The Tribunal's Order is subject to appeal to the High Court (Administrative Court) by the Applicant. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11526-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BRIAN HOFFMAN Respondent

Before:

Miss T. Cullen (in the chair)
Mr M. N. Millin
Mrs V. Murray-Chandra

Date of Hearing: 7-8 December 2016

Appearances

David Barton, Solicitor Advocate of Flagstones, High Halden Road, Biddenden, Ashford, Kent, TN27 8JG, for the Applicant.

Joshua Swirsky, counsel of Field Court Chambers, 5 Field Court, Gray's Inn, London WC1R 5EF for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 20 June 2016. The allegations were that:-

1.1 On the 8 September 2014, on instructions from his client Mr K, he withdrew from client account the sum of £236,000 and paid it to a third party F and SI. He thereby provided a banking facility to Mr K in breach of Rule 14.5 of the SRA Accounts Rules 2011 ("SAR").

1.2 On the 8 September 2014, on instructions from his client Mr K, he withdrew from client account the sum of £150,000 and paid it to a third party D Limited. He thereby provided a banking facility to Mr K in breach of Rule 14.5 of the SAR.

1.3 He failed to keep records of his due diligence checks of his client Mr K as required by Regulation 19 of the Money Laundering Regulations 2007("MLR"). He thereby failed to comply with his legal and regulatory obligations in breach of Principle 7 of the SRA Principles 2011 ("the Principles").

1.4 Between June and September 2014 inclusive when conducting a commercial sale transaction for his client Mr K, he failed to comply with or have sufficient regard for his duties under the MLR and for the provisions of Chapters 2 and 11 of the Law Society's Practice Note on Money Laundering. He thereby breached all or any of Principles 2,3,6,7 and 8 of the Principles.

1.5 In breach of Rule 29.1 of the SAR he failed to keep accounting records properly written up at all times to show dealings with client money received, held or paid and any office money relating to client matters.

1.6 In breach of Rule 29.12 of the said SAR he failed to carry out reconciliations in accordance with the requirements thereof in that they did not compare the cashbook balance with the list of liabilities to clients.

Documents

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

Applicant

- Application dated 21 June 2016 and Rule 5(2) Statement with exhibit DEB1 dated 20 June 2016.
- Forensic Investigation Report of Cary Whitmarsh dated 18 January 2016.
- Costs Schedules dated 21 June 2016 and 1 December 2016.

Respondent

- Answer to the Rule 5(2) Statement (undated)
- Witness Statement of the Respondent dated 23 September 2016
- Statement of Means dated 9 November 2016
- Skeleton Argument (undated)

- Companies House Document for D Ltd

Other Documentation

- SRA Accounts Rules 2011 – Preamble, Introduction, Rule 14.5 and Rule 20

Preliminary Matters

3. Allegation 1.3 related to an alleged failure to keep records of identity checks. The Forensic Investigation Officer ("FIO") did not find any evidence of checks carried out by the Respondent in relation to Mr K for money laundering purposes. The documents, which the Respondent always said he had seen and copied, had now been located. The Respondent explained that when these documents were found another member of the Firm prepared them for certification and dated them October 2014 but the Respondent had copied them in June 2014. The Respondent had forgotten to certify them in June 2014 because of the pressure of the transaction and the hours he was working. He did not want to sign them in October nor cross out the date and change it. In those circumstances, the Applicant applied to withdraw allegation 1.3. The Tribunal gave leave for allegation 1.3 to be withdrawn.

Factual Background

4. The Respondent was born in 1954 and was admitted as a solicitor in June 1979. His name remained on the Roll of Solicitors. At all material times the Respondent practised in partnership as Hoffman Bokaei ("the Firm") from offices in London. The Respondent was the Firm's Compliance Office for Finance and Administration ("COFA").

5. On 13 October 2015 a FIO employed by the SRA commenced an inspection of the Firm's books of account and documents. A Forensic Investigation Report ("FIR") was produced dated 18 January 2016. The SRA wrote to the Respondent on 10 March 2016 enclosing the FIR and requesting an explanation of a number of issues arising from it. The Respondent replied on 30 March 2016.

6. Allegations 1.1, 1.2 and 1.4 arose out of one particular transaction. The Respondent acted for Mr K in connection with his purchase and sale of shares in a British Virgin Islands ("BVI") company called REHTL. REHTL was a wholly owned subsidiary of REL. REHTL's only asset was a property in London which will be referred to herein as "110". REL agreed to sell the shares in REHTL to Mr K for a consideration of £10.7 million and Mr K agreed to an immediate sub-sale to Mr M for a consideration of £11.7 million. REL was represented by one firm of solicitors, Mr K by the Firm and Mr M was represented by another firm referred to as "FB and Co" herein. Mr K required the sale proceeds to fund his purchase and both purchase and sale were completed on 5 September 2014. Unbeknown to the Respondent Mr K was a bankrupt when the transaction took place.

Witnesses

7. The following witnesses gave written and oral evidence:

- Cary Whitmarsh– FIO
- The Respondent

8. The Tribunal found the Respondent a credible, if at times somewhat irritating witness, who was doing his best to provide an explanation for what had happened. In trying to give his explanation, the Respondent did not limit his response to answering the questions asked of him.

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

Findings of Fact and Law

10. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11. **Allegation 1.1 - On the 8 September 2014, on instructions from his client Mr K, he withdrew from client account the sum of £236,000 and paid it to a third party F and SI. He thereby provided a banking facility to Mr K in breach of Rule 14.5 of the SAR.**

The Applicant's Case

11.1 The client ledger for the matter was opened on 5 June 2014 and the first entry was the receipt of the deposit of £100,000 from Mr M's solicitors. £90,000 was sent to Mr K in two payments in July 2014. Following receipt of monies from FB and Co the ledger was debited with two payments on 8 September 2014 when £236,000 and £150,000 were paid from the sale proceeds to F and SI and D Ltd. F and S I was an United Arab Emirates ("UAE") company. D Limited was a UK company. The first payment was accompanied by the narrative "Forgn Pyt 73052064" and the second payment with "[D] LIM F/Flow HB". There was an email dated 5 September 2014 in which Mr K asked the Respondent to send £190,000 to an account in Dubai in the name of F and SI and an email dated 4 September 2014 in which Mr K asked the Respondent to send £150,000 to D Ltd. The FIO saw nothing that demonstrated why Mr K had asked the Respondent to make these payments for him. The second payment was made in the sum requested in the email whereas the first payment was made for a higher sum of £236,000.

11.2 In interview on 10 November 2015 the FIO asked the Respondent if he knew what the payment to F and S I was for and, according to the Applicant, the Respondent's answer demonstrated that he did not know what the payment was for but had made a judgement. The Respondent had stated that "I am not, shall I say cognisant with Mr [K's] personal thoughts. I have to look it as an objective person. I can't look at it

subjectively. So, when you say to me what that payment was for, I can't answer that because that's a subjective point, I come at it from a different point of view is am I doing something, which I have considered, am I doing something, which is compliant and looking at the facts, I believed I had". The Respondent's answer in respect of the second payment was the same.

11.3 The Respondent was specifically asked about the provision of a banking facility in the SRA's letter to him dated 10 March 2016. In his letter sent on 30 March 2016 the Respondent stood by his judgement that it was in order to follow his instructions. The Applicant's case was that the sale proceeds belonged to Mr K and the Respondent knew that. He had no explanation from Mr K as to why he wanted the sale proceeds of £386,000 sent to the two entities and there was nothing to connect Mr K with them.

