SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11460-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NIGEL MAPLETOFT Respondent

Before:

Miss N. Lucking (in the chair)
Mrs J. Martineau
Mr P. Hurley

Date of Hearing: 4 & 5 October 2016

Appearances

Ms Marianne Butler, counsel, of Fountain Court Chambers, Fountain Court, Middle Temple, London EC4Y 9DH, instructed by Mr Alastair Wilcox, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Tim Nesbitt, counsel, of Outer Temple Chambers, The Outer Temple, 222 Strand, London WC2R 1BA, instructed by Mr Nick Trevette, solicitor, of Murdochs Solicitors, 45 High Street, Wanstead, London E11 2AA, for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Nigel Mapletoft, made in a Rule 5 Statement dated 21 December 2015, were that, whilst a sole practitioner at Mapletoft & Co, he:

1.1 Withdrew client money from client account to make personal payments in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 ("AR 2011") which says that client money may only be withdrawn from client account when it is properly required for a payment to or on behalf of the client;

1.2 Used client money to make personal payments, for which he was personally liable, in breach of all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles");

1.3 Failed to return client money to his clients as soon as there was no longer any proper reason to retain those funds, in breach of Rules 14.3 and 14.4 of the AR 2011;

1.4 Failed to keep accounting records properly written up to show dealings with client money, in breach of Rule 29.1 of the AR 2011;

1.5 Failed to remedy the breaches of the AR 2011 detailed above promptly upon discovery, in breach of Rule 7.1 of the AR 2011;

1.6 Used his client account as a banking facility for clients in breach of Rule 14.5 of the AR 2011;

1.7 Failed to comply promptly with a written notice from the SRA for a request for documents and information and failed to produce to the SRA records, papers and client matter files necessary to enable the preparation of a report in compliance with the Rules, in breach of Rule 31.1 of the AR 2011, Principle 7 of the 2011 Principles and failing to achieve Outcomes 10.8 and 10.9 of the SRA Code of Conduct 2011;

1.8 Dishonesty was alleged against the Respondent in respect of allegations 1.1 to 1.5 and 1.7; however, proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

2. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant

- Application dated 19 December 2015
- Rule 5 Statement, with exhibit "AHJW1", dated 21 December 2015
- Witness statements of
    - James Carruthers (of the SRA), dated 5 August 2016
    - Lisa Bridges (of the SRA), dated 16 August 2016, with exhibits LB1-LB3
    - Georgina Simpson (of HMRC), with exhibit, dated 15 August 2016
    - Andrea Lamb (of HMRC), dated 29 March 2016

  - Michelle Reid (of HMRC), with exhibit, dated 24 March 2016
  - Elizabeth Strutt, with exhibits, dated 18 August 2016
  - Suzanne Smythe, with exhibits, dated 16 August 2016
- Print out of Smythe ledgers (matters 1, 2 and 3)
- Copy accountant's report for Mapletoft & Co for 1 April 2012 to 31 March 2013
- Copy accounts of Mapletoft & Co for the year ended 31 March 2013
- Extracts from 2011 Principles, AR 2011 and SRA Code of Conduct 2011
- Applicant's schedule of costs as at 21 December 2015
- Applicant's schedule of costs as at 26 September 2016
- Applicant's Note of Opening/Skeleton Argument, dated 30 September 2016

Respondent

- Respondent's first witness statement, dated 25 February 2016
- Respondent's second witness statement, dated 27 September 2016
- Witness statement of Ms C, dated 30 September 2016
- Witness statement of Ms L, dated 3 October 2016
- Witness statement of Rosalind Jenkins, dated 29 June 2015 (included in Rule 5 bundle)
- Report of Dr Kampers (consultant psychiatrist), dated 30 September 2016
- Letter from Dr Uddin (GP), dated 29 September 2016
- Respondent's personal financial statement, dated 13 September 2016
- Respondent's skeleton argument, with annex setting out Respondent's formal response to the allegations, dated 2 October 2016

Other

- Miscellaneous inter partes correspondence/correspondence with the Tribunal office
- Memorandum of Case Management Hearing held on 11 February 2016

Preliminary Matter – "Adverse inferences" – Tribunal Practice Direction No. 5

3. It was noted that in the light of the medical evidence presented by the Respondent he would not be called to give evidence. The details of that evidence are not set out here to preserve the Respondent's privacy, but the Tribunal noted that he was assessed by appropriate medical professionals as not being fit to take part in the proceedings.

4. Mr Nesbitt for the Respondent submitted that the medical evidence recommended that the Respondent should not attend. However, he had attended. The Tribunal noted that the Respondent could leave the court room at any point if he wished, and could request a break (through his counsel) if he required one. Mr Nesbitt told the Tribunal that the Respondent made no application to adjourn the hearing; he was keen for the proceedings to reach a conclusion.

5. On behalf of the Applicant, Ms Butler submitted that in the light of the medical evidence the Applicant would not invite the Tribunal to draw adverse inferences if the Respondent did not give evidence. There would, of course, be a separate issue concerning the weight to be given to the Respondent's witness statements if he was not called and thus was not subject to cross examination.

6. The Tribunal noted that it would not draw any adverse inferences if the Respondent did not give evidence, but would have to consider the weight to attach to the Respondent's witness statements.

Factual Background

7. The Respondent was born in 1954 and was admitted to the Roll of solicitors in 1980. He held a current Practising Certificate, subject to conditions, at the time proceedings commenced.

8. At all material times, the Respondent practised as a solicitor, as a sole practitioner, at Mapletoft & Co ("the Firm"), at 192 Upper Richmond Road, Putney, London, SW15 2SH. The Firm's work largely involved high value conveyancing transactions.

9. Owing to concerns about the Firm, (in particular as raised in an anonymous report to the Applicant) a duly Authorised Officer from the SRA was commissioned to carry out an inspection at the firm. Ms Lisa Bridges, a Forensic Investigation Officer ("FI Officer"), attended at the Firm on the 2 June 2014 to commence the investigation. Due to Ms Bridges commencing an extended period of leave soon after, the investigation was continued and concluded by another FI Officer, Mr James Carruthers. The FI Officer's report ("the Report"), dated the 15 April 2015, was relied on by the Applicant.

10. Following an examination of the books of account, the FI Officer discovered that a cash shortage existed in the sum of £11,116.73. Paragraph 17 of the Report stated:

> "The cash shortage was caused by three improper payments from client bank account instigated by [the Respondent] where residual amounts, which should properly have been returned to clients following completion of their respective retainers, were used for purposes other than those in respect of the relevant client matters."

Allegations 1.1, 1.2, 1.3, 1.4 and 1.5
Strutt

11. The Respondent acted for Mr and Mrs Strutt in relation to their purchase of a property referred to as "R", which was in Kent, for the sum of £3.7 million and their sale of 12 H Road, in London, for £2.5 million on the 31 August 2011.

12. It was reported in the Report that on 10 December 2013, the Firm's client bank account was charged with a payment of £8,220.73 in respect of cheque number 062682, dated 6 December 2013. The cheque was signed by the Respondent and a copy appeared in the Rule 5 bundle.

13. The cheque was allocated to the client ledger account of Mr and Mrs Strutt's purchase of "R." At the time the payment was made, £8,220.73 represented the exact residual credit balance being held for Mr and Mrs Strutt in respect of their sale and purchase, matters which had completed two years earlier, with the residual monies having not been returned to the clients.

14. A copy of the relevant client ledger showed that the corresponding entry on the ledger, dated 6 December 2013, was: "HMRC - Stamp Duty + penalty."

15. A witness statement of Rosalind Deborah Jenkins ("Roz Jenkins"), who was the Respondent's PA/secretary until the closure of the Firm in July 2015, which was dated 29 June 2015 included the statement: "I have also been shown the cleared cheque in question which is also in [the Respondent's] handwriting which I do have some recollection of seeing before." The cheque was drawn as payable to "HM Revenue and Customs."

16. The FI Officer discovered, on the client matter file, two Stamp Duty Land Transaction Return forms ("SDLT1 forms") which were contemporaneous with payments totalling £177,000 paid to HMRC in respect of Stamp Duty Land Tax ("SDLT"). £165,000 was paid on 17 October 2011 and £12,000 on 1 November 2011. Documents from HMRC to Mr and Mrs Strutt confirmed receipt of the payments in the sums of £165,000 and £12,000.

17. The FI Officer was unable to locate any documentary evidence, such as correspondence, to support the payment of £8,220.73, made on the 6 December 2013, some 25 months after the transaction had completed.

18. An itemised statement sent by the Respondent to the clients, dated 22 September 2011 made no mention of a payment due to HMRC for Stamp Duty Land Tax in the sum of £8,220.73. However, it did indicate that SDLT was due, or had been paid, in respect of the transaction in the sum of £185,000 i.e. £8,000 more than the sum actually sent to HMRC in October and November 2011. Letters from HMRC to Mr and Mrs Strutt dated 20 March 2015 indicated that their account was balanced (the sums of £165,000 and £12,000 having been paid) that no payment was due and that there was no proposed demand.

19. Ms Bridges questioned the Respondent about the payment in the sum of £8,220.63 on 4 June 2014. It was reported in the Report that the Respondent told her that, prior to completion, the title in respect of "R" was divided into two ("R" and "R Cottage") so that the mortgage could be secured on "R" alone. SDLT in the sum of £165,000 was paid on 17 October 2011 in respect of "R" and £12,000 on 1 November 2011 in respect of "R Cottage." It was further reported that the Respondent told Ms Bridges that he had advised the clients that HMRC may regard the two transactions as associated, in which case £185,000 would be payable. He said that his clients had instructed him to "have-a-go" and he had paid the two amounts totalling £177,000 from client account. It was also reported that the Respondent said that, at a later date, HMRC had contacted both the firm and Mr and Mrs Strutt seeking additional monies as it had been determined by HMRC that the transactions were associated. The Respondent was noted as having said that Mr and Mrs Strutt had instructed him to pay the additional liability and that there were no letters on the file evidencing it because the file had been in storage at that time. The Respondent repeated the same explanation to Mr Carruthers on 29 January 2015. This account of what was said was disputed by the Respondent.

20. The FI Officer made contact with Mr and Mrs Strutt by email and received a reply from them on 14 March 2015; that reply appeared in the Rule 5 bundle. In their response, they said that:

- They had not been contacted by HMRC in connection with SDLT payable on the purchase of either "R" or "R Cottage;"
- They had not been contacted by the Respondent in connection with any additional liability to SDLT;
- They were not aware that the Respondent had been holding any of their monies on account;
- They were not aware that the Respondent had used those monies to make a payment to HMRC on the 6 December 2013 in the sum of £8,220.73.

21. Further evidence from HMRC indicated that no demand was issued to Mr and Mrs Strutt for additional SDLT on the basis that the purchases of "R" and "R Cottage" were associated.

22. A tax self-assessment statement for the Respondent dated March 2015, showed that the monies (i.e. £8,220.73) were paid into the Respondent's personal account at HMRC in December 2013; the date recorded on the statement was 5 December 2013. The Respondent had also made a payment to HMRC towards his tax account in the sum of £50,000 on 21 October 2013 arising from the proceeds of the sale of the property referred to in relation to allegation 1.6 below.

23. An email from Mr David Orna-Ornstein, at HMRC, to Mrs Alexandra Iliff, the Supervisor at the SRA with conduct of the investigation dated 23 September 2015 stated that the payment (of £8,220.73) was made "over the counter at a bank with a pre-printed payslip on 06.12.13." The paying-in slip appeared in the Rule 5 Statement. The Respondent accepted that he had written and signed that document. The reference which appears on the paying-in slip (*******929K) accorded with the reference in the top right hand corner of the self-assessment, save that the letter "K" did not appear at the end of the reference on the self-assessment statement. The copy cheque stub number, ***682, was the same as appeared on the cheque.

24. The Respondent did not replace the monies in full in client account until 14 April 2015 and did not refund Mr and Mrs Strutt in full until 28 April 2015. The funds were replaced from the Respondent's own resources. The narrative on the ledger for Mr and Mrs Strutt, concerning the refund, was "HMRC - Stamp duty refund."

Smythe

25. The Respondent acted for Mr and Mrs Smythe in relation to their sale of 18 P Place, London, for £1.98 million and the purchase by Mrs Smythe of 2 A House, London on 7 January 2014, along with the purchase of a property in the name of Mr Smythe.

26. On 13 February 2014, the Firm's client bank account was charged with a payment of £2,100 in respect of cheque number: ***745, dated 7 February 2014.

27. A copy of the cheque, made payable to the Nationwide Building Society and signed by the Respondent, was included in the hearing bundle together with the relevant bank statement. On the reverse of the cheque there appeared the following narrative in manuscript: "Mtge a/c No ****-*****7199."

28. A copy of the payment request voucher, which was dated 7 February 2014, showed that a request was made for the cheque to be made payable to the "Nationwide Building Society," from the ledger of "SMYTHE," with the reason for the request being, "completion of purchase."

29. The cheque was allocated to the client ledger account of the Mrs Smythe's purchase of 2 A House. At the time the payment was made, the combined residual balance on the client accounts for Mr and Mrs Smythe's matters was £2,144.25 which had not been returned to the clients following completion of the transactions on 7 January 2014.

30. A copy of the ledger entry showed that the corresponding entry, dated 7 February 2014, read: "NWB- Completion."

Oxspring

31. The Respondent acted for Mr and Mrs Oxspring in connection with the purchase of 63 M Road, London, for £835,000 on 28 June 2013.

32. The Report reported that on 29 October 2013, the Firm's client bank account was charged with a payment of £796 in respect of cheque number ***623, dated 21 October 2013.

33. A copy of the cheque, made payable to the Nationwide Building Society and signed by the Respondent, was included in the hearing bundle, together with the relevant bank statement. On the front of the cheque, just after the words "Nationwide Building Society", in a different hand, appeared the words "NIGEL MAPLETOFT" and the initials "NM". On the reverse of the cheque appeared a partially obscured account number, the final digits of which were "2940."

34. The cheque was allocated to the client ledger account of Mr and Mrs Oxspring's purchase of 63 M Road. At the time the payment was made, the residual balance on client account for Mr and Mrs Oxspring's matter was £796, which had not been returned to the clients following completion of the transaction in June 2013.

35. The corresponding entry on the client ledger, dated 21 October 2013, read: "Mr and Mrs Oxspring - bal retd."

36. The cash statements supplied to the clients indicated that all of the clients' money was used towards the purchase price but the client ledger showed that £796 was retained on client account after completion.

Explanation to the FI Officer

37. Mr Carruthers questioned the Respondent about the Nationwide Building Society Accounts and the payments in a meeting on the 11 November 2014.

38. In an e-mail to Mr Carruthers dated the 27 November 2014, the Respondent stated:

> "Payments to Nationwide Building Society
> I do not know which payments you are referring to. I did have a mortgage with Nationwide Building Society and the mortgage account number was ****-*****7199. The mortgage has now been repaid and I do not have any statement."

39. The FI Officer stated in an email to the Respondent dated 5 December 2014, that it appeared that the cheques had been paid into the Respondent's personal mortgage accounts and sought an explanation from the Respondent. An explanation was not forthcoming and the FI Officer repeated the request in an email dated 12 December 2014.

40. On 28 January 2015, the Respondent produced a mortgage redemption statement from the Nationwide Building Society for account number ending "7199" and on 29 January 2015 a copy of a letter from the Nationwide Building Society dated 16 October 2014 which confirmed that that mortgage account had been redeemed.

41. The documents showed that the mortgage account numbers ending 7199 and 2940 were personal mortgage accounts held by the Respondent and his wife, Ms L.

42. In a meeting with Mr Carruthers on 29 January 2015, the Respondent said that he had "to put his hands up" and that there had been a "dreadful mistake" as the payments had been drawn from "the wrong account" and paid into joint mortgage accounts. He told the FI Officer that he had signed the cheques but had not noticed that the payments had been made from the Firm's client account. The Respondent said that he could tell that the cheques had been written out by his daughter Ms C, who had covered for his secretary when she had been absent. He suggested that she had picked up the wrong cheque book when preparing the cheques. When asked why the amounts paid had been allocated to the matters of Smythe and Oxspring, the Respondent replied that he did not know and that "there's been a crossed-wire somehow."

43. The Report recorded that in a telephone call with the FI Officer on the 6 March 2015, the Respondent indicated that he had replaced the cash shortage in respect of the Smythe and Oxspring matters.

44. A bank statement showed that, on 9 February 2015, £750, was replaced on the matter of Oxspring. The corresponding narrative on the client ledger stated, "From client onac" which was understood to mean "on account". The ledger relating to the matter of Smythe referred to the replacement of the monies as, "From Suzanne Smith - onac".

45. The FI Officer telephoned the Respondent on the 6 March 2015 and asked him for clarification in respect of the narrative on the ledgers. The FI Officer was told that both lodgements had come from the Respondent's personal resources and that an additional £50 had been lodged in the client bank account on the 3 March 2015 to make up the shortfall on the matter of Oxspring.

46. At the meeting on 29 January 2015, Mr Carruthers asked the Respondent why he had provided Ms Bridges with a different version of events regarding the two payments. The Respondent replied, "I was surmising when I told Lisa. I wasn't saying, 'This was the case.'"

Allegation 1.6

Mr and Ms L- Flat C, 225-231 UR Road

47. The Respondent acted for himself and his wife in connection with the sale of a flat, namely Flat C, UR Road, London. The copy of the ledger for this matter showed that the file was opened in the name of "Neill Nigel," although the Respondent and his wife were the clients.

48. The flat was sold for £320,244.38 on 11 October 2013. Following a payment of £187,088.90 to redeem the mortgage, the balance of the proceeds of sale in the sum of £133,155.48 remained on client account and were disbursed in such a way that, it was alleged, the Firm's client account was used as a banking facility for the Respondent and his wife.

49. Personal payments made, between 11 October 2013 and 14 April 2014, included a payment in the sum of £50,000 to HMRC on 21 October 2013 and payments to American Express on 17 March and 14 April 2014.

50. The FI Officer reported that the resulting balance of £54,302.32 was still being held on client account when Ms Bridges started the investigation on 2 June 2014. The balance was transferred to the Respondent's personal account on 6 June 2014.

51. The Respondent was questioned about this matter by Ms Bridges on 4 June 2014. When asked why the ledger was incorrectly named, he told the FI Officer that his cashier had made a mistake when opening the ledger account and had used the name of an existing client who was unconnected with the transaction. The Respondent said that it was "laziness" on his behalf to have left the funds in client account.

52. In a meeting with Mr Carruthers on 29 January 2015, the Respondent agreed that the proceeds of sale should not have been retained in client account and that he should not have made the payments.

Mr and Mrs R - Sale of 25 R Lane

53. The Respondent was retained by Mr and Mrs R in connection with the sale of a property at 25 R Lane for £685,000 on 18 January 2013.

54. A copy of the ledger showed that the proceeds of sale were retained in client account for a period of nine months following completion, during which time the Respondent made a number of payments for Mr and Mrs R which were unrelated to the underlying legal transaction on which he had been instructed.

55. The payments included payments of school fees to a public school, to a private members' club, and round sum transfers to Mrs R, Mr R and Master R. The ledger showed that the Respondent raised two invoices for making the payments; one in the sum of £300 on 31 May 2013 and the other, for the same amount, was raised on 30 August 2013.

Allegation 1.7

56. The Report noted that the FI Officer asked the Respondent to produce client matter files on the following dates:

- 4 November 2014;
- 11 November 2014 (in person);
- 21 November 2014;
- 12 December 2014;
- 13 January 2015;
- 20 January 2015;
- 23 January 2015;
- 29 January 2015 (in person);
- 6 February 2015;
- 27 February 2015;
- 10 March 2015;
- 16 March 2015; and
- 24 March 2015.

57. In an email on 4 November 2014, Mr Carruthers asked the Respondent to make the matter file relating to the Strutt matter to be made available for inspection.

58. When the FI Officer attended at the firm on 10 and 11 November 2014, the Respondent told him that he was unable to find the file as he was having difficulty accessing a storage facility.

59. The FI Officer repeated his request in an email of 21 November 2014 to which the Respondent replied, on the 27 November 2014,

> "I gave Lisa [Bridges] the Smythe, Strutt and Oxspring files during her visit and I cannot now locate them as they may have been misfiled."

60. The FI Officer subsequently served a notice pursuant to section 44B of the Solicitors Act 1974 on the Respondent, requesting (amongst other documents) production of the files relating to the matters of Strutt, Smythe and Oxspring by 20 January 2015.

61. The Respondent replied on the 15 January 2015, enclosing some files, indicating that he would send others in the DX the following day and in relation to Smythe, Oxspring and Strutt indicating that he was having difficulty locating those files "as they were misfiled following your colleague Lisa's visit in June".

