The Respondent appealed to the High Court (Divisional Court) against the Tribunal's decision dated 24 January 2018 in respect of procedural decisions and sanction. The Applicant, the Solicitors Regulation Authority, cross-appealed against the Tribunal's decision not to find dishonesty in respect of allegation 1.1. The appeal and cross-appeal were heard by Lord Justice Irwin and Mr Justice Holgate on 6 June 2018. The appeal was dismissed and the cross-appeal allowed. The Respondent was ordered to pay the Applicant's costs, assessed at £20,000. Ahmad and Solicitors Regulation Authority [2018] EWHC 1596 (Admin). The Respondent sought permission from the Court of Appeal to appeal that decision. That application was dismissed with costs on 29 November 2018.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11674-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

EJAZ AHMAD — Respondent

Before:

Miss J. Devonish (in the chair)
Mrs C. Evans
Mr S. Marquez

Date of Hearing: 8-9 January 2018

Appearances

Andrew Bullock, barrister, employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Rafaquat Hussain, barrister of 1 MCB Chambers, Third Floor, 15 New Bridge Street, London EC4V 6AU for the Respondent. The Respondent did not attend.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 On various dates between 22 July and 30 October 2015 he made or permitted to be made improper payments from the client account of LG Law Chambers ("the Firm"), leading to a minimum cash shortage of £1,203,276.66 as at 30 October 2015, and therefore breached all or any of:

1.1.1 Rule 20.1 of the SRA Accounts Rules 2011 ("the SAR");

1.1.2 Principle 2 of the SRA Principles 2011 ("the Principles");

1.1.3 Principle 4 of the Principles;

1.1.4 Principle 6 of the Principles; and

1.1.5 Principle 8 of the Principles.

1.2 By failing to remedy the consequent shortage on the client account arising from the transfers which are the subject of the allegations made against him in paragraph 1.1, promptly or at all, he breached Rule 7 of the SAR.

1.3 Between 22 July and 2 November 2015, by failing to redeem six charges over five properties in accordance with Undertakings given between 23 July and 20 October 2015 ("the Undertakings"), he breached any or all of:

1.3.1 Principle 6 of the Principles;

1.3.2 Principle 7 of the Principles; and

1.3.3 Outcome 11.2 of the SRA Code of Conduct 2011 ("the SCC").

1.4 Between 22 July and 2 November 2015 he failed to keep properly written up accounting records, and therefore breached any or all of:

1.4.1 Rule 1.2(e) of the SAR;

1.4.2 Rule 1.2(f) of the SAR;

1.4.3 Rule 29.1 of the SAR;

1.4.4 Principle 6 of the Principles;

1.4.5 Principle 7 of the Principles;

1.4.6 Principle 8 of the Principles; and

1.4.7 Principle 10 of the Principles.

1.5 Between 22 July and 2 November 2015 he practised as a sole practitioner without first obtaining SRA authorisation as a recognised sole practitioner and therefore breached any or all of:

1.5.1 Rule 4.3 of the SRA Practising Rules 2011 (version 14) ("the Practising Rules");

1.5.2 Principle 6 of the Principles; and

1.5.3 Principle 7 of the Principles.

1.6 Between 22 July and 2 November 2015 he failed to have in place a Compliance Officer for Legal Practice ("COLP") and a Compliance Officer for Finance and Administration ("COFA") and therefore breached either or both of:

1.6.1 Rule 8.5 of the Authorisation Rules 2011 ("the Authorisation Rules");

1.6.2 Principle 6 of the Principles; and

1.6.3 Principle 7 of the Principles.

1.7 Between 19 October 2015 and 8 February 2017, by failing to disclose information as required by the SRA for the purposes of an inspection of the books of account and other documents of the Firm he breached any or all of:

1.7.1 Rule 31 of the SAR;

1.7.2 Principle 6 of the Principles; and

1.7.3 Principle 7 of the Principles.

1.8 Between October 2015 and February 2016 he gave false and/or misleading information to an FI Officer in the employment of the SRA, and therefore breached or failed to achieve all or any of:

1.8.1 Principle 2 of the Principles;

1.8.2 Principle 6 of the Principles;

1.8.3 Principle 7 of the Principles; and

1.8.4 Outcome 10.5 of the SCC.

2. Whilst dishonesty was alleged against the Respondent in respect of allegations 1.1 and 1.8, proof of dishonesty was not an essential ingredient for proof of those allegations.

Documents

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

- Notice of Application dated 3 July 2017
- Rule 5 Statement and Exhibit EP1 dated 3 July 2017
- Respondent's Answer to the Rule 5 Statement (undated)
- Applicant's Schedule of Costs dated 29 December 2017

Preliminary Matter

Respondent's application to cross-examine the Applicant's witnesses

4. Mr Hussain submitted that he was not aware until his attendance at the Tribunal that the Applicant's witnesses in this matter were not being called to give evidence. He was instructed to attend to represent the Respondent at the hearing the week prior to the hearing. As the witnesses had provided statements in this matter, they should be in attendance at Court so that their version of events could be tested by way of cross-examination. Following questions from the Tribunal, Mr Hussain confirmed that he did not have a hard-copy of the papers in this matter, he had been sent an electronic version by the Respondent. On being instructed, he had not contacted the SRA to ascertain the position in relation to the attendance of any witnesses.

5. Mr Bullock submitted that the usual statutory notices had been sent to the Respondent including a notice pursuant to Rule 14(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the SDPR"). The notices were sent on 8 December 2017. The Respondent was provided with a copy of the witness statements on which the SRA intended to rely and was advised that should he require the attendance of any of those witnesses at the hearing, he should advise the SRA in writing of that requirement nine days before the date of the hearing. By way of an email dated 19 December 2017, Ms Priest, a legal adviser at the SRA, wrote to the Respondent stating: "As I have not heard from you, I assume that you do not wish to cross examine any of our witnesses at the hearing in January. I will now therefore advise them that they do not need to attend." Given that the appropriate notices had been sent to the Respondent, and he had failed to indicate that he required any of the witnesses to attend for cross-examination, the Respondent's application should not be acceded to, and the case should progress on the basis that the Respondent accepted the truthfulness of the content of the witness statements.

The Tribunal's Decision

6. The Tribunal noted that the Applicant had complied with all directions, and the appropriate notice as regards witness attendance had been sent to the Respondent. The Tribunal read an email from the Respondent dated 20 December 2017 (in response to Ms Priest's email of 19 December 2017) which stated:

> "I can not (sic) understand that what type of statements from witnesses (sic). I never run this office (sic)… I have nothing to declare. I was mostly in the hospitals (sic) and with the doctors. I tried to help [Mrs L] for time being (sic). I already request Mr Rafaquat Hussain to prepare Statement rule 5 (sic)

> and he promise me to complete it before end of this month (sic). Kindly help me and let me know what I should do? I am completely depressed."

7. Ms Priest replied to that email on 29 December 2017 and stated (amongst other things):

> "I cannot give you legal advice … You had the opportunity to … confirm which of our witnesses, if any, you wanted to attend the Tribunal to be cross examined. However you failed to do so."

8. The Standard Directions in this matter were dated 6 July 2017. Standard Direction 11 required "Each party to notify the other of the names of any witnesses whom they wish to attend the hearing for cross-examination by no later than 4.00 p.m. on Tuesday 19 December 2017." He was reminded of this date in the letter of 8 December 2017. He was informed in the email of 29 December 2017 that he had not requested the attendance of any witness. He did not, even at that stage, state that he required any witness to attend. Further, no enquiries had been made as regards the attendance of any witnesses following the Respondent's instruction of counsel. The Tribunal considered that the Respondent had been properly provided with the opportunity to request the attendance of witnesses for cross examination, but had failed to indicate that any witnesses were required. In the circumstances the Tribunal refused the application.

