**The Applicant appealed the Tribunal's Order dated 3 April 2019. The appeal was heard by Flaux LJ and May J on 8 October 2019 and Judgment handed down on 18 October 2019. The appeal was allowed. The Tribunal's finding that the Respondent was not dishonest was substituted with a finding that he was dishonest. The Tribunal's order imposing a £10,000 fine was quashed and substituted with an order that the Respondent be struck off the Roll of Solicitors. Solicitors Regulation Authority v Siaw [2019] EWHC 2737 (Admin).**

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11870-2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

KWAME AGYEKUM SIAW Respondent

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Before:

Mr J. P. Davies (in the chair)
Mr L. N. Gilford
Mrs N. Chavda

Date of Hearing: 2-3 April 2019

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Shaun Moran, Solicitor Advocate employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street Birmingham B1 1RN for the Applicant

The Respondent was in person.

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# JUDGMENT

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**Allegations**

1. The allegations made against the Respondent Kwame Agyekum Siaw by the Solicitors Regulation Authority arising out of his time whilst working at Mountain Partnership Solicitors ("the firm"), as amended with the permission of the Tribunal, were that:

1.1 On 20 August 2018 the Respondent having provided his personal bank account details to Client K (or Client K's wife), received £500 into his personal bank account in relation to Client K's immigration matter and subsequently failed to account for that money (or part of that money) to the firm thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 and Rule 14.1 of the SRA Accounts Rules 2011.

1.2 In an email dated 22 May 2017 the Respondent informed the SRA that he had not received payment (of costs) into his personal bank account in relation to Client K's matter when this was untrue and/or misleading contrary to all or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011.

2. Dishonesty was alleged in respect of the allegations at paragraph 1.1 and 1.2 however proof of dishonesty was not an essential ingredient for proof of these allegations.

**Documents**

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement with exhibit SM1 dated 14 September 2018
- Note of Opening/Skeleton Argument of the Applicant dated 1 April 2019 drafted by Mr Shaun Moran
- Witness statement of Mr Olufemi Okenla with exhibits OO1 and OO2 dated 20 March 2019
- Witness statement of Mr John Kotun with exhibit JWKK1 dated 27 March 2019
- Witness statement of Ms Adina Ion (Mrs Kotun) with exhibit AI 1 and attachment JWKK 1
- Email from Ms Jennifer Poole of the Applicant dated 3 April 2019 to UTIAC Field House with reply of the same date from Field House Correspondence
- SRA (Solicitors Regulation Authority) Practice Framework Rules 2011
- HM Courts & Tribunal Service UTIAC Fees Table to all processes on or after from 22 April 2014
- Applicant's Statement of costs as at Date of Final Hearing 2 April 2019 dated 28 March 2019
- Applicant's Statement of Costs as at Issue dated 17 September 2018

Respondent

- Respondent's Statement in response to the Rule 5 Statement of the Applicant with exhibit KAS1 dated 13 December 2018

- Witness statement of the Respondent dated 11 March 2019 with attachments
- Second witness statement of the Respondent
- Bundle of documents in Judicial review claim relating to Mr John Kotun JR/9112/2015
- Extracts from the SRA Handbook Version 21
- Respondent's Statement of Cost as at 11 March 2019

**Preliminary and Other Issues**

4. Witness Statements

4.1 The Tribunal had already accepted into evidence witness statements from Mr John Kotun ("Mr K") and Ms Adina Ion ("Ms I" or "Mrs K") after the date set in Standard Directions as the Respondent had requested their attendance for cross examination. The witness statement of Mr Olufemi Okenla ("Mr O") was also accepted.

5. Application by the Applicant to amend the allegations on the second day of the hearing

5.1 The Tribunal commenced its deliberations on its findings of fact and law on the second day of the hearing but became concerned about the potential impact of new evidence which had been introduced by the Applicant consisting of the evidence of an email dated 3 April 2019 from the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC") at Field House to the Applicant which conclusively proved that £350 of the sum of £500 the subject of allegation 1.1 could not be shown to have comprised the fee for a request for reconsideration at a hearing of a decision on an application for permission for judicial review, an Oral Personal Hearing ("OPH") application. The new evidence arose in its turn out of the Applicant's consideration of new evidence given by the Respondent during his oral evidence when he particularised the make-up of the £500 by way of disbursements for the first time. The result of the admission of the new evidence had been that the Respondent decided to withdraw part of the oral evidence he had given about the disbursements he asserted he had paid. The Tribunal considered that in the significantly changed circumstances it would be in the interests of justice for the Applicant to be permitted to consider its position regarding the allegations which might in turn lead to the Respondent giving rebuttal evidence. The Tribunal retired to give the Applicant that opportunity.

5.2 After considering the Applicant's position in the light of the developments regarding the new evidence, Mr Moran applied to amend allegation 1.1 by inserting the words "or part of that money" after the words "that money" so that the allegation read as set out above, for the following reasons. It was the Applicant's position that the Respondent could only be acting as Mr K's solicitor because of SRA (Solicitors Regulation Authority) Practice Framework Rules 2011 ("PFR") for the reasons set out in submissions recorded below. That being the case all money received from Mr K should have been accounted for to the firm by the Respondent. It was relevant from the new evidence that it could not all be disbursements; so at least the residual funds had to be accounted for to the firm and it was Mr O's evidence that that did not take place.

5.3 Mr Moran also applied to amend allegation 1.2 by the insertion of the word "of costs" after the words "received payment " on the basis of the evidence of the email dated 3 April 2019 from UTIAC to the Applicant so that the allegation read as set out above. He submitted that some part of the £500 had to be costs because of the contents of that email.

6. Respondent's response to the applications to amend

6.1 The Respondent took the view that as set out in his submissions below, the SRA Accounts Rules 2011 ("the SARS") did not apply. The Respondent did not however oppose the application to amend the allegations. He submitted that if the Tribunal found that only £205 of the £500 was disbursements he would be in its hands. He would not be able to account for the remaining £295 but maintained that the SARs did not apply. He would be happy to refund the money. The Respondent did not seek time to check upon the accuracy of the email from UTIAC.

7. Determination of the Tribunal upon the Applicant's applications to amend the allegations

7.1 In the light of the changes to the Respondent's evidence and the document obtained from UTIAC by the Applicant and the Respondent not opposing the applications, the Tribunal gave permission for allegations 1.1 and 1.2 to be amended in the terms sought by the Applicant.

**Background**

8. The Respondent was born in 1959 and he was admitted as a solicitor in England and Wales on 16 September 2002. As at the date of the Rule 5 Statement his name remained on the Roll of Solicitors.

9. The Respondent held a current Practising Certificate free from conditions and practised as a solicitor at R. Spio & Co Solicitors.

10. At all times material to the allegations, the Respondent practised at Mountain Partnership Solicitors ("the firm"), in London. The Respondent began working for the firm as an assistant solicitor on 7 June 2004, on 1 July 2005 he was promoted to an associate and on 1 July 2006 he became a partner at the firm. The Respondent left the firm in October 2016.

11. In a report to the Applicant dated 18 April 2017, Mr K stated that prior to his detention in July 2015 by the Immigration authorities he visited the Respondent at the firm with his then fiancée now wife (Ms I/Mrs K) to seek advice. On 17 July 2015, whilst in detention, Mr K authorised the firm to act for him and spoke with the Respondent on the telephone. Mr K indicated that he understood the firm's fees to be £1,500 and that the Respondent provided bank details to facilitate an initial fee payment of £500. The initial payment was made on 20 August 2015 and Mr K confirmed that the Respondent had received the payment safely in a telephone call. Mr K indicated that no invoice was received in relation to the payment and no client care letter was received. The bank details were not those of the firm. The Respondent

accepted that he did not account for this sum to the firm, retaining it instead in his personal account. Mr K also complained to the Legal Ombudsman ("LeO").

12. In an email to the Applicant dated 22 May 2017 the Respondent addressed concerns regarding Client K's matter stating that he was working "…out of my heart on a pro bono basis" and made other statements which gave rise to allegation 1.2.

**Witnesses**

13. **Mr Olufemi Okenla** gave evidence. The witness provided a signed copy of his statement which had been faxed to Mr Moran. The witness confirmed that the Letter of Authority which Mr K had signed was a template document of the firm's and the handwriting on it apart from Mr K's signature was the Respondent's. The letter head of a letter of 17 July 2015 sent by the Respondent to the Home Office accorded with the firm's letter head. The witness had searched the firm's case management system and accounting systems and found no documents relating to Mr K. The witness explained that the fee earners did their own typing. The firm's reception recorded all letters in and out and there was no record of that letter; he had personally checked. The documents in this matter had come as exhibits to Mr K's complaint (not from the firm). The witness had asked the Respondent to come in and explain the matter as the conducting solicitor. He made phone calls to the Respondent which went to voicemail. He had made contact with the Respondent once and explained what he needed him to explain but the first time he had seen the Respondent since then was at this hearing.

14. The witness had circulated a memorandum dated 19 May 2014 to all staff in the firm, about 10 people in all. He explained that as he said in his witness statement:

> "However, since January 2014, I started noticing in the course of my file reviews that there are (sic) many files that were opened and conducted by [the Respondent] in the firm without any corresponding payment to the firm's clients or office accounts as appropriate, so I had a meeting with him on or around 16th May 2014 and since I was not satisfied with his response, I decided we should part ways amicably due to breach of trust and he should stop taking on new clients and wind down all his files in orderly manner by December 2014 but further extension (sic) were later agreed due to the number of files involved for his winding down to conclude by 9th October 2015 when his role in the firm would cease."…"

The witness stated that the outcome was that he came up with the memorandum, the purpose of which was to clarify file opening processes and pro bono work. Prior to the memorandum there had been no need for any processes but as the Respondent had undertaken some pro bono work they needed a process in place.

15. In cross examination, the witness stated that the Respondent did not receive a salary but worked on commission on the same basis whether he brought the work in or the firm allocated work to him; 60% of fees to the Respondent and 40% to the firm.

16. The witness clarified that the first he heard of Mr K was when the LeO wrote to him and then K wrote to him on 18 August 2016 and 30 September 2016. The witness did not know how Mr K had come by the letters from the Respondent to the immigration authorities. The receipt of the 18 August letter prompted the witness to contact the Respondent. In terms of his availability to meet with the Respondent, the witness stated that while he was a businessman and travelled, in 2016 he spent more than 10 months in the UK.

