SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case Nos. 11679-2017, 11738-2017, 11739-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ISI INYANG — First Respondent
SIMEON OLUMIDE COKER — Second Respondent
[NAME REDACTED] — Third Respondent
NNANNA CHURCHILL WAGBARANTA — Fourth Respondent

Before:

Mr R. Hegarty (in the chair)
Mr B. Forde
Mr S. Hill

Dates of Hearing: 1-9 October 2018

Appearances

James Ramsden QC, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Natalie Claire Jervis, solicitor of Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Applicant. Daniel Purcell of Capsticks appeared on 9 October 2018 in place of James Ramsden QC.

Alexandra Felix, barrister of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London EC4R 0EU, for the First Respondent.

Herbert Anyiam, barrister of Great James Street Chambers, 37 Great James Street, London WC1N 3HB for the Third Respondent.

The Second and Fourth Respondents did not attend and were not represented.

JUDGMENT

Allegations

The Allegations were made in a total of four statements.

Rule 5 Statement dated 7 July 2017
First and Second Respondents only (referred to in this Judgment as "Statement A")

The Allegations contained in this statement were as follows:

In relation to the First Respondent:

1. She failed to rectify a deficit of approximately £130,019.81 on the Client Account:

1.1 from 14 April 2014, the date she became a Partner of the Firm; and/or

1.2 from 10 June 2016, when the Court determined that no debt was owed by Client A to the Firm

and in doing so breached Principles 6, 8 and 10 of the SRA Principles 2011 ("the Principles") and Rule 7 of the SRA Accounts Rules 2011 ("SAR").

2. On becoming aware, on or around 3 February 2017 of a decision by the SRA to effect an intervention into the Firm, and thereafter, she:

2.1 caused or allowed the return of clients' matter files to clients having been informed by the SRA that she should not do so;

2.2 caused or allowed steps to be taken to render information held on the Firm's computer system inaccessible to the SRA;

2.3 told the SRA's Intervention Agent that there were no documents held by or on behalf of the Firm offsite when she was aware that client files were held in off-site storage;

2.4 caused or allowed arrangements to be made for client files held by or on behalf of the Firm in off-site storage to be removed from such storage after their existence had been established by the SRA and in doing so she breached Principles 2, 6 and 7 of the Principles and Rule 31 of SAR.

Dishonesty was alleged with respect to the Allegations at paragraphs 1 and 2 but dishonesty was not an essential ingredient to prove those Allegations.

In relation to the Second Respondent:

3. He made, or caused or allowed the making of withdrawals from the Client Account on 27 January 2014 other than as permitted by Rule 20 of the SAR and in doing so he breached Rule 20.6 of SAR and Principles 2, 4, 6, 8 and 10 of the Principles.

4. He failed to rectify a deficit of approximately £130,019.81 on the Client Account:

4.1 from 27 January 2014, the date of the transfer of £130,019.81 from the Firm's Client Account to the Firm's Office Account; and/or

4.2 from 10 June 2016, when the Court determined that no debt was owed by Client A to the Firm and in doing so he breached Rule 7 of SAR.

5. He failed to discharge or adequately discharge his duties as the Firm's nominated Compliance Office for Finance and Administration (COFA) during 2016 and in doing so he breached Rule 8.5(a), 8.5(e) and 8. 7 of the Solicitors Authorisation Rules ("the Authorisation Rules"), Rule 6.1 of SAR and Principle 7 of the Principles.

Dishonesty was alleged with respect to the Allegations at paragraph 4 but dishonesty was not an essential ingredient to prove that Allegation.

In relation to the First and Second Respondents:

6. The Respondents or either of them knowingly or recklessly caused or allowed inaccurate and misleading information to be produced to the Court including:

6.1 inaccurately describing an Order for Interim Payment made by Master Price on 29 May 2013 as a "judgement" in various Court documents including:

6.1.1 in a Defence dated 29 January 2014;
6.1.2 in a Grounds of Appeal dated 27 November 2014;
6.1.3 in a Skeleton Argument dated 12 March 2015;
6.1.4 in a Grounds of Appeal dated October 2015;
6.1.5 in an Amended Defence dated 15 October 2015;
6.1.6 in a Skeleton Argument dated 26 January 2016.

6.2 Inaccurately stating in Court documents that it had not been denied that Client A had instructed the Firm in the sale of his property, including:

6.2.1 in a Defence dated 29 January 2014;

6.2.2 in a Grounds of Appeal dated October 2015;

6.2.3 in a Skeleton Argument dated 28 January 2016.

6.3 inaccurately stating in a Grounds of Appeal dated 27 November 2014 that "[ARSJ] caused a handwriting expert to examine the signature [on a letter dated 2013] and it was established that it was a forgery".

6.4 under circumstances in which the Firm had been provided with a copy of a Writ of Control relating to enforcement action on or around 13 May 2015:

6.4.1 inaccurately stating in a letter to HHJ Hughes dated 14 October 2015 that Enforcement Officers "did not have authority to attend the premises";

6.4.2 inaccurately stating in a Grounds of Appeal dated October 2015 that "no such letter [a compliance letter] has been produced nor for that matter any Writ of Control".

6.5 inaccurately stating in a Grounds of Appeal dated October 2015 that "it has since transpired that [the Enforcement Officer] is being investigated by Ipswich County Court a fact not disclosed to the Court when they were aware that the investigation had been instigated by the First Respondent in February 2015;

6.6 inaccurately stating in a Grounds of Appeal dated October 2015 that "the deposit was left with [the Firm] and indeed pledged towards the outstanding fees owed [to the Firm] by [Client A]" and in doing so they, or either of them, breached Principles 1, 2 and 6 and failed to achieve Outcome 0(5.1) of the Principles.

Dishonesty was alleged against both Respondents with respect to the Allegations at paragraph 6 but dishonesty was not an essential ingredient to prove the Allegation of recklessly allowing inaccurate or misleading information to be produced to the Court.

Rule 7 Statement dated 2 February 2018
Second Respondent only (referred to in this Judgment as "Statement B")

The further allegations against the Second Respondent were that, while in practice as a Partner in Alpha Rocks Solicitors ("the Firm"):

7. In relation to Client A:

7.1 He caused or allowed a bill for fees and disbursements dated 16 January 2012 totalling £43,732.50 including VAT, to be raised, when the billed sums had not been legitimately incurred, and in doing so breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

7.2 He caused or allowed a bill for fees and disbursements dated 19 March 2012 totalling £3,500 including VAT, to be raised, when Client A was not responsible for the billed sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.

7.3 He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 19 April 2010 totalling £178,350.20 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the SRA Code of Conduct ("the Code").

7.4 He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 28 February 2011 totalling £15,171 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

7.5 He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 16 January 2012 totalling £43,732.50 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

7.6 He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 19 March 2012 totalling £3,500 including VAT, when there was no evidence of Client A's liability for such sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

7.7 By reason of the conduct alleged at 7.1, 7.2, 7.3, 7.4, 7.5 and/or 7.6 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

8. He failed to report to the SRA that he was subject to a 24 month fully probated suspension effective in December 2012 and/or a fully probated suspension effective on 15 December 2014 and in doing so breached Principle 7 of the Principles and Outcome 10.3 of the Code.

Rule 5 Statement dated 2 February 2018
Third Respondent only (referred to in this Judgment as "Statement C")

The Allegations against the Third Respondent were that, while in practice as a Partner in Alpha Rocks Solicitors ("the Firm"):

1. In relation to Client A:

1.1 He caused or allowed a bill for fees and disbursements dated 16 January 2012 totaling £43,732.50 including VAT, to be raised, purportedly in respect of the Firm's conduct, when the billed sums had not been legitimately incurred, and in doing so breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 He caused or allowed a bill for fees and disbursements dated 19 March 2012 totaling £3,500 including VAT, to be raised, when Client A was not responsible for the billed sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.

2. He signed a contract for the sale of Client A's property 13 Augustine's Road ("the Property") for £1.3 million to Company C on 17 December 2012, without authority from anyone at the Firm to sign the contract on Client A's behalf and in doing so, he breached Principles 4, 5 and 6 of the Principles.

3. In connection with proceedings brought by the Firm in February 2013 in which the Firm sought to recover costs said to be owed by Client A:

3.1 he signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and

disbursements dated 19 April 2010 totaling £178,350.20 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Solicitors Code of Conduct 2007.

3.2. he signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 28 February 2011 totaling £15,171 including VAT when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

3.3 he signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 16 January 2012 totaling £43,732.50 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

3.4 he signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 19 March 2012 totaling £3,500 including VAT, purportedly in respect of the Firm's conduct, when there was no evidence of Client A's liability for such sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

4. In relation to Client H:

4.1 he signed a Claim Form and Particulars of Claim dated 11 September 2013, and allowed the same to be filed at Court, stating that Universal Trading & Shipping (UK) Ltd ("Universal") was, at all material times, the owner entitled to possession of the freehold land at 57 Bridge Road ("Bridge Road") when in fact the company had been struck off the Register of Companies, and in doing so he breached any or all of Principles 1, 2, 3, 4 and 6 and failed to achieve Outcome 5.1 of the Principles.

4.2 he signed a Claim Form and Particulars of Claim dated 11 September 2013, and allowed the same to be filed at Court, which stated that the Occupants entered and took possession of Bridge Road on an unknown date and without the Claimant's permission, and failed to disclose to the Court that the occupants had, at one time, a licence to occupy Bridge Road, and in doing so he breached any or all of Principles 1, 2, 3, 4 and 6 and failed to achieve Outcome 5.1 of the Principles.

5. On or around 27 January 2014 he allowed, or failed to prevent the withdrawal of deposit funds held in relation to the sale of the Property from the Client Account other than as permitted by Rule 20 of the Solicitors Accounts Rules ("SAR") and in doing so he breached Rule 20.6 of SAR and Principles 2, 4, 6, 8 and 10 of the Principles.

6. In relation to matters for Client A:

6.1 he signed a Defence dated 29 January 2014, and allowed the same to be filed at Court, which contained inaccurate statements, in that it contended that it had not been denied that Client A had instructed the Firm in the sale of the Property when issues relating to the legitimacy of the instructions in the sale had been raised on at least three occasions and in doing so breached Principles 1, 2, 6 of the Principles and failed to achieve Outcome 5.1 of the Code.

6.2 he signed a Defence dated 29 January 2014, and allowed the same to be filed at Court, which contained inaccurate statements, in that it referred to Master Price's Order for Interim Payment as a judgment without making it clear that it was in fact an order for Interim Payment and that the costs litigation with Client A had not concluded and in doing so breached Principles 1, 2, 6 of the Principles and failed to achieve Outcome 5.1 of the Code.

7. By reason of the conduct alleged at 1.1, 1.2, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 6.1 and/or 6.2 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

8. By reason of the conduct alleged at Allegation 2 above, he acted recklessly.

Rule 5 Statement dated 5 February 2018
Fourth Respondent only (referred to in this Judgment as "Statement D")

The Allegations against the Fourth Respondent were that, while in practice as a Partner in and/or as a Former Partner in Alpha Rocks Solicitors ("the Firm"):

1. During a hearing in June 2016, the Respondent provided false and/or misleading information to the Court, and in doing so he breached Principles 1, 2 and 6 of the SRA Principles 2011 and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011.

2. He caused or allowed a bill of costs dated 19 April 2010 to be raised and delivered to Client A in the RA Matter which contained items which should not legitimately have been charged to Client A and in doing so he breached Rule 1.02 and 1.04, 1.05 and 1.06 of the SRA Code of Conduct 2007.

3. Between April 2008 and February 2010 he acted for Client A in the RA Matter when he did not possess the necessary skills, competence and experience, and in doing so he breached Rules 1.01, 1.04 and 1.05 of the 2007 Code.

4. By reason of the conduct alleged at 1 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of the Allegations.

5. By reason of the conduct alleged at 2 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Preliminary Matters

1. Application to proceed in the absence of the Second and Fourth Respondents (Applicant)

1.1 Mr Ramsden made an application under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") to proceed in absence of the Second and Fourth Respondents, neither of whom had attended or were represented.

1.2 Second Respondent - Mr Ramsden told the Tribunal that there had been a number of occasions when the Second Respondent had engaged directly with proceedings and in compliance with directions.

1.3 In his most recent letter of 27 September 2018 he had informed the Tribunal that he would not be attending or participating. In that letter the Second Respondent had drawn the Tribunal's attention to matters he wished to be taken into account. Mr Ramsden submitted that there was no doubt he was aware of the hearing and had chosen not to attend or participate. The Applicant had declined to fund his travel but had suggested he attend by video link. The Second Respondent had rejected that offer on basis of parity of arms. Mr Ramsden reminded the Tribunal that it was not unusual for Respondents to appear unrepresented. The Second Respondent had conducted a great deal of litigation during his tenure at the Firm and was not somebody cowed by the judicial process and the Tribunal was entitled to say he could have attended by video link and represented himself.

1.4 Fourth Respondent - The Fourth Respondent had cited his age, health and his residency in Nigeria. He had not provided any substantiation of medical incapacity. Mr Ramsden told the Tribunal that the Fourth Respondent's name had been removed from the Roll upon his own application. It had been open to the Fourth Respondent to make written representations and the Tribunal could infer that he did not wish to engage. It was therefore right to proceed in his absence.

1.5 Miss Felix made no representations in respect of this application.

The Tribunal's Decision

1.6 The Tribunal was satisfied that both the Second and Fourth Respondents were aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in

particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(ii) …;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) …;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) …;

(viii) …;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) …;"

1.7 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:-

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

1.8 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

1.9 Second Respondent - The Tribunal read the letter from the Second Respondent dated 27 September 2018. It was right to say that he had engaged throughout the proceedings.

1.10 It was clear that the Second Respondent had made a conscious decision not to attend the hearing, including by video link, or to be represented. The Second Respondent had not sought an adjournment and based on his letter it was clear to the Tribunal that he would not attend any adjourned hearing. This was the second listing of the matter and would be unfair to the other Respondents as well as the Applicant to delay matters. It would not be in the public interest for the matter not to go ahead given the gravity of the Allegations. The Tribunal was satisfied that it was in the interest of justice to proceed in the absence of the Second Respondent. In doing so the Tribunal would have regard to all the documents and submissions he had referred to in his correspondence as well any matters he may have raised had he been present.

1.11 Fourth Respondent - The Fourth Respondent had not communicated with the Tribunal and had not sought an adjournment. The matters relevant to his position were his age, health and the fact that he now lived abroad. He had produced no medical evidence to suggest he was too unwell to attend. He had not applied to participate by video link and there was no indication that he would attend an adjourned hearing. He also faced serious Allegations, which required prompt determination in the public interest.

1.12 The Tribunal was satisfied that it was in the interest of justice to proceed in the absence of the Fourth Respondent. In doing so the Tribunal would have regard to any matters he may have raised had he been present.

1.13 Mr Ramsden's applications to proceed in absence were therefore granted.

2. Application to exclude material from the bundles (First Respondent)

2.1 Miss Felix made an application for a number of items to be excluded from the hearing bundles. These items were set out in a schedule that was presented to the Tribunal on the first day of the hearing.

2.2 Miss Felix accepted that the list was later than it could be, but submitted that a good point was a good point whenever it was made. Miss Felix did not submit that it was impossible for the Tribunal to put matters out of its mind, but the proper course would be to remove what should not be there. The material had to be relevant to the Allegations against the Respondents and probative of the issues. If it was not then it should not be in the bundles.

2.3 The matter of Mr Smith's evidence is dealt with separately below for the purposes of this Judgment.

Applicant's Submissions

2.4 Mr Ramsden submitted that the application was made too late and all parties had prepared on the basis of the documents as they currently stood. The Tribunal was a professional Tribunal which had ample expertise to enable it to put out of its mind any material that may be collateral or irrelevant.

2.5 Mr Ramsden told the Tribunal that the Applicant had been asked to make redactions in the week before the hearing by the First Respondent's legal representatives at the time. These had been agreed even though the Applicant had not believed all of them to be necessary.

2.6 On the specifics of the application, Mr Ramsden had no objection to the redactions proposed to Tab A of the hearing bundles.

2.7 In respect of the Tab B redactions – Mr Ramsden told the Tribunal that he was not relying on the Intervention Judgment.

2.8 In respect of Tab B, Mr Ramsden told the Tribunal that this was central to an Allegation against the Third Respondent. As to the comment from Ms Underwood, that was a matter for the Tribunal but should not be excluded.

2.9 In respect of the proposed redactions at Tab C, Mr Ramsden submitted that this may be relevant to question of whether the First Respondent had given inconsistent evidence on these matters. The Adjudication Panel decision was something the Tribunal was entitled to read but may choose to attach little if any weight. The Tribunal had to reach a fresh decision and the Adjudication Panel decision was not a decision on which the Applicant relied, nor was it directly relevant to decision the Tribunal had to make.

2.10 In response a question from the Tribunal, Miss Felix confirmed that the issues had been in existence at the time of the Case Management Hearing ("CMH") on 11 September 2018 but due to cost issues and Miss Felix's relatively late instruction, it had not been aired.

2.11 The Third Respondent did not have any representations in respect of this application.

The Tribunal's Decision

2.12 The Tribunal considered carefully the submissions made by Miss Felix and Mr Ramsden including the helpful document that Miss Felix had prepared.

2.13 At the CMH on 11 September 2018 the First Respondent had been represented, albeit not by Miss Felix. That hearing had been listed to deal with the issue of the bundles as a result of a lack of agreement between the Second Respondent and the Applicant about the admissibility of certain documents. The Memorandum of that CMH recorded at paragraph 6:

> "Mr Thomas stated that the Applicant had circulated a draft bundle index at the beginning of September in accordance with the relevant Direction. He stated that the First, Third and Fourth Respondents had not raised any objections to it."

2.14 The Tribunal had now been told that the First Respondent had proposed redactions to the Applicant during the week before the hearing. These redactions had been agreed by the Applicant. The bundles had accordingly been prepared in their current form and circulated to the Tribunal, which had read them in preparation for the hearing.

2.15 The First Respondent had been represented throughout the proceedings and had therefore had ample opportunity to raise these matters previously. This application was very late and came on the first day of a substantive hearing that had been listed several months ago.

2.16 The Tribunal was an expert Tribunal and was capable of placing whatever weight was appropriate on material placed before it. It was also capable of putting out of its mind any material that turned out not to be relevant to the Allegations faced by any of the Respondents. It was not uncommon for background material to be before the Tribunal. The Tribunal was fully aware of the evidential status of Judgments in other proceedings.

2.17 The Tribunal was not satisfied that it was necessary, proportionate or in the interest of justice to exclude the material sought, beyond the redaction which Mr Ramsden had conceded could be removed. To that extent only the application was granted, in all other respects the application to remove documents from the trial bundles was refused.

3. Application for a ruling on the basis upon which the Applicant puts its case (First Respondent)

3.1 This application was made on the first day of the hearing. Miss Felix based her submissions on a Skeleton Argument that she had prepared, which the Tribunal read carefully. Miss Felix took issue with a number of paragraphs in Mr Ramsden's Opening Note, which she had received the working day before the hearing.

Applicant's Submissions

3.2 Mr Ramsden submitted that he had every right to make the submissions he had in the Opening Note. What was relevant was what was in the First Respondent's mind at all times. It had never been part of the First Respondent's case before Recorder Hollington QC that there was a nuanced legal argument that it was arguable the money may have been Client A's. It had not been pleaded in that way and the Judge had taken that point of his own volition. The First Respondent had argued that the Firm had a lien over the money and she had stated that Client A had pledged the money to the firm for unpaid fees.

3.3 The test was what her subjective belief was about the Firm's entitlement to keep the monies.

3.4 Mr Ramsden told the Tribunal that it did not have to find as a fact whether it was CH's money or not. That had been determined in civil courts. What the Tribunal was required to do was to establish what was in R1's mind when and if she applied it.

3.5 The Third Respondent had no representations in respect of this application.

The Tribunal's Decision

3.6 The Tribunal considered that this application effectively sought a mini-trial of the issues. The Tribunal would determine the Allegations against all Respondents based on the pleadings in the Rule 5/7 statements. This was not the time to determine this issue. The Tribunal would review all the evidence at the appropriate time in the usual way. This application was therefore refused.

4. Application to exclude evidence of Christopher Smith (First Respondent)

4.1 Miss Felix again, helpfully, produced a Skeleton Argument as the basis of her submissions in respect of this application. Miss Felix submitted that it appeared that the facts that the Applicant was inviting the Tribunal to accept from Mr Smith were that:-

- There was a computer called Alpha 5;
- That it was never produced to Mr Smith;
- That the password for accounts had been changed on the morning of 6 February 2017.

4.2 The inference the Tribunal was being invited to draw was because of the way in which Mr Smith changed the passwords. That inference would only be open to an expert to explain how a computer operated. Mr Smith's evidence was the subject of expertise but the Applicant had not complied with CPR Part 35 and no direction had been made for receipt of expert evidence.

Applicant's Submissions

4.3 Mr Ramsden submitted that what Mr Smith had done was entirely routine. He had not relied on an application of software to retrieve deleted files. He had simply looked at the computer, looked at recent users' index and printed it. Anyone could do that and it was not evidence of opinion. Mr Smith was not an expert and was not being called as an expert witness. He could be cross-examined if it was believed he has been unfair or made mistakes. This was how his evidence had been treated in the Chancery Division. In those proceedings the First Respondent had not suggested that Alpha 5 was a file not a computer. It was right that her new position was now tested. Mr Ramsden submitted that the evidence was clearly admissible.

4.4 Mr Anyiam had no representations in respect of this application.

The Tribunal's Decision

4.5 The Tribunal considered the submissions carefully and re-read Mr Smith's statement. The Tribunal noted that a person with experience could also be a witness of fact. Computers were used as part of everyday life. There were common tasks that people did that did not require expertise.

4.6 There were a number of facts set out in Mr Smith's statement and indeed that had been accepted by Miss Felix in submissions. The Tribunal was capable of distinguishing between facts, opinions and inferences. It may well be that Mr Smith gave evidence as to his opinions and inferences which the Tribunal would, in due course, ignore. Miss Felix would have the opportunity of cross-examining Mr Smith and she would no doubt address the Tribunal in closing submissions. However in view of the fact that at least some of Mr Smith's evidence touched on factual matters, there was no basis to exclude it at this stage and the application was therefore refused.

5. Application to strike out Allegation 3 of Statement C (Third Respondent)

5.1 Mr Anyiam applied to strike out the Allegations under paragraph 3 of Statement C. He referred the Tribunal to the complaints made in the Third Respondent's Response to the Allegations. Mr Anyiam submitted that Allegation 3 lacked specificity it referred to "and/or other documents". He invited the Tribunal to strike it out. The

Applicant had been given the opportunity to amend the Rule 5 Statement and had not done so.

Applicant's Submissions

5.2 Mr Ramsden submitted that the Allegations make reference to specific paragraphs in the Rule 5 Statement. Each of the documents were identified in the corresponding paragraphs and the Rule 5 Statement also made reference to the Rosen Judgment. The Applicant had identified the relevant document in each case insofar as the document existed.

5.3 Miss Felix had no representations in respect of this application.

The Tribunal's Decision

5.4 The Tribunal considered carefully the submissions made both orally and in writing.

5.5 The Rule 5 Statement referred to the various supporting paragraphs. Those paragraphs referred to proceedings against Client A, contained the date of issue of the proceedings, the amount claimed, interest claimed and the subject matter. These paragraphs confirmed that the Third Respondent was not a Partner at the time much of the work behind the bills had been incurred. The paragraphs did confirm that he was a Partner in February 2013 when proceedings had been issued. The Rule 5 Statement alleged that the Third Respondent had signed the Particulars of Claim. Paragraph 127 alleged that the Third Respondent had acted recklessly. Paragraphs 130-132 went on to allege that he knowingly caused the Court to be misled. The Tribunal was satisfied that there was a substantial amount of detail which made it quite clear what was being alleged and provided sufficient detail to allow the Third Respondent to answer the Allegations against him. The Tribunal refused the application to strike out Allegation 3.

Factual Background

The Respondents

6. The First Respondent was born in 1961 and admitted to the Roll of Solicitors on 3 August 1998. She had joined the Firm as a Salaried Partner on 14 April 2014 and had become an Equity Partner on 1 January 2016. At the time of the hearing the First Respondent held a Practising Certificate with conditions including that she may only practise as a solicitor as an employee, and such employment must be approved in writing by the SRA.

7. The Second Respondent was born in 1976 and was a Registered Foreign Lawyer. He had been a Partner at the Firm since 11 October 2011 and had held this role (as well as the role of the Firm's Compliance Officer for Finance and Administration ("COFA")) at the time of the alleged misconduct.

8. The Third Respondent was born in 1962 and was admitted to the Roll of Solicitors on 1 September 2005. He had joined the Firm on 11 October 2011 and been Partner and COLP until 14 April 2014, when he had left the Firm. At the time of the hearing the Third Respondent held a Practising Certificate which was free of conditions.

