SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11464-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MELVIN DOUGLAS GOLDBERG Respondent

Before:

Mr I. R. Woolfe (in the chair)
Mr G. Sydenham
Mrs V. Murray-Chandra

Date of Hearing: 25-27 October 2016

Appearances

Chloe Carpenter, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Robin Havard, solicitor of Blake Morgan, for the Applicant.

Susanna Heley, solicitor of RadcliffesLeBrasseur, 85 Fleet Street, London, EC4Y 1AE, for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were set out in a Rule 5 Statement dated 29 December 2015 and were as follows:

1.1. The Respondent failed to maintain proper books of accounts contrary to Rule 29 of the SRA Accounts Rules 2011 ("AR 2011") in that he:

a) failed to maintain proper accounting records contrary to Rule 29.1 of the AR 2011;

b) failed to appropriately record all dealings with client money contrary to Rule 29.2 of the AR 2011;

c) failed to record dealings with office money relating to client matters and to appropriately record such dealings contrary to Rule 29.4 of the AR 2011;

d) failed to maintain separate books of account for non-sterling transactions contrary to Rule 29.12 of the AR 2011;

e) failed to conduct client account reconciliations at least once every five weeks contrary to Rule 29.2 of the AR 2011;

f) failed to identify shortages contrary to Rule 29.14 of the AR 2011; and

g) failed to justify the use of a suspense ledger account contrary to Rule 29.25 of the AR 2011.

1.2. The Respondent failed promptly, or at all, to remedy the said breaches of the AR 2011 in breach of Rule 7 of the AR 2011 and Principles 4 and 10 of the SRA's Solicitors Code of Conduct 2011 ("the SCC 2011") in that, having become aware of the breaches, and despite having been afforded time by the SRA to bring the accounting records of the firm into compliance, the Respondent failed to do so.

1.3. The Respondent used the client account of his firm inappropriately by using it as a bank facility for clients, contrary to:

a) Rule 14.5 of the AR 2011 and/or, where such use took place prior to 6 October 2011;

b) Rule 15 of the Solicitors Accounts Rules 1998 ("SAR 1998")

in that, in a number of matters, the Respondent allowed funds to be paid into, and out of, client account when it was unnecessary and inappropriate as there was no underlying legal transaction in which he was conducting reserved legal work to which such payments were linked.

1.4. The Respondent failed to comply with legislation applicable to his business, namely anti-money laundering, contrary to Outcome 7.5 of the SCC 2011 and/or in relation to the period prior to 6 October 2011, Rule 5.01 of the Solicitors Code of Conduct 2007 ("the SCC 2007"), in that:

a) there were instances where funds were paid into his firm's client account without any satisfactory due diligence having taken place as to the source of funds or any satisfactory due diligence with regard to the recipient of payments made out of client account; and

b) he failed to comply with Regulations 5 and 7 of the Money Laundering Regulations 2007 ("the MLR") on the basis that he failed to take adequate steps to verify clients' identity.

1.5. The Respondent acted in transactions where there was a conflict of interest or a significant risk of a conflict of interest, contrary to Outcome 3.5 of the SCC 2011 and/or in relation to the period prior to 6 October 2011, Rule 3.01(1) and (2)(a) of the SCC 2007, in that he:

a) acted for different clients who were parties to the same purported investment transactions but who held entirely different interests and objectives in circumstances where each party should have received independent legal advice on the basis that there was a conflict of interest or a significant risk of a conflict of interest; and

b) acted for the joint owners of property in relation to a sale in circumstances where he was directed by one client i) to not deal with the other client; and ii) not to send funds to the other client but to a third party such that there was a clear conflict between the interests of the parties or the significant risk of a conflict and it was inappropriate for the Respondent to act on behalf of both clients who should have been separately represented.

1.6. The Respondent failed to act in the best interests of clients, contrary to Principles 4 and 10 and Outcomes 1.1 and 1.2 of the SCC 2011, in that he:

a) Acted for a client, Mr BO, in circumstances where: he failed to ensure that a guarantee intended to be for Mr BO's benefit was appropriate, valid and enforceable; where he failed to comply with the terms of an undertaking; and where his client's monies were distributed in accordance with the instructions of third parties without his knowledge or consent.

b) Acted for a client, Mr SM, in circumstances where: he failed to ensure that a guarantee intended to be for Mr SM's benefit was appropriate, valid and enforceable; and where his client's monies were distributed in accordance with the instructions of third parties without his knowledge or consent.

c) Acted for a client, Mr EH, when instructions were given by a third party and where the proceeds of a sale of property were remitted to that third party without any written authority having been provided by Mr EH nor any verbal authority subsequently confirmed in writing.

1.7. The Respondent acted for clients in purported transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements, and, in so doing, he failed to act with integrity and failed to behave in a way that would maintain the trust the public placed in him and in the provision of legal services contrary to Principles 2 and 6 of the SCC 2011 and/or Rules 1.02 and 1.06 of the SCC 2007 where such conduct relates to a period prior to 6 October 2011.

1.8. In relation to Allegations 1.3 to 1.7, it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.

Documents

2. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement with exhibit MRH1 dated 29 December 2015
- Forensic Investigation Report of Mr David Bailey, Forensic Investigation Officer dated 26 August 2014
- Cost Schedules dated 29 December 2015 and two undated schedules received on 20 and 27 October 2016
- Two lever arch folders of Additional Documentation

Respondent

- The Respondent's Answer to the Rule 5(2) Statement as set out in an email dated 6 February 2016
- Witness Statement of the Respondent dated 21 October 2016
- Various character references
- Response from Ms Heley to the SRA dated 14 July 2015
- Letter and exhibits from Mr MG to the SRA dated 20 October 2014 (received October 2016).
- Email from Mr MG to Ms Heley dated 27 October 2016 with attached documents.

Other documents

- Bundle of Authorities provided by the Applicant and referred to by Ms Carpenter and Ms Heley.

- Information from Practical Law in respect of Bonds, Guarantees and Standby credits provided by Ms Heley on 27 October 2016.

Preliminary Matter – Disclosure

3. At the case management hearing on 10 May 2016 directions had been made in respect of disclosure. The Applicant had obtained the relevant files but the Respondent had not inspected them. The Respondent had chosen not to inspect the files as he considered it would take some days to inspect them and he did not want to be in the offices of the Applicant's solicitors for that time and he also wished to go through the files with his former clients. In any event he could not afford copying charges. However he had never asked the Applicant if copies could be provided free of charge. Ms Heley had raised the issue of disclosure in correspondence with the Applicant's solicitors in July 2016.

4. The Tribunal was concerned, given the lack of disclosure, as to whether it was possible to have a fair trial. The Respondent was entitled to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In his witness statement dated 21 October 2016, the Respondent stated that he was unable to admit or deny allegations 1.3 to 1.7 and that he had not been able to inspect the files and had had to rely on memory and information he was able to obtain from his former clients. Ms Heley confirmed, on behalf of the Respondent, that she was not making an Article 6 argument at this time. It was for the Applicant to prove its case. Ms Heley would need to consider depending on the outcome whether or not the issue of Article 6 was grounds for appeal. The Respondent was entitled to a fair trial within a reasonable time and was present to answer the allegations. He would be eighty next year and had no intention of returning to the profession.

5. Ms Carpenter for the Applicant did not accept that the Respondent could not access his files. If he had told the Applicant he could not afford the copying charges then the Applicant would not have made him pay them. In her view, the Respondent had simply chosen not to engage until last week. The Respondent had had access to his files when providing earlier responses and when he was interviewed prior to the Intervention. Ms Carpenter was of the view that any Article 6 point needed to be taken now. When it became clear the previous week that disclosure was an issue, two lever arch files of documents, containing unused materials from the Forensic Investigation Officer's files, were produced and the Respondent's original files were available in the courtroom should they be required. There was also information available in respect of Mr BO's Compensation Fund claim in light of the information the Respondent had exhibited from Mr BO.

6. The Chairman stated that Ms Heley had seen the Applicant's case, and if she was to take the Article 6 point, it should be prior to the hearing, not when the outcome was known. Ms Heley confirmed she was not taking the point and the Tribunal decided to proceed to hear the case.

Factual Background

7. The Respondent was born in 1937 and was admitted to the Roll in December 1963. At the material time, the Respondent practised as a sole practitioner under the style of Mel Goldberg Law, Media House, 4 Stratford Place, London, W1C 1AT ("the Firm"). The Respondent was also the Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA") of the Firm. The Respondent's practising certificate was suspended upon the intervention into his practice on 24 September 2014.

8. On 17 June 2014, the SRA commenced an investigation into the Firm following receipt of reports as to the Respondent's involvement in matters where it was alleged he had acted without client consent and/or instructions. The investigation was undertaken by a Forensic Investigation Officer employed by the SRA, Mr David Bailey ("the FIO") and he was assisted during the course of his investigation by Mr Stephen Cassini. At the conclusion of the investigation, the FIO produced a Forensic Investigation Report ("the FIR") dated 26 August 2014.

9. On 15 June 2015 the SRA wrote to the Respondent enclosing the FIR and invited his observations. By letter dated 14 July 2015 a response was provided on behalf of the Respondent by his solicitor. On 18 August 2015, the Respondent was referred to the Tribunal.

Witnesses

10. The FIO, the Respondent and Mr BO gave oral evidence. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

11. Mr BO attended the three days of the hearing. At the close of the Respondent's evidence on day two, Mr BO gave the Chairman a note, which requested he be allowed to give evidence. The Chairman did not read the note but gave it to the clerk to the case who showed it to Ms Carpenter and Ms Heley. Following discussions with the Respondent, Ms Heley called Mr BO to make a short statement at the commencement of the third day of the hearing. Mr BO was cross-examined by Ms Carpenter. The Tribunal noted that Ms Heley did not associate the Respondent with Mr BO's evidence nor with the documents from Mr BO which were exhibited to the Respondent's witness statement.

12. The Tribunal did not find Mr BO to be a credible witness. Mr BO's position, at the hearing, was that the Respondent had not been dishonest in respect of his transaction. However, Mr BO had previously accused the Respondent of being part of an organised fraud and of dishonesty (when making a claim against the Compensation Fund which was refused). Mr BO had 'an axe to grind', had changed his position more than once and his evidence was motivated by his self-interest.

13. The Tribunal found that the Respondent was not a totally credible witness. The Respondent contradicted his previous positon and the response provided by Ms Heley to the Applicant's letter pre-proceedings. The Respondent's age and memory may have played a part but his evidence was confused in places and he did not always provide a reply to the question asked, and in parts the Tribunal found him evasive.

14. The Applicant had not opposed the admission of a letter from Mr MG dated 20 October 2014 but received in October 2016. The Applicant submitted that the Tribunal should give limited weight to that letter. It was not in the form of a witness statement and did not contain a statement of truth. The Tribunal read the letter and its exhibits and considered its contents as part of the Respondent's case.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's right 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.

16. **Allegation 1.1 - The Respondent failed to maintain proper books of accounts contrary to Rule 29 of the AR 2011 in that he:**

a) failed to maintain proper accounting records contrary to Rule 29.1 of the AR 2011;
b) failed to appropriately record all dealings with client money contrary to Rule 29.2 of the AR 2011;
c) failed to record dealings with office money relating to client matters and to appropriately record such dealings contrary to Rule 29.4 of the AR 2011;
d) failed to maintain separate books of account for non-sterling transactions contrary to Rule 29.12 of the AR 2011;
e) failed to conduct client account reconciliations at least once every five weeks contrary to Rule 29.2 of the AR 2011;
f) failed to identify shortages contrary to Rule 29.14 of the AR 2011; and
g) failed to justify the use of a suspense ledger account contrary to Rule 29.25 of the AR 2011.

Allegation 1.2 - The Respondent failed promptly, or at all, to remedy the said breaches of the AR 2011 in breach of Rule 7 of the AR 2011 and Principles 4 and 10 of the SCC 2011 in that, having become aware of the breaches, and despite having been afforded time by the SRA to bring the accounting records of the firm into compliance, the Respondent failed to do so.

<u>The Applicant's Case</u>

16.1 During the course of its investigation the SRA found that the Firm's books of account were not in compliance with the AR 2011. At the commencement of the investigation on 17 June 2014 the Respondent was unable to provide the FIO with any accounts as at the extraction date. On 25 June 2014, the FIO attended a meeting with the Respondent and a Mr AO, an accounts manager at the Firm's accountants. Mr AO advised the FIO that the accounts were not up to date and explained that, although all current transactions were being accurately recorded, "brought forward balances could

not be verified and that the accounts were not reliable". The Firm was allowed one week to put the accounts in order.

16.2 On 4 July 2014, the FIO attended a further meeting with the Respondent and Mr MB, a partner at the Firm's accountants. Mr MB explained that there were "shortcomings" in the Firm's accounting records which he indicated were being put right. He conceded that the accounts were not in a satisfactory state. Mr MB was unable to produce a current book of accounts for the Firm; the most recent trial balance available was at 31 March 2014; the client listing as at 31 March 2014 (provided to the FIO) showed overdrawn balances amounting to £106,825.49; and client ledgers had not been maintained for foreign currency transactions. Further there was a debit balance on a suspense account in the sum of £53,094.37 and the brought forward balance was unreliable; the last time the Firm's client account had been reconciled was on 31 March 2013; and past transactions had not been properly recorded in the books of account. Mr MB acknowledged that the books of account were "clearly unreliable" and errors had not been resolved promptly.

16.3 A further extension was accordingly granted to allow the Respondent an opportunity to bring the Firm's accounts up to date. On 23 July 2014, the Respondent advised the FIO that Mr GR had been engaged to attend to the Firm's accounts. Mr GR subsequently provided the FIO with a revised client listing as of 31 March 2014, which reflected debit balances of £95,823.08, together with cash account summaries and a Memorandum explaining the current status of the Firm's accounts.

16.4 In his Memorandum, Mr GR recorded that previous arrangements made "the task of resolving the client overdrawn balances extremely difficult especially in identifying the reasons as to how the balances became overdrawn in the first place." Further that "To track back on individual receipts to the client account and subsequent payment out of any of those funds in 2012 has proved a significant task" and "...there has been difficulty identifying the nature of payments, posted to the suspense account and in fact whether they were client related." He also stated that "The list of twenty overdrawn client balances has now been reduced to eight. This includes the suspense account which still stands at the 31st March figure of £53,094.37. This figure is expected to be paid into the client's account t (sic) from Mel's private funds by Friday of this week [25/07/2014]. Certain queries on the other seven balances remain to be clarified" and that "On another account … a receipt for £20,000 does not show up on the client summary … The receipt has been identified coming in to the client account but as yet no disbursement is identified."

16.5 There was no explanation as to why the debit balance identified on the suspense account, in the sum £53,094.37 as at 31 March 2014, was not remedied immediately and it was not remedied on 25 July 2014. In an interview undertaken by the SRA on 20 August 2014 the Respondent stated that it was to be remedied on that day. The balance was subsequently remedied. In his interview with the SRA, the Respondent agreed that the suspense account had previously been identified in a Qualified Accountant's Report which the Respondent accepted: i) he had read; and ii) had set out what the problems were. At a further meeting on 8 August 2014 the Respondent indicated that he was investigating the implementation of a new computer-based accounting package but no date was provided for implementation of that new package. It was not possible for the FIO to express an opinion as to whether funds

held on the client account were sufficient to cover the Respondent's liabilities to his clients.

The Respondent's Case

16.6 The Respondent admitted these allegations but provided an explanation of how the breaches arose by way of mitigation. The Respondent had been in practice for many years. By the time he set up on his own account in around 2007, the Respondent had not been directly responsible for compliance with the Accounts Rules for a minimum period of about twenty years. He obtained recommendations for accountants and bookkeepers to run his accounts and later employed a consultant to deal with regulation, compliance and administration. Things went well for a number of years. The Respondent's consultant left in 2011 to set up his own firm. In 2012 the Respondent planned to set up an LLP with another solicitor (a former partner) with a view to obtaining SRA authorization and transferring the business to the LLP. This other solicitor would have taken on the roles of COLP and COFA in the proposed LLP. This project did not proceed. During his time at the Firm the Respondent tried to keep up to date with changes to regulation. He read the Law Society's Gazette and attended Law Society training courses. The Respondent still considered it best to employ bookkeepers and accountants to ensure that the Firm complied with relevant regulations.

16.7 Things started to go wrong in 2013. The Respondent had employed a full time bookkeeper who was recommended to him by another solicitor's practice but he left in the middle of his task. Although the Respondent did not realize it until it was too late, his work was not satisfactory. The Respondent also employed, again on recommendation, a chartered accountant, Mr AB whom he had known him for some years. The Respondent was slow in realizing that he was not doing his job properly and in dispensing with his services. Mr AB's duties included supervising the work of the bookkeeper which, according to the Respondent, he failed to do.