11.4 The Law Society's Practice Note on Money Laundering at Section 11.2.3 of Chapter 11 explicitly reminded solicitors that they should not provide a banking facility for clients, but recognised that it could be difficult to draw a distinction between holding client money for a legitimate transaction and acting more like a bank. It exemplified the problem caused when a solicitor holds sale proceeds and was asked to make payments. There was a clear distinction to be drawn between payments to mainstream loan companies and others who may be private individuals or entities whose identity was not clearly established, together with a clearly stated purpose. The Applicant submitted that in doing as he was asked, in both specified instances, the Respondent provided Mr K with a banking facility.

11.5 The FIO's evidence was that the Respondent had made the two payments to the third parties when there was no underlying legal transaction. The FIO had not made any enquiries in respect of F and S I and D Ltd. The issue was with the payments to a third party, irrespective of who that party was, because the funds were not related to an underlying legal transaction. The Respondent should have made the payments to Mr K and Mr K could then have paid the third parties. The FIO would not have been concerned about these payments if they had been used to say pay an estate agent or discharge a mortgage.

11.6 The Tribunal acknowledged that the Respondent had admitted the allegation but was concerned as to whether or not the Respondent had in fact provided a bank facility when Rule 14.5 was considered in conjunction with Rule 20 of the SAR and specifically asked Mr Barton to address it on this point. Mr Barton's submissions on this point are set out in full immediately below but apply also to allegation 1.4 and money laundering.

11.7 Rule 14.5 stated that "You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities." Payment to third parties might form part of a solicitor's normal regulated activities but it would depend on the circumstances. A solicitor's professional obligations would always override a client's instructions. The Respondent had made two payments to third parties when he did not know the relationship between his client and the two third parties he was paying and did not know the purpose of the payment. He did not have any documentation about the payments and they were not discussed as part of any

pre-completion deliberations with Mr K. These payments did not arise out of the underlying transaction. It was not part of the Respondent's normal regulated activity to pay a third party unquestioningly. One of the mischiefs that Rule 14.5 was aimed at was ensuring that it was not open to solicitors to make payments to any part of the world to fund any activity on their client's instruction. Note 5 to Rule 14.5 stated that "Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not." There had to be a link between the underlying legal transaction and the purpose of the payment. The solicitor needed to be satisfied as to what that link was and that it was a proper payment for them to make. The quality and nature of the relationship between the payment and the transaction was key.

11.8 Mr Barton drew the Tribunal's attention to a previous case where the payment of school fees from the proceeds of sale was found to be the provision of a banking service for the client concerned. He also drew the Tribunal's attention to a payment to a motor dealership made out of funds arising from legal work. The solicitor concerned understood what the payment was for but the payment was not related to the underlying legal transaction. In the Respondent's case there was no link between the instructions to make the payments and the underlying transaction. The Principles applied to all aspects of practice including the handling of client money. The public trusts solicitors to deal with client money properly. The purpose of the SAR was set out in Rule 1 and was to keep client money safe.

11.9 In respect of Rule 20.1 Mr Barton submitted that client money may only be withdrawn from a client account when it was properly required for a payment to or on behalf of the client. A payment to a third party could be proper but in this case Mr Barton submitted that the payment was not proper because the Respondent knew nothing about it. Mr Barton referred the Tribunal to the Tribunal case no 11195-2013 Scott. The respondent in that case had appealed (Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin)).It had been alleged that Mr Scott had permitted his client account to be used as a banking facility as payments did not relate to underlying transactions. The fact that the client had given the instructions did not matter. The use of the word properly was deliberate. If a solicitor properly directed his or her mind to what they were doing the payment could have been proper. Otherwise the payments lacked the ethical quality that Rule 14.5 imported. The Respondent did not know why he was being asked to make the payments. The quality of "properly" fell away and Rule 20 did not help. Rule 14.5 did not justify the two payments. A guillotine came down at the end of the transaction and the instructions in respect of the payments were after that guillotine had come down. At that point the instructions converted the payments into something different. The payments were no longer part of the underlying transaction. The mischief at which Rule 14.5 was directed would be defeated.

11.10 In respect of Rule 20.1 of the SAR the word "properly" was used repeatedly. It was an integral requirement for compliance with Rule 20 which was designed to be a restrictive rule to protect client money.

11.11 Mr Barton submitted that the SAR required a Principal such as the Respondent to fulfil obligations and comply with the wider rules and Principles in the Code. The use of the word "properly" gave it an ethical quality that required client account to be dealt with in accordance with the above Principles and desired Outcomes. The introduction to the SAR said explicitly:

> "The Principles set out in the Handbook apply to all aspects of practice, including the handling of client money. Those which are particularly relevant to these rules are that you must:
>
> - protect client money and assets;
> - act with integrity;
> - behave in a way that maintains the trust the public places in you and in the provision of legal services;
> - comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner; and
> - run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.
>
> The desired outcomes which apply to these rules are that:
>
> - client money is safe;
> - clients and the public have confidence that client money held by firms will be safe;
> - firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard client money;
> - client accounts are used for appropriate purposes only; and
> - the SRA is aware of the issues in a firm relevant to the protection of client money."

11.12 Although Mr K had asked for the money to be sent to 'our account' the Respondent was acting for Mr K as an individual and the account name bore no relationship to the name of the client. The Respondent had not asked what the connection was between Mr K and the company. There was a clear difference between Mr K and the account in Dubai. If this payment was not in breach of the SAR it would be open to any solicitor in these circumstances to say that they were following their clients instructions and that this was acceptable. Had enquiries been made it would have changed the nature and the quality of the payment. Rule 20 could not apply as the money was not properly required for a payment on behalf of the client. Rule 20 could

not be used to justify a payment that would otherwise be a banking facility under Rule 14.5.

11.13 The rules were designed to prevent money laundering. These payments were payments that Mr K's bank should have made. It was not clear to Mr Barton that Mr K had a bank in the UK. Mr K had not put money into the transaction which had raised nearly £1 million and it was not known what had happened to that money. The Respondent had not properly played his part as gatekeeper. He should have undertaken a risk assessment and asked his client what the purpose of the payment was and why the client wanted him to send the payment. He should have asked the client to tell him about it and documented what he was told in order to protect himself and his indemnity insurers. There were no notes about these critical steps. There was no evidence that the Respondent had a basic understanding of why he was being asked to make the payment or that he had queried why the bank could not do this.

11.14 The Respondent had to assess the risk. If he knew why he was being asked to make the payment he could assess the risk in making the payment but if he did not have that information (which on the Applicant's case the Respondent did not) then he could not assess the risk. He was floundering and guessing and there was no risk assessment at all. In respect of the email giving instructions to make the payment to Dubai it was difficult to be certain, but it appeared to the Tribunal that there were different font sizes and the Respondent needed to satisfy himself that he had a complete understanding of where and why the money was being sent, rather than just sending it. The fact that some of the money was going abroad did not matter, the concern would have applied to money sent in this country equally. .

<u>The Respondent's Case</u>

11.15 The Respondent admitted the allegation having initially denied it in his letter to the SRA dated 30 March 2016. In his witness statement the Respondent explained that at the time of the transaction he was aware of the rules forbidding the provision of banking facilities. He had considered the position and took the view that he would not be in breach of this rule. He had now had time to reflect and take advice and accepted that he was wrong to act on this instruction. On that basis he admitted allegation 1.1.

11.16 The Respondent was conscious that a solicitor should not provide banking service to clients as, amongst other things, this could give the appearance of legitimacy to funds that have been dishonestly obtained. The Respondent stated that regardless of the circumstances he would never allow a client to place money in his Firm's client account that was unconnected with any underlying legal transaction and then use those funds to pay bills or make other payments on behalf the client. The Respondent considered the situation with Mr K was different. There was an underlying legal transaction and he was entitled to the monies. Because Mr K's request was unusual the Respondent took time to consider it.