9. The Fourth Respondent was born in 1943 and was admitted to the Roll of Solicitors on 3 September 2001, having taken and passed the Qualified Lawyers Transfer Test. He was the Senior Partner and COFA at the Firm between 24 April 2008 and 28 February 2010.

10. On 6 January 2016 the Respondent applied to remove his name from the Roll of Solicitors and this had been granted.

Chronology

2008	24-Apr	Fourth Respondent became a Partner (and COFA)
	May	Client A instructed ARS in respect of R Claim
2010	28-Feb	Fourth Respondent ceased being a Partner (and COFA)
	19-Apr	Bill for £178,350.20
	21-May	Freezing Order obtained against Client A
	25-Jun	Freezing Order lifted
2011	28-Feb	Bill for £15,171
	11-Oct	Second Respondent became a Partner and COFA
	11-Oct	Third Respondent became a Partner and COLP
2012	16-Jan	Bill for £43,732.50
	19-Mar	Bill for £3,500
	17-Dec	Third Respondent signed contract for sale of 13 Augustine's Road
	20-Dec	Client A notified ARS that he had instructed Barnes to act for him
	24-Dec	ARS received deposit of £130,000 from RSE
2013	10-Jan	Barnes wrote to ARS informing them they had been instructed to act
	13-Feb	ARS started proceedings against Client A to recover £171,708.06
	25-Feb	Consent Order in respect of the claim for £178,350.20
	04-Mar	RSE alleged that there had been breaches of contract by Client A and sought to rescind contract
	25-Mar	ARS applied for an Order for Summary Judgment re claim for £43,732.50
	29-May	Order for Interim Payment made by Master Price
	06-Jun	Third Respondent signed Particulars of Claim re claim for £178,350.20
	16-Jul	ARS transferred £130,000 to Client Deposit account
	11-Sep	Third Respondent signed Particulars of Claim re claim for possession of 57 Bridge Road

2014	06-Jan	Company C commenced proceedings to recover deposit
	08-Jan	ARS informed Client A that it would offset money they were holding against costs owed
	15-Jan	Claim Form received by ARS
	27-Jan	Second Respondent withdrew money from Client Account
	29-Jan	Defence filed
	14-Apr	Defence filed
	14-Apr	First Respondent became a Partner of ARS
	14-Apr	Third Respondent ceased being a Partner in ARS
	07-Nov	DJ Parfitt ordered ARS' Defence be struck out
	22-Nov	First Respondent signed ARS' Notice appealing DJ Parfitt's Order
	27-Nov	Grounds of Appeal
	15-Dec	Fully probated suspension effective (Second Respondent)
2015	12-Mar	Skeleton Argument
	13-May	Skeleton Argument
	13-May	Firm received Writ of Control
	12-Oct	HHJ Hughes set aside previous orders and ordered ARS pay costs to Company C
	Oct	Grounds of Appeal (unsigned and undated)
	14-Oct	Letter to HHJ Hughes
	15-Oct	Amended Defence
2016	26-Jan	Skeleton Argument
	28-Jan	Skeleton Argument
	10-Jun	Skeleton Argument
	10-Jun	Rosen QC determined no debt owed by Client A to ARS
	05-Sep	Forensic Investigation commenced
	23-Dec	Grounds of Appeal
2017		
	03-Feb	Intervention Notice served
	03-Feb	27 Clients given their files
	06-Feb	Intervention visit by James Dunn and Christopher Smith
	09-Feb	Search & Seizure Order made

Facts

11. *Costs Litigation*

11.1 The Firm had been involved in various strands of litigation in relation to a former client, Client A. As set out in the Judgment of Mr Rosen QC ("the Rosen Judgment") the Firm sought payment by Client A of £171,708.06 plus interest in respect of four matters, as follows:

- £178,350.64 including VAT, said to have been incurred by reason of the Firm's conduct, between about May 2008 and April 2010 of the defence of a County

Court action brought against Client A by his half-brother, less payments credited of £46,835.64, leaving a balance of £131,514.56;

- £15,171 said to have been agreed in respect of the Firm's costs of a freezing order obtained against Client A on 21 May 2010 in relation to his liability for the Firm's fees in the litigation described above;

- £43,732.50 including VAT said to have been incurred by reason of the Firm's conduct, between about September 2010 and March 2012, of a claim in the Land Registry brought against Client A by his former partner less payments credited of £22,210, leaving a balance of £21,522.50; and

- £3,500 said to said to have been incurred by reason of the Firm's conduct, between November 2010 and March 2012, of a claim or claims brought by RF against one of Client A's tenants, AB.

11.2 The Firm raised a bill dated 18 April 2010 for £178,350.20 including VAT in respect of their costs. The Forensic Investigation Officer ("FIO") had stated in the Interim Forensic Investigation Report ("FIR") that "the client file did not evidence any costs updates, estimates or costs/risk benefit analysis relating to the case",

11.3 The Rosen Judgment stated: "[Client A] …accepts that he retained [the Firm] in respect of (a) the [RA Matter] …but denies that it did the work claimed in respect thereof, properly or in some respects at all; alleged that its bills of costs were inflated and indeed false…"

11.4 The Second Respondent was not a Partner in the Firm during the period to which the bill related (May 2008 and April 2010) nor at the time the bill was raised (April 2010). However, he was a Partner in February 2013 when the Firm issued proceedings against Client A seeking to recover the fees allegedly owed by Client A.

11.5 The Third Respondent had signed Particulars of Claim dated 6 June 2013 which stated: "on 19 April 2010 the Claimant's Mr Wagbaranta delivered to the Defendant the Claimant's detailed bill of costs for litigation services carried out on behalf of the Defendant in respect of the said action, amounting to £178,350.20, inclusive of VAT". The Particulars of Claim continued: "on behalf of the Defendant, his son, [Mr SA], conducted a 'reconciliation' of the bill, and, by email dated 17 January 2011, he informed the Claimant…that he arrived at a total fee then owing to the Claimants…was £131,514.56…by deducting payments previously made to the Claimants of £46,835.64". At paragraph 2C the Particulars of Claim stated: "the Claimants have accepted the aforesaid reconciled amount as being due from the Defendant on 17 January 2011, but the Defendant has failed to pay the said sum, or any part thereof".

11.6 The Rosen Judgment stated that "in cross examination, Mr Wagbaranta seemed to admit" that some of the costs should not have been billed to Client A. The Judgment continued "[the Firm] has failed lamentably to offer and even more so to provide any satisfactory explanation of the items which Mr Wagbaranta admitted should not have been charged to the client and constituted a considerable part of the [RA Matter] bill". It concluded "the [RA Matter] invoice and bill of costs were false as regards a

majority of the fees charged and [the Firm] must have known that, or at the very least been reckless. Moreover, the fact that [the Firm] has persisted in its claim for the (full) amount of its [RA Matter] bill…speaks badly as regards its conduct".

11.7 In relation to the case stated in the Firm's Particulars of Claim that the email of 17 January 2011 evidenced Client A's agreement to pay the debt, the Rosen Judgment stated: "I am far from satisfied that [Mr SA's] email was (or was intended to be treated as) a legally binding admission as to the true state of account and liability for a debt of the balance of £131, 514.54 'reconciled' on behalf of his father".

11.8 In respect of the £15,171 bill relating to the freezing order, that matter had been concluded by way of a Consent Order on 25 February 2013. The Consent Order stated that costs were ordered to be 'costs in the claim of all parties costs'. The FIO found that the client file evidenced an invoice in relation to the Injunction totalling £15,171.00 (including VAT and disbursements), dated 28 February 2011. On 6 June 2013 the Firm submitted the Particulars of Claim in which it was stated that "...the Defendant (i.e. [Client A]) sent his son to settle the matters … and he agreed to pay the Claimant bill of costs for the freezing order and the claim, which was £15,171.00". The FIO noted in the Interim FIR that "there was no indication on the client file that [Client A] had either been ordered to pay the Firm's costs, or had agreed to pay them".

11.9 The Rosen Judgment stated that the Firm had not "pleaded how, when or by whom any such agreement [on behalf of Client A to pay £15,171 or any other sum in respect of its alleged Freezing Costs] was made, let alone sought to prove it by evidence."

11.10 In respect of the bill for £43,732.50, the FIO had noted that the Client File contained an invoice for £43,732.50 dated 16 January 2012. The invoice did not detail any payment made on account of costs, although the Client Ledger indicated that, between 31 January and 31 August 2008, the Firm received £4000 into the Office Bank Account on behalf of Client A as payments on account.

11.11 The FIO had further stated that the client file did not contain any evidence of correspondence to Client A regarding costs updates or estimates, or setting out his responsibly for costs.

11.12 The Rosen Judgment found that the Firm had "produced nothing by way of time sheets of other work logs to support its case" and that "[the Firm] could not have submitted its invoice and bill without knowing or being at least reckless as to [the bill's] falsity".

11.13 In respect of the £3,500 bill, the Particulars of Claim stated: "the Claimant also represents the Defendant in a matter between the Defendant and one of his tenants and the bill of costs was £3,500".

11.14 The Rosen Judgment found "again [the Firm] adduced no factual evidence in support of its contention that [Client A] had authorised [Mr RF] to incur liability for [the Firm's] costs on his behalf".

11.15 The Firm had applied for a summary judgment against Client A. Master Price considered the matter and, on 29 May 2013, made an Order for Interim Payment of £131,514.56 plus interest. The Applicant's case was that the First and Second Respondents inaccurately referred to the Order for Interim Payment as a "judgement", in the following documents:-

- Defence dated 29 January 2014;
- Grounds of Appeal dated 27 November 2014;
- Skeleton Argument dated 12 March 2015;
- Grounds of Appeal dated October 2015;
- Amended Defence dated 15 October 2015;
- Skeleton Argument dated 26 January 2016.

11.16 The FIR had recorded that correspondence on the files held by the Firm indicated that Client A had denied, both to the Firm and to Barnes, that he had instructed the Firm in the sale of the property at St Augustine's Road. The Applicant's case was that in the following Court documents the Firm had contended that it had not been denied that Client A had instructed the Firm in the sale of the property:-

- Defence dated 29 January 2014;
- Grounds of Appeal dated October 2015;
- Skeleton Argument dated 28 January 2016.

11.17 During the course of the litigation with Company C, the Firm began to suspect that Barnes had not legitimately been instructed by Client A and so a report was obtained from a graphologist. The Grounds of Appeal dated 22 November 2014 stated that "it was established that the signature on a letter dated 1 July 2013 "was a forgery by the 1st Defendant's son"". The graphologist's report did not refer to the son and the Applicant's case was that the conclusions did not go so far as to establish a forgery, rather it concluded that there was "strong evidence" that the letter was not signed by Client A.

11.18 The FIR recorded that at a hearing on 12 October 2015, HHJ Hughes set aside certain orders previously made in the case and ordered that the Firm pay costs to Company C and the Enforcement Officers. The Firm wrote to HHJ Hughes on 14 October 2015 asking him to prevent the Order from being sealed due to 'material non-disclosure'. The letter stated that the Enforcement Officers "did not have authority to attend the premises". However a letter of 13 May 2015 confirmed that the Firm had received a copy of the Writ of Control by that date. The FIR made reference the Grounds of Appeal drafted following HHJ Hughes' decision of 12 October 2015. The Grounds of Appeal stated that "no such letter [a compliance letter] has been produced nor for that matter any Writ of Control".

11.19 A letter from the Firm to the SRA confirmed that the Index of the Application Bundle before HHJ Hughes showed that the Writ of Control was before the Court at the hearing of 12 October 2015. It was the Applicant's case that it was therefore inaccurate to state in the Grounds of Appeal that no Writ of Control had been produced.

11.20 The Grounds of Appeal (October 2015) stated "it has since transpired that [the Enforcement Officer] is being investigated by Ipswich County Court a fact not disclosed to the Court". However the investigation referred to was instigated following the Firm's complaint about the Enforcement Officers in February 2015 and the Applicant's case was that the Firm therefore knew about the investigation at least eight months before the Court hearing on 12 October 2015.

11.21 In the final hearing which took place in June 2016 before Mr Rosen QC, the Fourth Respondent gave evidence as a witness for the Firm. Mr Rosen QC found that he could not rely on his testimony as honest and accurate. He found that the Fourth Respondent "did not seek to assist the Court to the truth" and was not to be trusted in giving a full account of the sort which the Firm was obliged to provide.

12. Deposit Litigation

12.1 In December 2012, the Firm purported to act for Client A in the sale of a property in Augustine's Road, NW1 9RL ("the Property") to Company C. At the time of acting Client A was alleged to have owed the Firm money for unpaid fees as set out above.

12.2 The Firm received £130,000 on 24 December 2012 from RSE, acting for Company C, as a deposit in the purchase of the Property.

12.3 The contract for sale was signed by the Third Respondent. The FIO identified a letter from Mr SA, Client A's son and attorney, stating that he had not accepted any offer for sale. The letter was dated 17 December 2012 and copied to Client A. There was a telephone attendance note in the name of Mrs A (a struck-off solicitor working at the Firm with SRA permission) stating that Client A had discussed the exchange of contract and stated "he is happy as he wants to buy a property for himself in … Nigeria", and asking her to "save him from [Mr SA]". The FIO reviewed the file and had concluded that "there was no clear authority from Client A or Mr SA for anyone at the firm to sign the sale contract on Client A's behalf".

12.4 Following the exchange of contracts, the sale of the Property did not complete. On 4 March 2013, RSE alleged in correspondence sent to the Firm that there had been breaches of contract by Client A, sought to rescind the contract for sale and sought the return of the deposit funds. The Firm did not return the deposit funds to Client A or to Company C. Company C commenced litigation against the Firm on 6 January 2014. On 8 January 2014 the Firm notified Client A that it had offset the amount they were holding against the sums they claimed were owed by Client A in unpaid fees and disbursements.

12.5 The Firm transferred £130,000 from the Client Account to the Client Deposit Account. On 27 January 2014 the Firm made a further transfer, whereby it transferred £130,109.81 from the Client Deposit Account the Office Account. As a result of the Transfer, a cash shortage of £130,019.81 arose on the Client Deposit Account. As at the date of the FIR (21 November 2016), the cash shortage had not been replaced.

12.6 In the Rosen Judgment it was held that the Firm's claims for fees against Client A were "largely dishonest" and were dismissed, whilst Client A was awarded £65,369.85 and interest on his counterclaim for fees already paid to the Firm.

13. Client H Litigation (Third Respondent)

13.1 The Third Respondent had denied that he was the fee earner on this matter, stating that it was Mrs A. However he had accepted that he supervised her work. On 9 October 2013 proceedings were issued for repossession of a property in Bridge Road. The Claim Form and Particulars of Claim dated 11 September 2013 were completed and signed by the Third Respondent. The Particulars of Claim stated: "The Claimant is and was at all material times the owner entitled to possession of the freehold land at 57 Bridge Road". The Particulars of Claim were supported by a statement of truth. Although the claim was brought in the name of Company U, the company had been struck off the register of companies on 1 July 2003.

13.2 The Applicant's case was that by signing Particulars of Claim stating that the Claimant was entitled to possession when this was not the case, the Third Respondent had placed misleading information before the Court.

13.3 In the same Particulars of Claim dated 11 September 2013, it had been stated: "On a date unknown to the Claimant the Defendants…entered and took possession of the Property without the Claimant's permission and has since remained in possession of the land without the Claimant's permission". The Particulars of Claim did not mention that the Occupants had, at one time, had a licence to occupy, as per the instruction letter from Client H dated 19 August 2013.

14. Failure to Report (Second Respondent)

14.1 The SRA were made aware that the Second Respondent had been made subject to a 24 month fully probated suspension effective on 15 December 2014 following a finding in the District Court of Dallas. The SRA could find no evidence that the Second Respondent had advised the SRA of this sanction. In his response to the SRA on 7 May 2015 the Second Respondent had admitted that he had not disclosed his probated suspension of 15 December 2014, nor an earlier one from December 2012, because "they were not serious matters and [he] was allowed to continue practise as normal".

15. Failures as COFA (Second Respondent)

15.1 The Second Respondent had informed the Court in Grounds of Appeal dated 23 December 2016 that he was "ordinarily resident outside the jurisdiction". However, he had informed the SRA in a letter dated 4 May 2016 that he frequently travelled between the UK and USA as he has "family, properties and businesses in both countries".

15.2 The First Respondent, during the interview on 5 September 2016, explained to the FIO that the Second Respondent "had not attended at the Firm's offices for the whole of 2016" and could not say when he would next be in the office. The FIO stated that the Second Respondent "did not review Client Account reconciliation statements", and could not provide any examples of how the Second Respondent had discharged his role of COFA.

15.3 In a letter from the First and Second Respondents' then-legal representatives, they denied that the Second Respondent had been absent from the Firm for more than a year and stated that "he has fulfilled his obligations as COFA remotely and attended the office when necessary to ensure proper supervision of the office". It stated that "Mr Coker is principally resident in the USA but he is involved in the management of the Firm and is in regular phone and email contact".

16. Post-intervention Matters (First Respondent)

16.1 The Firm was intervened in and this resulted in a visit to the Firm on 6 February 2017 by Mr Dunn and Mr Smith. During the Intervention, the First Respondent advised Mr Dunn that 27 clients had been given their files on 3 February 2017 or over the following weekend, after she had been informed of the intervention. The First Respondent stated to Mr Dunn that she was able to give client files to the SRA or to the clients, which Mr Dunn explained was incorrect.

16.2 While Mr Dunn was meeting with the First Respondent, Mr Smith from Devonshires' IT department, established that there was no server at the Firm, and that all of the Firm's soft copy material was held on connected local computers or drives. He believed that it appeared that files, accounts and letters had been deleted from the Firm's computers over the weekend. The First Respondent had denied that she, or anyone else, had deleted any data or other records from the Firm's computers. She gave Mr Dunn passwords for two of the email accounts at the Firm and agreed to provide full contact details of the 27 clients to whom client files had been given, the passwords for all email accounts, and website passwords. The passwords provided by the First Respondent to Mr Dunn were subsequently discovered to be incorrect. Mr Smith gained access to the master account through the Firm's ISP Provider. He found that when he reset a password, the expiry date was automatically listed as six months later. Therefore, given the previous expiry date for the password on the accounts was 5 August 2017, he deduced that the passwords were last reset on the day of the Intervention visit.

16.3 Mr Dunn asked the First Respondent whether any fee earners had files at home and she confirmed they did not, and that all the client files, including archived files, were at the Firm's address. She specifically confirmed to Mr Dunn that the Firm did not have any off-site storage facility. It was later established that the Firm paid a direct debit to 'Access Self Storage' and that client files were held in a storage unit managed by this company.

17. Lacking Skills (Fourth Respondent)

17.1 In the Rosen Judgment, Mr Rosen QC criticised the Fourth Respondent's work in the RA Matter. At paragraph 17 of the Rosen Judgment he had stated "[The Fourth Respondent] seems to have found the process of obtaining, disclosing and producing documents difficult (Indeed he may not have understood…)".

17.2 At paragraph 28 he stated: "[The Fourth Respondent] demonstrated little knowledge (whatever he might once have known) of the [RA Matter]…and his role…and almost total ignorance of English disputes practice, including the CPR (relevant to the two misconceived application and other work which should not have been charged and for

which he was responsible)". At paragraph 30 Mr Rosen QC continued "in my judgment, [the Respondent] was more than incompetent".

17.3 In Jackson LJ's Judgment of 28 June 2016, he referred to Mr Rosen QC's criticisms, stating: "[Mr Rosen QC] found…that [the Firm's] conduct of the litigation has been incompetent from start to finish. They did not conduct disclosure and litigation properly. Indeed, they did not understand what those processes involved. The bundles which [the Firm] prepared for trial were of no practical use. The Judge heard oral evidence from [the Fourth Respondent], who had conduct of the case. Although he was by then retired, he had conduct of the case on behalf of Client A".

17.4 One of the criticisms was that the Firm had prepared trial bundles for the RA Matter trial that were disorganised, un-paginated and unindexed, manifestly incomplete and inappropriate for any hearing, as well as unnecessary.

Summary of Evidence of Live Witnesses

18. Lesley Horton (FIO)

18.1 Ms Horton was not cross-examined. In response to questions from the Tribunal she confirmed that she had attended the Firm's offices more than once. On one occasion she received a verbal undertaking from the Third Respondent to the effect that monies held in the designated deposit account should remain there. She believed that this conversation took place most likely in December 2013 but possibly the very beginning of January 2014.

19. James Dunn

19.1 Mr Dunn confirmed that his witness statement dated 14 March 2017 and his affidavit dated 10 February 2017 were true to the best of his knowledge and belief. In response to questions from Miss Felix he told the Tribunal that he had attended for a number of hours and that the First Respondent had co-operated with him. He confirmed that the First Respondent had taken a break during the course of the intervention visit.

19.2 In response to questions from the Tribunal Mr Dunn stated that the First Respondent had been concerned when he had raised the issue of her having given the files to clients, which he had told may have amounted to a criminal offence. The First Respondent was intelligible but he accepted that anybody would be upset in the circumstances.

20. Christopher Smith

20.1 Mr Smith confirmed that the contents of his witness statement dated 14 March 2017 were true to the best of his knowledge and belief. Mr Smith was cross-examined by Miss Felix and confirmed that he had been an IT analyst since 2011. He agreed that he had expertise in IT and that he had considerable experience as a result of the many years he had spent in the industry. Mr Smith told the Tribunal that he was not aware of specific guidance for analysing digital equipment.

20.2 Mr Smith stated that Alpha 5 was a reference to another machine. By this he meant that it could be a computer, a networked storage facility or a device on which the majority of data was held. It would have to be something physical but not necessarily a computer. He confirmed that it need not be in the office although in this instance he believed it was because of the addressing system which indicated that it was within the local area network, as opposed to being cloud-based. He confirmed that when he had referred to "a computer called Alpha 5" he did not necessarily mean a freestanding machine with the screen and keyboard.

20.3 Mr Smith was asked if, in accessing Alpha 5, it would look like accessing a file. Mr Smith agreed and went on to state that the user would see the location of the file. At times it would be User 1 and at other times Alpha 5.

20.4 Mr Smith confirmed that he had to reset the passwords using his expertise and the permission granted to him by the Internet service provider. He was unable to exclude the possibility that someone could reset the process that generated a six-month expiry date for the passwords. The system in place at the Firm was not a Windows system but was bespoke.

21. First Respondent

21.1 The First Respondent confirmed that her witness statement dated 10 September 2018 stood as her evidence in chief. She told the Tribunal that she had no previous matters or appearances before her regulator.

21.2 The First Respondent told the Tribunal that she had left local authority work after 10 to 15 years as she wished to develop herself and undertake more complex work. She had managed teams in the past in an 'acting up' role and she had mentored new members of the team.

21.3 When she joined the Firm, the investigation by Ms Horton was already underway. The First Respondent stated that Ms Horton had been guiding her and identifying structural problems. The First Respondent had made a number of suggestions to improve compliance. Whilst she would have had to run them past the Second Respondent, they were her suggestions. In cross-examination the First Respondent told the Tribunal that she could not say if her redraft of the office manual including money-laundering policies and other policies had been completed. It was an ongoing process while she was at the Firm which she periodically continued with. When she became an Equity Partner in 2016 her level of responsibility did not change but she told the Tribunal that she had more of a say in the decision-making.

Allegation 1

21.4 The First Respondent told the Tribunal that it took about six months for her to become knowledgeable about the position in respect of this matter. She told the Tribunal that she had nothing to gain personally from this claim. The First Respondent had not seen the instructions that had been provided to Counsel. At the time she had not felt the need to see them as she had trusted the competence of the people that have gone before her. She also relied on her own understanding of conveyancing processes, specifically, that if a sale did not complete the deposit would be forfeited. On the

basis of this together with Counsel's opinion the First Respondent formed the view that the Firm could set off its fees from the deposit monies. The First Respondent told the Tribunal that the SRA was aware of the situation and had not raised any concerns at that stage. The First Respondent told the Tribunal that at the time she was not aware of how the money had been dispersed. She was told that it had been spent on disbursements. She paid more attention following SRA enquiries after the Rosen Judgment.

21.5 In cross-examination the First Respondent was asked how soon after joined the Firm she became aware that Client A and CH were jointly claiming that the sale had been abandoned by mutual consent. The First Respondent told the Tribunal that she could not recall the exact dates or months but that it took about six months to become fully familiar with the circumstances.

21.6 The First Respondent told the Tribunal that she had sought to locate the instructions to Counsel because the SRA had requested them, but they were not on the file. Mr Ramsden asked the First Respondent whether she had enquired of the Second Respondent as to where they were. The First Respondent told the Tribunal that the Second Respondent was responding to his own request from the SRA and she regarded that matter as his responsibility. It was put to the First Respondent that it was clear from Counsel's advice that it was plainly wrong in that it asserted that the sale may have completed. The First Respondent told the Tribunal that the material part of the advice considered the scenario in which the sale had not completed. The First Respondent was unable to say that she knew the sale had not completed when she read the advice. Mr Ramsden put to the First Respondent that if the sale had completed the money belonged to Client A and if it had not completed there was still no forfeit as it had been by consent. The First Respondent stated that these were legal arguments and there were differing views.

