

IN THE MATTER OF [*RESPONDENT 1*]  
and DAVID RICHARD ROODYN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D Green (in the chair)  
Mrs K Todner  
Mr D Gilbertson

Date of Hearing: 19th May 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Jonathan Richard Goodwin, Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 26<sup>th</sup> August 2008 that [*Respondent 1*] of London, E11, solicitor, and David Richard Roodyn of London, NW8, solicitor, might be required to answer the allegations contained in the statement that accompanied the application, together with the additional allegation contained in the supplementary statement dated 16<sup>th</sup> April 2009 and that such Orders might be made as the Tribunal should think right.

The allegations against [*Respondent 1*] ("the First Respondent") and David Richard Roodyn ("the Second Respondent") were that:-

1. Contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("the 1998 Rules") they had failed to ensure compliance with the Rules.
2. Contrary to Rule 7 of the 1998 Rules they had failed to rectify breaches promptly and upon discovery.

3. They had withdrawn money from client account without having delivered a bill or written notification as to the costs incurred, contrary to Rule 19(2) of the 1998 Rules.
4. They had withdrawn money from client account other than as permitted by Rule 22(1) of the 1998 Rules.
5. They had withdrawn money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) of the 1998 Rules.
6. They had made cash withdrawals from client account contrary to Rule 23(3) of the 1998 Rules.
7. They had misappropriated clients' funds.
8. They had made a claim for costs which they knew they could not justify.
9. Contrary to Rule 32 of the 1998 Rules they had failed to keep accounts properly written up.
10. They had failed to carry out the required reconciliations contrary to Rule 32(7) of the 1998 Rules.
11. That by virtue of the matters set out in the Report dated 28<sup>th</sup> April 2008, they had acted contrary to Rule 1 of the Solicitors Practice Rules 1990, in that their conduct had been compromised or impaired or had been likely to compromise or impair their independence and integrity as solicitors, their duty to act in the best interests of a client(s), their good repute or that of the solicitors' profession and in particular:-
  - a) they had failed to carry out their professional work diligently and promptly;
  - b) they had failed to prepare and submit estate accounts to the executors and/or beneficiaries in the estates of F and D following requests for the same;
  - c) they had failed to provide material information to the executors and/or beneficiaries in the estate of F and D, notwithstanding requests to do so.
12. On 5<sup>th</sup> August 2008 they had been convicted by Westminster Magistrates Court of making taxable supplies of services as solicitors without giving security as required to do so by a notice dated 19<sup>th</sup> October 2006, contrary to Section 72(11) and paragraph 4(2) of Schedule 11 to the Value Added Tax Act 1994.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19<sup>th</sup> and 20<sup>th</sup> May 2009 when Jonathan Richard Goodwin appeared as the Applicant, the First Respondent was represented by Mr Treverton-Jones QC and the Second Respondent appeared in person.

The evidence before the Tribunal included Memoranda of Conviction and statements from both Respondents.

**At the conclusion of the hearing the Tribunal made the following Orders:-**

The Tribunal Orders that the Respondent, [*Respondent 1*] of London, E11, solicitor, do pay a Fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay a contribution of £10,000 towards the costs of and incidental to this application and enquiry fixed in the sum of £35,000.00.

The Tribunal Orders that the Respondent, David Richard Roodyn of London, NW8, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay a contribution of £25,000 towards the costs of and incidental to this application and enquiry fixed in the sum of £35,000.00.

**The facts are set out in paragraphs 1 – 50 hereunder:-**

1. The First Respondent, [*Respondent 1*], born in 1955, was admitted as a solicitor in 1979. His name remained on the Roll of Solicitors and he holds a current practising certificate.
2. The Second Respondent, David Richard Roodyn, born in 1954 was admitted in 1979. His name remained on the Roll of Solicitors but he does not have a current practising certificate.
3. At all relevant times the Respondents had carried on practice in partnership under the style of Roodyn Manski of Suite 4, De Walden Court, 85 New Cavendish Street, London, W1W 6XD. On 14<sup>th</sup> May 2008 an Adjudication Panel had resolved to intervene into the Respondents' practice.
4. The Forensic Investigation Unit ("FIU") had carried out an inspection of the Respondents' books of account commencing on 7<sup>th</sup> August 2007.
5. The books of account had not been in compliance with the Solicitors Accounts Rules in that:-
  - (i) the accounting records had not been properly written up since September 2002;
  - (ii) the books of account had not been reconciled since 31<sup>st</sup> July 2007.
6. Due to the inadequacy in the records it had not been considered practical for the Investigation Officer to express an opinion as to whether or not funds held on the client bank account were sufficient to meet the firm's liabilities to clients as at 31<sup>st</sup> July 2007. However, a client ledger reconciliation as at 31<sup>st</sup> July 2007 provided to the Investigation Officer had shown a cash shortage of £50,058.91 as at 31<sup>st</sup> July 2007.
7. The shortage had been caused as a consequence of:-
  - (i) overdrawn client ledgers of £10,987.68;
  - (ii) unallocated transactions of £39,071.23.

