SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11528-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HANIF MOHAMMED Respondent

Before:

Mr R. Nicholas (in the chair)
Mr G. Sydenham
Dr S. Bown

Date of Hearing: 15-17 March 2017, 7-9 May 2019 and 29-31 July 2019

Appearances

Ms Chloe Carpenter, Counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant,

At the hearing on 15-17 March 2017, Mr Adrian Keeling QC and Mr Richard Alomo, Counsel of No 5 Barristers Chambers, Greenwood House, 4-7 Salisbury Court, London EC4Y 8AA instructed by RadcliffesLeBrasseur, 85 Fleet Street, London EC4Y 1AE for the Respondent who was present on 15 and 16 March 2017.

At the resumed hearings on 7-9 May 2019 and 29-31 July 2019 the Respondent was in person.

JUDGMENT

NB: THIS JUDGMENT HAS BEEN SUBJECT TO SOME REDACTION AT THE DIRECTION OF THE TRIBUNAL

Allegations

1. The allegations against the Respondent, Hanif Mohammed, made by the Applicant were that:

1.1 between 1 January 2014 and 31 December 2014 he made 24 improper withdrawals and/or allowed improper withdrawals to be made from client account totalling £216,387.30 thereby creating shortages on client account, and breached all, alternatively, any of the following:

1.1.1 Rule 20.1(a) of the Solicitors Accounts Rules 2011 ("SAR") by withdrawing money from client account when it was not properly required for payment to or on behalf of a client;

1.1.2 Rule 20.9 of the SAR by allowing client account to be overdrawn;

1.1.3 Principle 2 of the SRA Principles 2011 ("Principles") by failing to act with integrity;

1.1.4 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services;

1.1.5 Principle 10 of the Principles by failing to protect client money and assets;

1.2 Eight of the 24 improper transfers referred to in allegation 1.1, made between 1 April 2014 and 21 May 2014 were improperly transferred money from client account to office account in respect of costs totalling £72,787.16 when no bill of costs had been given, nor bill sent, nor other written notification of the costs incurred had been given, or sent to the client or paying party and therefore as regards these 8 transfers, in addition, the Respondent also thereby breached all, alternatively, any of the following:

1.2.1 Rule 17.2 of the SAR;

1.2.2 Rule 20.3 (b) of the SAR;

1.2.3 Principle 2 of the SRA Principles by failing to act with integrity;

1.2.4 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.

1.3 He failed, between 1 January 2014 and 11 February 2015, to remedy the breaches of the provisions of the SAR specified in paragraphs 1.1 and 1.2 promptly on discovery in breach of Rule 7.1 of the SAR.

1.4 He fabricated a bill of costs purportedly dated 9 May 2014 showing that he was entitled to take monies in settlement of costs in May 2014 when in fact that bill of costs was created in November 2014 in breach of all, alternatively, any of the following:

1.4.1 Principle 2 of the SRA Principles 2011 by failing to act with integrity;

1.4.2 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.

1.5 He failed to keep accounts records properly written up between 14 April 2014 and 16 October 2014 in that not all payments made out of client bank account were recorded within the firm's books of account (ledgers and cash book) at the time the payments were made and thereby breached all, alternatively any of the following:

1.5.1 Rule 29.1 by failing at all times to keep accounting records properly written up;

1.5.2 Rule 29.2 by failing to appropriately record all dealings with client money;

1.5.3 Rule 29.9 by failing to ensure the balance on each client ledger account was always shown, or was readily ascertainable, from the records kept in accordance with Rules 29.2 and 29.3.

1.6 He failed to carry out client bank account reconciliations every 5 weeks between January 2014 and December 2014 in breach of Rule 29.12 of the SAR.

2. Dishonesty was alleged against the Respondent with respect to allegations of 1.2 [as refined during the course of hearing and limited to six of the eight transfers] and 1.4 but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal reviewed all the documents including:

Hearing on 15-17 March 2017

Applicant

- Volumes 1-6 of the hearing bundle as detailed on the amended Index for Hearing Bundle
- Authorities bundle
- Skeleton argument for the Applicant dated 7 March 2017 drafted by Ms Chloe Carpenter
- Skeleton argument for the Applicant on abuse of process dated 13 March 2017 drafted by Ms Chloe Carpenter
- Authorities bundle for hearing listed 14 (sic) to 16 March 2017
- Chronology for the Applicant
- Letter from Mr M Gibson of the Applicant to Ms S Heley of RadcliffesLeBrasseur dated 14 March 2017
- Applicant's statement of costs as at date of final hearing served on 6 March 2017
- Applicant's costs schedule as at date of issue served on 28 June 2016
- Extract from Disciplinary and Regulatory Proceedings Eighth Edition by Gregory Treverton-Jones QC and Others

- Judgment in Awan v The Law Society [2003] EWCA Civ 1969
- Judgment in Teinaz v Wandsworth London Borough Council [2002] EWCA Civ 1040

Hearing on 7-9 May 2019

Additional documents provided for or during the hearing on 7-9 May 2019

- Resumed Hearing Bundle 1 Transcript of hearings on 15 and 16 March 2017 and Memorandum of CMHs and other interlocutory material
- Resumed Hearing Bundle 2 Correspondence between the Applicant and the Respondent between 7 September 2018 and 1 May 2019
- Resumed Hearing Bundle 3 Correspondence between the Applicant and the Respondent between 21 March 2017 and 19 January 2018
- SRA Additional authorities bundle for the resumed hearing 7-9 May 2019
- SRA Procedural Chronology for the Period 15 March 2017 to May 2019
- SRA Costs Schedule updated to include resumed hearing 7-9 May 2019 dated 6 March 2017 attaching Schedules of costs as at 6 March 2017 and 28 June 2016 the date of issue
- Applicant's letter to the Tribunal dated 26 April 2019 and attachments comprising email exchanges between the Applicant and the Respondent from 15 March 2019 - 23 April 2019

Additional documents provided for or during the hearing on 29-31 July 2019

- Applicant's Schedule of Costs as at 17 July 2019 dated 17 July 2019

Hearing on 15-17 March 2017

Respondent

- Volume Correspondence 2 filed by RadcliffesLeBrasseur, the Respondent's representatives at this hearing
- Skeleton argument drafted by Mr Richard Alomo dated 9 March 2017
- Screenshots relating to transfers made on 8 May 2014, 14 April 2014, 19 May 2014 and 20 May 2014
- Blow-ups of lists extracted from the above screenshots
- Lists bearing manuscript ticks relating to transfers of £6,980 – 14.04.14; £14,166 - 08.05.14; £2,000 – 19.05.14; £2,988.60 – 20.05.14
- Ledger sheet for client Mr W
- Ledger sheet for clients Mr and Mrs D and A
- Ledger sheet for client Mr U

Additional documents provided for or during the hearing on 7-9 May 2019

- Bundle of documents sent by the Respondent to Mr Mark Gibson of the Applicant in July 2018
- File A comprising approximately 202 pages of client ledger sheets and 4 page list of duplicate transfers

- File B comprising client matter file documents
- File C comprising accounting material
- File D comprising list of 64 clients and extracts from various client files
- File E1 comprising schedules of file transfers and rectification details, with client ledger sheets and bills
- File E2 comprising annotated list of client file transfers headed 4 July 2014 with client ledger sheets and bills
- File E3 comprising annotated list of client file transfers headed 19 September 2014 with client ledger sheets and bills

Additional documents provided for or during the hearing on 29-31 July 2019

- None

Preliminary Issues (1)

March 2017 Hearing

4. For the Applicant, Ms Carpenter asked that the issues be dealt with in the following order; any abuse of process application in respect of the dishonesty allegations; the Applicant's application to withdraw the dishonesty allegation in part in respect of allegation 1.2; followed by the Respondent's application to adjourn the substantive hearing on grounds of unavailability of his witness Ms K. For the Respondent, Mr Keeling QC suggested that the withdrawal application be dealt with first followed by the adjournment application because if that was successful there would be no need to consider the abuse of process argument. After a short adjournment, the Tribunal determined that it would follow the order suggested by Ms Carpenter because if the substantive hearing were adjourned the abuse of process argument would potentially consume a lot of time at the beginning of the adjourned hearing.

5. Abuse of Process

5.1 Mr Keeling submitted that having regard to the way in which this argument was put for the Respondent no preliminary ruling from the Tribunal was needed. The issue of abuse had been floated in respect of the decision of the Adjudication Panel that the Respondent had not been dishonest, as a ground for intervening in his practice. Mr Keeling did not pursue the abuse argument on the basis that the Adjudication Panel had looked at the question of dishonesty and rejected it and it was therefore not open to the Tribunal to consider it, rather it was recognised that the Adjudication Panel's decision had been made in good faith and it was submitted that the Tribunal could look at the same material and arrive at a different decision. Mr Keeling submitted that the fact of the Adjudication Panel's decision was something to be taken into account at the conclusion of the substantive hearing. Following submissions by Ms Carpenter, Mr Keeling confirmed that an abuse of process argument was not being pursued and would not be resurrected at a later stage of the proceedings. The Tribunal noted the position and that there was no longer any need for it to consider the skeleton arguments and authorities provided by the parties relating to an abuse of process argument.

6. Withdrawal of aspects of the allegation of dishonesty allegation 1.2

6.1 Ms Carpenter referred to a letter from Ms Heley of RadcliffesLeBrasseur ("Radcliffes") with substantial attachments dated 13 March 2017 which the Applicant had reviewed. Ms Carpenter clarified for the Tribunal that allegation 1.2 related to eight client to office account transfers which were admitted to have been in breach of the SARs and Principle 10 but in respect of which, breach of Principles 2 and 6 was also alleged along with dishonesty. One of the transfers totalled £31,541. It was referred to in the Respondent's witness statement dated 7 February 2017 under the heading Mr D – transfer of £29,000 (allegation 1.2). The Respondent stated:

> "The chronology of events is as follows:
>
> 30.04.14 – Statement of account and costs update letter sent to Mr [D] requesting immediate payment of £30,000 in respect of costs already incurred.
>
> 09.05.14 Mr [D] informs the firm that he has paid in £31,541.00 into client account…"

The witness statement went on to explain that the Respondent only realised on 27 June 2014 that £29,000 might have been received rather than the full amount referred to by Mr D. He also stated that £25,000 was paid in on 27 June 2014 and £4,000 on 30 June 2014. No evidence had previously been provided of Mr D contacting the firm but in the documents attached to the letter 13 March 2017 there was an attendance note dated 9 May 2014 which included:

> "Mr [D] ringing for HM [the Respondent]. Informed him HM was not in, asked when HM will be back… He left the message that he has transferred the sum of £31,541 to the client account and he will call or e-mail HM to confirm also…"

There was then an e-mail from Mr D on 9 May 2014:

> "Fees £31541 as agreed transferred to your account, please arrange meeting with [M] and [K] asap."

Ms Carpenter submitted that the Respondent had not previously provided evidence of the source of the money received in June 2014 but he now provided a bank slip showing respectively the receipt of £4,000.00 on 30 June 2014, £25,000.00 on 27 June 2014 (and £10,000.00 on 27 June 2014). There was also now a document apparently signed by Mr D confirming that he paid £25,000.00 to the firm's bank account on 27 June 2014. An attendance note dated 16 July 2014 made by the Respondent stated:

> "HM meeting with [D]. Handing to him the firm's receipt dated 16 July 2014 confirming his payments to the firm on 23 May 2014 for £2,500.00 and 30 June 2014 for £4,000.00"

Ms Carpenter submitted that the money was not in client account and what the Respondent had done was grossly reckless; he had made no checks before making the transfers number 6 and 7 shown on the document entitled "Further Information" appended to the Rule 5 Statement which detailed the 24 transfers. Ms Carpenter submitted that the objective test for dishonesty was satisfied but in the light of these documents the subjective test was not and so the Applicant sought to withdraw dishonesty in respect of transfers 6 and 7 under allegation 1.2. Mr Keeling positively supported Ms Carpenter's application to withdraw the dishonesty allegation which the Tribunal granted. [These submissions were made and the application was determined by the Tribunal on the basis of the test for dishonesty in the case of Twinsectra v Yardley [2002] UKHL 12 which was applicable in the Tribunal at the time this hearing commenced but was later overtaken by Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67 (Judgment dated 25 October 2017). At the hearing in July 2019, Ms Carpenter reminded the Tribunal of the altered legal position and referred the Tribunal to the Ivey case].

7. Adjournment Application

7.1 It was originally the intention of Mr Keeling to call two witnesses, Ms K whom the Respondent had bought into the firm before the Applicant's investigation began as an independent consultant/bookkeeper and Mr B who was an expert on Lawbyte the accounting software the firm used. Both had provided written statements. Ms K had indicated that she was no longer willing to give evidence and Mr B's evidence would only be available by video link but a video facility could be provided by the Tribunal. Ms Carpenter confirmed that she took no point in connection with dishonesty regarding allegation 1.2 on the details of the Respondent's accounting. The detail went to support the admitted breaches of the SARs. It was not suggested that either Ms K or Mr B were wrong about how the software worked. It was however submitted that the Respondent should have listed the debits on the reconciliations (in connection with the admitted SAR allegations) and regarding dishonesty, that he should not have made the transfers in the first place and that he knew that. It was also alleged that he had dishonestly fabricated a bill. Ms Carpenter had no objection to Ms K's evidence being read. After a short adjournment for Mr Keeling to consider his position regarding the witnesses, he informed the Tribunal that on the basis of the way the allegations were now being pursued by the Applicant and that dishonesty was only alleged regarding transfers on the basis they should not have happened in the first place but everything else was either irrelevant or went to the issue of dishonesty in respect of the backdated bill, Mr Keeling withdrew his application for an adjournment because these matters had become part of the background. Mr Keeling and Ms Carpenter also informed the Tribunal they were content for Ms K and Mr B's statements to be read.

8. Admission of additional documents on the second day of the hearing

8.1 For the Respondent, Mr Keeling submitted at the commencement of the second day of the March 2017 hearing that for the first time the day before, two lines of attack had been validly opened by the Applicant based on the belief that the lists/schedules which the Respondent said that he had looked at when making the transfers could not be genuine, partly because there was an issue that no ticks appeared against entries whereas they did elsewhere and partly because some dates on the list/schedules

post-dated when the Respondent said that he had looked at them (in making the transfers). The Respondent had now found versions of those documents bearing ticks and efforts were being made to have the firm's IT consultant identify meta data which would show that the documents were contemporaneous with the Respondent's actions. Ms Carpenter did not object if there was a short delay but pointed out to the Tribunal the Applicant's view that there had been considerable delay already and gave as an example that her instructing solicitors had written to the Respondent's solicitors in February 2017 asking whether it was his position that these were contemporaneous documents and had only received Ms Heley's letter dated 13 March 2017 saying that the documents were contemporaneous. She submitted that this was not a late point by the Applicant. Mr Keeling informed the Tribunal that the Respondent had been very tired after giving evidence all day in a Crown Court trial on 14 March 2017 and so had not been able to start this investigation earlier. It was not feasible to continue the hearing because the Respondent was next to give evidence and be cross examined which would render him unavailable to his legal team. It had been arranged that he would meet with junior counsel at 7:30 a.m. before the second day's hearing began. Documentation was duly produced which demonstrated that the list/schedules were contemporaneous and Ms Carpenter withdrew her suggestion that they were not. She submitted that if the Respondent confirmed in evidence that he looked at the lists when making the transfers she would not challenge that evidence and it would have the effect of narrowing the dishonesty argument.

9. Fitness of the Respondent to participate

9.1 It was communicated to the Tribunal during the course of the second day's hearing that the Respondent was feeling unwell. It was decided to take the evidence of Mr Ian Anderson on his behalf out of order. Thereafter the Tribunal made it clear that the Respondent could be afforded more frequent breaks than usual if he commenced his evidence. A short adjournment was permitted. After hearing submissions from Mr Keeling and Ms Carpenter who was concerned about the time which had already been lost in dealing with preliminary issues and obtaining documentation and having heard via his Leading Counsel from the Respondent that he felt unable to give evidence at that time by reason of feeling unwell, the Tribunal determined that it would adjourn for the day just after 3 p.m. in the hope that the Respondent would feel better the following day. Upon resuming at the beginning of the third day of the hearing the Tribunal was advised that the Respondent was presently in hospital and having been provided with information relayed from Mr Alomo, junior counsel who had gone to the hospital in question and having heard an adjournment application from Mr Keeling which Ms Carpenter did not oppose, the Tribunal determined that it would adjourn the hearing until 09.30 on 24 March 2017 and 28 March 2017. The Tribunal gave directions in the following terms:

> "The substantive hearing be adjourned to **9:30 a.m. on 24 March 2017 with a further day listed on 28 March 2017**.
>
> The Respondent to file at the Tribunal and serve on the Applicant a report by an appropriate medical practitioner confirming the circumstances surrounding the Respondent's inability to attend the Tribunal on 17 March 2017 **by 4:00p.m. on 22 March 2017**.

If the Respondent applies for a further adjournment, the application is to be supported by a reasoned opinion of an appropriately qualified medical practitioner and the opinion is to address the Respondent's ability to attend, give instructions and participate in the proceedings including by way of giving oral evidence, subject to any reasonable adjustments."

9.2 In the event it was not possible to resume the hearing on 24 March 2017 because of the Respondent's ill health and the hearing on 28 March 2017 was treated as a Case Management Hearing ("CMH").

Preliminary Issues (2)
May 2019 Hearing

10. The Chairman reminded the parties of the procedural history of the substantive hearing. By the conclusion of the March 2017 hearing the Applicant had closed its case and the defence case was due to begin save that one witness Mr Ian Anderson for the Respondent had been taken out of order. The substantive hearing had been adjourned and numerous Case Management Hearings ("CMH") had taken place in the intervening period. The Respondent had been represented at the March 2017 part of the substantive hearing but was now in person.

11. Application to adjourn by the Respondent on 7 May 2019

(This application was treated as being held in private. The application was refused.)

12. Application by the Respondent for the judgment not to be published, in so far as the adjournment application was concerned.

(This application was treated as being held in private. The application was granted.)

(The hearing was treated as resuming in public from this point.)

13. The Respondent and the question of giving evidence

13.1 The Respondent wished to take advice about deciding whether he would give evidence. His attention had been drawn to Practice Direction 5 and that the Tribunal might take an adverse inference if he decided not to do so. The Practice Direction addressed the obiter dicta by Sir John Thomas, President of the Queen's Bench Division, at paragraphs 25 and 26 of the Judgment in Muhammed Iqbal v Solicitors Regulation Authority [2012] EWHC 3251. In the Practice Direction the Tribunal directed for the avoidance of doubt that, in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it was alleged that he has been dishonest), and/or disputed material facts, and did not give evidence or submit himself to cross-examination, the Tribunal should be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. The direction applied regardless of the fact that the Respondent might have provided a written signed statement to the Tribunal. The Tribunal allowed the Respondent a lunch break of more than an hour and a half so that he could take advice and also to organise material

that he wished to present to the Tribunal which had been submitted to the Applicant regarding his practising certificate application.

14. Admission of additional documents

14.1 Upon resuming, Ms Carpenter informed the Tribunal that the documentation received by the Applicant relating to the Respondent's appeal against the imposition of conditions upon his practising certificate was without a covering letter and now that she had those documents it could be seen that a lot of them were already in the hearing bundle. The Respondent agreed but submitted that there were certain documents which were very much key to this case by way of fairness to him. The Respondent referred to allegation 1.2 which, following amendment with the agreement of the Tribunal, alleged dishonesty in respect of six of the alleged eight improper transfers relating to monies where no bill had been raised or other written notification sent to the client. The Respondent submitted that the documents would show that there had been duplication and the money had not been transferred without bills. Also other fee earners were involved. There was delegated responsibility. All the papers relating to those matters should be before the Tribunal including client care letters and client ledgers signed off by the fee earners. The transfers did not add up to the amount claimed as there was an element of duplication. The Respondent also raised an issue relating to the documents in the case of Mr D in respect of which there was an allegation of dishonesty. However Ms Carpenter pointed out where the relevant documents were in the hearing bundle and the Respondent accepted that.

The Respondent's position regarding admissions and denials

14.2 Ms Carpenter queried what the Respondent's latest position was. She submitted that he had admitted allegation 1.2 and that no bills had been raised but denied dishonesty and breach of Principle 2, saying what happened was all a big mistake. He had never said that there were bills to support the original transfers. If the Respondent had documents he could produce them during the three days set aside for the resumed hearing. The Respondent submitted that he had taken advice and first and foremost he wanted to ensure that the documentary evidence which would support his case, even without him giving evidence, was before the Tribunal. In his witness statement he had gone through the office procedures which involved others not just him. If the documents were placed before the Tribunal the Respondent might not need to give evidence. The Tribunal pointed out that the Respondent could have negotiated before the Applicant's case got off the ground. He responded that he was caught in unfortunate circumstances that year. On the occasion of the first part of the hearing he had shown that lists provided by fee earners were contemporaneous. He also submitted that there was a spreadsheet of all the bills and how they were rectified which was not in the papers. The Respondent clarified that he was going to take advice on whether to give evidence on the evening of the first day of the resumed hearing.

14.3 The Tribunal retired for a short time to consider what it had heard about documentary evidence. Upon resuming, the Tribunal sought clarification from the Respondent of his admissions. In his Amended Answer ("Answer") to the Re-amended Rule 5 Statement he had outlined what he admitted and denied and said he admitted the

factual aspects of quite a lot of the allegations. At paragraph 3 of the Answer the Respondent stated:

> "The Respondent admits the allegations set out at paragraphs 1.1.1, 1.1.2, 1.1.5, 1.2.1, 1.2.2, 1.5.1, 1.5.2, 1.5.3 and 1.6"

At paragraph 5 the Respondent stated:

> "The Respondent denies that he acted without integrity in breach of Principle 2 of the SRA Principles 2011 as alleged in paragraphs 1.1.3, 1.2.3 and 1.4.1 as alleged or at all…"

The Respondent submitted that he did not draft the document; it was based on delegated instructions and he was just before the Tribunal as head of the firm. The buck stopped with the Respondent, but just as with the contemporaneous lists what he was saying was that the bills existed; he could show as a matter of fact they were done. He asked if he could make an application to amend the pleadings. The Tribunal pointed out that in the Respondent's witness statement at paragraph 1 he admitted a number of breaches:

> "I have admitted a number of breaches of the SRA Accounts Rules 2011 as well as a breach of Principle 10 of the SRA Principles 2011…"

At paragraph 2 he made denials:

> "I have denied the allegations of dishonesty, lack of integrity and failing to behave in a way which maintains the trust the public places in me and in the provision of legal services…"

The Respondent submitted that he could set out what he admitted and denied when his Answer was discussed. The Tribunal suggested that it would be easier to treat all the allegations as denied but the Respondent said that he accepted some of the allegations. He clarified that he was not happy with the evidential rather than the factual side of the allegations. The allegation that he took money randomly without any bills was not correct.

14.4 The Tribunal emphasised to the Respondent that it expected him to make clear at 9.30 am the following day the second day of the resumed hearing if he was going to give evidence on oath and then he could make submissions after his evidence. The Respondent must also decide if he was admitting any allegations as the Applicant needed to know that. The Tribunal pointed out to the Respondent that he had time to produce the documents overnight and during the next two days of the hearing but he needed to produce them as soon as possible to give the Applicant time to look at them. He was also reminded about Practice Direction No. 5.

14.5 The Respondent asked for clarification of the Tribunal's reasons for refusing his application to adjourn; was it on the basis that he was fit to give evidence? The Tribunal indicated that it would produce full reasons for its decision in due course but it was satisfied that it was not appropriate to adjourn on the basis of ill health or otherwise based on the evidence before the Tribunal.

14.6 Ms Carpenter expressed concern at what she described as a lot of prevarication; there had been reference to the file of documents put to the Applicant regarding the practising certificate appeal and the Applicant made a great effort to obtain it but there was nothing relevant in it. The Respondent submitted that he now needed other documents. Ms Carpenter submitted that the Respondent admitted no bills were raised in correspondence about his witness statement. The Applicant made queries about the lists including about whether they were contemporaneous. The reply from Radcliffes, then acting for the Respondent was that they were and it stated that he did not say he had the bills before him when he authorised the transfers. The Respondent replied that just because he did not have the bills in front of him did not signify; there were a number of fee earners. The Respondent submitted that he was not prevaricating; he just wanted a fair fight.

14.7 The Tribunal adjourned at the conclusion of the first day of the resumed hearing at 4.10 pm.

Preliminary Issue (3)
8 May 2019

15. Absence of the Respondent at the commencement of the second day of the resumed hearing

15.1 The Respondent had been directed to attend at 9.30 am on 8 May 2019 and inform the Tribunal of his decision upon the matters set out above. The Respondent did not appear. He had emailed the Tribunal office at 4.56 am copying in Mr Willcox including:

> "I am asked to inform, which allegations I accept and which allegations do I not accept, so far as the applicants rule 5 is concerned,
>
> 1.1 - I do not accept that the figure is £216387 this figure is to be amended.
> Also in consequence so far as 1.1 is concerned I do not accept 1.1.3, 1.1.4 1.1.5
>
> 1.2 I do not accept, and 1.2.3 and 1.2.4
>
> 1.3 I accept
>
> 1.4 I do not accept, along with 1.4.1 and 1.4.2
>
> 1.5 I accept
>
> 1.6 I accept
>
> 2 I do not accept with respect to any of the allegations or particulars
>
> I also do not accept that I acted with a lack of integegrity (sic) with respect to any of the allegations or particulars …"

The Respondent then went through the Rule 5 Statement indicating in the main that he did not accept its contents.

15.2 At 8.46 am Mr Willcox replied:

> "Thank you for your email setting out what your position now is regarding the Rule 5 Statement. I note this contradicts your Answer served in these proceedings [**original trial bundle 1 pages 34 to 42**], your witness statement [**original trial bundle 1 pages 50 to 69]** and also previous representations that were made on your behalf by Radcliffes' in letters to the SRA between 2015 and 2017 (see Radcliffes' letter dated 27 April 2015 at **original bundle 3 pages 547-560**; Radcliffes' letter dated 7 May 2015 at **original bundle 3 pages 615-620**; Radcliffes' letter dated 24 July 2015 at **original bundle 3 pages 541-546**; Radcliffes' letter dated 29 October 2015 at **original trial bundle 3 pages 639-644**) and Radcliffes' letter dated 13 March 2017 [**Correspondence bundle part 2, front of bundle**].
>
> So that the SRA may understand what your current position is please can you respond to the following queries:
>
> 1. Regarding paragraph 1.1 of the Rule 5 Statement you state "I do not accept the figure is £216,387 this figure is to be amended".
>
> A breakdown of the figure of £216,387 is contained in the SRA's Further Information (**original trial bundle 1 page 14 to 17**). It comprises 24 transfers. 23 of these improper transfers were identified by [Ms K] in the report you yourself commissioned. One additional improper transfer (£29,000) was identified by the FI officer.
>
> Ms [K's] report is in **original bundle 2 pages 218-228**. You have previously admitted the contents of that report.
>
> You have also previously admitted paragraph 1.1 of the Rule 5 Statement (save for the allegations of breach of Principle 2 and Principle 6).
>
> If you now deny the figure is £216,387 please state:
>
> a. which of the 24 transfers in the SRA's Further Information at original trial bundle 1 page 14 to 17 you now wish to deny were improper transfers and the reason for your denial.
>
> b. What parts of Ms [K's] report that you yourself commissioned you now seek to deny.
>
> 2. The first sentence of paragraph 6 of the Rule 5 Statement describes the situation at the material time i.e. at the time of the breaches (2014). Please confirm you accept that the first sentence of paragraph 6 of the Rule 5 Statement correctly describes the position as at 2014.

3. Para 19 of the Rule 5 Statement simply states that Ms [K's] report identified 7 instances where improper transfers from client account to office account were made in relation to costs where no bills of costs or other written notification of costs had been made. Ms [K's] report does identify 7 such instances. Please see her report at **original bundle 2 pages 218-228.** Do you deny that Ms [K's] report contains this wording?

