SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10172-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW JAMES WATKINS Respondent

Before:

Ms K. Thompson (in the chair)
Mr A. G. Gibson
Mrs S. Gordon

Date of Hearing: 11th April 2013

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Proceedings against the Second Respondent, Catherine Mary Bernadette Hartland, were severed and Judgment was delivered by the Tribunal on 13 July 2011.

Allegations

1. The allegations against the First Respondent, Andrew James Watkins and the Second Respondent, were that:-

Set out in a Rule 5 Statement dated 22 December 2008

1.1 In breach of Rule 20.03 of the Solicitors Code of Conduct 2007 they have not dealt with the Authority and the Legal Complaints Service in an open, prompt and cooperative way; [the allegation was withdrawn against the Second Respondent]

1.2 They have failed to deliver their accountants report for the period ended the 31 January 2008, due by the 31 August 2008.

Set out in a Rule 7 Statement dated 25 January 2010

2.1 In breach of Rule 13 of the Solicitors Accounts Rules 1998 they held or received into client account monies other than those permitted by the said Rule;

2.2 In breach of Rule 19(2) of the said Rules they withdrew monies from client account purportedly in respect of costs properly due without having first delivered to the client a bill or other written notification of costs;

2.3 In breach of Rule 22 of the said Rules they withdrew monies from client account in circumstances other than permitted by the said Rule;

2.4 In breach of Rule 24 of the said Rules they failed to account to clients the interest earned on client account;

2.5 In breach of Rule 32 (7) of the said Rules they failed to reconcile client cash account with client account bank statements;

2.6 They operated a suspense account in breach of Rule 32 (16) of the said Rules;

2.7 [withdrawn]

Dishonesty or alternatively gross recklessness was alleged against this Respondent in regard to allegation 2.3, although it was not necessary to establish dishonesty for the allegation to be made out.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 22 December 2008;
- Rule 5 Statement dated 22 December 2008 and exhibit "DEB1"
- Rule 7 Statement dated 25 January 2010 and exhibit "DEB2";
- Applicant's supplementary bundle;
- Witness Statement of Ceri Hughes dated 8 July 2009 and exhibit "CH1";
- Witness Statement of Lorraine Bak dated 9 July 2009;
- Witness Statement of Mark Taylor dated 10 July 2009 and exhibit "MT1";
- Extract of the Register from HM Land Registry relating to a property in Rhoose, Barry title number CYM376032, jointly owned by the Respondent.
- Applicant's Schedule of Costs dated 6 March 2013.

Respondent:

- Letters from the Respondent's mother addressed to the Clerk to the Tribunal dated 10 July 2011 and 5 November 2012, together with a response from the Clerk dated 9 November 2012;
- Report of Dr Peter L Jenkins dated 21 March 2012;
- Undated letter from Mr R Withers at Hafal;
- Letter dated 10 February 2011 from Dr Sue Smith at the Amy Evans Centre, together with medical certificate dated 11 August 2010;
- Report dated 5 April 2013 from Mr Simon David James.

Tribunal:

- Memorandum of Application on 16 February 2010;
- Judgment in respect of the Second Respondent and Memorandum of Application for Adjournment in respect of the Respondent on 13 July 2011;
- Memorandum of Mention on 17 October 2011;
- Memorandum of Adjournment and Directions on 13 December 2011;
- Memorandum of Adjournment on 20 April 2012;
- Memorandum of Case Management Hearing on 26 November 2012.

Preliminary Matter (1)

4. Mr Barton noted that the Respondent was not present. He told the Tribunal that the SRA application and the Rule 5 Statement went back a considerable length of time to 22 December 2008. A Rule 7 statement dated 25 January 2010 had been served upon the Respondent. The Second Respondent in the matter had been dealt with by the

Tribunal on 13 July 2011 but the hearing involving this Respondent had been serially adjourned due to his medical circumstances.

5. A Report upon the Respondent had been received yesterday, 10 April 2013, from a Mr Simon James, who was not medically qualified but was a social science specialist with a degree in social policy issues and mental health and social care and that Report was before the Tribunal. Mr James' opinion was that the Respondent could neither take part in, nor care about, the current proceedings due to his state of health and that it was not in the interests of the SRA or the Respondent to continue to bring charges against him.