62. On 23 January 2015 the FI Officer informed the Respondent by email that he would be attending at his offices on 29 January 2015 to examine the file relating to Mr and Mrs Strutt. When the FI Officer attended, the files had not been made available for inspection and were still outstanding as at the date of the report, 15 April 2015.

63. The Respondent did not make the files of Strutt, Smythe and Oxspring available to the SRA for inspection until the 19 June 2015.

Allegation 1.8

64. Allegation 1.8 was based on the same facts as are set out above in relation to allegations 1.1 to 1.5 and 1.7.

SRA Investigation

65. On 29 May 2015, the Supervisor in the employment of the SRA's Supervision Department with conduct of this matter sent to the Respondent a document, "The Supervision Report." The Supervision report made a recommendation that the Respondent's practice be intervened into and asked the Respondent for his representations.

66. Murdochs Solicitors, instructed by the Respondent, replied on his behalf under cover of a letter dated 24 June 2015.

67. With regard to the payments, which were made on the matters of Smythe and Oxspring, it was stated,

> "We accept that [the Respondent] signed both these cheques during the course of a busy and pressured environment but what is also apparent is that both cheques were actually written out and prepared by his own daughter who often covers in the office when his secretary is absent, details that were known to the [FI Officer].
> [The Respondent's] practice is to dictate his letters for his secretary who will then prepare the necessary letters and where appropriate the relevant cheques for signing."

68. The letter set out the enquiries Murdochs Solicitors made of the Respondent's daughter. The letter went on to state:

> "...these transactions are the result of a dreadful and unforeseen mistake and any allegation of dishonesty is unfounded."

69. The letter further stated that Murdochs Solicitors were making enquiries of HMRC regarding the payment made using monies belonging to Mr and Mrs Strutt and that the reason for the "apparent lack of engagement" displayed by the Respondent was due to a serious health issue.

70. Finally, the letter stated that the Respondent proposed to conduct an orderly wind-down of his practice.

71. A decision to refer the Respondent's conduct to the Tribunal was made on the 15 July 2015. The Applicant deferred a decision to intervene into the Respondent's practice, having received representations as to how an orderly wind-down of the Firm could be achieved. The Firm was closed in July 2015.

Witnesses
For the Applicant

72. Ms Lisa Bridges – FI Officer

72.1 Ms Bridges confirmed that the contents of her witness statement, dated 16 August 2016, were true to the best of her knowledge, information and belief and was then cross examined by Mr Nesbitt on behalf of the Respondent.

72.2 Ms Bridges gave the Tribunal information about her professional history and work with the Applicant since 2007. Ms Bridges told the Tribunal that annually she would be involved in about 15 to 20 investigations, which might involve visiting firms for 2 weeks or so each month, although some investigations were more "desk-based". Visiting firms which dealt with conveyancing was something of which she had experience. Due to sickness absence, Ms Bridges handed over the investigation to Mr Carruthers in about July 2014 and had little further involvement, save that she may have seen the Report before it was published, although she did not specifically recall this.

72.3 Ms Bridges was referred to her notes made during the investigation. The notes considered relevant to the issues in the Report had been appended to her witness statement. Ms Bridges confirmed that the notes were important as they were contemporaneous, and were reliable as the best record of what had been said. Ms Bridges confirmed that her notes had been made whilst talking to the Respondent, rather than written up later. She assumed that Mr Carruthers had recounted in the Report what he understood had been said (in June 2014), based on her notes.

72.4 Ms Bridges told the Tribunal that before the investigation, which was prompted by a report to the SRA, the Respondent was sent a standard letter warning of the visit and asking for information to be made available. Ms Bridges told the Tribunal that she understood the report to the SRA had mentioned specific cheque numbers and possibly one of the relevant clients. When the investigation began on 2 June 2014 she knew the sort of information for which she was looking.

72.5 Ms Bridges told the Tribunal that she could recall meeting the Respondent, at his offices which were situated above an estate agency. The office was arranged over three floors, with the receptionist/PA on the first floor, the Respondent's office on the

floor above and the bookkeeper, Mr ER, was based on the top floor. There was also an assistant solicitor, Mr PS. Ms Bridges accepted that the tenor of the conversation on arrival had been friendly, with some chit chat, and that she had not mentioned the Strutt, Oxspring or Smythe matters in the initial discussion. Ms Bridges confirmed that she had not made any notes about being denied access to any accounts information and that on the first day she had requested the three client files (Strutt, Oxspring and Smythe) and these had been provided promptly. Ms Bridges did not recall if the files had been stored on site or in off-site storage. Ms Bridges confirmed that the tone of the discussions with the Respondent had been friendly and appeared co-operative; she had not been obstructed in her investigation. Ms Bridges told the Tribunal that the Respondent had not presented as being worried about producing the files. Ms Bridges was unable to comment on whether the files had been looked at or tampered with before they were handed to her. Although she had not spoken to Mr PS, Ms Bridges confirmed that the Respondent had been content for her to speak to anyone in the office.

72.6 Ms Bridges told the Tribunal that on 4 June 2014 she had spoken to the Respondent and drawn to his attention the concerns which had been noted. She had copied the documents she wanted from the files, having been given access to the Firm's photocopier.

72.7 Ms Bridges told the Tribunal that she could not comment on whether the Respondent returned the files to storage after she left the Firm. It was suggested that the Firm had about 5 completions each week; Ms Bridges told the Tribunal that that figure was believable and that the value of the transactions were quite high. It was put to Ms Bridges that in conveyancing matters about 8 to 16 debits on a client ledger would be normal; Ms Bridges could not comment on this. Ms Bridges accepted that on the Strutt ledger there appeared to be about 16 debits on the ledger. It was put to Ms Bridges that if the Firm had about 250 conveyancing matters each year, that would mean there were thousands of payments in and out of the Firm's accounts each year; Ms Bridges accepted that. It was put to Ms Bridges that where there were a large number of payments in and out of the accounts, mistakes could be made. Ms Bridges accepted that mistakes could be made, but she would hope to see that such mistakes were picked up on regular client account reconciliations, which should be checked by a principal of a firm. Posting errors should be picked up by a bookkeeper or the principal through the reconciliation statements. The bookkeeper, Mr ER, was understood to have day to day responsibility for the accounts, but the Respondent was in overall control and had responsibility.

72.8 Ms Bridges confirmed that one area which should be picked up on audits was any sums retained on client account after the end of a matter; this seemed to be a problem at the Firm. Ms Bridges told the Tribunal that such balances should be picked up on the accounts system and, particularly in a smaller firm, the principal should be aware of the issue and should rectify it. A list of liabilities to clients would not show up any dormant balances, but accounts systems could usually list matters on which there had been no activity for a period. Solicitors should know that they should not retain dormant balances. Ms Bridges told the Tribunal that she recalled discussing this issue with the Respondent, who acknowledged that there were some dormant balances in existence. Ms Bridges told the Tribunal that the Respondent had agreed to look into this issue, but she had not followed this up as she was thereafter on sick leave.

72.9 Ms Bridges told the Tribunal that it could be easy for dormant balances to remain and not be picked up by a bookkeeper or auditor, particularly if a firm had lots of client matters. Printed off ledgers could run to a number of pages and it was feasible that the Firm had several hundred matters on its system. Ms Bridges confirmed that problems had been identified on the three files mentioned, together with the Mr and Mrs R file and the Respondent's own conveyancing file. She could not say that she had reviewed everything in the Firm. Further files had been requested. What she had noted on other files which had been reviewed was that copies of the cheques were on the client files, so that it could be seen to whom cheques had been paid; there were no copy cheques on the three files in issue. Ms Bridges told the Tribunal that the initial part of the investigation took three days and she had intended to return at a later date to complete the investigation.

72.10 Ms Bridges told the Tribunal that she could not recall asking about who had written the cheques in question. She would expect to see a copy of the cheque on the file, but did not recall this on the files in issue. At the time of the investigation, Ms Bridges did not know who had written the chit or the cheque; she had not asked at that stage, as the intention was to return at a later date. Ms Bridges confirmed that it may have been Mr ER who input the data onto the client ledgers. She did not recall discussing the Respondent's working practices e.g. whether he dictated on tapes for Mrs Jenkins or Ms C. Ms Bridges had not investigated who would have been involved in drawing bills such as that addressed to Mr and Mrs Strutt dated 22 September 2011, nor had she seen or known that the handwriting on the cheque and the payment slip was that of the Respondent. Ms Bridges had not made enquiries about who made the entries on the ledgers or who filled out the SDLT forms. However, as the Respondent was the fee-earner on the Strutt matter he would be expected to pick up any errors which occurred on the ledger. Ms Bridges could not say what input the Respondent may have had into the wording on the Oxspring or Smythe ledgers.

72.11 Ms Bridges was referred to her handwritten notes about Smythe, Oxspring and Strutt, appended to her witness statement, which she confirmed were the best notes available.

72.12 In relation to Strutt, the notes read:

> "SDLT saving exercise. Lender said won't lend on cottage whilst mother still there, so titles split so paid £3.3 mill for main property £400k cottage. Strutt thought SDLT saving – 3% on 400k. Told him regarded by SDLT as associated transaction. He said have a go. Both got calls from Revenue and so said just pay it. No letter on file because file was in storage. Failed SDLT saving scheme."

Ms Bridges accepted that this note appeared to suggest that Mr Strutt had asked about saving SDLT. Ms Bridges accepted there was nothing in the note which suggested when that discussion had been, or when Mr Strutt said "just pay it"; the Respondent had not given the timings. Ms Bridges was referred to the Report which, at the relevant section, read:

> "[The Respondent] said that at a later date HMRC contacted both Mr and Mrs Strutt and the Firm seeking to recover additional [SDLT] having determined the transactions to be "associated".

Ms Bridges accepted that there was nothing in her note which referred to "at a later date". Her note could mean that the payment of SDLT had been discussed at the time of the transaction and that the Respondent was instructed to pay the full SDLT. Ms Bridges told the Tribunal that she believed the Respondent had used the description "failed SDLT saving scheme", but she could not be certain.

72.13 Ms Bridges told the Tribunal that when she spoke to the Respondent on 4 June 2014, it had not been a full interview but the Respondent would have been aware of the files she had reviewed. Ms Bridges could not say whether or not the Respondent had read the files before handing them to her for review, but she had no recollection of him going through the files. Ms Bridges told the Tribunal that the Respondent had given his answers to her questions readily.

72.14 It was put to Ms Bridges that in relation to the Strutt matter the Respondent had been trying to give an answer relating to events in 2011 and a payment 7 months earlier, and that he may have been answering "off the top of his head." Ms Bridges told the Tribunal that as the payment had been made 7 months before the discussion, the Respondent must have reviewed the file about that time and that he should have had a reasonable recollection. Ms Bridges had no recollection of the Respondent becoming guarded in his answers.

72.15 Ms Bridges confirmed that the files had been discussed in the order in her note – Smythe, Oxspring and Strutt. It was put to Ms Bridges that the payment of £796 on Oxspring, 8 months before the discussion, was for a relatively small sum and was not particularly memorable. Ms Bridges accepted that there were some larger sums in question. She had asked the Respondent why the balance had been left over and why the payment of £796 had been paid to Nationwide. It was put to Ms Bridges that her note of the discussion was couched in terms which suggested the Respondent was suggesting what might have happened, rather than stating what had happened. Ms Bridges accepted that the word "probably" was used, but the comment about speaking to a particular person ("Catherine") suggested it was a statement about what had happened; this did not look like a "guess", but a statement about something which had happened.

72.16 With regard to the matter of Smythe, Ms Bridges told the Tribunal that she believed she saw the chit requesting the cheque for £2,100, and would have asked why the cheque was to be paid to the Nationwide. The note read,

> "Completion £2,100. Can't find anything on file. At the moment when purchased the property roof terrace not included in the demise (illegible) with Deed of Variation, Payment made to Nat West Bank, sent to residents company account. Payment on account of costs."

Ms Bridges acknowledged that it was not clear from the note whether it was the Respondent or herself who had stated nothing could be found on the file. It was the Respondent who had referred to a Deed of Variation in connection with the conveyance. Ms Bridges told the Tribunal that the Respondent may have mentioned the wrong bank (Nat West, rather than the Nationwide) or she may have written it down wrong. There may have been two explanations given by the Respondent: that the money was sent to the residents' association, or that it was on account of costs.

Ms Bridges could not comment on whether a payment to a residents' association would be in connection with the demise of a roof terrace. Ms Bridges told the Tribunal that she had intended to have another discussion with the Respondent, at a later date. It was put to Ms Bridges that the note suggested the Respondent had been trying to give an explanation of what had happened rather than speaking from his recollection of events. Ms Bridges agreed that the notes could read in that way.

72.17 Ms Bridges told the Tribunal that the Respondent had agreed to provide documents in connection with his explanations, e.g. letters on the computer system where there were no hard copies on file.

72.18 In response to a question from the Tribunal, concerning the note on the Strutt matter, Ms Bridges stated that usually a file would not be placed in storage until there was a zero balance on the accounts. There had been no letters on the file about the payment. The Respondent had suggested that there was a letter on the computer system, for which Ms Bridges had asked. The suggestion from the Respondent was that the letter about payment to HMRC was after completion and the initial payments to HMRC (in October 2011).

73. Mr James Carruthers, FI Officer

73.1 Mr Carruthers confirmed that his witness statement dated 5 August 2016 was true to the best of his knowledge, information and belief. That statement, in turn, confirmed that the contents of the Report, which had been prepared by Mr Carruthers, were true and accurate. Mr Carruthers was then asked some questions arising from the Respondent's witness statement dated 27 September 2016.

73.2 Mr Carruthers was referred to the Firm's accounts for the year ended 31 March 2013. His observation on that document was that the Firm's fee income and profits were down from the 2011/12 year, and expenses had increased along with the Firm's borrowings. The capital account showed reduced profit and reduced drawings. The Respondent had taken £60,000 in drawings, which was more than the Firm's profit, so more had been taken out of the Firm than had been earned.

73.3 Mr Carruthers told the Tribunal that he had spoken to the Firm's bookkeeper, Mr ER, about the nature of his job. Mr Carruthers told the Tribunal that Mr ER worked as a cashier at the Firm part-time (two days per week) and worked at other firms on other days. Mr Carruthers had formed the impression that Mr ER merely processed chits and made entries on the ledger. The Respondent had suggested in his statement that Mr ER would check transactions and raise queries. Mr Carruthers told the Tribunal that his impression was that Mr ER simply processed the instructions he was given, although he would have queried something if it did not tally. There was a lot of work for Mr ER to do in the time available to him.

73.4 Mr Carruthers told the Tribunal that as part of investigations he would routinely see a firm's accountants' reports. The report for the year 2012/13 was provided to him in September 2014. The Respondent had stated in his witness statement, "I believe that the SRA annual audit reports submitted by [accountants] in recent years were more than satisfactory". Mr Carruthers told the Tribunal that the accountants' report for

2012/13 was qualified, noting 6 issues the accountants considered to be breaches of the rules.

73.5 Mr Carruthers was then cross examined by Mr Nesbitt.

73.6 Mr Carruthers told the Tribunal that he had been a forensic investigation officer for over 20 years and in the course of his work would carry out about 12 to 24 visits to law firms each year. Some of the firms visited carried out conveyancing work. Mr Carruthers confirmed that he relied on his notes rather than direct memory concerning the visits. The Report had been compiled from evidence obtained in the investigation, including notes of conversations. There had been no recorded conversations in this investigation because not all the files required had been available when the investigation concluded; Mr Carruthers did not have the files to be able to ask questions in a recorded interview.

73.7 Mr Carruthers confirmed that he took over the investigation in about July 2014 and that the Report had been prepared by him. He had relied on Ms Bridges' notes in putting together the Report.

73.8 Mr Carruthers told the Tribunal that although the first document in the hearing bundle concerning his contact with the Respondent was dated 4 November 2014 he had had an earlier telephone conversation with the Respondent and other contact. Those notes had not been deemed relevant to the case.

73.9 Mr Carruthers confirmed that he understood that when the investigation started Ms Bridges had been provided with some cheque numbers and at least one client name. Ms Bridges had seen the files of Strutt, Oxspring and Smythe and had copied documents from those files e.g. accounts records. Mr Carruthers accepted that the Respondent would assume that Ms Bridges had copied the relevant items.

73.10 Mr Carruthers told the Tribunal that he visited the Firm on 10 and 11 November 2014. Mr Carruthers told the Tribunal that the Respondent had told him there was a problem with the garages in which files were stored as some of the files requested in an email on 4 November 2014 were not produced to him on arrival on 10 November. Mr Carruthers' note of the discussion read:

> "JC said he needed the files, please identify location and advise when will be available. [The Respondent] agreed to force the lock if the key can't be found. [The Respondent] said he wanted the visit sorted…"

Mr Carruthers told the Tribunal that he could not comment on whether or not there had been a genuine problem with the storage and confirmed that the Respondent had said he wanted things sorted out.

73.11 Mr Carruthers was referred to an email he sent to the Respondent on 21 November 2014, which included, in relation to the client matter files:

> "Only 3 of the 14 client matter files selected were produced for inspection… You said that you had difficulties accessing both of your off-site archives (lock-up garages) and were working to resolve these issues but were unable to

> produce the files for my visit. I imagine by now you have already taken further steps to retrieve the files and would be grateful if you could advise me at the earliest opportunity that the files are now ready for inspection so that I can make arrangements to conclude the investigation without further delay."

Mr Carruthers was also referred to a letter to the Respondent two months later, on 13 January 2015, with the s44B Notice to produce documents (including the files of Strutt, Smythe and Oxspring) and a letter from the Respondent dated 15 January 2015 which enclosed two files and referred to others to be sent the following day. The letter also stated, "I am having difficulty in locating the files of Smythe, Oxspring and Strutt as they were misfiled following your colleague Lisa's visit in June." Mr Carruthers confirmed that the email attaching the letter of 15 January 2015 was from Mrs Jenkins' email account and that it was normal for emails from the Respondent to be sent from that account.

73.12 Mr Carruthers was referred to an email he sent to the Respondent on 23 January 2015 in which he stated he would attend at the Firm on 29 January 2015 and to the notes he made dated 29 January 2015.These read, so far as relevant:

> "Site visit with [the Respondent]
> Visit 2x garages (archive store) (at 2 different locations in Putney). Found 3 more cards → found files (see attached) …
> … inaccessible gge will be much harder to access (no plans at present)."

Mr Carruthers told the Tribunal that he recalled the visit to the garages when the Respondent demonstrated the access problem. One garage could be accessed and some files were retrieved. In another, it was possible to see there were some boxes in the garage but it was not accessed. Mr Carruthers told the Tribunal that the Respondent seemed to have a genuine access problem.

73.13 Mr Carruthers was referred to a series of emails requesting documents which he sent after that visit. He accepted that there was no reference to the files of Strutt, Smythe and Oxspring in the emails of 6 February, 27 February (which referred back to the 6 February email) and 10 March (although the latter referred to a telephone conversation in which the documentation from HMRC on the Strutt matter had been discussed). Mr Carruthers confirmed that in an email on 16 March 2015 he had asked for a file (Strutt) to be recreated from electronic records. That email had referred to the formal s44B Notice. Mr Carruthers accepted that on 23 March 2015 the Respondent (via Mrs Jenkins) had sent him the SDLT forms for R and R Cottage (re Strutt). An email sent by Mr Carruthers on 24 March 2015 stated that he was away from the office and that he did not appear to have received a reply to the letter of 16 March 2015. Mr Carruthers accepted that email did not explicitly refer to the files of Strutt, Smythe and Oxspring.

73.14 Mr Carruthers was referred to a letter from Murdochs Solicitors, instructed by the Respondent, dated 3 June 2015 (and stamped as received by the SRA on 19 June 2015), which referred to the files being retrieved. Mr Carruthers told the Tribunal that that letter would have been passed to a colleague, as he had completed his Report in April 2015. Mr Carruthers told the Tribunal that he had a note of a

discussion with the Respondent explaining that he was completing the Report, after which the file was passed to a supervisor.

73.15 It was stated on behalf of the Respondent that the Respondent recognised that he had been too passive about providing access to the files.

73.16 Mr Carruthers told the Tribunal that he first contacted the Respondent on 6 August 2014 to say he had taken over the investigation. After a period of leave he contacted the Respondent to tell him that he would visit the Firm in September 2014. He had then chased Mr ER for ledgers and on 7 October 2014 wrote to the Respondent requesting copies of the cheques sent to the Nationwide as those had not been produced by that date. Mr ER had then sent the copy cheques on 24 October 2014, with further correspondence (which was in the hearing bundle) from 4 November 2011 onwards. Mr Carruthers told the Tribunal that all of his communications had been to the Respondent or Mr ER. He had not had any sense that the Respondent was trying to stop him from speaking to anyone in the Firm. Mr Carruthers told the Tribunal that he could have spoken to Mr PS (the assistant solicitor) but did not do so as he was not a manager of the Firm.