Factual Background

9. The Respondent was born in 1954 and was admitted to the Roll of Solicitors in August 2013. He did not hold a current practising certificate. At all material times he was a partner at the Firm, having joined as a partner on or around 8 December 2014. Prior to that, ST was the sole owner of the Firm from 22 November 2014 until the Respondent joined. She resigned from the Firm on or around 22 July 2015 and ceased to be a partner from that date.

10. As a result of irregularities in respect of conveyancing transactions, an FI Officer attended the Firm on 19 October 2015 to commence a without notice inspection of the Firm's books of account. The FI Officer was met by the Firm's secretary who advised that the Respondent had telephoned her the previous day to inform her that he was going to hospital due to a heart condition. She also explained that the only contact number she had for the Respondent had been diverted to the office phone. The FI Officer sent emails to the Respondent and KS. (At the time of the inspection, KS was believed to be a partner in the Firm. KS subsequently advised that he was not, and had never been a partner at the Firm). The emails advised that the FI Officer had attempted to commence an inspection and he was concerned that there did not appear to be a qualified person supervising the Firm.

11. On 22 October 2015, the Respondent telephoned the FI Officer and explained that he intended to close the Firm and obtain run-off cover by 26 October 2015. On 30 October 2015, an SRA Adjudicator made a Decision to intervene into the Practice of the Respondent on the grounds of his suspected dishonesty. The intervention took place on 2 November 2015. On 9 November 2015 the Intervention Officer received a letter from the Respondent stating that he did not intend to resist or challenge the

intervention. As regards the fraudulent transactions, the Respondent explained that ST and a caseworker, Mr H, were responsible.

12. The FI Officer interviewed ST on 2 December 2015 and 18 February 2016. She denied being aware of any concerns relating to conveyancing transactions. She explained that the only time she had spoken with the Respondent since leaving the Firm was in respect of rent that was due as the lease for the Firm's office was in her name. She had had no involvement with the Firm since her resignation.

The Conveyancing Transactions

13. During his investigation, the FI Officer identified six matters where the Firm had acted for the sellers in property transactions and a shortage existed on the client ledger. In each transaction the purchasers had been unable to complete the registration of the properties. The FI Officer was able to reconstitute a client ledger account for each of the transactions from copies of the purchasers' client matter files and the Firm's bank statements.

Sale No. 1

14. The Firm acted for the seller, who was the personal representative of Ms SM. The property was being sold for £620,000.00 plus an additional £50,000.00 for fixtures and fittings. The Official copy of register of title showed that two charges were registered against the property in favour of Santander and PGS. £670,000.00 was received by the Firm on 28 July 2015 into its client account. On 29 July 2015, two payments in the sums of £466,654.41 and £30,000.00 were made to seemingly unconnected third parties. A further payment of £6,640.29 was made to Ms SM on 3 August 2015, however Ms SM had passed away on 28 February 2012. As the FI Officer did not have sight of the Firm's client matter file, he was unable to ascertain whether the payment was made to her estate. By a letter dated 23 July 2015, the Firm provided an undertaking to "redeem the charge in favour of Santander … and hold the DS1 in respect of the charge in favour of [PGS]". Similar undertakings were provided in the Replies to Requisitions contained in the Completion Information and Undertakings form dated 16 July 2015.

15. The FI Officer was unable to find any evidence that the charges had been redeemed. On 15 December 2015, the purchaser's solicitors submitted a claim to the Compensation Fund in respect of the Santander charge registered against the property that had not been redeemed by the Firm.

Sale No. 2

16. The Firm acted for the sellers. The property was being sold for £900,000.00. The Firm received £899,825.00 on 28 August 2015 into its client account, however due to the purchaser's concerns about the purchase, this sum was returned to the purchaser's solicitors the same day. Notwithstanding the concerns, a further payment, in the same amount, was made on 2 September 2015. At 4.34pm, the purchaser's solicitors emailed the Firm stating:

> "Further to completion our client is trying to gain access but one of the vendors is at the property and is stating the property has been sold illegally. Could you please stop any monies going to your clients immediately."

The Firm responded at 5.16pm stating:

> "This is plainly shocking to us and fortunately we have not transferred any money out to any one as such we will return the money first thing tomorrow morning and cancel the contract."

17. The FI Officer noted from the bank statements that three payments in the sums of £45,000.00, £190,000.00 and £349,000.00 were made from the sale proceeds received by the Firm on 2 September 2015. On 3 September 2015, the Respondent emailed the purchaser's solicitors and explained that:

> "Unfortunately we had transferred £545,000 under fraudulent instructions from our client, however we have recalled those monies back in to our account upon receiving your email from you. I have telephone (sic) my Bank at least four time (sic) and have informed them of the fraudulent instructions."

18. The Firm returned the sum of £314,000.00 to the purchaser's solicitors on 3 September 2015. The FI Officer calculated that this left a shortage of £585,825.00.

Sale No. 3

19. The Firm acted for the seller. The property was being sold for £235,000.00. The Firm received £235,000.00 on 25 September 2015 into its client account. The Official copy of register of title showed that one charge was registered against the property in favour of PFL. In the Completion Information and Requisitions on Title form dated 25 September 2015, the Firm undertook to redeem the charge in favour of PFL on completion. The FI Officer noted from the bank statements that three payments in the sums of £100,178.00, £12,000.00 and £25,000.00 were made to seemingly unconnected third parties from the sale proceeds. There was no evidence that the charge in favour of PFL had been redeemed.

Sale No. 4

20. The Firm acted for the seller. The property was being sold for £240,000.00. The Firm received £239,832.00 on 16 October 2015 into its client account. The Official copy of register of title showed that one charge was registered against the property in favour of PFL. In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 15 October 2015, the Firm undertook to redeem the charge in favour of PFL on completion. The FI Officer noted from the bank statements that two payments in the sums of £46,000.00 and £92,500.00 were made to seemingly unconnected third parties from the sale proceeds. There was no evidence that the charge in favour of PFL had been redeemed.

Sale No. 5

21. The Firm acted for the seller. The property was being sold for £200,000.00. The Firm received £200,000.00 on 27 October 2015 into its client account. The Official copy of register of title showed that one charge was registered against the property in favour of the Birmingham Midshires. In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 27 October 2015, the Firm undertook to redeem the charge in favour of the Birmingham Midshires on completion. The FI Officer noted from the bank statements that a payment in the sum of £71,377.66 was made to a seemingly unconnected third party from the sale proceeds. There was no evidence that the charge in favour of the Birmingham Midshires had been redeemed.

Sale No. 6

22. The Firm acted for the seller. The property was being sold for £325,000.00. The Firm received £325,000.00 on 29 October 2015 into its client account. The Official copy of register of title showed that one charge was registered against the property in favour of the Bank of Scotland. In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 20 October 2015, the Firm undertook to redeem the charge in favour of the Bank of Scotland on completion. The FI Officer noted from the bank statements that a payment in the sum of £81,250.00 was made to a seemingly unconnected third party from the sale proceeds. There was no evidence that the charge in favour of the Bank of Scotland had been redeemed.

23. The FI Officer calculated that there was a minimum cash shortage on the Firm's client account of £1,203,276.66 as at 30 October 2015.

Witnesses

24. No witnesses gave oral evidence.

Findings of Fact and Law

25. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

26. **Allegation 1.1 - On various dates between 22 July and 30 October 2015 he made or permitted to be made improper payments from the client account of the Firm, leading to a minimum cash shortage of £1,203,276.66 as at 30 October 2015, and therefore breached all or any of Rule 20.1 of the SAR and Principles 2, 4, 6 and 8 of the Principles.**

The Applicant's Submissions

26.1 The evidence demonstrated the involvement or knowledge of the Respondent in the transactions; and upon completion the sale proceeds were paid away to unconnected third parties in whole or in part. The payment of the monies could only have been

made by the Respondent as from 22 July 2015, he was the sole signatory to the client account from which the payments were made. As a consequence, there was a cash shortage on client account in the sum of £1,203,276.66. The SRA had received claims on the compensation fund following the intervention into the firm to a total value of approximately £1.8 million and had paid out £1,280,885.02 to date.

