SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11484-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW JOHN DAVIES Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss H. Dobson
Mr R. Slack

Date of Hearing: 11 – 12 October 2016

Appearances

Inderjit Johal, Counsel of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 17 February 2016.

2. The allegations were that:-

2.1 he acted in breach of Rule 29 of the SRA AR 2011 ("SAR") and in breach of all or alternatively any of Principles 4, 6, 7 and 10 by failing at all times to keep accounting records properly written up to show dealings with client money received, held or paid;

2.2 he acted in breach of Rule 20 and 17.02 SAR and in breach of all or alternatively any of Principles 2, 4, 6 and 10 by making improper transfers from client account;

2.3 he acted in breach of Rule 7 of the SAR and in breach of all or alternatively any of Principles 7 and 10 of the SRA Principles 2011 ("the Principles") by failing to replace the shortage on client account;

2.4 he acted in breach of Principles 2 and 6 by misleading the Forensic Investigation Officer ("FIO") during her investigation, by amongst other things, providing her with falsified accounting records, documents and emails;

2.5 he acted in breach of Principles 2 and 6 by misleading his clients, Mr and Mrs B by providing them with falsified bank statements and payment debit slips that purported to show that he had paid of their liabilities;

2.6 he acted in breach of Principles 2, 4, and 6 in that, on the 4 August 2014, he sent to his clients, Mr and Mrs R falsified bank statement which purported to show that their mortgage had been redeemed, when it had not been;

2.7 he acted in breach of Principles 2 and 6 in that on the 7 November 2012 he provided forged building regulation certificates to a Mr IW who acted for the Royal Bank of Scotland ("RBS") in a property transaction;

2.8 he acted in breach of Principles 2 and 6 in that he misled chambers and his employees by falsifying and creating emails dated 3 April 2014, that purported to show that he had paid for the professional services of a barrister at chambers;

2.9 he acted in breach of Principle 2 and 6 by forging an opinion of Mr AT QC, dated 15 July 2013, and by fabricating an email from his clerk, Mr JR, dated the 19 July 2013, and in so doing misled his client CCL, to whom he supplied a copy of the forged opinion on the 17 July 2013.

3. Dishonesty was alleged against the Respondent in respect of allegations 2.3, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10; however proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

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

Applicant

- Application and Rule 5(2) Statement with exhibit IJ1 dated 17 February 2016.
- Witness Statement of Baljinder Dhaliwal dated 8 June 2016.
- Cost Schedules dated 18 February 2016 and 6 October 2016.
- Respondent's letter to the Applicant dated 11 April 2016.
- Applicant's Civil Evidence Act Notice dated 7 September 2016.
- Official Copy of the Register dated 30 September 2016 in respect of the Respondent's last known address.

Respondent

The Respondent had not engaged with the proceedings and had not provided any documentation.

Other Documentation

- Royal Mail Proof of Delivery dated 22 February 2016 and 11 May 2016

Preliminary Matter One – Application to proceed in the absence of the Respondent

The Applicant's Submissions

5. The Respondent did not attend the hearing and the Applicant made a preliminary application to proceed in the absence of the Respondent. The Applicant invited the Tribunal to consider whether the Respondent had been properly served and if the Tribunal was satisfied he had been served, to proceed in his absence under Rule 16 (2) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR").

6. The Applicant's position was that the papers had been served by the Tribunal's administrative office in February 2016. On 22 February 2016 the letter serving the proceedings was signed for at the Respondent's last known address. There was proof of delivery before the Tribunal and this recorded the printed name of the person signing for the letter as 'Davies'. Notice of the Hearing had been sent to the Respondent at the same address on 10 May 2016. On 11 May 2016 this letter had been signed for and the Royal Mail Proof of Delivery recorded the printed name as 'Davies'. There was proof of delivery before the Tribunal. On 11 April 2016 the Respondent had written to the SRA on a separate matter and he had written from the address at which he had been served. This letter was before the Tribunal. Further the SRA had obtained Official Copies of the Register for the Respondent's last known address. The edition of the register, dated 30 September 2016, was handed to the Tribunal. This confirmed the Respondent as joint proprietor of the property as of that date. Mr Johal submitted that the Tribunal could be satisfied that the Respondent had been properly served and invited the Tribunal to proceed in his absence.

7. Mr Johal referred the Tribunal to consider Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 and the principles (laid down in the context of criminal proceedings) by the Court of Appeal in R v. Hayward, Jones & Purvis QB 862 [2001], as qualified and explained by the House of Lords in R v. Jones [2002] UKHL 5.

8. The Tribunal asked Mr Johal to address it on the case of General Medical Council v. Adeogba [2016] EWCA Civ 162 which set out the factors to consider in a regulatory context. Mr Johal submitted that based on the principles set out in Adeogba the Tribunal should proceed in absence. Fairness to both the Applicant and Respondent was a relevant consideration. The Tribunal should deal with regulatory proceedings efficiently and quickly. There was no evidence that the Respondent would attend if the hearing was adjourned. The Respondent had been served with the proceedings in February 2016 and had not engaged.

The Tribunal's Decision

9. The Tribunal was satisfied that there was proper service of notice of the hearing. The Official Copy of the Register, which, whilst not included in the Civil Evidence Act Notice, was a public document, confirmed that the Respondent was still registered as the joint proprietor of his last known address as at the end of September 2016. Rule 16(2) of the SDPR states that "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

10. The Tribunal had to decide whether to proceed in the absence of the Respondent. This was a discretionary decision and that discretion should only be exercised rarely. Jones and Adeogba set out the key case law that the Tribunal needed to take into account and the Tribunal considered this guidance and the Applicant's submissions. The allegations, if proved, were serious and related to events that took place over two years ago. To adjourn the case and relist it would lead to delay. It would be some time before the matter could be re-listed as it had a time estimate of three days. The Tribunal needed to be fair to both parties and the Respondent had been aware of the proceedings since February 2016. He had not engaged with the Applicant except to query the reason for the decision to publish the referral by the SRA to the Tribunal in his letter of 11 April 2016. If the matter was adjourned it would prejudice the Applicant and there was no evidence to suggest that the Respondent would attend an adjourned hearing. The Tribunal's role was to uphold the reputation of the profession and to protect the public. It was in the public interest for the matter to proceed. The Tribunal concluded that the Respondent had voluntarily absented himself and that it would proceed in his absence.

Preliminary Matter Two - Application to amend the Rule 5 Statement

11. Mr Johal explained to the Tribunal that there was an error in the Rule 5 Statement in respect of the allegation of dishonesty. Paragraph 3 of the Rule 5 Statement referred to dishonesty being alleged in respect of allegations 2.3, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10. There were in fact only nine allegations and the underlying facts in respect of the allegations of dishonesty related to allegations 2.2, 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9.

Mr Johal sought leave to amend the Rule 5 Statement to refer to these allegations and not those stated.

12. Given the Respondent was not present the Tribunal did not consider it appropriate for the Rule 5 Statement to be amended in that way. The Respondent had a right to know the allegations against him. Dishonesty had been alleged in respect of allegations 2.5, 2.6, 2.7, 2.8 and 2.9 and the Tribunal decided that it would proceed on the basis that dishonesty was alleged in respect of these allegations only. The Tribunal would not consider any allegation of dishonesty in respect of allegations 2.2 and 2.4 and there was no allegation 2.10.

Preliminary Matter Three - Application to admit the Witness Statement of Athena Russell dated 10 October 2016

13. On 10 October 2016 the Applicant emailed the Tribunal and the Respondent a short witness statement from Ms Russell dated 10 October 2016 verifying that she had provided the SRA with RBS bank statements. Mr Johal applied to admit the statement into these proceedings. This statement was not subject to the Civil Evidence Act Notice dated 7 September 2016 although the documents it referred to were subject to the Notice. Given that the Respondent was not present and the document had only been sent to him the night before the hearing by email the Tribunal declined to admit the document.

Factual Background

14. The Respondent was born in 1984 and was admitted to the Roll of Solicitors on 3 November 2008. The Respondent practised as a partner in the firm of Robert Meaton & Co ("the Firm") from 1 May 2009. He was the senior and only equity partner in the Firm from December 2012 until the Firm was intervened into by the SRA. The Respondent's practising certificate was suspended as at the date of the intervention and no application was made for the suspension to be lifted.

15. The SRA commenced an investigation into the Firm on 13 September 2013. At an initial meeting on 13 November 2013, the Respondent informed the FIO that the existing client account shortage was caused by duplication of transfers in relation to conveyancing bills which had caused duplicate sums totalling £53,281.93 to be transferred from the Firm's client bank account to the office bank account at varying time between 2007 and 2012.

16. On 25 July 2014, RBS contacted the SRA to report that the Firm's office and client account had been frozen due to two suspicious transfers from the client account to the Respondent's personal bank account.

17. An interim forensic investigation report ("the IFIR") was prepared by the FIO and was dated 1 August 2014. The IFIR recorded that there were two improper transfers of money from the Firm's client account to the Respondent's personal account of £270,398.17 and £205,714.20 on 25 July 2014. The IFIR identified a minimum client account shortage of £529,394.30 as at 30 July 2014. As a result of the matters identified in the IFIR, the Firm was intervened into on 7 August 2014.