16.8 The Respondent employed another firm of chartered accountants, also highly recommended, to maintain proper accountancy records. When interviewed, Mr MB of that firm indicated on 4 July 2014 to the SRA that the most recent trial balance was at 31 March 2014 (i.e. three months late). The Respondent was shocked to learn that he had been let down once again. As a result of this he engaged the services of Mr GR who he knew from his time as a partner at another firm and who was a solicitor with accountancy experience to assist the accountants in bringing the records up to date. Before Mr GR could complete his task the intervention occurred and the Respondent was unable to continue to rectify the issues with the Firm's accounting records.

16.9 The Respondent acknowledged that responsibility for ensuring compliance with the Accounts Rules lay with him. He deeply regretted that he was unable to demonstrate full compliance. The Respondent had believed that employing staff to fulfil this function was the best way to ensure compliance but now realized that he should have ensured closer oversight of the bookkeeping and accounting functions of the Firm.

The Tribunal's Findings

16.10 Allegations 1.1 and 1.2 were admitted.

16.11 Allegation 1.1 related to a failure to maintain proper books of accounts contrary to Rule 29 of the AR 2011. There were seven parts to the allegation set out as (a) to (g) in paragraph 1 above. The Tribunal considered each sub-allegation and was sure beyond reasonable doubt that allegations 1.1 (a), (b) and (d) to (g) were proved beyond reasonable doubt. However it could not be sure that allegation 1.1 (c) was proved beyond reasonable doubt. That alleged that the Respondent failed to record dealings with office money relating to client matters and to appropriately record such dealings contrary to Rule 29.4 of the AR 2011. The Tribunal could not identify any evidence specifically relating to this allegation.

16.12 Allegation 1.2 related to the Respondent's failure to remedy the said breaches of the AR 2011 promptly or at all in breach of Rule 7 of the AR 2011 and Principles 4 and 10. The Respondent had known about the deficit on the suspense ledger for some time and had not rectified when he said he would (albeit he did rectify it eventually). Having a deficit on the suspense account and having accounts that were not maintained in the proper manner could not be seen as the actions of a solicitor who was acting in the best interests of his client. A client had a right to expect that a solicitor would protect their money and assets. The Tribunal was satisfied beyond reasonable doubt that allegation 1.2 was proved.

17. **Allegations 1.3 to 1.8**

17.1 The factual matrix for Allegations 1.3 to 1.8 was the same. There were six transactions which related to California Natural Tomato Products Holding Limited ("CNTP"), Swiss Garantie (Issuance) Limited ("Swiss Garantie"), T-Net Asia Corporation Limited ("T-Net"), Mox Telecom Arabia FZLLC ("Mox"), Mr BO and Mr SM. Separately, there was also the sale of a property by a mother and son. The alleged facts in relation to each transaction have been set out under the most relevant allegation but the Applicant's case and the Respondent's case should be read as a whole in relation to these allegations and the lack of specific reference to a fact and/or submission under any given heading does not mean that the Tribunal did not take it into account when considering the relevant allegation.

17.2 The FIR recorded that, from March 2011 to August 2014, the Firm was instructed on a total of twenty one high value financial transactions. In the course of acting in these transactions the Respondent acted for Goldmoss Limited ("Goldmoss"), a BVI registered company which had its principal place of business in South Africa, with offices in Dubai. Instructions were received from Mr MG, the managing director of Goldmoss. The Respondent also acted for ND Consultancy and Coppercast Limited (BVI) ("Coppercast"), both associated with Goldmoss. In relation to these entities instructions were received from Mr MC. The Firm also acted for various third parties, including investors/borrowers, during the course of the transactions.

17.3 The general format of these transactions was that Goldmoss, ND Consultancy and Coppercast acted as authorised representatives ("the ARs") for various financial institutions, primarily General Equity Building Society, Auckland, New Zealand ("GEBS"). The transactions provided for high value non-sterling credit instruments to be issued by a financial institution, routinely GEBS, in exchange for which the ARs would receive a specified fee/premium. The credit instruments varied from case to case but were usually in the form of an enhanced letter of credit on non-depletion

loans. The credit instruments issued would in some cases be backed by what purported to be a bank guarantee. Funds, constituting the specified fee/premium, would be lodged into the Firm's client bank account in advance of the credit instrument being issued. The Firm was required to issue an undertaking to the ARs to hold the funds to their order pending confirmation that the credit instrument was in place. Upon confirmation that the credit instrument had been received by the investor/borrower, the fee would be disbursed in accordance with the ARs instructions. All documentation relating to the transaction was prepared in advance by the ARs and provided to the Respondent as a fait accompli.

17.4 On or about 7 September 2011, the Respondent was instructed in connection with an agreement between Goldmoss and CNTP which provided for a loan facility in the sum of US$100,000,000.00 to be provided by GEBS to CNTP, purportedly to facilitate the borrower's proposed business activities secured against a Deutsche Bank guarantee. This transaction will be referred to as the CNTP transaction.

17.5 On or about 6 January 2012, the Respondent was instructed in relation to a purported investment agreement between Goldmoss and T-Net, an entity located in Seoul, Korea. There was an agreement between Goldmoss and T-Net dated 9 January 2012. This transaction will be referred to as the T-Net transaction.

17.6 On or about 15 August 2012, the Firm was instructed in relation to a purported investment agreement between Goldmoss and Mox. Prior to the receipt of documents from GEBS, €180,000.00 was sent to the Firm by Mox on 25 September 2012. In total, €821,919.00 was sent by Mox in eight separate payments between 25 September 2012 and 28 January 2014. A further €20,000.00 was also credited on 5 November 2012. This transaction will be referred to as the Mox transaction.

17.7 The Respondent was instructed by Water Our World Investment Scheme ("WOW") in relation to investments made by Mr BO and Mr SM. WOW was represented by a Mr GE. The principle business of WOW was understood to have been water purification technology. It was stated that WOW was a charitable company and that was the Respondent's understanding at the relevant time. The transaction involving WOW and Mr BO will be referred to as the WOW/Mr BO transaction and the transaction involving WOW and Mr SM will be referred to as the WOW/Mr BO transaction.

17.8 On 2 November 2011 the Respondent received instructions from Mr GE, on behalf of WOW, in respect of an investment to be made by Mr BO in the sum of €3,000,000.00. In the WOW/ Mr BO transaction, the nature of the transaction/investment was set out in a, "term sheet" dated 19 October 2011. Pursuant to this term sheet it appeared that an agreement had been reached between Mr BO and WOW as regards the former investing the sum specified in an investment fund, the stated purpose of which being the "establishment of regulated fund in Singapore and Investment into the ELIX 36 Fund registered and regulated in Luxembourg."

17.9 On or about 17 October 2011 the Respondent was instructed on behalf of WOW in respect of an investment to be made by Mr SM in the sum of US$2,000,000.00. The nature of the transaction/investment was set out in a "term sheet" dated 3 November 2011. Pursuant to this 'term sheet' it appeared that an agreement had

been reached between Mr SM and WOW in relation to the former, as with Mr BO, investing the sum specified in an investment fund, the stated purpose of which once again being the "establishment of regulated fund in Singapore and Investment into the ELIX 36 Fund registered and regulated in Luxembourg."

17.10 On 26 February 2014, the Respondent was informed by a Mr NS, purportedly Chairman of Conduit Services Limited, that a deal was, "being assembled for a Capital Guarantee via Swiss Garantie Ltd and the Ricom Trust" and that the Firm had been specified as the "Escrow Agent" by Ricom Trust ZAO ("Ricom Trust"). Mr NS further advised that the loan amount would be for €112,500,000.00 and that the premium payment would be £15,000,000.00. Additional lenders ultimately participated in the transaction. Thirteen separate individuals/entities transferred the sum of US$3,645,723.46 into the Firm's client account ("the Third Party Investors"). The funds received from the Third Party Investors between 7 May 2014 and 12 June 2014 were paid out at the direction of Coppercast to multiple individuals with accounts in, inter alia, Geneva, Dubai, America, Bulgaria and Latvia. Whilst the nature of and background to the involvement of both Mr NS and Conduit Services Limited was unclear, the FIO established that Swiss Garantie was a Limited Company registered in Hong Kong. This transaction will be referred to as the Swiss Garantie transaction.

17.11 The Respondent was instructed to act on behalf of Mrs H and Mr EH in the sale of a property. Mr LHA gave instructions pursuant to a power of attorney for Mrs H. This transaction will be referred to as the sale transaction.

18. **Allegation 1.3 - The Respondent used the client account of his firm inappropriately by using it as a bank facility for clients, contrary to:**

a) Rule 14.5 of the AR 2011 and/or, where such use took place prior to 6 October 2011;

b) Rule 15 of the Solicitors Accounts Rules 1998 ("SAR 1998")

in that, in a number of matters, the Respondent allowed funds to be paid into, and out of, client account when it was unnecessary and inappropriate as there was no underlying legal transaction in which he was conducting reserved legal work to which such payments were linked.

The Applicant's Case

18.1 Rule 14(5) of the AR 2011 stated: "You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities." The guidance note (v) of the rule provided that "Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. It should be noted that any exemption under the Financial Services and Markets Act 2000 is likely to be lost if a deposit is taken in

circumstances which do not form part of your practice. It should also be borne in mind there are criminal sanctions against assisting money launderers."

18.2 Prior to the introduction of the AR 2011, the guidance note (ix) to Rule 15 of the SAR 1998 provided that "In the case of Wood and Burdett (case number 8669/2002 filed on 13 January 2004), the Solicitors' Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if a deposit is taken in circumstances which do not form part of a solicitor's practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."

18.3 The Firm provided no solicitorial input and merely acted as a conduit for the transmission of funds received. For this "service", the Respondent charged an hourly rate of £500.00. No client ledgers were maintained by the Respondent in respect of any of the transactions. There was no evidence that the Respondent had any involvement in the documentation other than receiving the completed documents. Ms Carpenter, on behalf of the Applicant, submitted that many of the six transactions were circular in nature.

<u>The CNTP Transaction</u>

18.4 In the CNTP transaction, pursuant to a letter dated 7 September 2011, the Respondent advised the director of CNTP Mr AG, that he was prepared to act on behalf of his company and to hold to its order the fee of US$2,000,000.00, "payable under the agreement to the order of Goldmoss, upon the agreement being complied with by Goldmoss Limited". These funds were received into the Firm's client bank account on 14 September 2011. Although the documents referred to Deutsche Bank, there was no evidence of any correspondence or other documents having been sought or obtained from Deutsche Bank on file. There was also no evidence on file as to the nature of the business activities of CNTP or the exact purpose of the loan. The loan was a "revolving loan facility".

18.5 That same day, the Firm issued an undertaking to Goldmoss stating that they were holding the sum of US$2,000,000.00 in cleared funds and would release the said funds to their order, subject to a deduction of legal fees in the sum of US$25,000.00, on receipt of written confirmation that the account of CNTP reflected a credit balance of US$100,000,000.00. At 15:26 on 14 September 2014 the Respondent received confirmation by email from a Mr MW that the sum of US$100,000,000.00 had been credited to CNTP. The email attached a form of confirmation from GEBS. Mr MW's email was sent from a Hotmail address. The Applicant suggested that it was highly unusual for a purportedly bona fide, multi-national organisation dealing with transactions of this magnitude to operate a Hotmail email account.

18.6 Instructions were received by the Respondent from Goldmoss by letter dated 14 September 2011 as to the distribution of the funds which were effected on 15 September 2011. Despite the nature and scale of the payments, no client ledger was maintained in respect of them. The FIO reconstructed a ledger from the Firm's bank statement setting out the source and application of the funds. Funds were

distributed in round sums to nine recipients in various countries. The recipients included Dr WPB who was purportedly the Head of Treasury and Credit at GEBS.

18.7 On 15 September 2011, the Firm rendered a bill in the sum of US$25,000.00 which was credited to the Firm's office account that same day. This was despite the fact that there was no evidence of any substantive legal work having been done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Goldmoss.

The T-Net Transaction

18.8 In the T-Net transaction, on 10 January 2012, the sum of US$199,975.00 was lodged into the Firm's client bank account "by order of" Mr CW. On 10 January 2012, namely the same day as funds were received, the Respondent was informed by Mr MG that this sum was a deposit in respect of a US$2,000,000.00, "standby letter of credit" from GEBS. On 16 January 2012, MM of Coppercast forwarded by e-mail an agreement entered into between Goldmoss and T-Net which was dated 9 January 2012. It is unclear what, if any, involvement Mr CW had with the agreement, with T-Net or with the transaction generally, notwithstanding the receipt of funds from him.

18.9 On 18 January 2012, payment instructions were received from Goldmoss as regards the funds previously sent by Mr CW. There was no client ledger on file but the Firm's bank statements showed the application of the funds to multiple individuals with accounts in, inter alia, Abu Dhabi, Kuala Lumpar, Dubai and Frankfurt. The payees included Dr WPB, as an individual and GEBS. A payment of US$21,500.00 was also made to an account in the name of MM. No substantive legal work was done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Goldmoss. On 19 January 2012, the sum of US$6,000.00 was credited to the Firm's office account.

The Mox Transaction

18.10 In the Mox transaction, the fee purportedly due to Goldmoss was €320,000.00 which was to be paid in two separate tranches. There was no explanation as to why additional funds were sent, including the basis for the transfer of €20,000.00, other than it being suggested that the agreement was extended. On 28 September 2012, payment instructions were received from Goldmoss in relation to the initial receipt of €180,000.00. There was no client ledger in respect of this matter but the Firm's bank statements showed the payments made. Funds were sent to multiple individuals with accounts in, inter alia, Dubai, Latvia, Kuala Lumpar, Blackpool and Frankfurt. It was not apparent what, if any, instructions were received in relation to the additional funds paid to the Firm. The funds were similarly remitted to multiple individuals including Dr WPB and GEBS. No substantive legal work was done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Goldmoss. The sum of US $32,000.00 was credited to the Firm's office account.

The Swiss Garantie Transaction

18.11 On the Swiss Garantie Transaction, there was no client ledger in respect of this matter but the ledger, reconstructed by the FIO from the Firms' bank statements, showed payments which included the sum of US$1,000,000 to Dorax, the sum of US$2,500.00 to Dr WPB and the sum of US$164,468.20 back to Quantum Leben. No substantive legal work was done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Coppercast (and/or Swiss Garantie). Nevertheless, on 12 June 2014, the Firm rendered a bill in the sum of US$48,000.00, which was credited to the Firm's office account that same day.

The WOW/Mr BO and the WOW/Mr SM Transactions

18.12 In the WOW/Mr BO transaction, the Respondent was also acting for Mr BO in relation to the purported transaction and on 2 November 2011 a client care letter was sent to him. It was not apparent that the Respondent had any involvement in relation to the agreement reached, and the term sheet pre-dated the Respondent's instructions. The steps that were to be taken by the parties, in furtherance of the investment, included that Mr BO was to deposit the investment amount of €3,000,000.00 in a "Lawyer's account, Isle of Man"; Mr BO was to enter into an agreement with the 'Lawyer' that the funds would only be transferred to WOW once it had obtained a bank guarantee, to be issued by Barclays Bank PLC, "or similar bank", accepted by the 'Lawyer' on behalf of Mr BO, for 115% of the investment and the investment funds were to be paid to the 'Lawyer' which was to confirm receipt to WOW. Once the guarantee had been, "received and accepted" by the 'Lawyer' they were to transfer the funds to a WOW account. The guarantee was to be held by the 'Lawyer' to be released in exchange for the original investment amount to WOW on completion of the, "Agreement Period of Investment" (which was not seemingly defined). On the basis that the Respondent was instructed on behalf of Mr BO and facilitated these steps, there being no suggestion that any other 'lawyer' (from the Isle of Man or otherwise) was instructed, it was alleged that he assumed responsibility to act in accordance with the term sheet which set out, at least in part, the scope of his instructions and what Mr BO expected of him.

18.13 On 10 November 2011 the sum of €3,000,000.00 was lodged into the Firm's client account. The funds from Mr BO were not invested in the manner provided for in the term sheet or placed into a non-depletion account. The Firm's bank showed the application of the funds to multiple individuals with accounts in, inter alia, Kuala Lumpar, South Africa, Dubai and Frankfurt and these payees included, once again, Dr WPB and GEBS.

18.14 An attendance note dated 15 November 2011 recorded further instructions being provided, this time by Mr GE, in relation to Mr BO's remaining funds. In circumstances where no instructions were taken from Mr BO, the sum of €1,600,000.00 was paid to a Mr EO'B, at an accountants firm, on 16 November 2011 seemingly without Mr BO's knowledge or consent. The FIO was unable to establish why the sum was paid. It was not apparent if the Respondent made any enquiries as regards the purpose or nature of this payment.

