Neutral Citation No: [2017] EWHC 2496 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No: HC14C02586

CHANCERY DIVISION

Rolls Building
Fetter Lane
London EC4A 1NL

Date: 10 October 2017

Before :

Mr John Martin QC sitting as a Deputy Judge of the High Court

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Between :

THE LAW SOCIETY

Claimant

- and –

RAJESH SINGH PATHANIA

Defendant

James Ramsden QC (instructed by Devonshires) for the **Claimant**
Alexander Hill-Smith (directly instructed) for the **Defendant**

Hearing dates: 20, 21, 22, 24 March 2017

JUDGMENT

Pursuant to CPR PD 39A Para 6.1, I direct that no official shorthand note shall be taken of the judgment and that copies of this version as handed down may be treated as authentic.
John Martin QC

Mr John Martin QC:

1. These proceedings raise an interesting question about the scope of the statutory trust imposed by section 35 and Schedule 1, paragraph 6, of the Solicitors Act 1974 ("the 1974 Act"). That trust arises where the Law Society ("the Society") has intervened in the practice of a solicitor.

2. The defendant, Rajesh Singh Pathania ("Mr Pathania"), was formerly the sole principal of Newland Solicitors ("Newlands"), a firm of solicitors practising from 25 New Road, London E1 1HE. On 1 June 2009 the Society, acting by the Solicitors Regulation Authority, intervened in the practice of Newlands under section 35 of the 1974 Act, having on 28 May 2009 resolved that it had reason to suspect dishonesty on the part of Mr Pathania and that the monies referred to in paragraph 6 (2) (c) of Schedule 1 to the 1974 Act and the right to recover or receive them should vest in the Society.

3. Paragraph 6 (3) of Schedule 1 requires the Society to serve on the solicitor or his firm and on any other person having possession of sums of money to which the paragraph applies a certified copy of the resolution and a notice prohibiting the payment out of any such sums of money. There was a dispute as to whether or not this had been done, Mr Pathania saying that he was in India at the time and had not received any such copy or notice. In the course of the hearing, the Society produced a copy of a letter dated 29 May 2009 addressed to Mr Pathania at Newlands' offices notifying him of its exercise of its power to intervene on the ground of suspected dishonesty and enclosing a certified copy of the resolution. Section 84 of the 1974 Act provides

among other things that any notice required by the 1974 Act to be served on any person may be served by sending it by post to his proper address. It is also provides that any such notice may be served on a practising solicitor by sending it in a registered letter addressed to him at any place specified as his place of business in his latest application for a practising certificate; but that latter provision is expressly stated to be without prejudice to any other method of service. It is not clear whether the letter dated 29 May 2009 was sent by registered post or not; but I am satisfied that it was in any event sent by post to Mr Pathania's proper address and was properly served in accordance with section 84 (2) of the 1974 Act.

4. Following the Society's intervention, Mr Pathania was made bankrupt on 29 June 2010 and was struck off the Roll of Solicitors on 4 February 2011. He was discharged from bankruptcy on 28 June 2011, and subsequently took assignments from his trustee in bankruptcy of the right to sue for various loans that he had made prior to the intervention. The Society found out about this when Mr Pathania tried to make a claim against the SRA Compensation Fund in respect of one of the loans. The Society has been added as a party to the proceedings relating to that loan, brought by Mr Pathania against Thavasar Iqbal Sharif in the Mayor's & City of London Court; and by order of that court dated 21 July 2014 the proceedings were transferred to this division and directed to be heard at the same time as these proceedings.

5. The Society's case is that the loans made by Mr Pathania were made with monies improperly taken from the Newlands' client account and on intervention vested in the Society, to be held subject to the statutory trust arising on intervention. Mr Pathania's case is that the loans were made out of his own money and never became subject to the statutory trust.

6. There are now 18 such loans in issue (although the Society initially pleaded 37). For reasons given later in this judgment, I find that some of those loans were made by Mr Pathania (a) prior to the intervention and (b) using monies initially derived from Newlands' client account, although to some extent those monies were subsequently repaid by Mr Pathania. On that basis, what Mr Pathania held at the date of the intervention was a number of choses in action, consisting of the right to receive the repayment of the loan monies in accordance with the terms of the loans.

7. The relevant statutory provisions are as follows. Section 35 of the 1974 Act, which is headed "Intervention in solicitor's practice", provides that "The powers conferred by Part II of Schedule 1 shall be exercisable in the circumstances specified in Part I of that Schedule". Paragraph 1of Part I of the Schedule states that the Society may intervene where it has reason to suspect dishonesty on the part of a solicitor, an employee of a solicitor, or the personal representatives of a deceased solicitor, in connection with the solicitor's practice or in connection with certain other matters (subparagraphs 1 (a) and (aa)). The same paragraph describes a wide variety of other circumstances in which the Society may intervene, including undue delay by the personal representatives of a deceased solicitor, the failure of a solicitor to comply with rules, the bankruptcy of a solicitor, the committal of a solicitor to prison, the incapacity of a solicitor, the striking-off or suspension from practice of a solicitor, and the failure by a solicitor to hold or comply with the conditions of a practising certificate. The Society may also intervene where it is satisfied that it is necessary to do so to protect the interests of clients of the solicitor or of his firm or the beneficiaries of any trust of which the solicitor is or was a trustee, or (by paragraph 3)

where there has been undue delay in connection with any matter in which the solicitor is or was acting.

8. The powers exercisable on intervention are set out in Part II of Schedule I. They relate to money (paragraphs 5 to 8) and documents (paragraph 9). Only the powers relating to money contained in paragraph 6 are relevant. So far as material, they are as follows.

> "(1) … if the Society passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Society, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Society's resolution) and shall be held by the Society on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto and to rules under paragraph 6B upon trust for the persons beneficially entitled to them.
>
> (2) This paragraph applies—
>
> (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the solicitor or his firm in connection with his practice or former practice …."

9. It is also relevant to mention paragraph 6A, which applies to any right to recover or receive debts due to the solicitor or his firm in connection with his practice, and provides that if the Society passes a resolution to the effect that such rights shall vest in it, those rights shall vest accordingly.

