SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10316-2009
Case No. 10850-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ANDREW JAMES CAMERON BANFILL — First Respondent

Before:

Mrs J. Martineau (in the chair)
Mr J. C. Chesterton
Mr R. Slack

Date of Hearing: 24th and 25th July 2012

Appearances

Mr Andrew Tabachnik, Counsel of 4–5 Gray's Inn Square, Gray's Inn, London, WC1R 5AH instructed by Attwaters Jameson & Hill and Mr Stephen Battersby, Solicitor of Attwaters Jameson & Hill, 72/74 Fore Street, Hertford, SG14 1BY for the Applicant.

The First Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent Andrew James Cameron Banfill were:-

Contained in a Rule 5 Statement dated 4 September 2009

1.1 That he failed to ensure that the interests of his clients were protected contrary to Rule 1.04 of the Solicitors' Code of Conduct 2007;

1.2 That he failed to provide a good standard of service to his clients, contrary to Rule 1.05 of the Solicitors' Code of Conduct 2007;

1.3 That he behaved in a way which was likely to diminish the trust that the public had in him and/or the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;

1.4 That he failed to make arrangements for the effective management of his firm contrary to Rule 5.01 of the Solicitors' Code of Conduct 2007.

Contained in a supplementary Rule 7 Statement dated 9 July 2010

1.5 That he had failed to deliver to the Solicitors Regulation Authority his firm's accountant's report when the same became due contrary to Section 34 of the Solicitors Act 1974;

1.6 That he had failed to comply with a condition on his Practising Certificate contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007.

Contained in a Rule 5 Statement dated 5 October 2011

1.7 That he had made withdrawals from client account other than as permitted by Rule 22 of the Solicitors' Accounts Rules 1998 (SAR);

1.8 That he had transferred monies from client account representing costs without first providing to the client a bill or other written notification of the same contrary to Rule 19 SAR;

1.9 That he had failed to keep his books of account properly written up contrary to Rule 32(1) SAR;

1.10 That he had failed to ensure that accounting documents and records were retained as required by Rule 32(9) SAR;

1.11 That he had failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 SAR;

1.12 That he had failed to ensure that each client's money was used for that client's purposes only contrary to Rule 1(d) SAR;

1.13 [Withdrawn]

1.14 That he breached an undertaking contrary to Rules 1.02, 1.06 and 10.05 of the Solicitors' Code of Conduct 2007;

1.15 [Withdrawn]

1.16 That he improperly removed from client account funds which were subject to a Restraining Order contrary to Rules 1.01, 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007;

1.17 That he had acted with a lack of integrity and in a way likely to diminish the trust which the public placed in him and the profession contrary to Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 and it is further alleged that his conduct in making the improper withdrawals (allegations 1.7 and 1.8) was dishonest, although this was not an essential element of the allegations.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the First Respondent which included:-

Applicant:

- Application dated 4 September 2009;
- Rule 5 Statement dated 4 September 2009 with attached documentation;
- Rule 7 Statement dated 9 July 2010 with attached documentation;
- Rule 5 Statement dated 5 October 2011 with attached documentation;
- Statement of Patrick Benedict Heffernan dated 7 July 2012;
- Schedule of Costs;
- Position Statement;
- Letter from Attwaters Jameson Hill Solicitors dated 17 July 2012.

First Respondent:

- Letter from First Respondent dated 16 July 2012.

Preliminary Matter (1)

3. In his letter to the Tribunal dated 16 July 2012, the First Respondent had made an application to adjourn the substantive hearing. The Applicant had opposed the application. The Tribunal had not been prepared to agree to the request for an adjournment based only on the correspondence that had been received from the parties and had advised the parties the Tribunal would consider the matter at the start of the hearing.

4. Mr Tabachnik, on behalf of the Applicant, told the Tribunal that the First Respondent was "clutching at straws" in relation to this application and submitted that there was

no good reason to adjourn the hearing. He stated that the First Respondent had claimed that the hearing date was causing him difficulties. Mr Tabachnik stated that this was surprising given that the hearing date had been arranged some four and a half months previously and the Tribunal had notified both parties of the hearing date on 13 March 2012. The notification had been sent to Mr Beaumont who had then been representing the First Respondent and it had to be assumed that Mr Beaumont had forwarded the notification on to his client. Mr Tabachnik reminded the Tribunal that there had been a series of communication regarding the hearing and there had been no reaction from the First Respondent until he had been sent a copy of Mr Heffernan's statement on 11 July 2012. Mr Tabachnik suggested that it appeared that the First Respondent had decided to focus on matters only recently and was now looking to delay the hearing.

