SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11429-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TIMOTHY CHARLES ELKINS Respondent

Before:

Mr E. Nally (in the chair)
Mr K. W. Duncan
Mr M. R. Hallam

Date of Hearing: 24-26 May and 1 June 2016

Appearances

Paul Gott QC, barrister of Fountain Court Chambers, Temple, London EC4Y 9DH, instructed by Jonathan Goodwin, solicitor of Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT, for the Applicant

Timothy Kendall, barrister of 2 Bedford Row, London WC1R 4BU instructed under Direct Access, for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent, made on behalf of the Solicitors Regulation Authority ("SRA") were that:

1.1 He failed to disclose material information to lender client(s), in breach of:

a) In the period up to 5 October 2011 Rule 1.02, 1.03, 1.04 and 1.06 and 4.02 of the Solicitors Code of Conduct 2007 ("SCC 2007") and/or;

b) In the period from 6 October 2011 all, or alternatively any, of Principles 2, 3, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcomes 1.2, 1.12 and 4.2 of the SRA Code of Conduct 2011 ("SCC 2011")

1.2 He failed to act in the best interests of his purchaser client(s), in breach of:

a) In the period up to 5 October 2011, Rule 1.04, 1.05 of SCC 2007 and/or;

b) In the period from 6 October 2011 all, or alternatively any of Principles 4 and 5 of the Principles and failed to achieve Outcomes 1.2 and 1.12 of SCC 2011.

1.3 He acted in transactions where there was a conflict or a significant risk of conflict or a significant risk of conflict between the interests of two clients, the buyer(s) and lender(s) in breach of:

a) In the period up to 5 October 2011, Rule 1.02, 1.03, 1.04, 1.05, 1.06 and 3.01(1) and 3.01(2) of SCC 2007 and/or;

b) In the period from 6 October 2011 all, or alternatively any of Principles 2, 3, 4, 5 and 6 of the Principles and failed to achieve Outcome 3.5 of SCC 2011

1.4 He failed to enter into a written agreement with Inventive Tax Strategies Limited ("ITS") and/or Professional Advice Bureau ("PAB") and failed to inform purchaser clients in writing of all relevant information concerning the referral(s) from ITS and/or PAB to the firm in breach of:

a) In the period up to 5 October 2011, Rule 9.01(1), 9.02(a), 9.02(b), 9.02 (c), 9.02(e), and 9.02(g) of SCC 2007 and/or;

b) In the period from 6 October 2011, Principle 8 of the Principles and failed to achieve Outcomes 9.3, 9.4 and 9.7 of SCC 2011.

1.5 He failed to keep accounting records properly written up, in breach of:

a) In the period up to 5 October 2011, Rule 32(1) and (2) of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or;

b) In the period from 6 October 2011, Rules 29.1 and 29.2 of the SRA Accounts Rules 2011 ("SAR 2011").

1.6 He permitted the utilisation of clients funds for the benefit of another, without authority from the first client to do so, in breach of:

a) In the period up to 5 October 2011, Rule 1.02, 1.04, 1.05 and 1.06 of SCC 2007 and Rule 22 of SAR 1998 and/or;

b) In the period from 6 October 2011, all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles and Rule 20 of SAR 2011.

1.7 He backdated documents relating to the Crystal Scheme to the date of purchase to provide the misleading impression that the documents were executed at the same time as the original property purchase, in breach of all, or alternatively any of Principles 2, 3, 4 and 6 of the Principles.

1.8 He provided misleading information to HMRC by completing and submitting SDLT1 form(s) claiming full relief from Stamp Duty Land Tax ("SDLT") when, in fact, as at the date of the SDLT1 return the client(s) had signed agreements relating to the Option Scheme, which he knew had been rendered ineffective by amendments to the Finance Act 2003 on 21 March 2012, in breach of Principles 2, 3, 4 and 6 of the Principles.

1.9 He facilitated, permitted or acquiesced in a failure to disclose full and accurate information to ITS and/or HMRC in relation to HMRC's enquiry relating to two transactions, in breach of all, or alternatively any, of Principles 2,4 and 6 of the Principles.

2. While dishonesty was alleged in respect of Allegations 1.7, 1,8 and 1.9, dishonesty was not an essential ingredient for proof of the Allegations.

Documents

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

Applicant

- Application and Rule 5 Statement with Exhibit JRG/1 dated 15 September 2015
- Applicant's Authorities Bundle
- Applicant's Outline Opening dated 20 May 2016
- Schedule of Costs
- Supplementary Schedule of Costs dated 31 May 2016

Respondent

- Answer to Rule 5 Statement dated 29 October 2015
- Witness Statement of Respondent with Exhibits TCE/1, TCE/2, TCE/3, TCE/4 and TCE/5 dated 29 February 2016
- Respondent's Outline Submissions dated 30 May 2016
- Respondent's Authorities Bundle
- Respondent's supplementary Authorities Bundle

- Schedule of Respondent's position relating to each charge dated 24 May 2016, amended 26 May 2016
- Character Reference of Janice Flashman dated 2 March 2016
- Character Reference of Sir Julian Flaux (undated)
- Witness Statement of Stephen Porter dated 2 March 2016
- Email from John Surtees CBE dated 18 April 2016
- Email from Andrew Poplett dated 13 February 2016

Factual Background

4. The Respondent was born in 1958 and admitted to the Roll of solicitors on 15 November 1983. At the date of the hearing he remained on the Roll with an unconditional practising certificate. At all relevant times the Respondent carried on practice at Johnson and Gaunt ("the Firm") from offices at 47 North Bar Street, Banbury, Oxfordshire, OX16 0TJ.

5. On 16 April 2013 an investigation was commenced by Helen Maskell, a Financial Investigation Officer at the SRA ("the FIO"). As a result of that investigation she produced a Forensic Investigation Report dated 17 June 2014 ("FIR1"). A supplementary report was prepared by Stephen Cassini, also a Forensic Investigation Officer ("the second FIO"), and his report was dated 18 June 2015 ("FIR2").

6. The FIR1 related to the Respondent's role in conveyancing transactions involving SDLT mitigation schemes in the period 9 May 2011 to 5 July 2013. The schemes were promoted by PAB and ITS. The FIO identified that the Respondent completed 80 conveyancing transactions for clients who had also participated in a SDLT mitigation scheme.

<u>The Schemes</u>

7. The FIO identified four schemes as follows:

    - The Unlimited Company Scheme ("UCS") on which 28 transactions were completed,
    - The Option Scheme on which two transactions were completed,
    - The Crystal/Conditional Contract Scheme ("Crystal Scheme") on which 42 transactions were completed,
    - The Jovian Planning Scheme ("Jovian Scheme") on which eight transactions were completed.

    The FIO calculated that the Respondent's involvement in the schemes resulted in the non-payment of SDLT in the sum of £1,299,560.00. In addition to the conveyancing fees, the Firm also received fees paid by the promoters totalling £29,250 plus VAT, with the promoters receiving fees totalling £578,985.32 plus VAT.

UCS (Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6)

8. The Respondent carried out 28 transactions using the UCS. In 21 of those transactions he also acted for the lender. The earliest transaction completed on 9 May 2011 and the latest on 5 April 2012. In total £533,719.00 SDLT was avoided in that period.

9. The operation of the UCS was set out in the step-by-step guides prepared by the introducers. In summary it worked as follows:

- The purchaser clients would set up an unlimited company, of which they were the directors and shareholders (or a nominee co-director if there was only one client). They would subscribe for shares and this would be financed by funds normally used by clients to purchase the property;
- The new unlimited company would enter into a contract to purchase the property from the vendor using the funds raised from the share subscription;
- Upon completion and transfer of the sale from the vendor to the unlimited company, the company simultaneously would make a capital distribution to the shareholders (the purchaser clients) by way of a transfer of the property. Shortly after this the company would be wound up;
- Where a mortgage was obtained for the purchase of the property, mortgage funds were used for the purchase from the vendor, i.e. the purchase by the company, although the company was not the borrower named on the mortgage offer.

Exemplified Case – E&C

6.1.11	A letter confirming instructions was sent to the clients
21.1.11	The Respondent received an email from TY, a financial consultant, with information about SDLT mitigation schemes provided through PAB. This referred to a Confidentiality Agreement as well as an overview of the scheme and a Letter of Instruction for BH Tax
26.1.11	The Respondent emailed TY with the signed confidentiality agreement between the Firm and PAB.
27.1.11	PAB emailed the Respondent regarding the SDLT mitigation scheme, referring to the steps to be taken and the documents to be signed. The email referred to the need to ensure "*that the flow of monies into the client account meet CML and SRA accounts guidelines*" and to the need to open three separate client ledgers.

31.1.11	Company documents were drawn up including a New Company Questionnaire, IN01 Application to register a company, a DS01 Striking Off application, Articles of Association, Memorandum of Association, HMRC Corporation Tax form, board meeting minutes, resolution and confirmation letter dated 31 January 2011. These documents all confirmed that the company would, in anticipation of liquidation/winding up make a payment or "in specie transfer" to the shareholders (who were the purchaser clients) totalling £882,000 (being the purchase price of the property).
3.2.11	The Certificate of Incorporation of the company (EC) was issued.
	Exchange of contracts took place between vendor and EC.
4.2.11	The Respondent wrote to the clients stating "*…the sum of £882,000.00 will be held on trust by this Firm for EC and represents the Share Capital of the Company. I undertake to act as a bare trustee for the said Company and to hold the said funds in the capacity of Trustee*".
8.3.11	The Respondent received instructions for the Firm to act on behalf of the lender in respect of a mortgage of £650,000.00 to the purchaser clients.
18.4.11	The Respondent sent two transfer documents to the clients. The first one was between the vendor and the company and the second one was between the company and the individual clients. The Respondent also sent a SDLT1 form.
28.4.11	The Certificate of Title was sent to the lender.
9.5.11	Completion took place.
	The property transferred from the vendor to EC (company)
	The property transferred from EC to the purchaser clients as individuals. This recorded that "*The transfer is not for money or anything that has a monetary value*".

11.5.11	The SDLT1 (the form used to claim the relief from payment of SDLT) was submitted and an SDLT5 was received. The SDLT1 referred to the purchase by EC for £882,000.00 and claimed SDLT relief under code 28.
3.6.11	The title was registered to the purchaser clients.
8.6.11	PAB invoiced the clients for £18,512.16

10. On 22 October 2012 HMRC Specialist Investigations wrote to the Firm and the Directors of EC assessing SDLT due in the sum of £35,208.00.

Option Scheme (Allegations 1.1, 1.2, 1.3, 1.4)

11. The Respondent carried out two transactions using the Option Scheme, in both cases also acting for the lender. The first transaction was completed on 2 February 2012 and the second on 24 February 2012. In total £39,050.00 SDLT was avoided in that period.

12. The operation of the Option Scheme was set out in the step-by-step guides prepared by the introducers. In summary it worked as follows:

- The purchaser client would exchange and complete with the vendor in the usual manner, sending the full balance of funds on completion;

- On the same date as completion, but following completion, the purchaser client would grant to an offshore company, JHL, an 'option' to purchase the property at a future date at market value, with consideration passing from JHL to the client for the option, usually in the sum of £1.00. JHL would normally, though not always, act in person, (that is, without separate legal representation) with the Firm providing a Certificate of Title to them;

- The scheme sought to utilise sub-sale relief provisions in the Finance Act 2003, with SDLT calculated at 'nil' based on the consideration under the option agreement.

Exemplified Case – RP

12.1.12	A letter confirming instructions was sent to the clients
13.1.12	A letter of engagement and letters of instruction from BH Tax were sent to the clients although they were dated as signed by the clients the previous day.