4. Paragraphs 23 to 27, 30 to 34, 38 to 42, 59, 62, 63, 76 to 78 and 79 to 82 of the Rule 5 Statement simply describe what the ledgers, reconciliations and bank statements show. Those paragraphs refer by page number of the bundles to the documents which prove this. Do you deny what your own ledgers, reconciliations and bank statements show?

5. Regarding paragraphs 46 to 54 of the Rule 5 Statement, I do not understand your comment "not accepted £29000"

6. Paragraphs 55 to 56 simply describe correspondence between you and HMRC. The relevant pages of the bundle which contain that correspondence are referred to. This correspondence was produced by you to the SRA pursuant to a section 44B notice. Do you deny the correspondence that you yourself produced to the SRA?"

Between these email exchanges the Respondent emailed the Tribunal office at 7.59 am not copying in Mr Willcox:

> "Further, to the email below [4.56 am], and to my adducing additional documentary evidence, some of the material is only in paper form and is archived and I can only access the archive at 08.30am, the next train to London is at 08.56, which gets into Euston at 10.56, I apologise for the delay, and thank you in anticipation for the indulgence of allowing me the extra time."

At 9.43 am Mr Willcox emailed the Respondent:

> "I have seen the email which you sent to the Tribunal at 07.59 this morning.
> Please could you confirm whether you caught the 08.56 train?
> I am copying this email to the Tribunal."

15.3 At 9.52 am the Tribunal resumed the hearing in the absence of the Respondent. Ms Carpenter submitted that the Respondent's email of 7.59 am constituted a request for an adjournment to 11 am. She expressed some concerns about this and the late search for documents. She was not asking to proceed in the absence of the Respondent but asked the Tribunal to make a decision about a time by which, if the Respondent was not present, the Tribunal would proceed and that he should be informed of that at this point.

15.4 Ms Carpenter submitted that the Respondent had previously admitted some breaches and now sought to resile from those admissions. It was very unsatisfactory that at such a late stage he now sought to adduce documents; the Standard Directions required the filing of documents in 2017. Mr Gibson had written to Radcliffes on

28 December 2016 after the Respondent's original Answer to the unamended Rule 5 Statement dated 23 August 2016 and before his witness statement dated 7 February 2017. The letter included:

> "As we understand your client's case on the dishonesty allegation to date (from your correspondence and from his Response to the Rule 5 Statement), his case is as follows: his accounts were in a mess in 2014 and his ledgers were not up to date. He seems to say that he thought at the time that they were made that the 8 client to office transfers could be done as he thought costs were due on conveyancing files, that he did not check the ledgers which were not up to date anyway, that he got it wrong, and then allocated monies to the miscellaneous one-off ledger which was operating in the form of a suspense ledger while he sorted it out. He says the wrong dates were entered on the ledgers, bills and reconciliations not to make shortfalls but because the software the firm was using on its accounts would not let the ledgers go overdrawn. He also explains that he was at the time dealing with some very serious personal trauma…
>
> To date this explanation has not been provided with sufficient clarity for us to be able to accept it – in particular, if the above remains your client's case we would expect your client's evidence to deal with at least the following points:"

Those points included at point 7:

> "Whether any of the 8 transfers from client to office account which were reversed were subsequently charged to any client. If so which client, on what dates, and a copy of the ledger and bills should be provided."

Ms Carpenter submitted that the letter spelt out what evidence was needed to understand the Respondent's case and at paragraph 7 he was told that bills were needed. The Respondent served a witness statement and did not deal with the issue so it was assumed he stuck to his original position. Ms Carpenter referred to unpaginated documents at the end of volume 6 of the original hearing bundle which included a letter from Mr Gibson dated 23 February 2017 to Radcliffes. It pointed out the lack of clarity in the Respondent' witness statement as to what his case was as to why he made each of the 24 incorrect payments, and in particular what, if any documents, he said he had before him prior to him authorising each incorrect payment. The letter included that information was wanted, in particular including:

> "As regards paragraph 15 and paragraphs 20 onwards of [the Respondent's] evidence as to the 8 transfers from client to office account between 1 April 2014 and 21 May 2014 (numbered 3 to 10 of the SRA's Further Information) we are unclear as to what, <u>if any</u>, documents [the Respondent] is saying he had before him/looked at before he authorised each of these 8 transfers.
>
> Please answer separately the questions below for each of the 8 transfers as it may be that the answer is different for each transfers…
>
> …

> 1.3 Is [the Respondent's] evidence that bills ha (sic) been sent to each client and that he had before him bills that had been sent to each client? Our understanding from your previous correspondence (e.g. your letters dated 27 April 2015 and 24 July 2015) is that bills had not been prepared and therefore [the Respondent] cannot have had any bills before him when he authorised each transfer. Please confirm. Alternatively, if it is now said that [the Respondent] did have bills before him when he authorised each transfer please provide a copy of each bill that [the Respondent] says that he had before him."

Ms Carpenter also referred to the Respondent's lever arch file from the first part of the hearing submitted by Radcliffes titled Correspondence 2. In Radcliffes' letter of response to the 13 March 2017 letter the answer to question 1.3 above was:

> "[The Respondent] is not saying that he had bills before him when he authorised the transfers. He was working from a print of matter balances reviewed by relevant fee earners."

Ms Carpenter submitted that it had been clear for several years that if the Respondent had bills these were vital documents to produce and he had no good reason to do it on this day. Ms Carpenter assumed the Respondent was looking for bills but the report of Ms K instructed by the Respondent which he produced to the FIO said there were no bills. Ms Carpenter confirmed for the Tribunal that the only bill in file Correspondence 2 was at 187. The Respondent had different explanations for the absence of bills. In some cases he said the transfers were a mistake. There were six composite bills. He said the bill at 187 was a duplicate bill. In respect of Mr D's matter he gave a different explanation.

<u>Determination of the Tribunal regarding the Applicant's application to set a time limit after which it would hear an application to proceed in the absence of the Respondent</u>

15.5 The Tribunal retired to deliberate. The Respondent's reason for absenting himself was that he needed to spend court time looking for documents. The Applicant questioned this strategy; the Respondent had never produced the documents before and did not produce them to the Adjudicator or the FIO. The Tribunal had been referred to Mr Gibson's letter of 23 February 2017 which was a very relevant letter and a Radcliffes' letter 13 March 2017 in reply. In his documents the Respondent had said that bills were not prepared and he was now contradicting his own earlier submissions. All his representations to date had been to the effect that the bills did not exist. Now he was seeking time out of the hearing to search for documents which he had repeatedly been asked for and had not provided. His own evidence was that they did not exist. The Tribunal also noted that this was the second time in the course of the last two days that the Respondent had asked for time to produce documents; the Respondent had asserted that his documents regarding the practising certificate conditions issue would contain evidence to shorten the proceedings. The Tribunal had adjourned for a time to allow the Respondent to go through the documents but he did not take the Tribunal to anything.

15.6 The Tribunal also considered the Respondent's approach to the conduct of his case. He had dis-instructed his solicitors in July 2018. He had had plenty of time since then to instruct someone else if he wished to and to seek the material he was now looking for. He had informed the Tribunal that he was taking advice about his case by telephoning a member of counsel; initially he had said he would do this during the lunch adjournment on 7 May 2019 which had been taken into account in the timing of the break and then he said it would take place overnight on 7 May 2019. Also it was now apparent that he had access to an archive; he did not say that it was in the possession of someone else.

15.7 The Tribunal determined in all the circumstances that the Respondent, having absented himself from the proceedings without permission when he had expressly been directed to be present at 9.30 am, it would be appropriate to set him a reasonable time by which he must be at the Tribunal or it would hear an application to proceed in his absence from the Applicant. The Tribunal retired at 10.48 am.

15.8 At 10.26 am while the Tribunal was sitting, the Respondent had responded to Mr Willcox:

> "I am travelling to London from Preston! I note what you say, I have brought with me so it can be clarified, the central bills records, consisting of 3 ring binders and ledgers and bills and client care material from the files of the April. May June transfers, my response this morning to the rule 5 was based upon those records having been previously read by myself along with my son prior to making representations to Mr [C of the Applicant], the representations were based upon advisement from Counsel post the hearing in march 2017
>
> When Counsel advised that I should get together all of the central records which were made available to Mr Baker [the Forensic Investigation Officer] and in particular the bills and all client file material for the ápril (sic) May June transfers and (once I was fit a supplemental statement would be made in these proceedings)
>
> So far as Mrs [K] is concerned, she advised that so far as the April, May June transfers were concerned to make the bills available to Mr Baker, which we did in the presence of Mrs [K] and. Mr [P] of [the firm's accountants].
>
> It may be best for yourself and Counsel to look at the records yourself.as they are the same records for 2014 that were presented to Mr Baker.
>
> So far as Mrs [K] was concerned my recollection is that when it came to the transfers between March, April May June July August September were concerned she wanted more to understand how the accounts team processed the reconciliations given the backlog, arising as a result of my wife's absence and the month ends not being reconciled on time.
>
> Should be there deals (sic) permitting after 11am"

At 10.44 am the Respondent emailed Mr Willcox:

> "Unfortunately, I missed the 8.56 as by the time I had retrieved the archived records which consists of two suitcases, I had to catch the next fast train which was 9.46 am
>
> I apologise for delaying both yourself and Counsel, and my omission in not copying you into the original this was just an oversight."

The Tribunal office at the direction of the Tribunal emailed the Respondent at 10.56 am:

> "We note from your email sent 07.59 this morning that you have chosen without leave of the Tribunal to absent yourself from the resumed hearing which was scheduled to commence at 09.30. You now advise in an email to Mr Willcox timed at 10.26 that you expect to arrive after 11.00. To avoid further delay in the proceedings the Tribunal will recommence the hearing at 11.45 when we understand the Applicant will make an application to proceed in your absence, should you not have arrived by then."

This email in effect crossed with the Respondent's email above timed at 10.44 to Mr Willcox.

15.9 At 11.09 am the Respondent replied to the Tribunal office:

> "I did email the tribunal, and I did email Mr Wilcox advising as to my ETA, I am not absenting myself not all, my stance has been that I want to assist the court and SRA which hopefully may save time in the long run, and I am mindful of the indulgence provided to me by both the tribunal and the SRA,
> I am confident that the application to proceed in my absence will not be necessary as I will be at the tribunal in good time prior to that"

16. Substantive application by the Applicant to proceed in the absence of the Respondent

16.1 The Respondent not having arrived by 11.45 notwithstanding his message to the effect that he would be present "after 11 am", at 11.47 am the Tribunal heard an application from Ms Carpenter to proceed in the Respondent's absence. Ms Carpenter referred to the email exchanges quoted above. The Applicant had tried to identify the trains from Preston to Euston to which the Respondent referred but could not find trains which exactly matched those the Respondent cited. There was a train at 9.56 am which was scheduled to arrive at Euston at 11.37. Ms Carpenter referred the Tribunal to the authorities relating to proceeding in the absence of the Respondent. The case of GMC v Adeogba and Visvardis [2016] EWCA Civ 162 summarised the position in respect of a Tribunal proceeding in the absence of a Respondent. The judgment referred to the starting point as the case of R v Hayward, Jones and Purvis [2001] QB 862, CA which set out the factors the Tribunal had to take into account. She submitted that the key paragraphs were at 14 to 18 of the Adeogba judgment.

16.2 Ms Carpenter emphasised the references to the need to protect the public interest and that a regulator could not compel the attendance of a Respondent. The context of Hayward had to be borne in mind – criminal proceedings. The Respondent here had been told that he needed to be at the Tribunal at 9.30 am and that he needed to state if

he would give evidence. He did not seek leave to be absent and he did not copy the Applicant into his email at 7.59 am. It was not a good reason to be absent to look for archive material that he could have produced years ago if it was relevant to his defence. Ms Carpenter submitted that as to whether the Respondent's behaviour justified an adjournment one had to consider if an adjournment would result in the attendance of the Respondent at a resumed hearing in circumstances where the regulator could not compel him. He had already applied for an adjournment in these proceedings and it had been refused; he could not just take one. Ms Carpenter submitted that if the Respondent did not arrive in the next 10 minutes then he was not coming. Also the likely length of an adjournment was unknown as it was not known where the Respondent was. He said he wished to assist but he had had many years to produce documents and at the latest, opportunities when he was in correspondence with the Applicant. One could not say that what he was doing was assisting the Applicant. There would be some disadvantage to the Respondent from the Tribunal proceeding in his absence but it was his choice. As a professional body, the Tribunal would go through his representations and what he has said at this hearing on the previous day together with the bundle of documents which Radcliffes had previously submitted on his behalf. The Tribunal would look at his statement and testimonials. The Tribunal would critically analyse the Applicant's case. The risk to the Respondent was low. There was a serious public interest in proceeding. The case had been outstanding for a very long time; it had been adjourned for two years. It was made clear to the Respondent with the refusal of an adjournment the previous day that there was a public interest in proceeding in a case with a history of adjournments. The Respondent had ignored the Tribunal directions given the previous day and voluntarily absented himself. He decided not to attend at 9.30 am and it was unclear whether he would attend. He had sent no further emails to those referred to above. There had been no indication in the emails whether the Respondent would give evidence.

<u>Determination of the Tribunal regarding the Applicant's application to proceed in the absence of the Respondent</u>

16.3 The Tribunal retired to deliberate. It had regard to the fact that if it went ahead in the absence of the Respondent the next step would be to hear any further submissions from Ms Carpenter (on matters of law only, her case having closed) and then it would determine its findings on the allegations. The Tribunal had a concern that to proceed would effectively eliminate the defence case. Also the Respondent had been in communication that morning and advised of the efforts he was making to attend the Tribunal. The Tribunal therefore indicated to Ms Carpenter that it was minded to direct that another email be sent to the Respondent informing him that it had not reached a final decision on the application to proceed and asking him to indicate where he was. The Tribunal was not unsympathetic to the Applicant's application. Ms Carpenter suggested that the email ask the Respondent to confirm his current location, estimated time of arrival and give him a deadline to respond. The Tribunal decided that such an email should be sent and that it would reconvene at 1.15 pm. Ms Carpenter also indicated that she had a mobile telephone number for the Respondent over which the email could be read in case he did not pick it up. The Deputy Clerk called the number provided by Ms Carpenter just before 1 pm. It rang without being answered or going to voice mail.

16.4 The Tribunal office at the direction of the Tribunal emailed the Respondent at 12.22:

> "The Tribunal has heard Ms Carpenter's application that the hearing should proceed in your absence. Please confirm your whereabouts, mode of transport and estimated time of arrival at the Tribunal. The Tribunal is deliberating and will give its decision as to whether it will proceed in your absence at 1:15 p.m."

The Respondent arrived immediately before 1.15 pm without replying to the Tribunal's email.

16.5 Upon arrival, the Respondent apologised for his absence relying on his earlier email explaining what he was doing. He informed the Tribunal that the archive he had visited was in a building owned by his family.

16.6 The Respondent stated that he had consulted counsel about the refused adjournment of the previous day and had been referred to a case decision which related to judicial decision making as to whether someone was fit, based on sight and demeanour. His counsel asked for a copy of the memorandum of the Tribunal's decision to proceed because counsel informed the Respondent he could not advise him whether to give evidence without it. The Respondent had provided him with copies of the Memoranda of two previous Tribunal decisions. The Respondent stated that from a medical point of view he was unfit however he felt the Tribunal had made a decision based on sight that he was fit. Counsel had also told the Respondent that it was clear from the point of view of the transfers covered by allegation 1.2 that the Respondent could adduce documentary evidence. Counsel wanted to see the decision and whether the Respondent was to be allowed to adduce evidence.

16.7 The Tribunal clarified for the Respondent that it was not preventing him from adducing evidence but that it wanted the Applicant to see the evidence first. The Respondent informed the Tribunal that if he was allowed to give (documentary) evidence to the regulator there was no problem with him giving oral evidence himself. He also stated that all his evidence had been with his representatives at the hearing in March 2017; he had had it in his hotel room. His instructions to his representatives had been clear that the April, May, June and July bills had been done. There was duplication. The Respondent was warned that he was about to waive privilege in respect of advice he had previously received. The Respondent stated that his instructions were that he only accepted improper transfers in respect of duplicated matters and he did not accept that he never raised any bills and randomly took money.

16.8 The Tribunal explained to the Respondent that if he gave evidence he could be cross-examined by the Applicant or he could present his case without giving evidence. He asked if he could present his documentary evidence to the Applicant first. He was prepared to give evidence if the appropriate adjustments were made. The Tribunal confirmed that he could. Ms Carpenter submitted that she opposed any adjournment for the evidence to be presented. The Respondent would have to give evidence in chief to present his evidence and the Respondent had said only one file was relevant. The Respondent clarified that there were folders. Ms Carpenter explained that the Applicant did not require a break in the hearing to consider the files/folders; the Respondent could produce copies and give evidence immediately

and explain the relevance of the documents. She might need time to consider before she cross examined the Respondent. Ms Carpenter did not accept that the Respondent needed written reasons from the Tribunal for the refusal to adjourn; the Tribunal had said it did not accept that there was any medical evidence supporting the Respondent's contention that he was not fit; that was part of the Tribunal's decision. The Tribunal had not said that it relied on assessing his condition by sight; it said there was no medical evidence.

16.9 Ms Carpenter submitted that the case to which the Respondent referred was Maitland-Hudson v SRA [2019] EWHC 67 (Admin):

> "83. There is no blanket rule that a court (or tribunal) must ignore what it sees and hears in court. Solanki was a very extreme case on its facts. The first instance judge there essentially completely disregarded the medical evidence without giving any reasons and substituted it with his own opinion that the claimant in that case was not genuine.
>
> 84. It is quite legitimate for a court to take account of its own assessment of a litigant's capacity to participate effectively in its overall assessment of the evidence before it, including the expert medical evidence, if it considers it appropriate to do so. No court is ever bound to accept the expert evidence before it, even if that evidence is agreed; see for example Levy v Ellis-Carr and others [2012] EWHC 63 (Ch) at [36] (endorsed in Hayat at [38]). A court or tribunal is entitled to weigh up the medical evidence against all of the other material available to it. If it intends to depart from the conclusion of an expert or experts, it needs, of course, to exercise caution. It also needs to bear in mind that litigants with, for example, mental health illness may mask their problems or not understand that it may not be in their best interests to continue. It must also give reasons for its conclusion. The Judge's failure to do so in Solanki was central to the Court of Appeal's criticism of the Judge's approach.
>
> 85. This approach is wholly consistent with the comments of the Court of Appeal in Hayat: see in particular at [56] where Coulson LJ said:
>
> > "Finally, I consider that the Tribunal was entitled to weigh up the (inadequate) sick note against all of the other material available to them. This included not only the existing medical evidence…but also the fact that Dr Hayat had already made three unsuccessful applications to adjourn this hearing on entirely different grounds, each without success."
>
> Mr Cohen again points to the fact that the court in Hayat does not appear to have been taken to the decision in Solanki, which is authority for the proposition that a tribunal is not entitled to substitute its own view on a medical matter for that of an expert. He accepts that a tribunal is not bound to accept medical evidence but submits that it may only depart from it where there is a basis found in other medical expert evidence to different effect. I do not accept that the ability of a tribunal not to accept the evidence of a medical expert is so limited. The task of a court is to

weigh up the expert medical evidence under scrutiny alongside all the other material available to it. Solanki does not say otherwise.

86. Thus, the central submission for the Appellant that the Tribunal's own experience and view of the Appellant's performance during the hearing was irrelevant and should have been wholly disregarded as a matter of principle is misconceived."

Ms Carpenter submitted that the case said a Tribunal would look at medical evidence and at its own perceptions. The Respondent had had plenty of time to decide about giving evidence. He had made the Tribunal wait all morning while he produced evidence he had had years to produce.

17. Application of the Respondent to adduce an Addendum Statement

17.1 The Respondent submitted that he would like to prepare an addendum statement to support his evidence in chief. He would sit there as long as it took to get that done. His original statement needed clarification. He could easily draft the statement and hand it to Ms Carpenter and Mr Willcox and for them to cross examine him on it. Ms Carpenter submitted that he had had plenty of time to do that. The Respondent submitted that he needed time to look at the documents; it was a long time ago. He had always said that the billing had been done and the figure in the allegation should be reduced. He had made representations to that effect to Mr Conlon and Mr Gibson of the Applicant. He would be cross examined on things which he could clarify in an addendum statement with documents. Ms Carpenter opposed that suggestion; the Respondent had produced a statement before and had had plenty of time to decide whether to give evidence. The Respondent submitted that was not in the interests of justice; he had been qualified for 30 years, was 58 years old and did not have much of a career left. At this point the Tribunal retired to allow the Respondent a short break.

17.2 Upon resuming, the Tribunal summed up the present issues in the proceedings; it was not prepared to give immediate written reasons for its decision not to adjourn the proceedings; it had made clear that written reasons would follow. The Respondent's health was only one aspect of the decision and the Tribunal's determination had not been based on its sight of the Respondent. The Tribunal accepted that the Respondent needed some time to decide to which documents he needed to refer; to decide what was relevant to the Tribunal and he asked to draft a further written statement. Upon request the Respondent gave the Tribunal an estimate of 45 minutes to prepare the statement which the Tribunal considered to be optimistic bearing in mind that as well as preparing the statement the Respondent would have to collate the documents to accompany it. The Tribunal also allowed for the need to make reasonable adjustments for the Respondent's propensity to become tired. The Tribunal decided to allow the Respondent until 4.30 pm, that was about two and a half hours, for the Respondent to prepare the statement and to decide what part of the documents were relevant and to serve them on the Applicant and the Tribunal. In arriving at this decision to allow additional time above that requested the Tribunal also bore in mind that the Respondent had been sending emails from 4.59 am that day.

17.3 The Tribunal resumed two hours and 34 minutes later. The Respondent informed the Tribunal that he was 35% to 40% through his statement and identifying documents. The Tribunal determined that it would resume at 9.30 am the following day and begin with the Respondent's evidence. If he had identified documents he could provide them then. The Respondent said that he did not have to return to Preston that evening; he had been going to stay with his son in the London area but instead could stay in a nearby hotel. The Respondent stated that he and his wife and Mr T of the firm had carried out an exercise in January 2017; there were lists, bills, details of duplications and ledgers which they sent to Radcliffes. He held up two lever arch files which he said had been sent to Radcliffes on 3 January 2017. It was explained to the Respondent that if he did not produce documents he could not rely on them. The Respondent stated that his son would come to assist him that evening but he did not have access to a copier however there might be one at the hotel. To cut down the amount of the total material the Respondent had brought with him they would need to go through the central ring binders and extract bills. Ms Carpenter pointed out that the Respondent did not have to cut down the documentation; what he presented was entirely a matter for him. The Respondent referred to the time his case might take. The Tribunal also pointed out that it was his case and the way he presented it was up to him. The Tribunal would need six copies of the documents.

17.4 The Tribunal directed the Respondent to serve his additional documents at 9.00 am for a 9.30 am start on 9 May 2019 in whatever format he wanted together with the Addendum Statement if he relied on it. The Respondent stated that if he finished he could email documents to the Applicant. The Tribunal explained it would require a hard copy at 9.00 am at the latest. It was assumed the Respondent would give evidence but open to him if he wished to change his mind over night. The Respondent indicated he would give evidence but had wanted to be sure he had the documents.

Preliminary Issue (4)
9 May 2019

18. Additional Respondent documents

18.1 The Respondent did not arrive at the Tribunal and did not serve any documents at 9.00 am on 9 May 2019. He explained when the Tribunal resumed that he had prepared the Addendum Statement and had prepared one bundle and had been trying to find a copy shop to make six copies from 8.00 am. The Respondent stated that he could email the statement but he could not email all the documents. The Respondent stated that in the Addendum Statement he identified each and every document. He stated that the documents should be in the bundle which the Applicant had prepared apart from those in the firm's central records. The Tribunal directed the Respondent to email his Addendum Statement to the Tribunal office and liaise with the deputy clerk about copying. It was decided that for speed the statement could be emailed and unusually Tribunal staff would undertake the copying. The Tribunal wished to work towards a start at 10-10.15 am. Copying commenced just after 9.30 am and took until approximately 11.45 am. There were two files to be copied one with 7 tabs and the other with multiple stickers which could not be reproduced in a reasonable time. There were further documents which the Respondent wished to have copied and which he had offered to the staff but they concentrated on the two files first.

18.2 Ms Carpenter informed the Tribunal that she had only had time to look at the folder now identified as File A and submitted that seemed to be completely replicated in the file Correspondence 2 from the first part of the hearing in March 2017 (save for the last tab 7 which she had not had time to look at). File A seemed to be a complete copy of file Correspondence 2 as follows:

- Tab 1 Ledgers were to be found also at pp 16-59 of Correspondence 2
- Tab 2 Ledgers were to be found also at pp 62-137 of Correspondence 2
- Tab 3 Ledgers were to be found also at pp 139-141 of Correspondence 2
- Tab 4 Ledgers were to be found also at pp 144-155 of Correspondence 2
- Tab 5 Ledgers were to be found also at pp 157-166 of Correspondence 2
- Tab 6 Ledgers were to be found also at pp 168-186 of Correspondence 2

Ms Carpenter also submitted that she had flipped through File B and it appeared to contain some documents she had not seen before. The Respondent stated that bizarre as that might sound, he had not seen the file Correspondence 2 prepared by Radcliffes in response to questions from the Applicant. The Respondent said it was the same with a green folder which related to conveyancing clients and there was another one like that for non-conveyancing clients but he could not find the hard copy. Ms Carpenter informed the Tribunal that it would not take her very long to look at the documents now adduced; possibly half an hour. She also submitted that the Respondent had been provided with the file Correspondence 2 the previous day (and had had it at the first hearing). The Tribunal expressed concern that if the Respondent now began to give evidence the case would go part heard with him sworn and therefore unable to discuss the case with anyone. Ms Carpenter submitted that he had brought this upon himself. The Respondent submitted that he would like, if at all possible, for the case to be concluded on 9 May 2019. The Tribunal explained that if the Respondent was to give evidence and be cross examined that could not occur. The Tribunal had to bear in mind his health issues and allow breaks. The Tribunal retired to allow copying of the remainder of the Respondent's documents.

18.3 Upon resuming, Ms Carpenter informed the Tribunal that the folder now designated File B consisted of a few random bills which were nothing to do with the transfers and so time was not an issue for her. The Respondent had intimated that he wanted to extract bills from central bill files and other documents he had with him. The Respondent explained that he did not want to copy all of the two central bill files but to extract bills relevant for each transfer. The Tribunal reminded him that he should focus on what was relevant to the allegations in the Rule 5 Statement. The Respondent stated that his wife and Mr T had prepared an explanation which he had not seen for his response to a letter from the Applicant; all the bills related to when the matters were effectively corrected for the period 14 April to 21 May 2014. [The Respondent's wife Mrs M and Mr T had each prepared an undated Explanatory Statement which was contained in file Correspondence 2 at pages 241-248 (Mrs M) and 249-254 (Mr T).] The Respondent stated that he did not know that File A had been in the documents previously submitted by Radcliffes. The Respondent wished to pick out relevant bills relating to each transfer because they were referred to in his Addendum Statement and estimated it would take him 15 to 20 minutes. He confirmed they were not in File B.

18.4 The Tribunal directed that if the Respondent did not produce any and all documents which he wished to adduce by 1.30 pm he would be debarred from doing so. Ms Carpenter had asked for a deadline of 1.15 pm but the Tribunal allowed a little longer. After an interval the Respondent informed the Tribunal that he had extracted "rectification bills and duplications". He was just going through the spreadsheet prepared at the time giving the number of each bill and the duplication bill. These were the transfers and rectification. Before the lunch break the Respondent confirmed that he would give evidence if appropriate adjustments were made for him and all the documents he wanted were before the Tribunal.

