SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11837-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KULDIP SINGH Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr T. Smith
Mrs C. Valentine

Date of Hearing: 5 & 6 February 2019

Appearances

Mr Gareth Thomas, Counsel of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. It is alleged against the Respondent that, in his capacity as a manager, Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") of SJ Solicitors LLP, 604 Green Lane, Ilford, Essex, IG3 9SQ (ID number: 551166) ("the firm") from 2011 until 20 June 2017:

1.1 From in or around 2011, breached Section 41 of the Solicitors Act 1974 (as amended) by employing or remunerating Mr O, who had been disqualified from acting as a solicitor, in connection with his practice as a solicitor:

1.1.1 without the written permission of the SRA;

1.1.2 having applied for but been refused permission from the SRA to do so.

And in doing so, he breached any or all or of Principles 2, 6 and 7 of the SRA Principles 2011.

1.2 In May 2017, used funds held on trust for Client A in respect of other clients' matters in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("SAR 2011") and in doing so breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011.

1.3 In or around May 2017:

1.3.1 caused or allowed a shortfall to arise on client account in breach of Rule 1.2 and Rule 20.6 of the SAR 2011;

1.3.2 failed to replace the shortfall on client account promptly on discovery in breach of Rule 7 of the SAR 2011.

And in doing so he breached any or all of Principles 6 and 10 of the SRA Principles 2011.

1.4 Between around June 2015 and June 2016, acted in a situation where there was a client conflict or significant risk of a client conflict, by acting for the borrower and lender in the following loan transactions:

1.4.1 Client B's loan to Client C;

1.4.2 Client B's loan to Client D;

1.4.3 Client B's loan to Client E;

And in doing so, he breached Outcome 3.5 of the SRA Code of Conduct 2011 and any or all of Principles 3, 4 and 6 of the SRA Principles 2011.

1.5 Between June 2015 and December 2016:

1.5.1 Failed to act in accordance with Client B's instructions and in doing so breached Principle 4 and 5 of the SRA Principles 2011;

1.5.2 Failed to return money held on client account for Client B when there was no proper reason to retain those funds in breach of Rule 14.3 of the SAR 2011 and in doing so, breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.

1.6 By accepting instructions to act for Client B in the loan transaction referred to at allegation 1.4.3 above, acted in a situation where there was an own interest conflict or a significant risk of an own interest conflict and in doing so breached any or all of Outcome 3.4 of the SRA Code of Conduct 2011 and Principles 3 and 6 of the SRA Principles 2011.

1.7 From around March 2016, failed to maintain adequately or at all, the firm's books of account in breach of Rule 29.1 and 29.12 of the SAR 2011 and any or all of Principles 6 and 8 of the SRA Principles 2011.

1.8 In his capacity as the COFA at the firm he failed to ensure or take adequate steps to ensure compliance with the firm's regulatory obligations under SAR 2011 in breach of his obligations under Rule 8.5 of the SRA Authorisation Rules 2011 and Principle 7 of the SRA Principles 2011.

2. By reason of the conduct alleged at paragraph 1.1 and 1.5.2 above, acted dishonestly. However, dishonesty is not an essential ingredient of the allegation at paragraph 1.1 or 1.5.2, and it is open to the Tribunal to find the allegation proved without making a finding of dishonesty.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 18 June 2018 with Appendices 1-3 and exhibit LXS1
- Witness statement of DT dated 5 February 2019 with exhibits DT1 and DT2
- Bundle of recent correspondence (numbered 682–690 and following on from the hearing bundle)
- Judgment in the case of Dean v Allin and Watts (a Firm) [2001] EWCA Civ 758
- Judgment in Tribunal case of Bogan no. 10973-2012
- Applicant's schedule of costs relating to investigation, preparation and presentation of the hearing on 5 February 2019 dated 25 January 2019

Respondent

- Emails included in exhibit LXS1 above

Preliminary and other issues

4. The Respondent was not present. For the Applicant, Mr Thomas obtained permission of the Tribunal to hand up a bundle of recent correspondence (numbered 682–690 and following on from the hearing bundle) addressed to the Respondent. Mr Thomas submitted that the Respondent had asked in emails to the Applicant dated 5 April 2018

and 15 May 2018 that his last known address should not be used for personal reasons. At a Case Management Hearing ("CMH") in June 2018, the Tribunal had given permission for the Respondent to be served by email as he requested.

5. Emails had been sent to the Respondent by the Applicant and then by Capsticks Solicitors LLP ("Capsticks"). On 17 July 2017, Capsticks had emailed a letter to the Respondent following certification of a case to answer by the Tribunal. The letter constituted the first of a number of written notices under Rule 14(2) of the Solicitors (Disciplinary Proceedings) Rules 2007. It referred to the evidence of Ms CR. A follow up letter was sent by Capsticks on 23 July 2018. On 13 August 2018, the Respondent emailed Capsticks including:

> "I have returned from India and can be contacted on my mobile. I still recovering from depression and anxiety. I am not sure if I am in a position to address the correspondence or have required mental state to face a trail (sic) at the SDT…"

Capsticks tried to contact the Respondent on 13 and 14 August 2018 and followed up on 28 August 2018. On 30 August 2018, Capsticks invited the Respondent to provide medical information and consent for his medical records to be shared with the Applicant. On 30 October 2018, Capsticks emailed the Respondent pointing out that they had not heard from him since before a CMH arranged by telephone on 4 September 2018 in which he had not participated. Capsticks continued to write to the Respondent including on 10 September 2018 when a further Notice was served under Rule 14(2) regarding the witness statement of Mr DT and on 16 November 2018 adding the statement of Mr BK. The one way correspondence continued; on 8 January 2019, Capsticks sent the Respondent a draft hearing timetable created on the basis that he might still chose to attend the hearing and also a certificate of readiness. On 14 January 2019, the Respondent was sent the witness statements of the Forensic Investigation Officers ("FIOs") Mr Carruthers and Mr Middleton-Cassini. The hearing bundle was also sent electronically. An email letter to the Respondent from Capsticks dated 16 January 2019 pointed out the hearing date and that no response had been received to the previous emails. He was reminded about the Rule 14(2) Notices and asked to confirm whether or not he required the witnesses to attend. He was advised:

> "If I do not receive a response from you, I will invite the Tribunal to admit the statements as read. This means that the witnesses will not be required to attend the hearing in person."

The situation was advised to the Tribunal as a courtesy with a copy of the emailed letter to the Respondent. (A copy of the Applicant's schedule of costs was also sent on 28 January 2019.)

6. Mr Thomas applied for the Tribunal to proceed in the absence of the Respondent. Mr Thomas referred to the case of R v Hayward, Jones and Purvis [2001] QB 862, CA which set out the principles to which the Tribunal should have regard in exercising its discretion to proceed; it had to be undertaken with the utmost caution. The Tribunal could be confident that the Respondent was aware of the proceedings and that he had been given the opportunity to provide medical information which might be relevant and he had not done so. He had been written to at the email address of his choosing and

from which he had contacted the Applicant. The Respondent had not engaged in the proceedings; he had not filed an Answer. He had made no application to adjourn and there was no reason to believe that an adjournment would secure his attendance at a future hearing. Mr Thomas submitted that the Respondent had a right to attend that hearing but that right could be waived and he had done that. The Tribunal had to consider fairness but this included to the Applicant which was represented and ready to proceed with its witness in attendance. There was also the public interest in the proceedings going ahead; for the hearing to be held promptly, to uphold the standards of the profession and to protect the public Mr Thomas was not able to say whether any emails sent to the Respondent had bounced back or if the Applicant required a notification if an email was opened but he emphasised that the emails had been sent to an address which the Respondent had used.

7. The Tribunal had regard to the guidance in the case of Hayward and to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which provides:

> "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 the Respondent was aware of the proceedings and of the hearing date; he had been served by email at an address to which he requested service. The Tribunal determined that the Respondent had voluntarily absented himself from the hearing and that it would proceed in his absence.

8. Mr Thomas drew the Tribunal's attention to the Civil Evidence Act Notices ("CEA") which had been served on the Respondent and to which there had been no response, in respect of the evidence of the witnesses and asked the Tribunal to accept their evidence. In the circumstances he intended to call only one of the Applicant's witnesses, Mr James Carruthers. The Tribunal accepted the witness statements.

9. Mr Thomas also referred to certain pages of the hearing bundle which were blank. He had already provided replacement pages 58, 140 and 142. Two other blank pages had been drawn to his attention; 225 and 233. After taking instructions, Mr Thomas submitted that 225 was believed to be intentionally blank and 233 was blank because the preceding page represented the end of a document and a new document commenced at 234. The appendices to the FI Report included a statement provided by the Respondent which was incomplete. With the permission of the Tribunal a correct and complete version was substituted when Mr Carruthers gave evidence.

10. The Tribunal also considered position regarding the witness statement of Mr DT dated 28 September 2015 in other court proceedings which concluded with a statement of truth signed by someone else. Mr Thomas was instructed that Mr DT had been contacted by telephone and the Applicant was satisfied that this was in fact Mr DT's statement. The Tribunal indicated that it would not rely on a telephone conversation/note and asked Mr Thomas to seek to obtain a statement of truth before the conclusion of the proceedings. While the Tribunal had no doubt that Mr DT had signed the statement, as this was a case where CEA Notices were relied on the Tribunal was not sure it could give the statement much weight in its present form. There was

also another witness statement by Mr DT which had been provided for these proceedings dated 22 July 2018 which stated that the witness statement in the other litigation was true but itself bore no statement of truth. On the second day of the hearing a witness statement was provided from Mr DT dated 5 February 2019, to which were exhibited both of the witness statements in question, in which Mr DT confirmed that he signed the witness statement dated 28 September 2015. He also confirmed that his witness statement dated 22 July 2018, prepared for these proceedings was true to the best of his knowledge, information and belief.

11. Paragraph 16 of the (final) Forensic Investigation ("FI") Report referred to comments said to have been made to Mr Middleton-Cassini by the Respondent about the status of Mr O. The Tribunal refused permission to Mr Thomas to make submissions beyond what was said in the paragraph as a handwritten note referred to in evidence by Mr Carruthers and said to have recorded the comments was not before the Tribunal.

Factual Background

12. SJ Solicitors LLP ("the firm") was authorised as a Limited Liability Partnership law practice and traded from a single office in Ilford, Essex. According to the annual renewal form submitted for the practising year 2016/2017, the firm's main practice areas were: children – 30%, immigration – 26%, non-litigation (other) – 10%. The other areas listed include family, employment, landlord and tenant, property and wills.

13. At all material times, other than where set out specifically below, the Respondent was a manager holding 100% of the equity at the firm. Although the Respondent held 100% of the equity, Ms CR was a member and consultant of the firm from 18 December 2013 until 20 June 2017.

14. The Respondent was born in 1965 and was admitted to the Roll on 17 January 2000. The Respondent's practising certificate was suspended.

15. The firm was created on 13 October 2010 and started trading on 11 January 2011.

16. The Respondent was a manager at the firm from 11 January 2011. The Respondent was the firm's COFA and COLP from 10 December 2012.

17. The Applicant received seven separate reports about the firm from solicitors acting on behalf of former clients and professionals who had dealings with the firm. In consequence, a duly authorised officer of the Applicant commenced an inspection of the books of accounts and other documents of the firm on 7 February 2017. In the course of that investigation, the Respondent was interviewed on 13 March 2017, 27 March 2017 and 12 April 2017 and transcripts of those interviews were before the Tribunal. The investigation culminated in an Interim Report dated 2 June 2017 ("the Interim Report") and Final Report dated 25 September 2017 ("the FI Report").

18. At the time of completing the Interim FI Report, the Forensic Investigation Officer ("FIO") Mr James Carruthers identified that the books of account were not up to date and that there was a minimum shortfall on client account as at 17 May 2017 in the sum of £231,330.13.

19. When the FIO completed the FI Report, additional concerns had been identified, including: the employment and remuneration of Mr O, who had previously been struck off the Roll of solicitors, the Respondent's conduct when acting in three loan transactions from Client B to each of Client C, Client D and Client E, including conflicts of interest.