10. In order to consider their proper scope, it is convenient to combine subparagraphs (1) and (2) of paragraph 6 into the following single statement of their effect:

> "Upon the passing by the Society of a resolution to that effect, all sums of money held by or on behalf of the solicitor or his firm in connection with his practice or former practice, and the right to recover or receive them, shall vest in the Society (whether they were received by the person holding them before or after the Society's resolution) and shall be held on the statutory trust".

11. In those circumstances, there are issues (1) as to whether the loans were at the date of the intervention or subsequently "sums of money" held (a) by or (b) on behalf of Mr Pathania; (2) whether the fact that they were made initially out of client account means that they were at the date of intervention or subsequently held in connection with Newlands' practice; and (3) whether the right to recover or receive those loans vested in the Society on intervention or subsequently, or remained throughout with Mr Pathania.

12. In formulating those issues, I have taken the relevant period as the date of intervention and subsequently. This was the view taken by Lightman J in *Dooley v The Law Society* (unreported, 23 November 2001, HC 0102366), a case which addressed the question of the respective rights of the Society and a solicitor in relation to fees received after intervention and in relation to fees receivable but unpaid at the date of intervention. One of the issues that fell for decision was at what time money must be held for paragraph 6 (1) to apply, the solicitor contending that the relevant time was the date of the resolution and that consequently there was no vesting in the Society of sums received after the date of the resolution. Lightman J said this (at [8]):

> "In my judgment the relevant time is the date of the resolution and the full period thereafter whilst the resolution remains in force. This is so for two reasons. The first is the words in paragraph 6 (1) requiring vesting in the Society of sums: "whether they were received by the person holding them before or after the Council's resolution". This is plainly the intent behind the use of these words and [counsel for the solicitor's] construction deprives them of any meaning or effect. The second is that to limit the vesting to sums already held and to exclude sums to be received after the date of the resolution would for no conceivable reason emasculate the statutory protection provided".

I agree with this conclusion and with the reasoning that supports it. The consequence in the present case is that, whether or not the benefit of the loans vested in the Society on intervention, any sums repaid in respect of those loans will vest in the Society on repayment if they are to be regarded as held in connection with Mr Pathania's former practice. This is so notwithstanding that the intervention occurred over eight years ago, since there is no provision in the 1974 Act for bringing an intervention to an end (except to a limited extent under paragraphs 6 (4) and (5) of Schedule 1, which allow a person on whom a notice has been served prohibiting payment out of any sums of money to which the paragraph relates to apply to the High Court for, and for the Court to make, an order directing the Society to withdraw the notice). This latter conclusion was also reached in *Dooley* at [14]. Accordingly, the intervention will remain in force indefinitely; although its practical effect will be self-limiting, since there will inevitably come a time when there are no outstanding sums which can be said to be subject to the intervention.

13. The matters set out in the previous paragraph, which were largely conceded by Mr Hill-Smith for Mr Pathania, mean that it is strictly unnecessary to consider whether or not the benefit of the loans vested in the Society on intervention. However, this topic occupied a substantial part of the argument, and it is desirable to deal with it. The question is whether or not the right to receive repayment of a loan, which right is a chose in action, is to be treated as included in the expression "sums of money held by or on behalf of the solicitor or his firm" appearing in Schedule 1, paragraph 6(2)(a). On the face of it, it is not: as a matter of ordinary language, a chose in action is not a sum of money. Nor does the debtor hold on behalf of the creditor the sum of money he received when the loan was made: the money was his own to do with as he wished, his obligation being to repay an equivalent amount on the due date. Some authority that this is the correct view is again provided by *Dooley*, where (at [9] and [10]) Lightman J said this:

> "In my view the statutory provisions make clear beyond question that there vest in the Society only sums held by the solicitor (e.g.in bank accounts) or on behalf of the solicitor (e.g. by agents for him or to his account); the right to recover sums due from former clients to the solicitor remains vested in the solicitor and the solicitor can alone commence and pursue proceedings for recovery of the debt. The entitlement of the solicitor is however fettered in two regards. First any recovery automatically vests in the Society. Second implicit in the statutory scheme the solicitor is precluded from any dealing with the debts before payment which operates to evade or undermine the scheme and the protection intended to be afforded to clients and the Society.

> The short answer to the second question is accordingly that there is not vested in the Society the right to recover practice monies or professional fees which became payable before or after the date of the intervention. There is vested only the right to such monies when paid (whether before or after the intervention)."

This conclusion was accepted as correct by Lawrence Collins J in *Re Ahmed & Co* [2006] EWHC 480 (Ch) at [10], and I too agree with it. I was also referred to the decision of Mann J in *The Law Society v Austin* [2013] EWHC 3002 (Ch), in which he regarded the expression "sums of money" in paragraph 6 as being capable of applying to "any sums of money which were formally held on trust and which are either sums of money or, in my view, some other traceable form which can still be seen to be held by the solicitor, or conceivably by others who have obtained it from the solicitor". But Mann J was not there dealing with debts, and what he said is of limited assistance in the present context.

14. There is, however, a factual distinction between the position considered in *Dooley*, namely the entitlement to sums (such as payment for services rendered) which had never formed part of the monies of the practice, and the position in the present case, where loans were initially made from monies held on client account. That distinction leads, in my judgment, to a different result. That is for the following reasons.

15. Whatever else may be included in the expression "sums of money held by or on behalf of the solicitor or his firm", it is plain that money standing to the credit of the solicitor or his firm on client account and office account are within its ambit. If it were otherwise, the statutory provisions would be almost entirely deprived of any effect;

but the matter is in any event put beyond doubt by the express reference in paragraph 6 (2) (b) – which applies where the intervention is on the death of a sole practitioner – to all sums of money in any client account. However, money in a bank account is not, strictly speaking, held by the customer or held by the bank on behalf of the customer. It has been established at least since *Foley v Hill* (1848) II HLC (Clark's) 28; 9 E.R. 1002 that the relationship between banker and customer is that of debtor and creditor. In that case, Cottenham LC said this (at pp 36-7):

> "Money, when paid into a bank, ceases altogether to be the money of the principal; it is by then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's, is money known by the principal to be placed there for the purpose of being under the control of the banker; it is then the banker's money; he is known to deal with it as his own; he makes what profit of it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it or deal with it as the property of his principal; but he is, of course, answerable for the amount, because he has contracted, having received that money, to repay to the principal, when demanded, a sum equivalent to that paid into his hands.