18.15 On 18 November 2011 funds were transferred into the Euro account in which Mr BO's funds were held from the Firm's US $ account in the sum of €1,225,299.35 and the sum of €1,499,958.68 was paid to Morning Star Ventures Ltd

("Morning Star") in Monaco. It was not apparent from whom, if anyone, the Respondent took instructions in relation to these or subsequent payments from the relevant account which are recorded in the ledger reconstructed by the FIO, there being no ledger kept by the Firm. No substantive legal work was done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Goldmoss. Nevertheless, on 14 November 2011, and 5 December 2011, the sum of €16,000.00 was credited to the Firm's office account in relation to its fees.

18.16 In the WOW/ Mr SM transaction it was not apparent that the Respondent had any involvement in relation to the agreement reached. The Respondent was also instructed to act for Mr SM in relation to the transaction on or about 7 November 2011. Client care letters were sent to Mr GE, on behalf of WOW, and to Mr SM on 17 October and 7 November 2011 respectively. The 'term sheet' was in near identical terms to that in Mr BO's transaction.

18.17 The funds from Mr SM were not invested in the manner provided for in the term sheet or placed into a non-depletion account. The Firm's bank account showed the application of the funds to multiple individuals with accounts in, inter alia, Sydney, Kuala Lumpur and the UAE. The payees included Dr WPB and GEBS. A payment of US$50,000.00 was also made to an account in the name of Mr GE. No substantive legal work was done by the Firm and the client account was effectively used as a conduit for the transmission of funds to the order of Goldmoss. On 18 November 2011 the sum of US$10,000.00 was credited to the Firm's office account in relation to its fees. Also on 18 November 2011 funds were transferred into the Euro account in which Mr BO''s funds were held from Mr SM's funds in the Firm's US$ account in the sum of US$1,225,299.35 and the sum of €1,499,958.68 was paid to Morning Star. A further payment was also made on 21 November 2011 to Knowledgeworkx Ltd. It was not apparent from whom, if anyone, the Respondent took instructions in relation to these payments.

All Six Transactions

18.18 The Applicant's case was that in respect of the receipt and payment of funds there was no underlying legal transaction(s) nor was any reserved legal activity being undertaken by the Firm. The payments and receipt of funds made through the Firm's client account could just as easily have been made through a normal clearing bank. No explanation was provided to the Firm as to why the funds were disbursed in the manner instructed. It was accordingly alleged that the Respondent made improper use of the Firm's client account, operating it as a bank facility in breach of Rule 14.5 of the AR 2011 and/or Rule 15 of the SAR 1998.

18.19 In Ms Carpenter's submission a solicitor of the Respondent's knowledge and experience would have been aware that there needed to be an underlying legal transaction. Ms Carpenter referred the Tribunal to the cases of Patel v the Solicitors Regulation Authority [2001] EWHC 3373 (Admin) and Fuglers LLP v the Solicitors Regulation Authority [2014] EWHC 179 (Admin). In her submission, the Respondent was acting like a bank. If the work that the Respondent was doing was purely administrative and had no association with the professional duties of a solicitor and was not in relation to an underlying legal transaction then this was not a permitted use

of client account. Here the Respondent checked the GEBS guarantee against a draft and if the documents matched he paid out. This was what bankers do.

18.20 The Rule 5 Statement had referred to "no underlying legal transaction in which he was conducting reserved legal work to which such payments were linked". Rule 14.5 stated "Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities." Reserved legal work and normal regulated activities were not one and the same. Both were defined in the Legal Services Act 2007. It was the Applicant's case that the allegation related to there being no underlying transaction (and the funds arising therefrom) or to a service forming part of the Respondent's normal regulated activities and that the reference to reserved legal work was an error. In the Applicant's view the fact that this was an error was clear from the paragraphs that were relied on in the Rule 5 Statement in support of the Applicant's case. The key issue was whether or not the payments in and out were related to legal work and in the Applicant's view they were not and there was no underlying legal transaction.

18.21 The SRA had issued a warning notice on 10 September 2013 in respect of high-yield investment fraud. This warning notice set out a number of common characteristics of such fraud and warned that fraudsters involved lawyers for a number of reasons and that there were a number of types of legal services that promoters might request including moving monies through client account. Although five of the six transactions pre-dated this warning notice the Respondent had in his interview with the FIO on 20 August 2014 confirmed he was aware of the SRA's warning notices and indicated that he kept a copy of the "yellow card" in his desk.

18.22 There had been an earlier Law Society warning in respect of banking instrument fraud. This was issued in 1997 and the SRA had never withdrawn it. There had been a number of warnings over the years. The FIR referred to a warning notice in respect of fraudulent financial arrangements issued in April 2009 and this was applicable at the time of the transactions. There was also a warning on money laundering that had been updated in April 2009.

18.23 On 29 September 2014 the New Zealand Financial Markets Authority had issued a warning to the public about GEBS, warning any persons dealing with it to exercise extreme caution before obtaining any financial services, or acquiring any financial products. This warning confirmed that GEBS was not a licensed financial markets participant in New Zealand and was not a New Zealand bank or a non-bank deposit taker. There was also a warning on GEBS' website about people acting in an unauthorised way on its behalf and stating that GEBS would be happy to confirm or authenticate instruments issued by them. The FIO drew the Respondent's attention to this in interview on 20 August 2014 and informed the Respondent that it had been there for some time.

18.24 The Applicant's position was that there was a conflict between what the Respondent was doing (acting as a bank) and what he was required to do. However, all of the Principles were in play as this activity was in connection with his practice, not something in his private life.

The Respondent's Case

18.25 In advance of his witness statement it appeared that the Respondent admitted allegation 1.3. In his witness statement he said that he was not in a position to admit the allegation. In cross-examination the Respondent appeared to admit the allegation but it was Ms Heley's position that the Respondent did not understand what he was admitting.

18.26 It had always been the Respondent's understanding that holding escrow accounts was a normal part of a solicitors' business. He had understood that he was acting as an escrow agent and that this was something that solicitors routinely did. The Respondent understood that the SRA's recent approach to interpretation of Rule 14.5 was to concentrate on whether or not there was an underlying transaction in respect of each payment made into or out of client account and that the second limb of Rule 14.5 – "services forming part of normal regulated activities" was generally overlooked.

18.27 Given the passage of time and without access to any of the underlying documentation, the Respondent was not able to comment in any detail on the payments made into and out of his client account. It was the Respondent's case that he had been advised by Mr MG of Goldmoss and Coppercast that the list of payments appearing at paragraph 68 of the Rule 5 Statement were payments of fees and interest to GEBS (£750,000) and payment of fees to other interested parties being the broker of the deal and partners, directors or shareholders of Goldmoss who were entitled to a specified share of fees charged by Goldmoss. GEBS had confirmed in a letter dated 24 August 2015 that they were aware of payments being made to Dr WPB. Exotic Rent A Car LLC was an entity connected with Goldmoss.

18.28 In general terms, the Respondent said that he received funds which represented fees and interest in respect of the issue of international banking instruments including letters of credit and bank to bank guarantees. Those funds were to be held to the order of the sender until specified conditions were met and then they were to be distributed in accordance with the instructions of the person entitled to the fees – principally Goldmoss or Coppercast in the cases exemplified by the SRA. In each case, there was a legitimate reason for the payment and (notwithstanding the allegations made against the Respondent), he believed that proper due diligence had been conducted on each of the persons making payments into his client account. The payments made out of his client account were to discharge fees payable from the monies held and made on instructions given in writing in accordance with Rule 20.1(a) and/or 20.1(f) of the SRA Accounts Rules 2011.

18.29 The Respondent was unsure of the extent of the SRA's case in relation to allegation 1.3. It was unclear to him how the SRA could assert that he was instructed in transactions in relation to allegations 1.4 – 1.7 and yet asserted that he was not instructed in relation to allegation 1.3. The Respondent argued that the SRA had not made clear which payments were said to have been made in breach of Allegation 1.3; the allegation itself says "a number of matters" but then referred to "reserved legal

work". Rule 14.5 was not limited to underlying transactions in connection with reserved legal work. If it were, every commercial transaction or estate administration undertaken by every firm in England would, in the Respondent's view, likely involve a breach of Rule 14.5.

18.30 The Respondent was aware of the SRA Principles and the contents of the code of conduct. He knew a solicitor should not act if it was inconsistent with the solicitor's duties and that he could not act if he did not understand the transaction. He said that clients felt more confident when money was paid into a solicitor's account.

18.31 Ms Heley acknowledged that the Respondent's role in the Goldmoss/Coppercast transactions was execution only. It was conceded that, given this, there was a lack of solicitorial input and any underlying transaction, and there was at least a risk of breach of Rule 14.5. Ms Heley argued that it was part of a solicitor's normal business to operate an escrow account if this was related to the solicitor's normal regulated activity. If the solicitor was acting outside their normal regulated activity then not all of the Principles would be engaged.

The Tribunal's Findings

18.32 The Tribunal treated the allegation as denied given the Respondent's equivocal admission and the submissions of Ms Heley.

18.33 Rule 14.5 of the AR 2011 stated: "You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities." Rule 15 of the SRA 1998 made provision in respect of use of a client account and note (ix) to that Rule provided that solicitors should not provide a banking facility through a client account. The reference in allegation 1.3 to reserved legal work was a drafting error and the Tribunal did not consider that the Respondent had been misled. The factual background to the allegation was quite clear.

18.34 The Tribunal considered each of the six transactions and what the Respondent was actually doing. The Respondent was operating escrow accounts. The Tribunal noted that the Respondent did give a number of undertakings not to do certain things until specified conditions had been met. On the Swiss Garantie matter the Respondent entered into a tripartite agreement with Dorax to act as a trustee. The Tribunal concluded that in respect of these six transactions the Respondent was not giving advice, his role was to check that documents matched.

18.35 There was no reason why the Respondent could not have made the payments, from the monies he received, to Goldmoss, enabling them to then make the various third party payments from those funds. The payments out to various payees were not related to an underlying legal transaction or a service forming part of the Respondent's normal regulated activities. The Tribunal did not accept that Rule 20.1 (a) or (f) justified the making of payments to multiple payees for the clients' convenience. When the Respondent had received payments in from thirteen separate individual/entities on the Swiss Garantie transaction he was taking the role of a bank.

He was not providing any solicitorial services to those who made the payments in and was not acting for them.

18.36 On that basis allegation 1.3 was proved beyond reasonable doubt.

19. **Allegation 1.4 - The Respondent failed to comply with legislation applicable to his business, namely anti-money laundering, contrary to Outcome 7.5 of the SCC 2011 and/or in relation to the period prior to 6 October 2011, Rule 5.01 of the SCC 2007, in that:**

a) there were instances where funds were paid into his firm's client account without any satisfactory due diligence having taken place as to the source of funds or any satisfactory due diligence with regard to the recipient of payments made out of client account; and

b) he failed to comply with Regulations 5 and 7 of the ML R on the basis that he failed to take adequate steps to verify clients' identity.

The Applicant's Case

19.1 The Respondent was required to comply with the MLR and in particular Regulations 5 and 7. There were considerable guidance and warnings issued by the Law Society and the SRA in respect of money laundering and fraudulent financial arrangements/transactions. Warning signs in relation to money laundering included:

- Payments from a third party where the source of funds cannot be verified;
- Payments to unrelated third parties; and
- Movement of funds between accounts, institutions or jurisdictions without reason.

19.2 Warning signs in relation to fraudulent financial arrangements/transactions included:

- The promise of unrealistically high returns;
- Deals forming part of larger deals involving millions, or billions of pounds, dollars or other currencies;
- Any advance fee payable to secure future lending or to buy into an "investment" process;
- Confusing and complex transactions involving misleading descriptions or ill-defined terminology; and
- Vague reference to humanitarian or charitable aims.

19.3 In the course of an Indemnity Interview with Mr Pooles QC, acting for the Respondent's insurers, on 1 November 2013, the Respondent confirmed that he was aware of his obligations including those imposed by the Law Society and the SRA

regarding money laundering and bank instrument fraud and with the warnings themselves. In his interview with the SRA on 20 August 2014 the Respondent confirmed he was aware of the SRA's warning notices and indicated that he kept a copy of the "yellow card" in his desk. There was evidence of client due diligence having been undertaken in respect of Goldmoss and Mr MG.

19.4 A number of purported transactions were reviewed by the FIO who had had to reconstruct the ledgers from the Firm's bank statements. €841,919.00 and US$7,451,333.77 was received into the Firm's client account in the course of acting in eighteen transactions and fees were charged by the Firm in the amount of €31,000.00 and US$121,942.11. The FIO had exemplified six of these transactions in the FIR.

The CNTP Transaction

19.5 The contractual/financing documentation found on the Respondent's files pertaining to these purported transactions shared a number of unusual, suspect and/or irregular features, including that they were complex and confusing. For example, in respect of the CNTP transaction there was a document whose purpose was stated to be an agreement providing for Goldmoss to procure for "the Borrower" a US$100,000,000.00 loan facility at GEBS. However:

a) It was unclear why the Borrower could not approach GEBS direct in the event that this was a bona fide transaction;

b) There were seemingly no warranties provided by Goldmoss;

c) The purpose of the 'loan' was stated only to be to "facilitate the Borrower's proposed business activities." The nature of those business activities was unclear;

d) There was reference to the loan facility being secured against a Deutsche Bank guarantee, the nature and effect of which was unspecified and no documentation from Deutsche Bank had been located;

e) In addition to an initial payment to Goldmoss in the sum of US$2,000,000.00, seemingly for doing no more than arranging the loan, further payments were due under the agreement for i) 1% of the loan amount, on successful closing/refinancing, of each Deutsche Bank or other agreed bank guarantee of credit instrument; and ii) US$3,000,000.00 on the monthly extension/rollover of the facility should the Borrower elect to extend the facility. Not only were these terms and events not defined, the agreement seemed to refer only to a single guarantee being obtained;

f) Despite GEBS, purportedly the lender, not being party to the agreement, clause 5 contained repayment terms in relation to the principle loan sum. This clause also appeared to suggest that the full amount of US$100,000,000.00 was 'initially' repayable in just 31 days. Should the loan be extended beyond 31 days a further US$3,000,000.00 was to be paid to Goldmoss. There was no explanation as to why the Borrower would wish to enter into such a significant loan transaction for just 31 days. It also seemingly could not be repaid in part;

g) Whilst the 'purposes' clause referred to the borrowing being secured against a Deutsche Bank guarantee, this conflicted with clauses 7 and 8 which seemingly provided for the security taking the form of a bank guarantee or 'bank debit instruments' with either UBS or Deutsche Bank;

h) Clause 6A required the Borrower, "to ensure that it will be able to make use of the Loan Facility in accordance with this agreement." The meaning of this provision was unclear; and

i) The contact details for both parties include a Hotmail account and an account that made no reference to the Borrower.

19.6 The document contained unclear and/or ill-defined language, terms and terminology. For example, with reference to the same agreement:

a) Whilst the loan amount of US$100,000,000.00 was defined as the "Loan Sum", the agreement variously referred to it as the loan facility, the revolving loan facility, the loan amount, the loan, the loan monies and the facility;

b) It stated that "principal bank, senior unconditional as to payment and non-subordinated bank guarantees/bank debit instruments" will be accepted as security for the loan, none of which were defined;

c) The agreement was said to be "made this seven day of September 2011";

d) Pursuant to the agreement the Borrower must ensure that it would be "able to make use of the Loan facility", without any further specification; and

e) Payments were purportedly due to Goldmoss as a consequence of specific events that were ill-defined (clause 4).

19.7 The documents were signed and dated prior to being received by the Respondent. There was no evidence that he had any involvement in the documentation other than simply receiving them as completed documents.

19.8 In respect of CNTP the letter dated 7 September 2011 from the Respondent to the director of CNTP, Mr AG, the Respondent made explicit reference to the fact that he had "sufficient insurance coverage protecting the US$2,000,000 that we are to hold." It was suggested that the reference to insurance served to add legitimacy and respectability as highlighted in the SRA's Warning Notice regarding Fraudulent Financial Arrangements.

19.9 A letter dated 13 September 2011 was subsequently sent to the Respondent from Morgan Keegan & Co (understood to be a US financial institution) confirming that funds in the sum of US$2,000,000.00 had been, "wired" to the Respondent. Despite the fact that the Respondent was purportedly acting for CNTP, the letter refers to funds having been sent, "on behalf [Mr BR]" having "been wired from [Mr BR's] money market fund at Morgan Keegan & Company and are good, collected funds." The letter also stated: "Mr. [BR] has been a client of mine for over 24 years. I have known Mr. [BR] personally and professionally for over two decades and I can attest to

his character and integrity. As such, I am confident you will find your interaction with Mr. [BR] to be professional and above reproach." It was not apparent why the funds were sent by Mr BR and not CNTP and there was no evidence that the Respondent undertook any enquiries in this regard. There was also no evidence that the Respondent undertook any enquiries as to the source of these funds.

