SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11399-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAJENDRA MASHRU Respondent

Before:

Mr J. P. Davies (in the chair)
Mr J. A. Astle
Mr S. Marquez

Dates of Hearing: 26-28 April 2016

Appearances

David Barton, Solicitor Advocate of Flagstones, High Halden Road, Biddenden, Ashford, Kent, TN27 8JG, for the Applicant.

Clare Dixon, Barrister of 4 New Square, Lincolns Inn, London, WC2A 3RJ instructed by Beale & Co Solicitors LLP, Royal Talbot House, 2 Victoria Street, Bristol, BS1 6BN for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made on behalf of the Solicitors Regulation Authority ("the SRA") were as follows:

1.1 Contrary to Rule 14.5 of the SRA Accounts Rules 2011 ("the SAR") payments into, and transfers or withdrawals from his client account were not made in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of his normal regulated activities;

1.2 In breach of Principles 2,6,7 and 8 of the SRA Principles 2011 ("the Principles"), or any of them, he failed to have sufficient regard for his duties under Money Laundering Regulations 2007 and/or the Law Society's Blue Card Warning on money laundering;

1.3 In breach of Principles 2,6,7 and 8 of the Principles, or any of them, he participated in or facilitated a transaction that bore the hallmarks of advance fee fraud and failed to be alert to its suspicious features;

1.4 In breach of Principle 7 of the Principles he failed to comply with his regulatory obligation to supervise RB;

1.5 In breach of Principles 2,3,6,7 and 8 of the Principles, or any of them, he permitted RB to participate in and/or conduct litigation after he had been struck off the Roll on 20 March 2014.

Documents

2. The Tribunal considered all the documents in the case including:

Applicant

- Application and Rule 5 Statement with exhibit DEB/1 dated 17 June 2015
- Applicant's Skeleton Argument for Hearing dated 14 April 2016
- Addendum to Applicant's Skeleton Argument dated 19 April 2016
- Applicant's Supplementary Bundle
- Statement of John A Russell with exhibit JAR/1 dated 18 March 2016
- Statement of Nathan Russell dated 18 March 2016
- Statement of John D Russell dated 18 March 2016
- Statement of Costs dated 17 June 2015 and 18 April 2016

Respondent

- Answer to Rule 5 Statement (undated)
- Witness Statement of Respondent with exhibits RM/1-RM/10 inclusive dated 25 January 2016
- Witness Statement of Bharat Thakrar dated 4 April 2016
- Witness Statement of Neil Mendoza with exhibit NM/1 dated 13 April 2016
- Witness Statement of JB (client) dated 6 April 2016

- Witness Statement of Hussnain Ali dated 21 January 2016
- Witness Statement of Balwinder Chana dated 25 January 2016
- Bundle of Respondent's disclosure
- Statement of Costs dated 22 April 2016

Preliminary Matters

3. The Applicant applied to limit the scope of Allegation 1.2 to the six movements of money set out in the table below. The Applicant had reviewed the evidence provided by the Respondent and his witnesses and had taken the view that it would not be possible to prove the Allegation beyond that limited scope. The Respondent did not oppose the application. The Tribunal was satisfied that it was in the interests of justice to permit the Applicant to amend its case in light of fresh evidence. The application was granted.

Factual Background

4. The Respondent was born in 1953 and was admitted as a solicitor on 1 October 1979. At the time of the hearing he remained on the Roll of solicitors holding a full practising certificate free from conditions. At all material times he practised in partnership at Blackstone's, 3rd floor North Wing, Argyle House, Joel Street, Northwood, Middlesex HA6 1NW ("the Firm"). The Firm closed on 1 October 2014.

5. On 25 February 2014 Sean Grehan, an Investigation Officer employed by the SRA ("the IO"), commenced an inspection of the firm's books of account and other documents. His Forensic Investigation Report ("the FIR") was dated 10 June 2014.

6. From 21 July 2011 until 20 September 2013 the firm employed RB, a solicitor admitted to the Roll in 1986. He was employed as a consultant. On 4 April 2011 his practising certificate had become subject to a number of conditions, one of which provided that he could act as a solicitor only in employment which had first been approved by the SRA. He was also obliged to inform prospective employers of the existence of the conditions and the reason for their imposition. On 21 July 2011 the SRA approved RB's employment by the Firm subject to a condition that he was directly supervised by the Respondent, or another solicitor or partner should the Respondent be unable to do so through absence. The Respondent informed the IO that RB's employment terminated on around 20 September 2013. The Tribunal heard an application against RB on 20 March 2014 and ordered that he be struck off the Roll of solicitors.

Allegation 1.1

7. Allegations 1.1-1.3 concerned six monetary transfers as follows on ledger 1794;

Date	To	From	Amount (£)
9.11.11	Firm's client account	MS	50,000
11.11.11	Firm's client account	Nathan Russell	25,000
11.11.11	Firm's client account	John A Russell	75,000
15.11.11	MS	Firm's client account	50,000
15.11.11	MSG	Firm's client account	50,000
17.11.11	LG Solicitors	Firm's client account	50,000

8. The Respondent operated a client account with NatWest bank. The IO inspected ledger 1794 together with contemporaneous emails and other documents. All relevant entries in the ledger were made after RB was employed. The ledger was opened in October 2011 and named the client as LMK Limited ("LMK"). It was titled P/O 27/39 Q. RB had conduct of the matter, supervised by the Respondent. The IO considered the credits and debits into the client account as recorded in the ledger between 20 October 2011 and 2 December 2011. The IO did not find a connection with the contemporaneous conduct of an underlying legal transaction or to a service forming part of the Firm's normal regulated activities.

9. Throughout the period 28 October to 2 December 2011 LMK's two directors were PC and SG. The Firm received and acted on instructions from PC as an officer of LMK but also from MS who was an accountant.

10. The ledger was first credited with the payment of £1,000 from PC into the Firm's client account on 28 October 2011. In PC's email of 28 October 2011 he stated it had been transferred from one of his companies, MPL, and that he was in the process of opening an account for LMK. On 7 November 2011 costs and VAT totalling £940 were transferred from client account to office account. It was not apparent what the Firm charged for or what reserved work it had undertaken. There was no client care letter. In a reply to questions dated 9 April 2014 the Respondent accepted this was a shortcoming.