6. In Mr Barton's submission, the first issue for the Tribunal to decide was whether to proceed with the hearing in the Respondent's absence and in this regard the Tribunal should consider all of the medical evidence, which typically arrived two to three days before a hearing.

7. Mr Barton had attempted to get updated information from the mental health support organisation Hafal but had not met with any success. Neither had anything been received directly from Dr Sue Smith, the Respondent's consultant psychiatrist at the Amy Evans Clinic in Barry, since her letter dated 10 February 2011. Mr Barton had spoken to her yesterday; she had been away from the office but had had no recollection of seeing the Respondent recently. As the Report from Mr James had arrived in the interim, Mr Barton had not taken matters any further with Dr Smith.

8. Mr Barton had received no response from the Respondent himself.

9. The initial medical report on the Respondent had come from Dr Jenkins, a consultant psychiatrist, on 21 March 2012 and this had been commissioned by the SRA; that report was before the Tribunal as was the other historic medical evidence. Mr Barton read out selections from Dr Jenkins' report concerning the need for the Respondent to undergo further treatment. However, Mr Barton told the Tribunal that there was no evidence that the Respondent had submitted to any further treatment and Dr Jenkins' report was now just over a year old.

10. In Mr Barton's submission the evidence from Mr James had been served late, as had a number of previous reports on the Respondent. It was accepted that this may have been as a direct consequence of the Respondent's on-going illness. Moreover, it was simply not possible to tell who had sent Mr James's report as there was no covering letter. The Tribunal should take note that no recent opinion had been expressed by a medical consultant. It was further observed by Mr Barton that Mr James had made comment that the Respondent was unable to travel without support and that he was unsure whether the Respondent's health would improve in the foreseeable future, mainly because he was unwilling to take medication on a regular basis. Mr James seemed to say that it was in the interests of the Respondent that the matter be resolved.

11. There was a letter attached to Mr James's report which was from the Respondent and had been signed by him, although Mr James had said he was not aware of who had prepared it. In the letter, which was dated 4 April 2013, the Respondent said that he had discussed his future with his mental health team and had decided that in order to

remain well he could no longer work in a legal environment. He went on to say that he understood he would be removed from the Roll of Solicitors and would not work in law in future; neither would he apply to be re-admitted. He continued:

> "I am not well enough to defend myself in the current proceedings but I do believe that it is in my interests to bring this matter to a conclusion. I do the above on the basis that I can draw a line under the proceedings and I will not have to deal with correspondence from the Tribunal or the prosecution in the future."

12. He also said that he accepted that he needed help and that he would do what he could to get assistance from agencies that were able to provide it.

13. Mr Barton said that there was a conflict between the contents of this letter and the contents of other parts of Mr James's report. On the one hand it was said that the Respondent was able to sign such a letter as he appeared to understand the effects of signing it and on the other that he was unable to participate in the proceedings due to illness.

14. In Mr Barton's further submission the principal legal issue to be addressed by the Tribunal was whether the Respondent's illness and absence from the hearing was an obstacle to this Tribunal hearing the matter. The SRA was not minded to withdraw the allegations against the Respondent as they were serious. The Tribunal had given the Respondent extra time to seek help and support and had adjourned the case on a number of previous occasions. It now appeared that the Respondent had not taken advantage of those adjournments.

15. Mr Barton referred to two authorities. The first case was that of Brabazon-Drenning v United Kingdom Central Council for Nursing Midwifery and Health Visiting [2001] HRLR 6. In that case the High Court had considered whether it was right to hear a disciplinary case in the absence of the Respondent when the basis of that absence was said to be due to her illness. Mr Barton quoted from the judgment of Mr Justice Elias in that case:

> **"**18. In my judgement, this hearing plainly should have been adjourned. Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the public's hands, to go on with the hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigours of the disciplinary process.
>
> 19. I do not accept that the qualification of the doctor's letter, in the second paragraph, to which I have had adverted, changes the position. Even if the inability of the appellant to appear was, in part, as a consequence of her failing to take pills which had been prescribed for her, it is not suggested in any way that was done deliberately so as to avoid the hearing or anything of that kind. We have no idea why she failed to take these pills; maybe they had unpleasant side-effects. But in any event, in my view none of this is to the point. She clearly was unable to

attend this hearing because she was too ill to do so. In those circumstances, I do not think that there were any overriding public interest considerations which should have deprived her of a basic right to be present when the case was put against her, and to be in a position where she could either cross examine herself, or have a representative with whom she could communicate cross examine on her behalf. It was a breach both of the principles of natural justice and Article 6.

