SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11596-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROSE ELIZABETH EGARR First Respondent

ANDREW WALSH Second Respondent

Before:

Mr A. Ghosh (in the chair)
Mr M. N. Millin
Mr G. Fisher

Date of Hearing: 4 July 2017

Appearances

Ms Katrina Wingfield, Solicitor of Penningtons Manches LLP of 125 Wood Street, London, EC2V 7AW instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The First Respondent did not appear and was not represented.

The Second Respondent appeared and was assisted by Ms Joanne Falencka, Solicitor.

JUDGMENT

Allegations

1. The allegations against the First Respondent and the Second Respondent were as follows:

The First Respondent

1.1 By her own admission, she paid or caused to be paid to a client of her firm, MM, a sum of between approximately £80,000.00 and approximately £100,000.00 from funds held on her firm's general client account to which she knew MM had no entitlement. She thereby acted in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("SRA AR") and Principles 2, 4, and 6 of the SRA Principles 2011 ("Principles").

1.2 There existed a shortfall on the firm's general client account of at least £69,990.00 as at 21 April 2015. She thereby breached Rule 20.6 of the SRA AR, and Principles 6 and 10.

1.3 On 14 April 2015 she attempted to mislead the SRA Forensic Investigation Officer by falsely stating that:

1.3.1 she was unaware of any misuse of client funds at her firm; and

1.3.2 she had not utilised for her own purposes any of the funds which had been improperly withdrawn from client account.

She thereby breached Principles 2, 6 and 7.

1.4 She failed to ensure that proper accounting records were kept showing accurately the position with regard to the money held for each client and trust. She thereby breached Rule 1.2(f) of the SRA AR and Principles 6 and 10.

1.5 She failed to ensure that, after January 2015, client account reconciliations were undertaken every five weeks. She thereby acted in breach of Rule 29.12 of the SRA AR, and Principles 6 and 10.

1.6 She failed to comply with conditions imposed on her practising certificate by an SRA Adjudicator on 25 July 2014, in that:

1.6.1 from 31 January 2015, she was the sole signatory on her firm's bank accounts and had sole responsibility for those accounts; and

1.6.2 she failed to undertake a course on the requirements of the SRA Handbook within six months of the Adjudicator's decision or at all.

She thereby acted in breach of Principle 7.

1.7 She failed to ensure that:

1.7.1 after 23 May 2014, her firm had an approved Compliance Officer for Legal Practice ("COLP"); and

1.7.2 after 31 January 2015, her firm had an approved Compliance Officer for Finance and Administration ("COFA").

She thereby acted in breach of Rule 8.5 of the SRA Authorisation Rules 2011 and Principle 7.

1.8 After 13 February 2015, she practised as a sole practitioner without authorisation from the SRA, in breach of Rule 10.1 of the SRA Practice Framework Rules 2011 and Principle 7.

1.9 She failed to co-operate with the SRA in its investigation into her misconduct following the SRA's intervention into her firm. She thereby acted in breach of Principle 7 and Outcome 10.6 of the SRA Code of Conduct 2011.

The Second Respondent

1.10 He carried out withdrawals of funds from client account in the knowledge that those funds would be loaned to someone who had no entitlement to them, namely MM. He thereby acted in breach of Rule 20.1 of the SRA AR, and Principles 2, 6 and 10.

1.11 He failed to keep proper accounting records showing accurately the position with regard to the money held for each client and trust. He thereby breached Rule 1.2(f) of the SRA AR and Principles 6 and 10.

1.12 Notwithstanding that he was the firm's COFA, he failed to report to the SRA promptly or at all:

1.12.1 the improper withdrawals of client funds described at allegation 1.10 above; and

1.12.2 the fact that the firm's books of account were not in order.

He thereby breached Principles 2, 6, and 7, and failed to achieve Outcomes 10.1 and 10.4.

2. It was further alleged that the First Respondent's conduct in respect of allegations 1.1 and 1.3 was dishonest. However, dishonesty was not an essential ingredient of either allegation, and it was open to the Tribunal to find either or both of the allegations proved without making a finding of dishonesty.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 6 January 2017 with Appendices
- Bundle of correspondence with the First Respondent's non-legal representative from 2 April 2017 to 29 June 2017 with attachments where appropriate
- Extracts from Rules and Principles relied upon by the Applicant
- Responsibilities of managers, COLPs and COFAs issued by the Applicant
- Extract from Solicitors Act 1974, Part II Professional Practice, Conduct and Discipline of Solicitors and Clerks: Practice Rules
- Decision of Adjudicator in respect of the Second Respondent dated 13 July 2016
- Statement of Applicant's costs for hearing 4-5 July 2017

First Respondent

- None

Second Respondent

- Response by the Second Respondent to the Rule 5 Statement
- Redacted version of Second Respondent's Statement of Agreed Facts
- Letter from the Second Respondent's spouse dated 4 July 2017
- Letter from Blackpool Teaching Hospitals dated 21 May 2014
- Document from the Second Respondent's GP surgery detailing medication

Preliminary Issues

Applicant's application to proceed in the absence of the First Respondent

4. For the Applicant, Ms Wingfield made an application to the Tribunal that it should proceed in the absence of the First Respondent. She directed the Tribunal's attention to medical issues raised in respect of the First Respondent at two Case Management Hearings ("CMHs") which had taken place on 27 April 2017 and 26 June 2017 respectively. The Tribunal had received a letter dated 2 April 2017 from a third party writing on behalf the First Respondent from the First Respondent's address informing the Tribunal that she was seriously ill, was awaiting heart surgery and was not well enough to deal with the matter. The letter attached copies of what were described as "recent Fit Notes" from a GP surgery dated 17 January and 2 March 2017. A further letter dated 18 April 2017 from the First Respondent's representative stated that she wished to rely on these notes and was unlikely to be well enough to deal with the matter as she was "still awaiting heart surgery and as a consequence of her existing chronic respiratory condition is not receiving medication for the heart condition and is at serious risk of suffering further heart attacks." At the CMH on 27 April 2017, the Tribunal gave directions including that the First Respondent was to file and serve by 4 p.m. on 8 June 2017 a detailed medical report. The Tribunal set out at length the requirements for that report. It was to cover her current medical condition(s) and prognosis, whether she was currently fit to deal with the Tribunal proceedings against her, including appearing before the Tribunal to give evidence in her own defence and if she was not currently fit to deal with these proceedings when she was likely to be fit to deal with them. The direction went on to require information be provided about

medical treatment. On 12 May 2017, a third party wrote on the First Respondent's behalf to the Tribunal enclosing a further Fit Note covering the period 4 May 2017 to 29 June 2017. The letter stated that she had "recently suffered what was stated to be by one doctor "a catastrophic heart-attack and at risk of suffering another". It also reported that another doctor had stated that she was "at risk of sudden death". The letter continued:

> "A prognosis is not available as to when she will be well enough to deal with this matter. In the circumstances should you proceed with this issue without her being certified well enough by her doctors to deal with it, then, a formal complaint will be made and if necessary referred to the Court. As previously stated copies of further Fit Notes will be sent to you when received otherwise no further correspondence will be entered into until [the First Respondent] is certified well enough to deal with the matter."

On 26 June 2017 at the second CMH, the Tribunal determined that the medical evidence did not meet the criteria set out in the Tribunal's direction of 27 April 2017 or in the Tribunal's Policy and Practice Note on Adjournments. The Tribunal was therefore not prepared to vacate the 4 July 2017 hearing in respect of either Respondent. It would be a matter for the First Respondent what, if any, application to make on that date and for the Tribunal hearing the matter to decide how to proceed at that stage.

5. Ms Wingfield submitted that the First Respondent had not complied with the direction to provide the detailed medical report. She was aware of the hearing and had chosen not to attend and had provided no medical evidence of her inability to do so. The Second Respondent was present and wished to have the matter disposed of. Ms Wingfield referred to the authorities relating to whether a Tribunal should proceed in the absence of a respondent; the cases of R v Hayward, Jones and Purvis [2001] QB 862, CA and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 were accordingly considered by the Tribunal

6. The Tribunal carefully considered the application to proceed in the First Respondent's absence. It had regard to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rule 2007, which provided:

> "If the Tribunal is satisfied that notice of hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

The Tribunal also bore in mind that the authorities made it clear that the discretion to proceed had to be exercised with great care. The Tribunal was satisfied that the First Respondent had been properly served with the proceedings and was aware of the date of the hearing. It also bore in mind that she was unrepresented. It had to be fair both to the First Respondent and the other parties, the Applicant and the Second Respondent. It had been made clear to the First Respondent by means of the Memoranda of the two CMHs that the medical evidence which she provided was not sufficient to satisfy the Tribunal's requirements for a successful adjournment application and detailed directions had been made as to what medical evidence she

would have to provide if such an application were to succeed. In those circumstances the Tribunal determined that the First Respondent had voluntarily absented herself from the proceedings. There was no indication that adjourning the proceedings would result in the First Respondent either attending or providing the requisite medical evidence. The Tribunal decided that it would be appropriate to proceed but it would bear in mind its duty to ensure that the trial was as fair as the circumstances permitted and that that it must take reasonable steps to expose weaknesses in the Applicant's case and make such points on behalf of the First Respondent as the evidence permitted.

Application by the Second Respondent for severance of the allegations against him

7. The Second Respondent submitted that he wanted it recognised that he had respected the proceedings and cooperated with the Applicant. He had responded to the Rule 5 Statement and had tried to achieve a Statement of Agreed Facts and Indicated Outcome. He desperately needed the proceedings to come to an end. He had found them hard to deal with and stressful. He wanted the allegations against him to be severed and for the proceedings to go ahead at this hearing in respect of him. The Tribunal asked for clarification of the reasons for his application including the advantages or disadvantages of the Tribunal proceeding without agreeing his application. The Second Respondent submitted that he felt there was a clear distinction between the actions and non-actions of the First Respondent and the evidence he provided to the Tribunal. He indicated that his application might reflect his lack of understanding of the process.

8. Ms Wingfield submitted that where the Tribunal had decided to proceed against the First Respondent it was far more satisfactory to hear the proceedings as a whole. She appreciated that the application had been somewhat protracted but this was a feature of non-engagement by the First Respondent. Ms Wingfield hoped that it might be possible to deal with the matter in one day. If severance were to be granted there would have to be two separate hearings before the Tribunal based on the same factual background. It might be that this division of the Tribunal would have to recuse itself in respect of the second hearing.

