Neutral Citation Number: [2022] EWHC 484 (Ch)

Case No: BL-2021-001526

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
CHANCERY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 March 2022

Before :

THE HONOURABLE SIR GERALD BARLING
Sitting as a Judge in the High Court

- -

Between :

(1) SOOPHIA KHAN **(2) SOPHIE KHAN & CO. LIMITED**	**Claimants**
- and –	
SOLICITORS REGULATION AUTHORITY LIMITED	**Defendant**

- -
- -

Mark Green (instructed by **Direct Access**) for the **Claimants**
Rupert Allen (instructed by **Capsticks Solicitors LLP**) for the **Defendant**

Hearing dates: 27th & 28th January 2022

- -

APPROVED JUDGMENT

Sir Gerald Barling:

Introduction

1. The first-named claimant, Ms Soophia Khan ("SK"), was admitted to the Roll of Solicitors on 1 November 2006. She is a solicitor advocate and has been the sole director and shareholder of the second-named claimant, Sophie Khan & Co Limited ("the Firm"). The defendant, the Solicitors Regulation Authority Limited, ("SRA") has, since June 2021, been a separate legal entity from the Law Society of England and Wales, and entitled to exercise in its own right certain regulatory functions and powers which before that date were delegated to it by the Law Society. The powers in question include the power to suspend solicitors and to intervene in their practices.

2. On 19 August 2021 a three-member adjudication panel of the SRA ("the Panel") issued a decision ("the Decision") pursuant to which it intervened in SK's and the Firm's practices pursuant to section 35 and Part 1 of Schedule 1 to the Solicitors Act 1974 on the following grounds:

   In respect of SK's practice: (1) that there was reason to suspect dishonesty on SK's part in connection with her practice as a solicitor (paragraph 1(1)(a)(i) of Schedule 1 – Part I to the Solicitors Act 1974); and (2) that SK had failed to comply with rules (paragraph 1(1)(c) of Schedule 1– Part I to the Solicitors Act 1974).

   In respect of the Firm's practice: (1) that there was reason to suspect dishonesty on the part of SK, as a manager of the Firm, in connection

with the Firm's business (paragraph 32(1)(d)(i) of Schedule 2 to the Administration of Justice Act 1985); and (2) that SK, as a manager of the Firm, and the Firm itself, had failed to comply with the SRA Principles 2011 and 2019 and the SRA Accounts Rules 2011 and 2019 (paragraph 32(1)(a) of Schedule 2 to the 1985 Act).

3. In the Decision the Panel also exercised the power under paragraphs 6(1) and 6(2) of Schedule 1, Part II to the 1974 Act, to direct that the right to recover and receive money in connection with the Firm should vest in the Law Society. It exercised the power under paragraph 9(1) to appoint a person to take possession of documents and otherwise to act as the Law Society's agent in relation to the intervention. It also suspended SK's practising certificate.

4. Sub-paragraphs 6(4) and (5) of Part 2 of Schedule 1 to the 1974 Act provide:

> "(4) Within 8 days of the service of a notice under sub–paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing … may apply to the High Court for an order directing the Society to withdraw the notice.
>
> (5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit."

The notice referred to in sub-paragraph 6(4) is that which is served on a solicitor upon an intervention and which prohibits payment out of money held by the solicitor or his firm in connection with his practice.

5. On 31 August 2021, SK issued a Part 8 claim form under CPR 64.4(1)(b) seeking an order pursuant to sub-paragraph 6(4) that the intervention notice be withdrawn on the grounds that

> "the decision to intervene was fundamentally flawed and disproportionate"
>
> and/or
>
> "on having regard to the material now before the Court, the intervention ought in any event to be withdrawn".

6. On 2 September 2021 Meade J ordered the Firm to be added as a claimant and the SRA to be substituted for the Law Society as a defendant.

7. The SRA contends that the intervention challenge is without merit, and that on the evidence then available the intervention was clearly necessary and proportionate for the protection of clients and the public interest. The SRA also relies upon subsequent events as rendering it wholly unrealistic in any event to argue that the intervention notice should now be withdrawn. In this regard they refer, in particular but not exclusively, to the fact that SK is currently serving a six months sentence of imprisonment imposed by Leech J on 12 January 2022. This was imposed on the ground that SK was in contempt of court by reason of her failure to comply with court orders dated 7 September 2021 and 21 September 2021 requiring her to deliver up certain practice documents to the SRA. The SRA contends that SK's imprisonment would give rise to a further ground of intervention in her practice, and that her conduct since the intervention, including that which led to the finding of contempt, demonstrates her unsuitability to practice as a solicitor in any capacity.

8. Both sides have put in written evidence in the form of two witness statements by SK dated 27 August 2021 ("Khan 1") and 24 September 2021 ("Khan 2"), and two witness statements by Claire Crawford, an associate solicitor with the solicitors acting for the SRA. Ms Crawford's witness statements are dated 8 October 2021 ("Crawford 1") and 17 January 2022 ("Crawford 2"). There are about 2,000 pages of exhibits. There has been no oral evidence.

9. At the hearing of this claim SK and the Firm have been represented by Mr Mark James of counsel, and the SRA by Mr Rupert Allen of counsel. The hearing was conducted without oral evidence. SK did not attend. At the outset I was able to satisfy myself that she had instructed her counsel to proceed in her absence. SK's father was present throughout the hearing.

The applicable legislation and legal principles

10. There is to a large extent agreement between counsel as to the principles to be applied by the court in determining this challenge to the intervention. There is one main exception to the accord, which I will explain in due course.

Power to intervene

11. Section 35 of the 1974 Act provides that:

> "The Powers conferred by Part II of Schedule 1 shall be exercisable in the circumstances specified in Part I of that Schedule."

12. The grounds for intervention set out in sub-paragraph 1(1) of Part 1 of Schedule 1 are, so far as relevant, that

> "(a) [the SRA] has reason to suspect dishonesty on the part of… a solicitor… in connection with that solicitor's practice or former practice…
>
> (c) [the SRA is] satisfied that a solicitor has failed to comply with rules made by virtue of [various provisions, including sections 31 or 32 of the 1974 Act] …
>
> (e) a solicitor has been committed to prison in any civil or criminal proceedings"

13. The SRA's intervention powers, which are admittedly draconian, enable the SRA to require the delivery to it of money, documents, computers and other property, the redirection of postal and electronic communications, and the suspension of the solicitor's practising certificate. The effect is often to bring an end to the solicitor's practice, at least for as long as the intervention continues, and sometimes forever. It is common ground that these intervention powers were extended (with certain necessary differences not relevant for present purposes) to bodies such as the Firm, by sub-section 9(6) and paragraphs 32 to 35 of Schedule 2 to the Administration of Justice Act 1985.

Reason to suspect dishonesty

14. Where, as in the present case, a ground for intervention is that the SRA has reason to suspect dishonesty on the part of a solicitor, it is agreed that the correct test for dishonesty is *not* that which was hitherto applied in criminal cases pursuant to *R v Ghosh* [1982] QB 053, viz whether the solicitor acted dishonestly by the ordinary standards of reasonable and honest people, and was aware that by those standards

he was acting dishonestly. Rather, by virtue of the Supreme Court decision in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67, [2018] AC 391, the test is now aligned with the civil law test of dishonesty as explained by the Privy Council in in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37, [2006] 1 WLR 1476. At paragraph 74 of its decision in *Ivey* the Supreme Court said:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge and belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

15. It must be borne in mind that the ground of intervention relating to dishonesty does not require the SRA, or indeed the court in a challenge under sub-paragraph 6(4) such as the present, to determine whether there has been dishonest conduct on the part of a solicitor: the SRA must *have reason to suspect dishonesty* on the solicitor's part. The justification for the power to take such measures on the strength of suspicion was explained by Sir Robert Megarry V-C in *Buckley v Law Society (No 2)* [1984] 1 WLR 1101, at 1105-1106:

> "Statute has put the Law Society in a special position in relation to solicitors generally. The society has many important powers which are exercisable in the public interest. In many ways the society is the guardian not only of the profession but also of the public in its

> relation with solicitors. The powers of intervention conferred by Schedule 1 are plainly powers that are intended to enable the society to nip in the bud, so far as possible, cases of dishonesty by solicitors. The power to act on suspicion is a strong power, and there must often be a real element of risk in its exercise. But the decision of Parliament that the society is to have power to act on suspicion necessarily involves a decision that the society is to take whatever risks are involved in so acting; and those include risks both to the society and to the solicitors concerned."

16. In *Neumans v Law Society* [2017] EWHC 2004 (Ch) at [26(vi)], Newey J (as he then was) summed up the Vice-Chancellor's explanation as being that the SRA

> "can properly decide to intervene on the basis of risks rather than certainties".

Non-compliance with rules

17. As seen above, in the Decision the SRA also relied[1] upon alleged breaches by SK and the Firm of specified rules applicable to them, as a further ground for its intervention. There is no dispute as to the content and applicability of the rules in question. Their sources are several, and more numerous than might be expected because the period of alleged non-compliance in this case extends both before and after 25 November 2019 when new (but very similar) provisions were substituted.

[1] Pursuant to paragraph 1(1)(c) of Part 1 of Schedule 1 to the 1974 Act, and paragraph 32(1)(a) of Schedule.

18. Further details of the relevant rules, and of the instruments in which they are to be found, are in the Annex[2] to this judgment. In an attempt to simplify matters, I set out below only the substance of the obligations to which they give rise, under the headings "Principles", "Outcomes to be achieved", "Accounts Rules", and (in relation to the post-25 November 2019 period), "Solicitors Code/Firm Code".