20. I do recognise the practical difficulties which a committee faces in circumstances of this kind. I do appreciate that it may be very irritating for the Committee when an application to adjourn comes late in the day (albeit that there had been some indication… that the appellant might wish to have an adjournment). But in my view that fact does not override the need to ensure that fairness is done, and that the appellant is given a proper opportunity to put her case. In addition, I think it must be recognised that when an individual is suffering from what may be a rather bleak and black depression, at the appellant appears to have been in this case, it is perhaps unrealistic to expect to show the normal courtesies that she might, no doubt, show if she were fully fit. She may simply be unable to face up to her situation."

16. Mr Barton told the Tribunal that he drew a distinction between Brabazon-Drenning and this case. In Brabazon-Drenning there had been a positive application for an adjournment of the hearing which was not present in this case. In addition, there had been a significant number of previous adjournments of the matter now before them.

17. Mr Barton also referred to the criminal case in the Court of Appeal, R v Hayward, Jones and Purvis [2001] EWCA Crim 168. In the judgment in that case the principles which should guide the English courts in relation to the trial of a defendant in his absence were amplified. Mr Barton asked the Tribunal to take particular note of the fact that one of the principles was the general public interest that a trial should take place within a reasonable time of the events to which it relates. In this case there was a significant public interest which supported the proposition that the case should proceed today. Mr Barton had already indicated the apparent inconsistency between Mr James's report and the letter attached to it. Importantly, the Applicant could not challenge Mr James's report not least because of its late emergence. In that regard Mr Barton questioned the weight that could be given to Mr James's report.

18. It was the Applicant's position that the case should proceed today.

The Tribunal's Decision on Preliminary Matter (1)

19. The Tribunal had considered very carefully everything that had been said and submitted on behalf of the Applicant and all of the documentation that they had before them in relation to the Respondent. In this case the Tribunal had been particularly careful to take into account the position of the Respondent as he was not present and was not represented.

20. The Tribunal found that as a matter of fact there was no application for an adjournment before them today; on the contrary everything that they had read

concerning the Respondent indicated that it would be a great relief to him if the matter were dealt with by the Tribunal and he himself had indicated a way in which the matter might be brought to a conclusion. Even if the Tribunal had found that an application for an adjournment was before them today, they noted that the Tribunal's own Policy/Practice note on Adjournments would not support an adjournment, since there was no reasoned opinion of an appropriate medical adviser before them in relation to the present hearing. The Tribunal was thus able to distinguish between the facts in this case and those in the case of Brabazon-Drenning.

21. When considering whether to proceed In the Respondent's absence the Tribunal had considered both of the authorities referred to by Mr Barton and was aware that the principles in R v Hayward, Jones and Purvis had been adopted in disciplinary cases (Tait –v- the Royal College of Veterinary Surgeons [2003] UKPC 34). The Tribunal had applied those principles and was fully aware that the discretion as to whether the hearing should take place in the absence of the Respondent should be exercised with utmost care and caution and that only in rare and exceptional cases should it be exercised in favour of the hearing taking place. This was particularly the case where the Respondent was unrepresented. Fairness to the Respondent was of prime importance but fairness to the Applicant must also be taken into account.

22. The Tribunal did conclude that it was a rare and exceptional case when a hearing continued in the absence of the Respondent. Here the Respondent had not engaged in the proceedings over a lengthy period of time; he had absented himself from all previous hearings. The Tribunal did not believe that any adjournment would result in the Respondent's attendance based upon the previous pattern of events; there had been a number of previous adjournments and none of them had resulted in his attendance. Any disadvantage that the Respondent might suffer as a result of his not being present to give his account of events could be mitigated by the Tribunal taking very particular care to examine any evidence presented by the Applicant from his point of view. In this respect the Tribunal noted that the vast majority of the evidence was based upon documents from the Respondent's own office. This was a serious matter which included an allegation of dishonesty and there was a public interest element in having it heard as soon as possible; the Tribunal also believed that it was in the long term interests of the Respondent that the matter be concluded.

23. In all of the surrounding circumstances, the Tribunal had concluded that, on balance, it was right that the matter should proceed.