5. In his letter to the Tribunal, the First Respondent had claimed that he had only just become aware of the existence of Mr Heffernan's statement. He had said that the failure to disclose this statement in a timely manner had placed him at a disadvantage in that he was being denied the opportunity to review the evidence. Mr Tabachnik told the Tribunal that Mr Heffernan's statement had been served just under two weeks ago and it did not play a central role in these proceedings. He stated that,essentially, Mr Heffernan's evidence was corroborative of the material that had already been disclosed in the case.

6. The First Respondent had also said that he had just discovered that there was an unused witness statement for WM in existence. He claimed that he was being placed at a disadvantage in the preparation of his defence as he had been unable to review the evidence in WM's statement. Mr Tabachnik told the Tribunal that WM's draft statement had never been finalised and could not be disclosed even if the Applicant was prepared to waive privilege. He confirmed that the Applicant would not be placing any reliance on the draft statement within the proceedings.

7. The Tribunal noted that the First Respondent lived in the United States of America and had stated that he was currently trying to obtain American citizenship. He had claimed that, as part of this process, it was virtually impossible for him to travel outside of the country whilst awaiting a citizenship interview. He had stated that, as a result of this issue, he had given instructions to his previous legal representative to avoid a hearing date prior to September 2012. Mr Tabachnik pointed out that the First Respondent had not provided any evidence from the American authorities to show that he was unable to leave the country. He stated that even if the First Respondent did have a genuine difficulty in leaving America, he had failed to make arrangements to attend the hearing via video link. Mr Tabachnik confirmed that it had been made clear to the First Respondent that the Applicant had no objection to the use of video link technology but that this would need to be organised and paid for by the First Respondent. Mr Tabachnik told the Tribunal that the First Respondent had failed to make the necessary arrangements.

8. Mr Tabachnik reminded the Tribunal that it could proceed with the hearing in the absence of the First Respondent in accordance with Rule 16 (2) of The Solicitors (Disciplinary Proceedings) Rules 2007 (SDPR). He stated that the First Respondent had failed to engage with these proceedings and had not provided a substantive response to the allegations. He claimed that the First Respondent had decided to

absent himself from the hearing today. He had not complied with the Tribunal's own Practice Note in relation to adjournments and had failed to demonstrate the existence of "exceptional circumstances" which would justify an adjournment. Mr Tabachnik reminded the Tribunal that these matters dated back to 2008 and he submitted that there should not be any further delay in dealing with matters. He invited the Tribunal to refuse the application to adjourn and proceed with the hearing.

The Tribunal's Determination of Preliminary Matter (1)

9. The Tribunal carefully considered the application for an adjournment that had been made by the First Respondent. It also had regard to its own Practice Note in relation to adjournments. It was the Tribunal's view that Mr Heffernan's statement did not add anything significant to the proceedings. His position would have been evident from the material that had been disclosed within the proceedings so far. To the extent that Mr Heffernan's evidence did add anything further, the Tribunal considered that the First Respondent would have no difficulty in dealing with any issues raised by Mr Heffernan's statement quickly and easily. The Tribunal noted that the Applicant was not relying on the draft statement of WM. There was no property in a witness and there had been nothing to prevent the First Respondent from obtaining a statement from WM if he had thought it appropriate to do so.

10. The Tribunal noted that the First Respondent had failed to provide any external evidence to support his assertion that he was unable to leave America. Although the First Respondent had referred to the use of a video link in order to attend at the hearing, he had failed to make the necessary arrangements. There had been various communications with the First Respondent and his previous Counsel. The Tribunal had received notification from Mr Beaumont that he had withdrawn from the case on 17 July 2012. It had to be inferred that Mr Beaumont had been acting for the First Respondent up until that time and so he must have communicated the date of the hearing to him. The First Respondent had not made any reference to his inability to attend at a hearing prior to September 2012 until his letter to the Tribunal dated 16 July 2012.

11. The Tribunal had to consider whether the refusal to grant an adjournment would result in an injustice to the First Respondent. It was clear that the First Respondent had received notification of the hearing date. There had been time for him to prepare his case and to arrange for legal representation. There were no "exceptional circumstances" which provided justification for an adjournment. In all the circumstances, the Tribunal refused the First Respondent's application for an adjournment and decided to continue with the proceedings.

Preliminary Matter (2)

12. Mr Tabachnik explained that he did not think that it would be possible for the Tribunal to establish, to the required standard of proof, the true position regarding the structure of the firm which formed the subject matter of allegations 1.13 and 1.15. Accordingly, it was not in the public interest for the Applicant to continue with these allegations and Mr Tabachnik made an application under Rule 11(4)(a) of the SDPR for permission to withdraw allegations 1.13 and 1.15 to which the Tribunal consented.