21.7 Mr Ramsden put to the First Respondent that the advice from Counsel contained facts which she knew to be untrue and that the advice was based on those facts and was therefore worthless. The First Respondent did not accept this.

21.8 The First Respondent agreed that she understood that the Firm could only take the monies if it was successful in its claim against Client A. Mr Ramsden pointed out that the claim had failed in July 2016. The First Respondent agreed with this. Mr Ramsden put to her that there was no reason to argue for the retention of the monies after that date. The First Respondent told the Tribunal that the Firm's position was that there was already litigation in Court regarding CH and so it was decided to let the Court decide that matter. She did not regard the money as being client money any longer as neither Client A nor CH were clients, rather it was a judgment debt. Mr Ramsden asked the First Respondent whether at any stage the Second Respondent had pressured her into doing anything that she did not want to do in respect of this matter. The First Respondent stated that she had not been coerced or pressured into taking any action.

Allegation 2

21.9 The First Respondent told the Tribunal that she had received the letter from the SRA notifying her of the intervention on 3 February 2017, which was a Friday afternoon.

She confirmed that she had read it and she accepted that she had handed 27 files to clients. Following receipt of the telephone call, approximately one to 2 hours before the letter, she had realised that the Firm had a problem and she believed that she had a duty to tell the clients of the situation. The First Respondent told the Tribunal that her understanding was that the intervention took effect on the date of the visit, namely the following Monday, 6 February 2017. The First Respondent told the Tribunal that she had been quite shocked when she received the telephone call and her thought was that she needed to organise the office. She had told Mr Dunn that she had given the files back to clients and she told the Tribunal that she had not tried to conceal anything. When Mr Dunn told her that she may have committed a criminal offence she was completely shocked.

21.10 The First Respondent told the Tribunal that she had given all that she knew existed to Mr Smith. She did not know about any other device that existed to run the network. The First Respondent told the Tribunal that passwords were auto saved on the computers and that she had not changed the passwords on the system. The administrator was the Second Respondent.

21.11 The First Respondent told the Tribunal that Alpha 5 was a folder and when you clicked on it you could see all the client files.

21.12 The First Respondent accepted that it was entirely possible that she could have told Mr Dunn that there was nothing stored off-site but she denied deliberately seeking to mislead him. The question of off-site storage was the last thing on her mind. The First Respondent denied having any knowledge as to who may have attended the storage facility. She had not asked anyone to go there.

21.13 In cross examination the First Respondent confirmed that on Friday 3 February 2017 the usual team had been present. Mr Ramsden put to her that the letter stated that the intervention powers "have come into effect". The First Respondent maintained that she thought the intervention would be carried out on the following Monday. That was how she had read the letter. It was put to the First Respondent that the warning about an application to the Court and the possibility of the commission of criminal offences something that she had read and understood. The First Respondent stated that she had been unfamiliar with the process and that whilst she would have seen the reference appreciating the impact is a different matter. She believed that she had understood it with hindsight she accepted that she might have understood it better.

21.14 The First Respondent was asked who had made the decision to return 27 files to clients. The First Respondent stated that it flowed out of conversations. When the client was telephoned, if they wanted to collect their file that they could do so. The First Respondent could not remember who it was that had decided to contact clients but she maintained that this was something that would have had to have been done at some point. Mr Ramsden put to the First Respondent that she had not misunderstood the letter, she knew what it meant and she had deliberately flouted the requirements. The First Respondent denied this and told the Tribunal that she regretted that it had happened.

21.15 The First Respondent accepted that the Tribunal was entitled to conclude that she had told Mr Dunn that there was nothing stored off-site. Mr Ramsden asked the First Respondent why, between the morning of 6 February and the afternoon of 9 February, she had not contacted Mr Dunn to correct the answer. The First Respondent stated that she still found the episode traumatic and she had not remembered about it in that time period. The main focus was working on the legal challenge to the intervention. The First Respondent told the Tribunal that there was a key to the off-site storage there was kept in a drawer in the office. It was put to her that she had not made an enquiry as to who may have attended the facility because she knew about it. The First Respondent denied this.

21.16 The First Respondent told the Tribunal that the first she was aware of the suggestion that Alpha 5 was missing was and she read Mr Smith's witness statement in the proceedings challenging the intervention. It was put to her that at no stage before her evidence before this Tribunal had she stated that she believed that it was a document file. The First Respondent stated that she had not been asked. Mr Ramsden asked the First Respondent if she knew who had accessed Alpha 5 at 7:45 PM on Saturday 4 February 2017. The First Respondent stated that she doubted it was her. Over that weekend all members of the team had attended the office at different times. This was primarily to do tidying up and take personal items home as well as in the filing. The First Respondent was not aware of anyone seeking to tidy or alter electronic files. The First Respondent repeated that she had not changed the passwords. She denied seeking to obstruct the intervention and denied acting dishonestly.

Allegation 6.1

21.17 The First Respondent told the Tribunal that she had nothing to do with the Defence dated 29 January 2014.

21.18 In respect of the grounds of appeal dated 27 November 2014, these had been drafted by Counsel. She told the Tribunal that she believed that she had seen it but could not say so categorically. It was Counsel's position had been that the Order of Interim Payment was tantamount to a Judgment.

21.19 The First Respondent could not recall if she had seen the Skeleton Argument dated 12 March 2015 but if she had seen it she would not have taken issue with the use of the word "judgement" for the same reasons as in respect of the grounds of appeal dated 27 November 2014.

21.20 The First Respondent did not know whether the grounds of appeal dated October 2015 were in draft or final form. They had been drafted by Counsel and again she would not have taken issue with the word "judgement".

21.21 The First Respondent's position was the same in respect of the amended Defence dated 15 October 2015 and the Skeleton Argument dated 26 January 2016, in that the document to be drafted by Counsel and she would not have taken issue with the use of the term "judgement".

21.22 In cross examination Mr Ramsden put to the First Respondent that she could not rely on this as a defence. She stated that this was an argument being put forward and the other side in the litigation was free to agree or disagree with it.

Allegation 6.2

21.23 The First Respondent's position was again in respect of the Defence dated 29 January 2014, was that she had nothing to do with that document. In respect of the grounds of appeal dated October 2015 and the Skeleton Argument dated 20 January 2016, this set out the Firm's belief at the time, namely that the letter suggesting that the Firm had not been instructed by Client A contained a forged signature. In cross-examination it was put to the First Respondent that it was not just the one letter that cast doubt on this and she was asked why she had felt it appropriate to say that there had never been in dispute about Client A's instruction of the Firm. The First Respondent stated that the issue of Client A not having instructed the Firm had been raised by Client A's son. The position of the Firm at the time was that the letter was the son's work.

Allegation 6.3

21.24 The First Respondent told the Tribunal that the Firm believed that the signature on the letter had been forged by Client A's son. This was because the son had instigated the move to another Firm and because of the conclusions of the handwriting expert which stated that there was strong evidence to suggest it was not Client A. In cross-examination the First Respondent told the Tribunal that they were looking at the situation in the round, not just the particular letter.

21.25 Mr Ramsden put to the First Respondent that the handwriting expert did not conclude or seek to identify who the forger may be. The First Respondent was therefore asked why she allowed the Court to be told that it had been established that the son was the person responsible. The First Respondent stated that she believed that he was the forger as he was the only other person involved in the case, he had the power of attorney and had asked for the money. The First Respondent accepted that the expert's report did not mention anybody specifically and stated that she did not pick up on the error at the time in the grounds of appeal. With hindsight she accepted that it was a significant and obvious error. She stated that she had possibly relied too heavily on Counsel but she denied that there was any attempt to mislead or give false information.

Allegation 6.4

21.26 In respect of the letter to HHJ Hughes, the First Respondent told the Tribunal that what she had intended to say was that the enforcement officers did not have the authority to attend at the time they attended. She confirmed that this was her letter and she accepted that when drafting it she knew that the enforcement officers did have authority. The First Respondent told the Tribunal that she accepted that the letter was poorly drafted. She stated that it was the wrong use of words and in her mind the question had been whether they had authority at the time the entered. She had not understood the significant difference between that and the actual position at the time

she drafted the letter and had it been drawn to her attention at the time she would have appreciated it. It had not been her intention to mislead the Court.

21.27 In respect of the grounds of appeal dated October 2015, these were drafted by Counsel. The First Respondent accepted that it contained an error but told the Tribunal that she had not picked up on it at the time. She denied that there had been any intention to mislead the Court.

Allegation 6.5

21.28 The First Respondent told the Tribunal that if she had seen this reference then she missed the error and again there had been no intention to try to mislead the Court. The First Respondent accepted that this should not have been said that queried whether the grounds of appeal represented the final document filed at Court. Mr Ramsden put to the First Respondent that this was consistent with the Firm saying things which served its purpose regardless of whether they were accurate are true. The First Respondent denied this.

Allegation 6.6

21.29 The First Respondent referred the Tribunal to her witness statement in which she explained that the word "pledged" was synonymous with the word "promise".

21.30 In cross-examination the First Respondent accepted that it was an error to have said that the monies left with the Firm had been promised as funds against which the Firm could discharge its fees. It was put to her that this was a grievous and serious error. The Respondent accepted that it was an incorrect statement and was a mistake.

21.31 In response to a question from the Tribunal, the First Respondent stated that in order to ensure that Counsel had a fully contemporaneous bundle and was fully appraised of all the relevant documents she would have ensured that Counsel was provided with necessary material. She explained that while she had run cases of that size before, there had been an extensive use of Counsel to assist. In re-examination the First Respondent stated that Counsel had explained to her what had transpired and what the arguments were. The Managing Partner, the Second Respondent, was giving the instructions.

22. Third Respondent

22.1 The Third Respondent had served an affidavit dated 28 September 2018 on the first day of the hearing. No objection had been taken to its admission and the Tribunal took this as the basis of the Third Respondent's evidence in chief.

22.2 The Third Respondent told the Tribunal about his route to qualification and his work history. He told the Tribunal that in the last 13 years he had undertaken fewer than 10 conveyancing cases. Upon arriving at the Firm he became aware of Mrs A and of her status as a struck off solicitor who had been granted permission to work. He was asked to be her supervisor as the Second Respondent could not do so on account of being her son.

Allegation 1.1

22.3 The Third Respondent told the Tribunal that to the extent that he was a Partner and the COLP, he admitted this allegation. He had not personally caused or allowed the bill to be raised but he told the Tribunal that he admitted the allegation on a strict liability basis. He stated that he may have been reckless but he was certainly not dishonest.

Allegation 1.2

22.4 The Third Respondent told the Tribunal that this related to work done before he joined the Firm and he again admitted this allegation on a strict liability basis. He later signed the Particulars of Claim in respect of this matter believing that work had been carried out.

Allegation 2

22.5 The Third Respondent accepted that he had signed the contract of sale. He stated that he had not had direct authority from the client but that he had been authorised by the Second Respondent to sign the contract. He had relied on that authority when doing so.

Allegations 3.1-3.4

22.6 In the case of each of the bills referred to in the Particulars of Claim, the Third Respondent told the Tribunal that this related to work undertaken before his time at the Firm. He genuinely believed that some work had been done and believed that the sensible thing was for the bills to go for taxation by an independent arbiter. The Third Respondent admitted these Allegations to the extent that he was a Partner and the COLP. In cross-examination Mr Ramsden asked the Third Respondent whether his case was that he had made no enquiry as to the underlying basis of the claims. The Third Respondent maintained that he honestly and genuinely believed that the work had been done. It was put to him that he had seen no paperwork to back that up, to which the Third Respondent explained that it would have taken 3 to 6 months to go through all of it and his preferred option was for it to go for taxation. That was why he had signed the Particulars of Claim. The Third Respondent agreed that the bill was uninformative. Mr Ramsden asked the Third Respondent whether he had asked anyone at the Firm how that sum had been arrived at and for the justification. The Third Respondent stated that he had asked the Second Respondent in a conversation which had lasted "quite a reasonable length of time".

22.7 In respect of the bill that was the subject of Allegation 3.2, the Third Respondent accepted that he would approach matters differently if faced with the same situation again. He would do more due diligence on his own.

22.8 In respect of Allegation 3.3 it was put to the Third Respondent that there was no evidence that any of the claim about Mr S working on the case was true. The Third Respondent stated that he had been relying on information given to him by the Second Respondent. He accepted that he could have taken more time to consider the information before he signed.

22.9 In respect of Allegation 3.4 the Third Respondent had signed the Particulars of Claim based on what was shown to him at the time, namely a bundle of documents representing work that had been done.

Allegation 4.1

22.10 The Third Respondent told the Tribunal that he admitted signing the Particulars of Claim but denied having any intention to mislead. The Particulars of Claim were based on instructions on the file and there had been no information that he had seen that the company had been struck off. When he discovered that it had been, he immediately told the client that the Court would have to be notified and indeed this is what has happened. If the client had not given his consent for this that he would have withdrawn from acting. The proceedings were stayed until the company was reinstated.

Allegation 4.2

22.11 The Third Respondent again accepted that he had signed the Particulars of Claim and told the Tribunal that this too was signed with an honest and genuine belief, in this case because there was no information on the file that the occupant had a licence. In cross-examination in the Third Respondent told the Tribunal that the word "squatter" had come from the Second Respondent. The Third Respondent was asked if he could think of any reason why the letter of instruction was not on the file, to which he replied that it was either carelessness on the part of a case worker or possibly a deliberate attempt by somebody at the Firm to mislead him.

Allegation 5

22.12 The Third Respondent told the Tribunal that he admitted this allegation on the basis of strict liability. He stated that he had not withdrawn the monies and he was not aware that it had been withdrawn. The Second Respondent was the COFA and the withdrawal came to his attention through Ms Horton. The Third Respondent had stated that he would ensure that the money was not touched by anyone. If it was moved he would have raised the alarm. He checked daily to make sure that it had not been touched or moved. The Third Respondent's position was that the money should have been returned and he told the Tribunal that Counsel had been instructed behind his back. He denied receiving any of the money.

Allegations 6.1 and 6.2

22.13 The Third Respondent told the Tribunal that most of the documents came to his attention after he had left the Firm. He did not knowingly or intentionally sign this Defence and had misgivings as to the signature. He had no intention to mislead the Court. If it was his signature, the only explanation was that it would have been brought to him towards the close of the business day and he may not have looked at it properly before signing it. The Defence was contrary to his position on the return of the monies and it was not the Third Respondent who had instructed counsel. Mr Ramsden put to him that there were two possibilities, one that he had not bothered to read it and the other being that he may have been set up. The Third Respondent stated that he believed he had been set up.

Allegation 7

22.14 The Third Respondent denied dishonesty entirely. He told the Tribunal that he may have lost his guard, been careless and reckless. He accepted he should have scrutinised documents better. He had now learned that not everybody was to be trusted. He had received no financial benefit or gain and he held himself to a very high moral standard.

Allegation 8

22.15 The Third Respondent told the Tribunal that he admitted that his conduct was reckless. He described the circumstances of his departure from the Firm. He told the Tribunal that he was a very patient person and had suggested ADR, and mediation. That was all declined. The Third Respondent had waited 43 years to realise his dream of becoming a lawyer and he would not throw that away for anything. As a result of his efforts to do the right thing at the Firm he had received verbal insults and threats. He had therefore decided to leave. The Third Respondent told the Tribunal that he felt "profound remorse at what has happened".

Findings of Fact and Law

23. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and 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. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to all of the oral and written submissions of all parties, which are summarised below.

General Approach

Dishonesty

24. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

25. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondents' knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

26. When the Tribunal was required to consider whether a Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

27. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

Recklessness

28. Where recklessness was alleged, the Tribunal applied the test set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

29. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

Statement A – First Respondent

30. **Allegation 1 - She failed to rectify a deficit of approximately £130,019.81 on the Client Account:**

1.1 from 14 April 2014, the date she became a Partner of the Firm; and/or

1.2 from 10 June 2016, when the Court determined that no debt was owed by Client A to the Firm

and in doing so breached Principles 6, 8 and 10 of the SRA Principles 2011 ("the Principles") and Rule 7 of the SRA Accounts Rules 2011 ("SAR").

Applicant's Submissions

30.1 Mr Ramsden's case in respect of the First Respondent had been developed extensively in cross-examination.

30.2 Mr Ramsden submitted that the First Respondent became aware of the breach perpetrated by the Second Respondent in transferring the deposit funds from Client Account to Office Account from the date upon which she joined the Firm as a Partner. Mr Ramsden submitted that the deposit money was client monies pursuant to Rule 12.2 of the SAR. The First and Second Respondent, in representations before and after the intervention, had asserted that Rules 11, 17 and/or 20.1 (a) availed them of a defence. Mr Ramsden submitted that none of these rules amounted to a justification. He submitted that Rule 17 did not apply as Company C was not the Firm's client and the deposit had been paid under the contract of sale and so the Firm was a stakeholder for Company C. Mr Ramsden submitted that it was therefore not tenable to suggest that the deposit paid by Company C was being held for a client of the Firm, namely Client A. Rule 20.1(a) was not intended to apply to the discharge of a client's liability for solicitors costs. The SAR only permitted payment out of Client Account to a client on or on the authority of the client four that clients benefit. That was not what had happened in this case. Rule 11 did not give a solicitor a right to withdraw money from the Client Account when it did not have such a right expressly provided for in the SAR.

30.3 The First Respondent had conduct of both the costs litigation and the deposit litigation. Mr Ramsden submitted that she was aware that the Firm's claim for costs and its appropriation of the deposit monies were matters of significant dispute. The First Respondent had done nothing to restore the money to the Client Account pending the outcome of the claims when the Firm had been ordered to pay £130,000 into Court as a condition of its entitlement to further defend the deposit litigation the Firm had ignored that order and proceeded to serve an amended Defence. Mr Ramsden described this behaviour as "cynical and improper". He further submitted that in light of the Judgment in the Costs litigation on 10 June 2016, the First Respondent "could have had no possible and plausible lingering doubt" that she needed to restore the deposit monies to the Client Account.

30.4 It was submitted that the First Respondent had acted dishonestly in that in that she had allowed a deficit to remain on the Client Account whilst knowing that the entitlement to this money was in dispute. She had benefitted from its retention as the money was used to pay office expenses and the Fourth Respondent.

First Respondent's Submissions

30.5 Miss Felix made a number of general submissions which are set out here so as to avoid repetition but were kept in mind by the Tribunal throughout its deliberations in respect of the First Respondent. Miss Felix reminded the Tribunal of the list of documents that she had sought to exclude at the start of the hearing. She invited the Tribunal to disregard that material, in particular the Adjudication Panel's decision that

resulted in the intervention. Miss Felix reminded the Tribunal of the correct test to be applied when considering allegations of dishonesty, namely that set out in Ivey. Miss Felix also referred the Tribunal to the sanctions guidance issued by the General Medical Council which referred to the relevance of culture and language.

30.6 Miss Felix reminded the Tribunal that the First Respondent was of good character with no previous disciplinary history. This was relevant both to her credibility and to the question of propensity. Miss Felix submitted that the First Respondent had nothing to gain, financially or otherwise, from the misconduct that was alleged by the Applicant. She had made an error in allowing herself to trust others. While she could simply have blamed the Second Respondent for all that had gone on, she had instead tried to do the right thing and resolve matters appropriately.

30.7 In respect of Allegation 1 specifically, Miss Felix reminded the Tribunal of her submission that there was no evidential basis for determining that the funds belonged to Company C at the material times. The Tribunal should not proceed on the basis that funds were, at all material times, Company C's.

30.8 Miss Felix reminded the Tribunal that the First Respondent only became a Partner on 14 April 2014 and that all of the conduct that gave rise to the Allegation was done by others. Miss Felix submitted that the duty to remedy the breach could only arise once the First Respondent knew of the breach and so the central issue was her state of knowledge and belief at the material time. The First Respondent knew that there had been some litigation which had resulted in Client A owing fees to the Firm. Client A had decided to sell the property in order to meet his legal fees to the Firm. That sale had got as far as exchange of contracts but had not completed and the deposit had been used to set off the fees owed to the Firm. The First Respondent had been satisfied that this was a proper course since she had discussed the matter with those involved and, importantly, she had had sight of Counsel's advice. The SRA had been aware of the receipt of the deposit and the transfer to Office Account. The First Respondent had been satisfied that the fees were properly due and that the deposit monies belonged to Client A, from whom the Firm was entitled to set off against its fees. The litigation was ongoing and the First Respondent had no reason to think that the work that was the basis of the fees claimed had not been done. Miss Felix submitted that it therefore followed that the First Respondent was not aware of any breach and so the duty to rectify was not engaged.

30.9 As regards the position post 10 June 2016, the First Respondent believed that the funds belonged either to Client A or to Company C, the dismissal of the appeal confirming that the funds were not owed to the Firm. Mr Recorder Hollington QC had, on 8 July 2015, identified that there was an issue as to whether or not the funds forfeit. Miss Felix submitted that the First Respondent's state of knowledge was therefore that there was no deficit on the Client Account that required rectification. It was instead a judgment debt.

30.10 Miss Felix invited the Tribunal to accept the First Respondent's evidence. It was reasonable in the circumstances for the First Respondent to have relied on the advice of Counsel who had detailed knowledge of the proceedings. Mr Recorder Hollington had clearly determined that there was an argument as to the ownership of the funds

and Miss Felix submitted that an ordinary decent person, with the knowledge of the circumstances, would not regard the First Respondent's actions as dishonest.

The Tribunal's Findings

30.11 The Tribunal considered the SAR and the background to the money coming into the Firm. The money had clearly been paid in as a deposit in respect of an anticipated sale of Client A's property. It was for that reason that it had, quite correctly, been placed in the Client Account in the first place.

30.12 When the sale did not complete the possibility of the forfeit of the deposit arose. If the deposit was found to have been forfeited then the money belonged to Client A and could only be removed from Client Account in accordance with Rule 20 of the SAR. If the deposit was not forfeit then the money was owed to Company C by way of a refund. As early as March 2013 the Firm was aware that Company C was requesting the return of the deposit.

30.13 The Tribunal was not required to make a finding as to whether the monies belonged to Company C or not. That was not part of its function and there had clearly been continuing litigation on that matter. The question for the Tribunal was not who had legal entitlement to the monies but rather, as a first question, whether the monies should have been held in Client Account or Office Account.

30.14 Client money was defined in Rule 12.2 of the SAR as follows:

> ""Client money" includes money held or received:
>
> (a) as trustee;
> (b) as agent, bailee, stakeholder, or as the donee of a power of attorney, or as a liquidator, trustee in bankruptcy, Court of Protection deputy or trustee of an occupational pension scheme;
> (c) for payment of unpaid professional disbursements;
> (d) for payment of stamp duty land tax, Land Registry registration fees, telegraphic transfer fees and court fees (but see also guidance note (i));
> (e) as a payment on account of costs generally;
> (f) as a financial benefit paid in respect of a client, unless the client has given you prior authority to retain it (see Chapter 1, outcome 1.15 and indicative behaviour 1.20 of the SRA Code of Conduct);
> (g) jointly with another person outside the firm."

30.15 The Tribunal was satisfied beyond reasonable doubt that the money should not have been moved into Office Account on 27 January 2014. The circumstances of that transfer are discussed in more detail below in relation to Allegation 3, as the First Respondent was not at the Firm at the time it took place and clearly could not therefore be responsible for that.

30.16 The next question for the Tribunal, and the central question in relation to this Allegation, was whether the First Respondent had failed to rectify the deficit. It was not in dispute that the deficit was not in fact rectified. However the duty to rectify was only engaged at the point when the First Respondent became aware of it, given that

she had not been at the Firm when the breach had occurred. The Tribunal considered the First Respondent's role in the Firm after she joined on 14 April 2014. She had joined as a Partner, albeit initially salaried rather than equity. This was significant as it reflected the fact that she was in a senior position in the Firm. However the most important point was that she became the fee earner with conduct of the deposit and costs litigation. The Tribunal accepted that she would have required some time to familiarise herself with the background to the disputes, but she was under a duty to do so as soon as reasonably practicable. The Tribunal found that the First Respondent knew that there was a dispute concerning the deposit monies at an early stage as that was the whole basis of a key part of the litigation for which she had conduct. In November 2014 she had signed the Appeal Notice against the decision of DJ Parfitt and so her knowledge of the position by point was certainly such that she would have known of the transfer from Client Deposit Account to Office Account and would have known that a breach of the SAR had therefore occurred.

30.17 The First Respondent had told the Tribunal that she had relied on Counsel's advice and her own understanding of the position together with the fact that the SRA were aware of the position.