> That has been the subject of discussion in various cases, and that has been established to be the relative situation of banker and customer. That being established to be the relative situations of banker and customer, the banker is not an agent or factor, but he is a debtor."

The incidents of the relationship of debtor and creditor described in that passage are, of course, not confined to the relationship of banker and customer. They apply to any loan relationship, and in particular apply to the loans made in the present case. The chose in action which is the solicitor's right to repayment of the debt due from his banker represented by the sums on client and office accounts is clearly comprehended within the expression "sums of money held by or on behalf of the solicitor or his firm"; and in my judgment the same applies to any other loan made by the solicitor or the firm from monies connected with the practice.

16. In taking this view, I have not overlooked the existence of paragraph 6A of Schedule 1 which (as I have said) allows the Society to pass a resolution vesting in it "any right to recover or receive debts due to the solicitor or his firm in connection with his practice or former practice". This paragraph was added by the Legal Services Act 2007, and was clearly intended to reverse the situation held to exist in *Dooley* and allow the Society to collect outstanding fees for legal services. In fact, I was told that the Society has never passed such a resolution, since in a typical intervention the administrative effort involved in identifying and pursuing book debts will be too great. However, the existence of the paragraph might be taken to suggest that the passing of a resolution under paragraph 6 did not have the effect of vesting in the Society the right to recover a debt of any nature. As I have already pointed out, however, to construe paragraphs 6 and 6A in that way would mean that the Society would have no

right by virtue of a paragraph 6 resolution to obtain monies standing on client or office account; and that cannot have been the legislative intention. In my view, the debts referred to in paragraph 6A are those (such as outstanding fees) that arise from contractual arrangements other than loans.

17. Nor have I overlooked paragraph 7 of Schedule 1, which provides so far as relevant that "If the Society takes possession of any sum of money to which paragraph 6 or 6A(3) applies, the Society shall pay it into a special account". Mr Hill-Smith contended that this provision clearly indicated that paragraph 6 related only to sums of money capable of being paid into a bank account. The reference to paragraph 6A(3) was particularly telling, since that subparagraph referred not to debts as such but to sums recovered by the Society by virtue of exercising rights vested in it as a result of a paragraph 6A resolution. I see the force of this argument; but I do not consider that there is any warrant for construing the reference to "sums of money" in paragraph 6 as confined to cash, or to money repayable on demand (since that would prevent it applying to money held on time deposit), or to money held by a bank. I do not see any reason in this context to distinguish one type of loan from another; and, just as paragraph 7 cannot apply even to money in client account until it is actually received, so it will apply to money received in respect of other debts on receipt.

18. For the reasons I have so far stated, I conclude that a resolution under paragraph 6 of Schedule 1 has the effect of vesting in the Society, as included in the expression "sums of money held by or on behalf of the solicitor or his firm", the right to recover loans made out of monies connected with the solicitor's practice. That right extends both to receipt of monies when paid and to the prosecution of proceedings to compel

payment. The decision whether or not to pursue such proceedings lies with the Society, moderated only by the duties it has as a public body.

19. I now turn to consider whether or not the fact that the initial source of the loan monies was the Newlands client account is sufficient to make the loan monies connected with the practice.

20. The expression "in connection with" is, no doubt intentionally, wide in its scope; and, having regard to the underlying purpose of the Schedule 1 powers, namely to preserve assets of the practice in circumstances where they would otherwise be at risk, is in my view to be given a wide interpretation. Mr Hill-Smith drew my attention to *Williams v Law Society* [2015] 1 WLR 4982, in which Sir William Blackburne construed the expression "practice" where it appears in paragraph 6(2)(a) of Schedule 1 as meaning "the activities of the solicitor or authorised body so far as carried out in that capacity". From this, Mr Hill-Smith argued that the activity of money-lending was not an activity done by a solicitor in his capacity as such, so that nothing resulting from money-lending could be said to be connected with the solicitor's practice. He did, however, concede that if a loan was funded entirely from client account it would have been made in connection with the practice; but he said that the position would be otherwise if the money taken from client account was reimbursed by the solicitor, since then the solicitor would ultimately have used his own money to make a loan that was not itself connected with his practice. Mr Hill-Smith's concession is in my view obviously correct: since the solicitor holds the client account in his capacity as such any misapplication of it is connected with that practice. It appears to me, however, that the position is the same where the loan has initially been funded by a misapplication of monies from client account, even if those monies have subsequently been reimbursed

by the solicitor. The solicitor is in a position to make the loan only because he has access to client monies held by him for the purposes of his practice, and that in my judgment is sufficient to make the loan itself connected to the practice. I reject later in this judgment Mr Pathania's suggestion that some instances of his use of monies from client account to fund loans occurred with the knowledge and authority of the clients, who participated in the returns; and on that basis the use of client monies was unauthorised. Whether or not Mr Pathania subsequently replaced the monies taken from client account, the fact is that the loans would not have been made without the improper use of client monies. In my judgment, the monies, and the right to receive repayment of the loans, are held in connection with Newlands' practice.

21. Accordingly, I hold that in principle any loans made by Mr Pathania using monies derived from client account vested in the Society on the date of intervention, together with the right to recover them. It follows that none of those loans vested in his trustee in bankruptcy, and any assignment of the benefit of them made by his trustee in bankruptcy was ineffective. If any of the loans is repaid, the repayments will fall to be held on the statutory trusts; and if any repayments have already been made, Mr Pathania will have to account for them. Mr Ramsden QC for the Society accepted that, if Mr Pathania were able to prove that he had in fact made reimbursement to client account, he would be entitled to be treated as a potential beneficiary under that trust.

