SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11730-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHRISTOPHER MARK HOWDLE Respondent

Before:

Mr R. Nicholas (in the chair)
Ms A. Horne
Mr R. Slack

Date of Hearing: 19 April 2018

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 12 October 2017 and were that:

1.1 On the 15 March 2013, whilst a partner at Knights Solicitors LLP he caused an improper transfer of £25,000 from the client ledger account of clients C and M to the bank account of an unrelated client, client H in breach of Rule 7 and 20.1 of the SRA Accounts Rules 2011 ("SAR") and all or alternatively any of SRA Principles 2, 4, 6 and 10 ("the Principles");

1.2 On or around 30 May 2013, whilst a partner at Knights Solicitors LLP he inserted or caused to be inserted an incorrect purchase price of £245,000 on a Stamp Duty Land Tax form ("SDLT1 form") submitted on behalf of clients C and M, when he knew that the true purchase price of the property was £745,000, in breach of all or alternatively any of Principles 2, 4 and 6.

1.3 By causing a payment to be made of £11,667.06 on 28 March 2013 from money held on behalf of his client and father in law, JD, to pay his own personal tax liability, he used the client account of Knights Solicitors LLP as a banking facility in breach of Rule 14.5 of the SAR.

1.4 Between 19 December 2013 and 22 December 2014, whilst a partner at Freeths LLP he made or caused to be made fourteen improper withdrawals of client money for the benefit of unrelated clients, totalling £984,098.82 in breach of Rules 7 and 20.1 of the SAR and all or alternatively any of Principles 2,4, 6 and 10 of the Principles.

1.5 Between 8 November 2013 and 9 April 2014, he made or caused to be made eleven improper withdrawals of client money from the client account of KJD Freeths LLP for the benefit of unrelated clients, totalling £1,001,841.69 in breach of Rules 7 and 20.1 of the SAR and all or alternatively any of Principles 2, 4, 6 and 10 of the Principles.

2. Dishonesty was alleged against the Respondent in respect of allegations 1.2, 1.4 and 1.5; however, proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 12 October 2017 with exhibit "IJ1"
- Forensic Investigation Report in respect of Knights Professional Services Limited dated 19 May 2016
- Forensic Investigation Report in respect of Freeths LLP dated 19 May 2016
- Forensic Investigation Report in respect of KJD Freeths LLP dated 19 May 2016
- Letter from Freeths LLP to the Applicant dated 20 December 2016
- The Applicant's Schedule of Costs dated 16 October 2017 and 29 March 2018

- General Medical Council v Adeogba [2016] EWCA Civ 162
- Letter from Mr Johal to the Respondent dated 13 November 2017 in respect of the revised test for dishonesty
- Witness Statement of Mr MB dated 12 January 2018 with exhibits "MEB1" to "MEB4"
  Witness Statement of Mr HB with exhibit "HB1" dated 1 November 2017
- Letter from Mr Johal to the Respondent dated 14 March 2018
- Email from Mr Johal to the Respondent dated 14 March 2018
- Email from the Applicant dated 18 April 2018 and timed at 13:28

Respondent

- Letter from Aaron and Partners to the Applicant dated 7 October 2016
- Email from the Respondent dated 18 April 2018 and timed at 10:14
- Email from the Respondent dated 18 April 2018 and timed at 14:06
- Email from the Respondent dated 18 April 2018 and timed at 15:49

Preliminary Matters

4. On 18 April 2018 at 10.18 am the Tribunal received the following email from the Respondent:

> "I received a letter from you dated 14th March 2018 last week. This has taken so long to arrive as you did not put the road name in to the address letterhead. I am concerned as to what other post I have been sent but not delivered to me. There are parts of the Witness Statements, particularly of [Mr MB] I would wish to challenge.
>
> I have to put on record that I am completed disenchanted by this process. Some of the allegations against me emanate from a series of events that took place almost 5 years ago. The effect on my health has been substantial and has led to the breakdown of my marriage and the disintegration of my legal career.
>
> I have been out of work for a period of time, but have secured short term work this week. I cannot afford to pay for a solicitor to prepare a defence or a barrister to appear on my behalf at the hearing. I am looking at the possibility of a short term loan from a bank or family but this will not be in place in time for Thursday.
>
> I also cannot get an appointment with my GP until May as I would wish to include evidence of the impact of the mental health issues that I have suffered from over the last 5 years.
>
> I would ask that in the interests of justice and for a defence to be entered to adjourn/re-allocate the hearing time for an alternative time preferably in June. This will give me the opportunity to address all the issues before me. I would not be able to conduct a coherent defence on my own my health is not robust enough to do this.

> I wish to state clearly this is not an attempt to delay matters. The thought of this being delayed further is hard for me. I want this process to be over as soon as possible, but, I do want to defend myself to the best of my ability.
>
> I would ask that this e-mail be put in front of the Tribunal."

5. The letter that the Respondent referred to was a letter from the Applicant not the Tribunal.

6. Mr Johal was asked for his views on the adjournment application and responded opposing the application. Mr Johal stated:

> "Although I did not put Mr Howdle's full address on the letter, I did e-mail it to him on the 14 March 2018 (to an e-mail address which he has previously corresponded with the SDT). Please see e-mail and letter attached.
>
> The application for the adjournment has been made at a very late stage and only a day before the substantive hearing. The application is not supported by any medical evidence.
>
> Mr Howdle has had notice of the hearing since the 19 October 2017 and has had sufficient time in which to submit any medical or other evidence to the SDT.
>
> Mr Howdle has been directed to lodge an answer in these proceedings by the SDT on 4 separate occasions and has failed to do so and has failed to comply with any other directions issued by the SDT in this case. At a case management hearing on the 29 January 2018, he was directed to lodge file an answer by 4pm on the 5 February 2018 and if he fails to comply it was directed that he shall not be permitted to rely on his answer or documents without the permission of the SDT."

7. On 18 April 2018 at 14:06 the Respondent emailed the Tribunal's administrative office stating:

> "I have received Mr Johal's response.
>
> I would say again that this process has taken 5 years to get to this position. My health is poor. I have been trying to get a doctor appointment for a number of weeks to present this evidence. I suffer from acute anxiety and depression. I will be able to provide this evidence when I have spoken to the doctor.
>
> I will not be able to attend tomorrow unassisted. I will however explore any rights of appeal should a decision be made at the hearing.
>
> I would ask you to make the Tribunal aware of this email."

8. On 18 April 2018 at 15.07 the Tribunal's administrative office emailed the parties in the following terms:

> "The Tribunal has considered the application and it has been **refused.** It does not accord with the policy on adjournments with regard to cost/evidence of ill health etc. and it is made at such a late stage.
>
> Mr Howdle can attend and make the application orally before the full division of the Tribunal."

9. On 18 April 2018 at 15:49 the Respondent emailed the Tribunal office and stated "Thank you for letting me know. I will not be attending."

10. On 19 April 2018 the Respondent did not attend the hearing and the Applicant submitted that the Tribunal should proceed in the Respondent's absence.