9. The Tribunal considered the submissions of the Second Respondent and for the Applicant. It had decided to proceed in the absence of the First Respondent. All the allegations arose out of a set of common facts which it considered were inextricably linked. The Tribunal concluded that it would increase costs if the matter proceeded by way of two separate hearings. If the matter proceeded against both Respondents at this hearing the Second Respondent would achieve what he wanted which was to have the matter resolved now. The Tribunal did not consider that it was in the public interest for there to be further delay or for the Applicant to bear the additional costs of two hearings. It could not see that the Second Respondent was in any way prejudiced by the allegations being heard together, indeed it felt that it was to his advantage for the matter to be dealt with expeditiously. Even if the Tribunal were to grant his application for severance, the Tribunal would have to hear the bulk of the prosecution case in order to determine the allegations against him. Furthermore there might be points made in respect of the First Respondent that he would want to comment on and if the allegations against him were severed he would be deprived of the opportunity to

do that. Accordingly the Tribunal dismissed the Second Respondent's application for severance of the allegations against him; that is allegations 1.10, 1.11 and 1.12.

Factual Background

10. The First Respondent was born in 1957 and was admitted to the Roll in 1984. She did not hold a current practising certificate.

11. The Second Respondent was an un-admitted person. He was born in 1974.

12. At the material times, the First Respondent was practising as the owner of, and a manager at, Arthur Smiths Solicitors of Wigan ("the firm"), and the Second Respondent was employed as the firm's accounts manager and COFA.

13. The Second Respondent worked in the firm from June 2013. He resigned from the firm with effect from 31 January 2015.

14. Following an inspection of the books of account and other documents of the firm, a Forensic Investigation Officer of the Applicant, Ms Lisa Bridges ("the IO") produced an interim Forensic Investigation Report dated 21 April 2015 ("the interim FI Report").

15. On 30 April 2015, an Adjudication Panel of the Applicant resolved to intervene into the firm on the basis of the information set out in the interim FI Report. The IO subsequently produced a final Forensic Investigation Report dated 5 November 2015 ("the final FI Report") to which the interim report was exhibited.

Client Account shortfall caused by improper withdrawals from Client Account – Allegations 1.1 and 1.2

16. In the interim FI Report, the IO was unable to quantify with certainty the shortfall which existed on client account at that time, due to various issues with the firm's accounts including:

- client account reconciliations had not been undertaken since January 2015 (the IO's inspection had commenced on 14 April 2015);
- five client ledgers had debit balances, which the First Respondent told IO had been caused by 'posting errors';
- the January 2015 reconciliation showed 51 matters which had an office account credit balance, which together totalled £65,778.06. The First Respondent told the IO these credit balances had been caused by costs being posted and transferred to office account twice, or where costs had been transferred without bills having been raised.

17. The IO identified a minimum shortfall of £69,990.00.

Causes of shortfall

18. Whilst preparing the final FI Report, the IO reviewed the firm's bank statements and identified that between 14 October 2014 and 7 April 2015 a number of unallocated 'round sum' client to office transfers (including the ten shown on the January 2015 reconciliation), followed by payments out of office account which appeared to have been made out of those client funds. A schedule of those payments showed that:

- £47,871.50 was paid to a client MM or his associates;
- £85,438.43 was paid to 'PF' (the firm's outsourced payroll service provider); and
- £7,950.00 was paid to a bank account in the name of the First Respondent herself.

19. However, because:

- funds transferred from client into office account were, in some cases, mixed with the money already in office account;
- payments subsequently made out of office account to the three parties identified above did not, in most cases, exactly match the sums transferred in from client account; and
- payments were made from office account to parties other than the three identified;

it was not possible, on an analysis of the bank statements, to show definitively that each payment to one of these three parties was made from the improperly transferred client funds. Additionally, the First Respondent did not respond to the IO's requests for information in this regard.

Attempts to mislead the IO - Allegation 1.3

20. In the initial interview at the start of her investigation on 14 April 2015, the IO had asked questions of the First Respondent about the use of client funds. The allegation arose out of the First Respondent's answers.

Failure to keep firm's accounts properly written up – Allegations 1.4 and 1.5

21. In the interim FI Report, the IO reported various breaches of the accounts rules (including the improper withdrawals of client funds totalling £69,990.00 described above). In their initial interview on 14 April 2015, the First Respondent advised the IO that the firm's books of account were not up to date, and that client account reconciliations had not been carried out since January 2015. The First Respondent stated that the reason for the failure to undertake reconciliations was that the Second Respondent had been responsible for preparing them, and had left the firm at the end of January 2015.

Practising in breach of conditions on Practising Certificate – Allegation 1.6

22. On 25 July 2014, an Adjudicator of the Applicant decided to grant the First Respondent a practising certificate ("PC") subject to various conditions including:

- she was forbidden from having sole responsibility for client or office account or sole responsibility for authorising client or office account transfers, whether electronic or otherwise;
- she was forbidden from acting as a COLP or COFA and
- she was required to undertake a course on the SRA Handbook within six months.

Failure to ensure that the firm had a COLP and COFA – Allegation 1.7

23. The firm's COLP had been Ms B, a salaried partner at the firm. However, Ms B went on maternity leave on 23 May 2014 and, although she had been due to return in September 2014, her leave was extended. On 13 February 2015 she resigned with immediate effect, having not returned to work.

24. The Second Respondent had resigned from the firm and left on 31 January 2015. At the time he was the firm's COFA and was not replaced in that role.

Practising as a sole practitioner without authorisation – Allegation 1.8

25. Since Ms B's resignation on 13 February 2015, the First Respondent had been practising as a sole practitioner without authorisation from the Applicant.

Failure to co-operate with the SRA – Allegation 1.9

26. The IO was unable to obtain a response to her attempts to contact the First Respondent for her comments on the matters in the IO's final FI Report.

The First Respondent's Statements/Submissions generally

27. The First Respondent provided the IO with an undated witness statement and a signed statement dated 15 April 2015 which was headed "Background of [MM] (formerly [A])". She was also interviewed by the IO about her dealings with MM. In summary, the First Respondent stated:

- she was first instructed by MM in October 2013;
- he told her that he had been working in undercover policing in Holland for a unit called ERSOU ("Eastern Region Special Operations Unit" which was a police unit dedicated to combating organised crime across Bedfordshire, Cambridgeshire, Essex, Hertfordshire, Norfolk and Suffolk.);
- MM had changed his name from A due to his undercover activities;

- he had funds in the sum of £3.3 million in a bank account in Holland;

- she lent MM money because he was "desperate" due to difficulties accessing funds from the account in Holland and/or the sum of around £300,000.00 which was due to him from ERSOU pursuant to a compromise agreement;

- when lending MM funds, she relied on various assurances from individuals purporting to work for ERSOU as well as the C Bank that the funds would be repaid, which were described in the witness statement (and discussed in greater detail below). However, for various reasons, those funds never materialised.

The First Respondent's Witness Statement

28. In the unsigned undated witness statement, the First Respondent stated that she had first been instructed by MM in connection with purchasing the lease of a pub, and that it was MM's intention to also acquire a brewery and other public houses in the area, but:

> "none of the transactions was able to proceed to completion on account of the monies not arriving in Client Account despite the fact that [MM] was receiving assurances that monies would be sent to Client Account".

29. In March 2014 the First Respondent was then asked to advise in connection with a compromise agreement between MM and ERSOU. She explained the agreement to him and it was signed and witnessed on 22 March 2014. Pursuant to the agreement, the funds due to MM were due to be paid within five days. On 26 March 2014, MM sent the First Respondent an email purporting to be from ERSOU confirming that the sum of £290,000.00 was due to be received into the firm's account that day. However, no payment was received.

30. The First Respondent then described 13 promises/assurances given by or on behalf of MM between 26 March 2014 and 31 July 2014 that the funds would be sent to the firm, but in each case the funds did not materialise and the First Respondent was provided with an excuse for this failure.

31. The First Respondent stated that MM received a cheque from ERSOU in the sum of £330,250.00 on or around 29 July 2014, which money was paid into MM's account at the C Bank. The First Respondent was told that the monies due to her/the firm would be released on 5 August 2014, but was told that there was a difficulty and that MM would need to attend the bank's branch in Manchester to arrange for a CHAPS transfer to be made. It was subsequently reported to the First Respondent that MM's account had been closed (apparently due to MM's account being mistaken for that of another client of the bank with the same name). Between late July/early August 2014 and early October 2014, the First Respondent was assured on seven occasions that funds belonging to MM would be transferred to the firm, but no funds ever arrived.

32. The First Respondent said in her unsigned witness statement:

> "The failure by the [C Bank] to make the payments properly authorised and requested by [MM] have (sic) created grave financial problems for [him] and issues for me personally and the firm of Arthur Smiths Solicitors".

33. The First Respondent described how, from October 2014 to March 2015, she engaged in correspondence with individuals purporting to represent ERSOU whose "mission it was to complete [MM's] problems ASAP". Again, numerous assurances were given that funds would be provided to MM and/or the firm, but no funds were received.

34. Exhibited to the First Respondent's statement were a number of emails which she exchanged with an individual calling himself MH, who purported to represent ERSOU in connection with the funds purportedly due to MM. MH used a 'Gmail' email address - rather than an address connected to ERSOU or the police; and MH's emails contained no footer/signature, and so provided no telephone number, address or other contact details; and the emails from MH in some instances contained examples of extremely poor spelling and grammar. When questioned by the IO about the authenticity of these emails, given the absence of official information and/or contact details, the First Respondent stated that this was how ERSOU operated and that ERSOU officers had visited the firm. No further details of this visit were provided to the IO. The IO asked the First Respondent whether she was concerned that she may have been the victim of a fraud, to which she responded that it had crossed her mind.

The Second Respondent - Allegations 1.10 to 1.12
The Second Respondent's submissions to the Applicant

35. In his email to the Applicant dated 12 September 2016, the Second Respondent stated:

- in connection with MM, he was reassured "despite all the delays and excuses for non-payment" by the fact that the First Respondent was "an experienced solicitor [who had] done her due diligence on her client and knew far more about his history";

- the First Respondent gave him assurances regarding MM, which included stating that she had a hard copy of a signed compromise agreement between MM and the police pursuant to which MM was owed £290,000.00;

- his confidence levels in the matter [that is regarding MM] grew after the First Respondent explained that she was now in direct contact with someone at the C Bank who could vouch for MM's means;

- during the Autumn of 2014, cash flow at the business was becoming tighter but the First Respondent continued to authorise payments to MM. However, the First Respondent was becoming more erratic, with less focus on client care, simple processes were not being followed and billing was becoming later and later;

- MM's affairs were starting to "dominate [the First Respondent's] world to the detriment of the business", and she started to lose some of her high-profile clients;

- from October 2014 he was required to chase the First Respondent for bills to match transfers which the First Respondent had herself made out of client account (he claimed that from August 2014, the First Respondent had the knowledge and means to access the firm's accounts and transfer funds via the firm's online banking account);

- due to, amongst other matters, an "ever increasingly erratic and aloof management style" on the part of the First Respondent, he decided that "enough was enough" and it was clear that MM had an "increasing hold over [the First Respondent] to the detriment of other clients";

- he felt that his conduct at the firm was "sound, working in an environment which was becoming more adversarial and irrational. I am guilty of showing too much loyalty to an individual [that is the First Respondent] who did not command it … [and who was] being influenced by a suspected fraudster"; and

- due to his experiences at the firm he was committed to not working in the legal sector again.