Preliminary matter (2)

24. Mr Barton told the Tribunal that allegation 2.7 had not been proved against the Second Respondent and that he therefore applied for it to be withdrawn against this Respondent.

The Tribunal's Decision on Preliminary matter (2)

25. The Tribunal had listened to what Mr Barton had to say concerning allegation 2.7 and agreed that it should be withdrawn against this Respondent.

Factual Background

26. The Respondent was born in January 1966 and was admitted as a Solicitor on February 1995. His name remained of the Roll of Solicitors. At all material times the Respondent was carrying on practice under the style of Hartland Watkins Solicitors ("the firm") of 14 Prince Street, Newport, Gwent MP19 8DS, together with Catherine Mary Bernadette Hartland who had been the Second Respondent in this matter.

Allegation 1.1

27. The Legal Complaints Service wrote to the Respondent on 26 September 2007, 22 October 2007, 10 January 2008, 29 February 2008 and 10 March 2000. There was no response.

28. The SRA wrote to the Respondent on 16 April 2008 and 3 June 2008. There was no response.

Allegation 1.2

29. The Accountants Report for the firm for the period ending 31 January 2008 was due for delivery by 31 August 2008 but the report remained outstanding. The letter from the SRA requesting delivery of the report had received no reply.

30. On 23 March 2009 Mr David Bailey, an investigation officer of the SRA ("the Investigation Officer") commenced an investigation of the Respondents' books of account and other documents.

Allegation 2.1

31. The Investigation Officer found that the firm allowed funds belonging to the partners of the firm to be held or received into the firm's client bank account in respect of personal conveyancing transactions.

Allegation 2.2 and 2.3

32. As at 28 February 2009 there was a cash shortage on client account of £35,836.84. The shortage was caused by the transfer of money from client to office account without delivery of a bill or other written notification of costs to the clients concerned. The sum of £36,259.74 had been transferred in this way on the 28 November and 31 December 2008. An examination by the Investigation Officer of a number of the individual client ledgers revealed that disbursements and bills of costs had been debited to the office side of the client ledger with a consequent transfer of money from client to office account.

33. In each case, the amounts transferred were the exact balances standing to the credit of the client ledger, thereby reducing it to a nil balance. None of the bills was delivered to the clients, who were not notified of the charges, and the files examined by the Investigation Officer did not reveal the conduct of any legal work undertaken on behalf of a client justifying such further costs.

34. The firm's overdraft facility was £35,000 and at the time of the inspection the debit balance was £32,000.

35. The Respondent met with the Investigation Officer on 15 April 2009 and he was asked if he agreed that the money belonged to the firm's clients and he answered by saying "Yes, I didn't even think if it belonged to anyone. All I saw were old ledgers". He accepted that he had not posted bills to the clients and that the intention was to close down the ledgers. He said he could borrow money from family and replace it.

36. The recurring features of the transactions were: –

    (i) bills were drawn describing the provision of legal services where the file showed no such work had been undertaken; the lapses in time between the receipt of money into client account and the transfer was consistent with a transfer of funds of finished matters;

    (ii) the bills contained no details of what was claimed to have been done and when;

    (iii) bills were not delivered to the client; none appeared to have been contacted and many bills contained no addresses;

    (iv) the bills were calculated in the exact amount outstanding to the credit of the ledgers.

37. By letters dated 8 September 2009 the SRA wrote to both of the Respondents to ask for an explanation for matters raised in the forensic investigation report.

38. On behalf of the Respondent it was conceded that he accepted there had been

> "… A misguided clearing up exercise, which he believed in good faith was under the direction and in accordance with the advice of the firm's accountants – those very people who were charged with policing compliance with the Accounts Rules".

Allegation 2.4

39. The Investigation Officer found that the firm failed to account to clients of the monies in lieu of interest held in the general client.

Allegation 2.5

40. The Investigation Officer observed that the firm failed properly to reconcile client cash account with the client bank statements and client listing and to prepare a reconciliation statement showing the cause of any differences shown by each of the comparisons.

Allegation 2.6

41. The Investigation Officer observed that prior to 31 July 2008 the firm had applied a procedure whereby monies due to the firm were transferred from client bank account to the office bank account by way of round sum transfers, without reconciliation.