18.5 When the Tribunal resumed after lunch there were additional documents from the Respondent as follows: File C email attachments and File D loose documents. The Respondent stated that he had not finished extracting the original bills but he had extracted those prepared for rectification. The Respondent then began to list documents upon which he said he relied. Ms Carpenter pointed out that file 3 of the original hearing bundle contained all the Radcliffes' representations and letters. The Respondent continued to list documents. Ms Carpenter queried what the procedural position was. The Respondent continued that he thought that Ms Carpenter had confirmed there had been no response to the 15 March 2017 questionnaire and the only documents were what his IT person said were supplied regarding the issue of the contemporaneity of the lists which the Respondent had seen in the Applicant's bundle. Then there were the medical documents which were separate. There was also correspondence sent from 4 April 2019 to 7 May 2019 between Mr Willcox and the Respondent. Ms Carpenter pointed out that the inter parties correspondence in that period would be in Resumed Hearing bundle 2. The Chairman informed the Respondent that the Tribunal had the documents relied on by the Respondent and the Applicant. It had not been able to go through the new bundles page by page (that is Files A – E1-3) but the Respondent could refer the Tribunal to specific documents. The Respondent submitted that he wanted to make sure that everything he was relying on was there.

18.6 The Respondent also confirmed that his son had emailed through a "tidied up" version of his unsigned Addendum Statement with a statement of truth. (This statement was not adduced in evidence as the Respondent adopted the version already filed dated 9 May 2017, along with his witness statement dated 7 February 2017 and his Answer when giving evidence).

19. <u>Adjournment part heard on 9 May 2019</u>

19.1 At a point after the Respondent began giving his evidence the Tribunal reviewed progress and the now obvious need to go part heard. The Respondent had expressed the hope earlier in the day that the case could be concluded within the time allotted but the Chairman had explained that this would not be feasible if he was to give evidence and be cross-examined. In re-listing the hearing the Respondent asked that the Tribunal take into account that it was now Ramadan and he had received an exemption to take medication because of the pressure of the hearing. Ramadan was expected to conclude on 6 June 2019 and involved fasting from 3.00 am to 9.00 pm. He said earlier he would be disappointed if he was asked to attend the Tribunal during Ramadan. After retiring to consider, the Tribunal estimated that it would need two further days to complete the case. Various dates were canvassed and it was

determined that the hearing would resume on 30 and 31 July 2019. The Respondent was warned that as he was part way though giving evidence he could not discuss the case with anyone. Ms Carpenter said the Applicant would email the bundles provided by the Respondent on the final day of this part of the hearing to the Respondent and copy in the Tribunal. This was done on 13 May 2019. The hearing was adjourned just after 4.30 pm on 9 May 2019. Some days after the hearing concluded, the Tribunal informed the parties that it felt that an additional day should be set aside to ensure the matter could be concluded on 31 July 2019. The Tribunal would therefore reconvene on Monday 29 July 2019, a date convenient to the Tribunal and the parties. It would commence at 11 am to enable everyone to travel on the day instead of staying overnight on Sunday 28 July 2019.

Preliminary Issues (5)
July 2019 hearing

20. Application by the Respondent to admit further documents in advance of the resumed hearing

20.1 On 4 July 2019, the Respondent emailed the Tribunal office as follows:

> "I refer to the above matter, and would advise that given the issues arising during the course of the hearings between the 7 and 9 May 2019, in particular in terms of the disclosure process that involved my former representatives, I have now with the assistance of my son reviewed all of the documentation in this case since the date of the first letter that was received from Mr Oliver Baker of the SRA on the 27 January 2015.
>
> The insight that I received on the 7-9 May 2019, was very clear, what had been disclosed within the Radcliffe folder which folder I saw for the first time on the hearings of 7-9 May 2019, did not contain the minutiae of documentation, in particular raised bills, signed chits, emails passing during period April 2014-November 2014 and so forth, I did disclose some documentation, between the 7-9 May, and what I would now request is would I be able to provide a complete index of documents, to support my defence to the rule 5 statement, which go to support and explain each individual transaction identified within the FIR and subsequently reproduced in the Flanagan [an employee of the Applicant] report seeking intervention in the practice and also within the rule 5 statement, all of these documents were available to [Ms K], to Oliver Baker, and were provided to my former representatives, I believe these documents do show the insight that was provided to my former representatives to enable them to assist me and prepare for the hearings listed between 15-17 March 2017, and given my (sic) what was ventilated to me between the 7-9 May 2019 the documents within the index do give a complete picture in my respectful opinion concerning each individual transaction listed within the rule 5 statement.
>
> I would also ask if it is possible for me to have transcripts of the hearing between the 7-9 May 2019, so that I can review these also with my son in the context of the above exercise of preparing the index, and for him to understand

> the views of the SDT, and Mrs Carpenter. I look forward to hearing from you."

The Applicant indicated that it would oppose any application to admit further documents on 8 July 2019:

> "I write further to the e-mail from the Respondent dated 4 July 2019, and timed at 15:55 (below).
>
> The SRA opposes Mr Mohammed putting in any more documents. The reason for this is because he has been given every opportunity to do so including at the hearing on 7-9 May 2019.
>
> The Tribunal also made an Unless Order on day 3 of the Resumed Hearing that no more documents could be produced.
>
> The SRA also opposes Mr Mohammed providing an index unless it is simply an index of documents that are already before the Tribunal.
>
> The Respondent can obtain a recording of the 7-9 May 2019 hearing from the Tribunal and then get that transcribed if he wishes to.
>
> I am copying Mr Mohammed to this e-mail."

20.2 At 10.29 on 8 July 2019, the Respondent emailed Mr Willcox after receiving his email quoted above, as follows:

> "Thank you for your email below , please can I be provided with the recording for the hearing of the 7-9 May 2019 , In view of Mr Wilcoxs (sic) position, I will give due consideration to seeking formal permission by way of application to be heard prior to the resumed hearing and will serve the application and supporting documents in good time, I do note the comments of Mr Wilcox, however, given my circumstances between the 7-9 May 2019, which were patent for all to see and given the clarity provided at the hearing , I believe that the documents provide significant insight on my part to the rule 5 statement, and the subsequent part 35 questions raised by Mr Gibson,

20.3 The Respondent was provided with a recording of the 7-9 May 2019 hearing and it was explained to him by the Tribunal office that the Tribunal does not provide transcripts. The Respondent was advised by email as follows on 10 July 2019 with the approval of the Chairman:

> "It is totally a matter for Mr Mohammed what if any application he chooses to make.
>
> On 9 May 2019, the Tribunal directed that if the Respondent did not produce any and all documents which he wished to adduce by 1.30 pm that day he would be debarred from doing so. As the resumed hearing is now less than 3 weeks away if Mr Mohammed wishes to make any application for permission he should do so as a matter of urgency so that the SRA has the opportunity to

make any representations and the Tribunal has adequate time to determine if it is prepared to consider the application and if it is, the application can be determined well before the date listed for the hearing to resume.

Mr Mohammed should not assume that the Tribunal will be prepared to entertain any application on the first morning of the hearing.

Mr Mohammed should also bear in mind in respect of any application that he may make that the Tribunal does not provide a photocopying service to parties."

21. Application by the Respondent to admit further documents - 29 July 2019

21.1 On Monday 29 July 2019, when the hearing was listed to commence at 11 am the Respondent was not present. He emailed Mr Willcox at 09.27 as follows:

> "Further to my email of the. 4. July 2019, I can confirm that I'm currently on the 7.59am to Euston, barring any delays I expect to be at the tribunal prior to 11am.
>
> It is my intention to make application to adduce further documentary evidence as I previously advised, whilst. Previously you have stated that you oppose such application it would be my intention to email. You the draft index which I have now incorporated within the tribunal index as a draft I would hasten to add."

21.2 The Respondent then communicated with the Tribunal. At 11.45 am on 29 July 2019, Mr Willcox who was not present at the Tribunal that day emailed the Respondent as follows:

> "Although you sent a message to say that you would be 15 minutes late, I understand that you have still not arrived at the Tribunal. As you know, the hearing was due to start 45 minutes ago.
>
> If you are not at the Tribunal by 12 noon then the SRA will ask the Tribunal to hear an application to proceed in your absence.
>
> I am copying this e-mail to the Tribunal.
>
> Please copy any response to the Tribunal also."

Having been made aware of the above messages, the Tribunal resumed at approximately noon, one hour after the scheduled start time. The Respondent arrived as the proceedings began. Shortly thereafter at 12.07, Mr Willcox emailed the Tribunal as follows:

> "I am forwarding on, for your records, an e-mail I received from Mr Mohammed at 12:02, although I understand that he has now arrived at the Tribunal."

At 12.02 the Respondent had emailed Mr Willcox as follows:

"I'm just in a taxi unfortunately there was a q"

21.3 Upon arriving, the Respondent informed the Tribunal that he had with him nearly the full file of documents from his earlier representatives Radcliffes which he had been through with his son. He referred to his earlier email of 8 July 2019 to the Tribunal and Mr Willcox of the Applicant about his intention to apply to admit further documents. He believed that there were papers essential to support his case which were not all in the hearing bundle. It was pointed out to the Respondent by the Chairman that the hearing bundle had been filed a long time previously (in 2017). The Respondent submitted that at the May 2019 hearing that he was not fully focused and had to gather a lot of documents when the Tribunal gave him the opportunity to admit more documents on 7 May 2019. The Chairman reminded the Respondent that he was part way through his evidence in chief and requested that he clarify what application he wished to make. The Respondent informed the Tribunal that he had documents on his laptop which he could email to a nearby copy shop and then collect. The Chairman reminded the Respondent that the Applicant had, after the conclusion of the May 2019 hearing, emailed to the Respondent and to the Tribunal an electronic copy of the bundles A, B, C, D and E1-3 which the Respondent had been permitted to adduce on that occasion.

21.4 For the Applicant, Ms Carpenter objected to the Respondent's application; no copies had been provided of the documents which he sought to introduce and an unless order had been made at the last hearing. It would not be appropriate to allow an application to adduce documents which had not been produced.

21.5 The Chairman pointed out to the Respondent that in the Tribunal's email of 10 July 2019 he had been told that if he wished to apply to adduce further documents he must do so in good time. The Respondent stated that he had read the email as informing him that he had to attend to make the application. The Chairman pointed out that this interpretation was incorrect. The Respondent said he had read it as saying he was entitled to make the application.

21.6 Ms Carpenter submitted that the Respondent had been given three days at the last hearing to produce documents even though the substantive hearing had commenced in 2017. The Respondent had been advised in response to his email of 8 July 2019 that the Applicant would oppose any application to admit further documents and the Tribunal's email of 10 July 2019 was quite clear that if the Respondent was to make the application he must do so in good time. Such an application should not be made on the first day of a hearing. He had been reminded he could not arrive with bundles of documents and expect the Tribunal to copy them. An unless order had been made and even without that history, for him to say that he wanted to adduce documents without providing copies it was impossible to understand if they were relevant and also if they were already in the hearing bundle. Looking at the Index which the Respondent had recently provided to Mr Willcox it appeared some of the documents at 4 and 5 in the Index were already in the bundle. Ms Carpenter submitted that the rest might be. She asked that the application be refused and the Respondent resume his evidence.

21.7 The Respondent submitted that he wished to adduce a spreadsheet a document of three or four pages which would make it easier to understand the billing history of each file. The FIO in February 2015 had expressed a concern about client to office account transfers masking the transfers the subject of the allegations and the Respondent had said he would do whatever he had to, to prove they were in order. His accountants had advised him in respect of a schedule he produced that no corrections were needed. His former representatives had sought the accountants' report to the Applicant to that effect. The Respondent added that he had one set of hard copies that he could provide of the documents he wished to adduce.

Determination of the Tribunal on 29 July 2019 of the Respondent's application to admit further documents

21.8 The Tribunal had regard to the submissions by the Respondent in support of his application and by Ms Carpenter opposing the application. These Tribunal proceedings had begun in 2016 with a time estimate of three days. The substantive hearing commenced in March 2017 and been adjourned because of the ill health of the Respondent. It had resumed in May 2019 and again been adjourned on that occasion for lack of time, a half day having been lost when the Respondent elected to absent himself from the Tribunal to collect further documents which he was then permitted to adduce. The Tribunal had gone to great lengths to afford the Respondent every opportunity to present his evidence, recognising that he had dis-instructed his legal representatives after the first adjournment. It was inaccurate for him to assert that he had been invited by the Tribunal to make an application to adduce further documents on the first day of the resumed hearing. He had indicated by one of his emails of 8 July 2019 that he would:

> "give due consideration to seeking formal permission by way of application to be heard prior to the resumed hearing and will serve the application and supporting documents in good time"

The Respondent was told by email in reply from the Tribunal to make any application in good time so that it could be determined well before the hearing was listed to resume. He had been clearly warned in the email that he should not assume that the Tribunal would be prepared to entertain an application at the commencement of the hearing. However the Respondent had ignored these clear instructions and as on previous occasions the Respondent had arrived late and sought to adduce additional documentation. Moreover an unless order had been made on 9 May 2019 giving the Respondent until 1.30 pm on that day to produce all the documents upon which he intended to rely. The Tribunal had heard his latest application to admit further documents notwithstanding the unless order with its 9 May 2019 deadline. On the evidence of his own emails it was clear that the Respondent understood the need to act in a timely fashion in the context of a hearing which had been going on for nearly two and a half years and which in the interests of justice and the parties must be brought to a fair and efficient conclusion. He chose yet again to ignore the Tribunal's clear directions. The Tribunal dismissed the Respondent's application to adduce further documents. It would continue to hear his evidence.

Admissions

22. At the July 2019 hearing the Tribunal asked the Respondent to confirm the status of his admissions. He confirmed that he admitted allegations 1.3, 1.5 and 1.6 and so did not need to give evidence about them. He wished to cover allegation 1.1 regarding what he had said under allegation 1.2.

Factual Background

23. The Respondent was born in 1960 and was admitted to the Roll in 1988 and his name remained on the Roll. He held a current practising certificate which at the conclusion of the substantive hearing was subject to conditions imposed by the Applicant.

24. At the material time, the Respondent was a recognised sole practitioner practising at Mohammed & Co ("the firm"), in Preston, Lancashire.

25. Mr Oliver Baker, a Forensic Investigation Officer ("FIO") of the Applicant commenced an investigation of the firm which resulted in a Forensic Investigation Report ("FIR") dated 17 March 2015.

Allegations 1.1 and 1.3

26. The FIR identified a document entitled "Mohammed & Co. Solicitors Report on Compliance of the Solicitors Accounts Rules 01st January 2014 to 31st December 2014 ("Report") which was handed on the FIO on 3 February 2015 and which identified 16 examples of breaches (in some cases more than one breach per example) of the SRA Accounts Rules 2011 which totalled £187,387.30.

27. The Report identified improper withdrawals from client account which left the various clients' accounts overdrawn as the withdrawals had been made when there were insufficient funds in the client accounts.

28. The FIR identified a further improper withdrawal of £29,000.00 which was made on 9 May 2014 which was not identified in the Report. The total amount of improper withdrawals amounted to £216,387.30.

29. One of the series of improper withdrawals is exemplified below.

30. *Client Account of Mr A*

30.1 The Report identified four improper withdrawals from the client account of Mr A totalling £60,000.00 between 16 September 2014 and 16 October 2014 when there were insufficient funds in the client account to fund the withdrawals. The Report stated that the money was returned to the client account on 23 December 2014 which meant that the client account was overdrawn for a period of 133 days.

30.2 A review of the client ledger by the FIO identified payments out totalling £40,000.00 as opposed to £60,000.00.

30.3 However a review of the firm's client account bank statements by the FIO also identified payments out of the client bank account to Mr A totalling £60,000.00 i.e. of £20,000.00 on 16 September 2014, £10,000.00 on 17 September 2014, £10,000.00 on 3 October 2014 and £20,000.00 on 16 October 2014.

30.4 In a Supervisory Note headed "Re: SAR breaches/client shortfalls to be rectified post 13 December 2014 reconciliation", which provided the Respondent's response to some of the breaches of the SAR identified by his bookkeepers, the Respondent accepted that he did not check the ledger when making the payments and accepted the improper withdrawals were his fault.

30.5 In a letter to Mr A, dated 23 December 2014, the Respondent advised that the payments that had been sent to Mr A should not have been made to Mr A and he requested a cheque for £60,000.00.

30.6 The FIR identified that on 22 December 2014, the sum of £40,000.00 was transferred from the firm's office bank account to the firm's client bank account in partial payment of the improper withdrawals.

30.7 The FIR identified that the balance of the improper withdrawals of £20,000.00 was credited to the client bank account on 30 January 2015.

Allegations 1.2 and 1.3

31. The Report identified seven instances where improper transfers from client account to office account were allegedly made in relation to costs where no bills of costs or other written notification had been sent to the client(s) or the paying party.

32. The transfers were made between 1 April 2014 and 21 May 2014, ranging in value between £2,000.00 and £14,166.00, and totalled £43,787.60.

33. The FIR confirmed the contents of the Report and identified a further allegedly improper withdrawal of £29,000.00 in relation to costs meaning that the total amount of allegedly improper withdrawals in relation to costs was £72,787.60 across eight transfers.

34. Four of the transfers were exemplified in the Rule 5 Statement: for £6,980.00, £14,166.00, £9,512.00 and £29,000.00 as set out below.

35. *One-Off advice Misc ledger (02500) £6,980.00 transfer client to office account (transfer 4 on Further Information appendix to Rule 5 Statement*

35.1 The client ledger for this matter recorded that on 14 April 2014 the sum of £6,980.00 was received into client account before being transferred on the same day to office account with the narrative "c>o trans our costs/disbs".

35.2 The client bank account statements showed that the sum of £6,980.00 was paid out of client account on 14 April 2014 and into office bank account by way of a cheque. However, there was no corresponding receipt of the same amount into client bank account on (or around) that date as per the client ledger for this matter.

35.3 The FIO reviewed the client bank account reconciliation for April 2014 and noted that the sum of £6,980.00 appeared as an unreconciled client bank account credit with the narrative "o>c shortfall". However, the sum of £6,980.00 was showing as an unpaid item and meant that the payment had not been made to client account as at 14 April 2014.

35.4 The FIO noted that the sum of £6,980.00 remained as an unreconciled lodgement on the firm's client bank account reconciliations for May 2014 and June 2014 but had cleared before the July 2014 client bank account reconciliation.

35.5 The sum of £6,980.00 was transferred from the firm's office bank account to the firm's client bank account on 4 July 2014.

36. *£14,166.00 client bank account to office bank account transfer (transfer 5)*

36.1 On 8 May 2014, the client ledger for this matter recorded that the sum of £14,166.00 was received into client bank account and thereafter transferred on the same day to office bank account with the narrative "c>o error".

36.2 The client bank account statements covering 8 May 2014 showed that the sum of £14,166.00 was paid out of the client bank account and into the office bank account but there was no corresponding receipt of the same amount into client bank account on (or around) that date as per the client ledger for the matter.

36.3 The firm's client bank account reconciliation for May 2014 showed the sum of £14,166.00 on 8 May 2014 as an unreconciled bank account credit (lodgement) with the narrative "o>c error corrected". However, the sum of £14,166.00 was showing as an uncleared item and meant that the payment had not been made to client account as at 8 May 2014.

36.4 The sum of £14,166.00 dated 8 May 2014 remained as an unreconciled lodgement on the firm's client bank account reconciliations for June, July and August 2014 but had cleared before the September 2014 client bank account reconciliation.

36.5 The sum of £14,166.00 was transferred from the firm's office bank account to the firm's client bank account on 17 September 2014.

37. *£9,512.00 client bank account to office account transfer One-Off advice Misc (02500) (transfer 10)*

37.1 On 9 May 2014, the client ledger for this matter recorded that the sum of £9,512.00 was received into client account before two transfers in the same amount were made on 21 May 2014 to office account with the narrative "c>o error".

37.2 The client account bank statement covering these dates showed that the sum of £9,512.00 was paid out of client account on 21 May 2014 and into office bank account, but there was no corresponding receipt of the same amount into client bank account on (or around) that date, as per the client ledger for this matter.

37.3 The client bank account reconciliation for May 2014 showed that as at 21 May 2014 the sums of £10,000.00, £3,000.00 and £4,041.60 appeared as unreconciled client bank account credits (lodgements) with the narratives "error corrected". However, the sums of £10,000.00, £3,000.00 and £4,041.60 were showing as uncleared items and meant that the payments had not been made to client account.

37.4 The Report stated that "the amounts paid back differed to the original amounts as there were some contra entries on the ledger which caused some confusion".

37.5 The sums of £10,000.00, £3,000.00 and £4,041.60 were transferred from the firm's office bank account to the firm's client bank account on 27 June 2014, 6 August 2014 and 4 July 2014 respectively.

Allegation 1.2, 1.3 and 1.4

38. *Mr D*

38.1 The client bank account reconciliation for May 2014 showed that the sum of £31,541 appeared as a cleared payment against the "One-Off Advice - Misc" ledger.

38.2 In the firm's client bank account reconciliation for June 2014, the sum of £31.541.00 was reversed and then split into two payments of £29.000.00 (apportioned to Mr D's ledger and £2,541.00 (apportioned to the "One-Off Advice" ledger).

38.3 The firm's client bank account reconciliation for May 2014 shows that the sums of £25,000.00 and £4,000.00 were shown as uncleared receipts recorded against the "One-Off advice Misc" ledger with the narrative "from HM".

38.4 The firm's client bank account reconciliation for June 2014 showed the sums of £25,000.00 and £4,000.00 as cleared receipts on 9 May 2014, recorded against the "One-Off Advice - Misc" ledger with the narrative "from HM", and cleared payments on 9 May 2014, recorded against the "One-Off Advice - Misc" ledger before the sum of £29,000.00 was recorded against (and back dated as this was contained in the June 2014 client bank account reconciliation) the client ledger for Mr D on 9 May 2014 with the narrative "c>o trans our costs/disbs" the sum of £2,541.00 remaining on the one-off advice ledger, the two together, totalling £31,541.00.

38.5 The client account bank statement showed that the sum of £31,541.00 was paid out of client account on 9 May 2014 and into office account on the same day.

38.6 The ledger for Mr D showed that the interim bill of costs dated 9 May 2014 in the sum of £29,000.00 (inclusive of VAT) was paid from client account on the same day creating a shortage on client account of £29,000.00 as there were no funds on account for the client at the time.

38.7 The shortage of £29,000.00 was replaced by way of payments into client account of £25,000.00 on 27 June 2014 and £4,000.00 on 30 June 2014 although neither of the payments was received from office account.

38.8 The bill of costs dated 9 May 2104 in the sum of £29,000.00 was numbered 14108. The immediately preceding bill of costs (numbered 14107) was dated 17 November 2014 and the proceeding bill of costs (numbered 14109) was dated 19 November 2014.

Allegations 1.2 and 1.4

39. HMRC issued a statutory demand against the Respondent, dated 9 October 2012, and thereafter sought to petition for bankruptcy.

40. A letter to the Respondent from HMRC, dated 25 April 2014, confirmed:

> "....upon receipt of a client account cheque for the sum of £87,610.57 (HMRC) will instruct (their) solicitors to seek dismissal of the bankruptcy petition due to be heard on 13 May 2014..."

41. The Respondent made payments to HMRC as follows:

- On 8 May 2014, the sum of £24,970.00
- On 9 May 2014 £10,000.00
- On 12 May 2014, the sum of £28,000.00.

Allegations 1.5 and 1.6

42. The IO noted that not all payments made out of client bank account were being recorded within the firm's books of account (ledgers/cashbook) and client bank account reconciliations were not carried out every five weeks.

43. The IO noted that the firm's October 2014 client bank account reconciliation (amongst others) contained nine pages of "uncleared items", the vast majority of which (more than seven pages) related to postings made after 30 October 2014 (making it likely that the firm's October 2014 client bank account reconciliation was not completed before the last of these "uncleared items", that being dated 19 January 2015). The IO noted that the firm's 30 October 2014 client bank account reconciliation was printed on 20 January 2015.

44. Two examples of accounts records allegedly not being properly written up are exemplified below.

45. *Mr A*

45.1 The firm's client account bank statements showed four payments out of the firm's client bank account in relation to this matter. The payments were £20,000.00 on 16 September 2014, £10,000 on 17 September 2014, £10,000.00 on 3 October 2014 and £20,000.00 on 16 October 2014.

45.2 The relevant client ledger for the matter did not record the client account payment of £20,000.00 on 16 October 2014 as shown in the firm's client account bank statement.

45.3 The firm's client bank account reconciliation for 30 October 2014 had no record of the payment out of client bank account of the sum of £20,000.00 or the earlier allegedly improper withdrawal of £10,000.00 on 3 October 2014 other than by a post-it note attached to page 18 of the Reconciliation Summary.

46. *One-Off Advice - Misc*

46.1 The client ledger recorded that on 14 April 2014, the sum of £6,980.00 was received into client account before being transferred on the same day to office account with the narrative "c>o trans our costs/disbs".

46.2 The client bank account statements covering the date of 14 April 2014 showed that the sum of £6,980.00 was paid out of client account on 14 April 2014 but there was no corresponding receipt of the same amount into client bank account on (or around) that date as per the client ledger for the matter.

46.3 The firm's client bank account reconciliation for April 2014 showed the sum of £6,980.00 appeared as an unreconciled client bank account credit (lodgement) with the narrative "o>c shortfall" on 14 April 2014.

46.4 The sum of £6,980.00 remained as an unreconciled lodgement on the firm's client bank account reconciliations for May 2014 and June 2014 but had cleared before the July 2014 client bank account reconciliation.

The Applicant's Investigation

47. The Applicant wrote to the Respondent on 29 June 2015 and set out various allegations to which it asked the Respondent to respond.

48. The Respondent, via his solicitors, provided a response to the allegations by letter dated 24 July 2015. In this letter Radcliffes asked that their letter be read in conjunction with earlier correspondence (some 87 pages).

49. The Applicant raised further allegations against the Respondent in a letter dated 2 October 2015.

50. Radcliffes provided a response to the further allegations by letter dated 29 October 2015. A brief summary of the correspondence in relation to the allegations is set out below.

- The Respondent admitted to a failure to comply with Rule 29 of the SAR;
- The Respondent admitted that he had breached Rules 17 and 20 of the SAR;
- The Respondent admitted that he failed to rectify breaches promptly on discovery but stated that he acted as promptly as possible once the breaches were found and brought to his attention but admitted there was some delay in his discovering the breaches;

- The Respondent regretted backdating the bill of costs dated 9 May 2014. He stated his intent in doing so was to make the records accurately reflect the course of events in practice. He stated it was not to mislead or cover up what had occurred.

- The Respondent denied breaching Principles 2 and 6.

- The Respondent admitted breaching Principle 10.

- The Respondent denied acting dishonestly.

- The Respondent stated that the improper transfers were genuinely made in error.

- The Respondent stated that he had rectified all breaches and had taken steps to prevent the recurrence of any breaches.

- By way of mitigation the Respondent advised that he was under extreme pressure both personally and professionally. He stated that his wife was suffering with very serious ill health and his father was seriously ill and subsequently passed away. His wife was the firm's bookkeeper and her ill health prevented her from attending the office.

- He advised that the junior book keeper at the firm was absent from the office due to paternity leave.

51. On 23 March 2016, a decision was made to refer the Respondent's conduct to the Tribunal.

Witnesses

52. **Mr Oliver Baker** Forensic Investigation Officer gave evidence. He confirmed the accuracy of the FIR which he had prepared. He was unable to confirm what the Respondent said in his witness statement that annual control reports prepared by the firm's reporting accountants dating back more than 10 years provided evidence that the firm had been compliant before 2014. The witness was able to say that a number of the firm's accountants' reports had been qualified prior to his visit. He did not recall having an opportunity to review the firm's process for transferring from client to office account bills due to the firm and disbursements which the Respondent described in his statement. He did not recall seeing the documents constituting exhibit HM2 to the Respondent's statement comprising the lists of client matters and balances; they might have been provided at the date of inspection but he did not recall reviewing them.