18. A second prearranged interview of the Respondent and Mr SA was due to take place on 31 March 2015. The Respondent did not attend and has not provided any explanation for his non-attendance.

19. A final forensic investigation report ("the FIR") dated 2 June 2015 was prepared by the FIO. The FIR stated that the cash shortage had increased to £833,450.04. The shortage had not been replaced.

Witnesses

20. Mr Taranjeet Babra, Investigation Officer, gave oral evidence.

21. 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.

22. Ms Dhaliwal was the allocated Forensic Investigation Officer. She had prepared the IFIR, the FIR and a witness statement. Unfortunately, Ms Dhaliwal had broken her leg and was absent from work. On that basis, prior to the hearing, the Applicant applied to adjourn the hearing supported by medical evidence. The Tribunal refused the adjournment application and made enquires of the Applicant as to what, if any, reasonable adjustments could be made for Ms Dhaliwal to give evidence if required. Despite these enquiries being made more than once no satisfactory answer was ever received from the Applicant. The Tribunal would have, in the circumstances, been content for reasonable adjustments to be made to hear her evidence in some form short of appearing in London.

23. Ms Dhaliwal's two reports and witness statement were subject to a Civil Evidence Act Notice and no Counter Notice was served by the Respondent. The Tribunal was aware that Ms Dhaliwal had been accompanied on two of her visits to the Firm by Mr Babra and made the suggestion to the Applicant that Mr Babra attend the hearing to clarify any matters arising out of the IFIR and FIR with which he could assist. Mr Babra attended the Tribunal and gave brief oral evidence. The Tribunal appreciated Mr Babra's assistance.

24. Whilst fully understanding why Ms Dhaliwal could not attend the Tribunal in London and making no criticism of her, the Tribunal expected the Applicant to provide a cogent response to its enquiries about reasonable adjustments. It was regrettable that such a response was not forthcoming. Ms Dhaliwal's investigation had clearly been very detailed and thorough. The IFIR and FIR were of considerable assistance to the Tribunal and whilst significant time had been spent on their preparation and the investigation this was reflected in the quality of the evidence before the Tribunal.

Findings of Fact and Law

25. The Respondent had not filed an Answer in the proceedings. The Tribunal proceeded on the basis that all of the allegations were denied. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

26. **Allegation 2.1 - he acted in breach of Rule 29 of the SAR and in breach of all or alternatively any of Principles 4 , 6, 7 and 10 by failing at all times to keep accounting records properly written up to show dealings with client money received, held or paid;**

Allegation 2.2 - he acted in breach of Rule 20 and 17.02 SAR and in breach of all or alternatively any of Principles 2, 4, 6 and 10 by making improper transfers from client account.

The Applicant's Case

26.1 The Firm acted for Mr and Mrs W in the sale of their property and for Ms B in the sale of her property. The sales completed on 24 and 25 July 2014 respectively. Both properties had existing mortgages that required redeeming. Ms MW, an unadmitted fee earner, had conduct of the Mr and Mrs W sale and Ms SW had conduct of the sale for Ms B.

26.2 The Firm's ledger in respect of Mr and Mrs W showed that, on 24 July 2014, £270,398.17 was paid to Virgin Money to redeem the mortgage. The Firm's ledger in respect of Ms B's sale showed that, on 25 July 2014, £205,714.20 was paid to HSBC to redeem the outstanding mortgage. The redemption statements for both matters contained details of the beneficiary bank account numbers to which the redemption monies should have been sent. The Firm's respective Royal Bank of Scotland Bankline CHAPS payment forms contained the same beneficiary name and account details as on the redemption statements. The Firm's client bank account statements show that, on 24 July 2014, a CHAPS payment of £270,398.17 was made to Virgin Money in respect of Mr and Mrs W's redemption. There had been another attempted payment on 24 July 2014 which was unsuccessful. On 25 July 2014, a CHAPS payment of £205,714.20 was made to HSBC Bank Plc in respect of Ms B's redemption.

26.3 The RBS payment debit advice ("RBS PDA") in respect of both Mr and Mrs W and Ms B contained different beneficiary account numbers and banks to that in their respective redemption statements and the CHAPS payment forms. The RBS PDA for Mr and Mrs W and for Ms B recorded the beneficiary bank as National Westminster Bank PLC (although with differing branches) and the same beneficiary account number.

26.4 The FIO obtained a copy of the Respondent's personal bank statement. The Respondent's personal bank was the National Westminster and the account number is the same beneficiary bank and beneficiary account numbers that appeared on the RBS PDA's. In interview with the FIO officer on the 30 July 2014, the Respondent

initially denied that his account number meant anything to him but after being provided with a copy of his personal bank account statement, he confirmed that he did have an account at the National Westminster with that account number. The Respondent accepted that the payments were made into his account but denied any knowledge of the payments.

26.5 The Respondent confirmed that the payments on both matters had been set up by the fee earners who had conduct of the matters. However, only the Respondent, his partner Mr SA and the Firm's casher Ms EB could authorise the payments on the Firm's bankline system. The Respondent and Mr SA told the FIO that they had not authorised the payments.

26.6 Mr SA provided the FIO with documents in support of his view that the client account had been hacked. The documents showed that fee earners, Ms MW and Ms SW had set up the payments which had been subsequently "updated" by an individual with User ID "MARIEWO" and "SHERIDANW". The Respondent and Mr SA confirmed that they were not aware of a user with the identity "MARIEWO" nor "SHERIDANW". Mr SA surmised that the beneficiary details had been altered by the rogue users.

26.7 After the intervention, the SRA received further information regarding the Firm's bankline system from RBS. The Bankline system enables its customers to make payments electronically, the company director/owner needs to set up their staff with certain access rights to enable them to view the account, make transfers between accounts and to make online payments to third parties. Some staff can be given authority to create payments and some to authorise payments. The persons who have the administrator rights are able to manage the roles for each staff member including set up of a user, amend and delete users. RBS informed the SRA that the Firm had three administrators, the Respondent whose User ID was 'ANDD'; Mr SA and Ms EB.

26.8 RBS provided the SRA with a spreadsheet which showed the bankline audit trail for the Firm from 23 July 2014 to 31 July 2014. It showed that the Respondent's User ID 'ANDD' was used to create a new User ID on the system, in order to alter the beneficiary account to both the payments of £270,398.17 and £205,714.20. The spreadsheet showed that the Respondent's User ID created User ID 'MARIEWO' on 24 July 2014 and 'MARIEWO' edited the beneficiary details of the payment of £270,398.17 and the user ID was subsequently deleted using the Respondent's user ID The spreadsheet also showed that the User ID 'ANDD' created User ID 'SHERIDANW' on 25 July 2014 and 'SHERIDANW' edited the beneficiary details of the £205,714.20 payment and the User ID was subsequently deleted using the Respondent's user ID.

26.9 On 25 July 2014, Mr SU, a bank employee of the RBS, contacted the Respondent to enquire if the payments of £205.714.20 and £270.398.17 that were credited to his personal account were an error. The Respondent stated that the payments related to inheritance payments that were due to him.

26.10 In interview on 30 July 2014 the FIO referred Mr SA and the Respondent to a copy of the Respondent's personal bank account statement. The Respondent was asked to confirm that his personal account was the same account number as where the £270,398.17 had been transferred to and he responded "Yes I do, but I know nothing about that, in terms of the Virgin redemption". The Respondent also stated that "I would just like to say on record immediately I know nothing about this going into my account." When the FIO said that it was clear from the documents considered that the amount had gone into his account the Respondent said "Yeah I know and I know how that looks but with respect I'm not a stupid man. I'm not going to transfer £270,000 to my account direct from client account."

26.11 Mr Babra told the Tribunal that the Respondent had been asked to access his own account online at the time of the interview but had been unable to do so. The Respondent was asked to consent to various bank statements being obtained directly from the relevant banks but Mr Babra was uncertain as to whether or not this request included the Respondent's personal bank account. Original statements for that account were not before the Tribunal.

26.12 The Respondent acted for Mr and Mrs B in relation to the purchase of a property. Following completion of the matter, there was a residual balance of £10,780.00 and the clients instructed the Respondent to pay off their liabilities. The FIO, on reviewing the file of papers and the client bank statements, discovered that the Respondent had failed to pay off the client liabilities and had instead transferred £10,000.00 from the Firm's client account to the Firm's office account on the 25 February 2014, purportedly in respect of a bill for the same amount.

26.13 The Respondent acted for Mr and Mrs R in the sale of a property. The Firm's legal fees were £600.00 plus VAT of £100.00, totalling £700.00. The ledger records two transfers of costs one on 11 June 2014 in the sum of £788.00 being £658.00 plus VAT of £130.00 and the second on 25 July 2014 in the sum of £10,200.00 being £8,500.00 plus VAT of £1,700.00. The client and office bank statements and the client ledger recorded both transactions. The FIO reviewed the client file and found no details of what the further transfer of costs on the 25 July 2014 represented. There was no evidence on the file that the Respondent had done additional work.