19.10 Copies of Mr BR's passport and utility bill were sent to the Firm under cover of a letter from Kizer, Hood and Morgan LLP of Louisiana, USA, and a signed copy of the client care letter was received on 12 September 2011. The Respondent was provided with a copy of the agreement entered into between the parties, dated 7 September 2011 and which was already signed by Mr AG, not Mr BR, on 12 July 2011. Funds in the sum of US $2,000,000.00 were received and lodged into the Firm's client bank account on 14 September 2011.

19.11 The client matter file did not contain any due diligence as to the recipients of the disbursed funds. It was alleged that alarm bells should have rung with the Respondent as to the legitimacy of the "transaction" when considering some of the recipients of the funds. It was particularly noteworthy that funds were sent to Dr WPB personally in the sum of US$350,000.00 to a bank account in Malaysia, and GEBS itself in the sum of US$750,000.00. In circumstances where CNTP was purportedly obtaining a loan facility from GEBS, these payments appeared highly suspect. It was alleged that the payment of US$245,000.00 to Exotic Rent-a-Car LLC should have at least encouraged the Respondent to make further enquiries.

<u>The Swiss Garantie Transaction</u>

19.12 Swiss Garantie was purportedly represented by a Mr SJ under a Power of Attorney dated 6 June 2014 and Ricom Trust was a Russian Trust company registered in Moscow. The Power of Attorney was on the face of it highly unusual and/or suspect. It was drafted in extraordinarily wide terms and there was no explanation as to why Swiss Garantie would enter into a Power of Attorney of this kind or why it could be necessary. It was also signed by individuals purportedly acting on behalf of Carpe Diem Business Services Limited and Quality Management Group Limited. Whilst the former was stated to be the Director, the relevance of the latter company was unclear. It was not signed by the "Attorney". Swiss Garantie also changed its name from Star Ship HK Limited on the same day as the Power of Attorney was purportedly entered into. As regards Mr SJ, a copy of his passport was on the Respondent's file. There was no evidence as to his having any connection with Swiss Garantie.

19.13 A Company Search identified that an individual with that name and the same date of birth is, or was, a director of a variety of UK companies, including Integral Limited. An internet search identified a BBC report which confirmed that Mr SJ "…appeared in the Companies Court in February 2013. His company, [name redacted] Limited, was being liquidated. In the published court documents, the judge, Richard Snowden QC, said he did not have "faith in the truthfulness or accuracy of the evidence" by Mr [SJ]. He added that evidence to the court must be accurate true and reliable but Mr [SJ]'s evidence "demonstrably fails the test". In the absence of a credible explanation, he said he was "driven to the conclusion that Mr [SJ]'s original evidence was untrue and a wholly improper attempt to mislead the court." There was no evidence that the Respondent had made any such searches nor that the Respondent

was aware of the matters which would have been revealed if he made such searches. Notwithstanding the extraordinary terms of the Power of Attorney and the absence of any, or any clear, reason for the involvement of Mr SJ, it was not apparent that the Respondent undertook any client due diligence other than obtaining a copy of his passport.

19.14 There was no evidence that the Respondent had performed any client due diligence in relation to Ricom Trust. In interview the Respondent indicated that the Ricom Trust was, in this transaction, the equivalent of GEBS. The Respondent was provided with a copy of an agreement dated 1 May 2014 entered into between Coppercast and Swiss Guarantee. There was a separate 'Premium and Commissions Agreement' dated 1 May 2014 and on 6 June 2014 the Respondent entered into a tripartite 'Escrow Agreement' with Dorax Limited ("Dorax"), a company registered in Cyprus. Unusual, suspect and/or irregular features of the agreements included that:

a) The sums involved were considerable: Coppercast was agreeing to procure, for the benefit of Swiss Garantie, a letter of guarantee from Ricom Trust in the sum of US$150,000,000.00 together with a financial guarantee from Allianz S.P.A for the same sum. There was no evidence of any correspondence from Allianz S.P.A on file.

b) Pursuant to the 'Premiums and Commissions Agreement' dated 1 May 2014, in consideration for arranging for the service provided, Swiss Garantie agreed to pay to Coppercast an initial US$50,000.00 as a "file opening/commitment fee" followed by the sum of US$4,800,000.00 by way of "bank wire" to the client account of the Firm.

c) The purpose of the guarantee was to "secure a financial arrangement, arranged and managed by the client". It was unclear precisely what, if anything, was being guaranteed.

d) The nature and purpose of the 'Escrow Agreement' with Dorax was unclear. For reasons which were also unclear, and extraordinarily complex, the 'Escrow Agreement' seemingly provided that Dorax had agreed to issue certain financial instruments through the Ricom Trust to a bank nominated by Goldmoss. Goldmoss had then agreed to pay to Dorax a commission of 2.5% of the value of the instrument, amounting to US$1,000,000.00, on confirmation of receipt of SWIFT evidencing the issue of the instrument (letter of guarantee) and issuing the financial guarantee at a named notary public in Italy.

19.15 The Firm was subsequently provided with a, "Ricom Guarantee", together with a "Financial Guarantee" purportedly from Allianz S.P.A for US$40,000,000, notarially certified on 6 June 2014 by notary public ELM but unsigned, together with correspondence from Swiss Garantie authorising the payment of travel costs for the head of international at Ricom to attend the closing transaction, the payment of 0.2% of the "escrow funds" to the notary public responsible for certifying the deeds and an undated promissory note to Ricom. The "Ricom Guarantee" and "Financial Guarantee" were similarly complex and contained confusing and/or ill-defined terms and terminology. In contrast to the underlying agreement, the "Ricom Guarantee" was stated to be, "transferrable, assignable and divisible without notification" (the

precise meaning of which was unclear) and the "Financial Guarantee" was governed by Italian Law. The Notarial Seal had also not been independently authenticated. The background to and nature of the involvement/investment of the Third Party Investors was unknown. Their relationship, if any, to the Respondent and the parties to the underlying agreement was similarly unclear. Further, there was no evidence of any due diligence having been undertaken in relation to the receipt of funds from any of the Third Party Investors.

19.16 "Drawdown and Accession" deeds were forwarded to the Firm, signed by a number of the Third Party Investors. An example of one such deed is dated 2 April 2014 and related to a Mr TB pursuant to which Mr TB seemingly committed himself to an investment of NOK1,000,000 (Norwegian kroner). In common with other documentation relevant to this transaction the deed was complex and confusing and contained unclear and/or ill-defined language, terms and terminology. In addition it was stated to be from another company entirely whilst Mr TB was stated to be the "Additional Lender"; referred to a facility agreement dated 2 April 2014 which did not appear to relate to any agreement entered into between Coppercast and Swiss Garantie; and was executed only by Mr TB. Similar deeds were received from the other Third Party Investors with proof of identification including from an entity named Quantum Leben (purportedly a life insurance company based in Liechtenstein) which purported to represent a number of individuals and provided copies of their passports accordingly. There was no evidence of any client due diligence having been undertaken/received for one of the Third Party Investors, Custodian Life Limited. Notwithstanding the terms of the agreement between Swiss Garantie and Coppercast, no funds were received by the Firm from the former entity. The client matter file did not contain any due diligence as to the recipients of the disbursed funds.

<u>The T-Net Transaction</u>

19.17 Funds were received from Mr CW. There was no evidence that the Respondent obtained or sought any client due diligence documentation in relation to Mr CW or that he undertook any due diligence as regards the source of these funds. Unusual, suspect and/or irregular features of the agreement between Goldmoss and T-Net included that:

a) It provided for the obtaining of a, 'credit enhancement instrument' in the form of a, 'standby letter of credit' in favour of T-Net in the sum of US$2,000,000.00 in consideration for which Goldmoss would receive a fee amounting to US$200,000.00 to be paid to the Firm and released within three days upon receipt of confirmation that the standby letter of credit had been issued. Trading in apparent banking instruments such as standby letters of credit was specifically identified as a warning sign in the SRA's warning notice regarding Fraudulent Financial Arrangements.

b) Whilst the agreement stated it was governed by UK law, the 'standby letter of credit' which was attached as an exhibit stated it was governed by New Zealand law. The Respondent had confirmed that he was not qualified to provide any advice in relation to New Zealand law.

c) It contained an exhibit (B) which was not referred to within the body of the agreement, the purpose of which was unclear and which contained the unusual assertion that, "the aforementioned agreement constitutes legal and honest business". It also referred to an entity called Anametrics Holdings Limited, seemingly based in Malaysia. The relevance of this entity to the purported transaction, reference to which appears elsewhere in the documents, was unclear.

19.18 On 17 January 2012, the Firm's standard client care letter enclosing the Firm's terms and conditions on retainer quoting an hourly rate of £500.00 was forwarded to Goldmoss. A number of documents (notarially certified on 16 January 2012) were forwarded to the Firm, including a letter of undertaking dated 9 January 2012. This was similarly complex and confusing and contained unclear and/or ill-defined language, terms and terminology. It was also signed by a Mr NCL, who pursuant to the document, purported to be the President/CEO of T-Net, legal representative of T-Net and the, "Beneficiary" of the standby letter of credit. A further letter, headed unusually with a warning that, "This letter is not to be dated and NOT TO BE NOTARISED", although it was nevertheless notarially certified on 16 January 2012, signed by Mr NCL and stated:

> "This letter serves to inform you that unfortunately due to unforeseeable circumstances, we are not able to deliver on our contract…
>
> Therefore, we hereby ask you to cancel our contract from the date of this letter. We shall not present any documents or make any claims of whatsoever nature under the said SBLC you have issued. Any payment made or costs incurred by either party in relation to this transaction are non-refundable and not subject to any claims from either side.
>
> We also hereby revoke the SBLC…
>
> …
>
> We hereby agree to pay for any costs in association with the cancellation of the instrument(s). All costs are to the beneficiary account and may not be waived or disputed"

19.19 Despite this, on 18 January 2014, the Firm received notification that GEBS had issued an, "irrevocable, transferrable, assignable standby letter of credit" to be issued to Standard Chartered First Bank of Korea Limited, Seoul, Korea, for the sum of US$2,000,000.00. The precise nature of the purported cancellation and the effect on the transaction was accordingly unclear. Nevertheless, on 18 January 2012, payment instructions were received from Goldmoss as regards the funds previously sent by Mr CW and payments were made to multiple individuals. The client matter file did not contain any due diligence as to the recipients of the disbursed funds.

<u>The Mox Transaction</u>

19.20 The Firm's instructions were attached to an email from Mr MG sent from an msn.com account. Mr MG was purporting to send know your client documents for Mox which were not therefore obtained by the Respondent directly. He directed that

the Respondent issue an undertaking in a specified form and directed him to write to Mox and provided him with a draft letter.

19.21 Unusual, suspect and/or irregular features of the Mox agreement included that:

a) The agreement provided for the procurement of a, "non depletion loan" for the term of two consecutive calendar months, with GEBS, the purpose of which being to, "collateralize and facilitate the borrower's requirement for a Credit Enhancement Instrument (CEI) issued by GEB, in the format attached hereto as exhibit "A" consisting of a bank confirmation letter and bank statement in the amount of €9,500,000." The commercial nature/purpose of this transaction was unclear. However, there was no evidence that the Respondent took steps to obtain any further information.

b) In consideration, Goldmoss was to receive a fee amounting to €320,000.00.

c) It contained the following, highly irregular clause referencing information being backdated:

> "…the Arranger will open a Sub-Account for the Borrower in the Borrower's name. Upon the account being opened at GE in the name of the Borrower, and the funds in the amount of Euro 9,500,000 being created, the CEI will be made available to the Borrower. The Borrower will also be granted Internet access to view the account from the date the Euro 9,500,000 is position on the account. It is also agreed that for accounting purposes, the Arranger will have GE confirm the relationship existed as at February 2012"

A letter confirming this apparently false information was attached as an exhibit.

19.22 On 16 August 2012 the Firm issued an undertaking in accordance with exhibit C to this agreement. A standard client care letter incorporating the Firm's terms and conditions of retainer was forwarded to Goldmoss on 21 August 2012. On 26 September 2012, client care and due diligence documents were received from GEBS, together with proof that the sum of €9,500,000.00 had been placed in an account in the name of Mox. There was no evidence that the Respondent undertook any due diligence as regards the source of these funds. The client matter file did not contain any due diligence as to the recipients of the disbursed funds.

<u>The WOW/Mr BO and the WOW/Mr SM Transactions</u>

19.23 The Respondent was instructed by WOW in respect of investments to be made by Mr BO and Mr SM. There was no explanation as to why a charitable organisation would be involved in high value investment activity and there was no evidence that the Respondent made any enquiries in order to satisfy himself that the transactions were bona fide. WOW claimed to be, "tasked under UN compliance". Suggestions that schemes were supported or operated under the auspices of a major international body (such as the UN) were specifically identified in the Law Society's "yellow card" warning notice on banking instrument fraud as being a common characteristic of fraudulent financial arrangements.

19.24 The FIO was unable to find any evidence that client due diligence had been undertaken to verify Mr GE's ability to act as authorised representative of WOW. The FIO established the transactional structure of the WOW investment scheme and the circulation of monies from Mr BO and Mr SM to various third parties.

19.25 The term sheet stated that:

a) The recital indicated that it summarised, "the proposed principle terms and conditions by which Mr. [BO], will invest into an investment fund". It was accordingly an 'agreement to agree'. This was confirmed on the final page of the document which confirmed that it was, "merely an expression of intent".

b) It referred to, "returns of 50% of the amount invested in 8 weeks from the Start Date. Therefore generating a net return to investor of 50% in 8 weeks". Very high rates of return and disproportionate rewards, often within a short space time, were specifically identified in the SRA's warning notice on investment fraud as being a common characteristic of fraudulent financial arrangements. When asked about the rate of interest in interview, the Respondent commented that it was "unbelievable".

19.26 On 31 October 2011 the Respondent received instructions from Goldmoss to issue an undertaking to WOW in the form provided. The basis of and reason for Goldmoss' involvement in the transaction was unclear in circumstances where the expectation from the term sheet was that a guarantee would be issued by Barclays Bank PLC. On 2 November 2011 an undertaking was issued by the Respondent to WOW in the following terms:

> "I confirm and undertake that upon receipt of [Mr [BO]'s] funds in the amount of €3,000,000.00 paid in to my client account at Coutts Bank, the full detail (sic) of which are provided below, I will hold said funds to their order pending the issue by General Equity Building Society, Auckland, New Zealand of a bank guarantee issued in conformity with the agreement to be completed by your Client."

19.27 It appeared that GEBS was therefore engaged in preference to Barclays Bank PLC. On 10 November 2011 the Respondent was provided with an agreement entitled, "Hire Agreement" dated 7 November 2011 between Goldmoss and WOW. The purpose of this agreement was stated to be as follows:

> "This Agreement provides for the Authorised Representative (AR) of General, Equity Building Society, Auckland, New Zealand (GEBS), to arrange for the Clients use, a credit enhancement instrument in the format attached hereto at Exhibit 'A', consisting of a bank guarantee, issued by the Issuer, GEBS, in the amount of €3,450,000.00 in the Clients favour. In consideration thereof the Client agrees to pay the fee as defined herein to the AR/GEBS."

19.28 Unusual, suspect and/or irregular features of the agreement included that:

a) Whilst it was set out as a 'Hire Agreement' it bore none of the features that could reasonably be expected of such an agreement;

b) Goldmoss' email address was once again stipulated as a Hotmail account;

c) Whilst the agreement stated it was governed by UK law, the 'guarantee' which was attached as an exhibit states it is governed by New Zealand law and any dispute, "shall be submitted to the exclusive jurisdiction of the New Zealand courts";

d) Paragraph 4 of the agreement provided that in consideration for Goldmoss doing no more than arranging for GEBS to provide a guarantee it would receive the sum of €483,000.00, to be received by the Firm.

19.29 The agreement was signed by Mr GE on behalf of WOW and by Mr MW on behalf of Goldmoss. The agreement was already signed when received by the Respondent. Pursuant to exhibit B to the agreement an undertaking was provided by WOW that it would not in any circumstances, "put the underlying funds at risk or indeed attempt to move said funds". It was suggested that the 'investment' carried no risk, but would nevertheless realise a return of 50% within 8 weeks. The Respondent was instructed that upon receipt of the sum of €483,000.00, the bank guarantee would be issued and a copy would be forwarded to the Firm. The Firm would be required to verify the bank guarantee with GEBS and ensure that it was in conformity with exhibit A to the agreement. Exhibit A stated that the 'beneficiary' to the proposed guarantee was stated to be WOW and Mr BO's name was included as the reference.

19.30 No client ledger was found. No monies were ever received from or on behalf of WOW. Monies were sent by Mr BO and the Respondent had provided an undertaking that those monies were to be held to the order of Mr BO. Nevertheless, pursuant to exhibit C to the 'Hire Agreement' the Respondent was seemingly expected to provide a second undertaking to Goldmoss that he was holding €483,000.00, "in cleared funds received on behalf of WOW".

