SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10362-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL ASHLEY HENRY Respondent

Before:

Mr. R. Nicholas (in the chair)
Mr J C Chesterton
Mrs L. McMahon-Hathway

Date of Hearing: 13th and 14th March 2012

Appearances

James Moreton, solicitor of Field Fisher Waterhouse LLP, 35 Vine Street, London, EC3N 2AA for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent Paul Ashley Henry in a Rule 5 Statement dated 22 October 2009 were as follows:

1.1 that he transferred sums from client (bank) account for costs that he knew that he could not justify thereby deliberately overcharging his clients;

1.2 that he improperly utilised clients' funds that should have remained in client account for his own benefit;

1.3 that he failed to keep books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);

1.4 that he failed to rectify breaches of the Solicitors Accounts Rules promptly as required by Rule 7 of the 1998 Rules;

1.5 that he failed to inform his clients of the required costs information contrary to Rule 2 of the Solicitors' Code of Conduct 2007.

The further allegation against the Respondent in a Rule 7 Statement dated 2 July 2010 was as follows:

1.6 that he breached the Solicitors Accounts Rules 1998.

2. Allegations 1.1, 1.2 and 1.5 of the Rule 5 Statement were repeated in the Rule 7 Statement with additional information.

3. Dishonesty was alleged in respect of allegations 1.1 and 1.2 in both the Rule 5 and Rule 7 Statements. The case was put on the basis that it would be open to the Tribunal to find any or all of the allegations proved without any element of dishonesty.

Documents

4. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 22 October 2009 with exhibit;
- Rule 7 Statement dated 2 July 2010 with exhibit;
- Psychiatric report of Dr J D D Laidlaw in respect of the Respondent marked 9 May 2011;
- Witness statement of Mrs F C J Jeffrey dated 4 March 2010 with exhibit;
- Report of Mrs Sue Corbin, Law Costs Draftsman and Cost Lawyer dated 8 March 2012;
- Respondent’s letter dated 20 April 2010 to Mr Moreton;

- Email from the Tribunal office to the Respondent dated 13 May 2011;
- E-mail from Mr Moreton to the Respondent dated 17 May 2011;
- Letter from Mr Moreton to the Respondent dated 7 September 2011;
- Schedule of costs dated 12 March 2012.

Respondent:

- Handwritten letter from the Respondent to Mr Moreton received on 8 March 2012 with attachments
- Typed transcript of above letter with the Respondent's corrections endorsed

Preliminary issues

5. The Respondent did not appear. Mr Moreton informed the Tribunal that notices in respect of the Rule 5 Statement had been served on 3 November 2009. The witness statement of Mrs Jeffrey, the Respondent's former client had been served under cover of a letter dated 16 April 2010 with a Form 6 notice and notices had also been served in respect of the material annexed to her statement. The Respondent had acknowledged Mr Moreton's letter in his letter of 20 April 2010 in which he referred to Mrs Jeffrey's "accusations". In his letter the Respondent had also raised issues about his (medical) fitness. Mr Moreton had responded on 22 April 2010 requesting medical evidence and referring to the material supplied with Mrs Jeffrey's statement. Mr Moreton had written again on 2 July 2010 regarding the new allegations and had sent to the Respondent an advance copy of the Rule 7 Statement and exhibit, asking for further provision of medical evidence. The Rule 7 Statement was served with notices on 16 July and the matter had been fixed for trial on 5 August 2010. The trial had been adjourned because of the Respondent's pleas of unfitness and the Applicant, with the authority of the Tribunal had undertaken to fix an appointment for the Respondent to be examined by a psychiatrist. The appointment took quite a long time to arrange and it was not until 2011 that the psychiatric report was provided. The matter had come before the Tribunal for a mention on 14 April 2011; the matter had been listed for a substantive hearing on 19 May. At the April hearing the Tribunal directed that any application for an adjournment of the substantive hearing by the Respondent would only be considered if it was supported by medical evidence from an independent Consultant. The report became available and showed that the Respondent was suffering from some mental difficulties and recommended that if he persisted with a course of treatment he should be able to appear in three to four months. It indicated that he was fit to plead in any event. The Tribunal considered in May 2011 that it was prudent to wait. Mr Moreton then obtained the date for this substantive hearing last autumn. No indication had been received from the Respondent of any kind save for a telephone call in May last year to the effect that he wished to put all these matters behind him although he did not agree with everything. He also indicated a lack of papers. Mr Moreton had asked for clarification but received nothing. Mr Moreton further informed the Tribunal that there had been correspondence in the form of a handwritten letter from the Respondent last week. Mr Moreton had attempted a transcript of the letter which he had sent to the Respondent who had annotated it with further endorsements the previous day. The originals of both documents were available for inspection. In summary Mr Moreton

advised the Tribunal that the Respondent disputed the allegations but did wish to put matters behind him and carry on looking after his family. Mr Moreton therefore applied to proceed with the hearing in the absence of the Respondent.

6. The Tribunal noted that in the letter received by Mr Moreton on 8 March 2012 the Respondent had said:

> "I will, you will not be surprised to hear not be able to attend; taking aside my lack of clear recollection, the travel alone would physically 'wipe me out' and I would not be able to venture inside the tribunal such is my aversion to any stressful situation. I have a duty to my family not put myself in situations that would cause real and significant harm.
>
> That said I really do need closure – the completion of these issues with attendant penalties once and for all – I feel only after this matter is concluded do I stand a good chance of making a genuine recovery.
>
> I trust this letter will assist in your bringing this matter to a conclusion without my attendance and would of course state that no disrespect is intended to the tribunal or you by my non-attendance…"

7. The Tribunal was satisfied under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 1997 that the Respondent had been properly served with the proceedings and was aware of the substantive hearing date. It was satisfied from Dr Laidlaw's psychiatric report that the Respondent understood the nature of the allegations against him and was fit to plead and that the Respondent had capacity to make the decision whether to appear and that his absence was voluntary. Accordingly the Tribunal decided to proceed with the hearing under Rule 16(2) notwithstanding that the Respondent failed to attend in person and was not represented at the hearing. There were no formal pleas but in earlier correspondence there were indications that the Respondent might be denying the allegations although the later correspondence muddied the waters a little. Mr Moreton agreed that there was some indication of admissions of breaches of the 1998 Rules but he would put it no higher than that. The Tribunal therefore treated all the allegations as denied.

8. Mr Moreton made an application that a report of Mrs Sue Corbin, Law Costs Draftsman dated 8 March 2012, be admitted into evidence. In the trial bundles the Tribunal already had two reports from Mrs Corbin. It had become apparent recently that there were papers that Mrs Corbin had not seen from a bundle provided by the Respondent to the Investigation Officer Mr Sage just when Mr Sage had prepared his Forensic Investigation Report and passed it to one of the Applicant's caseworkers. Accordingly Mr Moreton had asked her to carry out a further analysis of those papers. It resulted in a more favourable position for the Respondent. The Tribunal considered Mr Moreton's representations and as the document was favourable to the Respondent, the application to admit Mrs Corbin's report dated 8 March 2012 into evidence was approved.

Background

9. The Respondent was born in 1966 and admitted as a solicitor in 1992. His name remained on the Roll of Solicitors.

10. At all material times, the Respondent carried on practice on his own account under the style of Paul Ashley Henry ("the firm") in Moreton-in-Marsh Gloucestershire. The practice was intervened into by the Applicant on 6 October 2009.

11. On 22 July 2008, upon due notice to the Respondent, an Investigation Officer, Mr Robert Sage of the Applicant attended the firm. He produced a Forensic Investigation (FI) Report dated 11 August 2008. (Mr Sage is referred to as the "IO" if mentioned in connection with this first FI Report.)

12. On 17 August 2009, upon due notice to the Respondent, Mr Nick Ireland an Investigation Officer, of the Applicant attended the Respondent's firm. He produced an FI Report dated 18 September 2009. (Mr Ireland is referred to as the "IO" if mentioned in connection with this second FI Report.)

13. The Respondent was interviewed by Mr Ireland on 9 September 2009. A transcript of the interview was before the Tribunal.

14. The IO Mr Ireland's review of the firm's office bank account statements from August 2008 showed that the overdraft facility had gradually been reduced over the months from £17,000 to £12,000 from 1 March 2009 to be reviewed on 31 December 2009. The bank statements also showed that the firm had exceeded the overdraft limit on a regular basis incurring unauthorised borrowing fees and a higher rate of interest. The review also showed that at varying times the bank had stopped cheque and direct debit payments being made.

Allegations 1.2, 1.3 and 1.4

15. During the first investigation the IO discovered that the books of account were not in compliance with the 1998 Rules.

16. The Respondent produced a list of liabilities to clients as at 30 June 2008 totalling £110.50 after adjustment. The IO found that although the items on the list agreed with the balances shown in the clients' ledger, the list did not include further liabilities to clients shown by the books amounting to £72,118.25.

17. The IO conducted a comparison of liabilities not shown by the books, with cash held in client bank account as at 30 June 2008. He identified a cash shortage of £72,157.75 which was agreed by the Respondent.

18. The IO found that the cash shortage was caused by:

- improper transfers from client to office bank account, in respect of nine client matters, made during the period 27 July 2007 to 6 June 2008 and totalling £54,230.75. These transfers represented sums relating to Stamp Duty Land Tax ("SDLT") and/or Land Registry fees. The Respondent made transfers from

client to office bank account and then drew cheques on office account payable to HMRC or to the Land Registry. In each of the nine matters the cheques remained unpaid as at 30 June 2008;

- client funds incorrectly retained in office bank account amounting to £17,887.50;
- over transfers from client to office bank account totalling £39.50.

19. In the first FI Report dated 11 August 2008 the IO exemplified the following matters in respect of improper transfers from client to office bank account.

Mr JL and Mrs JD

20. The Respondent acted for these clients in connection with the purchase of a property at a price of £400,000, completion of which took place on 12 July 2007. The relevant account in the clients' ledger showed on 27 July 2007, a transfer of £12,000 from client to office bank account and an office account payment of £12,000 with the narrative "Stamp Duty", but the cheque remained unpaid as at 30 June 2008. The Respondent agreed that as a result, he had benefited by holding client's money of £12,000 in his office account for over 11 months.

21. An examination of the client matter file revealed that the SDLT return was submitted electronically to HMRC on 20 February 2008 and the transfer was registered on 22 February 2008. In response to a demand for the unpaid SDLT, the firm wrote to HMRC on 4 July 2008 saying:

> "By our records we sent you the payment shortly after we were able to obtain a certificate under the Government Gateway scheme, the previous handwritten submissions having been rejected."

22. No evidence was seen on the matter file that the payment had been sent. The Respondent said that the SDLT return was originally submitted manually but was rejected by HMRC at least once, along with the accompanying cheque for £12,000. He said that when the form was submitted electronically, the cheque would have been re-dated and sent again. He added that, prior to January or February 2008, manually completed SDLT forms were routinely rejected by HMRC and by that December 2007 he had a large backlog of outstanding SDLT returns. He said that he was then advised to use the online Government Gateway system by which the returns were submitted electronically.

23. Payment of SDLT was due within one month of completion. A letter from HMRC dated 8 July 2008 stated that the amount due at that day in respect of Mr JL and Mrs JD's property, including the penalty for late payment and interest was £13,064. The Respondent agreed that the sum remained unpaid until 5 August 2008 and constituted a client account shortage of £12,000 from 12 July 2007.

Mr JE and Miss YC

24. The Respondent acted for these clients in connection with their purchase of a property at a price of £362,500, completion of which took place on 13 December 2007. The

relevant account in the clients' ledger showed, inter-alia, on 19 December 2007 a transfer of £10,875 from client to office bank account and an office account payment in the same amount with a narrative "Stamp Duty" but the cheque remained unpaid at 30 June 2008, more than six months later.