26.14 The Respondent acted for Mr FP in a purchase of a property. The FIO identified that, although the contracts had not been exchanged, the Respondent requested the mortgage advance from Barclays on 2 April 2014 of £281,215.00 and also £37,500.00 from the client account on 15 July 2014. The client ledger recorded the receipt of the mortgage advance on 3 April 2014 and the £37,500.00 on 15 July 2014. The client bank account statements recorded the receipt of the monies. The date of the mortgage advance received from Barclays was recorded as 4 April 2014. The certificate of title recorded the mortgage advance of £281,215.00 with a completion date of 7 April 2014. It was signed by the Respondent on the 2 April 2014. The Respondent knew that the mortgage advance was for Mr FP not Mr FrP.

26.15 The FIO noted that all the correspondence on the Mr FP file had a ledger reference PO169/1. That ledger reference related to another client, a Mr FrP, in respect of whom it appeared that the Respondent was acting for in the purchase of another property. Neither the FIO nor the intervention agents were able to locate a file for

Mr FrP. It was not clear that Mr FrP ever existed. The ledger for Mr FrP recorded a receipt 'from client' of £281,215' on 3 April 2014. This was the same amount that was remitted by Barclays for Mr FP's mortgage advance on 4 April. The client bank account statements only record one receipt of £281,215.00. There were no other entries on the ledger of Mr FP after receipt of £37,500.00 on 15 July 2014. There was no evidence on file that the Respondent completed or exchanged on the property purchase for Mr FP.

26.16 The Respondent, rather than applying the mortgage advance for the purchase of Mr FP property, posted the receipt to the ledger of Mr FrP for the purported property purchase on his behalf. The Respondent subsequently used the mortgage funds in numerous transactions unconnected to Mr FP or Mr FrP. After a review of the legers, client bank account statements and having consulted with RBS the FIO concluded that £241,200.81 of the mortgage advance for Mr FP had been improperly used by the Respondent. The transactions included payments, transfers from client to office account and inter ledger transfers from the Mr FrP Ledger. On 1 April 2014 there was an inter ledger transfer in the sum of £18,582.63. The narrative on the ledger was "money to GF as per agreement". The ledger of a Mr GF showed receipt of £18.582.63 on the 1 April 2014. There was no connection between Mr GF and Mr FrP. On 4 April 2014 there was a payment of £37,922.90 recorded as "money to client". RBS confirmed that the cheque was made payable to JC. There was no connection between JC and Mr FrP. On 13 June 2014 there was a transfer of £25,000.00 from client to office account in respect of costs and this payment was shown on the bank statements.

26.17 Mr Robert Meaton was the Respondent's Partner in the Firm until his death on 14 December 2012. The Respondent and a Mr AC were named as joint executors and trustees under Mr Meaton's Will. Under the terms of the Will, Mr Meaton gave his interest in the Firm to the Respondent on the condition that the Respondent pay £170,000.00 to his estate. The money was to be paid within four years of Mr Meaton's death by annual equal instalments. In the event that the Respondent decided not to pay the money, the Firm was to be sold and the monies raised were due to be paid into the estate.

26.18 The FIO discovered that the Respondent had made payments of approximately £42,000.00 from the Firm's client account to the three beneficiaries, rather than from his own funds. The Respondent made a CHAPS payments of £14,240.93 from the Firm's client account to Mr AC on 20 December 2013 and a payment of £14,614.00 to Mr RN on 17 February 2014. Mr AC and Mr RN told the FIO that the monies received were in relation to the annual payment by the Respondent in accordance with Mr Meaton's Will. Mr AC's personal bank statement showed a receipt of £14,240.93 on 20 December 2013. Mr RN's personal bank statements showed a receipt of a payment of £14,614.00 on 17 February 2014. The Firm's client bank account statements record both payments being made to Mr AC and to Mr RN. The Firm's bank statements recorded that the payment to Mr AC relates to reference KO113/1. That reference related to another client, a Mr K and his property purchase. The ledger recorded the payment of £14,240.93 as "money to agent" on 19 December 2013.

26.19 Mr RN provided the FIO with a copy of a RBS Bankline CHAPS payment advice, provided to him by the Respondent. It recorded that payment was made to Mr RN on 16 January 2014 from the Firm's client account. It contained reference MO033/3, which was the reference for Mr Meaton's probate matter. That Ledger did not record the payment to Mr RN and the last item recorded on the ledger was a balance of £355.82 on 5 November 2013. The payment to Mr RN was posted to ledger TO/148/1, which related to a Mr T and his property purchase. That ledger recorded a payment of £14,614.00 to 'Mr RN' on 17 February 2014.

26.20 In an email exchange between the FIO and the third beneficiary, Mr GK on 4 December 2014, Mr GK explained that he had instructed the Respondent to keep the money owed to him and to pay off an equity loan on his flat. Mr GK provided the FIO with confirmation of the payments. The Respondent made two payments of £6,900.00 each in respect of the loan. The Firm's client bank account statements record the two payments of £6,900.00 on 15 May 2014. The Respondent should have paid these monies from his own personal resources.

26.21 The Respondent made improper payments from the Firm's client account to his personal account for his own benefit. In doing so, he concealed his actions. He also made a number of improper transfers from the Firm's client account to office account on account of costs, again for his benefit. The Respondent also made improper payments from the Firm's client account to others, for his own benefit and for the benefit of unrelated clients. He also transferred monies between unrelated clients. The Respondent improperly posted receipts and payments of monies to and from clients to unrelated client ledgers and included false narratives on client ledgers to justify his actions.

26.22 The Applicant's case was that the Respondent had created the false User IDs. The false User IDs had then been used to alter the beneficiary detail for the payment. These false USER IDs were then deleted. This was done in order to conceal what the Respondent had done. The Respondent lied to the FIO and to RBS about the nature of the payments.

26.23 The Respondent acted without integrity, failed to act in the best interests of his clients, acted in a way that undermined public trust in him and the profession and he failed to protect client money. The Respondent lied to the FIO in order to conceal the true position and provided her with false personal bank statements. He made these payments from clients' resources to avoid making them from his personal resources and this benefitted him financially.

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

26.24 Rule 29 of the SAR detailed the required accounting records for client account and included provision in respect of reconciliation and bills and notifications of costs. Rule 20 of the SAR made provision in respect of withdrawals from client account including the fact that client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held). Rule 17.02 of the SAR stated "If you properly require payment of your fees from money held for a client or trust in a

client account you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."

26.25 Principle 2 required that a solicitor must act with integrity. Although Mr Johal for the Applicant had not referred to it, the Tribunal considered the guidance in Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) which endorsed the proposition in SRA v Chan and Ali [2015] EWHC 2659, that want of integrity was capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case when deciding whether or not the Respondent lacked integrity.

26.26 Principle 4 required a solicitor to act in the best interests of each client, Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in that solicitor and in the provision of legal services. Principle 7 required a solicitor to comply with his legal and regulatory obligations and to deal with his regulators and ombudsmen in an open, timely and co-operative manner. Principle 10 required a solicitor to protect client money and assets.

26.27 In considering its findings for this allegation, the Tribunal also had in mind Bolton v The Law Society [1994] 1 WLR 512 which set out that a solicitor was required to discharge their duties with complete integrity, probity and trustworthiness.

26.28 On the factual matrix underlying allegations 2.1 and 2.2 the Tribunal found beyond reasonable doubt that the Respondent had created the User IDs 'MARIEWO' and 'SHERIDANW' , used those IDs to alter the beneficiary of the payment to his own account number (but not for the point of emphasis the payee name) and then deleted the User IDs. The information from RBS showed that the Respondent's User ID not the User IDs of Mr SA or Ms EB had been used to create the two fictitious users. The same information showed the fictitious users had amended the payee details and that the Respondent's User ID had then been used to delete the fictitious users. The two fictitious User IDs had been created, used to edit the payment and deleted within a period of a few minutes each. 'MARIEWO' was created on 24 July 2014 and 'SHERIDANW' on 25 July 2014. There was no evidence that the Firm's account had been hacked. The Respondent had transferred £270,398.17 that was for Mr and Mrs W's mortgage redemption to his personal bank account. He had also transferred £205,714.20 that was for Ms B's mortgage redemption to his personal bank account in identical fashion. The Respondent had lied to RBS about these payments and had lied to the FIO denying that he had made the transfers. The Respondent had improperly transferred client money from client account to his own personal account.

26.29 The Tribunal also found to the same standard of proof that the Respondent had improperly transferred money from client to office account. There was no bill in the sum of £10,000.00 for Mr and Mrs B. The money had not been used in accordance with their instructions. The Respondent had incorrectly transferred £788.00 for the first bill in respect of Mr and Mrs R when he should have transferred £700.00. He had then transferred a further £10,200.00 for his costs. There were no details as to what this represented.

26.30 The Tribunal further found, again beyond reasonable doubt, that the Respondent had made improper transfers and payments from client account. This was established by the use of Mr FP's mortgage funds including for payments to unrelated clients. In respect of the payments to the beneficiaries under Mr Meaton's Will the Tribunal was mindful that the beneficiaries had a financial interest. However there was clear evidence before the Tribunal that the payments to the three beneficiaries that had to be made from the Respondent's own resources had been made from the Firms' client account. These payments could be traced from the Firm's client account to Mr AC and Mr RN personal bank accounts and they had provided copies of their statements to the FIO. Mr GK had confirmed two payments had been made on his behalf and these payments were made from client account.

