SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11720-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MOHAMMED ASIF DIN Respondent

Before:

Mr S. Tinkler (in the chair)
Mr P. Jones
Mrs L. Barnett

Date of Hearing: 1 March 2018

Appearances

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

Mr Jonathan Goodwin, solicitor advocate, of Jonathan Goodwin Solicitor Advocate Limited, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF for the Respondent, Mr Mohammed Asif Din, who was present.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent, Mr Mohammed Asif Din, in a Rule 5 Statement dated 21 September 2017 (and as amended with the permission of the Tribunal on 1 March 2018) were that:

1.1 Between 16 September 2013 and 29 September 2015, he made or caused to be made transfers of at least £42,500 from the bank accounts of Sovereign Solicitors, purportedly for disbursements and to bank accounts in the name of a Mr Kevyn Thompson ("Mr KT) and Infinity Marketing ("IM") when, in fact, the monies were being transferred to his personal bank accounts, in breach of all, or alternatively, any of the following:

1.1.1 Rules 20.1, 20.9 and 29.1 of the SRA Accounts Rules 2011 ("the AR 2011"); and

1.1.2 Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles"); and

1.2 He provided false and inaccurate information in response to SRA production notices dated 31 March, 20 May and 7 November 2016, including in respect of whether he benefitted from any of the payments made by Sovereign Solicitors to Mr KT or IM, in breach of all, or alternatively, any of Principles 2, 6 and 7 of the Principles.

1.3 Dishonesty was alleged against the Respondent in respect of allegations 1.1 and 1.2; it was pleaded that dishonesty was not an essential ingredient to prove those allegations.

Documents

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

Applicant: -

- Application dated 21 September 2017
- Rule 5 Statement, with exhibit, dated 21 September 2017
- Statement of costs at date of issue
- Statement of costs dated 19 February 2018
- Schedules of costs of forensic investigation reports
- Civil Evidence Act Notice dated 8 February 2018, with related email correspondence
- Response to Respondent's Answer, dated 14 November 2017
- Witness statement of Carolann Shimmin
- Certificate of Readiness dated 22 January 2018
- Tribunal's Practice Direction No. 5 – Inference to be drawn where Respondent does not give evidence

Respondent: -

- Answer to allegations, dated 2 November 2017, with exhibits including bundle of character references and statement of Mr QI dated 19 April 2017

- Bundle of authorities, including: Ivey v Genting [2017] UKSC 67 ("Ivey"); Law Society v Waddingham, Smith and Parsonage [2012] EWHC 1519 (Admin) ("Waddingham"); Donkin v Law Society [2007] EWHC 414 (Admin) ("Donkin")
- Certificate of Readiness dated 23 January 2018

Other: -

- Standard form directions issued on 28 September 2017
- Variation to standard directions, dated 20 October 2017
- Extracts from Civil Evidence Act 1995

Preliminary Matter (1) – Amendment of Rule 5 Statement and Allegations

3. Mr Johal for the Applicant applied to amend the allegations and Rule 5 Statement in the following respects:

3.1 Amend the date in allegation 1.1 to "16 September 2013 and 29 September 2015", from the incorrectly stated, "16 March 2013 and 29 September 2015";

3.2 Amend the account numbers mentioned at paragraphs 68, 69 and 71 of the Rule 5 Statement from an account number ending "760" to an account number ending "260";

3.3 Amend the date of a letter from the forensic investigator, mentioned at paragraph 52 of the Rule 5 Statement from 17 November 2017 to 17 November 2015;

3.4 Delete two parts of references in the footnotes to paragraph 69 of the Rule 5 Statement.

4. Mr Goodwin confirmed that there was no objection by the Respondent to these amendments.

5. The Tribunal agreed to the proposed changes, which clarified some factual matters and did not cause the Respondent any difficulty.

Preliminary Matter (2) – Effect of the Civil Evidence Act Notice dated 8 February 2018

6. Mr Goodwin, for the Respondent, made submissions about the appropriate treatment of certain documents in the light of the Applicant's Civil Evidence Act Notice ("CEA Notice") dated 8 February 2018.

7. Mr Goodwin told the Tribunal that the CEA Notice had been served on him on the morning of 8 February 2018 (in accordance with the timetable set in the Tribunal's directions). That CEA Notice, which gave the details of this case and referred to the Civil Evidence Act 1968 in its heading, read:

> "**TAKE NOTICE** that at the hearing of this Application on the 1 and 2 March 2018, the Applicant SRA desires to give in evidence the statements made in the documents contained in the bundle which accompanies the Applicant SRA's statement pursuant to Rule 5(2) of the Solicitors

(Disciplinary Proceedings) Rules 2007 of Inderjit Johal dated the 21 September 2017 which accompanies an application of the same date.

AND FURTHER TAKE NOTICE that the relevant particulars relating to the said statements are apparent from the face of the said documents.

AND FURTHER TAKE NOTICE that the Applicant desires to give in evidence in the following witness statement:

Witness statement of Carolann Shimmin dated 25 January 2018."

8. Mr Goodwin told the Tribunal that the documents appended to the Rule 5 Statement included:

- An email from Mr KT dated 31 March 2016;
- A letter from the Respondent's former solicitors, Ashfords, dated 7 February 2017 which set out the Respondent's explanations for a number of matters. That letter had enclosed a statement by Mr QI, which did not appear in the Rule 5 bundle but it had been appended to the Respondent's Answer to the allegations;
- A statement by Mr KT dated 24 May 2017 which confirmed that he had owed money to the Respondent and which referred to an authority/mandate in respect of four cheques which had been paid to the Respondent;
- A statement by Mr Mohammed Ashraf ("Mr MA") dated 5 June 2017, which confirmed similar matters.

9. Mr Goodwin submitted that the CEA Notice covered all of these documents, not just those which had been prepared for or obtained by the Applicant. Mr Goodwin submitted that the documents mentioned were admissible and that the explanations set out in those documents had been accepted and were relied on by the Applicant as part of its case. Mr Goodwin submitted that the Tribunal should therefore give these documents equal weight with other documents in the bundle.

10. Mr Goodwin told the Tribunal that he had emailed Mr Johal after receipt of the CEA Notice, asking him to clarify the first paragraph of the Notice. Mr Johal had responded, also on 8 February 2018, to the effect that the Notice related "in the main" to the forensic investigation reports and documents appended to that.

11. Mr Goodwin submitted that it was not clear from Mr Johal's reply whether the Notice had been drafted in error, or if there was an intention to rely on the Respondent's documents. Mr Goodwin submitted that he had given Mr Johal an opportunity to correct the matter and it was not for Mr Goodwin to point out what appeared to be an error. Mr Goodwin referred to the recently decided matter of Barton v Wright Hassall, handed down by the Supreme Court on 21 February 2018. That case involved a litigant in person and the Court had ruled that there was no duty on a represented party to point out a procedural deficiency on the part of the litigant in person. In this instance, the Applicant had the benefit of legal advice.

12. Mr Goodwin submitted that the effect of the CEA Notice was that the Applicant relied on and accepted the contents of the documents mentioned at paragraph 8 above. Therefore, it was submitted, it would be difficult if not impossible for the Applicant to maintain the allegation of dishonesty, in particular with regard to allegation 1.2. These documents at the least raised a doubt about whether the Respondent was guilty as alleged, and given the burden and standard of proof applied in this Tribunal, the allegations of dishonesty could not be proved.

13. Mr Johal for the Applicant submitted that the CEA Notice was not intended to cover every document in the bundle. The Respondent's documents (being the items noted at paragraph 8 above) were included in the bundle as they set out the Respondent's position on a number of matters. Mr Johal submitted that it was clear which documents were relied on by the Applicant and if there had been any doubt about this, Mr Goodwin could have asked for clarification. Mr Johal told the Tribunal that, as Mr Goodwin had submitted, the Applicant had not included in the Rule 5 bundle all of the enclosures to the letter from Ashfords dated 7 February 2017. None of the Respondent's documents were relied on by the Applicant.

14. The Tribunal noted that the CEA Notice stated that the Applicant, "desires to give in evidence…" and asked Mr Goodwin whether this might mean merely that the documents were intended to be placed before the Tribunal, rather than the contents of the documents being relied on by the Applicant as being true. Mr Goodwin referred to s.1(2)(a) of the Civil Evidence Act 1995 ("the CEA") which refers to a statement "which is tendered as evidence of the matters stated…" Mr Goodwin submitted that he had raised the matter with Mr Johan by email; there was no duty on him to flag up a procedural error by an opposing party. Mr Johal could have excluded items from the scope of the CEA Notice.

15. The Tribunal asked Mr Goodwin to clarify his submissions on interpretation of the CEA Notice, in particular in relation to the use of the word "statements". Mr Goodwin submitted that "statement" in this context did not necessarily mean a witness statement, but could be any document before the Tribunal. For example, it included the contents of the letter from Ashfords. Mr Goodwin submitted that the effect of the CEA Notice was that Mr Johal sought to rely on the contents of that letter, and therefore must accept its contents.

16. Mr Johal submitted that it would be clear that the Applicant did not rely on the statements of Mr KT or Mr MA. He accepted that it was possible he had not made this clear. Mr Goodwin was an experienced advocate, and had not sought further explanation if there was a lack of clarity and it should not be taken that he had accepted the contents of the Respondent's documents.

17. The Tribunal sought clarification from Mr Goodwin of the basis of his submission that "desires to give in evidence" equated to "seeks to rely upon" and whether the first phrase could mean, for example, that the Applicant sought to put the documents before the Tribunal in order to challenge the Respondent's account. Mr Goodwin submitted that Mr Johal had indicated that he had not intended to include the Respondent's documents within the documents on which he relied; however, he had served a Notice which indicated an intention to rely on the documents. Mr Goodwin submitted that it would be usual to exclude a Respondent's explanatory documents

from the scope of those covered by a CEA Notice. Mr Johal's email in which he said that "in the main" he intended to rely on the forensic investigation report on the documents appended to that did not exclude the Respondent's documents from those relied on by the Applicant.

The Tribunal's Decision

18. The Tribunal considered carefully the submissions of the parties, the wording of the CEA Notice and the provisions of the CEA 1968 and the CEA 1995, which were incorporated into the Solicitors (Disciplinary Proceedings) Rules 2007.

19. The Tribunal noted that under the CEAs of 1968 and 1995, documents and evidence which would otherwise be inadmissible in evidence as they were hearsay could be admissible in certain circumstances, including where appropriate notices were served. The Tribunal noted and found that as a consequence of the service of the CEA Notice on 8 February 2018, the documents in the Rule 5 bundle which would otherwise have been inadmissible in evidence could be admitted into the evidence.

20. The Tribunal noted the following sections of the CEA 1995:

> "1(1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay;
>
> 1(2) In this Act –
>
> a) "hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated…
>
> 4(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> 4(2) Regard may be had, in particular, to the following –
>
> a) Whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>
> b) Whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
>
> c) Whether the evidence involved multiple hearsay;
>
> d) Whether any person involved had any motive to conceal or misrepresent matters…

5(2) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness –

a) Evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and

b) Evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.

Provided that evidence may not be given of any matter of which, if had been called as a witness and had denied that matter in cross examination, evidence could not have been adduced by the cross-examining party."

The Tribunal understood from these provisions that, absent a very explicit statement to the effect that the contents of the documents to which the CEA Notice applied were relied on as being true, it should admit into evidence all of the documents in the Rule 5 Statement. That did not mean that the Applicant was bound to accept the contents of those documents as being true. The fact that some documents setting out an explanation in relation to certain matters on behalf of the Respondent were included in the bundle did not mean that the Tribunal would be unable to find the allegations, in particular the allegation of dishonesty, proved to the required standard.

21. The wording of the particular CEA Notice in issue was that the Applicant, "desires to give in evidence" the documents in the Rule 5 bundle, and that "the relevant particulars relating to the said statements are apparent from the fact of the said documents." This was not the same as a notice which explicitly stated that the party giving the notice relied on the truth of the statements contained in the relevant documents. Rather, the Tribunal determined, the effect of the wording in the CEA Notice was that the Applicant accepted that the documents were the documents that they purported to be – without commenting on the truth or otherwise of the statements contained within the documents – and wanted those documents to form part of the evidence before the Tribunal. Had the Applicant not served a CEA Notice covering the Respondent's documents then, absent either any CEA Notice from the Respondent, or his adoption of those documents in his evidence to the Tribunal, it may have been that none of the documents mentioned at paragraph 8 above would have been admissible in evidence.

22. The documents would be admitted to evidence and the statements in the Respondent's documents would be given the weight which the Tribunal determined was appropriate, in the light of the factors it ought to consider under s. 4 of the CEA 1995.

Factual Background

23. The Respondent was born in 1969 and was admitted to the Roll of Solicitors in 1997.

24. At all material times, the Respondent was a partner and a director of Sovereign Solicitors ("SS") and Dean Solicitors ("DS"), until the Respondent's practice at those firms was intervened into by the Applicant on 20 March 2017, on the grounds that there was a reason to suspect dishonesty. The Respondent's Practising Certificate ("PC") was suspended as a result of the intervention but the suspension was later lifted. At the date of the hearing the Respondent held a PC subject to conditions. The Respondent's partner at SS was Mrs Ali-Iqbal and his partner in DS was Mr Ismail Patel. The Respondent had also been a partner in Shire Solicitors ("Shire") but that firm was not relevant to the matters in issue in these proceedings.

25. The Respondent's practices in SS and DS were intervened into following forensic investigations into those firms. The investigations resulted in forensic investigation reports being produced dated 9 June 2016, prepared by the forensic investigation officer ("FI Officer") Mrs Shimmin ("the first FI Report") and 14 June 2016 into DS, prepared by the FI Officer Mr Hair ("the second FI Report").

26. Both FI Reports reported that the Respondent had engaged the services of Mr KT, a struck off solicitor, as a costs draftsman. He had worked at SS since around 2008/9 and DS since around 2003 on a consultancy basis and was paid by SS and DS from the costs that they recouped on the successful conclusion of personal injury ("PI") claims. Schedules of payments to Mr KT showed that in 2015 alone, he had received £112,000 from DS and £44,000 from SS. On a review of a sample of client files, the FI Officers concluded that Mr KT had done little to justify the payments made to him. There were no written retainers between SS/DS and Mr KT and no written instructions to him on any client matter.

27. Both FI Reports also reported that since 2014, the Respondent had engaged the services of Infinity Marketing ("IM"), which was understood to be an investigation company whose role was said to include protecting the firm against fraudulent claims. There was no contract in place between IM and SS/DS and the FI Reports indicated that there was little evidence of work carried out by IM, other than the production of a standard template letter. Despite that, in 2015 alone, IM received £44,000 from DS and over £11,000 from SS.

28. The first FI Report also reported that a number of cheques recorded in the books of account as being made to Mr KT, drawn on both office and client account and totalling £22,500, were in fact paid to the Respondent. The FI Officer also discovered that bank transfers from SS to Mr KT and IM totalling £20,500 were paid into bank accounts purportedly in the names of Mr KT (bank account number ending 1682 and sort code ****12) and IM (bank account number ending 0260 and sort code ****12).