11. On 9 November 2011 and 11 November 2011 the Firm's client account was credited with payments totalling £150,000 which were duly recorded in the ledger. £50,000 was paid in by MS on 9 November 2011, £25,000 by Nathan Russell and £75,000 by John Russell, both on 11 November 2011. Neither MS nor the Russells were clients of the Firm. The payment details relating to the payment by MS were described a part deposit for an exchange. The same sum went directly back to MS six days later on 15 November on his, MS' instructions. The payment credit advices for the deposits made by the Russells were accompanied by credit slips with the narratives "deposit/re payment for loan".

12. By 11 November 2011 the ledger recorded a credit balance of £150,060.00. MS gave instructions for the part disbursement of the sum. On 15 November 2011 he sent an email requesting £100,000 be paid out of client account. £50,000 was to go to a company called MGS Limited and the same amount was to go to him personally. Both payments were duly made. The Respondent authorised both of them. The payment slips contained the narratives "Account as requested by client and MS". There was an email from PC dated 15 November 2011 in which he confirmed £100,000 could be transferred to MS. The IO did not identify a legal transaction to which the Russells' payments in and out related.

13. On 16 November 2011, MS deposited a further £5,000 with the firm "on account of searches and costs". This took the credit balance to £55,060.

14. On 17 November 2011 £50,000 was paid to PC according to the ledger narrative. The Respondent informed the IO that the ledger was incorrect and the payment was in fact made to LG solicitors.

15. On 2 December 2011 a bill for £2,484 was raised and paid by client to office transfer. The narrative of the bill stated that the Firm had provided services in connection with the proposed purchase of 27/39Q, had taken further instructions, had perused documentation, had raised detailed enquiries and had dealt with the proposed funders and made searches. The IO concluded that none of this was supported by any of the documents seen by him. The Firm charged and was paid £3,424 during the period up to 2 December 2011.

Allegation 1.2

16. The IO concluded that the receipts and payments in relation to the movements of money detailed above were not supported by documentation and did not appear to relate to the purchase of 27/39 Q. The IO concluded that the SRA Warning Notice on Money Laundering (April 2009) had not been considered.

Allegation 1.3

17. As referred to above, the Russells paid £100,000 into the Firm's client account and it was disbursed on MS's instructions to himself and to MGS Limited. The Respondent authorised both payments of £50,000 each on 15 November 2011. He did so following the receipt from RB of an email dated 15 November 2011. The IO asked the Respondent "what was your understanding of the Russells providing funds in relation to this matter?" He answered by stating that RB had told him that the money was to form part of the deposit due to be paid to the sellers as stated on the credit slips. He said that he understood the money was paid on the instructions of MS "and we are not privy to the understanding between them".

18. Subsequently, a further explanation was offered by the Respondent's solicitors. They said "the Russells sent in £100,000 in respect of the transaction. It appears that the purpose of the monies might have been different to that known to the firm (i.e. an arrangement between MS and the Russells) but that was not apparent at the time of receipt (note that RB was not aware of the arrangements). In any event on the basis that the £100,000 represented a 5% deposit and RB was undertaking a legitimate transaction it is reasonable and fair for the funds to be treated as part of the transaction".

19. In a letter from Lyndale's solicitors dated 28 November 2012, instructed by the Russells to recover the £100,000 paid by them in November 2011, it was claimed that the money was paid as a deposit (advance fee) for a much larger loan of £1 million that MS was to arrange. The letter from Lyndale's asserted that the loan never materialised and that it was a sham. It sought disclosure of where the money was sent. The IO concluded that the transaction bore the hallmarks of advance fee fraud.

Allegation 1.4

20. As stated above, RB was under the Respondent's supervision in accordance with the agreement reached with the SRA when the application to employ RB was granted. RB was the sole principal of B & Co until the SRA intervened on 8 February 2011. The intervention followed a forensic investigation report dated 21 January 2011. The intervention notice described the alleged misconduct, which amounted to breaches of

the SAR including the use of client bank account for the provision of banking facilities. The intervention notice further alleged dishonesty.

21. The application for approval to employ RB dated 21 July 2011 informed the Applicant that the Firm:

> "are considering employing RB in the capacity of a business promotion consultant. Ideally, and subject to the approval of the SRA we would like his role to be introduce (sic) business clients to our practice and help with advertising, marketing and promoting our firm to existing as well as, hopefully of course, new clients."

22. On 14 June 2011 the SRA caseworker asked a series of questions about the proposed arrangements and these were answered on 14 July 2011. That communication stated that "we have had further discussions with RB and amongst the partners of this firm concluded that we would like to offer RB employment with our firm subject of course to approval by yourselves".

23. In answer to the question on the discrete matter of who would supervise RB on a day-to-day basis it was said "Rajendra (RM) (partner) will be responsible for the supervision of RB". The Firm was asked to provide details of the procedures in place to ensure RB was properly supervised and managed. The Firm said:

> "It is normal practice all file opening to be authorised by RM. All incoming mail is looked at and distributed by RM. On a regular basis all fee earners to prepare a report on the files that they are dealing with. Each manager in the office is responsible for going through the files of the staff nominated to the employee on a regular basis and at regular intervals. In this case Mr Mashru will be doing so."

24. The Firm was asked to provide RB's job title and job description. The Firm told the SRA that he was to be employed as a consultant solicitor and he would be working only from the firm's offices in Northwood. The Firm stated "he will only be dealing with files and matters that have been prior approved as permitted to be done by R Mashru or this firm". As to the job description the firm stated "he will be doing all that one may expect of a solicitor (legal work) of his standing, and in particular to handle files of clients in his field of expertise, subject to prior approval of the supervisor who will ensure that he is capable of supervising the same". The firm also stated that RB would not have responsibility for receiving or holding client money and it was not intended he would be a signatory to client or office accounts.

25. On 21 July 2011 the SRA approved RB's employment by the firm subject to the following conditions:

> "1. He is directly supervised by the Rajendra Mashru and in the event he is absent from the office, another solicitor/partner "qualified to supervise" in accordance with Rule 5.02 of the Solicitors Code of Conduct, will supervise him.

2. RB shall not hold, receive or handle client or office account monies, or be involved in the operation of the firm's client or office accounts and accounting functions.
3. RB shall not be a signatory to any office or client account cheques (including any electronic banking arrangements).
4. The Solicitors Regulation Authority is notified prior to any material changes taking place, that may affect the firm's ability to supervise RB in compliance with the conditions imposed, so that prior to such changes taking place consideration can be given as to whether to continue to improve RB's employment with the firm.
5. This approval and the conditions attached to it are subject to review at the discretion of the Solicitors Regulation Authority."