53. In cross-examination, the witness was asked about the Report provided by the independent costs consultant/bookkeeper Ms K. He confirmed what he said in his executive summary to the FIR that upon attending the firm he was provided with a document entitled "Mohammed & Co - Solicitors; Report on Compliance of the Solicitors Accounts Rules 01st January 2014 to 31st December 2014" by the firm's newly appointed bookkeeper. He agreed he had been told that the firm had instructed her to assist regarding what had gone wrong and what could be done to put it right and that it was handed over without difficulty as a matter of course. He stated that it

did not refer to and detail all breaches alleged. The witness agreed that the Report commenced:

> "Mohammed and Co. Solicitors is run by Hanif Mohammed, Solicitor with 27 years experience. Mr Mohammed founded the firm in 1992 and has been a successful Sole Trader for 23 years…
>
> The firm is well run and improvements have been noted in the last two years Solicitors Accounts Rules Audits…"

With the Report was a document entitled "Breaches identified in the Period between 01 January 2014 and 31 December 2014". The witness stated that the Report contained the breaches save that he identified a further improper withdrawal £29,000.00 made on 9 May 2014 as set out in the FIR. The witness did not disagree with Ms K's report and witness statement and that in an addendum to her statement dated 25 January 2017, Ms K said:

> "I recall that initially I missed the breach of £29,000 on [D] but I reported it myself to Mr Baker of the SRA. I don't remember him spotting it until that point…"

The witness also agreed that with Ms K's report was a document headed "Factors that have affected the Accounts Function in the current Financial Year" which listed four factors that might have affected the function (the limitations of the software, the Respondent wife's health problems, health problems of the Respondent's father and subsequent death and outstanding training needs for the accounts staff.) He agreed that Ms K went on to set out how the accounts function could be tightened up and that her Report included the Supervisory Note of 23 December 2014 which set out what the Respondent then knew. In re-examination the witness confirmed that Ms K had not identified issues regarding the backdated bill which was the subject of allegation 1.4.

54. **Mr Ian Anderson** solicitor gave evidence. The witness confirmed his witness statement which set out the chronology and timetable relating to the sale and purchase of the firm. There was one error in a date in the chronology which listed the date of the legal aid contract application related to criminal work in the name of the firm and its anticipated new practice name being submitted on 9 June 2016 when it should have been 9 September. The witness stated that the effective date of the transfer from one business to another would be close of business on 31 March 2017. This timescale coincided with the Legal Aid Agency 2017 crime contract process. The contract application had been verified and he was now waiting for the contract to commence on 1 April 2017 and for there to be a seamless transition when the existing contract would novate across to the new firm. This had to take place before 1 April 2017 and so the effective date of the business changeover was close of business on 31 March 2017. The witness confirmed that he had provided a character reference for the Respondent which was before the Tribunal. In cross-examination, the witness stated that the original plan had been to dispose of the business entirely but there had then been a discussion with the contract manager for the existing firm at the Legal Aid Agency. Usually a contract could be novated if the contract manager consented to moving it to another firm. At the time of discussions the Legal Aid Agency had a

contract out to tender and the existing firm had put in a bid. The process had closed and no new entrant could submit a bid. This meant that the Respondent had to be involved in order for the new firm to obtain a contract. There were conditions that he could not be an owner or manager of the firm. By this time the tender process had collapsed. In the 2017 tender process the Respondent had no role as employee, manager or director. It had been thought that he would be a consultant but now he would not be. The witness confirmed that the contract would novate to an entity which was solely his.

55. In cross-examination, the witness was asked about various matters but he could not recall having involvement in any of them. He stated that in general he was involved in the legal aid side of the practice; most of the private client matters he undertook were simple motoring offences carried out privately for a fixed fee. The majority of the work was legally aided. Generally the private matters he was involved in were few and far between.

Findings of Fact and Law

56. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(References to the submissions below include both submissions made in writing and orally.)

57. **Allegation 1.1 - Between 1 January 2014 and 31 December 2014 he [the Respondent] made 24 improper withdrawals and/or allowed improper withdrawals to be made from client account totalling £216,387.30 thereby creating shortages on client account, and breached all, alternatively, any of the following:**

1.1.1 Rule 20.1(a) of the SAR by withdrawing money from client account when it was not properly required for payment to or on behalf of a client;

1.1.2 Rule 20.9 of the SAR by allowing client account to be overdrawn;

1.1.3 Principle 2 of the Principles by failing to act with integrity;

1.1.4 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services;

1.1.5 Principle 10 of the Principles by failing to protect client money and assets.

Allegation 1.2 - Eight of the 24 improper transfers referred to in allegation 1.1, made between 1 April 2014 and 21 May 2014 were improperly transferred money from client account to office account in respect of costs totalling £72,787.16 when no bill of costs had been given, nor bill sent, nor other written notification of the costs incurred had been given, or sent to the client or paying party and therefore as regards these 8 transfers, in addition, the Respondent also thereby breached all, alternatively, any of the following:

1.2.1 Rule 17.2 of the SAR;

1.2.2 Rule 20.3(b) of the SAR:

1.2.3 Principle 2 of the SRA Principles by failing to act with integrity;

1.2.4 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services;

Submissions for the Applicant in respect of allegation 1.1

57.1 For the Applicant, Ms Carpenter submitted that allegation 1.1 related to 24 transfers listed in the Applicant's Further Information document appended to the Rule 5 Statement. In his Answer, the Respondent admitted that the 24 improper withdrawals were made and that he thereby breached Rules 20.1(a) and 20.9 of the SAR and Principle 10. He denied that he breached Principles 2 or 6. Eight of the transfers which were from client to office account and which were for convenience designated transfers 3 to 10 in the Further Information document were also the subject of allegation 1.2 and are covered in more detail under that allegation. Of the remaining 16 transfers, four were made from client account to the client Mr A and 12 were made to third parties when insufficient funds were held for the client to make the transfer. The Rule 5 Statement exemplified the matter of Mr A where four transfers (numbered for convenience 18, 19, 20 and 21) totalled £60,000.00 even though no funds were held for Mr A at the time and the facts in respect of which are set out in the background to this judgment. The Respondent's explanation was that on each occasion Mr A telephoned him and asked for funds and that Mr A told the Respondent that the firm was holding funds on his behalf. The Respondent's case was that he made the four transfers simply on Mr A's "say-so" and without checking the ledgers or any other documentation. The ledgers would have shown that no monies were held for Mr A. Ms Carpenter submitted that there was no allegation of dishonesty in respect of these transactions; they did not benefit the Respondent but it was alleged they were so reckless as to impugn his integrity. Ms Carpenter pointed out that the cheque numbers for the payments were sequential and that the Respondent said that two cheque books were maintained for the client account; one was held by the accounts staff and locked in the accounts room and the other he held. The ledgers showed that the fee earner was F2 that is the Respondent as he accepted in his witness statement. Ms C of the firm had previously dealt with the file but was on maternity leave. The Respondent asserted that a Ms K of the firm was dealing with the matter day to day and he was just the supervisor.

57.2 Ms Carpenter submitted that none of the four transfers were recorded on Mr A's ledger between 16 September 2014 and 30 January 2015. The May 2014 reconciliation was not completed until 23 September 2014 and because of its late completion had 15 pages of uncleared items up to that date. The payments to Mr A dated 16 and 17 September 2014 were not listed showing that they had not been recorded in the A ledger as at 23 September 2014. The payments to Mr A between 16 September 2014 and 16 October 2014 were not listed on any of the reconciliations for the months of June – November 2014 (which were not completed until between 20 November 2014 and 30 January 2015) showing that they had not been recorded in the ledger at any time up to 30 January 2015. The only reference to the payments to

Mr A on the reconciliations was by handwritten post-it notes on the September, October and November reconciliations. Payments to Mr A dated 16 and 17 September 2014 and 3 October 2014 were listed for the first time in the December 2014 reconciliation which was completed on 3 February 2015. Ms Carpenter submitted that the Respondent's case was that the reason the Mr A ledger showed a debit balance when other ledgers did not was because the Mr A ledger for the first three payments was not written up until the £40,000.00 shortfall had been repaid on 23 December 2014 and until the firm had closed the November reconciliation on 30 January 2015. Ms Carpenter submitted that the Mr A ledger was not written up with the first payments to Mr A which had been made between 16 September 2014 and 3 October 2014 until more than three months later, on a date between 30 January 2015 and 3 February 2015. Further the fourth payment to Mr A dated 16 October 2014 was only on the December 2014 reconciliation as a handwritten post-it note and was still not on the Mr A ledger by the date the ledger was provided to the FIO in February 2015. The Mr A shortfall was not rectified until 23 December 2014 as regards £40,000.00 and 30 January 2015 as regards the remaining £20,000.00.

57.3 Ms Carpenter submitted that the Respondent said that he made the payments on Mr A's instructions because he was a well-known client of the firm. In his Supervisory Note dated 23 December 2014 the Respondent said:

> "17217 [A]… the payments made on 16 and 17 September 2014 and 3 October 2014 and 16 October 2014 were requested by HM [the Respondent]. HM recalls NK was dealing with a property purchase in Bury. Mr [A] rang HM saying that NK was off and that he had discussed the return of £20,000.00 in two separate cheques from the monies held in client's account. Mr [A] is a well-established client of the firm and HM accepts that he didn't check the ledger and made the payments. Having now reviewed the only ledger that he could have been talking about in September there were no funds and obviously this is clearly HM's fault and will have to be rectified and Mr [A] is being pursued and has agreed in due course to reimburse the firm…
>
> The payments to [A] of £20,000.00 each on 3 and 16 October 2014 related to file 17217. Whist (sic) HM did not check the ledger on that occasion it will be seen that HM gave Mr [A] a cheque on 3 and 16 October 2014 and funds were received on 17 October 2014. HM did not effect telegraphic transfer therefore there seems to be a crossover between the payment to him and his payment to us although it has to be accepted that the funds were not in client account when this payment was made. Mr [A] has been pursued and has agreed in due course to reimburse the firm. Mr A whilst being a long standing client and well-known to HM is also a qualified barrister currently non-practising…)"

Ms Carpenter submitted that the monies referred to as being received by the firm came in for a completion in the amount of £120,739.80 on 17 October 2014 which as the Respondent acknowledged in his Supervisory Note was after he had made the payments to Mr A and of that sum completion monies in the amount of £120,000 were paid out on 20 October 2014 so that the money was not available even ex-post facto to justify these payments. It was completion monies for the purchase and paid out almost immediately, so that did not explain any of the payments either. Not only

were the Respondent's actions a plain breach of the SARs and Principle 10 which he admitted but Ms Carpenter submitted they were also breach of the requirement to act with integrity because the Respondent had just relied on the client's "say-so". This was highly reckless conduct by a solicitor and was not proper stewardship of client money and thereby engaged Principle 2. It was also a failure to maintain public trust in legal services under Principle 6.

57.4 In her skeleton in addition to the payments to Mr A, Ms Carpenter referred to four examples of payments made to third parties in the matter of client D when insufficient funds were held for the client to make the transfer:

- On 20 June 2014, £3,800.16 was paid to YR (transfer 12) which was corrected by a payment from office account on 4 July 2014.
- On 16 July 2014, £235 was paid to HMCTS (transfer 14) which was corrected by a payment from office account on 29 October 2014.
- On 28 October 2014, £3,583.22 was transferred to MJ as agent's fees. Insufficient funds were held to make the payment meaning that £1,024.28 of the payment was improper (transfer 22) which was corrected by a payment from office account on 5 January 2015.
- On 19 November 2014, £3,723.39 was paid to MJ as agent's fees (transfer 23) which was corrected by a payment from office account on 29 January 2015.

Submissions for the Applicant in respect of allegation 1.2

57.5 Ms Carpenter submitted that eight of the improper transfers referred to in allegation 1.1 (transfers 3 to 10) from client account to office account in respect of costs totalling £72,787.60 were also the subject of allegation 1.2. In his Answer to the Rule 5 Statement, the Respondent admitted that the eight transfers were improper withdrawals, no bill of costs or other notification of costs having been given, and that he thereby breached Rules 17.2 and 20.3(b) but he denied that he breached Principles 2 or 6. It was set out in the Rule 5 Statement that seven of the transfers ranged in value from £2,000.00 to £14,166.00 and totalled £43,787.60. The FIR confirmed the contents of Ms K's Report and identified a further improper withdrawal from client to office account of £29,000.00 in relation to costs, meaning that the total amount of improper withdrawals from client to office account in relation to costs was £72,787.60.

57.6 In respect of the withdrawals: the ledgers did not record the payments as at the date the payments were made, or for several months thereafter. For example, none of the May 2014 improper transfers from client to office account, that is those numbered 5 – 10 on the list, were recorded in the April reconciliation even as an uncleared item although the April reconciliation was not completed until 8 July 2014. They first appeared in the May reconciliation which was completed on 23 September 2014. Ms Carpenter submitted that it followed that none of the improper May 2014 transfers were recorded on the firm's ledgers until a date between 8 July 2014 and 23 September 2014. When they were eventually recorded one was recorded to the P ledger (transfer 3) and the remaining seven were allocated to the miscellaneous one-

off ledger (transfers 4 to 10). However in November 2014, £29,000.00 of payment of £31,541.00 (transfer 6) was removed from the miscellaneous one-off ledger and transferred to the D ledger. Further, the ledgers were inaccurately written up in that the rectifying payments from office to client account which were made only between 4 July 2014 and 17 September 2014 were shown as payments from office account to client account on the same date as the incorrect payment was made, or on an earlier date. Hence the debit balances that existed on these eight matters were masked as the firm's ledgers and reconciliations did not show a debit balance. The Respondent stated that this was a consequence of the way in which the Lawbyte software package worked. Seven of the eight incorrect transfers, numbered 3 to 5 and 7 to 10 were eventually reversed by the Respondent paying money back from office to client account between 4 July and 17 September 2014. The remaining payment (number 6), in the amount of £29,000.00 made on 9 May 2014 was rectified by the firm receiving cheques of £25,000.00 and £4,000.00 on 27 and 30 June 2014 respectively. Ms Carpenter submitted that what the firm should have done was to put minuses for correcting payments that had been made by July 2014 but had not been made at May to record correctly that there were debit balances in May.

57.7 In oral submissions, Ms Carpenter said that the Respondent gave the same explanation, which the Applicant did not accept, for transfers numbered 4, 5, 8, 9 and 10; he said that they were mistakes. In respect of transfer 3 the Respondent said that this arose out of duplication of a bill payment.

57.8 In her skeleton, Ms Carpenter set out the detail of transfer 5 from client to office account on 8 May 2014 of £14,166.00. During the hearing Ms Carpenter went through other transfers 4, 8, 9 and 10 in detail also. Ms Carpenter also went through the detail of transfers 6 and 7 relating to Mr D which added up to £31,541.00, the facts of which are set out in the background to this judgment. Again the Respondent used the client account cheque book which he held personally. He was the fee earner on the matter (his travel costs were detailed) which related to a European Extradition Warrant in the case of Mr D (the son of a longstanding client). Ms Carpenter submitted that the Respondent said that he thought the client had paid some of the money in on 9 May 2014. On 30 April 2014, the firm wrote to Mr D confirming that total costs incurred as at that date were £75,355.75 which together with VAT and disbursements brought his total costs to £90,426.90. The letter stated that a Statement of Accounts providing a breakdown of the costs was enclosed and informed him that taking into account monies he had already paid the total balance outstanding stood at £67,441.88. The letter continued:

> "We will therefore require a further payment on account of costs from you in the sum of £25,000.00 plus VAT totalling £30,000.00 before we can carry out any further work on your behalf.
>
> We therefore look forward to receiving the sum of £30,000.00 from you as soon as possible…"

57.9 The Respondent accepted that he had not received the money from the client but stated that he thought that the firm had. The documentation included among the attachments to Radcliffes' letter of 13 March 2017 had led the Applicant to apply to withdraw the allegation of dishonesty in respect of these amounts of money. As set

out under Preliminary Issues above, the Applicant now accepted that the Respondent had received an e-mail from the client or 9 May 2014 informing the Respondent that £31,541.00 had been transferred by way of fees to the firm's account. On the same day, the Respondent transferred that money from client account to office account. Ms Carpenter submitted that the circumstances were very similar to those in the case of client Mr A which occurred later in September and October of that year. Here the client said that he had paid in money and on the "say-so" of the client the Respondent transferred the money to office account. Even if the client had paid the money in on 9 May 2014 as he said, the Respondent could not reliably think that it had cleared. Ms Carpenter submitted that to transfer it the same day without making any checks was grossly reckless conduct with client funds. The Respondent said that he did not discover the true position until 27 June 2014 when £25,000.00 was paid in and then another £4,000.00 (a cash payment) on 30 June. There was a debit balance for over a month from 9 May to 27 June 2014 in a substantial amount of money. Initially the payment was allocated to the miscellaneous one-off ledger and then moved to the Mr D account. Ms Carpenter took no point on that; it was just a matter of how the money had been moved over.

Breaches of Principles 2 and 6 as regards allegations 1.1 and 1.2

57.10 Ms Carpenter reminded the Tribunal that the Respondent admitted the underlying facts of these allegations and the breaches of the Accounts Rules and in respect of allegation 1.1 breach of Principle 10. In respect of the meaning of failing to act with integrity, at the March 2017 hearing Ms Carpenter relied on the case of Scott v SRA [2016] EWHC 1246 where the Divisional Court stated that it served no useful purpose to define want of integrity because it was capable of being identified as present or not by an informed tribunal or court by reference to the facts of a particular case. Lack of integrity did not require a solicitor to have been dishonest and examples of lack of integrity were where a solicitor was reckless as to the use of client account, did not think or care about what was required by the rules governing his profession or did not enquire as to the reasons for payments out of client account or did not show any steady adherence to any kind of ethical code. Ms Carpenter submitted that in this case the Respondent was at the very least reckless as to the use of client money in respect of allegations 1.1 and 1.2 (and in respect of allegation 1.2 the Applicant went further and alleged that he acted dishonestly). For example, by paying four payments to Mr A totalling £60,000.00, simply on his say-so and without checking the ledgers or any other document, the Respondent acted grossly recklessly and in disregard of the rules of professional conduct. Further the failure to record these payments on the ledgers for many months and simply to include them on the reconciliations by post-it notes was further reckless conduct and a clear disregard of the rules of professional conduct. Ms Carpenter also submitted that on 9 May 2014 in the case of Mr D the Respondent made payment from client office account of £31,541.00 when that money was not held in client account and as in the case of Mr A, he relied on what the client had told him and made no enquiries at all to see if monies had cleared the bank. This was not the conduct of a solicitor acting with integrity or in accordance with his important duty to safeguard client funds. She submitted that it constituted reckless conduct. At the July 2019 resumed hearing Ms Carpenter referred the Tribunal to the more recent case of Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 paragraphs 93-106 which covered both Principles 2 and 6 acting with integrity and maintaining public trust respectively:

"93. Let me stand back from the kaleidoscope of the authorities and consider what the law now is. Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. These observations are self-evident and they fit with the authorities cited above. The legal concept of dishonesty is grounded upon the shared values of our multi-cultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest.

94. The general law imposes criminal and/or civil liability for many, but not all, dishonest acts or omissions. As explained most recently in *Ivey*, the test for dishonesty is objective. Nevertheless, the defendant's state of mind as well as their conduct are relevant to determining whether they have acted dishonestly.

95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in *Williams* and I disagree with the observations of Mostyn J in Malins.

96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

98. I agree with Davis LJ in Chan that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."

99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless have met with general approbation.

100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:

i. A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (Emeana);

ii. Recklessly, but not dishonestly, allowing a court to be misled (Brett);

iii. Subordinating the interests of the clients to the solicitors' own financial interests (Chan);

iv. Making improper payments out of the client account (Scott);

v. Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (Newell-Austin);

vi. Making false representations on behalf of the client (Williams).

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether Howd was correctly decided.

103. A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law.

104. Let me now turn from Principle 2 in the SRA's code to Principle 6. A solicitor breaches Principle 6 if he behaves in a way that undermines the trust which the public places in himself/herself and in the provision of legal services.

105. Principle 6 is aimed at a different target from that of Principle 2. Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his

careless conduct goes beyond mere professional negligence and constitutes "manifest incompetence"; see Iqbal and Libby.

106. In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But acts of manifest incompetence engaging the Principles of professional conduct are of a different order."

Ms Carpenter submitted that the case above held that someone who was not dishonest might be found to lack integrity and that if they were found to be dishonest they must also lack integrity.

57.11 Ms Carpenter alleged that the same conduct was a failure to behave in a way that maintained the trust the public placed in the Respondent and the provision of legal services. The public would not expect a solicitor to make payments totalling £60,000.00 to a client from client account when he did not hold money for that client, nor would the public expect a solicitor to make no checks at all prior to making such a payment. Similarly, the public would not expect a solicitor then to fail to record such payments at all in any ledgers for several months and only refer to them by post-it notes on the reconciliations. The Respondent was at the time dealing with distressing personal circumstances as regards family members. The public would of course be sympathetic to his personal circumstances. However client money was sacrosanct (Bolton v Law Society [1994] 1 WLR 512). The public would expect whatever difficulties and trauma a solicitor faced it should be able to trust a solicitor's stewardship of client funds fully.

Submissions and Evidence of the Respondent regarding Allegation 1.1

57.12 The Respondent stated that just after his father died and there had been a Moslem mourning period he went to the office in the first week of January 2014. He already knew there were issues. His wife was ill. He tried to get help from the firm's accountants who had set up the firm's accounting systems. He did not hear back and they started the process of working through the backlog from October to December 2014/January 2015. Ms K emailed the firm a day after the FIO wrote to him. She started work on a Friday and the FIO was coming on the following Tuesday or Wednesday. The Respondent consented for her report to be disclosed to the FIO as soon as it came in. The firm had an accounting backlog. The Respondent stated that his wife was the lynchpin and when she became ill thing went downhill without her. The Respondent stated that he was at the Tribunal as a figure head. There was a lot of delegation. At the time he didn't quite grasp what was explained to him. He did not pick up on what was being alleged. Ms K had raised an issue about the accounting software. It shocked him. The Respondent asserted that the figure of £216,387.30 in allegation 1.1 was incorrect as a result of a mathematical exercise which someone had carried out.

57.13 There was a one-off miscellaneous ledger; some sort of vehicle/device to circumvent client money. The one-off miscellaneous ledger was set up between the Respondent's wife and Mr P of the accountants in 1995. It was designed for one-off miscellaneous

payments. They were bringing it to an end. It was hardly used until this period. At the time his wife thought it was the best way to overcome the accounting problems. There was no specific file for it. The miscellaneous one-off ledger was used for matters where files had not been opened; for one-off miscellaneous fees of relatively small amounts. There had been occasions when it would involve a client matter but this was extremely rare. It was mainly used from April 2014 to December 2014 or October, November 2014 when the final reconciliations were being done. The period before that coincided with his wife's illness in respect of which the Respondent referred to a chronology he had provided. His wife was the decision maker with the chain of communication to the accountants. The Respondent stated that he allowed her to make those decisions and he found it difficult to suggest they obtained help. The Respondent submitted that the one-off miscellaneous ledger was relevant to his defence because the transfers the subject of the allegations were posted into it. The Respondent stated that the one-off miscellaneous ledger was the cause of the whole debacle.

57.14 The Respondent understood that his accountants should answer the FIO's questions not him. The Respondent stated that he had all the firm's accountants' reports since 2003 and management control reports. The Respondent stated that prior to the two health issues suffered by his wife in December 2013 and then from April 2014 everything prior to February 2014 was up to date. Then towards the end of March and going into April 2014 his wife was unable to come into the office daily. The Respondent stated that all the procedures were there and they followed them but he was distracted; it was like someone talking to you but you're not listening. He was basically not involved in the minutiae of the accounts; they were delegated to his wife and Mr T. He also referred to the involvement in the process of the fee earners as shown in the structure chart in his witness statement. There was a manual. His wife and Mr B of the accountants set it up. Possibly he could and should have done things around September 2014 but in October 2014 his father suddenly became very seriously ill and was in intensive care. (He died in December 2014.) As oldest son the Respondent was expected to at the hospital every day.

57.15 The Respondent stated that he did not wish "to abrogate himself" but he underestimated what his wife had been doing. If his father had not become ill he would have done something about the situation. From the structure chart the Tribunal could see how staff reported to the Respondent when things were working; when his wife was there and in control. The structure chart showed that after Ms C (the solicitor supervisor of conveyancing and immigration shown in the structure chart at the end of 2013) went on maternity leave from February to November 2014 the Respondent was head of the crime, conveyancing and immigration teams and there were two other solicitors in the crime team. The Respondent described the bill process at paragraph 18 of his statement:

> "I was ultimately responsible for the firm and for management of the client account. I was not involved in the day to day practicalities of inputting entries into the firm's accounting software, Lawbyte and I was only running a handful of my own client files. I had regular meetings with supervisors, usually on a weekly basis but more often if needed. I was responsible for signing off authorisations for client account payments and we operated a "chit" system with different colour chits denoting different transactions or accounts signed by fee earners. Electronic payments were authorised by my signature on a

> proforma. We had two chequebooks (sic) for each account and I held one chequebook, the other was kept locked in the accounts room. My accounts staff would usually prepare a cheque for my signature when payments were to be made by cheque although when the accounting staff were busy I would assist in this regard."

The Respondent stated that he was probably like the Queen, the head of state, not running the government. The way his wife ran it, it was that smooth. The authorisations he would sign off would be those the supervisor in question wanted him to sign off; authorisations for client account. He would not sign off for everything – it was the ones that were considered "judicious" by the supervisor for example an undertaking to another firm which involved money.

57.16 The Respondent stated that the procedures were followed in respect of every single transfer. At paragraph 20 of his witness statement, he set out the position:

> "By this time, the accounting function at the firm had started not to keep pace with what was happening in relation to fee earning. I met with fee earners and authorised transfers based on what they were telling me was happening on the files. Each of the transfers of £6,980.00, £14,166.00, £9,512.00, £2,000.00 and £2,988.00 were aggregate sums covering receipts across a number of files which were primarily conveyancing files and some immigration files. All of the files were privately funded. From the point of view of the process of transferring from client to office account, bills that are due to the firm or for that matter disbursements that are to be reimbursed, the fee earners are provided with a client matter balances list, this list is then considered by the fee earners as to whether or not the balances on client account can be billed or not. The list is also provide to the supervisor of the relevant section and to myself. Thereafter the fee earners decide what matters can be billed along with the supervisor and I am consulted as necessary. Once the matters are identified for billing one cheque is done and a list of all the transfers are kept in a central folder which is kept alongside all of the central accounting folders, such as purchase ledgers, bills delivered, day books and trial balances, client matter listings etc. the responsibility for preparing bills was with the fee earners and/or the section supervisor and the accounts section. The bill would then be sent to the client with a file copy kept on each file and a copy would be given to the accounts section to be kept in the central folder. The bills were always filed in number order."

In cross examination the Respondent stated that in conveyancing and immigration the work was privately paid and rather than making transfers one at a time the bulk system just developed. The crime team would make individual transfers because the work was usually legally aided.

57.17 The Respondent stated that so far as he was concerned everything was procedurally correct. He slowly began to realise as the months went on that it was not. Only when his wife was in a fit state did they both sit down; she said they had to get this sorted; and he realised what had gone on. The buck stopped with him. When he was available the Respondent would be told that a payment needed to go out and he would sign the cheque; that was all he had to do. He would have trusted at least three people

to have done their job. It would be impossible for him to write a cheque without following the procedures if they went as they should and always had done. The accountants' reports gave the firm a clean bill of health as did previous the previous investigation by the Applicant. The situation that gave rise to the allegations occurred due to specific circumstances.

57.18 The Respondent stated that normally Mr T would write the cheques but the Respondent did have his own cheque books. The Respondent referred as an example of what happened, to the list relating to the transfer totalling £6,980 dated 14 April 2014 marked with ticks; the Respondent stated that he would receive it. His wife was absent and so the client matter listings were not accurate. There would have been a spreadsheet with the balances on each of these matters when the Respondent saw the list. It was not a case of him scrutinising it and involving himself in the file. That was the team leaders' role not his. He approved the transfer. Mr T was on leave in April or May and the Respondent did have to sign a number of cheques himself or even fill them in.