11. Mr Johal outlined the history of the proceedings. The proceedings were lodged on 13 October 2017 and Standard Directions were made dated 18 October 2017. The Respondent had signed for the papers on 19 October 2017. The Standard Directions required that the Respondent file his Answer by 20 November 2017 but he failed to do so. Following a non-compliance court the Respondent was given a second opportunity to file his Answer, which was then due by 14 December 2017. The Respondent had mentioned in an email dated 14 December 2017 that the proceedings had affected his health. As he did not file his Answer by 14 December 2017 a case management hearing was held on 18 December 2017. The Respondent participated in that hearing by telephone. He indicated that he was seeing a solicitor that day and was given until 22 January 2018 to file his Answer but again failed to do so.

12. There was a further case management hearing on 29 January 2018 which the Respondent did not attend but he had requested a further seven day extension in an email dated 24 January 2018 in which he also stated that he could not afford representation and would be preparing his response himself. The Tribunal gave him until 5 February 2018 to file his Answer after which time he could not file an Answer without the Tribunal's permission. This was his fourth opportunity to provide an Answer but he did not do so.

13. The Respondent had not contacted Mr Johal or, as far as Mr Johal was aware, the Tribunal from 24 January 2018 until he made his adjournment application on 18 April 2018.

14. Mr Johal applied to proceed in the Respondent's absence. He relied on Adeogba and referred the Tribunal to what he described as three other important cases namely, R v Hayward, [2001] EWCA Crim 168, R v Jones [2002] UKHL 5 and Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34.

15. Mr Johal outlined the factors that must be considered by the Tribunal when determining whether or not to proceed in the Respondent's absence. The starting point was that a respondent had a right, in general, to be present at the hearing of allegations made against him. However, the Tribunal, had a discretion to proceed with the hearing in the absence of a respondent but that discretion had to be exercised with great care and it was only in rare and exceptional circumstances that it should be exercised in favour of the hearing continuing in the absence of the Respondent. In

deciding whether to proceed in the Respondent's absence fairness to the Respondent was a prime consideration, but fairness to the Applicant should also be considered.

16. The Tribunal should take into account all the relevant circumstances including (i) the nature of the Respondent's behaviour and whether he had deliberately and voluntarily absented himself from the hearing, thereby waiving his right to attend; (ii) whether an adjournment would be likely to secure the Respondent's attendance; (iii) the delay caused by the length of any potential adjournment; (iv) the general public interest and the interest of witnesses and victims that the hearing should take place within a reasonable time of the events to which it related; (v) as was consistent with the judgment in Adeogba, the decision should be made in the context of the Tribunal's duty to protect the public and bearing in mind that the Respondent had a responsibility to co-operate with his regulator.

17. Mr Johal submitted that the Respondent had waived his right to attend. The Respondent had been aware of the hearing date since 19 October 2017. He had made a very late application for an adjournment and when that was refused had chosen not to attend, either to answer the allegations against him, or to renew his application for an adjournment. The Respondent had stated that he as suffering from ill-health but had not provided any medical evidence. The Respondent had mentioned ill-health in his email of 14 December 2017 and had had time to see his doctor and obtain medical evidence. He had had four opportunities to submit his Answer but had not done so. His application for an adjournment did not comply with the Tribunal's Policy and Practice Note on Adjournments. It was in the public interest for the hearing to proceed. The allegations were serious in nature, were five years old and included allegations of dishonesty.

18. The Tribunal retired to consider the Applicant's application to proceed in the Respondent's absence. It considered the guidance in Adeogba and its Policy and Practice Notes on Adjournments dated 4 October 2002. The Tribunal concluded that the Respondent had had opportunity to obtain medical evidence but had failed to do so. He had not complied with the Tribunal's previous directions and, if the case was adjourned, there was no evidence to suggest that the Respondent would attend the adjourned hearing. The Respondent had told the Tribunal that he had secured short-term work but had not stated whether or not this was in a legal role.

19. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 states: "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing." The Tribunal was satisfied that notice of the hearing was served on the Respondent, he was clearly aware of the hearing. The Tribunal decided to exercise its power to proceed in the Respondent's absence. The Respondent was facing serious allegations including dishonesty and it was in the public interest to proceed.

Factual Background

20. The Respondent was born in October 1971 and was admitted to the Roll of Solicitors on the 15 September 1997. As at the date of the Rule 5 Statement the Respondent held a practising certificate subject to conditions.

21. The Respondent's relevant professional history was as follows:

- partner of Knights Solicitors LLP ("Knights") between 1 January 2013 and 28 August 2013;
- Partner at Freeths LLP ("Freeths") between 30 September 2013 and 1 July 2015;
- Partner at KJD Freeths ("KJD") between 1 February 2014 and 1 July 2015.

22. On 20 May 2015, the SRA received reports from Knights, Freeths and KJD concerning breaches of the SAR committed by the Respondent. Freeths and KJD were connected firms. The Respondent was suspended by Freeths and KJD on 27 April 2015 and left both firms by mutual consent on 1 July 2015.

23. Between 8 and 10 September 2015, the SRA commenced forensic investigations at Knights, Freeths and KJD. The investigations were carried out by David Rowson, Forensic Investigator (FIO) and he was assisted by Stephen Wallbank, Investigation Team Manager (ITM). Three Forensic Investigation Reports (FIRs) dated 19 May 2016 were prepared following the investigations. All three FIRs recorded, amongst other matters that the Respondent made improper transfers and withdrawals from the respective client accounts of Knights, Freeths and KJD. In an interview between the FIO and the Respondent on 13 April 2016, he accepted that he had made improper transfers as recorded in the three FIRs, however he claimed that the transfer of clients' funds that was the subject of the Knights FIR was a mistake. In respect of the transfers at Freeths and KJD, he said that the first few were mistakes.

24. The SRA wrote to the Respondent for an explanation of his conduct, on 26 August 2016. Paul Bennett of Aaron and Partners responded on behalf of the Respondent on 7 October 2016.

25. Freeths wrote to the SRA on 20 December 2016 pointing out that any strains that the Respondent may have been under whilst at the firm was new information to them, and that there was an overall shortfall on client account of £203,035.90 which their insurers had re-paid into client account.

Witnesses

26. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the brief oral evidence from the FIO. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

27. The Tribunal was aware that the Respondent had stated that "There are parts of the Witness Statements, particularly of [Mr MB] I would wish to challenge." Given this assertion, and in the absence of the Respondent and Mr MB, the Tribunal decided that it would place no reliance on Mr MB's witness statement. The Tribunal drew no conclusions in respect of the content of the witness statement, its decision was based on the fact that it did not know what the Respondent wished to challenge and in order to ensure as fair a hearing as possible in the Respondent's absence the most appropriate way forward was for the Tribunal to put this evidence out of its mind.

28. The Tribunal was mindful that the Applicant had failed to include the Respondent's street address in his letter of 14 March 2018 serving the Civil Evidence Act Notice and witness statement but noted that they had been emailed on the 14 March 2018 to the email address that the Respondent was using to correspond with the Tribunal. In respect of the other witness statements one was from the FIO and one from Mr HB. The FIO was present at the Tribunal and gave limited evidence. He confirmed that his witness statements and reports were true to the best of his knowledge and belief. He clarified for the Tribunal the fact that, at the time, Freeths and KJD were part of the same organisation. In respect of Mr HB the matters contained in his witness statement were not determinative in assisting the Tribunal to reach its findings.