26. The Respondent became directly involved in this transaction at three specific stages. These were a) when Lyndales contacted the Firm b) when RB became ill around November 2012 and c) when the property transaction relating to 27/39Q eventually completed.

Allegation 1.5

27. RB was struck off the Roll on 20 March 2014. The Respondent was informed of this by the IO. RB had been acting for JB prior to this. Following his strike-off, emails between the Firm and the other side concerning Mr JB's case were copied to RB at his web-based email address. One email was sent on 29 May 2014 at 11.53am concluded with the words "Kind regards RB" (RB's name was written in full in the original email). This was followed by a further email at 12.06pm stating "Further to Mr Mashru's email below, please delete/ignore reference to Mr RB's name at the bottom of the email. Don't know how this has come about". RB attended a 'without prejudice' meeting after he had been struck off.

Witnesses

John A Russell

28. Mr Russell confirmed that his Witness Statement was true to the best of his knowledge and belief.

28.1 In 2009 he, along with his brother Nathan Russell, was the director of two companies running amusement arcades and shops. He had first been introduced to MS and RB in about October 2009. In late 2011 he and Nathan Russell had been contacted by Mr ASM, the former owner of a group of companies in the same industry. Mr ASM told them that there was an opportunity to buy some of the shops from his former company and that MS had some very wealthy clients willing to invest if the Russells were looking to expand. A substantial loan could be provided on favourable terms. The sum suggested was £1,000,000.

28.2 The Russell brothers and their father, John D Russell, were interested and a meeting was arranged at a hotel in Watford in late 2011. The meeting lasted around two hours and the outline of a lending agreement was reached. The proposal was that a loan of £1,000,000 would be made available, but first the Russells had to make an upfront

advance payment of £100,000. This was to be paid into the client account of the Firm where RB was working. The details of the loan were then to be arranged and a loan agreement drawn up. In the event that an agreement could not be reached, the money would be returned to the Russells less up to £5,000 for the Firm's legal fees. The Russells took comfort from the fact that the money was being paid into a solicitor's client account. The money was paid in two instalments as set out above. No agreement was drawn up and the Russells never saw their money again.

28.3 In cross-examination he confirmed that he did not know the identity of the wealthy clients to which Mr ASM had referred. He did not know who would be making the loan beyond the fact of it being a client of MS. The terms of the loan were not identified save for the fact that there was to be a loan agreement and if there was not then the maximum loss would be £5,000.

28.4 Mr Russell was referred to an email dated 8 November 2011 from RB to Mr Russell senior in which RB had written "Further to our telephone conversations of today, I understand that you have now agreed to provide £100,000.00 as a non-refundable deposit which can be released immediately upon my receipt of the same from you/your family companies. I understand that you have received directly an assurance/guarantee from a third party (I have no details of it) and you have satisfied yourself in respect of that. I have confirmed to you that I do not act for you in the matter and whilst we know each other, I have not and cannot offer you any legal advice or assurance whatsoever. Furthermore, neither I nor this firm accept any liability whatsoever in respect of the monies that you have agreed to provide. There is no paperwork in relation to the loan and the lender may or may not perform. If you decide to proceed then you do so on this basis and you would need to look to the guarantor for payment of the monies that you send to me". The bank details were provided and the email concluded "For the avoidance of any doubt, if and when I receive the sum of £100,000 from you or your family companies I shall treat the same as released and utilise those monies as my client directs without further reference to you". Mr Russell confirmed that his father had shown him this email at the time.

28.5 It was put to Mr Russell that the email made clear that it was a non-refundable deposit. He accepted that the email read that way but reiterated that it was his understanding that it would be refundable. The money was not to be immediately released and he had emailed RB the following day to confirm that the money was to be held to order. He repeatedly denied that the £100,000 was a payment made to the Firm for their client to use as he saw fit. The purpose was for the arrangement of the loan and nothing else. Mr Russell believed that he and his family became clients of the Firm as the money was being paid into a client account although he accepted that this email (and others) suggested otherwise. He had been required to provide his identification. He agreed that he had not formally approached MS regarding the monies until 18 December 2012 when they instructed Lyndales to write to him. He told the Tribunal that the money remained missing.

<u>John D Russell</u>

29. Mr Russell confirmed that his Witness Statement was true to the best of his knowledge and belief. He further confirmed that he had read the Witness Statement of his son, John A Russell, and that was also true.

29.1 He confirmed that the wealthy clients behind the loan were not identified, neither were the terms of the loan, the interest rate or the repayment details. There was, however, an expectation that the £100,000 would be returned whether or not a loan was advanced, less £5,000 for costs if it was not. He and his family drew a great deal of comfort from the fact that the money was being paid into a solicitor's client account.

29.2 He agreed that the email of 8 November 2011 referred to a non-refundable deposit and told the Tribunal that he had not taken issue with it in his email to RB the following day but he had done so by telephone. The email the following day corrected the matter concerning the money being held to order. He denied that the money was to be used as MS saw fit – it was to be used to arrange the loan. MS did not have carte blanche to do as he wanted with it.

Nathan Russell

30. Mr Russell confirmed that his Witness Statement was true to the best of his knowledge and belief. He further confirmed that he had read the Witness Statement of his brother, John A Russell, and that was also true.

30.1 Mr Russell confirmed the account of the meeting at the hotel in Watford to be the same as that of his father and brother. He thought that the reference to a non-refundable deposit in the email of 8 November 2011 was strange, as was the reference to RB not acting for them in any way and the money being utilised without further reference to them. His father had replied the next day and he had seen that email at the time. Mr Russell believed that the money was to go to MS at his accountancy firm. In reply to question from the Chairman he added that it may also have been for one of MS' clients in connection with the loan. He denied the suggestion that he knew the Firm was not protecting his position at that point.

Sean Grehan (IO)

31. Mr Grehan confirmed that the contents of the FIR were true to the best of his knowledge and belief.

31.1 The Respondent had co-operated with the investigation and given him access to the files. Mr Grehan did not have access to the email accounts. He had not been offered access nor had he sought it. He had not interviewed PC, RB or MS in the course of his investigation.