30.18 The Tribunal reviewed Counsel's advice. It was clear that the advice was based on an inaccurate factual premise concerning the status of the sale of the property. The fact that the SRA were involved was, in itself, a red flag that there had been concerns. The First Respondent was an experienced solicitor who would understand the importance of the correct handling of client money and the correct operation of the Client Account (including the Client Deposit Account).

30.19 The Tribunal was satisfied beyond reasonable doubt that the First Respondent was under a duty to rectify the breach of the SAR soon after she joined the Firm and, without doubt, by November 2014.

30.20 On 10 June 2016 the Deposit Litigation was concluded as set out in the Rosen Judgment. The Firm's claim to the monies, against which it had 'set-off' the deposit monies, was entirely unsuccessful. Even if the First Respondent had believed that the Firm had been entitled to make the transfer (which the Tribunal did not accept), the basis of that belief was removed entirely by the Rosen Judgment. Therefore she would have known that the transfer made in January 2014 had been done in breach of the SAR and that it required immediate rectification.

30.21 The First Respondent's position that after the Rosen Judgment the monies became a Judgment debt – the money being owed to either Client A or Company C – was unconvincing. By her own admission, there was at least a chance that the money was owed to Client A and it should therefore have been in the Client Account. The reality of the position was that the money had been dissipated from the Office Account (at a time when the First Respondent was at the Firm) and the funds therefore did not exist to enable rectification.

30.22 The Tribunal found the factual basis of Allegation 1 and the breach of Rule 7 of the SAR proved in full beyond reasonable doubt.

30.23 *Principle 6*

30.23.1 The Tribunal found that the trust the public placed in the provision of legal services was always undermined when a solicitor failed to rectify a major breach of the SAR which involved client monies. This was a continuing failure involving significant sums. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt in relation to both limbs of Allegation 1.

30.24 *Principles 8 and 10*

30.24.1 The breaches of these Principles followed as a matter of logic from the Tribunal's findings in relation to the factual basis. The breaches of Principles 8 and 10 were proved beyond reasonable doubt in relation to both limbs of Allegation 1.

30.25 *Dishonesty*

30.25.1 The Tribunal had regard to the character evidence served on the First Respondent's behalf and took note of it both in relation to credibility and propensity.

30.25.2 The Tribunal considered the First Respondent's state of knowledge. This is discussed within the Tribunal's analysis of the factual element of the Allegation above. The First Respondent knew that the transfer had occurred and was aware, no later than November 2014, that there was a dispute about it. The money was dissipated from Office Account during her time as a Salaried Partner and to that extent she benefited, albeit not to the same extent as the Second Respondent. The First Respondent knew of the Rosen Judgment and therefore even if she had not known the full circumstances before then (which the Tribunal had found that she did) she clearly did after that Judgment was given. The Tribunal had listened to her evidence that she believed genuinely that the money belonged to the firm. The Tribunal rejected this evidence on the basis that it was inconsistent with material that had been before her at the time. The advice by Counsel was defective and she was closely involved in the litigation concerning this sum of money. The First Respondent had access to all the files and to the extent that documents were missing, such as the instructions to Counsel, this should have made her more suspicious not less. The Tribunal found that the First Respondent had turned a blind eye to the obvious.

30.25.3 The Tribunal was satisfied that by the objective standards of ordinary decent people, notwithstanding the character references, the First Respondent had acted dishonestly. As soon as she knew there was a dispute about the deposit monies she should have arranged for it to be returned and the latest point for her to have done this was November 2014. In view of her failure to do so the Tribunal found beyond reasonable doubt that she had acted dishonestly in respect of both limbs of Allegation 1.

30.26 Allegation 1 was proved in full in respect of both limbs including the allegation of dishonesty.

31. **Allegation 2 - On becoming aware, on or around 3 February 2017 of a decision by the SRA to effect an intervention into the Firm, and thereafter, she:**

2.1 caused or allowed the return of clients' matter files to clients having been informed by the SRA that she should not do so;

2.2 caused or allowed steps to be taken to render information held on the Firm's computer system inaccessible to the SRA;

2.3 told the SRA's Intervention Agent that there were no documents held by or on behalf of the Firm offsite when she was aware that client files were held in off-site storage;

2.4 caused or allowed arrangements to be made for client files held by or on behalf of the Firm in off-site storage to be removed from such storage after their existence had been established by the SRA and in doing so she breached Principles 2, 6 and 7 of the Principles and Rule 31 of SAR.

Applicant's Submissions

31.1 Mr Ramsden had put his case in respect of this allegation to the First Respondent in the course of cross-examination. He submitted that the First Respondent had acted dishonestly in respect of the post-intervention conduct. It was submitted that the First Respondent had knowingly provided inaccurate information to the SRA as to the existence and location of documents held by the Firm. She had knowingly withheld information and/or given false information and had stood to benefit from this as it enabled her to continue to handle client matters and to conceal matters from the SRA which may have been relevant to its investigation.

First Respondent's Submissions

31.2 Miss Felix told the Tribunal that the First Respondent had been co-operating with the SRA throughout her time at the Firm. There was no dispute that she had caused or allowed the client files to be returned to the clients. However the Tribunal was invited to accept her evidence that she had believed, albeit erroneously, that she was entitled to do this. The letter informing her of the intervention was not sufficiently clear in view of the fact that she had no experience of interventions. Miss Felix submitted that objectively judged, the First Respondent's actions would not be considered dishonest.

31.3 In respect of the allegation concerning the accessibility of information held on the Firm's computer system, Miss Felix reiterated her submission that the evidence of Mr Smith should be excluded because he had been a lay witness who had given expert evidence, something which was not permissible. What had emerged from his evidence was that Alpha 5 was not necessarily a computer but a device and that it might appear to a user as no more than a file when looking at the screen. Mr Smith had also confirmed that passwords could be changed from outside the country and that there

was no evidence that it was done in the office or that it was done by the First Respondent.

31.4 As regards the representation to Mr Dunn that there were no files held off-site, Miss Felix reminded the Tribunal that the First Respondent had been very distressed during the course of the intervention visit. The Tribunal should ask itself whether this may have affected the First Respondent when she was dealing with Mr Dunn. Miss Felix submitted that there was no evidence that the First Respondent had caused or allowed arrangements to be made for the client files held off-site to be removed. There was no evidence that she was involved and no evidence that whoever did go had done so on her instruction or with her encouragement.

The Tribunal's Findings

31.5 In considering Allegation 2, and indeed all the Allegations, the Tribunal put the intervention decision and subsequent litigation on the question of the intervention out of its mind. The reasons for the intervention were not relevant to the Allegation. The only relevant fact was that there had been an intervention decision. It was the First Respondent's conduct in the four areas that comprised Allegations 2.1-2.4 that was relevant and the Tribunal confined itself to those matters.

Allegation 2.1

31.6 It was not in dispute that the First Respondent had returned 27 files to clients – she had accepted that in her evidence. The Tribunal considered the letter of 3 February 2017 that referred to "notice to provide all documents to us". The key word was "us" as that was inconsistent with giving the files to anyone else, including clients. The Tribunal found the factual basis the breach of Rule 31 of the SAR and the breach of Principle 7 proved beyond reasonable doubt.

31.7 *Principle 2*

31.7.1 The First Respondent had been told in clear terms in the letter and notice of 3 February 2017 that the powers were in effect - as in they had taken effect on the Friday and she was therefore required to deliver all documents to James Dunn, acting on behalf of the SRA. The letter included a serious warning about the consequences of not complying. The Tribunal found that the failure to adhere to the terms of the letter demonstrated a lack of integrity. The Tribunal reject the First Respondent's suggestion that the intervention did not take effect until the Monday. The letter was clear both about when it took effect and what she was required to do. The fact that she had paid no proper attention to the notices was a clear example of lack of integrity. The Tribunal found the alleged breach of Principle 2 proved beyond reasonable doubt in relation to Allegation 2.1.

31.8 *Principle 6*

31.8.1 The Tribunal found that failure to pay proper attention to an important regulatory and statutory notice inevitably undermined trust in the profession as the public would expect the regulator not to be frustrated in carrying out its

functions. The Tribunal found the alleged breach of Principle 6 proved beyond reasonable doubt in relation to Allegation 2.1.

31.9 Dishonesty

31.9.1 In assessing the state of the First Respondent's knowledge, the Tribunal accepted that she may have been in a state of some shock upon receiving the news of the intervention decision on 3 February 2017. The Tribunal had found that she had not paid proper attention to the letter and notice. It therefore followed that the Tribunal could not be sure that the First Respondent had sufficient knowledge that she ought not to be giving files to clients. The Tribunal noted that she had volunteered the information to Mr Dunn on the morning of the visit.

31.9.2 In the circumstances the Tribunal was not satisfied that her actions would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore not proved in relation to Allegation 2.1.

31.10 Allegation 2.1 was proved in full beyond reasonable doubt save for the allegation of dishonesty which was not proved.

Allegation 2.2

31.11 There were two parts to this Allegation; the position regarding Alpha 5 and the changing of the passwords.

31.12 Despite very considerable focus on this aspect of the case, the Tribunal found that the evidence of the witnesses, including Mr Smith, Mr Dunn and the First Respondent, was not determinative as to what Alpha 5 specifically was. The Tribunal accepted Mr Smith's factual evidence that he was unable to access Alpha 5, but there was no evidence that First Respondent was responsible for not handing over Alpha 5 if indeed it was even a device.

31.13 As regards the passwords, there was no evidence that the First Respondent had changed passwords herself or caused or allowed anyone else to do so. There was evidence from Mr Smith that they had been changed. However it was not clear to the Tribunal, and Mr Smith could not say, who had done that, how they had done it or where the person(s) had been when it was done.

31.14 The Tribunal found Allegation 2.2 not proved.

Allegation 2.3

31.15 The First Respondent had confirmed in her evidence that she was aware that there were files held off-site. She had told the Tribunal that she was confused and upset. The Tribunal accepted that the intervention process would have been stressful. However while she may have been in a state of some shock on the Friday afternoon when she received the notice, as discussed in relation to Allegation 2.1, by the Monday she had had the weekend to digest the information. The Tribunal noted that she had attended the office at least once over the weekend to prepare for the visit. In

the course of the visit she had already been warned by Mr Dunn that her actions in handing the files to clients was a very serious breach. Unlike the letter and notice, the First Respondent was responding to a direct verbal question concerning off-site storage. The Tribunal rejected the First Respondent's evidence that she had not remembered about it at the time she was asked. This conclusion was reinforced by the fact that she did not contact Mr Dunn in the subsequent days to correct her error. The Tribunal found the factual basis, SAR Rule 31 and Principle 7 proved beyond reasonable doubt.

31.16 *Principle 2*

31.16.1 The First Respondent was under a duty to give completely accurate answers to Mr Dunn. In Wingate and Evans and Malins the Court had emphasised the need for solicitors to be scrupulously accurate. This clearly included a solicitors' dealings with their regulator. The Tribunal found beyond reasonable doubt that the First Respondent had lacked integrity and so breached Principle 2.

31.17 *Principle 6*

31.17.1 It followed as a matter of logic that public trust in the profession was undermined when misleading information was given by a solicitor to their regulator. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

31.18 *Dishonesty*

31.18.1 The First Respondent knew the purpose of Mr Dunn's visit and she knew of the existence of the off-site storage facility that contained client files. The First Respondent had understood Mr Dunn's question, which was not complicated – it required a 'yes or no' answer. The First Respondent therefore knew that she was not giving a truthful answer to his question. The Tribunal was satisfied beyond reasonable doubt that the First Respondent's actions would be regarded as dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

31.19 Allegation 2.3 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Allegation 2.4

31.20 The Applicant had produced no evidence to support its case that the First Respondent was responsible for the attempt to remove files from the off-site storage unit. There was no evidence that she had attended herself and no evidence that she had caused or allowed anyone else to go there. The Tribunal found Allegation 2.4 not proved.

32. **Allegation 3 – (In relation to the Second Respondent) He made, or caused or allowed the making of withdrawals from the Client Account on 27 January 2014 other than as permitted by Rule 20 of the SAR and in doing so he breached Rule 20.6 of SAR and Principles 2, 4, 6, 8 and 10 of the Principles.**

Applicant's Submissions

32.1 Mr Ramsden's submissions concerning the transfer of the funds from Client Account to Office Account are set out in relation to Allegation 1 and were also relevant to Allegation 3. The transfer which was made on 27 January 2014 had been made in circumstances in which the Firm was aware that it and Client A were the subject of proceedings being brought by Company C to recover the deposit monies. It was submitted that the conduct of the Second Respondent in transferring the sums demonstrated a lack of integrity and was contrary to the best interests of Client A. The funds were no longer accessible to him and were not protected under the SAR once they had left Client Account. Accordingly the Second Respondent had been in breach of Rule 14.1 of the SAR when he caused the deposits to be transferred.

Second Respondent's Submissions

32.2 The Second Respondent, in his reply to the Rule 5 Statement dated 5 September 2017, denied the allegation. He stated that the withdrawals were made in accordance with Rule 17.4, 17.5 and 17.2 of the SAR "to pay the debt owed by the Client A to the Respondent Firm and disbursement". He stated that the transfers were made following the "judgement" of Master Price dated 29 May 2013. He stated that a final judgment was given in which it had been ordered that Client A make an interim payment in the sum of £131,514.56 to cover the judgment plus interest of £5,280 for the remaining claims were referred to the Senior Court Costs Office for assessment. He stated that the judgment had been neither appealed nor set aside.

32.3 The Tribunal read the letter from the First and Second Respondents' then-solicitors dated 18 January 2017 to the SRA, which made similar representations concerning the transfer of the deposit monies.

The Tribunal's Findings

32.4 The Tribunal had regard to the Second Respondent's reply and considered the documents to which he had referred. The Tribunal considered carefully the sequence of events leading up to the transfer of the monies from the Client Deposit Account to the Office Account.

32.5 The factual background of the failed purchase is set out earlier in this Judgment. It was clear that when the deposit monies were paid, they had been correctly paid into the Client Account as they were client monies. The completion did not take place and for most of 2013 there was an ongoing dispute with Company C about whether the monies should be returned or not. The Tribunal was not required to make a finding on that question. The question for the Tribunal was whether the transfer on 27 January 2014 was in compliance with the SAR. It was therefore the factual existence of a dispute, rather than the merits of the dispute itself, that was relevant.

The timing of the transfer was important. It came three days after the Firm was notified of Company C's intention to commence proceedings

32.6 The Second Respondent was a Partner at the time of the transfer and he had not disputed causing or allowing it to occur, indeed he had stated that he was entitled to move it to cover Client A's legal fees. The Tribunal rejected that argument. The ownership of the monies was unresolved at that time, as was Client A's liability for the aforementioned fees. The Tribunal was satisfied beyond reasonable doubt that the transfer of the monies into Office Account was a breach of Rule 20.6 of the SAR. The Tribunal found the factual basis of this Allegation together with the breaches of Principles 8 and 10, which followed as a matter of logic, proved beyond reasonable doubt.

32.7 *Principle 2*

32.7.1 The Tribunal was satisfied that making a transfer of a significant sum of money in breach of the SAR demonstrated a lack of integrity in itself. The particular circumstances here were that the breach occurred a few days after the Firm was on notice of the commencement of proceedings on the part of Company C. the Tribunal found the Second Respondent had lacked integrity and was therefore satisfied beyond reasonable doubt that he had breached Principle 2.

32.8 *Principle 4*

32.8.1 It followed as a matter of logic that it was not in the best interests of clients for their money to be moved out of the Client Deposit Account (where it was protected) to the Office Account. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

32.9 *Principle 6*

32.9.1 The trust the public placed in the provision of legal services depended on solicitors/RFLs adhering strictly to the SAR and not transferring money into Office Account except in complete compliance with the relevant Rules. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

32.10 Allegation 3 was proved in full beyond reasonable doubt.

33. **Allegation 4 - He failed to rectify a deficit of approximately £130,019.81 on the Client Account:**

4.1 from 27 January 2014, the date of the transfer of £130,019.81 from the Firm's Client Account to the Firm's Office Account; and/or

4.2 from 10 June 2016, when the Court determined that no debt was owed by Client A to the Firm and in doing so he breached Rule 7 of SAR.

Applicant's Submissions

33.1 Mr Ramsden's submissions about the need to rectify the deficit on the Client Account are set out above in relation to Allegation 1, which was the same Allegation as this one but framed against the First Respondent. Mr Ramsden submitted that the Second Respondent had acted dishonestly by allowing the deficit to arise and remain on the Client Account whilst knowing that the entitlement to the money was in dispute. He had stood to benefit from the failure to rectify the deficit and indeed had benefited to the tune of £15,000 which were paid through the Office Account directly to the Second Respondent.

Second Respondent's Submissions

33.2 The Second Respondent denied this allegation. It followed from his defence to Allegation 3 that there was no deficit as the transfer had been made appropriately. Therefore a duty to rectify was not engaged. The Second Respondent took issue with the admissibility of the Rosen Judgment and set out his representations in that regard in his answer dated 5 September 2017. He submitted that the findings carried no weight and should not be relied upon in support of alleged breaches of the accounting rules. He submitted that the "judgment" of 29 May 2013 had been neither repealed nor set aside and that there were ongoing proceedings in another Court in relation to the £130,000.

The Tribunal's Findings

33.3 It was not in dispute that the money had not been restored to the Client Account/Client Deposit Account, although the need to do so had been disputed.

33.4 The Tribunal had already made a finding in relation to Allegation 3 that the transfer was made in breach of the SAR. It therefore had to be rectified promptly upon discovery. In the case of the Second Respondent 'promptly' meant immediately as he was aware of the transfer having caused it to be made. The Second Respondent was therefore under a duty from 27 January 2014. If the Second Respondent had not been aware of the need to rectify before the Rosen Judgment, something the Tribunal entirely rejected, he was certainly aware of it once that Judgment was given. The Tribunal noted the Second Respondent's complaints about the Rosen Judgment. The Rosen Judgment was admissible under SDPR Rule 15(4). It was proof of the facts contained therein but not conclusive proof. The Second Respondent's complaints about the Rosen Judgment lacked substance and were in some cases purely speculative and fanciful. Mr Rosen QC had the advantage of having reviewed all the paperwork and heard evidence from witnesses. The Tribunal had been taken to nothing that suggested that the conclusions were not firmly supported by the evidence. The Tribunal noted that leave to appeal had been refused, something which added further weight to the Rosen Judgment.

33.5 However even in the absence of such a Judgment, the Tribunal was entirely satisfied that there had been a duty to rectify that began on 27 January 2014 and was never discharged. The Tribunal found the factual basis of both limbs of Allegation 4 and the breach of SAR Rule 7 proved beyond reasonable doubt.

33.6 *Dishonesty*

33.6.1 The Tribunal considered the Second Respondent's state of knowledge.

33.6.2 The Second Respondent knew of the transfer as he had caused it to occur. At the time he did so he knew funds were in dispute and that he was not entitled to move the money. The Second Respondent, as discussed above, was under a duty to return the money immediately. He did not do so and indeed he was responsible for it being dissipated from the Office Account after the Third Respondent had left the Firm. The Second Respondent directly benefited to the tune of £15,000 from that dissipation. The Second Respondent was also aware of the Rosen Judgment in 2016 and he still failed to return the monies.

33.6.3 The Tribunal was satisfied beyond reasonable doubt that the Second Respondent's conduct would be considered dishonest by the standards of ordinary decent people and the allegation of dishonesty was therefore proved.

33.7 Allegation 4 was proved in full beyond reasonable doubt including the allegation of dishonesty.

34. **Allegation 5 - He failed to discharge or adequately discharge his duties as the Firm's nominated Compliance Office for Finance and Administration (COFA) during 2016 and in doing so he breached Rule 8.5(a), 8.5(e) and 8.7 of the Solicitors Authorisation Rules ("the Authorisation Rules"), Rule 6.1 of SAR and Principle 7 of the Principles.**

Applicant's Submissions

34.1 Mr Ramsden did not make specific submissions in respect of this allegation but referred the Tribunal to the contents of the Rule 5 statement and the FIR.

Second Respondent's Submissions

34.2 The Second Respondent denied this Allegation. The Second Respondent stated that when he needed to spend more time in the USA, notice had been given by way of an application to the SRA to change the COFA from the Second Respondent to the First Respondent. The Second Respondent made reference to a confirmation email of such an application sent by the SRA dated 20 April 2016. The SRA had therefore been aware that the First Respondent was performing the role and the Second Respondent stated that she had done this work diligently.

The Tribunal's Findings

34.3 The Tribunal noted that the Second Respondent had not been present at the Firm for significant periods. In the time that he was the COFA there were a number of serious breaches of the SAR, some of which have been discussed in relation to Allegations 1, 3 and 4. The Second Respondent was unable to properly explain how he had discharged his role. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had failed to adequately discharge his role as the COFA during

2016 and had therefore breached Rules 8.5(a) and (e) of the Authorisation Rules, SAR Rule 6.1 and Principle 7.

34.4 The Applicant had not set out how the Second Respondent had breached Rule 8.7 of the Authorisation Rules and the Tribunal therefore found that matter not proved.

34.5 Allegation 5 was therefore proved in full save for the breach of Rule 8.7.

35. **Allegation 6 – [In relation to the First and Second Respondents] The Respondents or either of them knowingly or recklessly caused or allowed inaccurate and misleading information to be produced to the Court including:**

6.1 inaccurately describing an Order for Interim Payment made by Master Price on 29 May 2013 as a "judgement" in various Court documents including:

6.1.1 in a Defence dated 29 January 2014;
6.1.2 in a Grounds of Appeal dated 27 November 2014;
6.1.3 in a Skeleton Argument dated 12 March 2015;
6.1.4 in a Grounds of Appeal dated October 2015;
6.1.5 in an Amended Defence dated 15 October 2015;
6.1.6 in a Skeleton Argument dated 26 January 2016.

6.2 Inaccurately stating in Court documents that it had not been denied that Client A had instructed the Firm in the sale of his property, including:

6.2.1 in a Defence dated 29 January 2014;

6.2.2 in a Grounds of Appeal dated October 2015;

6.2.3 in a Skeleton Argument dated 28 January 2016.

6.3 inaccurately stating in a Grounds of Appeal dated 27 November 2014 that "[ARSJ] caused a handwriting expert to examine the signature [on a letter dated 2013] and it was established that it was a forgery".

6.4 under circumstances in which the Firm had been provided with a copy of a Writ of Control relating to enforcement action on or around 13 May 2015:

6.4.1 inaccurately stating in a letter to HHJ Hughes dated 14 October 2015 that Enforcement Officers "did not have authority to attend the premises";

6.4.2 inaccurately stating in a Grounds of Appeal dated October 2015 that "no such letter [a compliance letter] has been produced nor for that matter any Writ of Control".

6.5 inaccurately stating in a Grounds of Appeal dated October 2015 that "it has since transpired that [the Enforcement Officer] is being investigated by Ipswich County Court a fact not disclosed to the Court' when they were aware that the investigation had been instigated by the First Respondent in February 2015;

6.6 inaccurately stating in a Grounds of Appeal dated October 2015 that "the deposit was left with [the Firm] and indeed pledged towards the outstanding fees owed [to the Firm] by [Client A]" and in doing so they, or either of them, breached Principles 1, 2 and 6 and failed to achieve Outcome 0(5.1) of the Principles.

Applicant's Submissions

35.1 It was submitted that the First and Second Respondents had inaccurately referred to the Order of Interim Payment as a "judgement" in the documents set out in Allegation 6.1. It was further submitted that the First and Second Respondents had inaccurately stated that it had not been denied that Client A instructed the Firm in the documents set out in relation to Allegation 6.2. It was submitted that the conclusions of the graphologist had been overstated so as to be inaccurate in relation to Allegation 6.3. Mr Ramsden had taken the Tribunal to all of these documents during the course of his cross-examination of the First Respondent.

35.2 Mr Ramsden had also taken the Tribunal to the letter to HHJ Hughes dated 14 October 2015 in which it was submitted that the First and Second Respondents had presented inaccurate information concerning the enforcement officers authority, or lack of it. He also took the Tribunal to the grounds of appeal dated October 2015 in support of his submissions in relation to Allegations 6.4.2, 6.5 and 6.6.

35.3 It was submitted that all the documents identified in this Allegation had been submitted on behalf of the First and Second Respondents and that they were either aware or should have been aware that they contained inaccurate information. The Applicant's primary case was that the First and Second Respondents knowingly submitted information to the Court which was incorrect. The Firm was a party to the litigation in which the submissions were being made and the Firm and the First and Second Respondents stood to benefit from the submission of incorrect information as it could affect the outcome of the litigation. In the alternative it was submitted that the First and Second Respondents had been reckless.

First Respondent's Submissions

35.4 Miss Felix reminded the Tribunal that the documents referred to in Allegations 6.1, 6.2 and 6.3 were drafted by Counsel. The order from Master Price would have been provided to the Court and therefore it could not have been misled. It was part of the Firm's case, as advanced by Counsel, that Master Price had in fact made a final order on 29 May 2013. This was a legitimate argument to run and it would have been illogical to describe the interim payment order otherwise.