8. By letter dated 19<sup>th</sup> November 2007, the SRA had written to the Respondents enclosing a copy of the Report of 30<sup>th</sup> October 2007 and seeking their explanation.
9. The Second Respondent had replied by letters dated:-
  - 30<sup>th</sup> November 2007
  - 20<sup>th</sup> December 2007
  - 15<sup>th</sup> January 2008
  - 18<sup>th</sup> January 2008
  - 25<sup>th</sup> January 2008
  - 30<sup>th</sup> January 2008
  - 1<sup>st</sup> February 2008
  - 13<sup>th</sup> February 2008
  - 15<sup>th</sup> February 2008
10. The FIU had carried out a further inspection of the Respondents' books of account commencing on 27<sup>th</sup> March 2008. This had resulted in a Report dated 28<sup>th</sup> April 2008.
11. The books of account had not been in compliance with the Solicitors Accounts Rules and it had been ascertained that there was a cash shortage in the sum of £115,439.77.
12. The Respondents had not agreed the existence of any cash shortage and in any event had indicated that they were not in a position to rectify the same.

The Estate of F deceased

13. The Second Respondent had been the fee earner in the matter. Mr F had died on 14<sup>th</sup> May 2001. The Second Respondent had indicated that no application for a grant of probate had been made and had confirmed that the beneficiaries were Mrs P (also one of the executors with her husband), Ms S and Ms F, daughters of the deceased).
14. The Will dated 19<sup>th</sup> January 1998 did not contain a charging clause.
15. When asked why probate had not been obtained approximately seven years from the date of death, the Second Respondent had indicated that the son of the deceased had been excluded from the Will and had challenged the validity of the Will, which challenge he had subsequently discontinued. Further, the Second Respondent had indicated that part of the assets included ten commercial units in London and that a valuation had been required. However, the Senior Investigator had pointed out that rental receipts had been received by the firm which demonstrated that the rent review appeared to have been concluded in or around June 2005, as arrears of rent at the new

rate had been received. The Second Respondent had agreed that that was the position, notwithstanding no application for probate had been made.

16. The Senior Investigator had ascertained from a review of the client matter file that the same had contained completed inheritance tax forms which had not been sent to HM Revenue and Customs. The forms showed a gross value for probate purposes of £995,033 and a net value of £984,651. The Second Respondent had indicated that he believed the figures to be correct.
17. Notwithstanding a number of requests from the executors for draft estate accounts, the same had not been provided to them. Mrs C (formerly Ms F) had requested information in relation to the estate given that it had been six years since the date of death.
18. Mrs C went on to say:-

"I note that there will have been substantial receipt of income during the period, particularly rental in respect of the garages that are let. Therefore can you please let me have an account showing income that has been received during the period since my father's death and also details of any outgoings including professional fees, tax, etc.
19. The Second Respondent had said that he had not provided Mrs C with the information that she had requested.
20. On 19<sup>th</sup> December 2005 a payment of £50,000 had been made to Mr and Mrs P, the executors of the F deceased estate, prior to probate being granted. The Second Respondent had indicated that the payment was in respect of expenses incurred by the executors personally. Whilst Mrs P was a beneficiary of the estate, Mr P was not.
21. The Senior Investigator had prepared an analysis of rental receipts extracted from the relevant account in the client's ledger for the period to 30<sup>th</sup> September 2006. The schedule showed that in excess of £365,000 had been received by the Respondents. The Second Respondent had not agreed the figure and had said that he wanted to check the two receipts of £100,000 shown as received on the same date, and that he would revert to the Senior Investigator by 9<sup>th</sup> May 2008.
22. The Senior Investigator had prepared an analysis of a sample of bills and client to office bank account transfers extracted from the relevant ledger in the client's ledger.
23. It had been identified that in the period December 2001 to February 2008 the Respondents had charged at least £250,000 in costs, representing approximately one quarter of the total value of the estate. The Second Respondent had indicated that he could not confirm the exact amount but that he was not surprised by the figure.
24. In response to a question from the Senior Investigator the Second Respondent had conceded that not all of the bills had been delivered to the executors.
25. The Senior Investigator had provided the Respondents with a second spreadsheet containing details of top copy bills (original bills) that he had discovered on the client