25. Correspondence on the client matter file revealed that the blank SDLT Return was sent to the clients for signature on 19 December 2007 and returned to the firm with a letter dated 14 January 2008. The signed form, which was otherwise uncompleted save for a National Insurance Number, was still on the file as at 24 July 2008. An SDLT Return was submitted to HMRC electronically on 21 February 2008 and the transfer was registered on 2 April 2008.

26. The Respondent agreed that the office account cheque in the sum of £10,875, dated 19 December 2007, could not have been sent on that date. He explained that the cheque was held pending completion of the SDLT form electronically using the online system which he had acquired at about that time. He said the cheque would have been sent out in February 2008 when the form was submitted electronically. No evidence was provided to support that contention.

27. In May 2008, correspondence ensued with HMRC concerning the unpaid SDLT and in a letter dated 23 May 2008; the Respondent stated "by our records we forwarded to you a cheque for the principal amount on the 19th December 2007." He agreed that this statement was incorrect and said that this was a mistake. Several further letters were exchanged with HMRC during June and July 2008 concerning the unpaid SDLT but no replacement cheque was sent until 29 July 2008.

28. On 4 August 2008 the Respondent said that he had sent an office account cheque to HMRC on 29 July 2008 in respect of the SDLT of £10,875 together with the penalty and interest to date. He agreed that in respect of this matter he had had the benefit of holding client's money of £10,875 in the office account for more than six months.

29. The IO noted as 1 July 2008, that the firm's office bank account was overdrawn in the amount of £17,268.79 against an authorised overdraft facility of £12,000.

Mr DB-R

30. The Respondent acted for Mr DB-R in connection with his purchase of a property at a price of £170,000, completion of which took place on 30 June 2008. The relevant account in the clients' ledger showed, inter-alia, a transfer of £2,508 from client to office bank account on 6 June 2008 in respect of the firm's costs and disbursements, including £1,700 payable for SDLT and £150 for the Land Registry fee. The ledger account showed no office account payments for these two items, which remained unpaid at 30 June 2008. Also in respect of this client's matter, the ledger account was found to show a transfer of £14,000 from client to office bank account on 9 June 2008 with the narrative "Trn to re deposit" and an office account cheque payment on the same date, in respect of the deposit to be paid on the purchase. However, office account bank statements indicated that the deposit cheque was not charged to the account until 25 June 2008. The Respondent agreed that the firm had benefited from having client funds of £14,000 in office account from 9 June to 25 June 2008. The IO noted that the office bank account overdraft stood at £10,368.96 on 5 June 2008.

31. In the FI Report dated 11 August 2008 the IO exemplified the following matters in respect of client funds incorrectly retained in office bank account.

Mr SJK

32. The Respondent acted for Mr SJK in connection with a litigation matter. The IO found that between 21 March 2007 and 16 January 2008, eight lodgements totalling £49,572.31 were made into office bank account in respect of the firm's costs and disbursements. This amount was found to include fees of £12,775 payable to counsel and £5,112.50 payable in respect of a medical expert's fee, both of which remained unpaid as at 30 June 2008. Entries on the ledger account indicated two office account payments on 25 February 2008 for counsel's fees of £15,275 and an expert's fee of £5,112.50. However as at 10 July 2008 neither of these cheques had been presented for payment. The Respondent agreed that the cheque for £15,275 had not been sent to Counsel.

33. This case was also referred to in the Rule 7 Statement. The IO Mr Ireland found that counsel's fees of £12,775 had been paid in three amounts between 31 July 2008 and 15 September 2008 rectifying the previously reported shortage.

34. The Respondent had told the first IO Mr Sage that the cheque for £5,112.50 in respect of the medical expert's fees had not been accepted and the matter was still in dispute. Mr Ireland found that the cheque had been cancelled on 31 March 2009, resulting in an office credit balance of £5,356.37. On 1 April 2009, a costs bill of £5,356.37 was posted to the ledger. Mr Ireland found a letter on the file dated 1 April 2009 from the Respondent to his client, enclosing the bill and informing his client that he did not expect to pay the bill, that he had set it against medical fees and would discharge those costs himself. In response to enquiries made by the IO, the medical expert Professor W provided copies of his outstanding fee notes and correspondence showing that he was owed £13,214.75.

Mrs Jeffrey (Mrs FJ) allegations 1.1 and 1.5

35. Mrs FJ's matters were raised in both the Rule 5 and Rule 7 Statements. The Respondent acted for Mrs FJ in connection with the sale of her house which completed on 8 February 2008 and also in connection with a legal dispute with a former business partner Mr H in respect of a business B Skips. In the first FI Report the IO expressed concern in relation to sums withdrawn by the Respondent from the proceeds of sale of the property purportedly in respect of the firm's bills of costs and disbursements for the litigation matter. The IO found that the client ledger in the matter of the property sale showed that during the period 6 November 2007 to 2 May 2008 transfers from client to office bank account amounted to a total of £87,141.67. It was noted that the latest transfer from client to office bank account dated 2 May 2008 reduced the balance remaining on client account to nil and this remained the position as at 30 June 2008.

36. Subsequently, pursuant to section 44B of the Solicitors Act 1974, the IO seized the files of Mrs FJ. Costs Draftsman Mrs Sue Corbin was instructed to assess bills of costs raised on the conveyancing and litigation files. She produced a report dated 22 June 2009.

37. Mrs Corbin found one retainer which related to the property sale but found no separate retainers for the B Skips matter, or in respect of a proposed action for professional negligence against the client's former solicitors C&H.

38. The Rule 7 Statement set out that in Mrs Corbin's second report dated 24 May 2010 she considered Mrs FJ's matter again. Mrs Corbin had received further information including Mrs FJ's statement dated 4 March 2010. Regarding the property sale, her opinion remained that the amount of £3,304 charged was reasonable. Regarding the B Skips litigation she concluded that the invoiced amount of £62,750 represented an overcharge of £48,982 (355%); her opinion remained unchanged about a possible negligence claim against the client's former solicitors: she had found no further items in relation to this work. It remained her view that the Respondent was not entitled to make any charge in respect of it. Her overall conclusion was that the total of reasonable costs was £17,072. Mrs Corbin revised her opinion in respect of the B Skips matter in a third report dated 8 March 2012. Her final conclusion was that the appropriate fee was £13,768 and that the invoiced amount represented an overcharge of £48,982 (355%).

Mr S - Allegation 1.1 and 1.5

39. This matter was raised in the Rule 7 Statement. The Respondent was first instructed by Mr S in or about July 2006 concerning a dispute and the eviction of members of his family from a property known as CH. It was jointly owned by Mr S and his father.

40. The matter files indicated that the Respondent informed Mr S that his hourly charging rate would be £160 and that he would confirm his likely costs as the matter developed. Terms of business were signed on 8 August 2006 confirming the hourly rate.

41. In 2007, Mr S instructed the Respondent to act in the sale of CH. Estate agents took on the marketing of the property and in March 2008 a buyer was found. On 3 April 2008 the Respondent wrote to Mr S confirming his instructions and providing an estimate of charges for the conveyancing, in the sum of £750, plus VAT and disbursements.

42. The sale completed in July 2008. A completion statement showed a balance of £218,822.65 due to Mr S after deduction of his share of the sale costs. He received £175,000. The Respondent retained the sum of £43,822.65. In a series of e-mails in October and November 2008, Mr S wrote to the Respondent seeking repayment of monies owed to him. It appeared that Mr S was living in Egypt and in poor financial circumstances.

43. By e-mail dated 24 November 2008, the Respondent responded to Mr S requesting confirmation of his banking details, which Mr S provided by return e-mail. Mr S wrote to the Respondent again on 10 and 18 December 2008 chasing payment of the monies owed to him. On 18 December 2008, the Respondent wrote to Mr S informing him that it appeared that the costs incurred in respect of the family dispute outweighed the monies retained. The Respondent indicated that he would complete his calculations and make a payment to Mr S within a matter of days. Having heard

nothing further from the Respondent, Mr S wrote to him again on 3 and 5 January 2009.

44. On 5 January 2009, Mr S raised matters with the Legal Complaints Service ("LCS"). The matter was referred to the Applicant for investigation of matters concerning the Respondent's conduct. By letter dated 31 July 2009 the Applicant wrote to the Respondent requesting his explanation in respect of allegations concerning Mr S. On 26 November 2009, an Adjudicator of the LCS acting pursuant to delegated powers directed the Respondent to waive an invoice dated 29 July 2008 in the total sum of £44,156.50 and refund that amount to Mr S, and to pay compensation of £1,000 to Mr S in addition to the refunded costs. The Respondent was directed to comply with the directions within seven days. The Adjudicator stipulated that non-compliance with his direction would result in the matter being referred without further notice to the Applicant to instigate an application to the Tribunal.

45. The Costs Draftsman Mrs Corbin was instructed to assess bills of costs raised on the client files relating to Mr S. Her analysis of the results was set out in her report dated 24 May 2010. In summary she found:

- that the files relating to Mr S did not support the charges raised;
- that reasonable costs relating to the dispute concerning CH amounted to £7,376, excluding VAT and disbursements;
- that the Respondent's charges amounted to £37,580, excluding VAT and disbursements, representing an overcharge of 409.5%.
- Shortages rectified prior to the second investigation.

46. The IO Mr Ireland discovered when reviewing the firm's accounting records that in two matters there had been significant shortages on client bank account which had been rectified prior to the investigation.

Mrs N

47. The Respondent acted for Mrs N in her matrimonial matter. Initial instructions were taken at a meeting on 7 May 2008. In September 2008 according to the client's ledger Mrs N re-mortgaged the matrimonial home, which following redemption of the existing mortgage, provided sufficient funds to settle some personal liabilities and the agreed settlement to her ex-husband. Also out of the balance of the proceeds, counsel's fees of £881.25 were paid. There were subsequent client to office bank account transfers and on 6 October 2008, £2,500 was paid from client bank account to Mrs N which resulted in an overdrawn balance of £1,729.39, which was increased to £5,426.21 following a further payment to the client of £3,696.82 on 24 October 2008. The payments to the client were based on a completion statement which the Respondent sent to her with a covering letter dated 24 October 2008. Mrs N then wrote asking for a detailed report of the Respondent's costs pointing out what she had paid up to August 2008 and that the amounts charged since seemed a lot more than expected. It appeared that the client was not aware of the Respondent's additional costs, which had been transferred from client to office bank account, until she received the completion statement.

48. A complaint was made to the LCS about costs. It was subsequently withdrawn following the Respondent's agreement to pay the client a further £1,811.07. This payment was made on 13 March 2009 from client bank account which increased the overdrawn balance to £7,237.28. The client ledger showed that on 1 June 2009 the shortage of £7,237.28 was replaced by offsetting amounts purportedly due to the firm in relation to costs and disbursements on other client matters. Although dated 1 June 2009, it appeared that the transfers were not actioned until 16 July 2009.

49. At the meeting on 20 August 2009 with the IO, the Respondent agreed that there had been a breach of the rules as the client had not been advised of costs prior to them being transferred from client to office bank account. The Respondent agreed that a shortage existed on this matter from October 2008 to June 2009. When asked why it had not been rectified earlier he said that the bookkeeper had been off sick and that they had not been as up to date on the client bank reconciliations as they should have been.