29. In response to production notices dated 31 March and 31 May 2016 the Respondent stated that the bank account numbers in paragraph 28 above were that of Mr KT and IM, and that they opened and controlled each bank account. He also confirmed that he did not benefit from payments made to Mr KT and IM. That information proved to be incorrect as the Bank in October 2016, informed the Applicant that those bank accounts were in fact in the name of the Respondent and he was the only mandate holder for the accounts.

The Facts and Matters relied upon in support of the Allegations

Allegation 1.1

Mr Kevyn Thompson

30. Mr KT was struck off the roll by the SDT on the 20 January 2000, in case number 7966/1999, the Tribunal having found that his conduct was disgraceful and that he had behaved dishonestly, to the detriment of his clients and the good reputation of the solicitors' profession.

31. The Respondent engaged Mr KT's services from around 2003. It was accepted that the Respondent was not aware that Mr KT was a struck off solicitor. Mr KT worked as a self-employed costs draftsman and according to the Respondent provided a range of services, as set out in the Respondent's response to a s44B Notice served by the Applicant – see the answer to Q15(iii) below at paragraph 71.

32. During the investigation, schedules of payments dated from 2013 to 2015 and made from SS and DS to Mr KT were provided by the Respondent to the Applicant. Copies of the schedules of payments were within the Rule 5 bundle. These showed that, typically, round sums of monies were paid to Mr KT by bank transfer or cheque and were primarily stated to be for *'costs work on client file'*. The payments for working on client files varied from as little as £100 to, in two cases, £6000. Mr KT received over £53,000 from DS in 2013 and over £56,000 from SS in 2014. He also received £112,750 from DS in 2015 and received over £44,000 from SS in 2015. This was at a time when DS made a loss of £90,450 to the year ending March 2015 and made losses of £55,032 and £71,611 for the previous two years.

33. The FI Officers examined various client files in which payments were made to Mr KT for his services. The FI Officers reported that they found no evidence of instructions given to Mr KT on the files and there was little or no evidence of work carried out by Mr KT on the files, save that in some instances copies of Statements of Costs for summary assessment (in form N260) were on the files.

34. The matter of Mr QI was exemplified in the first FI Report (re SS). Mr QI's claim was apparently settled in 2013 with the payment of £5,735 in damages. This figure appeared in a Tomlin Order, apparently signed on 26 June 2013, in which (for reasons which were not apparent or explained), SS was named as solicitors for the Defendant (a Mr BW), rather than for the Claimant. Mr QI's file contained an invoice from Mr KT under the trading name of '*Longmynd Legal Services'* dated 16 September 2013 in the sum of £2,500 for, "*Preparing Bill of Costs and Detailed Assessment work leading to settlement"*.

35. The FI Officer did not find any evidence of work or negotiations in this matter carried out by Mr KT. There was a statement of costs for summary assessment, which was not dated or signed, which may have been prepared by Mr KT. The document claimed a total of £24,470.98 in costs. The sum actually received in costs, on 19 September 2013, was £13,000. Mr KT was paid £2,500 in settlement of his invoice.

36. The Tribunal had available a statement by Mr QI dated 19 April 2017, which was appended to the Respondent's Answer to the allegations and which read:

> "1. I was involved in an accident on 1 April 2011 and [SS] of [address] were my solicitors. The reference for my file was [file reference].
>
> 2. I can confirm that [the Respondent], a partner in [SS] advised me that a [Mr KT] had done costs related work on my file and that [Mr KT] owed [the Respondent] money. [The Respondent] advised that he was going to take those fees directly.
>
> 3. I confirmed that I had no objection as it did not affect my compensation.
>
> 4. I can also confirm that at no point as anyone from any other organisation contacted me about this.
>
> 5. I understand that it has been alleged that I was not aware of the above but I can confirm that I was made aware prior to the fees being taken. I was also advised that the accounts would reflect [Mr KT's] fees as he did the work on my file."

37. The disbursements on the bill rendered to Mr QI on 23 September 2013 did not tally exactly with the disbursements on the bill of costs for summary assessment. That schedule and bill either referred to different amounts for some items or it was not clear from the description if the items were the same. The bill to the client included Mr KT's bill of £2,500.

38. The FI Officer contacted Mr KT but he did not agree to meet her. Mr KT provided the FI Officer with details of his costs drafting services in an email dated 31 March 2016. The email made no reference to the Respondent's firms; the FI Officer had not informed Mr KT which firms she was investigating.

39. In a witness statement dated 21 May 2017 submitted on behalf of the Respondent, Mr KT confirmed that he prepared, amongst other things, numerous costs schedules on the files of all three law firms in which the Respondent had been involved. The statement did not specify any other work undertaken and no documentary evidence was provided of any work he carried out (other than that some schedules of costs were provided).

Infinity Marketing Limited (IM)

40. The FI Officers both identified regular, mainly round sum payments from SS and DS to IM that had been made from the office side of client ledgers on PI claims that the firms were handling on behalf of clients. The FI Officer handling the SS investigation identified 14 payments totalling £38,970 from the office account to IM and she queried with the Respondent the arrangements they had in place with IM, and sought explanation for the payments.

41. In an interview with the FI Officer on the 4 November 2015 the Respondent explained that:

- They had engaged IM on an ad hoc basis since April 2014;
- IM provides search engine optimisation ("SEO") with Google;
- There was no contract in place with IM;
- They paid £2,500 to £3,000 to IM per week.

42. From that interview, the FI Officer understood that IM was a marketing firm and carried out marketing activities. However, from a conversation between the FI Officer and the Respondent on the 28 January 2016 the FI Officer understood that IM also undertook investigatory work in respect of PI claims for the Respondent. In that conversation, the Respondent informed the FI Officer that:

- there was no set fee for IM and that their fees were "*bartered*";
- IM were given instructions over the phone; and
- they would send their invoice on conclusion of the matter.

The Respondent also said that there would be no correspondence on the client file.

43. The Respondent described the services of IM in a letter dated 25 April 2016, which was in response to a s44B notice dated 31 March 2016, as set out at paragraph 71 below (Q7).

44. The FI Officer's review of client files where payments had been made to IM revealed no evidence of marketing or any other work carried out by IM. The first FI Report referred to the cases of Mr AY and Mr TH. In those cases, payments of £2,000 and £2,500 were made to IM on 4 August 2015 and 25 August 2015. The case of Mr AY was exemplified in the first FI Report. The only reference that was found to IM on the Mr AY client file was an invoice dated 4 August 2015 which recorded that a payment was due for £2,000 in respect of 'Marketing and SEO fees'.

45. During the investigation, the Respondent was asked to provide, in respect of client files on which payments had been made, evidence of SS and DS's instructions and evidence of the work carried out. In the response to the s44B Notice dated 31 March 2016, the Respondent provided invoices and "file reports". The invoices for work carried out, which invoices varied in amount from £1,000 to £8,000 were stated to be for, "IT & SEO Fees' or for "For investigative works", or for "Marketing and SEO fees". Some of the invoices referred to individual clients and on some the firm, SS, was named as the client. The "file reports" produced were undated and unsigned standard template letters which were identical for each client.

46. During the investigation, the Respondent provided schedules of payments made by DS and SS to IM. The schedules reveal that DS paid IM £31,140 in 2014, £44,750 in 2015 and £34,900 in 2016. SS paid IM £36,550 in 2014 and £11,920 in 2015. The names of clients in respect of which payments were made only appeared in the schedules on those matters where the reason for the payment was stated to be, "investigative work on client file*"*. No client names appeared against entries where the reason for the payment was described as "SEO works". In the schedule of

payments from DS to IM in 2016, no reason was given for the payment and no client name appeared next to the entries.

47. The FI Officer carried out a search at the land registry on IM's address and discovered that the Respondent and his partner in DS, Mr Patel, were the registered proprietors of the building in which IM was based; a copy of the certificate of title was within the case papers.

48. The managing director of IM, Mr MA, in a witness statement dated 5 June 2017 stated that he had known the Respondent for many years and that they were family friends. Mr MA claimed that a lot of work went into the investigative work. There was, however, no documentary evidence of the work carried out by IM.

Payments from SS purportedly to Mr KT and IM

Cheque payments

49. The FI Officer investigating SS reported that ten payments totalling £22,000 recorded as being paid from client ledgers to Mr KT, purportedly for costs draftsman fees, were in fact, according to the presented cheques, actually paid to the Respondent.

50. The FI Officer wrote to the firm's bank on the 17 November 2015, requesting copies of presented cheques drawn from both the client and office account which, according to SS's books of accounts had been payable to Mr KT. The bank replied on 27 November 2015 enclosing copies of the cheques requested. The FI Officer reported that four of the presented cheques were in fact payable to the Respondent, when the firm's bank cheque stubs, client ledgers and cash books, recorded these payments as being made to Mr KT.

51. With the letter from the bank was a copy bank mandate signed by the Respondent, the signature on the mandate appearing to be the same as that on the presented cheques. Copies of the mandate for both the SS client and office bank accounts were within the case papers.

52. The four cheques made payable to the Respondent were dated 16, 17, 19 and 30 September 2013. The cheque dated 16 September 2013 included payments said to be made in respect of three clients, was drawn on SS client account, was in the sum of £5500 and numbered 000623. The remaining three cheques, numbered 001733, 001734 and 001740, were drawn on the SS office account, and consisted of payments stated to be in respect of seven client matters. Those cheques totalled £16,500. The payments in respect of all four cheques were deducted from costs paid to the SS from third party insurers on successful conclusion of PI claims, although in the matters of Mr QI and Mr LS payments were made from the client accounts before the third party had paid the costs; this led to the client account being overdrawn for several days.

53. A copy of the presented cheque made out to the Respondent drawn on client account and numbered 000623 was within the case papers, together with a copy of the corresponding cheque stub. That showed the payee as 'K Thompson'. The cheque stub referred to the three client reference numbers in respect of which this payment was made and the amounts for each client, being the ledgers for Mr QI, MS and LS.

The ledgers showed that one client account cheque had been written in favour of Mr KT on the 16 September 2016. Mr KT's invoices were in respect of Mr QI (£2,500), LS (£1,500) and MS (£1,500). It appeared these invoices were paid by this cheque as set out in the firm's client cash book (although the cash book mistakenly referred to cheque number 00620 rather than cheque number 00623).

54. SS's client bank account statement dated 27 September 2013 recorded that the cheque for £5,500 was cashed on that date.

55. The FI Officer's review of the three cheques drawn from office account indicated that the cheque stubs, the ledgers and cash books recorded that the funds had been paid to Mr KT when in fact the presented cheques had been made out to the Respondent.

56. On 31 March 2016, the Respondent was asked to provide evidence that the payments to Mr KT, as recorded in SS's accounts, had been made to and received by Mr KT. The Respondent's response in a letter of 25 April 2016 was that all funds that had left their account had been sent to Mr KT in accordance with his invoices, however cheque numbers 1733, 1734. 1740 and 0623 were payable to the Respondent in accordance with a mandate for monies owed by Mr KT to the Respondent – see also the answer to Q3 at paragraph 71 below.

57. The form of authority which bore Mr KT's signature and was dated 1 August 2013 read: "I Kevyn Thompson authorise Mr MA Din to take monies for work billed to Sovereign Solicitors [address] in lieu of money owed to Mr MA Din." An accompanying document, which was not dated or signed, read: "Authority refers to cheques numbered 1733, 1734, 1740 and 0623".

58. The Applicant sent a further production notice dated 20 May 2016 to the Respondent enquiring, amongst other matters, about the entries for the cheques relating to Mr KT in SS's books of account (when the cheques were in the name of the Respondent), who signed the cheques and the circumstances in which Mr KT owed money to the Respondent. The Respondent's response, set out under Q13 and Q14 and Q15 at paragraph 71 below, indicated that this was because the partners did not want the staff to know about the private business of the Respondent and Mr KT, and that the Respondent had completed the cheques and counterfoils. The Respondent also stated that Mr KT had asked the Respondent if he could borrow some money from him, and indicated that the form or authority/mandate was evidence of this.

59. By way of a further production notice dated 7 November 2016, the Applicant queried details of the loan from the Respondent to Mr KT -see Q15. Q16 and Q17 of the response set out at paragraph 71 below.

60. The Applicant submitted that from the Respondent's answers it was clear that the only documentary evidence of the loan was the mandate (referred to at paragraph 57 above), prepared by Mr KT. Also, it appeared that the loan(s) were made in cash (to avoid paying them into Mr KT's bank) and that other than the cheques (mentioned above), repayments had been made in cash. The Respondent was unable to recall the amount loaned. Mr KT's witness statement dated 21 May 2017 stated that he was unsure about the exact monies that the Respondent gave him and that it was over a considerable period of time.

Bank Transfers

61. In a letter to the Nat West Bank, dated 17 November 2015, the FI Officer requested details of the account holder, account number and sort code in respect of four payments made by way of bank transfer, which were made from the SS office accounts and appeared to be payments to Mr KT and IM. In the letter, the FI Officer incorrectly referred to the payments being from the SS client account, but the payments were made from the office account.

62. The transfers dated from 10 October 2013 to 29 September 2015 and totalled £20,500. Three of the payments were recorded on SS's office account bank statements as being made to Mr KT or IM, but one recorded as made to Mr KT on 14 May 2014 did not appear on the bank statements. The transfers to Mr KT were made on 10 October 2013 (£10,000), 14 May 2015 (£3,000) and 29 September 2015(£4,000) and were for a total of £17,000. The fourth payment was recorded on the office bank statements as being made to IM on 2 June 2015 and was for £3,500.

63. The bank transfers to Mr KT and IM were documented on the schedules of payments to Mr KT and IM from SS, provided by the Respondent during the investigation. According to the schedules:

- The payment to Mr KT of £10,000 on 10 October 2013 was made in respect of 5 clients and comprised 5 individual payments of £2,000 each for 'costs work on clients file');
- The payment to Mr KT of £3,000 made on 14 May 2015 was in respect of 2 clients for 'costs work on client file';
- The payment of £4,000 on 29 September 2015 was in respect of 3 clients for 'costs work on client file';
- The payment to IM of £3,500 on 2 June 2015 was in respect of 1 client for 'investigative work on client files' and also a payment for 'SEO works'.

64. Nat West's response to the FI Officer's letter dated 17 November 2015, confirmed:

- that the payments apparently to Mr KT were made to bank account number ********1682, sort code ****12; and
- the payment apparently to IM was made to bank account number ********0260 and sort code ****55.

65. The Applicant wrote to the relevant bank to ascertain details of the accounts above. On 24 October 2016, the Customer Credit and Fraud department informed the Applicant that:

- both bank accounts were in the name of the Respondent and he was the only mandate holder for both accounts;

- account ********1682 was the Respondent's personal current account and was opened, "assumed by [the Respondent]" on 4 February 1999;

- account *******3020 was his savings account and was opened, "assumed by [the Respondent]" in May 2015;

- that account *******1682 received 25 "faster payments" totalling £138,077 between 10 October 2013 and 29 September 2015 (ranging from £5,000 to £10,000) and that 5 payments, totalling £39,000 were made from the account to SS between February and August 2015;

- 4 "faster payments" were made from SS into account *******3020, totalling £9,500.