matter file in April 2008. The Senior Investigator had prepared a further analysis of 82 bills of costs posted to the relevant account during the period 26<sup>th</sup> September 2006 to 28<sup>th</sup> February 2008, and that those bills of costs and the relevant client to office bank account transfers totalled £95,417.77. The Senior Investigator had indicated that the top copy bills of costs, which he would have expected to have been delivered to the executors, were still on the client matter file when it had been examined by him in April 2008. When asked if the bills of costs had been delivered to the executors, the Second Respondent had said that he accepted that the bills had not been delivered and the First Respondent had said that he had no previous knowledge that the bills had not been delivered to the executors.

26. When asked by the Senior Investigator if they agreed that a cash shortage in an amount of £95,417.77 had existed as at the end February 2008, the Respondents had indicated that they wished to reserve their position, although they had accepted that a breach of Rule 19(2) had occurred in relation to the failure to deliver the bills.
27. The Senior Investigator had asked the Respondents if they agreed that they had taken a quarter of the capital value of the estate in costs. The Second Respondent had agreed that they had. When asked if that had been a fair and reasonable figure, the Respondents had indicated that they wished to reserve their position. In response to further questioning from the Senior Investigator as to the lapse of time and the fact that probate had not been obtained, the Second Respondent had indicated that he had intended to show the firm's costs in the estate accounts, supported by the individual bills, but that he had not thought the production of the estate accounts would have taken so long.
28. Whilst the Second Respondent had replied to the Senior Investigator by letter dated 9<sup>th</sup> May 2008, he had not provided details of the information promised during the course of the inspection.

#### The Estate of D deceased

29. The Second Respondent had overall control of the matter save for a period during 2003 when he had been taken ill and when the First Respondent had taken over dealing with the matter.
30. It was understood that the Second Respondent was a distant relative of Mr D who had died on 10<sup>th</sup> November 2001. Both Respondents had been executors of the estate and also directors of the deceased's companies.
31. It was understood that Mr D had no close relations. Probate had been granted on 14<sup>th</sup> January 2004 and the Respondents had been the executors and controlled trustees in the matter.
32. Correspondence on the client matter file had indicated that during the period January 2005 to April 2008 the Respondents had been in contact with Wilson Solicitors, who had acted on behalf of G, one of the beneficiaries identified in the Will. The Respondents had indicated that the draft estate accounts were to be prepared by an independent trust accountant and Wilsons had been seeking updates from the Respondents as to the progress being made in that regard.

33. By letter dated 20<sup>th</sup> February 2008 the Second Respondent had written to Wilsons making reference to problems they had experienced due to deficient bookkeeping by previous bookkeepers. As at April 2008 estate accounts had not been provided to Wilsons or indeed to any other interested third parties.
34. The Senior Investigator had provided an analysis of a sample of bills and client to office bank account transfers.
35. It had been ascertained, and the Respondents had confirmed, that during the period December 2001 to April 2007, 153 bills, totalling £407,282.20 had been charged to the D matter. The bills had been delivered to the Respondents themselves.
36. The Senior Investigator had asked the Respondents whether they had considered that charging approximately £400,000 in costs had been "fair and reasonable", to which the Respondents had indicated that they did.
37. The estate had been valued at approximately £1.8 million, which meant that the costs charged to the estate had represented approximately 22% thereof.
38. The Respondents had said it had been an unusual case and that the deceased had had no close relatives who might have been able to assist in the administration of his affairs.
39. The Respondents had conceded that their bill of costs had not been subject to any third party scrutiny and when asked if they were delaying the production of the estate accounts because they knew that their costs would be included therein and subject to challenge, the Respondents had not agreed.