Mrs DF

50. In respect of this matrimonial matter the Respondent was contacted at short notice to act. Work undertaken included instructing counsel. On 9 October 2008, £10,000 was received on account of costs from the client's mother and lodged in the firm's client bank account. On the same date a bill was raised in respect of the work undertaken in the sum of £5,962.93 with this amount being transferred from client to office bank account. However the cheque for £10,000 was stopped, resulting in a shortage on client bank account of £5,962.93. The relevant client ledger showed that on 1 April 2009 the shortage of £5,962.93 was replaced, this being achieved by offsetting amounts due to the firm in relation to costs due on another client matter. Although dated 1 April 2009 it appeared that the transfers were not actioned until 16 July 2009.

51. At the meeting on 20 August 2009 the IO asked the Respondent if he agreed that a shortage existed on client account from October 2008 to April 2009. The Respondent said that technically there was a shortage but that he had other monies coming into client account which he could have transferred but did not.

Allegations 1.1, 1.2 and 1.6

52. During the second investigation, the IO Mr Ireland discovered that the books of account were not in compliance with the 1998 Rules, specifically Rules 7, 19, 20, 22 and 32. The Respondent produced a list of liabilities to clients as at 31 July 2009 totalling £22,371.05 after adjustment. The IO found that although the items on the list agreed with the balances shown in the clients' ledger, the list did not include additional minimum liabilities to clients, not shown by the books and amounting to £58,727.25. He conducted a comparison of the liabilities with cash held on client bank account and identified a minimum cash shortage of £58,980.81. The IO found that the cash shortage was caused by:

- improper transfers from client bank account totalling £53,614.75
- client funds incorrectly retained in office bank account amounting to £5,112.56

- debit balances amounting to £253.56.

53. During a meeting with the IO on 9 September 2009, the Respondent provided evidence to show the £253.56 was replaced on 24 August 2009. The Respondent agreed that a further shortage existed on client bank account of £15,780. The Respondent did not agree that a shortage of £37,834.75 existed in respect of the client Mrs BD exemplified by the IO in his report, and in relation to a shortage of £5,112.50 relating to unpaid professional disbursements in the case of Mr SJK. The Respondent said that the position remained as set out in the FI report dated 11 August 2008. At the date of the second FI Report, £58,727.25 of the minimum cash shortage had not been replaced.

Improper withdraws from client bank account - £53,614.75

54. The IO found in respect of at least three client matters that significant sums of money had been withdrawn from client bank account and transferred to the firm's office account, purportedly in respect of bills raised. Enquiries were conducted of three clients. They all confirmed that they had not received any of the bills concerned or any written notification of the additional costs charged. The IO exemplified the following matters in the FI Report dated 11 August 2008.

Mrs BD allegations 1.1 and 1.5

55. On 19 October 2006 Mrs BD met Ms C, a locum solicitor at the firm in respect of matrimonial matters. The following day Ms C wrote to Mrs BD providing an indication of the firm's charges should Mrs BD instruct the Respondent on a private basis; these were £500 (plus VAT) for the divorce and £1,000 (plus VAT) to deal with the financial aspects of the matter. Ms C advised that costs would be substantially higher, as much as £5,000, if Mr D did not cooperate, requiring proceedings to be issued.

56. Mrs BD took no further action until November 2007. The IO found on file a copy of the firm's standard Terms and Conditions of Business signed by Mrs BD on 29 November 2007, together with a costs schedule in Mrs BD's name dated 10 December 2007 indicating that the firm's costs for the divorce should not exceed £480 (plus VAT). Ancillary relief matters would be charged at an hourly rate of £160 (plus VAT) with an estimate to be provided once matters were underway. The firm's costs relating to children would be at the same hourly rate. The document also referred to charges in respect of injunction proceedings but these were never required. A review of the client ledger showed that between 29 November 2007 and 11 November 2008 Mrs BD had been charged £4,496.70 including VAT, relating to six bills varying in amount between £300 and £1,278.40. There was evidence that these bills had been sent to the client, as there was usually a covering letter to her and in addition all the bills have been settled by means of cheques to the firm.

57. In a letter dated 10 December 2008, the Respondent wrote to Mr D's solicitors proposing a full and final settlement of £25,000. In their response, dated 17 December 2008, Mr D's solicitors proposed a lump sum settlement of £35,000. On 23 December 2008 after some further proposals, the Respondent wrote to them confirming that an agreement had been reached for a lump sum payment of £32,500. Also in December

2008 Mrs BD re-mortgaged the matrimonial home with £69,970 being received into the firm's client bank account on 22 December 2008 from which £64,120.47 was utilised in redeeming the existing mortgage on 23 December 2008 leaving a balance held on her behalf in the firm's client bank account of £5,849.53.

58. On 23 December 2008, £5,807.05 was transferred from the firm's client bank account to the office bank account in settlement of two bills, both dated 23 December 2008, one for acting in the re-mortgage amounting to £575 inclusive of VAT and the other for dealing with the ancillary relief amounting to £5,232.50 inclusive of VAT. The transfer reduced the balance held in the firm's client bank account for Mrs BD to £42.48.

59. Following an e-mail sent by Mrs BD asking the Respondent if a cheque would be acceptable for Mr D, the Respondent wrote on 12 January 2009 stating:

> "If your Mum & Dad can let me have a cheque payable to this firm I will hold it in client account pending receipt of the Transfer and signed Consent Agreement from Mr D."

60. On 21 January 2009, a cheque was received for £32,500 which was lodged into the firm's client bank account increasing the balance held on behalf of the client to £32,542.48.

61. Between 3 February 2009 and 1 June 2009 the client ledger showed 14 transfers from the firm's client bank account to office bank account totalling £32,542.48. The dates and amounts recorded on the client ledger did not always correspond with the actual transfers. In addition a transfer of £522.38 on 1 June 2009 included in the total was part of amounts used to replace a shortage on client bank account. The transfers reduced the amount held on behalf of Mrs BD in the firm's client bank account to nil. The transfers were made in settlement of five bills of costs: for ancillary relief dated 23 January (£2,587.50) and 23 February (£5,640.75); for transfer of equity (£517.50) dated 17 March, for ancillary relief (£17,750) on 17 March and on 17 April 2009 (£6,049). These bills total £32,544.75.

62. The client file indicated as recorded in the second FI Report, that Mrs BD's husband had cooperated and no proceedings had been issued other than divorce proceedings which were uncontested. Mr D paid half of the divorce costs in the sum of £549.50 which the Respondent notified to his solicitors as being £1,099 in a letter dated 18 April 2008. Having raised the matter with the Respondent, Mr Ireland wrote to Mrs BD on 25 August 2009. On 27 August she telephoned and wrote in response, confirming that she had not received any of the bills enclosed with Mr Ireland's letter and she had not received anything in writing about any further charges.

63. The IO seized the files relating to Mrs BD, pursuant to section 44B of The Solicitors Act 1974. Mrs Corbin was instructed to assess bills of costs raised on the files. Her report was dated 24 May 2010. Mrs Corbin established that the Respondent's charges amounted to £36,921.98 plus VAT and disbursements, a total of £42,773.45. Mrs Corbin's summary of her opinion included that:

- the file did not support the charges raised;

- her calculation of the total reasonable charge amounted to £2,850 and, thus, there was an overall overcharge of 1,195%;
- the charge of £2,163.66 for the divorce work represented an overcharge of 238%;
- the charge of £6,393.32 for the ancillary relief work, up to the date of settlement, represented an overcharge of 316%;
- the charge of £28,365 for work after the financial agreement had been reached represented an overcharge of 4,445%;
- the level of overcharging increased exponentially after the financial agreement had been reached and the divorce settlement monies of £32,500 had been received into the client account;
- the charges consumed all of the settlement monies.

Mr and Mrs T- allegations 1.1, 1.2 and 1.5

64. The Respondent acted for Mr and Mrs T in the purchase of a property. On 21 April 2009, Mr T wrote to the Respondent further to a telephone conversation agreeing the Respondent's quoted fee of £575 (VAT and disbursements). The Respondent replied on 22 April 2009 confirming his expected charges of £575 and setting out the cost of specified disbursements.

65. The IO found that the contract showed a deposit of £35,000 being held to order. He noted however that the figure had been amended by hand to £25,000.

66. On 30 June 2009 the amount of £6,037 was transferred from client account to office bank account. On 1 July 2009 a further transfer of £3,823.53 was made from client account to the office bank account, increasing the office credit balance to £9,861.03. Both items were recorded as transfers of costs although no bills had been posted at that time.

67. An e-mail was discovered on the client file from the Respondent to Mr T dated 13 July 2009 setting out the monies required to complete the transaction, amounting to £326,193.90. The e-mail indicated that stamp duty of £10,500 was "to follow".

68. The balance of completion monies was received into the firm's client account on 14 July 2009.

69. On 16 July 2009 the sum of £1,357 was transferred from client account to the office bank account thereby increasing the office credit balance to £11,135.25.

70. On 17 July 2009, the purchase monies were transferred to the vendor's representatives. The transfer resulted in an overdrawn balance of £23.63. A bill totalling £695.75 was posted on same day. A further bill of £10,449.50 was posted on 24 July 2009, resulting in an office debit balance of £60. The client ledger showed that the client account shortage was rectified on 14 August 2009 by a payment from the office bank account, but the shortage was not actually rectified until 24 August 2009 as cheques which had been raised on the office bank account had not been paid into the client bank account.

71. During a meeting on 20 August 2009 the Respondent informed the IO that as far as he was aware the bill of £10,449.50 had been sent to the client. He said that it was based on work done. He said that the stamp duty of £10,500 was not held but, as indicated in the e-mail was to follow.

72. Enquiries were subsequently made of Mr T. He informed the IO that he had not received the Respondent's bill dated 24 June 2009; had not been informed of any significant additional charges; and as far as he was concerned did not owe a further £10,500 for SDLT. Mr T also observed that the e-mail which he had received on 13 July 2009 was different in several respects to the version of the document found by the IO on the file. It was noted that the message received by Mr T showed the Respondent's fees to be £661.25, compared with the e-mail on the Respondent's file which indicated the figure to be £9,705 plus VAT. Also the e-mail on the Respondent's file had the words "to follow" typed after the stamp duty figure of £10,500. Those words did not appear on the e-mail received by Mr T.

Mr PB and Miss KM allegations 1.1, 1.2 and 1.6

73. The IO found that the Respondent acted for Mr PB and Miss KM in the sale of a property, the completion of which took place on 10 July 2009.

74. The Respondent wrote to Mr PB and Miss KM on 13 May 2009 thanking them for their instructions. Enclosed with the letter were the firm's Terms and Conditions of business informing the clients, on the basis of information provided, that the firm's charges were expected to be £500, plus VAT and disbursements.

75. On 10 July 2009 the sum of £644 was transferred from client to office account in respect of a bill of the same date. The IO noted that the ledger recorded the bill being reversed and showing a revised bill of £4,848 plus VAT and other charges amounting to a total of £5,644. The additional sum of £5,000 was found to have been transferred from client account on 21 July 2009. The IO noted on the client matter file, the completion statement showing the firm's fees as £5,575. He could not find on the client matter file any correspondence from the Respondent informing the clients of any additional cost arising from the transaction. At the meeting on 20 August 2009, Mr Ireland asked the Respondent if he had sent the Bill for £5,644 to the client. The Respondent said he did not have a forwarding address. Mr Ireland asked how he was able to increase his fees from £500 plus VAT to £5,575. The Respondent said that the client agreed fees so they knew what they were.

76. Enquiries were made of Mr PB concerning the transaction. He informed the IO that there was a retention of £5,000 which was supposed to be held in a separate account. He had been attempting to obtain details of the account from the Respondent. Mr PB provided the IO with a copy of e-mails concerning the retention. The IO compared the documents with copy e-mail documents found on the file. He noted discrepancies, particularly that there was an e-mail on the Respondent's file which appeared to have been altered to remove a reference to a retention of £5,000.