Allegation 1.2

66. The Respondent and his partners were sent production notices, pursuant to s44B of the Solicitors Act 1974, in respect of either or both SS and DS. The relevant notices, set out in more detail below, were dated 31 March, 20 May and 7 November 2016.

67. The Respondent's partner, Mrs Ali-Iqbal responded to the production notice sent to SS dated 31 March 2016 on the 25 April 2016. The Respondent confirmed to the FI Officer that the letter from Mrs Ali-Iqbal also represented his response.

68. The Respondent's partner, Mr Patel responded to the production notice sent to DS dated 31 March 2016 on 25 April. The Respondent confirmed to the FI Officer that the response submitted by his partner was a joint submission.

69. The Respondent replied to the production notice dated 7 November 2016 on 2 December 2016.

70. The Applicant alleged that the Respondent provided false and/or misleading replies in response to the production notices dated 31 March, 20 May and 7 November 2016. A further production notice to DS, dated 23 May 2016 and answered on 30 May 2016 did not lead to any allegation.

71. The relevant questions in the production notices and the relevant responses of SS and/or DS and/or the Respondent are set out below in tabular form, for ease of reference. The question numbers are not necessarily those used in the original production notice but will be used in this document, to avoid (for example) having two "question 8s" or having the same question appear under two different question numbers. Questions and answers marked * were referred to in the proceedings, in particular in the factual background to allegation 1.1, but did not form part of allegation 1.2.

Production notices dated 31 March 2016 to SS and DS and replies from SS and DS (each on 25 April 2016)

Q1	**Provide the account name(s), account number(s) and sort code(s) for payments to [Mr KT and his associated businesses] during the period 1 August 2013 to 31 December 2015 (for SS) and January 2013 to December 2015 (for DS).** SS and DS: [KT] Account number ****0499 Sort code******* [KT] Account number ****1682 Sort code*******
Q2	**In respect of the bank account(s) identified in [Q1] above, state who opened and who has control of each bank account.** SS and DS: Kevyn Thompson
Q3*	**(SS only) Provide evidence that the payments made to [Mr KT/KT Legal Services/Longmynd Legal Services, as recorded in the firm's accounts, have been properly made to him and received by him.** SS: All funds have left our account and have been sent to the recipient in accordance with his invoices (enclosed), as you will no doubt have observed from perusal of our bank statements. However, in respect of the following cheques numbered 1733, 1734, 1740 and 0623, please note these were made payable to [the Respondent] in accordance with the enclosed mandate, for monies owed by [Mr KT] to him. However, please also note the ledger reflects the fact that [Mr KT] did the work on these files. The mandate was within our folder with the Selection Reports which you will no doubt have already seen.
Q4	**State whether you or any of your family members and/or associates/friends have a financial interest or management interest in [Mr KT and his associated businesses]. If so, provide details.** SS and DS: No
Q5	**State whether you or any of your family members and/or associates/friends receive a financial benefit from payments made from [SS][DS] to [Mr KT and his associated businesses]. If so, provide details.** SS and DS: No
Q6	**(SS only) State who opened bank account numbers ***1682 and ***0260 with [Bank]. State whose name the account is held in and who operates it.** SS: Please see [Q1] and [Q2]. Kevyn Thompson
Q7*	**Provide details of the services which were/are provided by [IM].** SS: Every instruction is approached on a bespoke basis. In essence, services can range from something as simple as address verification, surveillance of Defendants, detailed intelligence review, involving both desktop and covert field research. Investigations are led by intelligence and research. Claimant and defendant profiling providing invaluable

	insight into background and life style of the subject through intelligence gathering and deep web mining. Deep web mining uncovers open source intelligence that subjects never think to cover up or appreciate is publicly accessible. It is a combination of specialist knowledge and the time to pursue an enquiry that then ultimately drives the best solution.
Q8	**Provide the account name(s), account number(s) and sort code(s) for payments to [IM] during the period 1 August 2013 to 31 December 2015 (for SS) and January 2013 to December 2015 (for DS).** SS and DS: Infinity Marketing Ltd Account number ****4021 Sort code ****** Infinity Marketing Ltd Account number ****0260 Sort code ******
Q9	**In respect of the bank account(s) identified in [Q8] above, state who opened and who has control of each bank account.** SS and DS: Infinity Marketing
Q10	**State whether you or any of your family members and/or associates/friends have a financial interest or management interest in [IM]. If so, provide details.** SS and DS: No
Q11	**State whether you or any of your family members and/or associates/friends receive a financial benefit from payments made from [DS]. If so, provide details.** SS and DS: No
Q12	**(SS only) State who opened bank account number ****0260 with [Bank]. State whose name this account is held in. State who operates this account.** SS: Please see [Q8] and [Q9]. Infinity Marketing.

Production notice dated 20 May 2016, to SS only, with response from the Respondent and Mrs Ali-Iqbal dated 31 May 2016

Q13*	**... These four presented cheques (totalling £22,000) were in fact payable to [the Respondent] and not [Mr KT] as recorded on the cheques, the firm's bank cheque stubs, cash books and client ledgers. Please set out the reason for these differences between the books of account and the cheques.** SS: The reason for the full details not being on the counterfoils is that the cheque books were available to be seen by the members of staff. As the partners did not want the staff to be aware of the private business of [the Respondent] and [Mr KT], only information relating to [Mr KT] (who provided the services) were entered. However, full documentation and explanation has always been available for inspection.
Q14*	**Please state who completed these cheques, bank cheque stubs, cash books and client ledgers.** SS: The cheques and cheque counterfoils were completed by [the Respondent]. With regards to the cashbook and ledgers these were completed by the bookkeeper. As you are no doubt aware the AlphaLaw accounts package is an integrated system which means that any text/explanation entered in the cash book is automatically entered on the client ledger. As with the cheque counterfoils the ledgers are available to the staff and therefore the only information entered was details of [Mr KT] who provided the services to which the payments related. Again, as with the cheques, the partners did not want the staff to

	be aware of any of the private business of [the Respondent] and [Mr KT]. Full documentation and explanation has always been available for inspection.
Q15	**Reference is made to the answers provided in your letter dated 25 April 2016…** **(i) At paragraph [Q3] of your response you stated that in respect of these four cheques that they were made payable to [the Respondent] "in accordance with the enclosed mandate, for monies owed by [Mr KT] to him. Please set out the circumstances in which [Mr KT] owed money to [the Respondent] and provide evidence.** **(ii) Please confirm any other arrangements (if applicable) where payments have been made to someone other than the name recorded on the books of account and provide details.** **(iii) With your response you sent evidence of work carried out by [Mr KT]. You Provided completed copy HM Courts Service forms N260 (statement of costs). Please provide evidence of any other services provided by [Mr KT].** SS: 15(i) [Mr KT] asked [the Respondent] if he could borrow some money from him, due to some personal financial hardship that he had encountered. The mandate is evidence of this. 15(ii) Not applicable. 15(iii) Just those already outline in answer to question 1 of your letter dated 31 March (which read: "In depth perusal, review of files and preparing costs schedules. Liaising with fee earners. Giving advice and assistance on costs law and cost arguments. Reviewing and advising on cost offers. Referring to relevant case law. Preparing counter offers, preparing bills of costs for detailed assessment, considering Points of Dispute and if necessary attending final hearings. In some instances drafting pleadings. Advising on premature issue of proceedings, referring to case law and precedents. Advising on retainer and CFA arguments and difficulties as appropriate. Referring to case law and precedents. Assisting on practice and procedure. Giving in house training and via telephone on cost matters. Advice on changes in the recovery of costs and new costs case law."

Production notice dated 7 November 2016 to the Respondent, and response from the Respondent dated 2 December 2016

Q16*	**The letter to the SRA dated 31 May 2016 [see 15(i) above] stated that, "[Mr KT] asked [the Respondent] if he could borrow some money from him" but you failed to comply with the requirement to state, "Please set out the circumstances in which [Mr KT] owed money to [the Respondent] and provide evidence". Please now state: a) how much you lent to [Mr KT]; b) the date of each loan; c) the amount of each loan; d) the use to which [Mr KT] was to put the loan; d) the terms of each loan.** Respondent: I recall that the sum of money loaned to [Mr KT] was greater than that received from him, with reference to the cheques taken. I do not recall the exact dates as they were provided in 2012/13. [Mr KT] stated he was in serious financial difficulties

	and needed some financial help immediately. Due to our good working relationship I was prepared to help, just as any other person would, under the same set of circumstances. No set terms were agreed for repayment. In our culture monies are lent and borrowed without any written agreements regularly. So this was nothing unusual to me, as I have done it before and since with others.
Q17*	**Provide, in chronological order, all documentary evidence of any such loan (to Mr KT), such as but not limited to: a) written agreements; b) communications stating or referring to the existence of the loan; c) communications stating or referring to the terms of the loan; d) evidence of how funds were paid to [Mr KT] (such as, but not limited to, bank statements showing such payments); e) evidence of repayment by [Mr KT].** Respondent: No written agreement(s) were signed. All communication was verbal as he attended our offices on a regular basis. No set terms were agreed for repayment and monies paid to [Mr KT] were paid by cash, as he advised any monies put into his account would effectively be taken by the bank, as he was in serious arrears with them.
Q18	**Provide a chronological schedule of all repayments by [Mr KT] specifying how each repayment was made (such as but not limited to by cash, cheque, bank transfer or by a payment purportedly due to [Mr KT] being diverted to you).** Respondent: Other than the cheques, repayments have been made by cash. They have been sporadic and I do not remember the dates as it was some time ago.

72. The Applicant's position was that, contrary to the responses set out above at Q6, Q8 and Q12, accounts ***1682 and ****0260 were accounts opened by the Respondent and over which he had sole control. The accounts were not held in the name(s) of Mr KT and/or IM, they did not open or operate them. The Applicant further asserted that the Respondent had a financial interest in Mr KT and/or IM, and that he benefited from payments made by SS to them.

73. The witness statements of Mr KT and Mr MA each referred to the Respondent having accounts with the Bank; Mr MA referred to an "Infinity account." Both confirmed that they did not manage these accounts and stated that the Respondent used the account to bank money they owed to him. The Respondent did not advance this explanation in his answers to the production notices.

74. The Applicant's position was that the response to the production notice of 7 November 2016 was inaccurate as it did not show that the Respondent had received monies by bank transfer – see paragraphs 62 and 63 above – which payments were purportedly made to Mr KT.

The Investigation

75. The intervention into the Respondent's practices was a *'no notice intervention'* and the Adjudication Panel, as well as making a decision to intervene also made a decision to refer the Respondent to the Tribunal.

76. Ashfords LLP sent a letter dated 6 June 2017 to the Applicant on behalf of the Respondent. The letter enclosed, amongst other documents, the statements of Mr KT and Mr MA. The letter was primarily for the purposes of making an application to lift

the suspension on the Respondent's practising certificate, but they were also content for the matters to be shared with the Applicant's legal adviser. Extracts from that letter are set out under the Respondent's submissions, below.

Witnesses

Mrs Shimmin for the Applicant

77. Ms Carolann Shimmin, a FI Officer, gave evidence for the Applicant. She confirmed that both her statement and the contents of her FI Report were true to the best of her knowledge, information and belief.

78. Mrs Shimmin told the Tribunal that in her letter to Nat West bank dated 17 November 2015 she had referred in error to the "[SS] client account"; this should have been a reference to the SS office account. When the bank responded, they provided information relevant to the correct account. With regard to the form of authority – see paragraph 57 above – Mrs Shimmin told the Tribunal that she had received it from the Respondent and thought this was in the form of two pages attached to a response to one of the s44B Notices.

79. Mrs Shimmin was referred to the Respondent's Answer which, at paragraph 41 read: "Without in any sense being proffered as an excuse, but by way of explanation, the Respondent felt under a great deal of scrutiny at the time of the investigation and was under enormous pressure both at work and personally, and he regrettably made errors." Mrs Shimmin told the Tribunal that when she attended SS in October 2015 the Respondent was away, so she had dealt with Mrs Ali-Iqbal initially. When Mrs Shimmin returned in November 2015, as Mrs Ali-Iqbal did not have all of the relevant books of account and had explained that some of these were kept at the Respondent's home, she had met the Respondent. Mrs Shimmin told the Tribunal that the Respondent had been helpful both in November 2015 and when she returned in January 2016 to deal with some questions arising from documents she had received.

80. Mrs Shimmin was then cross examined by Mr Goodwin.

81. Mrs Shimmin confirmed that both Mrs Ali-Iqbal and the Respondent had been helpful on her visits to SS on 19 October (when the Respondent was not present) and 3 November 2015 and again on 27 January 2016. Mrs Shimmin told the Tribunal that the Respondent would pop into the room in which she was working, which was helpful as she could ask him questions as the work went along. Mrs Shimmin told the Tribunal that although the Respondent had had a helpful attitude, his account of dealings with IM had changed by the time of the January 2016 meeting. Originally, the Respondent had said that IM only dealt with SEO work but when she had noted that there was nothing on the client files to show what IM had done for the large amounts they were paid, the Respondent said that IM did more than SEO work. Mrs Shimmin denied that this was simply clarifying the point, as the Respondent had had the opportunity in November 2015 to explain what IM did. Mrs Shimmin told the Tribunal that she had made it clear that she was seeking an explanation of IM's role, in particular to check if the payments made were referral fees. Both Mrs Ali-Iqbal and the Respondent had said that there was no contract in place with IM; Mrs Ali-Iqbal had known little about IM and had referred Mrs Shimmin to the

Respondent. Mrs Shimmin told the Tribunal that the Respondent was aware that she wanted to establish the position with regard to IM. Mrs Shimmin told the Tribunal that she had visited the firm again in March 2016, largely to collect files, and did not think she had seen the Respondent on that occasion.

82. Mrs Shimmin was asked if she interpreted the "form of authority" (see paragraph 57) as a general authority and the "mandate" with regard to four cheques as being a specific authority. Mrs Shimmin told the Tribunal that she had been sent these documents as part of the response to a s44B Notice and that mandate dealt directly with the four cheques, but did not deal with the firm's books of accounts more generally.

83. Mrs Shimmin was referred to the Respondent's answer, set out at Q3 of paragraph 71, in which he referred to four cheques which had been paid to him. It was put to Mrs Shimmin that the Respondent had given open disclosure in relation to these four cheques. Mrs Shimmin agreed that this was the position as set out at that time.

84. In response to a series of questions, Mrs Shimmin told the Tribunal that: a date in paragraph 46 of her FI Report should have been 2013, not 2012; and references to documents mentioned at paragraphs 20 and 21 of her report were not correct.

85. Mrs Shimmin told the Tribunal that she had contacted Mr KT who had provided an email dated 31 March 2016. It was put to Mrs Shimmin that this email provided a full and detailed explanation about the work Mr KT did. Mrs Shimmin accepted that it was full and detailed, but she could not say whether or not it was true. It was put to Mrs Shimmin that she had not contacted Mr KT again to clarify what he had said, particularly if she did not accept what he had written. Mrs Shimmin told the Tribunal that the email was pretty comprehensive and clear. Mrs Shimmin told the Tribunal that she thought she had thanked Mr KT for his email but did not ask him further questions.