16.1.12	An email was sent to the Respondent from PAB asking him to act as "*panel solicitor on our behalf*" in respect of the Option Scheme for RP. Various documents including a step-guide were attached.
24.2.12	The Respondent received instructions for the Firm to act on behalf of the lender in respect of a mortgage to the purchaser clients.
26.1.12	BH Tax sent a letter to the clients via the Respondent. This summarised the scheme.
15.2.12	Exchange of contracts
16.2.12	The Certificate of Title was sent to the lender, signed by the Respondent
	The Firm wrote to the clients enclosing an SDLT1 for them to sign.
24.2.12	Completion took place
	The Certificate of Title was sent to JHL, signed by the Respondent.
	The Option Agreement was signed by RP and sent by the Firm to the solicitors for JHL inviting their signature
2.3.12	The Firm sent the Certificate of Title to the solicitors for JHL.
23.3.12	The SDLT1 was submitted and the SDLT5 was received. SDLT relief was claimed under code 28 and recorded the SDLT due as 'nil'.
20.4.12	The Firm wrote to HMRC outlining the use of the Option Scheme.
23.4.12	Confirmation of registration of title
24.4.12	The Firm wrote to the clients confirming that they would release the balance of SDLT once PAB's invoice had been received and their fees deducted.
25.4.12	PAB sent an invoice addressed to the clients c/o the Firm in the sum of £14,198.40
	The Firm sent PAB an invoice with the narrative "*Our costs relating to acting as panel solicitor for the company*" in the sum of £600.00.
4.9.12	The Firm emailed PAB enclosing the title documents and the SDLT5.

March 2013	Emails and letters were sent between the Firm and ITS arranging for JHL's copy of the Option Agreement to be sent and requesting the £1.00 consideration as this had not yet been done.

13. On 14 December 2012 HMRC wrote to the clients regarding the scheme. The Firm received a copy of this letter and sent it to PAB to deal with. This was confirmed to the clients in a letter dated 18 December 2012.

Crystal Scheme (Allegations 1.1, 1.2, 1.3, 1.4)

14. The Respondent carried out 42 transactions using the Crystal Scheme, of which 12 had been changed from the Option Scheme. Of the remaining 30 transactions the Respondent also acted for the lender in 28. The earliest transaction completed on 8 January 2012 and the latest on 22 March 2013. In total £363,427.00 SDLT was avoided in that period.

15. The operation of the Crystal Scheme was set out in the step-by-step guides prepared by the introducers. In summary it worked as follows:

- The purchaser client would exchange and complete with the vendor in the usual manner, sending the full balance of funds on completion;
- On the same date as completion, but following completion, the client purchaser would enter into a Conditional Contract with JHL to sell the property to them in 124 years at market value. Consideration was in the sum of £100.00;
- The purchaser would keep the property insured for the period of 124 years;
- The literature provided by the scheme providers/tax advisors set out that completion of the Conditional Contract must occur at the same time as completion of the main matter.

Exemplified Case - SW

8.3.12	A letter confirming instructions was sent to the client.
19.3.12	The Respondent received instructions for the Firm to act on behalf of the lender in respect of a mortgage in the sum of £322,070.00 to the purchaser client.
16.4.12	BH Tax sent a letter to the clients summarising the scheme.
1.5.12	Exchange of contracts took place
3.5.12	Certificate of Title was sent to the lender signed by the Respondent.

8.5.12	The Firm wrote to the client enclosing a Conditional Contract for the client to sign and a letter explaining the scheme from BH Tax. Enclosed with this letter was a SDLT1 completed by the Respondent for the client to sign.
10.5.12	The Certificate of Title was sent to JHL, signed by the Respondent.
14.5.12	Completion took place
	Conditional Contract was drawn up and dated
15.5.12	The SDLT1 was submitted and the SDLT5 was received. SDLT relief was claimed under code 28 and recorded the SDLT due as 'nil'.
22.5.12	A letter was sent to the Firm from JHL enclosing the signed Conditional Contract
23.5.12	PAB sent an invoice to the client c/o the Firm for "Sales fee for Tax Planning" in the sum of £7,740.00
21.6.12	The Firm sent an invoice addressed to the client but marked "Payable by PAB Limited" and sent directly to them with the narrative "*Our costs relating to acting on your behalf in connection with additional work incurred in executing stamp duty mitigation scheme in accordance with your instructions in connection with your purchase*…". The invoice was in the sum of £600.
	The Firm wrote to the client copying PAB's invoice and confirming the remittance of the balance of SDLT funds.

Jovian Scheme (Allegations 1.1, 1.2, 1.3, 1.4)

16. The Respondent carried out eight transactions using the Jovian Scheme, also acting for the lender in all of them. The earliest transaction completed on 24 April 2013 and the latest on 5 July 2013. In total £195,200.00 SDLT was avoided in that period.

17. The operation of the Jovian Scheme was set out in the step-by-step guides prepared by the introducers. In summary it worked as follows:

    - The purchaser client would exchange and complete with the vendor in the usual manner, sending the full balance of funds on completion;

    - On the same date as completion, but following completion, the purchaser client would enter into a contract with JHL in which the client agreed to grant JHL the option to purchase the property after 30 years. Consideration was set out in the agreement, with a lower rate if paid within two months of completion.

Exemplified Case – RM

26.3.13	A letter confirming instructions was sent to the client.
16.4.13	An email was sent to the Respondent from PAB asking him to act as "panel solicitor on our behalf" in respect of the Jovian scheme for RM
18.4.13	The Respondent received instructions for the Form to act on behalf of the lender in respect of a mortgage to the purchaser client.
16.5.13	Exchange of contracts took place
16.5.13	The Respondent signed the Certificate of Title and sent it to JHL.
5.6.13	The Respondent signed the Certificate of Title and sent it to the lender
6.6.13	The Firm sent a SDLT1 form completed by the Respondent to the client for signature.
12.6.13	The lender sent an updated letter of instruction to the firm
14.3.13	Completion took place
	The Agreement Deed between JHL and RM was dated and signed by RM
	A HMRC form entitled 'Disclosure of SDLT avoidance scheme' was completed and signed by RM.
	ITS sent an invoice to the client c/o the Firm for "Sales fee for Tax Planning" in the sum of £11,448.00.
17.6.13	The Firm sent PAB an invoice with the narrative "*Our costs in accordance with our agreement for acting as panel solicitor in the case of RM in accordance with our agreement"* in the sum of £600.00.
19.6.13	The SDLTD1 was submitted and the SDLT5 was received. SDLT relief was claimed under code 28 and recorded SDLT due to as 'nil'/
2.7.13	JHL sent the signed contract and consideration.

Change from Option Scheme to Crystal Scheme (Allegations 1.7 and 1.8)

18. As a result of amendments to the Finance Act 2003, announced on 21 March 2012 ("the March 2012 Budget") and effective from that date, the Option Scheme became redundant. The FIO identified 12 transactions that had started on the Option Scheme and completed after 21 March 2012, by which time the scheme was no longer effective. Following completion and submission of the SDLT1, Crystal Scheme documentation was sent by the Respondent to the purchaser clients. The Crystal Contract Scheme made clear that the completion of the conditional contract must occur on the same day as the completion of the main transaction. The Crystal Scheme conditional contracts were backdated by the Respondent to the date of the main transaction. The FIO was informed by the Respondent that he had received instructions and documentation to use the Crystal Scheme for matters previously on the Option Scheme on 3 April 2012.

Exemplified Case – P & L

1.3.12	A letter was sent from the Firm to the clients enclosing *"a tax advice letter provided by BH Tax*" and an Option Agreement, which the clients were asked to sign, but not date, and return.
21.3.12	March 2012 Budget – the Option Scheme was rendered ineffective from this date.
26.3.12	A letter was sent from the Firm to the clients with reference to the SDLT1 stating "*I have prepared this Form for your approval*". The clients were asked to check and sign it.
	Exchange of contracts took place
30.3.12	Completion took place
	A letter was sent from the Firm to the clients, inter alia, stating "*I will let you know as soon as I hear from PAB with regard to the new mitigation scheme which they are implementing in place of the option scheme they started you on. Obviously, as with any new scheme, there is the same opportunity for HMRC to challenge the scheme and, if they were successful, then you would have to pay the stamp duty due on the purchase, which is the same situation as you knew from the outset of course*".
11.4.12	The SDLT1 was submitted and the SDLT5 was received. The SDLT1 claimed relief under code 28 and recorded the SDLT due as nil.
13.4.12	A letter was sent from the Firm to the clients enclosing a conditional contract which they were asked to sign and return (undated). A tax advice letter from BH Tax was also enclosed, dated 26.3.12.
2.5.12	A letter was sent from the Firm to IFG enclosing a Certificate of Title dated 28.3.12 and the conditional contract dated 30.3.12 (the date of completion) "*duly signed and dated". The letter stated "Would you kindly complete with me? I have dated the Contract as it has already completed*".

Relationship between the Firm and the promoters (Allegation 1.4)

19. The FIO ascertained that the Firm had been referred business by ITS. The FIO was informed that the only written agreement that could be located between the Firm and ITS was an unsigned agreement. The FIO also located a confidentiality agreement on one of the transaction files dated 24 January 2011. This had been signed by the Respondent. The unsigned agreement provided, amongst other things, that the Firm's client was "…the client who instructs the conveyancer to undertake the clients purchase of the property…"

20. The FIO identified on 11 matters, emails to the Firm from ITS or PAB which included the words "please act as panel solicitor on our behalf…" The Applicant's case was that the Firm were receiving referrals of clients from the promoters of the schemes and as such Rule 9 of SCC 2007 up to 5 October 2011 and thereafter Principle 8 of the Principles and Outcome 9.7 of SCC 2011 were engaged, to the effect that there was a requirement that the agreement must be in writing. The FIO identified 18 invoices addressed to, or marked as payable by, ITS or PAB, 17 of which were made out ITS or PAB and one which was made out to the client but marked as payable by PAB. On 14 of the invoices, the description of work was detailed as "our costs acting as panel solicitor in accordance with the agreement in the case of…" or similar wording. On all of the invoices, save for one, the amount claimed by the Firm for profit costs was £500 plus VAT. It was ascertained that the Firm received fees paid by the scheme promoters totalling £29,250 plus VAT in addition to their conveyancing fees.

Response to enquiries from HMRC (Allegation 1.9)

21. In two transactions (A and T), HMRC raised enquiries about the SDLT mitigation scheme post-completion. These transactions were ones in which the Option Scheme had been substituted by the Crystal Scheme as detailed above. The letters from HMRC were both dated 11 January 2013 and sent to the Respondent as well as the purchaser clients.

22. The letters requested specific information and documents which were particularised in a schedule attached to the letters. They were sent to the Firm because it was the Firm who had submitted the SDLT1 and because the Respondent would have been in possession of the information and documents requested, having handled the transactions.

23. The Respondent did not respond directly to HMRC but forwarded relevant documents to ITS. He wrote to ITS on 1 March 2013 and enclosed the following documents:

- Contract
- Transfer of part
- Crystal contract
- SDLT1 and SDLT5
- Client ledger
- Completion statement
- Mortgage offer

Witnesses

Helen Maskell (FIO)

24. The FIO confirmed that the contents of her Witness Statement and FIR were true to the best of her knowledge and belief. She confirmed that the Respondent had provided her with all the documentation she had asked for during the course of her investigation.

The Respondent

25. The Respondent confirmed that the contents of his Witness Statement and his Answer were true to the best of his knowledge and belief.

26. He had first became involved in SDLT mitigation schemes after an approach in January 2011 from a wealth management company that had a relationship with PAB. At that time the Respondent's business partner was purchasing a house and decided to make use of the UCS. This is set out above as the E&C exemplified case. The transaction proceeded well and so the Respondent joined PAB's panel in order that PAB could introduce him to purchasers who were interested in SDLT mitigation schemes. The Respondent's view was that this was within the legitimate choice of a member of the public as to whether to be involved in lawful tax avoidance schemes.

27. A relationship with another promoter, ITS, grew out of the relationship with PAB. The schemes worked in the same way and the Respondent understood that PAB was operating under a licence from ITS. From November 2012 all schemes were operated via ITS.

28. Over time, different schemes evolved. Initially the Respondent was requested to implement the UCS. From early 2012 the Option Scheme was used until it was replaced by the Crystal Scheme following the March 2012 Budget. This scheme continued until the budget of March 2013, when it was replaced with the Jovian Scheme.

29. At all times throughout his involvement with PAB and ITS, purchasing clients were advised not only by the promoters but also by an independent chartered tax adviser company, BH. Most of his clients were sophisticated individuals with their own accountants, independent financial advisers or wealth managers. The Respondent never advised on tax issues, his role was limited to implementation.

30. The Respondent confirmed, in cross-examination, that BH sent a letter directly to clients and he would send a separate letter as well. He confirmed that he had read the SRA Warning Notice at the time and as a result had sought Counsel's opinion on the Option and Crystal Schemes. He had carried out due diligence by undertaking internet searches meeting PAB representatives at their offices, as well as speaking to other solicitors.