35.5 Miss Felix also queried whether the grounds of appeal dated October 2015, which were not signed, had in fact been submitted to the Court.

35.6 In respect of Allegation 6.2, Miss Felix reminded the Tribunal that it was the Firm's case that the letter contained a forged signature and that therefore the Firm believed that Client A had in fact not denied instructing the Firm. The graphologist report had been to the effect that the signature is not that of Client A and it therefore followed that it must be a forgery, something the Firm had believed to be the case for a number of reasons. The Allegation before the Tribunal did not allege that the Firm had asserted that the forgery was perpetrated by the client's son.

35.7 In relation to Allegation 6.4 and the writ of control, Miss Felix accepted that the position may have been poorly expressed in the letter to HHJ Hughes. The context was that when the bailiffs had attended they did not have the necessary writ in their possession. Miss Felix similarly accepted that in relation to Allegation 6.5 the grounds of appeal could have been better worded but were in essence true. In the case of both of these documents there had been no intention to mislead the Court and indeed the Court had not in fact been misled.

35.8 Miss Felix submitted that the First Respondent had genuinely believed that Counsel was advancing an argument in respect of Master Price's order, the authenticity of the signature to be from Client A and the position regarding whether or not he had denied instructing the Firm. In respect of the other documents she had failed to express herself properly and/or failed to spot a mistake. Miss Felix submitted that ordinary decent people knowing the circumstances would not consider the First Respondent's actions dishonest. Miss Felix further submitted that the First Respondent could not be considered reckless. It may now be regarded with hindsight as misguided to have relied on Counsel, but this was not the same as agreeing to a document without having considered it.

35.9 Miss Felix invited the Tribunal to accept the First Respondent's evidence in respect of all of these matters.

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

35.10 The Second Respondent did not make submission in his Reply to the Rule 5 Statement but it had been addressed in the letter dated 18 January 2017 to the SRA. In that letter it was queried whether any criticism could be made of the First or Second Respondents given that the "only bases on which he [Master Price] declines to enter judgment are technical based on the nature of a solicitors' claim".

35.11 In respect of the graphologist report, the letter explained that the suggestion that the only basis for the First and Second Respondents having a belief that the signatures were forged was the graphologist report was incorrect. Concerns had been raised about the authenticity of the letter, as the written instructions did not match the telephone discussions that Mrs A had had with the client. The letter continued to explain that the grounds of appeal or pleadings rather than evidence and its suggested that the FI Officer had "fundamentally misunderstood the nature of the relevant Court documents". The letter stated "whilst it is possible that the assertions made on behalf of the Firm were mistaken, there is no basis on which it can be concluded that there is reason to suspect dishonesty on the part of Ms Inyang or Mr Coker".

35.12 The letter submitted that Counsel in this case had more familiarity with the facts than either the First or the Second Respondent. Counsel had prepared many of the documents including the Skeleton Arguments and he was subject to his own professional obligations when doing so.

The Tribunal's Findings

35.13 *First Respondent - Allegation 6.1*

35.13.1 The Tribunal noted that the Defence dated 29 January 2014 was prepared and submitted before the First Respondent joined the Firm. The Tribunal therefore found this part of the Allegation (6.1.1) not proved.

35.13.2 The Tribunal noted that the Grounds of Appeal dated October 2015 had not been signed. The Tribunal accepted Miss Felix's submission that it was unclear whether or not the document had been filed with the Court or was merely a draft. The Tribunal therefore found this parts of the Allegation (6.1.4), and subsequent Allegations that relied on this document, not proved.

35.13.3 The remaining documents were considered by the Tribunal.

35.13.4 The Grounds of Appeal dated 27 November 2014 (Allegation 6.1.2) stated that "Failing agreement the 2nd Defendant issued a claim in the sum of £171,708.60 and on 29 May 2013 Master Price gave judgement for the 2nd Defendant in the sum of £138,350.03…"

35.13.5 The Order of 29 May 2013 stated that "the Defendant shall pay way of interim payment in respect of the amount due to the Claimant for legal services…the sum of £131,514.56 together with the sum of £5,240 in respect of today's interest to today's date, payable forthwith". There then followed a number of directions concerning service of pleadings with a view progressing the case. One of those directions stated that the claim "be stood over for further directions" on 26 July 2013. The final direction stated "This is an Order from which an Appeal lies to the single Judge. For the purposes of Rule 40.2(4) of the Civil Procedure Rules it is not a final Order". The Tribunal was satisfied that the terms of Master Price's Order of 29 May 2013 were clear – it was an interim order and could not accurately be described as a judgment.

35.13.6 The document entitled 'Judgment' dated 29 May 2013 was clear as to the nature of the order being made. At paragraph 16, Master Price stated:

> "It seems to me in those circumstances that summary judgment based on the bill itself is inappropriate, but the court should in principle make an interim payment in the sum of £131,514.56 together with an appropriate figure for interest".

35.13.7 At paragraph 17 Master Price stated:

> "As I say, this is a case in which the court is making an interim payment based essentially on entirely disparate matters relating to the litigation between the defendant and his brother".

35.13.8 At paragraph 19 Master Price stated:

> "The order that I will make today on the claimant's application for summary judgment is an order for an interim payment without a stay of execution in the way I have suggested".

35.13.9 It was abundantly clear that Master Price was making an interim order for payment and that he was not giving summary judgment.

35.13.10 The Tribunal accepted that Counsel may well have drafted the Grounds of Appeal, but it was the First Respondent who had signed the notice of appeal to which the Grounds were attached in support. The responsibility for ensuring that all that was contained in the Grounds was completely accurate was therefore belonged to her at the point of signing. The Tribunal rejected the First Respondent's case that the reference to a judgment was, in effect, a submission. The reference was contained within the section headed 'Introduction' and was presented as a factual matter rather than a submission. The document did not say, for example, 'Master Price issued what we say amounts was a final order' or any words to that effect. It was for the Firm to be completely clear as to what was being presented as fact as opposed to submission.

35.13.11 The First Respondent had conduct of the litigation and was familiar with the circumstances of the case, having spent several months acquainting herself with what had gone before. She would have had sight of the Interim Order.

35.13.12 The First Respondent knew that the aim of the Firm was to be able to retain the monies and that was the purpose of the litigation. She also knew the information to counsel had been wrong. The intention may well have been communicated by the Second Respondent but was it was aided and abetted by her involvement. The Tribunal was satisfied beyond reasonable doubt that that the document was inaccurate and misleading and that the First Respondent had knowledge of the inaccuracy in the Grounds of Appeal.

35.13.13 The Skeleton Argument dated 12 March 2015 (Allegation 6.1.3) stated "Failing payment the Defendant issued a claim in the sum of £171,708.60 on 13th March 2013 comprising its fees in respect of four unpaid bills of costs and on 29 May 2013 Master Price gave judgement for the Defendant in the sum of £138,350.03…". This was therefore expressed in the same, unqualified, terms as the Grounds of Appeal. As stated above, the First Respondent had conduct of the litigation and knew that the reference to "judgement" was misleading and inaccurate. The Tribunal was satisfied beyond reasonable doubt that that the document was inaccurate and misleading and that the First Respondent had knowledge of the inaccuracy in the Skeleton Argument.

35.13.14 The Amended Defence dated 15 October 2015 (Allegation 6.1.5) stated that "…Judgement was entered in favour of the Second Defendant on 29th May 2013…". For the reasons set out above the Tribunal was satisfied beyond reasonable doubt that that the document was inaccurate and misleading and that the First Respondent had knowledge of the inaccuracy in the Amended Defence.

35.13.15 The Skeleton Argument dated 28 January 2016 (incorrectly referred to as 26 January 2016 in Allegation 6.1.6 – no point was taken by Miss Felix on this) stated that "The Claimant obtained judgement against [Client A] on 29 May 2013 in the sum of £135,000.00 and the remainder of the claim was referred to the Senior Courts Cost Office for an enquiry". For the reasons set out above the Tribunal was satisfied beyond reasonable doubt that that the document was inaccurate and misleading and that the First Respondent had knowledge of the inaccuracy in the Skeleton Argument of 28 January 2016.

35.13.16 The Tribunal found the factual basis of Allegation 6.1 and Outcome 5.1 proved beyond reasonable doubt in respect of the First Respondent in relation to the documents listed at Allegations 6.1.2, 6.1.3, 6.1.5 and 6.1.6.

35.13.17 *Principle 1* - The First Respondent had caused or allowed four documents to be presented to the Court knowing that they contained inaccuracies and were therefore misleading. This was incompatible with her duty to uphold the proper administration of justice and the Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

35.13.18 *Principle 2* - In considering the question of integrity, the Tribunal noted the examples of lack of integrity cited in Wingate and Evans and Malins. Paragraph [100] of that Judgment stated: "Integrity connotes adherence to the standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse". The First Respondent had a duty to ensure that documents being placed before the Court were completely accurate and in no way misleading. The Tribunal had found that she had knowingly failed to do this and therefore found beyond reasonable doubt that she had lacked integrity and breached Principle 2.

35.13.19 *Principle 6* - It followed from the Tribunal's findings that the trust the public placed in the provision of legal services was seriously undermined when that solicitor allowed misleading documents to be presented to the Court and in doing so had lacked integrity and failed to uphold the rule of law. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

35.13.20 *Dishonesty* - The First Respondent's state of knowledge is analysed by the Tribunal in the discussion of the factual basis of the Allegation above. The wording of the Allegation required consideration of that issue as an integral part of the review of the evidence. It is therefore not repeated here.

35.13.21 The Tribunal found beyond reasonable doubt that the First Respondent's actions in knowingly causing numerous inaccurate or misleading documents to be produced to the Court over a period of more than a year would be considered dishonest by the standards of ordinary decent people. The number of documents was significant as the First Respondent had numerous opportunities to correct or clarify matters and had chosen not to do so. The Tribunal found dishonesty proved beyond reasonable doubt.

35.14. *Allegation 6.2*

35.14.1 As set out in relation to Allegation 6.1, the First Respondent was not at the Firm when the Defence dated 29 January 2014 (Allegation 6.2.1) had been produced. In respect of the Grounds of Appeal dated October 2015 (Allegation 6.2.2), for the reasons set out in relation to Allegation 6.1, the Tribunal was not satisfied beyond reasonable doubt that this document was filed and served on the Court. The Tribunal therefore found these parts of the Allegation not proved.

35.14.2 The Skeleton Argument dated 28 January 2016 (Allegation 6.2.3) stated that: "The Claimant represented [Client A] from 2008 in a number of contentious and non-contentious matters including in the sale of his property known as No 13 St Augustine's Road…" The Skeleton Argument continued "Instructions were later withdrawn from the Claimant prior to the completion date when [Client A] asked that the conveyancing file be transferred to another firm of solicitors, Barnes and Partners". Further on in the document it was stated "At no time did [Client A] say that he had failed to complete or that the Claimant had no instructions to sell his property on his behalf".

35.14.3 The Tribunal reviewed the correspondence in relation to this issue. In a letter dated 4 February 2013 in the name of Client A and copied to the Firm, it was stated:

> "I did not retain/instruct Alpha Rocks Solicitors in the matter of the sale of my property and my Attorney and son [Mr SA] informed me and I verily believe him; that he did not instruct Alpha Rocks on the sale transaction".

35.14.4 In a letter dated 8 February 2013 from RSE to the Third Respondent, the Firm was invited to demonstrate that it was instructed by Client A. This was in the context of RSE becoming aware that it was being asserted that Client A had not instructed the Firm to act in the sale. This was followed by a further letter along similar lines on 4 March 2013.

35.14.5 In the context of this correspondence the Tribunal found that it was clearly inaccurate and misleading to assert that "at no time" had Client A stated that the Firm had not been instructed. The First Respondent had told the Tribunal that it was the Firm's belief that the denial of instruction was not genuine and had not reflected Client A's true position. The Tribunal found that this did not assist the First Respondent in relation to this allegation. The Skeleton Argument had not stated, for example, that the Firm had received a purported

denial of instructions from Client A, but that it did not believe that this denial was genuine.

35.14.6 As stated above in relation to Allegation 6.1, the First Respondent had conduct of the litigation and by the time the Skeleton Argument was produced, had been at the Firm for well over a year. It was inconceivable that the First Respondent had not read the file, including the correspondence, by January 2016. She would therefore have known that the Skeleton Argument was inaccurate and misleading on this point. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had knowingly caused or allowed inaccurate and misleading information to be produced to the Court in the form of the Skeleton Argument in relation to the denial of instructions on the part of Client A. The Tribunal therefore found the factual basis of Allegation 6.2 and the breach of Outcome 5.1 proved beyond reasonable doubt.

35.14.7 *Principle 1* - The Tribunal had set out in relation to Allegation 6.1 the incompatibility between knowingly causing or allowing inaccurate and misleading information to be placed before the Court and a solicitor's duty to uphold the proper administration of justice. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

35.14.8 *Principle 2* - The Tribunal noted that in relation to Allegation 6.2 it was dealing with a single document rather than multiple documents as had been the case in relation to Allegation 6.1. However the duty to be scrupulously accurate applied to all and any documents placed before a Court and the contents of the Skeleton Argument were flatly at odds with numerous items of correspondence on the file. The Tribunal found beyond reasonable doubt that the First Respondent had lacked integrity.

35.14.9 *Principle 6* - It followed as a matter of logic from the Tribunal's findings that the trust the public placed in the provision of legal services was undermined by this type of conduct. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

35.14.10 *Dishonesty* - The Tribunal had assessed the First Respondent's state of knowledge when analysing both Allegation 6.1 and the factual basis of Allegation 6.2 as the pleadings required this. It is therefore not repeated here. The Tribunal found that the standards of ordinary decent people would have required that the First Respondent state clearly that there had, on the face of it, been a dispute about whether or not Client A had instructed the Firm, albeit the Firm believed that the dispute was not in fact genuine. The Tribunal was satisfied beyond reasonable doubt that by allowing the Skeleton Argument to go before the Court in the terms which it was drafted would be considered dishonest by those standards. The Tribunal therefore found the Allegation of dishonesty proved beyond reasonable doubt.

35.15 *Allegation 6.3*

35.15.1 The Grounds of Appeal dated 27 November 2014 stated:

> "The 2nd Defendant had received in July 2013 a letter purportedly written by the 1st Defendant but actually written by his son claiming that the deposit be returned to the Claimant because the 2nd Defendant did not have any instructions to sell his house. As this was clearly untrue and the 2nd Defendant did not receive a response to its enquiry challenging the 1st Defendant on the allegation, the 2nd Defendant caused a handwriting expert to examine the signature and it was established that it was a forgery by the 1st Defendant's son".

35.15.2 Miss Felix had correctly identified that the pleading did not make reference to the identification of the son as the forger as being part of the Allegation. The Tribunal was therefore examining whether the words "it was established that it was a forgery" were inaccurate and misleading.

35.15.3 The Tribunal considered the graphologist report. The scale used to indicate the strength or otherwise of a conclusion was as follows:

> "1. Conclusive evidence
> 2. Very strong evidence
> 3. Strong evidence
> 4. Weak evidence
> 5. Inconclusive evidence
> 6. No evidence."

35.15.4 The graphologist had found "strong evidence" that the signature on the exhibits analysed was not the same as on the comparison exhibits. The conclusion was not that the evidence was conclusive or even very strong, falling as it did in the middle of the scale. For the Grounds of Appeal to use the word "established" was to exaggerate the findings of the graphologist. There was no reason why the report could not simply have been quoted (accurately) in the Grounds of Appeal.

35.15.5 The First Respondent, as stated above, had conduct of the matter and by the time the Grounds of Appeal were submitted would have had ample opportunity to read through the file. The Tribunal considered that it was inconceivable that she would not read the graphologist report. The First Respondent was an experienced solicitor and the Tribunal found that she would have understood the difference between stating that the forgery had been "established" and that being "strong evidence" for it. The Tribunal was satisfied beyond reasonable doubt that the Grounds of Appeal had been inaccurate and misleading and that the First Respondent knew that it was overstating the conclusions of the graphologist. The Tribunal found the factual basis of Allegation 6.3 together with the breach of Outcome 5.1 beyond reasonable doubt.

35.15.6 *Principle 1* - The Tribunal had set out in relation to Allegation 6.1 the incompatibility between knowingly causing or allowing inaccurate and misleading information to be placed before the Court and a solicitor's duty to uphold the proper administration of justice. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

35.15.7 *Principle 2* - As discussed above in relation to Allegations 6.1 and 6.2, the duty to be scrupulously accurate applied to all and any documents placed before a Court and the contents of the Grounds of Appeal significantly misrepresented, to the Firm's advantage, the conclusions of the graphologist's report. The Tribunal found beyond reasonable doubt that the First Respondent had lacked integrity.

35.15.8 *Principle 6* - It followed as a matter of logic from the Tribunal's findings that the trust the public placed in the provision of legal services was undermined by this type of conduct. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

35.15.9 *Dishonesty* - The Tribunal had assessed the First Respondent's state of knowledge of the litigation and of this document specifically when analysing Allegation 6.1.2. It is therefore not repeated here. The Tribunal found that the standards of ordinary decent people would have required that the First Respondent to ensure that documents going before the Court accurately and fairly described the conclusions of the graphologist's report The Tribunal was satisfied beyond reasonable doubt that allowing the Grounds of Appeal to go before the Court in the terms in which it was drafted would be considered dishonest by those standards. The Tribunal therefore found the Allegation of dishonesty proved beyond reasonable doubt.

35.16 *Allegation 6.4*

35.16.1 Allegation 6.4.2 relied on the Grounds of Appeal dated October 2015. As set out in relation to Allegation 6.1, the Tribunal was not satisfied beyond reasonable doubt that this document was filed and served on the Court. The Tribunal therefore found this Allegation not proved.

35.16.2 Allegation 6.4.1 concerned the letter to HHJ Hughes dated 14 October 2015.

35.16.3 The purported purpose of this letter was to draw the Judge's attention to information which had not been disclosed previously. One such piece of information was the "fact that the second defendant who attended the claimant's office did not have authority to attend the premises…" The letter was not accurate and the First Respondent had accepted that she could have worded it better.

35.16.4 The letter contained the First Respondent's initials in the reference. The First Respondent knew that they did have authority and just had not shown it. This was very specific situation and the First Respondent knew the importance of the letter to the Judge. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had knowingly caused inaccurate and misleading information to be contained within the letter to the Judge. The Tribunal therefore found the factual basis of Allegation 6.4.1 and the breach of Outcome 5.1 proved beyond reasonable doubt.

35.16.5 *Principle 1* - The Tribunal had set out in relation to Allegation 6.1 the incompatibility between knowingly causing or allowing inaccurate and misleading information to be placed before the Court and a solicitor's duty to uphold the proper administration of justice. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

35.16.6 *Principle 2* - As discussed above in relation to Allegations 6.1, 6.2 and 6.3, the duty to be scrupulously accurate applied to all and any documents placed before a Court and the contents of the letter to HHJ Hughes was inaccurate and misleading on the question of the writ of control. The Tribunal found beyond reasonable doubt that the First Respondent had lacked integrity.

35.16.7 *Principle 6* - It followed as a matter of logic from the Tribunal's findings that the trust the public placed in the provision of legal services was undermined by this type of conduct. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

35.16.8 *Dishonesty* - The Tribunal had assessed the First Respondent's state of knowledge of the litigation and of this document specifically when analysing the factual basis of the Allegation due to the nature of the pleading. It is therefore not repeated here. The Tribunal found that the standards of ordinary decent people would have required that the First Respondent ensure that letters to the Court were completely accurate. The Tribunal was satisfied beyond reasonable doubt that sending a letter to the Judge that the First Respondent knew contained inaccurate and misleading information would be considered dishonest by those standards. The Tribunal therefore found the Allegation of dishonesty proved beyond reasonable doubt.

35.17 *Allegations 6.5 and 6.6*

35.17.1 This Allegation relied on the Grounds of Appeal dated October 2015. As set out in relation to Allegation 6.1, the Tribunal was not satisfied beyond reasonable doubt that this document was filed and served on the Court. The Tribunal therefore found this Allegation not proved.

35.18 *Second Respondent - Allegation 6.1*

35.18.1 For the reasons set out in relation to the First Respondent, the Tribunal was not satisfied beyond reasonable doubt that the Grounds of Appeal had been filed and served with the Court. The Tribunal therefore found this part of the Allegation (6.1.4), and subsequent Allegations that relied on this document, not proved. The remaining documents were considered by the Tribunal and its analysis of those documents it set out above in relation to the First Respondent.

35.18.2 The Defence dated 29 January 2014 (Allegation 6.1.1) stated that "…Judgement was entered in favour of the Second Defendant on 29th May 2013…" This was, again, not qualified and was not identified as a submission. The Second Respondent's position appeared to be that there was no more than a technical distinction between a judgment and an interim order

in this case. The Tribunal did not find that submission to be appealing as there clearly was a distinction and it ought to have been made completely clear that it was an Interim Order for payment and not a judgment. The Tribunal found that the Second Respondent had been involved in the litigation from the start and had been responsible for moving the monies into Office Account. Owing to his knowledge of the circumstances behind the litigation, the Tribunal found that he also knew that the pleadings were wrong. He was the senior Partner at the Firm and had therefore been responsible for the litigation strategy. This had included instructing Counsel, who subsequently drafted this (and other) documents. The Second Respondent had not denied sight of the documents and the Tribunal found it inconceivable that he would not have had sight of them, or at the very least knowledge of their contents, given their importance in the litigation. The purpose of the litigation was to enable the Firm to retain the monies and describing Master Price's interim order as a judgment furthered that aim. The Tribunal was satisfied beyond reasonable doubt that that the document was inaccurate and misleading and that the Second Respondent had knowledge of the inaccuracy in the Defence dated 29 January 2014.

35.18.3 The Tribunal had considered the contents of the documents listed at Allegations 6.1.2, 6.1.3, 6.1.5 and 6.1.6 when analysing the First Respondent's position. This is not repeated here, save to say that the Tribunal had been satisfied beyond reasonable doubt that they were inaccurate and misleading. The Second Respondent's state of knowledge of those inaccuracies continued following the Defence dated 29 January 2014 on account of his role as Senior Partner and the individual dictating the litigation strategy, which was being executed by the First Respondent. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent knowingly caused or allowed inaccurate and misleading documents to be produced to the Court, namely the Defence dated 29 January 2014, the Grounds of Appeal dated 27 November 2014, the Skeleton Argument dated 12 March 2015, the Amended Defence dated 15 October 2015 and the Skeleton Argument dated 28 January 2016. The Tribunal therefore found the factual basis of this Allegation and the breach of Outcome 5.1 proved beyond reasonable doubt in respect of those documents.

35.18.4 *Principles 1, 2 and 6* - The Tribunal found the breaches of these Principles proved beyond reasonable doubt for the same reasons as it had done so in respect of the First Respondent. The Second Respondent had been responsible for five documents being produced to the Court, sharing responsibility for four of those documents with the First Respondent.

35.18.5 *Dishonesty* - The Second Respondent's state of knowledge had, again, been analysed by the Tribunal in the discussion of the factual basis of the Allegation above due to the nature of the pleadings. It is therefore not repeated here.

35.18.6 The Tribunal found beyond reasonable doubt that the Second Respondent's actions in knowingly causing numerous inaccurate or misleading documents to be produced to the Court over a period of two years would be considered

dishonest by the standards of ordinary decent people. The Tribunal found dishonesty proved beyond reasonable doubt.

35.19 *Allegation 6.2*

35.19.1 For the reasons set out previously the Tribunal was not satisfied beyond reasonable doubt that the Grounds of Appeal had been filed and served with the Court. The Tribunal therefore found this parts of the Allegation (6.2.2), not proved.

35.19.2 The Tribunal had analysed the factual circumstances of the Skeleton Argument and the correspondence on the file when considering the case in respect of the First Respondent.

35.19.3 The Defence dated 29 January 2014 stated that "The Second Defendant is unaware of the letter referred to in paragraph 6 of the Particulars of Claim and takes serious exception to the suggestion that it was not authorised to act on behalf of the First Defendant in the Sale or that the Agreement was fraudulently executed in the First Defendant's name. The Second Defendant had represented the First Defendant in a variety of matters since 2008". Paragraph 6 of the Particulars of Claim had alleged that the Firm was not authorised to act on behalf of Client A.

35.19.4 In light of the correspondence referred to above, the truthful response would have been to say that the Firm was aware of what was being alleged concerning Client A's instruction of the Firm but that it was denied that this was a genuine complaint. The Defence gave the misleading impression that it was a non-issue was far as the Firm was concerned.

35.19.5 The Tribunal had set out its findings in relation to the Second Respondent's involvement in the litigation, namely that he was directing it, including instructing Counsel. The Tribunal noted that the Second Respondent had raised no defence to this allegation beyond a blanket denial.