42. On 31 July 2008 a reconciled amount of £5,322.29 was credited to a separate suspense ledger in the client account. The Investigation Officer was informed by the accountant, Mr J, that this amount represented monies which were due to the firm and that the ledger account had been created as a temporary measure pending the reconciliation of bills rendered with funds transferred.

43. The Investigation Officer observed that as at the inspection date the suspense account had not been reconciled and still reflected a credit balance of £5,322.29.

Witnesses

44. Mr David Bailey, the Investigation Officer of the SRA gave sworn oral evidence.

45. In his evidence Mr Bailey confirmed that he had carried out the forensic investigation at the firm and that the FI Report dated 30 July 2009 was true to the best of his knowledge and belief.

Findings of Fact and Law

46. The Tribunal treated each of the allegations as having been denied by the Respondent. The burden was therefore on the Applicant to prove each allegation beyond reasonable doubt.

47. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

48. **Allegation 1.1: In breach of Rule 20.03 of the Solicitors Code of Conduct 2007 they have not dealt with the Authority and the Legal Complaints Service in an open, prompt and cooperative way; [the allegation was withdrawn against the Second Respondent]**

Allegation 1.2: They have failed to deliver their accountants report for the period ended the 31 January 2008, due by the 31 August 2008.

48.1 Mr Barton told the Tribunal that witness statements had been obtained from Mark Taylor and Lorraine Bak at the SRA and Ceri Hughes at the Legal Complaints Service. These statements were before the Tribunal and had been served upon the Respondent.

48.2 In relation to allegation 1.1 a complaint had been made to the Legal Complaints Service by a client of the firm, a Mr B, relating to the administration of the estate of a Ms M. Ms Hughes had written to the Respondent on a number of occasions

concerning the matter but had received no response. Mr Taylor had also written to the Respondent on 16 April 2008 and 3 June 2008 and had received no response.

48.3 Mr Barton submitted in relation to allegation 1.2 that, as was clear from Ms Bak's witness statement, the accountants report for the period ending 31 January 2008 was due to be delivered by 31 August 2008 but was not filed until 2 March 2000.

48.4 The Tribunal noted that Mr Andrew Hopper had initially been instructed by the Respondent concerning, amongst other things, these two allegations, and noted the contents of his letter dated 23 October 2009 to the SRA at pages 76 to 83 of DEB/2.

48.5 The Tribunal had considered all of the evidence before them concerning both of these allegations and found both of them to have been proved beyond a reasonable doubt on the facts and documents before them.

49. **Allegation 2.1: In breach of Rule 13 of the Solicitors Accounts Rules 1998 they held or received into client account monies other than those permitted by the said Rule**

49.1 Mr Barton told the Tribunal that this allegation was based upon the Investigation Officer finding the firm allowed funds belonging to partners of the firm to be held or received into the firm's client bank account in respect of personal conveyancing transactions.

49.2 The Tribunal, having considered the evidence in respect of this allegation, found it to have been proved beyond reasonable doubt on the facts and documents before them. The Tribunal regarded this breach as less serious due to the circumstances of breach.

50. **Allegation 2.2: In breach of Rule 19(2) of the said Rules they withdrew monies from client account purportedly in respect of costs properly due without having first delivered to the client a bill or other written notification of costs;**

Allegation 2.3: In breach of Rule 22 of the said Rules they withdrew monies from client account in circumstances other than permitted by the said Rule.

50.1 Mr Barton took the Tribunal to the relevant paragraphs of the forensic investigation report. On 28 February 2009 a cash shortage of £35,836.84 existed on the client account of the firm. The cash shortage was caused by £36,259.74 being transferred to office bank account without delivery of bills of costs, less a surplus of £422.90. The Investigation Officer had observed that the firm had acted for a number of clients in the past where old residual credit balances, representing monies due to the respective clients, had been retained on the individual client ledgers and the firm had failed to account to clients for monies due to them. The Respondent had gone about transferring those funds to the office bank account to reduce the individual client ledgers to nil and the Investigation Officer had noted, following his examination of a number of the individual client matter ledgers, that the amounts written on a schedule in the Respondent's handwriting had been posted by the Respondent either as a disbursement or as a bill of costs on the office side of the client ledger. The residual credit balance shown on the client side of the client ledger was then transferred to the office side of the client ledger to enable the closure of the relevant client ledger. The Investigation Officer had examined a number of client matter files and concluded that

the bills rendered did not represent any further legal work performed on behalf of the client and had not been delivered to the clients concerned.