22. I turn now to deal with the factual position in relation to the loans.

23. The only witness from whom I heard evidence was Mr Pathania himself. In considering his evidence, it is relevant to refer to the history of his dealing with the allegations made against him in these proceedings. On 7 July 2014 an order was made

by Norris J recording undertakings by Mr Pathania to preserve and identify assets held by him or under his control. Mr Pathania provided some information in response to that order by two affidavits, the first undated and the second dated 6 November 2014. Neither of those affidavits stated the source of the monies used to make loans; and on 5 December 2014 an order was made by Mr Stuart Isaacs QC, sitting as a deputy judge of this division, requiring among other things that Mr Pathania make an affidavit answering a number of questions, of which one was: "5. In each of the 37 advances disclosed by [Mr Pathania] what is the origin of the money advanced or claimed by him". Mr Pathania made an affidavit in compliance with that order on 10 April 2015, but his answer to that question was that he claimed privilege as any answer might be self-incriminating. He ultimately changed his mind about that, making a witness statement on 10 December 2015 in which he abandoned his claim to the privilege against self-incrimination and for the first time offered affirmative factual explanations for the origin of the monies advanced by him as loans to clients and third parties. In considering those explanations, and in considering his evidence generally, I take the view that I am entitled to take into account that his initial sworn evidence, given in response to a court order requiring disclosure, was to decline to offer any explanation since to do so might incriminate him.

24. I also take into account in Mr Pathania's favour that he was being asked to explain transactions which almost entirely occurred before the intervention on 1 June 2009. It would be surprising if he were able to recollect the detail of matters after the passage of the intervening seven and three-quarter years. However, I reject his suggestion that he had not had sufficient access to Newlands' files. These files were taken into safekeeping on or soon after the intervention, and Mr Pathania was given access to

them under supervision once the proceedings had started. He contended that he was merely given access to a limited number of boxed documents, and that the materials relating to many of the transactions were missing. Although he claims to have asked those supervising his visit where the other files were, he made no complaint or request in writing following the visit. Moreover, in the course of his evidence he showed considerable familiarity with the documents in the case, often referring to documents other than those to which his attention was being directed and making an informed point on them. My overall assessment of Mr Pathania was that, where he had an explanation to give, he was able to give it and to refer to relevant documentation; but that where he gave no explanation, it was because there was no explanation properly to be given. I do not consider that I can rely on his explanations unless they are supported by contemporaneous documentation.

25. I should deal at this stage with three general points arising from his evidence. First, it was said on behalf of Mr Pathania that the client account was reconciled on a monthly basis and audited on an annual basis, and any small deficiencies revealed by these exercises were promptly made good by Mr Pathania. Reference was made to the accountant's report forms submitted to the Society as required by the Solicitors' Accounts Rules for each of the periods 1 May 2006 to 30 April 2007, 1 May 2007 to 30 April 2008, and 1 May 2008 to 31 October 2008. Each of these reports contains a statement by Reddy Siddiqui, a firm approved by the Society, that "the differences are as a result of debit balances in a number of client ledgers. The debit balances were rectified upon discovery the following month. No loss has occurred to clients". It was said to follow that any deficiency in client account was small and of a temporary nature, and that accordingly the client account could not be regarded as the source of

the monies for the loans. Even at the date of intervention, the deficiency of £46,606.01 asserted by the Society was far less than the aggregate amount of the loans. I have already dealt with and rejected the contention that reimbursement of client account monies had the consequence that the loans, even if initially made with monies derived from client account, could not be regarded as connected with Mr Pathania's practice. However, it also seems to me that the fact that the client account was regularly brought into balance does not mean that it could not have been the ultimate source of the loans. That is for the following reason. A reconciliation of the client account involves a comparison between the total of the liabilities to clients shown by the client ledger accounts on the one hand and the balance on the client account on the other. It does not establish that the ledger entries accurately show the amount due to each client. Monies debited without authority to a particular client ledger would have the effect of reducing the amount apparently due to the client but would not, unless the effect was to produce a debit balance on that ledger, result in a discrepancy between the total of the client ledgers and the total in the client account. The only way for an auditor to check that the ledger balances are accurate would ordinarily be to ask the client. It is observable that, in the majority of cases where Mr Pathania used client monies to fund loans, he debited the amounts against client ledgers that were in credit. That would not give rise to a deficiency in the periodic reconciliations. Accordingly, these reconciliations do not demonstrate either that monies were not obtained from client account or that, if obtained, they were replaced. The second point, related to the first, is this. In his evidence, Mr Pathania stated that some twenty of his clients were connected to each other and they all knew about the lending. They would get between £1000 and £2000 in return for the use of their money, although their cut did not go through the client account. Mr Pathania paid them by cheque or by bank transfer. I

have no hesitation in rejecting this evidence: as Mr Pathania accepted, he had no record of any such transaction and had not mentioned these supposed arrangements until his cross-examination. None of the clients was called to give evidence to support his version. I find that any payments out of client account to fund loans were made without the knowledge or consent of the client or clients for whom the money was properly held. Thirdly, although I accept that Mr Pathania had available to him a number of sources of credit, particularly on a large number of credit cards, I am satisfied that the way in which he operated was to make use of monies on client account where possible, since to do so would not cost anything, and only borrow money on commercial terms where he had no alternative. The availability of these alternative sources of credit does not, therefore, lead me to conclude that Mr Pathania's recourse to monies from client account was a matter of last resort; rather, he regarded it as a primary source of the available money. I observe, however, that this does not absolve the Society of the need to prove that client money was used to fund each of the loans: it is not open to the Society in effect to reverse the burden of proof and rely upon the absence of proper records as establishing that all payments must have come from client account.

26. 19 loans were still in issue at the start of the trial. During its course, one – that made to Bilal Miah – was conceded by the Society. The remaining 18 are as follows.