73.17 Mr Carruthers told the Tribunal that he would not have shown his handwritten notes, made during the visits, to the Respondent at that time. There was an entry which referred to a possible allegation of non-cooperation, and that had been struck through on 29 January 2015. Mr Carruthers told the Tribunal that at that stage he had evidence of the payments to Nationwide on Smythe and Oxspring, so he was reviewing what allegations might feature in his Report. The documents produced by the Respondent on 28 January 2015 tallied with the reverse of the cheques, so the Respondent had provided the mortgage account numbers albeit not the mortgage statements. It was clearly established that the cheques were paid to the Respondent's mortgage accounts.

73.18 Mr Carruthers confirmed that the fact that the payments were "misdirected" meant there was a breach of the Accounts Rules; he had not been making a judgement about whether or not there had been dishonesty. Mr Carruthers was asked if the fact that the Oxspring, Smythe and Strutt files were not mentioned in his notes on 29 January 2015 as being items to be provided by the Respondent might have meant the Respondent could have thought these items were no longer being chased. Mr Carruthers told the Tribunal that he did not think that was the case, given the number of previous requests for these files. However, it was less important to see the files when the information to show the payments which had been made had been provided; it would be fair to say that "the heat had gone out" of the request. As the mortgage account numbers had been provided, it was less important to see the Respondent's mortgage account statements. Mr Carruthers accepted that it may have seemed to the Respondent that only the Strutt file was still being actively sought.

73.19 Mr Carruthers told the Tribunal that some of his notes within the hearing bundle were made as he reviewed files, whilst others were made whilst discussing matters with the Respondent. Mr Carruthers told the Tribunal that he considered that the Respondent had sought to answer his questions. Whilst he had not been provided with all of the material he wanted he did not consider there was obfuscation on the part of the Respondent.

73.20 Mr Carruthers told the Tribunal that the three key files had been seen by Ms Bridges on 4 June 2014. He had not considered that they might be in one of the garages, which he had been told had not been opened for a long time. Rather, the Respondent told him they had been misfiled. He had also been seeking about 10 other files, which whilst old – and possibly in storage – had had financial transactions on them during 2014.

73.21 It was put to Mr Carruthers that with regard to the payments to the Nationwide, Ms C's evidence would be that she had drawn at least one of the cheques on the wrong account, and the Respondent had signed it. Mr Carruthers told the Tribunal that he understood that the Respondent's position was that there had been a dreadful mistake.

73.22 With regard to the Strutt matter Mr Carruthers told the Tribunal that he thought the title on the properties had been split. In the Report there were various calculations about what the interest may have been on an underpaid SDLT account. Mr Carruthers confirmed that he had not discussed his calculations with the Respondent. He had been trying to see if the amount of the cheque (£8,220.73) could reasonably be the £8,000 additional SDLT plus interest. The Report recorded that the sum of £220.73 did not appear to equate to the interest which would have been charged by HMRC for the relevant period. Mr Carruthers confirmed that the explanation he was given (i.e. that the SDLT which should have been paid was £185,000 but only £177,000 had been paid) was the same as that which had been given to Ms Bridges. Mr Carruthers accepted that Ms Bridges' note of the discussion with the Respondent about this matter did not refer to HMRC contacting the client and the Respondent "at a later date" seeking to recover the additional SDLT. Mr Carruthers told the Tribunal that the payment was made two years after the transaction, so "at a later date" was a reference to this. It was put to Mr Carruthers that the Respondent's position was that he thought the full SDLT had been paid and he arranged to pay the extra amount when he realised the full amount had not been paid.

73.23 Mr Carruthers told the Tribunal that he could not comment on the role Mr ER had had in scrutinising ledgers. Mr Carruthers told the Tribunal that quite a high percentage of accountants' reports on solicitors' firms were qualified. He accepted that the qualifications on the Firm's accounts appeared to be quite minor and that the accountants' testing had picked up some quite small sums. The report was provided to him on 15 September 2014 and the Respondent would have had it some time before that. Mr Carruthers accepted that the Respondent would expect his accountants to pick up on any Accounts Rules breaches and report them to the SRA. Mr Carruthers told the Tribunal about the lay-out of the Firm's offices. He told the Tribunal that the chits for the cheques would usually be completed by whoever wrote out the body of the cheque, for example this was done by Ms C in relation to the cheque to the Nationwide on 7 February 2014 and that the information on the chits would then be input onto the ledgers. Mr Carruthers was asked if an alert bookkeeper would pick up that the chit in this case (Smythe) referred to "completion of purchase" when, in fact, completion had been about a month before. Mr Carruthers told the Tribunal such a point may be picked up by an alert bookkeeper, but he would expect the principal of the Firm to review the ledgers. The Respondent had told Mr Carruthers that he did not have access to the computerised ledgers, but would sometimes get print-outs.

73.24 Mr Carruthers told the Tribunal that he had not established in his investigation who completed the SDLT forms. Mr Carruthers confirmed that his investigation confirmed that on the Oxspring and Smythe matters the Respondent had signed the cheques, but had not written them out and on the Strutt matter he had written and signed the cheque and payment slip, but it could not be said what other physical involvement he had had in the transactions.

73.25 There was no re-examination and no questions from the Tribunal.

74. The Applicant's other evidence

74.1 In addition to the oral evidence, the Tribunal was presented with and read the unchallenged witness evidence of two of the relevant clients and three officers of HMRC.

Ms Simpson, HMRC

74.2 Ms Simpson's role at HMRC involved the identification and investigation of transactions where there was a risk of underpayment of SDLT. Ms Simpson's statement confirmed that the SDLT1 form in respect of R, the purchase price of which was £3.3 million, was submitted electronically by the Firm on 14 October 2011 and a cheque payment of £165,000 was made for the correctly calculated SDLT (on the basis the transaction was for £3.3 million). HMRC issued a letter on 20 March 2015 to the purchaser (Mr Strutt) to confirm that the payment had been received and the account was balanced. On 1 November 2011 a SDLT1 form in respect of R Cottage was submitted by the Firm electronically which referred to the purchase price of £400,000 and a cheque for £12,000 was then paid in respect of the SDLT on this purchase. Again, at the request of the purchaser, a letter was issued on 20 March 2015 confirming receipt of the £12,000 and that the account was balanced. However, this matter had been referred to another team at HMRC as it appeared the transactions were associated and that there could, therefore, be a shortfall of £8,000 in the SDLT which had been paid. No demand for that sum had been issued as at the date of the statement (15 August 2016).

Ms Lamb

74.3 Ms Lamb dealt in her statement, dated 29 March 2016, with payments made to the Respondent's tax account for the tax years ending 5 April 2013, 5 April 2014 and 5 April 2015. Ms Lamb stated that a payment of £8,220.73 was made on cheque number **2682 drawn on the Firm's client account with Nat West bank on 6 December 2013 and allocated to the Respondent's self-assessment tax account.

Ms Reid

74.4 Ms Reid's statement, dated 24 March 2016, dealt with the Respondent's personal tax position. It was recorded in the statement that the Respondent's self-assessment indicated that in the tax year 2013/14 the Respondent's taxable/net profit after expenses and tax adjustments was £53,274 and for the year 2014/15 was £73,324. It stated that the Respondent received rental income of £30,850 for the tax year 2013/14,

of which the net profit after expenses and adjustments was £10,664 and for the year 2014/15 the rental income was £32,388, with net profit of £12,597.

Mrs Strutt

74.5 Mrs Strutt's statement, dated 18 August 2016, confirmed that she and her husband had sold a property in London and purchased R and R Cottage in 2011 and had instructed the Respondent in those transactions. The Respondent had confirmed the instructions and sale prices in an email on 11 July 2011 (sent from Mrs Jenkins' email account). The sale of the property in London completed on 31 August 2011, as agreed, and the purchase of R/R Cottage completed on 14 October 2011; in the interim, Mr and Mrs Strutt had moved to rented accommodation. A completion statement and cash statement were sent to Mr and Mrs Strutt prior to completion, which showed the SDLT liability for the purchase(s) to be £185,000 and the amount required to complete the purchases was sent by the clients to the Respondent on 11 October 2011. The Respondent sent an email to Mr and Mrs Strutt on 14 October 2011 confirming completion that day and that he would deal with payment of the SDLT and the registration of the purchases.

74.6 Mrs Strutt stated that prior to completion the Respondent had explained to them that HMRC could apply SDLT as either one transaction or two separate transactions and that it was more likely it would be treated as one transaction in which case the SDLT liability would be £185,000. The SDLT would be lower if the transactions were treated as separate. Mrs Strutt stated that the Respondent advised them to transfer the full amount, so that there would be no delay in completing the Land Registry application if HMRC treated the transactions as linked. Mrs Strutt stated that she understood that if HMRC treated the transactions as separate the Respondent would refund the difference. She had assumed that the SDLT had been applied as if the transactions were linked.

74.7 Mrs Strutt referred to the contact she had received from Mr Carruthers in March 2015, who had informed her that the Firm had been holding £8,220.73 on their ledger; Mrs Strutt stated she was not aware of that. Mrs Strutt had then sent an email to Mr Carruthers on 14 March 2015, which she believed to be true, in which she stated that: they had not been contacted by HMRC about SDLT on R/R Cottage; they had not been contacted by the Firm in connection with any additional SDLT liability in respect of R/R Cottage; they had not been aware that the Firm had been holding any of their money; they were not aware that the Firm used those monies to make a payment to HMRC on 6 December 2013. Thereafter, she had contacted HMRC and had obtained confirmation that £165,000 had been paid in SDLT on R and £12,000 on R Cottage in 2011.

74.8 Mrs Strutt stated that she and her husband had been horrified to learn that one of the allegations against the Respondent involved the use of their money to pay HMRC on the Respondent's personal account. So far as Mrs Strutt was concerned, the SDLT had all been paid in 2011 and she had not been contacted later by HMRC about any additional liability. Mrs Strutt confirmed that they had received a refund of £8,220.73 from the Respondent on 28 April 2015 but had not received any communication from the Respondent, either by post or email, regarding the transaction or why there had been a delay.

Mrs Smythe

74.9 Mrs Smythe's statement, dated 16 August 2016, confirmed that she and Mr Smythe had instructed the Respondent on the sale of a property in London and the purchase of a flat for Mrs Smythe at 2 A House, in about October 2013. The purchase of that property completed on 7 January 2014. Mrs Smythe referred to a cash statement, which was exhibited, which showed that the monies received in this matter and the payments made were equal.

74.10 Mrs Smythe stated that in the run up to completion matters were quite frantic as it transpired that whilst a roof terrace was included in the purchase it did not feature in the Land Registry documents. The Respondent advised Mrs Smythe that a Deed of Variation would be required, so that the roof terrace would form part of the deeds to the property; he also arranged indemnity insurance. Mrs Smythe stated that she instructed the Respondent separately to deal with the Deed of Variation. It was agreed that this would be done immediately after completion of the purchase. Mrs Smythe stated that the Respondent quoted her £1,000 for the work in obtaining the Deed of Variation, including his fees and the fees of an architect in drawing up the plans. Mrs Smythe stated that the Deed of Variation was completed on 16 July 2014 and that her main contact in relation to this matter was Mr PS.

74.11 Mrs Smythe stated that on 20 May 2015 she received an email from Mr PS which stated that whilst archiving the file he had noted a historic credit balance on the file and he asked for her bank details so that he could return the funds to her. Mrs Smythe stated she was surprised to receive this email as she had not known that the Firm held any of her money. Mrs Smythe referred to her email in reply, in which she asked why there was a credit and provided her bank account details. In an email on 22 May 2015 Mr PS stated, "I will return the sum of £2,185 to your account…" and the funds were indeed returned.

74.12 Thereafter, on 15 June 2015, Mrs Smythe received an email from the Respondent which stated, "I have revisited the file and as far as I can detain (sic) I believe you overpaid the amount required to complete. In any event, please can you let me have your bank details so I can remit the payment to you." Mrs Smythe stated that she was confused by this as she had already been reimbursed. She sent an email to the Respondent asking why she had been overcharged and why it had taken so long for him to let me know, as well as why he was proposing to refund an additional sum when Mr PS had reimbursed a similar sum on 22 May 2015. On 17 June 2015 the Respondent replied, stating that he had received two redemption figures from the building society and that the cash statement had not reflected the lower figure. Mrs Smythe stated that this had not been mentioned to her or Mr Smythe. Mrs Smythe stated that she had been shocked to learn of the allegation concerning use of her money to make a personal payment for himself. She stated that the Respondent had not informed her that any monies had been owing to her, despite having plenty of opportunities to do so, and that she would not expect a solicitor to behave that way.

For the Respondent

75. Ms L

75.1 Ms L confirmed that the contents of her witness statement, dated 3 October 2016, were true to the best of her knowledge, information and belief. Ms L was asked to amplify some of the matters in her statement.

75.2 Ms L described her role in the Firm, when it was established and her more recent role of "filling in" from time to time in the office, and described her daughter Ms C's work in the Firm. Ms L had received a salary from the Firm for the work she did and told the Tribunal that she was familiar with the way work was done at the Firm. Ms L told the Tribunal that the Respondent relied heavily on Mrs Jenkins whose PA role included dealing with some personal financial matters for the Respondent as well as office payments.

75.3 Ms L was referred to the Firm's drop in income in 2013 and told the Tribunal that in 2013 the Respondent had some difficulties in that period. Both Mr ER and Mr PS had been seeking pay rises. Ms L told the Tribunal that on one occasion the Respondent had been upset; Mr PS' fee-earning had suddenly dropped and the Respondent had been furious when he caught Mr PS carrying out client work for cash i.e. not paying the fees through the Firm. Ms L told the Tribunal that Mr PS had been stealing from the Firm. Further, he had carried out conveyancing work for Mr ER without charging, and had not had the Respondent's permission for that. The Respondent had considered that the drop in the Firm's income was due to Mr PS not bringing in the expected fees.

75.4 Ms L told the Tribunal that the family did not have any financial worries, having acquired a property portfolio since the 1980s and she gave specific evidence about cash available to her/the family during 2013/14. Ms L also confirmed that she had family who had the means to assist if she were ever in any financial difficulty, but such assistance had never been needed. Ms L told the Tribunal about the health problems of a family member, which coincided with the SRA investigation.

75.5 Ms L told the Tribunal that she had known the Respondent for almost 35 years and she knew him very well. She could not think of the Respondent doing anything dishonest. Indeed, he was "squeaky clean", for example handing money back if he was given excess change in a shop. Ms L told the Tribunal that she had worked with the Respondent closely over many years and would have known if he was dishonest. Ms L told the Tribunal that by the time Murdochs were instructed the Respondent was very low. The investigation had been hanging over him for a long time before he had told her about it. Ms L told the Tribunal that Mr Trevette of Murdochs had found it hard to take instructions because the Respondent was struggling to engage and may have appeared uncooperative. The Respondent had become "ostrich-like" and had mood swings. Ms L gave other evidence about the Respondent's personal history and told the Tribunal that he was not the man he used to be. Ms L told the Tribunal that she would not have allowed the Respondent to give evidence. It was clear that errors had been made and the Respondent was wounded and devastated by what had happened.

75.6 In response to a question from the Tribunal, Ms L confirmed that if the Respondent was under a lot of pressure, particularly after his partner's retirement in 2007, he could be very snappy. He did not have a violent temper but would be annoyed if people made mistakes; people would be wary of his temper.

76. Mrs Roz Jenkins

76.1 Mrs Jenkins, the Respondent's former PA, confirmed that the contents of her witness statement dated 29 June 2015 were true to the best of her knowledge, information and belief. She was asked some supplementary questions.

76.2 Mrs Jenkins told the Tribunal that she had worked for the Respondent for about 15 years across a period of about 23 years. She had worked in other law firms previously and had left one job because of bad experiences; she would not tolerate poor behaviour by her employers. Mrs Jenkins told the Tribunal that she had never known the Respondent send an email; any emails from him e.g. to the SRA had been sent from her account.

76.3 Mrs Jenkins told the Tribunal that the Respondent's daughter, Ms C, would cover for her quite a lot as she (Mrs Jenkins) had her own business and helped with her husband's business. The Respondent would let her have time off, in addition to normal holidays, for those activities. Mrs Jenkins told the Tribunal that she and Ms C would arrange who would be working and would sometimes keep the Respondent out of the loop. Sometimes, Ms C would cover for Mrs Jenkins for 2-3 weeks at a time, and other times might work the odd afternoon.

76.4 Mrs Jenkins told the Tribunal that the period 2013/14 was particularly busy in the Firm and sometimes mistakes were made. As it was a small Firm, Mrs Jenkins would deal with matters including typing, banking, answering the phones and organising some personal matters for the Respondent, including making some personal banking for him, although she would not see the details of the bills (whether credit card or tax bills) which were being paid.

76.5 Mrs Jenkins told the Tribunal that she was number dyslexic and sometimes would transpose digits; Mr ER would normally notice this. On other occasions, Mrs Jenkins might notice a mistake Mr ER had made.

76.6 With regard to the payment made from the Strutt ledger to the Respondent's personal tax account, Mrs Jenkins told the Tribunal that she recalled that the transaction had been complicated; this was something to do with having to split the title. Mrs Jenkins had been asked to make an enquiry of HMRC about this matter in early 2015 but she did not have any notes or records about that enquiry or when the Respondent had spoken to her about it. Mrs Jenkins told the Tribunal that it was often difficult to get to speak to HMRC about SDLT, particularly in the last 4/5 years.

76.7 Mrs Jenkins told the Tribunal that she would prepare the electronic SDLT forms; the Respondent would not know how to do this. She would also arrange the payments to HMRC. Mrs Jenkins told the Tribunal she would complete the forms based on the figures on the files, and the amount of SDLT payable would then be calculated on the HMRC system. On the Strutt matter, there had been two different figures.

76.8 Mrs Jenkins was referred to the passage in her witness statement which read:

> "… I thought and thought about the matter and on 24th June (2015) I contacted Mr Trevette on the telephone and informed him that on reflection I believed I may have inadvertently sent this cheque to HMRC by stapling it to [the Respondent's] personal tax assessment form which may have been left on my desk, instead of completing a SDLT form and sending it on behalf of the Strutts. I do remember that this particular week in the office was extremely busy."

Mrs Jenkins told the Tribunal that she had not been prompted to say this by having any conversation with the Respondent. She just thought it was logical that she would have done this and she would have stapled the cheque to the Respondent's tax assessment document. Mrs Jenkins acknowledged that it now appeared the cheque had been paid in at a bank. Mrs Jenkins told the Tribunal that there can be a number of payments made when a transaction was completed, and sometimes payments could be transposed. Mrs Jenkins told the Tribunal that she may have taken the cheque to the bank.

76.9 Mrs Jenkins told the Tribunal that she had never known the Respondent do anything dishonest, and she would describe him as hard-working, conscientious, meticulous and passionate about his work. Mrs Jenkins told the Tribunal that she had recommended him to friends and family as she trusted him to do a good job. Mrs Jenkins told the Tribunal that she would have known if the Respondent had any propensity to dishonesty; she could not believe he would be dishonest.

76.10 Mrs Jenkins was then cross examined by Ms Butler for the Applicant. It was made clear that the Applicant did not suggest that Mrs Jenkins had been involved deliberately in any wrongdoing.

76.11 Mrs Jenkins told the Tribunal that the Respondent could be quite aggressive if a mistake was made, and some staff felt they could not approach him. However, she could not recall the Respondent being cross about the Strutt matter in December 2013. It was put to Mrs Jenkins that the Respondent's explanation for that payment in December 2013 was because Mrs Jenkins had made an error in 2011 by paying the wrong amount of SDLT. Mrs Jenkins confirmed that she could not recall the Respondent being angry about that in December 2013.

76.12 It was put to Mrs Jenkins that the Respondent also asserted that she must have made a further error, in writing a cheque to HMRC which was not then sent to pay additional SDLT. Mrs Jenkins told the Tribunal that it seemed logical that it would have been her error, as she had sometimes made similar errors. It was put to Mrs Jenkins that in thinking about this matter she had not recalled paying the cheque in at a bank – it was now clear that someone had paid the cheque at a bank. Mrs Jenkins told the Tribunal that she surmised it was something she could have done. There was an immense workload, and sometimes she made errors. The Respondent knew that she sometimes rushed and did not take enough care.