20. On 16 June 2017, the Adjudication Panel resolved to intervene into the firm and made the decision to refer the Respondent to the Tribunal.

21. The Respondent was sent an Explanation With Warning ("EWW") letter on 14 November 2017. The Respondent did not respond to the EWW.

Allegation 1.1

22. Mr O was previously admitted to the Roll of solicitors. He was struck off the Roll of solicitors following a Tribunal hearing on 17 April 2008 which determined that Mr O had allowed his client account to be used as a banking facility, improperly withdrawn client money from the client account and created a shortfall on client account.

23. The Respondent applied to the Applicant in November 2014 for permission to employ Mr O as a legal assistant. The Respondent was informed by correspondence dated 2 December 2014 that the Adjudicator's decision was to refuse permission for the firm to employ Mr O.

Allegation 1.2

24. The firm only had one client account. The client account was named: "SJ Solicitors LLP – clients account" and was with Lloyds Bank: The Respondent confirmed to the FIO that he operated the client and office bank accounts alone when he was first interviewed.

25. The firm acted as the conveyancer for Client A in connection with the sale of Property 1 in C Crescent The conditions of sale recorded that the sale completed on 2 May 2017 and Client A's property sold for £190,000.00.

26. The firm's client account bank statement recorded that the sum of £189,873.97 was received into client account for that matter on 2 May 2017, which was consistent with that being the date of completion. The narrative stated "F/Flow BB Legal 150 [C] Cres". Various payment were then made out of client account which gave the FIO concern.

Allegation 1.3

27. When the FIO inspected the firm in May 2017, it was not possible to calculate the full extent of the firm's liabilities to clients due to the condition of the books of account (see allegation 1.7). Therefore, the FIO constructed a minimum cash shortfall using an extraction date of 17 May 2017. As at 17 May 2017 the available client account balance was £15,125.76.

28. The FIO reviewed seven client files and constructed the funds that should have been held in client account on those matters (10069-2; 10169-1; 10378-1; Client H;

10380-1;10393-1; 10404-1). As set out in the Interim Report, the FIO identified, from a review of those client files, the ledgers (where available) and the client account transactions on the bank account that, for those seven matters, there should have been a total of £246,455.89 available in client account to settle liabilities. Given that the client account balance was £15,125.76, this created a minimum cash shortfall of £231,330.13 as at the extraction date; 17 May 2017. The Respondent had not replaced any of the shortfall by the time of the intervention.

Allegation 1.4 and 1.5.1

29. From February 2015, B offered short term secured loans as part of its business. The Respondent introduced Clients C, D and E to Mr BK a director of B. Mr BK was the Respondent's wife's cousin and he provided instructions to the Respondent on behalf of B. It was disputed as to whether B was a client of the firm in respect of the loans.

30. Client C borrowed £530,000.00 from Client B in or around June 2015. Client D borrowed £225,000 from Client B in or around April 2016. Client E borrowed £355,000 from Client B in or around July 2016. In each case Client B took security for the loan by way of the grant of a charge over property belonging to the client and a guarantee given by the client or (in the case of Client C, which was a company) its director.

31. Client B's evidence was that the money for each loan transaction was transferred into the firm's client account.

The loan from Client B to Client C - £530,000 – June 2015 (allegation 1.4.1)

32. Client B assessed Client C's requirement for a bridging loan and offered to provide a short term loan of £530,000 to Client C for three months. The terms of the loan offer were set out in Client B's offer letter document to Client C dated 16 June 2015. Client B confirmed the proposed terms of the loan to the Respondent in a separate letter also dated 16 June 2015. The security stipulated by Client B in the offer letter included:

- a charge over the land owned by Client C (Land A);
- a charge over Property 1a, the residential property of Client C's director, Mr TB;
- a personal guarantee from Mr TB (Client C's director).

After confirming the proposals of the loan agreement, Client B transferred the principal loan amount to the firm's client account in three payments recorded in the ledger between 16 and 17 June 2015 (£148,000, £180,000 and £202,000). These transfers could also be correlated with the client account bank statements.

The loan from Client B to Client D - £225,000 – April 2016 (allegation 1.4.2 and 1.5.2)

33. Client B assessed Client D's requirement for a bridging loan and offered to provide a short term loan of £250,000 to Client D for 3 months. The terms of this loan offer were set out in Client B's offer letter to Client D (undated). The security stipulated by Client B in the offer letter included:

- a first charge over Property 2;
- a personal guarantee from Client D.

After confirming the proposals of the loan agreement, Client B transferred the principal loan amount to the firm's client account. The loan fell due for repayment at least on completion of the sale of Client D's property on or around 4 April 2016. Repayment of the loan was made on 5 December 2016.

The loan from Client B to Client E - £355,000 – July 2016 (allegations 1.4.3 and 1.6)

34. Client B assessed Client E's requirement for a bridging loan and offered to provide a short term loan of £355,000 to Client E for six months. The terms of this loan offer were set out in Client B's offer letter to Client E, which was sent to the Respondent as an attachment to a letter dated 28 July 2015. Client E received the loan money and then repaid the loan directly through a separate firm of solicitors in or around May 2017. Mr BK's evidence was that the loan amount of £355,000.00 was part of a payment into the firm's client account on or around 26 March 2016 in the sum of £415,000.00. The security stipulated by Client B in the offer letter included:

- a first charge over Property 4;
- a first charge on Property 5;
- a second charge on Property 6;
- a personal guarantee from Client E.

Allegations 1.7-1.8

35. Allegations 1.7 and 1.8 related to the firm's accounts and the Respondent's role as COFA respectively.

36. The Applicant wrote to the Respondent requiring an explanation for the matters giving rise to the Tribunal proceedings on 14 November 2017. The Respondent did not provide a response to the allegations.

Witnesses

37. **James Carruthers** gave sworn evidence. He confirmed the accuracy of the two FI Reports Interim and Final dated 2 June 2017 and 25 September 2017 respectively save for the substitution of a corrected version of a statement by the Respondent attached to the FI Report. The witness had taken over the investigation into the firm from Mr Middleton-Cassini on 21 April 2017 and had meetings with the Respondent. The last occasion was at the conclusion of the investigation following a review of a number of client matter files and establishing a minimum cash shortage on the client account when he put his findings to the Respondent before writing the interim FI Report dated 2 June 2017.

38. The witness confirmed that the minimum cash shortfall identified related only to the client matter files of the seven matters which he had reviewed. He had chosen these matters because in reviewing the client account bank statement he had identified large amounts of money in the client bank account and he traced them through the bank statements and to a less extent through the firm's accounting records, He checked what amounts the firm should be holding for these clients. None of the loans to Clients C, D and E was listed in the minimum cash shortfall.

39. Having regard to Client A and allegation 1.2, the witness stated (based on the completion statement) that apart from the money paid to the client £57,819.47 on 15 May 2017, the balance was earmarked to redeem a mortgage, pay off a loan, pay estate agents fees, service charge arrears and the firm's fees and other smaller payments. After the payment of around £57,000 to the client on 15 May 2017 the balance in the account was £13,124.37 which was not enough to complete her matter. The witness went through the client account bank statement for the relevant period. He had highlighted three payments which related to the property sale; the payment to the client on 15 May 2017, a payment to her mortgagee on 19 May 2017 and another to pay off a loan on the same date. There were other minor payments which the witness had traced through the client file, bank statements and supporting documents. Payments were made on 2 May 2017 of £11,025.50 and £213, 444 which had nothing to do with the transaction. The resulting balance of the account on 2 May 2017 of £6,980.56 again was not sufficient to complete her matter.

40. The witness had made handwritten notes of his meeting with the Respondent on 25 May 2017 at which Client A's matter was discussed. He had asked the Respondent why, on certain dates in May 2017, there was a very low balance on the client account including the sum of including just over £15,000 on 17 May 2017. The Respondent said this was "caused by decline in conveyancing volume". The witness had asked the Respondent about specific matters and then about the minimum cash shortfall. The witness had provided the Respondent with a working paper showing liabilities to clients. The Respondent agreed the list and that it showed approximately £232,000 in liabilities to the seven clients and that he should replace it "as soon as possible". The amount of £132,054.50 which the Respondent should have been holding for client A was not referred to in the handwritten notes as it was on the list the witness had given the Respondent. The witness gave the Respondent a time period within which to update the witness before he wrote his report. The witness called the Respondent on 1 May 2017 for an update and the Respondent gave him an idea of from whence he would raise the money; the sale proceeds of a property and from family resources. Shortly thereafter the firm was intervened into. The minimum cash shortfall had not been rectified up to that point.

41. The witness stated that both he and Mr Middleton-Cassini had reviewed the firm's books of account. The summary of non-compliance in the Interim FI Report remained the position by the end of April/beginning of May 2017. This meant that the Respondent was not in a position to identify what he owed to his clients. There was no specific comment recorded about the point in the notes of the 25 May 2017 meeting because the witness and the Respondent were on common ground about when the books would be up to date, what the Respondent' responsibilities were and what were those of Ms CR; the witness had noted that she had "No mgt/admin role. No responsibility for A/c's problems". The witness was referred to other documents which had not been attached to the FI Report; these were client account bank statements obtained for the investigation. The witness was taken through the detail of various transactions. The Respondent promised he would make up the deficit but he could not explain the reason for it.

42. In response to a question from the Tribunal, the witness stated that he had seen four boxes of manual ledger cards during the investigation; each with hundreds of cards. As to whether the accounting problems should have been raised by the firm's accountants,

the witness stated that the firm's accounts had been qualified. He had not raised this with the Respondent. As to remuneration of Mr O, the witness would have expected to see that coming out of office account. He had not looked back for remuneration payments to Mr O beyond six months.

Findings of Fact and Law

43. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
(The submissions below reflect those in the Rule 5 Statement and those made orally.)

44. **Allegation 1 - It is alleged against the Respondent that, in his capacity as a manager, Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") of SJ Solicitors LLP, 604 Green Lane, Ilford, Essex, IG3 9SQ (ID number: 551166) ("the firm") from 2011 until 20 June 2017:**

1.1 From in or around 2011, breached Section 41 of the Solicitors Act 1974 (as amended) by employing or remunerating Mr O, who had been disqualified from acting as a solicitor, in connection with his practice as a solicitor:

1.1.1 without the written permission of the SRA;

1.1.2 having applied for but been refused permission from the SRA to do so.

And in doing so, he breached any or all or of Principles 2, 6 and 7 of the SRA Principles 2011.

44.1 The Solicitors Act 1974 (as amended) cited in allegation 1.1:

"**41. — Employment by solicitor of person struck off or suspended.**

(1) No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that—

(a) his name has been struck off the roll."

SRA Principles cited in allegation 1.1

Principle 2:

"You must act with integrity".

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 7:

> "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

44.2 Mr Thomas submitted that it appeared that Mr O went by two aliases; AB and AH. As to the evidence that all three were the same person, Mr Thomas referred to the witness statement of Ms CR:

> "My understanding from working at the firm was the Mr [O] referred litigation cases to [the Respondent]. Mr [O] was also known as [AB]."

Ms CR stated that she did not know O as Mr AH. During the interview on 27 March 2017 between Mr Middleton-Cassini FIO (referred to below as SC) and the Respondent (R) the following exchange took place:

> "SC: Mr [O] first of all. Um Mr [O] is [AH]?
> R: Yes
> SC: They're one and the same?
> R: Yes
> SC: [H] is his wife's name, is that right?
> R: Yes"

44.3 As to evidence of Mr O's disqualification as a solicitor, Mr Thomas referred to the judgment of a previous division of the Tribunal given on 17 April 2008 in case no. 9742/2007. Mr O had admitted all the allegations. The judgment stated:

> "…the Tribunal concluded that as Mr [O] had not acted with the probity, integrity and trustworthiness required of a solicitor and had not exercised the required proper stewardship over client monies, it was both appropriate and proportionate that he be struck off the Roll of solicitors."

Subsequently the firm made an application to the Applicant for permission to employ Mr O as a legal assistant. This was recited at the beginning of the decision of an Adjudicator dated 28 November 2014. The application was refused. The decision included:

> "Mr [O] posed a substantial risk to the public…His actions were atrocious and remained so for a number of years across two separate firms…I am not satisfied that Mr [O] has established sufficient rehabilitation."