29. The Applicant had approached C and M for a witness statement in connection with these proceedings but they had not responded to the request, and there was no direct evidence from them before the Tribunal.

Findings of Fact and Law

30. 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.

31. **The Principles**

"**Principle 2** – You must act with integrity.

Principle 4 – You must act in the best interests of each client.

Principle 6 – You must behave in a way that maintains the trust the public places in you and in the provision of legal services.

Principle 10 – You must protect client money and assets."

32. **The SAR**

"**Rule 7 – Duty to remedy breaches**

7.1 Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

7.2 In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund.

Rule 14.5 - You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities.

Rule 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 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

33. **Allegation 1.1 - On the 15 March 2013, whilst a partner at Knights Solicitors LLP he caused an improper transfer of £25,000 from the client ledger account of clients C and M to the bank account of an unrelated client, client H, in breach of Rule 7 and 20.1 of the SAR and all or alternatively any of Principles 2, 4, 6 and 10;**

Allegation 1.2 – On or around 30 May 2013, whilst a partner at Knights Solicitors LLP he inserted or caused to be inserted an incorrect purchase price of £245,000 on a Stamp Duty Land Tax form ("SDLT1 form") submitted on behalf of clients C and M, when he knew that the true purchase price of the property was £745,000, in breach of all or alternatively any of Principles 2, 4 and 6.

The Applicant's Case

33.1 Knights acted for clients C and M in the purchase of a property. The client matter was opened on 30 January 2013. The Respondent had conduct of the purchase. On 15 March 2013, the Respondent made an improper payment of £25,000 from the client account of Knights to the bank account of H. H was also a client of Knights for whom the Respondent acted in respect of loans between him and other clients including a Mr M. The payment to client H was recorded on the C and M client ledger as "Loan Repayment". There was no connection between clients H and C and M. The payment to client H resulted in there being insufficient funds available on the client C and M ledger to pay the Stamp Duty Land Tax ("SDLT") due on completion of their purchase.

33.2 C and M's property purchase completed on 15 March 2013 and the purchase price was £745,000. The SDLT payable was £29,800. The completion statement showed the correct purchase price and the amount of SDLT payable.

33.3 On the 30 May 2013, an SDLT1 form was completed which stated, wrongly that the purchase price was £245,000 with the amount of SDLT due as £2,450.00. The copy SDLT1 form available on the client file was not signed but, it was clear that an SDLT1 form was submitted to HMRC with the wrongly inserted figures, as Knights received a letter from HMRC confirming that they had received a land transaction return from them in which they had assessed the tax payable as £2,450.00. HMRC sent a letter to the clients on the 24 April 2015 in respect of the underpayment of SDLT in the sum of £27,350. The letter indicated that the underpayment was due to the purchase price paid for the property entered on the SDLT return being £245,000 whereas the Land Registry information stated the amount paid for the property had been £745,000.

33.4 The Respondent was interviewed by the FIO and ITM on 13 April 2016, and was asked about these matters. The Respondent's explanation was as follows:

- The payment of £25,000 to H from the C and M ledger was a mistake made entirely by him;

- H was an investor in lots of properties and the £25,000 should have been paid from another ledger;

- The Respondent made a mistake in the SDLT form in respect of the purchase price of the property;

- C and M had re-mortgaged their existing property to effect the purchase, and he had mistakenly calculated the stamp duty based upon the value of the re-mortgaged property and not the purchase;

- The Respondent denied that he deliberately understated the purchase price so he could use the amount due in SDLT to make the payment to H.

33.5 The Applicant wrote to the Respondent on 26 August 2016, and asked for information about his handling of the C and M matter. Aaron and Partners responded on his behalf on 7 October 2016 and asserted that:

- Either the solicitor with conduct, or on a more frequent basis, a paralegal would complete the SDLT forms.

- On this occasion, the Respondent assumed that a paralegal would have completed the forms and the Respondent would have signed it off;

- The Respondent accepted that the ultimate responsibility for the error lay with him as the solicitor and partner with conduct for the matters, although whether it was his error or indeed the paralegal's was unclear;

- The Respondent accepted that the £25,000 transfer from the C and M client ledger to H's account was an improper payment.

33.6 The Regulatory Supervisor at the SRA wrote to Knights on the 25 August 2016 making enquiries about the Respondent's handling of the C and M matter. The Supervisor specifically queried whether Knight's records showed that the Respondent had acted for C and M in a re-mortgage matter. On 26 August 2016, a solicitor at Knights responded to the Supervisor, informing the Applicant that she could not see any record of the Respondent having acted for the clients C and M in a re-mortgage. As the Respondent was not acting for C and M in a re-mortgage whilst at Knights there could have been no confusion between the purchase price and any re-mortgage amount. Knights rectified the cash shortage of £27,350 on 13 November 2015. Mr HB's statement confirmed that when the Respondent had worked at a previous firm he had acted for C and M on three property matters which appeared not to have proceeded, and that no mortgages were taken out in respect of those matters.

33.7 The Respondent made an improper transfer to the bank account of client H from the ledger account of unrelated clients C and M. The Respondent accepted that this was an improper payment. It was not a payment that was made on the instructions of C and M and was in breach of Rule 20.1 of the SAR. Furthermore, the Respondent by

making an improper payment, lacked integrity and failed to protect the funds of clients C and M. The transfer resulted in insufficient funds being available for payment of the correct SDLT on the purchase of the property for C and M. The Respondent failed to act in the best interests of clients C and M and acted in a manner that undermined the trust the public placed in him and in the profession.

33.8 The Respondent under-declared the SDLT payable on C and M's purchase. He knew the true purchase price of the property that C and M was purchasing but inserted, or caused to be inserted a lesser figure, as he knew there to be insufficient funds available on the C and M ledger to pay the SDLT due, having improperly transferred £25,000 to client H. The Respondent calculated the purchase price at a level whereby there was sufficient funds available on the C and M ledger to make the payment of the SDLT to HMRC. This was a deliberate act and not a mistaken one as suggested by the Respondent. He failed to remedy the improper payment he made to H in breach of Rule 7 of the SAR. The insertion of the incorrect figure and the improper payment must have been very close in time. Having made the improper payment the Respondent would have been aware there was insufficient monies to pay the correct amount of SDLT.

33.9 The Tribunal asked whether it was possible that the SDLT1 form had been handwritten in the first instance and that the Respondent's "7" had been mistaken for a "2" when it was typed up. Mr Johal conceded that this was possible, but said that it was inconsistent both with the Respondent's explanation that he had miscalculated the amount, and his assertion that someone else completed the form where after he signed it off.