17. The witness stated that it was quite possible that letters written by the Respondent on the firm's notepaper could have been prepared within the firm and sent out and not necessarily have found their way onto the office systems. It was an open plan office and the letter heads were accessible to any case worker. Each fee earner had a standalone PC. The Respondent hardly used the Case Management System ("CMS").

18. The witness stated that he found that at least 10 files had been conducted unofficially. He had confiscated them and had a meeting with the Respondent about them. In one file there was a sum of money £1,700 in cash, on another £200. He found £2,000 to £3,000 in total. The witness kept the files for one month to see what would happen; nothing did so he drew up a schedule. He met the Respondent on 16 May 2014. The Respondent gave him a different story from what was on the files and the witness decided they should part company. He called a partners' meeting, told them what had happened and then issued the memorandum on 19 May 2014. It was directed at all staff not just the Respondent. On 16 May he was told not to open more files but to wind down. He had a lot of files, over 100. He anticipated it would take until December 2014 to wind down. The witness had set that date at the meeting but for whatever reason the Respondent could not effect an orderly closure of files. The witness had to force him to close down. The Respondent left in October 2015. The firm still had a lot of issues for example enquiries from solicitors. The Respondent was not talking to anyone. He did transfer some files, but 50 files were left, not properly transferred.

19. The witness had attached to his statement a schedule of fees charged by the firm for private work from 14 August 2008. The Respondent asked him to point to any fees of more than £200. The highest fee on the schedule for immigration work was £1,250. There was also a reference to a minimum payment of £2,500 for contentious matters where the fee could not be agreed or was unascertainable. The witness confirmed that his evidence was that he saw cash on some files that exceeded what the firm would charge for that type of work. According to the firm's policy, cash should have been paid into client account. The maximum amount in cash allowed to be taken was £5,000. The witness stated that the Respondent undertook all types of work; he was a general practitioner.

20. In re-examination, the witness stated that he showed the Respondent the files where there was cash and asked why they were not on the firm's database and the Respondent could not answer. The firm regularised the files by paying money into client account. The files fell into three categories; pro bono work, files where the Respondent had not taken enough money on account in accordance with the firm's policy; and files which had been opened but nothing much seemed to have been done. The witness stated that the firm was a commercial entity; it had been going through a lot of difficulties; legal aid was getting tight. It was inconsistent with its commercial

vision not to take enough money or work pro bono. The Respondent asked the witness whether he could provide evidence of the cash being paid into client account. He did not have any documentary evidence with him.

21. **Mr John Kotun** ("Mr K") gave evidence. He confirmed the truth of his witness statement as the Tribunal did not have one with an original signature. The witness had arrived in the UK on 24 July 2011 with the aim of joining the British Army. He obtained a six month visitor visa dating from August 2011. He began the process of applying to enlist. He understood that there was a rule change which affected his position. The army and the Home Office each referred him to the other. His visa expired. In cross examination, it was pointed out to him that Removal Directions dated 21 July 2015 stated:

> "Applicant entered the UK on 24/06/2011 on a visit visa valid from 17/05/2011 – 17/12/2011.
> On 13/08/2012 the applicant applied for leave to remain in order to enlist in the British Armed forces. He was granted leave on 16/07/2013 until 16/01/2014 to make an application to armed forces but due to changes in the recruitment process he was unable to enlist.
>
> On 09/06/2015 notice we (sic) received that the applicant intended to marry a Romanian national…"

The witness agreed the dates in the Home Office document were correct.

22. The witness stated that he had first visited the Respondent a week or two before he became engaged in February 2014. A Spanish national JC had referred him to the Respondent. The Respondent did not mention a fee to him on first meeting. The Tribunal pointed out to the witness that in his statement the year was stated as 2015 not 2014. The witness said that he was not very good with dates so he would go with the dates in the documents. His statement said he met with the Respondent at the firm's offices. He wanted to know how the Respondent could best assist him with his immigration status at the time and how much it would cost him to get this done. The Respondent told the witness that the only chance he stood of getting the documents he needed to be able to remain in the UK with certainty was if he had a baby or was married. He asked how much money was involved and the Respondent said they could discuss it later. The first contact with the Respondent was on the phone. The Respondent directed the witness and his fiancée to his office because they did not know where it was. They came there to see what the charges were. The Respondent did not mention that and so they did not instruct him then. They only instructed him when they had the documents; when they were engaged. The witness's evidence of his engagement date was a certificate of a celebratory helicopter flying lesson on 17 January 2015.

23. The witness was unsure of the date of his second meeting with the Respondent. He gave notice of intention to marry to the Home Office on 9 June 2015. He agreed that he had not gone to see the Respondent at that time. He confirmed that the reference in paragraph 8 of his witness statement was to the second meeting – on 6 August 2015:

> "On 6 August 2015 my fiancée and I attended the firm's office and met with the Respondent. He advised that his professional charges for the work on my case would be £1,500. An agreed first instalment of £500 was paid on 20 August 2015 by bank transfer from my fiancée's Barclays account to an account specified by the Respondent …"

24. According to the Removal Directions the witness had been detained on 14 July 2015 when officers came to the house in Clapham where he was living. He was paying the rent with the help of church friends and other people who knew his situation. When he first arrived in the UK he stayed with a family friend/an uncle. His fiancée lived partly with him and partly with her sister. He had been unemployed from 2011 until 2015. He was introduced to volunteer work for which he could not be formally paid but could receive something for assisting. On the day he was arrested, the witness first called the uncle he had lived with who advised that if he had already spoken to a legal adviser he should speak to that person. He did not call anyone from his home. On arrest he had been taken to Croydon and allowed two phone calls. His phone had been seized but he was allowed to obtain numbers from it to call using a phone the authorities provided. After calling his uncle he called the Respondent. The witness stated that the Respondent had given him his card at their first encounter. He was moved to another location and unable to contact his fiancée until the following morning. He spoke regularly to JC while detained.

25. The witness stated that he was only aware afterwards that his fiancée had spoken to the Respondent and arranged to meet him in his office on 16 July 2015. He was aware she had brought to the office the engagement certificate, pay slips, passports and her Romanian identity card. She told him she had brought all the documents which the Respondent required and not to worry. She said she had asked the Respondent what his charges would be. The Respondent insisted the priority was not about the fees but to get the witness out of the detention centre. She said she wanted to pay the Respondent but he did not mention any amount. She wanted to know how much the whole process would cost them so they could budget but the Respondent never gave them the figure. She would not have gone there with cash; she always walked around with her credit card.

26. The witness stated that the Respondent asked for the Judicial Review application fee and the witness instructed his wife to give the Respondent that money for the application. He had asked the Respondent about fees and the Respondent said he would be paid after the work had been done. He could not recall the amount he asked his fiancée to give the Respondent. He said to pay the Respondent what he needed. The witness received copies of a document "Application for a registration certificate or residence card as the family member of a European Economic Area (EEA) or Swiss national" while in detention. The fee for a single applicant with no children was shown to be £65. His fiancée did not tell him the amount she paid and he had not discussed it with her since. She told him she had given the Respondent money for the Judicial Review. It was pointed out to the witness that the document to which he referred was not an application for Judicial Review. He replied that part of the document was faxed to him at the Detention Centre because the Respondent needed him to sign it and fax it back. He discovered subsequently that the fee was for the EEA card and not for the Judicial Review; it was part of the fee not the whole of it.

The handwriting on the form was the Respondent's; the witness just had to sign and return it.

27. The witness clarified that he had been denied bail on 4 August 2015 but then he was told he was to be released. He called the Respondent and said he would like to come and see him. On 6 August 2015, they discussed how much the whole fee would be and that was how they came to the amount of £1,500. The witness rejected the suggestion that the Respondent's information was that the Judicial Review would cost in the region of £6,000. He and his wife didn't have that money instantly; they would pay some and then the rest of it later. His wife paid £500 four days later but he did not know that was the amount.

28. **Ms Adina Ion** (Ms I/Mrs K) gave evidence. She could not recall the first date when she came to see the Respondent but it was in the spring of 2015. She had more contact with the Respondent after Mr K was detained. After that she went with Mr K to see the Respondent. She could not remember exactly when; this happened in 2015 and it was now 2019 and she had been under stress which would not allow her to remember these details. It was put to the witness that she visited the Respondent on 16 July 2015. She stated that he had asked her to bring some documents for the Judicial Review and he filled out others. She was distressed when she visited the Respondent. She asked the Respondent to give prices because she and Mr K did not want to be in debt to anyone. The Respondent refused to give her numbers; he said they would discuss later what they would pay but focus on getting Mr K out of detention. In the period after Mr K was detained until 6 August 2015, the witness believed she had paid the Respondent "postal" fees, copy fees and "judicial" fees but she could not be sure. It was a small amount not hundreds of pounds. The rest of the work the Respondent was doing was to be paid for later. The witness agreed she usually paid by credit card but if asked to pay otherwise obviously would do so. The witness could not remember how many times she visited the Respondent after 16 July 2015 while Mr K was in detention. She had also visited Mr K but could not recall how many times. She was in phone contact with him but he was not always available. She consulted him about what the Respondent said. The witness was referred to a three page bank statement for her account date 21 July 2015 giving Mr K's address. Entries commenced on 19 June 2015. The witness believed she had submitted it to the Respondent with the documents for the Judicial Review. She agreed that the balance as at 20 July 2015 was £80.41. She had no other bank account. As to where the money came from to pay the Respondent, the witness stated that she made several cash withdrawals but she could not remember the payments accurately. The largest one was for the Judicial Review. She confirmed that none of the bank statements pages gave any indication that they included items for the Judicial Review; they were only small amounts. She did not know for sure if she made any payments to the Respondent other than the £500. She had no idea what she had done with the cash withdrawals.

**Findings of Fact and Law**

29. 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 include those in the documents and those made orally.)

30. **Allegation 1.1 - On 20 August 2018 the Respondent having provided his personal bank account details to Client K (or Client K's wife), received £500 into his personal bank account in relation to Client K's immigration matter and subsequently failed to account for that money (or part of that money) to the firm thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 and Rule 14.1 of the SRA Accounts Rules 2011.**

30.1 SRA Principles 2011

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;"

Rule 14.1 of the SRA Accounts Rules 2011 Use of a client account:

> "Client money must, without delay, be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19)."