Mr Thomas submitted that the decision was sent to the Respondent and he could not have misunderstood the refusal or the reasons for it and their seriousness. Some of the Adjudicator's comments were relevant to the seriousness of the wrongdoing alleged here. The whole purpose of Section 41 was to keep struck off solicitors out of law firms

so removing the risk that they could damage clients or the profession. The decision had been sent to the Respondent by a letter dated 2 December 2014, to which a copy of the decision of the Adjudicator was attached. The Respondent accepted in interview that he was aware of the position:

> "SC: Um you submitted an application to the SRA to, for, to seek permission to employ him in November 2014. That was refused on the 28th November 2014 and you were notified of that decision.
> R: Yes
> SC: Have or did you appeal that decision to the High Court?
> R: No
> SC: Ok so you were happy, well you were happy with as being the final
> R: Yeah
> SC: Decision on the matter
> R: He done, he done appeal I think and they asked him to do some courses which he did I don't if he done it or not I don't, I don't know
> SC: Right um so ok you were notified that you weren't to employ him
> R: Yes I think we never reply"

Mr Thomas submitted that by no later than 2 December 2014 the position regarding Mr O was absolutely clear to the Respondent.

44.4 Mr Thomas submitted that the prohibition on remunerating or employing struck off solicitors should be interpreted in its widest sense. To remunerate not only meant "to reward" or "to pay for services" but also "to provide recompense for". To employ should also be taken to mean "use the service of". These assertions were supported by previous Tribunal decisions referred to in case no.10973-2012 Bogan decided on 12 March 2013 (the paragraph numbers are those in the judgment):

> "40. There were three previous cases that had been before the Tribunal that were precedents for this case. In Ms Wingfield's submission the precise relationship between the Respondent and Mr James and Mr Ure should be interpreted in the widest possible sense. In the case of Andrew Godwin Cunnew (number 6134/1992) the Tribunal accepted that:
>
> > "The intention of section 41 is that struck off solicitors be kept out of solicitors offices save in exceptional and closely regulated cases. Although not argued before them, the Tribunal believe it is useful to add that in its view the word "remunerate" should also be interpreted in its widest sense so that it not only means "to reward" or "to pay for services" but also "to provide recompense for". The payment of out of pocket expenses by the Respondent was therefore remuneration"
>
> 41. In Coxall and Others (8401/2001) the Tribunal adopted the view expressed in Cunnew:
>
> > "there is no doubt in the mind of the Tribunal that the mischief that the Section intends to address is the possibility of a struck off solicitor handling client's affairs under the cover of a firm of solicitors. A striking off order would be without effect if a former solicitor, subject to such an

> order, (however heinous his offence might have been), could continue to undertake the work he had previously undertaken as a solicitor simply by sheltering beneath the umbrella provided by another firm of solicitors. This would not be in the public interest nor would it be in the interest of maintaining the good reputation of the solicitors' profession".

and

> "The interpretation of the words "employ" and "remunerate" are to be given the widest interpretation, and in particular the word "employ" should also be taken to mean "use the service of".

42. Similarly, in the Tribunal's Findings in Cook (9624/2006):

> "The Tribunal also noted the cases referred to by the Applicant. Mr Randall who was a struck off solicitor had been working in the Respondent's practice. This was the mischief which section 41 sought to attack. The Respondent had known Mr Randall was a struck off solicitor. "Employed" or "remunerated" were to be interpreted widely. The arrangement between the Respondent, C & V and Mr Randall amounted to remuneration by the Respondent at the very least."

44.5 Mr Thomas submitted that despite receiving notice of refusal of permission to employ Mr O, he was employed and/or remunerated by the firm. Mr O had received three payments according to the client account bank statements. All were made by the Faster Payment system; on 6 June 2016 £1,000 a payment described as "M [O]… FEES-Anthony" (the first name of AH); on 9 June 2016 "A[H]…ANTHONY-FEES" in the sum of £1,000 and on 8 April 2016 "M[O]…" the sum of £500. Mr Thomas acknowledged that it had been suggested that one of the payments constituted reimbursement of a barrister but there was reference to "FEES" on two occasions. Mr O emailed correspondence between parties from the firm using a personal email address, used an office at the firm; referred cases to the Respondent; and by the Respondent's own admission to the FIO on 14 February 2017, acted as a legal adviser in cases on which the firm was instructed even though his position was that his clients "employed" him.

44.6 By way of example of the relationship of Mr O with the firm, Mr Thomas submitted that the firm acted for Company 1 in a dispute with R Ltd ("R") one of the entities which reported the Respondent to the Applicant. The firm's reference was "KS/ [M]". The initials "KS" at the start of the reference were consistent with this case having been dealt with by the Respondent. Mr JH, a solicitor at R Ltd provided copies of correspondence between the parties to the Applicant as he had concerns that the firm was employing Mr O. These concerns arose because R Ltd received correspondence from the firm attached to an email from what appeared to be a personal email address. When Mr JH searched for that email address against a particular database, it was identified as being associated with Mr O, whom they discovered had been struck off the Roll of solicitors. The correspondence included a letter from the firm (reference "KS/[M]") to R Ltd dated 4 January 2016 which was sent from the personal email address including a surname beginning with H not from an email address at the firm. The email stated:

> "Dear Sirs, please find attached copy letter which has been sent to you in the post. Regards Anthony".

"Anthony" was one of the forenames by which Mr O was known. The letter had the firm's letter head and was signed off "SJ Solicitors LLP". The Applicant's contact detail records for Mr O included that email address as his email address as Mr O had emailed the Applicant from this address. Mr Thomas submitted that this was Mr O using his email address for involvement in sending out the firm's correspondence and not just him helping out the client.

44.7 On 3 January 2016, "Anthony" sent a copy letter to R Ltd in the same style which enclosed a draft consent order; which Mr Thomas submitted was not purely peripheral to a solicitor's practice. R Ltd wrote to the Respondent on 7 January 2016 seeking clarification as to the identity of the correspondent, as the email address used to send the firm's letter was "self evidently not a professional email address associated with your firm". R Ltd challenged the Respondent to explain why the H email address was used and drew a link with someone who had been struck off. The firm responded on 15 January 2016 including:

> "We are unaware as to the user of the email address mentioned in your letter dated 7th January 2016 save for from (sic) our understanding, based on instructions provided, one of the directors requested his friend to forward a copy of the letter, given to him, by email…"

Mr Thomas submitted that this was evasive, bordering on disingenuous. The firm said it was unaware of the sender and did not mention that Mr O had use of a room in the solicitor's office. It was an attempt to put distance between the firm and O. Mr Thomas submitted that R Ltd's 7 January letter was addressed "FAO: Mr Kuldip Singh" and because of the Respondent's position in the firm one could infer that the Respondent would have been aware of the reply letter sent to R Ltd.

44.8 Mr Thomas also relied on evidence drawn from matters relating to Mr DT, Mr DS and Company CT Ltd. A Legal acted on behalf of Ms DG in litigation in Central London County Court. Whilst acting in this litigation, which arose out of a dispute between Mr DT and Mr DS, A Legal had concerns that Mr O had acted at the firm for Mr DT and/or Mr DS in relation to the matters that formed the basis of the legal dispute. A Legal provided the Applicant with extracts of documents obtained to support concerns that Mr O had been employed by the firm in connection with the provision of legal services. The correspondence included an email from the H address dated 14 June 2011 to Mr DC about a bond being provided to Mr DT. The email confirmed at the start that "we have been instructed by Company CT Ltd" and concluded with "we look forward to hearing from you. SJ Solicitors". Mr Thomas submitted that this email did more than just send a letter; Mr O was plainly dealing with a client matter. The email showed the H address being used significantly earlier than the evidence from R Ltd in the other matter described above. In a letter dated 20 November 2015, A Legal wrote to the Respondent and Ms CR requesting an explanation of the link between the firm and Mr O. The firm replied on 14 January 2016:

> "We refute your unfounded provisional view as to employment of struck off solicitor at this firm.

> The correct position is that Mr [O] has been employed by Mr [DS]. Mr [DS] has been the client of this Firm for over 14 years. Mr [O] interacts with this firm on behalf of Mr [DS] in respect of the work that this firm undertakes for Mr [DS]."

This letter was addressed to the Respondent and Ms CR but it was sent to the firm's email address as well as to CR so the Respondent was aware of it. Mr Thomas submitted that when the statement in the firm's 14 January 2016 letter was compared to the totality of the evidence of O's involvement in the firm and other matters at the firm such as using an office there, the letter was not a completely candid response.

44.9 Part of the documentation provided to the Applicant by A Legal included a statement from Mr DT dated 28 September 2015 in the county court case. Mr DT's account was that he knew Mr O from around 2002. Mr Thomas submitted that Mr DT met Mr O at the offices of the firm and this established a close nexus with the firm. Mr Thomas also submitted that by 2012, O had been struck off and so could not have clients of his own. By taking DT as a client to the firm he was effectively trading out of the firm. Mr DT thought O was a solicitor working out of the firm although subsequently he did become a little suspicious as none of the firm's letter was signed by O and the people there knew him by a different name.

44.10 Mr Thomas also relied again on the evidence of Ms CR who was a manager at the firm from approximately 2012 to February 2017 when she resigned. In Ms CR's statement, she said:

> "I can only provide vague information as I did not have direct involvement with Mr [O] and I was not privy to the specific nature of the formal arrangements between [the Respondent] and Mr [O]."

However in the next paragraph she said:

> "My understanding from working at the Firm was that Mr [O] referred litigation cases to [the Respondent]"

She also said: "Mr [O] was also known as Anthony [B]" and:

> "I have been asked if Mr [O] was a formal employee of the Firm. As far as I was aware, he wasn't a formal employee of the Firm but I did know who he was as he used the office. For a period of about 18 months (which stopped about a year before the SRA intervention), he used the room on the top floor where the litigation and conveyancing work was done. He didn't come to the office every day all day but he came and went and used the room on the top floor."

Mr Thomas submitted that 18 months was a considerable period. He also submitted that the fact O was struck off, used one or more aliases and a non-firm email address meant the Respondent knew something was wrong. The Respondent applied to the Applicant to employ Mr O from which the Tribunal could conclude it was his intention to employ him and the common sense conclusion was that went on to happen covertly not overtly. Mr Thomas submitted that the evidence showed that the Respondent was aware of the fact he should not have been employing Mr O because of the notification he received from the Applicant and so no later than that date he knew he did not have permission

and that permission had been refused. Mr Thomas submitted that there was a clear case of O's services being used and payment going to him such as to satisfy the "employ or remunerate" principle and one could draw that inference from the overall conduct of O and the evasiveness with which the firm responded when challenged.

44.11 Mr Thomas submitted that by employing or remunerating Mr O without the Applicant's permission when the Respondent knew that this was required and that his request for permission to do so had been refused by the Applicant, the Respondent deliberately disregarded requirements of the Solicitors Act 1974 concerning the governance of the profession. In Wingate and Evans v SRA; R SRA v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession which was a higher standard. Mr Thomas submitted that a solicitor of integrity would adhere to the decision of his regulator to refuse him permission to employ or remunerate in connection with his practice as a solicitor a person who had been disqualified from acting as a solicitor having been struck off the Roll. The Respondent therefore breached Principle 2 of the SRA Principles.

44.12 Mr Thomas also submitted the public needed to know that people who worked in the solicitor's profession were properly supervised and subject to proper regulation and when looking at the Tribunal and Adjudicator's findings the public would be concerned to know that a former solicitor such as O had slipped through the net and been employed and remunerated by a firm of solicitors. Public confidence would be seriously undermined by the Respondent's actions in allowing a person who has been struck off the Roll of solicitors to continue to practise in a legal capacity in the knowledge that the Applicant was not prepared to grant that person permission so to do. The Respondent therefore breached Principle 6 of the SRA Principles. Mr Thomas submitted that as the Respondent was prohibited from employing or remunerating Mr O as set out in Section 41 of the Solicitors Act 1974 and by the Applicant's formal adjudication decision, his conduct amounted to a failure to comply with his legal and regulatory obligations and consequently a breach of Principle 7 of the SRA Principles.