86. Mrs Shimmin was referred to her letter to Mr KT of 6 May 2016, in which she had asked him to confirm if he was the same person who had been struck off by the Tribunal in 2000 and the statement in her FI Report that, "The partners did not have permission from the SRA under s41 of the Solicitors Act 1974 (as amended) to employ or remunerate [Mr KT]". Mrs Shimmin told the Tribunal that the allegations brought against the Respondent were not a matter for her and she could not say what had been in the minds of the partners when they had engaged Mr KT. Mrs Shimmin was referred to the transcript of the interview between the other FI Officer, Mr Hair, and the Respondent on 2 June 2016 in which it was recorded that the Respondent, and Mr Patel, had expressed that they were shocked when they learned that Mr KT was a struck off solicitor. Mrs Shimmin told the Tribunal that she would have discussed matters relating to the investigations with Mr Hair, but did not think she had seen his notes about this interview. She could not say whether Mr Hair had accepted what the Respondent had said about not knowing Mr KT was struck off. It was put to Mrs Shimmin that as her report had not been concluded until after the interview (on 2 June 2016), the comment in her report about the partners not having permission to employ/remunerate Mr KT was putting the worst possible explanation on the facts. Mrs Shimmin maintained that the FI Report set out the facts, not an interpretation of what was in the minds of the partners at the relevant time. Mrs Shimmin was referred

to passages in the transcript of the interview between Mr Hair and the Respondent/Mr Patel and stated that she could not speak to whether Mr Hair had accepted that the Respondent did not know Mr KT's position as a struck off solicitor. It was put to Mrs Shimmin that it was inconceivable that she did not have a discussion with Mr Hair about the case, and so would have known that the Respondent had said he did not know Mr KT had been struck off. Mrs Shimmin told the Tribunal that she did not recall such a conversation with Mr Hair. Mrs Shimmin told the Tribunal that any such discussion would not have made any difference to her report. As she was investigating SS, it would not have been proper to pull details from the investigation into DS into her report.

87. Mrs Shimmin was referred to the passage in her report dealing with the Respondent's client, Mr QI, and in particular her statement that, "On the client file there was no evidence of any work or negotiations carried out by [Mr KT]." Mrs Shimmin told the Tribunal that the file contained an invoice from Mr KT and a form N260 (schedule of costs for summary assessment) which was not completed or signed. Mrs Shimmin told the Tribunal that this schedule did not show a link to Mr KT. He was a costs draftsman, but such schedules could be prepared by solicitors and others as well as costs draftsmen. Mrs Shimmin accepted that the document could have been prepared ready for signature by the Respondent. Mrs Shimmin told the Tribunal that a costs draftsman's fee would not usually appear on the list of disbursements on such a schedule as it was not recoverable from the third-party insurers.

88. It was put to Mrs Shimmin that, as stated in Mr QI's statement, he was made aware before Mr KT's fees were taken from the amount he recovered. Mrs Shimmin told the Tribunal that she did not recall seeing Mr QI's statement before, and had not contacted him in the course of her investigation.

89. Mrs Shimmin was asked why not all of the documents provided with the SS letter of 25 April 2016 had been appended to the FI Report. Mrs Shimmin told the Tribunal that this was because of the volume of documents supplied. Mrs Shimmin agreed that it was important that the FI Report correctly recorded relevant information. It was put to Mrs Shimmin that the FI Report referred to there being 66 copy statements of costs provided by the partners, and that this showed work done by Mr KT. Mrs Shimmin told the Tribunal that these documents did not add anything to the FI Report; she had them available if required.

90. Mrs Shimmin told the Tribunal that she thought she had seen the letter from Ashfords before this hearing; she had not decided which of the attachments to include in the Rule 5 bundle.

91. Mrs Shimmin was referred to the information about a client, Mr AY, in the FI Report. It was put to Mrs Shimmin that Mr AY had been aware of the position regarding how much of his damages he would receive; there was a letter to Mr AY dated 24 June 2015 which had enclosed his damages cheque. It was put to Mrs Shimmin that the documents provided by the firm included a copy of the client care letter and Conditional Fee Agreement between the firm and Mr AY, and it was put to Mrs Shimmin that, as the Ashfords letter had explained that Mr AY was "aware of the success fee of 25%... reducing the general damages by 25% left [Mr AY] with £2,512.50…" Mrs Shimmin told the Tribunal that her concern was that from the

client file, where it appeared the claim had settled for a little over £10,000 plus costs, the client had received just £3,077.50 and there did not seem to be an explanation for the difference; the file should contain an explanation of these matters. Mrs Shimmin was asked if she had seen a note of hearing, dated 8 April 2015 and prepared by counsel in this matter, which was referred to in the letter from Ashfords. Mrs Shimmin told the Tribunal that she probably had not, but in any event nothing turned on this. The firm had given an explanation. The concern had been that the file did not speak for itself. (Mr Johal confirmed that this matter did not form part of the allegations).

92. Mrs Shimmin accepted that her letter to Nat West dated 17 November 2015 referred in error to the firm's client account, when it should have referred to the office account. Mrs Shimmin accepted that there was an important difference between the two. However, Mrs Shimmin told the Tribunal, this error had not mattered as the bank had checked the correct accounts. It was put to Mrs Shimmin that this could have been down to luck. Mrs Shimmin told the Tribunal that if the bank had looked at the client account statements, they would have seen that the relevant transactions did not appear and so could have queried the request. It was put to Mrs Shimmin that, on the face of this letter, there appeared an error – and making errors was something of which the Respondent was accused. Mrs Shimmin accepted that the letter was inaccurate. It was not meant to be misleading and it had not been misleading as the bank had responded with information about the four transactions.

93. In re-examination, Mrs Shimmin told the Tribunal that she had asked Mr KT to meet her. She had not disclosed to him that she was investigating SS, or anyone else. Mr KT had said he was too busy, and that it would not be cost effective to meet. Mrs Shimmin told the Tribunal that she did not think she had considered asking him again, as he had made his position clear. The statement in the FI Report that the partners did not have permission to employ/remunerate Mr KT was factually correct. Mrs Shimmin told the Tribunal that she was aware that Mr Hair had interviewed the Respondent, but she did not think she had seen a transcript of the interview or read the draft report at that stage and commented that it takes several days for a transcript to be prepared. Mrs Shimmin told the Tribunal that whilst there was a mistake in her letter to Nat West, the bank had provided the information she was seeking and the mistake had no bearing on the information she received.

94. In response to a question from the Tribunal, Mrs Shimmin told the Tribunal that when she received the form of authority/mandate she had thought it odd as the four cheques mentioned were later than the date on the form of authority. The documents had arrived with other items provided by the Respondent and appeared to be a photocopy of an original; so far as she knew, she had not seen the original.

Submissions for the Respondent

95. The submissions on behalf of the Respondent are set out here and will be referred to as relevant under the "Findings of Fact and Law" section.

96. Mr Goodwin submitted that this was not a case in which there had been any misappropriation of client money. The Respondent had admitted the factual parts of the allegations, including that there had been breaches of the AR 2011, but denied any

lack of integrity or that he had been dishonest. Mr Goodwin submitted that the Respondent was an honest man, whose integrity and probity were recognised by all. The Respondent, who was nearly 48 years old, had been qualified as a solicitor for nearly 21 years. His career to date was unblemished.

97. With regard to allegation 1.1, Mr Goodwin urged the Tribunal to ignore the reference in the allegation to transfers of "at least £42,500"; the Applicant could prove that sum and no more. Mr Goodwin submitted that the Respondent relied on his Answer and on the letter of 6 June 2017 from Ashfords as setting out his position. That letter set out submissions in relation to the suspension of the Respondent's PC. Mr Goodwin reminded the Tribunal of his submission that the Ashford's letter was covered by the CEA Notice and therefore formed part of the Applicant's case. Mr Goodwin drew attention in particular to a number of passages as follows:

97.1 "[The Respondent] is extremely regretful that his practice was intervened into on 22 March 2017…"

Mr Goodwin submitted that, in addition, the Respondent wanted to add that this was the worst day of his professional life, and he wanted to apologise for the fact of his appearance in these proceedings. Mr Goodwin added that the interventions had been into the Respondent's practice, not into the firms themselves.

97.2 At the time of the forensic investigations, [the Respondent] felt under great scrutiny and understands the [Applicant] felt that not all of their questions were answered. We hope this application will provide the answers to those questions and [the Respondent] is happy to answer any further questions you may have."

97.3 "… In brief, there were informal loans in place as between [the Respondent] and [Mr KT] (costs draftsman) and between [the Respondent] and [Mr MA] (managing director of [IM]). We understand that [the Respondent] participated in a community lending scheme and lent these monies to the two individuals in accordance with his community culture. We are advised that payments were mainly by way of cash payments. The effect of the intervention and the fact payments were made in cash meant there are limited records available to provide a definitive figure loaned to each of the individuals. [The Respondent] has set out the details of each loan agreement below based on the limited documentation available."

97.4 "We understand that no loan documentation exists given it was an informal agreement and no interest was charged as this is forbidden in the Islamic community."

97.5 "[The Respondent] now understands that the repayments should have been made from the two individual's accounts and not the firm's account, however you will note below that both [Mr KT] and [Mr MA] agreed to the repayments being taken in this way. Therefore, the funds were transferred with the full knowledge and approval of both [Mr KT] and [Mr MA] and did not relate to client monies."

Mr Goodwin submitted that the Applicant had accepted that there had been no shortage on client account.

97.6 "… It is further noted that although money was transferred to an account in the name of [the Respondent] as opposed to [Mr KT's] account, these monies were owed to a third-party costs draftsman and not to the clients themselves and there was a written agreement with [Mr KT] for [the Respondent] recoup these payments in this way. In the case of [Mr MA] we understand that there was a verbal agreement which was also given, which is also explained with [Mr MA's] witness statement, and it should be noted that no funds directly belonging to any client were transferred or taken."

97.7 "We understand that [the Respondent] first met [Mr KT] in approximately 2003 when [Mr KT] was working on another case as a freelance costs draftsman. We are advised that [Mr KT] gave [the Respondent] his contact details and [Mr KT] had been working with [the Respondent since approximately 2003 on numerous matters."

97.8 "Although [the Respondent] did not socialise with [Mr KT] they became close working colleagues. During this time [Mr KT] was suffering severe financial hardship and approached [the Respondent] to ask him for a loan as his home was about to be repossessed. The monies lent to [Mr KT] have therefore been spread over a very considerable period of time and hence records of such are limited."

97.9 "[The Respondent] is an active member of the Islamic community and often participates in charitable organisations and contributes to the communities "funding committee" which is common practice within the Islamic community. We understand that often families within the community would pay into a group "funding committee" to help each other financially. The first individual would then be given their funds to assist their financial situation but would continue to pay into the community "funding committee" so that the next person could also take their funds to assist them."

97.10 "We understand that it was in accordance with this practice [the Respondent] decided to loan [Mr KT] regular sums of money on a very informal basis. [The Respondent] had not hesitation in doing this as [Mr KT] was regularly attending their offices to carry out work for them. Please see attached hotel invoices showing that [Mr KT] regularly resided in a local hotel, paid for by [the Respondent] whilst he worked on a number of client mattes at the firm's offices."

97.11 "[The Respondent] was unable to provide a definitive sum to Mrs Shimmin when asked as he did not want to guess a figure without having the chance to review the accounts as he did not want the SRA to feel misled. [The Respondent] has had the opportunity to work through his finances and although a lot of the relevant records have been subject to the intervention, he is able to confirm that funds lent to [Mr KT] far exceeded the amounts he transferred to his accounts as repayments."

97.12 "As it was an informal arrangement between colleagues, no formal agreement was written up and we understand that [the Respondent] trusted [Mr KT] to repay the sums lent."

97.13 "We note that a query was raised as to why there is no agreement in place and we trust we have explained this above. We also note that a comment was made about the fact that [the Respondent] was unable to explain whether interest was payable on the loan. We are advised that [the Respondent] did not charge interest on this loan as this is forbidden within Islam, as he is a practising Muslim".

97.14 "As [the form of authority/mandate] demonstrates, it was agreed between [the Respondent] and [Mr KT] that [the Respondent] would transfer funds owed to [Mr KT] in his role as costs draftsman as repayments of the loan. In effect, [Mr KT] was working off his loan repayments. [The Respondent] advised that he completed the cheque stubs with the name of [Mr KT] as he felt this reflected the work [Mr KT] had carried out on particular files. In addition, as this was a private matter and [the Respondent] did not want to draw the finance staff's attention to [Mr KT's] personal financial affairs. [The Respondent] now appreciates that the funds should have been paid out to [Mr KT's] account before receiving the funds back personally as repayments and understands how the SRA could see this as a breach of Principle 2 (integrity) and as a breach of the SRA Accounts Rules 17, 20, 29.1 and 29.2. However, for the avoidance of doubt, the allegation of lack of integrity is strongly denied."

97.15 "We attach a witness statement of [Mr KT] dated 24 May 2017 in support of this application and to explain the loan as between him and [the Respondent] for your kind attention. In addition (document) which is also contained with the [first FI Report] demonstrates that [Mr KT] gave express and written permission for [the Respondent] to take monies for the work billed to [SS] in lieu of monies owed to [the Respondent]".

97.16 "Mrs Shimmin also makes allegations that there was no evidence on the sample client files reviewed [QI, MS and AY] that [Mr KT] carried out any work on these matters. However, the Statements of Costs that are prepared and are attached at [] are evidence of the work carried out by [Mr KT] on the matters exemplified with the FI Report."

97.17 "We are instructed that [the Respondent] was not aware that [Mr KT] was a struck off solicitor at the time and only became aware of this after receiving the s44B notice addressed to [the Respondent] and Mrs Ali-Iqbal from [SS] dated 20 May 2016. In interview with Mr Gordon Hair from the SRA on 2 June 2016 [the Respondent] and Mr Patel from [DS] confirmed they were shocked to find out [Mr KT] was a struck off solicitors and advised they would no longer be instructing [Mr KT] …"

97.18 "We are instructed that [IM] are a specialist investigative company. Their work includes investigations into individuals to protect the firm against any potential fraudulent claims. They also do search engine optimisation ("SEO") and general IT work. [Mr MA] is the Managing Director at the Firm and is a close family friend of [the Respondent."

97.19 "We understand that there is no formal agreement or contract in place between the firm and [IM]. Instead, services are commissioned on an ad hoc basis, as and when required as often the services required are bespoke."

97.20 "[The Respondent] used [IM] services on a number of matters on an ad hoc basis since April 2014, but understand [IM's] services are no longer used. We understand that often instructions to [IM] were by telephone or in person due to their close proximity. This was to contain unnecessary costs occurring as we understand that where there is something to report [IM] would produce a written report and if there was nothing to report, a written report would not be drafted and generally a phone call would take place instead. This was because [IM] would only get paid when a report

was produced. [The Respondent] appreciates that not all payments made to [IM] had been recorded and he appreciates a detailed and accurate note should have been made."