31. The total conveyancing fees, including both normal fees charged to the purchaser clients and the promoter's contribution to the scheme implementation costs amounted to £54,572 in 2011-12. This represented 23.6% of the Firm's conveyancing income

for the year and 4.7% of the Firm's total income. The respective figures for 2012-13 were £32,170, 13.3% and 2.7% and for the two months of 2013-14 were £5,300, 13.4% and 2.6%.

32. In cross-examination it was put to the Respondent that the figures were not "negligible" and represented useful income for the department. The Respondent agreed that it was useful but relatively minor in the context of the overall figures. The promoter fee was the important figure to consider and in 2011-12 that had been 6.2%. Although the promoter fees, as a proportion of the overall fees went up over the years, they remained steady at, or just above, 1% of firm-wide fees throughout.

Allegation 1.1 – UCS

33. The Respondent admitted that he had failed to disclose material information to his lender clients and in doing so admitted breaching Rules 1.04, 1.05 and 4.02 of SCC 2007 and Principles 4 and 5 of the Principles and Outcomes 1.2, 1.12 and 4.2 of SCC 2011. These admissions were made because of the specific manner in which the UCS operated. This involved two transfers of the legal title; from the vendor to the unlimited company and from the unlimited company to the ultimate purchasers. It involved the use of mortgage funds to capitalise the company with share capital equivalent to the value of the property. The Respondent admitted that this was a technical infringement of the Council of Mortgage Lenders Handbook ("CML Handbook") because the property was not owned by the company for more than six months.

34. He denied breaching Rules 1.02, 1.03 and 1.06 of SCC 2007 or Principles 2, 3 and 6 of SCC 2011. The breaches admitted were technical breaches of the CML Handbook which was there to protect the lender from fraud. There was no risk of fraud resulting from the use of the UCS. The Respondent had considered his responsibilities at the time and concluded that disclosure was not required as the information was not material to the lender's decision to lend. The Firm retained full control of the mortgage funds at all times. All the steps required for the scheme took place simultaneously and so there was no risk to lenders with regards to their funds or security. The Respondent denied that the failure to disclose represented a lack of integrity or independence, rather it was the result of the incorrect exercise of professional judgement in applying the technical requirements of the CML Handbook. The amount of money that the Firm gained as a result of implementing the UCS, or indeed any of the schemes, was negligible.

35. In cross-examination the Respondent denied deliberately choosing not to disclose the scheme to the lenders because it might deter them from lending. The Respondent had made an honest professional judgement and did not believe that it would have made any difference to the lender's decisions. The Respondent was asked about the declaration of trust over the lender's funds. He was unsure if this amounted to a breach of trust as the funds did not arrive for another three months.

Allegation 1.1 - Option, Crystal and Jovian Schemes

36. The Respondent denied that he breached any rules or outcomes in relation to the other schemes because the manner in which the schemes operated was materially different to UCS. All operated on the basis of a contract and completion of one transfer of the legal title between the vendor and purchaser in the usual way, with a separate contract with a third party exercisable at a point in the future. In the case of the Option Scheme this was an option to purchase and in the case of Crystal Scheme this was a conditional contract. In the case of the Jovian Scheme it was an agreement to grant an option.

37. The Respondent had concluded that it was unnecessary to disclose these schemes to the lender. The lender's interests were not affected by the schemes and the information about them was not material to the lender's decision to lend. The Respondent had had regard to section 5.1.2 of the CML Handbook requiring a solicitor to disclose matters which he "reasonably expects us to consider important in deciding whether or not to lend…" Paragraph 16.5.1 of the CML Handbook dealt with deeds of variation, rectification, easements and options. The Option Scheme took effect on the same day as completion, was not registered at the Land Registry and was not the kind of option that 16.5.1 was intended to deal with. The Respondent had applied his professional judgement to that decision. He did not feel that the matters required disclosure. The Respondent again denied deliberately withholding information which should have been disclosed to the lender. They were not reportable matters. It was put to the Respondent in cross-examination that the lender would want to know about the new interest or option or conditional contract being entered into.

38. The Respondent maintained that in his view the CML Handbook did not require it.

39. The Respondent was asked whether there was a potential for a blot on the title of the property if the interest had been registered. He accepted that it was theoretically possible that it could be registered but it would have no effect on the lender as they would not be bound by it. The lender would retain the first charge on the property in the event of a future sale.

40. The Respondent's representative, in a letter to the SRA dated 11 November 2013, had described the third party interests as a "legal nonsense" that would have no actual effect. In cross-examination he told the Tribunal that the phrase "legal device" would be more accurate. He accepted that the third party did receive a properly enforceable option but it was never intended that they would complete a purchase pursuant to exercising the option. It was put to the Respondent that the implementation of the schemes was a sham. He rejected this description and told the Tribunal that it was a legally enforceable agreement and it was for tax counsel to advise on whether the schemes were compliant. There was never any intention to exercise an option and no option was ever exercised in respect of any of the transactions that were completed. In some cases the properties had been re-sold without any difficulty. The Respondent reiterated that it had no effect on the lender's security.

Allegation 1.2 – UCS

41. The Respondent denied failing to act in the best interests of his purchaser clients. He did not hold himself out to be a tax expert. Purchaser clients were advised by BH. His clients did not seek tax advice from him and he believed that they had already received comprehensive advice including as to the risks of entering into any of the schemes.

42. In cross-examination he was referred to the Advice written by Gregory Treverton-Jones QC and Andrew Hopper QC dated 21 May 2012 ("Counsel's Advice"), which the Respondent stated he had relied upon when implementing the schemes. This stated:

> "In our view, solicitors can properly act as conveyancing solicitors in these schemes provided that:….Solicitors explain in broad terms the risks associated with the scheme failing, the possible consequences for the client of that happening and the need for the client to take further advice, if necessary, in relation to those risks and any proactive steps that should reasonably be considered".

The Advice continued:

> "We do not see any difficulty in solicitors making clear to their clients that a particular tax avoidance scheme is very "aggressive", i.e. high risk, and that if the client wishes to take advantage of the scheme he or she must therefore do so at his or her own risk and that the solicitor can in no sense guarantee that payment of the tax will successfully be avoided".

It was suggested to the Respondent that he had not followed this Advice in that he had not advised his clients sufficiently on the risks of the scheme. The Respondent denied that he had not acted in the best interests of his clients. He was responsible for the conveyancing and the tax element was a "bolt-on". He had explained to his clients that paperwork had to be put in place for the scheme to be viable. The scheme was put in place on the advice of leading tax counsel and in accordance with the step by step guide. The Respondent was asked if he had advised clients that they could look to him for advice on any aspect of the transaction. The Respondent confirmed that he had done so verbally but accepted that this advice was not confirmed in writing. It was not within his remit to describe the scheme as "aggressive" or otherwise. He did not keep telephone or attendance notes of this advice. However, following such advice being given verbally by him, some clients had decided not to proceed with the scheme.

Allegation 1.2 – Option, Crystal and Jovian Schemes

43. The Respondent denied this Allegation on the same basis as set out in respect of the UCS.

44. The Respondent reiterated that advice was given verbally, often by telephone. Some of his clients wished to discuss matters more than others. Many just wanted him to "just get on and do it", having received tax advice before he was instructed.

45. It was put to the Respondent that he declined to advise people who were not interested in advice. The Respondent denied declining to advise, telling the Tribunal that some clients did not want any further advice and were prepared to accept the risks. Advice was tailored to each client depending on their requirements. The advice given to a Chief Executive of a large company would differ from that given to a young couple who were first-time buyers, for example.

46. In response to questions from the Tribunal the Respondent accepted that with hindsight he should have kept a written record of the advice he gave to clients.

47. The Tribunal asked the Respondent what the consequence would be upon re-sale if, contrary to the way he understood the scheme may proceed, the option holder did register an interest. The Respondent answered that on an ordinary sale the owners would need to approach the option-holder to get the option cleared. He accepted that he did not explain this to clients as the scheme worked in such a way that there was no anticipation of the option being registered.

48. The Respondent was asked what his understanding was of giving the certificate of title to the third party. He told the Tribunal that he did not understand the significance of this but assumed it was a procedure devised by tax counsel who was unfamiliar with land law. It did not contradict the certificate of title given to the lender as it had no practical purpose at all.

Allegation 1.3 - UCS

49. The Respondent admitted acting in transactions where there was a conflict or significant risk of conflict between the buyers and lenders in respect of the UCS. These admissions were made on a similar basis to those in respect of Allegation 1.1. He therefore admitted breaching Rules 1.04, 1.05, 3.01(1) and 3.01(2) of SCC 2007, Principles 4 and 5 of the Principles and Outcome 3.5 of SCC 2011.

50. He denied breaching Rules 1.02, 1.03 or 1.06 of SCC 2007 or Principles 2, 3 and 6 of the Principles for the same reasons as given in respect of Allegation 1.1.

51. The Respondent denied favouring the purchaser clients over the lender clients. This was a tax-saving device bolted on to the conveyancing. It was correct that he should have brought this to the lender's attention as admitted. This was an error on his part and a misjudgement. However it was no more than that. He had maintained his independence, as he had done for 30 years and had not lacked integrity. The Respondent acknowledged making a mistake but that was all it was.

52. It was put to him in cross-examination that the reason he did not disclose was to deter the lender from lending and as such he was prioritising his purchaser client's interest. The Respondent denied this. It was suggested that disclosure would have led to awkward questions from the lender. The Respondent did not know what the lender might or might not have said, but it was "nonsense" to suggest he would risk his career in this way. It had simply never crossed his mind that it would deter the lender from lending.

53. Of the 28 transactions under this scheme, 21 involved a lender. It was suggested that there was ample opportunity to consider on each occasion whether to report the scheme to the lender. The Respondent replied that he assumed it was the same procedure for each transaction.

Allegation 1.3 – Option, Crystal and Jovian Schemes

54. The Respondent denied breaching any Rules or outcomes in relation to the non-UCS schemes for the same reasons as Allegation 1.1 above.

55. The Respondent accepted that these schemes allowed for an interest to be generated for the immediate benefit of the buyer and that this was done without the knowledge of the lender. There was no conflict of interests however as he was under no duty to report the scheme. The proposed amendments to the CML Handbook still did not contain a requirement to inform the lender. The Respondent therefore denied putting the interests of the buyer over those of the lender.

56. The Respondent was asked in cross-examination if he thought the lender would prefer the interest to exist or not exist. The Respondent stated that the view of the lenders was that they did not want to be notified of such schemes. No options were registered in practice in any of the 80 transactions where an SDLT mitigation scheme was used. Since then, eight properties had been re-sold without any difficulty.

57. The Tribunal asked how, in the event of re-sale, pre-contractual enquiries about the option would be addressed. The Respondent told the Tribunal that no such queries would have been raised as they were akin to an equitable interest and sat behind the legal title. He reiterated that there was no intention to exercise the option.

Firm's relationship with the Promoter – (Allegation 1.4)

58. The Respondent admitted that the written agreement with PAB was not available for inspection by the SRA but denied failing to enter into one. The unsigned agreement with ITS was in similar terms to the one with PAB. The Respondent admitted that the agreement with PAB was defective under Rule 9.02(b) of SCC 2007 in that the required introducer undertaking was missing. The Respondent further admitted that the agreement with PAB would not have provided for the need for the promoter to give the clients all relevant information about the referral (Rule 9.02(e)) and that he did not give this information to clients (Rule 9.02(g)).

59. The Respondent denied the remainder of this allegation. He had not recognised the arrangement as a referral arrangement under SCC 2007 because there were no payments by the Firm to the introducer in return for referrals to the Firm. Such monies as were paid to the Firm were only as a contribution to the additional legal costs of implementation the scheme and related to the additional work undertaken by the firm in relation to the conveyance. There was no element of profit. The Respondent denied that the arrangement with PAB compromised his independence or his ability to act in the best interests of his purchaser clients. The Respondent had applied due diligence in respect of PAB. He had been referred by the wealth management company and had met with representatives of PAB both at his own offices and at PAB's offices. The Respondent also considered the opinions of relevant

senior counsel including an Advice prepared by Gregory Treverton-Jones QC and Andrew Hopper QC. He conducted various internet searches to confirm that PAB was an expert in its field and was aware that they had marketed their services predominantly through independent financial advisers and accountants. The Respondent had attended a training session given by PAB in May 2011 and subsequently a lecture given by ITS on 12 June 2012. He had spoken to representatives of PAB and ITS and to other solicitor panel members at these events.