19.31 In an undated letter received on 9 November 2011, Mr BO wrote to the Respondent stating:

> "Please accept this letter as my irrevocable instruction that the amount of €3,000,000.00 held with you on my behalf is to be released to the order of Water Our World Holdings Ltd, on receipt by you of a written confirmation from General Equity Building Society, Auckland, that they have issued a bank guarantee in the amount of €3,450,000.00 in favour of Water Our World Holdings Ltd, referencing Mr [BO], to be held fiduciary wise for myself and to my benefit.
>
> …….
>
> I also reminds you about E-mail 09.11.11, and the agreement that you take upon yourself to fully evaluate the guaranty [sic], and that it is an unconditional guaranty to be paid at a certain date (sic)."

19.32 In an email of the same date the Respondent replied, setting out his credentials, and stated:

> "With regard to this transaction, I undertake to hold your funds to your order until such time as I am satisfied that General Equity Building Society issue a bank guarantee in conformity with the agreement to be completed by you."

19.33 The Respondent did not have in his possession a copy of the 'Hire Agreement' referred to in his undertaking at the time it was provided. On 10 November 2011, the same day he had been provided with a copy of the 'Hire Agreement', the sum of €3,000,000.00 was lodged into the Firm's client account. Whilst the email from the Respondent to Mr BO of 9 November 2011 requested, "the bank's confirmation of clean funds for money laundering purposes" it is unclear what steps, if any, were in fact taken in relation to the source of these funds.

19.34 On 11 November 2011 a guarantee in the sum of €3,450,000.00 was purportedly issued by GEBS in favour of WOW, with "Reference: Mr. [BO]", and provided to the Respondent. Notwithstanding the matters set out in the 'term sheet' and the 'Hire Agreement', in the Indemnity Interview on 1 November 2013 the Respondent confirmed that his understanding of his role was, "(a) to receive a guarantee in General Equity Building Society and (b) to receive money 3 million" and, "to receive the funds and when the guarantee was received to release them in accordance with my instructions, which is what I did".

19.35 On 11 November 2011 the Respondent forwarded a copy of the guarantee to Mr BO asking whether he could complete the transaction. In his response Mr BO stated:

> "I am not capable to evaluate this set up this BG must be evaluated and guaranteed by you towards me. The date is 11/12/12 but the trade is 8 weeks, does this mean that in the event that no payment is made after 8 weeks, I have to wait over 1 year? Also the BG is to WOW, you must then hold it on my behalf, and confirm so."

19.36 On 12 November 2011 Mr MG, on whose behalf the Respondent also acted, sent to the Respondent a suggested response to Mr BO's emails in the following terms:

> "The General Equity Building Society (GEBS) €3,450,000.00 guarantee is in favour of Water Our World Holdings Ltd, who is the client of GEBS, and you are referenced in the guarantee. I can also confirm that whilst GEBS is holding the guarantee in safe keeping, they are prepared to forward it to me for me to hold. I can also confirm that the guarantee has been issued by General Equity Building Society and I am satisfied with its authenticity."

19.37 On 14 November 2011, the Respondent replied to Mr BO but not in the terms proposed by Mr MG. Pursuant to his email he stated:

> "I confirm that I am happy with the form of the Guarantee from the General Equity Building Society the original of which is being sent to me by post."
>
> I shall hold this to your order and you do not have to wait a year to trade it."

19.38 The matter completed on 14 November 2011. On the face of the documentation the guarantee offered no, or no adequate, security for Mr BO's investment. In circumstances where no instructions were taken from Mr BO as regards the movement of his funds, monies were distributed on that day in accordance with the instructions of Goldmoss without Mr BO's knowledge or consent. This was despite the fact that Goldmoss' instructions were specifically stated to apply to the sum of £483,000.00 due to be paid by WOW pursuant to the 'Hire Agreement' which was never, in fact, paid. It appeared that Mr BO's funds were used to satisfy a contractual obligation owed by another client. When asked in interview about the distribution of the money the Respondent confirmed he did not know what the money was used for and the distribution was on the instructions of Goldmoss. He indicated: "I believe Goldmoss were acting as agents for Water Our World. They arranged the deal. They arranged the guarantee and they arranged for funds to be sent." The client matter file did not contain any due diligence as to the recipients of the disbursed funds.

19.39 The funds paid to Morning Star were subsequently frozen by the Swiss authorities on or about 23 January 2012. Whilst it was unclear what occurred subsequently as regards the purported transaction, in an email to the Respondent dated 18 April 2012, Mr BO stated: "Mr Goldberg it is your obvious duty to see that the BG is transferred as required. Please take action and inform me on the situation. The BG should definitely not be controlled by WOW, if so you are seriously responsible (sic)."

19.40 Mr BO subsequently instructed solicitors to recover his money. An email from those solicitors to the Respondent dated 25 April 2012 stated, inter alia, that Mr BO, "is concerned that he may be a victim of fraud and police involvement is now under active consideration". Mr Goldberg contacted Mr MG on 30 April 2012 confirming that Mr BO wanted, "his money back". In response Mr MG stated: "The guarantee is issued in favour of WOW … who are the Beneficiary of the guarantee". Mr MG also queried what happened to Mr BO's funds.

19.41 On 24 September 2012 the GEBS guarantee was cancelled by WOW. The purpose and effect of this purported cancellation in the context of the underlying transaction was unclear. Further, on 8 October 2012 an email was sent to the Respondent from a Mr DM, purportedly of WOW though originating from an AOL email account, querying the source of the Respondent's instructions. Proceedings were subsequently issued against the Respondent on behalf of Mr BO and Judgment was entered against him. Insurance cover was repudiated in relation to this claim against the Respondent on the basis that, "Inter Hannover formed the view that he is not entitled to indemnity under the Policy because the claim being made against him arises from dishonesty or a fraudulent act or omission committed or condoned by him".

19.42 In the WOW and Mr SM matter the Respondent was provided with an agreement similarly entitled "Hire Agreement" dated 14 November 2011 between Goldmoss and WOW which was also in near identical terms to that provided to the Respondent in the Mr BO matter, the purpose of which being:

> "This Agreement provides for the Authorised Representative (AR) of General, Equity Building Society, Auckland, New Zealand (GEBS), to arrange for the Client's use, a credit enhancement instrument in the format attached hereto at Exhibit 'A', consisting of a bank guarantee, issued by the Issuer, GEBS, in the

> amount of USD2,300,000.00 in the Client's favour. In consideration thereof the Client agrees to pay the fee as defined herein to the AR/GEBS."

19.43 In consideration for 'arranging' the guarantee Goldmoss was to be paid the sum of $322,000.00. The agreement was signed by Mr MW on behalf of Goldmoss. It was not seemingly signed on behalf of WOW. On 15 November 2011 the sum of US$2,000,000.00 was lodged into the Firm's client account. No monies were ever received from or on behalf of WOW. It was unclear what steps, if any, were in fact taken by the Respondent to identify the source of these funds at this time. Indeed after the event, following the seizure by the Swiss authorities of the funds sent to Morning Star, the Respondent wrote to Mr DM asking; "Would you please advise asap the source of those funds and the bank you used". A subsequent email to the Respondent from Mr SM dated 13 February 2012 stated: "The fund is clean and its from all my life savings (sic)."

19.44 By letter dated 16 November 2011, Mr SM wrote to the Respondent and stated:

> "Please accept this letter as my irrevocable instruction that the amount of USD $2,000,000.00 held with you on my behalf is to be released to the order of Water Our World Holdings Ltd, on receipt by you of a written confirmation from General Equity Building Society, Auckland, New Zealand that they have issued a bank guarantee in the amount of USD $2,300,000.00 in favour of Water Our World Holdings Ltd, referencing Mr [SM], to be held fiduciary wise for myself and to my benefit."

19.45 On or about 16 November 2011 a guarantee in the sum of US$2,300,000.00 was purportedly issued by GEBS in favour of WOW reference Mr SM and was provided to the Respondent. The matter completed on 18 November 2011. On the face of the documentation the guarantee offered no, or no adequate, security for Mr SM's investment. In circumstances where it was not apparent that instructions were taken from Mr SM as regards the movement of his funds, monies were distributed on that day in accordance with the instructions of Goldmoss without his knowledge or consent. This was despite the fact that Goldmoss' instructions were specifically stated to apply to the sum of US$322,000.00 due to be paid by WOW pursuant to the 'Hire Agreement' which was never, in fact, paid. As such it would appear that Mr SM's funds were used to satisfy a contractual obligation owed by another client. The funds from Mr SM were not invested in the manner provided for in the term sheet or placed into a non-depletion account. Instead they were paid to multiple individuals. The client matter file did not contain any due diligence as to the recipients of the disbursed funds.

19.46 The funds paid to Morning Star were subsequently frozen by the Swiss authorities on or about 23 January 2012. This was addressed in correspondence found on the Respondent's file from which it could be seen that:

a) There were suggestions that the funds were seized due to concerns regarding a Mr M having "defrauded funds". Mr M's background was addressed in correspondence sent to the Respondent by email on 23 January 2012;

b) Enquiries were made by the Respondent with a view to unblocking the funds sent and the Respondent was in direct correspondence with Mr AS of Morning Star;

c) In an email to Mr AS of 7 February 2012 the Respondent confirmed by email that the funds sent to Morning Star, "were clean funds" and, "were originally sent to me by Bank transfer from [GEBS]." In an email to GEBS on 8 February 2012 the Respondent suggested the funds had been received from WOW. The funds in fact originated from Mr SM and no money had ever been received from WOW.

d) An email was sent by Mr RS, seemingly on behalf of Mr SM, on 7 February 2012 which suggested that Mr SM had been making enquiries of the Respondent as regards his funds.

19.47 There was no evidence of any, or any adequate, due diligence having been undertaken with regard to the parties involved, including identification checks nor any enquiries as to the source of funds being paid into the Firm's client account or the recipients of funds. The Applicant's case was that accordingly the Respondent had acted in breach of Outcome 7.5 of the SCC 2011 and/or Rule 5.01 of the SCC 2007.

19.48 The FIO had raised his concerns about Money Laundering with the relevant Money Laundering Officer at the SRA and was aware that there had been subsequent steps taken. The steps required to prevent money laundering were not just taking copies of documents but understanding the source of the funds, how the transaction was structured and applying one's mind to the question of whether there could be fraud or money laundering, rather than acting as a rubber stamp.

19.49 It was acknowledged by the Applicant that the Respondent had undertaken some customer due diligence on everyone except Mr CW (on the T-Net transaction); Mr AG from CNTP and Custodian Life Limited (on the Swiss Garantie transaction).

<u>The Sale Transaction</u>

19.50 On the sale transaction, client due diligence documentation relating to Mrs H was retained on file and client due diligence documentation relating to Mr LHA was retained on a separate file. There was no client due diligence for Mr EH.

19.51 The Respondent acted in breach of Regulations 5 and 9 of the MLR in that at no stage either prior to, or during the course of, acting on behalf of Mr EH did the Respondent identify and verify his identity on the basis of documents, data or information obtained from a reliable and independent source. Nor did the Respondent meet with Mr EH. It was alleged that, had the Respondent met with his client, Mr EH, as he clearly should have done, and in doing so verified instructions and his identity, the lack of knowledge on the part of Mr EH of what was taking place would have become evident and the fraudulent sale would have been avoided.

<u>The Respondent's Case</u>

19.52 The Respondent denied the allegation. According to the Respondent, the SRA seemed to infer that there has been a breach of the MLR in respect of these transactions. That inference was based on there being no due diligence documents found on the file,

according to the FIO. It was the Respondent's understanding that client due diligence was not needed on every file. Client due diligence should be undertaken at the beginning of a business relationship and as needed thereafter depending on risk. There was no analysis by the SRA of whether the Respondent met with the relevant persons, had a prior relationship with them or whether the simplified due diligence regime applied.

19.53 The Respondent's case was that proper due diligence was undertaken wherever necessary. He met with new or prospective clients and in fact worked on many cases over the years which did not result in any deal being done. The Respondent was dealing with large and reputable institutions and he did rely, in some cases, on information provided by them as to customer due diligence. The Respondent considered this to be permissible and within Regulation 5 of the MLR.

19.54 The Respondent was certain that he obtained the usual money laundering ID with copy passports and proof of address etc. in respect of every person sending funds to the Firm's client account. If these documents were not kept in the relevant file they were kept in other related files which the Respondent could not check without access to the files. The Respondent had provided the Tribunal with some copies of documents provided by Goldmoss which he stated mirrored the information he would have had on file.

19.55 The Respondent acknowledged that he did not routinely undertake money laundering checks in respect of parties to whom he sent funds as he knew of no legal reason which made this compulsory. The Respondent stated that he discussed payments to be made with Mr MG from time to time. The Respondent knew Mr MG to have held a very senior position in a major bank for several years; to be very well connected and respected in the field of international finance and to be very knowledgeable about international banking regulations. The Respondent had known Mr MG for some years having been introduced to him by an acquaintance of some 20 years' standing in about 2008 or 2009. The Respondent had known him for a period, probably of several months, before they entered into a solicitor/client relationship.

19.56 The Respondent submitted that all of the parties named in the Rule 5 statement, with the possible exception of WOW, were sophisticated parties. Each would routinely have had their own retained legal advisers and all were high net worth, very high net worth or ultra-high net worth persons. The transactions were routine commercial transactions and they were not out of the ordinary in the context of the entities which undertook them.

19.57 In respect of Mr SJ the Respondent was very concerned that the SRA sought to mislead the Tribunal since it did not say that the news report relied upon post-dated the Respondent's initial instructions (the report is dated 14 May 2014) and it did not disclose that Mr SJ is a solicitor who trained at a City firm in the early 1990s. The Respondent drew the Tribunal's attention to a copy of Mr SJ's CV together with a Swiss Garantie brochure and Ricom Trust's brochure which was current at the relevant time. The Respondent did not submit that he had these documents on his files at that time, indeed Mr SJ's CV included the date of October 2015 which post-dated the intervention.

19.58 The Respondent's view was that the SRA appeared to have assumed that the entities and individuals were neither substantial nor reputable. The information contained in the FIR was of concern as it suggested that the SRA had made no effort to confirm the bona fides of the people on whom it was casting aspersions.

19.59 WOW purported to be a charity. It was managed by Mr GE and Mr DM was a director. The Respondent had known Mr GE in connection with another matter. He had met him and discovered some of his business interests. The Respondent was trying to broker a F1 sponsorship deal on behalf of a company of which Mr GE was a 49% shareholder in order to raise its profile. The Respondent was working on that deal at around the same time that he became involved in the WOW matters. Although, at the time, the WOW matters appeared to be routine matters, the Respondent later learned that there was an underlying investment which had been put together by a broker who had structured the transactions on behalf of Mr BO and Mr SM. The Respondent had no idea at the time that there had been an underlying investment in which he now understood both Mr SM and Mr BO had been promised large returns.

19.60 Mr BO had stated in very clear terms that his complaint against the Respondent was that the Respondent was negligent in not ensuring that he was the beneficiary of the bank guarantee. Mr BO did not allege before the Tribunal that there was any fraud or dishonesty. The Respondent understood that the broker of the deal was now under investigation in Switzerland but he did not believe that was the case at the time. The Respondent accepted, with regret, that he should have been more wary of the WOW transactions. Although he met with both Mr DM and Mr GE, the Respondent's position was that he was not acting on behalf of WOW. As he understood it, his involvement was limited to acting as escrow agent in respect of funds provided by Mr BO and Mr SM until Goldmoss had arranged for the issue of the bank guarantees. The bank guarantees were duly issued.

19.61 The Respondent did not know at the time that all parties did not have all relevant information, and wrongly believed that the instructions were routine based on the information he had been given. The Heads of Terms had been signed long before the Respondent had any involvement in the transactions and his role was very limited. Further, the problem with the bank guarantee was that it was withdrawn because WOW did not put up the required collateral. That was a contingency the Respondent could not have foreseen at the time.

19.62 In the context of the WOW work that the Respondent did, these were low value transactions entered into by sophisticated individuals who had taken their own legal advice. The Respondent understood that Mr BO had taken advice from his own Norwegian lawyers and in New Zealand, and that Mr SM was a former chief of police and an extremely wealthy individual with an extensive property portfolio.

19.63 The Respondent was concerned that the Rule 5 statement sought to introduce and rely on two warning notices which did not seem to have been current at the time and that the Applicant had said that he ought to have had regard to their contents. The Law Society's yellow card warning was issued in September 1997. There had been two significant overhauls of the Code of Conduct by November 2011 and legal services, money laundering and banking had all moved on significantly in the intervening period. Further, the warning card was directed at the fraudulent trade in banking

instruments. That is not what was occurring here; these transactions involved intermediaries' fees payable upon certain conditions being met. Some of those conditions were the issue of international banking instruments. There was no suggestion of trading in the instruments, they were issued as part of a larger commercial transaction in which the Respondent was not instructed. Furthermore, the SRA's warning card on high-yield investment fraud was not issued until 10 September 2013. The Respondent was aware of the features as set out in the money laundering warning card. He could not remember which warning card he was referring to when he said that he had one in his desk.