31.2 The FIR set out the background to RB's regulatory history. RB had been the principal at B & Co, which was the subject of an intervention by the SRA in 2011 as dishonesty was suspected. At that time RB's practising certificate had been suspended. The suspension was lifted on 4 April 2011 when conditions were imposed. On 21 July 2011 his employment with the Firm had been approved. This followed an exchange of emails between the Firm and the SRA in which the Firm had set out on 14 July 2011 how the Respondent intended to supervise RB. This included the following explanation: "It is normal practice for all file opening to be authorised by RM. All incoming mail is looked at and distributed by RM. On a regular basis all fee earners have to prepare a report on the files that they are dealing with. Each manager

in the office is responsible for going through the files of the staff nominated to the employee on a regular basis and at regular intervals. In this case Mr Mashru will be doing so." Mr Grehan did not agree with the suggestion put to him in cross-examination that the reference to incoming mail related exclusively to post rather than including emails.

31.3 In cross-examination concerning the movement of monies, Mr Grehan did not dispute that there was an intended transaction, namely the purchase of 27/39 Q and indeed pointed out that he had accepted this in the FIR.

31.4 It was suggested that there were numerous instances where he had not fully included the Respondent's explanations in the FIR. Mr Grehan denied this and stated that all the Respondent's answers were clearly appended to the FIR. The FIR was a summary of the investigation and the supporting documents were available to be read. In response to a question from the Tribunal he maintained that he had summarised the important parts of all the documents.

31.5 It was put to Mr Grehan that the money had been paid into the client account by the Russells and by MS for a particular purpose. That purpose having changed, when the purchase did not go ahead, it was right that the money should have been returned to MS. Mr Grehan maintained that the monies coming from the Russells did not have a contemporaneous link with the transaction concerning the purchase of 27/39 Q.

The Respondent

32. The Respondent confirmed that his Answer and Witness Statement was true to the best of his knowledge and belief.

32.1 He had been the Compliance Officer for Legal Practice (COLP) and the Compliance Officer for Finance and Administration (COFA) since he and his partners had opened the Firm in 2009. The Money Laundering Officer ("MLO") was NH, another partner. The Respondent had been in practice for 36 years and regarded himself as experienced. He told the Tribunal that RB had joined the Firm in July 2011 as a Consultant. Prior to July 2011 he had never heard of him. NH knew him and recommended that the Firm interview him for a position. The Respondent agreed to this and when RB was interviewed he was asked to provide his version of events behind the intervention. He did so and gave the impression that he had done his utmost to try to prevent the intervention becoming necessary. He told the Respondent that the allegations concerned breaches of the accounts rules but that he had offered to pay the money back. He did not tell the Respondent about the allegations of dishonesty although the Respondent had seen the intervention notice and knew of the allegation before RB took up employment. Initially NH submitted an application to the SRA to employ RB as a business promotion consultant. The Respondent was not happy with this and wanted RB as a solicitor or not at all.

32.2 The interview was a formal one at which all the partners were present. The Respondent did not obtain references because RB was recommended by NH. He was well-respected, did not come across as dishonest and had a good client following. The SRA had allowed RB to continue practising and the Respondent took comfort

from that. He felt that having weighed the risks it was reasonable to employ RB. He apologised if this turned out to be a mistake.

32.3 The Respondent confirmed that he had authorised the opening of the file relating to the purchase of 27/39 Q. The client was LMK. He accepted that he had not checked to see if a retainer letter had been sent out. He would have expected it to have been done but did not follow up to see if it had actually been done.

32.4 The Respondent was asked if he knew that RB had attended the meeting at the hotel in Watford described by the Russells. He did not believe such meeting even took place and therefore did not know whether or not RB attended. It had not been suggested to the Russells that the meeting did not take place as he could not prove it did not.

32.5 He was not aware of the Russells money coming into the client account until it did so. There were no discussions about it prior to that. He had not asked RB about the source of the funds previously as RB was a senior solicitor with 25 years' experience and he did not feel he needed to. His understanding when the money came in was that it was a deposit for the purchase of 27/39 Q. He referred to the payment credit advice which described the payment as "part deposit/prepayment for loan". Initially he thought this read "repayment" and believed that this was an arrangement between the Russells and MS in connection with the purchase.

32.6 The Respondent believed MS to be a lender or an investor. MS had paid £50,000 on that basis. This was what he had been told by RB and he had no reason to disbelieve him. There was no attendance note but he referred the Tribunal to an email exchange from RB to MS dated 16 November 2011, after MS had changed his mind about the purchase of 27/39 Q, in which RB asked MS "is this where you want the £50,000 that we are holding for the B purchase to be sent in connection with another purchase by yourselves?" to which MS replied in the affirmative. This led the Respondent to believe that it was more likely that MS was a lender. The £50,000 was returned to MS on 16 November 2011. The Respondent denied this was money laundering as the money had been paid in for a property purchase and was being returned as that purchase was not now proceeding.

32.7 It was put to him in cross-examination that there was no documentation of any sort that described MS as a lender and no letter from the Firm to MS confirming his role. The Respondent accepted this.

32.8 The Respondent explained that once the Russells had released the money to MS it belonged to him (MS) and PC as it was in the LMK account. It was true that the monies advanced by the Russells did not contribute to the eventual purchase but the Respondent's view was that it could be disbursed in whatever way MS directed. Although MS was not a client he was acting on instruction from PC, who was. The Respondent accepted that the money did not have to go through a client account and could have been paid directly from the Russells to MS, but people sometimes preferred to send monies via a solicitor as it provided reassurance.

32.9 It was suggested to the Respondent that he should have been proactive and made more detailed enquiries of RB during the course of the transaction. The Respondent reminded the Tribunal that RB was not a trainee but a qualified solicitor. No alarm bells were ringing. It was put to him that the Russells had been defrauded. The Respondent did not accept this. They were not "schoolchildren" but grown ups. The Respondent would not do anything differently in the same situation in the future. The Respondent accepted that he had not provided this explanation to Lyndales when they wrote to him enquiring about the missing monies. He found their letter accusatory and was of the view that they already knew the answers to the questions they were asking. He agreed that the letter was discourteous and apologised for it being so.

32.10 It was suggested to the Respondent that the events were not common. There was money coming from one third party going to another third party. The Respondent told the Tribunal that there was nothing to raise alarm bells. All the individuals knew each other and he had done nothing wrong.