50.2 At a meeting on 15 April 2009, the Investigation Officer had asked the Respondent concerning these balances:

> "Q. Do you agree that the money belonged to the clients?
>
> A. Yes, I didn't even think if it belonged to anyone. All I saw were old ledgers.
>
> Q. I assume that none of these bills were posted to the clients on this list?
>
> A. No, none were sent.
>
> Q. At the time did you intend to retain the money?
>
> A. My intention was to close down the ledgers.
>
> Q. What is your overdraft facility?
>
> A. £35,000.
>
> Q. What is your current balance (in office)?
>
> A. Currently it is £32,000.
>
> Q. Are you in a position to refund these monies?
>
> A. Yes I can borrow the money from my family. I will review all the files and ledgers and check the mathematics and issue cheques or (for the small balances) send them postage stamps.
>
> …
>
> Q. One of the ledgers which I have seen is Swalec. Do you have the file?
>
> A. Not at hand.
>
> Q. It would appear that a residual balance of £1,495.08 existed in client account as at 30 November 2000 and that a cheque was issued on 11 November 2000 which was reversed on 1 April 2008. I imagine the cheque was not presented. On 28 November 2008 a bill plus VAT totalling £1,495.08 was issued and the funds transferred into office.
>
> A. Yes, I had a list of uncleared cheques, or cheques which the accountant thought were uncleared, because the bank reconciliations had not been done correctly. Swalec was South Wales Electricity and is now Scottish Power, I think.
>
> Q. Was this part of the sweeping exercise?
>
> A. It was done to close the ledger down.
>
> Q. Was the bill posted to the client?
>
> A. No, they don't exist anymore."

50.3 In questioning from the Tribunal Mr Bailey said that whilst there was an example of a bill with an address on it before them in the exhibit bundle, a lot of bills showed no

address. He also confirmed that dishonesty had not been raised specifically with the Respondent.

50.4 Mr Barton also took the Tribunal to those parts of the forensic investigation report that referred to purchases of property by Mr P and a Mr W where residual funds had remained on client account following completion of the purchases. In the case of Mr P there was a surplus of £250 remaining on client account. On 31 December 2008, some three years after completion had taken place, an additional bill in the total sum of £250 was raised bearing the narrative "Acting on your behalf and giving advice on the property". Mr Bailey was unable to find any evidence of any further work being done by the firm following completion and noted that a copy of the bill had not been placed on the client matter file. In addition there was no address on the bill itself and no indication that the bill had been delivered to the client. The case of Mr W was identical save that the sum involved was £272.24.

50.5 The Tribunal would be able to see on page 19 of the exhibit DEB/2 the movement of £12,921.44 from client to office account on 31 December 2008, which matched the workings on pages 21 to 27 in the Respondent's handwriting. A further £2,110.96 had been moved from client to office account on that same date as shown at pages 28-30 of DEB/1.

50.6 In Mr Barton's submission this was a sweeping up exercise by the Respondent and the conclusion that the Respondent had been dishonest was irresistible on the facts before the Tribunal. The contents of the bills of costs were no more than a fiction. The Respondent's actions, which had been outlined by Mr Barton, were consistent with a conscious decision on his part consistent with dishonesty. It was difficult to see any innocent explanation.

50.7 Mr Barton also told the Tribunal that there was a lengthy explanation concerning these matters in Mr Hooper's letter dated 23 October 2009 to the SRA. In particular Mr Hooper had said that:

> "the 2009 report is principally concerned with what is now accepted by Mr Watkins to have been misguided clearing up exercise, which he believed in good faith was under the direction and in accordance with the advice of the firm's accountants – those very people who were charged with policing compliance with the Accounts Rules."

50.8 In conclusion, Mr Barton reminded the Tribunal of the dual test for dishonesty as set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In Mr Barton's submission the medical evidence before the Tribunal said nothing about the Respondent's state of mind at the time of these events.

50.9 The Tribunal found both of the allegations to have been proved beyond reasonable doubt on the facts and documents before them. The Tribunal was in no doubt that this had indeed been an exercise designed to sweep-up and retain for the Respondent's own purposes remaining credit balances on old matters, with no additional work having taken place. Bills of costs in respect of the exercise had not been delivered to the clients, indeed the Respondent had admitted as much in interview with Mr Bailey.