11.17 In a statement that the Respondent provided to the FIO he explained that he had received instructions from Mr K prior to completion as to the transfer of the balance of funds. At that stage the Respondent had not formulated any decision on the transfer request as he had his hands full with trying to arrange completion. He therefore gave the matter consideration over the weekend at home and took various factors into

account. These included the source of the funds which were received from another solicitors firms so he satisfied himself there were no issues there. Secondly he took into account that the funds had arisen from what was an underlying transaction therefore there were no issues there and the funds were therefore clean.

11.18 The Respondent also took into account the Law Society's Anti-Money Laundering Guidance and reference to warning signs which made the Respondent conclude that he was dealing with a legitimate transaction which did not constitute the Firm acting as a bank as the funds transferred were backed up by an underlying transaction. The Respondent had also been aware of and met members of the K family for approximately three years. The Respondent also made some enquiries on the Internet and found that both the recipients appeared to be legitimate companies. The Respondent recalled that D Ltd had been incorporated in the 1980s. Both companies were involved in the business of motor components and Mr K had described F and SI as "our account in Dubai". The Respondent knew that Mr K and his family had connections in the Middle East and believed that the family were wealthy. In the circumstances, the Respondent concluded that it was legitimate for him to pay Mr K's monies to the two companies as per his instructions. He now accepted that this was wrong.

11.19 The Respondent had made two payments totalling £90,000 to Mr K directly on 18 and 30 July 2014. On 8 September 2014 he made the payments to D Ltd and F & S I. In evidence the Respondent acknowledged that it would have been better for these sums to have been paid to Mr K directly for Mr K then to do with as he wished. Mr K had emailed the Respondent on 4 September 2014 asking him to send £150,000 to a specified UK bank account which he said was D Ltd Business Current Account. On 5 September 2014 Mr K emailed the Respondent asking him to transfer £190,000 to "our account in Dubai" and provided details. The Respondent explained that Mr K had varied the amount in a telephone call to £236,000. Mr K had a UK bank account. The initial £90,000 was paid to that account. It was not known what had happened to the £386,000. That was not investigated by the SRA.

11.20 The real cause of the harm was not the transaction itself but the fact that Mr K had been declared bankrupt. If Mr K had not been bankrupt then the transaction would have been entirely successful and Mr M would have received a good title to the shares. The Respondent had not carried out a bankruptcy check on Mr K and had he done so he would have found out that a bankruptcy petition had been issued against Mr K and would have acted quite different currently. The Respondent had no idea that Mr K was actually made bankrupt in August 2014. When he found out he was in a state of shock.

11.21 In making the payments set out in allegations 1.1 and 1.2 the Respondent stressed that he was not knowingly acting in breach of the SAR or to the detriment of anyone or knowingly assisting Mr K to avoid his obligations. The Respondent accepted that by transferring the monies on Mr K's instructions that he either prevented the Official Receiver/ Trustee in Bankruptcy recovering these monies from Mr K's bankruptcy estate or made it more difficult for them to be recovered. This was not the Respondent's intention. When the Respondent had received the instructions from Mr K the transaction was effectively at an end. The monies held in the Respondent's

Firm's account belonged to Mr K. As with any client Mr K gave instructions as to what he wanted the Respondent to do with the money.

11.22 As noted above the Tribunal was concerned as to whether or not the Respondent had provided a bank facility when Rule 14.5 was considered in conjunction with Rule 20 of the SAR and specifically asked Mr Swirsky to address it on this point. Mr Swirsky did not seek to go behind the Respondent's admission and confined himself to submissions on the SAR themselves.

11.23 Rule 14.5 did not define what a banking facility was, presumably because a banking facility was obvious when one saw it. The payments related to an underlying transactions and the funds arising from that transaction. The issue was that they were paid out to accounts that were not in Mr K's name. The rationale for Rule 14.5 was not limited to concerns about money laundering. In the case of Fuglers LLP v SRA [2014] EWHC 179 (Admin) the solicitors concerned represented Portsmouth Football club and did act as a bank facility. However, in that case there was no suggestion of money laundering. In Patel v SRA [2012] EWHC 3373 (Admin) although the client account had been used as a banking facility there was no suggestion of money laundering. The Scott case was quite different to this case. The purpose of Rule 14.5 was to stop the mischief of a solicitor acting as a bank, that could happen and there were cases where it had happened but it was not what had happened here. The monies were the end proceeds of the transaction.

11.24 Mr Swirsky submitted that Mr Barton was reading far too much into the word "properly". Mr K was entitled to the payment (in reality his Trustee in Bankruptcy was but only Mr K knew that). He was the beneficial owner of the monies and it was a payment made on his behalf. Rule 20.1(f) applied. The payments were made on the client's instructions for his convenience, and were requested in emails that the Tribunal had seen. This was not the provision of a banking service. Mr K was entitled to receive the monies and was saying where he, as the client, wanted them to go.

11.25 The question of whether the client account was being used as a banking facility was not clear cut. In the Rule 5 statement the allegation was put as a breach of Rule 14.5. In paragraph 17 of that document there was reference to the Law Society Practice Note and the fact it recognised that it could be difficult to draw a distinction between holding client money for a legitimate transaction and acting more like a bank. There was no suggestion that the money was "dirty". The Practice Note did not rule out the making of a payment to a person who was not a mainstream lender or estate agent. For money laundering such payments had to be considered in each particular case. In deciding whether or not to make a payment the solicitor had to consider whether there were any "red flags". Mr Swirsky did not accept that the interpretation of Rule 14.5 was as clear cut as Mr Barton suggested. If it was read as Mr Barton suggested Rule 14.5 would be saying that one should never pay anyone when they were not, for example, a mainstream lender or estate agent. There was no definitive guidance as to what a solicitor should do in these circumstances. The Respondent's case was that there was an underlying transaction and he had acted on his client's instructions in respect of his money and what he said should be done with it. It was open to the Tribunal to find these allegations not proved.

The Tribunal's Findings

11.26 The Tribunal in reaching its findings in no way condoned the use of a solicitor's client account for payments to third parties. It was not a proper use of a solicitor's practice to operate a banking facility for third parties, even if they were clients. The Tribunal's findings were based on the specific facts of this case. The Respondent could have made more enquiries. It would have been far better if the payments had been made directly to Mr K and not to F and S I and D Ltd. In making these payments the Respondent exposed himself to these allegations.

11.27 Rule 20.1 stated:

> "20.1 Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or behalf of the client (or other person on whose behalf the money is being held);
>
> (b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
>
> (c) for payment of a disbursement on behalf of the client or trust;
>
> (d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
>
> (e) transferred to another client account; (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and given in writing, or are given by other means and confirmed by you to the client in writing;…"

11.28 In Scott the Respondent had appealed in respect of the finding of lack of integrity and sanction and the appeal had been dismissed in its entirety. Before the Tribunal Mr Scott had admitted that he provided banking facilities through his client account but had disputed, amongst other matters that the withdrawals from client account were in breach of Rule 20 of the SAR. The underlying facts of Scott were not on all fours with the present case. In any event one division of the Tribunal was not bound by another division and the appeal had not concerned the use of client account as a banking facility.