76.13 Mrs Jenkins told the Tribunal that the Respondent generally made payments to his tax account in January and July each year. It was put to Mrs Jenkins that the Respondent, in his witness statement, said that he did not make ad hoc payments to the account and therefore an instruction to pay tax in December would have been odd. Mrs Jenkins confirmed that it would have been unusual and she would have remembered it. Mrs Jenkins told the Tribunal that she had had no reason to doubt the Respondent's honesty, so if she was given a cheque and pre-completed paying in form she would have taken it to the bank. Mrs Jenkins told the Tribunal that she respected what the Respondent asked her to do, as he was her superior.

76.14 Mrs Jenkins told the Tribunal that she was not aware of the other two payments in issue and the Respondent had not asked her if she had inadvertently paid those cheques into his mortgage account. Mrs Jenkins told the Tribunal that it would have been unusual for her to pay a cheque to the Respondent's personal mortgage account. She would have followed the Respondent's instructions, whoever the cheque was payable to e.g. the Nationwide. Mrs Jenkins told the Tribunal that the Respondent was very thorough. She would generally expect him to check a document before signing it, but sometimes he would just sign it. Mrs Jenkins suggested that this was because the Respondent trusted her, but she was sure he read documents most of the time. Mrs Jenkins told the Tribunal that the Respondent was very thorough when dictating, but would trust that she had done as instructed and so may not check documents produced for signing.

76.15 In response to a question from the Tribunal, Mrs Jenkins told the Tribunal about how she completed the online SDLT forms and that the Respondent trusted her to pick up the relevant information from the file. Mrs Jenkins was asked if the Respondent had given her any guidance on the Strutt matter, as it was unusual and would require both conveyances to be treated as one. Mrs Jenkins told the Tribunal that she would have seen that there were two titles. There was another form to complete if titles were to be dealt with together. Mrs Jenkins accepted that she had not ticked the forms to show that there was an associated transaction. Mrs Jenkins told the Tribunal that she recalled it was a complicated transaction. She thought she would have added the titles together, but told the Tribunal that she always found it difficult to complete the forms and would sometimes ask Mr PS. Mrs Jenkins did not recall being given an instruction to treat the SDLT forms together. Mrs Jenkins could not recall why the two SDLT forms were dealt with about 2 weeks apart. Mrs Jenkins told the Tribunal that after filling in the online SDLT forms, HMRC would issue a certificate; she would then staple the cheque to the copy certificate and send it off by post. Mrs Jenkins told the Tribunal that she had sometimes sent off the forms without an accompanying cheque. Generally, payments of SDLT would be made by post, to the HMRC office in Shipley, rather than at a bank. Mrs Jenkins told the Tribunal that when making her statement, the logical explanation for what had happened was that she had posted the cheque.

76.16 Mrs Jenkins told the Tribunal that if it was later found that there was something extra to pay, there would be a penalty notice from HMRC, which would be checked. Mrs Jenkins told the Tribunal that the client would be informed, and would be told that the Firm would deal with it. If there was a payment and penalty, Mrs Jenkins would send the cheque to pay that. Mrs Jenkins reiterated that it could be hard to speak to someone at HMRC about SDLT by telephone. Mrs Jenkins told the Tribunal

that a title to property could be registered when the SDLT certificate had been issued. She believed that either she or Ms C would have registered the titles to R/R Cottage either on the portal or by post; it would be normal for her to deal with registration.

77. Ms C

77.1 Ms C confirmed that the contents of her witness statement, dated 30 September 2016, were true to the best of her knowledge, information and belief. She was then asked some supplementary questions.

77.2 Ms C told the Tribunal that she had habitually filled in or helped out at the office from when she was about 11, initially with simple tasks. In 2013/14, at the time of the relevant events, Ms C was 20 years old and in her second year at university, but living at home and working part time as a nanny as well as filling in for Mrs Jenkins in the office. Ms C told the Tribunal that she might work, for example, one day every other week at the office but in the university holidays Mrs Jenkins could take more time off, which she would cover. Ms C told the Tribunal that she felt reasonably competent in the office but would sometimes leave tapes or tasks for Mrs Jenkins. It was a normal part of her work to write out cheques and to write letters. Ms C told the Tribunal that, generally, the Respondent would not necessarily know who was going to be in to work on his tapes. That would irritate him. Ms C told the Tribunal that Mrs Jenkins wanted to work part-time, but the Respondent wanted a full-time secretary. The Respondent was sometimes irritated when Ms C arrived rather than Mrs Jenkins.

77.3 Ms C told the Tribunal about the work she did in the office. She told the Tribunal that the atmosphere in the office was always tense and pressurised; it was extremely busy all of the time and the Respondent was often bad-tempered. Ms C told the Tribunal that the Respondent worked long hours, including most Saturdays; such hard work could affect his mood and he would be very stressed. Ms C told the Tribunal that the Respondent's clients were demanding and that she would be frustrated if she could not carry out a task which Mrs Jenkins would be able to do.

77.4 Ms C told the Tribunal that the Respondent would get to the office early and would dictate onto tapes, which he would then bring through with the files or documents. Ms C told the Tribunal that there would often be between 10 and 30 files worked on each day. When the typing had been done, the Respondent would sign the post and cheques at about 4.30pm each day. Ms C told the Tribunal that sometimes the documents which had been worked on would be stacked high – there was lots of work.

77.5 Ms C was referred to a passage in her witness statement which read, "I often witnessed my father signing the various letters and cheques and can honestly say that I don't think he actually read anything, he trusted Roz and myself to get everything right and just signed the letters and cheques as being correct." Ms C told the Tribunal that the Respondent trusted her, particularly after she was about 19 years old, to get things right. Sometimes the Respondent would just scan a document; some were signed without necessarily reading.

77.6 With regard to the matter of Oxspring, Ms C told the Tribunal that the main handwriting and the amount of the cheque were in her writing. The signature was that of the Respondent, but she did not recognise the additional writing (i.e. NIGEL

MAPLETOFT NM). It was entirely normal for her to write out a cheque which was signed by the Respondent. Ms C said that she did not associate the string of numbers on the back of the cheque with the Respondent or as being his writing.

77.7 With regard to the matter of Smythe, Ms C confirmed that the body of the cheque and the cheque request slip had been completed by her, but the writing on the rear of the cheque was not hers or the Respondent's. Ms C told the Tribunal that she would fill out the cheque first, then the pink chit/request slip, pretty much immediately after writing the cheque. That would then go into the tray for Mr ER, with a copy kept on file.

77.8 Ms C told the Tribunal that she remembered the matter of Smythe. When she was working in the office, the Respondent would sometimes interrupt with an urgent tape. Ms C told the Tribunal that this had happened on the Smythe matter. The Respondent had given her an urgent tape, which she put into the machine but then accidentally erased, as the erase button was next to the rewind button. Ms C told the Tribunal that she had done this on other occasions and the Respondent had not been happy. The tape had been erased before she had listened to it. Ms C recalled that the Respondent had given her a brief synopsis of what was on the tape. Ms C told the Tribunal that because she knew the Respondent would be irritated because she had erased the tape, she had not forgotten the incident because of the nerves and anxiety it caused. Ms C told the Tribunal that she wrote out the cheque on the Smythe matter. The file number would have been on the file, so that was written on the cheque request slip. Ms C told the Tribunal that she wrote that the cheque was for "completion of purchase" as she had tried to piece things together. Ms C told the Tribunal that she had made a mistake in a stressful environment in which mistakes were made. Ms C told the Tribunal that she did not deal with the cheque after it was written and had no specific recollection about later events.

77.9 Ms C told the Tribunal that she had never really understood the difference between office and client account, particularly as the cheque books looked the same. However, she knew that one could not use client money for personal matters.

77.10 Ms C told the Tribunal that she would have sensed it if the Respondent had been doing anything wrong. She had made a mistake, and the Respondent was not dishonest.

77.11 Ms C was then cross examined by Ms Butler on behalf of the Applicant, after being reassured that there was no suggestion by the Applicant that Ms C had done anything wrong deliberately.

77.12 Ms C told the Tribunal that she might work in the Firm for about 48 days a year. This was sporadic, and she would liaise with Mrs Jenkins about which days she would work. Ms C told the Tribunal that between the ages of 19 and 22 she had probably worked for about 150 days in the office. Ms C acknowledged that there would have been a number of tapes each day and it was put to her that it would be hard to recall an erased tape on the matter of Smythe. Ms C told the Tribunal that she specifically remembered each time she had erased a tape because of the guilt and anxiety; she would be flustered and would try to piece together what had been on the tape. Ms C was asked how she recalled the name of the client on this occasion. Ms C told the

Tribunal that she recalled the clients' flat, which was in a good location. Also, she had known some clients of the Firm for many years.

77.13 Ms C was asked if there was a reason she had not mentioned in her statement anything about writing a letter to the Nationwide to go with the cheque. Ms C told the Tribunal that there was no particular reason for this; she had not felt a need to put it in the statement. Ms C was asked why she did not ask Mrs Jenkins about the client, if she was unsure what to do. Ms C told the Tribunal that she did not want to disturb Mrs Jenkins on a day off, and it was something that she had wanted to forget. Ms C told the Tribunal that the tape had been a short one and he had given her an overview of what was on it.

77.14 It was put to Ms C that, as she was clearly bright, it was possible she had in fact correctly followed the Respondent's instructions. Ms C told the Tribunal that she would not have sent client money to the Respondent's personal account. Ms C was asked how she would know the money was to be sent to the Respondent's account. Ms C confirmed that she did not. It was put to Ms C that if the Respondent gave an instruction that the cheque was to be payable to the Nationwide, that it concerned the Smythes and that it was to be entered on the ledger that the money was being sent to the Smythes, there was nothing to suggest the payment would in fact be made to the Respondent. Ms C told the Tribunal that this happened a long time ago. It was put to Ms C that she had had no reason to doubt that a cheque made out to the Nationwide, concerning Smythe, was for any purpose other than for the Smythe's benefit. Ms C confirmed that she had had no reason to doubt that the cheque would go to the Smythes.

77.15 With regard to the matter of Oxspring, Ms C confirmed that she had no recollection of this matter. Ms C confirmed that the cheque was written by her during a reading week from university, during which she was covering for Mrs Jenkins in the afternoons. Ms C told the Tribunal that although she did not recall this matter, it must have been another mistake by her. Ms C confirmed that she would not have paid client money for the benefit of her parents' Nationwide mortgage account. It was put to Ms C that in writing the cheque and the chit she believed that the money would be sent to the Oxsprings and that there would have been no reason for her to doubt that. Ms C told the Tribunal that she would have followed the instructions that she was given and there would have been nothing to cause alarm.

77.16 Ms C was asked how it was that the cheques came to be paid into the Respondent's mortgage account. Ms C told the Tribunal they were probably sent in envelopes she had written up and posted, but she had no specific recollection of this. Ms C confirmed that she would only send out cheques if instructed to do so. On the Smythe matter, she had pieced together what was needed and used her initiative. The Respondent was not dishonest, so there must have been an honest mistake. Ms C told the Tribunal that what must have happened was that, four months apart, she had sent off cheques to the Nationwide which were posted to the Respondent's account; this was her supposition and what would have happened.

77.17 In response to a question from the Tribunal, about whether it would be usual for there to be a letter to accompany a cheque, Ms C told the Tribunal that sometimes cheques

would be sent out with a compliments slip. It was not unusual for there to be no letter, but a compliments slip would identify the client or other details.

77.18 Before being released, Ms C of her own initiative told the Tribunal that the Respondent's personality had changed since the allegations were made. He had taken it all very hard, and the Tribunal ought to take that into account.

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. Certain details of the Respondent's health and that of his family members have been withheld in order to preserve the Respondent's privacy, and that of his family.

79. The Tribunal noted that the Respondent admitted most of the factual background to the allegations, although he disputed the interpretation put on those facts by the Applicant. In particular, the Respondent denied that his conduct had lacked integrity or was dishonest.

80. The Tribunal noted that it was common ground that the Respondent had signed the three cheques which came to be credited to his account with HMRC (Strutt) and his mortgage accounts (Oxspring and Smythe). It was also common ground that the Respondent reimbursed the clients from his own resources, during the course of the SRA's investigation.

81. The Tribunal had had the benefit of hearing evidence from the two FI Officers involved in the matter. Both of them gave evidence in a straightforward and careful way, taking care to point out the limits of their personal knowledge of certain matters.

82. The Tribunal read the evidence of three HMRC officers (Ms Simpson, Ms Lamb and Ms Reid), together with the witness statements of two of the relevant clients, Mrs Strutt and Mrs Smythe. The HMRC officers gave evidence in particular about the payment into the Respondent's tax account in December 2013 (which money came from the Strutt client ledger) and the Respondent's personal tax position, whilst the clients gave evidence about what they knew at the relevant times. None of that evidence was challenged by the Respondent and, accordingly, the Tribunal could accept the evidence of those witnesses in full.

83. The Tribunal had also heard from the Respondent's wife, his daughter and his former PA. The Tribunal noted that Ms L was firm in her belief that the Respondent was not dishonest. However, she could not give evidence directly in relation to the transactions in question. The Tribunal noted that the Respondent had not told her about the SRA's investigation for about a year after it began. The Tribunal noted that Ms L's evidence was that she was diagnosed with an illness early in 2014 and that this followed a period in which the Respondent and family had been concerned about the health of another family member. However, neither of the Respondent's witness statements offered any explanation as to why he had not disclosed the fact of the investigation to Ms L at an earlier stage.

84. The Tribunal noted that both Ms C and Mrs Jenkins gave evidence from which it was clear that the Respondent could be bad-tempered. They wanted to avoid irritating him, and would arrange between themselves who would work on any given day, without informing the Respondent. The Tribunal considered that both of these witnesses felt considerable loyalty to the Respondent and had tried to explain what had happened by giving evidence that they had made mistakes. The Tribunal found it hard to accept that Ms C had a very precise recollection of some points (e.g. the erased tape on Smythe) but no recollection at all of other points. Mrs Jenkins had given evidence of what she might well have done – which led to the payment to the Respondent's tax account – but this was not an account based on memory and was simply not correct. In particular, Mrs Jenkins had suggested in her witness statement, made in June 2015, that she may have "inadvertently sent this cheque to HMRC by stapling it to [the Respondent's] personal tax assessment form which may have been left on my desk instead of completing a SDLT form and sending it on behalf of the Strutts…" This explanation was not correct, as it was clear from information provided by HMRC, which was accepted by the Respondent, that the payment had been made at a bank, with a pre-completed paying-in slip which the Respondent accepted he had written and signed.

85. The Tribunal noted that Mrs Jenkins described the Respondent as "meticulous". However, in her oral evidence – as confirmed by Ms C – it transpired that the Respondent would sometimes sign correspondence or documents without checking their contents. In circumstances in which mistakes happened, according to both Ms C's and Mrs Jenkins' evidence, this did not display a careful or meticulous approach by the Respondent.

86. The Tribunal did not hear from the Respondent, for reasons explained in the medical evidence he submitted. The Tribunal did not draw any adverse inferences arising from the fact that the Respondent did not give evidence. However, the Tribunal could only give very limited weight to the Respondent's witness statements. It noted that whilst the Respondent offered some explanations for what had happened, his position was that he could not remember particular, key aspects of the relevant transactions.

87. Further, the Tribunal noted that some of the Respondent's evidence was not accurate. In particular, in his recent statement, the Respondent stated, "… my income from the practice (which I think was about £130,000 for the year ended 31 March 2013), we also had a significant income from the rental of the properties. This gave us an income of around £60,000 per annum." However, the Firm's accounts for the year ended 31 March 2013 showed that the net profit for the year was a little over £42,000 (a drop from over £126,000 for the year ended 31 March 2012); the Firm's turnover had dropped from over £323,000 in 2011/12 to around £255,000. The Respondent's tax records for 2013/14 indicated that the Respondent's rental income was around £31,000, with a net profit of over £10,000 for the year; the figures for 2014/15 were slightly higher. However, there was no explanation as to why the Respondent had stated an income from rental of around £60,000 when the tax returns showed the income at about half that amount, with the profit being about one-sixth of that amount. The Tribunal also noted that the Respondent's self-assessment statement, dated March 2015, not only recorded the payment of £8,220.73 to the account in

December 2013 but recorded that at that time the overdue tax was £10,798.98, with a notice on the document to the effect that interest was running on the overdue amount.

88. The Tribunal further noted that whilst it was now over two years from the start of the SRA's investigation, at the time of the first visit to the Firm it was only about 8 months since the Oxspring payment, 6 months from the Strutt payment and 4 months from the Smythe payment. It should, therefore, have been easier for the Respondent to recall events or investigate what had happened than it was now, over two years after the events in question. It had been submitted on behalf of the Respondent that in his answers to questions put by Ms Bridges, the Respondent had been open and unguarded and had not even asked to check the files before answering her questions. However, it may have been better to check the file before giving a possible explanation which was inaccurate.

89. The Tribunal concluded that it could not rely on the Respondent's witness statements to any significant degree, save where supported by other evidence. The Tribunal remained conscious, however, that it was for the Applicant to prove the case, to the higher standard.

90. **Allegation 1.1 - Withdrew client money from client account to make personal payments in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 ("AR 2011") which says that client money may only be withdrawn from client account when it is properly required for a payment to or on behalf of the client**

90.1 The factual background to this allegation is set out at paragraphs 11 to 46 above. The Respondent admitted the allegation, in that he admitted that the effect of the payments which were made was that Rule 20.1(a) of the AR 2011 was breached, albeit he said this was unintentional.

90.2 There could be no doubt on the facts of this case, as set out above, that on three occasions in the period October 2013 to February 2014 the Respondent withdrew client account money to make personal payments. The monies were not used for the benefit of the clients, none of whom were aware that the money was on the Respondent's client account. The specific findings in relation to this matter are dealt with in more detail in relation to allegation 1.2 in order to address the denied allegation of lack of integrity.

90.3 The Tribunal was satisfied to the required standard on the evidence, and on the admission, that a breach of Rule 20.1(a) of AR 2011 had been proved.

91. **Allegation 1.2 - Used client money to make personal payments, for which he was personally liable, in breach of all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles")**

91.1 The factual background to this matter is set out at paragraphs 11 to 46 above.

91.2 The Respondent admitted the allegation, save that he denied that he had acted in breach of Principle 2 (i.e. he denied he had lacked integrity). In particular, the Respondent admitted that, as a matter of fact, client money was paid to the wrong place and that in each of the three cases money was credited to accounts to the

Respondent's benefit and that the fact this happened gave rise to breaches of Principles 4, 6 and 10.

91.3 For the Applicant, it was submitted that even if the Respondent's conduct was not dishonest, the occurrence of repeated, serious errors showed a lack of integrity.

91.4 This allegation related to the payments made on Oxspring, Strutt and Smythe, in relation to which the Tribunal made the following findings of fact.

Oxspring

91.5 This was the first in time of the three improper payments.

91.6 In or about June 2013 the Respondent acted for Mr and Mrs Oxspring in their conveyancing transactions. A cash statement in the matter dated 17 August 2013 showed that the receipts and payments made in the matter balanced i.e. it appeared from that statement that there should be a nil balance on the client ledger. However, a balance of £796 was still held after payment of an online fee in relation to SDLT on 20 August 2013. The Report indicated that the balance remained as the actual disbursements in the matter were less than those which had been expected. As noted above, it was not suggested by the Applicant that the existence of the balance had been deliberately created or manipulated by the Respondent; the Tribunal simply found that there was a sum remaining on client account after completion of the conveyancing transaction. There was no evidence that the clients had been informed that any balance was held on their account.

91.7 The Tribunal further found that on 21 October 2013 a cheque was written, in the sum of £796, which cheque was payable to the Nationwide Building Society. It was Ms C's evidence, which the Tribunal accepted, that she had written out the cheque. It was accepted by the Respondent, and the Tribunal found, that the Respondent had signed the cheque. The Tribunal found that after the payee details, the name "NIGEL MAPLETOFT" appeared, in capitals, with the initials "NM" above that name. Ms C confirmed in her evidence that she had not endorsed those details on the cheque and the Tribunal accepted that evidence. The Respondent also denied that he had written his name and initialled the change.

91.8 It was clear on the evidence that the cheque was in fact credited to a mortgage account in the names of the Respondent and his wife with the Nationwide Building Society, under an account number which ended 2940. That account number appeared on the reverse of the cheque, albeit it was partly obscured by some printing, which appeared to be of the sort added by banks when a cheque was processed. The Respondent accepted, in his witness statement, that the sum of £796 was paid from client account to a mortgage account held by himself and his wife. He accepted that this should not have happened.