32.11 The Respondent was made aware of RB's strike-off on 20 March 2014, the day it happened, as Mr Grehan informed him. By this time RB was no longer employed by the Firm. His email account had been deactivated on 29 October 2013. RB had been conducting JB's matter until he (RB) became ill around November 2012. At that stage conduct was transferred to RK who was assisted by Hussnain Ali and supervised by the Respondent. The Firm was asked by JB to keep RB in the loop, which the Firm agreed to do. He was not copied into every email and did not get daily updates. The emails that were sent to him were all sent to his web-based email address. A meeting was convened at the Firm's offices in April 2014 to explore Alternative Dispute Resolution of JB's matter. Among the people present at the meeting was RB. JB had asked for RB to be present. The Respondent made clear that RB was no longer in the employ of the Firm and was not being paid to attend. He expressed concern that RB's presence could cause confusion but the client insisted that RB attend in a supportive role at the client's insistence. The Respondent agreed, feeling that JB may change solicitors if his wishes were not respected, although JB did not actually spell this out. The input from RB at the meeting was minimal and said nothing except in reply to one specific question about a company. The Respondent accepted that he did not tell JB that RB had been struck off.

32.12 The Respondent was referred to the email of 29 May 2014 and he denied that RB had drafted the email. RB had sent him certain pointers, some of which he had adopted. While doing so he had inadvertently copied and pasted the name of RB. The email came from the Respondent however, reflected in the email signature at the end of the email. RB had not been participating in or conducting litigation and the Respondent had not been in any way influenced by RB's involvement as a friend of JB wishing to be kept informed of developments. The Respondent denied that he had allowed his independence to be compromised. He had not been influenced by a struck-off solicitor.

Balwinder Chana

33. Mrs Chana confirmed that her Witness Statement was true to the best of her knowledge and belief. She was a bookkeeper who started working with the Firm in April 2011. She described in detail how the accounting system was operated at the Firm.

Hussnain Ali

34. Mr Ali confirmed that his Witness Statement was true to the best of his knowledge and belief. He had joined the Firm in October 2009 and undertaken his training contract there. He remained at the Firm until 2014. Following RB becoming ill in late 2012 he had become involved in the conduct of JB's matter. JB insisted that RB be kept in the loop. Mr Ali made it clear to JB that all instructions had to come from JB as he was the client. JB asked that RB be copied into emails. He did not have any conversation with JB about RB being struck off. Mr Ali told the Tribunal that he believed RB's name came to be on the email of 29 May 2013 due to a section of an earlier email from RB being copied into the new email. When he was reading through the email he noticed it and sent the correction at 12.06pm. He had not seen RB's initial email to the Respondent, but knowing the Respondent he did not think it was an email drafted by RB.

JB (Client)

35. JB confirmed that his Witness Statement was true to the best of his knowledge and belief. He had always instructed RB to handle matters for him and this particular case had commenced in late 2009 or early 2010. He became aware that RB could not practise as a solicitor, although could not recall the precise date. RB had told him this. RB remained willing to support him as a friend and JB wished this to happen. JB told the Tribunal that he would have changed solicitors if RB had not been kept in the loop, although he did not recall saying this to anyone at the Firm. JB confirmed that he had asked RB to attend the 'without prejudice' meeting. The Respondent had explained that RB was not employed by him and he was not being paid to attend. JB told the Respondent that he wished him to be present. RB would help him prepare correspondence but would always make clear that he was not advising as a solicitor but simply as a friend as he could not act as a solicitor.

Findings of Fact and Law

36. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

37. **Allegation 1.1 - Contrary to Rule 14.5 of the SRA Accounts Rules 2011 ("the SAR") payments into, and transfers or withdrawals from his client account were not made in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of his normal regulated activities.**

37.1 The Applicant submitted that principals were strictly liable for breaches of the SAR and firms had to ensure compliance by all those employed. The Applicant invited the Tribunal not to look at Rule 14.5 in isolation, as the SAR imports the principles relating to the handling of client money into Rule 14.5. The Russells' money was effectively client money as it was not office money as defined by Rule 12. The Applicant referred the Tribunal to the cases of Patel v Solicitors Regulation Authority [2012] EWHC 3373 and Fuglers LLP and others v Solicitors Regulation Authority [2014] EWHC 179 (Admin). In Patel at [43] and [44] the Court said; "The primary purpose of maintaining a client account is to segregate funds held for the client from the solicitor's own funds in order to provide the client with a measure of protection. One would therefore expect it to be used to hold funds which have come into the solicitor's hands in relation to services carried out for the client, to be paid out in due course to the client or in accordance with his instructions". Rule 14.5 of the SRA Accounts Rules refers to instructions relating to an underlying transaction or a service forming part of the solicitor's normal regulated activities. The expression "regulated activities" includes in this context all forms of legal activity as defined in section 12 of the Legal Services Act 2007. That means the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes and the provision of representation in connection with any matter concerning the application of law or any form of resolution of legal disputes. It follows that in most cases the receipt of client funds will result from the provision of services forming part of the solicitor's normal regulated activities, but some recognised professional services, such as acting as an executor, will not fall into that category. There is clearly scope, therefore, for funds to arise from underlying transactions of a kind which, although they form an accepted part of the professional services provided by solicitors do not fall within the definition of regulated activates. They are likely, nonetheless, to be legal activities in the broad sense of the expression".

37.2 The Applicant submitted that the Russells' money bore no relation to the purchase of 27/39 Q. It was accepted that there was an intended transaction involving LMK purchasing 27/39 Q but the Applicant submitted that the payments made by the Russells bore no relation to that transaction. The instructions to release the money came from MS, who was not a client. There was no client care letter and no attendance notes suggesting that part of the funding of the purchase was coming from the Russells. There was no documentation produced that enabled the conduct of the underlying legal transaction to be identified in connection with the movements of money. The credit slip relating to the £25,000 from Nathan Russell was signed by RB and states "Part deposit/pre payment of loan". It was submitted that this was significant as it was an example of a contemporaneous document referring to a payment for a loan. The Applicant submitted that the Respondent should have had a complete understanding of the arrangements between the Russells and MS. On 15 November 2011 £50,000 was paid back out to MS, a six-day turnaround. There were no contemporaneous documents identifying the underlying purpose of the deposit and the repayment was a swift movement of money. When challenged by Lyndales, the Respondent did not explain to them that the Russells' money had been paid towards the intended purchase of a property.