Allegation 2 - Dishonesty in relation to the matters alleged at Allegations 1.1

44.13 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings. It was submitted that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people because, in all the circumstances of the case, he:

- employed or remunerated Mr O without the Applicant's permission when he knew that this was required and that his request for permission to do so had been refused by the Applicant; he went on to use Mr O in his client matters sending out letters on behalf of the firm, not only knowing he was not supposed to do it but doing it in a covert way using an email not linked to the firm. The Respondent also advanced an evasive and implausible explanation when the firm was challenged about Mr O;

- knew that Mr O had been struck off the Roll of solicitors by virtue of the Adjudicator's letter which the Respondent received dated 2 December 2014 and before applying to employ him in 2014, he had access to the Tribunal's judgment in Mr O's case and he must therefore have known that allowing Mr O to work on

cases that he had referred to the firm would be of a significant concern to the Tribunal;

- derived a direct benefit from employing of remunerating Mr O in that he provided an additional source of referrals.

Mr Thomas submitted that no solicitor in the position of the Respondent, an experienced solicitor, would think that it was honest by the standards of honest and reasonable people to employ or remunerate a solicitor who had been struck off the Roll in circumstances where permission has been expressly refused by an Adjudicator of the Applicant. It was relevant that the Respondent did not seek any clarification from the Applicant about the scope of the Adjudicator's decision and the Respondent denied any knowledge of Mr O using the H email address when asked to explain the link by R Ltd. The Respondent also denied that Mr O was employed or remunerated when asked to explain the link by A Legal.

44.14 As to the Respondent's response to being challenged about the role of Mr O in an interview with the FIO on 13 March 2017, he accepted that he received the Applicant's decision that his request to employ Mr O was refused and that he accepted that he did not respond or appeal the Adjudicator's decision. In this interview, the Respondent was asked about the payments from client account on 6 and 9 June 2016. The Respondent accepted that those payments were to Mr O but when the FIO informed him that the payments amounted to remuneration in breach of Section 41 of the Solicitor's Act, the Respondent said he was "surprised at that" and his explanation was "that payment was paid by the instruction of my client [a Mr C]". The explanation was that the client provided the payment to the firm and instructions for the firm to pay Mr O and that "yes I think he pay the barrister that day or something, he done it because then he send me money here". If the Respondent's account of the instructions he received from Mr C was accurate, the Applicant's case was that this fell within the scope of amounting to remuneration. The Respondent denied that Mr O referred any clients but that he attended his office with clients. The Respondent denied that he offered Mr O any facilities or allowed him to borrow an office.

44.15 The Tribunal had regard to the evidence both written and oral and to the submissions for the Applicant. The Tribunal first determined on the evidence whether Mr O, Mr AB and Mr AH were one and the same person. Ms CR said that Mr O was known as AB. The Respondent said that he was known as AH. The emails in question were from an address with the name H. Mr DT was contacted by Mr O using the H address. The Applicant had the H email address for contacting the Respondent. The Tribunal determined that Mr O also used the names Mr AH and Mr AB; they were one and the same person.

44.16 The Tribunal noted that Mr O had been stuck off the Roll of solicitors by the Tribunal on 17 April 2008. The Respondent's firm applied to employ Mr O as a legal assistant. The application was refused by an Adjudicator on 28 November 2014. Related to the application, the Respondent had completed and signed a questionnaire dated 17 July 2014 under Section 41. The employment was proposed to commence on 1 September 2014. At question 4a of the form there was a question "Have you read the Findings in respect of the prospective employee? To which the Respondent had answered "Yes". Question 4b asked "In light of the Findings, how will you ensure that

the public is protected. The Respondent had answered "[Mr O] will have no management role and no involvement with office & client account, his role will be limited to assisting senior partner in litigation matters." In answer to Question 6, Mr O's proposed hours of work were stated to be "9.30 am to 5.30 pm Monday to Friday." The Tribunal also noted the evidence provided by the complainants including the use of the firm's letter headed notepaper to carry forward litigation. Particularly telling was the fact that Mr O had sent a consent form to the solicitor at R Ltd which as Mr Thomas asserted was not something peripheral to litigation. Ms CR described O as having use of an office on the top floor of the firm and referring litigation to the Respondent. There was also the evidence of Mr DT who described their ongoing solicitor client relationship:

> "when [Mr O] moved to SJ Solicitors he continued to be my solicitor and I visited the offices of SJ Solicitors on a great number of occasions to meet with him and to provide him with instructions to deal with my legal matters…"

The Tribunal noted that Mr DT also said:

> "At the office when I went, I went upstairs to meet with Mr O. I also met the owner of SJ solicitors…Mr O was there in the office when I met the owner of SJ Solicitors."

44.17 As to whether the Respondent remunerated Mr O, the Tribunal noted the evidence that he made three payments out of client account to Mr O under one of O's aliases, two of which payments were expressly described as "FEES". The Respondent had given an explanation of the payments in interview which is quoted above. The Tribunal did not consider the explanation to be plausible when taken together with all the evidence. The Tribunal had noted the opinions expressed by earlier division of the Tribunal about the meaning of employment which while not binding on this division were informative. The Tribunal determined that the Respondent was using the services of Mr O and this alone was enough to constitute employing him. The Tribunal was also satisfied that the Respondent had remunerated Mr O albeit out of client account rather than office account. There remained the question of the time period over which the Respondent employed or remunerated Mr O. The allegation ran from in or around 2011. The Tribunal had seen correspondence included an email from the H address dated 14 June 2011 to Mr DC about a bond being provided to Mr DT. The email confirmed at the start that "we have been instructed by Company CT Ltd" and concludes with "we look forward to hearing from you. SJ Solicitors". The Tribunal noted this evidence but little other information was available about this matter. The Tribunal determined that the Respondent acting in his role as manager, COLP and COFA of the firm had employed Mr O without permission from at least 2 December 2014 when he was informed that his application for permission to employ Mr O had been refused. The Tribunal also found proved that in acting as he did the Respondent did not act with integrity in employing a struck off solicitor as alleged (Principle 2). His conduct would have a detrimental effect on the trust the public placed in him and the legal profession (Principle 6) and he did not comply with the requirements of Section 41 thus failing to meet the requirements of Principle 7.

44.18 In respect of the allegation of dishonesty (allegation 2) associated with allegation 1.1 the Tribunal employed the test in the case Ivey:

> "The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. 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…"

The test required the Tribunal first to establish the actual state of the Respondent's knowledge and belief as to the facts. The Respondent knew that Mr O had been struck off and went ahead and employed or remunerated him anyway in defiance of Section 41. As to whether by the standards of ordinary decent people the Respondent was dishonest, he was challenged by others about the status of Mr O. A Legal challenged him by letter dated 20 November 2015. This was well after the point at which the Tribunal had determined the Respondent knew about Mr O and that he had been refused permission to employ him. The firm responded on 14 January 2016:

> "We refute your unfounded provisional view as to employment of struck off solicitor at this firm. …
> The correct position is that Mr [O] has been employed by Mr [DS]. Mr [DS] has been the client of this Firm for over 14 years. Mr [O] interacts with this firm on behalf of Mr [DS] in respect of the work that this firm undertakes for Mr [DS]."

The letter also included:

> "Mr [O] aka [AH] has no connection with this firm…"

The Tribunal determined that this response could not be true. Mr O was sending correspondence to another party R Ltd in a different matter which was on the letter headed notepaper of the Respondent's firm. R Ltd also challenged the Respondent about Mr O by a letter dated 7 January 2016. The Respondent replied on 15 January 2016 including:

> "We are unaware as to the user of the email address mentioned in your letter dated 7th January 2016 save for from (sic) our understanding, based on instructions provided, one of the directors requested his friend to forward a copy of the letter, given to him, by email…"

This was the matter in which the H email address had been used to send a draft consent order to R Ltd. The firm's letter of 4 January 2016 sent under cover of an H email repeatedly referred to "our client". The Tribunal determined that the response to R Ltd on 15 January 2016 was designed to mislead the recipient. At the time the Respondent wrote this letter there would be emails on the client file enclosing letters with the firm's letter head. The Respondent accepted in interview on 23 March 2017 that AH was an alias for Mr O and so it was disingenuous to say that he did not know the user of the

email address. He agreed Mr O and AH were one and the same person. While breaching Section 41 of itself might not be dishonest, taken against the background of what the Respondent knew and what Mr O was doing from the firm, the Respondent behaved dishonestly by the standards of ordinary decent people. The Tribunal therefore found dishonesty (allegation 2) proved in connection with allegation 1.1 to the required standard on the evidence.

44.19 The Tribunal found allegation 1.1 proved on the evidence to the required standard with dishonesty.

45. **Allegation 1.2 - In May 2017, [the Respondent] used funds held on trust for Client A in respect of other clients' matters in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("SAR 2011") and in doing so breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011.**

45.1 SRA Principles cited in allegation 1.2:

Principles 2 and 6 of the SRA principles are set out under allegation 1.1 above.

Principle 10 required:

> "You must protect client money and assets."

SRA Accounts Rules 2011:

> "Rule 20.1 Client money may only be withdrawn from a client account when it is amongst other things:
>
> (a) Properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);

45.2 Mr Thomas relied on the facts relating to this transaction as set out in the background to this judgment and on the evidence of the FIO. The Rule 5 Statement set out that following completion, the first payment out of client account after 2 May 2017 in Client A's matter was a transfer to Client A of £57,819.47, made on 15 May 2017. Between 2 May and 15 May 2017 there were a number of payments out of client account for unrelated matters which utilised the funds held on trust for Client A. The FIO examined the client file, the completion statement and the bank statement which confirmed that the payments out of client account between 2 May 2017 and 15 May 2017 did not represent liabilities arising out of Client A's conveyancing transaction. In particular, on 2 May 2017, there was a payment out of client account in the sum of £11,025.50 (which did not quote a case reference) and a payment out of client account in the sum of £213,444.00 with the narrative "KS/JM/10410-1". These totalled £224,469.50 when the client account balance available (which was not being held on Trust for Client A) was £41,576.09. As £189,873.97 had been paid into client account, to be held on Trust for Client A on 2 May 2017, and by 17 May 2017 the only payment out of client account in respect of Client A's matter was £57,819.47 on 15 May 2017, there should have been £132,054.50 held in client account on trust for Client A. However, the client account balance on 17 May 2017 was £13,124.37. The other liabilities on Client A's matter were settled at a later date on 19 May 2017. Mr Thomas submitted that the firm

received a large sum of money relating to the sale of the property as shown in the bank statements. The FIO only identified two further transfers relating to that client's matter aside from the payment to the client and yet payments were made out of the firm's client account in such a way that the balance fell below what was needed to hold A's money. Mr Thomas submitted there was evidence of one client's money, which should have been sacrosanct to the solicitor holding it, being used for other matters in breach of the accounts rules.

45.3 It was submitted that the Respondent, as a Principal in the firm had a duty to ensure compliance with the SAR 2011 in the operation of the client account by himself and by everyone employed in the firm, as set out in Rule 6 of the SAR 2011. The Respondent operated the firm's client account alone and therefore either knew or should have known the source of the funds held on the client account. By making payments out of client account in respect of other client's matters when he knew that in doing so he would be using funds held on trust for Client A, the Respondent failed to act with integrity (Principle 2). Acting with integrity would require the Respondent to have only used funds held on trust for Client A for Client A's matters and made payments out of client account in accordance with Rule 20.1 of the SAR 2011. Public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's actions. The Respondent therefore breached Principle 6 of the SRA Principles. Mr Thomas submitted that this also amounted to a failure to protect client money in breach of Principle 10.

45.4 On 25 May 2017 (as recorded in the Interim FI Report), the Respondent agreed that on 17 May 2017, the firm should have been holding £132,054.50 on account for Client A.