60. Clients were informed both by PAB and ITS of their financial interest (being 50% of the SDLT saving) which should be paid to them. Clients were not made aware that the Firm would receive between £250 and £500 from the promoter towards the cost of implementing the scheme, as this would not have had any impact on a client's decision about how to pursue the matter. Clients would have been content in the knowledge that they would not have had to pay any such additional fees themselves.

61. In cross-examination the Respondent denied that he had been secretly paid for his work in implementing the scheme. He accepted that he had not told the clients in writing how much he had been paid, and in hindsight maybe he should have done so, although he maintained that had done so verbally. He accepted that he had not accounted to the purchaser clients but maintained that it was not a referral arrangement. He was not being referred clients directly by ITS/PAB. Instead he was on a list of solicitors given to prospective clients and they could choose from that list.

62. The Respondent told the Tribunal that the payments received did not always cover the costs of the additional work involved in operating UCS in particular. In the E&C exemplified case the work amounted to approximately 200 pages, setting up meetings, signing minutes and drafting resolutions. Several hours were spent setting up the company. The UCS often operated at a loss. The Respondent agreed that the documents were all in standard format but pointed out that they still had to be completed. The Respondent told the Tribunal that he had not received an inducement or bribe, the payment reflected the work undertaken and was often insufficient even in that regard. He repeatedly denied that the payments amounted to a financial arrangement with the introducers.

63. It was put to the Respondent that he had an interest, not just in the referrals, but in the transactions completing. This was because the £250 or £500 payment was not payable until completion. The Respondent strongly denied compromising his professional standards. He did not force people to adopt these schemes and had no incentive to do so – the Firm had a good supply of work and was not in difficulty.

64. The Respondent accepted that he should have had signed and dated agreements and that his failure to have copies of the same amounted to a breach of Principle 8.

<u>Allegation 1.5</u>

65. The Respondent admitted this Allegation in full.

Allegation 1.6

66. The Respondent admitted that he had breached Rule 22 of SAR 1998 and Rules 1.04 1.05 of SCC 2007 and Rule 20 of SCC 2011 as well as Principles 4 and 5 of the Principles. The Respondent denied breaching Rules 1.02 or 1.06 of SCC 2007 or Principles 2, 6 or 10 of the Principles. There was never any risk to the lender's funds and no lender was prejudiced by the use of the scheme. The basis of the Respondent's position in respect of this allegation was similar to that in respect of Allegation 1.1.

67. The Respondent agreed that he held the lender's money on trust in the E&C transaction. He maintained that he protected the lender's interest at all times.

68. In cross-examination he was asked how he could ever declare a trust in favour of the unlimited company. The Respondent told the Tribunal he was unable to answer that as at the time of the trust being declared the lender's money was not yet in his possession and would not be so for another three months. The Respondent accepted he had declared a trust over the lender's money but reiterated that the monies were always under his control and there was never any risk of a loss of funds. The monies would only have gone to the sellers or back to the lender, if the transaction had not completed. The trust did not interfere with the way in which he was undertaking the conveyancing work. The Respondent denied prejudicing the interests of lender in favour of the buyer. The Respondent was asked whether this was therefore a sham. The Respondent stated that he could not comment on the efficacy of the tax scheme.

Allegation 1.7 - Crystal Scheme – backdating documents

69. The Respondent admitted that he backdated Crystal Scheme documentation in 12 instances and admitted breaching Principle 4. The Respondent was operating under the impression given to him by the promoter that the scheme could be implemented retrospectively, following the Option Scheme having been rendered ineffective by the March 2012 budget. The documentation sent to the promoters and to the third party following completion would have indicated to both of them that the Crystal Scheme documentation had been backdated. No queries were raised by either the promoter or the third party. The Respondent strongly denied any intention on his part to mislead and denied breaching Principles 2, 3 or 6 of the Principles. The Respondent had subsequently recognised that the impression given to him by the promoter was likely to have been incorrect and he wrote to the firm's professional indemnity insurers on 6 February 2014. The Respondent completely denied being dishonest. Of the 12 cases where he had already completed and subsequently backdated documentation, six completed legitimately following the receipt of the Crystal Scheme documentation on 3 April 2012. These transactions could therefore have been completed without backdating any documents.

70. In cross-examination the Respondent agreed that the backdated contract was misleading. However he did not realise this at the time and had no incentive to mislead. He had genuinely believed he could legitimately backdate it and would not have done so otherwise.

71. It was put to the Respondent that the date on the contract was untrue and a lie and had been done in order to protect the workflow of cases. The Respondent agreed that the date was not true but repeated that he had an honest belief that it could be backdated. He had no incentive to have lied. The fees involved were minor, the Firm was not short of work so there was no reason to risk his career when there was no return for him in doing so. He had not been dishonest by the standards of ordinary and reasonable people.

72. In response to questions from the Tribunal the Respondent accepted that he was "clearly wrong to have backdated" the contract but he had not been dishonest nor had he diminished the trust placed in him by the public.

Allegation 1.8 - Crystal Scheme – submission of SDLT1 to HMRC

73. The Respondent admitted providing incorrect information to HMRC on the SDLT1 forms and admitted being in breach of Principle 4. This was on the same basis as the admission to the breach of the same Principle in Allegation 1.7. The Respondent denied any intention to provide misleading information to HMRC in relation to the completion of the SDLT1 and denied breaching Principles 2, 3 or 6 of the Principles. The Respondent had subsequently recognised that the impression given to him by the promoter may have been incorrect and he wrote to HMRC on 4 March 2014. He denied acting dishonesty.

74. In cross-examination the Respondent was asked which scheme was in place when he completed the SDLT1 Forms. He explained that he anticipated the Crystal Scheme being in place retrospectively. His attention was drawn to his interview in which he had suggested that he believed the Option Scheme to be in place, something he repeated in a letter to the SRA in January 2014. The Respondent told the Tribunal that this was what he recalled at the time of the interview, which took place two years after the events. He confirmed that he had known at the time of the form being completed that the Option Scheme had been invalidated by the March 2012 Budget and he was expecting the Crystal Scheme to be implemented retrospectively. Any mistakes in his previous communications had been corrected in his Answer. He had been under great stress at the time and had found it very difficult to revisit the paperwork.

75. The Respondent strongly denied acting dishonestly or diminishing the trust placed in him by the public. At the time he had not identified anything in relation to the principles, rules or regulations binding the profession that caused him to regard the backdating of the documents or the declaration on the SDLT1 forms as objectionable. He had been offered no inducement to do this and the relationship with the buyer and/or introducers was not dependent on the documents being completed in this manner.

Allegation 1.9 - Response to HMRC

76. The Respondent accepted sending documentation to ITS in order that they could respond to the queries raised by HMRC. This was in line the promoter's contractual responsibilities towards the clients. The Respondent strongly denied any intention to provide anything other than full and accurate information to ITS and/or to HMRC. He

was still operating under the impression given to him by the promoter that the Crystal Scheme could be implemented retrospectively. The documentation sent to the promoters and to the third party following completion indicated to both of them that the Crystal Scheme documentation had been backdated. The documentation sent to ITS so that it could respond to HMRC would also have indicated documentation had been backdated. As stated above, when the Respondent recognised that the impression given to him may not have been correct he wrote to HMRC on 4 March 2014. The Respondent denied acting dishonestly.

77. The Respondent was asked if there was anything in his dealings with PAB or ITS in the period prior to the letter from HMRC that led him to believe that BH would not provide HMRC with the full picture. The Respondent stated that there was not. Nothing about their behaviour gave cause for concern and nothing about the relationship clouded the Respondent's independence or undermined the trust placed in him by the public. It was suggested to the Respondent that he had concluded that he was entitled not to fully answer the queries due to the relationship with the promoter. The Respondent did not accept this characterisation of his position. He was not qualified to answer the queries raised by HMRC. It was put to him that he was qualified to explain that he had backdated documents. The Respondent told the Tribunal that this was not the question he was being asked at the time. He had not thought about it, the query came a year after the events in question and he never thought about it. He was not covering his tracks. He denied being dishonest, lacking integrity or undermining the trust placed in him by the public.

Findings of Fact and Law

78. 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.

79. The Tribunal was not required to make any findings in relation to the legality and/or propriety of any of the SDLT mitigation schemes which featured in the case. To do so would go beyond the scope of the Tribunal's role. For the purposes of these findings the Tribunal considered that the schemes referred to were legal and/or proper where operated properly and in accordance with appropriate legal advice from tax counsel. The Tribunal's role was to consider whether, in the operation of the schemes, any of the rules of professional conduct and/or the accounts rules were breached in the manner alleged by the Applicant. The attempted implementation of the schemes in themselves was not alleged to be a breach in itself.

80. **Allegation 1.1 - He failed to disclose material information to lender client(s), in breach of:**

a) In the period up to 5 October 2011 Rule 1.02, 1.03, 1.04 and 1.06 and 4.02 of the SCC 2007 and/or;

b) In the period from 6 October 2011 all, or alternatively any, of Principles 2,3,4,5 and 6 of the Principles and failed to achieve Outcomes 1.2, 1.12 and 4.2 of the SCC 2011.

80.1 This Allegation was partially admitted in respect of the UCS. The Respondent admitted breaching Rules 1.04, 1.05 and 4.02, and Principles 4 and 5. The remainder of the Allegation was denied.

Applicant's Submissions

80.2 The Applicant submitted that there were unsatisfactory features of each of the schemes as a result of the way they were operated by the Respondent. In the case of the UCS the Respondent was required to hold the lender's money on trust for the unlimited company when the monies advanced by a lender should be held on trust by a solicitor exclusively for that lender. The step-by step-guide for the UCS made no reference to lender clients at all and the scheme was not disclosed to them.

80.3 The other schemes also had deficiencies. The Option Scheme and the Crystal Schemes were contracts for sale and generated an equitable interest in the land which was capable of registration. In the Option Scheme this involved the purchasers granting an option to JHL to purchase the property at any point during the term of the mortgage. Under the Crystal Scheme the purchasers entered into a contract of sale with completion in 124 years. Lenders were not informed of the use of the Option Scheme or the Crystal Scheme or the creation of the options as interests in the land. The Jovian Scheme required that at the same time as the sale of a property, the purchasers would enter into an agreement to grant JHL an option to purchase the property after 30 years. Again, this created an equitable interest which was capable of registration and again, lenders were not informed of the scheme or the option.

80.4 The Applicant referred the Tribunal to the SRA v Chan and Ali [2015] EWHC 2659 in which Davis LJ stated at [51]- [52] in relation to schemes including the Option Scheme and UCS:

> "Nor did the lenders know of any of this. It is of little relevance to say that no lender suffered actual loss: the point is they should have had the opportunity to decide whether to continue to lend when new entities, such as companies, were being inserted into the purchasing process and when the funds being lent were not always being held to the order of the lenders nor were they being applied strictly as they should have been in the course of the purchasing process as they would have intended. Moreover some lenders may well, for reputational reasons, have not wished to involve themselves in such transactions at all: and at the least should have been given the chance to decide".

Respondent's Submissions

80.5 The Respondent submitted that there was no evidence of any implication arising from the implementation of this scheme on the lender's security. The Respondent invited the Tribunal to keep in mind that a security was obtained as a first charge on a clean and marketable title. Insofar as the Respondent failed to disclose information to the lenders, this was due to his failure to grasp how the scheme worked and/or to apply his mind to the legal consequences of the steps in the conveyancing mechanism. The scheme was a bolt-on device which effected a scheme to permit the lawful avoidance of SDLT but did not affect the conveyance. There was nothing in arrangements which

compromised the Respondent's independence. Neither the Firm nor the Respondent had a financial interest in the promoter. The fee charged was a banded fee and bore no relation to the level of the tax saving. There was no evidence of the Respondent inducing any client into any scheme.

80.6 The Respondent submitted that it was difficult to see how Rule 1.06 and Principle 6 were engaged by the admitted breaches in relation to the UCS.

80.7 In respect of the remaining schemes there was no engagement of the requirement to disclose to lending clients. The CML Handbook did not require any such reporting. The Respondent had given evidence that the views of other practitioners were the same as his on this point, something that had not been challenged by the Applicant. In each case the monies provided by the lender were applied for the purpose for which they had been advanced. It was submitted that the Applicant had failed to prove its case in respect of the disputed allegations. There was no evidence that the reason for the failure to disclose any of the schemes was the result of a concern that the lenders would not advance funds.