(1) Koyes Miah/Mohammed Koyes. There is an issue as to whether these two names are aliases of the same client. They are treated as being the same person by Mr Pathania in paragraph 8 of his third witness statement, and paragraph 65 of the same witness statement is explicit that they are the same person. In his seventh witness statement, however, Mr Pathania

said in terms in paragraph 42 that they are not the same person; and in his cross examination and re-examination Mr Pathania maintained that they were not the same person. This is critical, since the only evidence relied on by the Society is a cheque dated 13 May 2008 drawn on the Newlands client account for £10,425 in favour of Koyes Miah. They appear to have different client reference numbers, Mohammed Koyes having reference number 5288 and Koyes Miah having reference number 5574. Mr Pathania's case in his third witness statement was that he made a loan to Mohammed Koyes of £34,000 on 17 October 2006 from his personal account in respect of the acquisition of Flat 7, 50 Britannia Street, London WC1. In his seventh witness statement, he said that he had made an initial loan to Mohammed Koyes in 2007, and had obtained a promissory note dated 12 February 2007 for £53,000. He has never been able to produce the promissory note, and in his oral evidence said that he might in fact have obtained an equitable charge instead; and in fact that seems to have been the case. On 30 July 2010 Mr Pathania obtained judgment against Mohammed Koyes in the Luton County Court for £65,585. He said that he subsequently invested about a further £48,000 or £49,000 for refurbishment work on the flat in 2012 or 2013, resulting in a total indebtedness (after crediting rent) of £105,000. He was cross-examined about this sum without the Society being able to establish that the amount was wrong. He said that he was supposed to be repaid from the proceeds of sale of the flat, but the solicitors acting in the transaction wrongly took the money for themselves. He has a claim against the SRA Compensation Fund in respect of the £105,000. The existence of the Luton County Court judgment establishes that a loan was in fact made; but if Mohammed Koyes and Koyes Miah are not the same person, there is no evidence that the initial loan to Mohammed Koyes was funded from client

account. The Society established in cross examination that there had been a payment from Mr Pathania's personal account of £34,000 on 13 October 2006, which was four days before Mr Pathania claimed in his third witness statement to have lent the equivalent amount to Mohammed Koyes, and demonstrated that that payment had in fact been made into client account rather than to Mohammed Koyes. The Society was also able to demonstrate that there was no subsequent payment out of the client account to Mohammed Koyes. However, this does not in my judgment establish even that the initial payment was made out of client account; in fact, it seems to me to establish the exact opposite. If Koyes Miah and Mohammed Koyes are the same person, however, then the cheque relied on by the Society, which is dated 13 May 2008, does not fit with the date of completion of the purchase of the flat or with the date of the promissory note. Nor does it fit with the payment towards renovations, which (since it was made in 2012 or 2013) cannot have been made out of the client account, to which Mr Pathania had no access after June 2009. Despite my general scepticism about a good deal of Mr Pathania's evidence, I consider that the different client account numbers indicates that Mohammed Koyes and Koyes Miah are not in fact the same person; and in any event I conclude that the Society has failed to establish that any part of the monies lent towards the purchase and refurbishment of the flat came from client account. In my judgment, therefore, the entitlement to this loan did not vest in the Society on intervention. This conclusion has the consequence that Mr Pathania remains entitled to pursue his claim against the SRA Compensation Fund; but, since that fund is administered by the Society, the amount of the claim is to be set off against the value of those loans that did vest in the Society on intervention.

(2) Christine Tara Johnson. Four cheques were drawn on the Newlands client account in favour of C T Johnson on 18 December 2007, although one of them seems not to have been presented for payment. Mr Pathania's seventh witness statement stated, at paragraph 26, that Ms Johnson "was not treated as a client for these purposes so is not listed on the monthly reconciliation statements", and that he replaced the money "as the February 2008 reconciliation statement shows only a small deficit". In cross-examination, he was unable to recall how he had made repayment to the client account. I have already held that repayment is immaterial as a matter of principle; but as a matter of fact in this instance I accept the Society's case that the deficit shown on the February 2008 reconciliation related to 7 identified client matters, none of which was anything to do with Ms Johnson, and that reconciliation is accordingly irrelevant to the question whether or not repayment was made. I find as a fact that it was not. It follows that this debt vested in the Society on intervention. However, Mr Pathania's evidence, which to this extent I accept, was that Mr Pathania's proceedings in relation to this loan have been struck out.

(3) Khaleda Khanom Choudhury. Two cheques, one for £11,000 and the other for £9,000, were drawn on the Newlands client account on 9 February 2007, and a promissory note obtained for £20,000 on the same date. Mr Pathania's case was that this amount was replaced by a transfer of £45,000 from office account to client account on 7 June 2007. In cross-examination, he accepted that he could not say that that transfer from office account was to replace the withdrawal from client account, but he was clear that he had repaid the money. It was in this connection that he claimed that he had twenty clients who were connected with each other and they all knew and

consented to what was going on, receiving a sum between £1000 and £2000 in return. He was unable to say why he had not mentioned this previously, and was unable to identify any of the cheques or bank transfers by which he paid them. As I have said, I reject this part of his evidence. I find that this loan was made out of client account monies, and was not reimbursed by Mr Pathania. It vested in the Society on intervention. It appears that proceedings in relation to the loan are now statue-barred.

(4) Rina Das. Newlands acted for this client in relation to the purchase of a property in Ilford. Mr Pathania claims to have lent a proportion of the purchase monies, amounting to £42,450, and contends that that sum was included in the amount of £237,500 paid on completion out of office account. He relied on the entries to that effect. However, three days before the completion monies were paid, transfers totalling £248,000 were made from client account to office account. When asked about this, Mr Pathania said that he was not in the office at the time (being in India) and was not involved in the transaction. Matters should have been properly recorded, and he was not responsible for the fiasco. This evidence is to be contrasted with the case he presented to the Central London County Court when attempting to obtain judgment for the loan, which ultimately came down to an assertion that he had expressly agreed the loan with Ms Das before he went to India. In dismissing the claim, HH Judge Timothy Lamb QC said, among other things, this: "Mr [Pathania] was evasive in answering questions and he was inconsistent; not least in his recall and explanation of detail. He went back into the witness box in order to prove some bank statements which had recently come to light. Mr [Pathania] had an explanation for entries on the statements which suited his case but was

remarkably vague about other financial transactions appearing thereon". This mirrors very closely my own experience of Mr Pathania in the witness box. I am satisfied that Mr Pathania did make a loan to Ms Das in the sum he asserted, and that the source of the money was the client account. I am also satisfied that it was not repaid by Mr Pathania. It vested in the Society on intervention.