97.21 "We understand [the Respondent] also lent money to [Mr MA] at [IM], as he was going through both financial and marital difficulties. We are instructed that monies were again lent again (sic) on an informal basis and in line with the community funding scheme. Similarly, we are instructed that there is no formal agreement. It was agreed between [Mr MA] and [the Respondent] that [the Respondent] could recoup these payments from the funds that were owed to [IM] on the client matters where [IM] were entitled to be paid; please see [Mr MA's] statement for confirmation of this agreement. [The Respondent] trusts [Mr MA] to repay the amount he lent and is therefore another reason why no formal records exist of the exact amount loaned."

97.22 "To further reflect on the close personal relationship between [Mr MA] and [the Respondent], we understand that since October 2015 [Mr MA] has been residing in one of [the Respondent's] properties at a deferred rent (for it to be paid at a later date). In light of the above we trust it can be seen why loans were made on an informal basis and that the sums lent far outweigh the repayments made to [the Respondent] from the firm's accounts."

98. Mr Goodwin emphasised that, from the above points, it could be seen that the sums loaned to Mr KT and Mr MA far outweighed the sums which had been repaid from the SS account and that both Mr KT and Mr MA had agreed to repayments being taken in this way.

99. Mr Goodwin submitted that, as further noted in the letter from Ashfords, the Respondent had accepted that he had breached the AR 2011 (Rules 17, 20, 29.1 and 29.2).

100. Mr Goodwin also referred to the following passage in the letter from Ashfords:

> "[The Respondent] would like us to add that there have been no professional negligence claims against [DS], [SS] or Shire since their inception which was 2002 for [DS] and 2007 for both [SS] and Shire Solicitors. In addition, barring one complaint that has been upheld against [DS] a number of years ago by the Legal Ombudsman, no other complaints have ever been upheld."

101. Mr Goodwin submitted that as there were no allegations that the Respondent had breached s41 of the Solicitors Act (as he had no knowledge that Mr KT was a struck off solicitor), he did not need to address the Tribunal on that issue.

102. Mr Goodwin drew the Tribunal's attention to the witness statement of Mr MA, and in particular the following paragraph:

> "Over the years I have borrowed a substantial amount of money from [the Respondent]. This is and has always been personal loans between family friends. These monies were taken to help me out at a time in which I had separated from my wife and as a result found myself in dire financial circumstances. I agreed with [the Respondent] that I would repay him back,

> but that unfortunately it would not be a regular sum as that would just not work for me. He was fine with that. As I had been doing IT based work for a while and investigatory work I decided that I would establish this on a more formal basis. [The Respondent's] property who (sic) he owns with Mr Patel was coincidentally available at the time, as the letting agent that was present had relocated. If it hadn't become available I would have just sourced a commercial unit elsewhere in close proximity to the town centre. I agreed to [the Respondent] taking monies directly owed to him for works done for the legal practices. Any monies therefore taken by him in this manner have been with my full consent and knowledge."

103. Mr Goodwin submitted that Mr MA's statement, including the above passage, was covered by the CEA Notice and confirmed that the transfers were made with Mr MA's full consent and knowledge.

104. Mr Goodwin further drew to the Tribunal's attention the following passages from Mr MA's statement:

104.1 "I got to know [Mr KT] as [Mr KT] was working for [the Respondent] as a costs draftsman, reviewing files and preparing cost schedules. We would inevitably bump into each other often, as [Mr KT] visited the legal practices very regularly."

104.2 "As a result and in ascertaining that [Mr KT] was going through the same kind of personal turmoil as I was, I also gave [Mr KT] monies as this is also part of my culture. The complication was that some monies were from my own resources, when I was in a position to do so and some belonged to [the Respondent]. So rather than return monies to [the Respondent], I asked him if it was ok to pass them straight onto [Mr KT] on his behalf. He had no objection and so I gave [Mr KT] monies over a lengthy period of time. I was unsure of the exact amount that has been given as I have lent money to [Mr KT] over a period of time after the first sum given in 2008."

104.3 "I am fully aware that [the Respondent] has a [Bank] account which is described as an Infinity account, however this is not an account managed by me or my company. [The Respondent] uses this account to bank money that I give him in repayment for the money I owe him, with my full consent and knowledge prior to doing so."

105. Mr Goodwin was asked by the Tribunal if he had any submissions with regard to the fact that the signature page on Mr MA's statement had no text on it other than the signature/statement of truth and that that page, unlike the other pages of the statement, did not have a document reference in the bottom left hand side of each page. Mr Goodwin took instructions and invited the Tribunal not to draw any adverse inference from this. Mr Goodwin submitted that the statement and signature page may have been "sent back separately".

106. Mr Goodwin referred the Tribunal to Mr KT's statement, in particular the following paragraphs:

106.1 "Since 2003 or thereabouts I met [the Respondent] and we have been working together ever since. I have been working as a self-employed cost draftsman. I can confirm that I have prepared amongst other things numerous costs schedules on the files of all 3 law firms that [the Respondent] has been involved."

106.2 "Over a lengthy period of time (over 10 years) I have borrowed a substantial sum of money from [the Respondent]. The money was to help me when I was in considerable financial difficulties. I happened to mention one day to [the Respondent] that I was in financial difficulties and he was gracious and generous enough to lend me the money. I agreed with [the Respondent] that I would repay him back when I was able to but did not know when that would be. I agreed with [the Respondent] that taking monies directly owed to him for work that I had done for the legal practices would be the best way for me to repay the loan. Before any money has been taken by [the Respondent], it has been with my full consent and knowledge."

106.3 "I have already provided an authority/mandate authorising monies to be taken directly by [the Respondent]. I can further confirm that this authority/mandate is one that I prepared and signed prior to any monies being taken by [the Respondent]."

106.4 "I am unsure of the exact amount that has been given as I have taken money from both [the Respondent] and [Mr MA] over a period of considerable time."

106.5 "I am fully aware that [the Respondent] has a [Bank] account, however this is not an account managed by me. [The Respondent] uses this account to bank money that I give him in repayment for the money I owe him, with my full consent and knowledge prior to doing so."

107. Mr Goodwin submitted that the Respondent had accepted in his Answer to the allegations that he should not have had the payments from his firm's account. However, given that both Mr KT and IM carried out work for the firms, this had seemed a sensible and convenient way for the loans to be repaid. The Respondent now accepted that he was mistaken in his belief that this was appropriate, and he apologised to the Tribunal for his error.

108. Mr Goodwin told the Tribunal that the letter from SS to the Applicant dated 25 April 2016, in response to a s44B Notice dated 31 March 2016, was written by Mrs Ali-Iqbal, the other partner in SS. However, the Respondent adopted what was said in that letter. Mr Goodwin referred to the passage in response to Q3 at paragraph 71 above, which referred to four cheques which had been paid to the Respondent rather than to Mt KT. Mr Goodwin submitted that this was an open and honest disclosure in relation to the four cheques which had been paid to the Respondent.

109. Mr Goodwin drew attention to a paragraph in the first FI Report which recorded the question and answer set out at Q15(i) at paragraph 71 above, concerning the loan to Mr KT. Mr Goodwin submitted that this explanation, prior to completion of the first FI Report, was consistent with the account maintained by the Respondent. The first FI Report also referred to the response set out at Q13 of paragraph 71 above, concerning the reason the cheque book stubs etc. recorded that the payments were made to Mr KT. Mr Goodwin submitted that it appeared that the form of authority and the mandate about the four cheques were separate documents. Mr KT had

confirmed in his statement, which was covered by the CEA Notice, that the authority was given before any payments were taken. Mr Goodwin submitted that, contrary to the Applicant's case, there was no sinister motive for making the entries as he did. Rather, the motive was to preserve the private arrangement he had with Mr KT.

110. Mr Goodwin submitted that errors could occur in even the best firms or organisations. He reminded the Tribunal that Mr Johal had applied to amend the Rule 5 Statement and that Mrs Shimmin had accepted that her report contained errors. Mr Goodwin submitted that these were genuine mistakes, which could occur without there being any intention to mislead.

111. Mr Goodwin submitted that the Respondent, who was of good character, should be given credit for the full explanations he had given about the relevant transactions. There had been limited documents available, given that the loans went back a number of years. Mr Goodwin asked the Tribunal to consider why, if the Respondent were dishonest, he had waited until 2013 to begin such conduct; it was not logical that he would be honest before then and become dishonest in 2013.

112. With regard to allegation 1.2, Mr Goodwin told the Tribunal that the Respondent accepted that he had given inaccurate, misleading and untrue information - as had Mrs Shimmin in her report.

113. Mr Goodwin referred to the various Notices served by the Applicant. Two were served dated 31 March 2016, one on each of SS and DS. The Notice served on SS had 37 questions. Mrs Ali-Iqbal had prepared the response, which she had signed. The Respondent accepted that the response represented his position. Mr Goodwin submitted that, save for the specific matters where the answers were not accurate, the response had been true. The response had been mistaken in some respects and that was an error but there had been no intention to mislead.

114. Mr Goodwin told the Tribunal that he was instructed that whilst the bank accounts (into which monies had been paid by the Respondent) were in his name, and had been opened by him, in the Respondent's mind they were used to receive money from Mr KT and IM. The Respondent therefore associated those accounts with the payments made by Mr KT and IM, and this may have led to confusion. Mr Goodwin submitted that in the same response, the Respondent had, without compunction, given full and frank information about the four cheques made payable to himself. Mr Goodwin submitted that the Respondent was an honest solicitor. If he were not, he could have answered the question about the payments differently. The Respondent had told the Applicant about the four cheques which had been payable to him in accordance with the mandate from Mr KT. Mr Goodwin submitted that the Respondent had no motive to be untruthful in the answers, but he had been mistaken. Mr Goodwin submitted that if the Respondent had wanted to deceive the Applicant, he could have chosen not to disclose the relevant bank account; he had provided information which, at the time, he believed to be correct.

115. Mr Goodwin referred to the questions (in the 31 March 2016 Notice) about whether the Respondent or those connected to him had any financial or management interest in Mr KT's business (see Q4 and Q5 at paragraph 71 above), to which the Respondent had replied, "No", Mr Goodwin submitted that the Respondent had formed the view

that "payments" meant "remuneration". He had concluded that he was not remunerated and, rather, had received repayments of the loan; he did not consider he had a financial interest in Mr KT's business.

116. Mr Goodwin submitted that the Notice sent on 20 May 2016 raised 10 questions, including (see Q15(ii) at paragraph 71 above) one concerning any payments made to someone other than the name recorded on the books of account. The response, sent on 31 May 2016 (and signed by Mrs Ali-Iqbal and the Respondent) was, "Not applicable". Mr Goodwin submitted that this was consistent with the Respondent's view that "payment" meant "remuneration". Mr Goodwin submitted that the Respondent's position was that Mr KT and Mr MA were repaying the loans he had made them by "working off" those loans. Mr Goodwin submitted that as only this answer of the response dated 31 May 2016 had been pleaded by the Applicant, it must follow that the Applicant accepted that all the other answers were accurate in all respects.

117. Mr Goodwin submitted that the Respondent's answer to the questions should be considered in the context of his overall answers, including the fact that he had disclosed the four cheques. Insofar as the Respondent had misunderstood the question, he apologised. The Respondent accepted that he had been wrong and should be sanctioned, but he was not dishonest. Mr Goodwin submitted that the test for dishonesty as expressed in Ivey meant that the Tribunal had to consider the Respondent's actual state of mind before determining if he had been dishonest.

118. Mr Goodwin submitted that it was inherently improbable that, if the Respondent had been dishonest, he would have answered most questions honestly and yet answered some dishonestly. Mr Goodwin submitted that as no issues had been raised concerning the response to the s44B Notice served on DS on 23 May 2016, the Applicant must accept that those questions had been answered properly. Mr Goodwin submitted that the Respondent had been consistent in his approach and had a propensity to deal openly with the Applicant.

119. Mr Goodwin referred to the s44B Notice dated 7 November 2016 served on the Respondent, which raised 14 questions. The only answer said to be inaccurate in respect of that Notice was to the question (see Q18 at paragraph 71) asking for a schedule of repayments by Mr KT, to which the Respondent had answered: "Other than the cheques, repayments have been made by cash. They have been sporadic and I do not remember the dates as it was some time ago." The allegation related to the fact that this answer did not refer to the bank transfers. Mr Goodwin submitted that the Respondent's response was consistent and that he had had no motive to mislead the FI Officer.

120. Mr Goodwin submitted that there had then been a delay from early December 2016 until 9 February 2017 before the Applicant had reverted to the Respondent. The Respondent had replied to that letter by email on 3 March 2017, stating:

> "Please find attached email exchange from [SS] to Mrs Shimmin providing a full schedule of chronological payments (as an attachment to our email dated 26 April 2016) and referred to in the response to you dated 2 December. This

> I believe contains all the information you have requested. Mr Hair was I believe also given this, although this was possibly in person.
>
> Please note that we do not have details of which account each individual transaction was paid into and this has been already confirmed to Mr Hair by email and to Mrs Shimmin as we have never utilised any bank transfer forms and therefore do not have any, as detailed in our previous correspondence to you dated 2nd December 2016…"

Mr Goodwin submitted that this response, with the schedules, supported the view that the Respondent had made consistent attempts to be transparent. If there had been any mistakes, the Respondent apologised and submitted that errors could occur in life.

121. Mr Goodwin told the Tribunal that the Respondent would not be giving evidence. He invited the Tribunal not to draw any adverse inferences, as provided for in the Tribunal's Practice Direction No.5, which Direction was based on obiter comments of Sir John Thomas in Iqbal v SRA [2012] EWHC 3251 that, "ordinarily the public would expect a professional man to give an account of his actions." Mr Goodwin submitted that the Practice Direction went on to note that, "… in appropriate cases where a Respondent denies some or all of the allegations against him… and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt…" Mr Goodwin submitted that this was not an appropriate case in which the Tribunal should draw adverse inferences from the Respondent's decision not to give evidence. The Tribunal was entitled to take into account the Respondent's overall position in the proceedings. Whether or not the Respondent gave evidence, the burden was on the Applicant to prove the case. Mr Goodwin submitted that to find the allegations proved, the Tribunal had to be sure that the Respondent was guilty as alleged. Mr Goodwin submitted that the Respondent had chosen not to give evidence but his explanation of the position was covered by the CEA Notice. Mr Goodwin submitted that the Tribunal's directions order provided for the parties to file and serve, "the witness statements of any witnesses upon whose evidence they intend to rely" by the specified date. Mr Goodwin submitted that this direction, unlike the one directing an Answer by a specified date, did not necessarily require there to be a witness statement from the Respondent.

122. Mr Goodwin made submissions on the relevant law, concerning the test for dishonesty and the burden and standard of proof to be applied.

123. The test for dishonesty was as set out in Ivey. Mr Goodwin submitted that it contained a subjective element, namely whether or not the Respondent had a genuinely held belief about relevant matters; it did not require that belief to be reasonable. Mr Goodwin submitted that the Tribunal had to determine the Respondent's actual belief and then apply the objective standard.