Factual Background

13. The First Respondent was born on 30 May 1961 and admitted as a solicitor on 15 June 1992. His name remained on the Roll of Solicitors.

14. At all material times, the First Respondent was a Member in the firm of OBG Cameron Banfill LLP which had its main office at 24 Britton Street, London EC1M 5UA ("the firm"). The firm had been formed on 28 March 2008 when Cameron Banfill LLP (a US Limited Liability Partnership) had purchased various assets of a firm called Orchard Brayton Graham LLP ("OBG") which was by then in administration. The firm commenced trading on 31 March 2008 and continued until intervention took place on 11 March 2009.

Allegations 1.1-1.4

15. On 22 January 2009, the Solicitors Regulation Authority ("SRA") arranged for a "walk-by" inspection of the firm to be carried out by Roberto Ferrari of the Forensic Investigation Department. Mr Ferrari prepared a report in the form of an e-mail dated 23 January 2009. Whilst at the firm, he spoke to Mr Patrick Heffernan who told him that the firm may shortly go into administration. Mr Ferrari noted that unsecured files were lying around on desks and shelves.

16. In a letter dated 29 January 2009, the SRA wrote to the First Respondent raising their concerns. The First Respondent replied on 4 February 2009. He stated that he had been based in London since 1 December 2008 and was dealing with clients on a daily basis. He said that no client had been prejudiced by the situation in which the firm found itself and that the firm had not ceased trading but neither was it taking on any new clients. He denied that the files were insecure. He said that the firm shared the office space with a firm called PC and added that he would be happy for the SRA to inspect the files.

17. The firm instructed accountants SPW P & A ("SPW") to act on its behalf. On 12 February 2009, SPW told the SRA that the firm had ceased trading but this was not official and that there were four people still at the firm who were "keeping an eye on the matters... but not taking on any new matters". In addition, SPW stated that they were investigating the status of client accounts and that the firm was looking at a possible arrangement with creditors.

18. In his letter to the SRA dated 4 February 2009, the First Respondent had stated that there was £543,497.19 in client account. On 19 February 2009, SPW contacted the SRA again and stated that they were waiting for advice from their solicitor regarding the possible administration of the firm. They said that they were still reconciling the client account upon which there was a shortage but the amount of this was not known.

19. On 20 February 2009, the SRA received a telephone call from Mr P of PC who complained that SPW were not dealing with matters. On 23 February 2009, an SRA caseworker spoke to SPW who assured her that the files would be moved that day. This did not happen and a large number of files and items remained in the office. On 24 February 2009, SPW stated that they were organising removal but required 100 archive boxes.

20. On 4 March 2009, SPW complained that there was no money available to pay their fees. They stated that they were unable to cope with the calls coming in from clients and other solicitors and asked the SRA to step in and take things over.

21. On 6 March 2009, a decision was made to intervene into the practice and refer the conduct of the First Respondent to the Tribunal.

Allegations 1.5 and 1.6

22. The firm's accountant's report for the period ending 31 March 2008 should have been delivered by 30 September 2008 but was not.

23. The SRA sent an e-mail to the firm on 7 November 2008 as a reminder that the report was overdue. The report was not received.

24. The firm remained in existence until intervention took place on 11 March 2009. An accountant's report for the period from 1 April 2008 to the date of intervention was not delivered. On 8 April 2010, an Authorised Officer of the SRA decided to refer the matter to the Tribunal.

25. On 13 November 2009, an Adjudicator at the SRA decided to impose immediate conditions on the First Respondent's practising certificate for the practice year 2008/2009. One of the conditions stated that the First Respondent "... may act as a solicitor only in employment which has first been approved by the Solicitors Regulation Authority". A second condition prevented the First Respondent from being "... a sole practitioner or a manager or owner of a recognised body".

26. On 17 December 2009, M & Co (the solicitors acting on behalf of the First Respondent) were notified of this decision. There was no appeal. The SRA wrote to M & Co again on 18 January 2010 confirming that the matter was closed.

27. SRA records revealed that from 1 October 2009 to 18 March 2010, the First Respondent was a Manager in the firm of MR LLP ("MR"). On 12 April 2010, the SRA wrote to the First Respondent seeking his explanation. There was no response to this letter.

Allegations 1.7 - 1.12, 1.14, and 1.16 - 1.17

28. Following the intervention at the firm, an investigation into the accounting records and other documents was carried out by Rachel Whatmore, an SRA Forensic Investigation Officer ("FIO"). The investigation resulted in the preparation of a Forensic Investigation Report dated 31 January 2011 ("the FI Report").