11.29 The Applicant had submitted that in effect a guillotine came down on the underlying legal transaction at completion meaning that the two payments were not related to the transaction. The Respondent had been instructed on the purchase and sale of the shares. This was an underlying legal transaction and the proceeds of the sale had to be sent somewhere. They could not remain in the Respondent's client account. His client had given him written instructions (albeit there was a discrepancy in one of the amounts) and the Respondent had made two payments which the Tribunal found were within Rule 20.1(f) in that the sums were withdrawn on the client's written instructions for the client's convenience.

11.30 The Law Society's money laundering warning signs highlighted that it could be difficult to draw a distinction between holding client money for a legitimate transaction and acting more like a bank. It acknowledged that payments from proceeds of sale may be to more obscure recipients whose identity was difficult or impossible to check. In these specific circumstances, and bearing in mind Rule 20.1 (f), the Tribunal could not be sure beyond reasonable doubt that the withdrawals were not in respect of instructions relating to an underlying legal transaction and the funds arising therefrom. Accordingly, the Tribunal could not be sure that the Respondent had provided a banking facility to Mr K in breach of Rule 14.5 of the SAR. On the specific facts of this case the Tribunal did not find Allegation 1.1 proved.

12. **Allegation 1.2 - On the 8 September 2014, on instructions from his client Mr K, he withdrew from client account the sum of £150,000 and paid it to a third party D Limited. He thereby provided a banking facility to Mr K in breach of Rule 14.5 of the SAR.**

The Applicant's Case

12.1 The Applicant's case was set out above in respect of allegation 1.1.

The Respondent's Case

12.2 The Respondent admitted the allegation on the same basis that he had admitted allegation 1.1.

The Tribunal's Findings

12.3 For the same reasons as it found allegation 1.1 not proved beyond reasonable doubt the Tribunal did not find allegation 1.2 proved beyond reasonable doubt.

13. **Allegation 1.3 - withdrawn**

14. **Allegation 1.4 - Between June and September 2014 inclusive when conducting a commercial sale transaction for his client Mr K, he failed to comply with or have sufficient regard for his duties under the MLR and for the provisions of Chapters 2 and 11 of the Law Society's Practice Note on Money Laundering. He thereby breached all or any of Principles 2,3,6,7 and 8 of the Principles.**

The Applicant's Case

14.1 The Applicant's case was that the allegation was concerned with the payment of £236,000 from client account to F and S I on 8 September 2014, the payment of £150,000 from client account to D Ltd on the same date and the retention by the buyer's solicitor of the sum of £500,000 from the purchase price of which sum the Respondent ceded control on or before completion on 5 September 2014. In relation to each, there was nothing on the matter file to show why these payments were taking place. The Respondent did not scrutinise or document with evidence the propriety of any of these payments.

14.2 The two payments to F and SI and to D Ltd were set out in respect of allegations 1.1 and 1.2 above. In relation to the £500,000 the file contained nothing to show that there was an agent to be paid by Mr K in connection with his sale to Mr M. There was simply an email that recorded that the Respondent had been instructed that a commission of £500,000 was to be paid to agents.

14.3 The Applicant submitted that the payments had to be looked at in context. Firstly, Mr K's purchase price was £10.7 million and he sold to Mr M for £11.7 million. His profit was £1 million. Of this sum £386,000 was sent to F and SI and to D Ltd whose identities were undocumented and whose connection with Mr K was unknown. A further £500,000 was permitted to be retained by the buyer's solicitor with the Respondent's consent for a purpose that was not scrutinised or evidenced. Thus £886,000 of the "profit" was paid away. The ledger showed that Mr K did not make any financial contribution himself. He personally received only £90,000. The purported payment to the agent or agents significantly exceeded anything paid to Mr K. Secondly, Mr K was made bankrupt on 27 August 2014, and although there was no evidence that the Respondent knew this, it suggested a reason why Mr K might not have wanted to receive the full sale proceeds personally. It was submitted by the Applicant that an informed solicitor properly directing himself to his professional obligations in relation to money laundering would have scrutinised and carefully documented the payment of such sums of money. He would have satisfied himself it was in order to make these payments and to release the £500,000. Two payments to third parties and a retention totalling £886,000 should have put the Respondent on enquiry.

14.4 Regulation 7 of the MLR imposed an obligation on the Respondent to apply customer due diligence measures when he established his business relationship with Mr K and also at other appropriate times on a risk sensitive basis. His further obligation was to determine the extent of customer due diligence measures on a risk sensitive basis depending on the transaction, and to be able to demonstrate to his supervisory body (the SRA) that the extent of the measures applied were appropriate in view of the risks of money laundering and terrorist financing. Regulation 8 of the MLR imposed an obligation on the Respondent to conduct ongoing monitoring of his business relationship with Mr K which included the scrutiny of transactions undertaken throughout the course of the relationship. Regulation 8 specifically applied to it the due diligence provisions of Regulation 7.

14.5 The SRA expected solicitors to comply with the Practice Note when undertaking its role as a regulator and as supervisory body for the purposes of the MLR. Chapter 2 of the Practice Note addressed the risk-based approach solicitors should take to money laundering and terrorist financing and section 2.3.2 specifically directed attention to particulars areas of law where the risk is greater than others. Chapter 11 contained a number of money laundering warning signs, both general and specific. A relevant warning sign in respect of this transaction was unusual instructions which was addressed at section 11.2.2. The instruction to cede control of £500,000 to the buyer's solicitor was unusual both in itself and in the amount of money involved. It was 50% of Mr K's profit. This was effectively a payment between buyer and seller and solicitors were warned to be wary of these. The possibility of money being kept away from a trustee in bankruptcy, HMRC or law enforcement agencies was specifically exemplified. A further relevant warning sign was exemplified by the requests on the

day before and the day of completion to send monies to the two stated entities. There was nothing seen by the FIO to show it was planned in advance.

14.6 The Applicant submitted that the Respondent failed to comply with or have sufficient regard for his MLR duties or to the Practice Note in a number of respects. Firstly, when he was asked by Mr K to send £236,000 to F and SI he did not scrutinise the transaction to learn exactly why he had been asked to do this, and what the connection was between Mr K and that entity. The Respondent admitted to the FIO that he did not know what the payment was for. The same submission was made in respect of the second payment of £150,000 to D Ltd. Together there were substantial sums of money forming a large proportion of Mr K's profit from the sale. The same submission was made for the retention of £500,000 by the buyer's solicitor.

14.7 The Respondent was instructed to agree to £500,000 being retained by Mr M's solicitor to be dealt with by him as he saw fit once completion had taken place. The Respondent simply went along with that and this was consistent with following instructions unquestioningly. It was reinforced by an email dated 4 September 2014 from the Respondent to Dr B which stated "As to the balance £500,000 this is to be retained by you and only dealt with as you see fit once completion has taken place". During interview on 10 November 2015 the FIO asked the Respondent why he had used the term "as you see fit". The Respondent replied "I understand where you're coming from, but that was never meant, the import was and I'd also had a conversation with as I say [Dr B] was basically they were going to pay agents. So when I said 'as you think fit', I didn't know what agents were there, whether it was one agent, two agents, three agents so I used those words. Maybe in hindsight, you could say perhaps I should have phrased it more clearly, but with everything that was going on, I thought I was dealing with a reputable firm. I thought it was basically for estate agents. No way, in my mind, would I say go out and spend a holiday in Majorca or somewhere for £500,000 no way". The Applicant's case was that this explanation by the Respondent demonstrated that he had no or no adequate knowledge of the purpose of the money. The Respondent had previously emailed Dr B on 1 September 2014 referring to the £500,000 commission to be paid to agents and that that money was to be retained in Dr B's client account to be held to the Respondent's order. The subsequent email of 4 September which sought £495,000 to complete released the monies to Dr B to use as he saw fit after completion.