57.19 The Respondent referred to paragraph 15 of his witness statement:

> "Procedures were in place and were being followed, however, the specific circumstances of Mrs [M's] debility … and the departure of [Ms C] affected he smooth operation of these procedures and led to mistakes in the transfers on 14 April 2014 (in the sum of £6.980) 8 May 2014 (in the sum of 14,166), 9 May 2014 (in the sum if £2,541), 19 May 2014 (in the sum of £2,000) 20 and 21 May 2014 (in the sums of £2,988.60 and £9,512 respectively). At the time of the transfers I had believed that the transfers were correct based on the lists I had been given but on further investigation (as explained below) it appeared that there was duplication within the transfers and corrective action was taken. We were facing accounting and administrative circumstances which the firm had not previously encountered and we did our best between 30 June 2014 and 9 November 2014 to rectify those mistakes made. With hindsight I would have done things differently given the chance again, unfortunately I did not, however, none of my actions were motivated by dishonesty."

The Respondent stated that it was not a case of one cheque for one client – and it was not a case of the cheque going straight into the one-off miscellaneous ledger; the posting was being delayed.

57.20. The Respondent stated that they had a fall-back position – a manual record of payments but there were difficulties; a number of members of staff were away. The end result was the system did not work. The Respondent stated that he realised now that he should have grasped the nettle but because he was distracted he assumed people were doing their jobs. He acted in the same manner as when everything was running smoothly. What happened was that circumstances had significantly changed but they were following the same procedures. Fee earners kept doing the work but the administration behind the scenes completely slowed down.

57.21 The Respondent referred to File E1 the contents of which was prepared well after the event when Mr T and Mrs M were trying to sort things out. The file names and file numbers corresponded to the names on these lists and one could see the dates of transfer, amount transferred, date of rectification and summary about the status of the file at given positions. The Respondent gave a specific example the case of a Mr M. The Respondent stated that the exercise was carried out regarding existing bills where the posting was inaccurate; the lists became superfluous. The Respondent stated that, irrespective of the outcome of this hearing, he realised in consequence of what had happened during this period that his wife was the key. They complemented each other; she undertook the administration and accounts etc. and he brought in the work and contacts; without both of them working together the thing would not work.

57.22 The Respondent apologised to the Tribunal and to the Applicant. He had been in the profession for more than 30 years. He had always been proud of his role as a solicitor particularly in his community. He was the first in the Guajarati community in his area to qualify. He wanted to explain himself; he stated that if he had not been in the mind-set he was regarding his wife he would definitely have done things a lot differently. He did not want the profession to be in disrepute because of anything he had done.

57.23 The Respondent stated that one could see that duplicated bills were raised because of the inaccuracy of the accounts. When rectification was undertaken unless a duplicated bill was on Mr T's list it would not have been posted. All the bills in the central folder would be those which were not duplicated. One could go through it and the two folders (Files A and B) that had client care letters etc. and work done. The Respondent stated that it was only that he had not had time to produce the bills that were actually raised prior to or upon each transfer; they were all numbered in the final column. The Respondent stated that he wanted to adduce those bills with these lists to show there was a bill. In the majority of cases there were outstanding amounts due. The Respondent referred to Mrs M's Explanatory Statement where he said an explanation was given in consequence of what he referred to as Part 35 questions asked by the Applicant in its letter dated 23 February 2017. Mrs M's statement said she knew things had to be sorted out. They could not reconcile the software issue. The Respondent quoted from her Explanatory Statement at paragraph 9:

> "Even [Mr T] realised my situation and we did not communicate as we would do until just prior to his departure for paternity leave on 16 June 2014 when I thought I would try and reconcile the months of March and April 2014 as I was aware that [Mr T] at some point in June will be going on paternity leave. I was aware that there was backlog building and I wanted to get back on track before my [next medical absence] on 15 July 2014.
>
> I was able to reconcile the March month end very quickly, however, it was the usual documents and information that I then received for reconciling the April 2014 month end on or about 11 June 2014 and I started reviewing these documents which included the chequebooks, paying in books, bank statements, debit/credit slips and other office side postings and client to office transfers for April and May 2014 after [Mr T] left for paternity leave. I noticed that the April 2014 postings for office side to include a series of bills transferring £6,980.00 had not been posted because of April month end not being closed. At that point I could not understand this therefore I waited until

> [Mr T] returned on 30 June 2014 and he explained that there were other client to office transfers that were done in May 2014 involving mainly conveyancing files and immigration files, these transfers are detailed in [Mr T's] explanation note and were 8 May 2014- £14,166.00, 9 May 2014 - £2,514.00, 19 May 2014 - £2,000.00, 20 May 2014 - £2,988.60 and 21 May 2014 - £9,512.00 however the breakdown of the transfers did not match to the penny and further because of April month end not being closed there had been duplication of bills which needed to be rectified."

The Respondent explained that Mr T had been at the firm since 2000. Mr T explained the whole process and what happened at the rectification in his Explanatory Statement. The matters in Files E1, 2 and 3 were completely rectified. One could look at the list and compare it to the spreadsheet. The correct bills removed the duplication. The Respondent stated that he could deal with all the random one-off transfers.

57.24 The Respondent referred to the case of Mr A and stated that he was probably the main client about whom the FIO asked him. Very similarly to Mr D's father, Mr A was a good friend to the Respondent. Mr A was selling a property for £3m. The Respondent said in his statement:

> "Mr [A] is a barrister and I have known him for 18 years. I was aware that my firm acted for him in commercial property transactions. I did not deal with his transactions personally but I knew that we were working for him in September/October 2014."

Ms C would have supervised the staff dealing with the sale but she went on maternity leave at that point. The Respondent stated that it was definitely his fault; he was completely distracted and Mr A was a close friend of his although they were not now as close. Normally Mrs M would have challenged the Respondent about the transfers The Respondent genuinely believed they were in order. The Respondent's father had just gone into a coma and the two staff dealing with the sale whom Mr A would normally contact were on their separate honeymoons at the time. They had left a message that the money was coming in.

57.25 In cross examination, the Respondent was referred to the "Further Information" document appended to the Rule 5 Statement which detailed the 24 payments which were the subject of allegation 1.1. In his witness statement and his Answer he had previously admitted the list and that regarding transfers 3 to 10 no bills or notifications of costs had been done. The Respondent now indicated which of them he admitted to be improper. He challenged transfers 3 to 10, he stated that 11 and 13 were matters related to his family. Regarding 14 he said he held his answer on that, he was not sure about transfer 16 and he would have to know details regarding transfer 17 and regarding transfers 21 to 23 he would need to look at the ledger. He admitted that transfers 1, 2, 12, 15, 18, 19, 20 and 24 were improper. The Respondent stated that it was the same list that the firm had given to Mr B of the accountants when the Respondent prepared the Supervisory Note. It was then given to Ms K whose report was based on the material the firm gave her. She then gave that list to the FIO when he came to the firm. It was a list prepared at the time of the Respondent's father's death when the Respondent actually sat down and decided this needed to be sorted out.

57.26 Transfers 18 to 21 related to the payments to Mr A. The Respondent stated that he wrote the cheques dated 16 and 17 September 2014 for £20,000 and £10,000 respectively after Mr A called him, on the basis that staff members who had been on leave had done everything needed to make sure the money would be in client account. The Respondent had been informed that the transaction would be completed in mid-September 2014 and that the money should be in. Mr A rang to say that it was. The Respondent was distracted. Mr A had rung him a few times. The Respondent came into the office specifically. There were notes on the files that completion could take place. The Respondent signed the cheques and left them on the file. Mr A was a barrister and a property developer and the firm had acted in at least three or four matters for him. The two cheques the Respondent signed on 3 and 16 October 2014 for £10,000 and £20,000 respectively were written in a similar type of situation; there was a property where money was coming in and again there were notes on the file from the fee earners. The Respondent acknowledged that he had fallen below standard not because he had of what Mr A said but because he believed his staff. Normally the system was such that reconciliations would be up to date and the cheques would not have gone out. The Respondent did not dispute the contents of a note of interview with the FIO on 4 February 2015 describing Mr A's calls and what the Respondent had done. He had said that he fully accepted that he had failed to check the ledgers on each occasion when Mr A called. He said he had made a judgement call and trusted Mr A. It was a one-off situation that would not happen again. He took his eye off the ball. The accounts should have been more up to date but they were not up to date and so he could not rely on them. He had agreed what he had done was a breach of the rules. In evidence, the Respondent stated that he fully accepted that he fell between the two stools of the accounts process and the relationship; probably as he did with Mr D. He had followed a process but it did not work at the time. He had looked at the file, seen attendance notes and that completion was due and that there had been a discussion of exchange of contracts by a certain date in September 2014. The Respondent stated that he should have stopped as soon as he became aware of the effects of his wife's ill health. He was not in the habit of writing a cheque because a client called and he had been running the firm since 1992. The Respondent agreed that none of the four cheques to Mr A were written up on the ledger until after 30 January 2015. Hand written post-it notes were used. The Respondent did not dispute that the ledger might be inaccurate as it did not show the final payment to Mr A. The Respondent stated that he and Mrs M had done their best in desperate circumstances.

57.27 In his witness statement, the Respondent also addressed 'Unreconciled lodgements/masking' He relied on his contemporaneous attendance note of his conversation with the FIO of 9 and 11 February 2015. He said he was never responsible for day to day posting on the accounts software and was unaware that there had been a change in the software. He had never sought to mask any transfers and neither had any member of his staff. Each transfer was plainly described and would immediately attract the attention of any auditor as it did the FIO and Ms K. There was an issue with the software not accepting debit entries without any corresponding credit.

57.28 The witness statement also addressed 'Discovery and Rectification'. In it the Respondent referred to his wife's health issues at the material time. He stated that he:

> "took the reports I received from my staff as to the current financial positon on trust and did not verify everything that was said."

He accepted that it was his responsibility to ensure proper management of client account and regretted that he failed to do so. He did not appreciate the extent to which problems had arisen until late December 2014. Where individual matters had arisen he had made a start on resolving them, for example by beginning work on complete all the necessary actions to sort everything out because of the way in which events kept building up. The death of his father in December 2014 had been a turning point as he realised he needed to get to grips with his responsibilities at the firm. His team had been working to sort out reconciliations and mis-postings and had prepared a list of issues for him. He sat down to consider it and wrote the Supervisory Note of 23 December 2014. The Respondent went on to state:

> "It would be fair to say that in terms of remedy and rectification in relation to those matters outlined in the supervisory note (sic) had to a large extent been remedied including the final; [Mr A] office to client transfer of £20,000.00 by 31 January 2105. The rectification and remedial work that took place after this date related to the historical unreconciled lodgments and all of these were explained to [the FIO] during the course of his visit."

The Respondent stated that he was concerned about the breaches and set out how he had contacted the firm's accountants and Ms K whom he instructed to undertake a full review of the breaches that had occurred between 1 January 2014 and 31 January 2015. He referred particularly to her discussions with Mrs M regarding the period 14 April 2014 to 21 May 2014 and the use of the one-off miscellaneous ledger and the reallocation of those transfers to the client ledgers. He stated that after this explanation had been given, Ms K confirmed that she was satisfied with the explanation. She prepared the Report which was given to the FIO when he attended the firm in February 2015. The Respondent stated that with Ms K's assistance all the problems were identified and rectified, new procedures were put in place and the firm had had no recurrence of any issue since 2014. In evidence the Respondent stated that his delegation system failed because of what was going on. The firm did have set procedures. There was a delegation issue regarding one payment out regarding Mr D.

57.29 In cross examination, the Respondent agreed that at the time of the events in 2014 he was the sole signatory to client and office accounts. There were two client account cheque books; one for his wife and Mr T and one for the Respondent. He agreed that all the cheques payable to Mr A were from his cheque book. Because of his wife's health situation he was coming in at hours when the staff were not there (and so used his cheque book). At the time it was better for him to come into the office when it was not chaos. He would come in early in the morning or in the later part of the day. As well as the two conveyancers working on Mr A's matter being away, September 2014 was a time when they were massively behind and so a lot of things were on the Respondent's desk. He would leave cheques on the fee earner's desks. In normal circumstances things were all checked by everyone and signed.

57.30 The Respondent submitted that the systems and procedures had always been there; they were not something he made up. He signed all the lists and cheques. The Respondent signed the composite payments in the honest and genuine belief that

client matters had been identified and the firm was entitled to take the money and from his perspective the supervisor had authorised a bill on each file. Regarding the payments to Mr A, the Respondent submitted that he was at the Tribunal because the buck stopped with him but there were people behind him; it was a legacy thing for the Respondent to come to the Tribunal. Mr A, Mr D and a number of others were clients while the Respondent was growing. They had helped him and within his community there was also an element of trust. He had tried to explain that to the FIO. In any event, the FIO took the two files involved. It was a sale and purchase. Mr A said he needed a cheque and in the absence of the staff members the Respondent wrote the cheques on 16 and 17 September 2014. Regarding the 3 and 16 October 2014 payments the Respondent submitted that he did not know that the money had not come in until after the payments; he genuinely believed that £1.2m had come in. He signed the cheque on 15 October 2014 and one of the staff members dealing said the money was coming in the following day on the sale file. His father had just been taken to hospital and in October the Respondent was with him at the hospital every day. The Respondent asked for forgiveness; circumstances overwhelmed him; it was not something he would do under normal circumstances. The work was not stopping but he wanted it to slow down. It was a comedy of errors. Mr A knew of the staff holidays in September 2014 and of the Respondent's father's illness in October but the fault was the Respondent's.

57.31 In concluding submissions, the Respondent said that the accountants' reports showed that bulk transfers were something the firm had carried out and they developed organically as the firm grew. Layers of organisation and communication channels and hierarchy developed and so did the system. The firm was a business and the fee earners were incentivised. The system related mainly to conveyancing and immigration work which was privately funded. He had been asked if all he did was sign off a list; this was not so. There was file review process carried out by the Respondent and the supervisor and a billing process; the latter was the more important to the fee earners than the detail of the file review. When the Respondent discussed a matter through the file review process he would sign off on the file review which would involve confirmation of what matters needed billing as a result of the overall discussion. The supervisor would then identify the matters that needed billing. The supervisor would pass them to the accounts staff/administrative team on a weekly basis when everything was working (correctly). It fell short before 1 April 2014 because of Ms C's impending maternity leave. Having gone through the process the Respondent would always be of the genuine and honest belief that the monies were properly due to the firm. The Respondent was distracted, his wife was incapacitated; they were two key members of the firm. Fee earning went on going; there were replacement supervisors and work was running at a very fast pace. With hindsight one could ask why did the Respondent not stop but everything happened before he knew it. There had never been a leave situation like that. The Respondent stated that he should have anticipated it; that was his only mitigation along with his wife's sudden health problems. The Respondent fully accepted that they were running systems and procedures that did not suit the organic nature of the firm from 1 April 2014 to the end of January 2015.

57.32 The Tribunal asked the Respondent to comment on the fact that there were composite transfers on three consecutive days: 19, 20 and 21 May 2014 of £2,000, £2,988.60 and £9,512 respectively. He said he thought that the fee earners were conscious of their

targets; they wanted to make sure they could demonstrate they were meeting their agreed targets.

Submissions and evidence of the Respondent regarding Allegation 1.2 including the associated allegation of dishonesty

57.33 The Respondent denied allegations 1.2 and 1.4 and the allegations of dishonesty associated with them. He drew the Tribunal's attention to the fact that the Adjudication Panel that decided not to intervene into his practice and in particular to their statement that they were not satisfied at that time that there was reason to suspect dishonesty on his part. The Respondent submitted that the Tribunal had independent documentary evidence to identify his state of knowledge and belief as to the facts and was not dishonest. He submitted that he had been qualified since 1988 and had no disciplinary issues. There were some complaints to which he had responded and dealt with. He had had the same set of accountants since the commencement of the firm (although their name had changed). Mr P had helped him grow the firm from just the Respondent to 13 or 14 employees. The Respondent had produced accountants' reports. He accepted that they were qualified. He asked the Tribunal to look at the breaches identified by the accountants; they showed that he had never previously done what he was now accused of. The Respondent submitted that from what the accountants saw and his former representatives said, the firm was not a poisoned chalice up to 1 April 2014 which the FIO found as a result of the miscellaneous one-off ledger. This was shown by the fact that the firm was purchased by Mr Anderson who had given evidence. The Respondent had not had any approaches from him or the Applicant to say that there was any shortage or money due to any person.

57.34 The Respondent referred the Tribunal to files A-E. Their contents was as follows:

- File A - the Respondent stated that it consisted of every single ledger for the April 2014 and May 2014 transfers that led to rectifications.

- File B – the first four pages were metadata which had been requested, followed by the lists.

- File C were management control reports prepared by the firm's accountants. The first tab was a letter from the Respondent to B of the accountants dated 24 February 2015 which stated that it enclosed the office to client transfers folder referred to in an email from Ms K sent to B on 24 February 2015. The Respondent stated these went back eight years.

- File D began with an index of 58 clients and supporting papers for some of them.

- File E1 began with a rectification schedule and included client ledgers and bills.

- File E2 began with an annotated list dated 4/7/14 and consisted of client ledgers and bills.

- File E3 began with an annotated list dated 19/9/14 and consisted of client ledgers and bills.

The Respondent submitted that there was not one file where a genuine bill had not been raised. His position since the issue of the Rule 5 Statement had been that every single bill was on file. The Respondent accepted that analysis had been carried out which showed that in some cases files did not have a "strict bill" prior to money being taken but the bills were properly claimed and work done. The Respondent's position regarding Rule 17.2 and the documents in file B was that these were immigration and conveyancing files which were conducive to bulk work because the fees were fixed at the beginning and the client knew the fees they would be charged and what work the firm would do; the client received a communication about what the firm was doing. The money levied would tally up with the agreement reached with the client. The terms of business were also there. Even where no prior bill was raised all the work on all the files was properly charged to each client. There was sufficient on each file to show that given the retainer agreed appropriate notifications were there.

57.35 The Respondent took the Tribunal through documentation relating to a client Ms E. the first tab in file A related to the transfer totalling £6,980 made on 14 April 2014. Ms E's ledger showed an interim bill raised on 25 April 2014 totalling £244 (which figure appeared on the composite list for the transfer of £6,980 on 14 April 2014). The Respondent stated that all the bills should reconcile to the total but they might be pennies out as fee earners made mistakes as was discovered when Mrs M and Mr T were resolving matters. The Respondent stated that one could see the lists for each of the transfers: 4 April 2014, 8 May 2014, 19 May 2014, 20 May 2014 and 21 May 2014. Apart from the transfers relating to Mr D all the client matters on these lists followed the same pattern; so essentially the allegation that he wrote random cheques where there was no client and no bill was what he had challenged from day one. He stated that if one went through file D and the following files he was trying to link everything up, each ledger should have a bill, a time ledger if the work was done on an hourly basis and a client care letter.

57.36 The Respondent relied on paragraphs 19-31 of his statement. Paragraphs 19 is summarised elsewhere in the submissions and evidence. Paragraph 20 is quoted above. Paragraph 21 described the documentation Mr T provided to Mrs M at month end when the system was operating normally and continued:

> "It is my understanding that Mr [T] would post everything to the clients' side and Mrs [M] would post entries on the office side relating to income and expenditure and effect the reconciliation."

Paragraphs 22 and 23 referred to the timing of the March and April 2014 reconciliations which were delayed because of Mrs M's ill health. At paragraphs 24 and 25, the Respondent referred to the client to office transfers and identified who was involved in the process following Ms C going on maternity leave. He continued:

> "I accepted their word in light of their roles, responsibilities and job description that each of the files the subject of the transfers held the monies that were to be transferred. I exhibit at "HM2" the list of files the subject of each transfer.
>
> Each of the transfers was then made by way of one cheque per aggregate transfer completed and signed by myself for each respective transfer."

Referring again to his wife's absence the Respondent stated at paragraphs 26-29:

> "the reconciliations were significantly delayed and it would be fair to say that during this period due to the safeguards of Lawbyte and the accounting backlog accruing and taking into account fee earners wanting to fee earn and my personal circumstances of being out of the office more than I have ever been, it was difficult to gauge an immediate position on a particular client matter although I did not realise this at the time and I am not sure my staff realised it either.
>
> We didn't realise that there was a problem with the April and May transfers until work began on the April and May reconciliations which had been delayed due to Mrs [M's] illness. Mrs [M] had received the accounting information and documents to reconcile the months of April and May from Mr [T] on 11 June 2014 and in consequence she identified that there was some duplication in the transfers carried out on 14 April 2014, 8 May 2014, 19 May 2014, 20 May 2014 and 21 May 2014.
>
> Upon Mr [T's] return from paternity leave on 30 June 2014, Mrs [M] explained that the situation in terms of the duplication that had occurred between the transfers due to the delay in reconciling the month of April 2014 with respect to the transfers effected 14 April – 21 May 2014 and the fact that the fee earners were not coming back quickly and her impending [absence] on 15 July 2014 she instructed Mr [T] to repay the transfer for 14 April 2014 (which was accurate but the transfers on 8 May 2014, 19 May 2014, 20 May 2014 and 21 May 2014 had a knock on effect by way of error and duplication), her reasoning was that this was the most effective way given all the circumstances to remedy and rectify the situation. She also instructed that from an accounting record point of view the best course of action on a totally transparent basis was to post the £6,980.00 temporarily into the One-off Miscellaneous ledger 02500 after repaying the money into the client bank account and then reallocating to the appropriate client lodgers (sic) eliminating the errors and duplications with the transfers of 8 May 2014, 19 May 2014, 20 May 2014 and 21 May 2014. This course of action was then effected by Mr [T]. The sum of £6,980.00 was paid back into the client bank account from the office bank account on 4 July 2014, slip number 009660.
>
> Mr [T] then informed me of what he had done in accordance with Mrs [M's] instructions and I in turn reverted to each fee earner and whilst the Immigration section provided me with a revised accurate list, the conveyancing section provided me with revised lists for the transfers for 19 May 2014, 20 May 2014 and 21 May 2014. This then allowed Mr [T] to make an accurate client to office transfer on 4 July 2014 and which then allowed the month end of April 2014 to be closed."

The Respondent went on to explain that there were difficulties with the sum of £14,166 which was transferred on 8 May 2014 because of the staffing position in the conveyancing and immigration sections and continued in paragraph 30-31:

> "Mrs [M] could not wait to close the April month end therefore because of the delay in reconciling the 8 May 2014 transfer of £14,166,00; this was posted to the One-off Miscellaneous ledger. Mr [P a staff member] finally provided a reconciliation of this on 15 September 2014.
>
> As I have explained, we made some progress in reconciling entries in early July 2014 and work was being undertaken to bring us up to date however…"

The Respondent went on to explain that his wife was away unexpectedly from 15 July until August 2014 and his father was taken ill in late June 2014 and again in August 2014.

57.37 The Respondent set out in his statement that the rectification process only started when his wife had some respite at the end of June 2014 when Mr T returned from paternity leave. The Respondent was not involved in the process. It was carried out between Mrs M, Mr T and the relevant supervisors as set out in Mrs M and Mr T's Explanatory Statements. He accepted everything was delayed. As soon as became aware of the situation and Mrs M was more aware than he was, rectification went apace. Apart from the composite bills cited in the allegations there were no others which caused a problem. At paragraph 32 the Respondent stated:

> "At all times the transfers effected between 14 April 2014 and 21 May 2014 were genuinely and properly due to the firm once they have been corrected on terms of elimination of duplication and as can be seen from the analysis below particularly as some transfers had been missed/omitted which were legitimately and properly due to the firm. Once Mrs [M] and Mr [T] had worked out the above process for reversing the transfers and reconciling the amounts due, the position regarding these transfers stood as detailed in the analysis below."

The Respondent went on to quote the analysis which is set out below. The Respondent referred again to the process followed by Mrs M as set out in paragraph 9 of her Explanatory Statement quoted above under allegation 1.1. She was working from home and would email questions and instructions to Mr T. The Respondent stated that there was an issue with which he was not overly involved in that certain amounts did not add up and there was also a problem with the software; it was a combination of everything. The Respondent quoted paragraph 10 of Mrs M's statement:

> "Ever since I had worked for the firm we have never been in a situation with this kind of delay and backlog and bearing in mind that [Mrs M referred to her health] I was increasingly frustrated and I wanted to deal with this matter in the quickest and most efficient way possible taking in to account my circumstances [Mrs M referred to her impending absence] on 15 July 2014. I would repeat that this is not a situation that I had encountered before and rightly or wrongly I made the decision that the duplicated bills should not be posted and we should just start the whole process from scratch and that [Mr T] should carry out an office to client transfer of the £6,980.00, to enter this sum in the one-off miscellaneous ledger 02500 and then to reallocate this sum correctly to the appropriate ledgers and to ensure that all bills that could be

> correctly billed for April 2014 are approved by the fee earners, done and then correctly posted to the client ledgers. [Mr T's] explanation note details that he did follow this instruction. I would reiterate that I made this decision not to mask or hide anything but to ensure transparency in the best way that I could, given the need to close the month ends and also taking into account that I was anxious and worrying …"

The Respondent stated that Mrs M then followed that up with each of the lists in terms of what methodology she used with Mr T to resolve the position as best she could. At paragraph 17, Mrs M stated:

> "I would repeat also that Lawbyte has restrictions and safeguards in terms of posting debit entries on client account and in term of continuing to post on the office side if a month has not been closed, because of the complete breakdown and delay in carrying out the reconciliations meant that the client ledger balances were inaccurate."

57.38 The Respondent submitted that the normal communication between Mrs M and Mr T had broken down. At his paragraphs 6-9 of his Explanatory Statement Mr T stated:

> "Because of Mrs [M's] situation I was unable to provide her with any month end closure documents and information until she was ready to commence her duties again. In fact this was just prior to my going on paternity leave when Mrs [M] asked me to send the usual information for the April month end, being the cheque books, paying in books, bank statements, debit/credit slips and bills. She said that she would look though what I would send whilst I was on paternity leave and once I had returned any queries would be attended to and April month end closed and at that point she could commence the May month end.
>
> Unfortunately due to Mrs [M's] ill health it can be seen that the month end reconciliations were delayed which resulted in a backlog of the postings to Lawbyte, in particular the office side postings.
>
> On 14 April 2014 FD/AD/HM attended to the list totalling £6,980.00 in relation to immigration matters and AP/NK/HM attend to the list in relation to conveyancing matters. The list is duly agreed by both immigration and conveyancing and given to NM to prepare transfers approved by the fee earners for HM…
>
> The transfer is carried out by a cheque completed and signed by HM. Client account bank statement shows cheque number 010222 debiting the account in the sum of £6,980.00 on 14 April 2014.
>
> The client to office transfer is not posted and because the month end was not closed, this had a knock-on effect on the May client to office transfers as the April month end remained open."

Mr T went on to describe how the transfers of £14,166, £31,541, £2,000, £2,988.60 and £9,512 were arrived at. The Respondent referred to paragraph 22 of Mr T's Explanatory Statement:

> "As I explained above, Mrs [M] was only capable of starting the reconciliations for March and April just prior to my departing for my paternity leave. She completed the March reconciliation on 10 June 2014 and when I had returned from paternity leave on 30 June 2014 Mrs [M] informed me that she had looked at the information and documents I had sent to her in relation to the April month end, including the client to office transfer of £6,980.00. This had not been posted and I informed her that there may be a problem in posting this now to close the April month end and because of the transfers carried out on 8 May 2014, 19 May 2014, 20 and 21 May 2014 as there was a domino effect of errors and because of the fee earners being busy, [the Respondent] being occupied also, it had been difficult to reconcile the client to office transfer of £6,980.00 on 14 April 2014 against the transfers on 8 May 2014, 19 May 2014, 20 and 21 May 2014."

The Respondent stated that one could see from the Statement how Mr T followed Mrs M's instructions about where to put the cheques. Normally Mrs M would direct everyone.

57.39 The Respondent referred to paragraph 22 and 23 of Mr T's Statement about difficulties to reconcile. At paragraph 23, Mr T stated:

> "Mrs [M] explained that this was not a situation she had ever encountered and due to all of the circumstances, including the fee earners not coming back quickly and her impending [absence] on 15 July 2014, her instruction was to just repay the £6,980.00 back into the client account and to effectively start again making sure that the errors and duplication between transfer of 14 April 2014 and the transfers of 8 May 2014, 19 May 2014, 20 and 21 May 2014 were eliminated, all corrections made both from the point of view of the client and office bank accounts and from the point of view of the accounting records. She instructed that from an accounting record point of view her decision was to post the £6,980.00 temporarily into the one off miscellaneous ledger 02500 after repaying the money into the client bank account and then reallocating to the appropriate client ledgers eliminating the errors and duplication with the transfers of 8 May 2014, 19 May 2014, 20 and 21 May 201. I therefore did this in accordance with this instruction and paid in the sum of £6,980.00 into the client bank account from the office bank account on 4 July 2014 slip number 009660."