35.19.6 The Tribunal was satisfied beyond reasonable doubt that the Defence dated 29 January 2014 and the Skeleton Argument dated 28 January 2016 contained inaccurate and misleading information, which the Second Respondent had knowingly caused or allowed to be produced to the Court. The Tribunal found the factual basis of allegation 6.2 and the breach of Outcome 5.1 proved beyond reasonable doubt.

35.19.7 *Principles 1, 2 and 6* - The Tribunal found the breaches of these Principles proved beyond reasonable doubt for the same reasons as it had done so in respect of the First Respondent. The Second Respondent had been responsible for two documents being produced to the Court two years apart containing inaccurate and misleading information.

35.19.8 *Dishonesty* - The Second Respondent's state of knowledge was, again, analysed by the Tribunal in the discussion of the factual basis of the

Allegation above due to the nature of the pleadings. It is therefore not repeated here.

35.19.9 The Tribunal found beyond reasonable doubt that the Second Respondent's actions in knowingly causing a Defence and a Skeleton Argument containing inaccurate or misleading statements to be produced to the Court over a period of two years would be considered dishonest by the standards of ordinary decent people. The Tribunal found dishonesty proved beyond reasonable doubt.

35.20 *Allegation 6.3*

35.20.1 The Tribunal had set out its analysis of the Grounds of Appeal and of the graphologist report when considering this allegation in relation to the First Respondent. The Tribunal had found beyond reasonable doubt that the Grounds of Appeal contained inaccurate and misleading information. The Second Respondent's role in the litigation is also set out above in relation to Allegations 6.1and 6.2. The Tribunal noted that the Second Respondent was at the Firm at the time that the graphologist report was obtained. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent knew that by submitting the Grounds of Appeal in the terms in which it was drafted that he was causing or allowing inaccurate and misleading information to be produced to the Court. The Tribunal found the factual basis of this Allegation together with the breach of Outcome 5.1 proved beyond reasonable doubt.

35.20.2 *Principles 1, 2 and 6* - The Tribunal found the breaches of these Principles proved beyond reasonable doubt for the same reasons as it had done so in respect Allegations 6.1 and 6.2.

35.20.3 *Dishonesty* - The Second Respondent's state of knowledge was, again, analysed by the Tribunal in the discussion of the factual basis of the Allegation above due to the nature of the pleadings. It is therefore not repeated here.

35.20.4 The Tribunal found beyond reasonable doubt that the Second Respondent's actions in knowingly causing Grounds of Appeal containing a misrepresentation of an expert's report would be considered dishonest by the standards of ordinary decent people. The Tribunal found dishonesty proved beyond reasonable doubt.

35.21 *Allegation 6.4*

35.21.1 Allegation 6.4.2 relied on the Grounds of Appeal dated October 2015. As set out in relation to Allegation 6.1, the Tribunal was not satisfied beyond reasonable doubt that this document was filed and served on the Court. The Tribunal therefore found this Allegation not proved.

35.21.2 In relation to the letter to HHJ Hughes, there was no specific evidence to show that the Second Respondent was aware of the letter. This was different from the Court documents as they were documents prepared and into which the Second Respondent would have been involved. However this was an urgent letter sent by the First Respondent, who had conduct of the case. This was a detail within a litigation strategy. The Second Respondent knew of the overall litigation strategy and had been found to be aware of pleadings and skeletons but there was no evidence he was aware of the letter being drafted or sent.

35.21.3 The Tribunal found Allegation 6.4 not proved.

35.22 *Allegations 6.5 and 6.6*

35.22.1 This Allegation relied on the Grounds of Appeal dated October 2015. As set out in relation to Allegation 6.1, the Tribunal was not satisfied beyond reasonable doubt that this document was filed and served on the Court. The Tribunal therefore found this Allegation not proved.

Statement B (Second Respondent only)

36. **Allegation 7.1 - He caused or allowed a bill for fees and disbursements dated 16 January 2012 totalling £43,732.50 including VAT, to be raised, when the billed sums had not been legitimately incurred, and in doing so breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 .**

Allegation 7.2 - He caused or allowed a bill for fees and disbursements dated 19 March 2012 totalling £3,500 including VAT, to be raised, when Client A was not responsible for the billed sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.

Applicant's Submissions

36.1 It was submitted that the bills that were the subject of these Allegations did not properly reflect the amount owed by Client A in respect of these matters. The Second Respondent had been a Partner at the Firm as well as the COFA. He was therefore responsible for ensuring that bills of costs raised by the Firm were accurate. It was submitted that his failure to do so had demonstrated a lack of integrity and dishonesty. The bills had been inaccurate or exaggerated and this had the potential to result in financial gain to the Firm and the Second Respondent. It was not in the interests of Client A and it undermined the trust the public placed in the profession. The Applicant's primary case was that the Second Respondent was aware that the respective bills included costs for work which had not been legitimately incurred and that this would be regarded as dishonest by the ordinary standards of reasonable and honest people, the relevant circumstances being that the Second Respondent knowingly caused or allowed to Client A to be billed for work which had not been done where he stood to benefit from raising such bills. In the alternative the Second Respondent had not taken steps to ascertain that the bills of costs being raised in respect of these matters were properly owed and he had therefore acted recklessly.

Second Respondent's Submissions

36.2 In his Reply to the Rule 7 Statement dated 26 March 2018 the Second Respondent denied these Allegations, and indeed all the Allegations in Statement B. In that Reply the Second Respondent again, by implication, invited the Tribunal to attach no weight to the Rosen Judgment. In this document he implied that the Judge was not impartial.

36.3 In respect of Allegation 7.1 the Second Respondent set out the nature of the case which had given rise to the bill.

36.4 The Second Respondent referred the Tribunal to the transcript of the appeal hearing in which it had been accepted that the Firm had done "a lot of work" in the case giving rise to this bill. The Court of Appeal had further acknowledged that the client had had a successful outcome in this matter. The Second Respondent therefore denied that he had caused or allowed a bill to be raised in respect of fees that had not been incurred.

36.5 In respect of Allegation 7.2 the Second Respondent denied this allegation. Again the Second Respondent set out a summary of the work that had been done in this case. He stated that Client A had never objected to this bill and it formed part of the undertaking given to the Firm through a Power of Attorney dated 26 January 2012 and the undertaking given to the Court by Client A's representative in 2013. The Second Respondent referred the Tribunal to copies of both of these documents.

The Tribunal's Findings

36.6 The Rosen Judgment found that the Firm had "produced nothing by way of time sheets or other work logs to support its case" in relation to the bill for £43,732.50 (Allegation 7.1). In relation to the bill for £3,500 (Allegation 7.2) Mr Rosen QC had found that the Firm had "adduced no factual evidence in support of its contention that [Client A] had authorised [RF] to incur liability for [the Firm's] costs on his behalf". The Tribunal was satisfied beyond reasonable doubt that there was nothing to call into question the conclusions of Mr Rosen QC and it had already rejected the Second Respondent's criticisms, which were not related to the substance of the reasoning in any event. The Tribunal was satisfied beyond reasonable doubt that the billed sums had not been legitimately incurred. The Tribunal noted that the Second Respondent had joined the Firm as a Partner and the COFA in October 2011, some three months before the issuing of the bill for £43,732.50 and five months before the issuing of the bill for £3,500 (Allegation 7.2). As a Partner the Second Respondent was responsible for the bill being issued on a strict liability basis. The Tribunal found the factual basis of Allegation 7.1 and 7.2 proved beyond reasonable doubt.

36.7 *Principle 2* - The Tribunal noted that the Second Respondent had only joined the Firm a relatively short time before the bills were issued. He had not had conduct of the matters giving rise to the bills and the work done and is matters predated him joining the Firm. The Tribunal noted that the Second Respondent had failed in his duty as a Partner and as the COFA but it was not satisfied beyond reasonable doubt that this necessarily equated with a lack of integrity. The Tribunal found the breach of Principle 2 not proved.

36.8 *Principle 4* - It was clearly not in the best interests of clients for bills to be issued that were inflated and or for work that had not been done. It followed from that that it did not reflect a proper standard of service to those clients and accordingly the Tribunal found the breaches of Principles 4 and 5 proved beyond reasonable doubt.

36.9 *Principle 6* - The trust the public placed in the provision of legal services was inevitably undermined when bills, in this case for a significant sums of money, were issued when they did not properly reflect legitimately incurred fees. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

36.10 *Principle 10* - It again followed as a matter of logic that issuing an inflated bill was inconsistent with protecting client money as the Firm was requiring the client to pay that bill. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

36.11 *Dishonesty* - The Tribunal had referred to the fact that the Second Respondent did not have conduct of the matter and was not at the Firm at the time when most of the work was done. There was no evidence that he had prepared or signed the bills. The Tribunal was not satisfied beyond reasonable doubt that with limited knowledge of the facts the Second Respondent's conduct could be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the Allegation of dishonesty not proved.

36.12 *Recklessness* - In light of the Tribunal's finding in respect of dishonesty, it was required to consider the alternative Allegation of recklessness. The question for the Tribunal was whether the Second Respondent had perceived that there was a risk that inflated bills were being sent out. In light of the fact that the Tribunal could not be satisfied beyond reasonable doubt that the Second Respondent had knowledge of the specific bills in question at the time they were issued it could not be satisfied that the Second Respondent perceived a risk that these bills were not accurate. The Tribunal found the Allegation of recklessness not proved.

36.13 Allegations 7.1 and 7.2 were proved in respect of Principles 4, 5, 6 and 10 but not in respect of Principle 2, dishonesty or recklessness.

37. **Allegation 7.3 - He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 19 April 2010 totalling £178,350.20 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the SRA Code of Conduct ("the Code").**

Allegation 7.4 - He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 28 February 2011 totalling £15,171 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Allegation 7.5 - He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 16 January 2012 totalling £43,732.50 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Allegation 7.6 - He caused or allowed proceedings to be brought by the Firm in February 2013 in which the Firm sought to recover from Client A monies in respect of a bill for fees and disbursements dated 19 March 2012 totalling £3,500 including VAT, when there was no evidence of Client A's liability for such sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Applicant's Submissions

37.1 In respect of the bill that was dated 19 April 2010 and formed the basis of Allegation 7.3, it was accepted that the Second Respondent was not a Partner during the period to which the related nor the time and the bill was raised. However he was a Partner in February 2013 when the Firm had issued proceedings in respect of all four bills that formed the basis of Allegations 7.3 to 7.6. Many of the Applicant's submissions in respect of these Allegations overlapped with the Allegations against the Third Respondent contained in Statement C. The Tribunal was referred to the conclusions of the Rosen Judgment. It was submitted that the Second Respondent was a Partner at the Firm at the time the proceedings were initiated and by bringing proceedings seeking to recover fees that he knew or ought to have known were not legitimately owed by Client A, he had lacked integrity.

37.2 It was submitted that to the extent that the Second Respondent knew that some or all of the amounts being claimed were not legitimate bills he had acted dishonestly by causing the Court to be misled and allowing a claim to be brought seeking monies to which the Firm was not entitled. It was submitted that he stood to benefit from the bringing of these proceedings and the submission of inaccurate and/or misleading information as it could have resulted in a favourable beneficial outcome for himself for the Firm. In the alternative if he had not taken steps to ascertain whether the amounts being trained or legitimately build that he had acted recklessly.

Second Respondent's Submissions

37.3 In his reply to the Rule 7 Statement the Second Respondent denied each of these Allegations. In respect of Allegation 7.3 the Second Respondent submitted that contrary to the conclusions of the Rosen Judgment, there was ample evidence that Client A was liable for the sum claimed. The Second Respondent explained that the Firm started enforcement proceedings to recover its fee in 2010. However a settlement was reached between Client A on the Firm by which the client undertook to pay his fees by raising a mortgage on his property. As a result the proceedings were discontinued and the Firm continued to accept further instructions from him. The Second Respondent explained that the 2013 proceedings restarted the enforcement action relating to the undertaking given by the client in 2010.

37.4 In respect to Allegation 7.4 the Second Respondent submitted that it was "fundamentally wrong" for the Applicant to bring this Allegation as the matter had been settled and Client A had admitted owing these debts to the Firm.

37.5 In respect of Allegation 7.5 the Second Respondent explained that the Firm had acted on behalf of Client A and defended him against a matrimonial claim brought by his former Partner. The Lands Tribunal had agreed that Client A had incurred liability in defending this case and had assessed those costs at £29,000. The Second Respondent submitted that the Firm had sought to recover its costs as it was entitled to. He stated that the assessment was commenced in the Senior Court Costs Office where the matter had been referred as Client A's request "only for it to be aborted with the allegation of fraud and dishonesty".

37.6 Allegation 7.6 was also denied on the basis that the client was liable in relation to the possession claim against one of his tenants which also resulted in a successful outcome.

37.7 The Second Respondent denied acting dishonestly or recklessly. In his reply the Second Respondent made reference to the previous test for dishonesty but did not make reference to Ivey.

The Tribunal's Findings

37.8 The Tribunal noted that the bills that were the subject of Allegations 7.3 and 7.4 pre-dated the Second Respondent's role as Partner. However these Allegations related to the bringing of the proceedings, which had occurred in February 2013. By this stage he had been a Partner for some 16 months. The Rosen Judgment conclusions as to the monies are set out above in this Judgment. The Tribunal had seen no evidence that persuaded it that the Mr Rosen QC's conclusions were wrong and noted that he had heard from witnesses and reviewed each of the bills in detail. The Second Respondent had submitted that it had been found that some work had been undertaken on the cases. However the Tribunal noted that the Allegations referred to there being no evidence of Client A's liability for "such sums", those sums being the specified amounts in each Allegation. It was not pleaded that Client A owed no money at all to the Firm, although that was in fact the conclusion of the Rosen Judgment. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had caused or allowed proceedings to be brought in order to pursue monies to which firm was not entitled. The Tribunal found the factual basis of Allegations 7.3-7.6 proved beyond reasonable doubt.

37.9 *Principles 4 and 5* - It was clearly neither in a client's best interests nor did it reflect standard of service for a solicitor to cause or allow legal proceedings to be brought against them to recover monies which were not in fact owed to the Firm. The Tribunal found the breaches of Principles 4 and 5 proved beyond reasonable doubt.

37.10 *Principle 6* - The trust the public placed in the provision of legal services was inevitably undermined in circumstances where a solicitor/RFL pursued clients through the Courts from monies that were not owed on the basis of inflated bills. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

37.11 *Principle 10* - It followed as a matter of logic that by bringing these proceedings the Second Respondent was not acting in a way that protected Client A's money and assets. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

37.12 *Outcome 5.1* - On the basis that the proceedings had been brought to recover monies which were not in fact owed, the Court had clearly been misled in that the Firm had submitted that it was entitled to the monies identified in the respective bills. The Tribunal found the breach of Outcome 5.1 proved beyond reasonable doubt.

37.13 *Principle 2* - The Tribunal had referred to the Second Respondent's role in the litigation earlier in this judgment. He had been actively involved in this litigation, which should never have been brought for the reasons set out by Mr Rosen QC. The Tribunal was satisfied beyond reasonable doubt that bringing unmerited legal proceedings against Client A amounted to a lack of integrity in that he brought proceedings that should not have been brought against that client and was personally active in pursuing that litigation. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

37.14 *Dishonesty* - The Tribunal considered the Second Respondent's state of knowledge. His role in the direction of the litigation strategy had been discussed in detail in relation to Allegation 6 of Statement A. The basis of the Tribunal's findings is not repeated here, suffice to say that the Second Respondent was heavily involved in the litigation and had not played a passive role. He knew that the bills were not properly incurred by this point as he had been at the Firm for over a year. The bills were wrong, he knew this and the claims were found by Mr Rosen QC to be "largely dishonest" and "wholly without merit". The Tribunal rejected the Second Respondent's explanation regarding instructions from Client A in connection with the matter that formed the basis of Allegation 7.6 specifically as it was not supported by any of the contemporaneous evidence.

37.15 The Tribunal was satisfied beyond reasonable doubt that it would be considered dishonest by the standards of ordinary decent people to bring legal proceedings against a client in respect of bills which did not properly reflect the work done for monies which were therefore not owed. The Tribunal found the Allegation of dishonesty proved beyond reasonable doubt. This applied to each of the bills that were the subject of the proceedings commenced in February 2013.

37.16 The Tribunal found Allegation 7.3 to 7.6 inclusive proved in full beyond reasonable doubt including dishonesty.

38. **Allegation 7.7 - By reason of the conduct alleged at 7.1, 7.2, 7.3, 7.4, 7.5 and/or 7.6 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

38.1 The submissions and findings in relation to dishonesty and recklessness are set out above in relation to each substantive Allegation as it arose.

39. **Allegation 8 - He failed to report to the SRA that he was subject to a 24 month fully probated suspension effective in December 2012 and/or a fully probated suspension effective on 15 December 2014 and in doing so breached Principle 7 of the Principles and Outcome 10.3 of the Code.**

Applicant's Submissions

39.1 It was submitted that whether or not the Second Respondent considered the matter serious was irrelevant to the question of whether the allegation was proved. The Second Respondent was under a regulatory obligation to disclose the fact of his dated suspensions.

Second Respondent's Submissions

39.2 The Second Respondent in his reply to the Rule 7 Allegations denied this allegation. He stated "the suspension was suspended and I was not prevented from practising as this was resolved by consent. There was nothing to report".

The Tribunal's Findings

39.3 The Tribunal found that the Second Respondent had been under a duty to report to the SRA that he was subject to a 24 month fully probated suspension in December 2012 and in December 2014. The Tribunal rejected the Second Respondent's case that it did not affect his practice and therefore did not need to be reported. That was a matter of the SRA to determine and it did not relieve the Second Respondent of his obligation to comply with his duties. The Tribunal found this allegation proved beyond reasonable doubt including the breach of Principle 7 and Outcome 10.3.

Statement C - Third Respondent only

40. **Allegation 1.1 - In relation to Client A, he caused or allowed a bill for fees and disbursements dated 16 January 2012 totaling £43,732.50 including VAT, to be raised, purportedly in respect of the Firm's conduct, when the billed sums had not been legitimately incurred, and in doing so breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").**

Allegation 1.2 - In relation to Client A, he caused or allowed a bill for fees and disbursements dated 19 March 2012 totaling £3,500 including VAT, to be raised, when Client A was not responsible for the billed sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.

Applicant's Submissions

40.1 These Allegations corresponded to Allegations 7.1 and 7.2 in Statement B. The majority of the Applicant's submissions are set out above and not repeated here. In addition, Mr Ramsden had put his case to the Third Respondent in cross-examination.

40.2 It was submitted that to the extent that the Third Respondent was aware that the bills were for costs not legitimately incurred, he had acted dishonestly. It was submitted that he stood to benefit from the raising of the bills as there would be financial reward

to the Firm to which it was not entitled. If the Third Respondent had failed to take steps to ascertain that the bills being raised in respect of Client A's matters were properly owed then he had acted recklessly.

Third Respondent's Submissions

40.3 Mr Anyiam told the Tribunal that the Third Respondent admitted Allegations 1.1 and 1.2 on the grounds of strict liability on the basis that he was a Partner and the COLP time the bills were issued. He had not been at the Firm at the time the work was said to have been carried out and he had not signed, authorised, approved or sanctioned the raising of the bills. Mr Anyiam submitted that the Third Respondent had given plausible, honest and genuine explanations in his evidence before the Tribunal and the Tribunal was invited to accept his evidence.

40.4 Mr Anyiam told the Tribunal that the Third Respondent "may have acted recklessly" but he had certainly not been dishonest. This submission applied to all the Allegations where the Third Respondent faced an Allegation of recklessness and/or dishonesty.

The Tribunal's Findings

40.5 The findings of the Rosen Judgment relevant to these Allegations are set out above in relation to Statement B – Allegations 7.1 and 7.2 and are therefore not repeated here. The Tribunal was satisfied beyond reasonable doubt that the billed sums had not been legitimately incurred. The Tribunal noted that the Third Respondent had joined the Firm as a Partner and the COLP in October 2011, at the same time as the Second Respondent, some three months before the issuing of the bill for £43,732.50 (Allegation 1.1) and five months before the issuing of the bill for £3,500 (Allegation 1.2). As a Partner the Third Respondent was responsible for the bill being issued on a strict liability basis. The Third Respondent had admitted the factual basis of these Allegations and the Tribunal found the factual basis of Allegation 1.1 and 1.2 proved beyond reasonable doubt.

40.6 *Principle 2* - The Tribunal noted that like the Second Respondent, the Third Respondent had only joined the Firm a relatively short time before the bills were issued. He too had not had conduct of the matters giving rise to the bills and the work done predated him joining the Firm. The Tribunal noted that the Third Respondent had failed in his duty as a Partner but it was not satisfied beyond reasonable doubt that this necessarily equated with a lack of integrity. The Tribunal found the breach of Principle 2 not proved.

40.6 *Principle 4* - It was clearly not in the best interests of clients for bills to be issued that were inflated and or for work that had not been done. It followed from that that it did not reflect a proper standard of service to those clients and accordingly the Tribunal found the breaches of Principle 4 and Principle 5 proved beyond reasonable doubt.

40.7 *Principle 6* - The trust the public placed in the provision of legal services was inevitably undermined when bills, in this case for a significant sums of money, were issued when they did not properly reflect legitimately incurred fees. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

40.8 *Principle 10* - It again followed as a matter of logic that issuing an inflated bill was inconsistent with protecting client money as the Firm was requiring the client to pay that bill. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

40.9 *Dishonesty* - The Tribunal had referred to the fact that the Third Respondent did not have conduct of the matter and was not at the Firm at the time when most of the work was done. There was no evidence that he had prepared or signed the bills. The Tribunal was not satisfied beyond reasonable doubt that with limited knowledge of the facts the Third Respondent's conduct could be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the Allegation of dishonesty not proved.

40.10 *Recklessness* - In light of the Tribunal's finding in respect of dishonesty, it was required to consider the alternative allegation of recklessness. The Third Respondent had told the Tribunal that he admitted recklessness but Mr Anyiam had also told the Tribunal that the Third Respondent had not perceived any risk. The position as set out by Mr Anyiam was not consistent with the definition of recklessness set out in G and Brett, which required an appreciation of risk. The central question for the Tribunal was whether the Third Respondent had perceived that there was a risk that inflated bills were being sent out. In light of the fact that the Tribunal could not be satisfied beyond reasonable doubt that he had knowledge of the specific bills in question at the time they were issued it could not be satisfied that the Third Respondent perceived a risk that these bills were not accurate. The Tribunal found the allegation of recklessness not proved, notwithstanding the Third Respondent's admission.

40.11 Allegations 1.1 and 1.2 were proved in respect of Principles 4, 5, 6 and 10 but not in respect of Principle 2, dishonesty or recklessness.

41. **Allegation 2 - He signed a contract for the sale of Client A's property 13 Augustine's Road ("the Property") for £1.3 million to Company C on 17 December 2012, without authority from anyone at the Firm to sign the contract on Client A's behalf and in doing so, he breached Principles 4, 5 and 6 of the Principles.**

Applicant's Submissions

41.1 It was submitted that in signing the contract of sale without taking steps to record Client A's instructions the Third Respondent had failed to act in the best interests of his client or to provide a proper standard of service. The Third Respondent risked binding Client A to a contract against his wishes which could lead to an adverse outcome for that client. It was submitted that in proceeding despite that obvious risk the Third Respondent had been reckless. Mr Ramsden had put his case to the Third Respondent in cross-examination.

Third Respondent's Submissions

41.2 Mr Anyiam told the Tribunal that the Third Respondent admitted this Allegation to the extent that he relied on the telephone attendance note and power of attorney by Client A in favour of his son which he had seen on the file as well as verbal authority

from the Second Respondent. He accepted that there was no clear authority from Client A.

The Tribunal's Findings

41.3 The Third Respondent had told the Tribunal, and Mr Anyiam had included in his submissions, that he admitted this Allegation on the basis that he had not had clear authority from Client A to exchange contracts. However the Allegation did not allege that he had signed the contract without authority from the client, rather it alleged that he had signed the contract for sale without authority from anyone at the Firm. That was how the Applicant had pleaded its case throughout and indeed this was the basis on which Mr Ramsden had opened the case. In the Third Respondent's response to the Rule 5 Statement dated 18 December 2017 he had denied that Allegation, stating that he had the authority of the Second Respondent to sign the contract and because there was a telephone attendance note in the file which expressly indicated that Client A had instructed the Firm to proceed to exchange. This was the telephone attendance note between Client A and Mrs A. The Third Respondent had repeated this in his evidence. The Tribunal therefore rejected the admission as there appeared to have been some misunderstanding on the part of the Third Respondent as to the nature of the Allegation.

41.4 The Third Respondent had given evidence that he had spoken to the Second Respondent by telephone on the data exchange and had been authorised by the Second Respondent to sign the contract of sale. The Tribunal accepted the Third Respondent's evidence on this point. The Tribunal noted that the attendance note provided some support for the Third Respondent's case and there was no evidence to counter the evidence given by the Third Respondent on this point. The Tribunal was therefore not satisfied beyond reasonable doubt that the Second Respondent did not have authority from someone at the Firm to sign the contract for sale. The Tribunal therefore found Allegation 2 not proved.