33.10 The Respondent's explanation that he acted mistakenly was not borne out by the evidence and was not credible. He did not act in a re-mortgage for clients C and M and his explanation in this regard was untrue. He had correctly entered the purchase price in a number of other documents. The Respondent, in inserting or causing an insertion of an incorrect purchase price in the SDLT1 form, when he knew the true purchase price, lacked integrity, absent any deliberate intent. As a minimum, on his case he was responsible for calculating the SDLT payable and "signed off" the SDLT1 form. He should have been aware from the SDLT1 form that the stated purchase price and the SDLT were both incorrect.

33.11 The Respondent's actions in signing the forms were at the least reckless in accordance with the test for recklessness as set out at paragraph 78 of Brett v SRA 2014 EWHC 2974 (Admin). The relevant test was "with respect to (i) a circumstance where he is aware of a risk that exists or will exist and (ii) a result when he is aware a risk will occur, and it is, in the circumstances known to him, unreasonable for him to take the risk".

33.12 The Respondent's actions were not in the best interests of his clients, who were later contacted by HMRC about the incorrect payment of SDLT when it came to light. The Respondent's actions undermined the trust that the public placed in him and the profession. The public expect solicitors to submit accurate forms to HMRC in respect of the stamp duty payable, not to deliberately understate the stamp duty payable, whether that was with the intention of concealing an improper payment to another client, or otherwise.

The Respondent's Case

33.13 The allegations were treated as denied.

33.14 The Tribunal took into account what the Respondent had said in interview and what was said on his behalf in the letter from Aaron and Partners dated 7 October 2016. The Tribunal noted that the Respondent accepted that the transfer from C and M client ledger to Mr H's client ledger was an improper withdrawal from the client account of Knights.

33.15 The Respondent assumed that the SDLT1 form was completed by a paralegal on his behalf and that he would have "signed it off". This, he asserted, would explain the misunderstanding in terms of the figures involved, and why the valuation for stamp duty purposes reflected the basis of the valuation in the re-mortgage property rather than the property being purchased and that he was acting in respect of both properties. The Respondent asserted that this was a mistake and that ultimate responsibility for the error lay with him, whether the error was his or a paralegal's, as he was the solicitor with conduct of the matter.

33.16 In respect of the loan repayment to client H, this was an error and the funds were taken from the wrong client ledger. The Respondent had been following Knights' procedures which involved completing a "chit". The process was that the chit was completed, and then executed by the accounts staff recording entries against the relevant client ledger. As far as the Respondent could recall the systems and processes did not provide any checks or balances. The use of C and M's funds was an error which should not have occurred.

The Tribunal's Decision

33.17 *Allegation 2.1*

33.17.1 The Respondent stated that the transfer of the money from the C and M ledger to client H was a mistake. The Respondent made the payment to client H on 15 March 2013, the date that C and M's purchase completed. This left insufficient monies on the C and M ledger to pay the SDLT due. The cash shortage was not rectified until 13 November 2015 when Knights rectified it. HMRC raised the issue of the underpayment of the SDLT with C and M in April 2015, and the SRA was notified of breaches of the SAR in May 2015. The Respondent was under a duty to remedy any breach of the SAR promptly upon discovery. He did not so. The Tribunal found that the Respondent had not complied with Rule 7 of the SAR.

33.17.2 As set out above the Respondent had used C and M's money for the benefit of client H. Rule 20.1 set out when money could be withdrawn from client account. The payment did not fall within the circumstances of Rule 20.1 and the Tribunal found that the Respondent had not complied with Rule 20.1 of the SAR.

33.17.3 In making a payment of £25,000 from C and M's monies to client H the Respondent did not act in the best interests of each client in breach of Principle 4. It was not in C and M's interest for their money to be paid to an unrelated client. He failed to protect client money and assets in breach of Principle 10 because C and M's money was paid to an unrelated client. The Respondent had not behaved in a way that maintained the trust that the public placed in him and in the provision of legal services, in breach of Principle 6. The public would expect the Respondent to keep C and M's money safe and he had not done so.

33.17.4 Principle 2 required the Respondent to act with integrity. The question for the Tribunal was whether in paying C and M's monies to client H the Respondent had lacked integrity. The Respondent's case was that this was an error that should not have occurred. In Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) the Administrative Court upheld the Tribunal's finding that the appellant solicitor, who had made improper payments out of his firm's client account, had acted without integrity, in breach of Principle 2. In Wingate & Anor v Solicitors Regulation Authority [2018] EWCA Civ 366 Jackson LJ said: "In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members." He cited making improper payments out of client account as one example of a lack of integrity. Whether or not the Respondent's actions had been a mistake or deliberate he had paid client H money that belonged to clients C and M. This had not been corrected for some time and, when it was rectified, it was rectified by the firm and not the Respondent. Client account was sacrosanct, and the Respondent had not met the standards which society or the profession expected from him when he made this improper payment out of client account. He had not adhered to the ethical standards of his own profession. The Respondent had breached Principle 2.

33.17.5 Allegation 1.1 was proved in full beyond reasonable doubt.

33.18 *Allegation 1.2*

33.18.1 Allegation 1.2 was that the Respondent had breached Principles 2, 4 and 6 when he inserted the purchase price of £245,000 in the SDLT1 form, when he knew that the true purchase price was £745,000. The Respondent said that the wrong price was inserted in error, as he was also acting on a re-mortgage for the same clients in the sum of £245,000.

33.18.2 It was unclear as to whether the Respondent had actually completed the SDLT1 form or whether he had signed off on it and it had been completed by a paralegal. The Respondent had initially said that he had incorrectly completed the figure, but had provided a contradictory explanation via his solicitors. The Respondent was the solicitor with conduct of the matter and it was his responsibility to ensure that the form was correct.

33.18.3 There was no evidence that the Respondent was acting for clients C and M on a re-mortgage whilst he worked at Knights, and certainly no evidence he was acting on a contemporaneous re-mortgage at the same time as the purchase. The purchase price had been correctly completed in other documents, such as the Transfer and Completion Statement, which would have been completed at the same time.

33.18.4 Over two years after C and M completed on the purchase, HMRC contacted them to say that there had been an underpayment of SDLT. This was a direct consequence of the Respondent entering the wrong purchase price in the SDLT1 form. When the Respondent entered the wrong purchase price he clearly had not acted in the best interests of clients C and M. Nor had he behaved in a way that maintained the trust that the public placed in him and the provision of legal services. The public would expect a solicitor to get something as important as the purchase price right. The Respondent had breached Principles 4 and 6. The Respondent had allowed a SDLT1 form to be submitted to HMRC which contained the wrong purchase price. He had not adhered to the ethical standards of his own profession. Had he done so he would have ensured that this important form was correctly completed and that the right amount of SDLT was paid. Instead the form contained the wrong purchase price and based on that incorrect figure there was a significant underpayment of SDLT. The Respondent had breached Principle 2.

33.18.5 Although the Applicant had alleged that the Respondent had been reckless as set out in paragraph 33.11 above recklessness was not specifically alleged as part of allegation 1.2. The Tribunal made no finding in respect of whether or not the Respondent had been reckless.