(5) Thassavar Iqbal Sharif. On 20 August 2008 a cheque in the sum of £9,215.13 was drawn on Newlands' client account in favour of the London Mortgage Company on behalf of Mr Sharif. Mr Pathania contended that £6,000 of this was due to him, that sum having been deposited in client account on 8 August 2008 by Massoud Miah in respect of fees due to Mr Pathania. The remaining money was, so he said, reimbursed on 21 August 2008 by a payment of £3,968 from his personal money. In cross-examination, he was unable to explain why he would have reimbursed a sum greater than the amount taken from client account, and he was unable to explain the nature of the services rendered to Massoud Miah. In this respect, as in others, his evidence was unsatisfactory, and I am unable to accept it. The Society was also able to demonstrate that the payment of £3968 had been utilised to clear other debit balances as at 30 June 2008 identified on the periodic reconciliation. I am satisfied that the loan to Mr Sharif was funded entirely from client account. Mr Pathania obtained judgment for the amount of the loan, but claims that Mr Sharif's solicitors misappropriated the sums intended to satisfy that judgment. It was these proceedings that led to the Society's discovery that Mr Pathania was pursuing loans. I hold that this loan vested in the Society on intervention. I will make an order for payment out to the Society of the £9,250 it currently holds in respect of this loan.

(6) Grace Ajai. This was a loan for £2,000 which Mr Pathania asserts was from his own money. The Society was unable to point to any payment from client account, but relied upon an admitted wrongful – and much larger – payment by Mr Pathania from client account to a Dr Adedeji, who had agreed to sell a property to Ms Ajai as part of a complex arrangement for repayment of a separate loan due to Mr Pathania from Dr Adedeji. I am unable to see anything in the arrangements with Dr Adedeji that supports the proposition that the loan to Ms Ajai was funded from client account, and I hold that this loan did not vest in the Society on intervention.

(7) Jannati Choudhury. A cheque dated 28 April 2008 for £30,000 was drawn on client account in favour of Ms Choudhury. In his third witness statement Mr Pathania said that the sum was replaced "in a short time thereafter" by a cheque for £34,000 drawn on his personal account; and in his eighth witness statement he said that "the money was replaced by me into client's account in subsequent months". He relied also on the May 2008 reconciliation statement, which showed a deficiency of only £6,923. In cross examination he himself pointed out that the cheque he relied on as being the repayment was dated 3 May 2007, almost a year before the loan was made. Although the manuscript date has been crossed out on the cheque, the cheque was cleared on the same date. This cannot sensibly be regarded as repayment of a loan to be made almost a year in the future, and in any event Mr Pathania's evidence was consistently that he made repayment afterwards. Also in cross examination, he claimed to have a "foggy memory" that the repayment had been made from a loan of £40,000 or £50,000 obtained from Tax Assist. Even allowing for the passage of time, this evidence was wholly unsatisfactory. I reject the suggestion

that this loan was reimbursed by Mr Pathania at any stage. This loan vested in the Society at intervention. Mr Pathania subsequently took proceedings in relation to it, but those proceedings were struck out in June 2013 and no further proceedings have been commenced.

(8) Mir Masadul Haque. Mr Pathania's case is that he lent Mr Haque £16,000 from his personal account on 19 February 2007 in connection with the purchase of a property in London E3. He obtained a promissory note on the same date for £16,000 at an interest rate of 29.9% if paid within 90 days or 39% if paid after 90 days, plus bridging finance fees of £3,000. However, in cross examination the Society demonstrated that the payment of £16,000 recorded in his personal account was in fact a payment into that account, not a payment out. Moreover, the Society demonstrated also that there was a shortfall of £9,375 between the completion monies of £205,000 paid out to the seller's solicitors and the aggregate of the mortgage advance of £183,625 and a payment of £12,000 received from Mr Haque. Although Mr Pathania was adamant in his cross examination that no client account money was involved in these transactions, and that Mr Haque must have made good any shortfall, I am satisfied that both the payment of £16,000 and the shortfall of £9,375 did in fact come from client account. The current position appears to be that, following a judgment obtained against him, Mr Haque is paying off the debt at the rate of £800 a month. This debt, and the benefit of those payments, is vested in the Society.

(9) Samy Ojabi Djan. In his third witness statement, Mr Pathania said that he acquired Mr Djan's interest in a property in Rainham on 12 October 2007 for £15,000 or thereabouts. A legal charge was given on the same date. Mr Pathania in that statement acknowledged that he had

previously said the money for the loan had come from client account, but he said that having checked the client account he could now say that the sum did not come from client account at all. In his seventh witness statement he said that Mr Djan had purchased two properties through his firm, the one in Rainham and another in Woolwich, and that although he had lent £15,000 it did not come from client account. The Society relied on a cheque for £4,000 drawn in Mr Djan's favour on the Newlands client account dated 13 October 2007, which Mr Pathania said must have been a legitimate payment due to Mr Djan relating to the purchase; and also on the absence of any record of a payment from Mr Pathania's personal funds to Mr Djan, which Mr Pathania explained on the basis that he made a lot of payments from credit cards. I have had some difficulty with this transaction, but on balance have concluded that the Society is right, and that the cheque for £4,000 both demonstrates that part of the loan was funded directly from client account and gives rise to the inference, in the absence of any other observable source of funds, that the remainder was also funded from client account. I hold that this loan vested in the Society on intervention. The current position appears to be that Mr Pathania obtained a judgment in default for £15,000 in the Romford County Court on 2 February 2010 and that an application to set aside the judgment failed; but no recovery appears to have been made under the judgment, and Mr Pathania says that there was nothing left after the mortgagee repossessed Mr Djan's property.