The Applicant's Investigation

36. On 29 September 2015, the IO sent a letter to the First Respondent via post and email, asking the First Respondent to contact her. No response was received to that letter.

37. On 7 July 2016, a Regulatory Supervisor of the Applicant sent a letter to the Second Respondent seeking his comments in respect of the matters in the interim and final FI Reports. On 12 September 2016, the Second Respondent sent a detailed response by email via his solicitor.

38. On 21 July 2016, a Legal Adviser of the Applicant sent a letter to the First Respondent seeking her comments in respect of the matters in the FI reports. No response had been received to that letter.

Witness

39. The Applicant called the IO, Ms Lisa Bridges, to give oral evidence. She testified that the First Respondent was the only manager present when she commenced her investigation. The firm was authorised as a partnership. Ms B had resigned previously and not been replaced and so effectively it was an unauthorised sole practice. The witness confirmed the findings of her investigation including that the firm did not hold any funds on behalf of Mr MM. The witness confirmed that the reasons for the books of account not being in compliance with the SRA Account Rules were as she set out in the interim FI Report dated 21 April 2015 including that there was a minimum shortage of £69,990.00. The witness confirmed when she showed the First Respondent the figures indicating that in accordance with the client account reconciliation as at 31 January 2015 there was a client account shortage of

£104,122.72, the First Respondent said that she had not realised that it was "as high as that" but that she believed it represented a shortage on client account of that amount. The witness confirmed that the First Respondent said that she could now see "without a shadow of a doubt" that she should never have lent MM the funds and acknowledged that the client funds that she had lent to MM did not belong to her. The First Respondent had denied that the funds were used by her to support office account but rather they were for MM. However the witness had identified that when there were large payments out of office account primarily for PAYE they could only be made after a transfer from client account. In addition to confirming other details of accounting issues set out elsewhere in this judgment, the witness confirmed the detail in the final FI Report of the five instances she identified from a sample of client matter ledgers and files whereby costs had been transferred from client account to office account without evidence of the corresponding bills totalling £19,494.78. The witness also confirmed from the final FI Report that she had reviewed the office account bank statements for the period 14 October 2014 to 7 April 2015 and identified a selection of receipts of the unallocated transfers from client account to office account during this period whereby the following amounts were subsequently paid out: £62,474.71 to MM and/or associates; £85,438.43 to PF; £7,950.00 to the First Respondent; and £2,168.00 to the Law Society. The witness was taken through the various lists and schedules which attested to the problems with the accounting records. The witness confirmed that a document headed with Mr MM's name and "Client Loan Account" and showing a handwritten endorsement "Payments up to April 2014" included payments to him in the pre-April 2014 period.

40. The witness testified that she had found the First Respondent's explanation about Mr MM's expectation to be put in funds rather confusing; the First Respondent had provided two statements about what happened. MM was alleged to be working undercover for the police and for various reasons had money tied up in Holland. The First Respondent said she had received a compromise agreement for him saying that he would receive money from the Home Office or the Treasury. The First Respondent said that she had seen documents and believed that monies were coming in to cover the funds that she had lent. The witness clarified for the Tribunal that she had not seen source documents for the transfers and so she could not say who had authorised them. The First Respondent acknowledged that she had authorised transfers after the Second Respondent left and that it was a breach of the accounts rules. The witness had not viewed any accounting chits. As the witness set out in the interim FI Report, the First Respondent stated she had transferred funds from client bank account to office account whereby they were subsequently transferred to the client "to support him". She said she had "lent him about £90,000.00" from client account. This explanation was given in the course of discussions and presented in the First Respondent's statements. The longer of the two statements had a heading "IN THE HIGH COURT OF JUSTICE". It was unsigned and undated but the incomplete date section referred to March 2015. It was provided to the witness on site after she started to ask questions about what monies had been transferred; this was on 14 or 15 April 2015. She had discussed the matter with the First Respondent who was herself not taking the action to recover monies. The First Respondent had notified the police and she was still adamant that funds would be returned and while the witness was preparing the interim FI Report the First Respondent was still saying that the monies would be returned. The witness was referred to an e-mail from the First Respondent to her of 17 April 2015 in which the First Respondent said she had

heard from the QC instructed upon behalf of the client that the electronic transmission of funds was presently being undertaken.

41. The witness confirmed that she had extensive conversations with First Respondent during the investigation but that there had been no final meeting. She had challenged the First Respondent about why she was lending to Mr MM and initially the First Respondent stated that she had become aware of circumstances near Christmas when he needed money for his children and to live. She said that initially payments were made out of office account. The witness had questioned her about the continuation of payments. At that point the witness had in mind that they totalled about £70,000.00 which she thought was quite a large amount to feed children and to survive. The First Respondent stated that she knew the monies would be returned. The witness also enquired of the First Respondent whether the Second Respondent was aware of the client account to office account transfers. The witness recalled that the First Respondent had stated that MM had his children to feed and she said she did not want cause any trouble; she did not give a straight answer. She stated that the Second Respondent had authorised the payments because she was unable to do so because of her PC conditions and the Second Respondent drew up and maintained the spreadsheet of payments. In cross-examination by the Second Respondent, the witness stated that perhaps 'actioned' was a better word than 'authorised' regarding the online transfer of funds. The witness could not comment about how payments continued to be made when the Second Respondent was on a two-week holiday. She believed that the First Respondent told her at the start of her investigation that she had a bank mandate and so would have had the ability to make the transfers.

42. The witness confirmed that the police entity ERSOU was a genuine organisation. She clarified for the Tribunal that she had made enquiries of ERSOU for which the First Respondent believed MM operated and they were not involved in the matter at all. She did not know whether they were aware of MM because after she had submitted her findings a more senior staff member had taken over liaison with the police unit. As she recalled, the police just told him that MM was not acting for them and that the e-mails which stated they came from ERSOU had not and the police said they had not attended the firm. The witness had asked to see documents relating to contact with ERSOU but the First Respondent had told her they were subject to a gagging order and this also applied to court orders made about the matter so that the witness had not seen any of those documents. The Tribunal enquired whether the witness had asked either the First Respondent or Second Respondent if they were suspicious about the e-mails which came from Mr MH who was said to be of ERSOU but who used a personal e-mail address. The witness clarified that she had not met to ask questions of the Second Respondent during the investigation. She had asked the First Respondent because the e-mails came from a private source and the language, punctuation and grammar were extremely poor. She could not recall the First Respondent's exact words but her response was on the lines of that was how it was; that she had met these people and was satisfied about their genuineness.

43. The witness was also asked about e-mails coming from the C Bank which apparently suggested that it believed money was coming in for MM. The witness stated that she did not understand that side of the matter but the First Respondent said that she had attended the bank. The witness had not made any enquiries of the bank. She could not recall that she saw a paying in slip showing £200,000.00 being paid into the bank but

it had been mentioned that the money was paid in but was not clearing. However the witness stated that no money ever reached the client account from MM or any sources connected to him. She confirmed that she was told that the documents subject to a gagging order related to some of the payments to MM and some to his wife Mrs A. She had been told that he had changed his name because he was working undercover and that Mr MM and Mr A were one and the same person.

44. As to whether the First Respondent realised the seriousness of what had occurred, the witness clarified for the Tribunal that her impression from the First Respondent was that she was totally "sucked in" by MM. She acknowledged to the witness in discussions that she was aware of the accounts rules but she thought that the loan would be short-term. The witness had put it to the First Respondent that she had not seen money coming back to the firm but continued to lend and even as the witness left the firm the First Respondent was adamant that the money would be received the following Friday and she firmly believed what MM told her. She was fully aware that she was in breach of the accounts rules and the seriousness of what she had done.

45. As to the role of COLP, the witness thought that initially the First Respondent had stated that Ms B would continue the role while on maternity leave and that until Ms B resigned (on 13 February 2015) the First Respondent was under the assumption that she was doing so. The witness confirmed that she had contacted Ms B who had denied the First Respondent's assertions and said that she could not be a COLP at a firm whilst she was not working. There was neither a COLP, nor following the resignation of the Second Respondent, a COFA when the witness went into the firm. The First Respondent accepted that she was in breach of her PC conditions in this respect. The witness was referred to the final FI Report which referred to the comments of Ms B confirming the witness had made contact with her and that Ms B was not aware of the PC conditions to which the First Respondent was subject. Ms B had resigned because she became aware of the lending to a client of the firm and because she became aware of the First Respondent's PC conditions.

Findings of Fact and Law

46. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the First Respondent's and the Second 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.)

47. **Allegation 1.1: By her own admission, she [the First Respondent] paid or caused to be paid to a client of her firm, MM, a sum of between approximately £80,000.00 and approximately £100,000.00 from funds held on her firm's general client account to which she knew MM had no entitlement. She thereby acted in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("SRA AR") and Principles 2, 4, and 6 of the SRA Principles 2011 ("Principles").**

Allegation 1.2: There existed a shortfall on the firm's general client account of at least £69,990.00 as at 21 April 2015. She [the First Respondent] thereby breached Rule 20.6 of the SRA AR, and Principles 6 and 10.

47.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. The forensic investigation had been commenced because of concerns about the running of the practice. After consideration of the interim FI Report a decision was made to intervene into the practice which took place on 1 May 2015. It was set out in the Rule 5 Statement that the minimum shortfall of £69,990.00 comprised ten client to office account transfers of round sums of between of £500.00 and £17,000.00. These ten transfers had been made between14 October 2014 and 30 January 2015, and were not allocated to any client matter or transaction in the firm's accounts. Accordingly, they were made in breach of Rule 20 of the SRA AR. These transfers were shown on the January 2015 reconciliation as "un-reconciled adjustments". The First Respondent confirmed to the IO that these transfers represented transfers of funds from client to office account which were subsequently paid to a client of the firm, MM although the firm held no funds on his behalf and were made without the authority of any client. The First Respondent also confirmed that further transfers had been made before October 2014 and post January 2015. She provided a number of different figures to the IO during the investigation. In the final FI Report, the IO noted that S Solicitors, the Applicant's intervention agents, had produced a memorandum dated 15 May 2015 in which they recorded their initial findings, which were that there was a client account shortfall of £205,113.60. This was partly made up of unallocated client to office account transfers totalling £178,312.00, made between 14 October 2014 and 7 April 2015, which included the 10 unallocated transfers totalling £69,990.00. However, S Solicitors' findings were expressed to be a "best figure" and not a fully reconciled figure, due to ongoing issues with the firm's accounts. S Solicitors updated its interim findings on 15 July 2015. Due to these difficulties, and the First Respondent's admission that the 10 "un-reconciled adjustment" withdrawals were improperly made, the Applicant adopted the minimum shortfall of £69,990.00 identified in the interim FI Report. However, as was apparent from S Solicitors' findings, and the further information set out below, the actual shortfall was likely to be significantly higher. It was submitted in the Rule 5 Statement that the shortfall was likely to have been caused in part by payments to Mr MM/A, PF, and the First Respondent herself, for the following reasons.