45.5 The Tribunal had regard to the evidence both written and oral and to the submissions for the Applicant. This was a property sale in which the Respondent acted for client A. Completion took place on 2 May somewhat later than the 28 April 2017 date shown on the completion statement. The proceeds of sale £189,873.97 were received into client account on 2 May 2016. The completion statement showed how the money was to be paid out. There were two debts; a mortgage and a loan to be redeemed on completion as well as other smaller payments such as estate agents fees and service charge arrears to be discharged with the balance £57,819.47 due to client A. She did not receive the money due to her until 15 May 2017. As no other payments had been made in respect of her matter the client account should have held £132,054.50 for her, setting aside what else it might have held for other clients. In fact all it held on 17 May was £13,124.37. The Tribunal found that on the same day as the proceeds of sale were received into client account two large payments were made out of the client account; £11,025.50 and £213,444, leaving a balance in client account of £6.980.56. These payments were in no way referable to client A. Her two largest financial obligations were discharged on 19 May 2017; £118,528.83 to her mortgage lender and £8,288.44 for another loan. These amounts differed slightly from those on the completion statement because of additional interest arising out of the late completion. Letters to the relevant local authority about arrears of service charge and a firm of estate agents were on the file and showed that cheques were sent to them on 9 May and 16 May 2017 respectively and not presented. There were other minor payments in early May which might or might not have related to the client. The Tribunal found that the evidence showed that the Respondent used monies received for Client A for other clients and delayed making payments that should have been made to or for her immediately upon the completion

of her sale. The Tribunal therefore found proved that the Respondent was in breach of Rule 20.1 of the SAR 2011. His conduct also demonstrated a lack of integrity (Principle 2), failure to maintain public trust (Principle 6) and constituted a failure to protect client money and assets (Principle 10). The Tribunal found allegation 1.2 proved on the evidence to the required standard.

46. **Allegation 1.3 - In or around May 2017 [the Respondent]:**

1.3.1 caused or allowed a shortfall to arise on client account in breach of Rule 1.2 and Rule 20.6 of the SAR 2011;

1.3.2 failed to replace the shortfall on client account promptly on discovery in breach of Rule 7 of the SAR 2011.

And in doing so he breached any or all of Principles 6 and 10 of the SRA Principles 2011.

46.1 SRA Principles cited in allegation 1.3

Principles 6 is quoted under allegation 1.1 and 10 is quoted under allegation 1.3.

SRA Accounts Rules 2011

Rule 1.2
You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

…

(c)
use each client's money for that client's matters only;

Rule 20.6
Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts (except as provided in rule 20.7 below).

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."

46.2 Mr Thomas relied on the facts set out in the background to this judgment and, as set out in the Rule 5 Statement, the FIO calculated that, as at the extraction date of 17 May 2017, the following sums should have been held for the seven matters which he had reviewed:

Matter	**Funds that should have been available on client account**
10069-2	£132,054.50
10169-1	£40,500.00
10378-1	£33,200.00
Client H	£14,420.00
10380-1	£13,600.00
10393-1	£7,500.00
10404-1	£5,181.39
TOTAL of money that should have been held on client account as at 17 May 2017 for these 7 matters	**£246,455.89**
TOTAL available on client account	**£15,125.76**

The FIO confirmed that due to the poor condition of the Respondent's books of account, the original cause of the shortfall could not be identified. However, as the total sum of client money available on client account (for all matters) was less than the amount that should have been available for matter 10069-2 or 10169-1 or 10378-1, it followed that at least some of the money held in relation to those matters must have supported payments out of the client account other than for those clients' matters. This breached Rule 1.2. In addition, the payments that led to the shortfall must have exceeded the money held in the general client account on behalf of other clients in breach of Rule 20.6. The FIO notified the Respondent of the minimum client deficit on 25 May 2017. The Respondent accepted the position that there was a minimum shortfall of £231,330.13 in client account on 17 May 2017.

46.3 Regarding Rules 7.1 and 7.2, on 25 May 2017, the Respondent informed the FIO that he would replace the cash shortfall and let the FIO know when this had been done. The Respondent said that he was raising funds and would confirm the amounts that he could replace by 5 June 2017 to the FIO. The Respondent had not replaced any of the shortfall by the time of the intervention. Mr Thomas submitted that the Respondent did not take steps to make good the shortfall promptly and in any event the firm was intervened into.

46.4 It was submitted that public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's actions, in that he allowed a shortfall to arise on a client account and subsequently failed to remedy that promptly or at all in breach of the SAR 2011 when it was drawn to his attention. The Respondent therefore breached Principle 6 of the SRA Principles. This also amounted to a failure to protect client money in breach of Principle 10.

46.5 The Respondent did not challenge the shortfall.

46.6 The Tribunal had regard to the evidence both written and oral and to the submissions for the Applicant. In respect of allegation 1.3.1: the FIO had identified a minimum shortage on client account of £231,330.13 as at 17 May 2017 having reviewed seven client matter files. At that date only £15,125.76 was held on client account when in respect of these seven matters alone there should have been £246,455.89 including the money which should have been held for client A. The Tribunal noted that the FIO reported that on 25 May 2017, the Respondent said to him that he accepted the position as analysed by the FIO and added that he could not explain it and that he had not been aware of it until it was brought to his attention by the FIO. The Tribunal found all the above facts proved on the evidence. The Tribunal also found proved that the Respondent's conduct constituted a breach of Rules 1.2 and 20.6 of the SAR 2011. In respect of allegation 1.3.2: the Tribunal found that the Respondent was told of the shortfall on 25 May 2017 by the FIO and he accepted it but he did not replace it before the firm was intervened into. The Tribunal found this was in breach of Rule 7 of the SAR 2011. The Tribunal found that the Respondent had acted in a way that failed to maintain public trust (Principle 6) and failed to protect client money and assets (Principle 10). It found both aspects of allegation 1.3 found proved on the evidence to the required standard.

47. **Allegation 1.4 - Between around June 2015 and June 2016, [the Respondent] acted in a situation where there was a client conflict or significant risk of a client conflict, by acting for the borrower and lender in the following loan transactions:**

1.4.1 Client B's loan to Client C;
1.4.2 Client B's loan to Client D;
1.4.3 Client B's loan to Client E;

And in doing so, he breached Outcome 3.5 of the SRA Code of Conduct 2011 and any or all of Principles 3, 4 and 6 of the SRA Principles 2011.

47.1 SRA Principles cited in allegation 1.4:

Principle 6 is quoted under allegation 1.1 above.

Principle 3:

> "You must not allow your independence to be compromised

Principle 4:

> "You must act in the best interests of each client"

SRA Code of Conduct 2011

Outcome 3.5:

> "You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply."

47.2 Mr Thomas submitted that the purpose of Outcome 3.5 was to ensure that solicitors acted in the best interests of their clients and were able to provide independent, unfettered advice to clients and that allegations 1.4, 1.5 and 1.6 arose in different guises out of matters relating to Client B. It was a company represented by a director Mr BK who had given a statement for these proceedings in which he adopted two affidavits produced for civil proceedings in the Chancery Division dated 2 December 2016 and 8 December 2016. Mr BK was a cousin of the Respondent's wife. It was alleged in the Rule 5 Statement that the Respondent accepted instructions to act on behalf of Client B in the loan transactions in that he was instructed to arrange the security required for each loan and represent Client B's interests. The Respondent also accepted instructions to act on behalf of Client C, Client D and Client E in that he advised on the terms of the loan and the securities.

47.3 Mr Thomas submitted that the Tribunal had to determine if B was a client of the firm based on an objective consideration of all the circumstances. He referred to the Court of Appeal case of Dean v Allin & Watts (A Firm) [2001] EWCA Civ 758. It examined the question of retainer involving a borrower and lender and some of the circumstances in determining whether there was a retainer included whether or not a party was liable for solicitor's fees although it was not conclusive. One starting point was what Mr BK understood the relationship to be. In his first affidavit in the Chancery proceedings he stated:

> "There then followed three further loans, which for the avoidance of any doubt, SJ were instructed to represent the company is (sic) interests on."

Throughout his witness statement for the Tribunal proceedings as Mr BK went through the loans, he made it clear the Respondent was looking after the company's interests including in respect of the loan to Client C:

> "...he would ensure all the conditions of the offer were met before transferring the funds to the borrower. I trusted his word as a lawyer…"

Regarding Client E, Mr BK stated:

> "I decided it had to go through a legal firm for security and because I do not know how to do the legal side of things."

Mr BK's instructions to the firm were contained in the offer letters that went to the borrowers. The offer letter to Client C was dated 16 June 2015, to Client D was undated and that to Client E was dated 28 July 2016. There was a client care letter to Client C which included under the heading "Our Advice":

> "We have made you aware that we also ask [act] for the lender and you have confirmed that you have no objection to this."

Mr Thomas relied on the letter as evidence of a client solicitor relationship between the firm and Client B. The firm made no secret of acting for both sides to the loan. Client B wrote to the firm "FAO Mr Kuldip Singh" dated 28 July 2016 including:

> "Please find enclosed Offer Letters for [Client E as discussed, please note the charges secured on the properties mentioned in the offer letter are not to be removed until prior written consent if given from [B].
> Please insure that the Offer Letter is Signed …"

Mr Thomas submitted that the style and character of the letter was that of Client B giving instructions to the Respondent. There were other examples in the Rule 5 Statement where the context of the letter made it clear Client B acted in such a way that it relied on the Respondent to protect its interests and arrange security for its loans. This was evidence of a retainer along with the fact that in interview the Respondent did not dispute that the firm had acted for B in an earlier property matter. He was therefore a returning client of the firm. The position would have been more difficult to establish if B had had no previous contact with the firm. Furthermore client ledgers were opened for Client B in respect of some of the loans; hand written ledgers for Client C and for Client D's loans were attached to the FI Report. It seemed from the Rule 5 Statement that there was no ledger for Client E's transactions.

47.4 Mr Thomas then turned to the relationship between the firm and each of the three borrowers. Mr Thomas highlighted certain points. In a statement made by the Respondent in respect of his dispute with Client B he said: "[Client E] is a Client of the Firm". There was also the fact that there were client ledgers for C and D. The Applicant took the view that there was a conflict or significant risk of a conflict between Client B and each of the other clients. There was a well-known prohibition in Outcome 3.5 from acting in such a situation and the exceptions in Outcomes 3.6 and 3.7 did not apply in this case:

> "Exceptions where you may act, with appropriate safeguards, where there is a client conflict
>
> O(3.6)
> where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if…
>
> O(3.7)
> where there is a client conflict and the clients are competing for the same objective, you only act if…"

Mr Thomas submitted that even if the exception in Outcome 3.6 did apply, the Respondent was required to have done the following:

> "(a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
>
> (b) all the clients have given informed consent in writing to you acting…"

The Respondent had not complied with (a) or (b) above save for one line in a client care letter to Client C quoted above. It seemed the Respondent did not turn his mind to the issue of conflict or did not do so in any detail. Mr Thomas relied on the detailed submissions regarding conflict set out in the Rule 5 Statement as follow: The Respondent owed separate duties to act in the best interests of:

- Client B. in relation to the terms of the loan and to obtain and execute properly the security for the loans;

- Clients C, D and E in relation to the terms of the loan, including in relation to the security and/ or guarantees to be provided.

By acting for Client B and each of Clients C, D and E the Respondent's duties conflicted or there was a significant risk that those duties might conflict in relation to (i) the terms of the loan (ii) effecting the security of the loan and the supporting guarantees and (iii) the consequences of default of the loan agreement. In each case, a conflict arose in the course of or out of each of the transactions.

47.5 Mr BK's evidence was that he had had difficulty securing repayment of all three loans and that there remained funds outstanding from the short term loans provided to Client C and Client D. Client B issued proceedings against the Respondent to recover losses arising out of the loan transactions.