26.31 The Tribunal found that the accounting records required by Rule 29 of the SAR had not been kept. Client money had been withdrawn from client account when it was not properly required for a payment to or on behalf of the client. This was in breach of Rule 20 of the SAR. Money had been taken from client account on behalf of costs when there was no evidence of a bill or other written notification of costs in that sum. This was in breach of Rule 17.02 of the SAR.

26.32 As to want of integrity on the facts of this case it was self-evident that the Respondent had not acted with integrity. He had helped himself to client monies, had tried to cover his tracks and had lied to the bank and FIO. He had not protected client money and assets nor had he acted in the best interests of each client. In lying to the FIO he had not complied with his legal and regulatory obligations or dealt with his Regulator in an open, timely and co-operative manner. If the public were aware that a solicitor had taken client money, had not followed their clients instructions and had lied to the bank and Regulator there was an irresistible inference that the public would conclude that the solicitor had not behaved in a way that maintained the trust the public placed in that solicitor and in the provision of legal services. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in breach of Principles 2,4,6,7 and 10. He had not discharged his duties with complete integrity, probity and trustworthiness. The exact opposite was the case.

26.33 The Tribunal found allegations 2.1 and 2.2 proved beyond reasonable doubt.

27. **Allegation 2.3 - he acted in breach of Rule 7 of the SAR and in breach of all or alternatively any of Principles 7 and 10 of the Principles by failing to replace the shortage on client account.**

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

27.1 The Respondent was aware of the minimum cash shortage of £53,281.93 from at least 13 November 2013 as he informed the FIO of the existence of the shortage as at that date. In interview with the FIO on 30 July 2014 the Respondent agreed the minimum cash shortage of £529,394.30, mainly caused by his improper transfers from client account. The minimum cash shortage increased to £833,450.04 as at 31 March 2015. The Respondent failed to replace any of the cash shortage and his failure to do so was in breach of his regulatory obligations and his duty to protect client monies.

27.2 During the interview on 30 July 2014, the Respondent was asked whether he accepted there was a client account shortage and he replied "Yes potentially, yes." When asked if he agreed a client account shortage in respect of the two transfers from client account to his personal account of £270.398.17 an £205,714.20, he replied "Well, if it's in my account, yes clearly."

The Tribunal's Findings

27.3 Rule 7.1 of the SAR stated "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account." Rule 7.2 established that in private practice the duty to remedy breaches rests on the person causing the breach and all principals in the Firm.

27.4 The Respondent knew in November 2013 that there was a cash shortage in the sum of £53,281.93. He purported to replace that shortage from his own funds in January 2014. He produced bank statements to show that the payment had been received into client account. There were two inconsistent forgeries both showing the payment but the bank statements received directly from RBS did not show receipt of this sum into the client account. The minimum cash shortage had increased to £833,450.04 by 31 March 2015 and there was no evidence that this shortage had been replaced. The Respondent was clearly in breach of Rule 7 of the SAR. Further, he had lied to the FIO that he had made the payment and fabricated documents to mislead her. This was in breach of Principle 7. In allowing a minimum cash shortage in the sum of £833,450.04 to occur the Respondent had not protected client money and assets. The Tribunal found allegation 2.3 proved beyond reasonable doubt.

28. **Allegation 2.4 - he acted in breach of Principles 2 and 6 by misleading the FIO during her investigation, by amongst other things, providing her with falsified accounting records, documents and emails.**

The Applicant's Case

28.1 As originally pleaded allegation 2.4 was based on six separate factual matrices. At the hearing the Applicant informed the Tribunal that it did not intend to pursue this allegation in respect of the fact that the Respondent informed the FIO that he was a salaried partner prior to Mr Meaton's death nor in respect of the sale of his property. The Applicant did not apply to withdraw these elements of allegation 2.4 but considered it was not proportionate or necessary for all six parts of the allegation to be considered. The Tribunal did not consider these allegations as set out in paragraphs 102 to 106 and 114 to 122 of the Rule 5 Statement, nor the supporting documents or the relevant parts of the FIR.

28.2 On the 13 February 2014, the Respondent told the FIO that he had transferred monies from his personal bank account to the Firm's office business reserve account. He provided the FIO with copies of the office reserve bank account statements on 13 February 2014 and again, at the request of the FIO on 27 March 2014. The statements provided on 13 February 2014 showed that £53,281.93 was credited to the office business reserve account on 10 January 2014. The statement provided on 27 March 2014, however, showed the receipt of £53,281.93 on 14 January 2014.

Neither statement had a footer or page number listed on it. The Respondent also provided the FIO officer with a copy of his own personal bank statement on 22 May 2014. That recorded a payment to Robert Meaton & Co of £53,281.93 on 10 January 2014.

28.3 On 30 July 2014, the FIO asked the Respondent for a statement showing all office reserve account entries for January 2014. The Respondent provided her with a copy of the reserve bank account statement for the period 1 January to 31 January 2014. This statement did not record the receipt of £53,281.93. This statement was printed out from the Firm's bankline system and included a footer that showed the time and date that it was printed and details of the user. The Respondent also provided the FIO with copies of the client bank account statements as evidence of the monies having being transferred into client account. The statements recorded a credit of £53,281.93 on 14 February 2014. The statements were sent by way of a covering email dated the 20 February 2014. The client bank account statements did not contain page numbers and details of the time and users were not clear. The balances on the client bank statements, following the credit of £53,281.93, were inaccurate as they did not balance with the sum of the entries.

28.4 The FIO made copies of the client bank statements for February 2014 whilst attending the Firm. The statements clearly show the time and date they were printed and the status of the user. The statements did not show an entry for £53,281.93 on 14 February 2014. Copies of the bank statements for February 2014 obtained by the FI officer from Mr SA on 30 July 2014, again did not show any entry of £53,281.93 on 14 February 2014.

28.5 In interview with the FIO on 30 July 2014, the Respondent was shown copies of all the office reserve account statements and the client account bank statements. He could not offer an explanation for any of the discrepancies. The Respondent did not accept that he had not replaced the £53,281.93. When asked, by the FIO, if he considered that the statements he provided were misleading, he replied "Well if you put them all side by side they are misleading, but they are not deliberately misleading and I've, what I've downloaded has been sent on".

28.6 The Respondent provided the FIO with falsified client, office and personal bank statements in order to mislead her into believing that he had replaced the cash shortage of £53,281.93. Although the Respondent claimed that the office and client bank account statements he provided to the FIO were originals and printed off the Firm's online banking system, they did not contain footers which showed the time and date they were printed or the user or alternatively the footers were not clear. The office reserve account statements the Respondent provided on 13 February and 27 March 2014, although purporting to cover the same periods, showed different dates for the receipt of £53,281.93 and they both varied from the office reserve account statement that was provided (by Mr SA) to the FIO on 30 July 2014 which did not show a receipt of the £53,281.93 on either date. This statement (provided on 30 July 2014) contained a footer as opposed to the other office account statements provided.

28.7 The Firm's client bank statement provided by the Respondent on 20 February 2014 did not contain correct running balances following debits of £96,561.26 and subsequently £345,732.91, both on 14 February 2014. The statements printed off by the FIO on 30 July 2014 and those provided by Mr SA do not show the receipt of £53,281.93.

28.8 On 25 February 2014, the Respondent provided the FIO with documents which purported to be National Westminster bank statements in relation to his personal account showing three payments of £13,333.33 to the beneficiaries of Mr Meaton's estate. According to the Respondent, the payments were made in accordance with Mr Meaton's Will. The payments specifically related to the monies required to be paid by the Respondent annually to Mr Meaton's estate in order that he would receive Mr Meaton's interests in the Firm. The National Westminster bank statements that the Respondent provided recorded payments of £13,333.33 to Mr RN and Mr AC on 17 December 2013 and a payment of the same amount to Mr GK on 18 December 2013. Following the intervention, enquiries were made of the beneficiaries who all confirmed that they had not received those payments into their accounts. Mr AC and Mr RN's individual personal bank accounts for December 2013 do not record any receipt of £13,333.33 on 17 December 2013. Mr GK confirmed in an email dated 14 December 2014 to the FIO that he did not receive a payment of £13,333.33 on 18 December 2013. The Respondent falsified his National Westminster bank statements in order to mislead the FIO into believing that he had made personal payments to beneficiaries in accordance with Mr Meaton's Will.

28.9 The FIO requested the Respondent provide her with a copy of the client account reconciliation statement for 30 June 2014. The Respondent provided a copy of the reconciliation statement by email dated 15 July 2014. The FIO found that the client account reconciliation balanced with the accompanying client bank account statements. The client account reconciliation recorded the balance of the RBS Professional Client Account ("RBSPCA") as £547,886.00. The corresponding RBSPCA statement provided by the Respondent to the FIO on 21 July 2014 recorded a balance of £547,886.00 as at 30 June 2014. Following the intervention, the FIO discovered that the RBSPCA provided by the Respondent was false and that the balance of the account as at 30 June 2014 was £90.37.

28.10 The Respondent provided copies of the RBSPCA statements for the period 20 December 2013 to June 2014 to the FIO at her request. The FIO also obtained copies of the RBSPCA statements that had been supplied to the SRA, directly from RBS. RBS also sent these statements to the Respondent by fax on 18 July 2014. The FIO compared the statements and found that the balances as recorded in the RBSPCA statements provided by the RBS were significantly less than those provided by the Respondent. The minimum difference in the balances when comparing the statements for January to June 2014 was £287,489.00 for balances as at the end of January, February and March 2014. The largest difference was £574,775.63 as at 30 June 2014.