The Tribunal's Findings

80.8 The Respondent accepted that he had not disclosed the existence of the schemes to the lenders. His position was that, in the circumstances of the non-UCS schemes, he was not required to do so as it did not amount to material information that should be disclosed.

80.9 The Tribunal considered the case of Chan and Ali, in particular [51] as referred to above. The Tribunal also examined the SRA Warning Notice dated 16 February 2012 which stated:

> "If you act for a lender as well as the buyer, robust consideration needs to be given to whether the scheme could prejudice the interests of the lender. It is our view that it is likely to be very important to ensure that the lender is fully informed that the property is subject to an SDLT scheme with sufficient detail of how the scheme operates. Recent findings by the SDT would support this approach".

80.10 The Advice prepared by Messrs Hopper QC and Treverton-Jones QC made the following observations about how to deal with the lender:

> "Depending on the scheme and the impact this would have (if any) on the lending decision and the lending security, and where the lender is a client of the solicitors and the solicitors are therefore subject to the requirements of the Council of Mortgage Lenders Handbook, there must be appropriate full disclosure to the lender. In light of the SDT decisions referred to above, it would clearly be sensible to adopt a wide rather than artificially narrow interpretation of any duty to disclose. In other words: if in doubt, disclose".

80.11 The schemes had to be, on the face of it, legally enforceable and the Tribunal was therefore satisfied that the existence of the schemes was information that was material to the lender clients. The Tribunal found that the Respondent had not properly

considered the consequences that would have flowed if the options granted in the Option Scheme, Crystal Scheme or Jovian Scheme had been exercised. The Tribunal reached this conclusion having listened carefully to the Respondent's evidence on this point. The Tribunal found that the Respondent had not turned his mind to the possibility of the options being exercised when implementing the schemes and in his evidence he had no cogent answers as to the possible consequences if the schemes had not worked in the way that was intended. At no point had he taken a step back and considered the possibility. He had followed the schemes slavishly and in doing so had put his obligation to disclose to the borrower to one side.

80.12 The Tribunal found that the Respondent had been somewhat influenced to a degree by the volume of work brought in as a result of his Panel membership and the consequent income it generated. The Firm benefited to the tune of nearly £100,000 in total and in the first year the fees from the SDLT work represented nearly 25% of residential conveyancing income. The Tribunal did not accept that this had no influence. It impaired his view of the schemes and of his interpretation of his obligations to the lender. A lack of independence was amply demonstrated by the muddle he got into about the scenarios that could have unfolded. The reality was that the lender was left at potential risk by the Respondent's failure to disclose. This did not amount to the Respondent acting in the best interests of his client.

80.13 The impact on the trust the public placed in the Respondent and in the profession was not maintained as the public expect solicitors to maintain their independence. The conveyancing system relies, in circumstances such as these, on the lender's and the borrower's interests aligning. It requires a network of solicitors all bound by the same ethical code. By failing in his duty to the lender and thereby compromising his independence, it followed that this undermined the fabric of the whole system.

80.14 The Tribunal found that the core root of this breach was a careless disregard of the Respondent's obligations to the lender and breaches flowed from that. The Tribunal drew a distinction between carelessness and wilful recklessness. The Tribunal were not satisfied that the Respondent withheld the information as a conscious device to prevent the lender withdrawing, rather it was a product of an unreasonably narrow interpretation of his own retainer coupled with a lack of proper thought as to his professional obligations. The Tribunal had doubts as to whether these breaches amounted to a lack of integrity.

80.15 The Tribunal found this Allegation proved beyond reasonable doubt to the following limited extent; Rules 1.03, 1.04, 1.06 and 4.02 of SCC 2007, Principles 3,4,5 and 6 of the Principles and Outcomes 1.2, 1.12 and 4.2 of SCC 2011 in respect of all schemes. The Tribunal did not find a breach of Rule 1.02 or Principle 2 proved.

81. **Allegation 1.2 - He failed to act in the best interests of his purchaser client(s), in breach of:**

a) In the period up to 5 October 2011, Rule 1.04, 1.05 of SCC 2007 and/or;

b) In the period from 6 October 2011 all, or alternatively any of Principles 4 and 5 of the Principles and failed to achieve Outcomes 1.2 and 1.12 of SCC 2011.

Applicant's Submissions

81.1 The Applicant submitted that there were unsatisfactory features of the schemes from the perspective of purchaser clients as well as lender clients. The UCS involved a transfer from the unlimited company to the purchase clients as a gift, unsupported by consideration. The purchaser clients were not informed of the risks of entering into the scheme, they were not warned that it was aggressive tax planning and were not told that the Firm was receiving a fee. The Respondent did not follow the instructions for implementing the UCS, which required the opening of three client ledgers, namely a) a purchaser ledger b) a shareholders' ledger and c) a company ledger.

81.2 The other schemes also had deficiencies in respect of the purchasers' interests. They were not informed of the risks of entering into the Option Scheme including the fact of it being an aggressive scheme creating a potential blot on the title and again, were not told that the Firm was receiving a fee. In the case of the Crystal Scheme there was an unqualified obligation on the purchaser to keep the property insured until 2136, whether in occupation or not.

81.3 The Applicant again referred Chan in which Davis LJ stated at [51]- [52] in relation to schemes including the Option Scheme and UCS:

> "…Or take the option scheme. The very existence of such an option was potentially a blot on the title and fraught with difficulties: for example if…the option holder was dissolved. As to the unlimited company scheme…Mr Gott carefully took us through examples from the papers: which indicate that what was being represented by the firm to the Land Registry by no means correlated with what was being represented for SDLT reporting purposes or with the actuality of what was really intended".

Respondent's Submissions

81.4 It was submitted that the Tribunal consider the Respondent's written representations, his statement and his oral evidence on this Allegation, having regard to the advice provided by the promoters. The clients had been advised, as evidenced by the fact that some clients chose not to enter into the schemes having taken advice from the Respondent. This was a very different case from Chan. The title remained clean and marketable. It followed that given the intention of the parties, including specialist tax Counsel, there was no potential blot on the title.

The Tribunal Findings

81.5 The Respondent had denied this Allegation on the basis that the purchaser clients had been given sufficient information about the schemes and their implication, by BH Tax, to enable them to make a fully informed decision. He had also advised verbally, often by telephone.

81.6 The Tribunal again referred to the SRA Warning Notice. This stated:

"We are aware that a number of firms are taking corrective action such as…informing buyers that independent legal advice may be needed as well as ensuring lenders are aware of all the details of the SDLT scheme".

81.7 The Advice from Messrs Hopper QC and Treverton-Jones QC stated:

"In our view solicitors can properly act as conveyancing solicitors in these schemes provided that…

- solicitors explain clearly any relevant limits on their retainer and on their responsibility or ability to advise on the taxation aspects of the scheme so that there is no room for any possible doubt as to where the respective responsibilities of the tax advisers and the solicitors begin and end.

- Solicitors explain in broad terms the risks associated with the scheme failing, the possible consequences for the client of that happening and the need for the client to take further advice, if necessary, in relation to those risks and any protective steps that should reasonably be considered (it would be sensible to draw on the content of the SRA Warning Notice for this purpose…)".

81.8 The Tribunal found that these were sophisticated, complex schemes. Each one was different and involved conveyancing steps out of the ordinary. They shouted out for a full and detailed explanation to the purchasers. The Respondent considered the arrangements to have a purely nominal effect, describing it as a "legal device", having previously referred to it as a "legal nonsense" in correspondence sent on behalf of the Respondent. The Tribunal found that the schemes did not have a purely nominal effect but a real conveyancing effect. The results of implementation were conveyancing constructs that created potential blots on title, something about which the buyer was left in ignorance.

81.9 The Tribunal considered the Respondent's explanation that BH Tax had provided sufficient tax advice already. This was an erroneous assumption on his part. The tax advice letters were narrow in their application and focussed primarily on the issues relating to a challenge to the scheme by HMRC.

81.10 The Respondent had also sought to justify his position on the basis that he had sophisticated, wealthy clients who were uninterested in receiving advice. The Tribunal found this proposition to be untenable. Clients who did not wish to receive advice were often those who required it the most.

81.11 The Respondent also told the Tribunal that he did provide advice verbally, often by telephone and that as a consequence some clients decided not to proceed with the scheme. The Tribunal found that this in fact highlighted the need for that advice to be provided to all clients. By his own admission, he had not at any time recorded this advice in letters or attendance notes. When he did start sending letters at the very end of the material time they focused on the tax issues rather than the conveyancing implications. The Tribunal found the Respondent's evidence in relation to this

Allegation to be unconvincing. It was far from clear that he had given comprehensive advice and he had certainly not done so across the board.

81.12 The failure to adequately advise was plainly inconsistent with his duties to act in his client's best interest or to provide a proper standard of service. The Tribunal found this Allegation proved beyond reasonable doubt in its entirety.

82. **Allegation 1.3 - He acted in transactions where there was a conflict or a significant risk of conflict or a significant risk of conflict between the interests of two clients, the buyer(s) and lender(s) in breach of:**

a) In the period up to 5 October 2011, Rule 1.02, 1.03, 1.04, 1.05, 1.06 and 3.01(1) and 3.01(2) of SCC 2007 and/or;

b)

c) In the period from 6 October 2011 all, or alternatively any of Principles 2,3,4,5 and 6 of the Principles and failed to achieve Outcome 3.5 of SCC 2011

Applicant's Submissions

82.1 The Applicant submitted that by putting himself in a position whereby he placed the interests of the purchaser clients over that of the lender by failing to disclose the schemes to the lender, the Respondent was in a position where there was a significant risk of a conflict of interest.

82.2 In respect of the UCS, the Respondent should not have taken the lender's funds and declared a trust over them in favour of the unlimited company, which was owned by the borrowers. It was submitted that this amounted to a breach of the requirement to act with integrity, reduced public trust and compromised his independence. The Respondent was required to act as the trustee of the lender alone, but he had suborned his capacity to so act in favour of the unlimited company. The Firm had a financial interest in the transaction completing, of which neither purchaser nor borrower were aware.

82.3 With regard to the other schemes, an interest in the land was generated in order to facilitate the scheme. This was to the benefit of the purchaser, the promoter and the Respondent. The lender was not informed either of the use of a SDLT mitigation scheme or the generation of an interest in a property over which the lender was taking a charge.

Respondent's Submissions

82.4 The Respondent submitted that as far as the UCS was concerned the Applicant had relied on the admissions made on the Respondent's behalf by Ms Shenton, who had been assisting him in his dealings with the SRA during the investigation. The main document relied upon by the Applicant in opening had been the declaration of trust, which had only featured in the Rule 5 statement in relation to Allegation 1.6.

82.5 The Respondent sought to have the elements of the Allegation relating to the other schemes struck out following the way in which the case had been presented including in cross-examination. It was submitted that the Applicant had not particularised the Allegation. The Tribunal were referred to Article 6 of the ECHR which required that a person be given adequate notice and particulars of allegations made against him. This included a respondent facing disciplinary proceedings. In Richards v Law Society [2009] EWHC 2087 the Court held that the purpose of the Rule 5 statement was to inform the respondent fairly and in advance of the case he had to meet. Jackson LJ stated at [30]:

> "…a properly drafted Rule [5] statement will set out a summary of the facts relied upon. It would be helpful if those facts are set out concisely and in chronological order. The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or R[5] statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies…
> ….Once the R[5] statement has set out the primary facts asserted, it should then set out the allegations which are made on the basis of those primary facts…
> …In a complex case…the SDT needs to have a coherent and intelligible R[5] statement, in order to do justice between the parties".

82.6 The Respondent submitted that none of the issues developed by the Applicant in his opening were foreshadowed in the Rule 5 statement. The Respondent could not say whether the reasoning regarding the potential blot on title was right or wrong. The Applicant's case in respect of these parts of this Allegation was out-with the confines of the Rule 5 statement and the Tribunal were invited not to consider those matters.

82.7 If the Tribunal did consider the Allegation in full, the Respondent submitted that the suggestion of a conflict be rejected. If an interest was created, which was not accepted, it had been missed by large numbers of conveyancing practitioners across the country, missed by the SRA in previous cases involving similar schemes as well as by the Tribunal in reaching decisions in similar cases. It was submitted that the Respondent had done no more than his honest best as a reasonably able and prudent solicitor.