91.9 The Respondent's witness statement indicated that he could not provide any explanation for what had happened from his own memory, but he had tried to piece events together. The Respondent suggested that he may have given an instruction, on one of the tapes he dictated, to return the balance due to the clients; such an instruction would be normal. It would also be normal for either Mrs Jenkins or Ms C to write out such a cheque. Ms C confirmed in her evidence that this cheque was

written by her. It was suggested by the Respondent that the description of the payment on the ledger "Bal retd" (or "balance returned") would have been entered on the ledger by the Firm's bookkeeper, Mr ER, based on information on the pink chit completed when the cheque was written. The Respondent accepted that when the cheque and chit were written Ms C understood that the cheque was for the benefit of the clients by way of the return of a balance to them. The Tribunal accepted that Ms C had not done anything with an improper motive. The Respondent suggested that there had been a "mix up" and he did not know why the cheque was made payable to the Nationwide Building Society. He also stated that once the cheque was written he must have signed it without properly scrutinising it. The Respondent further wrote, "I do not know how the cheque was then conveyed to the Building Society, but it may have been that once it was completed and signed in favour of the Nationwide someone in the office has assumed it was for the credit of the personal mortgage account." The Respondent stated that he did not know what had gone wrong but asserted he did not deliberately arrange for this payment to be made from client account to his personal mortgage account.

91.10 The Tribunal noted that the Respondent was first asked about this payment on 4 June 2014 by Ms Bridges. Ms Bridges' notes of the discussion, appended to her witness statement, read:

> "Was probably money left over sent to Oxspring. No accompanying letter, because file was in archive. Spoke to Catherine and she said pay it on to a Nationwide account or something."

The reference to "Catherine" was understood to be a reference to Mrs Oxspring.

91.11 The Tribunal noted and found that in discussions with Mr Carruthers on 29 January 2015 the Respondent had stated that he had been surmising when he had given the explanation on 4 June 2014. However, the Tribunal accepted the evidence of Ms Bridges that she understood that the Respondent was explaining what he believed had happened, rather than offering a possible explanation. The specific reference to a named person, although qualified with a "probably" and "or something" indicated that the Respondent was speaking about an event of which he had some recollection rather than being a mere supposition about a possible event.

91.12 The Tribunal found that the Respondent had said to Mr Carruthers, on 29 January 2015, that he had to put his hands up as the payments had been made from "the wrong account". It was recorded in the Report that the Respondent had surmised that Ms C had picked up the wrong cheque book when preparing this cheque (and that on Smythe, later). The Respondent was further recorded as saying that there had been "a crossed-wire somehow". Mr Carruthers' note of the discussion also noted that the Respondent referred to intending to make a payment to the mortgage account which had, in error, been drawn on client account instead of a personal account. The Respondent did not say the money was intended for the clients, as was recorded on the ledger.

91.13 The explanation that the cheque was drawn on the "wrong account" was, of course, inconsistent with Ms Mapletoft's evidence. So far as she was concerned, the purpose of the cheque she was drawing was to send money to the clients; it was nothing to do

with making a payment to her parents' mortgage account. That explanation, was given some 7 months after the start of the investigation, when the Applicant had been asking for the Oxspring file (amongst others) from at least early November 2014. The Respondent had offered two explanations for not being able to produce the files which had been requested. In relation to a number of files he referred to difficulties in accessing the garages in which the archived files were stored but it appeared that his explanation in relation to Oxspring, Smythe and Strutt was that they had been "misfiled".

91.14 Neither of the Respondent's explanations for what had happened could be correct. The simple fact was that client money belonging to Mr and Mrs Oxspring was drawn, by cheque, and credited to the Respondent's mortgage account. The first explanation, that Mrs Oxspring had instructed him to pay the balance to "a Nationwide account or something" could not be correct. There was nothing on the file recording any instruction from the client and no covering letter to either a bank or the client. It was highly unlikely that the file was in the archive at that point (October 2013) as there was a balance on client account and it could not, therefore, have been properly "closed". Further, there was no direct evidence from the file or otherwise that Mr and Mrs Oxspring had an account with the Nationwide. It was correct that Ms C's evidence was that she had no recollection of the instructions given at the time of the Oxspring payment, and she had confirmed that she was sometimes confused between the office and client accounts (as the cheque books were similar). However, she was well aware that client money could not be used for a private purpose such as paying a mortgage. The Tribunal was satisfied that Ms C had drawn the cheque and the chit, indicating that money was to be returned to the clients, in good faith. The precise mechanism by which the cheque was diverted to the Respondent's mortgage account was not established. However, the Respondent had clearly signed a cheque on client account for the balance which was held on that account at the time. At best, he showed a significant lack of care in signing a cheque on the client account and not ensuring that it was sent to the clients or paid into their account.

Strutt

91.15 The Respondent acted for Mr and Mrs Strutt in the transactions described at paragraphs 11 to 24 above. Both the sale and purchases were completed by October 2011, and payments of SDLT were made in October and November 2011. A residual balance remained on the client account thereafter, largely because the clients had paid a sum on completion which provided for a total of £185,000 to be paid in SDLT, but only £177,000 was actually paid to HMRC.

91.16 On 6 December 2013, over two years after completion, the balance on client account was £8,160.73. On 13 December 2013 the sum of £60 was transferred from the client's property sale ledger. The Tribunal was satisfied, on the unchallenged evidence of Mrs Strutt, that the clients were not aware that the Respondent held any of their money and they had assumed that the full amount of SDLT had been paid in October/November 2011. The Tribunal was also satisfied that neither the Firm nor the clients had been contacted after November 2011 by HMRC with a request for further SDLT. Indeed, as at March 2015, HMRC considered that the SDLT accounts were balanced although, now that this matter had been brought to their attention, they

were considering whether there should be a demand for a further £8,000 (plus interest and penalties).

91.17 The Tribunal was further satisfied on the evidence, and on the Respondent's admission of particular facts, that on 6 December 2013 he wrote and signed a cheque payable to HMRC in the sum of £8,220.73, and wrote the cheque stub (although the date may have been written by Mrs Jenkins). This led to the client ledger being overdrawn until the transfer on 13 December 2013. He also wrote and signed a paying-in slip. That document was on a pre-printed form headed "HM Revenue & Customs", with a reference number (ending 7929K) and a credit account number. The reference number, save for the letter "K" matched the Respondent's tax reference number as shown on the self-assessment statement dated March 2015. The pre-printed part of the paying-in slip also bore the name "Mr N Mapletoft".

91.18 The Tribunal also noted that in an email from HMRC dated 23 September 2015 in relation to this payment it was stated,

> "The payment in question is the BGT processed on 09.12.13.
> It was a BGT payment i.e. paid over the counter at a bank with a pre-printed payslip on 06.12.13. The reference is printed along the bottom of the payslip. The credits and references for these payments arrive at HMRC the next working day on tape. HMRC does not receive the cheque."

This information had not been challenged by the Respondent and the Tribunal accepted that someone – it was not known who – had taken the cheque and paying in slip to a bank on 6 December 2013.

91.19 The Tribunal noted that there was clear evidence that the Respondent made payments to his tax account in January and July each year. Mrs Jenkins confirmed in her evidence that it would have been unusual, and hence memorable, if the Respondent had given her an instruction about a payment to his account in December. The Tribunal noted from the March 2015 self-assessment form that the Respondent made a payment towards his tax account in late January 2014 and in July 2014. Those payments were recorded on the statement as the first and second payments on account for the year 13/14, whereas the payment in December 2013 was recorded simply as "Payment – thank you".

91.20 The Tribunal was satisfied that the cheque, which used Mr and Mrs Strutt's money, was duly paid towards the Respondent's tax account. The Tribunal noted and found that this payment was recorded on the self-assessment statement dated March 2015. The Respondent must, therefore, have been aware of this credit (on receipt of that document at the latest) and that it was in the amount which had been investigated by the SRA since June 2014. As at the date of the Report (15 April 2015), despite a number of chasing messages from Mr Carruthers, the Respondent had not provided any information about what had become of the payment of £8,220.73; it was not known by the SRA at that stage that it had been used to pay the Respondent's tax account. As at the time of Mr Carruthers' visits to the Firm, the Respondent indicated that he would write to HMRC and obtain evidence to show that the payment had settled the clients' additional SDLT liability. The Tribunal also accepted that, as stated in the Report, the Respondent told Mr Carruthers on 6 March 2015 that HMRC

was "looking into" the matter. The Respondent was unable to provide any confirmation that he had contacted HMRC. Mrs Jenkins gave evidence that the Respondent had asked her to make some enquiries of HMRC, but she could not recall when that was and had not made any notes about her enquiries.

91.21 It was common ground that the Respondent had repaid the £8,220.73 to the clients on 28 April 2015 from his own resources.

91.22 The allegation of dishonesty will be addressed below, at allegation 1.8. In considering the current allegation, the Tribunal was satisfied that the Respondent's conduct, in making a payment to his tax account using client monies, at best showed a significant lack of care.

Smythe

91.23 The Tribunal found that the Respondent acted for Mr Smythe and Mrs Smythe in relation to a property sale and purchase of two properties. The purchase of Mrs Smythe's property at 2 A House was completed on 7 January 2014. It was accepted that there was a complication with that purchase, in that a roof terrace to the property which was included in the sale was not part of the Land Registry title, which meant that a Deed of Variation was required. The Tribunal noted and found that Mrs Smythe was given an estimate for the costs of that work by the Respondent and the work was duly carried out, primarily by the assistant solicitor Mr PS, and the Deed of Variation was completed in July 2014.

91.24 The Tribunal noted and found that the Firm had maintained at least 4 ledgers for Mr and/or Mrs Smythe at the relevant time. The ledger for the purchase of 2 A House showed a number of transfers between the various ledgers for these clients after completion. As at 24 January 2014 there was a nil balance on the client ledger for 2 A House. The Tribunal found that a cheque for £2,100 was drawn on that ledger on 7 February 2014, thereby creating a debit on that client ledger. The debit was rectified by two transfers into the ledger from other matters for these clients, both on 14 February 2014. The Tribunal did not see any chits relating to those transfers, which were simply described on the ledgers as being transfers between the same client. £1,957.50 was transferred from the ledger relating to the sale of 18 P Place and £142.50 from a ledger relating to a property at 39 H Street. The Tribunal noted and found that the Respondent repaid to the 2 A House ledger the sum of £2,100 from his own resources, and that sum was sent to Mrs Smythe by Mr PS in May 2015. The Tribunal could not be sure that all of that sum had been due to Mrs Smythe, as the payment in February 2014 had been made from monies which largely originated from the ledger relating to the sale of 18 P Place, which property was understood to have been owned by Mr and Mrs Smythe jointly.

91.25 The Tribunal was satisfied on the evidence, including that of Ms C, that the body of the cheque for £2,100, which was payable to the Nationwide Building Society, was written by Ms C and she also completed the accompanying chit which gave as the details of the cheque request "Completion of purchase". It was also clear on the evidence – and on the Respondent's admission – that the Respondent had signed the cheque. There was also no doubt at all that the cheque was then credited to a

mortgage account in the name of the Respondent and his wife. This was a different mortgage account number to that to which the Oxspring monies had been credited.

91.26 In considering whether the Respondent had displayed a lack of integrity the Tribunal considered his explanations for this use of client money to pay a personal liability, together with the evidence given by Ms C.

91.27 The Tribunal noted that when the Respondent discussed this matter with Ms Bridges on 4 June 2014 he had referred to the need for a Deed of Variation; this was clearly accurate. The remainder of the note referred to a payment to "Nat West Bank", which may have been an error by Ms Bridges or the Respondent, and to the money being sent to a residents' company or being money on account of costs. Of course, neither of these possible explanations for where the money was sent was correct.

91.28 On 5 December 2014, in the course of the investigation, Mr Carruthers sent an email to the Respondent concerning the two cheques which had been credited to the Respondent's mortgage accounts. The Respondent was asked for an explanation about both "as a matter of urgency". There was no substantive response to this request, or to the various chasing emails sent by Mr Carruthers, but the matter was discussed with Mr Carruthers on 29 January 2015. The Tribunal accepted that the Respondent had accepted at that meeting that there had been an error, and that the cheque had been drawn on the wrong account by Ms C. The notes made by Mr Carruthers also indicated that the Respondent had told him he had been keen to pay off his mortgage at that time. From this it was clear that the Respondent's explanation, some 7 months after the investigation began, was that the cheque should have been drawn on the office account rather than the client account.

91.29 The Tribunal noted and found that the Respondent's explanation did not fit with the fact that the chit referred to "completion". Given that Ms C's conduct was innocent, there must have been some reason for her to write that on the chit and to make the cheque payable to the Nationwide. The Tribunal noted that Ms C's explanation was that she had accidentally erased a tape of instructions which had been given to her as "urgent", thus requiring her to prioritise it over other work. It was unclear to the Tribunal why a tape which, on the Respondent's best case, instructed Ms C to make a payment to the Nationwide and to draw a cheque on the Smythe matter would have been urgent. The Smythe transactions had completed about a month before and the Deed of Variation was still some months from completion.

91.30 The Tribunal could readily accept Ms C's evidence that she was wary of her father's bad temper, and was anxious about telling him if she had accidentally erased a tape without listening to it. Such evidence was consistent with other evidence about the Respondent's irritability. Whether or not the tape had been erased, the Tribunal accepted that Ms C had done her best to follow what she understood the instructions from the Respondent to have been. Instructions to draw a cheque payable to the Nationwide, ostensibly in respect of completion, would not have raised any concerns on Ms C's part, given her lack of detailed knowledge about the Smythe transaction. Mrs Jenkins may have recognised that completion had already taken place, but if the tape and instructions were brought to Ms C during the day as being urgent – as Ms C said – the Respondent knew that it was his daughter and not Mrs Jenkins who was undertaking secretarial duties that day.

91.31 On the Respondent's account, he should have had a cheque to sign on office account, with a letter or compliments slip to send to the Nationwide with his mortgage account number, so that the payment could be allocated. In fact, he signed a cheque on client account made out to the Nationwide. There was nothing in the Respondent's explanation to indicate what work he expected to see on the Smythe matter that day – a letter, cheque or other document – or how he reacted when he realised he noted that there was nothing arising from his "urgent" tape relating to the Smythes.

91.32 In any event, the Respondent had signed a cheque on client account which he caused or allowed to be paid towards his personal mortgage account. Even on the Respondent's best possible case, this was seriously careless.

General

91.33 The Respondent had admitted that in signing cheques on client account which were paid to accounts for his own benefit he had failed to act in the best interests of his clients, had acted in a way which would tend to diminish rather than maintain the trust the public would place in the Respondent or the provision of legal services and failed to protect client money. The Tribunal was satisfied to the required standard on the evidence and on the admission that the Respondent had acted in breach of Principles 4, 6 and 10 of the 2011 Principles.

91.34 The Tribunal considered the denied allegation that this conduct had also involved a lack of integrity on the part of the Respondent. As noted above in relation to each of the Oxspring, Strutt and Smythe matters the Tribunal found that, at best, the Respondent's conduct had been careless to a significant degree. Even without going so far as to find dishonesty – which was considered separately in relation to allegation 1.8 – the Respondent's conduct had fallen far below the standards which any solicitor should maintain in the stewardship of client monies. Even if there had simply been "mistakes" on the part of the Respondent, the three significant mistakes in a four month period were sufficient to show such a lack of care for his clients' interests as to amount to a lack of integrity. Any cheque written on client account should only be signed if there is a proper reason for that payment to be made. There were unexplained elements of how each of the payments occurred. However, those elements e.g. who posted the cheques or paid the Strutt money in at a bank did not disturb the Tribunal's conviction that the Respondent's conduct lacked integrity. That conclusion was further bolstered by the Respondent's inability to give an accurate account of what had happened, or to investigate fully and properly to establish what had happened. There was no evidence, for example, that he had questioned Mrs Jenkins or Ms C about their role in writing out cheques and chits, for example. This reinforced the Tribunal's conclusion that the Respondent knew very well what had happened and that client money had been used for his personal benefit. The Respondent's submissions with regard to dishonesty and the Tribunal's conclusions on those submissions will be set out in relation to allegation 1.8 below.

91.35 The Tribunal was satisfied that the Respondent's conduct in using client money to make personal payments lacked integrity. The Tribunal was satisfied to the required standard, on the admissions with regard to Principles 4, 6 and 10, and on the evidence with regard to Principles 2, 4, 6 and 10 that this allegation had been proved.

92. **Allegation 1.3 - Failed to return client money to his clients as soon as there was no longer any proper reason to retain those funds, in breach of Rules 14.3 and 14.4 of the AR 2011**

92.1 The factual background to this matter is set out at paragraphs 11 to 46 above. The Respondent admitted the allegation. In particular, the Respondent admitted that in relation to each of the five client matters referred to in this case (Strutt, Smythe, Oxspring, Mapletoft and Mr and Mrs R), money was held on client account on behalf of clients for longer than it should have been. The Respondent denied that his conduct was deliberate, but acknowledged there had been breaches of Rules 14.3 and 14.4 of the AR 2011.

92.2 The Applicant made it clear in opening the case that there was no suggestion that the Respondent had deliberately created the balances which were held on client account in the matters of Strutt, Smythe and Oxspring. Whilst the monies had been held for longer than was appropriate, there was no suggestion of impropriety in the manner in which there came to be balances held on the client ledgers for those clients.

92.3 Setting aside the issues which related to the allegation of dishonesty, the Tribunal found that:

92.3.1 On the matter of Strutt, a balance of over £8,000 remained on client account from completion of the property transaction in October 2011 until that money was disbursed by the Respondent – and paid towards his tax account – in December 2013. There was no proper reason for the Respondent to retain the funds after completion of the transaction. The clients were not reimbursed until 28 April 2015. Overall, the funds were retained or used by the Respondent for a period of over three and a half years;

92.3.2 On the matter of Oxspring, the transaction completed in June 2013, with a balance of £796 remaining on client account until being used by the Respondent in payment towards his mortgage account in October 2013. There was no proper reason for the Respondent to retain the funds after completion. The clients were not reimbursed by the Respondent until March 2015, so the Respondent had retained or had use of the funds for a period of about 21 months;

92.3.3 On the matter of Smythe, the transactions completed in January 2014 but a balance of £2,100 remained on the various client ledgers for Mr and Mrs Smythe until that sum was utilised in February 2014 and credited to the Respondent's mortgage account. There was no proper reason for the Respondent to retain the client's funds after completion of the transactions. The Tribunal noted that there had been a linked matter concerning a Deed of Variation. That had completed in July 2014. Even if there had been a proper reason to retain the funds after January 2014 e.g. on account of costs, there was no reason at all to retain them after July 2014. The funds were not reimbursed to the client until May 2015. Accordingly, the Respondent had retained, or had use of the client funds, for a period of about 15 months or, on the most generous possible interpretation, 10 months.

92.4 What was very clear from the evidence was that the Respondent did not return client money to those to whom it was due until after the Applicant's investigation began. Indeed, there was no reimbursement of the clients until March 2015, some 9 months after the investigation began, even though the Respondent was well aware of the files which were causing concern from June 2014.

92.5 The Tribunal was satisfied, on the evidence and on the admission, that this allegation had been proved to the required standard.

93. **Allegation 1.4 - Failed to keep accounting records properly written up to show dealings with client money, in breach of Rule 29.1 of the AR 2011**

93.1 The factual background to this allegation is set out at paragraphs 11 to 46 above.

93.2 The Respondent admitted the allegation. The Respondent's formal response document stated that it was understood that the allegation arose from instances of the narrative entries on the client ledger not matching what actually happened to the funds concerned, i.e. not recording that they had been paid to the wrong place. It was admitted that the client ledger did not, in that sense, record what had happened accurately. The Respondent's position was that this was an accident and that the Respondent himself was not directly involved in creating ledger entries; however, he admitted he was placed in breach of Rule 29.1 of the AR 2011, as the principal of the Firm.

93.3 There could be no doubt that the descriptions on the client ledgers of the payments which had been made for the Respondent's benefit were incorrect. On the Strutt ledger, the entry on 6 December 2013 read, "HMRC – Stamp Duty + penalty", whereas the payment to HMRC had been to the Respondent's self-assessment tax account. On the Smythe ledger, the entry on 7 February 2014 read, "NWB – Completion", whereas the cheque was credited to the Respondent's personal mortgage account. On the Oxspring ledger, the entry on 21 October 2013 read "Mr and Mrs Oxspring – bal retd", whereas the cheque was actually credited to the Respondent's personal mortgage account.