28.11 The statements from the RBS included details of currency, statement period or account number details, gross interest, paid interest and tax paid. The statements provide by the Respondent contained none of these details. The Respondent falsified

RBSPCA statements and provided those to the FIO in order to mislead her into believing that the Firm's client account reconciled when it did not.

28.12 Mr Babra explained that when he met the Respondent and Mr SA the Respondent came across as the senior partner and Mr SA as the junior partner. He did not believe that there was a partnership agreement as the Respondent was the only equity partner. Mr SA had explained to Mr Babra that he had minimal involvement with client account and that the Respondent had done the reconciliations.

28.13 At the outset of the investigation, the Respondent told the FIO of the £53,281.93 shortage. On 13 November 2013, the Respondent informed the FIO that the executors of Mr Meaton's estate had agreed to the client account shortage of £53,281.93 being replaced from the estate. The Respondent provided the FIO officer with two emails from the other executor of the estate, Mr AC, to the Respondent confirming the position. The purported emails from Mr AC to the Respondent were dated 1 November 2013 and 20 March 2014. In the first email, Mr AC agreed to the Respondent being paid £53,281.93 from the estate and confirmed he could take the monies as part of a bulk payment from the estate on 14 December 2014. In the second email, Mr AC set out the agreement regarding the payment in more detail, including an alleged explanation by the Respondent that the monies were due to his client account and the Respondent showing Mr AC an accountant's report as evidence of that. The email also recorded the agreement for the Respondent to pay £53,281.93 from his personal finances to the business and that the price that he was due to pay for the business had been reduced by that amount. The FIO provided Mr AC with the above emails on 14 December 2014. AC confirmed that he had never been informed of the client account shortage and that he did not send the emails to the Respondent. On 14 December 2014 Mr AC sent an email to the FIO, in which he said "I can categorically say that these emails are forgeries".

28.14 The Respondent sent the falsified emails to the FIO in order to mislead her into believing that the executors had agreed for him to make payment of the shortage from the estate.

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

28.15 The Tribunal found beyond reasonable doubt that the Respondent had provided the FIO with falsified bank statements showing replacement of the cash shortage of £53,281.93. Amongst other forged documents, he had produced two false versions of the bank statement for the office business reserve account one of which showed the receipt of this sum on 10 January 2014 and the other showed the credit in on 14 January 2014. One of these was emailed to the FIO by the Respondent. The statement for this account that was provided by RBS showed no such payment. The FIO had spotted that the running balances on the documents provided to her after the purported transaction were wrong.

28.16 The Tribunal also found to the same standard of proof that the Respondent had provided the FIO with falsified bank statements showing payments to Mr RN, Mr AC and Mr GK. The Respondent had produced his bank statement showing three payments of £13,333.33. Mr RN and Mr AC had produced their bank statements which showed no corresponding receipt. Mr GK had confirmed that he had received

no such payment. If any payments in this sum had been made (which the Tribunal doubted, although they could not be certain without the original bank statements for the Respondent's personal account) the Tribunal was sure that they had not been made to the beneficiaries.

28.17 Further, the Tribunal found beyond reasonable doubt, that the Respondent had provided falsified RBS Professionals Bank Statements to the FIO. Prior to the intervention the Respondent had given the FIO certain statements for the RBSPCA. Following the intervention the FIO found that the RBSPCA statements provided by the Respondent were false. The FIO obtained the true RBSPCA statements direct from RBS. The difference between these statements at the end of June 2014 was £574,775.63. The Tribunal was sure that the figures on the falsified statements had been provided to mislead the FIO into believing that the Firm's client account reconciled.

28.18 The Tribunal found, again beyond reasonable doubt, that the Respondent had provided the FIO with false emails from Mr AC to the Respondent. Mr AC was the joint executor. He potentially had a financial interest in stating that he had never agreed for the payment to be made from the estate. However, there was no evidence to undermine his credibility or to suggest that the weight given to his evidence should be reduced. Mr AC had categorically denied sending the Respondent the emails that the Respondent had produced to the FIO as being sent by Mr AC. The documents were subject to the Civil Evidence Act Notice and the Respondent had not served a Counter Notice. Given the context of the allegations and the overwhelming evidence that the Respondent's words and documents could not be relied upon the Tribunal was sure that Mr AC had not provided the emails to the Respondent and that the Respondent had provided false emails purportedly from Mr AC to the Respondent to the FIO.

28.19 The Respondent had discharged his duties with a complete disregard to integrity, probity and trustworthiness. He had provided false information and documents. The Respondent's actions were not the actions of somebody acting with integrity. He had mislead the FIO. He lacked integrity and this was a lack of integrity at the highest end of the scale. Any member of the public who was aware of the Respondent's actions in misleading the Regulator would have had the trust they placed in the Respondent and in the provision of legal services completely undermined. The Respondent was in breach of Principles 2 and 6 by misleading the FIO and allegation 2.4 was proved beyond reasonable doubt.

29. **Allegation 2.5 - he acted in breach of Principles 2 and 6 by misleading his clients, Mr and Mrs B by providing them with falsified bank statements and payment debit slips that purported to show that he had paid of their liabilities;**

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

29.1 Following completion of the purchase of Mr and Mrs B's property, they instructed the Respondent to use the residual balance of £10,000.00 to pay off their liabilities to Barclaycard, Barclays, Blackhorse Finance and Halifax. The Respondent did not pay off the liabilities as instructed but made an improper transfer on 25 February 2014 of the £10,000.00 to office account as detailed above. The Respondent provided

Mr and Mrs B with copies of bank client bank account statements which purported to show that there were five payments made on 19 February 2014 to Barclays Bank, Halifax and Barclaycard. The Respondent also provided Mr and Mrs B with four RBS payment debit advices which purported to show four of the payments made on 19 February 2014. Client bank statements provided by the RBS directly to the FIO did not show any of the payments made on behalf of Mr and Mrs B on 19 February 2014. The FIO noted that the ledger balances on the client account bank statements provided to Mr and Mrs B, after each of the five payments were made, were incorrect. It was also noted that the copies of the client bank account statements provided by the Respondent to Mr and Mrs B showed a payment of £1,517.17 to the Halifax on 19 February 2014. The falsified RBS PDA recorded a payment of £1,517.17 to Blackhorse Finance. There was no corresponding payment to Blackhorse Finance on the falsified client bank account statements.

29.2 The Respondent, in providing his clients with false bank statements and RBS payment debit advices which purported to show that he had paid off their liabilities, failed to act with integrity, failed to act in the best interests of his client, and acted in a way that undermined the trust that the public placed in him.

The Tribunal's Findings

29.3 Mr and Mrs B had instructed the Respondent to pay off their liabilities, in the total sum of £10,000.00 following completion of a property transaction. The Respondent had provided them with copies of bank client account statements which purported to show five payments settling these liabilities and had also provided four RBSPDAs. The 'real' bank statements provided by RBS to the FIO did not show any payment on behalf of Mr and Mrs B.

29.4 In failing to pay off Mr and Mrs B's liabilities the Respondent had not acted in their best interests. He had also failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The public would rightly expect a solicitor to carry out his clients' instructions and to use their money as instructed. A solicitor who behaved in the way the Respondent had clearly lacked integrity. The Respondent had breached Principles 2, 4 and 6 and the Tribunal found allegation 2.5 proved beyond reasonable doubt.

30. **Allegation 2.6 - he acted in breach of Principles 2, 4, and 6 in that, on the 4 August 2014, he sent to his clients, Mr and Mrs R falsified bank statement which purported to show that their mortgage had been redeemed when it had not been.**

The Applicant's Case

30.1 The Respondent was instructed in the sale of Mr and Mrs R's property and was required to redeem the existing mortgage in favour of Clydesdale Bank, following the sale on 11 June 2014. The existing mortgage to be redeemed was £381,962.84. The Respondent did not redeem the Clydesdale Bank mortgage. However, the client ledger reference, RO181/1 recorded a payment of £322,325.24 on 12 June 2014 for 'mortgage redemption'.

30.2 Mr R emailed the Respondent on 4 August 2014 after receiving a letter from Clydesdale Bank informing him that the mortgage had not been redeemed. The Respondent emailed Mr R on the same day informing him that the payment for the mortgage redemption was debited from the Firm's client account on the 11 June 2014. He also provided Mr R with a falsified client bank account statement which showed £381,962.84 had been paid to Clydesdale Bank in relation to ledger RO181/1 on 11 June 2014. The RBS client bank account statements obtained directly from RBS did not show any entry on 11 June 2014 of a payment to Clydesdale Bank. The Clydesdale Bank confirmed on 26 August 2014 that no such payment was received and as at 15 August 2014, the outstanding mortgage was £384,422.07.

30.3 The FIO discovered that the mortgage monies appeared to have been improperly used to discharge the mortgage of another client, a Mr DR. The ledger for the sale of his property (RO142/3) recorded a Santander mortgage in the amount of £321,438.13 being redeemed on 15 June 2014. The client account bank statements showed an entry on 13 June 2014 of a payment to Santander of £322,325.24, reference RO181/1, which was the reference for Mr and Mrs R's sale.