Witnesses

Mrs Fay Jeffrey (Mrs FJ)

77. Mrs Fay Jeffrey gave evidence. She confirmed the truth of her witness statement dated 4 March 2010. The exhibits were documents in her possession as received from the Respondent. In early 2007 she [and her late husband] were having a house built in the grounds of their then residence [NE House]. Both the Respondent and the estate agent had given her an estimate for conveyancing of only £600. The Respondent had not given her anything in writing. At that time she was also engaged in litigation with Mr H. This litigation had been going on for around six years. The witness was represented in the litigation by C&H solicitors. There was an issue of outstanding fees, which they were finding it very difficult to pay but the witness had said that she would be able to pay once she had sold NE House and moved to the new property next door which was now called L House. The witness confirmed that eventually she had asked the Respondent what he thought they should do and he had looked at the paperwork. She could not recall exactly when he had been provided with the paperwork but it was August that year when she asked him to do the conveyancing. She had provided the Respondent with three large full boxes. He had not given any estimate regarding the litigation, just the £160 per hour in the original agreement document [regarding conveyancing]. If the Respondent had suggested that he gave her a verbal indication that the costs of the litigation would be at least £45,500 plus VAT, she would have been pretty horrified and would have had second thoughts about it. The witness confirmed that the trial of the action was due for the end of October 2007 and that she had difficulties getting papers from her former solicitors C&H. In order to obtain the papers she had to give them a charge on the property in respect of the monies which she owed them. She couldn't recall exactly how much money but thought it was around £32,000 or so but it could have been less. [Her statement said that for her and her son, the costs of the litigation, both paid and owed to C&H totalled in the region of £38,000 over a six year period.] She had gone with the Respondent to collect the documents. The Respondent had advised her that it would cost a great deal to go ahead with the action and that if they lost they would have to pay all the costs of the other side. He felt that they had received bad advice in the first place and that the case should not have been dealt with as it had been.

78. The witness was referred to various documents which she testified that she had not received:

- A letter dated 6 November 2007 which said "Please find enclosed receipted interim account one for your records."
- A bill dated 6 November 2007 in the amount of £25,000 plus VAT totalling £29,375, "Re: Dispute with the [Hs] … on account of costs incurred in this matter generally to date."
- A bill dated 15 November 2007 in the amount of £35,000 plus VAT totalling £41,125, "Re: Dispute with the [Hs] Interim account number 2" which included in the narrative "In the meantime preparing trial bundles for the final hearing listed for 5 days in the High Court (2 fee earners engaged)";
- A bill dated 15 November 2007 in the amount of £2,750 plus VAT totalling £3,231.25, "Re: Dispute with the [Hs] Interim account number 3".

- A letter from the Respondent dated 8 February 2008 which said "Further to completion of this matter Please find enclosed receipted invoice for your records." The heading referred to the sale of NE House.
- A bill dated in typescript 15 November 2007 but corrected in handwriting to 8/Feb/08 in the amount of £4,805 plus VAT totalling £5,645.88, "Re-: Proposed Claim against [C&H]".
- A bill dated 8 February 2008 in the amount of £3,424 plus VAT totalling £4,047.90, "Re: Sale of [NE] House".

79. The witness confirmed that in her bundle of papers exhibited to her witness statement, there was a letter dated 23 June 2008 from the Respondent with invoices, the first sheet of which bore, in her handwriting, "Received 25th June". These included undated documents all entitled "DRAFT ACCOUNT" as follows:

- "Re-: Sale of [NE] House" in the amount of £3,424 plus VAT totalling £4,047.90;
- "Re: Proposed Claim against [C&H]" in the amount of £4,805 plus VAT totalling £5,645.88;
- "Re: Dispute with the [Hs] Interim account number DRAFT" in the amount of £35,000 plus VAT totalling £41,125.

80. The witness had also received a letter dated 27 August 2008 from the Respondent including:

> "I would remind you once again that with regard to the [H] matter I quoted £43,500 plus VAT, plus what I had already spent in terms of lengthy consideration of your papers…"

81. The letter enclosed a document headed "Mrs Fay Jeffrey in account with Paul Ashley Henry Solicitor, which the witness had marked "received 29/8/09". The witness confirmed that she understood by this document that the Respondent had actually taken from her proceeds of sale of NE House, £86,450.02. She had not received any other indication that he had taken any other monies. She recalled that the sale price had been in the region of £505,000. The witness said that she had received in the region of £30,500 from the sale and no other monies whatsoever.

82. As to whether the witness had instructed the Respondent to conduct an analysis of the papers in the litigation with a view to possible proceedings against C&H for possible negligence, she said 'No', because she would possibly do that once she had settled up with NE House when she had something to spare after all the debts had been paid. She had not previously known the Respondent and had been introduced to him by the estate agent.

Mr Robert Sage

83. Until his retirement in September 2011, the witness had been employed as an IO by the Applicant. The witness confirmed the truth of his FI Report dated 11 August 2008. When he first met the Respondent he had been advised that the firm consisted of the

Respondent, two secretaries/ receptionists, one of whom worked part-time and an external bookkeeper who worked on a casual basis. There were no other staff. The witness had no direct knowledge of the involvement of the Respondent's wife in the business but understood that she had previously worked there and continued to receive salary. Very late in the day on 11 August the witness had received a bundle of papers from the Respondent which was before the Tribunal. [It consisted of the correspondence papers in Mrs FJ's matter.] He had forwarded it to another department of the Applicant and not looked at it in any great detail at the time. The witness confirmed that the Respondent had written on 15 September 2008 in response to his FI Report. It had been decided after the investigation was concluded that files should be costed and the witness have been instructed to prepare a Section 44 B notice and retrieve all the files, which he had done. The amount collected had filled seven banker's boxes and had been delivered to Mrs Sue Corbin, the Law Costs Draftsman.

Mr Nick Ireland

84. The witness was a chartered accountant and investigation team manager. He had been employed by the Applicant for 18 years. He confirmed the truthfulness of his FI Report dated 18 September 2009. Regarding who worked at the firm, the witness said that the Respondent was the only fee earner. The witness confirmed that he had uplifted the files relating to Mrs BD's matter under a Section 44B notice because he had serious concerns about the monies which the Respondent had transferred from client to office account regarding costs and he wished to preserve the files. The witness had interviewed the Respondent on 9 September 2009 and the process had been digitally recorded. In effect the transcript acted as a contemporaneous note for the witness when preparing the FI Report. The witness confirmed that he had written to Mrs BD and Mr T. Mr T had attended the Applicant's offices and provided copies of e-mails that he had received from the Respondent. Mr PB had e-mailed the witness sending him the e-mails that he had received from the Respondent. In his contact with Mrs BD she had confirmed that she had not received copies of bills.

85. Having regard to the Respondent's accounts, the witness had prepared a schedule in the form of a spreadsheet regarding three matters, Mrs BD, Mr and Mrs T, and Mr PB [and Miss KM]. It showed the position regarding the Respondent's bank account including the overdraft limit and what the balance would have been without the transfers from 22 December 2008 until 27 July 2009, when the Respondent transferred monies between client and office account in respect of those three files. The witness said that he was trying to show that the Respondent was in financial difficulties with his bank reducing the overdraft. The aim was to identify how the Respondent would pay himself drawings and pay the overheads of the business when he was close to [the limit of] the overdraft facility. There were numerous occasions when there were letters from the bank informing the Respondent that it had not paid cheques which he had raised. Direct debits were returned unpaid. The Respondent was very close to the overdraft facility throughout the period. Transfers [from client to office] alleviated the financial position with the bank, to keep him on or under the overdraft facility. By way of example, the witness referred the Tribunal to a transfer made from Mrs BD's account in the sum of £5,807.05 on 23 December 2008 when the overdraft limit was £14,500. With the benefit of the transfer the overdraft stood at £5,290.90 instead of £11,097.95. The witness had looked at the dates of the transfers

and what payments the Respondent would make after them, and had highlighted in bold where the Respondent had made drawings. By way of example the Tribunal was also referred to transfers made in May, June and July 2009 on the case of Mr PB and Miss KM. An amount of £5,000 which the witness said was the money which should have been held as a retention was transferred from client account on 21 July 2009. There was one drawing on that day and two on the following day for the Respondent. The witness said that after his initial review of the accounting records and his noting that a lot of money was being transferred from client to office, Mrs BD had been approached. He obtained the files to see if the firm could justify the amounts. In respect of items described as "loan repayment", the witness said that there had been a receipt of £18,000 possibly in September 2008 and it could be what the Respondent's wife had provided to help with the business. Having regard to items described as for Mrs Henry as 'salary' the witness said that there was no evidence that she was actually working in the firm at the time of the payments in 2009.

Mrs Sue Corbin

86. The witness was a qualified Costs Draftsman and had qualified as a Costs Lawyer in 2007. She had been in practice since 1986. The witness was referred to three reports, dated 22 June 2009, 24 May 2010 and 8 March 2012 which she had prepared in respect of the Respondent's files. The first report dealt with Mrs FJ's matters. The second report related to Mrs BD and Mr S with an addendum in respect of Mrs FJ. The witness had revisited her conclusions from the first report in order to correct a typographical error and also because more information had come from Mrs FJ concerning information she had been given. She had revisited Mrs FJ's matters again quite recently and further information came to light and this was reflected in her March 2012 report. As to the witness's methodology, she received files from the Applicant or whoever was instructing her. They usually consisted of correspondence, pleadings and other paperwork and could be in a variety of order. The witness tried to piece together and extract from the files the costs and put them in a format that could be understood by others who had not read the file. The witness was referred to her first report where she had said that the record of work she had considered had been taken from the seven boxes of files delivered to her by the IO Mr Sage. The witness confirmed that six and a half boxes contained C&H files and consisted of lever arch and cardboard folders which seem to be in quite good order. The Respondent's work was largely in cardboard folders. She had been able readily to identify C&H files, for reasons which she detailed. The witness had listed the files relating to work done by the Respondent. In respect of how much work had been done by the Respondent alone, it was just under one box. She estimated that six and one third boxes related to the other firm [C&H]. One box had files from both C&H and the Respondent's firm. The witness informed the Tribunal that it had taken just over three hours to go through the C&H files to check that they contain no papers regarding the Respondent, as opposed to carrying out a detailed review of the papers.

87. The witness confirmed the basis which she had used for costing the work in her report. In the report she had set out she had consulted the Law Society website for guideline on hourly rates. Having regard to the Respondent's length of qualification, the fact that he was a sole practitioner and his location, in her opinion the hourly charge of £160 was reasonable. She costed solicitor client work on an indemnity

basis and attempted to draw costs in a way that gave every benefit of the doubt to the solicitor. She was generous if not more than generous.

88. In respect of a proposed claim against C&H for professional negligence which the witness referred to in her first report, she had established that the Respondent had done very little work. He had not had sight of C&H's files until September or October 2008, quite near trial. The Respondent had looked through the files in the frantic three days before he managed to settle the case. Thereafter he had not given any advice on whether C&H had been negligent so far as the witness could tell. In her opinion Mrs FJ was none the wiser regarding whether C&H had acted negligently. The witness agreed that the Respondent may have revisited the files in respect of a negligence claim after the proceedings had settled. There was no evidence and no noticeable suggestion on the files that he had done that. The witness said in her first report that the Respondent had charged £62,750 (392 hours, almost 10 weeks) in relation to the court action for purportedly reading the files and preparing trial bundles etc. The report continued:

> "If this time was truly spent, and I doubt that it was, then additional time in excess of 30 hours to consider conduct issues is unreasonable because those issues would have become very apparent in the first examination of the file."