50.10 In so far as dishonesty was concerned, the Tribunal had considered the objective test as set out in Twinsectra; that test was whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. The Tribunal was sure that the Respondent's conduct in regard to these matters was clearly objectively dishonest. In deciding upon the subjective part of the test, as to whether the Respondent had himself realised that by those same standards his conduct was dishonest, the Tribunal had fully considered not only what Mr Barton had had to say upon the matter but also the Respondent's own explanation in interview and the points put forward by Mr Hopper.

50.11 The Tribunal had seen that there were a large number of transfers from client account to office account which had been calculated and organised by the Respondent. He had undertaken this exercise even though he had told Dr Jenkins that by that point he had lost interest in his job. It was apparent from the evidence before the Tribunal that no bills had been sent to the clients, even though those bills had been drawn up by the Respondent. The Tribunal was sure that in all of the circumstances the Respondent must have known that what he was doing was dishonest by the standards of reasonable and honest people.

50.12 The Tribunal having found beyond a reasonable doubt that both the objective and the subjective test in Twinsectra had been met accordingly found that the Respondent had been dishonest in relation to allegation 2.3.

51. **Allegation 2.4: In breach of Rule 24 of the said Rules they failed to account to clients the interest earned on client account;**

Allegation 2.5: In breach of Rule 32 (7) of the said Rules they failed to reconcile client cash account with client account bank statements;

Allegation 2.6: They operated a suspense account in breach of Rule 32 (16) of the said Rules.

51.1 Mr Barton indicated those parts of the forensic investigation report that related to these allegations. Mr Bailey had indicated in that report that he had found that the firm had failed to account to clients for monies in lieu of interest held in general client account, that the firm had failed to properly reconcile client cash account with the client bank statements and client listing and that monies had been credited to a separate suspense ledger in the client account and that the suspense account had not been reconciled and reflected a credit balance of £5,322.29.

51.2 The Tribunal found each of these three allegations to have been proved beyond reasonable doubt on the facts and documents before them.

Previous Disciplinary Matters

52. The Respondent had previously been before the Tribunal in case number 8646/2002, together with Catherine Hartland, in respect of failure to comply with the decision of an adjudicator dated 14 August 2001 within the time permitted. The Respondent had admitted the allegation and had been fined £750 and ordered to pay costs.

Mitigation

53. The Tribunal took careful note of the contents of Mr Andrew Hopper's letter dated 23 October 2009, where it was relevant.

Sanction

54. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

55. The Tribunal had found each of the allegations before them proved beyond reasonable doubt and had also found dishonesty by the Respondent.

56. In these circumstances, where the Tribunal had found dishonest misappropriation of client funds, the appropriate and proportionate sanction to protect the public and the reputation of the profession as a whole was that of Strike Off. The Tribunal could find no exceptional circumstances which would lead them to impose any lesser sanction. The Tribunal therefore determined that the Respondent should be Struck Off the Roll of Solicitors.

Costs

57. Mr Barton told the Tribunal that the Applicant's Schedule of Costs in the sum of £27,154.66 had been served on the Respondent and in his covering letter to the Respondent he had indicated that it would be in the Respondent's interests to make his finances known to the Tribunal. There had been no response from the Respondent. Mr Barton had apportioned the costs between the Respondent and Ms Hartland as to two-thirds to the Respondent, as his case has involved significantly more work.

58. Mr Barton also told the Tribunal that the Respondent jointly owned a property in Rhoose with Ms Hartland. He handed copies of the Land Registry entries relating to that property to the Tribunal.

59. The Tribunal believed that the costs applied for were somewhat high for a case of this nature and would award costs in the sum of £24,000.

60. There was little information before the Tribunal concerning the Respondent's financial position but what was available appeared to indicate that his finances were poor. Whilst the Tribunal had seen evidence concerning a property owned jointly by the Respondent, there did appear to be both a mortgage and a charging order upon it. It was right that the Tribunal should order costs against the Respondent but in these circumstances it would stipulate that those costs were not to be enforced without leave of the Tribunal.

Statement of Full Order

61. The Tribunal Ordered that the Respondent, Andrew James Watkins, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £24,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 23rd day of May 2013
On behalf of the Tribunal

K Thompson
Chairman