The Respondent stated that the fee earners were rushing ahead. The back office was not going at the same speed and not as it would normally be. The process Mr T followed applied to all the transfers. It was due to the backlog; people being away. Mr T summarised the situation at paragraph 34:

> "Taking all of the above into account, below is a summary of:
>
> a) The client to office transfers posted to the 02500 on off ledger

b) The monies paid back into client account to rectify the shortfalls on the 02500 one off ledger

c) The subsequent corrective client to office transfers carried out that were correctly allocated to client ledgers…"

57.40 Mr T then went on to set out the detail which was also in paragraph 32 of the Respondent's statement.

a) 02500 One Off Ledger- Client to Office Transfers

• 14 April 2014:	£6,980.00	Reconciled	8 July 2014
• 8 May 2014:	£14,166.00	Reconciled	23 September 2014
• 9 May 2014:	£2,541.00	Reconciled	23 September 2014
• 19 May 2014:	£2,000.00	Reconciled	23 September 2014
• 20 May 2014:	£2,988.60	Reconciled	23 September 2014
• 21 May 2014:	£9,512.00	Reconciled	23 September 2014
• **Total:**	**£38,187.60**		

b) 02500 One Of Ledger – Monies paid Back Into Client Account

• 4 July 2014:	£6,980.00	Reconciled	8 July 2014
• 17 September 2014	£14,166.00	Reconciled	23 September 2014
• 27 June 2014	£10,000.00	Reconciled	23 September 2014
• 4 July 2014:	£4,041.60	Reconciled	8 July 2014
• 6 August 2014	£3,000.00	Reconciled	23 September 2014
• **Total**	**£38,187.60**		

Subsequent Client to Office Transfers Undertaken Correctly Allocated to Client Ledgers

• 4 July 2014	£38,904.14
• 17 September 2014	£7,076.00
• 19 September 2014	£1,114.00
• **Total**	**£47,094.14**

The Respondent stated that all of the breaches were documented on the breaches records. The accountants, Mr T and Mrs M were all interacting about this. This was done with the other lists in the rectification bundle. The Respondent referred to clients Mrs E and Mr T who could be followed through the documents.

57.41 In his statement, the Respondent referred to management control reports provided by the firm's accountants dating back more than 10 years which were given to the FIO:

> "to provide evidence that the firm had not systematically masked, miss-posted, deliberately kept ledgers incomplete or had a system of uncleared lodgments..."

The Respondent stated that there had been no previous visits like the FIO's; the firm was not perfect regarding the Accounts Rules but the Respondent was not aware of issues; they were dealt with by the fee earners. The Respondent would sit down with the relevant person from the accountants if anything of concern arose and he would expect them to take whatever action was necessary. It was pointed out to the Respondent that before 2014 two of the accountants' reports had been qualified. The Respondent's understanding was that apart from any issues raised that needed correcting the firm would receive a clean bill of health. He was told afterwards of the qualifications when the intervention report came in. The accountants prepared the report, he just signed it. He stated that the FIO asked for a schedule of all client to office transfers over an eight year period and the Respondent had delivered the schedule to the accountants and understood there would be a report scheduling the breaches on which they had reported.

57.42 The Respondent stated that from the beginning he had said that bills were raised in respect of transfers 3 to 5 and 8 to 10 on conveyancing and immigration files. The Respondent was referred to Ms K's Report. It contained details of breaches identified in the period. It was put to the Respondent that in respect of every one of transfers Ms K stated that no bill was raised: in respect of the cheques for £5,600 on 1 April 2014, £6,980 on 14 April 2014, £14,166 on 8 May 2014 and by cheques of £9,512, £2,541, £2,000 and £2,988.60 on 9, 20, 20 and 21 May 2014 respectively. The Respondent stated that they did not say that there was no bill. There was an email regarding the one-off ledger and then Ms K had a long conversation with Mrs M and Ms K finally sent an email saying she was happy with everything. The Respondent stated that he had been through each and every ledger and was satisfied that all bills were raised and money was properly due.

57.43 In cross examination, the Respondent was referred to an email sent to him from the FIO dated 10 March 2015 posing questions including:

> "Do you accept in full the breaches of the SRA Accounts Rule 2011 that are identified in Ms [K's] report entitled …?"

The Respondent had replied on 16 March 2015 including:

> "So far as the report of [Ms K] is concerned as you are aware the report was commissioned by the firm on an independent basis having identified, remedied and rectified all of the breaches she highlighted in her report prior to her being commissioned…
>
> It goes without saying that in light of the fact that [Ms K] reported on an independent basis the breaches she has outlined are accepted…"

The Respondent stated that this was in terms that there was a deficiency. If one read the FIO's email he was asking whether the firm had transferred £43,787.60 between 1 April and 21 May 2014 improperly. The Respondent had said in the same reply:

> "We do not accept that we have transferred the sum of £43,870.60 from the firm's client account to the firm's office account between 1 April 2014 and

> 21 May 2014 either as a whole sum or in tranches that equate to that sum on an improper basis contrary to rule 17.2 and 20.3."

The Respondent stated that he accepted the overall breaches Ms Carpenter referred to. The Respondent was referred to Radcliffes' letter dated 27 April 2018 where it said:

> "[The Respondent] accepts, with regret, that there were breaches of the Accounts Rules during this period as detailed in the report prepared by [Ms K] on behalf of the firm prepared prior to the SRA's attendance at the firm."

The Respondent replied that this was regarding the one - off miscellaneous ledger at paragraph 46 of the letter. Ms Carpenter put to the Respondent that the Applicant's case was about there being no bills and she referred to the Respondent's file B as containing bills completely irrelevant to the five composite transfers. The Respondent repeated that he had always maintained that the cheques written out for the composite amounts were all linked and were client related matters where money was due to the firm, he stated that this was the same explanation that his wife and Mr T had given. He could not identify for the moment where in the documents he had said there were bills. In support of his assertion of credibility the Respondent referred to the fact he had been correct that the lists were drawn up contemporaneously with the composite transfers. The Respondent was referred to paragraphs 24 and 25 of Radcliffes' letter of 27 April 2015:

> "The firm's records, compiled before the arrival of the SRA, reveal that the issues identified were on 8 specific ledgers and consisted of two principal issues (i) the transfer of funds from the client account to the office account before a bill was properly raised on 7 occasions and (ii) payments to or on behalf of clients in excess of funds held.
>
> The first group of issues occurred between 1 April 2014 and 21 May 2014 involving 7 transfers, all of which related to payments properly due from clients and all of which related to funds properly held in client account. Where the firm fell into error was that it failed to issue the appropriate bill of written notification of costs…"

The Respondent distinguished between 'transfer' and 'cheque'. It was explained these were composite transfers and there were lists (breaking them down); some bills were raised prior to the work and some afterwards when the Rule 5 Statement was issued. The matters were usually where the Respondent was essentially the fee earner.

57.44 The Respondent stated that the question was specifically asked about Mr D and in Radcliffes' 7 May 2015 letter about the intervention application they explained at paragraph 10:

> "It is accepted by [the Respondent] that the bill should not have been issued bearing a date earlier than that on which it was issued however it is the firm's position that the bill reflected a written notification of costs which was provided to Mr [D] on 30 April 2014 and the issue as is demonstrated below is a technical point rather than an indication of dishonesty…"

The letter also stated that the bill dated 9 May 2014 appeared in the folder between a bill dated 17 November 2014 and one dated 19 November 2014. It set out that on 30 April 2014 a statement of account and costs letter was sent to Mr D requesting immediate payment of £30,000 in respect of costs already incurred. The Respondent stated that the principle in paragraph 10 applied to all the cases on the list(s). The Respondent stated that it was accepted that in a number of cases the bill was not issued before money was taken and referred again to cases where there was a completion statement etc. where one could see the client was aware.

57.45 Ms Carpenter took the Respondent through individual cases which he stated showed bills which were included in the transfers and were on the lists relating to those transfers. Ms Carpenter put it to the Respondent that the particular bills were raised and paid separately and did not relate to the transfers. An example was Mrs E; on 25 April 2014 an interim bill number 13825 was included in file B for professional charges of £203.33 with VAT of £40.67 and a Home Office fee of £906. It included: 'Received With Thanks £1,150.00'. Radcliffes' file Correspondence 2 included a ledger sheet for that client with same bill number and a client to office transfer on 25 April 2014. On 2 July 2014, there was another transfer of costs in the amount of £200 relating to an interim bill recorded the previous day and on 23 December 2014 a further interim bill totalling £6.00. Ms Carpenter suggested that the ledger showed that the 25 April 2014 bill had nothing whatsoever to do with any of the five composite transfers. The Respondent explained this matter by reference to the fact work was continuing. He pointed to a client care letter, time ledger and retainer as showing what was owed. He was satisfied that work was done and sums billed were properly due to the firm. The Respondent relied on the evidence he had provided of the firm's processes.

57.46 In another case that of Mr B, Ms Carpenter referred to the ledger sheet which showed three interim bills raised in 2012, another in November 2013 and three for additional further costs in May, June and July 2014. Each bill was shown as paid. Again the Respondent referred to evidence such as a client care letter and stated that the bills were on a composite list. The Respondent accepted that bills such as that of 25 April 2014 relating to Mrs E were not raised before the composite transfer on 14 April 2014 but stated the firm's processes had been followed –the fee earner was satisfied that the bills were properly due to the firm. The Respondent stated that this satisfied Rule 17.2 and the guidance relating to it. The firm was owed money at the time and the bill was raised after the date of the cheque and the bill was comprised in the composite cheque. The Respondent referred to Radcliffes' letter of 24 July 2015 where this was explained:

> "It is noted that none of the improper transfers were dishonestly or improperly motivated. The impropriety in relation to breaches of Rule 17 (and the majority of breaches of Rule 20) arose from [the Respondent's] mistaken assumption that key steps such as the issue and delivery of a bill had been completed or that funds had been paid to meet costs. On the 7 occasions where costs were improperly transferred, it was the case that such costs were incurred and were properly due and payable."

The Respondent stated that what Ms Carpenter asked was not asked of him at the time; they had been asked if they had raised bills on the date the cheque was written for the transfer complained of and they replied for all of them were. The firm had then sent a list to the Applicant to show as asked that monies were in the bank when the transfer was made. The firm identified each and every client and when they paid monies into the client account and linked them up. The Respondent had said at the time that in some cases he complied with Rule 17.2 and in others he did not but the money was always properly due.

57.47 As to whether the Respondent looked at bills or ledgers when he signed the cheques, the Respondent stated that he had meetings with the supervisors in conveyancing and immigration on a weekly basis. There was a procedure where, as the person who ultimately made the decision, he had people who assisted in making the decision and it was their job to provide him with evidence to support the payment; the process was like a sieve. The Respondent stated that he did not know who created the lists; there were layers of people in the firm. It was not remotely possible for him to write such a cheque; there were people who were responsible to the clients. The Respondent stated that the supervisor would discuss the client matter listings, the list was then prepared and then as long as it was approved, usually by Mrs M and then Mr T, the Respondent received the list of electronic authorities. The key authority was the chit for each file and what needed to be transferred. The Respondent stated that he had the lists and individual chits for each client. Mr T would have gone through the matter with the fee earner and checked everything. The chit was signed by the relevant fee earner or supervisor and the Respondent would have trusted that. This had been done for a long, long time. One of the accountants' reports referred to a similar matter with a composite list. When things worked this was how they worked. The Respondent referred to his statement already quoted and to paragraph 17 where he said:

> "From my perspective, I think I had always taken compliance a bit for granted. The systems were in place and they had worked for many years. With all the other pressures coming to bear on me at the time, I didn't immediately recognise the consequences which could occur once our processes had started to slip."

It was put to the Respondent that he was not saying that he discussed the matter with the fee earner; he replied that in April 2014 when the first transfer the subject of the allegation was made he was in at different times of day. If the money was there, the work had been done and the file was in order according to the supervisor responsible the Respondent would not question it. He investigated if for instance there was a complaint from a client or an issue that required him as Principal to resolve. Otherwise why would it be necessary to employ fee earners? The Respondent placed trust in his organisation. When it worked it worked. In abnormal times, without Mrs M, the system completely broke down. In respect of the payment of £6,980, the Respondent stated that he had transferred the money in advance of the way the firm would normally have done it. This applied to transfers 4, 5, 6, 7, 8, 9, and 10.

57.48 The Respondent referred to the two transfers relating to Mr P of £5,600 (transfer 3) where it was alleged no bill was raised. Mr P's was an extradition matter linked to Mr D. He gave it to another solicitor to hold while he accompanied Mrs M in her absence. An interim bill was raised on 10 January 2014. In his witness statement the

Respondent said that the transfer was in respect of costs on 1 April 2014; it "was unfortunately a duplicated oversight". Ms Carpenter challenged that. The Respondent accepted that he signed the cheque without checking the ledger. It was the first day of his wife's absence. He rejected the suggestion that he knew the money had already been billed and did it again because he needed the money. It was not dishonest.

57.49 In respect of the transfer in Mr D's matter of £29,000 (transfer 6), the Respondent stated that he had rejected the assertion from the beginning that without the (total) transfer of £31,541 in D's matter he could not pay the tax bill. The Respondent explained that he had a criminal defence background. He asserted that in alleged "carousel fraud" his firm punched well above its weight. He had done a lot of that type of work. The frauds were dotted across a number of countries and EU extradition warrants were used particularly across Germany. The Respondent stated that the matter of Mr D was a European extradition warrant under which D was to be taken overnight to Germany. His father was a very good friend of the Respondent. He had held a local public position. He helped the Respondent in his career before he qualified. A family member was trained by the Respondent before qualifying. Mr D was arraigned and taken to Westminster Magistrates' Court. It was necessary to apply for bail. This was high value well-paying work. The firm would have done a considerable amount of work on the matter. They instructed a well-known set of London chambers using an up and coming counsel. The matter went to various decisions before the Magistrates' Court which were challenged in the High Court. There was a time ledger with a work breakdown which he had provided to the FIO. He referred to the ledger sheet. He referred to the pressure in seeking to assist Mr D. This was not the sort of case the Respondent could say "No" to because these were people who had helped him. He had known Mr D senior for thirty years. He asked the Tribunal to look at the eight years of management control reports and see if this sort of breach had ever occurred before. He was caught between Mr D's needs and his own family circumstances. He was in a situation which overpowered him but he still had to make decisions. The Respondent had to make sure that there was no was delay for Mr D senior and his son because of the Respondent's relationship with the former. The Respondent submitted that when he signed the cheque for the transfer he expected monies to be in the account because of the urgency of the matter; it was very likely Mr D would be extradited to Germany and Mr D wished the Respondent to instruct German lawyers by the end of May 2014. The firm also needed payment for the work done when Mr D was first arrested; there had been a number of disbursements including the instruction of counsel. The Respondent stated that he was the fee earner; all the decisions were his although he was assisted by others. The Respondent agreed he had transferred £31,541 to office account based on Mr D's telephone message of 9 May 2014 evidenced by an attendance note of that date. The resulting shortage only came to light when Mrs M carried out the reconciliations.

57.50 Ms Carpenter put it to the Respondent that with each transfer he had a list of what he thought were balances on client ledgers and just decided to transfer them to office account because he needed to pay a tax bill. The Respondent rejected that as completely inaccurate. This was April 2014 and the tax bill was May. The Respondent also stated that he had volunteered the information which was reflected in the documentary evidence to the FIO. The section 44B notice came out of the blue. The Respondent sent the FIO the full file and authority so that the FIO could obtain information from HMRC.

57.51 Ms Carpenter suggested that the Respondent was grossly reckless regarding the D matter because he was so desperate to pay HMRC which had issued a bankruptcy petition against him. The Respondent rejected that; the petition had not been served. He would have agreed with the assertion if he could not have made the tax payment due by mid-May 2014 without transferring the D money. The Respondent referred to his correspondence with HMRC; he made a payment to HMRC of £30,000 on 11 March 2014. The office account bank statement showed there was no point where he could not pay that sum. He pointed to three pages of bank statements highlighting credits the firm received in May 2014 including £16,000 and £5,000 or £6,000 from the Legal Aid Agency. The Respondent stated that he had other sources of money including an offset mortgage and other reserves from his property interests with his brother. Ms Carpenter pointed out that the Respondent had paid £10,000 on 9 May 2014 to HMRC and £28,000 on 12 May 2014 to satisfy a demand that by this stage had reached £87,610.57 (the amount of the bankruptcy petition debt according to a letter from HMRC to the Respondent dated 25 April 2014). The Respondent replied that the debt was in the region of £62,000. The Respondent referred to HMRC's letter of 12 May 2014 acknowledging receipt of payment of £24,970. Ms Carpenter pointed out that the business bank account statement showed that the Respondent was near the limit of his overdraft and if he had to pay HMRC would have to do so from another source than office account. The Respondent stated that he had been allowed to exceed the overdraft; he had gone up to £75,000 (the limit was £65,000) as the bank statements showed. It was not a particular issue such that he needed to make the D transfer. The FIO never mentioned the issue in their meeting. The first time it came up was in the intervention report.

57.52 The Respondent stated that he really believed he was entitled to the composite transfer he made on 8 May 2014 in the sum of £14,166 (transfer number 5) from the miscellaneous one –off account and with the monies received he could have made the tax payment in any event. Ms Carpenter pointed out that the payment of £31,541 from Mr D's ledger was made on 9 May 2014 to office account and on the same day £10,000 was paid to HMRC and £28,000 was paid on 12 May. The Respondent stated he had explained in a note to the FIO that if he did not pay, the worst case would be that HMRC would serve the petition. Also he had a counterclaim. He was trying to offset VAT owed on a number of potential reclaims against this tax bill. The Respondent stated that he partially succeeded in doing that. HMRC was just trying to force his hand. He would not be made bankrupt. If one added up the payments including the £14,166 but not the D payment there would be sufficient to pay the amount due to HMRC. The Respondent also rejected what he described as the "misnomer" that he could not pay HMRC from any other source; he had a reserve facility which was a loan offset against a high interest deposit. The repayment of the money paid to Mr A when rectifications were done came from there.

57.53 Ms Carpenter pointed out that according to HMRC's letter of 25 April 2014 the bankruptcy petition was due to be heard on 13 May 2014. The Respondent stated categorically that the petition had not been served. If he had been asked by the FIO he would have obtained the evidence. He could show that he was owed money.

57.54 Ms Carpenter referred to a letter dated 4 March 2014 from the Respondent to HMRC enclosing a cheque for £30,000. It asked for confirmation that the hearing of 18 March would be adjourned as agreed for one month and within that period the

Respondent would pay the balance due on the petition of £95,000. The Respondent stated that HMRC kept renewing the hearing and the petition so that stopped service. He would have dealt with it well before he knew his wife was to be absent. He paid £30,000 and then the reserves were used to rectify a fee matter. There were reserves far in excess of what he owed HMRC. He utilised the £14,166 and without the D payment he would still have been able to pay. That had always been his position. The Respondent also referred to a letter he had sent to HMRC dated 4 March 2014 which included:

> "So far as the remaining balance is concerned we are in the process of forwarding to you and to your national office the PAYE return for 2012/2013 and the remaining VAT returns although as we advised so far as the remaining VAT returns are concerned we have a number of issues upon which we have sent correspondence to your local office but await a response from them. We merely flag this up at this stage as the response from your local office does impact upon those returns however in accordance with your advice we will continue to liaise with your local office."

The Respondent invited the Tribunal to look at the office account bank statement and stated that there was no way he would play brinkmanship if the following day he was to be made bankrupt.

57.55 The Respondent was referred to a qualified accountants' report for the year 1 February 2013 to 31 January 2014. It recorded a breach of Rule 2.1, client to office transfers not being specifically authorised. The management comment was:

> "Client to office transfers were carried out in bulk on a weekly basis. After each transfer is carried out, a report is printed detailing each specific transfer and this report is then signed by [the Respondent]…"

The Respondent stated that the supervisor had a book which the Respondent would sign to confirm that so far as supervision was concerned work was being done, there was time recording and there had been compliance with client care; his relationship with the supervisor was crucial here. It was suggested that it was not much use having a report after the transfer. The Respondent stated that he did not deal with the accounts and money paid out and received; he did not deal with the accounts across the board. They had followed this system since they began bulk work; it did not happen suddenly. Ms C supervised immigration and conveyancing and she went on maternity leave at the end of February beginning of March 2014 and others had the role; the Respondent stated that if he was culpable it was in not looking at supervision carefully. At the time he looked at the list he could say that because of Ms C's competence, experience, training and skills he was confident the understudies were competent. He did not scrutinise them. The breaches were mainly in conveyancing. The Respondent did not just make up the list and decide to transfer the money on 14 April 2014. Here was a tried and tested system that failed because of temporary supervision. He was at fault; he should have done his own due diligence but he got caught up in a system that spiralled out of control. When one was running a business one had to trust people. The Respondent was challenged about the dates he gave in the Supervisory Note for Mr T's paternity leave as May 2014 when other leave

information showed 16-27 June. The Respondent explained that Mr T also took some days off in May and possibly April 2014.

57.56 It was put to the Respondent that he had said in evidence that he misunderstood the markings made in handwriting on the lists by one of the supervisors P but now he said the transfers were properly made but contained duplication. The Respondent disagreed that there was inconsistency in his explanations; Radcliffes' letter of 24 July 2015 already quoted said that the firm could not show on a number of cases that the bill was raised or notification given prior to the transfer but maintained that the costs were properly due and payable. Radcliffes' letter of 29 October 2015 stated regarding the transfer of £6,980:

> "This question is based on an incorrect premise. The sum of £6.980 was an aggregate sum covering a number of receipts across a number of files. We enclose a list of the relevant files prepared by our client's bookkeeper and the supporting bank statements showing the funds received. Our client has had to recall the relevant files to review these issues.
>
> Our client has already admitted to failures in relation to record keeping and acknowledges that this transfer was part and parcel of those problems which rose. He denies that there was any breach of the principles alleged."

The Respondent maintained that in these and subsequent letters to the Applicant he was consistent; some bills were not raised prior to monies being taken but he was not guilty of non-compliance with Rule 17.2; the money was there and the firm was entitled to it but the majority of the cases lacked prior notification.

57.57 In cross examination, the Respondent stated that he had an understanding of the SARs and knew generally what the Principles were. From 1988 to 2014 he had been an upstanding man. He knew that client money was sacrosanct and it was common sense that he should not do anything to harm a client. He was not consistently focused on the principles on a daily basis but he knew the obligations, duties and responsibilities of a solicitor. As to whether he knew it was dishonest to transfer client money to office account if one knew one was not entitled to the money, the Respondent agreed in terms of one randomly writing out a cheque from client to office account but stated that at the same time if monies were properly due then he was allowed to transfer the money; that was his understanding particularly from the guidance to the rule, and particularly if the client knew a bill was going to be sent or work was done or the client was told what they would be charged. The Respondent stated that included the fee earner ringing the client to say they would receive a bill soon or where there was a completion statement (the Respondent said in evidence that he saw completion statements when signing cheques) or a fixed fee agreement. That happened a lot. It was acceptable as long as the client was aware before the matter started what the terms of engagement were regarding costs and that work had been done on an interim basis or that the client was aware that work had been finished. As long as the client was aware of monies that would be transferred and that they had to pay it was not dishonest to transfer. The Respondent submitted that the case of Mr D came into a different category from the other transfers because in D's case the funds had not been received by the firm. The Respondent explained what had happened in his statement at paragraph 38:

> "I made this transfer in the mistaken belief that funds had been received. I accept that it was wrong and that I should not have relied upon Mr [D's] confirmation that funds had been paid to the firm. For clarity, I should mention that it is not the case that this transfer should be included within allegation 1.2; the mischief here was that the funds had not arrived, not that no written notification of casts had been given."

However if the Respondent showed Mr D the December 2014 bill he would know what it was about; the Respondent did not transfer without a bill, notification or the client knowing about those bills.

57.58 In summary, in respect of allegations 1.2, the Respondent emphasised that the firm was entitled to the money taken in the eight transfers. There was duplication in adding up by Mrs M or Mr T in their rectification exercise and it was not with any deliberate intent or deception to pay a tax bill which the Rule 5 Statement asserted in respect of allegations 1.2 and 1.4. The Respondent stated that there was an angry dispute with the taxman. The Respondent had met with B of the accountants just prior to the FIO's visit and it was being dealt with. It was high as with any assessment, and the Respondent was challenging it. There had been a number of letters prior to the statutory demand which the Respondent had not received. The Respondent stated that he was the one who disclosed it to the FIO and gave the FIO authority to find out anything about it. The Respondent stated that he could pay the amount he said he owed without a problem.

57.59 Regarding the allegations of lack of integrity in allegation 1.1 and 1.2, the Respondent submitted that he had read the case of Scott and referred to paragraph 59 of the judgment:

> "It was submitted on behalf of the appellant that, in the circumstances of this case, the basis on which the SDT found that the appellant was not subjectively dishonest should inevitably have led them also to conclude that he did not fail to act with integrity. I am unable to accept that submission. It is worth emphasising the general point to which Sharp LJ has referred, that dishonesty, and a lack of integrity, are not synonymous terms. As was said in *Hoodless and Blackwell v FSA,* where ordinary standards are clear –
>
> > "A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards".
>
> To take a hypothetical example, suppose a solicitor had repeatedly taken monies from the client account, used them for his own purposes, and from time to time made good the deficiency when he found it convenient to do so. Suppose that when challenged by his professional body, his response was that he knew he was not supposed to treat the client account in that way, but did not think that it really mattered as long as the monies were repaid, and did not think that anyone would regard him as dishonest. He might on that basis be acquitted of subjective dishonesty; but it surely could not be suggested that he had not shown a lack of integrity."

The Respondent asked the Tribunal to consider this sympathetically regarding the April and May 2014 transfers. All the transfers were signed with the genuine and honest belief and this had never happened before.

Determination of the Tribunal in respect of Allegation 1.1

57.60 The Tribunal had regard to the evidence including oral evidence and the submissions for the Applicant and for and by the Respondent. The Applicant had commissioned an FIR against a background of qualified reports by the firm's accountants. The Tribunal had been taken to evidence of the 24 withdrawals from client account which resulted in shortages on client account. The facts alleged by the Applicant concerning the withdrawals were never explained or denied by the Respondent save that he disputed the total amount of £216,387.30. However neither party proposed an alternative figure. The Respondent had commissioned a Report entitled "Mohammed & Co. Solicitors Report on Compliance of the Solicitors Accounts Rules 01st January 2014 to 31st December 2014" which the firm itself provided to the Applicant on 3 February 2015 and which identified improper withdrawals from client account where withdrawals had been made when there were insufficient funds in the client accounts. These withdrawals totalled £187,387.30. A further withdrawal of £29,000 was identified, resulting in the total amount of the improper withdrawals cited in allegation 1.1. The Respondent had also provided to the Applicant a schedule of the withdrawals which formed the basis of a document appended to the Rule 5 Statement entitled "Further Information". The document showed the withdrawals broken down and totalling the sum alleged. The Respondent said little about allegation 1.1. During his evidence the Respondent accepted that a considerable number of the transfers were improper; he admitted the transfers numbered 1, 2, 12, 18, 19, 20 and 24. He challenged numbers 3 to 10. He stated that 11 and 13 were matters related to his family. Items 14, 16 and 17 he said he was not sure about or would have to have details and regarding items 21 to 23 he would need to look at the ledger but he did not revert to these withdrawals or challenge any of the individual figure that the schedule contained. The Respondent also accepted repeatedly, indeed he asserted that the firm's account were not up to date. The Tribunal determined that payments were made that were not supported by client money and the 24 withdrawals cited in allegation 1.1 were therefore improper. The Respondent denied that he was personally at fault but accepted that "the buck" rested with him. In the face of considerable evidence and in the absence of any evidence to the contrary, the Tribunal found the facts alleged as giving rise to allegation 1.1 to be proved on the evidence to the required standard.