124. Mr Goodwin submitted that the Tribunal should apply the criminal standard of proof, which required that the finder of fact (in this case the Tribunal) was sure of the guilt of the Respondent. Mr Goodwin submitted that "sure" meant at least: certain, unquestionable and absolute. Mr Goodwin submitted that it was not for the Respondent to prove his innocence; it was for the Applicant to prove guilt.

Mr Goodwin submitted that this was a very high standard, which minimised the risk of an incorrect finding, the consequences of which would be very serious. Mr Goodwin submitted that if the Tribunal found that the Respondent was "probably" guilty, it must acquit him, as the high standard required would not be met.

125. From the case of Waddingham, Mr Goodwin submitted that the Tribunal could not make inferences without being sure, and referred to the following passage (at paragraph 54 of the Judgment):

> "… For example, it was right to attach importance to the criminal standard of proof throughout the proceedings. I reject Mr Dutton's submission that the inferences to be drawn from established facts are not assisted by reference to the standard of proof. A decision as to whether or not someone has acted dishonestly will very often be made by drawing inferences from the facts that are found (where they are disputed) or agreed (as in this case). It would be impermissible in my view in a case to which the criminal standard of proof applied to infer that the person accused had acted dishonestly without being sure that he done so." (Emphasis as in the original).

126. Mr Goodwin submitted that this was a case in which the Applicant was inviting the Tribunal to draw conclusions based on inferences. He went on to draw attention to paragraph 60 of the Waddingham Judgment, in which the Judge noted what whilst the solicitors in that case had *probably* acted dishonestly, he was not able to be *sure* and so the allegations of dishonesty were not made out.

127. Mr Goodwin submitted that, using the Ivey test and applying the criminal standard of proof, the Tribunal should note that it was inherently improbable that a solicitor of over 20 years' qualification, of previous good character, should suddenly seek to act dishonestly.

128. Mr Goodwin submitted that the Donkin case made it clear that the Tribunal should consider evidence of good character before considering whether or not a Respondent was dishonest. The weight to be attached to such evidence was a matter for the Tribunal.

129. Mr Goodwin drew the Tribunal's attention to the bundle of character references appended to the Respondent's Answer to the allegations, including:

129.1 Mr GC, an accountant, who had known the Respondent since 2011;

129.2 Mr Patel, the Respondent's former partner in DS, who had known the Respondent since 1993, who stated (amongst other matters), "I have been advised of what has happened and can still make a wholehearted endorsement of [the Respondent's] unimpeachable character when it comes to professionalism and work ethic. I still trust him and maintain my trust in him. He is fair-minded, patient, generous and above all both hardworking and honest."

129.3 The Respondent's wife, who had been married to the Respondent for over 20 years. Mr Goodwin submitted that the Tribunal should give particular weight to this testimonial, which included the following passages in particular:

- "I would say that very few people have the kindness, patience and determination that [the Respondent] has. He is hard working, dependable, selfless and extremely conscientious of others' feelings."

- "At the time of the investigation into the firms I can tell you that [the Respondent] had a huge amount to deal with." The testimonial then set out illness and bereavements in the Respondent's family which "really did take its toll on him. I can tell you that there are very few people who would respond to that kind of stressful situation with such level headedness and grace."

- "The pressure and stress increased dramatically once the investigation started and it did affect him very badly. Prior to this he has always been happy go lucky, sociable, jovial with a good sense of humour, particularly enjoying the company of other people. During this period people have commented – they have asked if he's okay because he is not his normal self, not jovial and "doesn't' talk as much"."

- "Despite all of the above he in no way shirked his responsibilities to both his partners and staff. In fact, he tried his utmost best to continue as normal. [The Respondent] has always displayed a high degree of integrity, responsibility and ambition…"

- "In light of the above, I can only stress that [the Respondent] was under an extreme amount of pressure at the time and I do hope that this is taken into consideration."

129.4 The Chair of the Central Mosque in Rochdale, who had known the Respondent for over 30 years, who stated (amongst other matters):

- "I can safely say that I have a very firm grasp of [the Respondent's] personality, ethics, honesty and integrity and hope this reference adequately expresses the trust I and the larger community have in him."

- "[The Respondent] is a person who is very generous with both his time and money when it comes to charitable causes. Nothing ever seems to be too much trouble for him. For instance, he regularly helps people who approach him, whether for legal matters or otherwise, both within and outside the confines of the mosque, even when it's to his own detriment."

- "[The Respondent] has been a pivotal guiding mentor for hundreds of local people… purely without any self-interest or personal motivation. Typically, he is a 24-hour support and advice service that is called upon by members of the community in all facets of life. It would be no exaggeration to assert that [the Respondent] has helped, advised and referred thousands of marginalised people to mainstream support agencies and acted as an invaluable mentor to them over the last several years."

- "He has regularly aided people in financial difficulty by providing monetary assistance to them. In some instances this has been by way of the community funding committee, or in other cases he has simply been charitable and generously

not only provided his money, but more importantly his time too. In recent time he has assisted people to complete pilgrimage to Mecca, which is a central pillar of Islam and a duty upon every Muslim to perform in their lifetime…"

- "[The Respondent] has explained what he has done and I can assure that both the wider community and I have and always will have the utmost faith and trust in [the Respondent's] honesty, integrity, generosity and commitment to the wider good for the community at large, just as he always has. He is a selfless individual and is an exemplary human being with the brain power, personality and heart necessary to succeed in any setting."

129.5 Sarah Khan Bashir, MBE, who had been the Respondent's partner in Shire Solicitors, and had known the Respondent for over 13 years. The testimonial stated, amongst other matters:

- "I am aware of the circumstances [the Respondent] finds himself in and can say without any hesitation or reservation that I have found and still find [the Respondent] to be honest, trustworthy and reliable."

- "In addition [the Respondent] is a big philanthropist and was always ready to help anyone who was experiencing a hard time and gave regularly to charitable causes. He did this without the need for the limelight or recognition…"

129.6 Shameen Ali-Iqbal, who had been the Respondent's partner in SS, and had known the Respondent for about 14 years. From that testimonial, Mr Goodwin drew attention to a passage which read: "[The Respondent] has explained the situation that he finds himself in and I am very surprised to learn of this as this is out of character for him as he has always been selfless, honest, trustworthy, dependable and humble. My experience of working for him and with him has been a positive one and I have always found him to have strong moral principles. I would still be happy to work with him in the future because I have trust in him."

129.7 Margaret McDonald, a barrister who had been one of the Respondent's tutors on the Legal Practice Course and more recently had been instructed by the Respondent in road traffic accident cases, who commented: "I have always considered that he was someone who acted in his client's best interests. He is intelligent, hardworking, committed and dedicated… I have known him for 24 years and have always found him to be a man of honour and integrity."

130. Mr Goodwin submitted that individually and collectively, these testimonials provided persuasive evidence of the Respondent's character.

131. Mr Goodwin submitted that whilst after disposing of this case the advocates and Tribunal members would move on, the decision would have a lasting impact on the Respondent. It could be life and career changing, given that if the Tribunal found dishonesty the outcome would be a strike off, unless there were exceptional circumstances. It was for the Applicant to prove the allegations so that the Tribunal was sure, whatever the Tribunal thought of the Respondent's decision not to give evidence. As there were admissions to parts of each allegations 1.1 and 1.2,

Mr Goodwin would address the Tribunal on sanction after its decision on dishonesty was announced.

Applicant's Further Submissions

132. Mr Johal made brief submissions on points of law raised by Mr Goodwin.

133. Mr Johal accepted that the Tribunal applied a high standard of proof, but it was not an impossible standard to meet when the Tribunal assessed the weight to be attached to the evidence.

134. With regard to Ivey, Mr Johal submitted that the Tribunal had to be sure that the Respondent was dishonest by the objective standards of ordinary decent people, having assessed the Respondent's actual knowledge and belief, which were matters of evidence. As the Respondent had not given evidence, he had not assisted the Tribunal on the issue of his genuinely held beliefs at the relevant times.

Findings of Fact and Law

135. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal made clear to the parties at the start of the hearing that it was independent of the parties, would ensure that the hearing was fair and that its decisions would be based on the evidence presented.

136. The Tribunal was conscious of the arguments raised by Mr Goodwin concerning the documents within the Rule 5 bundle which had been prepared for the Respondent. The letter from Ashfords was, at best, a record of the instructions the Respondent had given rather than containing direct statements by the Respondent. The Tribunal accepted that this letter contained such a record and it could be assumed that it accurately reflected information which the Respondent had given to his then solicitors. The Tribunal accepted that the email from Mr KT made various statements about the nature of his costs drafting business. Even if it were accepted that the contents of that email were entirely true and accurate, it did not comment directly on either the allegations or Mr KT's dealings with this Respondent and so had little relevance to the allegations. The Tribunal accepted that Mr KT and Mr MA had each signed statements concerning their relationships with the Respondent, which statements appeared in the Rule 5 bundle. The Applicant did not accept those statements as being true. The Tribunal determined that as the Respondent could have called either or both Mr KT and Mr MA to give evidence on his behalf, it should give those statements very limited weight. It was clearly not the case that the Applicant relied on those statements, but it was appropriate that they were "given in evidence" in the trial.

137. The Tribunal noted that the CEA Notice did not apply to the Respondent's Answer to the allegations. There was no witness statement from the Respondent and the Tribunal had not had the benefit of hearing from the Respondent with his explanations of the transactions and the inaccurate statements. The Respondent had accepted that

the way in which he dealt with the four cheques and the bank transfers, which the firm's books recorded as being sent to Mr KT or IM, was in breach of the relevant Accounts Rules and that dealing with the accounts in this way was in breach of Principle 6 and Principle 8.

138. The Tribunal noted and accepted that there was no misappropriation of client money in this case. It also noted that it was submitted that the Respondent was a man of good character, with no previous disciplinary findings against him, and took into account the testimonials provided for the Respondent.

139. The Tribunal noted and accepted that many solicitors, barristers and employees of the Applicant made errors. Both Mrs Shimmin and Mr Johal had accepted that there were errors in documents they drafted. The Tribunal considered carefully whether the errors, which the Respondent admitted, were more than simple mistakes, which could be made, innocently, by anyone. In considering the allegations, in particular those which had not been admitted by the Respondent, the Tribunal was careful to evaluate the evidence and whether it was sufficient to show a lack of integrity and/or dishonesty. As set out further below, the Tribunal also considered carefully the weight to be attached to the evidence presented, and whether or not any adverse inferences should be drawn as the Respondent had not given evidence.

140. **Allegation 1.1 - Between 16 September 2013 and 29 September 2015, he made or caused to be made transfers of at least £42,500 from the bank accounts of Sovereign Solicitors, purportedly for disbursements and to bank accounts in the name of a Mr Kevyn Thompson ("Mr KT) and Infinity Marketing ("IM") when, in fact, the monies were being transferred to his personal bank accounts, in breach of all, or alternatively, any of the following:**

1.1.1 Rules 20.1, 20.9 and 29.1 of the SRA Accounts Rules 2011 ("the AR 2011"); and

1.1.2 Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles").

141.1 The factual background to this allegation is set out at paragraphs 30 to 65 above.

141.2 The Respondent admitted there had been a breach of the AR 2011 and that his actions were in breach of breach of Principle 8, but denied any breach of Principles 2 and 6. The Respondent also denied that he had been dishonest.

Applicant's Submissions

141.3 With regard to the admitted part of the allegations, it was submitted that the Respondent acted in breach of Rule 20.1 of the AR 2011 as he made withdrawals from the client account in respect of three clients (QI, SM and LS), purportedly to pay disbursements when those payments were actually made to the Respondent. Further, on the matters of QI and LS, the withdrawals were made at a time when there were insufficient funds on client account, such that the client account became overdrawn for 7 days, in breach of Rule 20.9 of the AR 2011. The books of account of SS (including cheque stubs, client ledgers, cash books and office bank account statements) recorded that payments were made to Mr KT or IM for disbursements,

when those payments were actually made to the Respondent. Accordingly, SS's books of account were not properly written up to show his dealings with client and office money in breach of Rule 29.1 of the AR 2011.

141.4 The Applicant also submitted that the Respondent's conduct in creating false and misleading accounts breached Principle 8, as he failed to run his business or carry out his role in his business in accordance with proper governance and sound financial and risk management principles.

141.5 With regard to the alleged breaches of both Principle 2 and Principle 6, the Applicant submitted that the Respondent had created false and misleading accounts, which showed payments to Mr KT or IM, when in fact they were paid to him. It was submitted that these false accounts were created to conceal the fact the payments were being made to him. He had benefitted from the payments in the sum of £42,500 (or more, in the Applicant's submission). Most of the money the Respondent received in this way was office money, as the purported payments to Mr KT or IM were made from the firm's profit costs. It was not clear whether the Respondent had accounted for tax on the monies received; it submitted that he should have done so, as the monies were part of the firm's profit costs. The monies specified in the case were received in a period of two years, from September 2013 to September 2015.

141.6 The Applicant's position was that there was little evidence of work done by Mr KT or IM in exchange for the very substantial sums they were paid. The Applicant's position was also that there was no real evidence that the Respondent had loaned anything to either Mr KT or Mr MA of IM. There was no documentary evidence of any such loan and neither the Respondent, Mr KT nor Mr MA had given any indication, even in "ball park" terms, of the amount supposedly loaned and the amounts repaid/still outstanding. The only document relied on by the Respondent was the mandate/form of authority prepared by Mr KT, which apparently authorised the Respondent to take monies from sums due to Mr KT and later referred to four cheques issued the following month. The mandate did not mention the bank transfers.

141.7 The Applicant submitted that the Respondent's conduct in creating and causing misleading entries to be made in the SS's books of account, in order to conceal payments that were being made to himself, irrespective of the propriety of those payments, was a matter that compromised his integrity, in breach of Principle 2. The concealment of the payments could give rise to the inference that the payments themselves were improper. The breaches of the AR 2011, which were intended to ensure transparency of dealings with client and office monies, occurred in circumstances where payments were made to him, purportedly due to Mr KT and IM, when there was little evidence of work done by Mr KT or IM, and even less evidence of a loan arrangement. In the event that payments to KT and IM were for genuine services and the Respondent did have a loan arrangement with Mr KT, he should not have sought to use SS's accounts to recoup those monies and in doing so create false accounts. The creation of false accounts would undermine the trust that the public places in Respondent in breach of Principle 6.

Respondent's Submissions

141.8 The Respondent's overall submissions are set out at paragraphs 96 to 132 above, and are not repeated here. The submissions of particular relevance to this allegation are at paragraphs 98 to 108 above.

The Tribunal's Findings

141.9 The Tribunal noted that the Respondent accepted that he had made the transfers under consideration in this allegation to his own account rather than to the person or business named on the firm's books of account. The Tribunal noted the Respondent had admitted his actions were in breach of the AR 2011, as pleaded, and had no hesitation in finding that this allegation had been proved both on the admission and on the facts. There was also no doubt that failure to keep proper books of account, in the circumstances of this case, also amounted to a breach of Principle 8.