(10) Misba Property Services. This transaction is different from those referred to above in that it does not relate to a loan. On 14 May 2007 £69,000 was paid out of the Newlands client account to Misba Property Services, which was primarily a mortgage broker. Its principal was Misba Uddin. The money in client account was held on behalf of a client of Misba who had

remortgaged his property. Misba falsely claimed that he had the authority of the client to receive the money, and the payment was made out of client account on that basis. The client complained to the Solicitors Regulation Authority, and according to Mr Pathania he was required to make good the deficiency. He claimed to have done so by borrowing from Keyform Consultants; but the Society disputed this, and contended that the monies obtained from Keyform were referable to a transaction for another client called Taiwo. I am not persuaded that it is necessary for me to resolve that issue, since even if Mr Pathania did not repay the sum missing from client account it does not seem to me that it can be said that that sum is held by him or on his behalf. However, since he has obtained an unsatisfied judgment against Misba Uddin, I should resolve the issue in case payment is ever made in whole or in part under that judgment. I am satisfied that Mr Pathania's contention that he repaid the missing money is correct. What has persuaded me of that fact is the statement that he made to the police at the time of the misappropriation, which included the assertion that repayment had been made on 15 June 2007; and I also find it significant that the Solicitors' Disciplinary Tribunal dealing with the matter recorded, in paragraphs 9 and 10 of their factual finding, that most if not all of the missing sums had been refunded by Mr Pathania. Accordingly, I hold that no part of the £69,000 vested in the Society on intervention, and nothing will subsequently vest if it is ever recovered under the judgment.

(11) Abdul Goffar. This matter relates to a loan of £10,000, made by two cheques, each of £5000 and each dated 21 December 2007, drawn on the Newlands client account. Mr Pathania obtained a promissory note for the £10,000, together with "arrangement fees" of £2500 per

quarter until final payment. The promissory note appears to be dated 21 January 2007, but that is no doubt a mistake for 21 December 2007. Mr Pathania's contention is that he had already paid £15,000 into client account and that the payment of £10,000 to Mr Goffar came from this amount. The only candidate for the payment of £15,000 was a cheque dated 24 July 2007 for that amount drawn on Mr Pathania's personal account; but that was five months before the making of the loan, and I do not accept that it was in any way connected to the loan to Mr Goffar. In cross-examination, Mr Pathania said that there might have been a conveyancing transaction with a member of Mr Goffar's family which would have justified payment out of client account, or that he might have made the loan from his own resources because he had a credit balance of his own on client account. I reject both the suggestions, and hold that this loan vested in the Society on intervention. There appear to have been possession proceedings taken in the Clerkenwell and Shoreditch County Court, but these were dismissed. It is unclear whether or not there is any possibility of obtaining repayment of the loan.

(12) Shahed Mohammed Choudhury. There are three types of transaction relevant to this matter. First, in his third witness statement Mr Pathania said this: "He was a mortgage broker. He re-mortgaged his property with Bank of Scotland. The monies were paid into the clients account. The monies should then have been paid in large part to HSBC to discharge the first charge; as it was the HSBC charge was never discharged. This did not happen: the monies were paid to him via cheques and online transfers. When I returned from India, I discovered that some monies were transferred to him and I confronted him. I contacted Bank of Scotland and told them what had happened and Mr Choudhury finally agreed to allow Bank of Scotland to register their

charge on his property. (The clients' account is a Bank of Scotland account.) I did not take any money out of the clients' account to myself in relation to Choudhury." It is difficult to make much sense of this, which was not explored in cross examination; but on the face of it, it suggests that monies were improperly paid out of client account to Mr Choudhury rather than to HSBC. If that is so, I do not see that those monies can at present be said to be held by or on behalf of Mr Pathania. Mr Pathania says that he has not taken any proceedings against Mr Choudhury; but it nevertheless appears to me that if anything is ever paid in respect of these monies, which appear to amount to over £200,000, they will vest in the Society. Secondly, the Newlands client account records show several payments to Mr Choudhury, which Mr Pathania says he was entitled to by way of commission. Again, little was made of this in cross examination; but most if not all of these payments referred to particular clients, and I am prepared to accept that they were legitimately made. Finally, on 24 October 2006 Mr Choudhury gave Mr Pathania a promissory note in respect of a loan of £20,000 plus finance fees of £1,500. No mention was made of this in Mr Pathania's witness statements. The Society relied upon a cheque drawn in Mr Chowdhury's favour out of the Newlands' client account for £20,000, which cleared on 27 October 2006. In the absence of any other suggested source for the loan to Mr Choudhury, I accept the Society's contention that the loan to Mr Chaudhury was made from client account. In cross-examination, Mr Pathania said that he did not know if the loan had been repaid. If it was still in existence at the date of intervention, I hold that it vested in the Society.

(13) Amjad Hussain. According to Mr Pathania's third witness statement, Amjad Hussain was a friend who owed money

to Misba Financial Services. Mr Pathania lent him £10,000, and a further sum of £2355, on 1 September 2006 from office account to clear his debts to Misba. Mr Pathania made a further loan of £5000 on 14 May 2007, again from office account, and a further loan of £800 from office account on an unspecified date. In his seventh witness statement, Mr Pathania said that by July 2008 he was owed over £55,000 and took a legal charge by way of security. There is in evidence a legal charge dated 11 June 2008 securing the sum of £55,460, and three promissory notes: one for £10,000 dated 26 October 2006, and two for £5,000 (although one at one point refers to a figure of £10,000) dated respectively 18 December 2006 and 6 February 2007. Proceedings are in existence against Mr Hussain, in which according to Mr Pathania Mr Hussain is denying that any money was lent to him or paid on his behalf. In cross-examination, the Society focused on a payment from client account of £20,000 on 7 July 2008 in favour of "A. Hussain", but I accept Mr Pathania's evidence that this transaction was unrelated to Amjad Hussain. In the Society's opening note on evidence, it sought to demonstrate that payments made to Amjad Hussain from office account were in fact funded by illegitimate payments from client account; but there was no cross-examination related to this, and I am not prepared to find against Mr Pathania on this point. I hold that any indebtedness due from Amjad Hussain did not vest in the Society on intervention, and any recoveries made in respect of that indebtedness will not vest in the Society on recovery.