#### Debit balances – unallocated transfers

40. It had been ascertained that during the period 28<sup>th</sup> February 2004 – 12<sup>th</sup> February 2008 debit balances, varying in amount between £0.01p and £6,120.63, and totalling £15,086.40, had arisen on seven accounts in the clients' ledger and having regard to proper set off balances held in client designated deposit accounts totalling £209.40, the net debit balances had totalled £14,877.00.
41. Included in the debit balances had been unallocated transfers during 2003/2004 totalling £6,120.63 which had not been allocated to any specific client ledger.
42. Further, during the period 9<sup>th</sup> to 31<sup>st</sup> January 2008, ten separate transfers from client to office bank account, totalling £5,145.00 had been made which had not been allocated to any specific client ledger.

#### Cash withdrawals from client account

43. The Senior Investigator had examined the firm's office bank account statements that showed that since September 2007 the account contained details of unpaid standing orders and unpaid direct debits with which the Respondents had agreed. Further, it had been ascertained that the overdraft facility, shown on the bank statement, until February 2008 had been £16,400 and that throughout the period September 2007 to

March 2008 the office account had been overdrawn at or about its maximum overdraft facility, and with little or no funds deposited to reduce the overdraft. It had appeared that the firm's bankers would not pay standing orders and direct debits. The Respondents had agreed that instead of transferring funds from client to office bank account in respect of costs, they had cashed client account cheques. The Respondents had confirmed that the firm had been in severe financial difficulty. The client account cheque book stub, examined during the course of the inspection, had shown that between November 2007 and February 2008 a total of £33,577.88 had been withdrawn in cash from the client bank account by the Respondents. The Senior Investigator had prepared an analysis on a spreadsheet from the information shown on the client bank account cheque book stubs.

44. The Senior Investigator had prepared a memorandum dated 12<sup>th</sup> May 2008 in response to the Second Respondent's letter dated 9<sup>th</sup> May 2008.

Allegation 12

45. By letter dated 15<sup>th</sup> September 2008 Murdochs Solicitors, acting on behalf of the First Respondent, had written to the SRA and advised that on 5<sup>th</sup> August 2008 the First Respondent had appeared before the Westminster Magistrates Court when he had entered guilty pleas to charges that on various dates between October 2006 and February 2007 he had made taxable supplies of services as a solicitor without giving security as required to do so by a Notice dated 19<sup>th</sup> October 2006, in contravention of the Value Added Tax Act 1994.
46. The First Respondent had been sentenced to a fine of £5,000.00 (£1,000.00 for each of the five charges) and ordered to pay costs.
47. Following Murdochs' letter of 15<sup>th</sup> September 2008, reporting matters to the SRA, the SRA had written to the First Respondent by letter dated 5<sup>th</sup> December 2008 seeking his explanation.
48. By email dated 23<sup>rd</sup> December 2008 Murdochs had provided an advice from Counsel on evidence together with a draft basis of plea document. Subsequently Murdochs had provided further material to the SRA.
49. The Second Respondent had been convicted of the same offence.
50. Before the Submissions of the Applicant, the Second Respondent had objected both to the statement of Geraldine Field and to the content of one of the First Respondent's personal references. Having heard submissions from Mr Treverton-Jones QC, the Tribunal directed that as Ms Field would be giving evidence and therefore could be cross examined by the Second Respondent, her witness statement was properly before the Tribunal. In addition, the Tribunal directed that paragraph 4 of the letter from Andrew Hochhauser QC be redacted. As an expert Tribunal it was able to exclude inappropriate evidence.



## The Submissions of the Applicant

51. The Applicant explained to the Tribunal that the First Respondent denied dishonesty but admitted allegations 1 - 6, 9, 10 and 12 and denied allegations 7, 8 and 11. Whereas the Second Respondent admitted all the allegations except allegations 7 and 8 and denied any dishonesty. The Applicant explained that allegations 3 - 8 involved the issue of dishonesty. He referred the Tribunal to the combined test for dishonesty as applied in the *Twinsectra* case. The Applicant also reminded the Tribunal of the words of Sir Thomas Bingham MR in Bolton v the Law Society Court of Appeal 1944 when he said:-

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal.”

52. The Applicant stressed that the allegations were extremely serious involving breaches of both the Solicitors Accounts Rules and of the Solicitors Practice Rules. He referred to the case of Weston v the Law Society CA 1998 in which Lord Bingham, the Lord Chief Justice had said that:-

“The Solicitors Accounts Rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded an onerous obligation was placed on solicitors to ensure that those Rules were observed.”