19. The obligations imposed include the following:

> "Pre-25 November 2019"
>
> Principles
>
> 1. "You must act with integrity"
> 2. "You must act in the best interests of each client"
> 3. "You must behave in a way that maintains the trust the public places in you and the provision of legal services"
> 4. "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner"
>
> Outcomes to be achieved
>
> 5. "clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter"
> 6. "you comply with court orders which place obligations on you"

[2] I am grateful to counsel for the defendant for the detail set out in the Annex.

7. "you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you"

8. "you comply promptly with any written notice from the SRA"

9. "pursuant to a notice under Outcome 10.8, you provide all information and explanations requested".

Accounts rules

10. "Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary"

11. "If you properly require payment of your fees from money held for a client … in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party"

12. "A mixed payment must either (a) be split between a client account and office account as appropriate or (b) be placed without delay in a client account."

Post-25 November 2019

Principles

13. "You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons"

14. "You act with honesty"

15. "You act with integrity"

16. "You act in the best interests of each client"

Solicitors Code/Firm Code

17. "You do not place yourself in contempt of court, and you comply with court orders which place obligations on you"

18. "You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services"

> 19. "You respond promptly to the SRA and (a) provide full and accurate explanations, information and documents in response to any request or requirement; and (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA".

20. On the meaning of *"integrity"* I was referred to *dicta* of Rupert Jackson LJ in *Wingate v SRA* [2018] EWCA Civ 366, [2018] 1 WLR 3969 at [95]-[103]:

> "95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in *Williams* and I disagree with the observations of Mostyn J in *Malins*.
>
> 96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
>
> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
>
> 98. I agree with Davis LJ in *Chan* that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."
>
> 99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in *Hoodless* have met with general approbation.
>
> 100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more

> scrupulous about accuracy than a member of the general public in daily discourse.
>
> 101. The duty to act with integrity applies not only to what professional persons say, but also to what they do…
>
> 102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public…
>
> 103. A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law."

Challenges to an intervention decision

21. The difference between counsel, to which I have referred, is in connection with the approach to be taken by the court in a challenge to an intervention notice. It is convenient to set out the rival arguments and indicate my conclusion on the point at this stage.

22. For present purposes the story can conveniently begin with the observations of Neuberger J (as he then was) in *Dooley v Law Society* (unreported, 15 September 2000):

> "If the solicitor…applies to the High Court under paragraph 6, the court will look at the evidence as it is at the date of the hearing: *Buckley v The Law Society (2)* 1984 3 All England Reports 313. Thus, if further evidence is available which supports the suspicion of dishonesty, that may be taken into account as a ground for upholding the notice, even if the basis for the Law Society's original decision can be impugned. Equally, if the Law Society's decision

> was supportable on the evidence then available to it but further evidence inconsistent with dishonesty has come forward at the hearing or before the hearing, the court must take that evidence into account.
>
> The court's decision is a two stage process. First it must decide whether the grounds under paragraph 1 are made out … Secondly, if the court is so satisfied, it must consider whether in the light of all the evidence before it the intervention should continue. In deciding the second question, the court must carry out a balancing exercise between the need in the public interest to protect the public … and the inevitably very serious consequences to the solicitor if the intervention continues."

23. In *Sheikh v Law Society* [2006] EWCA Civ 1577 at [84]-[85], [89] and [92] Chadwick LJ commented as follows:

> "84. There is, if I may say so, some potential for confusion in the two-stage test as formulated. It is pertinent to note that, in making those observations, Mr Justice Neuberger referred to the comments of Mr Justice Sedley, sitting in this Court in *Giles v The Law Society* (1995) 8 Admin LR 105, 118. After pointing out that it was appropriate to describe sub-paragraph 6(4) of schedule 1 as "conferring jurisdiction upon the court to direct the Law Society to withdraw from an intervention", Mr Justice Sedley went on to say this:
>
> > "On such an application [under paragraph 6(4)] it is for the court to decide whether or not to direct withdrawal on the material then before it.
> >
> > If it is demonstrated to the court that a notice given under Part II of the schedule is fundamentally flawed (for example because it is based on an *ultra vires* resolution) it may well be that a direction for withdrawal should be made *ex debito justitiae*, leaving it to the Law Society to decide whether, in the light of what it then knows, it ought to pass a fresh resolution to intervene. But while the para 6(4) procedure is manifestly provided in substitution for the ordinary recourse to judicial review (see *Buckley v The Law Society* [1983] 2 All ER 1039) so that any point as to *vires* which might have been available under ord. 53 of the Rules of the Supreme Court is equally available on the originating summons under para. 6(4) in the Chancery Division, the relationship of discretion to law will not necessarily be the

> same. For instance, even in a case where it can be shown by the solicitor that the original notice ought not to have been issued because, say, the original evidence prompting the intervention was too exiguous to found a reasonable suspicion, the court need not direct withdrawal if on intervention abundant evidence of dishonesty has been found. . . . For the rest, it is by common consent a matter for the court's judgment (I prefer not to use the word discretion in this context) whether it should direct withdrawal – a judgment which may be significantly, though not conclusively, affected by the Law Society's own view of the facts, since the view taken by the professional body charged with the regulation of solicitors is in itself a relevant evidential factor to which the Judge not only can but must have regard."

85. Plainly, if there is a challenge to the exercise of the intervention powers, the court will need to ask itself whether the grounds under Part I of schedule 1 to the 1974 Act upon which the Society relied at the time of the resolution to intervene were made out on the basis of the information available (or, perhaps, reasonably available) to the Society at that time. If that question is answered in the negative, then (as it seems to me) the resolution under paragraph 6(1) is of no effect and notices served under paragraph 6(3) or 9(1) are "fundamentally flawed", to adopt the words of Mr Justice Sedley. That is because the powers under Part II of schedule 1 are exercisable only in circumstances within Part I. So, if the Society is to exercise intervention powers in reliance on paragraph 1(1)(a), the Council must have reason to suspect dishonesty at the time when it passes the resolution under paragraph 6(1) or serves the notice under paragraph 9(1).

…

89. It follows, in my view, that there is a danger that a court may be led into error by uncritical adherence to the "two-stage process" suggested by Mr Justice Neuberger in *Dooley*. As I have said, there may be cases - those in which there is a challenge to the validity of the resolution or to the service of the intervention notices – where the court does need, first, to decide whether the grounds under paragraph 1 were met at the time of the decision to intervene. But those were not, I think, the cases which Mr Justice Neuberger had in mind; as his own approach to the decision which he had to make in that case shows (transcript, pages 37 and 38). For my part, I find instructive the following passage in the judgment of Mr Justice Carnwath at first instance in *Giles v The Law Society* (unreported, 12 April 1995):

> "The grounds for intervention stated in paragraph 1 of the Schedule are not to be construed as separate and mutually exclusive procedures. The difference between the various sub-paragraphs is relevant to certain points in the Schedule, for example the need to give notice under paragraph 1(2) and to some of the powers. However, subject to any express limitations, I can see no reason why the scope of the powers should be confined by the particular sub-paragraph used to initiate the process. Thus, for example, the Society may properly intervene on the grounds of suspected dishonesty, but thereafter maintain the intervention if it becomes apparent that there is a breach of the rules but no actual dishonesty. Similarly they may intervene for a breach of the rules, and subsequently discover dishonesty and pursue the intervention on that basis. There is no policy reason for requiring the notice to be withdrawn, so long as it is justified in the light of the facts known to the court, and the solicitor has had a fair opportunity to deal with any allegations against him (see *Buckley (No 2)* p.317 d). "

Where there is no challenge to the validity of the resolution or to the service of intervention notices, the single issue for the court is whether the notices should be withdrawn.

……

92. I should add (by way of parenthesis) that, for my part, I confess to some doubt whether, as Mr Justice Sedley suggested in *Giles*, the court could refuse to direct withdrawal of a notice which "ought not to have been issued" because the original evidence prompting the intervention "was too exiguous to found a reasonable suspicion" on the basis that abundant evidence of dishonesty had been found on intervention – if he intended to include in that example a case where, on a proper analysis of the position at the time the decision to intervene was taken by the Society, the powers of intervention had not become exercisable. As Sir Robert Megarry, Vice-Chancellor, observed in *Buckley v The Law Society (No2)* [1984] 1 WLR 1101, 1105: "the society ought not to be free to intervene on inadequate grounds in the hope that what will be found will justify the intervention". But I recognise that the Vice-Chancellor clearly took the view in that case that it would be open to the court to refuse to direct withdrawal notwithstanding that, on the facts known to the Society at the time of the resolution, there was insufficient reason to suspect dishonesty. He said this, by way of example, (ibid, 1105):

> " . . . On the available material the society concludes (wrongly) resolution. The intervention then reveals that there are other facts, previously unknown to the society, which demonstrate that

> the solicitor is in fact grossly dishonest. On the hearing the court may nevertheless direct the society to withdraw the notice (and perhaps pay the costs), and leave the society to begin again. [That] seems to me to be an unjust result that Parliament is unlikely to have intended. . . . "
>
> As I have said, the powers under Part II of schedule 1 to the 1974 Act are exercisable only in circumstances within Part I. If, at the time when the Society purports to exercise its powers under Part II, those powers have not become exercisable - because the pre-condition (the existence of circumstances within Part I) is not met - it seems to me difficult to avoid the conclusion that the exercise of the powers was, indeed, *ultra vires* in the public law sense. But that is not how it has appeared to other judges in other cases. This is not a case in which it is said – or could be said – that the intervention powers were not exercisable at the time when they were exercised. It is unnecessary to decide the point; and I do not do so."

24. Mr James submitted that in the light of these comments of Chadwick LJ, if in an application under sub-paragraph 6(4) of Schedule 1 a court were to find that, at the time a decision to intervene was made, the grounds relied upon by the SRA were not made out on the basis of the material then available to the SRA, the court must make an order for withdrawal of the intervention notice under sub-paragraph 6(4), because the intervention decision would be *ultra vires*. The court's obligation would not be affected by material now before the court but unavailable at the time of the SRA's decision.