(14) Ahmed Khan. In his third witness statement, Mr Pathania stated that he had made a loan by cheque of £7,000 and a cash loan of £7,500 to Mr Khan. He exhibited a post-dated cheque from his personal account dated 19 November 2008. He said these payments had nothing to

do with client account. In his seventh witness statement he said merely that the monies had come from his personal account and from cash, and no money had come out of client account. The Society accepted that it had no evidence to contradict Mr Pathania's position in relation to these two loans totalling £14,500. However, Mr Pathania did not refer to a prior loan transaction in June 2008, under which he lent £50,000 to Mr Khan. This transaction was evidenced by a promissory note dated 31 July 2008 and by a legal charge of the same date. In proceedings before a Land Registry adjudicator, Mr Pathania asserted that he made the loan of £50,000 on 2 September 2008 by himself borrowing that amount from the Newlands client account and paying it to the Mortgage Business plc at Mr Khan's instruction. He also asserted in those proceedings that he had reimbursed the client account, but the cheque he referred to was a cheque only for £50 dated 14 December 2011. The documents and evidence before me show that the payment of £50,000 on 2 September 2008 did indeed come from the Newlands client account. In cross-examination, Mr Pathania denied that he had borrowed the money from client account at a time when he had a nil balance on his own ledger account; but I am satisfied that that is indeed the position. It is unclear whether or not there is any security for this loan or the possibility of any recovery; but in any event I hold that it vested in the Society on intervention.

(15) Polash Rahman. Mr Rahman is a mortgage broker. In Mr Pathania's third witness statement, he said that three payments for commission and brokerage fees had been properly made from the Newlands client account in respect of client matters, and that Mr Pathania had not lent him any money. The Society focused on two payments from the client account to Mr Rahman: a payment of £23,000 made on 30 July 2008 with the reference

"Shimu", and a payment of £20,000 made on 13 August 2008 with the reference "Shiddiq". In cross-examination, Mr Pathania stated that these sums were commission or a turn on particular transactions, and would ultimately be debited against the purchaser's client ledger. In relation to the reference "Shiddiq", I was persuaded that it was a shorthand for a client called Majid Khan whose client ledger had the reference 5620SIDDI; and I am satisfied that the payment was legitimately made out of client account. According to Mr Pathania, the reference to Shimu referred to Mr Rahman himself, and the £23,000 related to more than one transaction. Although the accounting of these transactions was less than satisfactory, the fact that the payment of £20,000 was in my judgment legitimate leads me to the conclusion that the Society has failed to establish the £23,000 was improperly made out of client account. Accordingly, I hold that these sums did not vest in the Society on intervention.

(16) DEG Services. In his third witness statement Mr Pathania stated that he entered into a contract dated 28 August 2008 to purchase from DEG Services Ltd a number of properties in Morning Lane, London E9. He paid a deposit of £150,000, of which £45,000 came from the Newlands client account by four cheques and the balance from personal account and office account. The cheques referred to are one dated 1 September 2008 for £10,000; two drawn in favour of Graham Bennett Solicitors, the first for £30,000 dated 17 September 200 and the second for £5,000 dated 18 September 2008; and (by inference from the terms of the covering letter referring to three cheques totalling £40,000) an open cheque for £5,000 dated 19 September 2008. All of these cheques had cleared by 25 September 2008. On 26 September 2008 Mr Pathania, who was the client in relation to this transaction, deposited £50,000 in

client account. There is thus no dispute that part of the deposit was initially funded from client account and only subsequently reimbursed. The fact of reimbursement was challenged by the Society on the basis that there was no evidence of any payment from Mr Pathania's personal account, or from office account, at the relevant period. On the view I have taken the law, this does not matter; but in any event I accept the Society's contention that repayment has not been established. The position at the date of intervention, however, was that monies from client account had been wrongly used to acquire the benefit, not of a loan but of a contractual right to property; and I do not consider that such a right can be regarded as a sum of money held by or on behalf of the solicitor. In this, I recognize that I may be differing from the obiter view expressed by Mann J in *The Law Society v Austin* (supra). Since the contract was purportedly cancelled by DG Services in June 2013, it is unlikely that there will be any recovery of the money; but if it is recovered, it will then vest in the Society.

(17) Dominic Collins Tashie Lewis. In his third witness statement Mr Pathania stated that Mr Lewis was a mortgage broker. He accepted that in February 2007 £14,102.67 came from client account, but said that that amount was replaced in its entirety. He said that there were other disputes with Mr Lewis relating to property development but they did not involve client account; and he said that he had obtained a substantial judgment against Mr Lewis arising out of those other disputes, but that judgment remained unenforceable. In his seventh witness statement, he said that Mr Lewis had strong connections with the Nigerian community and introduced at least 30 to 40 clients to Mr Pathania. In consequence, he was from time to time owed substantial brokerage fees and commission, his commission being about 2% to 2.5% of the amount of any

mortgage arranged by him. Mr Pathania said that sums of £8,000 paid on 19 December 2007, and £8,600 paid 24 August 2007, were sums properly due to him by way of commission. In relation to the loan of £14,102.30 paid from client account on 26 February 2007, Mr Pathania referred to the reconciliation statement at 4 February 2007 showing a debit balance of £6,833.61, which was remedied in April 2007. He also referred to a payment into client account of £14,709 on 8 March 2007, which might relate to the amount lent but he had not been able to trace the source of those monies. In cross-examination, he accepted that he was not entitled to take the £14,102 from client account, but maintained that he had replaced it. He relied upon the reconciliation statements, and said that he had monies from third parties. On the material available to me, I am satisfied that the loan made on 26 February 2007, which was admittedly made from client account, vested in the Society on intervention; but I do not consider the other two payments, totalling £16,600, were unauthorised payments from client account, and they did not vest. Although Mr Pathania appears to have obtained a judgment for over £213,000 on 2 April 2012, and obtained a charge in respect of that judgment, it does not appear that anything has been recovered and the charge is no longer registered.

(18) Francisca Okoye. In relation to this matter, the Society accepted that it had no evidence to challenge Mr Pathania's evidence, but sought to maintain the claim in case I came to the conclusion that I could not believe anything Mr Pathania said. I observe that merely disbelieving Mr Pathania would not necessarily mean that the Society had discharged the burden of proof; but in any event it is not the case that I have totally disbelieved Mr Pathania's version of events. This claim fails.

27. In summary, therefore, the Society's claim fails in respect of the transactions concerning Koyes Miah/Mohammed Koyes, Grace Ajai, Misba Property Services, Amjad Hussain, Polash Rahman, DEG Services, Francisca Okoye and Bilal Miah. In all other transactions, it succeeds to at least some extent. I will discuss with counsel what orders should be made to reflect the outcome of the litigation.