29. The inspection revealed that there was an unverified minimum cash shortage of £400,869.08. Following an initial assessment of the available accounting records recovered following the intervention, it became apparent that most of the records relating to client monies were missing. This made it difficult for the SRA to ascertain the true situation. The FIO identified a number of improper transfers from client account:-

2 September 2008 - £160,000

- There was no identifiable reason for the transfer from client account to PC;
- The First Respondent described PC as an "equity partner" of the firm;
- On the date of the transfer, three separate amounts were received from PC into the firm's office account totalling £150,000 and a further £9,960 was received two days later;
- There was no indication, apart from an invoice to PC as to what any of the payments received from them were for;
- On 3 September 2008 the firm made payments from office account totalling £97,363.97 which appeared to be for staff salaries;
- The First Respondent told the SRA that the payment from client account to PC was part of a larger amount lodged by Z Limited ("Z Ltd"), who were a finance company, in order to settle the loan obligations of WH, RC and DO who he claimed had been equity partners at the firm;
- The First Respondent stated that the funds were subject to a security valuation being satisfied on WH's property which did not happen.

10 September 2008 - £25,000

- The transfer was said to relate to an invoice but no specific invoice could be identified;
- The client was identified as Z Ltd
- On the same date, payments were made out of office account totalling £12,000.

29 October 2008 - £110,000

- The transfer was said to relate to "a payment of outstanding fees" by a client RCA;
- No invoices had been sent to the client before the transfer;
- The two invoices attached to the transfer document were dated 5 November 2008 and totalled £109,994.50;
- The client disputed the invoices and stated that the invoices were not received;
- The monies held for the client were subject to a Proceeds of Crime Act Restraint Order which remained in force until 21 January 2009;
- The office bank account statements showed six payments totalling £60,000 to a US bank account in the name of "A Banfill";

- RCA's new solicitors applied for a grant from the Compensation Fund following the intervention.

5 January 2009 - £50,000

- There was no identifiable reason for the transfer from the ledger of the client Mr R;

- Payments were made out of office account between 5 and 9 January 2009 totalling £56,867.34 and made up of £20,367.34 apparently for staff salaries, £25,000 to a US account and £11,500 to the accountants SPW;

- The transfer followed the receipt of funds into the client ledger of Mr R in the sum of £50,000 which represented costs due to him and another client under a Settlement Agreement;

- Mr R and another client had entered into a Funding Loan with JC Limited ("JC") in connection with which the First Respondent had given an undertaking which required him to repay the lenders up to the limit of what was due to them (in this case £42,844.76) within 30 working days of receipt of the costs. No such payment was made to JC.

Witnesses

Patrick Heffernan

30. Patrick Heffernan gave evidence and confirmed that the content of his witness statement was accurate. He stated that he had not authorised the withdrawal from client account on 5 January 2009. He told the Tribunal that he had authorised withdrawals previously but by January 2009, it was clear that the firm was "falling apart" and he would have exercised extreme caution in authorising a withdrawal for such a large amount.

31. The witness acknowledged that he had not read the firm's banking mandate form, which he had signed previously. He did not know how many signatures would have been required to authorise a withdrawal from client account and he was unable to say whether only one signature would have been required to send money to a foreign bank account. He could not recall whether he had signed cheques on his own or with someone else.

Rachel Whatmore

32. Rachel Whatmore, the SRA's FIO gave evidence and confirmed that the content of the FI Report was true to the best of her knowledge and belief. The witness was asked to consider a letter from the First Respondent to the SRA dated 4 February 2009 in which the First Respondent had stated that two signatories were required to access the client account. Ms Whatmore told the Tribunal that she had not seen the letter before and she had not considered the issue as part of the investigation.

Findings of Fact and Law

33. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.

34. **Allegation 1.1: That he failed to ensure that the interests of his clients were protected contrary to Rule 1.04 of the Solicitors' Code of Conduct 2007;**

Allegation 1.2: That he failed to provide a good standard of service to his clients, contrary to Rule 1.05 of the Solicitors' Code of Conduct 2007;

Allegation 1.3: That he behaved in a way which was likely to diminish the trust that the public had in him and/or the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;

Allegation 1.4: That he failed to make arrangements for the effective management of his firm contrary to Rule 5.01 of the Solicitors' Code of Conduct 2007.

34.1 Mr Tabachnik told the Tribunal that clients had been "left in the dark" regarding the situation at the firm. He referred the Tribunal to the e-mail report of Mr Ferrari which followed the "walk-by" inspection. He stated that, initially, Mr Ferrari had been told that the firm was no longer in operation but he had spoken to Mr Heffernan later who had told him that the firm was still open but may be going into administration shortly. Mr Heffernan had confirmed that most of the staff had left and the switchboard was no longer working.