53. The Applicant referred the Tribunal to the two Forensic Investigation Reports dated 30<sup>th</sup> October 2007 and 28<sup>th</sup> April 2008. In particular, he noted that as at 29<sup>th</sup> February 2008 liabilities to clients as shown on the books of account totalled £72,632.72. However, that had not included further liabilities to clients not shown by the books of account totalling £95,417.77. These liabilities had resulted in a cash shortage of £115,439.77. That cash shortage had arisen from:-

1. The estate of Mr F deceased, client to office bank account transfers - bills not delivered £95,417.77.
2. Debit balances, £14,877.00.
3. Unallocated payments made from client bank account £5,145.00.

54. The First Respondent had told the Investigators, Mr Shaw and Mr Page, that he had had no dealings with the estate of Mr F deceased. The Second Respondent had explained that he was acting for the executors. He had confirmed the date of death as 14<sup>th</sup> May 2001, that no application for a Grant of Probate had yet been made and that the Will did not contain a charging clause. The Second Respondent also agreed that the executors had been asking for draft estate accounts which would have shown, inter alia, the firm's costs but that no draft estate accounts had been provided to them.

55. The Applicant explained that Mr Shaw had prepared a spreadsheet (available to the Tribunal) containing details of top copy bills (i.e. original bills that should have been sent out to the executors) that the Investigators had discovered on the client matter file of the estate of Mr F deceased in April 2008. The 82 undelivered bills of costs posted to the estate account during the period 26<sup>th</sup> September 2006 – 28<sup>th</sup> February 2008 and the relevant client to office bank account transfers had totalled £95,417.77.
56. The Applicant noted that the Second Respondent had agreed that the firm had taken a quarter of the capital value of the estate, some £250,000, in costs. The Applicant submitted that the Second Respondent had made unjustified claims for costs and that while the involvement of the First Respondent had been less than that of the Second Respondent, both Respondents had had the benefit of those costs and both had been signatories to the firm's client account. Moreover, the Applicant submitted that the Second Respondent knew that he had been transferring monies without bills and without sufficient work to justify such claims for costs and that in so doing the Second Respondent had been acting dishonestly. The Applicant referred to the statement of the Second Respondent in which he said "I was not aware that it was such a serious breach to take the costs without rendering an account."
57. Turning to the matter of Mr D deceased, the Applicant noted that the First and Second Respondents had been the executors and also the directors of the deceased's companies. Mr D had died in November 2001. The First Respondent had dealt with the matter when the Second Respondent was ill but the Second Respondent had taken over conduct again in mid 2003. Probate had been granted on 14<sup>th</sup> January 2004. During the period December 2001 - April 2007 the Respondents had charged at least £400,000 in costs being some 22% of the value of the estate which was approximately £1.8m. Some 153 bills of costs had been delivered over 6½ years. None of the bills of costs had been subject to any third party scrutiny. Although the Second Respondent had had the greater involvement, the Applicant submitted that the First Respondent's involvement was significant resulting in eight interim invoices to the value of £38,982.00.
58. During the period 28<sup>th</sup> February 2004 - 12<sup>th</sup> February 2008 debit balances, varying in amount between £0.01 and £6,120.63 and totalling £15,086.40, had arisen on seven accounts in the client ledger. After appropriate set off the net debit balances had totalled £14,877.00.
59. As at 29<sup>th</sup> February 2008 some £5,145.00 of unallocated payments had been made from client to bank account. They had not been posted to individual accounts in the client ledger. However, the recipients of the cash had been the Respondents as "drawings" and the bookkeeper as "fees".
60. The Applicant referred to the sum of £33,577.88 in allocated cash withdrawals made from client bank account. He explained that throughout the period September 2007 - March 2008, the Respondents' office account had been overdrawn at or about its maximum overdraft facility with the result that it appeared that the firm's bankers had not been paying standing orders or direct debits. Instead of transferring funds from client to office bank account in respect of costs, the Respondents had cashed client account cheques because the firm had been in severe financial difficulties. The Tribunal was referred to a spreadsheet prepared by the Investigators that indicated that

client account cheques had been cashed and items allocated later although some matter items had not subsequently been allocated at all.

61. The Applicant drew the Tribunal's attention to the First Respondent's statement in which he had accepted that the Respondents had drawn cash from client account from about late 2007 and that such had been wrong, although he had not realised that at the time.
62. Turning to allegation 12 in the supplementary statement, the Applicant explained that both Respondents accepted the allegation in the light of their convictions.