Cause of shortfall - payments to MM/Mr A

47.2 During interviews between the IO and the First Respondent on 14 and 15 April 2015, the First Respondent:

- recognised that there was a shortfall on client account. The IO had suggested that, on the basis of the January 2015 reconciliation, the shortfall was £104,122.72 and the First Respondent did not dispute this. She stated it was created by the transfer of funds from client to office account and subsequently to the client, MM (also known as Mr A). In her signed statement dated 15 April 2015, the First Respondent stated that MM's name had formerly been Mr A; it had been changed due to his work in covert policing. Additionally in an e-mail to the Applicant, the Second Respondent stated that SA was the partner of MM.);

- stated that she had lent the funds to MM because he was "desperate" but now recognised that "without a shadow of doubt" she should not have lent him the funds;

- stated that she thought she had loaned MM around £130,000.00, and that about £90,000.00 of this was taken from client account (although the First Respondent provided various different figures to the IO in respect of the sums she had loaned to MM);

- stated that when she first started utilising client funds to loan money to MM, she was aware at that point that her actions were a breach of the SRA AR;

- confirmed that she had not had authority from any client for the transfer of those funds out of client account.

On 15 April 2015, the First Respondent gave the signed statement to the IO in which she confirmed that significant sums had been loaned to MM from funds held on the client account. She wrote:

> "I believe that a sum in the region of £121,487.63 has been lent in total although most certainly the early loans were paid out of Office Account... I believe that the money paid out of Office Account would be in the region of £20,000.00 although this is purely from considering the schedule of payments...
>
> I expected these payments would be all that was required and most certainly there was never an intention at the outset to fund the payments from Client Account. This only arose as a consequence of the payments [that is payments purportedly due to MM from third parties] not being made when they stated they would be."

Also on 15 April 2015, the First Respondent told the IO that there had never been a written loan agreement in place with MM and that she had loaned him the money in good faith. A schedule provided by the First Respondent to the IO, which the First Respondent stated had been maintained by the Second Respondent, showed that £81,036.63 had been paid to MM. However, the First Respondent stated that it had not been updated since the middle of February 2015, as she herself was not able to update it (and the Second Respondent had left the firm by that stage), and that she had loaned MM around £40,000.00 during March 2015. The schedule post dated the two documents which gave the Applicant's original figure of £69,990.00). Taking the two figures provided by the First Respondent one arrived at around £120,000.00 and the First Respondent estimated that when one included repayments and costs due to the firm MM owed around £170,000.00. Ms Wingfield submitted that the First Respondent provided an explanation to the IO and two statements about her relationship with MM, the longer of which was undated and unsigned but referred to March 2015 although the inspection did not start until April 2015. The statements set out why the First Respondent paid money to her client MM. She provided various e-mails which purported to show that MM was owed money by the Home Office and had millions of Euros in a Dutch bank account. Ms Wingfield submitted that there was one excuse after another as to why the money for MM was not coming into the firm's client account.

Cause of shortfall - payments to PF

47.3 The First Respondent denied that she used client monies for herself but the IO noted round sum transfers that she had made from client to office account and payments from office to PF to meet office expenses and Ms Wingfield submitted that these payments were for the First Respondent's benefit. PF was an outsourced payroll system provider used by the firm to pay its wages. The firm's bank statements show that between October 2014 and March 2015, at around the middle of each month, the sum of between £13,400.00 and £16,051.32 was paid to PF by direct debit. However, the firm's bank statements also show that, between October 2014 and January 2015, each of these payments was preceded by a large ''round sum' transfer between client and office account. All of these client to office transfers were shown as unallocated adjustments on the January 2015 reconciliation. The payments to PF in February and March 2015 were similarly preceded by large client to office transfers, but these transfers were not (due to the date that they were made) shown as "unallocated adjustments" on the January 2015 reconciliation. The Second Respondent in an email to the Applicant dated 12 September 2016 confirmed that client funds were being used as "working capital". The Rule 5 Statement particularised the client to office transfers between 14 October 2014 and 13 March 2015 totalling £86,400.00 and sums debited by PF on the same day or the following day totalling £85,438.43.

Cause of shortfall - payments to the First Respondent

47.4 The firm's office account statements showed a number of transfers out to an account in the name of the First Respondent. For the reasons given above, it was not possible to conclude that all these payments were made from client funds improperly transferred to office account. However, the bank accounts showed that on 28 November 2014:

- £2,400.00 was transferred from office account to a bank account in the name of the First Respondent; immediately after that transfer, £2,400.00 was transferred from client to office account; and the client to office transfer of £2,400.00 was shown as an unallocated transfer on the January 2015 reconciliation.

Additionally:

- On 12 December 2014, £500.00 was transferred from office account to a bank account in the name of the First Respondent; immediately after that transfer, £502.00 was transferred from client to office account (this was not shown as an unallocated transfer on the January 2015 reconciliation)

- On 7 April 2015, five payments totalling £22,500.00 were made to (i) the First Respondent (two payments of £1,000.00 each), (ii) SA understood to be MM or his partner (payments of £8,500.00 and £2,000.00) and MK Ltd understood to be a creditor of MM or a company otherwise connected to him (£10,000.00); and £22,500.00 was transferred from client to office account later that day (this transfer post-dated the January 2015 reconciliation, so it was not shown as an unallocated transfer).

Determination of the Tribunal in respect of allegation 1.1

47.5 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The First Respondent had chosen not to attend the hearing. She had made various admissions to the IO whom the Tribunal found to be a credible witness whose sworn testimony was supported by the evidence of her interim and final FI Reports and attached documentation. The First Respondent had given various figures to the IO for the amounts which she had paid or caused to be paid to MM, a client of her firm. The Tribunal considered that the range of figures in allegation 1.1, as a sum of between approximately £80,000.00 and approximately £100,000.00 was a safe assessment of the amount withdrawn from client account and paid to MM. The First Respondent had provided two statements; in the statement signed and dated 15 April 2015 she said:

> "I expected these payments would be all that was required and most certainly there was never any intention at the outset to fund the payments from Client Account. This only arose as a consequence of the payments not being made when they stated they would be."

The IO in her interim FI Report stated:

> "[The First Respondent] said that when she first started utilising client funds to assist Mr [MM] she was aware at that point that her actions were breach of the Solicitors Accounts Rules and added that she "would not be fit to practise" if she did not know that."

The Tribunal determined that in breach of Rule 20.1 of the SRA AR, the First Respondent was making withdrawals from client account, which were in effect loans made for the benefit of one particular client at the expense of other clients whose monies she held in trust. The First Respondent admitted that what she did was unauthorised by those clients and the firm held no money for MM so what she was doing inevitably adversely impacted on monies held for other clients. The Tribunal determined that the First Respondent's actions constituted lack of integrity (breach of Principle 2); a failure to act in the best interests of each client (breach of Principle 4) and that by her actions the First Respondent had failed to behave in a way that maintained the trust the public placed in her and in the provision of legal services (breach of Principle 6). The Tribunal therefore found allegation 1.1 proved on the evidence to the required standard.

Dishonesty in respect of allegation 1.1

47.6 For the Applicant, it was submitted that the First Respondent's conduct in respect of Allegations 1.1 and 1.3 was dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings, that is the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12: the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly. In respect of allegation 1.1, it was submitted in the Rule 5 Statement that in withdrawing (or causing to be withdrawn) from client account funds which she knew did not belong to MM, and

subsequently paying (or causing to be paid) those funds to MM, the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people and that she must also have been aware that it was dishonest by those standards for the following reasons: she admitted to the IO on 15 April 2015 that when she first started utilising client funds to assist MM she was aware at that point that her actions were a breach of the SRA AR and that she would "not be fit to practise" if she did not know that; and that no experienced solicitor could consider that reasonable and honest people would regard deliberately and knowingly breaching an important rule of conduct as honest conduct.

Determination of the Tribunal in respect of Dishonesty and Allegation 1.1

47.7 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. In determining whether the First Respondent had behaved dishonestly the Tribunal applied the two limbed test in the case of Twinsectra v Yardley. The Tribunal was satisfied that reasonable and honest people would consider that by their standards the First Respondent had behaved dishonestly in circumstances where she as a solicitor had withdrawn client money to make an advance to a third party Mr MM who had no monies in her client account without any authorisation from her clients (the objective test). The Tribunal also considered whether the First Respondent knew that by those standards she was acting dishonestly. The First Respondent was very well aware that Mr MM had no money in her client account at the time she made or authorised the withdrawals. The Tribunal considered that knowledge, taken together with what she had said to the IO about her actions that if she had not known she was acting in breach of the rules she would not be fit to practise, showed that the First Respondent, who as a solicitor would have at the forefront of her mind her obligation to protect the money of her clients, was aware that she would be considered to have acted dishonestly. The Tribunal therefore found dishonesty proved on the evidence to the required standard in respect of allegation 1.1.

Determination of the Tribunal in respect of Allegation 1.2

47.8 In respect of allegation 1.2, the Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The IO reported in her interim FI Report that the First Respondent admitted there was a shortage on client account which was in excess of that alleged £69,990.00:

> "[The IO] noted that the client account reconciliation as at 31 January 2015 indicated a client account cash shortage of £104,122.72 and asked for [the First Respondent's] comments. [The First Respondent] stated that she had not realised the figure was "as high as that" but that she believed it did represent a shortage on client account of that amount. She said the shortage was created [The First Respondent] said that she lent him the money because "he was desperate" but she could now see "without a shadow of a doubt" that she should never have lent him the funds. [The First Respondent] acknowledged that the client funds that she had lent to Mr [MM] did not belong to her."

The Tribunal considered that both on the oral evidence and on the First Respondent's admissions to the IO, the facts of this allegation were proved; the firm held no monies for MM and so any monies taken from client account for him constituted a breach of Rule 20.6 and therefore the First Respondent had breached Rule 20.6 of the SRA AR and Principles 6 and 10 (the requirement to protect client money and assets). The Tribunal found allegation 1.2 proved on the evidence to the required standard.