93.4 The Tribunal further noted and found that the descriptions in the Firm's books of account of the repayments made to clients were incorrect. On the matter of Strutt, the entry on 14 April 2015, read, "From HMRC – stamp duty refund" and the entry on 28 April 2015, when the funds were returned to the client, read, "Refund of stamp duty". In fact, the funds were paid into the account from the Respondent's own resources, not by HMRC, on 14 April 2015 and there was no refund of Stamp Duty by HMRC. On the Oxspring matter, the client ledger showed an entry on 9 February 2015 when £750 was replaced on the account, which read, "From client onac" and another entry on the same date, referring to a credit on the ledger of £2,100 read, "From Suzanne Smythe, onac". These entries were clearly false. It was a matter of concern that the Respondent had continued to cause his Firm's books of account to be incorrectly written up even when the Applicant was investigating and reporting on his conduct.

93.5 There was no doubt, on the facts and on the admission, that this allegation had been proved to the required standard.

94. **Allegation 1.5 - Failed to remedy the breaches of the AR 2011 detailed above promptly upon discovery, in breach of Rule 7.1 of the AR 2011**

94.1 The factual background to this allegation is set out at paragraphs 11 to 46 above.

94.2 The Respondent admitted the allegation. In his formal response, it was admitted that upon discovery of the erroneous payments the Respondent did not act as promptly as he could and should have done to remedy the breaches.

94.3 The question of when the breaches were "discovered" fell to be considered with regard to the issue of dishonesty. If the Respondent knew at the time of a transaction that there was a breach, the time from which it should be remedied began to run immediately. For the purpose of this basic allegation, the Tribunal simply considered the time from being alerted to the breach by the FI Officers until the breach was remedied. As noted above at paragraph 92, there was a period from June 2014 until 28 April 2015 (Strutt), March 2015 (Oxspring) and May 2015 (Smythe) in which the Respondent failed to replace client monies and/or properly investigate whether or how much should be reimbursed to the clients.

94.4 There was no doubt, on the facts and on the admission that the Respondent had failed to remedy the breaches of the AR 2011 which had been discovered promptly. He had not provided any explanation for not replacing client funds promptly, something which – on his evidence – he was financially well able to do.

95. **Allegation 1.6 - Used his client account as a banking facility for clients in breach of Rule 14.5 of the AR 2011**

95.1 The factual background to this allegation is set out at paragraphs 47 to 55 above.

95.2 The Respondent admitted this allegation. In relation to the Respondent's own matter, and the matter of Mr and Mrs R, the Respondent admitted that sums were retained and paid out of client account in a way which placed the practice in breach of the rules against providing a banking facility. It was submitted that the Respondent did not himself have conduct of the Mr and Mrs R matter, and was not directly responsible for the account being handled as it was. The Respondent accepted responsibility as the principal of the Firm for breach of the Rule.

95.3 The Tribunal found, on the facts and on the admission, that this allegation (which was distinct from the allegations involving the matters of Strutt, Oxspring and Smythe) had been proved to the required standard.

96. **Allegation 1.7 - Failed to comply promptly with a written notice from the SRA for a request for documents and information and failed to produce to the SRA records, papers and client matter files necessary to enable the preparation of a report in compliance with the Rules, in breach of Rule 31.1 of the AR 2011, Principle 7 of the 2011 Principles and failing to achieve Outcomes 10.8 and 10.9 of the SRA Code of Conduct 2011**

96.1 The factual background to this allegation is set out at paragraphs 56 to 63 above.

96.2 The Respondent admitted this allegation. The Respondent's formal response to the allegations indicated that, although it arose in a context which included difficulties accessing archived documents, the Respondent's health issues and a lack of competence in the use of computers, the Respondent accepted that he did not respond promptly enough to requests for documents, and that this gave rise to the breaches alleged.

96.3 In relation to this matter, the Tribunal noted that there was no medical evidence to support the proposition that the Respondent had been in poor health during the investigation. The first time it was mentioned was in the letter from Murdochs in June 2015, after the Report had been finalised. Mr Carruthers had not been asked about whether the Respondent had presented as unwell or unable to deal with matters; indeed, his evidence had been that the Respondent appeared to be providing information and answers to questions, albeit not as promptly as Mr Carruthers wanted. The Tribunal also could not avoid noting that at least one of the garages in which files were stored was owned by the Respondent; he could and should have been able to overcome any access difficulties easily, as the property belonged to him. Further, the Tribunal noted that the files of Strutt, Oxspring and Smythe had been produced to Ms Bridges in June 2014. The Respondent had explained thereafter that those files had been "misfiled"; he did not appear to assert that these files had been placed into the locked/inaccessible garages. The Tribunal considered it to be unusual that a solicitor, knowing that the regulator was concerned about particular files, would not take the utmost care to preserve those files in such a way that they could be easily and safely located.

96.4 The Tribunal noted that a formal request for documents and information was made, in a s44B Notice, in February 2015. Some of the material requested was provided reasonably promptly, but other items such as the three main files in question were not delivered for over 4 months.

96.5 The Tribunal was satisfied, to the required standard, on the facts and on the admission that the allegation had been proved.

97. **Allegation 1.8 - Dishonesty was alleged against the Respondent in respect of allegations 1.1 to 1.5 and 1.7; however, proof of dishonesty was not an essential ingredient for proof of the allegations.**

97.1 The factual background to the allegations of dishonesty is set out above at paragraphs 11 to 46 and 56 to 63, and the Tribunal's findings of fact in relation to allegations 1.1 to 1.5 and 1.7 at set out at paragraphs 90 to 94 and 96. Those findings of fact are not repeated here. The Respondent denied all of the allegations of dishonesty.

Applicant's Submissions

97.2 The Applicant submitted that the Respondent's actions were dishonest according to the test laid down in the case of Bultitude v The Law Society [2004] EWCA Civ 1853, applying the test for dishonesty as formulated by the House of Lords in the case of Twinsectra v Yardley and others [2002] UKHL 12. It was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and

honest people ("objective test") and he realised that by those standards his conduct was dishonest ("subjective test").

97.3 The Applicant submitted that the Respondent would have been aware that his conduct would have been considered to be dishonest by reasonable and honest people because:

97.3.1 The Respondent acted dishonestly on three separate occasions;

97.3.2 The Respondent made the payments without the clients knowing and without their authority or say-so;

97.3.3 As a solicitor with over 30 years' post qualification experience at the material times, and in his role as the Firm's COLP and COFA, the Respondent knew that monies held on client account were to be used only for the benefit of those clients in accordance with Rule 20.1(a) of the AR 2011;

97.3.4 The Respondent also knew that residual balances held on client account should have been returned to the relevant clients (Oxspring, Strutt and Smythe) on completion of their matters in accordance with Rule 14.3 of the AR 2011;

97.3.5 The Respondent knew that, by making the payments, he was in breach of the AR 2011 and the 2011 Principles;

97.3.6 The Respondent knew that Mr and Mrs Strutt did not have a liability to HMRC for SDLT, and that Mr and Mrs Smythe and Mr and Mrs Oxspring did not have a liability to the Nationwide Building Society;

97.3.7 The Respondent knew that he should use his own money to pay his personal debts;

97.3.8 Despite such knowledge, the Respondent made a conscious decision to use his clients' money for his own purposes;

97.3.9 The Respondent did not return the monies to the clients when there was no longer any proper reason to retain the funds;

97.3.10 The Respondent signed all three cheques, one of which he also countersigned and endorsed (Oxspring);

97.3.11 The Respondent remained silent about what he had done and did not replace the monies until after the SRA's investigation had started. On the matter of Strutt, the Respondent entered the incorrect narrative on the ledger of "From HMRC - Stamp duty refund," when he knew that not to be the case and when he knew that he had replaced the monies from his personal funds;

97.3.12 On the matters of Oxspring and Smythe, incorrect narratives were also entered on the ledgers, indicating that the monies received into client account were payments on account, when the Respondent knew that not to be true and knew that he had replaced the monies from his personal funds;

97.3.13 Furthermore, the Respondent deliberately misled and provided incorrect information to the FI Officer as to the whereabouts of the client matter files;

97.3.14 The Respondent deliberately misled and provided incorrect information to the FI Officer regarding the monies on the Strutt matter. The Applicant relied in particular in the passage in the Report which read:

> "The Respondent told the FI Officer that, at a later date, HMRC contacted both Mr & Mrs Strutt and the firm seeking to recover additional Stamp Duty having determined the transactions to be "associated." He said Mr & Mrs Strutt instructed him to "just pay it" and added that there were no letters on the matter file because at that time the file was in storage. In conclusion he described this as "a failed SDLT-saving exercise."

However, Mr and Mrs Strutt told the FI Officer, in an email dated 14 March 2015:

> "We have not been contacted by HM Revenue and Customs in connection with Stamp Duty Tax payable on the purchase of Roughetts or Roughetts Cottage.
>
> We have not been contacted by Mapletoft Solicitors in connection with any additional liability to Stamp Duty Land Tax on the purchase of Roughetts or Roughetts Cottage.
>
> We were not aware that Mapletoft Solicitors were holding any of our monies on account.
>
> We were not aware that Mapletoft Solicitors utilised those monies by making a payment of £8,220.73 to HM Revenue & Customs on the 6 December 2013."

97.4 The Applicant's position, in short, was that the sheer number of errors involved in the Respondent's explanation of events, which had led to payments for the Respondent's own benefit, were inherently implausible and should be rejected. It was submitted that the facts spoke for themselves, and that the Respondent clearly intended to make payments for his own benefit. As a result of putting the case in this way, it was submitted that if the Respondent intended to make payments for his own benefit, he must have realised that his conduct was dishonest by the ordinary standards of reasonable and honest people. It was submitted that the various explanations given by the Respondent were inconsistent and that he had failed to assist the SRA in getting to the bottom of what had happened.

97.5 It was also submitted for the Applicant that there was no medical evidence to suggest that the Respondent was ill at the relevant time such that he did not recognise that what he was doing was wrong. The Applicant submitted that whilst the existence of the balances on Strutt, Oxspring and Smythe involved breaches of the AR 2011, it was not contended that those balances had been created deliberately or manipulated

by the Respondent; the Tribunal should note their existence, but not construe their existence against the Respondent when considering dishonesty. The Applicant submitted that each of the three transactions should be considered separately, and then could be considered together or cumulatively, particularly with regard to the credibility of the Respondent's explanations. The Applicant made submissions with regard to each of the issues which gave rise to the allegations of dishonesty.

Strutt

97.6 It was submitted that on the Strutt matter, the cash statement had referred to a payment of SDLT in the sum of £185,000 but £177,000 had been paid and the balance of £8,000 had remained on the client ledger concerning the purchase of R/R Cottage. On 6 December 2013 a cheque for £8,220.73 was drawn on that ledger, payable to HMRC, which was recorded in the Firm's books of account as "SDLT – balance and penalty". Another residual balance was transferred from another matter for the same client to rectify the shortage on this client ledger which was created by the issuing of the cheque. That transfer occurred on 13 December 2013. There was no doubt that the Respondent had completed and signed the cheque and then wrote the cheque stub. It was also clear, and accepted by the Respondent, that the Respondent had completed the paying-in slip addressed to HMRC and that the cheque was used to pay part of the Respondent's tax liability.

97.7 It was submitted that the Respondent had contended that the payment was directed to HMRC after there had been demands made to the Firm and the clients for additional SDLT; that was the explanation given to Ms Bridges on 4 June 2014, approximately 6 months after the cheque was paid, and was repeated to Mr Carruthers on 29 January 2015, a further 7 months later. This explanation was repeated in a letter from the Respondent's solicitors dated 22 June 2015 which included the following:

> "We are instructed that [the Respondent] cannot recall exactly how this figure (£8,220.73) was calculated but his recollection is that these monies, being the balance of monies on the account, were due to HMRC and he arranged for those monies to be sent.
>
> … The rationale for the payment has been previously explained by [the Respondent] as his recollection is that HMRC treated the purchase of the two properties as an "Associated Transaction" so that the liability should have been calculated as one purchase not two.
>
> … [The Respondent] maintains that this was payment on behalf of Mr and Mrs Strutt."

97.8 It was submitted for the Applicant that it was clear that no demands had been made by HMRC for any such payment. There was unchallenged evidence from Mrs Strutt that no demand for payment had been made to her/her husband, and the evidence from the HMRC officers made clear that whilst the matter was now under review, no demand had been issued for additional SDLT on the purchase of R/R Cottage. The Respondent's present position was as stated in his witness statement that:

> "Winding forward again to December 2013, when I saw the substantial amount being held on the client ledger in respect of the Strutts and looked into the payments that had been made, I realised that the amounts that were held were sums that should have been paid to HMRC in respect of stamp duty. I could see that given the late payment there would be interest or penalties accruing which would exceed the amount held by us, and in the circumstances I thought that the best thing to do was to pay the full amount to HMRC, as it should have been in the first place."

This passage indicated that this was the Respondent's recollection, rather than speculation on his part. It was also the Respondent's position that it had been Mrs Jenkins' error which meant the full £185,000 had not been paid in 2011.

97.9 It was submitted that the Respondent's position was that he was not able to explain, from his own memory, how it came to be that a pre-printed paying-in slip to HMRC was completed and the cheque drawn on the Strutt account paid into the Respondent's HMRC account. It was submitted for the Applicant that it was compelling that:

- There was nothing on the client file to support the claim that the Respondent had decided, unilaterally, to send over £8,000 to HMRC;
- The Respondent had not made any enquiries of HMRC or taken any instructions;
- Contrary to the Respondent's earlier claim, there had been no demands from HMRC for £8,000 in additional SDLT;
- There was no basis for sending the exact residual balance from the ledgers of these clients, it being noted that there had been a transfer of a balance from the sale to the purchase ledger;
- It was common ground that the Respondent wrote and signed the cheque and the paying-in slip. It was implausible that it could have been an error to pay client money to his tax account. The Applicant's position was that the Respondent knew what he was doing, and he did it deliberately. As the Strutts did not know that the Respondent was holding any of their money, they knew nothing about this payment to HMRC and would be none the wiser;
- The Respondent had given varying accounts of what had happened and had failed to assist the Applicant with the investigation into what had happened.

97.10 It was submitted that Mrs Jenkins was loyal to the Respondent and wanted to find an innocent explanation for what had happened. However, her evidence that she would have posted the cheque could not be right as it was now clear that the cheque was presented at a bank with the pre-printed paying-in slip. It was submitted that the Respondent had given changing and unhelpful explanations about this file. He had displayed a lack of interest in assisting the investigation, and this was not consistent with the behaviour of an honest solicitor. The Respondent had not drawn to the attention of the Applicant the self-assessment statement for March 2015 which showed that the monies had been credited to the Respondent's tax account.

97.11 It was further submitted that there was no medical evidence about the Respondent's state of mind at the time of the payments. The Applicant acknowledged that the position had changed since the investigation, as shown by the recent medical evidence.

97.12 The Applicant made submissions, in opening the case, about the Respondent's defences to the allegation of dishonesty. The Respondent's defence is, set out more fully below.

97.13 It was submitted for the Applicant that the Respondent had suggested it would be "mad" for him to make the payments, but the payments on Strutt and the other matters had not been picked up on the monthly reconciliation statements or within the Firm's accounts systems. It was a small Firm in which, according to Mr Carruthers' evidence, Mr ER's role was that of a bookkeeper who received chits and processed the paperwork. It was submitted that it was not surprising that Mr ER would not have picked up that the transaction was improper unless, for example, he had reviewed whether there had been a demand from HMTC for SDLT. As the Respondent was perceived as an honest and reliable solicitor, there was no reason on its face for the payment – which was stated on the Firm's records to be for the balance of SDLT etc. – to be queried.

97.14 The Respondent had asserted that as he was wealthy he had no reason to be dishonest. In his witness statement dated 27 September 2016 the Respondent had stated that his income from the practice for the year ended 31 March 2013 was about £130,000 and his rental income was about £60,000 per annum. The Respondent's tax returns for that year were not available, but the three relevant transactions were in the following financial year. As already noted above, the Respondent's profit from the practice for the year ended 31 March 2014 was about £53,000 and the net profit from the rental income was about £10,000, giving a net profit for the Respondent of about £64,000. It was submitted that this was rather different from the position asserted for 2012/13. Further, the profit for 2014/15 was put at about £73,000 with profit from the rentals about £12,000. This was an improved position from 2013/14, but not at the level asserted for the year prior to the relevant payments.

Smythe

97.15 The payment of £2,100, which was applied to the Respondent's mortgage account with the Nationwide, was about two months after the payment on Strutt. The Smythes' transactions had completed in January 2014. The cheque dated 7 February 2014 was recorded on the Firm's accounts system as "NWB completion". The cheque and chit had been completed by Ms C. The cheque which had been written out was signed by the Respondent and was used to credit the mortgage account of the Respondent and his wife.

97.16 The Applicant's submissions referred to the Respondent's witness statement which stated that the Respondent did not recall how the payment had come about, but stated,

> "I should mention that at around this time – and also I think at the time of the Oxspring payment – I think I was intending to write to the Nationwide about keeping open the mortgage account, notwithstanding that almost all of the borrowing had been paid off… I can therefore understand that at around this time there may have been instructions on a tape relating to the Nationwide."

97.17 The Respondent's position, therefore, appeared to be that he had intended to reimburse the Smythes, that the payment could not have been anything to do with completion but that,

> "… if, as appears likely to have been the case that the paperwork that I had given to [Ms C] that day included paperwork relating to something to do with the Nationwide, once the cheque had been made out to the Nationwide it could have been sent off with a compliments slip or something of that kind bearing the number of the account, taken by [Ms C] or [Mrs Jenkins] from the documents in the pile of paperwork."

97.18 It was submitted that it was not part of the Applicant's case that Ms C had been dishonest. On the Respondent's case, it was submitted, there would have had to be no fewer than four errors in relation to this particular transaction:

- Ms C in error wrote a cheque to the Nationwide when it should have been made out to the clients;
- The Respondent failed to notice that the beneficiary of the cheque was not his clients but the Nationwide;
- There were no documents concerning the intended payment to the clients e.g. no letter to accompany the cheque; and
- The cheque was taken and accidentally paid to the Respondent's mortgage account, even though those in the office understood it to be for the benefit of the clients.

97.19 It was further submitted that the Respondent's own evidence was that he did not make ad hoc payments to his mortgage account. It was submitted that Ms C had sought to find an innocent explanation for why the cheque had been made payable to the Nationwide. The Applicant's position was that it was implausible that the four errors noted above had occurred, particularly when it was noted that this payment was within two months of the Strutt payment. It was submitted that a more credible explanation was that the Respondent told Ms C to write a cheque to the Nationwide, which would be paid to the clients albeit there was no covering letter. The cheque could then be paid to the Respondent's mortgage account without there being any duplicity on the part of Ms C. As the clients were unaware that the Respondent held a balance for them, they were not in a position to ask questions.

97.20 On behalf of the Applicant, reference was made to the Respondent's explanation in relation to the Smythe matter given to Ms Bridges on 4 June 2014, which concerned a Deed of Variation in relation to a roof terrace at 2 A House. Thereafter, in January 2015, the Respondent had sought to distance himself from that explanation, stating to Mr Carruthers that he had only been surmising what might have happened. The Respondent had indicated to Mr Carruthers that there had been "a dreadful mistake", which he stated arose because Ms C had used the wrong cheque book when writing the cheque i.e. that the payment was intended for the Nationwide account, but should have been drawn on office account. The Respondent's position in his witness statement was that the money was intended for the client. It was submitted that the changing explanations and the lack of co-operation shown during the investigation showed that the Respondent was not acting honestly.

Oxspring

97.21 It was submitted that this improper payment occurred two months before the Strutt payment. The cash statement issued to the clients when their transactions completed showed that all of the money they had paid to the Firm had been used. However, a balance of £796 remained. When a cheque for this amount was written on 21 October 2013 it was recorded on the ledger as being for a balance being returned to the clients. However, the cheque, which was made payable to the Nationwide, was used to credit the Respondent's mortgage account. There had been no covering letter to the clients to accompany the cheque which was supposedly being sent to them to return their money.

97.22 In his witness statement, the Respondent stated that he had no specific recollection of this payment or cheque, but it would have been normal to give an instruction to Ms C, or Mrs Jenkins, to return client monies. The Respondent also stated that sometimes personal payments were made on instructions to staff. As with the Smythe matter, it was submitted that on the Respondent's case there must have been four errors which led to the cheque being credited to the Respondent's mortgage account:

- Ms C made another error, in making out the cheque to the Nationwide rather than Mr and Mrs Oxspring;
- The Respondent failed to notice that the cheque was payable to the building society rather than his clients;
- There were no supporting documents about the intended payment to the client e.g. there was no instruction about preparing a covering letter; and
- Someone took the cheque and paid it to the Respondent's account, notwithstanding that it was understood by all at the Firm that this money belonged to the clients. It was also noted that the cheque had been "endorsed" with the Respondent's name and initials.