47.6 As part of the forensic investigation, the FIO was provided with a written statement from the Respondent in which the Respondent did not accept that he acted for Client B as well as Clients C, D and E. However, in the meeting with the FIO on 13 March 2017, the Respondent made some admissions about introducing the lender and the borrower and acting for them both. The Respondent stated that he agreed to introduce Mr BK to potential borrowers of bridging finance. The Respondent was asked to explain what work he did for Mr BK. The Respondent explained that he introduced him to the lenders and:

> "so he asks, he agree with them about Terms and Conditions and he only asked me to put the charge on the property when lending money and it is because um the assistance. So we so far whatever, what we act as a client told us I am being dealt with and the reason I'm thinking he's a lender so I don't open a second file for the lender normally on conveyancing side normally we having a lender's instruction we never open a separate file for the lender or even do the same folders and acting them whatever they done in folder"

<u>The loan from Client B to Client C - £530,000 – June 2015 (allegation 1.4.1)</u>

47.7 Mr Thomas relied on the facts set out in the background to this judgment. As to the existence of Client B's retainer, as set out in the FI Report, when the single client file for the loan arrangement was produced by the Respondent, the FIO could not locate documentary evidence of the firm's retainer with Client B or the loan agreement between Client B and Client C. However, it was submitted that it was evident that the Respondent acted for Client B for the following reasons:

- The client care letter to Client C dated 15 June 2015 with its reference to acting for the lender quoted above.

- In Client B's offer letter to Client C dated 16 June 2015, Client B referred to the firm being "the solicitors" [of the loan agreement];

- The Respondent had a separate client ledger for Client B in relation to this transaction. The ledger card was titled "client: [Client B] [Mr BK] Reference KS/9763-3";

- Mr BK's evidence in his affidavit dated 2 December 2016 was that the Respondent was instructed to secure the debt and represent Client B's interests in the arrangement of the loan;

- The Respondent acknowledged his instructions to arrange security for the loan for Client B by email dated 3 July 2015 to Mr BK which stated:

  > "I write to confirm that we have received your funds in the sum of £530,000 loaned to [Client C].
  >
  > I can confirm that we have redeemed the charge in favour of Punjab National Bank secured against the land in Rotherham and as soon as the DS1 is received then we shall proceed to register a Charge in favour of your company [Client B] against the land"

47.8 As to Client C's retainer, it was submitted that the firm confirmed that it was instructed on Client C's behalf in respect of this loan transaction in a client care letter dated 15 June 2015. This letter stated: "Thank you for instructing this firm to act on your behalf in this matter". The letter had the subject "Loan from [Client B] to [Client C] and Personal Guarantee". It set out the scope of work, Client C's instructions, the firm's advice, that the Respondent was responsible for the matter and that there was an agreed fixed fee in the sum of £950.00 plus VAT.

47.9 It was submitted that there was a significant risk of conflict between Client B and Client C which materialised when the Respondent was arranging the loan in that the Respondent released the funds to Client C even though:

- the legal charge stipulated as required security for the loan was not executed;

- the personal guarantee from the director of Client C was not arranged;

- the loan agreement was not signed.

47.10 The client account bank statement recorded that £297,227.07 was transferred to Client C on 29 June 2015. Although it was not possible to identify the other transfers which totalled the loan amount (due to the books of account not being properly maintained), the Respondent did not dispute that the full loan was transferred to Client C. Although the Respondent prepared a draft application for the charge to be secured in accordance with Client B's instructions, this did not occur. Instead of securing the legal charge, the Respondent confirmed in a statement dated 13 February 2017 and referred to in the FI Report that he accepted the role of trustee (the papers included a Trust Deed so that he would hold 100% of Client C's shares on trust for Client C until the loan was repaid, as an alternative method of security. Mr BK's evidence was that he did not provide instructions to release the loan money to Client C without the security for the loan being arranged. The Respondent's account

was that it was agreed between Client B and Client C that Client B would not put legal charges on the properties.

47.11 It was submitted that the Respondent's actions, in failing to secure the loan in accordance with Client B's instructions were in the interests of Client C and to the detriment of Client B; the Respondent therefore failed to act in the best interests of Client B. Client C defaulted on the loan and as a result of the Respondent's actions in releasing the loan money to Client C without securing the legal charge or the personal guarantee from Client C, there was a final balance outstanding on the loan and Client B did not have a charge as security to enforce repayment of the loan.

<u>The loan from Client B to Client D - £225,000 – April 2016 (allegation 1.4.2)</u>

47.12 Mr Thomas relied on the facts set out in the background to this judgment. Regarding Client B's retainer, it was submitted that as set out in the FI Report, when the single client file for the loan arrangement was produced by the Respondent, the FIO could not locate documentary evidence of the firm's retainer with Client B, the retainer with Client D, the final loan agreement between Client B and Client D or the charge over Client D's property in favour of Client B. However, it was evident that the Respondent acted for Client B for the following reasons: Mr BK's evidence in his affidavit dated 2 December 2016 was that the Respondent was instructed to secure the debt and represent Client B's interests in the arrangement of the loan. The Respondent had a separate ledger for Client B. The ledger card was titled: "Client: [Client B] (Bob) Matter: [Client D]" Reference: KS/9763-5."

47.13 Regarding Client D's retainer, it was submitted that it was evident that the Respondent acted for Client D for the following reasons:

- The Respondent had a separate ledger for Client D. The ledger card was titled:

  "Client: [Client D] Matter: [sale of property 3]" Reference: KS/9519-5";

- The offer letter from Client B to Client D set out the terms and conditions of the loan and included a section for the borrower to sign. Under the section for the borrower, there was a space for the solicitors to sign and this was typed as being the place for the Respondent to sign on behalf of the firm;

- The loan agreement signed by Client D was witnessed by the Respondent;

- The legal charge deed for Property 3 (which purported to be security for a loan from Client B) which was signed by Client D, was witnessed by the Respondent;

- The loan money was recorded on the ledgers as being paid to Client D through the client account and the partial repayment of the loan was recorded as being repaid back to Client B through client account on Client D's ledger.

Conflict of interest between Client B and Client D

47.14 It was submitted that the significant risk of conflict between Client B and Client D materialised when the Respondent was arranging the loan in that the Respondent released at least some of the loan money to Client D even though:

- the legal charge stipulated as required security for the loan on Property 2 was not executed;
- the legal charge proposed by Client B on Property 2 was substituted by a legal charge on Property 3, without obtaining Client B's instruction;
- the legal charge on Property 3 was not registered until 7 January 2016, which was after the full loan had been due to be repaid;
- the personal guarantee from the director of Client C was not arranged;
- the loan agreement had not been signed by both parties;
- the legal charge on Property 3 was removed even though the loan money had not been fully repaid to Client B.

47.15 Mr BK's evidence, as set out in his affidavit dated 2 December 2016 was that:

- the loan money for Client D was paid into the firm's client account (the firm already held some of the necessary funds in client account and he transferred the additional £45,000.00 required into the firm's client account);
- the Respondent confirmed to him that the loan started on 26 September 2015 and was therefore due to be repaid by 26 December 2015.

47.16 As a result of the condition of the firm's books of account, it was not possible to identify the transfers of receipts and payments between Client B and Client D but the Respondent accepted that the funds were loaned from Client B to Client D.

47.17 Although Client B's offer letter stipulated that security was required in the form of a legal charge on Property 2, this was not arranged by the Respondent. The Respondent's account was that "it was later agreed between the parties that security could be over a different investment property, Property 3". Mr BK's evidence was that he did not provide instructions for the charge on Property 2 to be replaced by a charge on Property 3. By substituting the proposed legal charge on Property 2 for a legal charge on a different one of Client D's investment properties the Respondent failed to secure the loan in accordance with Client B's instructions, in the interests of Client D and to the possible detriment (although there was no evidence of an actual detriment) of Client B and the Respondent failed to act in the best interests of Client B.

The loan from Client B to Client E - £355,000 – July 2016 (allegation 1.4.3)

47.18 Mr Thomas relied on the facts set out in the background to this judgment. As to Client B's retainer, as recorded in the FI Report, when the single client file for the loan

arrangement was produced by the Respondent, the FIO could not locate documentary evidence of the firm's retainer with Client B. However, it was evident that the Respondent acted for Client B for the following reasons:

- In Client B's offer letter to Client E dated 16 June 2015, Client B referred to the "acting solicitor details" [of the loan arrangement] as being the Respondent at the firm.

- In Client B's letter to the Respondent dated 28 July 2016, (in which he attached the loan offer letter to Client E), Client B provided the Respondent with instructions:

  > "Please find enclosed offer letter for [Client E] as discussed, please note the Charges secured on the properties mentioned in the offer letter are not to be removed until prior written consent is given from [Client B]. Please insure (sic) that the offer letter is signed and original copies sent to us and further legal loan Agreement that we have in place is correctly formulated and signed please also update and correct CH1 form… all legal costs relating to this transaction are to be borne by the borrower"**.**

- The Respondent had a separate client ledger for Client B in relation to this transaction. One ledger card was titled "client: [Client B] [Mr BK] Reference KS/9763-3".

- Mr BK's evidence in his witness statement dated 2 December 2016 was that the Respondent was instructed to secure the debt and represent Client B's interests in the arrangement of the loan.

47.19 As to Client E's retainer, it was submitted that as set out in the FI Report, when the single client file for the loan arrangement was produced by the Respondent, the FIO could not locate documentary evidence of the firm's retainer with Client E. However, it was evident that the Respondent acted for Client E as the Respondent had two separate handwritten ledgers for Client E arising out this loan transaction. One ledger card was titled "CLIENT: [Client X] [Client E]" "MATTER: [Client E's forename]" with reference number 10218-1. The other ledger card was titled "CLIENT: "[Company O] (Client E)" "Matter: Purchase of Land" with reference number 10145-2.

<u>Conflict of interest between Client B and Client E</u>

47.20 It was submitted that the significant risk of conflict between Client B and Client E materialised when the Respondent was arranging the loan in that the Respondent released at least some of these funds to Client E even though the:

- legal charge on Property 4 was not executed;
- personal guarantee from the director of Client E was not arranged;
- loan agreement was not signed;
- legal charge over Property 5 had not been executed;
- Respondent did not notify Client B that Company O, a company for which the Respondent was a director, was purchasing Property 5 using the loan money;

On 27 January 2017, a charge was executed on Property 5. However, the Respondent did not act in the best interests of Client B as he did not inform Client B that Client E did not own Property 5, but that it was owned by Company O, which the Respondent had set up for Client E and that 100% of the shares were owned by the Respondent. The Respondent signed the execution of this charge as a deed as "[Company O] Acting by [the Respondent] as Director". Mr BK's evidence was that his instructions to the Respondent were as set out in the offer letter and that he did not know that the Respondent was associated with Property 5 and Company O. By releasing the loan money in the circumstances described above, without seeking instructions from Client B, it was submitted that the Respondent failed to secure the loan in accordance with Client B's instructions in the interests of Client E and to the detriment of Client B and the Respondent failed to act in the best interests of Client B.

47.21 It was alleged in respect of breaches of the Principles that by accepting instructions for two clients with interests that conflicted, the Respondent allowed his independence to be compromised and did not act in the best interests of each client and therefore breached Principles 3 and 4 of the SRA Principles. In addition, public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's actions by accepting instructions for both clients in a transaction where there was a client conflict or significant risk of a client conflict and subsequently acting in a way that preferred the interests of one client over another, the Respondent therefore breached Principle 6 of the SRA Principles.

47.22 The Tribunal had regard to the evidence both written and oral and to the submissions for the Applicant. This allegation related to loans which company B had made to C, D and E. The Tribunal first had to decide if any or all these parties were clients of the Respondent. Mr Thomas had drawn the attention of the Tribunal to the case of Dean v Allin and Watts (a Firm) concerning retainer. The judgment included, quoting the judgment in the case of Searle v Cann and Hallett [1993] PNLR 494:

> "No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that [the solicitor himself] ought to have appreciated it"

And:

> "Other circumstances to be taken into account include whether such a contractual relationship has existed in the past, for where it has the court may be readier to assume that the parties intended to resume that relationship…

Client B had been a client of the firm previously. The Tribunal had a witness statement from Mr BK of B, the Respondent's cousin in law dated 16 November 2018 with a statement of truth. He also confirmed the truth of witness statements he had given in litigation relating to the loan transactions. He said he first instructed the Respondent through B when purchasing a property. He then instructed the Respondent to sell that property through the firm. He stated that during 2014 they had surplus funds in the company which the Respondent knew about and suggested they loan out the money. "He told me he would take care of everything." At the end of 2014/beginning of 2015 the Respondent told BK that one of his clients required a short term loan. Three other

loans followed which were the subject of the allegation. The first loan of the three remained unpaid. In respect of each loan to C, D and E the Applicant had produced evidence of a retainer between B and the Respondent.