82.8 The Respondent invited the Tribunal to reject the suggestion of any financial motive. The transactions were at their peak in the first year, the contribution to the Firm's finances were low and reduced over time, the Firm was healthy and was not dependent on payments from the promoter, which contained no profit element. The Respondent submitted that there was no basis upon which the Tribunal could properly find this Allegation proven beyond the extent of the admissions made.

The Tribunal's Findings

82.9 The Tribunal considered the Respondent's application to strike out parts of the Allegation.

82.10 The Tribunal considered that the Rule 5 Statement was appropriately drafted. The Allegation referred to a significant risk of conflict arising when the Respondent was acting for both the lender and borrower. The Rule 5 Statement pleaded the totality of the Allegation across each of the four schemes and identified the relevant alleged breaches of the Rules and Principles. This included the issue of the potential blot on title, which was clear from the totality of the Allegations. The basis of this Allegation was the breach of the duty to disclose the schemes to the lender, as outlined in detail in Allegation 1.1. This had been a major part of the case against the Respondent and he had robustly defended himself against it.

82.11 The Respondent had clearly had sufficient information about Allegation 1.3 to admit part of it in relation to the UCS. The Tribunal was satisfied that the Respondent was aware of the nature of the Allegation, that it was sufficiently specific to enable him to prepare his response and to defend himself, as indeed he had done eloquently. The Tribunal found that it was compatible with Article 6 and did not agree to strike out this part of the Allegation.

82.12 The Tribunal therefore moved on to consider the evidence and submissions.

82.13 The Tribunal had already found that there was a careless disregard by the Respondent of his duty to disclose the schemes to the lender. The Respondent had admitted as much in relation to the UCS and the Tribunal had found it proved in relation to all the schemes. The reasons why the matters should have been disclosed are set out in the reasoning for Allegation 1.1. The point of there being a duty was to enable the lender to make an informed decision. It followed as a matter of logic that if the lender was not fully seized of the facts they could not make an informed decision to lend, or to decline to lend if it was deemed appropriate in all the circumstances. If the lender had declined to continue lending to a particular purchaser client the consequence would have been the collapse of the transaction, which was not in the purchaser client's interests.

82.14 The Tribunal had in mind the reputational issues referred to in Chan and Ali as well as the potential blots on title referred to above.

82.15 The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent had acted in transactions where there was a significant risk of conflict across all the schemes.

82.16 A lack of independence was completely inconsistent with acting where there was a significant risk of conflict. As a matter of logic, a solicitor cannot act in the best interests of his client in such circumstances.

82.17 The impact on the trust the public placed in the Respondent and in the profession was not maintained as the public expect solicitors to maintain their independence. The confidence the public has in a solicitor and placed in this Respondent is based on the fundamental principle that the solicitor is only acting in the client's best interests and that there is no conflict of those interests with another client.

82.18 The Tribunal again found that the core root of this breach was a careless disregard, rather than wilful recklessness, of the Respondent's obligations. The Tribunal was not satisfied that the Respondent deliberately allowed a potential for conflict to arise, rather it was another example of a lack of proper thought as to his professional obligations. The Tribunal had doubts as to whether these breaches amounted to a lack of integrity.

82.19 The Tribunal found this Allegation proved beyond reasonable doubt to the following limited extent; Rules 1.03, 1.04, 1.06 and 3.01(1) of SCC 2007, Principles 3,4,5 and 6 of the Principles and Outcome 3.5 of SCC 2011 in respect of all schemes. The Tribunal did not find a breach of Rule 1.02 or Principle 2 proved.

83. **Allegation 1.4 - He failed to enter into a written agreement with Inventive Tax Strategies Limited ("ITS") and/or Professional Advice Bureau ("PAB") and failed to inform purchaser clients in writing of all relevant information concerning the referral(s) from ITS and/or PAB to the firm in breach of:**

a) In the period up to 5 October 2011, Rule 9.01(1), 9.02(a), 9.02(b), 9.02 (c), 9.02(e), and 9.02(g) of SCC 2007 and/or;

b) In the period from 6 October 2011, Principle 8 of the Principles and failed to achieve Outcomes 9.3, 9.4 and 9.7 of SCC 2011.

Applicant's Submissions

83.1 The Applicant submitted that as well as being paid by purchaser clients, the Firm was paid by the promoters in respect of each successfully completed transaction. The purchaser paid the stamp duty sum to the Firm which was split 50/50, with half being paid to the promoter and half being returned to the purchaser. The Firm would then invoice the promoter for professional fees in the sum of £500 plus VAT. This constituted a financial arrangement with an introducer in respect of which no written agreement was entered into with ITS/PAB in breach of Rule 9.02(b) and (e) and Outcome 9.7.

83.2 It was correct that there was a draft agreement with ITS on file but this was deficient in the following ways:

a) It was not executed or entered into;

b) It did not contain terms which required ITS to undertake to comply with Rule 9.02(b);

c) It did not contain terms which required ITS to inform the purchaser clients of all relevant information concerning the referral, including the fact there was a financial arrangement between the Firm and ITS (Rule 9.02(e)(i)) and the amount that ITS was paying the Firm for the services being provided by the Firm (Rule 9.02(e)(iii)(A)).

83.3 The Respondent had taken no steps to satisfy himself that clients referred by the promoter had been acquired by marketing or publicity which, if done by a regulated person, would breach Rule 9 (c). The Respondent had not informed the purchaser clients that there was a financial arrangement between the promoter and the Firm (Rule 9.02(g)(i), of the amount the promoter was paying the Firm (Rule 9.02(g)(iii)(A)) or that any advice given by the Respondent would be independent and the purchaser client was free to raise questions on all aspects of the transaction (Rule 9.02 (g)(iv)).

83.4 It was further submitted that the Respondent compromised his independence as a result of the financial arrangements. The Firm had a financial interest in the completion of the transactions and the purchaser client was unaware of that interest.

Respondent's Submissions

83.5 It was accepted that, in cross-examination, the Respondent did not have a signed agreement with PAB or ITS. As a consequence it was admitted that he was in breach of Principle 8. The Respondent's evidence was, however, that he had regarded the unsigned agreement as being an agreement that was binding on him as to his contractual responsibilities. The Respondent had also explained in his evidence the level of the fee, originally £250, rising to £500. The fee was calculated on a cost basis with no element of profit. Owing to the fact that no payment went from the Firm to the promoter, he did not regard the arrangement as a referral agreement.

83.6 It was submitted that the Respondent had not allowed the requirement of the introducer to affect the advice given to clients. He had not been reliant on this work and he had retained control of the work he had done for clients. His relationship with the introducer did not affect his duty to communicate directly with the clients, or to take their instructions.

83.7 The Respondent submitted that there was no evidence that he lacked integrity or independence. Again, he had been doing his honest best. He was fiercely protective of his independence and the Firm would never buy work.

83.8 The Respondent had given evidence that he was satisfied that the clients had been referred to the promoters by IFAs, who were themselves regulated and not by direct marketing. He had attended two conferences and there was no evidence that any client was obtained by the introducer in breach of any of the SRA rules.

83.9 There was nothing about the payment arrangements which might have affected client's decisions to implement the schemes. Each payment was for a small amount, the level did not affect the advice given by the Respondent and the decision to implement the schemes was always taken by the clients. Given the substantial savings on SDLT that were involved, a fee of £250 or £500 was a "gnat" which would have had no effect on the client's decision to proceed.

The Tribunal's Findings

83.10 The Respondent had admitted that written agreements were not available for inspection, but maintained that they were entered into. There was no evidence of any such agreement with PAB in the documents and the Tribunal therefore found the Respondent's evidence to be unpersuasive on this issue. There was, however, the unsigned document in relation to ITS. The Tribunal found that this did create sufficient doubt as to whether or not such an agreement had been entered into with ITS. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Rule 9.02(a) in that there was no written agreement with PAB and the agreements with PAB and ITS were not available for inspection by the SRA.

83.11 The Respondent had admitted that the agreement did not contain an undertaking by the introducers to comply with the provisions of this Rule. The Tribunal found the breach of 9.02(b) proved beyond reasonable doubt.

83.12 The Respondent had not enquired about how the clients referred by the introducer had been acquired. In the absence of the undertaking or the written agreements he could not have been satisfied that the clients had not been acquired through marketing or publicity or other activities which, if done by a regulated person, would be in breach of any of the Rules. The Tribunal was satisfied beyond reasonable doubt the breach of Rule 9.02(c) was proved.

83.13 The Respondent had admitted in his evidence that the agreement with the introducers did not require them to provide the clients with all relevant information concerning the referral. The Tribunal found the breach of Rule 9.02(e) proved beyond reasonable doubt.

83.14 The Respondent had admitted that he had not given the clients the information himself in writing. The Tribunal was satisfied beyond reasonable doubt that the breach of Rule 9.02(g) was proved.

83.15 In view of the breaches that had been admitted and/ or proved as set out above, the Tribunal found that the Respondent could not have acted in the best interests of his clients. Rule 9 was created specifically to protect clients in situations where referral arrangements existed and the failure to adhere to them led to an irresistible conclusion that the Respondent had not acted in his client's best interests. The Tribunal had already found that in the implementation of the schemes the Respondent had allowed his independence to be compromised. The schemes flowed directly from the referrals and the linked financial arrangements with the introducers and therefore on the basis of the findings made in relation to Allegations 1.1 and 1.3 the Tribunal was satisfied beyond reasonable doubt that this was another example of the Respondent's independence having been compromised. The breach of Rule 9.01(1) was therefore proved.

83.16 As a result of these breaches the Tribunal was satisfied that clients were not in a position to make informed decisions as, by the Respondent's own admission, they had not been informed of that which they ought to have been. They were not informed of the financial interest in the arrangement. The Respondent denied that it amounted to a financial interest. However, as set out above, the Tribunal found that the financial

arrangement was not insignificant to the Firm and that it was something that clients should have been made aware of. The fact that, in the Respondent's view, it would have made no difference to their decision to proceed missed the point. The Respondent had failed to achieve Outcomes 9.3 and 9.4.

83.17 Outcome 9.7 was the natural consequence of a breach of Rule 9.01(1) under the SCC 2007. The Tribunal found the Respondent had not achieved this Outcome, with the same caveat as their finding in relation to Rule 9.02(a), namely that it could not be sure that no such agreement existed in respect of ITS.

83.18 Allegation 1.4 was therefore proved beyond reasonable doubt to the limited extent set out above, namely the breaches of Rule 9.02(a) and Outcome 9.7 were limited to the absence of a written agreement with PAB and to the failure to make any of the agreements available for inspection by the SRA.

84. **Allegation 1.5 - He failed to keep accounting records properly written up, in breach of:**

a) In the period up to 5 October 2011, Rule 32(1) and (2) of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or;
b) In the period from 6 October 2011, Rules 29.1 and 29.2 of the SRA Accounts Rules 2011 ("SAR 2011").

84.1 This Allegation was admitted in full and the Tribunal found it proved beyond reasonable doubt on the evidence.

85. **Allegation 1.6 - He permitted the utilisation of clients funds for the benefit of another, without authority from the first client to do so, in breach of:**

a) In the period up to 5 October 2011, Rule 1.02, 1.04, 1.05 and 1.06 of SCC 2007 and Rule 22 of SAR 1998 and/or;
b) In the period from 6 October 2011, all or alternatively any of Principles 2,4,5,6 and 10 of the Principles and Rule 20 of SAR 2011.

Applicant's Submissions

85.1 The Applicant reminded the Tribunal that in transactions where the Respondent acted for a lender client, the mortgage funds were used to facilitate the purchase of the property from the seller, that is to say the purchase by the company, notwithstanding that the company was not the borrower named on the mortgage offer. Ms Shenton had confirmed on behalf of the Respondent that he had not informed the lender clients of the scheme. "TE did not inform lenders of the use of any of the schemes and nor did he, in his professional opinion, believe that this was necessary".