34.2 The Tribunal was told that the SRA had received a number of complaints from clients who had been unable to get through to the firm. In addition, there had been complaints from former employees and other firms of solicitors. Mr Tabachnik stated that the SRA had also been contacted by Counsel's chambers who were concerned that they had been instructed after the date that the firm had ceased trading. A letter from the firm's accountants SPW had been attached which had confirmed that the firm had stopped trading on 29 December 2008 and SPW had later informed the SRA that the First Respondent had promised to make good any shortfall on the client account.

34.3 Mr Tabachnik told the Tribunal that the report which had been prepared by the SRA prior to the intervention contained details of clients and other individuals who had raised concerns after encountering difficulties in contacting the firm. Mr Tabachnik said that the firm had been in "melt-down" with clients left confused and abandoned. He told the Tribunal that the First Respondent had claimed that matters were in-hand but his response had been considered to be insufficient and the intervention had proceeded.

34.4 The Tribunal found allegations 1.1–1.4 substantiated on the facts and documents before it.

35. **Allegation 1.5: That he had failed to deliver to the Solicitors Regulation Authority his firm's accountant's report when the same became due contrary to Section 34 of the Solicitors Act 1974.**

35.1 Mr Tabachnik told the Tribunal that the First Respondent had not filed an accountant's report for the period between 28 March 2008 when the firm had been established and 31 March 2008 when the firm had commenced trading. He acknowledged that there was no specific evidence that client money had been held during that time and stated that he would make no point about this. However, the First Respondent had not filed an accountant's report for the period from 1 April 2008 until the date of intervention on 11 March 2009. Mr Tabachnik reminded the Tribunal that in accordance with the SAR, the First Respondent had been required to file his final accountant's report within six months of the date of intervention and he had failed to do so.

35.2 The Tribunal found allegation 1.5 substantiated on the facts and documents before it.

36. **Allegation 1.6: That he had failed to comply with the condition on his Practising Certificate contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007.**

36.1 Mr Tabachnik reminded the Tribunal that conditions had been imposed on the First Respondent's Practising Certificate following the Adjudicator's decision of the 13 November 2009. The First Respondent had been given 28 days to appeal against the decision but had not done so. He had become a manager at the firm of MR on 1 October 2009. Mr Tabachnik acknowledged that this had been before the condition preventing him from becoming a manager had been imposed.

36.2 The Tribunal was told that there was no evidence to suggest that the First Respondent had ceased being a manager at MR. Mr Tabachnik conceded that he could not say that the First Respondent had been under an obligation to tell the SRA but he said that there was a clear expectation on the part of the First Respondent to do so. He reminded the Tribunal that the First Respondent had claimed that he had left everything to MR with the assumption that they would complete the correct paperwork.

36.3 There was no evidence to show that the First Respondent had remained as a manager at MR after the date upon which conditions had been imposed on his Practising Certificate. Accordingly, the Tribunal did not find allegation 1.6 substantiated to the required standard.

37. **Allegation 1.7: That he had made withdrawals from client account other than as permitted by Rule 22, Solicitors' Accounts Rules 1998 (SAR);**

Allegation 1.8: That he had transferred monies from client account representing costs without first providing to the client a bill or other written notification of the same contrary to Rule 19 SAR;

Allegation 1.11: That he had failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 SAR;

Allegation 1.12: That he had failed to ensure that each client's money was used for that client's purposes only contrary to Rule 1(d) SAR;

Allegation 1.14: That he breached an undertaking contrary to Rules 1.02, 1.06 and 10.05 of the Solicitors' Code of Conduct 2007;

Allegation 1.16: That he improperly removed from client account funds which were subject to a Restraining Order contrary to Rules 1.01, 1.02, 1.04 and 1.06 SCC 2007.

37.1 Mr Tabachnik referred the Tribunal to the withdrawals from the firm's client account which had been identified by the FIO, Ms Whatmore. He stated that the First Respondent was responsible for the improper withdrawals from client account of £160,000 on 2 September 2008 and £25,000 on 10 September 2008 as he had been a Member of the firm at the relevant time and, as such, he was obliged to ensure compliance with the SAR as a matter of strict liability.

2 September 2008- £160,000

37.2 The Tribunal was told that a large sum had been deposited into the firm's client account from Z Ltd who were proposing to invest in PC. Mr Tabachnik stated that the relationship between the firm and PC was not clear but PC appeared to have "propped up" the firm and its predecessor OBG. He told the Tribunal that the sum of £160,000 had been transferred to PC when there had been no good reason for the money to have been paid out of client account at all.