57.61 In respect of the sub paragraphs of allegation 1.1 the Tribunal found as follows:

Allegation 1.1.1:
Rule 20.1(a) of the SRA Accounts Rule 2011 version 9 published on 1 April 2014 stated:

> "Client money may only be withdrawn for a client account when it is:
>
> (a) Properly required for a payment to or on behalf of the client, (or other person on whose behalf the money is being held):"

The Tribunal found proved that a breach of Rule 20.1 (a) followed from the facts established and that allegation 1.1.1 was proved on the evidence to the required standard.

Allegation 1.1.2:
Rule 20.9 stated:

> "A client account must not be overdrawn except in the following circumstances…"

The Tribunal noted that the exceptional circumstances referred to in the rule related to a separate designated client account involving a trust, or the death of a sole practitioner, neither of which applied in this case. There were numerous examples in the evidence of the client account being overdrawn as a result of the improper withdrawals, thus breaching Rule 20.9 and the Tribunal therefore found that allegation 1.1.2 was proved on the evidence to the required standard.

Allegation 1.1.3, 1.1.4 and 1.1.5:
Principle 2 of the SRA Principles 2011 requires a solicitor to act with integrity which was discussed in the case of Wingate where it was stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."

And

> "The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:
>
> …
>
> iv) Making improper payments out of the client account (*Scott*);"

The Tribunal had found that the Respondent made 24 improper withdrawals from client account. The Respondent relied on his assertion that the firm had a proper system for the authorisation of withdrawals but that it was not working properly at the time because of the ill health of his wife who was a key member of staff and because of various absences of a key member of the accounts staff and of various fee earners. The Respondent admitted that he did not get to grips with the situation when he should have done. A particularly stark example was the case of the four payments to Mr A. The Respondent admitted that he had made these payments relying on Mr A's word alone based on their longstanding relationship. He admitted that he did not check the ledger and that the improper withdrawals were his fault. As a result the client account was over drawn for 133 days. This meant that other clients' money had been used to pay Mr A. The Tribunal considered that the Respondent had been so reckless as to constitute behaving with lack of integrity in respect of payments to Mr A. He was the COLP and COFA of the firm and sole signatory to client and office account. In his statement he said regarding Mr A:

> "In light of my past association with Mr [A] and knowledge of his business dealings, it did not occur to me for one moment that he could have been mistaken when he said we were holding funds on his behalf. We knew by that time that the ledgers had fallen behind and it was entirely reasonable and plausible that we would be holding funds. Unfortunately, the fee earners who had conduct of his file were away at the time and I had to make a decision based on what Mr [A] told me."

The Tribunal noted that generally regarding these 24 withdrawals the Respondent accepted that he bore ultimate responsibility. He said in his statement:

> "I took the reports I received from my staff as to the current financial position on trust and did not verify everything that was said. In saying this, I do not seek to pass any blame to my staff, I accept fully that it was my responsibility to ensure proper management of client account and I regret that I failed to do so."

The Tribunal found the test in Wingate to be entirely satisfied and that the Respondent's actions fell squarely within the example (iv) given by the court in the case of Scott. The Tribunal found allegation 1.1.3 was proved on the evidence to the required standard. The Tribunal further found that acting is such a way inevitably constituted failure to behave in a way that maintained the trust the public placed in the Respondent and in the provision of legal services and so he had been in breach of Principle 6. He also breached Principle 10 because by his actions he failed to protect client money and assets.

57.62 All aspects of allegation 1.1 were therefore found proved on the evidence to the required standard.

Determination of the Tribunal in respect of Allegation 1.2

(For the Tribunal's determination of the allegation of dishonesty associated with allegation 1.2 see below.)

57.63 This allegation involved eight of the 24 improper transfers. Aside from the case of Mr D, the money was moved to office account by means of composite transfers. As to the facts underlying the allegation, the issue was whether a bill of costs was given, sent or other written notification of the costs was given or sent to the client before the money was taken. Rule 17.2 of the SRA Accounts Rules 2011 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."

Rule 20.3 (b) stated:

> "Office money may only be withdrawn from a client account when it is:
> …
> (b)

> properly required for payment of your costs under rule 17.2 and 17.3;"

The Respondent denied the allegation in respect of all eight transfers - items 3-10. The Respondent said in evidence that the Applicant merely relied on bills not being sent or other written notification being absent or late but that he had other ways of notifying clients; that these were immigration or conveyancing matters where there was a fixed fee and the client knew what it was and the Respondent referred to client care letters and completion statements. The Respondent in giving his evidence made clear that he thought that if work had been done it did not matter particularly if a bill was not raised. He said there was a bill for every client but he later accepted that individual bills were sometimes raised after the cheques were signed for the composite transfers and did not accept that method of operating constituted a breach of Rule 17.2. During the course of the May 2019 hearing, the Respondent provided files D and E which contained bills and other documents related to the client matters but the evidence he relied on to substantiate his assertion that there was a bill for every client going to make up the transfers did not match up to the composite payments. Ms Carpenter took the Tribunal through the matter of Mrs E where this was patently obvious. The bills the Respondent produced were not relevant to the eight transfers. The Tribunal found as a fact that bills were raised after the event if at all. Regarding the fixed fee point; the Tribunal found that the evidence upon which the Respondent relied did not constitute good notification. There was no evidence that the documents he pointed to specified the amount he would take. The Respondent produced no other evidence which constituted written notification of precise amounts of costs to be taken. His own evidence was that on a number of occasions bills were sent out after the date the cheque was written. He said this was because he believed that if the firm had done the work it was reasonable to take the money without a bill and in some cases he admitted breaching Rule 17.2. His accounts had been qualified in 2012 and 2013. The former cited under reportable breaches, a matter 16061:

> "On 30/07/12, funds were transferred out of the client account into the office account to pay for bill number 12798. The bill itself was not raised until 31/07/12. This is an improper withdrawal of client funds.
> Breach of rule 17.2"

The Management comment in response by the firm was:

> "In all of these cases the files clearly show that the work has actually been done at an interim stage and therefore we were perfectly entitled to raise the bill at that point for the work in question, particularly as all of these matters are conveyancing matters and a fixed fee had been agreed with the client and this fixed fee and the circumstances relating to it are properly detailed in the firm's client care letter which the client prior to work being commenced expressly agrees to."

In spite of this comment the accounts were still qualified. The Tribunal found that the facts giving rise to allegation 1.2 were proved on the evidence to the required standard; the Respondent acted as alleged. In respect of the sub paragraphs of allegation 1.2 the Tribunal found as follows:

- In respect of allegation 1.2.1 and 1.2.2 respectively the Tribunal found proved on the evidence to the required standard that the Respondent's actions constituted a breach of Rule 17.2 and because the Respondent had not rendered bills he was not entitled to take the money and in doing so breached Rule 20.3 (b).

- As to allegations 1.2.3 and 1.2.4, the Tribunal determined that the Respondent's conduct in taking costs without regard to the Rules in these circumstances represented a real departure from the ethical standards of the profession. He acted with disregard for his professional obligations by what he did; on his own evidence he was the firm's COFA throughout the material period. He knew that his wife was ill and that he had two recent years of qualified accounts and as COFA he had to be on a heightened state of alertness about compliance with the Accounts Rules. His actions therefore constituted a failure to act with integrity in breach of Principle 2. This inevitably breached Principle 6 regarding maintaining public trust. Client money was sacrosanct and the public would be horrified to learn that he had acted as he had. The Tribunal therefore found allegation 1.2 proved on the evidence to the required standard.

58. **Allegation of dishonesty associated with allegation 1.2**

Submissions for the Applicant

58.1 Ms Carpenter referred the Tribunal to the test for dishonesty set out in the case of Twinsectra v Yardley [2002] 2 AC 164 and Bultitude v Law Society [2004] EWCA Civ 1853, namely was the Respondent's conduct dishonest according to the standards of honest people (the objective test); and if so, did the Respondent know that what he was doing would be regarded as dishonest by honest people (the subjective test). At the hearing in July 2019 in making her final submissions on points of law, Ms Carpenter reminded the Tribunal that this test had been overtaken by the test in Ivey. She referred the Tribunal to paragraph 60 of the Ivey judgment:

> "It is plain that in *Ghosh* the court concluded that its compromise second leg test was necessary in order to preserve the principle that criminal responsibility for dishonesty must depend on the actual state of mind of the defendant. It asked the question whether "dishonestly", where that word appears in the Theft Act, was intended to characterise a course of conduct or to describe a state of mind. The court gave the following example, at p 1063, which was clearly central to its reasoning:
>
> > "Take for example a man who comes from a country where public transport is free. On his first day here he travels on a bus. He gets off without paying. He never had any intention of paying. His mind is clearly honest; but his conduct, judged objectively by what he has done, is dishonest. It seems to us that in using the word 'dishonestly' in the Theft Act 1968, Parliament cannot have intended to catch dishonest conduct in that sense, that is to say conduct to which no moral obloquy could possibly attach."

> But the man in this example would inevitably escape conviction by the application of the (objective) first leg of the *Ghosh* test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that "dishonestly", where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts."

Ms Carpenter also referred the Tribunal to paragraph 74 in the Ivey judgment which set out the current test:

> "These several considerations provide convincing grounds for holding that the second leg of the test propounded in Ghosh does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Ms Carpenter submitted that there was now one objective test but that the Tribunal must first determine the state of the Respondent's knowledge and belief and then decide whether someone who acted as he did with that knowledge and belief acted dishonestly.

58.2 With particular regard to allegation 1.2 it was submitted at the March 2017 hearing in respect of the test in Twinsectra that the objective limb was satisfied. Honest people did not take transfers of costs from client to office account which they were not entitled to and for which they had rendered no bill of costs. Ms Carpenter submitted that it was also highly suspicious that seven of the eight improper transfers were

allocated to a suspense ledger the miscellaneous one-off ledger. Ms Carpenter also submitted that the subjective test was satisfied. The Respondent was an experienced solicitor; at the time of the offence; he had been practising for 26 years. He must have known that it would be regarded as dishonest to take transfers of costs from client to office account to which he was not entitled and for which he had rendered no bill. It was not necessary for the Applicant to prove a motive for the Respondent's conduct however it was to be inferred that his motive for the transfers was that he was indebted to HMRC. The Respondent had been issued with a statutory demand by HMRC, his application to set it aside had been dismissed, and he was facing a bankruptcy petition in light of his failure to pay. HMRC was also chasing him for amounts outside the statutory demand. Following the improper payment of £14,166.00 from client to office account on 8 May 2014, on the same day he paid £24,970.00 from office account to HMRC. Following the improper payment of £31,541.00 from client to office account on 9 May 2014 on the same day he paid £10,000.00 to HMRC from office account and £28,000.00 to HMRC from office account on 12 May 2014. In the absence of the payments from client to office account, Ms Carpenter submitted making such payments to HMRC would have taken him over his office account overdraft limit of £65,000.00.

58.3 Ms Carpenter went through particular points raised by the Respondent in his witness statement in support of his denial of dishonesty.

58.4 The Respondent said that as regards five of the transfers from client to office account that were allocated to the miscellaneous ledger (payments 4 to 5 and 8 to 10) he thought at the time that these transfers were made that they were properly due as composite transfers of costs across a large number of conveyancing and immigration files. He said he subsequently learned that these transfers contained some duplications and that it was decided to reverse them and start again. The Applicant did not accept the explanation. The Respondent had not provided any of the material that would be expected to exist if this explanation were true. For example if the payments were truly understood by him at the time to be composite payments of costs across conveyancing and immigration files one would expect him to have provided copy bills on all such files showing that such payments were indeed due, and copies of the ledgers of the alleged conveyancing or immigration files. The Respondent said in his witness statement (paragraph 15):

> "At the time of the transfers, I had believed that the transfers were correct based on the lists I had been given but on further investigation (as explained below) it appeared that there was duplication within the transfers and corrective action was taken…"

The Respondent said that he thought it was in order to make the transfers because the balances held were slightly more than the total of the amounts held on all the files listed. Ms Carpenter submitted that the Respondent's explanation made no sense on the documents before the Tribunal because none of the transfers were ever allocated to the listed files but instead were put on the miscellaneous one-off ledger.

58.5 As points of detail, Ms Carpenter highlighted that for transfers 8 of £2,000.00 and 10 of £9,512.00 the cheque had a number which indicated that the Respondent had used the personal client account cheque book as he had in the case of Mr A. His defence

was based on his being given lists by other members of staff and so one would think that the cheques would have been prepared from the cheque book held by the accounts department but this was not the case.

58.6 In respect of transfer 3 – £5,600.00 made on 1 April 2014, Ms Carpenter submitted that for this transfer the Respondent gave a different explanation from the other seven. This case again related to a European arrest warrant and the client was Mr P and the fee earner was the Respondent. A transfer was made out of client account in the sum of £5,600.00 where Ms Carpenter submitted there was no bill and it was common ground that money was not due to the firm. The Respondent said that what he had done was not dishonest but was a mistake because a previous bill had been issued in January 2014 and the money was being taken twice by mistake. The ledger showed an interim bill on 10 January 2014 in the amount of £5,051.42 plus VAT under reference 13705. On 14 March, under reference 10178 a transfer of £5,559.25 was made. The Applicant did not accept that this was a case of duplication; this was the Respondent's file and it was submitted that he must have known that the first bill had been paid. On the face of it, the second transfer did not appear to make sense and the Respondent's explanation was not credible. It was submitted that he made the second payment because he needed payments into office account and he was not concerned whether the money should be paid or not.

58.7 Ms Carpenter also submitted that the explanation in the Respondent's witness statement was inconsistent with the contents of the Supervisory Note dated 23 December 2014 in which the Respondent stated (where the letters HM referred to the Respondent):

> "In terms of breaches that HM is aware of HM would respond as follows:
>
> 1. Those that were in May 2014 under ledger 02500 [(the miscellaneous one-off ledger], HM would respond as follows – this was at a time when [Mr T] was either off on paternity leave or about to go on paternity leave and HM recalls that these were conveyancing balances which were marked by AP but subsequently transpired that AP had marked the ones that should not be taken and in the absence of [Mr T] HM in accordance with previous such exercises transferred those that were marked by AP as being monies owed to the firm. Subsequently on [Mr T's] return this was identified and corrected after liaison with AP…"

Ms Carpenter submitted that Mr T was not in fact absent at the time of the transfers. Even if the Respondent had looked at the lists before making the transfers it still made no sense as to why he thought he could authorise payment because he was relying on what was just a list of balances on files and decided to take them as costs. The Respondent was experienced. This was not the act of an honest solicitor. Ms Carpenter submitted that the Respondent's witness statement was also notably vague on what, if any, documents he said he reviewed before authorising each of the transfers. He had tendered the same explanation for all five of these transfers (4, 5, 8, 9, and 10).

58.8 Ms Carpenter also submitted that the Respondent relied on the fact that the Adjudication Panel on 14 May 2015 decided not to intervene into his practice and in particular on their statement that they were not satisfied at that time that there was reason to suspect dishonesty on the part of the Respondent. She submitted that this decision was irrelevant. The Tribunal would make its own decision on dishonesty. The Adjudication Panel, having found grounds to intervene given the SAR breaches, did not need to find an additional ground to intervene because they were considering intervention. They had to have grounds and then had to do the balancing exercise. They found the grounds on the Solicitors Accounts Rules breaches, so they did not need to find grounds that they suspected dishonesty, although they did say admittedly that they were not satisfied on that. And then they went on to do the balancing exercise and decided on balance that in light of the Respondent's stated intention to close his practice, they were not going to intervene. Further, the Panel's reasoning referred, at paragraph 5.10, to the masking issue in the books of accounts and paragraph 5.9 to the issue of motive (payments to HMRC) but did not refer to the key issue as to whether the fact of making the payments was dishonest. At paragraph 5.9 the Panel stated:

> "The FIO suggests that there is reason to suspect dishonesty on the part of Mr Mohammed due to certain payments being withdrawn from client account to meet payments to HMRC in April and May 2014. We have had regard to the details of the withdrawals, the total of those withdrawals and payments made to HMRC. After careful consideration we have concluded that the information, as presented to us, does not lead us to have reason to suspect dishonesty on the part of Mr Mohammed."

At paragraph 5.10, the Panel stated:

> "The FIO report also refers to unreconciled lodgments and mis-postings. Ms [K's] supplementary statement refers to faults in the software package used by the firm. We consider that, in view of the conflicting explanations for the shortcomings in the firm's book-keeping, we are not in a position to assess adequately the plausibility of either account so as to determine if there is reason to suspect dishonesty on Mr Mohammed's part."

58.9 Ms Carpenter submitted that the Panel did not consider the transfers; it said that the software issue was very difficult and it could not be sure. The Tribunal was in a much better position as it could look at each transfer and hear evidence. Finally, the decision of the Adjudication Panel did not, she submitted, in reality assist the Respondent. The Panel made a finely balanced decision not to intervene, relying on the Respondent's assertion that he was closing his firm voluntarily. The Respondent had not in fact closed his firm almost two years later, stating that the negotiations to transfer it to Mr Anderson had taken longer than expected. Ms Carpenter submitted that there was a real issue as to whether the Adjudication Panel would have made its decision not to intervene if it had known that when the Respondent stated that he was closing his firm he meant that he was closing it provided he could negotiate a profitable sale of it to someone else.

58.10 Ms Carpenter also referred to the Respondent saying in his witness statement that he could have paid HMRC without the incorrect transfers because he had a loan facility with the Woolwich on which he could have drawn down, he could have sold shares, or he could have used his unplanned borrowing limit of £85,000.00 with Yorkshire Bank. Although it was not necessary for the Applicant to prove a motive for dishonest conduct, Ms Carpenter did not accept that the Respondent could easily have paid his liabilities to HMRC without making the unauthorised client to office transfers. First, if he could easily have paid the money then it was not clear why he allowed the position to get to the point where HMRC had served a statutory demand, and successfully opposed his application to set it aside and had issued a bankruptcy petition. Secondly he was also in dispute with a former employee who had obtained a judgment against him which was unsatisfied. This eventually led to a charge being obtained against his account and his Yorkshire Bank office account being frozen on December 2014, forcing him to open a new HSBC office account. Thirdly and in any event, a dishonest individual might well use client monies to pay his liabilities rather than drawing on a loan which carried interest or selling assets.

Submissions and evidence by the Respondent in respect of the allegation of dishonesty associated with allegation 1.2

58.11 The Respondent's submissions and evidence upon this allegation formed part of his submissions and evidence in respect of allegation 1.2 set out above.

Determination of the Tribunal in respect of the allegation of dishonesty associated with allegation 1.2

58.12 During the course of the hearing the Tribunal had first heard submissions for the Applicant based on the test for dishonesty to be applied in the Tribunal based on the case of Twinsectra. More recently, the test for dishonesty to be applied in Tribunal proceedings had been redefined in the case of Ivey and the Tribunal applied the Ivey test. Dishonesty was alleged in respect of six of the eight transfers. The Respondent had provided evidence which had induced the Applicant to apply successfully to withdraw the allegation of dishonesty in respect of transfers - number 6 and 7 the two transfers in respect of costs relating to Mr D. In respect of the remaining six transfers, the Tribunal looked first at the state of the Respondent's knowledge and belief as to the facts. The Respondent had over 25 years' experience as a solicitor and had built the firm up from small beginnings; he was at the top of its tree and the sole signatory to its client account. He recognised that the buck stopped with him. The Respondent acted repeatedly, justifying himself by saying that he followed a process which was long established and which had previously worked correctly. Although he said he underestimated his wife's role in the administration of the firm he knew that in her absence the office systems were not working as they should and he acted without the financial control information which his wife would normally provide. (He was also operating with temporary supervisors in the absence of an experienced member of staff heading up the immigration and conveyancing teams and some absence on leave of Mrs M's assistant in running the firm's accounts processes.) The Respondent was the firm's COFA which he accepted, with recently qualified accounts and he knew he should ensure compliance. The Tribunal did not accept the Respondent's evidence that in those circumstances he could genuinely have relied on the lists of client matters as sufficient to assure him that bills had been raised or appropriate notification

given to clients. The Tribunal considered that it was impossible that the Respondent did not understand his obligations including that he should not transfer client money to office account by way of costs without raising a bill or otherwise complying with the notification requirements. He signed cheques for transferring money in circumstances where he knew what Rule 17.2 required and that he had not complied with it. As to whether ordinary decent people would consider the Respondent's actions to be dishonest, it was not necessary for the Tribunal to determine the Respondent's motives for making the six transfers but it was clear the firm had had tax issues since 2006; the evidence the Respondent produced showed recurring VAT penalties. The Tribunal determined that the timing of the composite transfers and the HMRC action reaching a peak with bankruptcy proceedings on foot and monies also owing to HMRC outside those proceedings was too coincidental to be unrelated. The Tribunal was not convinced by the Respondent's assurances that he had the tax situation in hand although the figure owed was reducing somewhat. It found the Respondent's evidence to be unreliable on the state of his finances. The Tribunal determined that in taking transfers of client money to office account as he did without raising or ensuring that the firm had raised bills or given the necessary notification to clients, the Respondent's actions would be considered dishonest by ordinary decent people and that the allegation of dishonesty in connection with allegation 1.2 was proved on the evidence to the required standard.

59. **Allegation 1.3 - He [the Respondent] failed, between 1 January 2014 and 11 February 2015, to remedy the breaches of the provisions of the SRA Accounts Rules 2011 specified in paragraphs 1.1 and 1.2 promptly on discovery in breach of Rule 7.1 of the SAR.**

Submissions for the Applicant

59.1 Ms Carpenter submitted that the Respondent failed to remedy breaches of the accounts rules promptly in breach of Rule 7.1. In his Answer to the Rule 5 Statement, the Respondent admitted that due to the firm's records not being up to date breaches were not discovered as promptly as they would usually have been. He said he nevertheless took prompt action when breaches were brought to his attention. He therefore submitted that his admission to allegation 1.5 in its entirety addressed the mischief at which allegation 1.3 was directed. Having regard to the improper payments made to the client Mr A, Ms Carpenter submitted that the Respondent's actions were an example of failure to rectify. The Respondent's Supervisory Note dated 23 December 2014 showed that even if he needed to know more about the payments in order to make rectification by that date, the Respondent knew that the client monies were not held but he did not make repayment for five weeks. Instead he chose to wait and see if Mr A re-paid the money himself. The Respondent should have made the rectification and then sought to obtain the money back from the client to whom he wrote on the same day as the Supervisory Note but in respect of which he received no reply until 19 January 2015. By 31 January 2015, Mr A had not repaid the money and so the Respondent did so.

59.2 More generally in respect of allegation 1.3, Ms Carpenter referred to the Applicant's Further Information document where the transfers were listed along with the dates on which they were corrected. The length of time to rectify ranged from seven weeks in the case of transfer 6 to over four months for transfers 5, 11, 15 and 16. Ms Carpenter

submitted it was clear that the Respondent knew that his accounts were in substantial disarray at the time so this was not a case of not having discovered that incorrect payments had been made. Ms Carpenter also submitted that the Respondent had made the improper payments so he knew about them and if the Tribunal was against her on that point she submitted that the Respondent realised they were improper having regard to the contents of the Supervisory Note. On his own case, the Respondent said that when his wife started on the reconciliations, steps were taken to re-do the relevant lists and money was paid back in June, July and September 2014. Therefore, even on his own case, the Respondent became aware of all the problems with all these April and May transfers from the middle of June 2014 onwards, and yet one could see from the table in the Further Information document that the rectification by transfers back from office to client account went on for several months up until September. Ms Carpenter submitted that was, in any view, a failure to rectify promptly on discovery, and what seemed to have happened was that the Respondent wanted to make further transfers from client to office account in July and September 2014, which were not disputed transfers, and he had attached the documents relating to them. It appeared that he wanted to wait until those transfers could be done before making the rectifications, but that was not acceptable from a compliance point of view. It was similar to the point regarding Mr A; one did not wait for the client to pay back, the solicitor repaid if they had made a mistake. Similarly if one had made transfers that were wrong, the solicitor did not wait until they were due more transfers before paying them back, the solicitor did it immediately for obvious reasons.

Submissions and evidence of the Respondent

59.3 The Respondent admitted allegation 1.3. Relevant to both allegation 1.3 and 1.5 were the following: The Respondent referring to his Supervisory Note and a letter he wrote to Mr A both dated 23 December 2014. The letter referred telephone conversations between the Respondent and Mr A also on that day. The Respondent referred to the four payments by their date. The letter mentioned Mr A calling to request the money and informing the Respondent that the money was held in client account relating to a property in Bury. The letter included:

> "Regrettably I did not check our records and made the payment based upon our conversation and our relationship…"

The Respondent referred to the firm having no option but to pay the money back to client account. The Respondent concluded by asking for a cheque for £60,000. On 19 January 2015, Mr A replied. He said his honest recollection was that the money was available in the client account to send to him. He continued:

> "We have known each other for some 18 years now, we have conducted business worth over one million pounds and certainly it would never be my intention to in any way put you in difficulty for this amount.
>
> I can safely assure you that you have my personal undertaking and also you hold details of all properties that I own which are worth more than 2.2 million pounds so that you know that this sum between us is not significant.

The only reasons I have been so late in getting back to you and you have had to send me a reminder is unfortunately my mother's health is deteriorating…"

Determination of the Tribunal

59.4 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and for and by the Respondent. The Further Information document listed for each of the payments the date on which it was corrected. The timelines were not disputed. The length of time ranged from 7 weeks (transfer 6) to over four months (transfers 5, 11, 15 and 16). The Respondent knew the accounts were in disarray and was the person who made or authorised each of the incorrect payments. The delays in repayment constituted a breach of Rule 7.1. The Tribunal therefore found allegation 1.3 proved on the evidence to the required standard indeed it was admitted.

60. **Allegation 1.4 - He [the Respondent] fabricated a bill of costs purportedly dated 9 May 2014 showing that he was entitled to take monies in settlement of costs in May 2014 when in fact that bill of costs was created in November 2014 in breach of all, alternatively, any of the following:**

1.4.1 Principle 2 of the SRA principles 2011 by failing to act with integrity;
1.4.2 Principle 6 of the Principles by failing to behave in a way that maintains the trust of the public places in him and in the provision of legal services.

Submissions for the Applicant

60.1 Ms Carpenter submitted that in his Answer to the Rule 5 Statement the Respondent denied this allegation which related to the matter of client D. The facts giving rise to allegation 1.4 are set out in the background to this judgment. The Respondent accepted that the bill of costs dated 9 May 2014 was not prepared until about 17 November 2014 and was backdated. However he denied that it was a fabrication or created to deceive. Rather he said that it was created to reflect the reality that the costs were due and had been taken by the firm on 9 May 2014 and on that day the Respondent transferred £31,541.00 from client to office account. No bill of costs or other notification of costs was issued by the firm in that sum prior to the transfer being made. The payment was not recorded on any ledger as at the date it was made or for several months thereafter. For example no payment in that amount from client office account was recorded in the April reconciliation even as an uncleared item even though the April reconciliation was not completed until 8 July 2014. This payment first appeared in the May reconciliation which was completed on 23 September 2014. When the transfer dated 9 May 2014 was eventually recorded in the firm's books on a date between 8 July and 23 September 2014 it was recorded in the miscellaneous one-off ledger as a payment made on 9 May with the narrative "c > error". However the miscellaneous one-off ledger was also written up to record that two receipts from HM of £25,000.00 and £4,000.00 were received on the same date 9 May 2014 to correct most of the error. That was incorrect. In fact no such sum had been transferred from the Respondent on that date. Rather the receipts had been received on 27 and 30 June 2014. At some point between 23 September 2014 (the date of the May 2014 reconciliation on which the £31,541.00 was allocated to the one off ledger) and 20 November 2014 (the date when the June 2014 reconciliation was completed) the

Respondent reallocated £29,000.00 of the £31,541.00 to the D ledger. This was done by reversing the £31,541.00 payment on the miscellaneous one-off ledger; reversing the £29,000.00 receipts on the previous miscellaneous one-off ledger; replacing the 9 May transfer of £31,541.00 on the miscellaneous one-off ledger with a transfer of £2,541.00 on 9 May 2014; writing up the D ledger after the event to record a payment made or 9 May 2014 "£29,000 c>o trans our costs/disbs" leading to a shortage of £29,000.00 on that ledger and to record receipts of £25,000.00 and £4,000.00 on 27 and 30 June respectively correcting that debit balance. As a result of this re-allocation, by the date that the June reconciliation was completed (20 November 2014) £29,000.00 of the £31,541.00 was reallocated to the D ledger by the steps set out above. Ms Carpenter submitted that it seemed likely that the June reconciliation happened on or about 17 November 2014 because on or about that date the Respondent prepared a bill to Mr D purportedly dated 9 May 2014.