30.2 For the Applicant, Mr Moran submitted that it would be necessary for the Tribunal to determine the status of Mr K (whom the Applicant referred to as Client K) which was at issue between the parties. In an effort to explain his receipt of payment directly into his personal bank account from Client K, the Respondent had adopted a consistently inconsistent position as to the status of Client K throughout the Applicant's investigation and these subsequent disciplinary proceedings. The Applicant's case was clear; Client K was a client of the firm. Mr Moran submitted that the following substantiated the Applicant's position: Client K signed a form of authority dated 16 July 2015 which "authorises [the firm] to act on my behalf in my Immigration Matter …" There was a series of correspondence sent by the Respondent to various third parties including Courts and government departments/officials in the period prior to the time scheduled for deportation, all of which stated that Client K was represented by the firm. The correspondence was as follows:

- In an email dated 17 July 2015, the Respondent wrote to the Home Office and Chief Immigration Officer on the firm's letter head stating:

  > "We are instructed by the above named client in connection with his immigration matter as such we request that you note our interest and forward all future correspondence to us."

- A letter on firm letter head to the Home Office dated 21 July 2015 included "We refer to our above named client's immigration matter…"

- A letter on firm letter head to the Chief Immigration Officer dated 22 July 2015 included the same phrase.

- A letter on the firm's letter head to the Home Office dated 27 July 2015 (enclosed Client K's application for Judicial Review (stating that the firm was instructed and including a Statement of Truth signed by the Respondent). The Respondent accepted that he lodged this Judicial Review application in his witness statement.

- A letter on firm letter head to the Chief Immigration Officer dated 27 July 2015 enclosed the aforementioned application for Judicial Review including "We refer to our above named client's immigration matter…"

There was also the Judicial Review application referred to above which was endorsed by a Statement of Truth. Mr Moran submitted that no solicitor could sign a Statement of Truth unless they were certain that what they were attesting to and informing the Court of on the form was true and accurate. At Page 10 of the application, the Respondent stated:

> "Statement of Truth
> I believe (The applicant believes) that the facts stated in this claim are true.
> Full name – Mr Kwame Siaw
> Name of applicant's solicitor's firm - Mountain Partnership Solicitor
> Signed – [Respondent's Signature appears]"

The Judicial Review Claim Form prepared by the Respondent stated at Page 7:

> "Applicant's or Applicant's Solicitors' address to which documents should be sent – MOUNTAIN PARTNERSHIP SOLICITORS"

Mr Moran submitted that the Respondent therefore confirmed to the Court that the firm was instructed, and that Client K was a client of the firm's. As no solicitor could mislead the Court by signing a Statement of Truth verifying something which was contrary to what they believed to be true and accurate it therefore followed: firstly that Client K was a client of the firm and secondly that the Respondent personally believed this to be the case.

30.3 Mr Moran further submitted that Client K maintained throughout that he understood the firm to be acting on his behalf; in his letter to the "Manager" of the firm dated 18 August 2016 headed beginning "OFFICIAL COMPLAINT...", in his letter dated 30 September 2016 to the Managing Partner of the firm Mr O about the Respondent's conduct, and in his witness statement for these proceedings dated 27 March 2019. Client K's belief that he had instructed the firm was perfectly understandable given the signed letter of authority that he endorsed, appointing the firm as his solicitors on 16 July 2015. Furthermore the LeO concluded that Client K was the firm's client and whilst the LeO's decision was of course not binding in the context of this application to the Tribunal, it was at the very least persuasive. Thus the evidence demonstrated that Client K, the LeO and the Respondent (in signing the Statement of Truth) all concluded or believed that Client K was a client of the firm.

30.4 Mr Moran submitted that it was common ground between the parties that £500 was received by the Respondent into his personal bank account in relation to Client K's case. The Respondent accepted that he failed to account for this sum to the firm, retaining it instead in his personal account. Before the Tribunal was a redacted copy of Ms I's bank statement recording against "£500-00"as a "Bill Payment:

> "20/08/2015 KWAME A. SIAW
> ADINAJOHN/PAYMENT BBP"

In an email to the Applicant dated 5 September 2017, the Respondent stated:

> "Finally, I can confirm that on 20 August 2015 Miss [I] made payment of £500.00 into my Halifax account."

Mr Moran submitted that the Respondent however did not accept that this constituted misconduct notwithstanding that he accepted the underlying facts regarding the direct payment he received from Ms I. Client K explained in his witness statement that the Respondent quoted a fee of £1,500 for his work on the case when Mr K and Ms I visited him on 6 August 2015. Mr Moran submitted that the £500 sent to the Respondent's personal account was a partial payment of this total, to put the Respondent in funds to enable him to continue working on the case. Mr K set this out in an email dated 18 April 2017 to the LeO.

30.5 Mr Moran submitted that the Respondent's explanation of a reimbursement of application fees was not credible and nonsensical. In his Answer, he said:

> "In response to this allegation I deny that I have breached Rule 14.1 of the SRA Accounts Rules 2011 neither have I breached Principles 2 and 6 of the SRA Principles 2011. Reason: Mr [K] was reimbursing me the application fees I paid for him, it is not client money."

In his first witness statement at paragraph 10, the Respondent stated:

> "After the bail hearing [Mr K] asked me to apply for Chief Immigration Officer's bail again I refused to do so and I told him I had only offered to lodge JR application, [Mr K] made application to the CIO himself and was granted CIO's bail. He called me after he went home and later came to see me in the office. We discussed the JR application that I lodged and the application fees, he was not aware that I paid the fees so he offered to arrange to pay me back later as he has to ask his girlfriend for the money. He later called me to ask for my bank details to refund the application fees. At this time [Mr K] was fully aware that I paid disbursements in the form of application fees, his girlfriend was aware that I did not without charging a fee for the application I lodged."

Mr Moran submitted that there was no reason for the Respondent to use his personal bank account to receive payments or to make payments of disbursements. Mr O, the firm's COLP, was clear that no one at the firm was authorised to use their private bank account in the course of acting for clients of the firm. In responding to queries raised by the Applicant, Mr O, stated on 30 May 2017:

> "… Mr [K] says that he paid £500 into [the Respondent's] private account and there is no file reference of the firm allocated to this matter. No funds were ever traceable paid by Mr [K] to the firm to date. No file of paper [sic] were ever held by the firm…"

In response to the Applicant's querying whether it was normal practice for staff at the firm to receive money from clients into their personal bank accounts, Mr O replied:

> "All client monies are routinely and normally paid into our client's account as a standard practice and all office monies are paid into the office account held with Barclays Bank PLC. No member of staff or partner are ever allowed to receive monies into their private accounts in the course of receiving instructions or acting for clients of the firm."

And:

> "In relation to immigration matters, clients may be required to pay costs on account of disbursements like Home Office fees or court fees and in such circumstances these monies are paid into the firm's clients account no… held with Barclays Bank PLC since inception of the firm."

30.6 Mr Moran submitted that it was noteworthy that the Respondent declined, both in the course of the Applicant's investigation and in these proceedings, to provide evidence (such as copies of his bank statement or receipts from the Court) demonstrating the disbursements and court fees that he claimed to have paid out from his personal funds. Mr Moran explained to the Tribunal that the documents obtained by the Applicant were second hand. It was Mr O's evidence in his statement:

> "I confirm that as far as I am concerned Client K was not a client of the Firm's. There was no file opened at any stage for Client K and no payments were received into any of the firm's accounts by, or on behalf of, Client K."

30.7 Mr Moran submitted that there would have been no reason for the Respondent to use his personal funds to pay a client's application fee. Additionally, providing his personal bank account details to a client and receiving direct payments could never be a legitimate course of action by a solicitor. Furthermore, the application fee for judicial review to the Upper Tribunal in such matters was £140 and the Respondent received £500 into his personal bank account so any suggestion of reimbursement was not credible and Mr K's evidence was clear that it was for fees. As a client of the firm, any payments made in connection with Client K's case should have been dealt with according to the SARs and in compliance with the firm's accounting practices. The Respondent failed to account to the firm for the direct payment he received in relation to Client K's case.

30.8 Mr Moran referred the Tribunal to his observations on the Respondent's case in his skeleton argument which he submitted were important because they went to the Respondent's credibility. He submitted that the Respondent had been unable to provide a coherent account of the matters giving rise to these allegations; he had been unable to explain why each of the documents he prepared stated that the firm was

acting and that he was instructed by Client K. The Respondent's inability to reconcile the fact that the firm was acting on behalf of Client K, with his receipt of "off the books" payments into his personal account rendered any defence to the allegations futile. At the various stages of the Applicant's investigation and these proceedings the Respondent had adopted different positions when explaining his actions. Mr Moran submitted that these different positions were as follows:

30.8.1 Explanation 1 Pro bono: In an email to the Applicant on 22 May 2017, the Respondent explained that the firm acted on a pro bono basis for Client K. The Respondent did of course aver that the firm was acting for Client K in the series of documents referred to above (including one endorsed by a Statement of Truth). Mr O confirmed in his witness statement that the firm did not act for Client K on a pro bono basis. He said:

> "… this would have entailed my express permission in writing in line with the Memo dated 19th May 2014 (appended at OO2). This was widely circulated in the firm including a copy received by the Respondent."

Mr O also confirmed that no file was opened by the firm for Client K. The Respondent was forbidden from taking on new clients on behalf of the firm at the time Client K instructed the Respondent and in any event the firm's processes and restrictions relating to partners taking on pro bono work precluded the Respondent from taking the case on that basis. Mr Moran submitted that it was clear therefore that "Explanation 1" as advanced by the Respondent could not be correct.

30.8.2 Explanation 2 – Acting in a private capacity: In direct contradiction to his first explanation, the Respondent stated in an email to the Applicant on 5 September 2017, that "any suggestion that the firm was instructed is wrong" and that he was acting in a "private" capacity for Client K. In his first witness statement dated 11 March 2019, the Respondent repeated this position stating that he assisted Client K in a "personal capacity… not as a client of the firm". Mr Moran submitted that this explanation was rendered unsustainable by the series of correspondence that the Respondent prepared on behalf of Client K and the application for Judicial Review from which it could be inferred that the Respondent believed that Client K was a client of the firm as at 27 July 2015. Client K similarly believed he was a client of the firm. He signed a "Letter of Authority" on 16 July 2015. It was annotated by somebody at the firm and the Respondent was invited to confirm under oath whether this annotation was made by him (which he did). Taking all the circumstances into account, the LeO determined that the firm was acting in the matter. This objective, independently reasoned conclusion was at the very least persuasive on the point. Mr Moran submitted that Explanation 2 therefore (in addition to completely contradicting Explanation 1) could not be correct either. Neither on the facts or legally could Explanation 2 be correct, as the Respondent could not have commenced litigation on behalf of Client K in the way he suggested (i.e. a personal capacity) as the SRA Practice Framework Rules 2011 ("PFRs") would preclude it. Rule 1.1 (c) applied as the firm was an authorised body:

"1.1 You may practise as a solicitor from an office in England and Wales in the following ways only:

…

(c) as a manager, employee, member or interest holder of an authorised body provided all the work you do is:

…

(ii) done for the body itself, or falls within Rule 4.1 to 4.11 [in-house practice], and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that form, accordingly"

Mr Moran submitted that a solicitor could only act for a client in one of the ways set out in Rule 1 of the PFRs. In view of the evidence, it was clear that the Respondent was acting for Client K pursuant to Rule 1.1 (c) and therefore the Respondent's "Explanation 2" was invalid and not possible in the circumstances. Working pro bono had to be in compliance with the PFRs; the firm had to act.