25. Mr Allen did not agree that this is the correct approach. He submitted that the remarks of Chadwick LJ to that effect were *obiter* and wrong. He invited me to prefer the views of the "other judges" who, as Chadwick LJ acknowledged in paragraph 92 of his judgment (above), had taken a different approach. These included Sir Robert Megarry V-C in *Buckley v the Law Society (No 2)*, quoted by Chadwick LJ in that paragraph. Mr Allen submitted that the Vice-Chancellor's

views in *Buckley* were not *obiter* but represented the *ratio* of that case, which concerned a preliminary issue of disclosure turning on whether the substantive hearing should be confined to matters available to the Law Society when they decided to intervene or whether, as the Vice-Chancellor held, matters occurring subsequently could be referred to at the hearing. In disposing of an appeal in that case, not from the Vice-Chancellor but from the decision of Peter Gibson J at the substantive hearing, Balcombe LJ giving the judgment of the Court of Appeal said:

> "…In my judgment there is no way in which this court, or any court, can determine a question upon which no issue in the proceedings now depends. As it seems to me, that really is the short answer to this appeal – that whether or not the Law Society had proper grounds for suspicion in the first place, as it appears from the authorities to which I have referred (which, as I have said, are in my judgment correct) the decision has to be made at the time of the hearing. At the time of the hearing…, as indeed now, there is no effective way in which this notice can be withdrawn because… [*inter alia* the solicitor had been made bankrupt.]"

26. In my view Mr Allen is correct. Although the procedure under sub-paragraph 6(4) of Schedule 1 is a substitute for what would otherwise be an application for judicial review, it does not follow that it replicates judicial review in all respects. The ultimate question in an application under sub-paragraph 6(4) does not relate to the *vires* of the SRA's decision or whether it was otherwise unlawful and should be quashed; rather it is whether the court should now order the notice to be withdrawn so that the intervention ceases. This appears to be the effect of the Court of Appeal's decision in *Buckley*, as well as the view of the other judges referred to by Chadwick LJ. Even were it not binding on me, I would prefer the approach of Balcombe LJ,

as supported by the Vice-Chancellor and, it appears, by Neuberger, Carnwath and Sedley JJ (as they all then were). As Carnwath J stated in the passage from *Giles* quoted by Chadwick LJ:

> "There is no policy reason for requiring the notice to be withdrawn, so long as it is justified in the light of the facts known to the court, and the solicitor has had a fair opportunity to deal with any allegations against him."

27. Thus, it is clear that an intervention can properly be maintained, and withdrawal of a notice properly refused, on grounds different from those upon which the notice was given, even in the absence of a finding that the original grounds were valid. The question for the court is whether, on the basis of the material available at the hearing, it is necessary and proportionate for the intervention to continue, or whether the notice should be withdrawn. In relation to that question it was common ground that the following passage from the judgment of Chadwick LJ in *Sheikh* is instructive:

> "the court must … weigh the risks of re-instating the solicitor in his (or her) practice against the potentially catastrophic consequences to the solicitor (and the inconvenience, and perhaps real harm, to his or her existing clients) if the intervention continues. In weighing the risks of re-instatement, the court must have regard to the views of the Law Society as the professional body charged by statute with the regulation of solicitors … and as the body whose members are obliged, through the compensation fund, to underwrite those risks… In a case where the Society has taken, and continues to take, the view that there are reasons to suspect dishonesty on the part of the solicitor, the court may well need to address those reasons in the context of weighing the risks of re-instatement; although … that will not always be the case. It is important to keep in mind that (in cases where there is no challenge to the validity of the resolution or to the service of the notices) there is no free-standing requirement for the court to decide whether there are grounds for suspecting dishonesty;

> a fortiori, no requirement for the court to decide whether the solicitor is or has been dishonest. The issue arises (if at all) in the context of deciding whether the intervention needs to continue."

28. It was also common ground that in cases where there are a number of different elements of a solicitor's conduct which give rise to concerns, it is their combined effect which is relevant for the purposes of determining the question before the court in a case such as this.

The Background

29. The Decision is based on a number of concerns on the part of the SRA, many of which arise out of claims for damages brought against the police by a Mr Corbridge ("Mr C") and a Mr Naylor ("Mr N"). It is therefore necessary to set out the background to that litigation, which for convenience I will refer to as "the C and N Claims". I do not understand the following detail to be controversial.

The C and N Claims and the costs issues to which they gave rise

30. Between August 2012 and December 2013 SK was an associate solicitor at McMillan Williams Solicitors ("MW"), and acted for Mr C and Mr N, who were MW's clients, on the C and N Claims. Each had signed a conditional fee agreement with MW. At about the end of 2013 SK left MW to set up the Firm, and some 6 months later Mr C and Mr N transferred their instructions on the C and N Claims from MW to the Firm, entering into new CFAs with the Firm.

31. To preserve MW's interests in any costs recovery obtained from the defendant, on 2 June 2014 the Firm entered into an agreement with MW whereby SK and/or the Firm gave the following (among other) undertakings to MW:

- To preserve MW's lien as to costs and disbursements;
- To include MW's claim for costs, success fees, disbursements and counsel's fees in any detailed assessment proceedings or other cost negotiations;
- To notify MW of the sums being claimed on its behalf, to advise them of any offers made in respect of its costs and success fees and disbursements; and
- not to settle any claim for MW's costs, disbursements or counsel's fees without the specific written consent of MW's Managing Partner.

32. In witness statements provided to the SRA, Mr C and Mr N state that in 2015 they were dissatisfied with SK's service and contacted MW to ask them to take over their matter from the Firm. They say that shortly thereafter they discovered that the C and N Claims had already been settled without their knowledge or consent. Settlement cheques were received for amounts which they stated were considerably less than they had been led by SK to believe they would recover – £25,000 for Mr C and £18,500 for Mr N.

33. There then ensued a dispute between MW and SK as to who was entitled to represent the clients in the costs assessment proceedings. By an order dated 27

November 2017 District Judge Langley gave directions for the preparation of a joint bill of costs containing both MW's and the Firm's costs. Accordingly, the Firm presented to DWF, the solicitors representing the defendants in the C and N Claims, a joint bill of costs dated 27 March 2018 for about £182,000, of which c. £114,000 were MW's costs and c. £68,000 were the Firm's.

34. On 21 August 2018, DWF made a Part 36 offer to settle the costs claim in the sum of £110,000, subject to certain deductions. On 28 August 2018, MW informed SK that it was prepared to settle its part of the costs claimed for £80,000 and instructed her to make a Part 36 offer to DWF to that effect. On 3 September 2018, DWF made a revised Part 36 offer of £120,000 in full and final settlement of the costs claimed in the joint bill of costs. This was stated to be a "gross" offer from which would be deducted a payment on account already made to the Firm of £15,000 and the further sum of £4,463.50 in respect of cost orders in favour of the defendant and the costs of dealing with a previous incorrect bill of costs.

35. On 5 September 2018, the Firm wrote to DWF stating that the offer of £120,000 was "accepted on the basis that" the interim payment and the sums included in the costs orders could be deducted, but not the £2,451 in respect of having to deal with a previous bill of costs. Accordingly, the letter requested payment of £103,390.15 into the Firm's client account within 14 days.

36. It does not appear to be in dispute that, despite the terms of the undertakings referred to above, SK did not inform MW of DWF's offer of 3 September nor obtain MW's consent before sending the 5 September letter to DWF. Nor does it appear

to be disputed that SK did not inform Mr C or Mr N that she proposed to settle their claim for costs or obtain their consent.

37. On 6 September 2018 DWF replied that the Firm's "purported acceptance" of 5 September had sought to impose terms on the acceptance, and that "As such the offer has not been accepted and remains live." In a further letter dated 11 September 2018, DWF referred to SK's statement in a telephone conversation with them the previous day that she intended "to apply to the court to seek to enforce your purported acceptance of our client's offer." DWF stated that this would be resisted, and repeated that they did not consider her acceptance to be valid. On 19 September 2018, the Firm wrote to DWF reiterating that the Part 36 offer had been accepted and that there was "a binding agreement between the parties" which was "enforceable against your client". The Firm again requested that the settlement sum be paid into the Firm's client account.

38. On 10 October 2018, DWF sent to the Firm a cheque for £100,536.50, this being the sum offered in the Part 36 offer letter of 3 September 2018, net of all the deductions identified in that letter. Neither the Firm nor DWF has retained a copy of the covering letter which accompanied the cheque.

39. On 12 October 2018 SK paid the cheque into the Firm's office account. The same day, following a chasing email from MW on 10 September, the Firm wrote to MW stating that "We have, in principle, accepted an offer to settle the Claimants' profit costs, disbursements, additional liabilities and VAT contained in the Bill of Costs dated 27 March 2018 in the sum of £120,000.00. The outstanding issue is the

Defendant's costs in the sum of £2,451.00 for dealing with the previously drawn bills including the costs of preparing Points of Dispute. Once there has been a resolution of this issue, we will write to you again with an up-date." The same day MW remonstrated by email that the Firm had in principle accepted an offer without first reverting to them.

40. On 15 October 2018 the Firm wrote to DWF as follows: "Our clients do not accept the cheque in the sum of £100,536.50 as final (sic) and final settlement" of the bill of costs of 27 March 2018. The Firm requested a further payment of £2,853.65 within 7 days "in order for him to discharge his obligation in relation to the terms of acceptance of the gross offer in the sum of £120,000.000". The letter explained that the difference between the above sum of £2,853.65 and the originally disputed sum of £2,451.00 relates to an additional £402.65, being "the outstanding costs of the enforcement proceedings against your client". It concluded "…until your client discharges his obligation, our clients will be within their right to pursue the outstanding sum and seek their costs for doing so…"

41. On 17 October 2018, DWF replied that their position set out in the letters dated 6 September and 11 September 2018 regarding "your purported acceptance of our client's offer" remained unchanged. On 9 November 2018, the Firm responded stating it did not understand why DWF had sent the cheque "purporting to be in full and final settlement" of the claim for costs contained in the Joint Bill of Costs when its case was that there had been no acceptance of the gross offer. The Firm offered to accept a further payment of £1,628.15 in full and final settlement. Meanwhile, on 31 October 2018, the insurance company involved had discovered that the

cheque had been cashed earlier that month. On 13 November 2018, DWF wrote rejecting the Firm's proposal, stating that the cheque had been "tendered in full and final settlement of your clients' claim for costs" and, since it had been cashed by the Firm, "the matter is now concluded."