85.2 There was no evidence that the Respondent obtained authority from the lender that the mortgage advance could be used in any way other than as stipulated in the offer. The mortgage advance was held for the lender until completion and improper and unauthorised use of the mortgage advance was a breach of rule 22 of SAR 1998 and rule 20 of SAR 2011. Instead of holding the mortgage advance on trust for his lender clients, the Respondent had purported to offer undertakings to purchaser clients that

purchase funds would be held on trust for the new unlimited company as share capital, notwithstanding some or all of the money held represented a mortgage advance. The Applicant referred the Tribunal to the guidance notes attached to Rule 32 of SAR 1998 which provides that "although the solicitor does not open a ledger account for the lender, mortgage advance credited to that account belongs to the lender, not to the borrower, until completion takes place. Improper removal of these mortgage funds from client account would be a breach of Rule 22". In the EC transaction the Respondent was also instructed by the lender in respect of a loan of £650,000. The ledger account showed the receipt of deposit monies from for the purchaser client and a mortgage advance from the lender. It was not apparent on what basis the Respondent felt able to offer or to fulfil any undertaking given to his purchaser clients that the purchase funds would be held on trust for the new unlimited company. In relation to the exemplified transaction of EC, Ms Shenton said that that case was "typical".

Respondent's Submissions

85.3 The Respondent submitted that it did not follow that in permitting the utilisation of one client's funds for the use of another he lacked integrity. He had certainly made an error in having used the funds as set out in the UCS but that error had not arisen through a lack of integrity. Indeed it was an error commonly made by other solicitors implementing such schemes. The Respondent made a similar submission in relation to Principle 6, namely that an honest mistake in relation to the implementation of a single scheme in the context of an unblemished 35 year career and boasting the impressive testimonials that existed in the case, did not amount to damaging the trust the public placed in the Respondent or in those who provide legal services. The Respondent had given evidence that he opened a single ledger in the UCS. He maintained control of the monies in the single account and explained that he did so notwithstanding the risk to the scheme, because he was adamant that the monies were more secure being under his control at all times in a single ledger. He retained control of the transaction, acted to protect client money and successfully ensured that there was never any risk to it. Accordingly the Tribunal were invited to find the breach of Principle 10 not proved.

The Tribunal's Findings

85.4 The Respondent had admitted the factual basis behind this Allegation and indeed some of the Rules and Principles that flowed from the breach. The use of one client's funds for the benefit of another without authority fundamentally undermined the trust and confidence that the public placed in the profession.

85.5 The Tribunal found that by declaring a competing trust over the funds held in the exemplified case of E&C he had failed to protect client money.

85.6 The Tribunal could not be sure that this amounted to a lack of integrity. Based on the reasoning behind the Tribunal's findings in relation to Allegations 1.1 and Allegation 1.3, the Tribunal found that this was part of the pattern of repeated carelessness.

85.7 The Tribunal found this Allegation proved beyond reasonable doubt to the following limited extent; Rules 1.04, 1.05 and 1.06 and 4.02 of SCC 2007, Rule 22 of SAR 1998, Principles 4,5,6 and 10 of the Principles and Rule 20 of SAR 2011. The Tribunal did not find a breach of Rule 1.02 or Principle 2 proved.

86. **Allegation 1.7 - He backdated documents relating to the Crystal Scheme to the date of purchase to provide the misleading impression that the documents were executed at the same time as the original property purchase, in breach of all, or alternatively any of Principles 2,3,4 and 6 of the Principles.**

Allegation 1.8 - He provided misleading information to HMRC by completing and submitting SDLT1 form(s) claiming full relief from Stamp Duty Land Tax ("SDLT") when, in fact, as at the date of the SDLT1 return the client(s) had signed agreements relating to the Option Scheme, which he knew had been rendered ineffective by amendments to the Finance Act 2003 on 21 March 2012, in breach of Principles 2,3,4 and 6 of the Principles.

Applicant's Submissions on Allegations 1.7 and 1.8

86.1 The Applicant submitted that a retrospective agreement was not the same as a backdated agreement. A retrospective agreement would bear the date on which it was entered and seek to have retrospective effect. By contrast a backdated agreement would be an agreement which purports to have been entered into on a date earlier than that upon which it was entered and is designed to mislead. The Applicant referred the Tribunal to the case of Holmes v Alfred McAlpine Ltd [2006] EWHC 110 at [19], at which Stanley Burnton J stated:

> "Mr Wilkinson submitted that the agreement was on its face retrospective. That is incorrect. It was not retrospective it was backdated, which is a very different thing. A properly drafted agreement would have borne the date on which it was executed, but would have expressly provided for its application to work done on the prior date agreed by the parties. The written agreement in this case was misleading. Anyone who saw it would assume that it had been executed on the agreement date, that is, 15 July 2000. In fact it was not".

86.2 In the exemplified transaction of P and L, the timeline was that completion had taken place on 30 March 2012, on 11 April 2012 the SDLT1 had been submitted by the Respondent at 16:10 hours. On 13 April 2012 the Respondent had written to the clients enclosing a conditional contract for their execution which was backdated to 30 March 2012.

86.3 As the Respondent had accepted, the option scheme which P and L had originally intended to use was rendered ineffective from 21 March 2012. The Respondent knew when he submitted the SDLT1 on 11 April 2012 that the conditional contract had not been executed. This method was adopted in all 12 transactions where the Option Scheme was replaced by the Crystal Scheme. There was no basis for claiming SDLT relief, the form was deliberately misleading and dishonest.

86.4 The backdating of the contract was, it was submitted, a deliberate act by the Respondent to mislead and to give the impression that, in accordance with the strict timing of the step by step guides on the Crystal scheme a) the contract had been executed on 30 March 2012 and b) there was a scheme in place on 11 April 2012 when the form was submitted to HMRC such that the SDLT could be assessed at 'zero'.

86.5 The Applicant submitted that the dishonesty was patent, obvious and inescapable. The Respondent had informed HMRC of something that was not true and had backdated an agreement that had to be executed on the same day as completion, inserting the date of 30 March 2012 when he knew the agreement had not been executed on that date. The Respondent had therefore consciously generated two untrue and misleading documents. The Applicant referred the Tribunal to the test for dishonesty as set out in Twinsectra v Yardley and others [2002] UKHL 12 and submitted that the Respondent's actions were dishonest by the ordinary standards of reasonable and honest people and that he himself must have realised that by those standards his conduct was dishonest.

Respondent's Submissions - Allegations 1.7 and 1.8

86.6 In submissions made on behalf of the Respondent the Tribunal was reminded of the advice provided by Counsel that clients on the Option Scheme could be retrospectively switched to the replacement Crystal Scheme. The essence of that advice had been conveyed into a letter sent to the purchaser clients by the Respondent who believed that advice, it having come from tax Counsel. It was only in the light of that advice and the Respondent's honest reliance upon it that he backdated the documentation and/or completed the SDLT1 form. It was submitted that he conducted himself honestly in relation to six other purchasers for whom there was no need to backdate in any event, there having been the option to proceed afresh. The Tribunal was invited to take account of the following matters in respect of the first limb of the dishonesty test, namely objective dishonesty;

86.6.1 the Respondent received advice from the promoter that the position had been considered by leading tax Counsel

86.6.2 the advice received was that the new scheme could operate retrospectively and documents could not be backdated to enable the transactions all to be dated upon the same date

86.6.3 the relationship between the Respondent and the promoter was such that there was no improper benefit or financial advantage to be gained by the Respondent one way or another were the purchaser to implement the scheme or not.

86.6.4 the dealings which the Respondent had with the promoter only served to cause him to conclude that the information he received was accurate, proper and reliable. The Tribunal was reminded of the lectures and conferences that the Respondent had attended, the advice notes from Messrs Hopper QC and Treverton-Jones QC and the terms of the unsigned agreement with ITS which preserved the standards of professional propriety between the Respondent and his clients.

86.7 It was submitted that the Tribunal should not conclude that by the standards of reasonable and honest people the Respondent acted dishonestly. Even if the tribunal were persuaded that in the face of the advice received by the Respondent, that by the standards of reasonable and honest people the backdating was dishonest, then for the same reasons it was submitted the Tribunal should feel compelled to find the second limb was not proved. The Tribunal was invited to take account of the Respondent's unblemished career and the character references which it was submitted were compelling. The Respondent had repeatedly asked when giving evidence "why would I dishonestly sacrifice my 35 year career for these 12 transactions?"

86.8 The Respondent submitted that there was no evidence upon which the Tribunal could be sure that the Respondent lacked integrity. It was submitted that the evidence demonstrated that the Respondent had always conducted himself to the highest of standards, but that on this occasion his naive acceptance of the account of Counsels' advice led him into error. The Tribunal was invited to conclude that it was nothing more than an error. There was no lack of independence and a mistake of this nature would not give rise to a breach of principle 6.

The Tribunal's Findings – Allegation 1.7

86.9 The Respondent admitted backdating documents relating to the Crystal Scheme. The issue for the Tribunal's determination was his motivation in doing so and in particular whether or not he had acted dishonestly. In considering dishonesty the Tribunal applied the two-stage test in Twinsectra.

86.10 The Tribunal considered whether the Respondent's actions were objectively dishonest.

86.11 The backdating of documents was an extremely unusual way of working and at odds with recognised professional practice. The Respondent had accepted that it was unique in his own experience. This was not a mere correction of an administrative oversight and it had been done, by the Respondent's admission, to fit a particular window of time. The effect of backdating the documents was that a misleading picture of when the documents had been dated, and the consequent tax implications, was created. This undermined the concept of a change in the law, given that the March 2012 Budget had specifically invalidated the Option Scheme. Reasonable and honest people would regard it as so. The legal system depends on documents being dated accurately. The Tribunal was satisfied beyond reasonable doubt that in backdating the documents the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people.

86.12 The Tribunal considered the subjective test.

86.13 The Tribunal read carefully all the character references and took account of all of them. They were written by individuals of integrity, many of whom held senior positions. The Respondent clearly did not have a preponderance to dishonesty and he was not an inherently dishonest person. He had told the Tribunal that he had received a phone call from the creators of scheme telling him that it could operate retrospectively. There was no telephone note of this conversation. The only supporting evidence he had for this assertion was a letter sent to his client on

30 March 2012. The letter stated "I am currently waiting for PAB Limited to forward me the paperwork with regard to the stamp duty mitigation scheme they are to switch you on to. They called and emailed yesterday to say that it was too late to switch you on to an existing scheme but, having spoken with them this morning, they tell me that there is a variation of the option scheme which they have a first draft of and this could be implemented retrospectively and as soon as I receive the paperwork with regard to this I will let you know". He had not been told how the scheme would operate retrospectively, only that it may do so.

86.14 The Tribunal accepted the Applicant's submission that there was a difference between backdating a document and a scheme operating retrospectively. The Tribunal considered the step by step-guide, which the Respondent subsequently received. There was nothing contained in that document that suggested backdating. The Respondent did not have any reason to believe he could backdate the document at the time that he did so. The Tribunal found the Respondent's explanations to be a retrospective justification of something that was inexplicable in professional terms. The Tribunal rejected his evidence. He had made a conscious decision to backdate the documents by his own admission. He had done so on wholly flimsy grounds and the Tribunal was entirely satisfied that he knew he should not do it. He was a very experienced solicitor and was familiar with the fact that the aim of the schemes was to achieve tax avoidance. The Tribunal was satisfied beyond reasonable doubt that he knew he was acting dishonestly by the ordinary standards of reasonable and honest people.

86.15 Having found the Respondent to have acted dishonestly it followed as a matter of logic that he had also lacked integrity, allowed his independence to be compromised and had undermined the trust the public placed in him and in the profession.

86.16 The backdating of the documents meant that they were effectively invalid. As a consequence the clients were not in fact legitimately covered by any SDLT mitigation scheme. This was contrary to their best interests.

86.17 The Tribunal found this Allegation proved in full beyond reasonable doubt.

<u>The Tribunal's Findings - Allegation 1.8</u>

86.18 The Tribunal examined the SDLT1 submissions made to HMRC. In the exemplified transaction of P&L the transaction took place on 30 March 2012, nine days after the March 2012 Budget. The SDLT1 was submitted on 11 April 2012. The conditional contract had not been sent out to the clients until 13 April 2012. Therefore at the time of the submission of the SDLT1, claiming full exemption from SDLT, the only documents that the clients had signed were for the Option Scheme, which the Respondent knew had been rendered invalid nine days previously. When interviewed by the SRA the Respondent had said that at the time he believed the Option Scheme was in place, but he accepted in his evidence that he was wrong about that and confirmed that he knew, at the time of the submission, that the Option Scheme was no longer valid. Instead he believed that the Crystal Scheme, when finally set up, would be able to operate retrospectively.

86.19 The Tribunal found as a fact that there was no valid SDLT scheme in place at the time the Respondent submitted the SDLT1 forms. The Option scheme was invalid and the Crystal Scheme was not yet in place. The SDLT1 form contained information that was wrong.