30.8.3 Explanation 3 – The Respondent "did not see [Client K] as a client" In an email to the Applicant dated 8 January 2018, the Respondent stated that he did not regard Client K as a client. This was yet another interpretation proffered by the Respondent which in addition to contradicting the earlier explanations lacked any credibility of itself. The Respondent informed the Court, Home Office and Client K that he was acting and the firm was instructed. The Respondent commenced litigation on behalf of Client K and accepted professional fees albeit "off the books" - directly into his personal bank account).

30.8.4 Explanation 4 – "I will say I conducted the matter on pro bono on a voluntary basis using my time as I am self-employed person." In his second witness statement, the Respondent stated his latest position which was that he did the work on a "pro bono" "voluntarily basis" as a "self-employed person". Mr Moran submitted that this explanation could not be correct. The evidence of Client K and his wife was clear in that the work was to be completed on a fee-paying basis (£1,500 quoted, £500 paid) as opposed to pro bono. As a solicitor, it was not open to the Respondent to redefine the regulatory framework under which he was permitted to practise. The PFRs set out the ways in which it would have been possible for him to act in this matter and he could not have done so on a voluntary basis, independently of his firm as was now claimed. Mr Moran also submitted that while the Respondent stated that he undertook Client K's matter as a "self-employed person" it was not necessary to examine the Respondent's employment status at the firm in any great detail in the context of these allegations, however it was a fact that at the time he undertook Client K's case the Respondent was recorded by the Applicant as a Partner at the firm. Furthermore, the Respondent accepted in his first witness statement that he was a Partner at the firm. The Respondent's latest claim that he was self-employed was, aside from being erroneous,

immaterial to the allegations before the Tribunal. Explanation 4 was not therefore correct.

30.9 In his final submissions on the law, Mr Moran submitted that Rule 12.2 of the SAR 2011 applied to the money received from the Ks; it was client money. This applied even if it was a mixed amount of costs and disbursements. As it was client money Rule 14.1 applied to it; it must be paid without delay into a client account. Mr Moran submitted that the Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 and Rule 14.1 of the SRA Accounts Rules 2011 by providing his personal bank details to his client, receiving a direct payment on behalf of the client, and for failing to account to the firm for the monies received in connection with the case.

Dishonesty and Allegation 1.1

30.10 Dishonesty was alleged in respect of allegations 1.1 and 1.2. It was denied. Mr Moran referred the Tribunal to the test for dishonesty at paragraph 74 of Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC):

> "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"

In respect of dishonesty and allegation 1.1, Mr Moran submitted that the Respondent admitted that he received £500 into his personal account. He must also accept therefore that he provided his personal bank account details to Client K or Ms I to facilitate that payment. The Respondent was aware that Client K had signed an Authority empowering the firm to represent him, there was no basis on which the Respondent could have genuinely believed that he was instructed in any personal/private capacity by Client K (which in any event would not have been possible given the requirements of the PFRs). The Respondent must have understood that the firm was acting having regard to what he stated in the documents detailed above. In that context a payment received into a personal bank account from a client could never be legitimate and the Respondent would have been aware of this. The Respondent would have been aware that the firm had directed that from May 2014 onwards he was not to take on new clients. The Respondent was therefore acting contrary to the firm's decision when he commenced working on Client K's case and submitted an application for Judicial Review on 27 July 2015. This of itself might not constitute misconduct as the Respondent was a Partner and the decision to accept new clients, or to direct him not to do so, was an internal firm matter. However, where the Respondent decided to accept Client K as a client and invite payments to be made

outside of the firm's accounting processes into his personal bank account (for which he failed to account to the firm at any stage) this was misconduct on his part. Circumventing the firm's decision that he should not take on new clients and requesting a payment to be made directly, to ensure that he benefitted personally rather than follow his firm's accounting process, were conscious acts by the Respondent in possession of the full facts. Mr Moran submitted that ordinary, decent people would regard it as dishonest for a solicitor to act in this way.

Submissions and evidence of the Respondent regarding Allegation 1.1

30.11 The Respondent agreed that at the firm he exclusively dealt with Mr K's matter in terms of correspondence. Mr K first came to see him in January 2015. Mr K had arranged to get married on 1 September 2015. Prior to his detention the Respondent was invited to the wedding. When Ms I came to see the Respondent he told her that if Mr K was not released before 1 September she would not be able to get married so the Respondent would assist to his very best to see if Mr K could be granted bail. The Respondent agreed a form with his handwriting on it was faxed to Mr K at the detention centre and returned. (It was the Tribunal's understanding that both the letter of authority and EEA application were faxed to Mr K in detention.)He chose to send Mr K a letter of authority because otherwise the Home Office would not believe anything as Mr K would not be a client. The Respondent asserted that Mr Moran was jumping to the conclusion that Mr K was automatically a client without leeway for the Respondent to assist a friend. The letter of authority was authority to act on his behalf; to speak to others. He agreed the form suggested that the firm was appointed to represent Mr K. The Respondent did not dispute the evidence in terms of the letters on the firm's letter head showing the Respondent as a partner to the Home Office dated 17 July 2015, 21 July 2015 and 27 July 2015, to the Chief Immigration Officer dated 22 July 2015 or that from the Claim Form for Judicial Review the Court would believe the Respondent was acting for Mr K. The Respondent rejected the suggestion that based on these documents and the facts, the Respondent was Mr K's solicitor. He said he had a friend in need who asked for assistance. He had the tools to assist so the Ks could get married.

30.12 The Respondent disputed that at the time the letter of authority was signed 16 July 2015 he was not permitted to take on new clients. He did not put the matter to Mr O. He was a partner and his authority came from the partnership agreement. Mr O did not want him to bring any new immigration matters to the firm. He accepted the fact of the meeting on 16 May 2014 where he was told what not to do and the existence of the memorandum dated 19 May 2014. The Respondent accepted that he provided his personal bank account details to Mr K but he disputed that he had failed to account for the £500 paid into his personal bank account.

30.13 The Respondent stated that Mr K had given notice to the Home Office he planned to get married and he had an appointment to go to the Home Office but was arrested pre-emptively The Respondent thought if he made representations to the Chief Immigration Officer ("CIO") Mr K would be released. The Respondent advised Mr K that he should let the Respondent make the application to the Home Office for an EEA card and then Mr K could apply for Judicial Review to stop the removal and the chances were that he would be released on bail. The Respondent advised Ms I to visit

Mr K as frequently as possible to maximise the prospects of success. She made three or four visits. Nothing was discussed in terms of fees.

30.14 The Respondent stated that since Mr K first consulted him in January 2015, Mr K called the Respondent frequently, asking for news about Ghana. The Respondent first heard about the detention from Mr JC a mutual friend and the Respondent said to let Ms I call him. Ms I came to his office; she was hysterical and so that she could see that he was doing something the Respondent prepared a letter of authority. He faxed the letter of authority and showed the fax confirmation to Ms I so she would know something had started.

30.15 The Respondent agreed that he did not challenge Ms I or dispute the fees she referred to in her witness statement:

> "I attended several meetings with my husband and the Respondent at which the case was discussed. With regard to fees I confirm that that (sic) the Respondent advised us at one such meeting that his professional charges for the work on my husband's case would be £1,500. An agreed first instalment of £500 was paid on 20 August 2015 by bank transfer from my Barclays account to the Respondents account (I exhibit a redacted copy of my bank statement which shows the transfer as "AI1". I saw no issue with transferring the Respondent's fees in this way as he was a solicitor and we trusted him, and this was the method he specified."

The Respondent stated that the Tribunal had heard Mr K and Ms I and they did not confirm they had paid fees to him. The money paid was for refund of the disbursements he had made in connection with Mr K's case.

30.16 The Respondent stated that his relationship with Mr K was as a friend and when a friend was in difficulties and one could assist, one did whatever one could. When he was dealing with this matter he looked at Ms I's bank account; there was practically nothing there. Mr K was in detention and the Respondent knew for a fact he had not been working for a very long time. Mr K came to the Respondent, who was not going to charge anything, but if he presented himself to organisations without authority to act, no matter how, he would not be given any information. The Respondent stated that how the court saw the firm was different from the Respondent's relationship with Mr K. When a client came to him, the Respondent would assess their means and if appropriate refer them to another solicitor's practice as the Respondent's firm did not have a legal aid contract. Mr K wanted the Respondent to act for him because Mr K knew the Respondent. The Respondent did not take Mr K on as a private paying client; it would probably turn out to be the most expensive mistake the Respondent had made in his life. When Mr K asked him to put in a bail application, the Respondent said "Do it yourself. I've done enough". He later elaborated in evidence that he attended the bail hearing because Ms I was distressed. It was the Respondent's professional opinion the application would fail and it did. He advised that the EEA should be put in so that it would be pending when the Judicial Review was considered. The Respondent considered Mr K received bail because the Home Office needed to clear the detention centre. It would take eight months for the Judicial Review application to be reconsidered and 90% of applicants were released on bail and the Respondent was confident that would happen.

30.17 The Respondent was referred to his email response to the Applicant dated 22 May 2017 where he said in answer to question 4 that he had acted pro bono; the Respondent did not accept that that was impossible and that rather Mr K was a bona fide client of the firm. As to Mr O's prohibition on pro bono work, the Respondent stated that it was possible for him to act pro bono because he was a self-employed person, working on commission. It would be a restraint of trade for that prohibition to be implemented. The Respondent respected the memorandum; he would not act pro bono for a client that ought to be processed but this was a friend. Mr K knew money was not something the Respondent was short of.