42. It appears that there was no response to the 13 November letter from the Firm, and no further negotiations between the Firm and DWF over the joint costs claim.

43. It is not clear from the contemporaneous correspondence whether the cheque was received by the Firm before or after the letter was sent to MW on 12 October 2018. Nor is it clear whether and if so when SK informed MW that monies had been received or whether MW discovered this from another source. However, an email from MW to SK dated 31 October 2018 states "I know you are in receipt of monies on this case since 16/10/18", and seeks confirmation of the amount received from DWF whilst asking for an interim payment within 7 days. It therefore appears possible that MW had become aware from a separate source that monies had been received by the Firm, but were not sure of the amount. Emails from SK to MW dated 5 and 6 November 2018 state that "there will be no interim payment towards your costs within the next 7 days" and that SK would be continuing to seek a full and final settlement of the joint bill of costs.

44. No sum was paid by the Firm to MW in respect of the monies received from DWF. On 7 March 2019 MW made a complaint to the SRA alleging that the Firm had failed to comply with the undertakings it had provided to MW in relation to their joint costs. In July 2019 MW issued proceedings against the Firm to recover their

costs ("the Costs Action"). On 28 May 2020 MW wrote to Mr C and Mr N in respect of their outstanding costs liability. On 27 June 2020 Mr C and Mr N made a joint complaint about SK and the Firm to the SRA. In January 2021, following a trial of the Costs Action in which SK gave evidence, HHJ Backhouse ordered the Firm to pay £78,729.50 to MW in respect of its share of the costs settlement with DWF. In the course of her judgment the Judge made criticisms of the evidence of SK, describing it as "thoroughly evasive". The Judge also stated that SK "found it very difficult to answer straight questions", and that some of her explanations were "highly implausible, indeed specious". SK's case that there had been no settlement with DWF of the costs liability was rejected. The judgment is currently under appeal.

45. On 8 February 2021, having in the course of 2020 issued notices requesting the Firm to supply information and documents in connection with the joint complaint of Mr C and Mr N, the SRA commenced an inspection of the Firm. In the course of this the SRA raised questions concerning the payment of the settlement cheque into the Firm's office account, and the failure to account to MW for their share of the monies. In correspondence with the SRA in February 2021 SK disputed that these were "mixed" monies or that any of the monies ought to have been paid to MW or into the Firm's client account. She stated that the common law permitted the Firm to set cost liabilities of the clients against the payment of the clients' costs made by DWF, and that the former exceeded the latter. In support of this SK provided the SRA with a document headed "Pro Forma Fee Note" and dated 16 January 2018. The document is extremely brief and states:

> "SUMMARY
>
> The breakdown of our costs and disbursements are in relation to your claim against The Chief Constable of Dorset Police, and include costs recovery and negotiations with the Defendant.
>
> Profit Costs £119,105.00
>
> This is not a VAT receipt."

46. In her email dated 15 February 2021 to which this document was attached, SK stated that Mr C and Mr N "were informed as to my firm's costs position by way of the six-monthly costs letter update." In this regard she supplied the SRA with copies of two letters addressed to each of Mr C and Mr N dated 9 April 2018. In respect of the position *vis a vis* DWF, she stated that "There has been no final settlement of the costs" and that the correspondence with DWF showed "that there is no binding agreement between the parties in respect of costs." She said that the cheque had been "banked as an interim costs payment". As to the undertakings provided to MW, she stated "…there was no agreement between my firm and [MW] that my firm account for or to pay [MW] costs received from" DWF.

47. In signed witness statements dated 16 March 2021 containing statements of truth, provided for the purposes of the SRA investigation, both Mr C and Mr N stated that they were not at any time provided with cost information nor with interim bills by SK. They each stated that they had never seen either the Pro-Forma Fee Note or the costs update letters of 9 April 2018 until copies were shown to them by the SRA.

48. In a fuller letter to the SRA dated 5 April 2021, SK reiterated that the Firm's non-payment of any amount to MW out of the sum paid by DWF was justified on the

basis that there had been no settlement of the *inter partes* costs claim, and the Firm was entitled under the conditional fee agreements with the clients to use the costs recovered from DWF to cover any shortfall in solicitor-client costs owed to the Firm; in this regard she referred again to the Pro-Forma Fee Note as showing the amount owed to the Firm by the clients. She maintained that the undertakings did not oblige her to pay anything to MW out of the DWF cheque, and that HH Judge Backhouse was in error in so deciding. There was an outstanding appeal against that decision on the grounds that the Judge had no jurisdiction to award damages for breach of a solicitors' undertaking, that in any event there was no breach, or alternatively that the undertaking did not constitute an agreement to account to MW or to pay them any of the costs received from DWF. As to the statements by Mr C and Mr N that they had never before seen either the Pro-Forma Fee Note or the costs letters of 9 April 2018, SK stated that these witness statements "were drafted and prepared by" MW for the action against the Firm. The implication of this is that SK is asserting that the statements by Mr C and Mr N are inaccurate and/or untrue.

Coulthard/Martin complaints and delivery of files to SRA

49. A further issue relied upon by the SRA in the Decision relates to two complaints made to the SRA in 2017. The complaints were by Mr and Mrs Coulthard about the Firm and SK, and by Mr Martin about the Firm. Following these complaints, in August 2017 the SRA issued a document production notice to the Firm under section 44B of the Solicitors Act 1974 requesting client files ("the M and C Files") for Mr Martin and Mr and Mrs Coulthard ("the M and C Notice"). There followed protracted correspondence between the Firm and the SRA about the Firm's

compliance with the M and C Notice culminating, on 13 December 2017, in SK's written assurance that she would deliver "a full copy of the client files" for Mr and Mrs Coulthard "by no later than 4pm on 12 January 2018". However, on 10 January 2018 SK wrote to the SRA "rescind[ing] the undertaking given" in December, on the basis of two judgments she had seen. In November 2018 the SRA issued High Court proceedings against the Firm to enforce the M and C Notice ("the Files Claim").

50. On 28 August 2019, shortly before the hearing of the Files Claim was due to start, SK told the SRA's solicitors that the original client files for Mr Martin and Mr and Mrs Coulthard had been hand-delivered by her to the SRA's offices in Birmingham in May 2019. Master Clark made an order requiring the Firm to produce a complete copy of the client files for Mr and Mrs Coulthard to the SRA's solicitors by 4 September 2019 ("the First Clerk Order"). The trial was adjourned.

51. There was an appeal by the Firm against the First Clerk Order, which was unsuccessful save that the costs order was modified. On 28 January 2020, Birss J made a further order for the production to the SRA of complete copies of the Coulthard files by 17 February 2020 ("the Birss Order"). On 9 April 2020 Master Clerk made an order in the same terms as the First Clerk Order and the Birss Order, except that it substituted 24 April 2020 as the date for compliance and contained a penal notice. It also required the Firm to file and serve a witness statement by 23 April 2020 in respect of documents relating to Mr Martin's file ("the Second Clerk Order"). The Firm filed an Appellant's Notice seeking permission to appeal parts of the Second Clerk Order and seeking a 56 day stay of the requirement to produce

a copy of the Coulthard file and a witness statement in relation to the Martin file. The stay was refused by Mann J in May 2020, and on 23 November 2020 the trial of the Files Claim took place before Master Clerk.

52. SK represented the Firm at the trial and also gave oral evidence on its behalf, in the course of which she was cross-examined by counsel for the SRA. The essential issue was whether SK had in fact hand-delivered the original client files to the SRA in May 2019 as she had stated. The Master's reserved judgment was given on 5 January 2021. Master Clark found that the original files had *not* been delivered by SK to the SRA, that SK was not "a satisfactory witness" and that her refusal to answer questions was "highly likely to be a contempt in the face of the court". Master Clark also stated that SK had been "evasive" and that "her performance was not such as to give confidence in the reliability of her evidence…". By her order of 15 March 2021, Master Clerk required the Firm to produce the complete original M and C Files to the SRA by 30 March 2021 ("the Third Clerk Order"). Zacaroli J refused permission to appeal the Third Clerk Order, recording that the proposed appeal was wholly without merit.

53. At the hearing before me the SRA stated, and it was not disputed by counsel for SK, that although SK indicated in Khan 2 (as at 24 September 2021) that she could "make arrangements" to send copies of the Coulthard client files to the SRA, this had not yet occurred.

54. On 23 April 2021 the SRA issued a contempt application against SK and the Firm in respect of a failure to comply with the First, Second and Third Clerk Orders and

the Birss Order. The SRA also applied to strike SK off the roll pursuant to s.50 of the Solicitors Act 1974. This application for contempt appears to have been overtaken by events, including a second application for contempt to which I will refer in due course.

The Humpston complaint and the Legal Ombudsman

55. The Decision also refers to the involvement of the Legal Ombudsman. This occurred as follows. In September 2017 a Mr Humpston instructed the Firm in relation to two claims against Kent Police and Ashford Borough Council. In May 2018 he decided he no longer wished to instruct the Firm and asked for his papers to be returned and for a copy of the complaints procedure. The following month he sent a letter of complaint to the Firm, and in September 2018 he made a complaint to the SRA about SK and the Firm. In March 2019 the SRA requested information from SK by 3 April 2019. She replied in May stating that having reviewed Mr Humpston's file she could not see what assistance could be gained from the documents sought. Mr Humpston then complained to the Legal Ombudsman about SK and the Firm. The SRA wrote again in August 2019 pursuing the original request for documents. SK declined the request on the basis that the Ombudsman was already investigating the same issue.