89. There was no retainer and so there was no doubt to be resolved in favour of the Respondent. The witness had allowed 50 hours for the work to settle the case and considered that the Respondent could have got a very good idea as to any negligent advice in sifting the papers.

90. In respect of his work in the litigation, the witness said that while the Respondent had worked on it for a very short time, it was quite serious litigation with a six-day trial fixed. It needed a solicitor with knowledge of commercial litigation. The Respondent would have had to get into it very quickly but before that, based on what he had seen he had already advised Mrs FJ to withdraw and discontinue and had set the ball rolling for the case to be settled before he got the papers. The first report contained a table, which had information taken straight from the Respondent's notes on files. The witness had relied on the evidence of the Respondent's work on a handwritten note and would have tried to take account of all the evidence on file, for example work indicated in a letter where there was no other evidence of the work on file. Under the heading 'hand tally', she referred to attendance notes which were fairly standard and would be seen in any solicitor's file. In respect of long telephone calls and attendances in person for the conveyancing, the Respondent claimed 3.25 hours and the witness had allowed 1.6 hours but the witness did not consider that disallowing calls made by the secretary which the witness treated as an administrative overhead, would account for that discrepancy. The witness was asked about a reference in one of the bills relating to the litigation dated 15 November 2007 "2 fee earners engaged". The witness said nothing had emerged from the file regarding a second fee earner just the very helpful secretary SS. The witness was also asked to clarify what she had said in her first report relating to Mrs FJ having acted in person:

> "Mrs [FJ] had been represented by [C&H] until April 2007 when they had come off the record… Mrs [FJ] had then acted in person until, on 24 August

> 2007, finding the litigation too much for her, she persuaded Mr Henry to represent her…"

91. She was referring to a file note of 24 August 2007 which included:

> "… said she had received something from the court and other side and didn't know what to do c&h wouldn't help and she had phoned the LCS as I suggested but they couldn't do anything;
>
> asked me to take the matter on: I advised that the trial date posed difficulties as we were expecting baby … in September and I would be away from the office;
>
> she accepted this but was at her wits end..."

92. The witness agreed that the note said nothing about Mrs FJ acting in person but she had gathered that from other information. Mr Moreton reminded the Tribunal that in his letter 24 August 2007, the Respondent in writing to the other side's solicitor had said that his firm was not on the record and referred to his client remaining a litigant in person until his firm was able to assist or she was able to obtain alternative representation. In a letter of 13th September 2007, the other side's solicitors had recorded that Mrs FJ and her son had both signed a Notice of Change dated 18 April with which that firm was served on 30 August 2007. The witness informed the Tribunal that she did not recall seeing any notes or memoranda from the Respondent indicating that he was trying to get Mrs FJ to allow him to take the case as opposed to her interpretation that Mrs FJ persuaded him. The witness agreed that a solicitor and client could reach whatever bargain they chose about the costs of the case but the costs must be fair and reasonable.

93. Having regard to the conveyancing work, the witness had approached it on the basis that there were some technicalities but that they were not out of the scope of an experienced solicitor. In her first report, the witness recorded that the Respondent had provided a separate written estimate of £600 plus VAT and disbursements. At some point the estimate was revised by way of a handwritten note on the original estimate indicating that Mrs FJ had agreed to a ball park £3,500 limit. The witness confirmed her opinion that the conveyancing charges were reasonable.

94. In her third report the witness had concluded that the overcharge for the litigation was 355% (£48,982). She had seen most of the additional papers before and was not entirely convinced that she had not already made allowance for what she had found there but she had erred on the side of generosity.

95. In her second report the witness had dealt with the cases of Mrs BD and Mr S. She confirmed her conclusions regarding overcharging and what she had found on the files. In respect of Mrs BD the witness had recorded:

> "Mr Henry has made very few records of his time and so my opinion is based largely on estimations based on my experience of time that would be taken by other solicitors for similar work."

96. The witness had calculated the work before the financial agreement had been reached on 23 December 2008 and afterwards.

97. The witness had carried out a similar analysis in the case of Mr S, again the hourly rate of £160 set out in the Respondent's terms of business was considered to be reasonable. The witness confirmed that in her report she had set out that the times recorded for attendances on Mr S appeared excessive in most instances for the matters discussed.

98. She confirmed that in both the cases of Mrs BD and Mr S she was satisfied that she had seen all the paperwork available and there were not very many attendance notes. The firm did not have a computer time recording system.

Findings of Fact and Law

99. In considering the allegations the Tribunal used its usual standard of proof, that is beyond reasonable doubt. In respect of those matters where dishonesty was alleged in connection with allegations 1.1 and 1.2, in considering the Respondent's conduct the Tribunal followed the two limbed test for dishonesty established in the case of Twinsectra v Yardley [2002] UKHL 12.

100. **Allegation 1.1: that he transferred sums from client (bank) account for costs that he knew that he could not justify thereby deliberately overcharging his clients;**

Submissions on behalf of the Applicant in respect of allegation 1.1

100.1 On behalf of the Applicant, in respect of the allegation of dishonesty coupled with allegation 1.1, Mr Moreton relied on the matters of Mrs FJ, Mr S, Mrs BD, Mr and Mrs T, and Mr PB and Miss KM.

100.2 Mr Moreton took the Tribunal through the documentation relating to the sale of Mr and Mrs FJ's house and to the litigation with their former business partner Mr H over the business B Skips. The matters had run from March 2007 until mid-2008. A handwritten attendance note of 25 April referred to the Respondent attending Mrs J and discussing the sale and:

> "then the new matter explaining background of her dispute said unhappy with her solrs- (I offered 2nd opinion). Said she owes them money + can't pay @ mo! Could we say we will pay out net proceeds of sale? Paul agreed to Fx C&H and repeated offer of 2nd opinion. (no response)…"

100.3 By letter of that day, the Respondent offered an undertaking to remit £18,000 from the net proceeds of sale to the litigation solicitors C&H to discharge existing and future costs. His letter to C&H of 17 May 2007 confirmed that the available equity on completion would be approximately £200,000. The sale dragged on. An attendance note from 1 August said:

> "Client dropped in papers (box files etc) plus corresp from her solr. What's happening re the legal charge? What do the fees relate to?… Call [Mrs FJ]...? No reply letter sent…"

100.4. The Respondent wrote to Mrs FJ on 1 August 2007 discussing the costs in the litigation which C&H were claiming. Mr Moreton submitted that this letter dictated the previous day was inconsistent with the note that said the papers had been dropped in on 1 August. On 24 August the Respondent wrote to the solicitors acting for H in the litigation saying that he had received instructions from Mrs FJ; that C&H had come off the record of acting he continued:

> "We are placed in a position where we have very limited papers and no idea of the trial window, if as appears to be the case that there is one;
>
> We are not on the record as such and are uncertain due to potential time constraints whether we will be able to assist.
>
> We have considered the timetable prepared by your Counsel which subject to our own logistical difficulty seems on the face of it reasonable…."

100.5. The Respondent referred to the difficulties of getting the papers still held by C&H and said:

> "our client will remain a litigant in person until we can confirm we are able to assist or she is able to obtain alternative representation"

100.6. Mr Moreton submitted that the Respondent had received some information but did not have a complete set of papers until midway through October. He conceded that it was unclear what Mrs FJ had provided to the Respondent but her witness statement referred to three boxes and it was accepted it could have been in early August. Mr Moreton pointed the Tribunal to the typed attendance note of 24 August 2007 referred to by Mrs Corbin in evidence. It recorded that she asked him to take the matter on. He pointed out his difficulties. The note continued:

> "She accepted this but was at her wits end. Said it would be very expensive to play catch up on a ball park basis provided we could get the files from c & h it would cost 45,500.00 in profit costs at least plus vat plus what I had done; if if (sic) runs to trial with bundles etc we will require a brief for circa 10k plus 2500 per day refresher; she believes case is listed for 6 days! I would probably have to attend with a daily rate circa 850 per day plus vat Instructed to proceed contacted rid (sic) trying to agree arrangements for the ptr…"

100.7. On 14 September 2007 the Respondent wrote to confirm that he had received instructions and dealt with the pre-trial review timetable. Mr Moreton referred the Tribunal to the work which the Respondent had then done as evidenced by the papers including negotiations for settlement and continued correspondence with C&H regarding costs and the papers. A handwritten attendance note of 17 September recorded that in a telephone conversation with Mrs FJ he suggested a drop hands offer, which he then made to the other side on the same date. By letter on 26 September the Respondent confirmed to C&H that his firm had taken over the case and repeated the offer of an undertaking in return for the full file of papers. On 27

September, C&H confirmed the amount owing including interest to 5 October was almost £15,000. On 3 October in the absence of the Respondent on paternity leave, the firm wrote that it was still hamstrung in the production of the trial bundles by C&H's failure to hand over any papers. They had papers provided by Mrs FJ and asked for the claimant's standard disclosure list and the extent of witness evidence. Discussions between the parties continued. C&H was given an undertaking in respect of the papers on 15 October 2007. On 22 October the Respondent sent a consent order to the court confirming that the hearing could be vacated.

100.8 In mid-January the Respondent was off sick and his secretary SS was writing on his behalf to H's solicitors. A typed attendance note dated 24 January 2008 referred to consideration of C&H's files between the end of December 2008 to date, continuing:

> "with regard to their conduct on the [H] case: including advice at outset, any change of advice, did client ignore this advice, should they have abandoned the client reoving [sic]counsel etc Collated on the basis of in excess of 30 hours spent."

100.9. Mr Moreton submitted that the earliest the Respondent had any papers was 1 August 2007 and the litigation settled in mid-October. C&H have been dealing with it for some years. He accepted that it would be appropriate for the Respondent to review the papers in respect of a possible claim against C&H but questioned why he would have done that in January 2008. On 25 January H's solicitors confirmed that they were about to take enforcement proceedings. Costs were finally paid in the amount of £411.25 to H's sols on 21 February 2008 and £22,539.43 to the High Court enforcement officers a few days before 14 February.

100.10 Contracts for the sale of NE House took place on 26 October 2007 after discussions about outstanding building works. (Completion was fixed 9 January 2008.) Mr Moreton conceded that this was clearly not a smooth conveyance. Possibly Mrs FJ needed to borrow more money from the bank as illustrated by the monies which were dispersed by the Respondent from the net proceeds of sale in respect of charges etc. H's solicitors sought to enforce the costs which Mrs FJ had agreed to pay; there had been problems with complaints about the building works at NE House.

100.11 From the proceeds of sale of NE House, Mrs FJ received just three payments, on 12 and 14 February and on 13 March 2008 of £10,000 each. On 25 April an amount of £1,200 was also sent to pay fencing contractor Mr E. In support of the allegations of dishonesty, Mr Moreton referred to the ledger for NE House which showed that costs had been taken in short order until by early May 2008 nothing was left on the client account balance at all. It was clear from Mrs FJ's letters and other contacts with the firm that she was anxious about receiving the net proceeds of sale. As an example in her letter of 8 May, she asked the Respondent to speedily sort out the account and make settlement to her as soon as possible and referred to it being three calendar months since completion. In a letter to her of 14 May 2008 the Respondent said inter-alia:

> "Thank you for your letter, we regret to say that we have not heard anything from [the purchaser's solicitors], I am unable to wind matters up at this stage, as matters simply aren't concluded. I share your exasperation with the time it

> is taking to finalise these issues, and will continue to press [the purchaser solicitors]. With regard to the net proceeds of sale, I would remind you that there will be substantial costs to be deducted in four main areas… Once I have carried out my final reconciliation I will account to you for any sums due, but I would remind you that the costs at the conclusion of all these matters are likely to be very substantial indeed."