19.64 Ms Heley submitted that if a solicitor was suspicious as to money laundering then they needed to be alert and satisfy themselves that there was no money laundering.

The Tribunal's Findings

19.65 The allegation was denied. It was alleged that the Respondent failed to comply with legislation applicable to his business, namely anti-money laundering, contrary to Outcome 7.5 of the SCC 2011 and/or in relation to the period prior to 6 October 2011, Rule 5.01 of the Solicitors Code of Conduct 2007 ("the SCC 2007").

19.66 There were two payments into the client account where no due diligence had been undertaken as to the source of the funds. These payments in came from Mr CW and Custodian Life. In respect of CNTP, funds were received from Mr BR personally not CNTP. There was no due diligence undertaken on Mr AG of CNTP. Mr AG had signed the agreement. In respect of the first leg of allegation 1.4 (a) the Tribunal found beyond reasonable doubt that there were instances where funds were paid into his Firm's client account without any satisfactory due diligence having taken place as to the source of funds. However the Tribunal found that, in respect of the second leg of that allegation, there was no requirement to undertake due diligence on the recipient of the funds unless the Respondent suspected money laundering or the recipients were clients of the Firm. Neither applied here. Allegation 4(a) was therefore proved in part only.

19.67 As regards allegation 1.4(b) on the evidence it was clear that the Respondent had failed to comply with the MLR in respect of Mr CW, MR AG, Custodian Life and Mr EH. A solicitor had to comply with the relevant legislation. Allegation 4(b) was proved beyond reasonable doubt.

20. **Allegation 1.5 - The Respondent acted in transactions where there was a conflict of interest or a significant risk of a conflict of interest, contrary to Outcome 3.5 of the SCC 2011 and/or in relation to the period prior to 6 October 2011, Rule 3.01(1) and (2)(a) of the SCC 2007, in that he:**

a) acted for different clients who were parties to the same purported investment transactions but who held entirely different interests and objectives in circumstances where each party should have received independent legal advice on the basis that there was a conflict of interest or a significant risk of a conflict of interest; and

b) acted for the joint owners of property in relation to a sale in circumstances where he was directed by one client i) to not deal with the other client; and ii) not to send funds to the other client but to a third party such that there was a clear conflict between the interests of the parties or the significant risk of a conflict and it was inappropriate for the Respondent to act on behalf of both clients who should have been separately represented.

20.1 For the avoidance of doubt it was not alleged that the Respondent acted for Mox on the transaction exemplified in the Rule 5 Statement. In respect of T-Net there was no evidence, except the Respondent's admission that he assumed he was acting for them, that he was acting for T-Net on the transaction exemplified in the Rule 5 Statement.

The Applicant's Case

20.2 The Respondent was instructed by both Goldmoss and CNTP, counterparties to the same transaction. A "New Client ID & Matter Form" was completed by the Respondent on 12 September 2011. In response to the question on the form, 'Is there a Conflict of Interest?' the Respondent circled 'No'. The Respondent sent a client care letter to Mr BR, purportedly of CNTP, on 12 September 2011. Despite being on the face of the matter a commercial transaction, the client care letter referred to matters of relevance to a litigation dispute.

20.3 The Respondent was instructed by both Coppercast and Swiss Garantie, counterparties to the same transaction, and also entered into an 'Escrow Agreement' pursuant to which it appeared he was acting as trustee for Dorax and was the "authorized trustee" for both Dorax and Goldmoss.

20.4 The Respondent acted for Mr BO and Mr SM on their respective transactions as well as WOW and Goldmoss. The Respondent was accordingly acting for three separate clients on different sides of the same transaction, which was admitted by him in the Indemnity Interview on 1 November 2013. The fact that there was a conflict of interest was evidenced by the dispute that arose in respect of these transactions. During the course of the Indemnity Interview the Respondent indicated that he was also acting for Mr GE of WOW personally at this time in relation to a proposed agreement regarding sponsorship for which it was intimated that the Respondent's fees would be in the region of over €100,000.00.

20.5 In acting for multiple parties to the same transactions, the precise extent of his instructions being unclear, and in circumstances where certain parties entered into agreements pursuant to which they warranted that they had obtained independent legal advice, the Respondent acted in circumstances where there was a conflict of interest or a serious risk of conflict. It was alleged that it should have been obvious to the Respondent at the very outset that there was an actual conflict or a significant risk of a conflict arising between the interests of clients who were on both sides of the purported investments.

20.6 The Respondent was instructed by Mr LHA in the sale transaction and a client care letter was sent to him on 22 August 2012. An office copy of title issued on 22 August 2012 confirmed the registered proprietors of the property to be Mrs H (who

was Mr LHA's mother) and Mr EH, who was another son of Mrs H. Mr LHA had a power of attorney to act on behalf of his mother but not his brother.

20.7 Whilst the Respondent claims to have spoken with Mr EH on the telephone, he indicated that Mr EH declined his request to attend the office on the basis that he was too bus. The Respondent asserted that he requested Mr LHA arrange for Mr EH to attend upon him, without success. The Respondent proceeded with the sale of the Property without having met Mr EH and in circumstances where he had taken no, or no adequate, steps to verify his identity or to confirm his instructions.

20.8 In an interview with the SRA's FIOs on 20 August 2014 the Respondent confirmed that Mrs H, who was an elderly lady that he said was suffering from Parkinson's disease, provided him with instructions not to deal with Mr EH and to take instructions from Mr LHA. The Respondent asserted he had been told Mr EH was in effect a bad lot who had been involved with the police.

20.9 On or about 30 July 2013, the Respondent received a letter addressed to Acenden Limited, ostensibly signed by Mr EH and Mrs H in respect of the supply of information to enable the redemption of the mortgage. On 11 September 2012 the Respondent asked Mr LHA to obtain written authority from Mr EH and Mrs H authorising the release of the deeds to the Property to enable the sale to proceed. Although Mr LHA had no power of attorney to act for Mr EH the Respondent accepted his instruction on behalf of Mr EH and Mrs H to complete, and for funds to be sent to an account for the mother. The Respondent received the transfer form TR1 dated 11 September 2013, purportedly signed by Mr EH and Mrs H. Notwithstanding being on notice as to Mrs H's feelings toward Mr EH, in circumstances where no efforts had been made to verify Mr EH's identity or his instructions, the Respondent also took no steps to seek to verify Mr EH's signature. The sale proceeded to complete and, on 12 September 2013, purchase monies were received into the Firm's client bank account, from which the sum of £100,000.00 was remitted immediately to Mr LHA. On 17 September 2013 redemption monies were paid to the mortgagee of the Property, a completion statement was drafted and forwarded to Mr LHA and the balance of the proceeds, totalling £72,000.00, was transferred to his account.

20.10 In acting on the sale of the property in circumstances where the Respondent was provided with direct instructions by one client, Mrs H, not to deal with another client, Mr EH, and to ignore him and deal with Mr LHA instead, it was alleged that the Respondent acted in circumstances where there was a clear conflict of interest.

20.11 Indicative Behaviour 1.25 of the SCC 2011 provides that acting in the following way may tend to show that a regulated individual has not achieved specified outcomes and therefore not complied with the Principles:

> "acting for a client when instructions are given by someone else, or by only one client when you act jointly for others unless you are satisfied that the person providing the instructions has the authority to do so on behalf of all of the clients."

20.12 There was no evidence that the Respondent took any steps to verify that Mr LHA had authority to provide instructions on behalf of Mr EH. He had no authority from Mr EH to remit the proceeds of the sale to Mr LHA.

20.13 On 3 October 2013 the Respondent received a letter from solicitors alleging that Mr EH had not agreed to or authorised the sale of the Property. On 19 February 2014 the Respondent, in an email sent to Mr LHA stated: "I am concerned that I will be reported for selling a property jointly owned by your brother and your mother and all the money was sent to you." Proceedings were issued by Mr EH against the Respondent for his share of the proceeds of sale and the Tribunal was told that these had been settled in part by family mediation and in part by the Respondent's insurance.

The Respondent's Case

20.14 The Respondent denied allegation 1.5 (a) but admitted allegation 1.5 (b). The Respondent submitted that the extent of the SRA's case in relation to alleged conflicts of interest was unclear to him. The SRA appeared to say that he carried out no work in respect of some transactions and yet acted where there was a conflict of interest. The Respondent found it difficult to reconcile those two statements. The SRA seemed to acknowledge that the parties involved had provided written confirmation that they had taken independent legal advice but then disregarded that statement. The Respondent did not believe that the SRA had made enquiries of any of the relevant parties to establish whether, in fact, independent advice was taken. He believed that each of the parties involved had their own attorneys. The Respondent's role in the transactions was limited to acting as escrow agent pending the fulfilment of conditions which had been negotiated separately between the parties. The Respondent did not therefore believe that there was a conflict of interest. The Respondent acknowledged that he should have ensured that the client care letters sent to the various parties expressly limited the Firm's retainer and he apologise for failing to do so. However, he maintained that there was no conflict of interest between the various parties in respect of the role he was to play in the transactions.

20.15 The Respondent acknowledged that he was acting for Goldmoss and CNTP but could not see any conflict of interest between the two parties. The Respondent considered that CNTP were "big boys not little children" and would not have proceeded if they thought someone was trying to take advantage of them. Goldmoss had known who to approach and CNTP had not. It was CNTP's choice to be involved in the transaction. No-one was forcing them.

20.16 The Respondent considered that he had acted for both Goldmoss and T-Net even though there was no client care letter to T-Net. Again he did not see that there was a conflict of interest. The Respondent had not acted for Mox but had given Mox an undertaking. The Respondent had acted for both Goldmoss and Swiss Garantie. He did not accept that he was acting in a situation where there was a conflict of interest.

20.17 Despite at one point stating in evidence that he had not acted for WOW, the Respondent now stated that he had acted for Goldmoss, WOW and Mr BO, and for Goldmoss, WOW and Mr SM. He did not see that there was any conflict of interest between the three parties in each transaction despite the problems that subsequently

arose. The Respondent considered that he had only acted for Mr BO in a limited way and that the deal had been set up by the time the parties came to him. Mr BO had had a Norwegian and/or Swiss lawyer acting for him. The Respondent's role had been in receiving the monies and inspecting the guarantee. Mr BO had chosen to become involved in the transaction despite funding being available from a mainstream bank. The Respondent had thought he was acting for WOW but was now aware that there was a dispute between Mr DM and Mr GE of WOW, and that Mr DM did not consider that the Respondent was acting for Mr DM nor WOW.

20.18 Ms Heley submitted that when the Respondent's role in these transactions was considered there was no conflict of interest. His role was execution only. It was not reasonably foreseeable within the confines of that role that there would be a conflict of interest.

20.19 In respect of the case of Mr LHA and his mother Mrs H, Mrs H explained to the Respondent in some detail that he was to act on the instructions of her son Mr LHA to whom she had given a Power of Attorney. Her other son, Mr EH, was wanted by both the British Police and also by the Police in Ghana and had spent several years in prison. Mrs H had sent a very long letter to the Respondent explaining all the circumstances very clearly and also came to his home and explained it in greater detail. Mr EH had made threats against her and she was worried he might kill her as a result of threats and questions such as "where do you keep your life policy?"

20.20 The Respondent had tried to make an appointment to see Mr EH and he then called the Respondent to make an appointment. However he did not keep the appointment and did not call to explain the reason for his failure. The Respondent assumed perhaps wrongly that he had been arrested again either here or in Ghana. However he did sign the transfer which was witnessed by an Englishman living here who signed his name and gave his address. The Respondent assumed that Mr EH was happy for him to act on his mother's instructions. The Respondent acknowledged that he should have made his position clearer in writing and that there was a risk of conflict in relation to the instructions he received. The Respondent accepted that he should have made more enquiries of Mr EH and should have insisted that he obtain legal advice. The Respondent regretted that he did not do so. After completion of the sale the parties negotiated an agreement between themselves and the proceeds were split in accordance with that agreement in which the Respondent was not involved. The Respondent had taken pity on Mrs H and had become involved in the transaction. Although the Respondent did not deny allegation 1.5 (b) Ms Heley questioned whether there was a retainer as a matter of law.

<u>The Tribunal's Findings</u>

20.21 Rule 3.01 (1) of the SCC 2007 stated that a solicitor must not act if there was a conflict of interests (except in limited circumstances dealt with in 3.02(1)), and 3.01(2) (a) stated there was a conflict of interest if the solicitor or firm owed separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that the duties conflict. A solicitor could act in such situations if the clients had a substantially common interest in relation to a matter and all the clients had given in writing their informed consent to the solicitor or firm acting.

20.22 Outcome 3.5 provided that a solicitor must not act if there was a client conflict or significant risk of a client conflict unless the circumstances set out in Outcomes 3.6 or 3.7 applied. Outcome 3.6 stated "where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if: (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks; (b) all the clients have given informed consent in writing to you acting; (c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and (d) you are satisfied that the benefits to the clients of you doing so outweigh the risks." Outcome 3.7 stated " where there is a client conflict and the clients are competing for the same objective, you only act if: (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks; (b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective; (c) there is no other client conflict in relation to that matter; (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and (e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks.

20.23 The Respondent had acted for a number of parties on the same transaction. He sought to justify this on the basis that there was no significant risk of conflict of interest between the parties as his role was to check that the guarantee matches the terms of the draft agreement and it was not inevitable that there would be conflict. Mr BO had told the Tribunal he did not know that the Respondent was acting for WOW and Goldmoss also. There was no evidence that the clients had given the Respondent informed consent in writing to his acting for more than one party in the transaction nor that he had explained the situation to them. In the CNTP transaction the Respondent had acted for both parties. In the Mr SM and Mr BO transactions he was acting for three parties. In the Swiss Garantie transaction as well as acting for Goldmoss/Coppercast and Swiss Garantie the Respondent was also appointed as a trustee. There was a significant risk of conflict. Allegation 1.5(a) was proved beyond reasonable doubt.

20.24 The Respondent had admitted allegation 1.5 (b). The Respondent had acted for joint owners of the property where one owner was telling the Respondent not to deal with the second owner and the Respondent never met the second owner. There was a clear conflict of interests in this transaction and, whatever the Respondent's motivation, he should not have acted for both Mrs H and Mr EH. Allegation 1.5 (b) was proved beyond reasonable doubt.

21. **Allegation 1.6 - The Respondent failed to act in the best interests of clients, contrary to Principles 4 and 10 and Outcomes 1.1 and 1.2 of the SCC 2011, in that he:**

a) acted for a client, Mr BO, in circumstances where: he failed to ensure that a guarantee intended to be for Mr BO's benefit was appropriate, valid and enforceable; where he failed to comply with the terms of an undertaking; and where his client's monies were distributed in

accordance with the instructions of third parties without his knowledge or consent.

b) acted for a client, Mr SM, in circumstances where: he failed to ensure that a guarantee intended to be for Mr SM's benefit was appropriate, valid and enforceable; and where his client's monies were distributed in accordance with the instructions of third parties without his knowledge or consent.

c) acted for a client, Mr EH, when instructions were given by a third party and where the proceeds of a sale of property were remitted to that third party without any written authority having been provided by Mr EH nor any verbal authority subsequently confirmed in writing.

The Applicant's Case

21.1 In the WOW/Mr BO transaction the purported guarantee was subject to New Zealand law. The Respondent admitted that this was not a document upon which he could form any view. He alleged that he, "was just asked to receive it. I wasn't asked to give advice or my opinion as to the strength of it or otherwise".

21.2 On 11 November 2011 the Respondent forwarded a copy of the guarantee to Mr BO asking whether he could complete the transaction. In his response Mr BO stated:

> "I am not capable to evaluate this set up this BG must be evaluated and guaranteed by you towards me. The date is 11/12/12 but the trade is 8 weeks, does this mean that in the event that no payment is made after 8 weeks, I have to wait over 1 year? Also the BG is to WOW, you must then hold it on my behalf, and confirm so."

21.3 On 12 November 2011 Mr AG on whose behalf the Respondent also acted, sent to the Respondent a suggested response to Mr BO's emails in the following terms:

> "The General Equity Building Society (GEBS) €3,450,000.00 guarantee is in favour of Water Our World Holdings Ltd, who is the client of GEBS, and you are referenced in the guarantee. I can also confirm that whilst GEBS is holding the guarantee in safe keeping, they are prepared to forward it to me for me to hold. I can also confirm that the guarantee has been issued by General Equity Building Society and I am satisfied with its authenticity."

21.4 On 14 November 2011, the Respondent replied to Mr BO but not in the terms proposed by Mr AG. Pursuant to his email he stated:

> "I confirm that I am happy with the form of the Guarantee from the General Equity Building Society the original of which is being sent to me by post."
>
> I shall hold this to your order and you do not have to wait a year to trade it."