14.8 The FIO's evidence was that the Respondent should have retained control of the £500,000 and if there were agents to be paid on behalf of Mr K he should have made these payments and not relied on a third party to make the payments. Unless the Respondent had control of the funds he could not be sure that the payments to the agents would be made. To fulfil his professional duty the Respondent should have ensured he had control of the funds to ensure the payments were properly made. The fact that the Respondent had been told that there was an agent or agents involved meant that he should have looked into it. The Respondent should have ensured that Mr K co-operated and gave him proper instructions to deal with the funds. The proper thing was for the Respondent to call in the funds and make the payments to the agents.

14.9 The cross border element in the F and S I payment should have raised the Respondent's concerns. The Respondent should not have made the payments and should have returned the funds to Mr K. In the alternative he should have made enquiries about the legitimacy of the transaction and whether the payment was connected to the transaction. However the Respondent had done nothing and had made the payments without taking any steps and without understanding why the payments were being made. The Respondent should have established the reason for the payments from Mr K. The FIO had been concerned about the fact that payments were made to third parties and the cross border element. These were identified as potential opportunities to facilitate money laundering in the Practice Note.

14.10 The Applicant would still have been concerned about this transaction irrespective of whether or not Mr K was declared bankrupt. Albeit it was accepted that had Mr M got good title and not complained to the SRA it was unlikely that the transaction would have come to its attention.

14.11 The Respondent's had lacked integrity. A solicitor had to think very carefully before acting on their client's instructions. If a solicitor simply acted on instructions their independence was compromised. The trust the public placed in the Respondent and the provision of legal services would be damaged if the public knew that the Respondent had made payments that money was kept away from the Trustee in Bankruptcy and that HMRC may not have known about the profit as the payments did not pass through Mr K's bank account. The transaction was not illegal but it was back to back and the Respondent was obliged to comply with his legal and regulatory obligations which went hand in hand, there was no distinction between the two.

The Respondent's Case

14.12 The Respondent denied this allegation. The Respondent had been a solicitor for nearly thirty seven years. He specialised in property law and the majority of his work involved expensive properties at the top end of the market. Many of the Respondent's clients were property professionals, namely people who bought residential properties with the intention of making a profit as opposed to providing them with somewhere to live. A great deal of the Respondent's work involved bridging finance. The Respondent was well-known in his field and considered that he was good at what he did.

14.13 The Respondent was aware that this was an area of law in which it was not uncommon to encounter criminal activity and would-be money launderers. The Respondent always conducted client due diligence as described by the Law Society's Practice Note on the subject. The Respondent was familiar with the SRA report on this subject ("Cleaning Up") and with the guidance provided by the Law Society. At all times the Respondent was alert to so-called "red flags" and to his responsibilities as a solicitor. He kept his obligations under review. If the Respondent believed that his Firm was being used to facilitate money laundering he would take appropriate steps to ensure that it was not involved in and that the authorities were informed.

14.14 On either 2 or 3 June 2014 the Respondent was approached by Mr K and his father, SK. They wanted to buy the entire share capital of REHTL from REL and become the owners of 110. The Respondent had come across SK before in connection with

property matters. SK had once assisted the Respondent with the viewing of a substantial property for another client. The Respondent knew that the family owned a property in London which was worth at least £10 million. The Respondent also knew that his business partner had been instructed to pursue a debt against SK on behalf of another client. In pursuing those instructions she had done some research into SK and his family assets. A statutory demand been served as a tactical ploy and SK had then paid the client the debt he owed. There was no suggestion at that time that SK was insolvent. In fact, SK appeared to have substantial assets.

14.15 Initially SK and Mr K had not decided in whose name the shares in REHTL would be purchased. The Respondent met both SK and Mr K in his office on 2 or 3 June 2014 when he was told that Mr K would be the purchaser. The Respondent then carried out the Firm's usual ID checks. In the course of this he took copies of Mr K's passport and copied three documents relating to a private medical insurance claim which provided his address in the UK. The Respondent was not a party to the deal between REL and Mr K/SK for the purchase of the shares in REHTL. The Respondent knew that at least in part the deal was put together by an agent, SS, of a company called API. Agents were a common feature of high end property transactions. Indeed, a single transaction could involve more than one agent.

14.16 This was the first and only time the Respondent acted for Mr K. The Respondent had been instructed at a late stage. He had been told that the transaction needed to happen quickly and that Mr K and SK's usual solicitor was going on holiday and could not assist. That solicitor was also going to retire imminently. . The Respondent contacted that solicitor and confirmed he was going away. Mr K and SK had asked the Respondent to act on the matter as they had heard of him and knew he had extensive legal knowledge and ability in this area. . The Respondent explained that the transaction was front end loaded and that he had worked under significant pressure to secure exchange of contracts.

14.17 The Respondent knew from an early stage that the purchase price of the shares was £10.7 million. He was told the shares would immediately be sold on by Mr K to a third party for £11.7 million. Mr K was going to use the ultimate buyer's money to fund the purchase of the shares. The Respondent did not initially know the identity of the ultimate buyer, who turned out to be Mr M. The Respondent had no reason to believe that REL were aware that was going to be a further transaction. According to the Respondent, back to back transactions were not uncommon in high end property transactions. The Respondent was instructed both on the purchase of the shares from REL and on the sale to Mr M. Mr M was represented by Dr B of FB and Co. The Respondent and Dr B had worked together at a previous firm.

14.18 On 6 June 2014 the agreement between REL and Mr K was signed for the sale and purchase of the shares. At the time REL had not acquired vacant possession which Mr K required. The agreement had provision for completion on a date to be notified by REL's solicitors. It was envisaged that completion of the REHTL shares would take place reasonably quickly once vacant possession been obtained. On 24 August 2014 REL's solicitors informed the Respondent the vacant possession been obtained. The Respondent knew that the completion monies would be needed as REL could serve a completion notice at any time. The Respondent informed Dr B that he should ask his client to make the funds available. On 29 August 2014 Dr B transferred

funds to the Respondent but there was a shortfall of £995,000. No explanation for the shortfall was provided. On 2 September 2014 the solicitor for REL served notice to complete on Mr K. The Respondent then served a similar notice on Mr M. Correspondence, which the Respondent described as bad-tempered, followed from Dr B at that point but no explanation of the shortfall was received. The Respondent said that he had been put in a very difficult position when the funds were under transferred and had wanted to sue but his client did not instruct him to do so.

14.19 At this point Mr K instructed the Respondent to complete on receipt of a further £495,000 (£500,000 less than the agreed price between himself and Mr M). He said that this was because commission was due to an unnamed agent. The Respondent did not know whether this was true or not. The involvement of agents was common in this sort of transaction. Mr K was committed to the deal with REL and needed Mr M's money to complete. It was possible that what he said about agents was just his way of saving face. Either way these were his instructions and the only person losing anything was going to be Mr K himself. Mr K was still going to make a significant profit on the deal. If Mr K had insisted on the full £995,000 then the deal with REL may well have collapsed as he could not pay the purchase price. Mr K would have been left with the remedy of suing Mr M, who was a foreign citizen and resident outside the jurisdiction. If the transaction had not competed Mr K had stood to lose at least the deposit he had paid and possibly more.