48. **Allegation 1.3: On 14 April 2015 she [First Respondent] attempted to mislead the SRA Forensic Investigation Officer by falsely stating that:**

1.3.1 she was unaware of any misuse of client funds at her firm; and

1.3.2 she had not utilised for her own purposes any of the funds which had been improperly withdrawn from client account.

She thereby breached Principles 2, 6 and 7.

48.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. Ms Wingfield submitted that the First Respondent was asked by the IO whether she was aware of misuse of client funds in the initial interview at the start of her investigation on 14 April 2015 and the First Respondent had answered that she was not aware of such misuse. She was then asked again once the IO had gone through the matter. Once the First Respondent had subsequently acknowledged that she had improperly used client funds to assist MM, the IO asked her why she had initially said that she was unaware of any misuse of client funds. The First Respondent responded that there had been "no reason". Also on 14 April 2015, the IO asked the First Respondent if she had personally used any of the funds improperly transferred from client account, as the cash shortage indicated by the January 2015 reconciliation was higher than the figure of £90,000.00 which the First Respondent said she had lent to MM. The First Respondent replied that she did not use any funds personally. However, as described above payments totalling £85,438.43 were made to PF from office account, shortly after large sums were transferred between client and office account; and at least £2,400.00 was paid to the First Respondent's personal bank account from funds which were improperly withdrawn from client account. Ms Wingfield submitted that as the First Respondent was the owner of the firm, use of the client funds for running costs was in effect use for her own purposes. Possibly at first the payments were made from office account but as the firm developed financial difficulties they came from client account.

Determination of the Tribunal in respect of Allegation 1.3

48.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. In the interim FI Report which had been confirmed by the IO in evidence the admissions made by the First Respondent were set out. The FI Report stated:

> "During the initial interview at the start of the investigation [the IO] asked [the First Respondent] if she was aware of any misuse of client funds, [the First Respondent] responded no. After [the First Respondent] had acknowledged that she had utilised client funds to assist Mr [MM] [the IO]

> asked why she had responded that she was not aware of the misuse of client funds. [The First Respondent] said there was 'no reason' why she had answered no to that question."

The Tribunal therefore found the facts of allegation 1.3.1 proved.

48.3 In respect of allegation 1.3.2, the Tribunal noted that the IO reported in the interim FI Report that she had asked the First Respondent:

> "if any of the funds transferred from client account had been utilised by her personally, as the client cash shortage as stated on the 31 January 2015 client account reconciliation of £104,122.72, was higher than the amount of client funds (approximately £90,000.00) that [the First Respondent] initially said she had loan to Mr [MM]. The First Respondent] stated that she had not used the funds personally…"

However as the Rule 5 Statement recorded payments totalling over £85,000.00 were made to PF from office account shortly after large sums were transferred between client and office account; for example the FI Report recorded that the office account bank statement showed that on 13 February 2015, £15,000.00 was transferred from client account to office account and on the same day £14,295.00 was transferred from office account by direct debit to PF. The Tribunal found as a fact that monies paid to PF were for the personal use of the First Respondent as she owned the firm. Furthermore at least £2,400.00 was paid to the First Respondent's personal bank account from funds which were improperly withdrawn from client account on 28 November 2014. There were further payments on 12 December 2014 and 7 April 2015. The Tribunal therefore found the facts of allegation 1.3.2 proved.

48.4 Based on the facts found proved in respect of allegation 1.3.1 and 1.3.2, the Tribunal found that the First Respondent had attempted to mislead the IO by making the false statements referred to above. The Tribunal determined that by so doing the First Respondent had acted in breach of Principles 2, 6 and 7 (to comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner).

Dishonesty in respect of Allegation 1.3

48.5 For the Applicant, it was submitted that by stating to the IO on 14 April 2015 that she was unaware of any misuse of client funds at the firm, when she was aware of such misuse because she later admitted that she had improperly used client fund to make loans to MM; and that she had not used any improperly withdrawn client funds for her own purposes, when she aware that (i) those funds were used, at least in part, to fund the firm's payroll between at least October 2014 and January 2015 (which benefitted the First Respondent as owner of firm) and (ii) at least £2,400.00 of improperly withdrawn funds were paid directly to the First Respondent's personal bank account; she acted dishonestly by the ordinary standards of reasonable and honest people. Not only was her conduct dishonest by the ordinary standards of reasonable and honest people but she must also have been aware that it was dishonest by those standards, because no experienced solicitor would consider that deliberately

making false statements to a representative of the Applicant was honest conduct by those standards.

48.6 The Tribunal considered the evidence including the oral evidence and submissions for the Applicant and applied the two limbed test in the case of Twinsectra. The Tribunal considered that in making statements to the IO which were blatantly untrue, the First Respondent had acted in a way which reasonable and honest people would consider to be dishonest (the objective test). The Tribunal further determined that in making what she knew to be false statements and for which she could give no explanation the First Respondent knew that she was acting dishonestly. The Tribunal therefore found dishonesty proved on the evidence to the required standard in respect of allegation 1.3.

49. **Allegation 1.4: She [the First Respondent] failed to ensure that proper accounting records were kept showing accurately the position with regard to the money held for each client and trust. She thereby breached Rule 1.2(f) of the SRA AR and Principles 6 and 10.**

Allegation 1.5: She [the First Respondent] failed to ensure that, after January 2015, client account reconciliations were undertaken every five weeks. She thereby acted in breach of Rule 29.12 of the SRA AR, and Principles 6 and 10.

49.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. It was set out in the Rule 5 Statement that in their initial interview on 14 April 2015, the First Respondent advised the IO that the firm's books of account were not up to date and that client account reconciliations had not been carried out since January 2015. The January 2015 reconciliation identified five matters with client ledger debit balances totalling £34,212.72. The First Respondent told the IO that there were debit balances which had been caused by posting errors and that she had rectified them (although no evidence of that rectification had been provided as at the date of the interim FI Report). The client account reconciliation for January 2015 recorded 51 client matters which had an office credit balance, totalling £65,778.06. The First Respondent stated that these had either been created by costs being posted and transferred to office account twice, or where costs had been transferred without a bill having been raised. On 14 April 2015, the First Respondent produced a list of client files where she had identified posting errors and/or files where costs had been transferred where no bills had been raised (the IO had not, however, verified the accuracy of this list).

49.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Tribunal found as a fact that the First Respondent had failed to ensure proper accounting records were kept as alleged (allegation 1.4) and no client account reconciliations had been undertaken every five weeks after January 2015 (allegation 1.5). The Tribunal had the evidence of the IO recorded in the FI Reports that the First Respondent advised the IO that the books of accounts were not kept up-to-date and that since the departure of the Second Respondent at the end of January 2015 no client account reconciliations had been carried out. The Tribunal therefore found proved on the evidence to the required standards that the facts underlying allegations 1.4 and 1.5 were proved and that they constituted respectively

breaches of Rules 1.2 (f) (allegation 1.4) and 29.12 of the SRA AR (allegation 1.5) and in the case of both allegations 1.4 and 1.5 breaches of Principles 6 and 10.

50. **Allegation 1.6: She [the First Respondent] failed to comply with conditions imposed on her practising certificate by an SRA Adjudicator on 25 July 2014, in that:**

1.6.1 from 31 January 2015, she was the sole signatory on her firm's bank accounts and had sole responsibility for those accounts; and

1.6.2 she failed to undertake a course on the requirements of the SRA Handbook within 6 months of the Adjudicator's decision or at all.

She thereby acted in breach of Principle 7.

50.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. It was set out in the Rule 5 Statement that on 15 April 2015, the First Respondent confirmed to the IO that following the Second Respondent's departure from the firm on 31 January 2015, she was the sole remaining signatory on the firm's office and client accounts, and had sole responsibility for those accounts. She also acknowledged that this was a breach of the relevant condition imposed on her 2013/2014 PC by an Adjudicator of the Applicant on 25 July 2014; and that she had not complied with the condition that she must undertake a course on the SRA Handbook 2011. Ms Wingfield informed the Tribunal that the Second Respondent and Ms B were not aware of the conditions on the First Respondent's PC. When the IO commenced her investigation in April 2015, the First Respondent's application for a PC for 2014/2015 was still under consideration. She had applied for the conditions to be removed.

50.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Tribunal had the evidence of the IO that the First Respondent had admitted that she had failed to comply with the conditions on her PC in the ways alleged. The Tribunal found the acts which gave rise to allegation 1.6 proved. The Tribunal determined that the First Respondent had thereby failed to comply with her legal and regulatory obligations and to deal with her regulators and ombudsmen in an open, timely and cooperative manner and that it was proved on the evidence to the required standard that the First Respondent was therefore in breach of Principle 7 so that both aspects of allegation 1.6 were found proved.

51. **Allegation 1.7: She [the First Respondent] failed to ensure that:**

1.7.1 after 23 May 2014, her firm had an approved Compliance Officer for Legal Practice ("COLP"); and

1.7.2 after 31 January 2015, her firm had an approved Compliance Officer for Finance and Administration ("COFA").

She thereby acted in breach of Rule 8.5 of the SRA Authorisation Rules 2011 and Principle 7.

51.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. In the Rule 5 Statement, it was set out that in interview with the IO on 15 April 2015, the First Respondent:

- told the IO that Ms B had agreed to continue in her role as COLP whilst on maternity leave. However, Ms B denied this;
- said there had been no COLP in place (understood to mean physically in place) at the firm since 23 May 2014 (that is the date on which Ms B went on maternity leave) and that she had been acting as COLP since Ms B's resignation in February 2015; and
- stated she had not told the Applicant about the fact that she was acting as the firm's COLP. Pursuant to the conditions imposed on her 2013/2014 PC she was not, in any event, permitted to act as the firm's COLP.

On 15 April 2015, the First Respondent also acknowledged that she had in effect been acting as the firm's COFA since the Second Respondent had resigned on 31 January 2015, and admitted (i) she had not notified the Applicant of this, and (ii) in doing so she had breached a condition on her PC forbidding her from acting as a COFA.

51.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. In respect of allegation 1.7.1, the Tribunal noted that the First Respondent informed the IO that she was under the impression that Ms B who was a salaried partner of the firm continued in her role as COLP after she went on maternity leave. The IO had interviewed Ms B including asking what arrangements had been made with the firm to fulfil the role of COLP while she was on maternity leave. Ms B stated that when she left the firm to go maternity leave in May 2014 she informed the First Respondent that she would need to appoint a temporary COLP. She stated that she sent the First Respondent a memorandum to this effect and also drafted the letter that the First Respondent would have to send to the Applicant notifying the change. The Tribunal also noted the content of Ms B's letter to the Applicant dated 13 February 2015 in which she stated amongst other things:

> "I left the firm to go on maternity leave on 23 May 2014. Prior to going on maternity leave I informed [the First Respondent] in correspondence that the firm would need to appoint a temporary COLP whilst I was on maternity leave. I have a copy of this letter and a copy can be produced if required by [the Applicant]. I had limited contact with the firm whilst I was on maternity leave and was recently made aware that a temporary COLP was never appointed by the firm. I am therefore notifying the Applicant that the firm does not have a COLP."