26.2 As to the Respondent's involvement with the transactions:

26.2.1 Sale 1 – his initials appeared on letters dated 23 July and 6 August 2015. His name appeared on an email dated 24 July and two emails dated 28 July 2015 sent by the Firm to the seller's solicitors.

26.2.2 Sale 2 – He sent (what appeared on its face to be) a self-report to the SRA on 5 September 2015. The self-report was not consistent with what had been told to the purchasers' solicitors on 2 September 2015. The self-report stated that on the clients' instructions, three payments had been made from the sale proceeds. The email to the purchasers' solicitors stated that no monies had been transferred out. The self-report made no mention of the prior complaints by the purchasers' as to the *bona fides* of the sale. Mr Bullock submitted that the self-report was a deliberately exculpatory document – Having disbursed funds in a transaction where he was alert to fraud, the Respondent was anxious to cover his tracks at the point when it was likely that the fraud would be discovered. The fact that the report was made 3 days subsequent to when the Respondent was alerted to the fraud was significant as it was consistent with a thought out and deliberate attempt to create an exculpatory position.

26.2.3 Sale 3 – It was recorded in an attendance note of 16 September 2015 that "EA" called. All other documentation for this matter ostensibly emanated from KS. However, as per his statement, KS did not conduct any work for the Firm. It was submitted that it was in fact the Respondent who had conduct of this matter, and had been working under the name of KS.

26.2.4 Sale 4 & Sale 5 – Whilst the Respondent was not mentioned in these matters, the matters were purportedly conducted by KS. As with Sale 4, it was submitted that these matters were in fact conducted by the Respondent.

26.2.5 Sale 6 – The Respondent was named as the representative exchanging contracts and his initials appeared on the Telephone Exchange Memorandum dated 23 October 2015. 26.3 As to the payment of monies to unconnected third parties:

26.3 The Respondent was the only person mandated to operate the client account, thus the funds must have been paid away by him. Even in the event that there were others involved of which the SRA was not aware, the Respondent was ultimately responsible for disbursing the monies. The involvement of any other third parties was, at most, significant to the extent of the Respondent's knowledge as to the transactions. When considering the Respondent's knowledge, the Tribunal should also consider that the Respondent was the sole principal of a small firm, and that the evidence of KS and ST was that they had nothing to do with the Firm at the time these transactions took place.

26.4 It was submitted that in the event that the Tribunal determined that the Respondent had no knowledge of the transactions, this would not be enough for the allegation to be dismissed. On the Respondent's case he transferred funds on the say so of ST. In determining whether the Respondent had acted without integrity, Mr Bullock submitted that the Tribunal should apply the test set out in Newell-Austin v SRA [2017] EWHC 411 (Admin) as stated by Mr Justice Morris in paragraphs 47 – 50 of the judgment. Integrity connotes moral soundness, rectitude and steady adherence to an ethical code; lack of integrity is capable of being identified as present or not by an informed Tribunal by reference to the facts of the particular case. It was submitted that no solicitor acting with integrity would pay away client funds on the say so of someone else. The Respondent had doubts as regards the *bona fides* of Sale 2; this was the only explanation as to the "reluctance" he had in completing the transaction. However, despite that reluctance, he made three payments to unconnected third parties from the proceeds of the sale. By making payments to unconnected third parties the Respondent had not only acted without integrity but had also failed to act in his clients' best interests and had behaved in a way that diminished the trust placed in him and in the provision of legal services. Accordingly, the Respondent had breached Principles 2, 4 and 6 of the Principles.

Respondent's Submissions

26.5 The Respondent denied involvement with any of the transactions. Mr Hussain submitted that it was clear from the language used in some of the letters attributed to the Respondent that he was not the author of those letters. This was evident when a comparison was made of those communications with ones known to have come from the Respondent. The language contained in the documents on the client matters was very different to the Respondent's style. For that reason, the Tribunal could not be sure that any documents attributed to the Respondent were actually from the Respondent. For the same reason, the Tribunal could not be sure that the self-report to the SRA dated 5 September 2015, whilst written in the Respondent's name, was written by him. Mr Hussain submitted that the SRA had advanced its case on the basis that the Respondent had attempted an *ex post facto* covering of his tracks. On the contrary, the Respondent was the victim of a pattern of ongoing deception that had been employed to deflect attention onto the Respondent. Any wrongdoing was not committed by the Respondent; in the event that he transferred funds, this was done at the instruction of ST. It was submitted that, in any event, the Respondent was not responsible for all of the transfers on the transactions. Given that ST and KS had not attended to give evidence, the Tribunal should give less weight to their evidence. As opposed to Mr Bullock's submission that the evidence was unchallenged, it should more properly be defined as untested. It was incorrect to state that the Respondent had provided no innocent explanation for his conduct. In his answer to the FI Officer's questions, the Respondent expressly stated that he had no involvement in any of the transactions related to the Firm and that he had been used as a "proxy". It was clear from the evidence of SC that someone at the Firm had purported to be the Respondent. There was no description matching the Respondent that had been given by any witness, and no photo ID of the Respondent in relation to any of the transactions. The Respondent did not have conduct of any of the transactions; someone at the Firm had purported to be the Respondent.

The Tribunal's Findings

26.6 The Tribunal noted the statement of SC who stated that he had attended the Firm's offices and met "Mr Ijaz". He described him as "athletic build, aged 35 – 40, well groomed" and also that he "spoke clear English". On 29 February 2016 the FI Officer showed SC a video clip. SC did not recognise anyone on that clip. The Tribunal found that the Respondent was on the video clip shown to SC. Mr Bullock accepted that the description given by SC did not match what was known of the Respondent. The Tribunal found that the person said to be "Mr Ijaz" when SC attended the office was not the Respondent.

26.7 On 29 October 2015, the FI Officer received an email, purportedly from KS which stated:

> "please find the details of the property where my Principal [the Respondent] committed fraud by operating several bank account (sic), by using my name as a RFL (Although I am not in the country), by not paying the sellers lender for redemption (sic)"

26.8 In a telephone conversation with the FI Officer on 2 November 2015, KS confirmed that he did not use the email address from which the 29 October 2015 email was sent. The Tribunal determined that the email was not sent by KS. The email described him as an RFL whereas he was a solicitor; had KS written the email he would not have incorrectly described his status.

26.9 Mr Bullock accepted that in terms of signatures on documents, the only document which the Tribunal could be sure was signed by the Respondent was his Answer in these proceedings. The Tribunal noted that the language contained in correspondence purported to be written by the Respondent was very different to the language used in documents known to have been written by him. The Tribunal had already found that there was an individual that had purported to be the Respondent, and the same or another individual that had purported to be KS. In the circumstances the Tribunal could not be sure that (i) any documents which purported to be signed by the Respondent, (ii) any correspondence written in his name, or (iii) any telephone attendance notes where he was said to be a party to the call actually involved the Respondent.

26.10 The Tribunal found that the transfers made as regards Sale 2 were made by the Respondent. As regards the other transfers, the Tribunal could not be sure whether the Respondent had made those. Whilst the Respondent was the only person on the mandate for the Metro account, it was clear that someone other than the Respondent had access to the NatWest account. The Tribunal could not be sure that the Respondent was the only person with access to the Metro Account. The Tribunal was unable to determine whether the transfers were made (i) by the person who had purported to be the Respondent when SC attended the Firm's office, (ii) by the person that had purported to be KS in the email of 29 October 2015, (iii) another person not known to the investigation, or (iv) by the Respondent. The Tribunal did not find any actual evidence that those transactions were undertaken by ST or according to her instructions, as was asserted by the Respondent.