100.12 The Tribunal's attention was directed to the fact that while in the letter there was typewritten "there will be substantial costs" the words "will be" had been crossed out and in handwriting the word "were" had been put in and the reference to costs being very substantial had been amended by the words "likely to be" being crossed out. In the bundle attached to Mrs FJ's witness statement was a copy of the letter of 14 May 2008 which she had received and on which the hand written amendments were not present. The bundle contains a further letter from the Respondent to Mrs FJ dated 23 June 2008; again this had not been in the bundle which had been provided to the Applicant. It included:

> "Further to this matter, I have been labouring with finalising the monies due whilst having trapped a nerve in my shoulder and neck this week which means I have only been in for part of the week, and indeed part of the end of last week. The documentation relating to all your files runs to about two filing cabinets, and would probably be nearly twice as tall as me if I were to pile them one on top of the other.
>
> I have done some draft calculations, and have enclosed some figures for the actual Court work I did, and the Conveyancing, also with regards to the situation as to whether there is a claim against your previous solicitors…
>
> You will recall you gave me a number of plastic containers, containing ring binder files which I read through and made notes on at length, so the figures are yet to be finalised.…
>
> I am bound to say I was a little concerned at your comments about the scale of costs…
>
> You were effectively taken into a case; and paid for a case over a number of years, that without expert financial help from a forensic accountant or otherwise, you couldn't possibly win…"

100.13 The draft bills referred to by Mrs FJ in evidence were enclosed. On 24 June Mrs FJ e-mailed the Respondent:

> "I am very surprised that I have not had a reply to my e-mail of the 17th– a week ago!… It is now almost 20 weeks since the payment for [NE] was made on Feb 8th. I am now more than a little anxious as to what the hold up can really be. On my very rough estimate there must be in the region of 85k left before your invoice is paid. I need a swift end to this please."

100.14 On 18 July Mrs FJ wrote again to the Respondent:

> "I have been so concerned regarding your bill, the delays and the impossibility to explain to creditors why I still, after five months, having no money that I have sort [sic] advice from the Legal Complaints Service as advised by the CAB. I have, of course, not mentioned which firm I was requesting advice about…"

100.15 This letter had also not been in the papers provided to the Applicant. In August 2008 Mrs FJ was concerned about her creditors and her address being blacklisted. On 4 August the secretary SS wrote to Mrs FJ to advise her that the Respondent had been unavailable for six weeks through annual leave and then upon contracting gastroenteritis on his return to the UK and would not be back in the office until 11 August. On 20 August the Respondent e-mailed:

> "… i will e-mail i statement showing the various payments and transactions on this matter and we can meet next week probably thursday; i will write to the fencing firm tomorrow indicating that we are meeting next week and will revert thereafter; there are a number of issues i need to address with you but have been unable due to ongoing ill health; I would hope to finally clarify matters next week."

100.16 On 27 August 2008 the Respondent wrote to Mrs FJ including:

> "I would remind you once again that with regard to the [H] matter I quoted 43,500.00 plus VAT, plus what I had already spent in terms of lengthy consideration of your papers…"

100.17 The letter included an account. From the sale price £506,750 after various deductions including that due to lenders, to C&H, to the estate agents, £30,000 paid to Mrs FJ and £1,200 to the fencing contractor, £85,941.67 remained. After the deduction of the Respondent's fees described as Costs on Conveyancing; Nov '07 Interim Account Litigation (1); Feb '08 Litigation (2); Accounts Litigation (3); C & H Account (1); and Account (2), a balance of £508.35 was left for Mrs FJ. This was precisely the balance shown on the ledger on Mrs FJ's client account in May 2008.

100.18 Mrs FJ continued to seek clarification and more details. On 1 September the Respondent replied to a letter from her dated 28 August that she was entitled to a remuneration certificate in respect of the conveyancing charges and possibly in relation to the proposed action against C&H. Writing on the same date Mrs FJ raised various queries, spoke to the Respondent by phone and wrote with further queries. In a letter dated 9 September the Respondent gave some limited explanation to Mrs FJ. He promised a breakdown and said that he would draft a letter to C&H setting out the various concerns over the conduct of the matter. He continued:

> "It would seem sensible to do this given the time and expense incurred in considering their conduct and in the circumstances I would be more than happy to prepare such a letter at no further cost."

100.19 Mr Moreton submitted that although all monies had already been deducted by the beginning of May, when Mrs FJ was asking for information from July onwards the Respondent still could not provide it for her.

100.20 Mr Moreton referred the Tribunal to Mrs Corbin's conclusions about overcharging. In the B Skips matter, she found no justification for charging fees totalling £62,750. Regarding the proposed action for professional negligence, she found no evidence that Mrs FJ had approved any work being conducted, nor that any such work was performed. Mrs Corbin's view on the basis of evidence on the file was that the Respondent's fee of £4,805 was unreasonable in its entirety.

100.21 In support of the allegation of dishonesty in respect of Mrs FJ's matter, Mr Moreton referred to the evidence of Mrs Corbin concerning overcharging and the bills raised by the Respondent in November 2007. They were similar to bills delivered in June and July 2008 which were undated and marked as drafts. There were certain amendments to the format of the draft bills as against the earlier bills. There was no numerical reference, or reference to the accounts regarding the action against H as being interim. The Respondent had taken monies against bills and charged them to Mrs FJ's ledger without her authority, without delivering any bill and he had taken all the monies in respect of which he had levied charges by 19 March 2008. Mr Moreton referred to the Respondent's conduct in response to Mrs FJ's efforts to obtain her money. There were also the handwritten amendments changing the tense of the 14 May 2008 letter. Mrs FJ had received draft bills in June and July 2008 with no indication that the Respondent had taken the residue of her money. Even when the Respondent wrote to her on 20 August 2008 by e-mail, promising a statement showing the various payments and transactions and a meeting, he still did not inform her about the bills and just said that there were a number of issues that he needed to address with her. The Respondent gave an explanation in his response to the Applicant dated 15 September 2008. He asked to be allowed the opportunity of sorting the matter out with her.

100.22 Mr Moreton also referred the Tribunal to the history of the matter involving Mr S and the sale of the property CH. There had been no settlement of the matter following the Adjudicator's decision in favour of Mr S. Mr Moreton relied on the Rule 7 Statement and the supporting evidence which showed that this matter completed in July 2008 and the completion statement indicated the balance due to Mr S £218,822 .65 of which £175,000 was paid by transfer on 29 July 2008 but £43,822.65 was retained by the Respondent. There were two bills on the file, the first dated 29 July 2008 in the amount of £1,510 plus VAT relating to the sale and the second of the same date in the sum of £37,580 plus VAT related to "acting for you in this ongoing dispute" and was described as [CH] "final account". The Rule 7 Statement recorded the communications between the Respondent and Mr S, Mr S's attempts to obtain his money and the complaint to the LCS and its outcome. In support of the allegation of dishonesty Mr Moreton also referred to the level of overcharging of Mr S which Mrs Corbin had found.

100.23 Mr Moreton then referred the Tribunal to the case of Mrs BD where dishonesty was also alleged. The Respondent wrote to the client on 12 January 2009 telling her that he would hold monies provided by her parents Mr and Mrs H in client account pending receipt of the Transfer [in respect of the matrimonial home] and signed Consent Agreement from Mr D. The sum of £32,500 provided by Mrs BD's parents to fund her divorce settlement had been received by the firm on 21 January 2009. From 3 February 2009 the Respondent made a series of transfers including monies left in client account from re-mortgaging the matrimonial home. By 1 June 2009 the balance

on client account was reduced to nil. The bills which were before the Tribunal had been provided to Mrs BD by the IO Mr Ireland. Mr Moreton submitted that Mrs BD had not received any bills after November 2008 or anything in writing about further charges. The FI report said:

> "At the meeting on 20 August 2009 Mr Ireland referred to the letter mentioned… above and asked Mr Henry how, since the Consent Agreement had not been signed by Mr D, he was… able to withdraw money from client account. Mr Henry said that he was incurring fees on the matter and would finalise matters when it was concluded…"

100.24 At the meeting on 9 September, the Respondent had said that they had settled the case in December and that he thought that they would have completed it in January and then that did not happen. The orders had gone back and forth and he must have amended the orders about half a dozen times at least and in doing so had incurred costs and so he had deducted costs from the monies that Mrs BD had paid. Mrs Corbin had assessed the total overcharge as 1,195%. It was accepted that there might be genuine errors in overcharges by solicitors but the Respondent refused to accept any error. He maintained that all the charges were reasonable and properly incurred. Mrs BD had received some bills and they were paid by cheque. She confirmed in her letter to Mr Ireland dated 27 August 2009 that she received invoices for costs between 29 November 2007 and 11 November 2008 amounting to £3,826.98 plus VAT. In December 2008 she re-mortgaged the matrimonial home and said that the Respondent received £69,970. The existing mortgage was redeemed leaving a balance of £5,807.05 in the firm's client bank account. She said that she was not sent the invoices raised by the Respondent on 23 December 2008 or any of the other [later] invoices. Mr Moreton suggested that the reason the Respondent failed to deliver bills after November 2008 was that to do so would alert Mrs BD to the fact that he was taking the monies from the re-mortgage account and settlement monies.

100.25 In the matter of Mr and Mrs T, the ledger showed that the deposit had been received on 25 June 2009 in the amount of £35,000. Transfers had been made in respect of costs on 30 June and 1 July and no bills had been posted. Mr Moreton pointed to the discrepancy between the copies of e-mails obtained from the Respondent which referred to stamp duty of £10,500 being 'to follow' and those which Mr Ireland had obtained from Mr T, both of which were dated 13 July but Mr T's copy did not have the words 'to follow'. The Respondent had denied altering e-mails and said that he had intended to charge a higher fee (than originally estimated). It was recorded in the second FI Report that at the meeting on 9 September 2009:

> "Mr Henry said that he had already indicated in his letter… dated 21 August 2009, that the bill had not been sent and he would need to make appropriate adjustments. Mr Henry agreed there was a shortage on this matter of £10,780.00 on 31 July 2009. When asked how he was going to rectify the shortage Mr Henry said that he was making arrangements to borrow monies from the bank which he anticipated would be in seven to ten days."

100.26 In the matter of Mr PB and Ms KM, Mr Moreton referred the Tribunal to the history of this matter as set out in the FI Report. They had been charged £5,644 against an

estimate of £500 and there were again discrepancies in emails, in this case concerning a retention of £5,000 (also relevant to allegation 1.2).

100.27 In respect of the allegation of dishonesty, Mr Moreton submitted that over £10,000 had been received from the clients Mr and Mrs T for SDLT and in respect of Mr PB and Miss KM there was a retention of £5,000. In both cases the Respondent took monies against bills which he had not delivered. He accepted in interview that there was a shortage in respect of both matters and told Mr Ireland that he would make arrangements with the bank to replace it. The Respondent agreed that that the shortage of £5,000 in the Mr PB and Miss KM case existed to 31 July 2009. Mr Moreton submitted that e-mails have been found on the client matter files in both matters which suggested they had been altered to disguise the true purpose for which the Respondent had received monies. The Respondent's letter of 21 August 2009 to Mr Ireland sought to excuse them as extended costs:

> "Further to our conversation yesterday I have investigated the position with regards to the [T] and [Mr PB and Miss KM] cases, as I was anxious I did not create the wrong impression.
>
> Following enquiries made this morning I can confirm that the accounts were not sent to the clients on completion albeit in the case of [Mr PB and Miss KM] this would make sense as there was no forwarding address.
>
> With regards to the amounts invoiced I regret that the situation is far from clear, and given that the clients may have readily approved the estimates I now believe that this does not relate to the extended figure and accordingly I will have to make appropriate adjustments until such time as this has been clarified."