37.3 On the date of the transfer, PC had paid £150,000 into the firm's office account followed by a further £9,960 two days later. This had resulted in all but £40 of the monies which had been paid to PC having been received back by the firm within two days. Mr Tabachnik stated that not only was there no documentation to justify the payment to PC but, in addition, he suggested that the purpose of the payment into the firm's office account had been to enable the firm to keep within its overdraft limit. A series of payments had then been made from the firm's office account which had appeared to be for staff salaries. Mr Tabachnik told the Tribunal that almost all of the money had been used and by 3 September, the firm was once again in overdraft.

37.4 Mr Tabachnik stated that there was no evidence that the First Respondent had been aware of what was happening at the time but this was still a serious matter. There had been no justification for the withdrawal from client account and the money had been used to keep the firm within its overdraft limit. Mr Tabachnik told the Tribunal that by 9 October 2008, the First Respondent had been aware that there was a deficit on client account as a result of the transfer but he had done nothing to rectify this.

10 September 2008 - £25,000

37.5 The Tribunal was told that the transfer had been made into the firm's office account when the firm was just within its overdraft limit and had enabled payments totalling £12,000 to be made from the office account on the same date. The transfer form had referred to "Payment of invoice" but the invoice had never been found and no further

detail had been included on the form. Mr Tabachnik asked the Tribunal to note that the amount of the invoice had been £25,000 exactly. He stated that the invoice was inconsistent with instructions received by Z Ltd in which they had requested the return of the money which had been deposited with the firm. There had been no mention of an invoice. Mr Tabachnik suggested that there had been no client relationship with Z Ltd which could justify an invoice and the First Respondent had failed to provide any explanation in relation to the matter.

37.6 Mr Tabachnik told the Tribunal that the First Respondent had been dishonest in relation to the withdrawals from the firm's client account which had been made on 29 October 2008 and 5 January 2009.

29 October 2008 - £110,000

37.7 Mr Tabachnik told the Tribunal that the date of this transfer was significant as it was only five days after the First Respondent had summarily dismissed two senior fee earners at the firm. Mr Tabachnik stated that the First Respondent had signed the transfer slip authorising the transfer of the money into the firm's office account. The transfer was said to relate to the payment of outstanding fees for the client RCA. Mr Tabachnik pointed out that the only invoices that might have related to the transfer were dated 5 November 2008 which was one week after the transfer had been made. He stated that there had been no attempt to send the invoices to the client at all. The clients claimed that they had never received the invoices and disputed the amount.

37.8 The Tribunal was told that RCA had instructed solicitors in an attempt to recover the money that the First Respondent had been holding under the terms of the Restraint Order. The First Respondent had claimed that the invoices "will be sent under separate cover". Mr Tabachnik asked the Tribunal to note that the First Respondent had not stated that the bills had already been sent to the clients. He had not explained what the bills were for and had not confirmed when the bills had been sent. He suggested that if there had been an honest explanation for the transfer then the First Respondent would have sent the bills to the client at the relevant time.

37.9 Mr Tabachnik stated that, in any event, the First Respondent was not authorised to levy charges in relation to the first invoice dated 5 November 2008 which had been incurred on behalf of the administrators of OBG. Mr Tabachnik explained that the charges had been incurred by OBG and should have been payable to the administrators. He referred the Tribunal to correspondence from one of the OBG administrators which confirmed that the administrators had not instructed the firm to issue the invoice. He stated that the First Respondent had signed the agreement for the sale and purchase of OBG and he knew that OBG's book debts and work in progress, which included the RCA matter, had been specifically excluded from the agreement. Mr Tabachnik stated that the First Respondent must have known that he was not entitled to the money and he had not passed it on to the administrators. He told the Tribunal that, essentially, this was the theft of someone else's money and the First Respondent had provided no explanation for his actions.

37.10 The Tribunal was told that the transfer had enabled five payments totalling £60,000 to be paid to an American bank account for the personal benefit of the First Respondent. The First Respondent had given instructions to NK, the office manager at the firm, as

to how the payments should be described in the accounting records. Mr Tabachnik stated that the First Respondent knew that the monies were subject to a Restraint Order which meant that their removal was a possible criminal offence as well as being in contempt of court. There had been nothing in the Restraint Order to justify the payment of legal fees. He told the Tribunal that the sale and purchase agreement which the First Respondent had signed had referred to the Restraint Order and the First Respondent had been made aware of the issue by staff at the firm. In particular, the resignation letter of EG, who had been a solicitor employed at the firm at the time, had referred to the RCA matter as a "restrained client account". Mr Tabachnik acknowledged that the letter had been addressed to "All" but stated that it was inconceivable that the First Respondent would not have seen the letter as he had been the main fee earner at the firm at the time. Mr Tabachnik told the Tribunal that WM had also reported the matter to the SRA.