47.23 Regarding the Respondent's relationship with each of C, D and E the Tribunal found that there was also convincing evidence that each of C, D and E was a client of the firm. In the case of each loan the exception in Outcomes (3.6) and (3.7) did not apply; the parties had no common purpose so the Respondent could not act for both the borrower and lender. In each case there was an identifiable risk of conflict which materialised. The Tribunal found proved that the Respondent breached Outcome 3.5 and Principle 3 because he allowed his independence to be compromised by acting for both lender and borrower. He breached Principle 4 because he did not act in the interests of either client in the transaction (in the case of the borrowers they took high interest loans giving personal guarantees and without separate legal advice and in the case of the lender he did not arrange the required securities; and he breached Principle 6 in that the public would not trust a solicitor who acted in a position where there was a conflict of interest between clients. The Tribunal found all aspects of allegation 1.4 proved on the evidence to the required standard.

48. **Allegation 1.5 - Between June 2015 and December 2016:**

1.5.1 [the Respondent] Failed to act in accordance with Client B's instructions and in doing so breached Principle 4 and 5 of the SRA Principles 2011;

48.1 SRA Principles cited in allegation 1.5

Principle 4 is set out above under allegation 1,4.

Principle 5:

"You must provide a proper standard of service to your clients."

48.2 Mr Thomas relied on the facts giving rise to allegation 1.4. He submitted that Client B gave instructions for the loans to be secured; which properties over which to take charges based on BK's assessment of what Client B needed for security regarding the amount loaned and what he knew of the borrower's circumstances. The Respondent did not put his instructions into effect. Mr Thomas relied on the FI Report and the detail in the Rule 5 Statement. It was alleged in the Rule 5 Statement that in respect of each loan the Respondent failed to act in accordance with Client B's instructions: for Client B's loan to Client C, the Respondent released the loan monies to Client C without securing a legal charge on Land A or Property 1a and without securing a personal guarantee from Mr TB for the loan. Further he arranged an alternative method of security that had not been agreed by Client B. In respect of Client B's loan to Client D, the Respondent released the loan monies to Client D without securing a legal charge on Property 2 and without securing a personal guarantee from Client D for the loan. Further, he arranged an alternative method of security that had not been agreed by Client B. In respect of Client B's loan to Client E, the Respondent released the loan monies to Client E without securing a legal charge on Property 4, and without securing a legal charge on Property 6 and without securing a personal guarantee from Client E for the loan.

48.3 Regarding breaches of the Principles, it was submitted that by releasing the loan monies without obtaining the security for those loans as he had been instructed to do (and which the client had assessed as being necessary in order to provide the loan), the Respondent failed to act in Client B's best interests in breach of Principle 4. He also manifestly failed to provide a proper standard of service to Client B in breach of Principle 5.

48.4 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant. The Tribunal found as a fact that the Respondent failed to act in accordance with the instructions of Client B in terms of obtaining the securities which Client B specified as conditions of the offer of a loan to each client. In each case the Respondent released the loan monies without securing the legal charge on the stipulated propert(ies) and without securing the personal guarantee required. In the case of Clients C and D he arranged an alternative method of security without authority from Client B. The Tribunal found proved that the Respondent had breached Principle 4 by failing to act in Client B's best interests and Principle 5 by failing to provide a proper standard of service. The Tribunal found allegation 1.5.1 proved on the evidence to the required standard.

1.5.2 [the Respondent] Failed to return money held on client account for Client B when there was no proper reason to retain those funds in breach of Rule 14.3 of the SAR 2011 and in doing so, breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.

48.5 <u>SRA Principles cited in allegation 1.5.2</u>

SRA Principles 2 and 6 are set out above under allegation 1.1 and Principle 4 is set out under allegation 1.4.

Principle 5:

> "You must provide a proper standard of service to your clients**"**

<u>SRA Accounts Rules 2011</u>

> "Rule 14.3 Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly."

48.6 Mr Thomas relied on the facts set out in the background to this judgment. It was submitted that Mr BK's evidence was that following Client B's loan to Client D, by January 2016, after the repayment period of the loan had expired, he started to chase Client D as he did not receive payment. In his witness statement dated 16 November 2018, he said:

> "[The Respondent] never confirmed to us in writing when the money was paid to [Client D]. I later saw on his ledger sheets that the money had allegedly gone to [Client D] in September 2015, which meant repayment was due in December 2015."

Mr BK stated that he carried out a Land Registry search and found the property he required to be charged had not been charged. He did not think the Respondent would have informed him if he had not confronted the Respondent. (BK was told that the property in H Road already had a legal charge on it and so the Respondent moved the charge to the other property in D Road.) Mr BK established that the charge had been put on after the loan was due to be repaid. BK also stated:

> "The loan was not repaid on time and during January 2016, [Client B] chased [Client D] for payment. When I contacted [the Respondent] regarding the outstanding repayment and the subsequent interest due, [the Respondent] stated that the [D] Road property was to be sold. …
>
> In July 2016 I phoned [client D] chasing him for payment. [Client D] informed me that the full payment was made in April 2016 into the Firm's client account."

Mr BK's evidence was that he confronted the Respondent about what was happening with the money:

> "I confronted [the Respondent] at his office with our Land Registry search and conversation with [Client D] and he said that that was not true. Initially he said the charge was still on the property but when I informed him that (sic) I saw on the Land Registry he started back tracking. He said that the Property was still in [Client D's] possession as the sale had not yet completed. I asked [the Respondent] to confirm the amount that we had received and he would not, he would only state that the money had been received. But when I asked for the money to be transferred to the company account he said that he did not have it. I asked him where the money was but he would not say anything. I did not know why he did not have the money and could not release it as he previously stated it was in the client account. [The First Respondent] asked for a month to sort it all out. I was flying out of the country for a month the next day so I gave him that month to give me the money back.
>
> I waited a month as [the First Respondent] requested before chasing him for the money. [The First Respondent] began avoiding my calls and the money had not been released to [Client B]. I only received the money for the loan that was in the client account in December 2016 when the account was seized."

48.7 Mr Thomas submitted that Mr BK's evidence was that, given that the loan had not been repaid and he had requested a charge on Client D's property, he was expecting full repayment of the loan when the sale completed. Although Client D sold Property 3 on or around 4 April 2016, and a charge was secured in favour of Client B, the Respondent failed to forward the loan repayments due under the loan agreement to Client B. The Respondent's client ledgers recorded a transfer in the sum of £250,000.00 from Client D's sale of Property 3 ledger to Client B's ledger on 4 April 2016. However, the Respondent did not inform Client B that the sale had completed and did not return any money to Client B until 5 December 2016 as evidenced by the bank statement; following an application for a freezing injunction on the firm's client account made by M & Co Solicitors on behalf of Client B. On 5 December 2016, £300,250.00 was transferred to M & Co Solicitors for Client B. The firm's client account showed that the sale proceeds for Property 3 were paid into client account in the sum of £399,000.00

on 1 April 2016. It was submitted that there was no good reason to hold these funds due to Client B from 1 April 2016 to 5 December 2016 and the Respondent's failure to do so was in breach of Rule 14.3 of the SAR 2011. The firm's client account balance varied significantly throughout the period of 1 April 2016 to 5 December 2016 but it was relevant that there were periods of time that the client account balance fell below the amount that was due to Client B from the sale of Property 3. It was submitted that this indicated that the money due to Client B was being utilised to support other payments out of client account without Client B's authority.

48.8 As to breaches of the Principles, it was submitted that a solicitor of integrity would be mindful of both the sacrosanct character of client money and the importance of complying with his professional obligations under the SAR 2011 and would therefore return client money to their client immediately upon request. Under no circumstances would such a solicitor retain such money for a period of eight months, in the face of requests for repayment, compelling their client to resort to litigation in order to obtain its return. Accordingly, by failing to release money due to Client B in breach of Rule 14.3 and following requests to do so by Client B, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and a steady adherence to an ethical code and breached Principle 2 of the SRA Principles. The Respondent also failed to act in the best interests of Client B by failing to return funds due to Client B in breach of Principle 4 of the SRA Principles. In addition, public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's failure to return client money in breach of the SAR 2011 and only doing so when the client applied for a freezing injunction. The Respondent therefore breached Principle 6 of the SRA Principles.

48.9 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant. The chronology of events in respect to the reimbursement of the loan to Client D was quite clear. Property 3 was sold on or around 4 April 2016. A transfer of £250,000 was made on that day from Client D's sale ledger to Client B's ledger. However the loan was only repaid to Client B after Mr BK had contacted Client D and learned that Client D understood the loan had been repaid and only when Client B obtained a freezing injunction against the firm's client account. The Tribunal found the facts of the chronology proved and that by his conduct the Respondent had breached Rule 14.3, acted with a lack of integrity (Principle 2), had failed to act in B's best interests (Principle 4) and had failed to maintain the trust of the public (Principle 6). The Tribunal found allegation 1.5.2 proved on the evidence to the required standard.

Dishonesty in relation to the matters alleged at Allegations 1.5.2

48.10 The Applicant relied on the test for dishonesty stated by the Supreme Court in Ivey. In addition, it was submitted that the circumstances of the case showed that the Respondent must have realised that by those standards he was acting dishonestly but proof of such realisation was not necessary to prove dishonesty. The Respondent acted dishonestly by the ordinary standards of reasonable and honest people because, in all the circumstances of the case he:

- knew when the loan was due to be repaid by Client D;

- acted in the sale of Client D's Property 3 and he knew that a charge had been secured against Property 3 in favour of Client B;

- knew that the funds needed to be paid to Client B as he removed the charge from Property 3 as part of the property sale;

- informed Client B that the loan would be repaid when Client D's property sale completed but then failed to arrange for this to happen;

- transferred the sum of £250,000.00 from Client D's sale of Property 3 ledger to Client B's ledger on 4 April 2016;

- denied to Client B that the property had been sold when asked by Client B on or around 7 July 2016; (as set out in BK's affidavit);

- must have known that for significant periods of 2016, the client account balance was less than the money due to Client B;

- benefited from withholding the money due to Client B because this money must have supported other payments out of client account not relating to Client B without Client B's permission;

- Despite Client B's requests to do so, he did not return the sums due to Client B until Client B made an application for a freezing injunction over the firm's client account.

48.11 Again the Tribunal applied the test in the case of Ivey. The knowledge and belief of the Respondent was that the loan to Client D was due and the money to repay it was available, the charged property having been sold by the firm for Client D. The Respondent removed the charge relating to the loan and so knew he was in a position to redeem the loan and told Client B that the loan would be repaid after completion. Mr BK's evidence was that the Respondent denied in July 2016 that the property had been sold which was a lie. The client account held insufficient monies over various time periods in 2016 to reimburse Client B which was relevant to the fact that the Respondent benefited from withholding reimbursement because the money withheld covered other payments out of client account not related to Client B. the Respondent only reimbursed Client B when forced to do so by court proceedings. The Tribunal determined that ordinary decent people would consider this conduct to be dishonest. The Tribunal therefore found dishonesty proved on the evidence to the required standard in respect of allegation 1.5.2.

49. **Allegation 1.6 - By accepting instructions to act for Client B in the loan transaction referred to at allegation 1.4.3 above, [the Respondent] acted in a situation where there was an own interest conflict or a significant risk of an own interest conflict and in doing so breached any or all of Outcome 3.4 of the SRA Code of Conduct 2011 and Principles 3 and 6 of the SRA Principles 2011.**

49.1 SRA Principles cited in allegation 1.6

Principles 3 is set out under allegation 1.4. Principle 6 is set out under allegation 1.1.

SRA Code of Conduct 2011

Outcome 3.4:

> "You do not act if there is an own interest conflict, or a significant risk of an own interest conflict."