42. **Allegations 3.1 - He signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 19 April 2010 totaling £178,350.20 including VAT, when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Solicitors Code of Conduct 2007.**

Allegation 3.2 - He signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 28 February 2011 totaling £15,171 including VAT when there was no evidence of Client A's liability for such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Allegation 3.3 - He signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 16 January 2012 totaling £43,732.50 including VAT, when there was no evidence of Client A's liability for

such sums and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Allegation 3.4 - He signed a Particulars of Claim and/or other documents supported by a declaration of truth claiming recovery from Client A of monies in respect of a bill for fees and disbursements dated 19 March 2012 totaling £3,500 including VAT, purportedly in respect of the Firm's conduct, when there was no evidence of Client A's liability for such sums, and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles and failed to achieve Outcome 5.1 of the Code.

Applicant's Submissions

42.1 The Particulars of Claim that formed the basis of these Allegations were served in the course of the proceedings that were the basis of Allegations 7.3-7.6 of Statement B in relation to the Second Respondent. To the extent that the Applicant's submissions are set out above in relation to the circumstances of the proceedings, they are not repeated here.

42.2 The Third Respondent was a Partner in the Firm when the proceedings were issued and he signed the Particulars of Claim dated 6 June 2013. It was submitted that as a Partner in the Firm he had failed to act with integrity in that the Firm was seeking to recover fees which Third Respondent knew or ought to have known were not legitimately owed by Client A. It was submitted that the Third Respondent had acted dishonestly, if he had knowingly submitted in accurate information to the Court, alternatively if he had not taken steps to ascertain whether the fees for which he was claiming had been legitimately billed and/or were owed then he had acted recklessly. Mr Ramsden had put his case to the Third Respondent in cross-examination.

Third Respondent's Submissions

42.3 Mr Anyiam told the Tribunal that the Third Respondent admitted Allegations 3.1 to 3.4 inclusive on the basis that he signed the Particulars of Claim and other documents on the instructions of the Second Respondent because he honestly genuinely and reasonably believed what he was being told by the Second Respondent, namely that Client A to the Firm the amount of money contained in the respective bills for unpaid legal fees. The Third Respondent had been shown approximately 22 lever arch files which he had been reliably informed contained the case papers for the work carried out for a Client A by the Firm before the Third Respondent had joined.

42.4 Mr Anyiam told the Tribunal that the Third Respondent accepted that he may have been reckless but denied acting dishonestly. In response to a request for clarification from the Tribunal, Mr Anyiam explained that the Third Respondent's position was that he had not foreseen any risk in the circumstances he faced at the time.

The Tribunal's Findings

42.5 The Tribunal had found that the bills that were the subject of Allegations 3.1-3.4 were not properly incurred and that the proceedings commenced in February 2013 seeking to 'recover' the monies were therefore not properly brought. The Tribunal had found

that there was no evidence for Client A's liability for such sums and that therefore the submissions made to the Court had been misleading. The reasons for the Tribunal's findings are set out above in relation to Allegations 7.3-7.6 of Statement B and are not repeated here. The Particulars of Claim of June 2013 related to those proceedings. The Third Respondent had accepted that he signed the Particulars of Claim. The Tribunal, having made the findings that it had, was therefore satisfied that the factual basis of Allegations 3.1 to 3.4 inclusive and the breach of Outcome 5.1 was proved beyond reasonable doubt.

42.6 *Principle 2* - The Particulars of Claim contained a statement of truth and in any event was a document that was being submitted to the Court. The Third Respondent had a duty, before signing the document, to ensure that everything in it was accurate and true. The Tribunal had found that the contents had not been accurate or true and it was therefore satisfied beyond reasonable doubt that the Third Respondent had lacked integrity by signing a Particulars of Claim in those circumstances. Adopting the analysis of integrity as set out in Wingate and Evans and Malins, it was clear that the Third Respondent had failed to discharge his duty to be scrupulously accurate in his dealings with the Court. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

42.7 *Principles 4, 5 and 6* - The Tribunal had found, when considering Allegations 7.3 to 7.6 in Statement B that it was not in the best interests of Client A to bring proceedings against him for money that he did not owe. The Particulars of Claim sought to justify those proceedings and in signing them the Third Respondent had clearly failed to act in the client's best interests and failed to provide a proper standard of service. In addition it followed as a matter of logic that the trust the public placed in the provision of legal services was undermined when Particulars of Claim there were untrue were signed by a solicitor. The Tribunal found the breaches of Principles 4, 5 and 6 proved beyond reasonable doubt.

42.8 *Principle 10* - It again followed as a matter of logic that pursuing a client for fees that were not owed was inconsistent with protecting their money and assets. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

42.9 *Dishonesty* - The Tribunal considered the Third Respondent's state of knowledge at the time he signed the Particulars of Claim. He was a Partner in the Firm but was not the senior Partner and was therefore junior to the Second Respondent. As discussed above, the Second Respondent had been directing the litigation and was responsible for the way in which it was being conducted. There was no evidence that the Third Respondent had drafted the Particulars of Claim. The Third Respondent had not acquainted himself with the many files involved in the case and therefore had insufficient information to form a proper view as to the facts underpinning the Particulars of Claim. The Tribunal found that the Third Respondent had been gullible in that he had relied on the Second Respondent and Counsel for his information. The Tribunal had considered the Third Respondent to be a credible witness and had also taken note of the character references submitted on his behalf.

42.10 The Tribunal was not satisfied beyond reasonable doubt that given the limited information for him that his conduct had been dishonest by the standards of ordinary decent people. The Tribunal found the Allegation of dishonesty not proved.

42.11 *Recklessness* - The Tribunal considered the alternative allegation of recklessness. The Tribunal considered whether the Third Respondent would have perceived that there was a risk that he was signing Particulars of Claim when there was no evidence of Client A's liability for the sums being claimed. The Third Respondent had not taken sufficient steps to satisfy himself of the accuracy of the Particulars of Claim. He had not gone through the 22 lever arch files and the Tribunal was satisfied that he must have known that there was a risk that he was signing a document that may not be accurate. He had proceeded to take that risk and given his duty to the Court this was clearly not reasonable and had resulted in him signing the Particulars of Claim in support of litigation that was found to be wholly without merit. The Tribunal was satisfied beyond reasonable doubt that the Third Respondent's conduct had been reckless.

42.12 Allegations 3.1 to 3.4 were proved in full save for the allegation of dishonesty which was not proved.

43. **Allegation 4.1 – [In relation to Client H] he signed a Claim Form and Particulars of Claim dated 11 September 2013, and allowed the same to be filed at Court, stating that Universal Trading & Shipping (UK) Ltd ("Universal") was, at all material times, the owner entitled to possession of the freehold land at 57 Bridge Road ("Bridge Road") when in fact the company had been struck off the Register of Companies, and in doing so he breached any or all of Principles 1, 2, 3, 4 and 6 and failed to achieve Outcome 5.1 of the Principles.**

Allegation 4.2 - he signed a Claim Form and Particulars of Claim dated 11 September 2013, and allowed the same to be filed at Court, which stated that the Occupants entered and took possession of Bridge Road on an unknown date and without the Claimant's permission, and failed to disclose to the Court that the occupants had, at one time, a licence to occupy Bridge Road, and in doing so he breached any or all of Principles 1, 2, 3, 4 and 6 and failed to achieve Outcome 5.1 of the Principles.

Applicant's Submissions

43.1 Mr Ramsden had put his case to the Third Respondent in cross-examination.

43.2 It was submitted that the Third Respondent's actions in signing the Particulars of Claim had resulted in misleading information being placed before the Court in relation to Client H's claim. In doing so the Third Respondent had failed to uphold the proper administration of justice and had allowed the Court to be misled. The Third Respondent had therefore lacked integrity as a member of the public would expect a solicitor to ensure the proceedings were properly brought. It was right that the Third Respondent, as he had suggested in representations to the SRA, had signed the Particulars of Claim in the absence of the Second Respondent believing that he done all the necessary checks that it was submitted that the Third Respondent had allowed his independence to be compromised.

43.3 In respect of the failure to disclose the occupant's licence the Third Respondent had again failed to deliver a proper standard of service to the client because he had placed

misleading information before the Court in relation to the claim and had signed a statement of truth on the client's behalf which could have caused prejudice to that claim. The Third Respondent's explanation in his email dated 27 March 2015 to the SRA that he had signed the Particulars of Claim in the Second Respondent's absence was inconsistent with his explanation provided on 2 April 2014 that the Particulars of Claim provided only a summary and the full circumstances would have been set out had the matter gone to trial.

43.4 The Third Respondent had stated in his email of 27 March 2015 that he signed the Particulars of Claim in the absence of the Second Respondent in circumstances where he had never met the client. It was submitted that the inaccuracies that formed the basis of Allegations 4.1 and 4.2 would either have been known to the Respondent or easily ascertainable. In failing to take any steps to verify the content before signing the Particulars of Claim the Third Respondent had acted recklessly. If he had known that the documents contained inaccurate information then he had acted dishonestly.

Third Respondent's Submissions

43.5 Mr Anyiam told the Tribunal that the Third Respondent admitted Allegation 4.1 on the basis that his action was based on the client's instructions at the time but that he had taken corrective action as soon as the fact subsequently came to light. The Court was notified with the client's consent, of the true position and an application was made for the proceedings to be stayed until the company had been restored to the register.

43.6 In respect of Allegation 4.2, Mr Anyiam told the Tribunal that the Allegation was admitted to the extent that he was not the fee earner with conduct of the matter. The Particulars of Claim had been drafted by Counsel and his actions in signing the Particulars of Claim reflected a genuine and honest mistake based on information he was provided with as to the client's instructions.

The Tribunal's Findings

43.7 The Third Respondent had not disputed the factual basis of Allegations 4.1 and 4.2. The Tribunal was satisfied that these admissions were properly made based on the evidence before it to which Mr Ramsden had referred. It therefore followed that the Claim Form and Particulars of Claim had been misleading in material respects. The Tribunal found the factual basis of Allegations 4.1 and 4.2 and the breach of Outcome 5.1 proved beyond reasonable doubt.

43.8 *Principle 1* - In light of the factual findings referred to above, it followed as a matter of logic that signing the Claim Form and Particulars of Claim containing inaccurate information that could mislead the Court was inconsistent with the proper administration of justice and accordingly the Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

43.9 *Principle 2* - The Third Respondent had not been the fee earner in respect of Client H, but he was a Partner in the Firm and most importantly he was the individual who had signed the Claim Form and the Particulars of Claim dated 11 September 2013. As the Tribunal had found in relation to Allegations 3.1 to 3.4, the Third Respondent was

under a duty to ensure that any document that he signed that was to go before the Court was completely accurate and could not be misleading. The Third Respondent had failed in that duty and had relied on information provided to him which was limited, taking it at face value rather than satisfying himself of the accuracy of that information. In respect of Allegation 4.1, the Tribunal accepted that he had subsequently corrected the matter. This was relevant to mitigation but did not detract from the fact that he had failed in his duty at the time when he signed the documentation. The Tribunal found that the Third Respondent had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt.

43.10 *Principle 3* - As the Tribunal had found above, the Third Respondent had taken what he was told on face value and had not taken steps to satisfy himself that what he had been told was factually accurate. In respect of Allegation 4.1 he had relied on his client's instructions without checking that those instructions were factually correct. It was not until the error was drawn to his attention that he had confronted the client, as he ought to have done the first place, and insist that the error be corrected. In respect of Allegation 4.2 the Third Respondent had placed too much reliance on Counsel. In the placing excessive reliance on what he had been told the Third Respondent had allowed his independence to be compromised and the Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

43.11 *Principles 4 and 6* - It was never in the best interests of a client to allow the Court to be misled and the trust the public placed in the provision of legal services was undermined when officers of the Court misled the Court by signing documentation that was inaccurate. The Tribunal found the breaches of Principles 4 and 6 proved beyond reasonable doubt.

43.12 *Dishonesty* - The Tribunal considered the Third Respondent's state of knowledge at the time of signing the Particulars of Claim and the Claim Form. The Tribunal identified aspects of this when considering lack of integrity. The Third Respondent had acted on the basis of information provided to him which he had failed to verify. The Tribunal was not satisfied that he had chosen to fail to enquire, or that he had known that the documents he was signing contained material inaccuracies. The Tribunal accepted that he had sought to correct the error in respect of Allegation 4.1, something that was inconsistent with him having known that what he had signed on 11 September 2013 was misleading.

43.13 The Tribunal was not satisfied that the Third Respondent's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the Allegation of dishonesty not proved.

43.14 *Recklessness* - The Tribunal considered the Allegation of recklessness as an alternative to dishonesty. The Third Respondent's conduct formed part of a pattern of behaviour which the Tribunal had found to have occurred in relation to Allegations 3.1 to 3.4. That pattern involved the Third Respondent signing documents without taking adequate steps to avail himself of the necessary facts to ensure that what he was signing was accurate. By failing to take those steps the Third Respondent would have appreciated that there was a risk that what he was signing might not be accurate as he could not be sure that it was. Despite the appreciation of this risk the Third Respondent had proceeded to sign the Claim Form and Particulars of Claim anyway,

with the consequence that inaccurate and misleading information had been presented to the Court. The Tribunal did not consider the Third Respondent's actions in this regard to be reasonable and found the allegation of recklessness proved beyond reasonable doubt.

43.15 Allegation 4 was proved in full beyond reasonable doubt save for the Allegation of dishonesty which was not proved.

44. **Allegation 5 - On or around 27 January 2014 he allowed, or failed to prevent the withdrawal of deposit funds held in relation to the sale of the Property from the Client Account other than as permitted by Rule 20 of the Solicitors Accounts Rules ("SAR") and in doing so he breached Rule 20.6 of SAR and Principles 2, 4, 6, 8 and 10 of the Principles.**

Applicant's Submissions

44.1 Mr Ramsden's submissions in respect of this Allegation had been contained within his submissions in relation to Allegation 3 in the Statement A and to the extent that they overlap with this Allegation there are not repeated here. In addition Mr Ramsden had put his case to the Third Respondent in cross examination. It was submitted that the evidence supported the Allegation that as a Partner he had allowed or failed to prevent the transfer of funds taking place. The Third Respondent had stated in the Defence dated 9 January 2014 that the money had been transferred to offset the amount allegedly owed by Client A. It was therefore submitted that he knew or ought to have known about the transfer by 29 January 2014. It was submitted that in allowing a failing to prevent this transfer the Third Respondent had lacked integrity and failed to act in the best interests of his client as well as undermining public confidence by breaching the accounts rules.

Third Respondent's Submissions

44.2 Mr Anyiam told the Tribunal that the Third Respondent admitted this Allegation on the grounds of strict liability on the basis that he was a Partner and the COLP at the Firm when the transfer took place. It was submitted that he had taken every possible step using his powers as a salaried Partner in the Firm to prevent the withdrawal from Client Account. The Third Respondent's position was that the transfer had been affected by the Second Respondent acting alone without the knowledge or consent of the Third Respondent, something it was submitted had been accepted by the Applicant. The Third Respondent's case was that the Second Respondent had concealed the transfer from him on the telly he only became aware of it when it was brought to his attention by the FIO. The Third Respondent had immediately confronted the Second Respondent when he discovered this in the Third Respondent had provided the verbal undertaking to ensure that the funds remained untouched pending the outcome of the costs of litigation. That undertaking had been adhered to and at the date of the Third Respondent's departure from the Firm the funds had not been touched. The Third Respondent had not received any payment from the funds. Mr Anyiam told the Tribunal that the circumstances of the transfer or one of the main reasons why the Third Respondent had left the Firm. The Tribunal was invited to accept the Respondent's evidence.

The Tribunal's Findings

44.3 The Tribunal had already found in relation to Allegation 1 and 3 of Statement A that the withdrawal of the deposit funds from the Client Deposit Account was not in accordance with Rule 20 of the SAR. The Third Respondent had admitted the factual basis of this Allegation, namely that he was a Partner at the time the withdrawal was made. The Tribunal therefore found the factual basis of Allegation 5 and the breach of Rule 20.6 of the SAR proved beyond reasonable doubt.

44.4 *Principle 2* - The Third Respondent had told the Tribunal that he was not aware of the transfer of the time it happened but that he became aware of it shortly thereafter. The evidence indicated that he was aware of it by the time he signed the Defence dated 29 January 2014. The Tribunal noted that he had provided an undertaking to the SRA that the monies would not be dissipated and this reflected the Third Respondent's knowledge that the transfer should not have taken place. The Third Respondent had a responsibility to ensure compliance with the SAR by virtue of his role as a Partner. In failing to discharge that duty the Tribunal was satisfied that he had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt.

44.5 *Principles 4 and 10* - At the time of the transfer, Client A was facing legal proceedings over his entitlement to the funds and by removing them from Client Account the Firm had deprived Client A of access to those funds should he have been required to pay part or all of them to Company C. This was not in the best interests of Client A and represented a serious failure to protect his monies. The Tribunal found the breaches of Principles 4 and 10 proved beyond reasonable doubt.

44.6 *Principle 6* - The Third Respondent had been at least partly responsible for a significant breach of the SAR. The trust the public placed in the provision of legal services required complete adherence to those Rules and any breach particularly involving substantial sums of money undermined that trust. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

44.7 *Principle 8* - It followed as a matter of logic from the Tribunal's earlier findings in respect of this Allegation that the Third Respondent had failed to carry out his role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal found the breach of Principle 8 proved beyond reasonable doubt.

45. **Allegation 6.1 – [In relation to matters for Client A] he signed a Defence dated 29 January 2014, and allowed the same to be filed at Court, which contained inaccurate statements, in that it contended that it had not been denied that Client A had instructed the Firm in the sale of the Property when issues relating to the legitimacy of the instructions in the sale had been raised on at least three occasions and in doing so breached Principles 1, 2, 6 of the Principles and failed to achieve Outcome 5.1 of the Code.**

Allegation 6.2 - he signed a Defence dated 29 January 2014, and allowed the same to be filed at Court, which contained inaccurate statements, in that it referred to Master Price's Order for Interim Payment as a judgment without making it clear that it was in fact an Order for Interim Payment and that the

costs litigation with Client A had not concluded and in doing so breached Principles 1, 2, 6 of the Principles and failed to achieve Outcome 5.1 of the Code.

Applicant's Submissions

45.1 Mr Ramsden's submissions in respect of this Allegation had, to a large extent been covered in relation to Allegations 6.1 and 6.2 of Statement A. To the extent that the submissions overlap there are not repeated here. In addition Mr Ramsden had also cross-examined the Third Respondent about these matters during the course of his evidence.

45.2 It was submitted that the Defence had been submitted to the Court at a time when the Third Respondent was a Partner. It had been signed by the Third Respondent and to the extent that he was unaware of the accuracy of the content of the Defence he had acted recklessly. Insofar as he knew that any or all of the documents contained inaccurate information the Third Respondent had acted dishonestly. The Third Respondent stood to benefit from the submission of incorrect information in that it could have resulted in a beneficial outcome for himself and all the Firm.

Third Respondent's Submissions

45.3 Mr Anyiam told the Tribunal that the Third Respondent admitted Allegation 6.1 but submitted that he had concerns as to how his signature came to prepare on the Defence dated 29 January 2014. He could not recall signing and it was submitted that the content of the Defence was contrary to the position that the deposit for the purchase of the property together with the case file should have been sent to Client A's new solicitors. The Third Respondent therefore admitted Allegation 6.1 on the basis that he may have been reckless because he believed that he may have been deceived into signing the Defence, if indeed the signature on the document was his. He had no intention to mislead the Court at any time.

45.4 The same concerns regarding the signature on the Defence applied to Allegation 6.2. The Third Respondent admitted this Allegation on the basis that he may be reckless and signing it, if indeed it had signed it. In any event he had no intention to mislead the Court. It was submitted that because the Third Respondent was in the habit of keeping copies of any important documents which he signed, the fact that he could not find a copy of the Defence in his file of documents added to his concerns about whether he'd signed the document. Mr Anyiam submitted that the Third Respondent had nothing to gain by misleading the Court and that the Defence had been settled by Counsel. The Third Respondent had not attended Croydon Crown Court at any time because he did not wish to have anything to do with that matter.

The Tribunal's Findings

45.5 The Tribunal had analysed the factual background concerning the Defence dated 29 January 2014 when considering Allegations 6.1 and 6.2 of Statement A. The Tribunal's conclusions are therefore not repeated here suffice to say that it had found that stating that it had not been denied that Client A had instructed the Firm and describing the order for interim payment by Master Price as a "judgement" had been inaccurate and misleading.

45.6 The Third Respondent had, on the one hand, stated that he admitted Allegations 6.1 and 6.2 but he had also suggested that the signature may not have been his. The Third Respondent had adduced no evidence to suggest that the signature was a forgery and indeed he had not made this submission with any great force. The Tribunal was satisfied beyond reasonable doubt that the Third Respondent had signed the Defence dated 29 January 2014, which contained inaccurate statements. The Tribunal found the factual basis of Allegations 6.1 and 6.2 together with the breach of Outcome 5.1 proved beyond reasonable doubt.

45.7 *Principle 1* - As in the case of the Particulars of Claim that was the subject of Allegation 3 and the Claim Form and Particulars of Claim that was the subject of Allegation 4, it followed that signing a Defence that is to be submitted to the Court that contains inaccurate and misleading information was inconsistent with the Third Respondent's duty to uphold the proper administration of justice. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

45.8 *Principle 2* - The Tribunal had referred already to the Third Respondent's duty to ensure that any document that went before the Court had to be completely accurate and in no way misleading. The Third Respondent had clearly failed in their duty by signing this document when it contained clear inaccuracies. The Tribunal was satisfied that the Third Respondent had lacked integrity and found the breach of Principle 2 proved beyond reasonable doubt.

45.9 *Principle 6* - The Tribunal found the breach of Principle 6 proved beyond reasonable doubt for the same reasons that it had done so in respect of Allegations 3 and 4.

45.10 *Dishonesty* - The Tribunal considered the Third Respondent's state of knowledge at the time that he signed the Defence dated 29 January 2014. The Tribunal could not exclude the possibility that the Third Respondent had, again, not read the statement properly before he signed it, nor could it exclude the possibility that he had not read the file to satisfy himself that the contents of the Defence in fact true and accurate. This appeared to be a continuation of the incompetence that the Tribunal had found present in Allegations 3 and 4. In the circumstances the Tribunal could not be satisfied beyond reasonable doubt that the Third Respondent's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the Allegation of dishonesty not proved.

45.11 *Recklessness* - The Tribunal considered recklessness as an alternative to dishonesty. As in the case of Allegations 3 and 4, there was clearly a risk that by not making proper enquiry as to the true facts of the case, the Third Respondent would be signing a document that was untrue. The Tribunal was satisfied beyond reasonable doubt that the Third Respondent would have perceived that there was a risk as he could not have known that what he was signing was correct. The Third Respondent had proceeded to take that risk and had signed the Defence, thereby putting his signature to a document that was misleading and inaccurate. The Tribunal found recklessness proved beyond reasonable doubt.

45.12 The Tribunal found Allegation 6, including 6.1 and 6.2, proved in full beyond reasonable doubt save for the Allegation of dishonesty which was not proved.

46. **Allegation 7 - By reason of the conduct alleged at 1.1, 1.2, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 6.1 and/or 6.2 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

Allegation 8 - By reason of the conduct alleged at Allegation 2 above, he acted recklessly.

46.1 The submission and findings in relation to these Allegations are dealt with above as they arose in respect of the substantive Allegations.

Statement D - Fourth Respondent

47. **Allegation 1 - During a hearing in June 2016, the Respondent provided false and/or misleading information to the Court, and in doing so he breached Principles 1, 2 and 6 of the SRA Principles 2011 and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011.**

Applicant's Submissions

47.1 The Tribunal was referred to the Rosen Judgment and in particular the impression that the Judge had formed about the Fourth Respondent as a witness. It was submitted that by providing false and/or misleading information to the Court the Fourth Respondent had failed to uphold the proper administration of justice. In doing so he had lacked integrity and caused damage to the trust the public placed in the Fourth Respondent and in the provision of legal services.

47.2 It was further submitted that in knowingly causing or allowing the Court to be misled, the Fourth Respondent's actions had been dishonest. The Fourth Respondent was aware of his obligation as a solicitor to provide a truthful account to the Court when giving evidence under oath. He was aware that the account provided to the Court in June 2016 differed from his witness statement of November 2014. It was submitted that the Fourth Respondent stood to benefit from the provision of false or misleading information as the Firm would potentially obtain a payment for work carried out which it was not entitled.