The Tribunal did not find the First Respondent's version of the position at all credible. Ms B told the IO that she categorically denied that the arrangement was as the First Respondent stated. The Tribunal accepted that Ms B could not possibly act as COLP whilst on maternity leave when she was not in day-to-day control of matters and it had seen no evidence to challenge that she had acted as she set out in her letter

of 13 February 2015 and as she had told the IO in interview. The Tribunal therefore found the facts underlying allegation 1.7.1 proved.

51.3 In respect of allegation 1.7.2, the Tribunal found as a fact that the Second Respondent, who filled the role of COFA at the time, left the firm on 31 January 2015. The First Respondent did not dispute this. She also admitted to the IO that she failed to ensure there was an approved COFA in place after he left, that she was a breach of the conditions on her PC that she should fill the role and she had not in any event contacted the Applicant about the situation. The Tribunal found the facts underlying allegation 1.7.2 proved. The Tribunal therefore found both aspects of allegation 1.7 proved to the required standard on the evidence.

52. **Allegation 1.8: After 13 February 2015, she [the First Respondent] practised as a sole practitioner without authorisation from the SRA, in breach of Rule 10.1 of the SRA Practice Framework Rules 2011 and Principle 7.**

52.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. In the Rule 5 Statement it was set out that the First Respondent had practised as a sole practitioner without authorisation from the Applicant since Ms B's resignation on 13 February 2015 and that in interview with the IO on 14 April 2015, the First Respondent admitted this, but said it was due to circumstances beyond her control and that she had met with another solicitor a week earlier with a view to him joining the practice as a partner.

52.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It found the facts underlying allegation 1.2 proved and noted that the First Respondent had admitted them. The Tribunal therefore found proved on the evidence to the required standard that the First Respondent was in breach of Rule 10.1 of the SRA Practice Framework Rules 2011 and Principle 7 and allegation 1.8 was therefore proved.

53. **Allegation 1.9: She [the First Respondent] failed to co-operate with the SRA in its investigation into her misconduct following the SRA's intervention into her firm. She thereby acted in breach of Principle 7 and Outcome 10.6 of the SRA Code of Conduct 2011.**

53.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. In the Rule 5 Statement it was set out that on 25 September 2015, the IO sent a letter to the First Respondent by recorded delivery and email, requesting that the First Respondent contact her to arrange a meeting for the purposes of the IO's investigation. The IO obtained confirmation that the letter had been delivered and signed for, but the First Respondent did not respond to it. The IO also attempted to contact the First Respondent by email and using her personal telephone number, and left a voicemail message on the latter, but again the First Respondent failed to respond. Accordingly, the IO was unable to obtain the First Respondent's comments on the matters in the IO's final report.

53.2 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Tribunal accepted the evidence of the IO about her attempts to contact the First Respondent to arrange a meeting by both recorded delivery and

e-mail as well as telephone, the detail of which were set out in the final FI Report. The Tribunal found the facts giving rise to allegation 1.9 proved and that by her actions the First Respondent had been in breach of Principle 7 and Outcome 10.6 and that allegation 1.9 was proved to the required standard on the evidence.

54. **Dishonesty in relation to Allegations 1.1 and 1.3**
(See allegations 1.1 and 1.3 above)

Second Respondent

55. **Allegation 1.10: He [the Second Respondent] carried out withdrawals of funds from client account in the knowledge that those funds would be loaned to someone who had no entitlement to them, namely MM. He thereby acted in breach of Rule 20.1 of the SRA AR, and Principles 2, 6 and 10.**

Allegation 1.11: He [the Second Respondent] failed to keep proper accounting records showing accurately the position with regard to the money held for each client and trust. He thereby breached Rule 1.2(f) of the SRA AR and Principles 6 and 10.

Allegation 1.12: Notwithstanding that he [the Second Respondent] was the firm's COFA, he failed to report to the SRA promptly or at all:

1.12.1 the improper withdrawals of client funds described at allegation 1.10 above; and

1.12.2 the fact that the firm's books of account were not in order.

He thereby breached Principles 2, 6, and 7, and failed to achieve Outcomes 10.1 and 10.4.

55.1 For the Applicant, Ms Wingfield relied on the interim and final FI Reports, the Rule 5 Statement and the oral evidence of the IO. The Second Respondent had provided an Answer and before that his then representatives sent a response by e-mail dated 12 September 2016 to the Applicant's letter referred to as being dated 11 July 2016 but actually dated 7 July seeking his comments. The Second Respondent was the firm's COFA. The Second Respondent stated in the e-mail to the Applicant of 12 September 2016 that this was a completely new role for him, he had no legal cashier training and had not been a COFA previously and "did not fully understand the principles behind disbursements and the SRA Accounts Rules 2011". He had responsibility for running the firm's accounts on a day-to-day basis and had prepared the client account reconciliation for January 2015 which illustrated various issues with the firm's accounts, including the fact that:

- there were ten 'un-reconciled adjustments' totalling £69,990.00;
- five client ledgers showed debit balances totalling £34,212.72; and
- 51 client matters had an office account credit balance, totalling £65,788.06.

The Second Respondent was aware that the First Respondent had been loaning funds to MM, because he set up a loan account in the firm's books to record these payments. It was apparent from the email of 12 September 2016, that the Second Respondent was aware that at least some of the funds being loaned to MM were being provided from client account, and that the Second Respondent had actioned transfers which enabled the funds to be sent to him (MM). In the email the Second Respondent:

- stated that the number of requests for loans from MM increased during 2014, as did the number of authorisations he received from the First Respondent to make those loan payments;

- stated that all these payments were made from office account and "coded to the loan account", and this account included payments made by the First Respondent directly to MM from her own bank account;

- stated:

  > "I was naturally becoming concerned about the timeline of getting funds into client account that belonged to [MM]. [The First Respondent] was adamant, that the case was genuine and that funds were due to her client [that is MM] and the delays were caused by delays within the Home Office…"
  >
  > "During the autumn of 2014, the cash flow of the business was becoming tighter, but payments to [MM] through Office continued to be authorised by [the First Respondent]…simple processes were not being followed and billing was becoming later and later…"

- stated that "the background for the £69,000 (sic) from October 2014" of unallocated client account withdrawals was that there were:

  > "Movements from client account, that had no corresponding cost billing attached. But from recollection, the whole sum of money would not have been paid wholly to [MM], some would have been used as working capital for the business. Some of the funds would have been paid to [MM], either authorised or possibly transacted by [the First Respondent]."

The Second Respondent also referred to the fact that he had been on leave between 1 August and 17 August 2014 and stated that during that time payments to MM had continued. He stated that he was required to chase the First Respondent for invoices. He commented on bills not being delivered which was confirmed by the schedule showing posting errors in respect of bills or where they had not been delivered. He indicated that the first client to office withdrawal not supported by billing was made to support a payment to PF. He said that he was pressured into making these transfers.

55.2 It was also submitted in the Rule 5 Statement that it was inconceivable, as the person (i) with day-to-day responsibility for the firm's books of account and (ii) responsible for carrying out the transfers of the loan payments to MM, that the Second Respondent did not know those payments were ultimately being funded by withdrawals from client account, and/or that MM himself had no entitlement to any of those funds. Notwithstanding that he was the firm's COFA and was aware of

numerous breaches of the SRA AR 2011, including multiple instances of improper withdrawals from client account, the Second Respondent made no report to the Applicant.

55.3 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Second Respondent admitted each of allegations 1.10, 1.11 and 1.12. The Tribunal had been at pains to ensure that the Second Respondent understood the implications of his admissions particularly his admission of breach of Principle 2 the requirement to act with integrity which it had reminded him was only less serious than dishonesty which was not alleged against him in this application. The Tribunal found the facts giving rise to each of the allegations 1.10, 1.11 and 1.12 proved. The Tribunal also found proved on the evidence to the required standard:

- Allegation 1.10 - the Second Respondent had breached Rule 20.1 of the SRA AR and Principles 2, 6 and 10; indeed the allegation was admitted

- Allegation 1.11 - the Second Respondent had breached Rule 1.2(f) of the SRA AR and Principles 6 and 10; indeed the allegation was admitted

- Allegation 1.12 - the Second Respondent had breached Principles 2, 6 and 7, and failed to achieve Outcomes 10.1 (you ensure that you comply with all the reporting and notification requirements in the Handbook that apply to you) and 10.4 (you report to the SRA promptly serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client) indeed the allegation was admitted.

Previous Disciplinary Matters

First Respondent

56. None

Second Respondent

57. The Second Respondent had not previously appeared before the Tribunal. A section 43 order had been made against him by an Adjudicator of the Applicant on 13 July 2016 under reference: CDT/1138116-2015 and he had also been ordered to pay £400.00 in costs to the Applicant. The Adjudicator had found that the Respondent had utilised the signature of another employee without his authorisation and that this conduct breached SRA Principle 2. The conduct in question had occurred at a firm where the Second Respondent was previously employed.

Submissions on Procedure for the Applicant

58. In its application, the Applicant had applied for a section 43 order against the Second Respondent. Ms Wingfield apologised to the Tribunal that existence of the section 43 order made on 13 July 2016 had not been brought to her attention. She informed the Tribunal that the individual at the Applicant who was instructing her had also been unaware of the section 43 order until it was referred to in documentation

provided late in the afternoon on 3 July 2017 by the Respondent's former solicitor who had been assisting him in advance of the hearing. The order had not been brought to the attention of the Tribunal until this point in the proceedings in accordance with Tribunal practice regarding previous disciplinary matters to avoid prejudicing the Second Respondent. The existing section 43 order ran without limit of time. It was subject to review and to revocation if appropriate. In the circumstances, Ms Wingfield was no longer seeking a section 43 order against the Second Respondent and requested instead that the Second Respondent be dealt by a fine. There was also the potential for the Tribunal to make an order for costs against him. In the application in addition to seeking a section 43 order against the Second Respondent, she had applied in the alternative for such order as the Tribunal should think right. She reminded the Tribunal of its powers which were set out in the Tribunal's Guidance Note on Sanctions:

> "By Section 43(1) and (1A) of the [Solicitors] Act the Tribunal has jurisdiction to deal with misconduct by those who are not admitted but are employed or remunerated by solicitors and others. The powers which the Tribunal may exercise in respect of such individuals are:
>
> - no order.
>
> - to make an order prohibiting, save with the prior consent of the regulator, any solicitor and others from employing or remunerating the person to whom the order relates, or from being a manager or having an interest in a recognised body.
>
> - to review or revoke a Section 43 Order (see separate Guidance Note on Other Powers of the Tribunal).
>
> The Tribunal's powers in respect of complaints by the Solicitors Regulation Authority (SRA) concerning employees of solicitors and managers and employees of recognised bodies have been extended by Section 47(2E) of the Act and an amendment by the Legal Services Act 2007 to Schedule 2 to the Administration of Justice Act 1985 respectively. The Tribunal has the power to make one or more of the following:
>
> - an order directing payment of an unlimited financial penalty payable to HM Treasury.
>
> - an order requiring the SRA to consider taking such steps as the Tribunal may specify in relation to the individual.
>
> - if the individual is not a solicitor, a Section 43(2) Order.
>
> - an order requiring the SRA to refer to an appropriate regulator any matter relating to the conduct of that employee."