30.18 Mr Moran asked the Respondent which of the four explanations he had postulated was Respondent's case. The Respondent stated that he had used the firm's facilities to assist a friend. He accepted he had breached the memorandum but it had nothing to do with outside authorities. Solicitors owned their time. Sometimes he went away every five or six weeks. He and Mr O both travelled a lot to do business. The Respondent had only returned a few days before this matter happened. If he used the firm for his own conveyancing; he didn't have to pay. If he acted for Mr K and other clients it was his time. The Respondent rejected the suggestion that he thought all four explanations were the same thing. The Tribunal asked why if he wanted to help Mr K as a friend the Respondent needed to involve the firm. He could have helped him draft any documents. The Respondent replied that there was urgency; Mr K was due to be removed in a matter of days. The Respondent agreed that if there were fees they would have to go through the firm; it would never be right to give personal bank details to a client if one was acting in a client solicitor relationship. The Respondent asserted that Rule 14.1 did not apply as the money paid was claimed to be a fixed fee. The Respondent stated that he was struggling to do someone a favour; it was the way he was brought up. The Ks appreciated it when he did it; they were grateful they could get married. Just because the Home Office decision did not go the way they intended they complained.

30.19 Regarding the allegation relating to integrity (Principle 2), the Respondent accepted that he had signed the application forms to the court and written letters to the Home Office. He repeated that his relationship with Mr K from the outset had been assisting a friend; he did not ask for any money up front. As witnesses the Ks confirmed that although they had asked he had not given them any bill for anything. He had only seven working days on this matter. The likelihood was that Mr K would be removed. As a solicitor, the Respondent had to focus on what the client wanted him to do and not on financial gain. He had seen Mr K was not working and that Ms I literally had no money in her bank account. No one save Ms I called the Respondent; if the uncle had paid the disbursements the parties would not be at the Tribunal. His integrity had been called into question at the Tribunal due to his generosity. The Respondent said he said he wanted a clean break from the clients when he left the firm; if they contacted him he was happy to take them but he did not request a file transfer. Mr O said 50 cases remained. The Respondent believed if the allegation of lack of integrity were true clients would have left. He was the COFA and Mr O was the COLP responsible for financial administration. If anyone questioned his integrity Mr O would have to inform the Applicant. The Respondent stated that he remained COFA until he left. (On the second day of the hearing Mr Moran informed the Tribunal that the Applicant's records showed that the Respondent had been the COLP at the firm rather than the COFA from 14 January 2013 until 30 September 2015). The

Respondent replied that he had said he was one or other of the COLP or COFA; whichever role he filled Mr O fulfilled the other one. He had asked Mr Moran to check for him.

30.20 Regarding Principle 6, the Respondent stated that he understood why the Ks felt the way they did. In her statement, Ms I said:

> "A further factor which caused us significant upset and anger was the Respondent's retention of our original documents which caused difficulties as my passport and national ID card expired whilst in his possession and I could not renew them without having the expired documents he held. I would regard the period dealing with the Respondent as one of the worst in my life."

The Respondent also referred to an attendance by Mr K at the office after the wedding. In his statement, Mr K stated:

> "On 10th September 2015, I came to your office to give [the Respondent] the marriage certificate together with some pictures from the wedding, and a couple of supporting documents…"

The Respondent stated that he told Mr K that he would not be at the firm from that month (he left in October 2015) but that there would be solicitors there.

30.21 Regarding Rule 14.1, the Respondent stated the money he received was not client money. It was a reimbursement of disbursements. Alternatively, if Mr K said the money was part of a fixed agreed fee then Rule 14.1 did not apply. It was pointed out to the Respondent that an agreed fee must be evidenced in writing. The Respondent stated that if the money was office money, Mr K would have gone to the firm's reception and paid. He called and asked for the Respondent's account bank details. Mr O testified that it was not the office that paid. If the Ks weren't going to refund the money to him the Respondent would not have done anything but if they paid he was happy to receive it. Later in evidence the Respondent stated, as to why he did not open a file in the office and pay the disbursements from office account, that in order for him to do so the firm would require the Ks to put the firm in funds. As to why he did not pay in the money to the firm for the Ks; the Respondent stated that ideally 95% of the time he would ask the client to go and get the postal order and get someone to accompany them there. Mr JC said he would guarantee anything the Respondent did. It was pointed out to the Respondent that before this hearing he had not given the explanation that Mr JC would underwrite these fees and that the Respondent would not be out of pocket. The Respondent stated that he would not have worried if he had been out of pocket. The Respondent was asked by the Tribunal how much time he had put in over the period mid-July to 6 August 2015 to help a friend including two trips to Field House. It was less than 15 hours not counting telephone conversations.

30.22 In respect of Rule 12.2(c) that money held for payment of unpaid professional disbursements was client money, the Respondent stated that it was not client money because it was a private matter. If the office had paid the disbursements it would have been client money and the office would be entitled to receive it. The money had no connection to client account or client money so Rule 14.1 did not apply. The

Respondent was referred to Rule 1.2 (d) which included money held or received for payment of court fees. The Respondent stated that applied where one took that money prior to making payment - it went into client account and then a client account cheque was issued. If one had already paid the disbursement and it was refunded, the money did not go into client account. His submission was that allegation 1.1 was not proved.

30.23 The Respondent was recalled to give further evidence on the second day of the hearing when Mr Moran informed the Tribunal that the Applicant had received new information about the disbursement payment of £350 which the Respondent asserted he had made to the UTIAC. Mr Moran submitted that the refund of disbursements paid by the Respondent on behalf of his client was an essential feature of his case and he gave evidence on oath of that. He had been invited at several stages of the case to give explanation of what he paid by way of disbursements. The Applicant had not had a chance to test that explanation. The Applicant had been particularly curious about the amount of £350. The Applicant had therefore made an enquiry of UTIAC in an email dated 3 April 2015 timed at 09.31 asking for confirmation whether the Respondent "lodged an application for oral permission for judicial review on behalf of a client called John Kotun between 28 July 2015 and 20 August 2015?..." The Respondent's submissions had already commenced when the response was received in an email dated 3 April 2019 timed at 10.31 from UTIAC at Field House, saying:

> "In regards to case JR/9112/2015, John Kotun, the solicitors did not lodge an application for OPH. The case was withdrawn and subsequently closed on 2/09/15."

The Applicant had not objected to the new evidence the Respondent had given the previous day and now lodged this evidence.

30.24 Mr Moran put it to the Respondent that on the previous day he had given two answers to him and one to the Chairman to the effect that he had paid £350 in respect for an application for an OPH in Judicial Review no. 9112/2015. The Respondent responded that he knew the application was made but could not say why UTIAC said they closed it. It was put to the Respondent by the Chairman that his evidence of the previous day was that he made an application for judicial review (fee £140) which was rejected and so because of the danger that Mr K would be deported, the Respondent made an OPH application. He knew he had had to take some action to stop removal. He had said that he took it to Field House in person and paid £350 in cash. The Respondent replied that he had to take the form and knew he paid something. It was put to him that he had said he had a receipt and he now replied that he had everything in a folder. He said he knew he made an application and would have had to pay an application fee. It was put to him that he said he did lodge the application and paid £350 not that he "would have". The Respondent stated that without the (documentary) evidence he relied on he would like to withdraw that evidence of the previous day. The Respondent confirmed he withdrew his previous evidence and that no OPH application had been made and no £350 fee had been paid. He stated that over the seven day period he would have paid more than £500 getting taxis to the Upper Tribunal and back and forth. He had travelled on three occasions by taxi. The first time was from the office and the second time from home. It was about 40 minutes from the office to the Tribunal and a similar time from home. The third occasion had been to the appeal at Taylor House (Tribunal Hearing Centre) from home. He would

have had a receipt for court fees in the file but the taxi fees etc. would have been more than £500. The Respondent had previously given evidence that he paid £65 to the Home Office for the EEA application, £140 to HMC&TS for the initial judicial review application and £350 by way of challenge to the original paper decision that went against his client (the OPH application). He confirmed the payments of £65 and £140 but withdrew his evidence regarding the £350 because he did not have evidence to support it. He confirmed that he accepted that he did not pay it although on oath the previous day he said that almost two thirds of the £500 was for reimbursement of the £350 fee. He was asked why he changed his evidence when confronted with the document. He said he knew he did a lot of work; activities to stop Mr K being removed. His difficulty was that from the beginning (of the Applicant's investigation) he did not have access to the file in the office.

30.25 The Chairman summarised the various explanations given by the Respondent as follows:

- The Respondent paid £350 cash out of his own resources and received a receipt – the evidence of the previous day.

- New evidence suggested no form was lodged on 28 July 2015 and the Respondent said he withdrew that evidence.

- The Respondent was not able to challenge the UTIAC email but stood by his earlier evidence.

- The Respondent had no recollection.

The Respondent confirmed the first of the above explanations for the new evidence; that no evidence had been provided of the payment and he withdrew his evidence of the previous day. Mr Moran confirmed with the Respondent that he withdrew his evidence that he paid £350 and that he withdrew his evidence that an OPH application had been made. The Respondent stated that the £500 was for money he paid on the Ks' behalf; in that period of seven days he paid more than £500. One wanted money back if it was paid on someone's behalf. Mr K did not deny the Respondent asked him for money while in detention. The Respondent rejected the suggestion that it was unusual for £500 to be paid and so he would recall it. The Respondent repeated that he had no evidence apart from the applications and transport here and there; it probably all came down to taxi rides which were disbursements that he would not normally claim. The Respondent maintained that the £500 was not for professional fees. It was his recollection that he did go to Field House. He knew he did something to stop the removal; that was his priority anyway. It was difficult to say what he did without the folder.