100.28 Mr Ireland sought clarification about what he meant but the Respondent did not respond.

<u>Submissions of the Respondent in respect of Allegation 1.1</u>

100.29 In his letter of 15 September 2008 in response to Mr Sage's FI Report the Respondent said in respect of the Mrs FJ matters:

> "I was surprised that Mr Sage sought to investigate this matter given that dialogue has been continuing with the client to attempt to resolve the matter amicably; I contend that these matters, a very complicated sale of part, a second opinion on a litigation matter; conducting the litigation matter to settlement and advising on a proposed action have all been properly billed and are not in any way in breach of the rules; the client was given extensive quotes for the litigation (witnessed by a member of the office staff); she has been advised of her rights to a remuneration certificate and appears in the last correspondence to be principally querying only 3 accounts;
>
> … I have checked the account ledger and it would appear that the forensic investigator has not taken into account the payment made on the client's behalf

> for £1200.00 which has in fact after transferring £691.65 to partially cover this left a debit of £508.35 on office.
>
> I enclose copy accounts as requested; the bills relate to the four different matters undertaken for the client and should be self-explanatory as to what they relate to; I quoted over £51,000.00 alone to take over the litigation matter short notice plus an additional amount for the work I had undertaken prior to this providing a second opinion since July 2007; having settled the case I was instructed to consider what action if any against her former firm we could take; invoices for this work accordingly resulted.
>
> Mr Sage makes the point that these accounts had some how not been delivered yet clearly in her letter to me dated 18th July not withstanding the fact that I do not accept any points raised by the client what it does show is that the bills had been received given that I [sic] client cannot complain about the bills she hasn't had; I am puzzled about the inclusion of this matter in the investigation
>
> I am providing a schedule breakdown to the client as requested on three accounts only and will forward them under separate cover. I would respectfully submit that I should be afforded the opportunity of sorting this matter out with my client not least as I would hope to be able to take the proposed matter forward so that the time and expenses incurred on that aspect is not wasted."

100.30 In the letter received by Mr Moreton on 8 March 2012 the Respondent said:

> "As to the care of Mrs [FJ] I repeat that she received a significant estimate @ the outset of the matter (witnessed by my PA) and that the cost draftsman exercise has ommitted (sic) to consider time schedules produced in the trial bundles etc. which was offered to Bob Sage on the phone but declined @the time; where are these schedules and indeed bundles now. Partially completed bundles were destroyed before I moved offices in 2008; the schedules presumably went to Worcester with the intervening solicitor."

100.31 More generally the Respondent continued:

> "With regard to the latter charges – what can I say? Two and a half years later I cannot relate to these matters @ all; as your own consultant explained I was already suffering from depression and behaving in a very strange manner; I prefer not to dwell on those events due to the sense of chaos it creates in my mind.
>
> I feel I was an entirely different person then whose grit and determination to carry on in very trying circumstances significantly backfired in terms of a physical, psychological and professional meltdown.
>
> So in response to the second wave of charges I have no idea what happened; I can see that the amount of [Mrs BD's] latter costs were bizarre but cannot offer anything by way of explanation other than the state I was in @ that time."

100.32 The Respondent had dealt with the matters of Mr and Mrs T and Mr PB and Miss KM in his letter to the IO dated 21 August 2009, quoted earlier.

Findings of the Tribunal in respect of allegation 1.1

100.33 The Tribunal had carefully considered all the evidence in respect of Mrs FJ's matters, which had been the subject of an allegation in the Rule 5 statement with additional facts in the Rule 7 Statement. It had had the benefit of hearing Mrs FJ give evidence. The Tribunal had noted that overcharging was not alleged in respect of the conveyancing matter. In respect of the litigation, the Respondent had charged £62,750 and Mrs Corbin's revised calculation amounted to £13,768. On behalf of the Applicant, the Respondent's attendance note dated 24 August 2007 indicating that he had given the client an estimate of £45,500 for the litigation work, had been rejected. The Tribunal was concerned that the Applicant seemed to wish to pick and choose among the contents of the note, relying on the elements which related to the client's difficult situation regarding the imminent litigation but rejecting the reference to the estimate. Whilst not in any way challenging Mrs FJ's integrity, the Tribunal had found her evidence on the discussions which she had had with the Respondent to be somewhat vague. It was not therefore satisfied beyond reasonable doubt that the Respondent had not given an estimate for the litigation of £45,500 in profit costs at least, plus VAT as his attendance note said. The Tribunal was satisfied that overcharging had occurred but not to the extent alleged by the Applicant. It found that Mrs FJ had been overcharged in respect of the litigation by the amount charged for that matter in excess of the amount of the estimate recorded in the attendance note.

100.34 The Respondent had not helped himself by his failure to provide costs information (see below regarding allegation 1.5). In respect of a possible action for negligence against Mrs FJ's former solicitors C&H, the Respondent had charged £4,805 under an invoice dated 15 November 2007. In evidence Mrs FJ was adamant that she had not instructed the Respondent to undertake any work in this matter but that she had indicated to him that she would consider it once the sale of NE House had gone through and all the outstanding debts had been paid. Mrs Corbin had found no separate retainer for this matter in the files that she had looked at. It was not clear why the Respondent might have undertaken work relating to a possible claim at the time he had noted he had done it in January 2008. The Tribunal was satisfied that there was not even an understanding that the client had been instructed, no estimate had been provided to Mrs FJ concerning any work and the Tribunal agreed that all monies charged to Mrs FJ in respect of the possible claim against her former solicitors constituted an overcharge. The Tribunal was satisfied that the Respondent had not delivered bills to Mrs FJ with the exception of those which were contained in the bundle attached to her witness statement; that is those headed marked DRAFT ACCOUNT all with the invoice number PAH 000, as follows "Re: Sale of NE House totalling £4,047.90"; "Re-: Proposed Claim against C&H" totalling £5,645.88; and "Re: Dispute with H Interim account number" totalling £41,125.00. The Tribunal considered that both in the overcharging and in his communications with Mrs FJ, the Respondent had displayed dishonesty which satisfied the objective test. As to the subjective test, the Respondent had transferred monies from Mrs FJ's client ledger until by early May 2007 there was no money left from the residue of the proceeds of sale of NE House. He had done this knowing that he did not have any authority from the client and that he had not delivered bills. The Tribunal accepted Mrs FJ's evidence

that she did not receive the draft accounts referred to above until June 2008 after all the money had been taken. The Tribunal also found indicative of dishonesty the fact that the purported bills in the case of Mrs FJ, not received by her, did not bear proper numbers for VAT purposes which in its view supported a finding of dishonesty in that they were not genuine bills. In communication with Mrs FJ, the Respondent had fobbed her off and resisted her requests for the money to which she was entitled. He had repeatedly told her that he was unable to make payment to her because matters had not yet been resolved. This was a difficult conveyance which took some time to conclude but the Respondent persisted in his approach, knowing that he had already transferred Mrs FJ's money to office account. The Tribunal found that in doing so he knew that he was dishonest and accordingly the twin tests in the case of Twinsectra were satisfied. The Tribunal found allegation 1.1 proved in respect of Mrs FJ's matters (aside from the conveyancing charges) with dishonesty proved beyond reasonable doubt.

100.35 In the case of Mrs BD, she had been given an estimate of costs in October 2006 by a locum solicitor and had signed the firm's terms of business in November 2007 and then received a schedule of estimated costs. It was recorded in the second FI Report that at the meeting with the IO on 9 September 2009, the Respondent said he did not agree there was a shortage on client account of £37,834.75, that he had sent bills to Mrs BD, that he had carried out a significant amount of work on the file and that the charges were warranted. When asked if he agreed that he misused client money the Respondent said that he had not. The Tribunal found as a fact that that between 29 November 2007 and 11 November 2008 Mrs BD had been charged £4,496.70 including VAT relating to six bills varying in amount between £300 and £1,270.40. It noted that there was evidence that these bills had been sent to the client and paid. The Tribunal found no other bills had been delivered by the Respondent and that the monies which had been provided by Mrs BD's parents to fund the divorce settlement and monies which comprised the balance of her re-mortgage in excess of £5,000, had been transferred by the Respondent from client bank account as alleged. The Tribunal considered the gross and deliberate overcharging of money available and earmarked for another identified purpose with no justification for the purported costs themselves, judged objectively constituted dishonesty and that the Respondent's actions in failing to deliver bills after November 2008 while transferring money from client account showed that he knew that what he was doing was dishonest and sought to conceal it. The Tribunal found allegation 1.1 proved in respect of Mrs BD's matter with dishonesty proved beyond reasonable doubt.

100.36 The Tribunal found that Mr and Mrs T had been quoted a fee of £575 plus VAT and disbursements as evidenced by Mr T's letter to the Respondent of 21 April 2009, which had been confirmed in writing by the Respondent the following day. The Tribunal was satisfied on the evidence that on 30 June and 1 July 2009 amounts of £6,037 and £3,823.53 respectively were transferred from client account to office bank account without bills being delivered. The Tribunal found the facts to have been set out in the Rule 7 Statement. The Tribunal did not accept the Respondent's explanation given to the IO on 20 August that a bill of £10,449.50 had been sent to the client and that SDLT had not been held. It accepted that Mr T had not received the bill dated 24 July 2009 and had not been informed of any significant additional charges. The Tribunal did not make any finding in respect of the fact that the IO found that the contract for Mr and Mrs T's purchase showed a deposit of £35,000

being held and that the figure had been amended by hand to £25,000. No evidence had been brought in respect of this aspect of the matter The Respondent had overcharged the clients by taking from his client account monies conveniently lodged there for payment of SDLT. The Tribunal considered that objectively dishonesty had been proved from the written evidence and while no allegation was made against the Respondent about the discrepancies between the documentation on his file regarding SDLT and that received by the clients, the Tribunal found these discrepancies to be supportive of the Respondent knowing that what he had done was dishonest and represented his efforts at concealment. Accordingly both tests for dishonesty were satisfied. The Tribunal found allegation 1.1 to have been proved in respect of Mr and Mrs T's matter with dishonesty proved beyond reasonable doubt.

100.37 The Tribunal found circumstances of Mr PB and Ms KM's matter similar to that of Mr and Mrs T. In this property sale there was a £5,000 retention which the Respondent had taken by way of a bill in July 2009, following completion earlier that month. The clients had been given an estimate of £500 plus VAT and disbursements in the firm's terms and conditions of business, but a completion statement found on the file showed the firm's fees as £5,575. The Tribunal noted the explanation in the Respondent's letter to Mr Ireland dated 21 August 2009 but did not believe it. The Tribunal was satisfied that the Respondent had appropriated the retention monies which objectively constituted dishonesty. There were discrepancies between the documentation held by the Respondent and the clients and an absence of bills which the Tribunal found to be the Respondent's knowing attempts at concealment. Both limbs of the test for dishonesty were satisfied. The Tribunal found allegation 1.1 proved in respect of Mr PB and Ms KM's matter with dishonesty proved beyond reasonable doubt.

100.38 The Respondent had acted for Mr S in respect of the property around which there was a dispute. He confirmed to Mr S that his hourly rate would be £160 in terms of business which were signed on 8 August 2006. The Tribunal found that the Respondent had written to Mr S on 3 April 2008 confirming his instructions and providing an estimate of charges for the conveyancing in the sale of the property of £750 plus VAT and disbursements. Of the balance of £218,822.65 due to Mr S after completion in July 2008, Mr S received £175,000 and the Respondent retained £43,822.65. In spite of repeated requests, Mr S did not receive the money to which he was entitled and had to complain to the LCS. The Respondent displayed the same pattern of behaviour in respect of this case as he did with those in the above findings. He fobbed off the client repeatedly and against a reasonable amount of costs calculated by Mrs Corbin as £7,376, he charged £37,580 (both amounts excluding VAT and disbursements) representing overcharge of 409.5%. The Tribunal found that objectively what the Respondent had done was dishonest and that by his conduct in concealing what he had done from Mr S, he showed that he knew it to be so. Allegation 1.1 was found proved with dishonesty in respect of Mr S's matter proved beyond reasonable doubt.