37.11 Mr Tabachnik told the Tribunal that the First Respondent had been asked to comment on these issues but had failed to do so. He had not provided any explanation for the payments. Mr Tabachnik stated that the First Respondent had acted dishonestly. He knew that the monies were subject to a Restraint Order and that the invoices could not be justified.

37.12 The Tribunal was told that the First Respondent had been aware that there was a shortfall in relation to this matter by November or December 2008 at the latest. Mr Tabachnik referred the Tribunal to an exchange of e-mails between the First Respondent and the firm's book-keeper which had referred to a deficit on client account. He told the Tribunal that the First Respondent had made no attempt to rectify the shortfall despite his promise to do so.

5 January 2009 - £50,000

37.13 Mr Tabachnik told the Tribunal that the First Respondent must have authorised the transfer from client account although he acknowledged that there was no documentation to confirm this. He stated that following the transfer, three separate round sum amounts had been paid from the firm's office account to an American bank for the benefit of the First Respondent. In addition, further payments had been made from the firm's office account which had apparently been for staff salaries and the sum of £11,500 had been paid to the accountants SPW.

37.14 The Tribunal was told that the First Respondent had been based in London at the relevant period. Mr Tabachnik reminded the Tribunal that as at the date of the transfer, the First Respondent and Mr Heffernan had been the only authorised signatories still with the firm and Mr Heffernan had stated that he had not authorised the transfer. Mr Tabachnik acknowledged that the First Respondent had claimed that his own signature and the signature of NK were required in order to make withdrawals from the firm's client account. He confirmed that NK did not appear on the bank mandate and stated that there was no evidence to show that the mandate had been changed.

37.15 Mr Tabachnik told the Tribunal that the money which had been withdrawn represented the costs due to Mr R under the terms of a Settlement Agreement following a High Court action brought by the Football Association Premier League

(FAPL). The First Respondent had signed the undertaking which required him to account to JC for the costs received from the FAPL within 30 working days of receipt. The payment from the FAPL had been made to the firm's client account on 31 December 2008 and had been transferred to the firm's office account on 5 January 2009. It had not been repaid according to the terms of the Funding Loan with JC and the First Respondent had failed to provide any justification for this transfer.

37.16 Mr Tabachnik referred the Tribunal to the test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. He suggested that the essential question for the Tribunal to consider was the extent of the First Respondent's knowledge in relation to the transfers. Mr Tabachnik stated that the First Respondent should have known and, in fact, did know that the transfers were dishonest. By way of example, he told the Tribunal that the Respondent must have read and appreciated the contents of the 5 November invoices which he had signed. He had known that the fees in relation to one of those invoices had been charged on behalf of the administrators and that he had not been given any authority to claim the money. He had not accounted to the administrators and had gone on to utilise the funds for his own purposes.

37.17 The Tribunal found allegations 1.7,1.8,1.11,1.12,1.14 and 1.16 substantiated on the facts and documents before it and having heard evidence from Ms Whatmore, the FIO and Mr Heffernan. The Tribunal had been invited to find that the First Respondent's conduct had been dishonest in relation to the withdrawals from the firm's client account which had been made on 29 October 2008 and 5 January 2009.

37.18 The First Respondent had signed the authority for the transfer from client account on 29 October 2008. The invoices to which the withdrawals were said to relate had been post-dated and had not been sent to the client. This had been confirmed by the First Respondent in his e-mail of 27 February 2009 in which he had referred to invoices being sent under separate cover. The First Respondent had signed the sale and purchase agreement and had known that work in progress was due to the administrators and not to the firm. He had known that the money was subject to a Restraint Order as this had been referred to in the agreement and so it was not necessary to establish whether or not he had seen the resignation letter sent by EG. Money had been paid to a bank in America for the benefit of the First Respondent and he had given instructions to NK as to how the payment should be described in the accounting records.

37.19 In evidence, Mr Heffernan had stated that he did not authorise the transfer on 5 January 2009 and the Tribunal considered his evidence to be credible on this point. The First Respondent had been the only other authorised signatory for the firm's accounts at the time and so he must have authorised the transfer. The First Respondent had suggested that the signature of both himself and NK had been required to make withdrawals from the client account. The Tribunal noted that a letter from the firm dated 9 October 2008 had been signed by a single partner and had been treated as authorisation for a transfer from the firm's client account. This provided cogent evidence that only one signatory was required to withdraw money from the client account. The banking mandate did not refer to NK and there was no evidence to suggest that the mandate had been changed. The First Respondent had known that the money which had been received on behalf of the client should have been paid to JC as he had signed the undertaking but he had failed to do so. Instead,

the money had been paid to an account in America for his own benefit and appeared to have been used to pay staff salaries at a time when the firm's overdraft was at its limit.