141.10 The Tribunal was also satisfied that deliberately making and maintaining false entries in the firm's books of account was conduct which would tend to diminish the trust the public would have in the Respondent and in the profession. Even on his own case, the Respondent had sought to conceal the fact that he was receiving payments of money from the firm's account, rather than making payments to those named as the recipients. The public would not expect a solicitor to conceal transactions in this way, particularly given that the AR 2011 was in place to protect both the public and the profession, and to ensure that there was adequate transparency in the books of account.

141.11 In considering the alleged breach lack of integrity, the Tribunal took into account the Respondent's explanation and the evidence, such as it was, in support of that explanation. That explanation, in short, was that he had loaned considerable sums to both Mr KT and Mr MA of IM and that the transfers to his account were made in partial repayments of those loans. The Tribunal noted that there were witness statements in the Rule 5 bundle from both Mr KT and Mr MA, but neither had been called to give evidence. Those statements were "in evidence" but were not adopted by the Applicant as being true. The Tribunal therefore could take those statements into account and accord them appropriate weight. The letter from Ashfords could not be taken as being more than as a record of the instructions which the Respondent had given; the writer of the letter could not give direct evidence about what had actually been in the Respondent's mind at the relevant times. Even if the Applicant "adopted" that letter as part of its case, that adoption could not mean more than that the Applicant agreed it recorded the Respondent's instructions and position, not that the contents were true. There was no statement from the Respondent as he had chosen not to give evidence, even having heard the Tribunal's ruling on the CEA Notice issue.

141.12 The Respondent's explanation was predicated on the existence of loans made by him to Mr KT and, later to Mr MA of IM. The Tribunal was struck by the fact that none of Mr KT, Mr MA or the Respondent gave any sort of indication about how much had been loaned, in what circumstances and when it should be repaid and when or how much had been repaid. It was incredible that someone would loan a significant sum – whether or not the loan were recorded formally – without having some idea of the

figures. This rendered the explanation that there were loans between these parties implausible. The Respondent had suggested in his answers to The Tribunal that it was normal in his culture to make informal loans, without keeping records. The Tribunal also noted that his position was that no interest would be charged on the loans, as that would be contrary to his religious beliefs. This raised the question of how the Respondent knew he was not charging interest, if he could not say how much had been loaned or repaid. The Tribunal also noted that the Respondent had stated, in particular in his answers to Q13 and Q14 at paragraph 71, that "full documentation and explanation has always been available for inspection", but the only document produced in relation to the loan(s) was the form of authority/mandate. The terms of the form of authority and mandate were far from convincing. The former did not indicate any amount or period to which it related. The latter clearly post-dated the date of the form of authority, as the cheques which were issued were dated September 2013. There was, of course, no mandate in respect of the bank transfers.

141.13 The Respondent had had from the time of the inspection until this hearing to review his accounts and any other records, in order to show the amounts loaned and repaid, but he had not produced any such documents. The Tribunal noted that in the letter from Ashfords, written on the Respondent's instructions, it was stated, "[The Respondent] has had the opportunity to work through his finances and although a lot of the relevant records have been subject to the intervention, he is able to confirm that funds lent to [Mr KT] far exceeded the amounts he transferred to his accounts as repayments." Despite having had that opportunity to review his finances, the Respondent had still not ventured any estimate of the amount loaned or repaid. There had been no indication that the Respondent had sought disclosure/production of any records which might have been taken in the course of the intervention into his practice.

141.14 The Tribunal did not accept that the loans claimed to have been made by the Respondent had ever been made. The background to, and purposes of, those payments by the Respondent to himself was therefore unknown although they seemed highly unusual. Even if the Tribunal accepted the Respondent's case that there had been loans made to Mr KT and/or Mr MA, (which it did not) the way the cheques and bank transfers were dealt with in the accounts records was false. Falsifying records as the Respondent had done clearly lacked integrity. No solicitor acting in accordance with proper moral and professional standards would choose to make false entries in the records of his firm, with the intention of concealing the true purpose of the transactions from his staff – which he acknowledged - and, by extension, auditors, his partner, his bank and his regulator.

141.15 The Tribunal was therefore satisfied, so that it was sure, that all aspects of this allegation had been proved. The position in relation to dishonesty is addressed below.

142. **Allegation 1.2 - He provided false and inaccurate information in response to SRA production notices dated 31 March, 20 May and 7 November 2016, including in respect of whether he benefitted from any of the payments made by Sovereign Solicitors to Mr KT or IM, in breach of all, or alternatively, any of Principles 2, 6 and 7 of the Principles.**

142.1 The factual background to this allegation is set out at paragraphs 66 to 75 above.

142.2 The Respondent admitted that some of the information provided had been inaccurate and he admitted breaching Principles 6 and 7. The Applicant's position with regard to those Principles was that the Respondent failed to be open and co-operative with his regulator in breach of Principle 7 and that the public would expect the Respondent to provide accurate and true information to his regulator during the course of any investigation. By providing false information, public trust in the Respondent and in the provision of legal services is undermined, in breach of Principle 6. The Respondent denied that he had lacked integrity or had been dishonest.

Applicant's Submissions

142.3 The Applicant submitted that the Respondent failed to act with integrity in breach of Principle 2 as he provided false and inaccurate information to the Applicant on three separate occasions, over the period of several months. That information was provided during an investigation into his practices and in direct response to formal production notices served on him and his partners. The Applicant relied on the following matters, which are also set out under paragraph 71 above at Qs 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 15 (in particular 15(ii)) and 18:

142.3.1 The information given in respect of who opened and had control over bank accounts ***1682 and ****0260 was false, in that the Respondent stated these were opened and operated by Mr KT or IM when they were opened by and operated by the Respondent (who was the sole mandate holder)

142.3.2 The answer to the question about financial interest in Mr KT/his business or IM was false, as the Respondent benefitted from payments made by SS which were (on his account) intended to pay Mr KT or IM for services provided;

142.3.3 The Respondent replied "not applicable" in response to a question about any payments, other than the four cheques identified, which had been made to someone other than the person named in the books of account. This was in circumstances where he had received £3,500 by bank transfer from SS on 2 June 2015 which, on its face, appeared to be sent to IM;

142.3.4 The Respondent's answer to Q18 at paragraph 71 was false, in that he stated, "other than the cheques, repayments have been made by cash…" when the Respondent had received a number of payments by bank transfer to his personal bank account in the period 2013 to 2015 which, on their face, were due to Mr KT or IM.

Respondent's Submissions

142.4 The Respondent's overall submissions are set out at paragraphs 96 to 132 above, with paragraphs 109 to 121 being of particular relevance to this allegation. Those submissions are not repeated here.

The Tribunal's Findings

142.5 The Tribunal noted that the Respondent accepted that, in some respects, his answers to questions put to him in the s44B Notices during the investigation were inaccurate. It was submitted on behalf of the Respondent that these inaccurate answers had arisen as a result of mistakes or errors and that there had been no intention to mislead the Applicant. Of course, the Tribunal had not had the benefit of hearing from the Respondent with his explanation of how those errors had arisen; it could only note the documents in the case and the submissions made about those.

142.6 The Tribunal noted that although some of the responses to the s44B Notices were in the names of the Respondent's partners in SS and DS, he had adopted those answers as his own.

142.7 The first set of inaccurate answers were given in response to questions about who opened and operated certain bank accounts. From Q1 and Q2, it appeared that two bank accounts, numbered ****0499 and ****1682 were accounts opened and operated by Mr KT, but the email from the Bank on 24 October 2016 showed that the latter was opened in 1999, presumed to be by the Respondent and in any event operated solely by the Respondent. The Respondent's explanation was that, in his mind, account ****1682 was used to bank money that he was repaid by Mr KT (and/or Mr MA). It was clear from Mr KT's witness statement that Mr KT did not manage this account. From Q6, it could be seen that the Respondent stated that a further account, ****0260 was operated by Mr KT. However, it was clear from the email from the Bank that this was the Respondent's savings account, opened in May 2015 i.e. after most of the transactions in issue in this case, and just five months before the investigation into the Respondent's firms began.

142.8 The Tribunal noted and found, in addition, that the Respondent had stated (in relation to Q8) that account ****0260 was opened and controlled by IM and at Q12 stated it was in the name of and operated by IM. As already noted, this account was in fact the Respondent's savings account, opened less than a year before he answered this question.

142.9 The above answers were clearly wrong. The Tribunal noted the Respondent's explanation, to the effect that he had been mistaken as, in his mind, the accounts were used to bank monies received from Mr KT or IM in repayment of the loan(s). However, when answering the questions, the Respondent knew that these were his accounts, under his sole control. In order to provide the account numbers, in answer to Q1, for example, he must have checked some account details; one could not pluck bank account details out of the air. Even the most cursory glance at bank records would show that these were the Respondent's accounts. It was thoroughly implausible that the Respondent thought an account into which Mr KT could, on his account, pay monies to settle a loan was in any way under the control of Mr KT. Clearly, Mr KT had no ability to withdraw money from that account. It was incredible that the Respondent did not know that the two relevant accounts were his, particularly given that one of them had been opened less than a year before he answered the questions. The Respondent could have taken the opportunity, when asked various questions in the course of the investigation, to advance the explanation later proffered by Mr KT and Mr MA, to the effect that he had regarded the accounts

as being those of Mr KT or IM. That explanation was first given with the letter from Ashfords dated 6 June 2017.

142.10 The second category of inaccurate statements related to whether the Respondent, or those associated with him, had any financial or management interest in Mr KT/his businesses and/or IM, or benefitted from payments made to them. The Tribunal noted that the Respondent had denied any such interest.

142.11 The Tribunal noted that there might be some scope for confusion about the meaning of a "financial interest" (as at Q4 and Q10). It was not asserted, for example, that the Respondent was a part-owner of any of the businesses of Mr KT or IM. If Mr KT and/or Mr MA owed money to the Respondent, it was in his interest that those businesses did well and, indeed, that his firms continued to instruct them. In this context, the Tribunal noted that the Respondent had stated (Q17) that apart from the four identified cheques, Mr KT had made repayments of the loan in cash. It also noted that, according to the Respondent, Mr KT did not want monies to pass through his bank account as he was indebted to the bank and any monies paid in might be taken to settle that liability. The Tribunal noted and found that the Respondent had, in effect, intervened between SS and Mr KT or IM in that he had taken payments which, according to the invoices issued, had been due to Mr KT/IM. This meant that the Respondent had a direct interest in Mr KT's business/IM. The Tribunal was satisfied that the answer to these questions was incorrect. However, it could not be sure that the Respondent had interpreted the question fully in the manner correctly set out above and his answer may therefore have been an error, rather than a deliberate attempt to give incorrect information.

142.12 However, there could be no doubt at all that the Respondent's answers to Q5 and Q11 were clearly wrong, and that he knew they were wrong. The Respondent had directly received payments from SS and DS which had been – on the Respondent's own case – due to Mr KT or IM. The submission on behalf of the Respondent had been that the Respondent had equated the word "payments" in the question with "remuneration." This was simply not credible, in the absence of hearing from the Respondent any explanation about how, as an experienced solicitor who ran three firms, he had mixed up or misunderstood these two rather different concepts.

142.13 The third area in which it was alleged the Respondent had provided false and inaccurate information to the Applicant related to his response "not applicable" to the question: "Please confirm any other arrangements (if applicable) where payments have been made to someone other than the name recorded on the books of account and provide details." This was said to be inaccurate as it omitted to mention the four bank transfers made to the Respondent (on 10 October 2013, 14 May 2015, 2 June 2015 and 29 September 2015). The Tribunal noted that the last of these transfers was less than three weeks before the investigation began, and two of the others were within 6 months of the start of the investigation. The answer to the question was provided on 31 May 2016 i.e. within a year of two of the transfers.

142.14 The Tribunal noted the submission on behalf of the Respondent that the answer in this instance was consistent with his view that "payments" meant "remuneration." The Respondent's position was that he was not being remunerated as Mr KT (and IM) were "working off" the loans he had made them. It also noted the submission that the

question related to Mr KT, not IM, but found that three of the four transfers which the Respondent failed to mention were in respect of monies purportedly due to Mr KT. As above, the Tribunal did not accept the Respondent's assertion that he had mistakenly thought "payments" meant "remuneration". This was a thoroughly implausible explanation.

142.15 The Tribunal was satisfied that in respect of the various matters set out above, the Respondent had provided false and inaccurate statements. The only explanation offered was that the Respondent had been mistaken and had made errors. It was submitted that most of the Respondent's answers to the questions were accurate and true, that the Respondent had voluntarily disclosed the four cheque payments made to him and that he had had no motive to mislead the FI Officer. It was correct that the Applicant took no issue with the majority of the answers given in response to the four s44B Notices. It was also true that the Respondent had answered a question about whether payments made to Mr KT had been properly made to and received by him, by disclosing the four cheques. However, the Respondent had not disclosed the bank transfers either then or later. A solicitor should answer questions put by the Applicant, in the course of an investigation, accurately or, if appropriate, indicate if there was any uncertainty about an answer being given. The fact that some correct answers were given could not outweigh a significant number of incorrect answers.

142.16 With regard to the submission that the Respondent had no motive to mislead the FI Officer, the Tribunal noted that if it appeared payments were made to bank accounts controlled by Mr KT and/or IM when in fact they were made to the Respondent's accounts, those payments would be disguised unless and until the FI Officer uncovered information about who actually controlled the bank accounts. The question of motive is addressed further below, with regard to the allegation of dishonesty.

142.17 The Tribunal also noted that in the testimonial from the Respondent's wife, she referred to various stresses and strains upon the Respondent, arising from various family illnesses and bereavements, as well as the stress of the investigation itself. There was, of course, no evidence from the Respondent or any medical practitioner to suggest that the pressure was such that the Respondent had been prone to making mistakes. An investigation was almost inevitably stressful for any solicitor. However, there was nothing in either Mrs Shimmin's evidence about the Respondent's assistance during the investigation or from the Respondent which could explain the fact that a number of very serious errors and omissions had been made, over a period of 8 months.

142.18 The Tribunal was satisfied that in the respects set out above, the Respondent had provided false and inaccurate information to the Applicant. His failure to provide accurate answers could not be explained as mere errors, in the absence of any supporting evidence from him about his state of mind at the time. It was incumbent on a solicitor to take care in responding to formal questions in an investigation. Even a lack of care, in the circumstances set out above, would have been sufficient to substantiate the allegation of lack of integrity. The Tribunal was in any event satisfied to the required standard that the Respondent knew that his answers were incorrect and misleading, and that he thereby lacked integrity. The Tribunal was satisfied that all aspects of this allegation had been proved to the required standard.

143. **Allegation 1.3 - Dishonesty was alleged against the Respondent in respect of allegations 1.1 and 1.2; it was pleaded that dishonesty was not an essential ingredient to prove those allegations.**

143.1 The factual background to this allegation is set out in relation to allegations 1.1 and 1.2 above. The Respondent denied that he had been dishonest.

143.2 The Tribunal's findings in relation to allegations 1.1 and 1.2 are not repeated, but can be read into the findings on the allegation of dishonesty.