37.3 The Respondent submitted that the payments into the Firm were made at a time when it was anticipated that MS would be an investor in the purchase of the property. When that intention changed the monies were paid out. The payment of the £50,000 to LG, a

reputable firm of solicitors was made after the position concerning the purchase had changed and was done in accordance with the client's instructions. The Respondent accepted that criticism over the lack of attendance notes and a client care letter was fair. However the absence of those documents did not mean that what he was told was incorrect. The Applicant had pointed out that the emails did not refer to a property purchase. However the question was whether MS was involved in a property purchase at the time and the answer to that question was "Yes." The Respondent submitted that the Russells had sent the money to the Firm for MS to do with as he saw fit. This was not a situation like that in Patel and Fuglers. This was a commercial conveyancing transaction. MS was going to invest, the money came in, MS changed his mind, the money went out.

37.4 The Tribunal considered Patel. The Tribunal was satisfied that there was an underlying transaction, as accepted by the Applicant. The key question was whether the monies coming in and going out had a reasonable nexus to that underlying transaction, as set out in Fuglers at [21.28]:

> "The Tribunal had not seen evidence of the retainer between PCFC and Fuglers so it was not at all clear exactly what the nature of the legal work that Fuglers had been instructed to carry out actually was. The tribunal had already rejected the submission that making payments to various creditors, particularly those who were non-football creditors, was ancillary to any legal work being carried out. The tribunal was therefore not satisfied that these payments from Fuglers' client account were incidental to the provision of professional services and that the Respondents could rely on any such exemption under the Financial Services and Markets Act 2000. The tribunal found that the Respondents could not rely on a blanket protection based on a retainer being in place which enabled these payments to be made as ancillary to that work. There had to be a reasonable nexus between the nature and scope of activity and the original retainer, and in this case the tribunal found that was not the position. Payments in the ordinary course of the business of creditors, whether football creditors or not, could not be said to be linked to insolvency advice on the facts of this case".

37.5 The Tribunal noted the email of 9 November 2011 from RB to John Russell. The subject heading was "RE: Deposit" and states "I confirm for the avoidance of doubt that I am acting for PC/LMK in this matter…" The reference to PC/LMK, who were the intended purchasers of 27/39Q in an email to the Russells suggested that there was a link between the money they were paying over and the transaction. The Payment Credit Advice documents are endorsed "part deposit/pre payment for loan". They were paid into ledger 1794 which was the PC/LMK account. On 15 November 2011 RB had emailed PC and the subject heading was "…Subject to contract". In the body of the email RB had written "Further to previous correspondence I write to confirm that Nathan Russell sent the sum of £25,000 for your account on Friday and his brother John Russell junior sent the sum of £75,000. They informed me yesterday that I can release those monies to MS. I await John Russell's written confirmation and expect that imminently". The email continues "I have not heard back from the seller's solicitors with replies to the queries we raised". The reference in this email to both the Russells' payments and the purchase of 27/39Q supported the proposition that the monies from the Russells were related to the purchase of 27/39Q. There was therefore

a reasonable nexus to the retainer and therefore the underlying legal transaction as the Respondent understood it to be. The same conclusion applied to the money being sent out to MS. In order to find the matter proved to the requisite standard the Tribunal would have to be sure beyond reasonable doubt that the transactions did not relate to the underlying transaction. The Respondent believed they related to an underlying transaction and the Tribunal accepted his evidence on this point.

37.6 The Tribunal was not satisfied beyond reasonable doubt that the payments into and withdrawals out of the client account were not in respect of instructions relating to an underlying transaction. This Allegation was not proved.

38. **Allegation 1.2 - In breach of Principles 2, 6, 7 and 8 of the SRA Principles 2011 ("the Principles"), or any of them, he failed to have sufficient regard for his duties under Money Laundering Regulations 2007 and/or the Law Society's Blue Card Warning on money laundering**.

38.1 The Applicant referred the Tribunal to the following warning signs as specified in the SRA Warning Notice on Money Laundering – updated April 2009, which it was submitted were ignored by the Respondent:

- Payments to unrelated third parties; money came in from the Russells and was paid out to MGS Limited and to LG Solicitors on another matter.
- Transactions taking an unusual turn; MS's change of mind in a matter of days allowed him to pay in £50,000 and withdraw it.
- Movement of funds between accounts and institutions without good reason; it was submitted that there was no good reason for these movements through the client account;
- Funds received into client account and paid back to the client or third parties.

38.2 The Applicant further referred the Tribunal to the relevant sections of the Money Laundering Regulations 2007. It was submitted that Regulation 5(c) defines "customer due diligence measures" as obtaining information on the purpose and intended nature of the business relationship. Regulation 7 imposed an obligation on the Respondent as a "relevant person" to apply customer due diligence measures as defined in Regulation 5(c) when he "established a business relationship and when he carried out occasional transactions". He established a business relationship with LMK, MS and PC and carried out occasional transitions when he authorised the receipts and payments that are the subject of Allegation 1.1. He did not obtain information on the purpose and intended nature of the business relationship and did not therefore carry out due diligence.

38.3 The Respondent submitted that payments were made to third parties but they were not unrelated or unusual. The payments were:

a) a repayment to MS of monies which had been paid to him at his behest (namely the monies from the Russells)
b) payment out by PC to a reputable firm of solicitors on another matter.

38.4 The Respondent submitted that the transactions did not take an unusual turn. They simply reflected a change in the position of MS to someone who was no longer going to be an investor in the property as had originally been intended. There was no evidence that the Respondent ignored warning signs. On the contrary he received explanations from RB as to why the monies needed to be moved in this way and then gave the necessary authorisation. So far as the money laundering regulations were concerned the Respondent denied failing to obtain information on the business relationship between LMK, MS and PC. The Respondent knew and had ascertained that they were all linked via the property transaction.