26.11 The Tribunal found that on the Respondent's case, he had lent his name to the Firm. He had taken no account of his responsibilities, obligations and duties as a partner in a practice. This was clear from his answers to the FI Officer in February 2016. The Respondent explained that when he was told by ST that she needed someone to be a partner in the Firm to prevent it from having to close, he "agreed only in good faith" and so as to help on a "courtesy basis". He considered himself to be an "honorary" partner as he could not work for the Firm on a regular basis due to his "health issues". ST, according to the Respondent, had agreed to use his name in a "positive sense". He had not been involved with the Firm when ST resigned, and her resignation came as a shock to him. As a result of that, he started "keeping records of our conversations as I could". It later became clear to him that ST wanted to "put her legal and illegal liabilities upon my shoulder (sic)". The Respondent further explained that when he joined the Firm he "just allowed [ST] to use my name in the firm's documents to carry on her business activities and in order to help her … I was not going to office (sic) regularly."

26.12 On his own case, the Respondent had provided ST with access to the client account, even though she was no longer a partner at the Firm. The video-clip where the Respondent can be seen providing account details to ST was filmed by him. It was clear that, given he filmed the interaction, the Respondent had suspicions about ST. Notwithstanding those suspicions, he provided her with unfettered access to client monies. The Respondent had been responsible for the transfers made in relation to Sale 2. He made those transfers even though he was alert to the purchasers' concerns as to the *bona fides* of that transaction, and despite the doubts he had about the transaction. On 28 August 2015, funds were received into the Firm's client account and returned on the same day to the purchasers' solicitors. The Respondent explained that as regards that matter "at one point I stopped the matter and returned the funds to the seller's (sic) solicitors when I had some doubts." Notwithstanding those doubts it was the Respondent's case that 5 days later, he made 3 payments to unconnected third parties on the instructions of ST.

26.13 The Tribunal determined beyond reasonable doubt that even on his own case, the Respondent had permitted improper payments to be made in breach of Rule 20.1 of the SAR. He had provided access to the client account to ST, who was no longer a partner. Whilst the Tribunal did not find that ST had made any improper payments, on the Respondent's case the payments were made by her or according to her instructions (whether that be by the Respondent or someone else). Had the Respondent not given her the details, ST would not have been able to make any payments. Further, he had acted in breach of the Principles as alleged. The Tribunal accepted Mr Bullock's submission that in considering integrity the definition in Newell-Austin was the appropriate one. No solicitor acting with integrity would simply lend their name to a firm for it to be used in the firm's documents. Nor would a solicitor acting with integrity, who was so suspicious of their business partner that they felt the need to covertly film them, provide that partner with unfettered access to the client account, or make transfers on that partner's instructions without undertaking any due diligence. The Tribunal found it astounding that the Respondent, having been so concerned about Sale 2 that he returned the monies to the purchasers solicitors had, within less than a week of that return, paid monies away to unconnected third parties without making any, or any proper enquiries. The Tribunal determined that this was indicative of the Respondent's belief that he bore no

responsibility for the actions of the Firm, and that he had no liability for the Firm's obligations and duties as he was an "honorary" partner. The Respondent had wholly failed to recognise the magnitude of signing up for partnership in a solicitors firm, both at the time he joined the Firm and throughout these proceedings. As the sole signatory to the account, the Respondent had the ability to stop any payment or to change the banking details. He made no attempt to prevent anyone else from accessing the account, and rather than being concerned to protect client money, the Respondent was more concerned about gathering covert evidence so that he would "have some proof if anything wrong happens, at least I have some evidence to prove myself that it was not my doing but [ST's] plan and execution." The Tribunal determined that this was an extraordinary position for any solicitor to take as regards their duty to safeguard client money given that all solicitors ought to know the sacrosanct nature of client money. Accordingly, the Tribunal found that even on his own case, the Respondent had failed to act in the best interests of his clients. He had failed to run the business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles; he had not run the business at all, nor had he attempted to do so. In failing to act in the best interests of his clients, and permitting client monies to be paid away to unconnected third parties such that there was a shortfall on the client account in excess of £1.2 million, the Respondent had diminished the trust the public placed in him and in the provision of legal services. It would be of extreme concern to members of the public to know that monies paid for the redemption of charges and held by a solicitor for that purpose were instead paid away to unconnected third parties. For most members of the public, the purchase of a property is the biggest purchase they will make; they place their full trust in solicitors to ensure that monies are safely kept and are not improperly paid away.

26.14 Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

27. **Allegation 1.8 - Between October 2015 and February 2016 he gave false and/or misleading information to an FI Officer in the employment of the SRA, and therefore breached or failed to achieve all or any of Principles 2, 6 and 7 of the Principles and Outcome 10.5 of the SCC.**

Applicant's Submissions

27.1 During the course of the investigation, the Respondent made a number of statements to the FI Officer that were demonstrably untrue, either because they were contradicted by other documents or were contradicted by other statements made by the Respondent himself.

- On or around 9 November 2015, the Respondent advised the SRA that on 21 October 2015 he had been undertaking a review of a particular client matter. However, in subsequent correspondence the Respondent stated that was travelling to Pakistan via Dubai on that date. Mr Bullock submitted that this was not something that could be legitimately explained as a mistake; it was expected that the Respondent would know if three weeks previously he was in the UK or abroad.

- On 8 October 2015, the SRA received an anonymous email stating that the Firm had three client bank accounts. This was confirmed by ST when she was interviewed by the FI Officer in December 2015. In an email dated 6 January 2016, the Respondent advised the FI Officer that the Firm only had one bank account with Metro Bank. Following the Firm's intervention on 9 November 2015, the Intervention Agents provided the FI Officer with correspondence detailing two accounts with Metro Bank and a further two accounts at Barclays Bank

- The Respondent stated that he became aware of the forensic investigation into the Firm as a result of the receipt of "an email from your good office dated 16 December 2015", when he had in fact spoken to the FI Officer on 22 October 2015 and had corresponded with him from that date.

- In his response to the FI Officer dated 12 February 2016, the Respondent stated that ST "was looking into the financial matters of the firm, these were joint accounts" whereas he was the only person on the mandate after ST resigned on 22 July 2015.

- When he was asked about Sale 1, where his name appeared as a witness to the seller's signature on the TR1 he stated "I am not aware of that matter [ST] and her colleague can better answer that question. Despite that denial, the Respondent's name appeared on various attendance notes and emails provided to the FI Officer by the various purchasers' solicitors. The Respondent was, in fact, referenced in all six transactions.

- On separate occasions the Respondent stated that he did not know anything about the transactions that completed after 21 October 2015, and denied any involvement with the six transactions but admitted to meeting with the "sellers" in Sale 2.

- The Respondent maintained that all of the files were left in the Firm's office however none of the files relating to the six transactions were at the office when the FI Officer attended or when the SRA subsequently intervened on 2 November 2015.

27.2 By providing the FI Officer with information that he knew to be untrue and misleading, the First Respondent failed to act with integrity. In providing false and/or misleading information, the Respondent had failed to behave in a manner which maintained the trust the public had placed in him and in the provision of legal services in breach of Principle 6, and had failed to co-operate with his regulator in breach of Principle 7. Mr Bullock submitted that the Tribunal did not need to find that the statements made by the Respondent were knowingly false or misleading to find the allegation proved.

Respondent's Submissions

27.3 Mr Hussain did not dispute the inaccuracy of the statements made. As regards the Respondent's answers relating to other accounts, his response to the FI Officer of February 2016 made it clear that when asked about the accounts he believed that he

was being asked about active accounts; the Barclays and NatWest accounts were not "functional" accounts. He accepted that he was the sole signatory of the client account but relied on the video-clips as evidence that others also had access to the client account. The appearance of the Respondent's name on any of the papers in relation to any of the transactions should be treated with caution. He had no conduct of any of the matters, and it was clear that there was someone at the Firm who had impersonated the Respondent. As regards the Respondent's oversight in relation to the date of the commencement of the investigation, this was of no consequence. The Respondent had no knowledge of who had removed the files from the Firm's offices; he had not done so himself.

The Tribunal's Findings

27.4 The Tribunal examined each of the statements made by the Respondent which were said to be false and/or misleading.

27.5 As regards the statements in relation to his travel and the review of the file taking place on 21 October 2015, the Tribunal determined that these were not wholly inconsistent statements; it was perfectly possible that the Respondent had reviewed the file on the date of his travel. In the absence of any evidence to the contrary, the Tribunal could not be sure that these statements were so wholly inconsistent that they must be false and/or misleading.