30.26 It was put to the Respondent that the UTIAC email said a positive step was taken on 2 September 2015, the day after the wedding to withdraw the application. The Respondent replied that he was surprised that by a letter dated 6 January 2016 the Home Office said the Judicial Review was ongoing. He directed the Tribunal to that letter addressed to Mr K:

> "Thank you for your correspondence. It is acknowledged that you have an outstanding Judicial Review, please be advised that you are not expected to depart from the United Kingdom whilst the Judicial Review remains outstanding…"

Mr Moran submitted that the UTIAC email was unequivocal about the Judicial Review application with the quoted reference number. It was noted that the January 2016 letter did not quote a reference number. Mr Moran reminded the Tribunal that the Applicant had not asked UTIAC about the particular reference number; UTIAC produced it in the reply to be helpful. It was noted that a letter from the Home Office dated 10 May 2016 informed Mr K that his case had been allocated to a particular team. It gave him the opportunity to provide the Home Office with "all evidence and information regarding your domestic circumstances…"

30.27 The Respondent stated that from the outset he did not have the papers to support him. He stated that all the evidence he would have had would be in the office on the file (folder). Mr O owned the office and the Respondent did not wish to wash their dirty linen at the Tribunal. The Respondent had been to the office when this matter started over a year after he left the firm. Mr O controlled the office and the systems. If the Tribunal had the yellow folder it would see the Field House receipts. It did not occur to him that he should go into details in his statements or answers to the Applicant about how the payments (either by way of a loan or gratuitous payment for a friend) were made. He took a series of actions most of which would be recorded on the file (folder) of papers which he had at the firm. He was certain that when Mr K and Ms I came in they sat down and decided everything. He did not know the amount of money paid into his account but he knew now. The Respondent had telephoned Mr P of the Applicant because he wanted clarification of the amount. As to whether he could have checked with his own bank; the Respondent stated that he did not know which bank account the money had been paid into. He had more than one account. The Respondent did not recall what he told the Ks he had paid out when they sat down together. The amounts would have come to about £200 (£140 plus £65) with the taxi fares at about £30 each of which there had been three totalling £90. He had nothing to say about the remainder of the £500. The Respondent agreed that the date when he sat down with the Ks had to be 6 August 2015. He referred to what occurred at the meeting at paragraph 10 of his 11 March 2019 witness statement quoted above under Mr Moran's submissions. It was put to him that nothing was said about the taxi fares; and the Respondent repeated that he would not normally charge for that. It was put to the Respondent by the Tribunal that as the disbursements added to £205, the £500 received could not be entirely for disbursements. The Respondent replied that he knew that no costs were discussed with the Ks. In his final submissions the Respondent stated that he had acted for Mr K as a friend. Mr O had confirmed that no file was opened and therefore in the eyes of the firm Mr K was not a client. There was no involvement of client or office account therefore the SARs could not possibly apply.

<u>Submissions and evidence of the Respondent in respect of Dishonesty and Allegation 1.1</u>

30.28 The Respondent accepted that he had not followed internal procedure at the firm. He had acted for a friend but friends fell out. He believed he was wearing two hats. He did not accept that any cash had been found in files and Mr O had not challenged him

about why cash in the form of notes had been found. Mr Moran referred the Respondent to Mr O's statement about files being opened without corresponding payment into the firm's client or office accounts and how dishonesty was put by the Applicant. The Respondent responded that he stayed on for more than a year with the firm. If he was dishonest in any way he did not think Mr O would let one day pass. The Respondent was the one that moved on. The Respondent stated that he did not take on any other new cases. He confirmed that he left more than 50 cases in the office when he left. He did not transfer one file.

Determination of the Tribunal in respect of Allegation 1.1

30.29 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. In determining its findings in respect of allegation 1.1, the Tribunal also took into account the evidence it heard from the Respondent in respect of allegation 1.2 which covered much of the same ground as allegation 1.1 because of the content of the questions put to him in cross examination. The Tribunal found the following facts. The Respondent was a partner of the firm; he received 60% of the fees he generated however the work came to him at the firm. In May 2014, Mr O senior partner had become unhappy because following file reviews he concluded that the Respondent was not working in the way Mr O wished and particularly that he was not always passing payments through the firm's systems. Mr O met with the Respondent on 16 May 2014 to discuss these concerns and decided they should part company. He directed that the Respondent should take on no new matters and should not undertake any pro bono work (this latter direction applied to all staff). Mr O issued a memorandum on 19 May 2014 setting out the firm's procedures. The Respondent's evidence accorded with Mr O's evidence about that. The Respondent also testified that he had not taken on any other new clients during the winding down period May 2014 to October 2015 (aside from the disputed relationship with Mr K). There was no suggestion from Mr O that he did so. The Tribunal noted that the Respondent did not leave the firm until October 2015 although it was originally planned that he would leave much earlier and concluded from that fact that there could have been no major concerns about the Respondent's behaviour.

30.30 In early January 2015, the Respondent had his first contact with Mr K when he gave him free advice about what he might potentially do or should be doing about his immigration situation. The Respondent gave Mr K his business card with his telephone number. According to the Respondent they developed a social relationship such that he was invited to the planned wedding of Mr K to Ms I, an EEA national, booked for 1 September 2015. In July 2015, Mr K was arrested and his situation became urgent because he was to be removed from the UK at 23.30 on 28 July 2015. Mr K called the Respondent from a detention centre after first calling his uncle for advice. The Respondent moved into action to assist Mr K. The Applicant relied on paper evidence: the letter of authority naming the firm; the Judicial Review application naming the firm; a Statement of Truth and various letters written by the Respondent to the authorities describing Mr K as the firm's client. The Applicant also relied on Mr and Mrs K's assertions in their witness statements and orally that Mr K was a client of the firm, and the alleged contradictions in the Respondent's various accounts of what had occurred. The Respondent did not concede Mr K was a client but said he described Mr K as such because it would give the Respondent's representations more weight with the Home Office and in Judicial Review

proceedings. The Respondent did not open a file in the firm's system. He did not discuss the case with Mr O. It was unclear from the evidence, oral and on paper whether any money was paid to the Respondent by Mr K or his fiancée while Mr K was in detention from 14 July 2015 to around 5 August 2015. If it was paid it would have related to disbursements; it was not disputed that in that period the Respondent was focussing on obtaining Mr K's release from detention so he could make his wedding date and said that fees could be sorted out later. The Tribunal found that the Respondent must have paid some disbursements; otherwise the judicial processes would not have gone ahead. On the face of her bank statement, Mrs K was without significant funds and her evidence about what she paid the Respondent apart from the £500 was very weak; she could not remember. This was not a criticism of her evidence; the events occurred some years ago. However there was no positive evidence she paid for the disbursements. At the end of July/beginning of August 2015 Mr K was released from detention pending an application for Judicial Review to be heard probably in eight months' time.

30.31 The Tribunal had to determine whether Mr K was a client of the firm. While the Respondent gave different accounts, there was no doubt that he and the firm were officially on the record and acting for Mr K. However that of itself did not mean that the basis of funding was not pro bono or private. The Tribunal determined that Mr K had become a client of the firm based on the following facts: he had signed an authority letter which the Respondent had prepared; the Judicial Review application named the firm and the Respondent as solicitor on the record; the Respondent signed a statement of truth; the Respondent wrote four letters relating to Mr K's case describing him as a client. The fact that the LeO found the firm was acting and awarded £340 against the firm to Mr K as compensation supported a finding that Mr K was a client. Mr K was a client of the firm in the true meaning that any solicitor, court, tribunal or client would regard Mr K as being. The fact there was no retainer letter or client care letter did not mean K was not a client. The fact that no file was opened at the firm and that Mr O did not know of the work was not determinative; it did not mean that the firm was not acting. Mr O's prohibition on acting pro bono and taking on new immigration work was not relevant to the allegations but a partnership matter between Mr O and the Respondent. The Tribunal did not consider that the other allegations which Mr O made about irregularities relating to cash being found in files had any relevance to the allegations it had to consider.

30.32 The Tribunal next had to consider the nature of the payment of £500 which Ms I made to the Respondent's personal bank account from her bank account on 20 August 2015. (The Respondent did not dispute that he received the money from Ms I in this way.) The Tribunal considered that a key question was what was said at the 6 August 2015 meeting with the Respondent attended by Mr K and Ms I. Mr K specified the date in his witness statement. The Respondent and Ms I did not do so in their witness statements but the Tribunal found it could only have been on that date and the Respondent accepted it during the hearing. In his first witness statement, the Respondent attached no importance to the meeting on 6 August 2015 which was the only meeting which occurred after Mr K was released. This witness statement was given before the Respondent knew what Mr K would say happened at the meeting. At that stage there was an ongoing application for Judicial Review. The Respondent said that the £500 was for the disbursements he asserted he had paid and Mr and Mrs K said it was for costs. They might have discussed with the Respondent on

6 August 2015 what the total costs would be if he continued to act for Mr K. In evidence the Respondent said such costs would be £6,000 if the case went to a full hearing for Judicial Review. The only issue was what the £500 was for.

30.33 In respect of the facts regarding the monies paid and received, on the first day of the hearing the Respondent had, for the first time, given an explanation of the individual disbursements he said he paid. The Tribunal accepted the Respondent's evidence that he made payments on account of disbursements out of his own resources in the amounts of £65 for the EEA application and £140 for the initial Judicial Review application. In giving evidence in respect of allegation 1.2 the Respondent had stated that his assertion about the EEA application was supported by his letter to the Home Office - EEA Applications dated 17 July 2015 which listed enclosed documents including "1.Completed EEA (FM) form with fees of £65." The Respondent also referred to the paper application form dated 27 July 2015. It could not be submitted by post. One had to go in person to the Upper Tribunal at Field House. One had to pay by card or cash and the Respondent always paid cash. Ms I's recollection of whether she had paid for any disbursements was unclear but the nature of the disbursements she mentioned as having been discussed with the Respondent supported his account that the two initial disbursements were paid out. Those payments had to be made as a matter of fact to get the applications started. The Respondent initially said he also filed a form at Field House applying for an OPH to reconsider the decision already made to refuse Judicial Review to prevent the removal of Mr K from the UK on the evening of 28 July 2015. He said he delivered the application form in person and paid the fee of £350. The Respondent gave the Tribunal his account for the first time without access to the yellow folder or documents. However on the second morning of the hearing, the email dated 3 April 2019 from UTIAC was introduced. The Respondent went back into the witness box to deal with this. He gave what appeared to be conflicting accounts. In the light of the contradictory accounts given by the Respondent the previous afternoon and on the second morning of the hearing and the evidence from UTIAC which the Respondent did not dispute and could not refute, the Tribunal did not accept that he made a payment of £350 from his own resources for an OPH application. The Tribunal did not consider that the correspondence at a later date from the Home Office to Mr K was relevant to this matter. It was more consistent with a possible separate and later Judicial Review application; the correspondence was addressed to Mr K personally, and there was no evidence it was material to the issues before the Tribunal.