21.5 On 18 November 2011 funds were transferred into the Euro account in which Mr BO's funds were held from the Firm's US $ account in the sum of €1,225,299.35 and the sum of €1,499,958.68 was paid to Morning Star. It was not apparent from whom, if anyone, the Respondent took instructions in relation to these or subsequent payments from the relevant account which are recorded in the ledger reconstructed by the FIO, there being no ledger kept by the Firm. Mr BO told the Tribunal that he had not had another lawyer advising him in respect of the WOW transaction.

21.6 In relation to the Respondent's conduct in acting for Mr BO and Mr SM it was alleged that the Respondent failed to act in the best interests of the Firm's clients in the following way:

a) Mr BO specifically instructed the Respondent to check the terms of the relevant GEBS guarantee. It was crucially important for Mr BO that the guarantee was valid and enforceable;

b) The Respondent did not have the expertise to advise and did not answer Mr BO's pertinent questions. Instead, he had been told by another party to the transaction, for whom he also acted, how to respond;

c) The Respondent failed to comply with an undertaking provided to Mr BO;

d) Notwithstanding the fact that, on the face of the documentation the guarantees in both matters offered no, or no adequate, security for Mr BO's and Mr SM's investments and in circumstances where no instructions were taken from them as regards the movement of their funds, monies were distributed in accordance with the instructions of the other parties involved in the transaction and WOW for whom the Respondent also acted without Mr BO's and Mr SM's knowledge or consent;

e) He took no steps to ensure that anyone other than Mr BO and Mr SM respectively had any authority to provide instructions on their behalf in relation to the payment of funds they had paid to the firm; funds were subsequently transferred without any written authority having been provided by Mr BO or Mr SM nor any verbal authority subsequently confirmed in writing.

21.7 In respect of the sale of the property owned by Mrs H and Mr EH the Applicant alleged that, in the circumstances, the sale of the property was effected without the knowledge of the joint-owner, Mr EH, and was fraudulent and that the signature on the TR1 prepared in the course of the transaction, purporting to be the signature of Mr EH, was a forgery. Whilst the Respondent had a purported authority from Mrs H in relation to the proceeds of sale, there was no evidence that he took any steps, or any adequate steps, to satisfy himself that remitting the funds to Mr LHA was also in her best interests.

21.8 The Respondent failed to act in the best interests of the Firm's client, Mr EH, in the following way:

a) He acted for Mr EH when instructions were given by someone else. He received instructions from Mr LHA, as opposed to Mr EH, who explained the reason for the sale and the basis on which the transaction would take place;

b) He took no steps to ensure that Mr EHA had any authority to provide instructions on behalf of Mr EH, in circumstances where he had been specifically asked not to deal with Mr EH;

c) He transferred the proceeds of sale to Mr LHA without any written authority having been provided by Mr EH nor any verbal authority subsequently confirmed in writing;

d) At no point did the Respondent meet with his client Mr EH to take direct instructions.

21.9 The Respondent should have refused to act in circumstances in which he only received instructions from someone other than his client. The Applicant's case was that in acting as he did the Respondent acted contrary to Principle 4 and Outcomes 1.1 and 1.2 of the SCC 2011.

The Respondent's Case

21.10 At the hearing the Respondent admitted allegation 1.6. The Respondent acknowledged that Mr BO had sought to be permitted to give evidence in these proceedings and had exhibited to his witness statement a letter Mr BO had sent to the Tribunal. The Respondent did not rely on the contents of Mr BO's letter. The Respondent understood from the SRA that Mr BO had previously made slightly different assertions in the context of an application for a payment from the Solicitors Compensation Fund which was refused on the grounds that he had contributed to his own loss. For his part, the Respondent acknowledged that Mr BO asked him questions which he should have refused to answer. That was a mistake on the Respondent's part, however well-intentioned. The Respondent knew that Mr BO had his own Norwegian legal advisers and he should not have allowed himself to be drawn in to his questions. The Respondent was simply motivated by a desire to assist Mr BO. Mr BO had confirmed that he gave instructions for the monies to be paid out. Mr SM had not raised any issue in these proceedings and the Respondent understood that Mr SM held Mr GE and the Swiss broker at fault for what occurred in these transactions. He had never complained to the Respondent.

21.11 The Respondent believed that he was acting on a limited retainer in respect of each of Mr SM and Mr BO. His role in the transaction was limited to acting as an escrow agent. The advice that he gave was, he believed, accurate and the Respondent knew that Mr BO, in particular, had taken independent advice from his own lawyers. The Respondent had been informed by Mr MG that a copy of advice given to Mr BO by New Zealand lawyers is on Goldmoss' file. Had the SRA made any enquiries of Goldmoss, they could undoubtedly have discovered this for themselves.

21.12 In light of the High Court's findings the Respondent had to accept that allegation 1.6(a) was proven. He had duties and he breached them. The same applied to allegation 1.6 (b).

21.13 As to the sale transaction, the Respondent's position prior to the hearing, was that he acted in the best interests of his client. Whilst he accepted that there was a potential conflict and had admitted that charge, he was concerned for Mr LHA's mother. She was a client who was in a difficult position and the Respondent tried to help her. The Respondent refuted the suggestion that the property sale was fraudulent. It was not. Nothing was hidden from anyone and the proceeds of sale were distributed pursuant to a Court Order, the parties having negotiated an agreement between them. At the hearing, the Respondent accepted that he had not acted in the best interests of his client in this matter. Allegation 1.6(c) was admitted.

The Tribunal's Findings

21.14 The Respondent had admitted allegations 1.6 (a), (b) and (c). Mr BO and Mr SM had lost significant amounts of money. Mr BO had not recovered his money and it was not known if Mr SM had recovered his money. Mr EH had had to take steps to recover his share of the proceeds of sale. Mr BO had wanted to ensure that he had an enforceable guarantee. The guarantee did not name him as the beneficiary and he could not rely on it. Principle 4 required a solicitor to act in the best interests of each client and Principle 10 required a solicitor to protect client money and assets. Outcome 1.1 required a solicitor to treat his/her clients fairly and Outcome 1.2 required a solicitor to provide services to his/her client in a manner which protected their interest in their matter subject to the proper administration of justice. The Tribunal found allegation 1.6 proved beyond reasonable doubt. The Respondent's conduct had clearly been a failure to act in the best interests of his clients contrary to Principles 4 and 10 and Outcomes 1.1 and 1.2.

22. **Allegation 1.7 - The Respondent acted for clients in purported transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements, and, in so doing, he failed to act with integrity and failed to behave in a way that would maintain the trust the public placed in him and in the provision of legal services contrary to Principles 2 and 6 of the SCC 2011 and/or Rules 1.02 and 1.06 of the SCC 2007 where such conduct relates to a period prior to 6 October 2011.**

The Applicant's case

22.1 In respect of the WOW Mr BO and Mr SM transactions a meeting was held at the Firm's offices on 23 February 2012 at which Mr RS represented both Mr SM and Mr BO seeking the return of their investments from WOW and the Respondent. Pursuant to a letter dated 10 June 2012 sent by Mr BO to GEBS, he alleged, "GEBS and WOW and Lawyer Mel Goldberg to be parts of an organized fraud".

22.2 The Applicant alleged that the Respondent acted for clients in purported transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements. The Applicant's case was that this was evidenced as follows:

a) Taking into account the nature of the transactions, the documentation utilised and the parties involved, the transactions demonstrated many of the notified hallmarks of fraud;

b) The underlying agreements/documentation had a number of unusual and/or irregular features and provided for a very high rate of return in a short space of time;

c) The Respondent had no understanding of the purported transactions and simply did as he was told and allowed his client account to be a repository for huge sums of money;

d) Monies were received from multiple third parties with no apparent involvement in the transactions and disbursed to multiple recipients in various countries;

e) The Respondent accepted instructions to undertake work in connection with which he had no knowledge, expertise or experience;

f) There was no explanation as to why a charity, WOW, would be involved in high value investment activity, and it was not apparent the Respondent made any enquiries in this regard and there was no evidence that the stated purpose of the transaction was ever met.

22.3 The Applicant submitted that the Respondent should have been especially wary in dealing with Mr MG, given his history, and should not have trusted what he said at face value. Further, the Applicant considered that the transactions were circular in nature and that this should have made the Respondent more suspicious.

22.4 Taking into account the above matters, in circumstances where the features of concern should have been completely obvious to the Respondent and where the Respondent fell very far short of the standards expected, the Applicant alleged that the Respondent failed to act with integrity and failed to act in a way that would maintain the trust the public placed in him and in the provision of legal services contrary to Principles 2 and 6 of the SCC 2011 and/or Rules 1.02 and 1.06 of the SCC 2007.

<u>The Respondent's Case</u>

22.5 The Respondent denied allegation 1.7. Properly considered the Respondent did not believe that the transactions exemplified by the SRA bore the hallmarks of fraud based on the information available to him at the time. The parties were reputable and well known. GEBS had relationships with around 200 banks, Goldmoss and Coppercast were each substantial and reputable brokers within the field of international finance. Of all the various parties involved, only Mr BO had raised any concerns. The matters raised by the SRA were matters which were of concern only to the SRA. If it was the case that the Respondent had acted on twenty one fraudulent transactions, each involving Goldmoss or Coppercast and GEBS, according to the Respondent, one might imagine that the FMA or any number of international authorities might have raised an inquiry or that a complaint might have appeared or, at least, there would have been reports in social media, and websites would have issued warnings. Aside from the WOW transactions, there had been none.

22.6 As to the WOW Mr BO and Mr SM transactions, the Respondent was aware of an investigation by the Swiss police. The Respondent had not been asked to provide any information in that investigation and had not been interviewed. At the time, the

Respondent did not know that there was any problem with the WOW transactions. He recognized that he should have been more wary. The Respondent did not subscribe to Mr BO's explanation of the transaction but asked the Tribunal to accept that, in the context of the work he was doing, this transaction appeared to be routine and relatively low value at the time.

22.7 The Respondent had trusted Mr MG and did not think that it was his responsibility to ask why payments need to be made or do money laundering checks on the recipients. The Serious Fraud Office case against Mr MG had collapsed and he had been vindicated. GEBS had confirmed to the Respondent that it knew about the payments to Mr WPB personally.

22.8 The transactions may have had unusual features and were complex but there were no secret aspects to them and the Respondent was not suspicious at the time although he acknowledged that with hindsight he should have been. The Respondent did not accept the Applicant's argument that they were circular in nature, the elements highlighted as suspicious were elements that would be seen in transactions involving a Stand-By Letter of Credit. The Respondent acknowledged that he was not qualified to advise on New Zealand law but this was not his role in the transaction. The Respondent had read and understood the documents in the various transactions.

22.9 Mr BO confirmed to the Tribunal that at the time in question the Respondent did not have the Term Sheet for his transaction. In Mr BO's opinion this document had been very much misinterpreted by the Applicant. The Respondent had done what Mr BO expected him to do, except for not ensuring that the guarantee was enforceable by him. This was little a fault with big consequences. Mr BO acknowledged that he did not know that the Respondent was also acting for WOW (and did not accept that he had based his evidence on what Mr DM said) nor that he was acting for Goldmoss. The Respondent had not told Mr BO how his funds had been paid away but Mr BO did not consider that the Respondent had a duty to do this once the funds were no longer held to his order.

22.10 The Respondent had been an "all-rounder" rather than a specialist. He had done all sorts of legal work. He had given his clients the advice they needed or, if it was outside his area of expertise, had referred them to another solicitor. He did consider the promised returns in some of these transactions, and especially the WOW/Mr BO one, ridiculous. The Respondent had relied on what Mr MG was saying; he had a senior position in a major bank and he was successful.

<u>The Tribunal's Findings</u>

22.11 Principle 2 required that a solicitor must act with integrity and Principle 6 that a solicitor must behave in a way that maintained the trust that the public placed in him/her and in the provision of legal services. Rules 1.02 and 1.06 of the SCC 2007 mirrored these provisions.

22.12 The Tribunal was an expert Tribunal. The transactions were complicated but the Tribunal understood the nature of the transactions and in particular was aware that the provisions in respect of standby letters of credit were standard.

22.13 The Tribunal was satisfied, taking into account the nature of the transactions, the documentation utilised and the parties involved, that the transactions demonstrated many of the notified hallmarks of fraud and that the Respondent had no understanding of the purported transactions and simply did as he was told and allowed his client account to be a repository for huge sums of money. Further monies were received from multiple third parties, with no apparent involvement in the transactions, and distributed to multiple recipients in various countries. There was no explanation as to why a charity, WOW, would be involved in high value investment activity and it was not apparent that the Respondent made any enquiries in this regard. The WOW transactions provided for a very high rate of return in a short space of time and there was no evidence that the stated purpose of the WOW transactions was ever met. It was clear to the Tribunal that the Respondent had acted for clients in purported transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements.

22.14 Neither Ms Carpenter nor Ms Heley had addressed the Tribunal on the definition of integrity. The case of Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) was in the bundle of authorities before the Tribunal. The Tribunal considered all of the evidence before it and asked itself whether want of integrity was identified as present or not by reference to the facts of this case. The Tribunal was in no doubt at all that the Respondent had not acted with integrity. The Respondent had acted for clients in transactions where there was an identified conflict of interest. He had seen his role as limited but had not made this clear in his client care letters. The Respondent had not satisfactorily safeguarded the interests of Mr BO or Mr SM. The transactions had borne the hallmarks of money laundering and/or fraudulent financial arrangements. The Respondent by his own admission had some awareness of the warning signs but he continued to be involved in these transactions justifying his actions by saying his role was execution only. In return he received significant fees for very limited work. The Tribunal did not consider that these were the actions of a solicitor who was acting with integrity. For the same reasons, the Respondent had not behaved in a way that maintained the trust that the public placed in him and in the provision of legal services. Allegation 1.7 was proved beyond reasonable doubt.

23. **Allegation 1.8 - In relation to Allegations 1.3 to 1.7, it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.**

The Applicant's case

23.1 The Applicant alleged that the Respondent acted dishonestly in relation to Allegations 1.3, 1.4, 1.5, 1.6 and 1.7. The Applicant's case was that the Respondent had acted in relation to the receipt and payment of funds in the course of transactions which bore the hallmarks of money laundering and/or fraudulent financial arrangements. It was alleged that he had acted in circumstances where:

a) The documentation utilised and the transactions themselves demonstrated many of the notified hallmarks of fraud;

b) The Respondent provided no legal advice or drafted any documentation when, at the same time, he made the Firm's client account available to operate as a banking facility to enable funds to be received and payments to be made out;

c) The Respondent purported to act for multiple parties, including in one instance seemingly as a trustee for Dorax, in suspicious circumstances where no, or no adequate, client due diligence was undertaken;

d) Certain parties were involved in the transactions in circumstances where the nature of and reason for their involvement was unclear yet where the Respondent undertook no investigations or due diligence, including Mr SJ, Dorax, the Third Party Investors, Mr CW and Conduit Services Limited;

e) The Respondent made no attempts to satisfy himself that it was proper to act;

f) The Respondent permitted the receipt of considerable funds into his client account from third parties in various jurisdictions, where no due diligence as to the source of funds was ever undertaken;

g) The Firm's client account was used as a conduit for the transmission of funds at the behest of Goldmoss where there was no explanation for the onward payments to seemingly unrelated third parties in various countries to include Russia and Latvia;

h) Certain payments appeared to be circular and/or particularly suspicious, namely those to Dr WPB, GEBS itself, and Quantum Leben;

i) The Respondent was paid considerable sums by way of legal fees without any objective justification;

j) The Respondent provided undertakings in the course of the matter conducted on behalf of Mr BO which set out conflicting duties and contained false information;

k) The Respondent had confirmed that he was aware of his obligations including those imposed by the Law Society and the SRA regarding money laundering and bank instrument fraud and with the warnings themselves ; and

l) The Respondent had been explicitly notified by the SRA in November 2013 of the High Yield Investment Fraud warning notice such that he was on notice that the investment activities he undertook were at least highly suspicious and possibly fraudulent prior to the Swiss Garantie matter being commenced.

23.2 In the Indemnity Interview in November 2013 various concerning features of transactions were drawn to the Respondent's attention and, despite the fact that he was aware of the concerns in relation to the nature of the transactions and knew what had happened in respect of Mr BO, the Respondent subsequently became involved with the Swiss Garantie transaction.

23.3 The Respondent had been paid large fees for very little work and the Applicant alleged that this was his motivation for acting improperly.

23.4 Mr BO had originally alleged that the Respondent was dishonest, but had then brought a claim in negligence and did not allege dishonesty. When that did not enable him to recover his money he tried to bring a claim against the Compensation Fund, in which he alleged that the Respondent was dishonest. He was now saying that the Respondent was not dishonest merely negligent.