34. **Allegation 1.3 - By causing a payment to be made of £11,667.06 on 28 March 2013 from money held on behalf of his client and father in law, JD, to pay his own personal tax liability, he used the client account of Knights Solicitors LLP as a banking facility in breach of Rule 14.5 of the SAR.**

The Applicant's Case

34.1 Knights acted for client JD in the matter of a grazing license. JD was the Respondent's father-in-law, and the Respondent had conduct of the matter. On 28 March 2013, the Respondent completed a client account payment request in the sum of £11,667.06 from JD's client ledger. The payment request recorded that the payments was for tax and was to be paid to HMRC. This amount was debited from the client account on 28 March 2013, resulting in a client ledger balance of nil.

34.2 In interview on 13 April 2016, the Respondent informed the FIO that the payment was made for his personal tax liability, and that JD had agreed to him making this payment. The Respondent agreed with the FIO that it was not an appropriate payment to make, and agreed that he had used client account as a banking facility.

34.3 Knights informed the FIO that JD had confirmed to them that he had given the Respondent authority to pay his personal tax from his client matter funds. In Aaron and Partners letter dated 7 October 2016 it stated: "Mr Howdle accepts that this was a payment made for his benefit and did not relate to an underlying legal transaction".

34.4 The Respondent used Knights' client account as a banking facility by transferring funds from JD's ledger to pay his own personal tax liability. There was no underlying legal transaction when he requested the payment to be made for his personal tax liability. The Respondent should have sent the money back to JD for him to transfer to the Respondent. The Respondent's use of Knights' client account as a banking facility was in breach of Rule 14.5 of the SAR.

The Respondent's Case

34.5 As the Respondent had not filed an Answer in these proceedings the Tribunal treated the allegation as denied.

34.6 The Tribunal took into account what the Respondent had said in interview and what was said on his behalf in the letter from Aaron and Partners dated 7 October 2016. The Tribunal noted that the Respondent accepted that the payment was made for his benefit, and did not relate to any underlying legal transaction. In 2016 the Respondent accepted the banking facility allegation based upon his personal knowledge of matters and the limited guidance the SRA had issued to those it regulated.

34.7 JD had offered to assist the Respondent when the Respondent drew to his attention his difficulty in paying school fees and a tax liability. JD had previously paid school fees and the Respondent did not consider this a particularly significant amount. JD had authorised the transaction. The Respondent had utilised the funds that were held in relation to the grazing licence matter to minimise the work involved for JD.

34.8 At the time the Respondent did not consider the use of these funds to be the provision of a banking facility. The purpose of the SRA Warning Notice issued on 18 December 2014 was, in part, to explain to solicitors that conduct which was previously acceptable was from that date no longer deemed acceptable by the SRA. The guidance failed to define banking facility and confirmed that making payments upon instruction used to be acceptable. The guidance post-dated the payment in question.

The Tribunal's Decision

34.9 At the date of the payment from JD's ledger to HMRC for the Respondent's own personal benefit Rule 14.5 of the SAR was in force. The Respondent had accepted that there was no underlying legal transaction and had therefore breached Rule 14.5. The Tribunal noted the Respondent's submissions about the fact that guidance had subsequently been published by the SRA on this point. However he had still technically breached Rule 14.5 of the SAR and allegation 1.3 was proved beyond reasonable doubt.

35. **Allegations 1.4 - Between 19 December 2013 and 22 December 2014, whilst a partner at Freeths LLP he made or caused to be made fourteen improper withdrawals of client money for the benefit of unrelated clients, totalling £984,098.82 in breach of Rules 7 and 20.1 of the SAR and all or alternatively any of Principles 2, 4, 6 and 10 of the Principles.**

Allegation 1.5 - Between 8 November 2013 and 9 April 2014, he made or caused to be made eleven improper withdrawals of client money from the client account of KJD Freeths LLP for the benefit of unrelated clients, totalling £1,001,841.69 in breach of Principles 7 and 20.1 of the SAR and all or alternatively any of Principles 2, 4, 6 and 10 of the Principles.

The Applicant's Case

35.1 The Respondent made fourteen improper withdrawals from the client account of Freeths between 19 December 2013 and 22 December 2014, totalling £984,098.82. He also made eleven improper withdrawals from the client account of KJD between 8 November 2013 and 9 April 2014, totalling £1,001,841.69. The improper withdrawals were all in respect of client funds used by the Respondent for the benefit of unrelated clients, other than one matter at KJD which was a referral fee of £100 paid from client rather than office bank account. The amounts of the improper withdrawals ranged from £1,219.67 to £198,959.69.

35.2 These withdrawals resulted in what appeared on the face of it to be a cash shortage of £984,098.82 in the Freeths' client account and £1,001,841.69 in KJD's client account. The shortage was replaced by both firms on discovery of the same in May 2015. The firms rectified the improper withdrawals by reallocating payments to the correct client ledgers in August 2015. In addition, Freeths transferred £203,035.90 from office account to their client bank account in May 2015 to rectify the shortage.

35.3 The Respondent was making improper withdrawals from the client account of Freeths for the benefit of unrelated clients of KJD, and from the KJD client account for the benefit of Freeths' clients. This meant that the improper withdrawals in respect of Freeths and KJD were connected. The FIO prepared detailed schedules incorporating all improper withdrawals at both Freeths and KJD. The Respondent was presented with the schedules by the FIO on 13 April 2016, and he agreed their contents during the interview. The schedules detailed the client account withdrawals that were made from incorrect client ledgers, when funds were not available in the correct ledger due to a previous improper withdrawal from that ledger. In the interview with the FIO the Respondent admitted that he had used client funds for the benefit of different clients, and that they were improper withdrawals.

35.4 The FIO also prepared a schedule analysing the improper payments between Freeths and KJD. The FIO exemplified within both the Freeths FIR and the KJD FIR, three clients matters in each of which the Respondent made improper payments.

Mr and Mrs W- £198,959.69 -KJD FIR

35.5 The firm acted for the above clients in the re-mortgage of a property. The Respondent had conduct of the file, which was opened on 9 September 2014. The client ledger account indicated that on 9 September 2014 completion monies of £198,965.00 were received, resulting in a client ledger account balance of £198,965.00. The client ledger showed that on 9 September 2014 a payment was made of £198,959.69 to Santander for a mortgage redemption of account number 19XXXXX3. The Respondent requested that payment. Mr and Mrs W's client matter file identified that Santander was not involved in the client matter and that the mortgagor was Midshires. The Respondent had used the monies on the Mr and Mrs W ledger for the redemption of a mortgage for unrelated clients of Freeths, Mr and Mrs H. Mr and Mrs H had a mortgage with Santander. Santander confirmed that £198,959.69 had been credited to the account of Mr and Mrs H on 9 September 2014, and that the mortgage had been successfully redeemed. The account number in Santander's letter to Freeths was the same number quoted by the Respondent on the request for payment.

35.6 There were insufficient funds held on Mr and Mrs H's ledger to make the payment of £198,959.69 as funds from their account had been improperly used for the benefit of another client. The improper payment resulted in a client account shortage in respect of the client matter of Mr and Mrs W in the amount of £198,959.69, which was rectified by the firm on 13 August 2015.