56. In September 2019 the Ombudsman made a misconduct referral to the SRA, reporting that SK had failed to co-operate with the Ombudsman's investigation into the complaint, had requested unreasonable extensions of time, and failed to provide requested documents. In November 2019 the Ombudsman issued a final decision,

finding the Firm's service was unreasonable in some of the respects alleged by Mr Humpston. The Firm was ordered to pay £250 in compensation and within 30 days to send all documents to Mr Humpston. The Firm did not comply, and after a number of unsuccessful attempts to obtain the Firm's compliance, on 22 January 2020 the Ombudsman made a further misconduct referral to the SRA. This resulted in the SRA issuing a further document production notice to the Firm under section 44B of the 1974 Act requiring the Firm to produce full client files and ledgers for Mr Humpston's matters. SK continued to object to the production notice and to resist compliance. In October 2020 the SRA's solicitors sent a letter before action to SK.

The professional indemnity insurance proposal form

57. Mention should also be made of another issue which was noted in the course of the SRA's investigation.

58. On 11 January 2021 SK completed a proposal form for the Firm's professional indemnity insurance. Section 5 of the form asked whether in the past 6 years

> "the firm or any Prior Practice or any current or former principal, partner, member, director, consultant or employee…ever:
>
> (i) been the subject of an investigation that led to adverse findings by any regulatory body? …
>
> (viii) been subject to … a civil judgment that could have a bearing on your/their professional standing (e.g. a petition for bankruptcy, entering into any voluntary insolvency arrangement etc.)?"

59. SK answered "no" to both of these questions. As to Question (i), although the proposal form expressly identified the Legal Ombudsman as one of the regulatory

bodies to which that question applied, SK did not mention the final decision of the Ombudsman in the Humpston complaint, which had been issued on 26 November 2019 and involved a finding that the Firm's service to Mr Humpston had been unreasonable in certain respects and had required the Firm to pay compensation to the former client.

60. As to Question (viii), SK did not mention that 4 days earlier, on 7 January 2021, in the Costs Claim MW had obtained a judgment against the Firm in the sum of £95,830.58 plus a substantial sum on account of costs, which it was apparently not in a financial position to satisfy by the due date. (It appears that the Firm was obliged to apply for a stay of execution of HH Judge Backhouse's order on that ground). Nor did SK mention that the reliability of her evidence had been criticised by HH Judge Backhouse, and also by Master Clerk in her judgment of 5 January 2021.

The Decision

61. As I have said, the Decision was based on a number of different concerns, based in large measure on the circumstances outlined above, and comprising both the Panel's reasons to suspect dishonesty on SK's part and alleged breaches of the various rules by SK and the Firm.

Reasons to suspect dishonesty

62. Mr James, in his oral submissions on behalf of SK and the Firm, divided the Panel's reasons for suspecting dishonesty on the part of SK into the following categories:

(1) There was what the Panel described as a "minimum shortage" on the Firm's client account of £78,729.50 arising from SK's appropriation of the entirety of a payment of £100,536.50 received from DWF as payment of the *inter partes* costs incurred by Mr C and Mr N in respect of both the Firm's and MW's costs.

(2) According to the Panel, the payment by DWF was a "mixed" payment which was deposited by SK into office account when it should have been paid into client account.

(3) SK produced the Pro-Forma Fee Note to the SRA during its investigation as a purported justification for the way in which she had handled the payment from DWF, but she had never previously mentioned this document, which was of doubtful authenticity.

(4) In order to justify her actions SK had maintained that her receipt of this payment had *not* been in full and final settlement of her clients' claim for costs submitted to DWF in the form of the joint bill of costs on behalf of the Firm and MW; and she had given explanations to the SRA that were inconsistent with what was said in the contemporaneous correspondence, where she had insisted that there was a binding agreement with DWF.

(5) At a trial before Master Clark in which the main issue was whether SK had hand-delivered client files to the SRA, the Court had not accepted her oral evidence that she had made such a delivery.

(6) SK had given answers on the Firm's professional indemnity

insurance renewal form that were untrue or inaccurate, and which she had not taken the opportunity to correct.

Breaches of the rules

63. The Panel concluded that these matters also gave rise to a number of breaches of the Principles, Codes, and Rules to which I referred at paragraphs 17-19 above and in the Annex. These included the following breaches by SK and the Firm:

- failing to act with integrity;
- failing to act in the best interests of her clients;
- failing to ensure that clients received the best possible information as to costs;
- failing to deal with complaints made by clients to the Legal Ombudsman in an open, timely and co-operative manner;
- failing to comply with a number of document production notices issued by the SRA to the Firm under section 44B of the 1974 Act;
- failing to comply with court orders;
- failing to behave in a way that maintains public trust in legal practitioners and the provision of legal services;
- failing to keep money in client account until the client had received a proper bill or notification of their costs.

64. Having found that grounds for intervention existed, the Panel went on to consider whether it was necessary to intervene into the practices of SK and/or the Firm. The Panel addressed SK's several representations to them, and found that it was necessary to intervene for the reasons they summarised at paragraph 5.57 of the Decision:

- SK had "no insight into her conduct and behaviour";
- SK "does not accept judicial findings, or the findings of the ombudsman, if they are unfavourable";
- SK had gone to considerable lengths to avoid producing documents which had been requested by the SRA and subsequently ordered by the court. It was to be inferred from "her continuing obfuscation, prevarication and delay that the files will or may reveal further misconduct" on SK's part. Her attempts to avoid proper regulatory scrutiny posed a serious risk to clients and the wider public, as well as to the administration of justice;
- SK had demonstrated that she was willing to put the Firm's interests before those of her clients, and there might be other client files where SK had transferred money into the office account without clients being aware of the amount of their invoice. There was a risk that clients might be left with substantial liabilities by her actions;

- SK refused to accept the reality of the numerous court orders to which the Firm had been subject. Moreover, SK's representations did not give the Panel any confidence that the Firm's obligations under such orders, including the payment of substantial sums to MW and the SRA, would or could be met.

65. In conclusion, the Panel stated that although taken individually the issues identified would not necessarily lead to intervention, collectively the magnitude of issues in the Firm were so great that intervention was necessary and represented the most appropriate regulatory action to protect clients and the public. The ongoing rule breaches by SK and the Firm, in particular SK's lack of integrity, her failure to act in the best interests of clients, and her failure to cooperate with regulators and the court, together with the finding that there was reason to suspect dishonesty on SK's part, created an unacceptable risk to clients and the wider public. SK was the sole manager of the Firm and the Panel did not have trust and confidence in her ability to run it properly. The need to intervene to protect clients and the public interest therefore outweighed the serious implications of intervention for SK.

66. The Panel noted that the SRA had by then applied to the court for an order that SK was in contempt of court, and for her to be struck off the roll for her non-compliance with orders. The Panel had considered whether to await the conclusion of the contempt proceedings before intervening but concluded that the risk, particularly to client money, was too great.

The parties' submissions

67. As I have said, both counsel accepted that the Panel were entitled to consider SK's conduct on a cumulative basis when reaching their conclusions. In the course of his submissions on behalf of the claimants, Mr James stated that his focus was on whether the decision to intervene was necessary and proportionate in the light of the material before the court. He conceded that there was sufficient material to entitle the Panel find certain breaches of the rules. He identified in this regard the breaches found in paragraphs 5.33, 5.40 and 5.41 of the Decision. These relate to (a) SK's failure to ensure that the Firm complied with certain orders of the court; (b) her failure to ensure that the Firm complied with its legal and regulatory obligations and to deal with the Legal Ombudsman in an open, timely and cooperative manner; and (c) her failure to comply with the SRA's document production notices in respect of the M and C Files.

68. However, Mr James took issue with other findings of the Panel: in particular, the finding that there were reasons to suspect SK of dishonesty, and the findings in respect of the rules about integrity, the need to act in the client's best interests, upholding public confidence and trust in the legal profession, and compliance with the accounts rules.

69. Whilst accepting that it was a "challenging proposition" to argue that the intervention notice should be withdrawn when a solicitor was in prison, Mr James's primary argument was that the court should ignore that feature, as it had not been before the Panel. But if he was wrong on that, then he submitted that the notice should still be withdrawn because SK would then recover her practising certificate, and although unable to practice while in prison, once released the sentence of

imprisonment would have a salutary and deterrent effect on her, and the public interest would be protected because the SRA are bringing disciplinary proceedings against her before the Solicitors Disciplinary Tribunal.

Suspicion of dishonesty

70. It is appropriate to examine first the points made by the claimants in respect of the reasons identified by the Panel for suspecting dishonesty on the part of SK.

(a) Minimum cash shortage in client account

71. In his submissions in respect of the Panel's finding of reason to suspect dishonesty, Mr James argued that the finding that there was a minimum cash shortage of more than £78,700 on the client account left one in ignorance as to the nature of the Panel's complaint. He noted that in the passages in question (sub-paragraphs 5.13.1 to 5.13.7) the Panel does not expressly state that this alleged shortage constituted a reason to suspect dishonesty, as it did with the other allegations under this head, nor why the shortage should lead to such a suspicion. There was, he said, no explanation of why paying the money into the office account gave grounds for suspecting dishonesty, and the finding was therefore fundamentally flawed.