14.20 On 5 September 2006 completion took place in both transactions. The completion monies were sent to REL's solicitors over two days because of restrictions on the Firm's use of CHAPS. On 5 September 2016 the Respondent prepared a completion statement for Mr K showing that his Firm was holding £386,000. From recollection this was sent to him on Monday, 8 September 2014. On 4 September 2014, in anticipation of completion, Mr K instructed the Respondent to send £150,000 of the completion monies to D Ltd. The following day Mr K instructed the Respondent to send £236,000 to F and SI. The latter was an UAE company and he referred to it as "our account in Dubai". The Respondent considered these instructions over the weekend rather than sending money straight away (as would be his normal practice). He undertook a risk assessment. Having considered the instructions the Respondent decided he should comply with them. It was not until 12 October 2014 that the Respondent learnt that Mr K was bankrupt at the time of completion and that Mr M may not have acquired good title to the shares.

14.21 The Respondent understood that certain kinds of back to back transactions could be indicative of fraud. He considered that this was usually when a mortgage was involved together with an inflated valuation of the property. The victim of such fraud was usually the mortgagee. There was no mortgagee in this case. Back to back transactions were also encountered in situations where there was no wrong doing. Such transactions were often called "flips" or "turns" and were not uncommon at the top end of the property market where an experienced individual who knew the market saw the opportunity for profit. Whether or not a back to back transaction was indicative of fraud was dependent on the particular facts of the case. In this case the Respondent did not see anything to suggest that Mr K was being fraudulent. He was simply selling a property (in fact shares) at a higher price than he had purchased them for. The seller was a BVI company and the end buyer a resident of the UAE. No

criticisms were made by the Applicant of these aspects. The UAE had its own money laundering legislation in force. The transaction did not give rise to any obvious risks.

14.22 The Respondent disagreed with the Applicant's suggestion that transactions with a foreign element could be indicative of fraud. The reality was that a significant part of the top end of the property market in London involved transactions involving, or even between, foreign nationals. The Respondent argued that one must be alert in all transactions to the risk of fraud and the Respondent believed he was. In this case Mr K was a British citizen and he was selling to a foreign national. The Respondent did not think that this alone or even coupled with the fact that it was back to back transaction with no lender involved, indicated fraud. Further there were no High-Risk or Non-Cooperative jurisdictions involved.

14.23 The Respondent was mindful of his obligations as regards money laundering when he accepted the instructions and kept those obligations in mind throughout the transaction. To the Respondent this did not seem to be a transaction that contained a high degree of risk of money laundering or terrorist financing. As the Respondent saw it, Mr K had seen an opportunity to make an easy profit on a property transaction and that was what he was doing. Purchase monies were coming from another solicitor's client account and the Respondent believed that he was entitled to rely upon that solicitor having carried out its obligations as regards knowing his client and ensuring that all necessary checks had been carried out as to the source of his client's funds. The Respondent accepted that these transactions might appear complicated to others but they were not complicated to him.

14.24 The Respondent considered the position before he transferred the funds to the two companies. He did not accept that these payments deprived Mr K of a significant portion of his profit from the transaction. It was Mr K who directed the Respondent to make these payments presumably because he wanted the funds to go there. In respect of the £500,000 the Respondent had some difficulty understanding the allegation. REL had served a notice to complete. Mr K did not have money to complete unless and until monies were made available by Mr M. There was a shortfall in the monies available of £995,000. This would have put Mr K in breach of contract and the Respondent demanded monies from FB and Co. At that point Mr K instructed the Respondent to accept £495,000. These were Mr K's instructions. They had the effect of ensuring that the deal went ahead and Mr K avoided a potential claim from REL. This was certainly not the first time a purchase price had changed just before completion.

14.25 It had been alleged that the Respondent should have been suspicious because Mr K was being deprived of his profit. At this stage the Respondent considered that Mr K was making a very significant profit for doing virtually nothing. This was not uncommon in the property business. By instructing the Respondent to accept the reduced price Mr K made a significant profit and avoided potential litigation. All the Respondent did was comply with his instructions. Dr B, if he had the money, was not transferring it to the Respondent. Despite the FIO's suggestion it was impossible for the Respondent to get the money and pay the agent(s).

14.26 The Respondent accepted that one of his communications with Dr B was unfortunately worded but the Respondent did not believe that this had any impact on the transaction. The Respondent acted on his client's instructions and there did appear to the Respondent to be some commercial sense in them. The Respondent accepted that he did not enquire in any depth as to why he was receiving this instruction but did not see anything untoward. It was of course easy with hindsight to say things should have been done differently because it was now known that Mr K was bankrupt when he gave those instructions. However at the time the Respondent felt that this was a matter for Mr K who was still going to make a handsome profit. As the Respondent did not know that Mr K was bankrupt it could not follow that the Respondent should have taken extra care because of it.

14.27 The Respondent's case was that the disputed allegation had three distinct components. Firstly the payment to the UAE company, secondly the payment to the UK company and thirdly the fact that Mr K instructed the Respondent that he had accepted a £500,000 reduction in the purchase price. The Applicant had stated that the Respondent should have been suspicious because Mr K was only to receive £90,000 out of the transaction when the three sums were deducted, or as it was put "£886,000 was paid away". The Respondent submitted that this was not a fair characterization of the transaction. This was an immediate sub-sale and Mr K was making an immediate profit. The two payments after the conclusion of the transaction could not be described as a reduction in profit; these were payments made on Mr K's instructions and it was reasonable to assume the payments were made for his own purposes. On any view then Mr K's profit was £500,000 – the only deduction being the reduction that he agreed to before completion. It followed that when Mr K gave instructions about the deduction the Respondent could not have known what Mr K's instructions would be as to the destination of the monies at the conclusion of the transaction.

14.28 The deduction of £500,000 could not be seen as a re-direction of purchase monies. Mr K was effectively using Mr M's money to purchase the shares in REHTL. The Respondent made three points about this reduction. Firstly, although the sums were larger this was really no different to any other situation where a seller agrees to a reduced consideration just prior to completion. A notice to complete had been served on Mr K and he needed the money from Mr M to complete. He was still going to make a handsome profit and he effectively had no choice. Secondly, the above was the reality and, the Respondent submitted, it was irrelevant what reason Mr K gave for the deduction. Finally, the £500,000 deduction was not going to cause a loss to anyone other than Mr K who had agreed to it. The only reason that it was said, after the event, that a loss was caused was because Mr K was bankrupt at the time. Even then the deduction caused no loss to Mr M (the obvious victim of Mr K's actions) but rather to other unspecified creditors.

14.29 The Respondent regarded the deduction of £500,000 as a decision that Mr K was entitled to take. While it was accepted that a solicitor should not provide a banking service, it was submitted that doing so in these circumstances did not mean that there was a reason to be suspicious of money-laundering. There can be many reasons for making a payment to a third party – most of which do not involve any wrongdoing. In this case the Respondent considered the instructions, did some research on the companies involved, and was told by Mr K that the UAE company was "our account in Dubai".

14.30 The Respondent accepted his obligations under the MLR and the Law Society Practice Note. It was submitted that he did adopted a risk based approach to this transaction in compliance with the MLR and paragraph 2 of the Practice Note. The Respondent did not take the view that the underlying transaction fell into those risky areas of practice identified in paragraph 2.3.2 of the Law Society's Note. The transaction did involve a cross-border element but then so did many high-end property transactions in London. While this may not have been ordinary residential conveyancing, it cannot really be said that this was a complicated property transaction. It was simply the sale of shares by A to B and then to C. Given that it was now accepted that the Respondent did keep proper records relating to Mr K's identity it could not be said that he did not assess the individual risk as regards Mr K. Further, there was no dispute that Mr K was a real person using his real name. He also gave a real address. The only problem in the whole transaction was that Mr K was already bankrupt when the transaction completed. He did not reveal this to anyone and continued with the transaction regardless. If he had been solvent, it was submitted, there would have been no criticism of the Respondent. If Mr K had instructed the Respondent to say pay off a mortgage there would have been no expectation that the Respondent needed to understand why he was being instructed to make the payment.