30.4 The Respondent, in providing his clients with false bank statements which purported to show he had paid off their mortgage, failed to act with integrity, failed to act in the best interests of his client and acted in a way that undermined the trust that the public placed in him.

The Tribunal's Findings

30.5 The Respondent acted for Mr and Mrs R. He was instructed to redeem Mr and Mrs R's mortgage. He told them that he had redeemed the mortgage and provided documentary evidence to them purporting to prove that he had done so when Mr R informed the Respondent that the mortgage company were stating that the mortgage had not been redeemed and was in arrears. There was no evidence that a payment had been made to the mortgage company on behalf of Mr and Mrs R.

30.6 In sending Mr and Mrs R falsified bank statement's which purported to show that their mortgage had been redeemed the Respondent had not acted in their best interests. He was misleading them as to the true position. His actions meant that he failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The public would rightly expect a solicitor to carry out his clients' instructions and when the client queried the position to tell the client the truth and not send the client falsified documents. The Respondent had lacked integrity. The failure to discharge the mortgage had been discovered and instead of acknowledging this and rectifying the situation the Respondent created documents whose sole intention and purpose was to mislead his clients. No solicitor acting with integrity could behave in this way. The Respondent had breached Principles 2, 4 and 6 and the Tribunal found allegation 2.6 proved beyond reasonable doubt.

31. **Allegation 2.7 - he acted in breach of Principles 2 and 6 in that on the 7 November 2012 he provided forged building regulation certificates to a Mr IW who acted for RBS in a property transaction.**

The Applicant's Case

31.1 The Respondent acted for Z Management Ltd ("Z") on the purchase of a property and the subsequent sale of twenty nine apartments on the site. Eversheds solicitors acted for the sellers. RBS were the lender to Z. RBS were represented by Mr IW at Cottrill Stone Lawless, then Ward Hadaway Solicitors. RBS took a first legal charge over both the freehold title to the development and over the individual leasehold titles to the twenty nine apartments. On 11 July 2012, the Firm sent a letter to Eversheds requesting completion certificates for the development as a whole and each individual apartments. Eversheds replied on 13 July 2012 and informed the Firm that they supplied a copy of the 2012 planning permission for the original development but did not have any completion certificates.

31.2 On 2 November 2012, the Respondent received an email from Mr IW, requesting copies of building regulation completion certificates for the apartments. On 5 November 2012, the Respondent sent an email to Ms FL at the relevant council, requesting copies of building regulations. He received a response from Ms AL, senior planning support assistant, on 7 November 2012, informing him that the documents had gone missing and she confirmed that the application was approved on 11 July 2000 and was signed off as complete by an officer, Mr SL, on 16 July 2001. On 7 November 2012, the Respondent replied to Mr IW's email, and sent him copies of all the building regulation certificates for the twenty nine apartments. These certificates were signed by a Mr CMH, Building Control Team Leader and were dated 25 July 2001. Attached to the Respondent's email was an email to Mr CC (a former fee earner at the firm) from Ms AL, dated 5 July 2012. The email recorded Ms AL stating "I can confirm all planning conditions relating to planning permission 06/2000/0019 have been discharged."

31.3 On 21 November 2012, the SRA received a complaint from the group solicitor at the council which alleged that the Respondent had supplied Mr IW with false completion certificates and a fabricated email from Ms AL. The complaint was made following receipt of a query from Mr IW concerning the correctness of the email from Ms AL. The complainant pointed out that the certificates were dated 25 July 2001 and contained the signature of a Mr CMH, "Building Control Team Leader." However, Mr CMH did not start working at the council until 2008 and his position was Assistant Director (City Planning Officer). Further the actual date of completion of the development was 16 July 2001 and not 25 July 2001. The complaint also detailed that the officer involved and the ICT department of the council had confirmed that the email from Ms AL to Mr CC dated 5 July 2012 was a fabrication.

31.4 The FIO found an email on Mr IW's file dated 8 November 2012 in which the Respondent informed Mr IW that he had spoken to the solicitors who sold the property to his client and they said that the building regulations were what they had obtained from the seller when they bought the property in 2006. The Respondent provided forged building regulation certificates to Mr IW as he was unable to obtain genuine copies from either the sellers or the council. The sellers did not provide the Respondent with copies of the forged certificates as they informed him that they did not have any in their possession. The Respondent also provided Mr IW with a fabricated email from Ms AL to Mr CC, in which Ms AL purported to inform Mr CC

that all the planning conditions relating to the planning permission had been discharged.

31.5 The Respondent's conduct undermined his integrity and undermined the public trust in him and in the provision of legal services.

The Tribunal's Findings

31.6 The Tribunal was entirely satisfied that the Respondent had provided forged building regulation certificates to Mr IW. The forged certificates were supposedly signed by somebody who did not work at the council at the time and contained an incorrect job title. The Respondent sent these certificates to Mr IW fifty one minutes after being told by Ms AL that she could not supply him with the request information as the documentation appeared to have gone missing. There was an email from the Respondent to Mr IW sending the documents. If subsequent events had not uncovered the fact that documents were falsified they would have been accepted as true and the Respondent must have known that to be the case. No solicitor acting with integrity could falsify documents and provide them to another party as if they were genuine documents. The facts spoke for themselves. Again the Respondent's actions were a complete departure from the standards of integrity, probity and trustworthiness expected of a solicitor. The Respondent had not behaved in a way that maintained the trust the public placed in him and the in the provision of legal services. The Respondent had acted in breach of Principles 2 and 6. The Tribunal found allegation 2.7 proved beyond reasonable doubt.

32. **Allegation 2.8 - he acted in breach of Principles 2 and 6 in that he misled chambers and his employees by falsifying and creating emails dated 3 April 2014, that purported to show that he had paid for the professional services of a barrister at chambers.**

The Applicant's Case

32.1 On 16 May 2014, the SRA received a report form and attachments from Mr MS, fees manager, at chambers. The report alleged that the Respondent falsified an email sent to him from Mr JP, the senior practice manager at chambers. The report set out how the Respondent instructed Mr NC, counsel of chambers to attend a court hearing in March 2014 and that, due to outstanding invoices owed by the Respondent to chambers, they required payment to be made in advance of counsel attending court. The Respondent had informed chambers that payments were made but none were received from the Respondent.

32.2 On 3 April 2014, Mr JP sent the Respondent an email timed at 14.40 in relation to outstanding payments in the amount of £86,000.00 owed by the Respondent and chambers having little option but to take the matter up with the SRA. In the email, Mr JP offered to visit the Firm in order to agree a payment plan. An onsite IT engineer at chambers confirmed that this was the only email sent to the Respondent by Mr JP on 3 April 2014. The Respondent responded to Mr JP's email on 4 April 2014, informing him that he would be happy to meet.

32.3 On 4 April 2014, Mr NC emailed the Respondent, informing him that he was withdrawing his services until payment had been received. This was after the Respondent had failed to keep to his latest assurance, given in an email of 4 April 2014, that payment had been authorised and sent. Ms FS, another solicitor at the Firm, responded to Mr NC on the same date expressing her surprise and confusion as she and other fee earners had received an email from the Respondent on 3 April 2014, attaching an email from the Respondent to Mr NC of the same date in which the Respondent said ..." I understand from your conversation with Aled, that you have been notified of receipt of payment. Please see below the email from [Mr JP], confirming receipt." The Respondent also attached, to his email to Ms FS an email from Mr JP to him, dated 3 April 2014 and timed at 14.40, in which Mr JP confirmed receipt of the payment and apologised for any confusion over the receipt of payment.

32.4 Mr NC, in a statement dated the 8 December 2014, confirmed that he did not receive the email from the Respondent on 3 April 2014 concerning notification of the receipt of payment and that eventually he did receive part payment of his fees on 15 April 2014. At the date of Mr NC's statement, he was still owed £17,900.00 plus VAT.

32.5 Mr JP, in a witness statement dated 15 December 2015, stated: "As is clearly set out within the complaint sent to the SRA, AD had doctored my original email requesting an update in relation to payment and sent to a solicitor at his firm saying look below, [name of chambers redacted] have had payment. This was a complete fabrication of the truth and clearly AD attempted to obtain counsel's services by deception."

32.6 The Respondent falsified an email received from Mr JP on 3 April 2014 and created an email dated 3 April 2014 to Mr NC in order to mislead fee earners at the Firm into believing that he had made payment to chambers for counsel's fees. That conduct undermined his integrity and public confidence in the Respondent and in the delivery of legal services.

The Tribunal's Findings

32.7 The allegation was that the Respondent had misled chambers and his employees by falsifying and creating emails dated 3 April 2014 that purported to show that he had paid for the professional services of a barrister at chambers. There was an email from Mr JP that the Respondent had forwarded to his employee that purported to be Mr JP acknowledging payment. Mr JP stated that he had not sent that email. Mr JP had provided a witness statement confirming that the email was a complete fabrication. There was also an email that the Respondent had allegedly sent to Mr NC. Mr NC has provided a witness statement confirming that he never received this email. Despite that fact the Respondent sent the email to his colleague as if it had been sent.