27.6 As regards the bank accounts, the Tribunal noted that there were bank statements in the joint names of both the Respondent and ST, which post-dated ST's resignation from the Firm, and in fact continued until November 2015. Notwithstanding that the Respondent was the sole person on the mandate, given the statements in joint names, the Tribunal could not be sure that when the Respondent stated that there were joint accounts, that statement was false and/or misleading. The Tribunal accepted that the Metro accounts were not the only accounts as stated by the Respondent. The Tribunal noted that when asked about the accounts, ST, who had been a partner at the Firm prior to the Respondent joining, did not mention the Barclays accounts; they were only discovered by the Intervention Agents. The Respondent, in his explanation to the FI Officer, detailed that he had provided information in relation to the account that was actively used, and not those that were not functional. The Tribunal considered that whilst the information provided was inaccurate, the Respondent may have misunderstood the nature of the information he ought to have provided.

27.7 The Tribunal repeated its findings at allegation 1.1 above as regards the Respondent's involvement in the transactions. Accordingly, the Tribunal could not be sure that any mention of involvement of the Respondent in the transactions could be attributed to his actual involvement. Further, the fact that the Respondent accepted that he had met the seller in relation to Sale 2, was not sufficient evidence to show that he was "involved" in the financial transaction.

27.8 The Tribunal found that whilst the Respondent stated that he was aware of the investigation in December 2015, when it actually commenced in October 2015, the SRA could not have been misled by that statement, given that the investigation had been commenced by the SRA itself; indeed it was the FI Officer who was undertaking

the investigation that had asked when the Respondent was aware of it in the full knowledge of all communication with the Respondent.

27.9 The Tribunal determined that it could not be sure that the Respondent's assertion that he had left the files relating to the transactions in the office was false and/or misleading. The fact that none of the files relating to the transactions were at the office when the FI Officer attended or when the SRA intervened into the Firm was not evidence that the Respondent's assertion was untrue and nor could the Tribunal infer that to be the case. This was particularly so in light of the SRA's acceptance that the FI Officer was permitted access to the offices by a third party.

27.10 Given its findings, the Tribunal could not be sure that the Respondent had given false and/or misleading information as alleged. Accordingly, the Tribunal did not find allegation 1.8 proved beyond reasonable doubt, and that allegation was dismissed.

28. **Dishonesty**

Applicant's Submissions

28.1 The appropriate test for dishonesty was that formulated by Lord Hughes in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

28.2 It was the Applicant's view that this test formed part of the *ratio* in the case, but in the event that the Tribunal deemed that the test was *obiter*, it was highly persuasive given that the decision emanated from five of the seven most senior judges of the highest court in the land.

28.3 In considering dishonesty it was not necessary to embark on an extensive inquiry into the Respondent's involvement in each of the transactions. There was ample evidence on the papers that he had played a greater role in those transactions than he had admitted. The Respondent was responsible for paying away the monies; that was clear as he was the only person on the bank mandate. The evidence of ST was that she had no involvement with the Firm once she left on 22 July 2015, and that she had "no control of financial matters beyond that date." Accordingly, the Respondent's response to the FI Officer during the course of the investigation that he had not committed any wrongdoing and that it was ST was incorrect. As regards the video clips submitted by the Respondent to the SRA, they were of little evidential value without the Respondent attending the Tribunal to explain their provenance. At their

highest, the clips did no more than show that on an unspecified date, at an unspecified time and in an unspecified location the Respondent had had a conversation with ST about pin numbers and passwords to an unspecified account – there was no evidence as to the context of that conversation. There was also no explanation from the Respondent as to why he was engaged in covertly filming ST in the course of what appeared to be a routine conversation between partners. Mr Bullock submitted that it may well be thought that the covert filming was, of itself, a suspicious act.

28.4 The Respondent's actions were clearly dishonest. Over a three month period, the Respondent had paid away in excess of £1.2 million out of the proceeds of the sale of properties where the Firm had conduct of conveyancing matters, to 10 different parties who were unconnected with the transactions. This constituted a course of conduct over that time. The paying away of the monies to unconnected third parties was a deliberate and conscious decision made by the Respondent who knew, or ought to have known that those parties were not included in the Completion Statements sent to his clients in respect of the transactions. Further, it could be inferred that the Respondent had sought to conceal his actions by removing or destroying all files and ledgers relating to the transactions. As regards the false and/or misleading statements, those statements were demonstrably untrue either because they were contradicted by other documents, or were contradicted by other statements made by the Respondent himself. The statements made were not being challenged by Mr Hussain on the Respondent's behalf, and it was not advocated that they were in fact accurate. Given the nature of the contradictions, it was submitted that the Respondent could not sensibly suggest that he did not know that what he was saying was untrue. Mr Bullock submitted that reasonable and honest people would view the Respondent's conduct as dishonest.

28.5 Given the above, it was clear that the Respondent's conduct required him to provide an explanation as to how his conduct was honest – no explanation had been forthcoming. Not only had the Respondent not attended to give evidence in these proceedings, he had been asked in a letter dated 18 October 2016 to explain his conduct. That letter informed him (amongst other things) that his conduct in relation to the transactions (allegation 1.1) and the provision of false and/or misleading information during the course of the investigation (allegation 1.8) was considered to be dishonest. The Respondent replied on 30 October 2016 requesting an extension of time for providing his response, and citing his health issues and limited access to the internet as reasons for his inability to respond previously. No substantive response was received from the Respondent in relation to the questions asked of him. In an email dated 12 December 2016 the Respondent explained:

> "I am in the hospital in ICU. I am a kidney transplant (sic) with other multiple medical issue (sic). I already sent file for response to barrister (sic) and in the same time I need legal opinion the Barrister promise to wait till this weekend. Kindly allow some more time to clarify myself and to make you more easier (sic) to find out culprit (sic)."

28.6 Whilst it was not disputed that the Respondent had a number of medical issues, it was submitted that it was difficult to see how those issues prevented him from answering the questions asked. Even a sick solicitor facing dishonesty would be anxious to explain why the SRA had erred in its allegations or misunderstood the facts. The

Respondent had had ample opportunity to put forward an innocent explanation and had failed to do so. The Tribunal was referred to its Practice Direction ("PD") 5 which quoted the decision of Sir John Thomas in Iqbal v SRA [2012] EWHC 3251 (Admin): "ordinarily the public would expect a professional man to give an account of his actions". PD5 clearly stated that:

> "in appropriate cases where a Respondent denies some or all of the allegations against him … and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings."

28.7 Mr Bullock submitted that this was a case where the Tribunal could properly draw an inference from the Respondent's silence pursuant to PD5 and Iqbal.

The Respondent's Submissions

28.8. Mr Hussain made no representations as to the test for dishonesty. The Respondent denied that he had been dishonest. Even on the case presented, if the Respondent was the person who made the transfers, he did so on the basis that those transactions related to genuine client matters. There was no evidence that could be relied upon to show that the Respondent had conduct of any of the matters. As to the transfer of funds on the instructions of ST, the Respondent was perfectly entitled to rely on her instructions. She was the senior solicitor and supervising principal who maintained her involvement with the Firm even after her resignation. The Respondent believed that ST's resignation was temporary on the basis of ill health. Nothing changed in terms of the management of the Firm following her resignation. Further, there was no evidence that the Respondent knew that the parties to whom monies were paid were not in fact entitled to those funds; the Applicant had failed to provide any evidence which showed that the Respondent knew the transfers to be improper. The culpability for the improper transfer of funds lay with others and not with the Respondent.

The Tribunal's Findings

28.9 In light of its dismissal of allegation 1.8, the Tribunal likewise dismissed the allegation that the Respondent's conduct had been dishonest in that regard.