This meant that the Tribunal had the power to make an order for a fine and costs even if it was not making an order under section 43.

59. The Tribunal asked Ms Wingfield to address the point made in Tribunal case no. 11298-2014 Johnson and Naughton where the Second Respondent was found to have acted in breach of a section 43 order in that he was working unauthorised by the Applicant and other allegations were also found proved against him. In that case Counsel for the Applicant had submitted that the fine only related to acting in contravention of the existing order and not to the other misconduct found proved. Ms Wingfield informed the Tribunal that the Applicant had spoken to Counsel in that case at the end of the first day of this hearing and he had advised that the circumstances regarding Mr Naughton were fact specific. Here the Second Respondent was not working in breach of a section 43 order and so the allegations found proved against him were not consequent upon such a breach and could be sanctioned separately. Ms Wingfield reminded the Tribunal that the earlier case was not in any event binding upon this division of the Tribunal. Ms Wingfield submitted that the Tribunal had acknowledged that the matters involved against the Second Respondent were serious. The Applicant would have referred them to the Tribunal and incurred costs in respect of the Second Respondent in any event. Ms Wingfield also submitted that a section 43 order was not equivalent to strike off or suspension; it was a regulatory order which permitted an individual to practise in the legal profession but the Applicant must approve their employment. Ms Wingfield submitted that the Applicant's power to fine was very limited and because this was a very serious matter a fine should be levied at Level 3 and not Level 2 of the Tribunal's Indicative Fine Bands. She also submitted that there had been contact with the Second Respondent's legal representatives over a number of months but at no time did they raise the existing section 43 order and it was not raised with anyone at the Applicant.

Mitigation

The First Respondent

60. The first Respondent was not present and offered no mitigation.

The Second Respondent

61. The Second Respondent submitted that he was deeply sorry to find himself in these circumstances. As to culpability, he had not sought to benefit personally and, save for his wages, did not receive any personal gain from the conduct giving rise to the allegations. His actions were not planned. He submitted that he was working in an intolerable environment with a lot of pressure to comply with the First Respondent's directions. He had no personal relationship with the First Respondent or MM and had no interest in the loan arrangements they agreed or any contact with either of them after his employment concluded. He accepted that he could have prevented at least some of the harm caused by the lending. In that sense he breached a position of trust. He was inexperienced in his role and received no training (internally or externally) in relation to the solicitors accounts rules or the role of the COFA and had inadequate supervision. He was used to working in an environment where the commercial managers would tell the finance team what to do and in this instance the First Respondent instructed him to make certain transactions which he tried to resist on the basis that the paperwork was not in place. It later became apparent that in some

instances the necessary paperwork was not provided, but he always acted on the understanding that it would be provided.

62. The Second Respondent submitted that he had not misled the regulator in any way. He had tried to cooperate as far as possible. Unfortunately there was one instance where a deadline was missed but this was because it "landed" when he was going through a difficult time with a separate investigation underway by the Applicant and he struggled to prioritise what was important and handle the pressure of a second investigation. Since that time he had done everything possible to assist the Applicant's investigation; he admitted the allegations and had tried to bring the investigation to a close. If the First Respondent had engaged with the process, he believed the matter would have been concluded long before now.

63. The Second Respondent accepted that harm was caused when money intended to be held in client account was transferred to office account when its transfer should have been properly justified at the time. Client money was put at risk and this had the potential to damage the reputation of the profession. He did not intend to cause harm. The Second Respondent submitted that he could have prevented at least some of the harm by refusing to believe the First Respondent and by reporting concerns to the Applicant. However, the deception was sophisticated and he left on the understanding that the situation was going to be resolved by the First Respondent and his replacement. He had received a direct assurance from the First Respondent that she was in the process of recruiting a new COFA and he thought that there was no need to report to the Applicant. He submitted that his time at the firm had been extremely stressful and had a significant impact on his health. He was in poor health and wanted to leave and he was not thinking clearly about the circumstances at the firm and the option of voluntarily contacting the Applicant. He did email the Applicant about leaving his role and the Applicant responded before he left the firm.

64. The Second Respondent submitted that that there was a clear distinction between his actions and those of the First Respondent. Possibly in believing that the imperfect paperwork would be rectified as soon as possible, he did not act with integrity in ensuring that it was. He did not see his errors as a reflection on his overall integrity or moral compass. There were many instances in the rest of his employment where he acted with integrity; engaging in the process before the Tribunal was such an example.

65. The Second Respondent submitted that a police investigation had concluded that there was no criminal conduct on his part, but he believed investigations otherwise continued. He had agreed to be a prosecution witness if criminal proceedings were initiated and he continued to cooperate with the police as much as he could. The Second Respondent submitted that he had relied on the assurances of the First Respondent in respect of Mr MM. He submitted that the First Respondent still believed later on that Mr MM would pay and the Second Respondent understood that she expressed the same view to the Police. He informed the Tribunal that the police investigation had revealed that MM had successfully deceived a number of other firms of solicitors in exactly the same way and other professionals including accountants. He felt when he raised questions he was regarded as argumentative and obstructive.

66. The Second Respondent accepted that his conduct was 'deliberate' in that he made a conscious decision to act as he did, but it was with the honest belief that the situation presented by the First Respondent/MM was true and the necessary invoices would be raised to reconcile the office/client accounts. The wrong doing was confined to the scenario involving MM. There was no systematic breach of accounts rules across the business. The day he left he undertook a true reconciliation of the client account and there was no deliberate attempt to hide away the numbers and, if there were gaps, it was because he was chasing paperwork.

67. The Second Respondent submitted that he was not aware of particular clients being prejudiced by the conduct giving rise to the allegations. He never attempted to conceal any information, either in the preparation of the firm's accounts or during the course of the Applicant's investigation. He had been open and frank about his involvement which had been led by a genuine and naive mistake of trust on his part. He did not believe at any point that anyone would suffer from the transactions he was involved with as he always believed the First Respondent would be able to provide the necessary paperwork to support the relevant transactions.

68. The Second Respondent also submitted that the circumstances giving rise to the existing section 43 order were quite different to the present circumstances. It did not involve the solicitors accounts rules or client funds but related to one error which was made in settling agreed legal documentation. He was not a solicitor and at the time, he genuinely thought he was acting in the best interests of the client in closing down an agreement as soon as possible. During his time at the firm where the earlier conduct occurred, he worked with the Applicant's forensic investigative team to uncover and piece together evidence of wrongdoing. He had also worked with receivers acting in the same matter and he provided evidence of wrong doing so they could potentially recover for investors. This was an example of his doing the right thing.

69. The Second Respondent submitted that he now worked in a completely different role and had done since April 2015. He had not sought and did not intend to work in the legal sector again. He had complied with the section 43 order. Prior to working in the legal sector, his career was unblemished. He previously worked for two companies both listed on the London Stock Exchange and received excellent references when leaving. The Second Respondent submitted that he no longer controlled client funds and was subject to supervision and worked in a more controlled and regulated financial environment. He was a Finance Manager with oversight of a team which undertook billing for a private hospital. He was concerned that the section 43 order might not only impose a restriction in the legal profession but would also extend to the accountancy profession in which case his means would change overnight. The Tribunal enquired of the Second Respondent whether he was a member of any professional body bearing in mind its power to require the Applicant to refer to an appropriate regulator any matter relating to the conduct of that employee. The Second Respondent indicated that he had previously been a member of CIMA but was no longer. He had left that organisation at the beginning of 2017 because he was not pursuing professional development. He achieved the professional qualification in 2007. Due to his health, he had been considering whether he wished to continue in the accountancy profession. The Second Respondent submitted that a financial penalty

and the application for costs were likely to have a significant effect on his physical and mental health and cause extreme stress.

70. The Second Respondent made submissions about his state of health and the resulting disruptive impact on his daily life and that of his family. He referred the Tribunal to medical information he had provided and to a letter from his wife. He also submitted that he had struggled to cope with the process of the Applicant's investigation and the Tribunal proceedings. He had tried to cooperate as far as possible with the Applicant providing submissions in response to the original application in September 2016 and February 2017. He instructed legal representation who had been liaising directly with the Applicant since June 2016, trying to reach a conclusion and bring the Applicant's proceedings to a close before the matter was to be heard by the Tribunal. He made admissions to the Applicant's allegations at the earliest formal opportunity. He had also tried to sever his case from that of the First Respondent but had been unable to do so until the hearing as the First Respondent has not engaged with the process and the Tribunal had to sit and give her the opportunity to attend.

71. It was submitted for the Second Respondent, regarding costs and his ability to pay that he had not been able to find much guidance about sanction for an un-admitted person and that a section 43 order was equivalent to a strike off or suspension because it meant that the individual could not work in the legal sector again and so it was questioned why a fine was proposed where a section 43 order was already in place. Looking at the purpose of sanction in the Guidance Note on Sanctions the references to the case of Bolton v The Law Society [1994] 1 WLR 512 related to solicitors rather than non-solicitors. The Tribunal was asked to take into consideration the fact that the Second Respondent had to live with the section 43 order for the rest of his career. It had a very significant effect on his career options. It was submitted that the solicitor's profession was protected; the Second Respondent could not repeat the offence. The Second Respondent had not challenged the effectiveness of the section 43 order but had complied with it and would do so going forward. It was argued for the Second Respondent that a section 43 order was equivalent to a striking off order. Ms Wingfield for the Applicant pointed out, however, that that was not the case. Unlike the position where a solicitor was struck off the Roll, the prohibitions imposed under a section 43 order could be waived by the Applicant. If the Tribunal was minded to impose a penalty it was suggested for the Second Respondent that this should be within Level 2 of the indicative bands of fines - conduct assessed as moderately serious - and that the conduct fell at the bottom end of the range of fines. The Second Respondent's first position was that the section 43 order should be enough of a sanction. It was also pointed out that the Second Respondent had struggled to understand why a second section 43 order was sought. It caused untold stress and cost to the Second Respondent to try to deal with the application in those terms. It was submitted that there was no reason that the Applicant should not have known about it. The Applicant undertook investigations including an investigation at the earlier firm at which the First Respondent, the Second Respondent and Ms B had all worked and it was in respect of conduct there the section 43 order had been made. The Second Respondent had asked why a further order was being sought when taking legal advice. He had not raised the point directly with the Applicant. Breach of Principle 2 had been an element of the previous section 43 application. It was not that the Second Respondent took the matter likely but the section 43 order limited his

career and that helped to influence his admission of these allegations and his attempts to try and bring this application to a close.