37.20 The Tribunal had to consider whether the First Respondent had been dishonest by applying the "combined" test for dishonesty as set out in Twinsectra. The Tribunal was satisfied that the First Respondent's conduct in relation to the transfers made on 29 October 2008 and 5 January 2009 would be considered dishonest by the standards of reasonable and honest people. Furthermore, the Tribunal considered that the First Respondent must have known that his conduct, in authorising those transfers, was dishonest by those same standards and accordingly the Tribunal found that the allegation of dishonesty was substantiated beyond reasonable doubt.

38. **Allegation 1.9: That he had failed to keep his books of account properly written up contrary to Rule 32(1) SAR;**

Allegation 1.10: That he had failed to ensure that accounting documents and records were retained as required by Rule 32(9) SAR.

38.1 The Tribunal was told that following the intervention, the firm's accounting records had been passed to accountants. It had become apparent that most of the important records relating to client monies were missing. Mr Tabachnik told the Tribunal that the accountants had reconstructed the client ledger and had ascertained that there was a minimum cash shortage which could not be fully explained due to the lack of accounting records. He stated that the provisional reconciliation of client monies that had been prepared by the accountants had not included the £50,000 that had been received in relation to Mr R's matter and so it was likely that a further £50,000 could be added to the amount of the shortfall.

38.2 The Tribunal found allegations 1.9 and 1.10 substantiated against the First Respondent on the facts and documents before it. The FIO had also given evidence to confirm that the contents of the FI Report were true.

39. **Allegation 1.17: That he had acted with a lack of integrity and in a way likely to diminish the trust which the public placed in him and the profession contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 and it is further alleged that his conduct in making the improper withdrawals (allegations 1.7 and 1.8) was dishonest, although this was not an essential element of the allegations.**

39.1 Mr Tabachnik stated that this allegation primarily related to the transfers from client account concerning RCA and Mr R. He told the Tribunal that if it did not find that the First Respondent had acted dishonestly in relation to these transfers, it could still be said that he had failed to act with integrity. Mr Tabachnik suggested that the concept of integrity was very wide and would cover situations where, for example, a solicitor had acted recklessly in signing a document without due care and consideration. He stated that the First Respondent had failed to make the enquiries that he should have done before authorising the relevant transfers and as such, he had failed to act with integrity.

39.2 The Tribunal found allegation 1.17 substantiated on the evidence and the facts and documents before it and indeed the Tribunal had found that the First Respondent had been dishonest.

Previous Disciplinary Matters

40. None.

Mitigation

41. None.

Sanction

42. The Tribunal had found all but one of the allegations substantiated against the First Respondent. He had also been found to have been dishonest. The Tribunal was mindful of the observations made in Bolton v The Law Society [1994] 1 WLR 512 in which it had been stated that:-

> "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..."

In order to protect the public and to maintain the reputation of the profession, the appropriate sanction in this case was that the First Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered. The Tribunal did not consider that there were any exceptional circumstances such as those identified in the decision of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) which would justify a sanction other than striking off.

Costs

43. The Applicant's claim for costs was £79,510.86. Mr Battersby told the Tribunal that the allegation against another Respondent had been withdrawn last week and he proposed to reduce his fees to take account of the fact that some of the costs related to that Respondent. In addition, Counsel's fees could be reduced due to the attendance of Mr Battersby on the second day of the hearing. Mr Battersby stated that his fees could be reduced to £74,790.86 and he invited the Tribunal to make a summary assessment of the Applicant's costs in the sum of £74,000.

44. Mr Battersby told the Tribunal that the First Respondent had not provided any evidence regarding his financial means. He reminded the Tribunal that the First Respondent had been represented by Counsel until recently and he stated that if the First Respondent had wished to allege that he was impecunious then he should have done this by now. Mr Battersby told the Tribunal that the First Respondent was currently resident in America. He did not know whether the First Respondent was working but stated that it must be assumed that the First Respondent was solvent as there was no evidence to the contrary. Accordingly, he asked that the Tribunal did not defer the enforcement of any costs order.

45. Having taken into account all of the relevant circumstances, the Tribunal considered that costs should be reduced to £67,500. The First Respondent had not put forward any evidence as to his means and there had been no request from him for his financial circumstances to be taken into account by the Tribunal. Accordingly, the Tribunal ordered that the First Respondent should pay the Applicant's costs fixed in the sum of £67,500.

Statement of Full Order

46. The Tribunal Ordered that the Respondent, Andrew James Cameron Banfill, 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 £67,500.00.

Dated this 11th day of September 2012
On behalf of the Tribunal

Mrs J. Martineau
Chairman