97.23 The alternative explanation, proffered by the Applicant, was that the Respondent asked Ms C to make out the cheque to the Nationwide and told her that this was to complete a purchase. As there was no covering letter to send off the cheque, it could then be paid to the Respondent's mortgage account, without any fear that the clients would find out.

97.24 The Applicant also referred to the Respondent's explanations of this matter as given to the Applicant. On 4 June 2014 the Respondent told Ms Bridges the payment was probably to the clients and the client ("Catherine") had told him to pay it to the Nationwide. The Respondent later told the Applicant that this had been a supposition on his part, although the Applicant considered that the reference to a named individual appeared to be very specific. During the investigation, the Respondent suggested that Ms C had used the wrong cheque book i.e. had written the cheque on client account rather than office account. However, the Respondent's position at the time of this hearing was that the money had been meant for the clients. It was submitted that these changing explanations and the lack of assistance given by the Respondent to the investigation supported the Applicant's case on dishonesty.

Allegation 1.7

97.25 It was submitted for the Applicant that during the investigation the Respondent was uncooperative and evasive. The Applicant's position was that this conduct was deliberate. If the Respondent had believed the explanations he had given, he would have done his best to assist and to clear up any confusion. Instead, the timeline and correspondence indicated that he had not replied for requests for information or for documents.

Respondent's Submissions

97.26 Mr Nesbitt, for the Respondent, reminded the Tribunal that it was for the Applicant to persuade the Tribunal whether, on each or any of the misdirected payments, the actions of the Respondent had been dishonest, whether carried out personally or through others. It was submitted that unless the Tribunal was satisfied that the Respondent had deliberately misappropriated his clients' funds, the allegation of dishonesty could not be made out. It was submitted that it was for the Applicant to show if the Respondent had had a dishonest state of mind in relation to each of the three misdirected payments. The Respondent accepted that there had been mistakes in each of the three transactions. It was noted for the Respondent that the Applicant's case was also put on the basis that the slowness of the Respondent's reaction to the investigation suggested dishonesty. It was submitted for the Respondent that the Respondent had co-operated and had, indeed, repaid the money due to the clients.

97.27 It was submitted that the Respondent accepted that each of the misdirected payments involved some direct errors by him, in particular signing the cheques and, in the Strutt matter, the bank giro credit form. The Respondent accepted that as the principal of the Firm he was liable for breaches of the Rules and that what had happened warranted a sanction. It was submitted that whatever the Tribunal's conclusions, the effect on the Respondent had been significant; there had been an impact on his health and his Firm had closed. The Tribunal was invited to conclude that the evidence as a whole did not imply or demonstrate that the Respondent had had an intention dishonestly to misappropriate clients' money.

97.28 It was submitted that the Tribunal should consider each individual payment, with the different evidence in relation to each. The Tribunal was asked to consider if it could determine, so that it was sure, that the Respondent engineered each of the three payments to be sent to the wrong destination. It was noted that the Applicant's case was put on the basis that the Respondent intended to use the money for his own benefit. It was submitted that if there was any doubt on any issue, it must be resolved in favour of the Respondent.

97.29 It was submitted that the way the Applicant's case was put showed that there was little evidence of the physical mechanism by which the payments were made. On the Smythe and Oxspring matters, the Respondent had signed the cheques but there was no wider evidence of his physical involvement. On the Strutt matter, the Respondent accepted that he wrote and signed the cheque and completed the bank giro credit form. Again, there was no other evidence of the Respondent's physical involvement in the way the payment was made.

97.30 It was submitted for the Applicant that the evidence of Ms C on the Smythe matter was that she clearly recalled a tape being erased and that she had written out the

cheque and chit, and may well have been responsible for sending it out. Whilst the explanation about how the money arrived in the mortgage account was not complete, Ms C's evidence gave a substantial explanation about what had happened and the errors which had occurred. It was submitted that Ms C's evidence was clear and genuine and could not be disregarded.

97.31 With regard to the Strutt matter, it was submitted that Mrs Jenkins' evidence was perhaps less specific than Ms C's but she had some memory of events and Mrs Jenkins thought that she may have been responsible for the way the payment was made. It was submitted that Mrs Jenkins was plainly an honest witness who was doing her best to assist the Tribunal; she had not been put up to giving evidence by the Respondent. It was submitted that Mrs Jenkins had a scrupulous approach to her work and would not have attended the Tribunal simply to assist her former employer. It was submitted that whilst Mrs Jenkins' evidence stopped short of any positive assertions, she had given an explanation of what had possibly happened. It was submitted that the Tribunal should not disregard the possible explanations and the evidence of Mrs Jenkins about her part in the series of mistakes.

97.32 It was submitted that the Respondent accepted that there were elements of each transaction which remained unexplained. The Applicant relied on the remaining mysteries as suggesting that it was inherently unlikely that there had been a series of errors and that this implied that the Respondent had a dishonest intent.

97.33 The submissions for the Respondent dealt with the Applicant's proposition that the way in which the Respondent had dealt with the investigation indicated that the Respondent had been dishonest. Firstly, it had been suggested that the Respondent's discussions with Ms Bridges had included his clear explanations about what had happened. It was submitted that Ms Bridges' evidence did not bear the weight the Applicant sought to place on it. It was submitted that the Respondent had spoken to Ms Bridges "off the top of his head". Ms Bridges had accepted that the Respondent did not ask to look at the relevant files before commenting; his answers had been unguarded and spontaneous remarks and Ms Bridges had accepted that the conversations had been casual and "off-hand". Mr Carruthers had not been able to throw any further light on those discussions, having derived his findings about the discussions from Ms Bridges' notes.

97.34 It was submitted that Ms Bridges' notes with regard to Strutt did not refer to when there had been contact from HMRC, but in the Report the expression "at a later date" appeared. It was submitted that it was equally likely that the Respondent had been describing a conversation which took place about the time of the transactions (2011). Ms Bridges' notes did not support the contention that the Respondent had stated that the contact from HMRC had been after the transaction, so the fact that the suggestion had been later shown to be untrue did not support the idea the Respondent had been dishonest.

97.35 With regard to the Oxspring matter, It was submitted that the words recorded by Ms Bridges about paying the money into a "Nationwide account or something" were couched in terms of probability. It was submitted that the Respondent's responses were unguarded and spontaneous, and that the Respondent had been seeking to give

an explanation without realising that this effort might later be used against him, when it transpired the explanations were wrong.

97.36 On the matter of Smythe, it was submitted, Ms Bridges' notes indicated there had been two possible explanations given by the Respondent for how the money had been used; it may have been paid to a residents' association or paid on account of costs. The notes referred to the wrong bank (Nat West, rather than Nationwide). It was submitted that, again, this exchange did not bear the weight the Applicant sought to place on it, and the Respondent's answers to Ms Bridges' questions had not been dishonest. It was submitted that Ms Bridges' notes indicated that the Respondent had been surmising what might have happened, rather than putting forward his recollection of what had happened. The Applicant then relied on the Respondent's later conversations with Mr Carruthers as the basis of suggesting that the Respondent had misled the investigation. However, it was submitted, Mr Carruthers had no direct memory of the conversations and relied on the contemporaneous notes. It was submitted that Mr Carruthers' note on 29 January 2015 with regard to Strutt, which read, "Stamp duty payment. It was adjudicated as 2 parts/titles…" was a very limited evidential basis on which to conclude that the Respondent had told the investigators dishonest stories.

97.37 It was submitted that the evidence of Mr Carruthers did not support the inference that the Respondent's failure to be sufficiently active during the investigation showed that he had been dishonest or, indeed, obstructive. It was submitted that during Ms Bridges' visit to the Firm in June 2014 the Respondent knew that she wanted to see particular files, and these were provided. The Respondent accepted that there had been subsequent requests for the same files, including in the form of a s44B Notice. However, after the Notice was served Mr Carruthers did not isolate or highlight the requests for the three main files. The context was that the Respondent believed he had provided the relevant files to Ms Bridges and that she had copied the relevant parts; the Respondent's inactivity in producing the files could be related to the fact that he understood Ms Bridges had seen and copied relevant parts of the files.

97.38 It was submitted that at the meeting with Mr Carruthers on 29 January 2015 the Respondent had explained the difficulties he had in accessing the garages where files were stored, and Mr Carruthers had not doubted the explanation he was given. Indeed, Mr Carruthers' note mentioned that he may possibly drop non-cooperation as an allegation. It was submitted that Mr Carruthers had accepted that the Respondent had a genuine problem with accessing archived files. Further, Mr Carruthers' note included a heading "What is [the Respondent] going to do?". That list included "Get me 3x Lisa files", but that was crossed out which indicated that the files were not actively being sought by the Applicant. It was further submitted that the correspondence thereafter did not highlight the Strutt, Smythe and Oxspring files; the files were supplied, via Murdochs, in early June 2015.

97.39 It was submitted that the Respondent had been extremely unwell and had not dealt with the investigation sufficiently proactively. It was submitted that there was insufficient basis for the Tribunal to infer that the Respondent's failure actively to engage with the investigation meant that his behaviour had been dishonest. It was submitted that all that was left was a series of errors. Whilst the Applicant's position was that such series of errors were so unlikely that there could be no innocent

explanation for the transactions, the Respondent had two honest witnesses who gave partial explanations for what had happened. Surprising things sometimes happened; that did not mean that there had been any malign intent.

97.40 Mr Nesbitt invited the Tribunal to consider six elements of the context in which the payments took place which would cast doubt on whether the Respondent had dishonestly engineered the transactions.

97.41 Firstly, the Tribunal was urged to consider the Respondent's background and record. He was a solicitor with an unblemished record for 35 years. He was well-regarded and trusted. His Firm had been subject to regular audits and employed a bookkeeper. Apart from the three transactions considered in this case, there was no evidence of any other compliance problems. It could not be inferred from the Respondent's history that he would be dishonest. The Tribunal was invited to note that it was unlikely that a solicitor with this sort of record would do something so crassly dishonest as to make the three payments in question, all of a sudden.

97.42 Secondly, all three witnesses for the Respondent knew him well and said that he was an honest man. Ms Lhad referred to the Respondent handing back money when he was given too much change. She had known the Respondent for over 35 years and had worked with him; Ms Lwould have known if the Respondent was prone to casual dishonesty and was emphatic in her evidence that he was not dishonest. Ms C had made strong assertions about her father's honesty, as well as telling the Tribunal about the impact these allegations had had on the Respondent. It was submitted that Ms C was intelligent and would have been able to tell if the Respondent was in any way "dodgy", having worked closely with him over a period of time. Mrs Jenkins had no family connection to the Respondent and, it was submitted, was plainly an honest witness. Again, she would know if the Respondent was prone to casual dishonesty. Whilst it was not impossible for an ordinarily honest person to be dishonest, it was submitted that this evidence was a powerful counterweight to the suggestion that this Respondent had been dishonest. The Tribunal was asked to consider how likely it was that the Respondent would have turned to crass dishonesty.

97.43 Thirdly, the Tribunal was asked to consider the modus operandi which had been put forward by the Applicant. The Applicant's case suggested that on each of the three occasions in which payments had been misdirected, the Respondent had involved other people in the transaction. The Tribunal should consider if the Respondent would have involved his own daughter in improper transactions (on the matters of Oxspring and Smythe). The Applicant's position was that the Respondent would not expect Ms C to question the instructions she was given. However, Ms C knew the difference between office and client account. It was submitted that it was telling that the Respondent would not necessarily know whether Ms C or Mrs Jenkins would be working on his tapes. Ms C had given evidence that the Oxspring payment occurred whilst she was on a reading week from university and so was job-sharing with Mrs Jenkins that week. It was submitted that it was implausible that a man who chose to misappropriate client monies would choose to involve his daughter; indeed, it would be immoral to choose such a course. On the matter of Strutt, Mrs Jenkins had been involved. It was submitted that a conveyancing solicitor such as the Respondent could have used various methods to misappropriate money (if that was what he wanted to do) which did not involve others.

97.44 The fourth, linked, point also related to the modus operandi. It was submitted that the three matters in issue related to old balances on client account; the balance on Strutt was particularly old. Such balances should not have been there and might attract the attention of auditors, a good bookkeeper and/or the SRA. In the Respondent's statement he had indicated that it would have been mad to proceed in this way, if he had had any dishonest intent, because of the scrutiny the use of old balances would have attracted. It was submitted that during the hearing there had been evidence that a specific report had been made to the Applicant, triggering the investigation, which referred to cheque numbers and at least one client. It seemed probable that such a report came from someone within the Firm. Someone had, therefore, spotted the use of the old balances and reported it. It was submitted that this corroborated the Respondent's point that any solicitor trying to misappropriate client monies would not have chosen this method. There was a risk of detection, which had in fact materialised. It was submitted that the risk of detection meant that it was unlikely the Respondent had dishonestly manipulated the accounts.

97.45 It was further submitted that the Respondent's financial circumstances should be considered. It was accepted that the Firm's accounts showed that there had been a dip in earnings. However, the Respondent had assets. The Tribunal should consider whether the Respondent had any motive to take clients' money, and whether or not he needed money was relevant to likelihood of any deliberate misappropriation. Although there had been a downturn in income, Ms L's evidence confirmed that the family did not need money; Ms L had had access to substantial amounts in cash (approximately £90,000 at the relevant time) and the family owned properties. It was submitted that the Tribunal could take into account that dishonesty usually occurred where someone needed money. The acts which were attributed to the Respondent by the applicant were desperate acts, but the evidence did not support the proposition that the Respondent was desperate.

97.46 The sixth contextual point related to the Respondent's interactions with Ms Bridges. The Tribunal was invited to note that when Ms Bridges began the investigation she knew at least some of the matters to be investigated. The Respondent was not told what she was looking for, but when she asked for the three files in issue (along with others) they were provided promptly. Ms Bridges accepted that the tone of her discussions with the Respondent was friendly, transparent, open and unguarded. The notes she had taken suggested that the Respondent had given spontaneous answers to her questions, in which he had surmised what might have happened. The Respondent had not delayed matters by asking to look at the files; some solicitors tried to stall by asking for time before answering questions. It was now alleged by the Applicant that the Respondent had engineered the theft of over £11,000 from three different client matters in a four-month period. If the Applicant's case were correct, the Respondent knew what he had done; it was submitted that in such a situation, the Respondent would not have provided the files so promptly. If he had been guilty of the matters alleged, the Respondent may have sought to rectify the position or stall. It was submitted that the evidence of the flavour of the first investigation visits did not support the proposition that the Respondent knew that he had stolen money on those three files.

97.47 Mr Nesbitt submitted that it was the Applicant's position that the unexplained features of the three payments were sufficient to invite a finding of dishonesty. However, the Tribunal should set against that the features which were emphasised in the submissions noted above. Whilst there remained some mystery about some aspects of the payments, the Tribunal should not be driven to the conclusion that the Respondent had been dishonest. Simply because it was not clear what happened, the Tribunal should not find there was dishonesty. It was, of course, acknowledged by the Respondent that the fact the payments were made, as described, meant that he was responsible for several breaches of his professional duties.

97.48 It was submitted that the Respondent admitted there had been breaches of his duties, but not that he had been dishonest. It was submitted that during the investigation the Respondent was in the midst of what was described as a break-down; the recent medical evidence arose from events during the investigation. The Respondent accepted that he had had a tendency to internalise the difficulties he experienced during the investigation and had put his head in the sand. It was submitted that the total of 13 days spent by the FI Officers at his offices had made him feel worn down; his failure to engage with the process should be seen in that context. It was submitted that it would be harsh for the Tribunal to reach the conclusion that the Respondent had been dishonest in relation to any of the allegations.

97.49 Mr Nesbitt was asked by the Tribunal to clarify the submission relating to the use of old client balances (paragraph 97.44 above) and in particular to address the possible argument that old balances were vulnerable to misuse where a client was not aware of the balance, and when the balance was cleared there was less risk of the transactions being the subject of scrutiny. Mr Nesbitt accepted that there were other ways of looking at this issue. However, the balance on Strutt had been in quite a striking amount and would have been noticeable. Mr Trevette assisted Mr Nesbitt by adding that any transfer could come to light on an audit, in particular where the transfer was "late". There were many cases in which balances were transferred without bills, for example; there were a variety of ways in which client monies could be misused.

The Tribunal's Decision

97.50 The Tribunal considered carefully the submissions of the parties and was conscious that it was for the Applicant to prove the allegation(s) to the highest standard. There were a number of relevant findings of fact which the Tribunal could make on the evidence presented.

97.51 With regard to the Respondent's submission that involving others in wrongdoing was unlikely, the Tribunal found as a fact that the Respondent was highly dependent on Mrs Jenkins/ Ms C and, indeed, Ms Lin running the office. He did not send emails on his own account, did not type up documents himself and did not prepare the online SDLT forms but would dictate instructions onto a tape. There was also evidence that he did not use computer screens to view accounts information but would sometimes consider print-outs of client ledgers. In these circumstances it was likely, rather than

unlikely, that the Respondent would require the involvement of others in preparing documents in order to make any payments from client account.

97.52 It had been submitted that the Respondent did not know in advance which of Mrs Jenkins or Ms C would be doing his work on any given day. However, it was clear on the evidence that the Oxspring payment was made whilst Ms C was working in the office several days during a reading week from university. It was also Ms C's evidence that the tape which may have contained instructions on the Smythe matter was brought down to her as an "urgent" tape during the day; the Respondent therefore knew that it was Ms C rather than Mrs Jenkins who would process his instructions.

97.53 In any event, the Tribunal noted that each of the transactions – as detailed below – could have been carried out where those who filled out documents were entirely innocent and would not have realised that the documents they created might have been subject to any misuse or misdirection.

97.54 The Tribunal noted the Respondent's submission that his background and record made it unlikely that he would have been dishonest on the occasions in question. However, the Tribunal noted that all solicitors should be assumed to be honest but, from time to time, a solicitor was dishonest. Whilst a track record of probity might suggest it was unlikely that someone would be dishonest, the Tribunal's role was to consider whether, in specific circumstances, a previously entirely honest person had behaved in a dishonest way. The Tribunal also noted the submission that the three witnesses who knew the Respondent well all said that he was honest. However, the Tribunal also noted that the witnesses all told the Tribunal about the Respondent's bad temper and irritability. The clear impression given to the Tribunal was that, to some extent, each was afraid of the Respondent when he was in a bad mood. They were all loyal to him, either through family relationships or long working relationships, and because they believed him to be innocent had tried to work out an innocent explanation of what he had done. None had questioned any of his instructions, because the instructions appeared entirely normal and proper and/or because they trusted that what the Respondent was doing was proper.

97.55 The Tribunal found the submission about the modus operandi being improbable, as the use of old balances would attract attention, was not compelling. Once an old balance had been cleared, it would cease to attract attention. Further, where a client did not know there was a balance and had not asked about the return of monies, any balance on the account was potentially vulnerable. The Tribunal was conscious that it was not said there was any impropriety in the way the balances were created but it found as a fact that the Strutt balance had existed for over two years before it was used, the Oxspring balance for about four months and the Smythe balance for about a month before being misdirected. The Firm's internal systems e.g. reconciliation statements had not highlighted these balances, nor had any external review noted the balance of over £8,000 on the Strutt ledgers for a period of over two years.

97.56 The Tribunal noted the submission that the Respondent's financial circumstances were such that he had no need to steal from his clients. The Tribunal noted and found that the Respondent did indeed, with his wife, own a substantial property portfolio. However, it was also the case that his income for the year 2013/14 had dropped from

the levels he asserted for 2012/13. The Tribunal found that the Respondent's statement in his witness statement about his income were unreliable, and this led to the Tribunal determining that the Respondent's evidence was not credible. In addition, of course, as already noted, the Tribunal could not assign any significant weight to the Respondent's statement unless and to the extent that it was corroborated by other evidence.

97.57 The Tribunal noted the submission that the Respondent's interactions with the FI Officers, in particular Ms Bridges, did not suggest that he had a guilty mind. His conduct was described as open and unguarded. It had been submitted that if, indeed, the Respondent knew that he had done something dishonest he would not have been so open and would not have produced the files so promptly in June 2014. This was an interesting submission and the Tribunal noted that some solicitors would indeed act in a "guilty" way if aware that their misdeeds were being investigated. However, it was clearly the case that the immediate "explanations" – whether suppositions or not – which had been proffered by the Respondent were wrong. It had taken some time to investigate what he had said, and the background facts. Even some seven months after the start of the investigation the Respondent had not been able to offer a true account of what had happened on the three key transactions. Given that the investigation started within 8 months of the first improper transfer and 4 months of the last improper transfer, it was notable that the Respondent had not been able to give the FI Officers a true account at the beginning of the investigation. It had been suggested by counsel that the fact he did not ask to check the files before answering questions was a positive factor, showing an unguarded approach. However, the effect of the answers had been to give the FI Officers incorrect working theories to consider. The Respondent had been described by Mrs Jenkins in her witness statement as "meticulous"; it was not the behaviour of a meticulous solicitor to offer off-hand explanations when checking the file could help clear up any confusion.