60.2 The Respondent admitted that the bill purportedly dated 9 May 2014 was created on or about 17 November 2014 and backdated but he claimed that he was simply seeking to record what had actually happened and denied that he had made an attempt to mislead anyone. The Applicant did not accept the explanation. However, Ms Carpenter submitted that even if the Respondent's explanation were true it would not be a defence to allegation 1.4. On the Respondent's own case, the bill dated 9 May 2014 was only created on 17 November 2014 and backdated. It was therefore a fabricated bill. Further it was submitted that backdating a bill in this manner plainly amounted to a lack of integrity and a failure to behave in a way that maintained the trust of the public and in the provision of legal services. The Respondent's explanation if true was at most mitigation and relevant to his defence of the dishonesty allegation. Ms Carpenter submitted that a solicitor backdating a document was a serious matter which had the capacity to mislead third parties, the clients and the firm's reporting accountants and anyone looking at the file.

<u>Submissions and Evidence of the Respondent including the associated allegation of dishonesty</u>

60.3 The Respondent submitted that allegation 1.4 overlapped with allegation 1.2. The Respondent said that he did not know about the backdated bill for Mr D until he read the intervention report. He spoke to Mr P of the accountants about it; his replacement at the accountants Mr B did not know anything about it. Mr P who had left the accountants by then confirmed to the Respondent that it was as Mrs M described in her Explanatory Statement. He neither typed nor authorised it; the Respondent stated that he did not know the Lawbyte software procedure.

60.4 In evidence, the Respondent stated that he had looked at the allegation with his former professional representatives and challenged the wording; what did 'fabricated' mean in respect of the bill of costs? He submitted that it did not mean that he did no work, that there was no file in existence. He just took money from Mr D whom he knew; who had even given him a reference for the intervention proceedings. The matter went back to the administrative Accounts Rules and how Mrs M did things in conjunction with Mr P and the firm's accountants. She was advised that the notification of a bill occurred when the service was provided as opposed to when the work was completed rather than the technical issue of dating the bill. The bill reflected the contractual point at which it was accepted money was due; the point when the firm notified the

client; this was what they had always been advised. The bill folders were presented to the FIO; the file was there for him to see. The Respondent distinguished it from a situation where someone took money from another person by hoodwinking them. Ms Carpenter clarified that it was no part of the Applicant's case that Mr D was not a real client and that the firm never did any work for him. Allegation 1.4 was that the Respondent created and backdated a bill. There was no bill at the date of the transfer. The Respondent stated that there was nothing sinister whichever way one dealt with it. Nothing like this had ever happened before.

60.5 The Respondent stated in terms of deliberate deception that he appreciated that one must never backdate anything. He referred again to paragraph 38 of his statement quoted above; written notification of costs had been given to Mr D in early May 2014. If Mr D received the bill in November 2014 for the exact same amount of work done at that time would he take umbrage in any way shape or form and say the firm acted improperly against him? This was how the allegation was first put to the Respondent when the intervention report came in; the first time the Respondent looked into the matter. The management control reports showed that the firm had been using the same system for a long time and he referred to a report from 2003 in the hearing bundle. He confirmed that his case was that he created and backdated the bill with no intention to deceive. The firm was not trying to hide anything; the central billing records were there. The Respondent also referred to the email from Mr D of 9 May 2014 informing the Respondent that £31,541 had 'as agreed' been 'transferred to your account' and the Respondent's attendance note of 16 July 2014 recording the Respondent 'Handing him [Mr D] the firm's receipt dated 16 July 2014 confirming his payments to the firm on 23 May 2014 for £2,500.00 and 30 June 2104 for £4,000.00.' The note went on to explain why the firm needed the money. The Respondent stated that the money was paid back as soon as he found out that the money was not there; Mr D came in and it was all sorted out. As soon as Mrs M said it was not right it was immediately sorted out as it was the Respondent's matter. There was an event log from the bank showing the debits and credits for £4,000 on 30 June 2014 and of £25,000 and £10,000 on 27 June 2014. What happened was confirmed in Radcliffes' reply letter dated 13 March 2017 to the Applicant's questions in its letter of 23 February 2017 which set out that the Respondent 'would have had the current part of the file in front of him relating to planned meetings with German lawyers.

60.6 The Respondent stated in cross examination that it would be dishonest to falsify a document if it was deliberately to deceive. He was not recording something in the D bill that had not happened. It was dishonest to backdate to deceive a client or the court or people generally but as long as the client was aware and it was not contrary to specific law the Respondent did not think it was dishonest. Nor was it dishonest if all parties were aware. As to whether the bill could mislead a regulator who came to look at files, the Respondent stated that neither he nor anyone else in the firm was asked about that bill; two yellow ring binders were in plain sight. The FIO was due to carry out a recorded interview with the Respondent but it was completely forgotten and the Respondent received the intervention notice. It would have been wrong to take the bill out of the central bill folder and hidden it but it was there for regulator to see; the FIO could ask questions. The people who created the document were there.

60.7 The Respondent stated that he did not create the bill. It was done as part of the rectification process. This activity had been done previously where there was this kind of difficulty. The Respondent did not know that this practice had been followed. The Respondent stated that he agreed with hindsight that it should have been properly flagged up that the bill was for service in May 2014. The Respondent later stated that service had been provided at Mr D's request in May and June 2014. The Respondent was only told of the bill when the intervention report was received. It was explained in Radcliffes' letters of 7 May and 24 July 2015. The bill bore his reference but he did not type up bills; anyone of three or four people could have typed it; two were mentioned in Mr T's statement (albeit not in connection with this bill). Apart from the date it would have been created in accordance with the process Mr T and Mrs M described. At paragraph 15 of her Explanatory Statement she said:

> "It is important that I explain the dating of the [D] bill. The reason for this was that whilst Mr [D] had been sent a statement of account and a written notification of costs on 30 April 2014, from the papers I had received I could not see that an invoice had been done to reflect the actual payment made as opposed to the statement of account and notification of costs. Therefore I advised [Mr T] to do the bill to send to Mr [D]. It had to be dated 9 May 2014 as from a posting point of view to date it in November when we were closing June month end would have resulted in the office account ledger being in credit from the date the monies where (sic) received to the date of the closure of the June month and which would have created a different set of enquiries as to why the office account was in credit for so long. There was no other sinister reason for this. The bill was also in number order as bill number 14108."

The Respondent pointed out that at paragraph 14, Mrs M stated:

> "Thereafter it will be seen that there were no postings on the 02500 ledger so far as the May transfers were concerned after the [D] transactions."

The Respondent stated that Mrs M was placing reliance on the notification to the client in May 2014. It was obvious for anyone to see that the bill was due and payable and from the point of view of posting she dated it to November. Mr P of the accountants confirmed the first time the Respondent knew of it was the intervention report. As to whether it could deceive a regulator or accountant, the Respondent stated that the accountants were the ones who advised and trained his wife and it was acceptable if the client was aware. Ms Carpenter asked if he suggested they trained his wife to backdate bills of cost. The Respondent stated that they advised her about the systems they created and that they satisfied the requirements of the organisation without breaking the rules of compliance. Mr D knew about the bill but it was after the notification point. The Respondent questioned whom he would be trying to deceive by giving Mr D a backdated bill. Ms Carpenter suggested this would be anyone who looked in the file for a bill or notification. The Respondent responded that the 29 April 2014 letter was notification. If the Applicant had asked him to locate D's bill he would have looked for it at 9 May 2014 and found it in November 2014 and would have gone back to Mrs M and Mr T and asked why and the same explanation would be given to the Applicant. The bill would stick out like a sore thumb; the central bill file was split up by month. The Respondent stated that Rule 17.2 was fully complied with; the bill reflected the statement of account.

60.8 The Tribunal asked for clarification regarding the bank reconciliation cashbook report where entries for £2,000 and £4,000 were described as "rev 'from HM' error" on 9 May 2014. The Respondent stated he did not get involved with the narrative or how it was done. He referred the Tribunal to what Mrs M had said in her Explanatory Statement about the June reconciliation at paragraph 13:

> "So far as the June reconciliation is concerned this was delayed until November 2014 due to my ill health… [The Respondent] had to be out of the office on a daily basis…There was only one real issue which was a legacy of the May transfers. On the 02500 ledger [the Respondent] authorised a transfer of £31,541.00 Whilst I was reviewing the papers [Mr T] held (sic) left for me whilst on paternity leave I could not find this sum anywhere on the bank statement I had been supplied for May. I spoke to [the Respondent], told him that this sum was not there, this was on 27 June 2014. On 30 June 2014 I was informed that the following payments had been made, namely £25,000.00 and £4,000.00 ..."

The Respondent emphasised the use of the word 'had' in the last sentence of the quote above regarding the two payments. She continued:

> "however, at that time this did not reconcile with the actual transfer and because the rectification client payment had been made in June and my anxiety to complete the May month end I did inform [Mr T] to post the sum of £25,000.00 and £4,000.00 onto the 02500 ledger. It was only at this point that the sum of £2,500.00 paid by Mr [D] on 23 May 2014 was married to the payments of £25,000.00 and £4,000.00 on the 02500 ledger. This then allowed June to be closed."

61. **Allegation of Dishonesty associated with allegation 1.4**

Submissions for the Applicant

61.1 In respect of the allegation of dishonesty relating to allegation 1.4, Ms Carpenter's initial submissions were based on Twinsectra. She submitted that the objective test was satisfied; an honest solicitor did not backdate a bill whatever the reason. An honest person would regard such conduct as misleading and dishonest. The Respondent could have left the matter as it was without a bill which would have been a breach of the Accounts Rules or if he created a bill later he should have used the correct date and sent a letter to the client explaining that the bill was one that he should have issued when the monies had been transferred. She submitted that the subjective test was also satisfied. The Respondent as an experienced solicitor must have known that an honest solicitor did not backdate bill of costs and create a bill in November 2014 and backdate it to May 2014; it was not an honest thing to do. Ms Carpenter submitted that whether or not the Respondent was found to be dishonest in what he had done would turn on his evidence about why he thought it was acceptable to give the bill the incorrect date. Ms Carpenter submitted as a final point that the Respondent said in his witness statement that prior to the problems at the firm in 2014 everything had been fine but this was not accepted because there had been two qualified accountant's reports which were before the Tribunal in which issues had been identified. The report for the year ending 31 January 2013 dated 23 July 2013

gave reasons for the qualification including breaches of Rule 17.2 where there was no bill for transfers. (This was quoted during the Respondent's oral evidence.) There were similar although probably fewer issues on the next year's report for the year ending 31 January 2014 which was also qualified and which cited a breach of Rule 17.2 in respect of funds being transferred out of the client account into the office account on 6 September 2013 and the bill not being raised until 17 September 2013.

Submissions and evidence by the Respondent in respect of the allegation of dishonesty associated with allegation 1.4

61.2 The Respondent's submissions and evidence upon this allegation formed part of his submissions and evidence in respect of allegation 1.4 set out above.

Determination of the Tribunal

61.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and for and by the Respondent. It was alleged that the Respondent fabricated the bill for Mr D backdating it from November to May 2014. The Respondent denied that he had done it or indeed had known about it until he received the intervention report. In his Amended Answer the Respondent said:

> "The Respondent took steps to correct his records and rectify all breaches prior to any SRA involvement as explained in correspondence. It is submitted that allegation 1.4 actually reflects a genuine although somewhat misguided attempt to accurately record events and was not a fabrication of a bill of costs as alleged…"

The Tribunal found that the bill was fabricated and was not an accurate document because the date was incorrect but Mrs M stated months later that she instructed Mr T to do it albeit her Explanatory Statement did not have a statement of truth. There was no independent evidence that the Respondent had prepared the bill and backdated it. There was the evidence of Mrs M that another person did it and the Respondent's evidence was consistent with that. The Tribunal could not therefore find proved to the higher standard that is to be sure that the Respondent had prepared the bill and the allegation was pleaded in terms that the Respondent had done it himself. The facts were not made out and so the alleged breach of Principles fell away. The Tribunal found allegation 1.4 not proved on the evidence to the required standard. The Tribunal having found allegation 1.4 not proved on the evidence, the associated allegation of dishonesty did not therefore fall to be considered.

62. **Allegation 1.5 - He [the Respondent] failed to keep accounts records properly written up between 14 April 2014 and 16 October 2014 in that not all payments made out of client bank account were recorded within the firm's books of account (ledgers and cash book) at the time the payments were made and thereby breached all, alternatively any of the following:**

1.5.1 Rule 29.1 by failing at all times to keep accounting records properly written up;

1.5.2 Rule 29.2 by failing to appropriately record all dealings with client money;

1.5.3 Rule 29.9 by failing to ensure the balance on each client ledger account was always shown, or was readily ascertainable, from the records kept in accordance with Rules 29.2 and 29.3.

Submissions for the Applicant

62.1 Ms Carpenter referred the Tribunal to her skeleton dated 7 March 2017 where she submitted that the Respondent admitted that he failed to keep accounts properly written up between 14 April 2014 and 16 October 2014 in that not all payments out of client account were recorded within the firm's books of accounts at the time the payments were made in breach of Rules 29.1, 29.2 and 29.9. It was submitted that the allegation was serious because on 18 of the 24 improper transfers (payments 4 -21) the Respondent:

- Failed properly to record the transfers on the firm's books of account as regards the Mr A, miscellaneous one- off ledger and Mr D matters

- Further, when the transfers were eventually recorded in the ledgers, on the miscellaneous one-off ledger (i.e. incorrect payments 4 to 10) the correcting credits were incorrectly posted on the same date as, or prior to, the debits, such that the books of account masked the debit balances. The Respondent stated that this was a feature of the accounting software which the firm was using; it would not allow a debit balance to be posted to a ledger unless the corresponding credit balance was also posted to the ledger at the same time, and further that where a reconciliation month end was still open, an office to client transfer after that month end could not be posted to the ledger without affecting other reports and therefore the credit balance had to be posted to the ledger within the month being reconciled. It seemed from the witness statements of Ms K and Mr B that the ledgers for Mr A and Mr D showed debit balances because those ledgers were written up so late (after 31 January 2015 in the case of Mr A and in November 2014 in the case of Mr D) that the correcting payments had already been made by the date the ledgers were written up and the only open reconciliations by the date the ledgers were written up were for the month of the correcting payment. However the software point did not explain why the Respondent did not ensure that the reconciliations were properly prepared, if necessary by manual amendments by hand to the computer-generated document, to record the fact that the credits were false credits and therefore properly to record the debit balances that existed on the miscellaneous one-off ledger.

Ms Carpenter submitted that the results of the above failures were that the Respondent's books of accounts were wholly unreliable. An entry on the ledger could not be relied upon as correct without checking the bank statements. As a result of the numerous errors in the books, the FIO was unable to express any view as to the firm's ability to meet its liability to clients. All that the FIO was able to do was to calculate a minimum cash shortage of £35,412.50 as at the inspection date of 31 December 2014, which was replaced by 11 February 2015.

Submissions by the Respondent

62.2 The Respondent admitted allegation 1.5. Regarding the payments to Mr A, the Respondent submitted that his wife's statement explained why the first three transfers were not written up until between 30 January 2015 and 3 February 2015.

Determination of the Tribunal

62.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and for and by the Respondent. The Applicant alleged breaches of the Accounts Rules as follows:

> **"29.1**
> You must at all times keep accounting records properly written up to show your dealings with:
> **(a)**
> client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and
> **(b)**
> any office money relating to any client or trust matter.
> **29.2**
> All dealings with client money must be appropriately recorded:
> **(a)**
> in a client cash account or in a record of sums transferred from one client ledger account to another; and
> **(b)**
> on the client side of a separate client ledger account for each client (or other person, or trust).
> No other entries may be made in these records.
>
> **29.9**
> The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept in accordance with rule 29.2 and 29.3 above."

The Tribunal determined that there could be no doubt on the evidence that the Respondent failed to keep accounts records properly written up during the period cited in allegation 1.5. This resulted in breaches of Rules 29.1 and 29.2 as 29.9 as pleaded. The Tribunal found allegation 1.5 proved on the evidence to the required standard indeed it was admitted.

63. **Allegation 1.6 - He [the Respondent] failed to carry out client's bank account reconciliations every 5 weeks between January 2014 and December 2014 in breach of Rule 29.12 of the SAR.**

Submissions for the Applicant

63.1 Ms Carpenter referred the Tribunal to her skeleton which set out that the Respondent admitted that he failed to carry out client reconciliations every five weeks between January 2014 and December 2015 in breach of Rule 29.12 of the SAR. Again it was

submitted that this breach was serious as the reconciliations were substantially delayed:

- the March 2014 reconciliation was not completed until 10 June 2014
- the April 2014 reconciliation was not completed until 8 July 2014
- the May 2014 reconciliation was not completed until 23 September 2014
- the June 2014 reconciliation was not completed until 20 November 2014
- the July 2014 reconciliation was not completed until 12 December 2014
- the August 2014 reconciliation was not completed until 17 December 2014
- the September 2014 reconciliation was not completed until 12 January 2015
- the October 2014 reconciliation was not completed until 20 January 2015
- the November 2014 reconciliation was not completed until 30 January 2015
- the December 2014 reconciliation was not completed until 3 February 2015.

Submissions for the Respondent

63.2 The Respondent admitted allegation 1.6 but submitted regarding reconciliations and how they were to be presented that the Rule did not specify how to present unreconciled items on the ledger; just that it must be capable of being understood. He referred the Tribunal to Mrs M's post-it notes and what he had previously been advised and his current submissions; what was unreconciled was shown; he was not trying to hide it. It was in handwriting not on a loose post-it note.

Determination of the Tribunal

63.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and for and by the Respondent. The Applicant alleged a breach of the Accounts Rules as follows:

> "**29.12**
> *You* must, at least once every five weeks:
>
> **(a)**
> compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and
>
> **(b)**
> as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also
>
> **(c)**
> prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."

The Tribunal found allegation 1.6 proved on the evidence to the required standard, indeed it was admitted.

64. **Allegation 2 - Dishonesty was alleged against the Respondent with respect to allegations 1.2 [as refined during the course of hearing] and 1.4 but dishonesty was not an essential ingredient to prove those allegations.**

64.1 The allegations of dishonesty are dealt with under the associated allegations 1.2 and 1.4 above

Previous Disciplinary Matters

65. None.

Mitigation

66. At this point the Respondent indicated that he believed the outcome of the hearing to be inevitable in terms of sanction as dishonesty had been found proved and he wished to leave the Tribunal. He was referred to the Tribunal's Guidance Note on Sanctions (December 2018) and to the recent cases of SRA v James, MacGregor and Naylor [2018] EWHC 3058 (Admin) on the point of exceptional circumstances being raised where there is a finding of dishonesty all of which were referred to in the Tribunal's Guidance. The Respondent indicated that he would read the Guidance and then offer mitigation and there was a short adjournment to allow him to do so.

Application by the Respondent to adjourn the Tribunal's consideration of Sanction

67. The Respondent submitted that it would appear that the exceptional circumstances point applied to him in that at the time of the conduct he had been affected by physical and mental issues. The Respondent submitted that he had been consulting a doctor and had medical reports but he could not put them before the Tribunal at present. They referred to his mental health and what he was going through at the material time. It had been alluded to in a medical report for this hearing. The Respondent referred to the effects of medication which he had informed the Tribunal he was taking from the commencement of the hearing in March 2017 and his reaction in stressful situations. He stated that he would like the opportunity to present a medical report to the Tribunal. He submitted that the circumstance were exceptional because of the impact upon him of the health problems suffered by close family members. He had never really looked at himself and how this affected him; at what his reaction was to stress. The Tribunal reminded the Respondent that the Guidance Note referred to mental or physical ill health at the time matters arose. Given the importance of the decision which the Tribunal was to make the Respondent asked for time to obtain a medical report about how he was affected at that time. The Tribunal expressed its concern about the relevance of a report prepared in the present about earlier events. The Respondent submitted that he did not agree with the Tribunal's decision but he respected it. He referred to his own medical problems and that he was awaiting a medical appointment. He submitted that he had been suffering stress without realising it. He did not know that prior to his ill health diagnosis. He was ignoring situations where he was under stress. He had wanted to get the proceedings

out of the way on the last occasion although his doctors said that he was to stay away from anything that caused him stress.

Submissions for the Applicant in respect of the application to adjourn

68. Ms Carpenter submitted that the Respondent had not addressed the test for exceptional circumstances as set out in the James case. The Tribunal had to focus on the nature and extent of the dishonesty and the Respondent's culpability. The dishonesty which had been found proved covered the period 14 April 2014 to 21 May 2014 – five weeks. The Respondent suggested that he be given time to obtain a medical report to see if he was suffering from a mental condition in April and May 2014. Mr Carpenter submitted that the Respondent should have obtained the report before now and that it would not assist the Tribunal regarding his state of mind five years ago. She reminded the Tribunal that its findings on exceptional circumstances in the James, Naylor and MacGregor cases had all been overturned on ex post facto reports.

Determination of the Tribunal in respect of the Respondent's application to adjourn consideration of sanction

69. The Tribunal considered the Respondent's application to adjourn its determination of sanction to permit him to obtain a medical report. The substantive hearing had commenced over two years ago and the Respondent had had ample opportunity to obtain such a report if he wished to do so. Over that time the Tribunal had seen medical evidence about the Respondent's ongoing health problems and he had been given numerous opportunities to provide any additional medical evidence. The Respondent informed the Tribunal that he wanted to have these proceedings concluded but his conduct of the hearing had not been consistent with that. The Tribunal did not consider that it would be in the interests of justice or the parties to adjourn the proceedings yet again and refused the Respondent's application to adjourn.

Sanction

70. The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation the Respondent had offered and testimonials which the Respondent submitted to the Applicant with Radcliffes' letter of 24 April 2015 over a year before these proceedings began but to which he referred in his Answer. A range of allegations had been found proved including dishonesty in respect of client account monies. The Tribunal determined that it would impose one sanction for all the misconduct. The Tribunal reviewed the seriousness of the misconduct found proved. As to culpability, the Respondent's motivation for his dishonesty had been self-interest as he was the only beneficiary from the costs taken. The dishonesty had not been a one-off incident but a systemic course of conduct. The Respondent had direct control of and responsibility for the circumstances giving rise to all the misconduct; he owned the firm and was the sole signatory to client and office accounts. He said on numerous occasions in giving evidence that the buck stopped with him. He had been his firm's COFA which emphasised his personal culpability in addition to his failure to live up to the trustworthiness he was expected to display as a solicitor. He was a very experienced solicitor of 26 years. Regarding Mr A, the Respondent had acted to assist

one friend and longstanding client over the interests of all his clients. The Respondent had betrayed the trust of the clients and the public. The Tribunal considered the harm which the Respondent's actions had caused. There had been significant potential harm to the reputation of the profession. The Respondent had disregarded the sanctity of client money and put it at risk on multiple occasions. Substantial amounts of client money had been missing for long periods of time by way of shortages. The extent of the harm that might reasonably have been foreseen to be caused by the misconduct was considerable. Also there were aggravating factors. The Respondent had been found dishonest. His actions had been deliberate and continued over a period of time. He ought to reasonably to have known that his misconduct was in material breach of his obligations to protect the public and the reputation of the legal profession particularly as he was the COFA. As a general mitigating factor he had not appeared before the Tribunal before. There had been some making good of shortages but one of the allegations found proved was that the Respondent had not done this promptly. He clearly lacked genuine insight; the Respondent frequently said in giving evidence that the buck stopped with him and that he was ultimately responsible but that did not inhibit him in seeking to attribute blame and responsibility to many others. He displayed a lack of understanding of the need to protect client money and his interpretation of the governing rules was inconsistent. In giving evidence the Respondent frequently failed to address the question he was being asked although the Tribunal had made every effort to help him focus on the allegations. He admitted the lesser allegations but made no admissions of the more serious allegations which were found proved. The Guidance Note set out:

> "The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin))."

The Guidance also stated that the dishonest misappropriation of client money would invariably lead to strike off. The Tribunal however considered whether there were any exceptional circumstances. The Guidance Note stated:

> "52. In considering what amounts to exceptional circumstances: relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others." (Sharma above). The exceptional circumstances must relate in some way to the dishonesty (James above)
>
> 53. The principal focus in determining whether exceptional circumstances exist is on the nature and extent of the dishonesty and the degree of culpability (Sharma and R (Solicitors Regulation Authority) v Imran [2015] EWHC 2572 (Admin)).
>
> 54. As a matter of principle nothing is excluded as being relevant to the evaluation, which could therefore include personal mitigation**.** In each case the Tribunal must when evaluating whether there are exceptional circumstances justifying a lesser sanction, focus on the critical questions of the nature and

> extent of the dishonesty and degree of culpability and engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as personal mitigation, health issues and working conditions on the other. (James above)**.**
>
> 55. Where dishonesty has been found mental health issues, specifically stress and depression suffered by the solicitor as a consequence of work conditions or other matters are unlikely without more to amount to exceptional circumstances:
>
> Pressure of work or of working conditions cannot ever justify dishonesty by a solicitor….” per Flaux LJ in James (above)”

The Tribunal acknowledged that the time when the misconduct was committed had been a difficult one for the Respondent personally because of the very serious health issues of a close family member and a bereavement. However a solicitor with that many years’ experience and a considerable size firm should have the means, mechanisms and ability to pass on some of the responsibilities to others subject to proper oversight, A solicitor was expected to behave with honesty and integrity whatever their personal difficulties and the Tribunal did not consider that this case met the test for exceptional circumstances such that any other sanction than strike off would be appropriate.

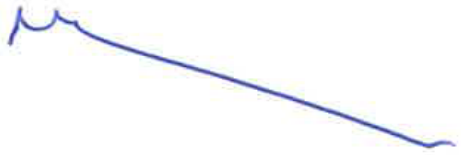
Costs

71. For the Applicant, Ms Carpenter applied for costs in the sum of £58,834.06 broken down between the various hearings. She submitted that in 2017, the Respondent had been given directions about how to submit evidence about his financial means if he wished to raise affordability as an issue and had not done so to date. The Respondent informed the Tribunal that he had received money from the sale of his practice by way of monthly instalments of £4,000 per month. He had sold it for £172,500 in total. He was still working on the firm’s book debts. He might have an issue with collecting them if he was struck off. Some of these debts were very big. Significant sums were owed. He had had a consultancy until these matters arose. The debts far exceeded the Applicant’s costs of these proceedings. The Respondent stated that he owned a block of six flats and another property. He had lost tenants because of Brexit because his tenants were Europeans. The flats were currently producing income of around £12,000 to £13,000 a month and were worth around £400,000. The Tribunal summarily assessed costs. The costs overall appeared reasonable and proportionate bearing in mind the length of the matter; the substantive hearing had consumed nine days and there had been numerous CMHs. The Tribunal determined that it would make a reduction in the costs to be awarded to the Applicant to reflect the fact that allegation 1.4 had not been found proved. Although it had been reasonably brought, it had led to additional cross examination. The Tribunal assessed costs at £55,000. The Tribunal did not consider it necessary to reduce the costs award on ground of affordability as the Respondent had considerable capital assets.

Statement of Full Order

72. The Tribunal Ordered that the Respondent, Hanif Mohammed, 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 £55,000.00.

Dated this 3rd day of October 2019
On behalf of the Tribunal



R. Nicholas
Chairman