28.10 The Tribunal agreed that the appropriate test for dishonesty was that formulated by Lord Hughes in Ivey. Given Sir Brian Leveson's statement in DPP v Patterson [2017] EWHC 2820 (Admin), that the comments of Lord Hughes were "clearly *obiter*", the Tribunal did not accept Mr Bullock's submission that the test formed part of the *ratio* of Ivey.

28.11 The Tribunal could not be sure that the Respondent had been involved in the transactions as alleged. The Tribunal referred to its detailed findings in relation to the Respondent's involvement in the transactions in relation to allegation 1.1 above. In response to the FI Officer's request for an explanation of his involvement in the transactions, the Respondent stated: "I was not involved in any of the transaction (sic) related to [the Firm] … whatever was done it was purely upon the instructions of [ST]… my name was used as proxy". The Tribunal found that statement to be

ambiguous. It could not be sure whether the Respondent was stating that he had made the transfers on instructions, or that the transactions had been conducted by others on instructions using his name. The Tribunal could not be sure that it was the Respondent that had paid away the monies in relation to all of the transactions. The Tribunal noted that attached to the email of 29 October 2015 was a screenshot of the NatWest account. The account was logged into in the name of the Respondent, but the email had not come from him, nor had it been sent, as purported, by KS. Given the content of the email, the Tribunal determined that it had not been sent by the Respondent himself purporting to be KS as it tended to incriminate the Respondent, but had been sent by a person unknown. Given the email's contents and attachment, it was evident that the sender of this email had access to the NatWest account and knowledge of the transactions. As the Tribunal could not be sure that the Respondent had made all of the transfers, it followed that the Tribunal could not be sure that the Respondent had knowingly transferred monies from client account to unconnected third parties, or that the payments were deliberate and conscious decisions to make payments to unconnected third parties. In light of the reasons stated above, the Tribunal did not find that the Respondent's knowledge or belief was such that he had acted dishonestly. The Tribunal determined that whilst members of the public would be concerned about the Respondent's conduct, they would not think that he had acted dishonestly, as he did not know that the transfers he made were improper payments made in breach of the rules. Accordingly, the Tribunal did not find that the Respondent had acted dishonestly and that allegation was dismissed.

29. **Allegation 1.2 - By failing to remedy the consequent shortage on the client account arising from the transfers which are the subject of the allegations made against him in paragraph 1.1, promptly or at all, he breached Rule 7 of the SAR.**

29.1 Rule 7 of the SAR required that:

> "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account. In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund."

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

29.2 As a result of the transactions detailed above, a cash shortage existed on the client account of £1,203,276.66. This had not been remedied by the Respondent, who was under a duty to do so.

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

29.3 The allegation was denied. Mr Hussain submitted that as the Respondent believed that his appointment as a partner was an "honorary" position, he did not consider that he was responsible for replacing any shortage on the client account, and that this was not what he had intended to be responsible for when he joined the Firm as a partner.

The Tribunal's Findings

29.4 The Tribunal determined that as a principal of the Firm, the Respondent was subject to the requirements of Rule 7, and was thus required to remedy the cash shortage on client account. The Respondent had not remedied the shortage promptly or at all. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt.

30. **Allegation 1.3 - Between 22 July and 2 November 2015, by failing to redeem six charges over five properties in accordance with the Undertakings, he breached any or all of Principles 6 and 7 of the Principles; and Outcome 11.2 of the SCC.**

The Applicant's Submissions

30.1 In five of the six transactions, the Firm undertook to redeem charges as follows:

- Sale 1 - By a letter dated 23 July 2015, the Firm provided an undertaking to redeem the charge in favour of Santander, and to hold the DS1 in respect of the charge in favour of PGS. Similar undertakings were provided in the Replies to Requisitions contained in the Completion Information and Undertakings form dated 16 July 2015.

- Sale 3 - In the Completion Information and Requisitions on Title form dated 25 September 2015, the Firm undertook to redeem the charge in favour of PFL on completion.

- Sale 4 - In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 15 October 2015, the Firm undertook to redeem the charge in favour of PFL on completion.

- Sale 5 - In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 27 October 2015, the Firm undertook to redeem the charge in favour of the Bank of Scotland on completion.

- Sale 6 - In the Replies to Requisitions contained in the Completion Information and Undertakings form dated 20 October 2015, the Firm undertook to redeem the charge in favour of the Bank of Scotland on completion.

30.2 There was no evidence that any of the charges had been redeemed, and there had been claims and payments made by the Compensation Fund in relation to those unredeemed charges. By failing to redeem and discharge the charges, the Respondent as a partner of the Firm had failed to comply with the undertakings given. In so doing he failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6; failed to comply with his legal and regulatory obligations in breach of Principle 7; and failed to perform the undertakings given within an agreed timescale or within a reasonable amount of time in breach of Outcome 11.2 of the SCC.

The Respondent's Submissions

30.3 The allegation was denied. The Respondent did not have conduct of those matters.

The Tribunal's Findings

30.4 The Tribunal found that the undertakings had been given by the Firm as detailed above, and that they had not been complied with. As a Partner, the Respondent was responsible for ensuring that any undertaking provided by the Firm was complied with, irrespective of whether or not he had conduct of the matter. It was no defence to assert that he was not the solicitor with conduct. He was aware that work was being conducted by others in the office. He made no enquiries as to what work others were doing, and showed no interest in the running of the Firm. In joining the Firm as a partner, the Respondent was under a duty to ensure that the Firm complied with its legal and regulatory obligations, and was liable if the Firm failed to do so. This was the case even if the Respondent believed that he had joined on a "courtesy" or "honorary" basis. The Tribunal found that in failing to ensure that compliance, the Respondent had diminished the trust the public placed in him and the provision of legal services. The public would be extremely concerned to know that monies paid to a firm that had undertaken to redeem a mortgage had been paid away to unconnected third parties and the mortgage had not been redeemed. Further, in failing to redeem the charges, the Respondent had failed to comply with his legal and regulatory obligations in breach of Principle 7, and failed to achieve Outcome 11.2 of the SCC. Accordingly the Tribunal found allegation 1.3 proved beyond reasonable doubt.

31. **Allegation 1.4 - Between 22 July and 2 November 2015 he failed to keep properly written up accounting records, and therefore breached any or all of Rules 1.2(e), 1.2(f) and 29.1 of the SAR; and Principles 6, 7, 8 and 10 of the Principles.**

31.1 Rule 1.2(e) required the establishment and maintenance of proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules. Rule 1.2(f) required proper accounting records to be kept which accurately showed the position with regard to money held for each client and trust. Rule 29.1 required that accounting records must at all times be properly written up to show dealings with client money held or paid, including client money not held in a client account, and also office money relating to any client or trust matter.

The Applicant's Submissions

31.2 Since the commencement of the investigation, the Respondent had failed to provide any accounting records for inspection as requested. Mr Bullock submitted that the Tribunal were entitled to infer that those records were not being kept, as if they were, they would have been produced. In failing to keep records the Respondent breached the accounts rules as alleged. Further, he failed to comply with his legal and regulatory obligations in breach of Principle 7; failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial risk management principles in breach of Principle 8; and failed to protect client money and assets in breach of Principle 10.

The Respondent's Submissions

31.3 The allegation was denied. Any responsibility for the keeping of the accounts rested with ST. Those processes should have been put in place by her before her resignation, and should have continued thereafter.