23.5 The Respondent's actions were dishonest according to the combined test for dishonesty as laid down in the case of Bultitude v Law Society [2004] EWCA Civ 1853, which applied the test for dishonesty as formulated by the House of Lords in the case of Twinsectra v Yardley and others [2002] UKHL In these circumstances, the Respondent acted dishonesty according to the ordinary standards of reasonable and honest people ("objective test") and was aware that by those standards his conduct would be judged to have been dishonest ("subjective test").

23.6 It was alleged in the alternative that such conduct was dishonest in that such disregard for the obligations of a solicitor to conduct himself in a way which safeguarded the public interest was so reckless as to negative honest belief. He effectively shut his eyes to irregularities and suspicious activities which were obvious. The Respondent did not ask specific questions that he should have asked because he knew what they answers were going to be. Ms Carpenter drew the Tribunal's attention to Manifest Shipping Cl Ltd v Uni-Polaris Insurance Co Ltd and others [2001] UKHL 1 which was the leading case on blind-eye knowledge. Blind-eye knowledge required a firmly grounded suspicion that relevant facts existed and a deliberate decision to avoid confirmation that they existed. It was a high test, requiring more than a feeling. In Ms Carpenter's submission if the test in Twinsectra was not met there was clearly blind-eye knowledge in this case.

The Respondent's Case

23.7 The Respondent denied the allegation and refuted the suggestion that he had acted dishonestly either knowingly or on the basis of blind-eye knowledge. Insurance cover had been withdrawn in respect of Mr BO's claim. In the context of these proceedings recklessness and dishonesty were not synonymous. Blind-eye knowledge was a high bar. This was not a case where the Respondent had deliberately closed his eyes. He was not dishonest by the standards of ordinary and honest people and could not be subjectively dishonest. To be subjectively dishonest he must have appreciated at the time that his conduct would have been judged to be dishonest by the standards of ordinary and honest people. In Ms Heley's submission the Twinsectra test was not met nor the test for blind-eye knowledge as described in Manifest Shipping.

23.8 The Respondent accepted that he had made mistakes and regretted having done so. The Respondent believed that the SRA's case against him had not been properly investigated and was overstated. The Respondent did not try to excuse his actions but asked the Tribunal to accept that his intentions were good.

23.9 The Respondent had been in the legal profession for nearly 50 years. He had provided a number of references to the SRA speaking of his character and these were before the Tribunal. The Respondent said that he had always sought to act honestly and with integrity. He accepted that he may have placed too much reliance on others in connection with some of the matters exemplified by the SRA and that, on occasion, he

should have been more cynical and suspicious and asked more questions. The Respondent hoped that he had explained why many of the SRA's assumptions and assertions were wrong. Most fundamentally, the SRA based its case on the alleged lack of due diligence. The Respondent considered that the SRA's position on this issue was wrong in fact and in law.

23.10 The Respondent invited the Tribunal to have regard to the references provided and to the inherent improbability that he should suddenly have started to act dishonestly after the age of about 74 having been in the profession for almost 50 years. The Respondent had been very proud to be a solicitor and had had an interesting career. Although his practising life ended with the intervention and amid allegations that he had acted dishonestly, his clients and friends had remained willing to assist him. The Respondent felt very lucky to have had such an amazing career and all he wanted was to be able to retire without the stigma of dishonesty attached to his name. The Respondent reiterated that he was not and had never been a dishonest person. He had made mistakes and he admitted to them.

23.11 In the Civil Case brought by Mr BO against the Respondent it had been accepted that the Guarantee was valid under New Zealand law, and the irregularity was that the beneficiary of the guarantee was not stated to be Mr BO so it afforded him no protection. That Court had not heard argument on breach of fiduciary duty or breach of undertaking as the case in negligence was made out. The Respondent may have been an idiot or incompetent but he was not dishonest. Mr BO's evidence to the Tribunal was that in respect of his transaction the Respondent had not been dishonest.

23.12 The FIO had not spoken to other parties in the transactions he had exemplified in the Rule 5 Statement. Nor had he spoken to a New Zealand lawyer. Ms Heley submitted that if the Tribunal could not understand the transactions it could not find the Respondent dishonest. The Respondent had thought some of the transactions were unusual but he had not thought that they were dishonest. There had been a lapse of time between the Indemnity Interview, the withdrawal of insurance cover in respect of Mr BO's claim and the Respondent's involvement in the Swiss Garantie matter.

23.13 The Respondent accepted that he should have had ledgers for the eighteen transactions but denied that the ledgers had not been prepared on purpose and disputed the Applicant's assertion that this was because he knew the transactions were dubious and not something a solicitor should be involved in.

<u>The Tribunal's Findings</u>

23.14 Dishonesty was alleged in respect of allegations 1.3 to 1.7.

23.15 Allegation 1.3 centred on the use of the Respondent's client account as a banking facility. The allegation had been proved. There were payments in from a number of people and payments out to a number of people. If the Respondent had knowingly allowed his client account to be used as a banking facility to launder money then that would have been dishonest. However looking at the use of the client account as a banking facility on the facts before it the Tribunal could not find that there was objective dishonesty in respect of this allegation. Dishonesty was not proved in respect of allegation 1.3.

23.16 Allegation 1.4 related to money laundering and the Respondent's failure to comply with the legislation applicable to his business. The allegation had been proved in part in respect of 1.4 (a) and in full in respect of 1.4 (b). The Respondent had failed to undertake due diligence on three people/entities that had paid money into his client account. He was not under an obligation to undertake due diligence on the recipients of the payments. In the circumstances the Tribunal could not find that there was objective dishonesty in respect of this allegation. Dishonesty was not proved in respect of allegation 1.4.

23.17 Allegation 1.5 was based on the fact that the Respondent acted in situations where there was a conflict of interest. Allegation 1.5 (a) had been found proved and 1.5 (b) had been admitted and proved. The Tribunal considered all of the evidence before it. In respect of allegation 1.5 (a) this was a breach of the Respondent's professional duties and he should not have acted. However the Tribunal could not find that the Respondent had acted dishonestly. Turning to allegation 1.5 (b), the Tribunal found that the Respondent had been foolish but not dishonest. Dishonesty was not proved in respect of allegation 1.5.

23.18 Allegation 1.6 related to a failure to act in the Respondent's clients' best interests. Allegation 1.6 had been admitted and proved. The Tribunal noted that the Respondent had consulted Mr MG before responding to Mr BO's query about the guarantee but had not in fact responded in the terms proposed by Mr MG. The Respondent had appeared in his response to be giving equivocal advice and fudging the issue. The Tribunal did not consider that the Respondent had been dishonest in respect of Mr BO's transaction. Nor did it consider that he had been dishonest in respect of Mr SM's transaction or the sale of the property. Dishonesty was not proved in respect of allegation 1.5.

23.19 Allegation 1.7 was an allegation that the Respondent had acted in transactions that bore the hallmarks of money laundering and/or fraudulent financial arrangements. It had been found proved. There was no evidence that there had in fact been fraud. However there had been payments in from numerous individuals and payments out to payees all around the world. These payees included GEBS itself, Mr WPB and relatives of those involved in the transactions. The Respondent had become involved in these transactions despite awareness of the warning signs. He had received significant remuneration for very limited work. There was no evidence that he had taken any steps to ascertain for himself whether the hallmarks of money laundering and/or fraudulent financial arrangements were simply hallmarks or whether there was in fact money laundering and/or fraudulent financial arrangements. By the standards of reasonable and honest people it was dishonest for a solicitor to have taken the Respondent's role in those transactions. The objective test in Twinsectra was satisfied. However, in order to find dishonesty the Tribunal needed to be sure that the subjective test was also satisfied.

23.20 The Tribunal carefully considered the six transactions. In the Tribunal's view the Respondent should have and would have been increasingly suspicious about the transactions. If he had not been, he could have been said to have been turning a blind-eye. The Tribunal did not consider that the subjective test in Twinsectra was satisfied in regard to the CNTP, T-Net, Mox, WOW/Mr BO and WOW/Mr SM transactions.

Nor did it consider that the high-bar for blind-eye knowledge as set out in Manifest Shipping had been crossed beyond reasonable doubt in those five transactions.

23.21 In the Indemnity Interview on 1 November 2013 Mr Pooles QC had focussed on the Mr BO transaction but had touched on the Respondent's previous transactions involving Goldmoss. In that interview the Respondent had confirmed that he was aware of the money laundering implications and had said that he did not consider it his responsibility to investigate whether or not it was a good or bad transaction. He had confirmed he was aware of the Law Society and SRA warning about money laundering and back instrument fraud. The Respondent had acknowledged in respect of the Mr BO transaction that he thought that the rate of interest was ridiculous and unbelievable. In respect of Mr MG the Respondent had said "I have my doubts obviously but I haven't actually seen him do anything which is improper" and that "I have no reason to believe that [MG] was dishonest". In respect of the WOW/Mr BO transaction the Respondent also stated "I do think that the parties, in hindsight, are thoroughly dishonest" and went on to say "[GE] is certainly dishonest. I suspect that [Mr BO] is dishonest as well. I suspect that his financial adviser, [Mr RS], is also dishonest. I have an open mind about [Mr MG]. I haven't actually seen him do anything which I would classify as dishonest." He then said in reference to Mr MG "he skates close to the wind obviously".

23.22 By the time of the Swiss Garantie transaction the Respondent had had the Indemnity Interview. He had had his insurance cover withdrawn in respect of the Mr BO transaction and there were civil proceedings in relation to that transaction. Yet the Respondent still became involved in the Swiss Garantie matter. The Tribunal had already found that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people in the Swiss Garantie transaction. The Respondent must have realised that by those standards his conduct was dishonest. The Tribunal was sure that in the Swiss Garantie transaction the subjective test was satisfied. The Tribunal found dishonesty proved beyond reasonable doubt in respect of allegation 1.7. The Tribunal considered that the Respondent had been dishonest but only at a late stage.

Previous Disciplinary Matters

24. None.

Mitigation

25. Ms Heley submitted that the Respondent was sorry that his financial circumstances had not allowed her to take a more active role in the proceedings and for any inconvenience this might have caused to the Tribunal and to the SRA. The Respondent offered his sincere apologies for the mistakes that he had made to the Tribunal and to the profession.

26. Ms Heley sought clarification from the Tribunal as to the extent of the finding of dishonesty in respect of allegation 1.7. It was clarified that the finding related to the Swiss Garantie transaction only as this post-dated the Indemnity Interview. Ms Heley sought to argue exceptional circumstances as to why, given the finding of dishonesty, the Respondent should not be struck-off.

27. Ms Heley summarised the Respondent's evidence in respect of the Indemnity Interview as having found himself shell shocked. He had not been expecting the type of interview that had taken place. Had he known, then he would have been much better placed to answer the questions that were put to him. The interview was some seven months prior to the Swiss Garantie transaction. The Insurers had declined cover in the March and the transaction was in the June. Mr MG had provided a letter to the Tribunal as to the background to the transactions. The Respondent had placed his trust in Mr MG and the people he was working with at the time however misguided that might have been.

28. Ms Heley had produced a number of character references, addressed to the SRA, attesting to the Respondent's good character and the fact that the referees considered him honest. Ms Heley acknowledged that personal circumstances did not assist her but noted that the Respondent had had a very lengthy and occasionally quite distinguished career. The Respondent had expressed his regret for the mistakes he had made. The extent of the dishonesty found proved fell far short of the extent of the dishonesty that had been alleged. The Respondent had no intention to practise again.

29. The Respondent was declared bankrupt in May 2015. He had been discharged from Bankruptcy as the Official Receiver had released him automatically on the 6 May 2016 without an application from him. The Respondent owned no real estate and lived in a rented Retirement Home with the assistance of his local Council. All assets he had had were taken by the Trustee in Bankruptcy. The Respondent did not have a private pension and had a small State Pension. He had no other asset of any kind.

Sanction

30. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction.

31. The Respondents' culpability was high. The motivation for the misconduct was financial gain and the desire to continue acting for Goldmoss. The Respondent's actions were planned and he had direct control and responsibility for the circumstances giving rise to the misconduct. He was a very experienced solicitor. Mr BO had lost a significant amount of money and not been able to recover it. Mr SM had also lost money and it was not known whether or not he had recovered his losses. The Respondent had been in a position of trust in respect of his clients and had breached this, particularly by acting for different parties to the same transaction.

32. The Respondent's actions had had a negative impact on the public and the reputation of the legal profession. His behaviour was not what the public expected of a solicitor. A solicitor was expected to act honestly and with integrity. The Respondent had lacked integrity and acted dishonestly. The harm was reasonably foreseeable in respect of the earlier transactions and intended in relation to the Swiss Garantie transaction.

33. The relevant aggravating factors were that dishonesty had been alleged and proved; the misconduct was deliberate, calculated and repeated; it had continued over a period of time; and was misconduct where the Respondent knew or ought reasonably to have

known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. There were very limited, if any, mitigating factors. The Respondent had had a long career with no previous disciplinary proceedings but the misconduct was not a one-off or of very brief duration. He had paid monies to clear the balance of the suspense account but had not done so when he was first aware of the issue or when he first said that he would. He did not have genuine insight and nor had he made early and frank admissions.

34. The Tribunal considered the range of sanctions available to it commencing with No Order. Given that there was a finding of dishonesty the Tribunal considered, but moved quickly through, the range of sanctions as they were inadequate to reflect the seriousness of the misconduct. The Tribunal considered whether a suspension was appropriate but given its findings did not consider that suspension would provide the necessary protection to the public and the reputation of the profession. A lesser sanction than strike-off would be inappropriate. The Tribunal considered whether there were any exceptional circumstances. Given the nature, scope and extent of the Respondent's misconduct, the length of time over which the conduct occurred, the financial gain for the Respondent and the adverse effect on others including Mr BO and Mr EH the Tribunal was satisfied that there were no exceptional circumstances that justified a reduction in sanction. The Tribunal ordered that the Respondent's name be stuck-off the Roll of Solicitors.

35. The Tribunal had made a finding of lack of integrity. Even absent proof of the allegation of dishonesty the seriousness of the misconduct was very high and the Respondent's conduct a complete departure from the required standards of integrity, probity and trustworthiness required of a solicitor. The misconduct was so serious that the finding of lack of integrity would have resulted in the Respondent being struck off even if dishonesty had not been alleged and proved.

Costs

36. The Applicant applied for its costs supported by a costs schedule in the sum of £59,277.36. The only estimated part of the schedule was the amount of time claimed for Mr Griffith's attendance at the third day of the hearing. The Tribunal queried whether there was duplication between the costs claimed for Mr Havard and Mr Griffiths. Ms Carpenter explained that Mr Havard was Mr Griffiths' supervisor and both had worked on the drafting of the Rule 5 Statement and that in Mr Griffiths' view there was no duplication although he acknowledged that there would be supervisory costs.

37. There was no information as to the Respondent's financial circumstances save that set out in his witness statement and there was no documentary evidence to support the contents of his statement in respect of his means. The Respondent had previously been made bankrupt and according to Ms Heley had no money. The Applicant had no evidence to gainsay what the Respondent said about his means and Ms Carpenter invited the Tribunal to assess costs and make an order that such costs should not be enforced without leave of the Tribunal. Ms Heley supported the application for assessment of costs and that such order costs should not be enforced without leave of the Tribunal.

38. In response to the Tribunal's query as to the need for Counsel to be instructed Ms Heley submitted that it was an issue as to whether or not it was necessary for Ms Carpenter to be instructed but acknowledged that if Mr Havard had undertaken the advocacy the costs would have been similar. However in that circumstance there would not have been the need for Mr Griffiths to attend.

39. The Tribunal assessed costs in the sum of £40,000.00. The Tribunal reached this figure by reducing the drafting time claimed by Mr Havard, deducting Counsel's fees as the Tribunal considered that Mr Havard could have undertaken the advocacy, in which case Mr Griffiths would not need to have attended, and adding a small amount for increased preparation had Mr Harvard undertaken the advocacy.

40. The Tribunal considered whether it was appropriate to order costs in this sum and secondly whether there should be an order that the costs could not be enforced without leave of the Tribunal. The Respondent had argued that he had no money but Ms Heley had not submitted that there should be no order for costs merely that any costs order should not be enforced without leave of the Tribunal. It was hard to see how the Respondent's financial circumstances might change in the future given his age and the fact that he had not worked as a solicitor since the intervention and had now been struck-off, However, the Tribunal considered that there was a possibility, albeit remote, that he might be able to pay in the future and that it was more appropriate to make an order that the assessed costs should not be enforced without leave of the Tribunal rather than reducing the costs payable to nil in which case the cost of the proceedings would inevitably be borne by the profession.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, MELVIN DOUGLAS GOLDBERG, 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 £40,000.00 not to be enforced without leave of the Tribunal.

Dated this 23rd day of November 2016
On behalf of the Tribunal

I. R. Woolfe
Chairman