14.31 Chapter 11 of the Practice Note gave advice on warning signs of money laundering. It was submitted that none of the warning signs were present. The transaction was not of itself unusual. While it is correct that Mr K accepted a significant deduction from the purchase price, this was not a case where he instructed his solicitor to return the money to its sender. Indeed it appeared that Mr M never paid the money. There was no suggestion as regards the £500,000 that it was somehow 'washed' in the Respondent's client account because it never passed through it. It also appeared that Mr M's solicitors never had this money. The reality was that Mr M never produced it. Dr B had not agreed to proceed on the basis that the £500,000 was held to the Respondent's order. The Respondent had been trying to reach a situation which was acceptable to Dr B so that he would release the £495,000 and the transaction could complete. The words "as you see fit" arose as a result of a conversation between the Respondent and Dr B when Dr B did not want to be tied down. The Respondent knew that Dr B was a solicitor and that he was also regulated. Dr B had told the Respondent he was going to use the money to pay agents. Mr K had confirmed that the Respondent could proceed on the basis that Dr B retained the £500,000.

14.32 Paragraph 11.2.2 of the Practice Note warns the practitioner against dealing with money which "you suspect that either is being transferred to avoid the attention of a trustee in a bankruptcy case, HMRC, or a law enforcement agency". However, there was no evidence that the Respondent did suspect that this was happening, or that there was evidence which should have put him on notice. The UAE was not a "suspect territory" as defined in the Practice Note. Further, this was not a case where the Respondent could be criticized as regards the source of the funds for the transaction. These were coming from Mr M who had his own solicitor, regulated by the SRA, acting for him. In these circumstances the Respondent was entitled to rely upon the proper checks being carried out by Mr M's solicitors.

14.33 The Respondent had not acted without integrity. The client had given clear instructions and the Respondent had acted on those instructions. His independence was not compromised. He understood the situation and his instructions did not

involve doing anything illegal. The Respondent had behaved in a way that maintained the trust the public placed in him and the provision of legal services. He had not known that Mr K was bankrupt when buying and selling the shares. The Respondent had complied with his legal and regulatory obligations. Looked at as the Respondent understood the facts to be on 4 September 2014 the Respondent had been aware of his money laundering obligations. He could not be criticised because a major problem had arisen a short time after completion. His client account was not used for illegal purposes. The mischief was that the funds should have been paid to the Trustee in Bankruptcy but they were not.

14.34 The Respondent had run his business and carried out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Respondent was very mindful of the risk of this situation to Mr K. If Mr K did not complete he was at risk of being sued and losing a lot of money. Mr K needed Mr M's money to complete. Mr K had told the Respondent to send the monies to "our account in Dubai" and this is what he had done. The Respondent could not be criticised for regarding Mr K as someone he could trust. He knew of his family and the fact that they were involved in property.

The Tribunal's Findings

14.35 The Respondent acted for Mr K on one transaction which lasted from June 2014 to September 2014. Copies of Mr K's passport and documents confirming his address had been provided to the Applicant. The Respondent had explained that when these documents were found another member of the Firm prepared them for certification and dated them October 2014 but the Respondent had copied them in June 2014. The K family were known to the Respondent, they were known in the world of property and the Respondent had phoned their usual solicitor and confirmed that there was a legitimate reason for his instruction.

14.36 The Tribunal considered that it was "a bridge too far" to say that the Respondent had failed to comply with or have sufficient regard for his duties under the MLR and for the provisions of Chapters 2 and 11 of the Law Society's Practice Note on Money Laundering in respect of the £500,000. His client had agreed to the reduction and to completion of the sale on that basis. The Respondent had never received the £500,000. Whether or not the money was ever used to pay agents was irrelevant. The Respondent never had control of the £500,000, it was never in his client account and he made no payments from these monies.

14.37 In respect of the two payments totalling £386,000 the Respondent had clearly had the MLR requirements and guidance in mind. The Law Society's Practice Note recognised that the more a solicitor knew their client and understood their instructions the better placed the solicitor would be to assess risk and spot suspicious features. The Respondent knew his client and understood his instructions. He had not made the payments until after he had taken the weekend to decide whether or not he should make the payments. Although this was a back to back transaction the Tribunal accepted that this was not an unusual feature in the Respondent's work nor was the foreign element. The Respondent was required to take a risk-based approach, including to compliance with customer due diligence obligations.

14.38 The Tribunal could not be sure that that the Respondent had failed to comply with or have sufficient regard for his duties under the MLR and for the provisions of Chapters 2 and 11 of the Law Society's Practice Note on Money Laundering in respect of the payments totalling £386,000. Given these two findings the factual basis of allegation 1.4 was not found proved beyond reasonable doubt and the alleged breaches of the Principles fell away.

15. **Allegation 1.5 - In breach of Rule 29.1 of the SAR he failed to keep accounting records properly written up at all times to show dealings with client money received, held or paid and any office money relating to client matters.**

The Applicant's Case

15.1 The FIO inspected the Firm's client account reconciliation statements for the month end of September 2015, and this included items shown as unpresented debits totalling £17,125.17 and unpresented credits totalling £7,093.79. The unpresented debits ranged in date from 15 October 2010 to 30 September 2015. Unpresented debits had not been written back and re-credited to the relevant client ledger with the consequence that liabilities to clients were understated. During the interview on 10 November 2015 the FOI asked the Respondent about this. He explained that during the period 2009 to 2014 the Firm engaged an accountancy practice to prepare the annual accountants report and that the issue had not been highlighted. He further said that until 2013 the books of accounts were maintained by an online cashier's business which had not highlighted it either.

15.2 The FIO asked the Respondent if he looked at the monthly reconciliations. The Respondent confirmed that he did but had not trawled back through them. The FIO pointed out to the Respondent that if he had looked at the reconciliation for April 2011 it would been obvious to him that the oldest unpresented debits should have been written back to the relevant client ledger. The Respondent accepted that.

15.3 Unpresented credits ranged in date from 26 January 2009 to 3 September 2015 and those items had not been properly allocated to the relevant client ledger during that period. The FIO asked the Respondent what steps the Firm took to allocate funds received from clients that could not be identified. The Respondent had explained that in these circumstances the cashier normally sent an email to all fee earners asking to which client it should be allocated. If that failed to identify the client then enquiries would be raised with the bank. The failure to spot unpresented credits during the stated period was attributed by the Respondent to a failure to properly look at reconciliations. The deficiencies had been corrected for the month end October 2015.

The Respondent's Case

15.4 The Respondent admitted this allegation. In the Respondent's letter of 30 March 2016, addressed to the SRA prior to these proceedings, he explained that the allegation related to a number of cheques that were paid to clients and then not cashed by the time the cheques became stale. The Respondent accepted that as a partner and as the COFA ultimate responsibility for the accounting errors rested with him. The Firm had employed a firm of accountants and neither the accountants nor the bookkeepers had drawn this problem to his attention and the Respondent did not

notice it when he reviewed the Firm's books. The Respondent accepted that he had reviewed the accounts and reconciliations during the relevant period but failed to notice the errors. As soon as the problems were pointed out to him he took steps to rectify the situation.

The Tribunal's Findings

15.5 Rule 29.1 required the Respondent at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him and any office money relating to any client or trust matter. The FIO's investigation had established breaches of Rule 29.1 which the Respondent admitted and had rectified. The Tribunal found allegation 1.5 proved beyond reasonable doubt.