The Tribunal's Findings

31.4 The Tribunal determined that on the Respondent's own case, it was evident that he had failed to keep accurate and properly written up accounting records in breach of Rule 29.1; had failed to establish and maintain proper accounting systems and internal control over those systems in breach of Rule 1.2(e); and failed to keep proper accounting records to record the position with client monies in breach of Rule 1.2(f). It was the Respondent's position that he had no responsibility to do so, with the responsibility resting with ST. This was clearly not the case. As a Partner, the Respondent was under a duty to ensure that the Firm complied with the accounts rules. The Respondent had wholly failed to recognise the obligations that being a partner in a firm entailed. It was simply not possible to be an honorary partner in a firm of that nature and to escape the duties, obligations and responsibilities incumbent with that role. The Respondent had advanced no positive case as regards the accounts. The Tribunal determined that the rules and obligations in that regard were quite clear. The Respondent could not escape the consequences of failing to comply with the rules on the basis that he did not intend to have any responsibility under them. The Tribunal found that in breaching the SAR as alleged, the Respondent had also breached the Principles. In failing to comply with the rules, the Respondent had failed to protect client money and assets in breach of Principle 10. It was clear that on his own case, the Respondent had made no attempts to run the business effectively and in accordance with proper governance and sound financial and risk management principles and had thus breached Principle 8. The Respondent had failed to comply with his legal and regulatory obligations in breach of Principle 7. It was clear that he believed that as an "honorary" partner, he had no obligations; that was incorrect. As a consequence of his conduct, the Respondent had diminished the trust the public place in him as a solicitor and in the provision of legal services in breach of Principle 6. Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt.

32. **Allegation 1.5 - Between 22 July and 2 November 2015 he practised as a sole practitioner without first obtaining SRA authorisation as a recognised sole practitioner and therefore breached any or all of Rule 4.3 of the Practising Rules, and Principles 6 and 7 of the Principles.**

32.1 Rule 4.3 of the Practising Rules required that:

> "If a change to the composition of a recognised body or a licensed body which was a partnership results in a solicitor or REL becoming its sole principal:
>
> (a) the SRA must be notified within seven days; and
>
> (b) temporary emergency recognition may be granted … so as to enable that sole principal to continue in practice …"

Applicant's Submissions

32.2 At the time that the Respondent joined the Firm, ST was the only other partner. As a result of her resignation on 22 July 2015, the Respondent was the sole partner at the Firm, and as such should have complied with Rule 4.3 of the Practising Rules. In his email of 12 February 2016, in response to questions from the FI Officer, the

Respondent confirmed that he had informed the SRA that KS had joined the Firm and that he had never met KS. On 1 November KS emailed the FI Officer and stated:

> "I do not consider myself partner (sic) in the firm. I am currently based in Lahore, Pakistan and have been managing affairs (sic) of my own law firm … [The Respondent] contacted me to provide assistance in a matter for his client in Pakistan and later proposed to work in partnership in [the Firm]. [The Respondent] told me that he has to get the approval from SRA (sic) for me as a partner before the visa process to be initiated by the firm (sic). I have not signed any partnership agreement; I do not have access to the firm's bank Accounts. I have not been involved in any of the firm's affairs up to date."

32.3 In his statement of 5 December 2016, KS explained that he had received a query from the Respondent relating to a family matter, and that as a result of that interaction: "the Respondent offered me the opportunity to join him as a Partner at the Firm. He informed me that he would get approval from the SRA to enable me to become a partner at the Firm." The Respondent sent a letter of invitation to KS dated 29 July 2015, asking him to "come to the UK to discuss a family matter and to discuss the terms of the partnership." KS stated that his visa application was unsuccessful and thus he was unable to travel to the UK and could not provide any assistance on the family matter or discuss the idea of partnership further. He again confirmed that he had no access to the accounts, had conducted no work on behalf of the Firm, had drawn no salary or profit from the Firm and did not consider himself a partner of the Firm. He also stated that he had not signed a partnership agreement.

32.4 Mr Bullock explained that the SRA accepted that KS was not and had never been a partner with the Respondent in the Firm. Accordingly, by failing to notify the SRA that he was the only partner at the Firm following ST's resignation, the Respondent breached Rule 4.3 of the Practising Rules and had failed to comply with his regulatory obligations in breach of Principle 7. The public would expect a solicitor to comply with his regulatory obligations, in particular in respect of his authorisation to practice as a solicitor. His failure to do so necessarily reduced the trust the public had placed in him and in the provision of legal services in breach of Principle 6.

Respondent's Submissions

32.5 In his email of 12 February 2016, the Respondent explained that as a result of ST's resignation, he asked KS to "give his name as partner (sic) of the firm because I was not in a position (financially) to close the firm and pay the Run off cover."

32.6 Mr Hussain submitted that the Respondent did not believe that he was a sole practitioner. He had joined the Firm as a partner and was shocked at the resignation of ST. After ST's resignation, KS stepped in.

The Tribunal's Findings

32.7 The Tribunal noted that in a letter to KS dated 21 October 2015, from the FI Officer, following a telephone conversation, it was stated that:

> "I explained to you that both you and [the Respondent] are listed as partners of the firm and are both therefore responsible for the firm from a regulatory position."

32.8 The Tribunal also noted that at the time of the intervention into the Firm, it was believed that KS was a partner, although that later changed with a supplemental Decision of the Adjudicator dated 13 November 2015.

32.9 The Tribunal considered the statement and email from KS. In both documents KS stated that he did not consider himself to be a partner. He did not unequivocally state that he had not agreed to become a partner in the Firm, or that his offer of partnership was contingent upon a successful visa application. The Tribunal noted that the Applicant had not levelled any allegations against the Respondent in relation to his informing the SRA that KS was a partner. It was clear that at the time of the Decision of the Adjudicator, the SRA believed that KS was a partner in the Firm.

32.10 In considering all of those factors, the Tribunal could not be sure that the Respondent was in fact a sole practitioner as alleged. Accordingly, the Tribunal did not find allegation 1.5 proved beyond reasonable doubt, and that allegation was dismissed.

33. **Allegation 1.6 - Between 22 July and 2 November 2015 he failed to have in place a COLP and a COFA and therefore breached either or both of Rule 8.5 of the Authorisation Rules, and Principles 6 and 7 of the Principles.**

33.1 Rule 8.5 of the Authorisation Rules required an authorised body to have a COLP and COFA at all times. Those roles must be performed by someone of sufficient seniority and in a position of sufficient responsibility to fulfil the roles, and their designation must be approved by the SRA.

The Applicant's Submissions

33.2 ST was the Firm's COLP and COFA from 28 August 2012 until she left on 22 July 2015. The Respondent failed to put in place an alternative COLP and COFA following ST's resignation. In failing to do so he breached Rules 8.5. Members of the public would expect a solicitor to fully comply with his regulatory obligations, in particular in relation to his compliance within his practice as a solicitor. Failure to comply with such regulatory requirements would necessarily reduce the trust the public placed in him and in the provision of legal services.

The Respondent's Submissions

33.3 The Respondent denied this allegation. Mr Hussain submitted that the Respondent did not accept that he was responsible for ensuring that these roles were filled as the system that was in place before he joined was to continue.

The Tribunal's Findings

33.4 The Rules were clear as to the requirement to have a COLP and COFA in place. The Tribunal found that there was no COLP or COFA in place at the Firm following ST's resignation. Accordingly, the Tribunal found beyond reasonable doubt that there had

been a breach of Rule 8.5. The Respondent did not suggest that there was in fact no breach of the Rules; simply that he was not responsible for compliance. As a principal of the Firm, the Respondent was responsible for ensuring compliance with the Rules. He failed to do so. The Tribunal considered the compliance roles to be important regulatory requirements specifically designed to protect the public. In failing to appoint a COLP and COFA, the Respondent had failed in his duty to protect the public. Members of the public would be troubled to know that he had failed to ensure their protection; and had failed to comply with his legal and regulatory obligations that were designed for that protection. This would diminish their trust in him and in the provision of legal services. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt.

34. **Allegation 1.7 - Between 19 October 2015 and 8 February 2017, by failing to disclose information as required by the SRA for the purposes of an inspection of the books of account and other documents of the Firm he breached any or all of Rule 31 of the SAR and Principles 6 and 7 of the Principles.**

34.1 Rule 31 of the SAR required that "You must at the time and place fixed by the SRA produce to any person appointed by the SRA any records, papers, client and trust matter files, financial accounts and other documents, and any other information, necessary to enable preparation of a report on compliance with the rules."