Mr and Mrs H - Freeths FIR

35.7 Freeths acted for the above clients in the sale of a property. The Respondent had conduct of the file, which was opened on 2 April 2014. The client ledger account showed that on the 5 June 2014 a payment was made of £167,786.18 to Santander for a mortgage redemption. The electronic payment request dated 4 June 2014 was signed by the Respondent. It stated that the mortgage redemption was for Santander account number 32XXXXX7 which was the account number in respect of another client, Mr Q. The correct Santander mortgage account in respect of Mr and Mrs H was 19XXXXX3 as identified by the client file.

35.8 The monies (£167,786.18) from the ledger of Mr and Mrs H had been used to pay the mortgage redemption on the Mr Q matter. There were insufficient funds on the Mr Q client matter to make this payment, as monies from that client matter had been improperly used for the benefit of an unrelated client. The payment resulted in a client account shortage in respect of the client matter of Mr and Mrs H in the sum of £167,786.18. Freeths rectified the shortage on 17 August 2015.

35.9 The FIO asked the Respondent why he used one client's money for different clients. The Respondent said:

> "I think, I just got to such an ebb, I think the very first few were mistakes and then I was, I just, I just wasn't there enough to sort it out, and one became another, and one became another. There was always the genuine belief that the monies were all in the system and they were all sloshing around somewhere, and I could, if I got 5 minutes or an hour or a week off where I would just re-do all the ledgers and tell the partners this is what's happened, and can we put

> it all right and I'll voluntarily make a whatever. I never got, I just didn't get time to do it. I was just pushed and pushed and pushed for fees, non stop."

35.10 The Respondent was asked when payment was required, how he decided which ledger then to charge it against? He replied:

> "I, I, I don't know what my thought process was at the time. I, I, I can't remember. I must have just, I must have just seen a pot of cash and think ok, well that must be from there, there and there and try to work it out and marginalise it in my head where, where each one should be, and that will need to go from there and then that can be put back in there…."

35.11 The Respondent was asked whether he was aware that was incorrect and wrong at the time? The Respondent replied:

> "Mmm. I never had the -yes, but that way it was in my mind was in this- I mean this is all wonderful around this table today and I feel like the worst person since sliced bread that even, even having to say this sort of thing, but when you're in the office for a day, half a day with five hundred clients shouting at you with four hundred an ninety nine brokers shouting at you and the boss saying when are the fees coming through that that, doing that becomes a lot easier than one file and Mr A and Mr B and, and rationalising it like. No excuse at all, whatever but that's the way it was at the time."

35.12 The Respondent was asked, the following question "OK, So say client A needed a payment but you knew then did you, that all though it was there in general client account, it actually belonged to client B. Were you aware that, that was the case?" The Respondent replied- "yeah of course". He was subsequently asked "yeah, and were you aware that, that was wrong and incorrect? He replied "yes". He was then asked - to do that at the time? The Respondent's response was that recorded at 35.11 above.

35.13 The Respondent was asked about the improper payments on the schedules, staring with the first payment on the schedules to Client M. The following exchange was relevant:

> "**Respondent**: But that is where it started
>
> **DR**: Right
>
> **Respondent:** That was the first one and then it seemed to snowball from there.
>
> **SW**: So you're saying that was a mistake
>
> **Respondent**: That was a mistake that one
>
> **SW**: rather than a

> **Respondent:** Yeah, and then I just- then, then as I've explained prior, previously, it just - one after another after that.
>
> **SW:** Because the next one on the schedule is the payment that should have been from M, which you then used in C?
>
> **Respondent:** Yeah and then it was, it was. it was just, one then one, for the next, one for the next.
>
> **SW**: So although the first one was a mistake, by the time you then paid the M amount from C, you were aware that was
>
> **Respondent:** I can't remember at what point, but I must have been very, sharpish after that, that it was"

35.14 The Respondent was asked whether it was dishonest to use client money for the benefit of other clients in this way and cover it up. The Respondent said at the time he did not think it was dishonest because he thought the funds were in the firm to pay out. When asked whether he still thought that at the date of interview, the Respondent did not directly answer the question and said it looked horrendous. He accepted he was wrong in using the ledgers but denied he was dishonest. He accepted that he did not act with integrity and accepted that he had been reckless.

35.15 The Respondent made twenty five improper payments from the client accounts of Freeths and KJD for the benefit of unrelated clients. The payments amounted in total to almost £2,000,000. The payments were made over the period of a year. Although the first transfer may have been a mistake as the Respondent claims, the withdrawals made thereafter were intentional.

35.16 The Respondent was in breach of Rule 20.01 and Rule 7 of the SAR as he made improper withdrawals from client account that caused cash shortages, and he failed to remedy the shortage. His actions led to a shortage of almost £2,000,000 in client account and, even after the firms had re-allocated payments to the correct ledgers, they were still required to make a payment of some £200,000 into the client account.

35.17 The Respondent admitted in interview with the FIO that he lacked integrity, although he subsequently denied that he lacked integrity in the letter from Aaron and Partners.

35.18 The Respondent intentionally made withdrawals of clients' funds and used those for the benefit of other clients that were not entitled to them. He did not seek permission from the clients to use their monies in this way. He failed to protect client money as he used it without clients' permission, and caused a huge shortage in client account. He failed to act in the best interests of his clients and acted in a manner that undermined public trust in him and in the profession.

35.19 Mr Johal observed that, far from the withdrawals being mistaken, the improper payments were always made from accounts where there were sufficient monies to make the payment without creating a debit balance on the client ledger. He had deliberately made payments from client monies that he knew were not for the benefit

of the client(s) whose money it actually was, and this lacked integrity in breach of Principle 2.

The Respondent's Case

35.20 As the Respondent had not filed and Answer in these proceedings the Tribunal treated the allegation as denied.

35.21 The Tribunal took into account what the Respondent had said in interview, and what was said on his behalf in the letter from Aaron and Partners dated 7 October 2016. The Tribunal noted that the Respondent stated that he viewed the client account as being a singular pot of money, rather than thinking of individual client ledgers as required by the SAR. As a consequence he made withdrawals which with hindsight he accepted were improper. He came to this view following the removal of the excessive pressure to which he was subject, and the feelings of anxiety and stress eased by no longer working for Freeths or KJD. The Respondent said he had made accounting errors which at the outset were pure mistakes. He had client authority to make the withdrawals but not against the incorrect client ledgers.

35.22 In the October 2016 letter the Respondent accepted that he had breached Rules 7 and 20.1 but did not accept that he had breached Principle 2 because of his own mental state at the relevant time, and his belief that nothing more than an administrative accounting error was occurring, and that it would be remedied as and when he had some time in the office. The Respondent said that matters simply snowballed and overwhelmed him due to a combination of work related pressures, personal pressures and a serious medical issue with regards to a family member.

35.23 At all times the Respondent was following the firms' procedures when making and authorising payments. At Freeths the fee earners made their own payments requests and authorised them. There were no checks and balances.