38.5 The Tribunal considered the Law Society's Blue Card Warning and the Money Laundering Regulations 2007, taking the warning signs individually and as a whole. The Tribunal was satisfied that the parties were not unrelated. They were linked to MS who was the accountant for PC, a client of the Firm. The property was being purchased by LMK of whom PC was the responsible officer. The Russells' monies appeared related to the purchase as set out in relation to Allegation 1.1 above. The money went into and back out of the Firm within a seven day period. This was explained however by the change of mind about the purchase on the part of PC. The money therefore went back to MS who had put the monies forward. Such changes of position were not unusual. The movements of money were between the client account and MS's accounts or that of his company or PC's other solicitor, LG. There was therefore a good reason for those movements. RB had asked the Respondent and another partner in the Firm, SD, to approve the transfers in a note dated 15 November 2011. The Tribunal accepted the Respondent's evidence that SD had discussed the matter with NH, the Money Laundering Officer who had approved the payments. The Tribunal was satisfied that the Respondent had established a connection between all parties. These were legitimate relationships. The Russells had been asked to produce identification, which John A Russell confirmed they had done. MS had also provided his identification on 9 November 2011. The Russells' money had come into the Firm from a UK bank account. This was not a cash transaction.

38.6 This Allegation was not proved.

39. **Allegation 1.3 - In breach of Principles 2,6,7 and 8 of the Principles, or any of them, he participated in or facilitated a transaction that bore the hallmarks of advance fee fraud and failed to be alert to it suspicious features.**

39.1 The Applicant submitted that the Russells' evidence supported the assertion that they had been victims of fraud. The property at 27/39 9Q was purchased by LMK on 31 January 2013 without using the Russells money. £50,000 went to MGS and the remainder to LG solicitors for another transaction, all on MS's instructions or direction. The 27/39Q purchase was entirely funded by money coming into the client account after the Russells' money had been disbursed. Had the Russells' money been contributing towards the purchase there should have been documentation to reflect that in the form of attendance notes and/or letters. There were no such documents. The Applicant submitted that the emails from RB were couched in opaque and secretive terms that could not readily be understood and were not consistent with the conduct of an open legal transaction. The Respondent's explanation, it was submitted, was unconvincing. The reality was that the Respondent did not know exactly why the Russells had paid money into client account. Having received the money it was, by

definition, client money and the Respondent had a duty to exercise proper stewardship over it. The Applicant submitted that the Russells had paid an advance fee for a loan and that, having lost their money, they were the victims of advance fee fraud. The Applicant submitted that the Russells' evidence was consistent with the documents.

39.2 The Respondent referred the Tribunal to the email dated 8 November 2011 from RB to John D Russell which stated:

> "Dear John
> Further to our telephone conversations of today I understand that you have now agreed to provide £100,000 as a non-refundable deposit which can be released immediately upon my receipt of the same from you/your family companies.
> I understand that you have received directly an assurance/guarantee from a third party (I have no details of it) and you have satisfied yourself in respect of that.
> I have confirmed to you that I do not act for you in the matter and whilst we know each other, I have not and cannot offer you any legal advice or assurance whatsoever. Furthermore, neither I nor this firm accept any liability whatsoever in respect of the monies that you have agreed to provide. There is no paperwork in relation to the loan and the lender may or may not perform. If you decide to proceed then you do so on this basis and you would need to look to the guarantor for payment of the monies that you send to me.
> Subject to the above, our bank details are as follows…
> For the avoidance of any doubt if and when I receive the sum of £100,000 from you or your family companies I shall treat the same as released and utilise those monies as my client directs without further reference to you."

39.3 The Respondent did not have sight of that email until the SRA's investigation. The Respondent submitted that for the Applicant to prove the allegation it would have to be established that the Respondent:

a) should have made himself aware of the contents of the email before authorising the payments to MS and MGS (the payments to LG not been authorised by him) and;
b) if he had, he would have been alerted to the possibility that the Russells were involved in an advance fee fraud.

39.4 The Respondent submitted that it was too onerous to impose upon a solicitor in the position of the Respondent an obligation to review each email sent by RB. To do so would go well beyond the conditions imposed by the SRA when they agreed to the Firm's employment of RB. It was also submitted that there was no evidence that RB would have shown the Respondent the email even if he had asked to see all emails related to the transaction.

39.5 Even if the Respondent had seen the email it was submitted that it was open to more than one interpretation. On one reading it was consistent with what the Respondent had been told by RB, namely that the Russells were, through MS, contributing towards LMK's purchase of the property in the form of a non-refundable deposit of £100,000 and that the deposit was the subject of an "assurance/guarantee" about

which RB had no details and in relation to which he and the Firm took no responsibility.

39.6 The Tribunal considered the email of 8 November 2011, which referred to a loan. This was ambiguous as that was capable of being interpreted as a loan relating to the purchase, particularly as other emails referred to a deposit and purchase of 27/39Q. The email referred to assurances/guarantees that the Russells had received from a third party and warned that the lender may or may not perform. The Tribunal could not be sure on the information available to the Respondent at the time that this bore the hallmarks of an advance fee fraud. The ambiguity was such that it was possible that there had been a misunderstanding on the part of the Russells. The Tribunal could not be sure beyond reasonable doubt that there was an advance fee fraud and therefore could not be sure that the Respondent facilitated it, let alone participated in it. The features were not suspicious and, for the reasons above, the Respondent had had regard to the Warning Notices. The Tribunal found this Allegation not proved.

40. **Allegation 1.4 - In breach of Principle 7 of the Principles he failed to comply with his regulatory obligation to supervise RB**.

40.1 The Applicant submitted that RB's employment would have required very careful and close supervision by the Respondent, who had employed a solicitor he knew to have been the subject of an intervention by the SRA. This should have required particular attention to detail in order to make informed judgements and decisions about his activities. In seeking permission to employ RB the Respondent presented a supervision package to the SRA, to which he was required to adhere. The Applicant submitted that the supervision provided by the Respondent was inadequate, indeed he had accepted that it may have been lacking. He had omitted to supervise the preparation and submission of a proper retainer letter. He did not appear to understand the relationship between MS and the Russells. In order fully to discharge his responsibility to supervise RB he would have had to ensure that he was fully aware of the details of the transactions taking place. The Applicant submitted that the "open door policy" operated by the Respondent was a passive approach and insufficient to discharge his responsibilities to supervise RB.

40.2 On behalf of the Respondent it was submitted that the qualified admission that he had made to this allegation in the Answer did not relate to this property transaction. The Respondent submitted that this Allegation referred to a failure to supervise in the context of this transaction. The principal failure here was the absence of the client care letter. The Respondent was entitled to rely on the fact that RB was an experienced solicitor, not a trainee, and was therefore entitled to rely on that experience and expect a client care letter to have been sent. The reasons for the intervention in RB's practice did not relate to a failure to send client care letters.