72. In my view this submission adopts an approach to the Decision which focuses excessively on individual paragraphs of the Decision and results in a misreading. The Decision is clearly to be read as a whole. This applies particularly to the elements of suspicion relating to the C and N Claims, including those elements which arose from the DWF costs payment to the Firm. All 15 sub-paragraphs of

paragraph 5.13 of the Decision relate to those matters, and are closely interrelated. This is abundantly clear from the context, and from the separate numbering of the only two other elements relied upon as reasons for suspecting dishonesty, namely sub-paragraphs 5.14 and 5.15, which concern respectively the hand-delivery of files to the SRA and the professional indemnity renewal form.

73. When 5.13.1-5.13.15 are read as a whole it is quite clear how the minimum shortage in the client account fits into the SRA's overall concern about SK's conduct in relation to the C and N Claims, and why that conduct was the principal element in the suspicion of dishonesty.

74. It is important to have in mind the following facts, which emerge clearly from the material before the Panel and the court, and cannot seriously be contested: SK had carriage of the *inter partes* cost negotiations with the defendant's solicitors, DWF. Those negotiations were clearly carried out on behalf of *both* the Firm and the clients' former solicitors, MW. That was the result of the court's order that there should be a joint bill of costs comprising both the Firm's and MW's *inter partes* costs. The joint bill, submitted to DWF by SK, was composed of approximately two thirds MW's costs and one third the Firm's. The contemporaneous correspondence makes it abundantly clear that both SK and MW understood that SK was doing the negotiations for both firms, and that a portion of any sums forthcoming from the defendant *via* DWF would be for MW's account. MW appear to have been apprehensive about SK carrying out this role, hence the undertakings she was asked to enter into, and the requests by MW for updates on the state of negotiations. SK received in all about £115,000 from DWF in respect of the joint

bill. MW had made clear to SK that the minimum they would settle for as their share was £80,000. Yet SK/the Firm appropriated the whole of the £115,000 by placing it in the Firm's office account and using it as she pleased. Not a penny was given to MW who, as we have seen, were obliged to sue the Firm in order to obtain anything.

75. In the context of the further elements of her conduct in relation to the C and N Claims relied upon by the Panel, I consider that the circumstances described above provide material on which they could properly suspect dishonesty on SK's part, having regard to the principles in *Ivey* (above). The Panel's reference to a minimum shortage of c.£78,000 is clearly a reference to the minimum amount which they considered SK should have retained in the client account against MW's claim for a share, and for which HH Judge Backhouse had ultimately given judgment against the Firm. The shortage complaint by the SRA is part of the story which emerges from the circumstances recited in sub-paragraphs 5.13.1 to 5.13.15 of the Decision. I do not consider that the Panel's reference to it in this context is a flaw, let alone a fundamental flaw in the Decision.

(b) Pro-Forma Fee Note

76. Mr James also questioned the Panel's suspicion relating to the authenticity of the Pro-Forma Fee Note which SK produced to the SRA as a justification for her payment into the office account and for retention of the whole payment made by DWF. Mr James accepted that the Panel was *technically* right to find that "the first time this fee note had been mentioned" was on 15 February 2021. However, he

submitted that although not using the word 'fee note', she had in her evidence to HHJ Backhouse on 6 January 2021 referred to sending something relating to costs to Mr C and Mr N. SK maintains in Khan (2) that this was the Pro-Forma Fee Note.

77. I have read the transcript to which SK and counsel refer, at pages 844G to 845G. The Judge presses SK several times on whether she had sent the clients a solicitor-own client bill. First the Judge said:

> "So have you sent them any cost breakdowns, any bills, any anything?"

SK replied:

> "Not, not on 12 October, that would have – That would have been before. Yes, it would have been before. It wouldn't have been at the time when the bill was sent to…"

Then, in answer to further questioning by the Judge she stated:

> "No, I haven't sent a Solicitors Act bill. All I have sent is the 27th, it was 27 March 2018 setting out the, what was sent to DWF and then the letter in October or November 2018 in relation to where we are with that."

78. SK's only clear answer is the second one. I do not consider that the Panel can fairly be criticised for their suspicion about the document's authenticity, not just because of the timing of its emergence, but also in the light of its contents. As can be seen from paragraph 45 above, it claims to be a "breakdown" but is nothing of the kind. It does not identify any amount of disbursements or VAT, and it is so brief as to be virtually meaningless. Nor is it referred to in the "Costs Update" letters said to have been sent to the clients nearly 3 months later in April 2018, giving an estimated

liability for the clients of c.£145,000 in costs. Added to this is the fact that both the clients gave written statements (containing statements of truth) that they had never seen this document before it was shown to them by the SRA. Had it been sent to them in January 2018 one might have expected, given the amount identified in it as owed by them, and that neither had received more than £25,000 in damages, that there would have been some reaction to it by one or both the clients at that time. In fact, there is no evidence of any complaint about costs from Mr C and Mr N until they received a letter before action from MW in 2020. These features cast doubt on the authenticity of the 9 April 2018 letters too, which the clients also stated they had never seen before being shown them by the SRA.

(c)Full and final settlement

79. Mr James next took issue with the Panel's reliance on SK's conflicting stances on the issue of whether there had been a full and final settlement with DWF of the joint *inter partes* costs claim. He submitted that all one could infer from the correspondence between SK and DWF is that they each had a different interpretation of what had taken place. He also argued that the Panel made an error in stating that SK's account is not reliable as all the letters from DWF which deny the existence of a settlement were dated before the cheque was banked: he points out that one was dated 17 October 2018, which was after the cheque was sent and cashed. Moreover, the finding of HH Judge Backhouse that there was a binding settlement is subject to appeal.

80. In my view these points provide no valid basis for criticising the Panel's reliance on this element. It is nothing to the point whether SK's appeal on the settlement issue succeeds or not. What the Panel relied upon was not the actual legal position, but SK's apparently opportunistic change of stance: she insisted throughout the correspondence with DWF that there was a binding settlement amounting to a legal obligation on their part which the Firm was entitled to enforce in the courts, and then later changed her stance 180 degrees to assert there had been no settlement, in order to resist the proceedings brought by MW to recover what they claimed as their share and to justify keeping the whole payment.

81. Nor does the DWF letter of 17 October 2018 demonstrate an error on the Part of the Panel: the Panel's point was a good one; DWF only continued to contest the existence of a binding settlement until they *became aware* that the cheque had been cashed. When they wrote the letter of 17 October they were clearly not aware of that. The fact that the letter is dated after the banking of the cheque is therefore irrelevant to the point made by the Panel. DWF's approach was entirely consistent throughout: SK's was not.

(d) Mixed money paid into office account

82. Mr James submits there is a fundamental error in sub-paragraph 5.13.12 of the Decision which states:

> "5.13.12 Miss Khan said that she was entitled to pay the money into office account as she was exercising a lien, and her firm were entitled to the costs. However, the question of a lien does not arise. Miss Khan was not exercising her lien to retain client files until her costs were paid. Instead, she marked the entire payment from DWF

> as office money. On that basis she said that the relevant accounts rules in relation to client money did not apply."

83. The claimants' submission is that the Pro-Forma Fee Note was notified to the clients in the sum of c.£119,000, thus complying with SRA Accounts Rules 2011, Rule 17.2. The Firm was not exercising its lien over the client files, as the Panel suggested, but over the monies paid by DWF, as the CFAs with the clients and common law entitled it to do. SK took the view that this was all office money for the purposes of Accounts Rule 17.2 and not a "mixed" payment within the meaning of Rule 18. As she stated to HH Judge Backhouse at the trial, in response to the Judge asking why she felt entitled to take all the money given that both the Firm and MW were owed substantial sums: "The money has come into my possession and under the….common law rights the money can be set against any outstanding costs liability, which is what happened" (Khan (2), paragraph 25).

84. Mr James submitted that in the light of this the Panel had elevated what was a technical question about the precise meaning of the SRA Accounts Rules into a suspicion of dishonesty. They had also overlooked SK's right to an equitable charge over the fruits of litigation, being here the whole of the monies paid to the Firm, including anything to which MW had a claim. This might have been unwise of her but could not be seen as dishonest.

85. In my view these points are entirely without substance. Leaving aside whether any notification of the Firm's solicitor-own client costs had been sent to Mr C and Mr N (which the Panel, with reason, considered to be dubious), SK's point about an equitable lien over the monies does not begin to address the point that on any view

MW too had an interest in a portion of this fund, as SK must have been aware. Far from being a mere technicality about accounts rules, her admitted conduct in relation to the negotiation of the joint bill of costs and her treatment of the resultant monies displayed a clear disregard for the spirit (whether or not also the letter) of her undertakings to MW, and a lack of integrity in dealing with other professionals. It also provided further material which the Panel were entitled to conclude raised a suspicion of dishonesty on her part.

86. I agree with the submission of Mr Allen that there is no credible basis on which SK could have genuinely believed that she was entitled to treat the settlement payment as having made in respect of costs which were *not* included within the joint bill of costs. There was, as he submits, no realistic means by which MW would be able to recover its share of those costs from either the defendant or its former clients. It is in my view clear that SK must have realised that MW would not have been able to assert any claim against the defendant for even the sum of £80,000 (which SK knew was the minimum amount that MW was willing to accept) let alone their full claim of c. £114,000. SK must also have realised that the clients, for whom MW and the Firm had been acting under CFAs and who had recovered only modest damages from the defendant, would not be able to pay anything significant towards MW's costs.

87. It is also to be noted that in the letters of 5 and 19 September 2018 SK requested DWF to pay the settlement money into the client account. Furthermore, SK informed MW of the agreed settlement for the first time in the letter dated 12 October 2018. This was more than a month after the Firm's purported letter of

acceptance dated 5 September 2018 and the same day that SK banked the settlement cheque into the Firm's office account. Even then she did not say that she had already received a payment from DWF. Nor did she intimate that she intended to retain the whole payment. On the contrary, she continued to correspond with MW after the settlement sum was received and, in particular, to discuss the outstanding issue of the defendant's deductions from the overall settlement figure. This indicates that SK recognised that MW had an interest in the settlement amount.