Fourth Respondent's Submissions

47.3 The Fourth Respondent had not served an Answer or a Witness Statement with the Tribunal. He had sent an email to the Applicant's solicitors on 26 August 2018 in which he had stated the following:

> "It is important to emphathize [sic] that the statement provided is all I can say about the matter. Although I was designated the senior Partner in the firm, charging of fees was not my responsibility. That power rested on the then manager, Mr [F], who also paid me the £1000 I earned per month for the period I spent in Alpharocks. Every fee agreement concerning the case of [Client A] had agreed before I joined the firm, I had no actual influence on fee charging".

47.4 That was the totality of the Fourth Respondent's engagement with the proceedings. The Tribunal had regard to his position as set out above when considering the Allegations against him.

The Tribunal's Findings

47.5 The Judgment of Mr Rosen QC is quoted in the section setting out the factual background above. The reliance that the Tribunal was able to place on the Rosen Judgment is also dealt with earlier on in this Judgment. Those points are not repeated here, suffice to say that Mr Rosen QC had found the Fourth Respondent's evidence to be neither honest nor accurate. The Tribunal had no reason to question the Judge's findings, supported as they were by the evidence in the case, both before Mr Rosen QC and before this Tribunal. Mr Rosen QC had benefit of hearing from the Fourth Respondent in person including in cross-examination. He had pointed out numerous inconsistencies and mis-statements in the Fourth Respondent's evidence. The Tribunal found that the Fourth Respondent had given false and misleading information to the Court, something which was inconsistent with proper administration of justice

47.6 The Tribunal found the factual basis of Allegation 1 together with the breach of Outcome 5.1 and Principle 1 proved beyond reasonable doubt.

47.7 *Principle 2* - The Fourth Respondent had supported a claim that, under cross-examination he had conceded should have been reduced. He had given false and misleading information to the Court on the Tribunal's finding above. This was the polar opposite of the duty to be scrupulously accurate in his dealings with the Court. The Tribunal was satisfied beyond reasonable doubt that the Fourth Respondent had lacked integrity and breached Principle 2.

47.8 *Principle 6* - It followed a matter of logic from the Tribunal's findings above that the Fourth Respondent's conduct in giving false evidence to the Court would undermine the trust the public placed in him and in the provision of legal services. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

47.9 *Dishonesty* - The Tribunal considered the Fourth Respondent's state of knowledge at the time he gave evidence to the Court in June 2016. He knew he was giving evidence about this matter and was alive to the issue about the bill. He knew that he was in Court and that he had a duty to be scrupulously honest. In the course of his evidence he admitted in Court that certain aspects of the bills should not have been included. He had had conduct of the matter and would have been most knowledgeable about it and before giving evidence he would have had an opportunity to review the file and the bill. He knew there were certain things that should have not been there.

47.10 The Tribunal was satisfied beyond reasonable doubt that the Fourth Respondent's conduct would be considered dishonest by the standards of ordinary decent people.

47.11 Allegation 1 was proved in full including the allegation of dishonesty.

48. **Allegation 2 – He caused or allowed a bill of costs dated 19 April 2010 to be raised and delivered to Client A in the RA Matter which contained items which should not legitimately have been charged to Client A and in doing so he breached Rule 1.02 and 1.04, 1.05 and 1.06 of the SRA Code of Conduct 2007.**

Applicant's Submissions

48.1 It was submitted that although the Fourth Respondent was not a Partner in the Firm when the bill was raised, having retired as a Partner in February 2010, he was the Senior Partner and the Fee Earner on the matter during a significant period to which the bill related. He had given evidence to the Court that he prepared and delivered the trial bundles. It was submitted that he would therefore have been aware how much time he had recorded on this aspect of the file and had a responsibility to ensure this was accurate.

48.2 To the extent that he was aware that the content of the bill of costs contained costs for work that ought not to have been charged to Client A, it was submitted that the Fourth Respondent acted dishonestly. He was aware that the bill of costs prepared by the Costs Draftsman would be prepared on the basis of the time he had recorded purportedly in respect of the preparation of trial bundles and he was aware that the bill of costs raised included costs for work that had not been carried out, had been exaggerated and/or was work for which Client A should not be charged.

48.3 He stood to benefit from causing or allowing the bill of costs to be raised and delivered to Client A, as the Firm would obtain payment for work purportedly carried out to which he knew he the Firm was not entitled.

48.4 In the alternative, the Applicant's case was that the Fourth Respondent knew that there was a risk that the bill of costs contained costs for work that ought not to have been charged to Client A, in which case he had acted recklessly.

The Tribunal's Findings

48.5 The Tribunal read the Judgment of Mr Prosser QC of 24 April 2014 ("the Prosser Judgment"). He concluded that "…in stating that [the Firm] spent 115 hours on the preparation of trial bundles is false. Thus in charging [Client A] for work that was not done, [the Firm] has exaggerated its fees". He went on to conclude that the exaggeration was "deliberate". The Rosen Judgment rejected the Fourth Respondent's evidence that "[the Firm] prepared and delivered anything resembling or intended as complete trial bundles". The Fourth Respondent had conceded in cross-examination before Mr Rosen QC that some elements of the bill should not have been claimed. The Fourth Respondent had caused the bill to be raised by sending it to the cost draftsman. He was heavily involved in preparing it and it contained claims for work not properly done. The Fourth Respondent had delivered it by handing it in personally and posting it twice.

48.6 The Tribunal found the factual basis of Allegation 2 proved beyond reasonable doubt.

48.7 *Rule 1.02* - The Tribunal found that the preparation, raising and delivering of a bill containing costs that should not have been charged to Client A to be a clear example

of a lack of integrity. The Tribunal found the breach of Rule 1.02 proved beyond reasonable doubt.

48.8 *Rules 1.04, 1.05 and 1.06* - It followed as a matter of logic that overcharging a client was inconsistent with acting in the client's best interests and with providing a proper standard of service. In the circumstances where Respondents had acted in this way, the trust the placed in the provision of legal services was clearly undermined. The Tribunal found the breaches of Rules 1.04, 1.05 and 1.06 proved beyond reasonable doubt.

48.9 *Dishonesty* - The Tribunal considered the Fourth Respondent's state of knowledge at the time that he raised and delivered the bill to Client A. The Fourth Respondent had been the fee earner and the work claimed covered the period May 2008-April 2010. He had been at the Firm until February 2010 and he had retained conduct after retiring. The Tribunal found that he knew that the bills were inflated. He had stood by the bill at the time of the trial and then admitted it was incorrect. It must therefore have been incorrect at the time that it was raised. The Tribunal was satisfied beyond reasonable doubt that the Fourth Respondent's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the Allegation of dishonesty proved reasonable doubt.

48.10 Allegation 2 was proved in full beyond reasonable doubt including the Allegation of dishonesty.

49. **Allegation 3 - Between April 2008 and February 2010 he acted for Client A in the RA Matter when he did not possess the necessary skills, competence and experience, and in doing so he breached Rules 1.01, 1.04 and 1.05 of the 2007 Code.**

Applicant's Submissions

49.1 Mr Ramsden referred the Tribunal to the Rosen Judgment in which the Respondents conduct of the defence of Client A was described as having demonstrated "incompetence from start to finish".

The Tribunal's Findings

49.2 Mr Rosen QC was heavily critical of the Fourth Respondent. It was clear that the Fourth Respondent had no understanding of Civil Procedure Rules. He had accepted that two applications were misconceived in the Rosen judgment. Mr Rosen QC had described the Fourth Respondent has having "almost total ignorance of English disputes practice…" The Tribunal had no basis on which to reject Mr Rosen QC's conclusions and found the factual basis of Allegation 3 proved beyond reasonable doubt.

49.3 *Rule 1.01* - The administration of justice could clearly not be upheld if the Fourth Respondent did not even have a proper grasp of the Civil Procedure Rules. The Tribunal found the breach of Rule 1.01 proved beyond reasonable doubt.

49.4 *Rules 1.04 and 1.05* - It followed as a matter of logic that incompetence was evidently not in best interests of a client and did not reflect a proper standard of service. This was particularly the case when that incompetence included supporting litigation against that client when it should never have been brought in the first place. The Tribunal found the breach of Rule 1.01 proved beyond reasonable doubt.

49.5 Allegation 3 was proved in full beyond reasonable doubt.

50. **Allegations 4 - By reason of the conduct alleged at 1 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of the Allegations.**

Allegation 5 - By reason of the conduct alleged at 2 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

50.1 The submission and findings in relation to these Allegations are dealt with above as they arose in respect of the substantive Allegations.

Previous Disciplinary Matters

51. There were no previous findings at the Tribunal in respect of any of the Respondents.

Mitigation

52. First Respondent

52.1 Miss Felix told the Tribunal that the First Respondent was 57 and her character references spoke to a very different person to the dishonest person the Tribunal had found her to be. The First Respondent was not "dishonest to her very core". The Tribunal might consider that its findings reflected an abject lack of judgement on the part of the First Respondent.

52.2 There was no suggestion that prior to these matters there had been a lack of judgement. The First Respondent had practised reputably in Nigeria and worked here in local authorities. Having taken the opportunity to join ARS and broaden her horizons, she had found herself in the middle on litigation that had already begun and of which she had no knowledge before joining. That litigation had been driven by people whom she had no reason, at the time, to distrust. There was considerable pressure on her to handle the litigation in a particular way. The Tribunal was invited to form the view that there were very particular circumstances in existence at that time to explain why she suddenly came to display what the Tribunal had found to be an abject lack of judgement. It was confined to those circumstances and they could exist ever again.

52.3 Miss Felix acknowledged that the Tribunal's principle duties were the protection of the public and the upholding of standards. Miss Felix submitted that not every act of dishonesty resulted in striking off and she referred the Tribunal to Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin. This identified a small residual category where it would be disproportionate. Miss Felix asked the

Tribunal to examine nature and scope and extent of the conduct by reference to how this happened. There had been a very particular set of circumstances. The Firm was investigated at length and the First Respondent had tried to deal with compliance when she came in.

52.4 As a consequence of trying to deal with it she had found herself in a situation she need not be in.

52.5 Miss Felix submitted that the First Respondent had not benefited financially, unlike the Second and Fourth Respondents who had received substantial sums of money. Nobody else had suffered loss; Client A succeeded in his trial in the end. CH did not have their money but the First Respondent had given evidence that she had an arrangement with the Second Respondent about that. Although the First Respondent could not meet the sums it was not for want of trying.

52.6 Miss Felix urged the Tribunal to consider a sanction other than a strike-off. She accepted that the Tribunal had found serious misconduct.

52.7 In terms of culpability, Miss Felix identified the following matters which she invited the Tribunal to take into account:-

- Counsel's involvement in these matters.
- The Respondent's motivation in that she wanted to deal with this matter and to do her job.
- The actions were spontaneous and not planned. She had been reacting to a set of circumstances arising in litigation.
- The First Respondent did have direct control and responsibility in terms of the litigation but not in the terms of the background.
- Her experience was mainly in local government and not in this sort of matter.
- Many of the Allegations concerning misleading the regulator had not been proved.
- The Allegation that had been proved must have been in the circumstances giving rise to a lack of judgement and could be considered as an instinctive reaction. The Tribunal was invited to view this in a very narrow context.

52.8 In relation to harm, Miss Felix accepted that any falling below the standard is harmful to the reputation of the profession but there was nothing to suggest the First Respondent had set out to behave dishonestly.

52.9 Miss Felix submitted that beyond the finding of dishonesty there were no aggravating factors. She identified the following mitigating features:-

- Deception by a third party – she had allowed herself to be misled by trusting in others.

- This was a single episode in previously unblemished career. The Tribunal was again referred to the character references in this context.

53. Third Respondent

53.1 Mr Anyiam told the Tribunal that the Third Respondent accepted the findings in their entirety. He had admitted almost all the Allegations. Mr Anyiam invited the Tribunal to take into account the fact that each case was fact specific. This was a very peculiar case and for the Third Respondent had even been assaulted due to his co-operation with his regulator.

53.2 This had been a very stressful period for the Third Respondent and matters had been hanging over his head for 5 years. Mr Anyiam accepted these were serious findings but identified the following mitigating factors which greatly diminished the breaches:-

- His culpability was low
- He had no previous disciplinary history
- He had co-operated with SRA throughout
- The Allegations all arose due to the actions of the Second Respondent and possibly others.
- His admissions were evidence of his intent to maintain the reputation of the profession.
- He had undertaken to ensure that the funds were not touched while he was a Partner and he had kept to that.
- He had been a Partner for a very brief period.
- He had demonstrated genuine insight.
- He was very unlikely to engage in such breaches again. He had told the Tribunal that he would do things differently in the future.
- There was no motivation for his actions, most of which had been spontaneous.
- He had tried to make sure things changed at the firm. When it was obvious he could not change things he was assaulted and left the firm.
- He had received no financial benefit.
- He had little or no experience in this area of law.
- His character references demonstrated that he was a credible person. These were unfortunate acts that happened due to difficult circumstances. The Third Respondent had learned a very bitter lesson.

- Some harm had occurred but he was not directly responsible for the dissipation of the £130,000. The most serious potential harm was to the reputation of the profession.

53.3 Mr Anyiam invited the Tribunal to impose a reprimand. The Tribunal was invited to consider the Third Respondent's means. He had a disposable income of £47 per month and so it was not appropriate to fine him. He would need to disclose a reprimand to his other regulators so this would still be a significant, adequate and appropriate level of sanction.

53.4 The Second and Fourth Respondents did not submit any mitigation.

Sanction

54. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering each Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

55. First Respondent

55.1 In assessing culpability the Tribunal found that the First Respondent's misconduct stemmed from an absence of judgement. The First Respondent was clearly culpable for the decisions she had taken. Her actions could not be described as spontaneous – she had continued with a course of action. The misconduct spanned both the litigation and the post-intervention periods. She had breached her position of trust by making false and misleading statements to the Court and she had direct control as she was the fee earner and was a Partner. The Tribunal accepted that she had limited experience of this type of litigation and that she had relied too much on Counsel.

55.2 In terms of harm, the Tribunal had regard to the comments of Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

55.3 In this case there was serious harm to the reputation of the profession that always occurred when there had been multiple findings of dishonesty and lack of integrity. In addition there was the significant matter of £130,000 being dissipated when it ought not to have been. The litigation had been dragged out by the First Respondent and she had subsequently misled the regulator post-intervention.

55.4 The matters were aggravated by the fact that the misconduct had been deliberate and repeated even if she may not have appreciated the gravity of her actions at time. There had been concealment of wrongdoing from the Court and she knew or certainly ought reasonably to have known she was in material breach of her obligations.

55.5 In mitigation the Tribunal read the character references, all of which spoke well of the First Respondent. She had no previous findings at the Tribunal. However the Tribunal

did not find that she had insight into her actions and was unable to identify any further mitigating factors.

55.6 The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

55.7 The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case and had regard to Sharma, as urged by Miss Felix. The nature and scope of the proved Allegations were multiple and multi-faceted. There had been personal gain and this could not be described as an exceptional case. The Tribunal found there to be nothing that would justify a suspension. The only appropriate and proportionate sanction was that the First Respondent be Struck-Off the Roll.

56. Second Respondent

56.1 The Tribunal assessed the Second Respondent's culpability. His motivation was a desire to retain costs that had not in reality been incurred by the Firm. His actions were clearly planned as reflected in the fact that he had instigated the Costs litigation. There had been a breach of the trust placed in him by Client A and in his duty to the Court. He had direct control of the litigation strategy and of the bank accounts. He had been the Senior Partner and an Equity Partner as well as the COFA. He had failed to engage properly with his regulator. The Tribunal assessed his culpability to be high.

56.2 The same overall factors contributing to the harm caused as had been identified in respect of the First Respondent were also applicable in respect of the Second Respondent, though it was more extensive in respect of the Second Respondent as he had been at the Firm throughout the material time. His conduct was even more serious than the First Respondent in that he was intending to retain the money himself personally and had been the controlling mind behind the Costs Litigation and the decision to transfer the deposit monies.

56.3 The matters were aggravated by the Second Respondent's dishonesty. The misconduct had been deliberate, calculated and repeated and had continued over a considerable period of time. He had sought to conceal wrongdoing by using the litigation to attempt to enforce his claim to the fees and by not disclosing his probated sentence to his regulator. He had been in a senior role at the Firm and therefore knew that he was in material breach of his obligations.

56.4 The Tribunal identified no mitigating factors but noted that he had no previous disciplinary findings before the Tribunal.

56.5 The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Second Respondent. The misconduct was at the highest level and the only appropriate sanction was that he be struck off the Register of Foreign

Lawyers. The protection of the public and of the reputation of the profession demanded nothing less. The Tribunal considered whether any exceptional circumstances arose that could enable it to impose an indefinite suspension but identified none. It therefore ordered that the Second Respondent be Struck-Off the Register of Foreign Lawyers.

57. Third Respondent

57.1 In assessing the Third Respondent's culpability the Tribunal noted that there was no motivation involving personal gain. He had been trying to help bring the Costs litigation to a conclusion and had followed the wrong path in seeking to achieve that. His involvement was spontaneous although the Tribunal noted that it happened more than once. As with the First and Second Respondents, a breach of trust involving clients and the Court was clear. The Third Respondent had been a Partner and therefore had direct control over the circumstances to the extent that he could, for example, have refused to sign the Particulars of Claim. He was sufficiently experienced to have known better.

57.2 There had been substantial harm caused. The Court had been misled and the Third Respondent had perpetuated a wrong-doing. He should have foreseen the harm that could have been, and was, caused.

57.3 The misconduct was aggravated by the fact that it had been repeated and deliberate although not necessarily calculated. It continued over a period of time and by pursuing the litigation the wrongdoing was concealed. The Third Respondent ought to have known he was in material breach of his obligations.

57.4 Matters were mitigated by the fact that he had resigned from the Firm at a point when he became uncomfortable about how it was being run. He had been told to sign things that he should not have signed and the Second Respondent had played a role in that. The Third Respondent had demonstrated some insight which had been reflected in his admissions to many of the Allegations. The Tribunal took note of the character references provided on behalf of the Third Respondent.

57.5 The misconduct was too serious for there to be no order or a reprimand. The Third Respondent had been found to have acted recklessly, to have lacked integrity and to have failed to uphold the proper administration of justice on multiple instances. This made matters too serious for a fine.

57.6 The Tribunal considered that the appropriate sanction was a suspension as there was a need to protect the public by immediately removing the Third Respondent from practice. There was no lesser sanction that could achieve this. The Tribunal considered that a fixed term of suspension was appropriate. He had been out of his depth, had made admissions and had not been found to be dishonest. It was therefore not necessary that he be struck off or that he receive an indefinite suspension. Taking into account all the factors identified above, the appropriate length of suspension was two years.

58. Fourth Respondent

58.1 The Tribunal assessed the Respondent's culpability. He had personally received some of the money following its dissipation. The Fourth Respondent had breached his position of trust and had lied to the Court in the course of his evidence. His misconduct had been planned and had continued over a period of time. He had direct control of the circumstances giving rise to the misconduct, not least in respect of the nature of the evidence that he had given before Mr Rosen QC.

58.2 The extent of harm caused by the totality of the breaches was the same as discussed in respect of the First, Second and Third Respondents. In addition the reputation of the profession was significantly damaged when a solicitor gave false evidence in Court.

58.3 The matters were aggravated by the Fourth Respondent's dishonesty and the fact that the misconduct was deliberate, calculated and repeated.

58.4 The Tribunal found the mitigating factors but noted that the Fourth Respondent had no previous matters before the Tribunal.

58.5 The Fourth Respondent was no longer on the Roll of solicitors. In view of the serious findings the Tribunal had made, it was satisfied that it to make a direction prohibiting his restoration to the Roll except by order of the Tribunal.

58.6 In terms of sanction, the Tribunal's powers were limited in that the Fourth Respondent could not be Struck-Off the Roll or suspended by reason of his voluntary removal from the Roll. The Tribunal considered the matters were too serious for there to be no order or reprimand. Had the Fourth Respondent still been on the Roll the Tribunal would have Struck-Off on the basis of the matters identified above and in the absence of any exceptional circumstances.

58.7 The Tribunal nevertheless considered it appropriate that there should be a sanction. The Tribunal considered that, absent the ability to impose a more severe sanction, it was appropriate that the Fourth Respondent pay a fine. The Tribunal had regard to the indicative fine bands and considered the matter to be significantly serious and therefore within level 5. The Tribunal therefore imposed a fine in the sum of £50,000.

Costs

59. Mr Purcell applied for the Applicant's costs in the sum of £114,956.10. This was based on a cost schedule submitted by Capsticks.

60. First Respondent's Submissions

60.1 Miss Felix referred the Tribunal to the First Respondent's Personal Financial Statements with supporting documentation. She submitted that the Tribunal was required to take the First Respondent's means into account. The First Respondent was facing a serious sanction which would affect her ability to earn. She had not been able to work as a solicitor due to restrictions placed on her Practising Certificate.

60.2 Miss Felix took issue with the Applicant's cost schedule in terms of the hours claimed in a number of areas and invited the Tribunal to reduce the costs accordingly.

60.3 In respect of apportionment Miss Felix submitted that at least two-thirds of the costs should be attributed to the Second Respondent.

61. Third Respondent's Submissions

61.1 Mr Anyiam told the Tribunal that he accepted that it had been a time-consuming and lengthy investigation and no issue was taken with the costs. He invited the Tribunal to take the Third Respondent's limited means into account and to direct that any costs order made should not be enforced without leave of the Tribunal. He had no property and was currently working as an immigration consultant.

The Tribunal's Decision

62. The Tribunal noted that there was a very limited about of detail contained in the cost schedule. In view of the fact that the total sum claimed was significant and absent more detail, the Tribunal determined that it was not in a position to carry out a summary assessment and that it should be the subject of detailed assessment.

63. The Tribunal considered the apportionment of whatever total figure was reached on detailed assessment. In doing so the Tribunal had regard to the respective roles of the four Respondents. This had been analysed above when considering sanction and is not repeated here. The Tribunal determined that the appropriate apportionment was as follows:

- First Respondent – 25% - interim payment £14,369.51
- Second Respondent – 50% - £28,739.02
- Third Respondent – 12.5% - £7,184.75
- Fourth Respondent – 12.5% - £7,184.75

64. The Tribunal considered that the overall bill was such that even if the detailed assessment resulted in some reductions, it would not amount to a reduction of more than 50%. It was therefore appropriate that the Respondents be ordered to make interim payments. This was calculated by taking the total costs claimed and halving them. The Respondents were then ordered to pay their portion of that half based on the apportionments set out above.

65. The Second and Fourth Respondents had not served a Personal Financial Statement at all, despite a clear Direction by the Tribunal that they be served not less than 28 days before the substantive hearing. There was therefore no basis for a reduction on the grounds of means in their cases. The Second Respondent's submissions about finances and the evidence of his bankruptcy did not amount to a Personal Financial Statement.

66. The First and Third Respondents served their Personal Financial Statements on the final and penultimate days of the hearing respectively. This was also in breach of the Tribunal's Direction. The purpose of the 28-day period was to allow the Applicant sufficient time to investigate any matters arising. Mr Purcell had not taken issue with

the late service of the material but the Tribunal did not regard it as acceptable to expect it to ignore its own Directions. The Tribunal therefore disregarded the Personal Financial Statements of the First and Third Respondents.

67. There was no basis for a reduction due to means and no basis for deferral of enforcement. The Tribunal therefore made the costs order in the usual terms.

Statement of Full Order

68. The Tribunal Ordered that the First Respondent, ISI INYANG, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay 25% of the costs of and incidental to this application and enquiry, such costs to be subject to detailed assessment unless agreed between the parties. The Tribunal further Ordered that the First Respondent do make an interim payment of £14,369.51 in respect of those costs.

69. The Tribunal Ordered that the Second Respondent, SIMEON OLUMIDE COKER, Registered Foreign Lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay 50% of the costs of and incidental to this application and enquiry, such costs to be subject to detailed assessment unless agreed between the parties. The Tribunal further Ordered that the Second Respondent do make an interim payment of £28,739.02 in respect of those costs.

70. The Tribunal Ordered that the Third Respondent, [NAME REDACTED], solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the 9th day of October 2018 and it further Ordered that he do pay 12.5% of the costs of and incidental to this application and enquiry, such costs to be subject to detailed assessment unless agreed between the parties. The Tribunal further Ordered that the Third Respondent do make an interim payment of £7,184.75 in respect of those costs.

71. The Tribunal Ordered that the Fourth Respondent, NNANNA CHURCHILL WAGBARANTA, Former Solicitor, be prohibited from Restoration to the Roll of Solicitors except by Order of the Tribunal pursuant to Section 47(2)(g) of the Solicitors Act 1974 (as amended). The Tribunal further Ordered that the Fourth Respondent do pay a fine of £50,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay 12.5% of the costs of and incidental to this application and enquiry, such costs to be subject to detailed assessment unless agreed between the parties. The Tribunal further Ordered that the Fourth Respondent do make an interim payment of £7,184.75 in respect of those costs.

Dated this 11th day of December 2018
On behalf of the Tribunal

R Hegarty
Chairman