### **Submissions on behalf of the First Respondent**

63. Mr Treverton-Jones QC explained that the First Respondent accepted all the allegations relating to Accounts Rules breaches in his capacity as a partner irrespective of who had carried out the work. However, apart from the period from December 2001 to July 2002, during the Second Respondent's illness, the First Respondent had not been involved in the estates of either Mr F or Mr D.
64. *[Respondent 1]* gave evidence relying on his statements dated 13<sup>th</sup> May 2009 and 17<sup>th</sup> May 2009. He detailed his professional history and his current role as an employed solicitor with a conditional practising certificate. He stressed that he had the benefit of an extremely supportive firm and many supportive clients. The First Respondent explained that both he and the Second Respondent had undertaken their own billing. He had always kept good records and his bills had always been time based. The First Respondent had assumed that the Second Respondent had done the same. He explained how the responsibilities of the firm had been divided up between the two partners with the Second Respondent being responsible for the financial management of the firm.
65. The First Respondent explained the firm's difficulties with bookkeepers. He said that these difficulties had resulted in some qualified accountant's reports in 2006 and 2007. However, before the second visit of the Investigators, he had impressed upon the Second Respondent the urgency of getting his matters corrected. The First Respondent had been satisfied that by August 2007 all his own matters had been in order.
66. The First Respondent stressed that at the time he had not realised that drawing cash from client account had been a breach Rule 22 of the Solicitors Accounts Rules 1998. He believed that once the bill was issued he had been entitled to take the cash and had kept a full record of cash withdrawals and transfers made.
67. The First Respondent said that the estate of Mr F had been the Second Respondent's matter and that his role in the estate had been very limited. The First Respondent had assumed that the Second Respondent had been dealing with the matter properly.
68. The First Respondent confirmed that as from late 2001 - July 2002 he had been dealing with the estate of Mr D and that during that time he had kept detailed financial and time costs records on the file.

69. The First Respondent stressed that he had been in partnership with the Second Respondent from 1987. Both were experienced solicitors and both had got on with their own work. Although he acknowledged the Second Respondent could be somewhat lax in implementing systems that he had tried to put in place, he had trusted his partner and had had no reason suspect any dishonesty or professional impropriety. He had had no reason to check the Second Respondent's files. In relation to allegation 12 the First Respondent had taken Counsel's advice and had admitted the offence on the basis of strict liability. The VAT in question was subsequently paid. He apologised both to the Solicitors Disciplinary Tribunal and to the Solicitors Regulation Authority.
70. In the cross examination by the Applicant, the First Respondent acknowledged that he had admitted serious matters, that there should never be a deficit on the client account and that from 2005 the firm's accounts had been in some disarray. He accepted that 19 overdrawn client ledgers, totalling £7,871.61 had arisen during the period 3<sup>rd</sup> September 2002 to 24<sup>th</sup> July 2007. He had been aware of the qualified accountant's reports and had taken steps in relation to his matters. Moreover, he had urged the Second Respondent also to take all appropriate steps to correct his matters. However, the First Respondent stressed that he had never experienced any problems in accounting to his clients and had not been made aware of any problems with the Second Respondent's matters.
71. The First Respondent said that after August 2007 he had been extremely concerned by the contents of the second Forensic Investigation Report and although he had continued to trust the Second Respondent to deal with the finances of the firm, the First Respondent had moved to become more hands on and had increased his involvement with the firm's bookkeeper. However, following the Investigators' visit in March 2008, the First Respondent had been shocked to learn that the Second Respondent had been invoicing the F estate but had not delivered the bills. The First Respondent insisted that he had had no reason to suspect that those bills had not been sent out and that he had not seen correspondence from the beneficiaries. However, he stressed that there had been substantial fees incurred because of litigation arising from a bitter rent review dispute.
72. The First Respondent agreed that he had had greater involvement in the matter of the estate of Mr D, both as an executor of the estate and during the Second Respondent's illness from November 2001 to June 2002. It had been a most unusual matter involving a great amount of work with no third party scrutiny; the residual beneficiaries being charities. The deceased had committed suicide and there had been no one with knowledge of his affairs. This had resulted in the First Respondent having to trace and locate assets and bank accounts. The First Respondent had kept detailed attendance notes to support his bills but had not been aware of all of the firm's bills on the file. The First Respondent explained the nature of the work he had undertaken on the file. He insisted that he had not been aware of the residuary beneficiaries chasing matters nor of the extent of the firm's bills to the estate. He had been aware that the estate accounts had needed to be corrected and finalised but he had trusted his partner in this. He stressed that given the amount of work involved he had not considered fees of 22% of the value of the estate necessarily high.