88. There is, in my view, at least good reason to suspect that, acting honestly and with integrity, a solicitor in SK's position would not have treated the Firm as entitled to retain the full amount of the settlement sum, leaving MW with nothing, and would also have been far more open and transparent with MW.

(e) Delivery of the client files to the SRA

89. Mr James submitted that the Panel's reliance on the findings of Master Clerk that SK did not hand-deliver the client files to the SRA in Birmingham, as she had stated in evidence that she did, was misplaced in that (1) Master Clerk did not make a finding of dishonesty and (2) the Master would have made a different finding if she had had access to other evidence which was not called.

90. Point (1) is, I am afraid, of no substance whatsoever. It is correct that Master Clerk made no express finding of dishonesty. However, the nature of the issue of fact before the court, namely whether SK had personally hand-delivered the client files to the SRA's office in Birmingham, means that in finding that that this did not happen, the Master did not believe her evidence. There is hardly any room for a

suggestion that SK was mistaken. Moreover, in her judgment, Master Clark also found that SK was not "a satisfactory witness" (para 22), that her refusal to answer questions that were properly put to her was "highly likely to be a contempt in the face of the court" (para 23), that she had been "evasive" and that "her performance was not such as to give confidence in the reliability of her evidence…" (para 53). At paragraph 30 the Master said: "In summary, [SK]'s evidence was characterised by either a refusal to answer questions or a refusal to engage with the questions asked; and in some respects, as noted, it was not credible."

91. Point (2) is no more valid. It relates to a debate at the first aborted hearing before Master Clerk as to whether the Master could make an order requiring the SRA to provide contact details of a receptionist who may have been at the SRA offices on the day SK said she delivered the files. The Master decided she had no power to make the order. The SRA identified the name of the receptionist and disclosed a draft unsigned witness statement. The person concerned was off sick and although the SRA sought to obtain her signature, this did not happen and she was not called to give evidence. Mr James refers to the finding of Master Clerk that the evidence corroborating SK's account was weak. However, there is no reason whatsoever to suppose that had the receptionist been called the outcome would have been different.

(f) Professional indemnity renewal form

92. Mr James realistically did not pursue an argument made by SK that in answer to Question 1 on the insurance renewal form she was not obliged to mention the

adverse finding of the Legal Ombudsman on the basis that the Ombudsman was not a regulatory body within the meaning of the Legal Services Act 2007, Schedule IV. As Mr James accepted, the form gives an extended meaning to that term and expressly identifies the Ombudsman as within it.

93. He did appear to pursue another point raised by SK, namely that the Panel were in error because the finding of the Ombudsman did not amount to an "adverse finding" for the purposes of the renewal form, in that the complaint related not to the quality of the service provided by SK but to the return of the complainant's file after the conclusion of the litigation in question. Further, the compensation of £250 showed the matter was minor and unlikely to affect the risk involved for the insurer.

94. He also argued that the Panel were wrong to consider HH Judge Backhouse's judgment as being disclosable to the insurer under Question 9 on the form, relating to a civil judgment that "could have a bearing on professional standing". His argument here was that the Judge had made her ruling on the basis that SK's/the Firm's liability to MW constituted a breach of contract as distinct from a breach of undertaking. Unsurprisingly he felt unable to make the alternative point that if it *was* a breach of undertaking it would still not have a bearing on professional standing. Either way the argument has no merit - particularly having regard to the comments about SK made in the Judge's judgment (see paragraph 44 above).

95. These arguments are not improved by the fact that the SRA investigator, Mr Cassini, stated in an email to SK some 3 weeks after SK had sent off the renewal form, that it was "a matter for you" whether SK told the insurers about the

investigation the SRA were then undertaking. A professional in SK's position cannot delegate her responsibility for making proper disclosure in answer to questions on a professional indemnity proposal form.

96. In my view the Panel cannot properly be criticised for taking the non-disclosure of the Legal Ombudsman decision or the judgment of HH Judge Backhouse into account as reasons for suspecting dishonesty.

Reason for suspecting dishonesty: my conclusion

97. In the light of the above, I consider there is no merit in the claimants' challenge to the Panel's finding in the Decision that there was reason to suspect dishonesty on SK's part in connection with her practice as a solicitor and as a manager of the Firm in connection with the Firm's business.

Breaches of rules

98. I turn to consider the challenge to the Panel's findings in respect of rules breaches.

99. For understandable reasons both counsel concentrated much of their fire on the issue of suspicion of dishonesty and rather less on the findings of rule breaches. Further, as I have already explained, Mr James conceded that the Panel had been entitled to find breaches of some of the relevant rules, in particular SK's failure to ensure that the Firm complied with certain orders of the court, her failure to ensure that the Firm complied with its legal and regulatory obligation to deal with the Legal Ombudsman in an open, timely and cooperative manner, and her failure to comply with the SRA's document production notices in respect of the M and C

Files. In my view these breaches were not trivial but serious. They give rise to significant and legitimate concern about SK's fitness to practice as a solicitor and an officer of the court.

100. I deal now with those alleged breaches which the claimants challenged.

Act with integrity

101. Mr James submitted that SK took issue with the finding in paragraph 5.25 of the Decision that she had demonstrated a lack of integrity in her dealings with MW and with Mr C and Mr N. He was constrained here to repeat the reliance upon the Pro-Forma Fee Note and the 9 April 2018 Cost Update letters as justifying her position that she had a claim to all the DWF payment by reason of the Firm's unpaid solicitor-own client costs. He submitted that the clients were never put in a worse position – there was always going to be a shortfall for which they would be liable; there was a "principled basis" for what she had done.

102. For the reasons I have given in earlier parts of this judgment, these arguments are untenable. Far from being principled, SK's actions were in certain respects deceptive, and were unprincipled; they led to what must have been great anxiety on the part of the clients, who found themselves in receipt of a letter before action from MW and who were later required to provide witness statements in litigation that was necessitated by SK's conduct in keeping 100% of funds which were clearly intended to be shared with MW. Further, in the light of the evidence there is justified doubt that the clients were ever sent the Pro-Forma Fee Note or indeed the Cost Update letters.

103. The next point made under this head concerns paragraph 5.26 of the Decision, where the Panel state that regardless of their enforceability and precise interpretation, SK knew the purpose of the undertakings and chose to subvert them. Mr James argues that SK complied with the letter of the undertakings, which did not require her actually to pay any money to MW.

104. This, too, is a bad point. The issue here is one of integrity, as explained in the helpful guidance provided by the case law to which I refer at paragraph 20 above, in particular by reference to "the higher standards which society expects from professional persons and which the professions expect from their own members". Neither the precise interpretation of the undertakings nor the outcome of SK's appeal against the judgment of HH Judge Backhouse affects the fact that her actions vis a vis MW were non-transparent and unprincipled. The underlying purpose of the undertakings and the understanding between the two firms were clear.

105. Mr James also takes issue with paragraph 5.27ff where the Panel revisit the professional indemnity renewal issue. He submits that there is no lack of integrity in making an innocent or negligent misrepresentation on an insurance proposal.

106. This begs the question. For the reasons already given when dealing with a suspicion of dishonesty in relation to this matter, I consider that the Panel were entitled to find a lack of integrity in SK's answers to Questions 1 and 9. The Ombudsman's finding and the judgment of HH Judge Backhouse would have been reasonably fresh in SK's mind. The latter was given less than a week before the form was completed.

Act in the best interests of the client

107. The Panel considered that in her dealings with Mr C and Mr N SK did not act in the best interests of the client, and did not provide them with the best possible information as to likely overall costs when appropriate as the matter progressed, pursuant to the relevant rules as identified in the Annex to this judgment. The Panel once again referred to the lack of any proper invoice, and the fact that neither client was aware they owed a substantial sum to MW or to the Firm, all of which must have come as a substantial shock when in 2020 they received a letter before action from MW seeking £120,000.

108. In his submission on this, Mr James simply referred to passages in Khan (2) where SK asserts that the fault for any anxiety suffered by the clients rests with MW for sending the letter before action, and reiterates that the clients were aware of their costs liability.

109. For the reasons I have already given, I consider that these arguments are unsustainable in the light of the available material. The Panel were entitled to find SK and the Firm in breach of the rules in question.

Upholding public trust and confidence in solicitors

110. This aspect of the challenge concerns the complaints at paragraphs 5.48 – 5.50 of the Decision; there the Panel again refer to SK failures to comply with court orders, with SRA production notices and with the Legal Ombudsman's decisions, and to the severe criticism of SK's evidence in the judgments of Master Clerk and HH

Judge Backhouse, together with her conduct in placing her own and the Firm's interests above those of her clients. In the light of these matters the Panel concludes that SK and the Firm have failed to maintain public confidence in the legal profession, in breach of the relevant rules.

111. Mr James submits that, in so finding, the Panel have elevated these complaints beyond their real substance, given that there has been no finding of fraud or dishonesty. I do not agree. I consider that the matters relied upon by the Panel more than justify their finding of a breach in this regard. This is another hopeless ground of challenge.

SRA Accounts Rules

112. At paragraphs 5.51-5.54, the Panel return to the C and N Claims, and the way in which the DWF monies were dealt with by SK. They refer to the following provisions of SRA Accounts Rules 2011: Rule 12 (a), and Rule 14.1, which provide that "client money" namely "money held or received for a client …and all other money which is not office money" "must without delay be paid into client account"; Rule 17.2: "If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party"; and Rule 18.2: "A mixed payment must either (a) be split between a client account and office account as appropriate or (b) be placed without delay in a client account."

113. The Panel did not accept SK's assertion that the money received from DWF was office money. They refer to SK asking DWF to pay it into client account. The Panel also state that even if SK was correct in asserting that she did not have to submit a bill to the clients on the ground that the matter was not concluded (which the Panel did not accept), the money should still have been in client account until a proper bill or notification of costs was given to the clients. Further, even if the Firm was entitled to a lien (which also was not accepted by the Panel) that would not mean that the money was office money – it would simply be in the nature of a charge over the funds.