30.34 The Tribunal had heard the evidence of the Ks and of the Respondent and it considered that the evidence of the Ks orally and in their witness statements was more reliable and consistent in respect of what happened at the meeting and about for what the money they paid had been requested. The Tribunal found that the Respondent asked Mr and Mrs K for money at the 6 August 2015 meeting. He was unable to tell the Tribunal what the money was for over and above the £205 for the two initial disbursements. He said he did something to stop the removal but he could not say what he did. The Respondent could not justify the entirety of the £500. At paragraph 10 of his first witness statement he said there was specific mention of payment of application fees at the meeting which was now known to be £205 only. The Ks' evidence of the meeting unchallenged by the Respondent in cross examination was that they tried to discuss fees at the meeting; the Respondent had not previously been prepared to do that. The Respondent said the fees would be £1,500 and he wanted

£500 on account. He gave them his personal bank details at some point either then or later and on 20 August 2015, £500 was paid in. The Tribunal found that it was clear that both Mr and Mrs K expected to pay fees and disbursements. Mr K said he had asked Mrs K to pay the court fees before the meeting. Mr K said they did not discuss disbursements on 6 August; he thought his wife had paid them. She could not recall definitely but referred to postal fees, copy fees and judicial fees which could only be the paper application fee before Mr K's release. Both Ks said the discussion on 6 August 2015 was about costs and the Respondent did not challenge them on that. The Tribunal found that the Respondent discussed an amount of £1,500 with Mr K and Ms I and they paid £500. The Respondent said this was repayment of disbursements. The Tribunal now knew that the disbursements consisted of £205 and a few taxis for which he said he would not ask clients. Therefore the Tribunal found that part at least of the £500 was not reimbursing the Respondent for disbursements. So even if part of the money was a refund of disbursements and the monies were received into the Respondent's personal bank account which was undisputed, as Mr K was a client of the firm then the Respondent should have paid the money into the firm's client account and then reimbursed himself. The Tribunal found that it did not matter if the disbursements had already been paid. If the Tribunal was wrong about that then at least the amount over and above £205 should have been paid into client account. The Tribunal therefore found breach of Rule 14.1 proved.

30.35 In respect of Principle 2, the Tribunal found that the Respondent might have been generous in acting initially for Mr K but he retained the £500 in his personal bank account and only now offered to refund it to whomsoever the Tribunal suggested. He had 15 years' experience of practice at that time. The Tribunal did not accept the Respondent's account of the 6 August 2015 meeting. The Respondent did not challenge the Ks' evidence about the costs figure of £1,500. The Tribunal found Mr and Mrs K's evidence to be more reliable than the Respondent's. If the Respondent was acting pro bono he would have limited his request for funds to the disbursements totalling £205. In the light of his questionable conduct the Tribunal found the Respondent failed to adhere to the higher standards which society expected from professional persons and thereby failed to act with integrity and also failed to act in a way that maintained public trust in him and the legal profession and therefore also breached Principle 6. The Tribunal therefore found allegation 1.1 proved on the evidence to the required standard.

Determination of the Tribunal in respect of Dishonesty and Allegation 1.1

30.36 The Rule 5 Statement alleged:

> "The Respondent was aware that he was not to take on new clients and in circumventing this decision by the firm and requesting a payment to be made directly, to ensure that he benefitted personally rather than follow his firm's accounting process, these were conscious acts by the Respondent in possession of the full facts."

The Tribunal followed the test in the case of Ivey. It had first to determine the state of the Respondent's knowledge and belief of the facts. He knew that he had received £500 into his personal bank account having provided Mr K with his personal bank account details. Mrs K produced a redacted bank statement recording the payment.

The Respondent produced no evidence but did not dispute the payment was made. The Tribunal did not doubt that the Respondent took on Mr K because of their previous warm acquaintance. From 16 to 27 July 2015 the Respondent was genuinely trying to get Mr K out of detention. There was no discussion of fees; obtaining Mr K's release was the full focus of the Respondent's activities. Mr K became a client of the firm; that was the context. On 6 August 2015 events took a different turn; the immediate emergency over, the Respondent had spent some of his own money on disbursements and when the dust settled he and the Ks discussed costs. Things changed to more of a business footing. The Tribunal found that the Respondent knew that either all or part of the money he received was costs and that he should pay it into the firm. If on his case he was not charging for the work – see his answer to question 4 from the Applicant under allegation 1.2 below - but only sought reimbursement of disbursements he should not have accepted personally a sum in excess of what he had expended. However he had a deep if misguided belief that he was acting privately to help a friend and that at least part of the money was his own. He had not opened a file and not created a ledger for the work. The Tribunal found this belief and his various explanations to be muddled but genuinely held. He did not realise that what he did might potentially engage other obligations by saying Mr K was a client or what pro bono work meant; the firm acting and not charging. The Tribunal could not be sure that the Respondent acted as he did as part of a deliberate course of action to deprive the firm of what it was entitled to and in those circumstances did not consider that by the standards of ordinary decent people he was dishonest. The Tribunal did not find proved on the evidence to the required standard that he acted with dishonesty.

31. **Allegation 1.2 - In an email dated 22 May 2017 the Respondent informed the SRA that he had not received payment (of costs) into his personal bank account in relation to Client K's matter when this was untrue and/or misleading contrary to all or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011.**

31.1 SRA Principles 2 and 6 are set out under allegation 1.1 above. Principle 7 required:

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

31.2 For the Applicant, Mr Moran referred the Tribunal to an email from the Applicant dated 8 May 2017 which included two questions as follows:

> "4. Did you receive costs from Mr [K] into your personal bank account? If so, why?
>
> 5. Have you received any money from any other clients into your personal bank account?"

The Respondent replied in an email to the Applicant dated 22 May 2017. He stated that he was acting on Client K's matter "…out of my heart on a pro bono basis". In relation to monies received specifically, the Respondent explained:

> "4. I acted for [Client K] on a pro bono basis and used my own money to pay his fees. I did not receive cost in my personal bank account."

The Respondent continued:

> "5. I have never received my money from client into my personal bank account."

The Respondent now accepted that he provided Client K with his personal bank account details and that he received £500 in relation to Client K's case into his personal bank account on 20 August 2015. The Respondent agreed that he had no reason to doubt the authenticity of Ms I's redacted bank statement and that it could be relied on although he had not seen the original. Mr Moran submitted that the Respondent's use of the term "my money" was noteworthy. The Respondent asserted in his Answer and in his witness statements that he did not receive payment (i.e. money due to him as fees for work undertaken) into his personal account. Instead he received a refund of disbursements that he had initially paid out of own funds at the commencement of the matter. Mr Moran submitted that several points were relevant arising from the Respondent's position:

31.2.1 Firstly, the Respondent's failure to provide these facts and this explanation in his initial email on 22 May 2017 demonstrated a lack of candour. It was also noteworthy that the Respondent was unable and remained unable to provide any evidence that he had personally paid disbursements associated with Client K's case as he had been invited to do by the Applicant during the investigation in an email dated 13 July 2017. The Respondent had failed at any stage to set out a schedule of each of the disbursements he claimed to have purportedly paid on behalf of Client K or to confirm their respective amounts. This would not be exculpatory given it could never be legitimate to provide a client with personal bank details, but it would at least have substantiated his explanation in relation to disbursements allegedly paid out on behalf of his client. The failure to provide this evidence further challenged the credibility of the Respondent's explanation.

31.2.2 Secondly, Client K was clear in his witness statement and letter of complaint that the £500 paid directly into the Respondent's bank account was a part payment of the £1,500 total quoted by the Respondent for his work on the case. Therefore, the payment represented fees and the Respondent's explanation in his email of 22 May 2017 could only be regarded as misleading.

31.2.3 Thirdly, the Respondent confirmed with a signed Statement of Truth that the firm was acting in this matter. Therefore, if disbursements had been incurred, they could have been dealt with legitimately through the firm's account in the usual way and would in no way have justified the Respondent providing a client with his personal bank details and receiving payment into his personal account.

31.3 Mr Moran submitted that when the Respondent informed the Applicant on 22 May 2017 that he had not received direct payment in relation to Client K's case he would have known that he had provided his personal bank account details to Client K and, on 20 August 2015, had received a payment of £500. A solicitor under investigation by the Applicant must act with transparency and with complete candour.

The Respondent was aware that the Applicant was investigating the issue of payments he might have received directly from his client and his answers in his email of 22 May 2017, his Answer to the Rule 5 Statement and his respective witness statements represented a crass attempt to play on words ("costs", "my money") to evade culpability for the misconduct alleged. Mr Moran submitted that in any event, by failing to disclose the payment he had received in his email of 22 May 2017 when that issue was being specifically addressed, the Respondent either misled directly (by stating he had not received payments - albeit he attempts to play on words by referring to "costs" etc.) or by omission in failing to explain candidly that he had provided his bank account details to his client and had received a direct payment. He would therefore have known that the information that he provided was untrue and would mislead the Applicant. Mr Moran also relied on his observations relating to the Respondent's case set out under allegation 1.1 above.

31.4 Mr Moran submitted that by providing information to the Applicant which was untrue and misleading the Respondent failed to act with integrity contrary to Principle 2, failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6 and failed to comply with his legal and regulatory obligations and deal with the Applicant in an open, timely and co-operative manner contrary to Principle 7. Mr Moran clarified that the allegation of breach of Principle 7 only applied to failure to deal with the Applicant in an open manner because of the contents of the 22 May 2017 email.

Dishonesty and Allegation 1.2

31.5 In respect of dishonesty and allegation 1.2, it was submitted in the Rule 5 Statement upon which Mr Moran relied that Client K's evidence was clear in that the fees quoted to him for his case were £1,500. He insisted on paying £500 after he instructed the firm rather than at the conclusion of the case. The Respondent provided bank details to facilitate this payment. Client K believed that the payment was being made to the firm. The Respondent accepted that the payment was made to his own personal account. On 22 May 2017, the Respondent informed the Applicant that he was working pro bono on Client K's case and that he refused to accept payment from Ms I. He stated that he did not receive payment into his personal account (neglecting to mention that – even on his own case – a refund of disbursements had been paid to him on 20 August 2015). On 5 September 2017 by email to Mr P of the Applicant, the Respondent confirmed that £500 had been paid to him personally in respect of Client K's case. The Respondent would have been aware when communicating with the Applicant on 22 May 2017 that he had received £500 into his personal account in respect of Client K's case and that his email was misleading. The Respondent stated that he had never received payment of costs ("my money") into his personal account, however Client K was clear in that this was precisely what had transpired (albeit Client K was under the impression that the bank details provided by the Respondent were the firm's as opposed to the Respondent's personal bank details). Ordinary, decent people would regard it as dishonest for a solicitor to provide a client with their personal bank details, accept payment and subsequently mislead their regulator by stating in correspondence that they had not received payment directly from their client when this was untrue.

Submissions and evidence of the Respondent in respect of Allegation 1.2

(The cross examination of the Respondent in respect of allegation 1.2 covered much of the same ground as under allegation 1.1 and where more relevant to allegation 1.1 has been set out under allegation 1.1 instead.)