32.8 The Tribunal was satisfied that the Respondent had fabricated both of these emails. There was no doubt that this is what he had done. The Respondent had sent these emails to fee earners at the Firm. This was clearly done to mislead them into believing that the payment issue with chambers had been resolved when in fact no payment had been made. There was no evidence that these documents had been created to mislead chambers. The Respondent had not sent the documents to

chambers and chambers would have known that no payment had been forthcoming. The emails were sent to chambers by one of the fee earners who had received them from the Respondent. It was reasonably foreseeable that a fee earner might be confused and send the emails on to chambers but the Tribunal could not be sure to the required standard that it was the Respondent's intention to mislead chambers by falsifying and creating emails dated 3 April 2014.

32.9 The allegation was not proved beyond reasonable doubt. Had the allegation been drafted "chambers and/or his employees" then the Tribunal would have found the allegation proved beyond reasonable doubt.

33. **Allegation 2.9 - he acted in breach of Principle 2 and 6 by forging an opinion of Mr AT QC, dated 15 July 2013, and by fabricating an email from his clerk, Mr JR, dated the 19 July 2013, and in so doing misled his client CCL, to whom he supplied a copy of the forged opinion on the 17 July 2013.**

The Applicant's Case

33.1 A firm of tax consultants, CCL, engaged the Firm to provide them with advice on Stamp Duty Land Tax mitigation schemes (SDLT schemes). In April 2013, the Firm instructed AT QC to draft an opinion on SDLT schemes. Mr AT drafted an advice dated 17 April 2013. Shortly thereafter, HMRC issued retrospective anti-avoidance measures that blocked the scheme that was subject of the opinion. The Respondent became aware of the HMRC anti-avoidance measures and on 17 June 2013, sent an email to Mr AT's clerk, Mr JR. Within the email to Mr JR, he included an email from a JP of CCL. In the email sent by the Respondent, he referred to the HMRC measures, which in his opinion appeared to close the SDLT scheme. He requested Mr AT provide his comments on whether the advice made the scheme redundant. Mr AT recalled that he was asked verbally whether there were any similar schemes that could still operate despite the anti-avoidance measures but he was not aware of any.

33.2 On 17 July 2013, the Respondent provided an SDLT scheme opinion to CCL. The opinion set out a new SDLT scheme. It was dated 15 July 2013 and was purportedly drafted by Mr AT. In a letter dated 13 January 2015 to the SRA CCL confirmed that the Respondent provided them with the opinion on 17 July 2013 and that they promoted the SDLT scheme on the basis of the opinion and advice from the Firm.

33.3 On 16 December 2014, Mr NJ, the senior clerk to Mr AT, wrote to the intervention agents and informed them that it had recently come to light that CCL had been provided with an unsigned opinion dated 15 July 2013 from the Firm, purportedly from Mr AT. Mr NJ confirmed that Mr AT did not write the opinion, nor had he received any instructions round about that time from either the Firm or CCL to provide advice on a stamp duty scheme. Mr NJ also stated that there was no record of outgoing opinions to anyone at this time concerning a stamp duty mitigation scheme or record of another fee being billed or paid. Mr NJ also informed the intervention agents of an email received by CCL from the Respondent dated 22 July 2013. The email included an email purportedly from Mr JR to the Respondent on 19 July 2013 which seemingly dealt with queries raised by the Respondent's clients about the new SDLT scheme. Mr NJ pointed out that they had no record of the email being sent to

the Respondent on the 19 July 2013, that Mr JR would not ordinarily write in such detail on behalf of Mr AT and the 'form' of the footer to the email is not what chambers footer was at the time.

33.4 Mr AT confirmed to the SRA that he was not the author of the unsigned opinion dated 15 July 2013. Mr JR confirmed that he was not the author of the email dated 19 July 2013 to the Respondent. Mr JR stated that "the copy of the email has clearly been forged as the 'footer' showing my title is not how it should have appeared at that time. I have checked all of my sent items for that day and confirm that no email was sent from my mail account to Mr Davies on that day." A copy of a genuine email sent by Mr JR on 19 July 2013, has a different footer.

33.5 In an interview on 31 March 2015, Mr SA informed the FIO that he was familiar with the opinion dated 15 July 2013 and that it was produced to the fee earners at the Firm as the replacement opinion and tax planning measure. He confirmed that the opinion was provided by the Respondent.

33.6 The Respondent forged an opinion from Mr AT and sent that to CCL in order to mislead them into believing that he had advised that a new SDLT scheme could be operated. He also fabricated an email from Mr JR in order to give further credence to the forged opinion and the new SDLT scheme. The Respondent also provided the forged documents to fee earners at the Firm. That conduct undermined his integrity and the trust that the public placed in him and the delivery of legal services.

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

33.7 The Tribunal considered whether it was sure that the Respondent had forged the opinion of Mr AT QC and fabricated the email from his clerk Mr JR. Mr AT had confirmed that he was not the author of the unsigned opinion dated 15 July 2013. He had not received instructions to provide this advice. The Tribunal had evidence from CCL and Mr SA that they had been provided with this advice by the Respondent. CCL had received it from the Respondent on 17 July 2013. It was clear that the Respondent had forged the July opinion. There was nothing to suggest that the Respondent had been provided with this opinion by anyone else.

33.8 The email from Mr JR dated 19 July 2013 purported to record detailed responses from Mr AT to enquiries raised by the Respondent. Mr JR denied that he sent the email and noted that it contained an incorrect 'footer'. Mr JR provided a copy of his sent items box which showed that he had not sent an email to the Respondent on that date. He also provided an email sent on the same date as the fabricated email that showed the correct 'footer'. Mr JR's purported email was sent to CCL by the Respondent on 22 July 2013.

33.9 The Tribunal found as a matter of fact that the Respondent had forged the opinion and fabricated the email and had sent both to CCL. In doing so he had mislead CCL who believed that the opinion was real and advised their clients on the basis of it.

33.10 Sending forged and fabricated documents to a client is not something that would be done by a person acting with integrity. Even if the documents were sent with the best of intentions the sender would still not have integrity as they would be sending

documents they knew to be false. This is not what a person acting with integrity would do. The Respondent's actions in sending these documents would not have maintained the trust that the public placed in him and in the provision of legal services. CCL placed reliance on these documents. The fact that the scheme referred to in the false documents was promoted to CCL's clients could only undermine the confidence of any member of the public who found out what had happened. The Tribunal found allegation 2.9 proved beyond reasonable doubt.

34. **Amended Allegation of Dishonesty in respect of allegations 2.5, 2.6, 2.7, 2.8 and 2.9.**

The Applicant's Case

34.1 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 12.

34.2 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").

34.3 The Applicant set out the particulars of dishonesty, in relation to each allegation and detailed why the Respondent would have been aware that his conduct would have been considered to have been dishonest by reasonable and honest people are set out below:

Allegation 2.5

34.4 The Respondent provided his clients, Mr and Mrs B with false bank statements and false RBS payment debit advices which purported to show that he had paid off their liabilities. The genuine bank statements obtained by the FIO directly from the RBS did not show the payments as recorded in the false statements. The Respondent provided the false documents to his clients in order to mislead them into believing that he complied with their instructions to pay off their liabilities. The Respondent would have been aware that deliberately providing false documents to his clients was dishonest.

Allegation 2.6

34.5 The Responded provided his clients, Mr and Mrs R with a false bank statement showing that their mortgage with the Clydesdale bank had been redeemed on 11 June 2014. The genuine bank statements obtained by the FIO directly from the RBS did not show the payment as recorded in the false statement. The false statement was provided in support of the Respondent's claim that the mortgage monies had been debited from his client account on the 11 June 2014 and in order to mislead his clients into believing that their mortgage had been redeemed. The Respondent would have been aware that providing his clients with a false bank statement in support of a false claim that mortgage monies had been debited from his client account, was dishonest.

Allegation 2.7

34.6 The Respondent provided forged building regulation certificates to Mr IW, a solicitor acting on behalf of RBS. The relevant council confirmed that the certificates were false. The Respondent was unable to obtain genuine copies of the certificates from either the sellers or the council. However, he needed the certificates in order to complete the property transactions on behalf of his clients. The Respondent lied to Mr W that he obtained the certificates from the sellers, despite the sellers having informed him that they did not have any certificates in their possession. The Respondent also provided Mr W with a fabricated email from Ms AL to Mr CC, in which she purported to inform him that all the planning conditions relating to the planning permission had been discharged. The Respondent, in deliberately providing forged building certificates and a fabricated email to Mr W, would have been aware that his conduct was dishonest.

Allegation 2.8

34.7 The Respondent deliberately falsified an email, received from Mr JP on 3 April 2014, and created an email dated 3 April 2014 to Mr NC. The Respondent sent the emails to solicitors at his Firm in order to mislead them into believing that he had made payment to chambers for outstanding counsel's fees. The Respondent would have been aware that falsifying and creating emails and subsequently sending those to solicitors at his Firm was dishonest.

Allegation 2.9

34.8 The Respondent forged an opinion from Mr AT and sent that to CCL in order to mislead them into believing that Mr AT had advised that a new SDLT scheme could be operated. The Respondent also fabricated an email from Mr JR, the Clerk to Mr AT in which he purported to deal with queries from CCL, in order to give credence to the new SDLT scheme and the forged opinion. The Respondent in forging the opinion, fabricating the email and providing those to CCL was aware that his conduct was dishonest.