86.20. The Tribunal again applied the test in Twinsectra and considered the subjective test. The SDLT1 submission stated that an exemption should be granted when in fact there was no scheme in place and therefore no basis for an exemption. The statement was therefore untrue. The Tribunal found that in making an untrue statement to HMRC the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people.

86.21 The Tribunal considered the subjective test for dishonesty and still had in mind the character references referred to above. At the time of submitting the SDLT1 it contained misleading information. He had been asked in his evidence what would have happened if the Crystal Scheme had never in fact been set up. He had said that he would have corrected the information. The Tribunal rejected this part of the Respondent's evidence. However, what he might or might not have done later was not relevant to the consideration of what he did at the time and what he had in his mind when he did it. The Tribunal noted that otherwise honest people can undertake dishonest acts for a wide range of reasons. The Tribunal did not wish to speculate as to those possible motives. The facts were clear; the information was untrue and the Respondent knew it was untrue when he supplied it. The Tribunal had no doubt that he was fully aware that he was acting dishonestly by the ordinary standards of reasonable and honest people.

86.22 Having found the Respondent to have acted dishonestly it followed as a matter of logic that he had also lacked integrity, allowed his independence to be compromised and had undermined the trust the public placed in him and in the profession.

86.23 The submission of information that was untrue on the SDLT1 meant that a false declaration had been made to HMRC, for which the client would ultimately be liable in terms of unpaid SDLT and any penalties. This was plainly contrary to their best interests.

86.24 The Tribunal found this Allegation proved in full beyond reasonable doubt.

87. **Allegation 1.9 - He facilitated, permitted or acquiesced in a failure to disclose full and accurate information to ITS and/or HMRC in relation to HMRC's enquiry relating to two transactions, in breach of all, or alternatively any, of Principles 2,4 and 6 of the Principles.**

Applicant's Submissions

87.1 The Applicant reminded the Tribunal that letters from HMRC seeking detailed information in respect of the schemes where the Respondent had backdated the conditional contracts were received by the firm on 11 January 2013. The Respondent did no more than send the transaction documents to the promoter. He did not explain that the conditional contracts had been backdated. The Applicant submitted that the Respondent deliberately chose to mislead HMRC and ITS by including the backdated

documents without any narrative or explanation of the fact that the date of those contracts did not reflect the date upon which they had actually been executed and agreed notwithstanding the clear importance of execution taking place on the same day as completion. The Applicant submitted that in acting in this manner the Respondent acted dishonestly, again with reference to Twinsectra. It was submitted his actions were dishonest by the ordinary standards of reasonable and honest people and he himself must realise that by those standards his conduct was dishonest. The Applicant submitted that the Respondent had been seeking to cover his tracks in respect of the multiple misleading backdated conditional agreements and the multiple submissions of misleading forms to HMRC at a time when there was no scheme in place.

Respondent's Submissions

87.2 It was submitted on behalf of the Respondent that this Allegation should be struck out for lack of certainty. The Allegation was drafted in the alternative and it was submitted that it could, on the drafting in the Rule 5 statement, be committed in any one of nine ways. The Respondent referred the Tribunal to the observations of Davies LJ in Chan and Ali at [23] where he stated:

> "The charges levelled against the respondents were many and varied. Unhappily they were, as formulated, for the most part unduly and unnecessarily convoluted and prolix…".

Davies LJ continued at [25]:

> "This sort of drafting - whether in the context of Solicitors Disciplinary Tribunal proceedings or any other kind of disciplinary or regulatory proceedings – is unacceptable. It would not be tolerated in the civil courts. It would not be tolerated in the criminal courts. It should not be tolerated in the disciplinary tribunals".

87.3 If the Tribunal did consider the Allegation, it was submitted that there was no evidence that ITS regarded the information being provided to them as incomplete or inaccurate and no evidence that incomplete or inaccurate material was provided to HMRC by ITS or BH. If, however, the Tribunal did find that there was such evidence then given the limitation of the Respondent's role in relation to enquiries from HMRC and ITS's own knowledge regarding each of the transferred schemes and the retrospectivity and backdating aspect, there was no basis upon which the Tribunal could be satisfied that the objective test for dishonesty in Twinsectra had been met. The Tribunal was again referred to the Respondent's evidence and the character references should it find it necessary to consider the subjective test.

The Tribunal's Findings

87.4 The Tribunal considered the application to strike out the Allegation.

87.5 The Allegation was that the Respondent had facilitated, permitted or acquiesced in failing to provide full and accurate information to ITS and/or HMRC. The information specifically referred to queries arising out of those cases that started on

the Option Scheme but were intended to be switched to the Crystal Scheme following the March 2012 Budget. The Allegation, as set out in the Rule 5 Statement, was that the fact of the backdating of the documents created a false impression and it was therefore argued that the Respondent did not provide full and accurate information. The Allegation, although related to the conduct underpinning Allegations 1.7 and 1.8, referred to a distinct and separate part of the process, namely the response to queries by HMRC many months after the event. The Tribunal did not find the Allegation to be duplicitous.

87.6 The Tribunal considered the Respondent's submissions as to lack of certainty and rejected them. The Tribunal found the Allegation to have been very clearly pleaded. The Respondent had been able to answer the Allegation in his interview, in his Answer and in his evidence. He had presented his case comprehensively. At no time during his evidence had he indicated that he was struggling to understand the case being put to him or that he was being taken by surprise. He fully understood the Allegation and he had emphatically and articulately denied it. The Tribunal found no breach of Article 6 and the Tribunal refused the application to strike out Allegation 1.9.

87.7 The Tribunal therefore considered the evidence and submissions.

87.8 The Respondent had provided information to ITS following a request from HMRC for clarification as to the basis of the exemption sought for SDLT. By his own admission this documentation contained a backdated document. This was not made clear in the information that was sent to ITS and ultimately HMRC. There was no explanatory note or qualification on the documents. The Respondent had told the Tribunal that ITS would have known that the documents were backdated and therefore there was no reason to draw particular attention to the fact. There was no evidence that this was in fact the case. Even if ITS did know that the documents had been backdated, the Respondent could not know that they had made this clear to HMRC.

87.9 The Tribunal was satisfied beyond reasonable doubt that the Respondent had facilitated, permitted, or acquiesced in a failure to disclose full and accurate information to ITS and/or HMRC.

87.10 The Tribunal again applied the test in Twinsectra and considered the objective test. The Tribunal found beyond reasonable doubt that the permitting of documents with an incorrect date on them to be submitted as part of an investigation by HMRC, particularly when that date had been backdated dishonestly was dishonest by the ordinary standards of reasonable and honest people.

87.11 The Tribunal considered the subjective test for dishonesty and still had in mind the character references referred to above. The Respondent knew that HMRC were examining a large number of transactions including the two pleaded as part of this Allegation. The Respondent knew that he had backdated the documents and therefore knew that the scheme he had claimed applied, did not in fact do so. The Respondent chose to be economical with the truth and not to provide the full picture to HMRC. The Tribunal was satisfied that he knew that full disclosure could lead to the SDLT mitigation scheme unravelling and it was this knowledge that led him to submit the documents containing the wrong date to ITS. The Tribunal were satisfied beyond

reasonable doubt that the Respondent was fully aware that he was acting dishonestly by the ordinary standards of reasonable and honest people.

87.12 Having found the Respondent to have acted dishonestly it followed as a matter of logic that he had also lacked integrity, allowed his independence to be compromised and had undermined the trust the public placed in him and in the profession.

87.13 It could never be in a client's best interests to allow HMRC to be potentially misled as the clients had instructed him to operate the scheme on the basis that it was a legal and permissible scheme. By not providing full and accurate information this risked leading to further investigation by HMRC and this was plainly contrary to their best interests.

87.14 The Tribunal found this Allegation proved in full beyond reasonable doubt.

Previous Disciplinary Matters

88. None.

Mitigation

89. On behalf of the Respondent it was submitted that he had an acute awareness of the Guidance Note on Sanction.

90. The Respondent submitted that it appeared from the Tribunal's findings that lack of integrity had not been found other than in respect of the Allegations in which dishonesty had also been proved. It was submitted that it could be inferred that the dishonest acts represented a cluster around the time of the March 2012 Budget. As such it could be viewed as a one-off instance arising out of very particular circumstances. There had been no conspiracy or planning and although the Respondent was an experienced conveyancing practitioner, he "remained an infant" when it came to matters of taxation.

91. The Respondent was a decent man who was trusted and respected by those who knew him and had worked with him. He had accepted he had got things wrong and had genuine insight. There were no specific exceptional circumstances that could be advanced. He was numb, embarrassed and totally ashamed.

Sanction

92. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

93. The Tribunal assessed the seriousness of the Allegations by considering the level of culpability and harm and any aggravating and mitigation factors.

94. The Tribunal found that there was a range of possible motives for the misconduct. The Tribunal preferred not to speculate but did not find the motivation to be of the most sinister type. The changes brought about by the March 2012 Budget precipitated the Respondent's dishonesty and to that extent it was not pre-planned and was reactive to the circumstances in which the Respondent found himself. However, the

breaches did persist for a year after the March 2012 Budget and there was an element of pre-planning in that respect. The Respondent was in a position of trust, particularly to the lenders, whose money he was entrusted to safeguard. He had 30 years' experience at the material time and was operating at partner-level. He therefore had direct control of the circumstances. The overall level of culpability was high.

95. The harm caused to the profession was high, particularly in view of the Respondent's dishonesty. The backdating of documents that supported the untrue SDLT1 forms was a serious matter, as was the failure to fully disclose information as part of the HMRC investigations. This struck at the heart of the trust and confidence that the public place in the profession.

96. Matters were aggravated by the fact that the actions were deliberate and repeated both in relation to those Allegations that involved dishonesty and those that did not. Matters continued for three years and the Respondent ought to have known he was in material breach of his obligations. There was an element of concealment of wrongdoing as evidenced in the Tribunal's finding in relation to Allegation 1.9.

97. Matters were mitigated by the fact that the Respondent had a previously unblemished career. The Tribunal had in mind the impressive character references submitted on his behalf. There was limited insight in the form of the admissions he had made both in his Answer and in the course of his evidence. He had co-operated with the investigation.

98. The Tribunal found that 'no order', a reprimand or a fine were insufficient to reflect the gravity of the misconduct, particularly the dishonesty. The protection of the public and the reputation of the profession required that the Tribunal remove the Respondent from practice.

99. The Tribunal considered a fixed-term of suspension with the imposition of restrictions thereafter. However there were no restrictions that would sufficiently protect the public or the reputation of the profession and a fixed term of suspension was insufficient to deter future misconduct. The Tribunal was therefore compelled to consider striking off the Respondent.

100. The Respondent was not someone who had a propensity for dishonesty, rather he had committed a cluster of dishonest acts. The Tribunal found this to be a sad conclusion to the Respondent's career but the reputation of the profession was paramount. As Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

101. The stark reality of this case was that the dishonest acts together with other serious breaches, absent any exceptional circumstances, meant that the Tribunal was under a duty to strike off. The Tribunal considered whether any exceptional circumstances existed such that could enable it to impose an indefinite suspension. None had been

advanced in mitigation and the Tribunal found none. The only appropriate sanction was to strike the Respondent off.

Costs

102. The parties informed the Tribunal that an agreement had been reached on the costs of the proceedings in the sum of £55,675.60. There was no agreement at present in respect of the investigation costs as some detail within the figures required clarification which the Applicant was not in a position to provide immediately.

103. The parties proposed that the Tribunal order that the investigation costs be subject to detailed assessment and carry out a summary assessment of the costs of the proceedings, which were agreed.

104. The Tribunal was satisfied that it was appropriate to order a detailed assessment of the investigation costs. The costs of the proceedings were examined and the Tribunal found them to be reasonable in all the circumstances.

105. No application was made for an order that costs not be enforced without leave of the Tribunal and the Tribunal found no basis to make such an order. The costs were ordered in the agreed sum.

Statement of Full Order

106. The Tribunal Ordered that the Respondent, TIMOTHY CHARLES ELKINS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay:

    (i) the costs of the proceedings fixed in the sum of £55,675.60; and

    (ii) the costs of the Solicitors Regulation Authority Forensic Investigation, to be subject to detailed assessment unless agreed between the parties.

Dated this 29th day of July 2016
On behalf of the Tribunal

E. Nally
Chairman