Applicant's Submissions

143.3 The Applicant accepted that the correct test for dishonesty was as set out in Ivey, and that to succeed with the allegation the Tribunal would have to be sure that the Respondent had been dishonest. Mr Johal submitted that as the Respondent did not give evidence, the Tribunal had no assistance from the Respondent about his actual state of knowledge or belief at the relevant times and whether those beliefs were genuinely held.

Respondent's Submissions

143.4 The Respondent's submissions are set out at paragraphs 96 to 132 above, and are not repeated here. It was submitted that it was inherently unlikely that an honest solicitor, with an unblemished record, would suddenly become dishonest. It was submitted that the testimonials submitted, which should be taken into account, showed that the Respondent was honest and a man of integrity. It was also submitted that the Tribunal should not draw any adverse inferences from the fact that the Respondent had chosen not to give evidence.

The Tribunal's Findings

143.5 As set out above, the Tribunal found that the Respondent had made false accounting records, which had concealed the fact that he had received monies which, according to the accounts records, had been paid to Mr KT or IM. It had also found that he had on three separate occasions made false statements to the Applicant in response to questions put in the course of an investigation.

143.6 The Tribunal noted paragraph 74 of Ivey which set out the test for dishonesty as follows:

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

the defendant must appreciate that what he has done is, by those standards, dishonest."

143.7 A major difficulty for the Tribunal, as submitted by Mr Johal, was that it had received no evidence from the Respondent about his actual state of mind; it was difficult to ascertain the Respondent's actual state of knowledge or belief as to the facts. The Tribunal bore in mind throughout that it was for the Applicant to prove the case, not for the Respondent to disprove it. Here, there was significant evidence of dishonest behaviour and nothing to counter this evidence. The Tribunal could and did find dishonesty was established. The Tribunal noted that it had been invited by the Applicant to draw adverse inferences from the Respondent's decision not to give an account of himself. Although this was an appropriate case in which it should have been expected the Respondent would explain himself, as set out below the Tribunal did not need to make any adverse inferences in reaching its conclusions.

143.8 It was beyond any doubt that the Respondent had made false entries in his firms' books of account. He had written out cheques to himself and written cheque stubs and accounts systems entries with the intention, on his own account, of concealing the fact that payments were being made to himself rather than Mr KT or IM. Similarly, he had made bank transfers on four occasions, where he made it appear the payments were made to those who were, on his account, providing services to SS and/or DS, but the money was sent, to his knowledge, to his own account. The Respondent knew the money was being paid to him and knew that he was concealing that by creating false accounting records. Irrespective of the background to his decision to take money in this way, and whatever his belief as to being owed money by Mr KT or IM, an ordinary, decent person would recognise that concealing payments in this way was dishonest. This was particularly so where making payments in this way had the effect that: the firms' staff and the Respondent's partners were given false information about the firms' accounts; the firms' financial records would be inaccurate as instead of paying a disbursement the firm was letting the Respondent have monies which would not be accounted for in the firms' profits; the tax treatment of the payments made to the Respondent was unclear; any auditor examining the firms' books of account would be misled about to whom payments were made and for what reason.

143.9 It was also beyond any doubt that the Respondent had made a number of false and misleading statements to the Applicant, over a period of 8 months. This was not a case where a simple error had been made, on one or even two occasions. The Respondent had had the opportunity to consider his responses to the questions and to check whatever information was available before giving answers in writing. His untrue statements related to: the control of bank accounts, which he knew were his; and to which he had knowingly transferred the firm's money; the concealment of payments to himself, other than the four cheques in September 2013; and the fact that he benefitted from payments which appeared to have been made to Mr KT or IM. The Tribunal did not accept Mr Goodwin's submission that a dishonest solicitor would be unlikely to answer some questions honestly and some dishonestly.

143.10 The Tribunal was satisfied that the Tribunal knew that he was making untrue and inaccurate statements to the Applicant. He knew he operated, controlled and was the beneficiary of those bank accounts, not least because he had actively transferred money into them. One of them had only been opened in the previous 12 months. The

questions were clear and the Respondent's answers were also clear – and unambiguously false. An ordinary, decent member of the public would consider that knowingly providing false information to a body which was entitled to expect accurate information was dishonest. Again, the Respondent had failed to provide any evidence about his actual state of mind so as to cause any doubt at all about whether this allegation had been proved.

143.11 The Tribunal's primary reasoning is as set out above. However, to reinforce its findings, the Tribunal made a number of other observations.

143.12 Even if the Tribunal had given the statements of Mr KT or Mr MA significant weight, and/or if they had believed the contents of those statements, there were considerable and troubling omissions in the evidence presented for the Respondent.

143.13 With regard to Mr KT, whilst it was accepted that at the relevant time the Respondent did not know that Mr KT was a struck off solicitor (and there were no allegations arising from Mr KT's work as a costs draftsman), it was surprising that the Respondent sought to rely on the evidence of someone who had been found by the Tribunal to be dishonest. It was also surprising that, after learning that Mr KT had been struck off, the Respondent had not sought to confirm the loan/how much remained outstanding in case of default on the part of Mr KT. Mr KT's statement did not refer to a point mentioned in the letter from Ashfords, namely that Mr KT's home had been under threat of repossession. There was no explanation in Mr KT's statement about the circumstances in which he had found himself in financial difficulties. This was surprising given the significant level of income he apparently derived from the Respondent's firms and, according to his email to Mrs Shimmin, the level of work in which he was engaged/how busy he was. Mr KT's statement only mentioned preparing "numerous costs schedules" for the three firms; there was no mention of carrying out detailed assessment work, attending costs hearings, giving training or advice to staff etc. Most significantly, Mr KT did not give any indication about when the loan(s) were made, save that he said it was over a lengthy period of over 10 years, whereas in his answer to Q16 (at paragraph 71) the Respondent indicated the loan was in 2012/13. In Mr KT's statement it was stated, "I agreed with [the Respondent] that taking monies directly owed to him for work that I had done for the legal practices would be the best way for me to repay the loan." The four cheques in issue had all been in 2013 (although the bank transfers continued until September 2015). Mr KT did not mention making repayments in cash, which the Respondent had stated happened (see Q17 at paragraph 71).

143.14 Mr MA's statement indicated that IM was a limited company, of which he was a director. He had not provided any information confirming that the company had given permission for monies due to the company to be paid to the Respondent in lieu of monies apparently owed by Mr MA personally. It would clearly be improper for such an arrangement to be made, without the utmost transparency, particularly given that IM would need to account for the relevant tax on its profits. Mr MA's statement indicated that he had borrowed money from the Respondent over a number of years. It was unclear whether or how any repayments of the loan(s) were made before 2014, given that it was clear from information the Respondent gave to the FI Officer on 4 November 2015 (as recorded in the first FI Report) that SS and DS had engaged IM "since April 2014." Somewhat confusingly, Mr MA referred in his statement to

lending money to Mr KT "over a period of time after the first sum given in 2008". However, Mr MA also stated that he got to know Mr KT through the work he did for the Respondent, as they "would inevitably bump into each other often." As Mr MA's first mention of work for the Respondent's firms was in relation to IM, established in 2014, there was a lack of clarity about the period for which Mr KT and Mr MA had been acquainted.

143.15 The Respondent could have produced Mr KT and/or Mr MA to give evidence in this case, but had not done so and so that Tribunal did not have the benefit of having these matters clarified. So, even if it accepted what was said in the two witness statements, that was not sufficient to explain fully the circumstances which were said to be the background to the allegations.

143.16 There was no allegation arising from the work which may or may not have been done for SS or DS by Mr KT or IM. There were, however, very considerable doubts about the amount of work purportedly done, and whether any work done was sufficient to justify the very large sums paid by the firms to Mr KT and IM. There was no contract, as one would expect in any dealings between commercial organisations and no explanation of how the invoices raised by Mr KT or IM were calculated. Drafting a costs schedule for summary assessment would not be sufficient to justify payments of the size made to Mr KT on numerous occasions. There was no evidence on the files explaining work supposedly done by IM, let alone justifying the large invoices that IM rendered.

143.17 The Respondent relied on both the existence of loans made by him to Mr KT and Mr MA, and work done by Mr KT and IM to account for his actions in concealing payments made to himself and in explaining the "errors" he made when replying to the Applicant's questions. He had not availed himself of the opportunities he had been given to give an account of his actions. There was, therefore, no evidence from him about his state of mind at the relevant times. The Tribunal did not have to go so far as to draw an adverse inference from his decision not to give evidence. The Tribunal was able, with full confidence, from the documents presented to it, including the Respondent's own confirmations about his intention to conceal the true nature of the payments, to determine that he knew what he was doing was wrong. Given that his actions were clearly of a type which would be recognised as dishonest by ordinary, decent people and that he had not given evidence to explain his state of mind, the Tribunal had no difficulty in finding he had been dishonest.

Previous Disciplinary Matters

144. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

145. Mr Goodwin noted that the Tribunal had made findings of dishonesty against the Respondent and that, in the light of the case of SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma") the usual sanction in such cases was to strike off a Respondent, unless there were exceptional circumstances. Mr Goodwin did not advance any exceptional circumstances in this case.

Sanction

146. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties.

147. The Tribunal had made findings of dishonesty in relation to both of the allegations. Dishonesty was the most serious matter which could be found proved against a solicitor. In those circumstances, "no order", a reprimand or a fine were clearly inadequate to reflect the seriousness of the matter.

148. The Tribunal noted that the case law made it clear that save in exceptional circumstances, the usual and proportionate sanction in cases of dishonesty was to strike the offending solicitor off the Roll. Here, no exceptional circumstances had been advanced on behalf of the Respondent, and the Tribunal could not find anything exceptional in this matter. The maintenance of the reputation of the profession as one whose members could be trusted to the ends of the earth required nothing less than that the Respondent should be struck off the Roll, and the Tribunal so ordered.

Costs

149. Mr Johal, for the Applicant, applied for an order that the Respondent should pay the Applicant's costs of the proceedings and referred to a schedule of costs dated 19 February 2018 in the total sum of £40,460.76. Mr Johal submitted that as the hearing would not go into a second day, as had been timetabled, the costs claimed should be reduced by about £900 (as the costs of attendance at the hearing had been estimated at £1,820). Mr Johal submitted that other than that change, the costs claimed were reasonable and should be awarded in full.

150. Mr Goodwin, for the Respondent, acknowledged that the Respondent should pay costs, but submitted that the costs claimed were too high. Mr Goodwin referred to the fact that 25 hours and 42 minutes had been claimed for drafting the Rule 5 Statement, which at the rate of £130 per hour had amounted to a substantial sum (£3,276) and indicated that about five working days had been spent on drafting.

151. Mr Goodwin submitted that the costs of the two forensic investigations were also high. The costs of the investigation carried out by Mrs Shimmin had been calculated at £18,318.38 and those of Mr Hair's investigation had been calculated at £12,925. The Tribunal was provided with a copy of the breakdown of costs in relation to each of the investigations. Mr Goodwin submitted that if there was any element of the costs in those schedules which related to the third firm in which the Respondent had been concerned (Shires Solicitors), those should not be payable. Mr Goodwin submitted that it was not clear how some of the time claimed by the investigating officers had been spent. For example, Mrs Shimmin's schedule claimed 42 hours of work under the heading "other". Mr Hair's referred to 38 hours under the heading "information review" and a further 18 hours for preparation of his report, which ran to only 9 pages. Mr Goodwin submitted that the case, as presented, had been based primarily on the contents of Mrs Shimmin's report rather than the second report.

152. Mr Goodwin told the Tribunal that he did not make any submission about the Respondent's ability to pay a costs award, other than to inform the Tribunal that the Respondent had been invoiced around £71,000 by the Applicant as the costs of intervention into his practice.

The Tribunal's Decision

153. The Tribunal considered carefully the submissions of the parties on the question of costs. The Tribunal noted that this had not been a straightforward matter; the costs of investigation and prosecution might appear high, but this did not mean they were necessarily disproportionate.

154. The legal costs had been calculated at the rate of £130 per hour, which the Tribunal accepted was a reasonable charging rate. The Tribunal recognised that a sum should be deducted from the costs schedule as that had estimated that, as listed, the case would last for two days and in fact it would be concluded in one day. The Tribunal decided that the appropriate reduction would be £1,000. The Tribunal also determined that the time spent on preparation of the Rule 5 Statement (claimed at 25 hours and 42 minutes) was too high, and the costs of that should not all be visited on the Respondent. Some "rounding down" of the legal costs was therefore in order.

155. The Tribunal noted that the costs of the first FIR had been put at over £18,000 and that a large amount of the time spent (42 hours) had been categorised as "other" work. The Tribunal acknowledged that sometimes work had to be done which turned out not to be relevant, and the FI Officer had to check a number of files and matters in order to reach the conclusion that those issues did not need to be in the final report. However, the amount of time recorded in this instance, absent an explanation of how it had been spent, seemed excessive and the Tribunal decided to reduce the costs allowable on the first FIR by about £4,000. The costs of the second FIR had been put at £12,925. Given that little of the material from that investigation had featured in this case, and that there was little information about the relevance of the work done, the Tribunal decided to reduce the costs of that investigation by about 70% i.e. the amount recoverable against this Respondent for this report would be reduced by up to £9,000.

156. Taking into account the matters noted above, and reviewing the overall proportionality of the costs in the case, the Tribunal determined that the Respondent should be ordered to pay costs in the total sum of £26,000.

157. The Tribunal Ordered that the Respondent, Mohammed Asif Din, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £26,000.00.

Dated this 26th day of March 2018
On behalf of the Tribunal

S. Tinkler
Chairman

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11720-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MOHAMMED ASIF DIN Respondent

Before:

Mr S. Tinkler (in the chair)
Mr P. Jones
Mrs L. Barnett

Date of Hearing: 1 March 2018

APPENDIX

Extract from the SRA Principles 2011

Principles

There are ten mandatory Principles which apply to all those regulated by the SRA, as follows:

You must:

1. Uphold the rule of law and the proper administration of justice;

2. Act with integrity;

3. Not allow your independence to be compromised;

4. Act in the best interests of each client;

5. Provide a proper standard of service to your clients;

6. Behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

8. Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;

10. Protect client money and assets.

Extract from the SRA Accounts Rules 2011

Rule 20: Withdrawals from a client account

20.1 Client money may only be withdrawn from a client account when it is:

a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);

b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;

c) properly required for payment of a disbursement on behalf of the client or trust;

d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;

e) transferred to another client account;

f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;

g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;

h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));

i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;

j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule

20.9 A client account must not be overdrawn, except in the following circumstances:

(a) A separate designated client account operated in your capacity as trustee can be overdrawn if you make payments on behalf of the trust (for example, inheritance tax) before realising sufficient assets to cover the payments.

(b) If a sole practitioner dies and his or her client accounts are frozen, overdrawn client accounts can be operated in accordance with the rules to the extent of the money held in the frozen accounts.

Rule 29: Accounting records for client accounts, etc.

29.1 Accounting records which must be kept:

You must at all times keep accounting records properly written up to show your dealings with:

a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and

b) any office money relating to any client or trust matter