The Tribunal's Findings

34.9 Having found allegation 2.8 not proved the allegation of dishonesty in respect of allegation 2.8 fell away. The Tribunal considered dishonesty in respect of allegations 2.5, 2.6, 2.7 and 2.9 only.

34.10 The Tribunal found beyond reasonable doubt that by the standards of reasonable and honest people the Respondent acted dishonestly when he provided Mr and Mrs B with false bank statements and false RBS payment debit advices which purported to show that he had paid off their liabilities. The objective test was met. The Tribunal then considered whether the Respondent was aware that by those standards his conduct would be judged to have been dishonest. The Respondent had created false documents and provided them to Mr and Mrs B. He knew he had to cover his tracks. If the Respondent thought that by the standards of reasonable and honest people his actions were honest he would not have need to take steps to conceal his actions. The subjective test was satisfied.

34.11 The Tribunal found beyond reasonable doubt that by the standards of reasonable and honest people the Respondent acted dishonestly when he provided his clients, Mr and Mrs R with a false bank statement showing that their mortgage with the Clydesdale bank had been redeemed on 11 June 2014. The objective test was met. The Tribunal then considered whether the Respondent was aware that by those standards his conduct would be judged to have been dishonest. Again the Respondent had created false documents and provided them to his client. He was trying to cover his tracks. He assured Mr R in his email of 4 August 2014 that "there has definitely been nothing fraudulent". This was despite the fact that the monies had not been used to pay Mr and Mrs R's mortgage but had been used, at least in substantial part, to pay Mr DR's mortgage. The subjective test was satisfied. The Respondent must have known that by the standards of ordinary and honest people his conduct would be judged to have been dishonest.

34.12 The Tribunal found beyond reasonable doubt that by the standards of reasonable and honest people the Respondent acted dishonestly when he provided forged building regulation certificates to Mr IW. The objective test was met. The Tribunal then considered whether the Respondent was aware that by those standards his conduct would be judged to have been dishonest. A solicitor cannot make their own standards. A solicitor knows that he cannot create a false document. Nonetheless the Respondent created forged building regulation certificates and provided them to another party in a property transaction. The Respondent must have been aware that by the standards of reasonable and honest people his actions would be judged to have been dishonest. The subjective test was satisfied.

34.13 The Tribunal found beyond reasonable doubt that by the standards of reasonable and honest people the Respondent acted dishonestly when he forged the opinion of Mr AT, fabricated the email from Mr JR and provided those to CCL. The objective test was met. The Tribunal then considered whether the Respondent was aware that by those standards his conduct would be judged to have been dishonest. The position was the same as in respect of the forged building regulation certificates. A solicitor cannot make their own standards nor create a document. Nonetheless the Respondent created an opinion and an email and provided them to his client. It was inconceivable with the Respondent's level of experience that he could have thought that his actions would have been seen as honest by anyone else. The Respondent must have been aware that by the standards of reasonable and honest people his actions would be judged to have been dishonest. The subjective test was satisfied.

34.14 The Tribunal found beyond reasonable doubt that the Respondent had been dishonest in respect of each of allegations 2.5, 2.6, 2.7 and 2.9 and the allegation of dishonesty was proved on all four counts.

Previous Disciplinary Matters

35. None.

Mitigation

36. The Respondent had not engaged with the proceedings. There was no information before the Tribunal in respect of mitigation nor the Respondent's financial circumstances.

Sanction

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

38. The Respondent was entirely culpable for his actions. It appeared that the motivation for his conduct was for personal, financial gain. He wanted to gain the interest in the Firm that he had been left, subject to payment, without paying for it and he was stealing money from clients and paying it into his personal account. The Respondent made considerable efforts to disguise what he was doing and cover his tracks. His actions were planned and appeared to be escalating. He was stopped when RBS froze the Firm's accounts and alerted the SRA. The Respondent was the senior partner in the Firm and the only equity partner. He was the co-executor under the will and he took client money. He misled his employees and Regulator. He acted in breach of a position of trust. The Respondent had complete control and responsibility for the circumstances giving rise to the misconduct. At the time in question he had sufficient experience to be able to run a Firm properly but chose to run it dishonestly.

39. The Tribunal did not know what harm had been caused to CCL who relied on the forged SDLT opinion but the potential was very great. Had the forged building control certificates entered into circulation significant harm would have been caused. The Tribunal had been told that a number of claims were being made against the compensation fund. At least two clients had lost substantial sums of money when they were paid into the Respondent's own account and other clients had not had their mortgage and liabilities discharged. The Respondent's conduct was a complete departure from the standards of integrity, probity and trustworthiness expected of a solicitor. His actions had harmed the reputation of the profession and had a significant impact on the public. The Respondent's actions in respect of the two sets of chambers were likely to have impacted on how solicitors were perceived within the legal profession. The Respondent had lied to his Regulator and forged documents to support what he was saying. The extent of the harm caused was completely foreseeable and intended. He knew what he was doing and that his actions would cause significant harm.

40. Dishonesty had been alleged and proved. Theft, forgery and fabrication of evidence were all involved. His actions were deliberate, calculated and repeated. The Tribunal considered that the Respondent's misconduct would have continued and escalated further had he not been stopped. The misconduct continued over a period of time. The Respondent had concealed his wrongdoing and had gone to significant efforts to do so. The Respondent was a qualified solicitor and would have known that the conduct complained of was in material breach of his obligation to protect the public and the reputation of the legal profession. These were all aggravating factors. There were no mitigating factors.

41. The Tribunal considered the range of sanctions available to it commencing with No Order. Given that there were four findings of dishonesty the Tribunal considered, but moved quickly through, the range of sanctions. The seriousness of the misconduct was at the highest level and the sanction imposed needed to reflect this fact. The protection of the public and the reputation of the profession also required the most severe sanction available. The Respondent had not raised exceptional circumstances and there was no evidence before the Tribunal of any exceptional circumstances. The only proportionate sanction was to strike the Respondent's name off the Roll of Solicitors.

42. The Tribunal had also made a number of findings of lack of integrity. Even absent proof of the allegations 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 these findings would have resulted in the Respondent being struck off even if dishonesty had not been alleged and proved.

43. The Tribunal was also mindful that there were findings of breaches of the SAR. Weston v Law Society [1998] Times, 15th July established that there was an onerous obligation placed on solicitors to ensure that the SAR were observed as the SAR existed to afford the public maximum protection against the improper and unauthorised use of their money. Client money should be sacrosanct. The Respondent had completely failed to comply with his obligations. The case involved dishonesty and lack of integrity of a very substantial nature. The Respondent had taken money belonging to clients, misled them and the Regulator as to his actions by forging documents and fabricating non-existent emails to cover his tracks. There were other, as serious examples, involving his own employees and other solicitors that must result in the Respondent being struck-off.

Costs

44. The Applicant applied for its costs supported by a costs schedule in the sum of £66,017.40, including £53,728.40 of costs in respect of the forensic investigations. The schedule provided for an estimated hearing length of seven and a half hours and did not therefore need reducing as the hearing had exceeded that time estimate. There was a claim for two night's accommodation that needed to be halved as the hearing had not lasted for three days.

45. Mr Johal acknowledged that at first blush the costs seemed large. However, they had been mainly incurred in respect of the forensic investigations. The FIO had provided a witness statement and explained that the investigation involved a significant review of accounting data and issues, internal and external meetings, contact with third parties, numerous file reviews and the reparation of two detailed reports. These were valid reasons as to why the FIO costs were so high and no costs had been claimed for Mr Babra's work on the case. Mr Johal invited the Tribunal to make a fixed order for costs.

46. There was no information as to the Respondent's financial circumstances save that Mr Johal informed the Tribunal that the Respondent had been made bankrupt.

47. The Tribunal carefully considered the costs schedule. The FIO's costs were very large, if not the largest that the Members of this Division had seen, but were fully justified. The costs of the FIO did not include any costs for Mr Babra who had attended the Firm with the FIO on two occasions. Nor had any costs been claimed for his attendance at the Tribunal or his preparation for the hearing. Mr Babra had told the Tribunal that there were seven boxes of materials in this case. The FIO had done an exceptional body of work in putting together a coherent case on potentially complex issues where the Respondent sought on numerous occasions to mislead her. The FIO had dug to a great depth. She could not trust anything the Respondent gave to her and pursued the issues that she identified until she was satisfied that she had established the true position.

48. The size of the FIO's bill was reflected in a modest legal bill from the SRA. It must be understood by the profession that, whilst misleading the Regulator was a serious professional matter, the cost consequences of such misleading was high in costs for the FIO to establish the true financial position of which this case was a good example. Mr Johal had had a good grasp of the case and presented it in a manner which was of assistance to the Tribunal. The SRA's legal costs were comparatively small given the amount of paperwork in the case.

49. The Tribunal assessed costs in the sum of £65,867.40. Before finalising its order 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 not sought to argue that he was impecunious and had not provided any evidence as to his means which he was required to do, in accordance with Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin), if he wished to argue that there should be no order for costs or a limited order for costs due to his means. In the circumstances it was appropriate for the costs order to be made in the full amount and it would be for the Respondent to make arrangements with the Applicant as to payment arrangements.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, ANDREW JOHN DAVIES, 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 £65,867.40.

Dated this 31st day of October 2016
On behalf of the Tribunal

J. C. Chesterton
Chairman