97.58 The Tribunal considered whether the explanations given to Ms Bridges on 4 June 2014 had indeed been suppositions, put forward as possible explanations rather than being explanations given from memory of events. With regard to the Oxspring matter, the Tribunal found the reference to speaking to "Catherine" to be specific and to imply, clearly, a recollection of a discussion. On the Strutt matter, whilst there was some confusion about when the mentioned contact from HMRC had been, it was incorrect that there had been any contact with the clients at all about SDLT. It was compelling that the clients believed that the full sum of £185,000 had been paid; indeed, they had no reason to doubt that until contacted by the SRA in March 2015. The Respondent had not suggested to Ms Bridges that, as he later asserted, he had realised the £8,000 had not been paid and decided to send off that amount, plus the other sums on the ledger to HMRC. With regard to the Smythe matter, it was correct that there had been an issue about the need for a Deed of Variation. That matter was ongoing at the time of the investigation. The offered explanation about where the £2,100 had been paid was clearly wrong; the Respondent could have checked easily, at that time, what monies had been paid to whom in respect of the Deed of Variation with which Mr PS was dealing.

97.59 The Tribunal concluded that, whilst not determinative, the fact that the Respondent had been willing to put forward "suppositions" which were not correct accounts of

what had happened damaged the Respondent's credibility. He gained no credit for openness when, in fact, what he had suggested was wrong.

97.60 The Tribunal also noted and found that there was no evidence of any ill health on the part of the Respondent in the period from the autumn of 2013 to spring 2014 which suggested that he had lost the ability to tell right from wrong. The medical evidence which was presented clearly showed that the Respondent had considerable present difficulties, and the Tribunal was sympathetic to those problems. One of the medical reports suggested that some of the symptoms had been present for "at least two years" i.e. from about September 2014 which was during the investigation. There was no record in the GP's report of any relevant symptoms until about July 2016.

97.61 Before considering the specifics of each of the payments, the Tribunal wished to comment on one further factor which damaged the Respondent's credibility. Whilst not covered in the Respondent's witness statement, Ms Lhad given impassioned evidence to the effect that Mr PS, an assistant solicitor, had stolen from the Firm by diverting client work to obtain personal payments for himself and that the Respondent had been upset about this. This apparent belief on the part of the Respondent did not sit well with the fact that in a letter to the SRA dated 12 July 2015 the Respondent's solicitors (on instructions) had supported a possible take-over of the Firm by Mr PS, together with his appointment to the roles of COLP and COFA. If the Respondent believed there had been substantial misconduct by Mr PS, he should have reported it to the SRA at the time, rather than supporting a proposal for Mr PS to take over running the Firm. The Tribunal wished to make it clear that it made no findings in relation to what Ms Lhad said in her evidence; Mr PS was not a party to this case and had not been heard.

97.62 In relation to the payment on the Oxspring case, as already found, the cheque was written out by Ms C to the Nationwide and was then paid, by someone, to the Respondent's mortgage account with the Nationwide. It was telling that there was no letter to the clients to inform them that a refund was to be made to them, or a letter to the Nationwide telling them why the payment was being made. The description of the purpose of the cheque, as being to return the balance to the clients, was entirely normal and would not have raised any suspicions by any staff member writing the cheque or entering the matter on the client ledger. The innocent appearance of the transaction was reinforced by the fact that the cheque was for the balance which was held on client account. The Tribunal noted the evidence on behalf of the Respondent that sometimes cheques would be sent out with a compliments slip. On the Oxspring matter, there was no evidence about any compliments slip or envelope being written out to the clients and there was no evidence they had a Nationwide account. It would, in any event, be unusual to write a cheque to a bank rather than to the clients, so that they could decide to which account to pay their money. There was no record on the file of any conversation with the clients about this matter. Whilst there was no direct evidence of who wrote out the mortgage account number or otherwise instructed the Nationwide to direct the money to the Respondent's account there could be no doubt that someone must have provided that information to the bank. The Respondent's staff could only write the account number if instructed to do so. What was particularly compelling in relation to this transaction was that someone had written the Respondent's name, and initialled it, on the front of the cheque. The Nationwide had accepted the cheque and credited it to the Respondent's account, which showed

that the bank had not queried whether the endorsement had been properly made by an authorised person. The Tribunal found that this information simply would not have been added to the cheque by bank staff. The addition must have been done by the Respondent, or on his direction. The endorsement on the back of the cheque of an account number would have been relied on by the bank, particularly as it matched the name appearing on the front of the cheque. It was also telling that the FI Officer found that on this file there was no copy of the cheque on the file, whereas copy cheques appeared on other files which were inspected. Mrs Jenkins' evidence had included evidence that copies of cheques e.g. which were used to pay SDLT would be placed on the files; none of the relevant copy cheques were found on the files of Oxspring, Strutt or Smythe.

97.63 The Tribunal noted that the Respondent did not claim to have a direct recollection of what had happened with regard to this payment. In any event, for the reasons outlined earlier, the Tribunal did not consider the Respondent's witness statement to be reliable. The Tribunal concluded that the Respondent took steps to direct the sum of £796 from the Oxspring ledgers to his mortgage account, using instructions to his daughter and accounts staff which would appear entirely innocent. The cheque having been written out, and explained on the ledger as being the return of monies to the clients, the Respondent then diverted the payment to his personal mortgage account by writing the mortgage account number on the back of the cheque – or causing it to be written – and by adding to the cheque his own name and initials (either by writing those details himself or causing someone else to make those additions). The fact that not every step of the transaction could be identified did not cause the Tribunal to have any reasonable doubt. The Respondent had used client money for his own benefit. That was something which would be regarded as dishonest by the ordinary standards of reasonable and honest people, and in choosing deliberately to use client monies for his own purposes the Respondent realised at the time of the transaction that what he was doing was wrong. The Respondent's conduct was dishonest with regard to the Oxspring payment.

97.64 The Strutt payment was the next in time. Mrs Jenkins had tried to explain to the Tribunal that she had made errors which had led to £8,220.73 of client money being used to pay the Respondent's tax bill. Mrs Jenkins had recollected, accurately, that the Strutt purchase matter had been more complicated than usual as it involved splitting the titles to R/R Cottage. The Tribunal was satisfied on the evidence of Mrs Strutt, which was not challenged, that prior to the purchase there was some discussion about whether or not HMRC would treat the purchases as associated or not; in the former case £185,000 would be due in SDLT and if the latter £177,000 would be payable. The clients had provided £185,000 to pay SDLT and had assumed that that sum had been paid to HMRC. They had no knowledge that the Respondent had retained £8,000 on the purchase ledger (and some other sums on the sale ledger) for over two years. It was clear that the Respondent knew that £185,000 should probably have been paid. However, it was clear from Mrs Jenkins' evidence that the Respondent had not instructed her to complete the SDLT forms in such a way as to show that the transactions were linked. As a result, £177,000 in total was paid. If there had been an error on Mrs Jenkins' part, it had arisen as the Respondent had not given a sufficiently clear instruction about how SDLT should be treated on this transaction and/or had not checked that the full amount due had been paid. There was no explanation from either the Respondent or Mrs Jenkins about how it had happened

that the payments of SDLT on R and R Cottage had been made about two weeks apart, when completion had taken place on the same date.

97.65 The Respondent's current explanation for the payment made in December 2013 appeared to be that he had recognised at about that time that a further £8,000 plus interest and penalties should have been paid. However, there was no evidence whatsoever – and the Respondent had not gone so far as to suggest – that the Respondent had checked with HMRC if they expected a payment and, if so, the amount of interest and penalties which would be charged. Further, the Respondent had not contacted the clients to explain that there had been an error. The correct course of action for a solicitor acting with integrity on discovering an error of the type suggested by the Respondent was to inform the client that the additional sum had to be paid, but the Firm would be responsible for payment of any interest and penalties as they had only become due because of an error on the part of the Firm. There was no proper reason for the Respondent to have sent the full amount on the ledgers for these clients to HMRC; the clients should not have had to pay the interest and penalties, even if their £8,000 should properly have been used to pay the "extra" SDLT. There was no proper reason for the cheque to have been written out for £8,220.73.

97.66 In addition, of course, the Tribunal noted that the Respondent had initially given an explanation which, whilst not specifying when the alleged contact with HMRC had been made, could only logically have been construed as meaning that HMRC had been in touch some time after completion. This was supported by the reference in Ms Bridges' notes to there being no letter as "the file was in storage". A file would only be placed in storage after the matter was complete and, of course, should not be archived unless and until there was a nil balance on the ledger. The Tribunal found that this possible explanation by the Respondent was not only wrong but damaged his credibility. Any reasonable solicitor would have informed the client about the position but the Respondent made no contact with the Strutts to explain. Further, there was no evidence that the Respondent had been in contact with HMRC about this matter in the autumn/winter of 2013 to check how much, if anything, was due in penalties and interest. It was inconceivable that a solicitor who genuinely believed that an error had been made, which needed to be rectified, could have failed to establish with the client and HMRC exactly what the position was.

97.67 On the Respondent's case the initial error – underpayment of SDLT – was followed over two years later by the accidental payment of £8,220.73 towards the Respondent's tax account. The Tribunal noted and found that not only did the Respondent write out the cheque and sign it but he also completed the paying-in slip, in favour of HMRC, endorsed with his name and tax account reference for the amount which – he said – he intended to pay to HMRC in SDLT. It was incredible to suggest that this was a mere mistake or administrative error. It was notable and compelling that the payment of the sum of £8,220.73 appeared on the Respondent's self-assessment tax statement for March 2015. Mrs Jenkins' account could not be accurate, as she suggested that the cheque may have been stapled to the Respondent's tax account slip in error and posted; the payment had been made at a bank. It was not known who had attended the bank and it was not material to know this; it could have been taken to the bank perfectly innocently by a staff member who would simply hand over a cheque and paying-in slip which were for the same amount and directed to the same payee. The Tribunal noted that if the Respondent had intended the payment to be in settlement of

the Strutt's SDLT liability, some reference number would have had to be given so that HMRC could match the cheque with a transaction. There was no evidence at all to suggest that the Respondent took any such step. Indeed, on his initial account – that the file was in archive – there may not have been ready access to the relevant reference number in order to pay the cheque to a SDLT account. Further, it was compelling that in order to rectify the small debit balance which was created on the purchase ledger for Mr and Mrs Strutt when the cheque was issued, a transfer of £60 was made from the clients' sale ledger a week later. This showed some thought or deliberation. It had not been suggested that staff would make transfers between ledgers without the authority of the Respondent.

97.68 The Tribunal found so that it was sure that in using client money on the Strutt ledger to pay a personal tax liability, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent realised at the time of the payment that his actions were dishonest by those same standards.

97.69 In relation to Smythe, it was notable that there had been four ledgers in existence for the clients at about the relevant time. Transfers were made between ledgers on 14 February 2014 to rectify the debit on client account which occurred when the cheque was issued on 7 February 2014. Again, this showed a degree of planning and deliberation.

97.70 The Tribunal noted and found that at the time of the Smythe payment there was in fact an ongoing matter for Mrs Smythe, being dealt with by Mr PS. Mrs Smythe's evidence was that she was unaware that any balance was held for her on the purchase ledger. There was no reason to doubt Ms C's account that she understood her instruction was to write out a cheque for £2,100 payable to the Nationwide and describe it as being for completion; there was no reason for her to question the legitimacy of such an instruction. There was no direct evidence about how the Respondent's mortgage account number came to be written by hand on the reverse of the cheque. However, the fact that such evidence was not available did not create any doubt that the cheque had been drawn on client account and was used towards paying off the Respondent's mortgage account. There could be no doubt that this step had been taken deliberately by the Respondent.

97.71 The Tribunal was satisfied in respect of each of the three transactions in question that the Respondent had acted in a way which was dishonest by the ordinary standards of reasonable and honest people and that he recognised at the relevant time that his actions were dishonest by those same standards. Even if there had been any residual doubt on that question – which there was not – any such doubts would have been firmly disposed of by considering the Respondent's course of conduct over the course of the three transactions, in a four-month period. In that period he had used over £11,000 of clients' money for his own purposes. He had signed cheques drawn on client account where there was no supporting documents to show that the payments were to be used for the benefit of the clients. He had caused details concerning his personal accounts to accompany the cheques when they left his office. This was clearly dishonest.

97.72 The matters set out above relate primarily to allegations 1.1 and 1.2. With regard to allegation 1.3 the Tribunal noted that the Respondent did not return the money to the

clients until long after the investigation began. The Tribunal did not find that the circumstances in which the Respondent came to hold residual balances were dishonest. However, the Respondent was aware of the residual balances and that they should be returned to the clients from at least the date he misused their money. With regard to allegation 1.4, the Tribunal noted and found that the Respondent's descriptions of how money had been used were clearly incorrect. The ledger entries on each of Oxspring, Strutt and Smythe indicated that the money had been used for the benefit of the clients whereas it had been used for the Respondent's benefit. Further, the Tribunal noted that the Respondent misdescribed the payments he made to the clients in the course of the investigation. It was clearly wrong, for example to describe the reimbursement by the Respondent to Mr and Mrs Strutt on 28 April 2015 as "Refund of stamp duty". With regard to allegation 1.5, the Tribunal was satisfied that the Respondent was aware of the breaches from the time each was committed, not simply from the time of the SRA investigation. The Respondent knew that over £11,000 of client money was missing and had been used for his benefit; he should have rectified that position immediately. Instead, the dishonest use of client money had continued until a considerable time into the investigation.

97.73 There was no doubt that: in withdrawing client money to make personal payments; in using client money to make personal payments; in failing to return client money to his clients as soon as there was no longer any proper reason to retain those funds; in failing to keep accounts records properly written up to show dealings with client money; and in failing to remedy breaches of the AR 2011 promptly on discovery, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people, and the Respondent knew that his conduct was dishonest by those same standards.

97.74 The Tribunal noted that allegation 1.7 had been proved; indeed, it was partially admitted. There was no doubt that the Respondent had failed to comply with requests for information and documents promptly. The Tribunal noted that the Respondent had handed over the three main files with which this case was concerned to Ms Bridges in June 2014, but had not produced them to Mr Carruthers when requested. The Tribunal noted that there had been lots of communication between the FI Officer and the Respondent. There was nothing in the Respondent's behaviour with either FI Officer to suggest that he did not understand the investigation or what was required; indeed, the Tribunal noted that the Respondent had shown Mr Carruthers the garages with which he was said to have problems and that this indicated that the Respondent understood what was being requested and what his obligations were. There was nothing in the Respondent's behaviour which suggested he was unwell during the time of the forensic investigation.

97.75 The Tribunal noted that whilst a reasonable and honest person would expect a solicitor to comply with requests from their regulator, it would not necessarily be dishonest to fail to comply. In any event, there was some doubt about whether the Respondent had recognised that failure to comply could (in some circumstances) be regarded as objectively dishonest. The Tribunal could not be satisfied to the required standard that dishonesty had been established with regard to allegation 1.7.

97.76 The Tribunal was satisfied on the facts that the allegations of dishonesty with regard to allegations 1.1 to 1.5 inclusive had been proved to the required standard, but was not so satisfied with regard to allegation 1.7.

Previous Disciplinary Matters

98. There were no previous disciplinary findings against the Respondent.

Mitigation

99. The Tribunal's findings on the issue of dishonesty having been announced, Mr Nesbitt told the Tribunal that he would make no submissions on sanction. He stated that he did not seek to persuade the Tribunal that this case fell into the narrow category in which striking off would not be appropriate after a finding of dishonesty.

Sanction

100. The Tribunal had regard to its Guidance Note on Sanction (December 2015) and to all of the facts of the case.

101. The Tribunal had made findings of dishonesty, in relation to three transactions over a four-month period. The Tribunal noted that during the case there had been reference to the pressures of working in a busy practice; such pressures were not unusual. There was no obvious financial motive for what the Respondent had done, as he had access to assets, albeit his financial position was not as he had indicated in his witness statement. In particular, his income had declined. It was an unpleasant aspect of the case that the Respondent had involved his daughter in his misconduct; the Tribunal was satisfied her behaviour was entirely innocent. Reference had been made in the recent medical evidence to the Respondent's current ill health. Indeed, there had been references to his ill-health since June 2015. However, there was nothing to show the Respondent was unwell at the time of the improper transactions, or during the SRA investigation. There had also been reference to various stresses experienced by the Respondent due to the illness of family members.

102. However, nothing exceptional had been suggested as a reason for the Respondent's misconduct, and the Tribunal could see nothing exceptional in the circumstances.

103. The case law, as summarised in the Tribunal's Guidance Note on Sanction, made it clear that where there was a finding of dishonesty, the normal and proportionate sanction was to strike the solicitor off the Roll unless there were exceptional circumstances. Here, no other sanction was appropriate and the Tribunal determined that the Respondent should be struck off the Roll.

Costs

104. The schedule of costs submitted by the Applicant, dated 26 September 2016, totalled £56,660.76. This comprised forensic investigation costs of £19,951.85, supervision department investigation costs of £7,950, counsel's fees of £19,440 and various disbursements for travel and accommodation, together with the Applicant's legal

costs calculated at £130 per hour. The costs at the date of issue had been £25,619.85 (including the forensic investigation costs).

105. On behalf of the Respondent, Mr Nesbitt submitted that the Respondent did not say he was unable to pay costs but there were queries concerning the amounts claimed.

106. It was noted that the hearing would conclude on the second day, whereas the time estimate had been three days, so there should be some reduction in costs. Mr Nesbitt submitted that, of course, it was not Ms Bridges' fault that she had taken a period of extended leave for health reasons, but there may have been duplication between the work done by Ms Bridges and Mr Carruthers. Mr Nesbitt queried whether the investigation department of the Applicant had really needed to spend 106 hours (at £75 per hour) on this matter. Further, Ms Butler's fee was queried; whilst she had done "a fine job", it was queried whether counsel from expensive, commercial sets were required for cases of this type. In addition, the need for hotel accommodation for the instructing solicitor was queried. It may be that there had been some further savings in costs due the speedy progress of the hearing.

107. In response, Ms Butler submitted that as the hearing had been shorter than anticipated, the claim for her fees would be £17,040 (including VAT) and that her fees included advising in conferences. It had been anticipated that there would be seven witnesses for the Applicant, although the Respondent had indicated in the course of preparation for the hearing that only the FI Officers would be required. It was submitted that the work done by the instructing solicitor was properly done and that there had been no duplication of work by the FI Officers. Ms Butler told the Tribunal that some of the supervision costs should have been included in the statement of costs at the time of issue. The work done by the supervisor, for example in communications with HMRC which had established that the payment towards the Respondent's tax account had been made at a bank rather than by post, had been useful. It was accepted that there should only be an accommodation charge for one night, not two. Overall, considerable correspondence and other work had been required to build and prepare the case.

108. The Tribunal considered carefully the costs schedules and the submissions of the parties. The Tribunal noted that as the Respondent did not claim to be in financial difficulty it did not have to consider making any sort of order for deferred payment or to reduce the amount to be paid on the grounds of the Respondent's means.

109. The Tribunal noted that there was no claim in the costs schedule for the time spent by the instructing solicitor in attending the hearing, simply for his travel and accommodation costs. The Tribunal noted that this was a reasonable approach. However, half of the accommodation charge should not be allowed, as the hearing would finish on the second day. The Tribunal noted the proposed reduction in counsel's fees. The Tribunal considered it likely that there had been some duplication in the time spent by the FI Officers, and that the time spent by the supervisor appeared to be on the high side. The legal costs part of the schedule was reasonable; indeed, some work had been done by the supervisor, whose work was charged at a lower rate, which might otherwise have been done by the instructing solicitor. The Tribunal noted that this was a case which required a lot of investigation and careful

consideration, particularly as the Respondent had not produced files and documents when requested.

110. The Tribunal considered that the reasonable and proportionate costs of this case should be assessed at £51,000, taking into account the factors noted above. The Respondent should be ordered to pay that sum in the usual way.

Statement of Full Order

111. The Tribunal ORDERED that the Respondent, NIGEL MAPLETOFT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £51,000.00.

Dated this 2nd day of November 2016
On behalf of the Tribunal

N. Lucking
Chairman