49.2 Mr Thomas submitted that this allegation was related to allegation 1.4.3 and the loan for Client E's matter. Mr Thomas referred to the offer letter from Client B to Client E dated 28 July 2016 which according to Mr BK's statement was a revised offer in an increased amount. The security stipulated by Client B is set under allegation 1.4.3 above. Client B understood that the purpose of the loan to Client E was so that she could purchase some land Property 5 as he set out in his affidavit dated 2 December 2016. As the proposed security for the loan included a legal charge against Property 5, it followed that Client B understood that Client E would have an interest in Property 5 against which such security could be effective. Instead the Respondent created Company O on 18 August 2016. Its address was the same as that of the firm. This company purchased Property 5 on 30 September 2016. The Respondent was shown as the sole director and described as a property dealer. He owned 100% of the shares. Company O purchased Property 5 on 20 September 2016. The Respondent did not arrange a charge on Property 5 until 27 January 2017. When the Respondent secured the charge, he signed the Trust deed as a Director of Company O. In February 2017 there was a submission to Companies House for a retrospective transfer of shares in O dated 30 August 2016 but the Respondent continued to be a director of Company O for some time thereafter until he resigned on 7 December 2016.

49.3 Mr Thomas submitted that there were two ways of looking at the matter; the loan might be used to purchase a property owned by Company O but as against this Mr BK confirmed in his evidence that he did not know that the Respondent was associated with Property 5 in that way. Alternatively if the Respondent had an interest in Property 5 because of his involvement in Company O, it was not in his interests to put a charge on Property 5 for Client B and that constituted a conflict or significant risk of own interest conflict. It was set out in the Rule 5 Statement that the Respondent should not have acted for Client B in obtaining security for the loan to Client E on Property 5 as the duty to act in Client B's interests conflicted, or there was a significant risk that they would conflict with, the Respondent's own interests as a director of Company O. The Respondent's position as a director and shareholder of Company O, which owned Property 5 when he was also due to carry out Client B's instructions to obtain a legal charge over Property 5 created a significant risk of an own conflict. Mr Thomas submitted that the precise relationship between the Respondent and Client E did not come out fully from the papers. Mr BK said that the Respondent and Client E were close associates. It was not possible to get to the bottom of that but the Respondent put himself in conflict with Client B as a lender of money.

49.4 The FIO asked the Respondent about his connection with Company O and Client E in interview on 13 March 2017. The Respondent's explanation was that the loan was for Client E, and that Company O had simply been set up, on Client E's instructions, for the purpose of purchasing the land. The Respondent said that Client E was on holiday at the time of completion, that all shares in Company O were transferred to Client E at a later date and that Client E had since repaid the loan.

49.5 As to breach of the Principles, it was submitted that by acting for Client B where there was an own interest conflict or a significant risk of an own interest conflict as a result of his position and duties as a director of Company O, the Respondent allowed his independence to be compromised (Principle 3). He could not act in the best interests of his client (Client B) (Principle 4). In addition, public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's actions by acting in a scenario where his own interests were at significant risk of conflicting with his own client (Principle 6). The Respondent therefore breached all three of the SRA Principles.

49.6 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant. This allegation arose out of the loan to Client E and related to own interest conflict for a solicitor. The loan was made by Client B for the purchase of a property by Client E but the entity which actually bought it O Ltd was a company established and owned by the Respondent. The Respondent produced an explanation that the would-be purchaser Client E was on holiday at the relevant time but there was no evidence to support this. The Tribunal determined that it was in any event irrelevant why the Respondent did what he did. The fact was a company of which he owned 100% of the equity bought a property against which Client B loaned money, it was also irrelevant that the Respondent later transferred his shares in the company to Client E. When he did so he remained a director until December 2016, whereas the property was purchased in late September 2016. The Tribunal found proved that the Respondent failed to achieve Outcome 3.4 and breached Principle 3 by allowing his independence to be compromised and failed to behave in a way that maintained the trust the public placed in him or the legal profession a breach of Principle 6. The Tribunal therefore found allegation 1.6 proved on the evidence to the required standard.

50. **Allegation 1.7 - From around March 2016, [the Respondent] failed to maintain adequately or at all the Firm's books of account in breach of Rule 29.1 and 29.12 of the SAR 2011 and any or all of Principles 6 and 8 of the SRA Principles 2011.**

50.1 <u>SRA Principles cited in allegation 1.7</u>

Principle 6 is set out under allegation 1 above.

Principle 8:

> "You must 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"

<u>SRA Accounts Rules 2011</u>

Rule 29.1

> "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."

Rule 29.12

"You must, at least once every five weeks:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

50.2 It was submitted that compliance with the SAR 2011 was the responsibility of each Principal in a firm as set out in Rule 6.1. Rule 1.2(f) stipulated that proper accounting records must be kept to show accurately the position with regard to the money held for each client and trust. Rule 29.2 of the SAR 2011 stipulated that all dealings with client money must be appropriately recorded (a) in a client cash account or in a record of sums transferred from one client ledger account to another and (b) on the client side of a separate client ledger account for each client. The firm had two office accounts and one client account, all held at Lloyds Bank PLC. The FIO inspected the firm's books of account. The inspection commenced on 7 February 2017. The books of account were not compliant as the FIO identified and recorded in the Interim FI Report that:

- The client cash account had not been written up since 31 December 2016;
- The client cash account had not been reconciled to the client bank account statements since 31 December 2016;
- A list of balances shown by the client ledger accounts had not been prepared and compared on a monthly basis to the client cash account since 31 March 2015.

The most recent written up cash account and the most recent reconciled bank statements, as provided to the FIO were dated 31 December 2016. The Respondent accepted these findings on 25 May 2017. He provided an explanation that the firm's cashier had suffered illnesses and was behind with his duties. This admission was evidence that the Respondent knew that the books of account were not up to date. The condition of the firm's books of account meant that the source of the client account shortfall established on 17 May 2017 could not be identified. In the absence of the cash account being written up, client account reconciliations and an up to date list of balances shown by client ledgers compared on a monthly basis, it was submitted that the

Respondent failed to ensure that proper account records were maintained at the firm. As set out in the FI Report, some of the transactions recorded on the ledgers for Client B's loan transactions with Client C, Client D and Client E did not correlate with transactions from the client account bank statements. The Respondent was the fee earner with conduct of those matters and they represented further examples of the Respondent not ensuring that the accounting records were accurate and up to date.

50.3 As to breaches of the Principles, it was submitted that proper governance and sound financial and risk management principles required the Respondent to ensure proper accounting records of his dealings with client money. In addition, public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn of the Respondent's actions in failing to ensure proper accounting records of his dealings with client money as required by the SAR 2011, the purpose of those rules being to ensure that firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard client money. The Respondent therefore breached Principles 6 and 8 of the SRA Principles 2011.

50.4 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant. The Tribunal found the facts asserted by the FIO proved by the investigation. The Respondent had breached Rules 29.1 and 29.12 of the SAR 2011 and by doing so had failed to maintain public trust (Principle 6) and had not run his business or carried out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8). The Tribunal therefore found allegation 1.7 proved on the evidence to the required standard.

51. **Allegation 1.8 - In his capacity as the COFA at the firm he [the Respondent] failed to ensure or take adequate steps to ensure compliance with the firm's regulatory obligations under SAR 2011 in breach of his obligations under Rule 8.5 of the SRA Authorisation Rules 2011 and Principle 7 of the SRA Principles 2011.**

51.1 <u>SRA Principles 2011 cited in allegation 1.8</u>

Principle 7:

> "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner."

<u>SRA Authorisation Rules 2011</u>

Rule 8.5:

> "Compliance officers:
>
> (e) The COFA of an authorised body must:
>
> (i) Take all reasonable steps to:

(A) Ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules;

(B) Record any failure so to comply and make such records available to the SRA on request; and (ii) In the case of a licensed body, as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:

…

(A) In the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with Rule 8.7(a); and

(B) A failure may be material either taken on its own or as part of a pattern of failures so to comply.

(iii) In the case of a recognised body or recognised sole practice, as soon as reasonably practicable report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply)."

51.2 It was submitted that the Respondent was appointed as the firm's COFA on 10 December 2012. The breaches alleged in allegations 1.2, 1.3 and 1.7 were material breaches which evidenced that the Respondent failed to take reasonable steps to ensure compliance with the SAR 2011 as required of a COFA under Rule 8.5 of the SRA Authorisation Rules 2011. Further, the evidence obtained by the FIO was that the Respondent was the sole operator of the firm's only client account so he had access and control over the accounts to be able to satisfy himself that the accounts were compliant. As the Respondent failed to comply with his legal and regulatory obligations as a COFA, he breached Principle 7 of the SRA Principles 2011.

51.3 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Respondent. The Respondent was the firm's COFA and the Tribunal found proved that he had failed to carry out the duties of that role as alleged. He had thereby breached Rule 8.5 of the Authorisation Rules 2011 and had breached Principle 7 because he failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and co-operative manner. The Tribunal therefore found allegation 1.8 proved on the evidence to the required standard.

Previous Disciplinary Matters

52. None.

Mitigation

53. The Respondent was not present and had offered no mitigation.

Sanction

54. The Tribunal had regard to its Guidance Note on Sanctions December 2018. The Tribunal assessed the seriousness of the misconduct. The Respondent's overall motivation was to keep his practice afloat. In respect of his employment of Mr O he would profit from clients referred to the firm by Mr O. He was the owner of the firm and controlled it. He was also the COFA. His actions were planned; for example it was in his control whether Client B's instructions regarding security for the loans were complied with and how client account was disbursed or withheld. He had a reasonable level of experience. The Respondent's actions caused harm both to clients and to the reputation of the profession. He had held Client A's money on trust and withheld it from her. There were aggravating factors; dishonesty had been found proved in respect of two allegations. The misconduct generally continued over a period of time. The Respondent ought to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the profession. The harm impacted clients in that Client B had to go to court to recover one loan and another that to Client C remained unpaid in part at the date of Mr BK's witness statement in these proceedings 16 November 2018. There were no mitigating factors. The Respondent had shown no remorse during the investigation and not engaged with the proceedings. He had made no admissions save in interview. He had referred to ill health but submitted no evidence even when given the opportunity to do so. The Tribunal considered that the misconduct was too serious for no order, a reprimand or a fine. It was not appropriate for suspension as it was serious enough to merit strike off. The Guidance stated that the most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved would almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)). The Tribunal could find no exceptional circumstances in this case. The Respondent would be struck off.

Costs

55. The Applicant applied for costs in the amount of £56,685.88. Mr Thomas informed the Tribunal that the costs were based on a time estimate of three days for the substantive hearing with associated travel costs. The schedule also included the cost of the attendance of another person sitting behind counsel which had not happened. However Capsticks' fees were based on a fixed fee for the type of matter rather than an hourly rate. Mr Thomas submitted that a hypothetical comparison of hourly rate and fixed fee showed the amount claimed was reasonable for this type of work having regard to the number of allegations and complexity of the issues. He reminded the Tribunal that it had found all that allegations proved and that there was a public interest in bringing allegations of this type. The Tribunal noted that Capsticks claimed for around 300 hours' work. Mr Thomas submitted that the amount claimed £34,500 divided by the number of hours gave a hypothetical hourly rate of £115 and that most of the work would have been done by a solicitor and a senior paralegal. The Tribunal noted that two FIOs had worked on the investigation and had some concern that there might have been duplication of work. Mr Thomas submitted that Mr Carruthers who had taken over the case was the lead FIO. After taking instructions, Mr Thomas informed the Tribunal that Mr Carruthers had come into the case in April 2017 (the investigation commenced in February 2017) and so the risk of duplication was small or non-existent. Mr Thomas

submitted that there were a number of different issues in the case which were ongoing and required multiple attendances at the firm. He referred the Tribunal to the correspondence and transcripts of interviews exhibited to the Rule 5 Statement. Mr Thomas also explained that the supervision costs referred to in the costs of the Applicant's investigation referred to the review of the FI Report and decision making about future action. The Tribunal considered the costs claimed reasonable and proportionate for a case of this type and awarded costs in the amount applied for. The Respondent had been invited in the Standard Directions if he wished to do so to make submissions about his financial position and had not done so. The costs would be awarded in the full amount.

Statement of Full Order

56. The Tribunal Ordered that the Respondent, KULDIP SINGH, 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 £56,685.88.

Dated this 18th day of March 2019
On behalf of the Tribunal

L. N. Gilford
Chairman