73. The First Respondent accepted that he should have checked the Rules relating to drawing cash from client account but at the time had not realised that it was wrong. However, he insisted that he signed cheques believing that bills had been delivered.
74. In response to cross examination by the Second Respondent, the First Respondent said that files had been in a mess because of the failures of a former accounts clerk. However but while he had put his files in order, the Second Respondent had failed to do the same. The First Respondent insisted that the Second Respondent had always signed the reconciliations except when away from the office because of his illness.
75. The First Respondent said that generally he had not attended the meetings between the financial controller (GN) and the Second Respondent. He insisted that the Second Respondent had said that he wished to deal with the firm's finances. The First Respondent explained that he had been the better generator of work and had only taken on about 25% of the firm's administrative work. He agreed that it had been a joint decision to take cash from client account rather than to transfer costs into office account but he had not realised at the time that such was in breach of the Rules.
76. In re-examination the First Respondent confirmed that no clients had alleged that monies had been lost nor were there allegations of him overcharging in relation to the estates. All his invoices had been based upon accurately recorded time.
77. Geraldine Field gave evidence on the basis of her statement relating to her employment as a secretary at Roodyn Manski Solicitors from October 2006 to May 2008.
78. In cross examination by the Applicant, Ms Field said that she had not raised the matter of the bills remaining on the file of the late Mr F because she had assumed that the First Respondent had been aware of the arrangement that had been explained to her by the Second Respondent.
79. In cross examination by the Second Respondent, Ms Field confirmed that any of her pay cheques that had been returned unpaid had been drawn on office account. Some 20 - 30 cheques had been returned unpaid. She had understood from the First Respondent that the Second Respondent had dealt with the firm's financial matters.
80. Stephen Nigel Porter gave evidence about the relative roles of the Respondents and of the First Respondent's character and his present employment in Mr Porter's firm.
81. In cross examination by the Second Respondent, Mr Porter explained that his knowledge of what had taken place was based upon the Rule 5 Statement and the Forensic Investigation Reports and of his understanding of the characters of the First and Second Respondents. He believed that the Second Respondent had been dishonest. In response to a question from the Tribunal Mr Porter said that it was his view that the Second Respondent had concealed things from the First Respondent and in his professional view that he had in fact acted dishonestly.
82. In clarification, the Applicant stressed that he was not relying on the witness's speculation as to dishonesty. While dishonesty was not an essential ingredient of

allegations 3, 4, 5, 6, 7 and 8, the case was put as against both Respondents on the basis that they had been dishonest in relation to all or any of those specific allegations.

### **Submissions by the Second Respondent**

83. The Second Respondent explained to the Tribunal that he admitted allegations 1 - 6 and allegations 9 - 12 but that he denied allegations 7 - 8 and that he denied any dishonesty. He referred to and relied upon his statement. He apologised both to the profession and to his clients in that he had fallen short of the standards required. He had not renewed his practising certificate.
84. The Second Respondent stressed that the decision to take cash from client account had been a joint decision with the First Respondent and that Ms Field had accepted that the bills were in the file. Moreover, no allegations of overcharging had been made by the executors in the estate of F and it had always been his intention to produce estate accounts. An incompetent bookkeeper had added to the problems of both the F and the D estates. The Second Respondent referred the Tribunal to the letter of Martin Potter dated 8<sup>th</sup> May 2009. He stressed that he had never taken costs without producing a bill but that he had been out of his depth in relation to the production of the estate accounts for both the estate of F and the estate of D as both had been ongoing matters.
85. The Second Respondent explained about his severe health problems and the ongoing consequences. He also referred the Tribunal to the letter from his Consultant, Mr Simon Witney. The Second Respondent said that he would have appreciated more input from the First Respondent on the financial side of their business. He stressed that he had a good reputation in the field of libel law and that he believed that had he not got involved in probate he would not now be before the Tribunal. The Second Respondent explained that as he was not working, he had no funds for representation.
86. In response to a question from the Tribunal, the Second Respondent said that he did not believe that he had overcharged and that he had not seen the letter dated 4<sup>th</sup> May 2009 from the executor for the late Mr F saying that redress was to be sought, before yesterday (18<sup>th</sup> May 2009).