31.6 The Respondent stated in respect of his answer to question 4 in the email to the Applicant dated 22 May 2017 that he acted free of charge; it was his time. He used his own monies to pay the fees that is the disbursements. He was asked, in the context of the Applicant raising the issue of direct payment, if when he sent the email was he aware that the £500 had been received into his bank account. The Respondent stated that the Applicant was raising the issue of costs which had a different meaning. He was not asked if he received "money". It was put to the Respondent that he quoted £1,500 by way of costs and he received £500. He replied that there was no figure in the firm's fee structure like that. Yes, he had paid disbursements and the Tribunal had heard Mr K say he instructed his wife to pay. The Respondent said at the 6 August meeting "Listen I spent money on your behalf, you said someone would come and give me the money" and Mr K was surprised that no one did. The Respondent said make arrangements. He did not hear for nearly two weeks. Mr K called and said his wife had the money and asked the Respondent to give him the bank details. The Respondent stated that he did not know at the time how much had been paid into his account. He called the Applicant's caseworker Mr P to ask how much had been paid in and Mr P came back with details of the Respondent's account.

31.7 The Respondent submitted that in his email of 22 May 2017 he used the same words that Applicant did in its email of 8 May. The Applicant's question included "Did you receive costs from Mr [K] into your personal bank account?" His reply included "I did not receive cost (sic) in my personal bank account. He explained that he paid money on behalf of the Ks and they refunded it, so he said yes they refunded it to him.

31.8 The Respondent stated that the only thing the parties differed on was that the Respondent asked for a refund of the money he had disbursed. The Respondent asked in what circumstances, when the first loan you made to someone had not been repaid, would you ask for extra money? In correspondence with the Applicant, Mr K never mentioned that he had paid disbursements to the Respondent. The Respondent asked him under oath if he did and he confirmed he instructed his wife to pay and he believed she paid. The Respondent referred to his email of 8 January 2018 to the Applicant which included:

> "I note that you have concluded that I acted dishonestly without cross reference of my version of the matter that is you have not verified my account of what happened. I have not seen the response of Mrs [K] regarding my response to fees when she first attended the office.
>
> …You have forwarded their letter to me for my comments therefore it is my legitimate right that you obtain their response to confirm what my version of the matter is. It is only after you have received their response that you can form an opinion as such I believe that you have failed in this regard and will not respond until you have obtained Mrs [K's] version of what happened when she came to see me…"

The natural thing would have been for the Applicant to go back to the Ks. The Respondent took the view that it was not fair if the Applicant did not put his version of events to the Ks. The Respondent stated that his position had never changed. He paid disbursements on their behalf and he was not refunded. The Applicant made no attempt to find out about it from them. They could have corresponded with each other to verify the money that was paid to him. The Respondent stated that he responded to the Applicant honestly, openly and with integrity.

Submissions and evidence of the Respondent in respect of Dishonesty and Allegation 1.2

31.9 The Respondent stated that the Applicant's email was very specific and he responded to it. He was very consistent; the maximum amount the firm charged for work was £1,200. He knew that the Applicant was investigating costs. He confirmed that he did not reply regarding the £500 because he did not regard it as costs. If the Applicant had asked if Mr and Mrs K had paid money onto his personal account as opposed to costs he would have said "Yes".

Determination of the Tribunal in respect of Allegation 1.2

31.10 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. It had to determine whether the Respondent's answers to questions 4 and 5 in his email to the Applicant were evasive or simply answering what he believed he had been asked. There was also a question as to why the Respondent chose not to volunteer information to the Applicant in the email and until the first day of the hearing when he had written letters, could have informed the firm and had made two witness statements. He said in evidence that he had more than one bank account and had to ask Mr P of the Applicant how much had been paid in. The Tribunal did not find this part of his evidence convincing not least because he had provided the bank details to Mr K himself. On the basis of the facts already found by the Tribunal, that at least in part the £500 consisted of costs and that it was not disputed that money was paid into his personal bank account, what the Respondent said was untrue and misleading. The Tribunal considered that the Respondent's response to the Applicant's email fell well below the standards which society expected of a solicitor. As such the Respondent failed to act with integrity and breached Principle 2. He failed to maintain public trust breaching Principle 6 and he failed to deal with the Applicant in an open way breaching Principle 7. The Tribunal therefore found allegation 1.2 proved on the evidence to the required standard.

Determination of the Tribunal in respect of Dishonesty and Allegation 1.2

31.11 Again the Tribunal applied the Ivey test. As to the Respondent's state of knowledge and belief as to the facts, setting aside procedural compliance, the answers which the Respondent gave were correct in part if he had used his own money to pay for disbursements but he had now also received an amount for costs. However the Respondent had been found not to regard that money as costs due to the firm. Also the answer might have been correct initially in the context of the relationship between the Respondent and the Ks. In the light of the Respondent's muddled state of belief in respect of the payment the Tribunal did not consider that it had been proved that he was trying to hoodwink the Applicant or that the email of 22 May 2017 was a concerted effort to mislead. In all the circumstances the Tribunal did not consider that

it could be sure that by the standards of ordinary decent people the Respondent had been dishonest.

**Previous Disciplinary Matters**

32. None.

**Mitigation**

33. The Respondent stated that he took the allegations very seriously as a solicitor of over 16 years' experience. He was very ashamed to find himself in this positon. He had always conducted himself in a professional manner. He deeply regretted the situation and assured the Tribunal that it would never happen again. The allegations mainly arose out of one situation; his relationship with Mr K. The breach of the SARs arose out of a misguided attempt to help a friend which he regretted. Here he had put friendship before his obligation to the profession. Up to that point he had held himself in high esteem. He acknowledged that he had not acted with integrity. He had not been motivated by personal gain but was mainly focussing on trying to suspend the removal directions of a friend from the UK. What happened was not planned and happened very quickly over a short period of time; four weeks from 16 July 2015. He had only just returned from Ghana when he received a call to assist from a mutual friend unexpectedly. Unfortunately for him the friendship had deteriorated and fallen apart. This was a very serious matter for the Respondent out of which he had learned a lot and he promised it would not happen again. He believed he focused on the outcome of preventing K from being removed and achieving his goal of getting married on 1 September. He did not intend any harm. He apologised unreservedly to the profession and he hoped no harm would result. He believed there had been no harm to Mr and Mrs K. He hoped that he would be reprimanded and given the opportunity to continue practising in the profession to which he had dedicated 16 years of his life helping people and he believed the Ks were very grateful that Mr K was not removed. He was at the mercy of the Tribunal.

34. The Respondent submitted that he had a very elderly relative and spent a lot of time abroad. He and other family members took turns to be with her. He worked for R. Spio & Co three days a week and only practised immigration law. He had limited means. He knew he should have brought some evidence of that but had provided a payment plan. He hardly did any work at the moment. He earned in the region of £12,000 a year. His children lived in the property he owned in the UK. They did not pay rent. He had not brought any valuation figures with him. The Respondent stated that he had bought the property in 2008 just before the financial crash. He estimated its value at £295,000. He had borrowed £260,000 on an interest only loan. The Respondent stated that he just owned that property. He lived with a partner and had no income from abroad.

**Sanction**

35. The Tribunal had regard to its Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct found proved. As to culpability, the Respondent stated that his motivation was to help a friend which the Tribunal accepted. What he did was not planned in the sense of being calculated. The conduct

occurred over a period of a few weeks. The Respondent had direct control over the circumstances and responsibility for them; he chose not to pay the money received into the firm and to answer the Applicant's questions as he did. He was quite experienced, a partner in the firm and its COLP when the misconduct occurred. He misled the regulator but the Tribunal had not found this to be calculated. As to the harm that resulted from the misconduct, the client had been assisted; he had complaints about the standard of service but these had been dealt with by the LeO and that was not the subject of any allegation. The loss to the client in monetary terms setting side any LeO compensation was limited to around £350. The Tribunal considered that the reputation of the profession had suffered because of the Respondent's approach to his obligations; his lack of understanding of what he should have done. He had been found to have failed to act with integrity in two respects. It was a serious matter to accept payment of costs into a personal bank account and to fail to deal openly with the Applicant. The resulting harm to the reputation of the profession was foreseeable. As to aggravating circumstances, Mr and Mrs K were vulnerable at the material time but the Respondent did try to help them. As to mitigating factors, the Respondent had not made good any loss suffered and only offered to do so during the hearing. The conduct was of fairly short duration in an otherwise unblemished career. The Respondent seemed genuinely contrite. As to sanction, the conduct involved lack of integrity. Proper accounting for client money was a cornerstone of the profession and even where the amount involved was relatively modest, the duty remained. Full co-operation with the Applicant was also important. The matter was too serious for either no order or a reprimand but the protection of the public and of the reputation of the profession did not require suspension or strike off. The Tribunal determined that a financial penalty would be appropriate. The Tribunal assessed the conduct as falling into Level 3 of the Indicative Fine Bands, conduct assessed as more serious and coming above the bottom of that band. The Tribunal assessed the fine at £10,000.The Respondent was aware that if he wished to argue that the fine should be reduced he should have produced evidence and had not done so.

**Costs**

36. For the Applicant, Mr Moran applied for costs in the sum of £3,521. He submitted that the costs schedule had been drawn extremely conservatively; no time was claimed for preparation of the skeleton or for reading in. The case had been dealt with purely in house by Mr Moran. He invited the Tribunal to exclude one of the nights for his hotel accommodation as the hearing had lasted two rather than three days. This would reduce the claim to £3,371. As to affordability of costs, Mr Moran pointed out that the Respondent had been invited in the Standard Directions to provide evidence about his financial means if he wished them to be taken into account. He also reminded the Tribunal that the Respondent had said during the hearing that he was a man of considerable means. The Respondent indicated that he had no submissions to make about the figures in the costs schedule. He submitted that what he said about his means in relation to helping Mr K did not mean that he was a rich person, rather he was helping a friend. The Tribunal considered the amount claimed in costs by the Applicant to be very reasonable. The Respondent had not challenged the figures but had asked for time to pay. That was a matter to be addressed with the Applicant. The Tribunal saw no reason to reduce the costs on account of dishonesty not having been

found proved; it had not generated any additional work. The Tribunal awarded costs to the Respondent in the amount of £3,371.

**Statement of Full Order**

37. The Tribunal Ordered that the Respondent, KWAME AGYEKUM SIAW, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,371.00.

Dated this 17th day of May 2019
On behalf of the Tribunal

J. P. Davies
Chairman