40.3 The Tribunal considered carefully the conditions attached to the SRA's approval of RB's employment, based on the assurances given by the Respondent. RB had been introduced by the Respondent's business partner. The Respondent had ensured that the revised application properly reflected the Firm's intention, namely that he was to be employed as a solicitor. The Respondent was aware that RB was the subject of an ongoing investigation and therefore there was a heightened need for supervision. However RB was 32 year' qualified and not a junior solicitor or a trainee. The extent

of supervision was not as great as it would be for a less qualified solicitor, even allowing for the additional supervision required by virtue of the condition imposed by the SRA. The Respondent did discuss the transactions with RB and the Money Laundering Officer, NH, was consulted when the money was transferred to MS. The fact that she was consulted indicated that the Respondent was cognisant of his obligations.

40.4 The Tribunal was not satisfied beyond reasonable doubt that the supervision of RB was inadequate or that it breached the assurances given to the SRA by the Respondent. This allegation was not proved.

41. **Allegation 1.5 - In breach of Principles 2,3,6,7 and 8 of the Principles, or any of them, he permitted RB to participate in and/or conduct litigation after he had been struck off the Roll on 20 March 2014**.

41.1 The Applicant submitted that bearing in mind his role as COLP and COFA, the Respondent ought to have declined to keep RB in the loop or to allow him to participate in meetings and in the drafting of communications that were clearly part in proceedings. The Applicant reminded the Tribunal that conducting litigation is a reserved activity under sections 13 and 14 of the Legal Services Act 2007. Conducting litigation includes "the issuing of proceedings before any court, the commencement, prosecution and defence of such proceedings, the performance of any ancillary functions in relation to such proceedings". The Applicant submitted that RB was participating in the litigation in the manner outlined above. It was essential that orders of the Tribunal striking solicitors from the Roll were not in any way frustrated or circumvented. These orders were made to protect the public and the reputation of the profession. JB was free to communicate with RB as he wished and could easily have done so without the need to be kept "in the loop" by the Respondent.

41.2 The Respondent submitted that at no time had RB been held out as a solicitor by the firm after he had been struck off. There was no evidence that the Respondent had attempted to circumvent the order of the Tribunal. The Respondent could not be guilty by association. It was not unusual for a client to bring along someone to assist them when they attended the offices of their solicitor. JB knew that RB had been struck off. Keeping such individuals in the loop occurs regularly. Struck off solicitors are not lepers, they can still remain friends with former clients. RB was not advancing matters substantively and therefore he was not conducting litigation.

41.3 The Tribunal considered whether RB had been conducting litigation or participating in the conduct of litigation. The Tribunal did not find that being "kept in the loop" amounted to participating in the conduct of litigation. There was clearly a long-standing friendship between JB and RB which survived RB being struck off. This was the view of Neil Mendoza, Counsel for JB, whose evidence was unchallenged. Although the Respondent had made clear to JB that RB had been struck off, the Tribunal accepted JB's evidence that he was aware that RB was not able to act as a solicitor based on what RB had told him. The Tribunal found that RB's involvement in JB's case was in the capacity of a personal friend. The Tribunal further accepted the evidence of Mr Ali and the Respondent concerning the way in which the case was conducted. RB was copied into the emails at his web-based email address, not that of the Firm. The Tribunal was satisfied that any emails drafted by RB were vetted by the

Respondent and/or Mr Ali. The Tribunal had regard to the exchange of emails dated 28 May 2014, in which RB had drafted a response to the other side and sent this to the Respondent, Mr Ali, JB and RK (another fee earner at the Firm). The Respondent had replied to RB, expressing the view that the email as drafted was likely to be counter-productive. He suggested an alternative approach "unless JB insists in which event I will send out the letter without further ado". The Tribunal was satisfied that this made clear that the Respondent was acting on instructions from his client alone. He had rejected RB's suggestion and would adopt it only if instructed to do so. The wording of the email that was eventually sent out on 29 May 2014 was sufficiently different to reflect the fact that it had been drafted by someone else, albeit adopting some phrases from RB's draft. This explained RB's name being at the bottom of the email, which the Tribunal was satisfied was a clerical error.

41.4 The Tribunal accepted the evidence of JB and the Respondent that RB's involvement in the 'without prejudice' meeting was minimal. The Tribunal was not satisfied beyond reasonable doubt that RB was participating in, or conducting, litigation. This Allegation was not proved.

Costs

42. The Applicant made an application for costs in the sum of £37,474.00, recognising in doing so that the matters had not been proved. Nevertheless the case had been properly brought by the SRA which had been discharging its responsibilities as a regulator acting in the public interest. The case had been the subject of ongoing review and this was reflected in the reduction of the scope of Allegation 1.2. To a certain extent the Respondent had brought matters on himself through a lack of comprehensive paperwork and in his responses, for example his letter to Lyndales, which was opaque.

43. The Respondent opposed this application and applied for costs against the SRA in the sum of £54,383.52. The Respondent accepted that the case had been properly brought and that there had been a case to answer. However none of the matters had been proved and the Respondent had endured these matters hanging over him for two years. He had lost a lot of fee earning time and the proceedings had been stressful. He had been required to mount an expensive defence.

44. In reply to the application for costs, the Applicant reminded the Tribunal that costs do not follow the event, per Laws LJ in Baxendale-Walker v The Law Society [2007] EWCA Civ 233. The case was properly brought, as accepted by the Respondent, and could not be described as a shambles from start to finish.

45. The Tribunal considered the submissions of both parties. The case had been properly brought. It was not a shambles, let alone from start to finish. Indeed it had been diligently prosecuted. The test for awarding costs against the Applicant as set out in Baxendale-Walker had not been met and that application was refused. The Tribunal considered Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Admin) in which Mr Justice Nicol stated at [42] "However while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor's costs, it does not follow that a solicitor who has successfully defended himself against those charges should have to pay the SRA's costs. Of course there may be something

about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that the case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action". In this case, while the Respondent had not helped himself in some respects, his failings were not such that he should have to pay the Applicant's costs. The application for costs against the Respondent was refused and the Tribunal therefore made no order for costs.

Dated this 15th day of June 2016
On behalf of the Tribunal

J. P. Davies
Chairman