114. Mr James argued that, for the reasons he put forward in respect of the Panel's finding that there was reason to suspect dishonesty in this regard, either there was no breach of the rules in question, or any breach was a technical one. I do not agree. For all the money to be office money SK would have had to give proper notice to the clients and the money would have had to be funds all of which the clients were at liberty to use to pay the Firm's fees. The Panel were clearly doubtful that proper notice was given to the clients - a view that I consider justified on the evidence. Further, had the clients been paid directly by DWF, they would clearly not have been free to use all the money to pay the Firm's fees: MW would have had a claim of precisely the same kind as the Firm's claim (whether by equitable lien or otherwise) on part of the fund, as appears to be accepted in the skeleton argument prepared by Mr James on behalf of the Firm for its appeal against the order of HH Judge Backhouse (paragraph 44). For these reasons as well as those set out at paragraphs 82 – 88 above, the Panel were correct to hold that SK's payment of the

entirety of the monies emanating from DWF into the Firm's office account represented a breach of the rules in question.

Was it necessary and proportionate to intervene?

115. Mr James then submitted that one could not fairly infer from the material before the Panel that there was such a degree of suspicion of dishonesty or lack of integrity as to justify the admittedly draconian measure of intervention. He conceded that the complaint of failure to produce documents had "weight" but contended that specific remedies existed to enforce such requirements, namely recourse to the court in the form of the various orders discussed earlier. Mr James also reminded the court of Chadwick LJ's statement that where there was no suspicion of dishonesty then careful consideration must be given before intervention is used. Thus, he submitted, the intervention remedy was disproportionate.

116. As may be inferred from my conclusions so far, I consider that Mr James has been endeavouring to make bricks without straw. This submission has no greater substance than the others. When a solicitor defies orders of the court, not once but repeatedly, and when a solicitor systematically refuses to cooperate with professional regulators and fails to comply with requirements made by them in the exercise of their function, alarm bells ring loudly. Add to that the unsavoury conduct of SK in the context of the C and N Claims and the payments by DWF, together with the serious criticism of SK's evidence by two judges and the other indications of dishonesty which I have found to be valid, giving rise as it does to a justified suspicion of dishonesty and an absence of integrity, then intervention

becomes a necessity. No other remedy would provide the protection to which the public are entitled. The necessary balancing of the risk to the public and the catastrophic consequences likely to occur for the Firm and SK admits of only one result. The material before the Panel was manifestly such as to render intervention in the Firm's practice both necessary and proportionate.

Should the court order withdrawal of the intervention notice?

117. I have already noted, at paragraph 69 above, counsel's submission that here the intervention should be set aside as of right by this court in view of the fundamental flaws in the Decision and the fact that the contempt finding was not before the Panel. The second part of that submission was based on a view of the law with which I have differed (see paragraphs 26-7 above). However, in the light of my other conclusions, my decision on that aspect of the governing legal principles makes no different to the outcome here. The first part of the submission I have found to be without merit.

118. Mr James submits that in any event the court should order withdrawal of the notice of intervention, as it is not necessary in view of the salutary effect that imprisonment is likely to have on SK's future conduct. As he rightly surmises, that is a challenging submission. In this connection I should outline the post-intervention conduct of SK upon which the SRA relies. As I have already found, the court is entitled to, indeed should, take such material into account if it is relevant to its decision whether or not to order withdrawal.

119. When SK was notified by the SRA of the intervention she indicated in a phone call with the SRA on 19 August 2021 that she would not attend the Firm's office to give the SRA access. Having failed to obtain access on 23 August 2021, the SRA obtained an order from Adam Johnson J at a remote hearing on 7 September 2021 attended by SK by phone. The order required the Firm and SK to produce practice documents, and authorised a search of the Firm's office in Leicester and the seizure of any practice documents found there. SK and the Firm failed to produce practice documents to the SRA as required, and when the SRA attended the Firm's office to carry out a search, the SRA discovered that all the Firm's practice documents had been removed.

120. During the remote hearing on 7 September 2021, SK had indicated that she was continuing to represent clients through an entity called Just For Public Limited ("JFP"). The SRA obtained a further search and seizure order against SK, the Firm and JFP from Miles J on 21 September 2021. The order extended to SK's residential address and to the registered office of JFP. SK, the Firm and JFP failed to produce any practice documents in accordance with the order.

121. The SRA brought contempt applications against SK for her non-compliance with the 7 September and 21 September orders. These applications were heard by Leech J on 17 December 2021, and judgment was delivered on 12 January 2022. SK was found to be in contempt of court. In his judgment, Leech J stated as follows:

> "Ms Khan deliberately failed to comply with the orders knowing that she might be held in contempt of court as a consequence" (para 50).

Further, the Judge held the contempt of court to be "serious" because

> "Ms Khan knew she was acting in breach of both of them and understood the consequences of the failure to comply with them" and "Her failure to comply with the orders involved not only an attack on the administration of justice … but also defiance of her regulator" (para 55).

He also found that SK had expressed no remorse and had put forward no reasonable excuse (para 63). He imposed a custodial sentence of 6 months, which SK is currently serving.

122. The SRA contended at the hearing before me that the findings of contempt also establish breaches by SK and the Firm of Rule 2.5 of the 2019 Solicitors Code and Rule 7.1(a) of the 2019 Firm Code. The SRA also stated that SK had still not, as at that time, taken steps to produce the practice documents that she was obliged to deliver to the SRA as a result of the intervention under paragraph 9(1) of Part 2 of Schedule 1 of the 1974 Act. Mr James did not challenge those contentions.

My conclusion

123. I am sorry to say that on the evidence before me SK appears to be unsuitable to carry on practice as a solicitor in any capacity. The grounds for intervention were clearly established on the material before the Panel as at the date of the Decision in August 2021. The arguments and explanations given by SK, whether through the medium of counsel, or in her witness statements in these proceedings, have not undermined in any way the SRA's reasons for suspecting dishonesty on her part. Nor do I consider that they provide good grounds for challenging the findings that

SK and the Firm were in breach of the rules in the several respects relied upon by the SRA. Moreover, through counsel SK has conceded certain serious breaches of those rules, not least failures to comply with orders of the court. I agree with Mr Allen's submission that SK's attitude is one of open defiance of and hostility towards the SRA as her professional regulator, and a lack of respect for the authority of the courts. I have no confidence that SK would conduct any solicitors' practice appropriately in the future. In the circumstances, whilst reminding myself of the caution to be exercised in relation to the draconian remedy of intervention, I have no hesitation in concluding that intervention here was and remains necessary and proportionate for the protection of clients and the public interest.

124. It follows that this challenge fails and must be dismissed.

ANNEX

(referred to in paragraph 18 of the Judgment)

The rules relevant to the intervention under the Solicitors Act 1974 in the present case include:

Until 25 November 2019, the SRA Code of Conduct 2011 ("**the 2011 Code**") and SRA Accounts Rules 2011 ("**the 2011 Accounts Rules**"); and *Since 25 November 2019*, the SRA Standards and Regulations 2019, which include (*inter alia*) the SRA Principles ("**the 2019 Principles**"), the SRA Code of Conduct for Solicitors, RELs and RFLs ("**the 2019 Solicitors Code**") and the SRA Code of Conduct for Firms ("**the 2019 Firm Code**").

The 2011 Code contains 10 mandatory Principles ("**the 2011 Principles**"), which are said in the introduction to the 2011 Code to be *"all-pervasive"* and to *"define the fundamental ethical and professional standards that [the SRA] expect[s] of all firms and individuals"*, including, so far as material, the following requirements:

Principle 2: *"You must act with integrity"*;

Principle 4: *"You must act in the best interests of each client"*;

Principle 6: *"You must behave in a way that maintains the trust the public places in you and the provision of legal services"*; and

Principle 7: *"You must comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner"*.

The 2011 Code also specifies various 'Outcomes' that solicitors are expected to achieve in order to comply with the 2011 Principles in particular contexts (although the 'Outcomes' are stated to be non-exhaustive). These include, so far as material:

Outcome 1.13: *"clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter"*;

Outcome 5.3: *"you comply with court orders which place obligations on you"*;

Outcome 10.6: *"you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you"*;

Outcome 10.8: *"you comply promptly with any written notice from the SRA"*; and

Outcome 10.9(b): *"pursuant to a notice under Outcome 10.8, you provide all information and explanations requested"*.

Solicitors and law firms were also required to comply with the 2011 Accounts Rules. So far as material, the 2011 Accounts Rules included the following provisions:

Rule 14.1: *"Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary"*;

Rule 17.2: *"If you properly require payment of your fees from money held for a client … in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party"*; and

Rule 18.2: *"A mixed payment must either (a) be split between a client account and office account as appropriate or (b) be placed without delay in a client account."*

The 2019 Principles impose similar requirements as the 2011 Principles, applicable from 25 November 2019, but the 2019 Principles are numbered differently:

Principle 2: *"You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons."*;

Principle 4: *"You act* with *honesty"*;

Principle 5: *"You act with integrity"*; and

Principle 7: "*You act in the best interests of each client"*

The 2019 Solicitors Code and 2019 Firm Code also contained relevant provisions:

Rule 2.5 (Solicitors Code); Rule 7.1(a) (Firm Code): *"You do not place yourself in contempt of court, and you comply with court orders which place obligations on you."*;

Rule 7.3 (Solicitors Code), Rule 3.2 (Firm Code): *"You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services."*; and

Rule 7.4 (Solicitors Code), Rule 3.3 (Firm Code): *"You respond promptly to the SRA and (a) provide full and accurate explanations, information and documents in response to any request or requirement; and (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA"*.