### **Submissions on behalf of the First Respondent**

87. Mr Treverton-Jones explained that the First Respondent admitted allegations 1 - 6 and allegations 9 and 10, save for the dishonesty element. He denied allegations 7, 8 and 11 but admitted allegation 12. Leading Counsel submitted that all breaches must be proved to the criminal standard and that the Tribunal had had the opportunity to judge the First Respondent by the way he had reacted to questions during his lengthy oral evidence. Mr Treverton-Jones stressed that the serious problems in the firm had arisen on the Second Respondent's files whereas the problems on the First Respondent's files had been less serious and had been remedied rapidly.
88. Leading Counsel explained that the First Respondent accepted that he could have done more in relation to the Accounts Rules breaches on the Second Respondent's files but that he had trusted his partner. As for the cash withdrawals from client account, he had not realised that they were not allowed but he had kept meticulous

records so that there was a clear paper trail. Leading Counsel submitted that the First Respondent had been mistaken but not dishonest in his actions. He stressed that the First Respondent had always been truthful, coherent, cogent and apologetic. All the documentation supported his denials. There were full records of his work on all files. The Tribunal had been provided with evidence about the contrast in billing methods of the two partners. The Tribunal also had character evidence relevant to the issue of dishonesty. The more serious allegations related to the Second Respondent's files. Leading Counsel submitted that the evidence showed that the First Respondent had been let down by his partner. The First Respondent had not misappropriated monies nor made unjustifiable claims for costs. Leading Counsel submitted that the allegations in dispute had not been proved and that the Tribunal could not be satisfied that the First Respondent's explanations were deliberately misleading and wrong.

### **The Decision of the Tribunal**

89. Having considered all the evidence, both oral and documentary as against the First Respondent and applying the higher standard of proof, the Tribunal was satisfied that all the allegations that were admitted were found proved i.e. allegations 1 - 6, 9, 10 and 12. The Tribunal found allegations 7 and 11, which had been denied, proved but the Tribunal found allegation 8, which had also been denied, not proved. The Tribunal did not find dishonesty proved against the First Respondent in relation to any of the allegations.
90. As against the Second Respondent, the Tribunal found all the admitted allegations proved i.e. allegations 1 - 6 and 9 - 12. It also found allegations 7 and 8, which had been denied, proved. Turning to dishonesty, the Tribunal found dishonesty proved in relation to allegations 3, 4, 7 and 8. The Tribunal was satisfied so that it was sure that in not sending bills out and in overcharging, the Second Respondent's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

### **Mitigation on behalf of the First Respondent**

91. Mr Treverton-Jones QC expressed the view that in the light of the Tribunal's findings and the massive gulf between the Respondents, a financial penalty would be an appropriate sanction. He reminded the Tribunal that following the intervention, the First Respondent had been given his practising certificate back with conditions, which he had kept. Leading Counsel submitted that the public interest did not require the interruption of the First Respondent's practice. He referred both to the financial and to the emotional costs of the intervention and of the First Respondent's appearance before the Tribunal. He also provided details of the First Respondent's means.

### **Submissions as to Costs**

92. The Tribunal was informed that all parties had agreed costs to be fixed in the sum of £35,000.00. The Applicant sought a joint and several order whereas Mr Treverton-Jones QC sought an apportionment between the two Respondents.
93. The Second Respondent said that he had nothing further to add by way of mitigation and would leave the issue of apportionment to the Tribunal.

**The Tribunal's Decision as to Penalty and Costs**

94. Having investigated the financial position of the Second Respondent, the Tribunal ordered that the First Respondent pay a contribution of £10,000.00 and the Second Respondent £25,000.00 to the fixed costs of £35,000.00.
95. Given its findings as to dishonesty in relation to clients' monies the Tribunal was satisfied that both the protection of the public and the maintenance of the reputation of the profession required that the Second Respondent be struck off the Roll of Solicitors. The Tribunal was satisfied that the conduct of the First Respondent merited a financial penalty and accordingly the Tribunal imposed a fine of £20,000.00.

Dated this 23<sup>rd</sup> day of December 2009

On behalf of the Tribunal

D Green  
Chairman