16. **Allegation 1.6 - In breach of Rule 29.12 of the said SAR he failed to carry out reconciliations in accordance with the requirements thereof in that they did not compare the cashbook balance with the list of liabilities to clients.**

The Applicant's Case

16.1 The investigation revealed that the Respondent had not carried out reconciliations properly, and that this had resulted in a long-term failure to identify unpresented items and correct them. A correctly performed reconciliation will compare a list of liabilities to clients with client account bank statements and the client account cashbook. This was a three way reconciliation and would identify discrepancies. The reconciliation statements also need to be looked at and acted upon. The Respondent accepted in interview that he had not carried out such comparisons or properly looked at statements to identify and correct differences.

The Respondent's Case

16.2 The Respondent admitted this allegation. The Respondent had looked at the reconciliations at the end of each month but failed to identify the problems as early as he should have done. When he became aware of the errors they were corrected shortly afterwards. The Respondent was concerned when the problems relating to reconciliations were identified during the course of the FIO's investigation. As a result he had changed the system since November 2015. The Respondent continued to peruse the monthly reconciliations as before but now sat down with the Firm's accounts department to double check the reconciliations.

The Tribunal's Findings

16.3 The SAR requirements in respect of reconciliations were set out in Rule 29.12. That Rule required reconciliations to be undertaken at least once every five weeks. The reconciliations had to compare the cashbook balance with the list of liabilities to clients. The reconciliation statement had to show the cause of the difference, if any, shown by the above comparison. The FIO's investigation revealed that the Respondent had not carried out reconciliations properly. The Respondent admitted the allegation and had changed the way in which the Firm carried out reconciliations. The Tribunal found allegation 1.6 proved beyond reasonable doubt.

Previous Disciplinary Matters

17. None.

Mitigation

18. The Respondent took his role as a solicitor extremely seriously. The whole property business was dependent on solicitors acting with integrity and honesty. Throughout the transaction that had led to these proceedings the Respondent believed that he had provided a proper and honest service to his client, who regrettably had not been honest with him. The Respondent had been deceived by people he believed were honest and genuine.

19. The effect of the proceedings had had a devastating effect upon the Respondent as an individual and also on the Firm. He had been facing more serious allegations than had been found proved. He had had conditions placed on his practising certificate by the SRA which had meant changes in the Firm so that it could continue to practice. The allegations found proved were not of the most serious kind. The accountants employed by the Firm should have spotted the issues but did not. Since the problems were identified the Firm had ensured that the errors had been corrected so no client had lost money as a result of these matters. The Respondent accepted that ultimately the breaches were his responsibility and he was no longer the COFA. The Respondent regretted the oversights that had led to the breaches of the SAR.

20. The Respondent had set the Firm up in 2007 with his business partner, who was his now his ex-wife. They still lived in the former matrimonial home but in separate households on separate floors. The Respondent had three grown up children and since 2013 he had held his interest in the home on trust for them. The Respondent had a reasonable income but had defaulted on various loans when the economic difficulties had reduced the Firm's work and he was still making payments on three of these loans. He had no capital and was unable to secure credit.

Sanction

21. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction. Sanction related only to the matters found proved, namely allegations 1.5 and 1.6. The Respondent was culpable for his misconduct. He had not been doing something that he should have been doing. He had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent was an experienced solicitor and the COFA. He should have ensured compliance with the SAR but had taken his eyes off the ball. There was no actual harm caused to anybody but there could have been. It was an important principle that the public knew that client money was safe and the SAR were in place for a reason. Here no client lost any money but the fact that the Respondent had not kept accounting records properly written up at all time and had not undertaken the required reconciliations meant that there was a risk of harm to the reputation of the legal profession.

22. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of his obligation to protect the public and the reputation of the profession. This was an aggravating factor. Once the Respondent

was aware of the issues he had made the deficiencies good. The Respondent had displayed genuine insight and had, once he was aware of the breaches of the SAR, made open and frank admissions and co-operated with the SRA. These were mitigating factors.

23. The Tribunal considered sanction starting with No Order. The Respondent's culpability was not so low that this was an appropriate sanction. Nor was a Reprimand appropriate. Whilst there was no identifiable harm caused to any individual the SAR were in place for a reason and compliance with them was very important. As COFA the Respondent had had additional obligations to ensure compliance. The Tribunal considered that a fine was the appropriate sanction when considering the allegations found proved. However the protection of the public and the protection of the reputation of the legal profession from future harm also required the imposition of a Restriction Order to prevent the Respondent from practising as a sole practitioner or sole manager or sole owner of an authorised or recognised body and preventing him being a Compliance Officer for Legal Practice or COFA. The Respondent was no longer the Firm's COFA and worked in partnership. However, the Tribunal considered that these restrictions were required to ensure that similar future circumstances could not arise given the importance of how client money was held and accounted for. The restrictions were imposed indefinitely with liberty to the Respondent to apply to the Tribunal if he wished to vary them.

24. In assessing the level of fine the Tribunal considered the misconduct to be at the lower end of the scale and that the appropriate fine would be £3,000. The Tribunal then took into account the Respondent's limited means. He had a number of financial liabilities and no capital assets. The Tribunal reduced the fine to £2,000 based on the Respondent's means.

Costs

25. The Applicant applied for its costs supported by a costs schedule in the sum of £32,377.65. The Applicant's position was that the proceedings were properly brought and it was appropriate for the Respondent to pay the costs of the proceedings irrespective of the fact that not all of the allegations had been found proved. The Respondent's position was that the bulk of the costs related to the allegations upon which the Applicant had not succeeded. There had been serious allegations which had not been found proved. It was not an appropriate case in which to order that the Respondent pay the costs of the proceedings. The SRA could have accepted the Respondent's admissions and not proceeded to a contested hearing in respect of allegation 1.4. Had that been the case there would have been a significant reduction in the costs. The Respondent was not prepared to admit allegation 1.4 given the effect it would have on him as a solicitor. Having successfully defended himself against that allegation the Respondent should not find himself burdened with costs.

26. Prior to the hearing the position had been that four allegations were admitted and one was denied. Two allegations had been found proved and three not proved. The Tribunal was satisfied that the allegations were properly brought. The matters raised in the unsuccessful allegations needed to be investigated. However, if these allegations had not brought there would have been a significant saving in terms of the Tribunal's time and the time taken to prepare for the hearing and the Respondent's

preparation of his defence would have been reduced. Allegations 1.1 to 1.4 arose out of the same factual matrix but the Tribunal had not found any of these allegations proved. The breaches of the SAR admitted and proved were discrete. The Applicant needed to be able to make and standby honest, reasonable and apparently sound decisions made in the public interest without fear of exposure to undue financial pressure if unsuccessful. In all the circumstances of the case, the Tribunal assessed that the costs that the Respondent should pay were £24,135.00. The Tribunal then went on to consider the Respondent's means and whether or not this sum needed to be reduced. In light of the Respondent's financial position the Tribunal considered that, as with the amount of the fine, there should be a one third reduction in what the Respondent was required to pay and ordered that the Respondent do pay costs in the sum of £16,074.00.

Statement of Full Order

27. The Tribunal Ordered that the Respondent, BRIAN HOFFMAN, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and that he be subject to the conditions set out in paragraph 2 below. The Tribunal further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,074.00.

28. The Respondent shall be subject to conditions imposed by the Tribunal as follows:

    The Respondent may not:

    - Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

    - Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

    - There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 28 above.

Dated this 20th day of January 2017
On behalf of the Tribunal

T. Cullen
Chairman