The Tribunal's Decision

35.24 The Respondent had made fourteen improper payments at Freeths and a further eleven at KJD. None of these twenty five payments were made in the circumstances permitted by Rule 20.1. The Respondent said that the improper payments were mistakes, and that the errors would be rectified when he had some time in the office. He accepted that he had breached Rules 7 and 20.1. He had not remedied the breaches promptly upon discovery. The Tribunal found that Rules 7 and 20.1 had not been complied with in respect of the matters alleged in allegations 1.4 and 1.5.

35.25 By making withdrawals against the incorrect ledgers the Respondent had not acted in the best interests of each client, in breach of Principle 4. Nor had he protected client money and assets in breach of Principle 10. The Respondent had not behaved in a way that maintained the trust that the public placed in him and in the provision of legal services in breach of Principle 6. The public would expect the Respondent to keep each client's money safe and he had not done so. The Tribunal found that Principles 4, 6 and 10 had been breached in respect of the matters alleged in allegations 1.4 and 1.5.

35.26 The Respondent had taken a cavalier approach to client money. At best he had made mistakes and had not rectified them. He had not brought the errors to anyone else's attention. He had carried on making improper withdrawals from the wrong client ledgers. The Tribunal was sure that in behaving in this way the Respondent had lacked integrity in breach of Principle 2 in respect of the matters alleged in allegations 1.4 and 1.5.

35.27 Allegations 1.4 and 1.5 were proved in full beyond reasonable doubt.

36. **Allegation 2 - Dishonesty was alleged against the Respondent in respect of allegations 1.2, 1.4 and 1.5; however, proof of dishonesty was not an essential ingredient for proof of the allegations.**

The Applicant's Case

36.1 In the Rule 5 Statement the Applicant had alleged that the Respondent's actions in respect of allegation 1.1 were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings i.e. the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12: the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

36.2 In the Supreme Court case of Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67, it was said by Lord Hughes (with whom all the other Justices who heard the case agreed) that the test in Ghosh "does not correctly represent the law and that directions based upon it ought no longer to be given". Rather, the correct test was as set out in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378, as clarified by the Privy Council in Barlow Clowes International Ltd v Eurotrust International Ltd [2006] 1 WLR 1476 namely "Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards".

36.3 Accordingly, Lord Hughes 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."

36.4 The Applicant invited the Tribunal to apply the test in Ivey. The question for the Tribunal was whether the Respondent was objectively dishonest by the standards of ordinary decent people having regard to his state of knowledge and belief as to the facts at the relevant time. Mr Johal stated that the Applicant had written to the Respondent to update him as to the dicta on the test for dishonesty in Ivey.

36.5 The particulars of dishonesty, in respect of allegations 1.2, 1.4 and 1.5 and details of the Respondent's knowledge are set out below:

36.6 *Allegation 1.2*

36.6.1 The Respondent had conduct of the C and M matter and knew the true purchase price of the property they were purchasing. He admitted that he calculated the SDLT and he would have signed off the SDLT1 form containing the incorrect purchase price.

36.6.2 The Respondent deliberately decided that he would put a purchase price of £245,000 on the SDLT1 form as that would reduce the amount of SDLT payable to a level whereby there was sufficient funds for the payment to be made from the C and M account.

36.6.3 The Respondent knew that there were insufficient funds in the C and M account to make the payment of SDLT that was due (£29,800 on a purchase of £745,000) as he had made an improper payment from that account of £25,000 to client H.

36.6.4 The Respondent's explanation that he had mistakenly calculated the SDLT payable on the basis of a re-mortgage that he was handling on behalf C and M was false as he never handled a re-mortgage for them.

36.7 *Allegation 1.4 and 1.5*

36.7.1 The Respondent intentionally used client monies for the benefit of other clients without their permission;

36.7.2 The Respondent's actions can be described as a course of conduct as he made twenty five withdrawals of clients' funds amounting to nearly £2,000,000 over a period of a year;

36.7.3 The Respondent knew that his use of client Ledgers was wrong. Although all clients' monies were in a general client account, he knew that when he was making a payment for client A, that it actually belonged to client B. He knew that his actions were incorrect.

36.7.4 The Respondent failed to inform anyone in Freeths or KJD as to what he was doing, nor did he seek to remedy matters.

36.7.5 The Respondent was a partner and experienced solicitor, having been practising for almost twenty years. He would have been aware that client

account is sacrosanct and that he could not use one client's money for the benefit of another client without their permission;

36.7.6 The Respondent's conduct led to a shortage of over £200,000 after Freeths and KJD reallocated payments to the correct ledgers.

36.8 Mr Johal did not consider that it was necessary to formally apply to amend the Rule 5 Statement to refer to the test in Ivey but would make the application if the Tribunal so wished.

The Respondent's Case

36.9 The Respondent denied dishonesty. He said that at the time he was very stressed and there were many factors outside of work, and it was too much for him to cope with.

The Tribunal's Decision

36.10 The Tribunal did not consider it necessary for the Rule 5 Statement to be formally amended. Dishonesty was pleaded and the only change was to the case law relied on from the test in Twinsectra to the test in Ivey, which the Tribunal had to apply in any event.

36.11 *Allegation 1.2*

36.11.1 The Respondent had provided two explanations for the insertion of the incorrect figure into the SDLT1 form. He had not attended the Tribunal and the Tribunal had not been able to explore with him his explanations and assess their credibility. It was not clear whether the Respondent had inserted the wrong figure, or whether a paralegal had, and he had not spotted the error. The improper payment of £25,000 of monies from C and M's client ledger to client H, and the fact that this meant that there were insufficient monies on the client ledger to pay the correct amount of SDLT, pointed towards dishonesty in the insertion of the incorrect figure in the form. However, the Tribunal could not be sure and found that dishonesty was not proved beyond reasonable doubt in respect of allegation 1.2.

36.12 *Allegations 1.4 and 1.5*

36.12.1 The Tribunal had to establish the Respondent's actual state of mind as to knowledge or belief as to the facts. The Tribunal was sure that the Respondent used client monies for the benefit of other clients without their permission, and that he knew that he was doing this. This was evidenced by the fact his actions amounted to a course of conduct during which he made twenty five withdrawals of clients' funds amounting to nearly £2,000,000 over a period of a year. The Respondent knew that when he was making a payment for client A, the money he was using actually belonged to client B. The Respondent knew that he had not told anyone in Freeths or KJD what he was doing and that he had not sought to remedy matters. The Respondent, even if he did not know the detail of the SAR, would have

known as a partner and experienced solicitor, that client account was sacrosanct and that he could not use one client's money for the benefit of another client without their permission. The Tribunal found that this was the Respondent's actual state of mind as to knowledge or belief as to the facts.

36.12.2 Having established his actual state of mind as to knowledge or belief as to facts, the question was whether the Respondent's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. The Tribunal was sure that by the standards of ordinary and decent people the Respondent's conduct was dishonest. Ordinary and decent people would expect the Respondent only to use client money for the benefit of the client(s) the money belonged to, and not to make improper transfers. Dishonesty was proved beyond reasonable doubt in respect of allegations 1.4 and 1.5.