72. As to his previous knowledge of the solicitors accounts rules, the Second Respondent had made as a point in his mitigation in the original section 43 proceedings that he did not know about the accounts rules. As to whether he should have done something about that before taking on the role at the firm, he was not a legal cashier or COFA at the previous firm but simply knew that the accounts rules existed. He had not familiarised himself with them to the degree that he should have done so although it was submitted for him that he had not been made aware that they should be at the forefront of his mind.

73. The Second Respondent had provided financial information and evidence of financial means. He submitted that a Tribunal penalty and/or an apportionment of the costs involved in the case was going to be extremely difficult for him to pay. He was the primary earner for his family and had three young children. He gave the Tribunal details of the care/educational arrangements for the children and of his wife's employment position and pay on a zero hours contract where there was no guarantee of any work. Their family finances were tight and they had little spare income. Their current accounts were in overdraft (total - £1,900.00). They had used two credit cards to try and bridge the gap in months where they had insufficient income to meet the family's expenditure. They currently owed over £4,300.00. Any spare income at the end of each month was used to try to clear the overdraft and credit card(s). One of the main reasons that the Second Respondent was unrepresented at the Tribunal was because he was unable to afford legal representation.

Sanction

74. The Tribunal had regard to its Guidance Note on Sanctions and in respect of the Second Respondent to the mitigation which had been offered.

The First Respondent

75. The Tribunal had found all the allegations proved against the First Respondent including two findings of dishonesty. The Tribunal determined that the First Respondent's misconduct had been very serious. As to her culpability, the Tribunal was not aware of her motivation because she had not attended the hearing to give an explanation of her actions. However it had the benefit of what she had told the IO. The misconduct arose from actions which were planned in that over a period she had given money from client account quite deliberately to a client without authorisation. She was the sole principal of the firm after Ms B left and Ms B was in any event a salaried partner. The First Respondent had total control of the circumstances giving rise to the misconduct. She was admitted in 1984 and was therefore an experienced solicitor. She had misled the regulator – this was one of the allegations found proved against her with dishonesty. There was a very substantial harm to the reputation of the legal profession as a considerable amount of money appeared to have been lost to client account both in terms of the payments made to the client MM who had no money deposited with the firm and in the monies which had been used for the First Respondent's own purposes including maintaining the practice which she owned. That harm might reasonably have been foreseen. The Tribunal

considered that the extent of the First Respondent's departure from the complete integrity, probity and trustworthiness expected of a solicitor was considerable and the harm to the profession's reputation was commensurate. There were several aggravating factors; dishonesty had been alleged and proved; the misconduct had been deliberate and continued over a period of time; the First Respondent had attempted to conceal her wrongdoing by misleading the Applicant and she certainly should have known that her conduct was in material breach of her obligations to protect the public and the reputation of the profession. It was possible that the First Respondent had been deceived by the client. The Tribunal had been told by the Second Respondent that a police investigation was on foot but she had not engaged in the Tribunal proceedings or indeed in the investigation by the Applicant and so the position was not clear. The First Respondent had done nothing to make good the losses which her actions had caused and the only mitigation apparent was that she had a previously unblemished career. She had made a number of admissions to the IO during the investigation but there was no evidence that she had genuine insight into what had occurred and indeed until the bitter end was insisting that the money would be repaid by the client. In terms of sanction, the most serious misconduct involved dishonesty and a finding that an allegation of dishonesty had been proved would almost invariably lead to strike him off save in exceptional circumstances. The only evidence which might have gone to personal mitigation consisted of a series of medical notes provided by GPs in respect of the First Respondent but no evidence had been provided of her medical state at the time the misconduct occurred and the notes themselves did not satisfy the requirements of the Tribunal's own practice directions. No evidence of exceptional circumstances had been offered to the Tribunal and it therefore determined that striking off would be a reasonable and proportionate sanction in respect of the First Respondent.

The Second Respondent

76. Again the Tribunal had regard to its Guidance Note on Sanctions. In respect of an un-admitted person against whom allegations of misconduct had been proved and who was already subject to a section 43 order, the Tribunal could decide to make no order or any one of the orders provided by section 47(2E) of the Solicitors Act (as amended). The Tribunal assessed the seriousness of the misconduct. As to culpability, the Second Respondent had not been the primary actor in the misconduct which occurred at the firm but on his own admissions he had assisted the First Respondent by facilitating unauthorised transfers and he had singularly failed in his role as a COFA and keeper of the firm's accounts. He indicated that he found the working environment stressful and felt pressured to carry out the First Respondent's orders; his motivation was to carry out her directions. His actions were deliberate and he understood what he was doing. This was not the first firm of solicitors in which he had worked. The Tribunal did however bear in mind the timetable of events. His misconduct at the earlier firm occurred on 12 June 2012. The forensic investigation into the first firm commenced two weeks later on 26 June 2012 when the person whose signature he had utilised without authorisation complained. An Explanation with Warning letter in respect of his conduct, which the Applicant sent to him, was dated 2 July 2015; well after he had left the First Respondent's firm on 31 January 2015. The Adjudicator's finding and award of the section 43 order were dated 26 July 2016. He was not the subject of a section 43 order while working at the First Respondent's firm. However while the Second Respondent might not have been

through the investigation at the earlier firm and not have been familiar with the solicitors accounts rules when he worked at the First Respondent's firm, he was a qualified management accountant and should have been fully aware of the importance of reporting to the Applicant and of familiarising himself with the solicitors accounts rules and the duties of COFA. He had agreed to and taken on the role of COFA without finding out what it involved. In mitigation, he relied heavily on his lack of training and awareness of what the role of COFA entailed but the Tribunal found this mitigation lacked credibility because of his previous experience at another firm where he was aware of his lack of knowledge and apparently did nothing to remedy it. The Tribunal did not consider that he could expect to rely on lack of familiarity with the accounts rules on two separate occasions. The amounts of money he was involved in transferring improperly were not insignificant and the Tribunal determined that the damage to the reputation of the profession was considerable and reasonably foreseeable. The Tribunal found that it was an aggravating factor that regardless of his state of knowledge of the solicitors accounts rules he was clearly aware, as he ran the accounts of the firm, that client money was being miss-used for the benefit of MM and the First Respondent and he persisted in the conduct complained of. He ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. By way of mitigating factors, the Second Respondent had made early and frank admissions and cooperated with the Applicant but the extent of his genuine insight into where he had gone wrong was unclear. The Tribunal found the conduct to be more than moderately serious and that it fell within Level 3 of the Indicative Fine Bands rather than Level 2 as had been suggested for the Second Respondent. Had there been no section 43 order in place the Tribunal would have imposed one. The Tribunal considered the Second Respondent's personal mitigation around his ill health but did not consider that it went to reduce the seriousness of what he had done. The Tribunal assessed the fine at £8,000.00. It considered the Second Respondent's ability to pay. He had submitted financial information but the information about his mortgage commitments did not extend to the amount of equity in his house. The Tribunal therefore reconvened to obtain the information and was satisfied that notwithstanding his other financial commitments the fine should not be reduced; he had equity in real estate which could be used as security for a loan, an ongoing income and a small amount of investments/savings.

Costs

77. For the Applicant, Ms Wingfield applied for costs in the amount of £28,451.76. The First Respondent had not engaged in the proceedings at all. There were no representations from her about the costs or her ability to pay. In the respect of costs incurred in bringing proceedings against the Second Respondent Ms Wingfield submitted that the costs would have been incurred in any event. She accepted that the Second Respondent made admissions at an early stage in response of the Rule 5 Statement and that he had earlier responded to the Applicant. There had been engagement with his then legal representative but it had not been possible to reach an agreed outcome. A draft agreement had only come through to the Applicant's representatives on the evening before the hearing began. As to the detail of the schedule of costs it had been drawn up on the basis of an anticipated one-day hearing. If the Tribunal was not minded to make an apportionment of costs between the First Respondent and Second Respondent on a two thirds/one third basis

Ms Wingfield suggested that it might be on a three quarters/one quarter basis. It was submitted for the Second Respondent that an apportionment of costs between the Respondents on a two thirds (First Respondent) and one third (Second Respondent) basis was not a fair reflection of the circumstances and the First Respondent's primary role in this matter. Her continuing lack of cooperation and engagement with the process had added to the costs involved since the original investigation. The Second Respondent asked that his ability to pay be assessed as part of fixing costs. He also submitted that a fair outcome would be to apportion 90% of the costs to the First Respondent and 10% to him. It was submitted on the back of the existing section 43 order that the Second Respondent had always approached the investigation as being primarily aimed at obtaining a second section 43 order and he had been trying to get himself together to respond that and incurred costs in responding on that basis. The Tribunal summarily assessed costs at £28,450.00. The costs claimed appeared reasonable save that the schedule was based on a one day hearing and the matter had run into the second day but some of the additional time had been devoted to the issue of the original section 43 order overlooked by the Applicant and so the Tribunal did not increase the Applicant's costs for the additional time. The Tribunal considered that the costs should be split between the First Respondent and Second Respondent as to 80% of the liability to the First Respondent who was the primary actor and 20% to the Second Respondent. The First Respondent had submitted no information about her means. The same considerations about the Second Respondent's ability to pay costs applied as to the fine and the Tribunal had borne in mind his two separate liabilities in arriving at its decision.

Statement of Full Orders

78. First Respondent
The Tribunal Orders that First Respondent, ROSE ELIZABETH EGARR, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do contribute to the costs of and incidental to this application and enquiry fixed in the sum of £22,760.00.

79 Second Respondent
The Tribunal Orders that the Second Respondent, ANDREW WALSH, solicitor's clerk, do pay a fine of £8,000.00, such penalty to be forfeit to Her Majesty the Queen and it further Orders that he do contribute to the costs of and incidental to this application and enquiry fixed in the sum of £5,690.00.

Dated this 11th day of August 2017
On behalf of the Tribunal

A. Ghosh
Chairman

Judgment filed
with the Law Society
on 11 AUG 2017