The Applicant's Submissions

34.2 The FI Officer had been provided with no accounting records since the commencement of the inspection. A Section 44B Notice was served on the Respondent on 19 October 2016 requiring the production of a number of documents. On 23 October 2015 the FI Officer emailed the Respondent with a list of documents he wanted to be produced at the meeting scheduled for 30 October 2015. On 30 November 2015, the FI Officer chased the Respondent for the documentation. Further emails were sent by the FI Officer requesting information on 11, 16, 21 and 23 December 2015 and on 4 January 2016. No substantive response was received. Despite numerous requests, the Respondent failed to produce all of the information and documentation requested and thus breached Rule 31 of the SAR. By failing to cooperate fully with the SRA he failed to achieve Outcome 10.6 of the SCC and breached Principle 7. The public would expect a solicitor to fully comply with his regulatory obligations, particularly as regards requests from his regulator to provide information in the course of an investigation. His failure to do so necessarily reduced the trust the public place in him and in the provision of legal services.

The Respondent's Submissions

34.3 The Respondent denied this allegation. When a number of requests were made for the provision of information, the Respondent was not in the UK. Any accounts documentation should have been present at the Firm and in place prior to the Respondent's joining the Firm. Those documents should have been available in the office. Any documents that were not available were as a consequence of earlier failings. The Respondent had responded to the Section 44B Notice by providing the documentation he had in his possession. There was no evidence that the Respondent had taken the documents. Further, there was no suggestion that the FI Officer had

been denied access to the office where the requested documents should have been available. Given that access was not denied, any documents were, by definition, made available.

The Tribunal's Findings

34.4 The Tribunal determined that the Respondent had failed to provide documents as requested by the FI Officer and in the Section 44B Notice. It was clear that the Respondent did not consider that he was responsible for attempting to obtain any documentation and deemed that simply stating he did not possess any documents was sufficient – it was not. Similarly, allowing the FI Officer access to the premises did not mean that the documents were, by definition made available. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had failed to disclose information as requested in breach of Rule 31. As a consequence, the Respondent had breached Principles 6 and 7. He had failed to comply with his regulatory obligations and deal with the regulator in a timely manner. Members of the public would expect a solicitor to comply with those obligations particularly where client account monies had been improperly paid away. Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt.

Previous Disciplinary Matters

35. No previous findings of misconduct.

Mitigation

36. Mr Hussain submitted that there was a spectrum of seriousness and culpability that ought to be considered when deciding on sanction. Whilst breaches of the accounts rules were serious, the Tribunal should consider how the Respondent came to be in breach of those rules. The Tribunal had not been given the complete picture, and the evidence was lacking in that regard. Whilst the breaches were serious, and whilst it was accepted that dishonesty need not be proven for the Tribunal to impose the ultimate sanction, the matters found proved were not so serious that striking the Respondent from the Roll of Solicitors was necessary. The circumstances were such that it appeared that the Respondent had been drawn into a Firm where certain activities appeared to have been in train, and he appeared to be a victim of deceit. The Respondent was naïve and had not fully appreciated his responsibility to scrutinise the books of the Firm as well as its employees and others associated with the Firm. The amount of time from the Respondent's joining the Firm to the transactions taking place was relatively short; that short time-frame suggested that there had been a level of pre-planning by others. There was no question that someone else at the Firm had impersonated the Respondent. It was clear that the Respondent had limited abilities to manage a firm. Given the circumstances, the most appropriate penalty was a financial one. However, in the event that the Tribunal found that matters were more serious, restrictions could be placed on the Respondent's practising certificate preventing him from taking up a management role in a firm or being a sole practitioner. If the Tribunal was of the view that this was still not sufficient, and that the seriousness of its findings were such that the Respondent ought to be excluded from practice, any suspension should be as short as possible, with conditions that the Respondent could only return to practice if he could satisfy the Tribunal of his ability,

capacity and appreciation of the risk in running or being involved in the management of a firm. A short suspension would, in reality, mean an end to the Respondent's career. The documentation submitted in relation to his health showed that he had a number of physical ailments as well as suffering from depression. Mr Hussain submitted that his health conditions meant that he was vulnerable to being preyed upon. It would be a severe blow to the Respondent if he were deemed unsuitable to remain on the Roll; any other sanction would provide the Respondent with hope that he could return to practice.

Sanction

37. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition-December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

38. The Tribunal determined that the Respondent's misconduct had resulted from his irresponsible attitude towards his regulatory obligations; that attitude was wholly unacceptable. He had completely failed to recognise the significance of being a partner in a firm, and the responsibility that such a role entailed. In so doing, the Respondent had allowed his name to be used by the Firm, and had permitted the improper payment of over £1.2 million of client monies. Whilst he may not have made all the payments, the Respondent was directly responsible as the sole signatory on the account from which the payments were made. He had suspicions in relation to Sale 2, but failed to make any proper enquiries or to change access to the client account. On his case he had granted unsupervised access to the client account to ST, who was no longer a partner at the Firm. The Tribunal had found that he had failed to keep properly written up accounting records, and had taken no interest in the accounting procedures of the Firm. He had failed in his duty to ensure compliance with the accounts rules, and his obligation to exercise proper stewardship of client monies. These were serious failings, and were a complete abstention of his duties. The Respondent had breached the trust placed in him and the Firm by clients, who believed that their monies were being safeguarded by being in the Firm's client account. The Respondent's actions had caused significant harm to the reputation of the profession, and were a compete departure from the standards, integrity and probity expected of a solicitor. The Compensation Fund had received claims of approximately £1.8 million, and at the date of the hearing had paid out in excess of £1.2 million. The Respondent ought to have known that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal considered that the Respondent's failings and the harm caused were so severe that the only appropriate and proportionate sanction so as to protect the public and the reputation of the profession was to strike the Respondent from the Roll.

Costs

39. Mr Bullock applied for costs in the sum of £21,575.50. This reflected a reduction in the hearing time of four days to 1½ days and a reduction in the time claimed for his preparation for the hearing. Whilst the hearing had taken two days, Mr Bullock was not claiming for the morning of the hearing on the second day as the submissions he made regarding dishonesty during that time were not accepted by the Tribunal; dishonesty was not found proved. The Tribunal, it was submitted, was not entitled to take into account the Respondent's means in determining the appropriate level of costs to be paid, or in ordering that any costs order could not be enforced without leave of the Tribunal; if it did so it would err in law. The Tribunal was referred to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) which determined that where a solicitor wished to contend that any costs order imposed should take account of his means, he must provide evidence of his means to the Tribunal and the SRA. The Respondent had failed to provide any such evidence.

40. Mr Hussain submitted that whilst the Respondent had not provided any documentation as evidence, his house was subject to repossession. As a result he had utilised a mortgage rescue scheme by which his house had been purchased and he had remained residing there as a tenant. Due to his financial situation the house was again being repossessed by the landlord. He had not understood the repercussions of allowing the purchase of the house by the mortgage rescue company. Proceedings for repossession were under way, but bailiffs had not yet attended at the property. The Respondent was currently in Pakistan with family, prior to that he was in receipt of state benefits. Given his financial position, it was submitted that any order for costs imposed should be one that was not to be enforced without leave of the Tribunal.

41. The Tribunal considered that there should be a further reduction in costs given that it had found allegations 1.5, 1.8 and dishonesty not proved. This was notwithstanding the reduction made by Mr Bullock as regards the hearing time and preparation. Time would have been taken to prepare the Rule 5 Statement and other documents in relation to the unproven allegations. The Tribunal considered that a reduction of £1,570.50 was a reasonable reflection of the costs incurred in relation to those matters. The Tribunal considered that the appropriate and reasonable amount of costs that should be paid by the Respondent in the circumstances was £20,000.00. The Tribunal did not consider that it was appropriate that payment of those costs should be subject to an order not to be enforced without leave of the Tribunal; the Respondent had failed to provide any evidence of his means, and the SRA was not in a position to be able to test the submissions made by Mr Hussain.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, EJAZ AHMAD, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

Dated this 24th day of January 2018
On behalf of the Tribunal

J. Devonish
Chair