Previous Disciplinary Matters

37. None.

Mitigation

38. The pressures felt by the Respondent precluded any effort to seek support, save for referring to the stresses and strain he was under to colleagues, Miss JG and Miss DC. The Respondent said that his distress would have been clear given that he was ill with high blood pressure and was walking round with a blood pressure monitor on in the office on the odd occasion he was present in the office. It seemed to the Respondent that Freeths was simply not interested in any personal pressures or work related matters; they were purely interested in billing sufficient funds each month to achieve target, and there was no let-up in the request for more and more funds to be billed.

39. None of the three firms had given the Respondent any training in the SAR. The last occasion on which he recalled receiving training on the SAR was prior to admission. The Respondent accepted his own professional responsibility to maintain his knowledge but simply misunderstood the position and how client account worked. The Respondent accepted that he had made serious errors. He accepted responsibility for those errors by the admissions he made during the course of an interview with the SRA without the benefit of legal advice. According to Aaron and Partners, the Respondent and SRA appeared to have been talking at cross purposes at interview. The Respondent was a vulnerable individual who would say anything to remove the stress factors arising in relation to the interview scenario.

40. A close family member of the Respondent's had been involved in a horrendous accident and had to have surgery. The Respondent was under stress and there was no empathy at Freeths. Not one of the other four partners even asked how the operation had gone. His workload had increased. The amount of work swamped him and it was overwhelming. He had discussed it with one of the partners at Freeths and was given extra typing support towards the end, but this was insufficient.

41. The Respondent's health had suffered. His marriage had broken down and he was disenchanted by the regulatory process. He pointed out that some of the allegations against him emanated from a series of events that took place almost five years ago.

Sanction

42. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition) when considering sanction.

43. The Tribunal assessed the seriousness of the misconduct. In terms of culpability the Tribunal could not identify the Respondent's motivation. In respect of the improper payments the Respondent's case was that the first few were mistakes; even if this was the case, after the first few the improper payments were planned. The Respondent had held client money and this placed him in a position of trust. He acted in breach of that position of trust. He had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent was an experienced solicitor and was a partner. There had been harm caused by the misconduct as identified below. The Respondent had not deliberately mislead the regulator. He was entirely culpable.

44. The Respondent's misconduct had harmed public confidence in the profession. The public would expect a solicitor who was holding their money to safeguard their money and only use it for their matter. The firms had had to make repayments, as there were shortfalls on client account, so they had also been harmed. C and M had thought that the correct amount of SDLT had been paid, and had then received correspondence to say that it had not been paid, which would have caused them concern. The Respondent's conduct was a total departure from the standards of integrity, probity and trustworthiness expected of a solicitor. The harm in respect of the facts underlying allegations 1.1, 1.2, 1.4 and 1.5 was intended and reasonably foreseeable. Whilst the transfer of JD's monies was a breach of the SAR, there was no actual harm caused by this payment which JD had authorised.

45. There were a number of aggravating factors. Dishonesty had been alleged and proved. The misconduct in respect of the improper transfers had become deliberate, calculated and repeated. The misconduct had continued over a period of time. Some of the Respondent's clients were releasing equity from their homes and may have been potentially vulnerable. The Respondent was in a position of trust. The Respondent knew or ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. The misconduct would have impacted on C and M, and all three firms would have suffered reputational damage.

46. In terms of mitigating factors the Respondent had made admissions in interview, but he had then sought to distance himself from these in the correspondence sent by his solicitors. The Tribunal considered that the Respondent had some limited insight. He had co-operated with the investigating body.

47. The Tribunal weighed up the overall seriousness of the allegations found proved. The aggravating factors were of more significance than the limited mitigating factors. The Tribunal did not consider allegation 1.3 to be particularly serious when weighed against the seriousness of the other allegations found proved. Client account should be

sacrosanct, and every solicitor should know that it is to be treated as sacrosanct. The Respondent had made numerous improper payments from client account, and that made his misconduct particularly serious, especially in terms of public confidence and the reputation of the profession.

48. The Tribunal had to determine the appropriate sanction. In doing so it started from the least serious sanction available, namely No Order. Given that dishonesty had been found proved No Order, Reprimand, Fine and Restriction Orders were insufficient sanction. These sanctions did not reflect the seriousness of the misconduct, nor did they provide the necessary protection to the reputation of the profession and the public. The Tribunal considered whether a Suspension would be sufficient sanction, but concluded that public confidence in the profession and the seriousness of the misconduct required a greater sanction. A Suspension including an Indefinite Suspension was not the fair or proportionate sanction given the Tribunal's findings. The Tribunal noted that when the Respondent instructed solicitors they were instructed to deflect the blame in other directions, and the Respondent had rowed back from what he had accepted in interview. He had tried to separate himself from the misconduct. The seriousness of the misconduct, the protection of the public and the protection of the reputation of the profession required the Respondent's name to be Struck-Off the Roll of Solicitors. Absent exceptional circumstances or compelling personal mitigation this was the appropriate sanction.

49. The most serious misconduct involves dishonesty. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)). In deciding whether or not the Respondent's misconduct fell into the small residual category where Strike Off was disproportionate, the Tribunal had to consider the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others. The Respondent had made numerous improper transfers from client account over a period of time. His conduct had become deliberate even if at the outset the misconduct was due to mistakes. There was no evidence that the Respondent had benefitted from the improper transfers. However there had been deficits in client account which had not been accounted for, and his misconduct had had an adverse effect on the firms and on C and M. There were no exceptional circumstances in this case.

50. In terms of personal mitigation the Tribunal was aware that this may be relevant and may serve to reduce the nature of the sanction and/or its severity. The Tribunal took this into account before finalising sanction. The Respondent had said that he was overworked, stressed and that a family member had had a significant accident. The Respondent had not produced any medical evidence to support what he said about his health. The Tribunal was unable to conclude that the misconduct arose at a time when the Respondent was affected by physical or mental ill-health which affected his ability to conduct himself to the standards of a reasonable solicitor. The appropriate sanction remained for the Respondent's name to be Struck Off the Roll of Solicitors.

Costs

51. The Applicant applied for its costs, supported by a costs schedule in the sum of £27,346.27. Mr Johal submitted that this sum needed to be reduced slightly as the hearing had not lasted for the seven hours claimed. The Tribunal had found all but one of the allegations proved. The consideration of that allegation had not materially increased the costs incurred in terms of preparation or the length of the hearing. The Tribunal decided that the Respondent should pay the Applicant's costs and proceeded to assess costs. Given the fact that the Tribunal had disregarded Mr MB's statement, and given that the hearing had lasted approximately five hours, the Tribunal decided that the costs should be reduced to £27,000. The Respondent had not provided any evidence in respect of his means. In the circumstances the Tribunal did not consider it appropriate for the amount of costs to be reduced. The Tribunal ordered that the Respondent pay the costs of and incidental to this application and enquiry fixed in the sum of £27,000.

Statement of Full Order

52. The Tribunal Ordered that the Respondent, CHRISTOPHER MARK HOWDLE, 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 £27,000.00.

Dated this 17th day of May 2018
On behalf of the Tribunal

R. Nicholas
Chairman