100.39 In finding allegation 1.1 proved with dishonesty beyond reasonable doubt, the Tribunal had found there to be a pattern of behaviour over a period, on the part of the Respondent by which he transferred considerable amounts of money that conveniently coincided with amounts in his client account at a time when he was subject to financial pressure in relation to his overdraft.

101. **Allegation 1.2: that he improperly utilised clients' funds that should have remained in client account of his own benefit**

Submissions on behalf of the Applicant in respect of allegation 1.2

101.1 Mr Moreton relied on the Rule 5 and 7 Statements and supporting evidence. The IO Mr Sage had found a cash shortage of £72,118.75 arising out of what Mr Moreton submitted were improper transfers from client to office bank account in respect of nine client matters made during the period 27 July 2007 to 6 June 2008 totalling £54,230.75. These transfers represented sums relating to SDLT and/or Land Registry fees. Cheques had been drawn following transfers from client to office bank account, made payable to HMRC or the Land Registry but the cheques remained unpaid at 30 June 2008. The cases exemplified in Mr Sage's FI Report were those of Mr JL and Mrs JD; Mr JE and Miss YC; and Mr DB-R. Mr Moreton also submitted that there had been client funds incorrectly retained in office bank account amounting to £17,887.50. The case of Mr SJK was exemplified in this regard. Between 21 March 2007 and 16 January 2008, eight lodgements totalling £49,572.31 were made into office bank account in respect of the firm's costs and disbursements. This amount included fees of £12,775 payable to counsel and £5,112.50 payable in respect of expert's fees, both of which remained unpaid as at 30 June 2008. Entries on the client ledger indicated two office account payments on 25 February 2008 for counsel's fees of £15,275 and expert's fee of £5,112.50. However as at 10 July 2008 neither of these cheques had been presented for payment. The Respondent agreed that the cheque for £15,275 had not been sent to counsel.

101.2. In the Rule 7 Statement the case of Mr and Mrs T referred to above in respect of allegation 1.1 was exemplified. It was submitted that the Respondent had been provided with monies including £10,500 for SDLT and had appropriated it as costs and then indicated that further monies were due to pay the SDLT. Regarding Mr PB and Miss KM, there was a similar situation with regard to retention monies of £5,000 which it was submitted were appropriated as costs.

101.3 In Mr SJK's matter, Mr Moreton informed the Tribunal that Professor W had still not been paid. In a letter of 4 September 2009 he had confirmed to Mr Ireland the details of his fee notes and his unsuccessful efforts to obtain payment. He was owed fees totalling £13,214.75. It was recorded in the FI Report that when Mr Ireland pointed out that the Respondent had submitted a bill to the client which included Professor W's fees of £5,112 50 and the client paid the bill, and money had gone into the office account. The Respondent said that he subsequently discovered that he had short-changed himself significantly in relation to the case and taken a certain course of action in relation to which he was criticised. He said that he had tried to agree an approach with Professor W and had been corresponding with him.

Submissions of the Respondent in respect of allegation 1.2

101.4 In his September 2008 letter, the Respondent agreed that the reason for the apparent shortfall was that a number of cheques had been issued for SDLT and not presented and that at the same time as they were issued monies had been transferred into office to cover their presentation. He said also that in the case of Mr SJK there had been an

administrative error on presentation of his final account and monies had been retained on file:

> "…it had become clear that the final account had drastically understated the sums due to the firm however the discovery of this fact was at such a stage as to make it entirely impractical to expect the client to cover these additional sums; accordingly I retained the payment in its entirety in office account and undertook with Counsel to settle the fees personally. If anything the client has effectively benefited from this action."

101.5 In respect of the SDLT the Respondent said:

> "All the SDLT was settled by cheques issued on or before the 5th August: I enclose copy bank statements… showing clearance of all these payments …include interest charges and penalties.
>
> Counsel's fees were being discharged in accordance with an instalment arrangement and we are pleased to confirm that the final instalments have now been sent to Counsel a revised receipted fee note is awaited and will be forwarded upon receipt under separate cover.
>
> The remaining sum sent to Professor [W] has not been presented and a dialogue to resolve this dispute is being undertaken…"

101.6 In the letter the Respondent explained difficulties which he said he had had in respect of manual applications for SDLT being rejected or gateway applications not tallying with subsequent payments which then went on to disappear into the system. He referred to a response he had made earlier to Mr Sage on 8 August 2008 which included:

> "By December 2007 we were looking at electronic submission of SDLT as an alternative which was achieved in the New Year. The SDLT returns were sent en masse to SDLT (HRMC) [sic] on the 25th, 26th and 29th February in accordance with our postal record."

101.7 The Respondent concluded his September letter with a summary:

- "I did not believe that paying the SDLT through office was on the face of it a breach of the rules.
- I am still somewhat uncertain as to whether this is the case given the diverging reactions from the monitoring visit and Mr Sage's visit.
- That at no time did anyone within this firm attempt to misuse client money
- That if the transfers became breaches over time that as soon as I was advised that these were breaches they were rectified.
- That Mr Sage acknowledged that problems do occur with SDLT payments but that he was surprised that so many cheques had got lost; this fails to take into account, and it was no doubt remiss of me to mention, that the payments sent out in February were sent out together so that if one envelope goes astray all

the cheques therein contained go with it; we did at one time keep copy cheques for each bundle and I'm checking through archives to see if we hold any relating to the cheques in question.

- That no client has been left out of pocket at all.
- That rather than benefit from the transfers I have in fact covered all interest and penalties in any event; a sizeable sum and more than enough encouragement to desist from this approach in the future.
- The transfers were themselves entirely transparent and there was no attempt to conceal matters which would raise inferences as to my bona fides.
- Above all I have been providing legal advice and support to my clients in this town since I was a trainee in October 1989; some people I met back then still come to my office for advice; I have on the whole a very good relationship with my clients having had very few complaints be it formal or otherwise; I would not find it possible to attempt to abuse the client's trust for financial advantage and if I did so would face the complete demise of my practice and good standing in the local community.
- I acknowledge that no doubt matters could and should have been handled better with more attention to unresolved matters and I will given the opportunity make every endeavour to ensure that this practice proceeds on that basis."

101.8 In his March 2012 letter the Respondent said:

> "I would stand by comments made in my first letter of response which deals with the first tranche of charges save that following the a/c's course I was sent on I was also left feeling that as long as I posted the cheques to HMLR that the transfer to office account for such sum was within the rules; this surprised me as it was expressly or 'impliedly' indicated during Bob Sage's tenure that the transfers were not within the rules. Is this correct?"

Findings of the Tribunal in respect of allegation 1.2

101.9 The Tribunal had carefully considered all the evidence, the representations on behalf of the Applicant and the Respondent's letters. It did not accept the Respondent's explanations. The timing of the various transfers was very significant. Mr Ireland's most helpful schedule showed that repeatedly, following monies having been taken from client account, payments were made as drawings for the Respondent and as salary and loan repayments to his wife or were held to prop up the overdraft. In respect of the allegation of dishonesty associated with allegation 1.2, as with allegation 1.1 the Tribunal found that the evidence showed that there was a course of conduct on the part of the Respondent which supported the allegation. The Tribunal considered that it was clear from the details of the transactions and the information available about the financial position of the firm, that the Respondent had been using monies made available to him to pay SDLT and/or Land Registry fees as well as counsel's fees and an expert's fees in the case of Mr SJK, and in the case of Mr DB-R including for the purpose of a deposit, to prop up his overdraft facility, leaving the monies sitting in his office account for months and in the case of Mr JL and Mrs JD for over a year. This course of conduct involving many incidents showed that

objectively the Respondent was behaving dishonestly. In respect of whether he knew that he was behaving dishonestly, the Tribunal had again taken particular note of the discrepancies between the communications received by the clients Mr and Mrs T and Mr PB and Miss KM and those on the Respondent's file. The Tribunal rejected the Respondent's denials and was satisfied that the Respondent had acted to conceal what he had done in respect of the retention in the case of Mr PB and Miss KM and the SDLT in respect of Mr and Mrs T. It was satisfied that the Respondent had embarked knowingly on a course of dishonest conduct as alleged. The Tribunal had noted the explanations given in the Respondent's letter of 15 September 2008 in respect of the cases of Mr JL and Mrs JD, Mr DB-R and Mr SJK but it was satisfied that his dishonest conduct extended to those cases and that of Mr JE and Miss YC. The Tribunal found that allegation 1.2 was proved with dishonesty proved beyond reasonable doubt.

101.10 The Tribunal considered that in the Respondent's conduct across both allegations 1.1 and 1.2, there was systematic overcharging and a general approach to taking and/or holding money that came in to client account for the Respondent's own purposes.

102. **Allegation 1.3: That he failed to keep books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);**

Allegation 1.4: That he failed to rectify breaches of the Solicitors Accounts Rules promptly as required by Rule 7 of the 1998 rules;

Allegation 1.6: That he breached the Solicitors Accounts Rules 1998.

102.1 The Tribunal considered these three allegations together. Allegations 1.3 and 1.4 were set out in the Rule 5 Statement and allegation 1.6 in the Rule 7 Statement.

Submissions on behalf of the Applicant in respect of allegations 1.3, 1.4 and 1.6

102.2 On behalf of the Applicant, Mr Moreton relied on the Rule 5 and Rule 7 Statements and exhibits including particularly the FI Reports of the IOs Mr Sage and Mr Ireland. In respect of allegations 1.3 and 1.4, during the first investigation, the IO Mr Sage identified a cash shortage of £72,157.75 which was agreed by the Respondent. The FI Report had shown that the cash shortage was caused by improper transfers from client to office bank account totalling £54,230.75, by client funds being incorrectly retained in office bank account totalling £17,887.50 and by over transfers from client to office bank account totalling £39.50. In respect of allegation 1.6, in the Rule 7 Statement, the IO Mr Ireland had set out his findings in respect of breaches of the 1998 rules. He found that:

- amounts had been improperly withdrawn from client bank account;
- entries had been made in the firm's accounting records in respect of purported bills to justify amounts improperly withdrawn from client account none of which had been delivered to the client;
- amounts have been held in the firm's office bank account in respect of professional disbursements;
- overpayments had been made from client bank account;

- overtransfers had been made from client bank account to office bank account;
- client reconciliations were not prepared at least every five weeks;
- a number of postings appeared to have been backdated in the accounting records.

102.3 The IO also identified when reviewing the firm's accounting records that in two matters, Mrs N and Mrs F, there had been significant shortages on client bank account which had been rectified prior to the investigation. At the date of the second FI Report 18 September 2009, £58,727.25 of the minimum cash shortage had not been replaced. An amount of £253.56 was replaced on 24 August 2009. The minimum cash shortage totalling £58,980.81 was made up of improper withdrawals from client bank account, £53,614.75; client funds incorrectly retained in office bank account, £5,112.50 and debit balances of £253.56.

Submissions of the Respondent in respect of allegations 1.3, 1.4 and 1.6

102.4 The Respondent had dealt with the allegations in the Rule 5 Statement in his letter of 15 September 2008, where he explained the discrepancy between the liabilities to clients shown in his books of accounts and the actual minimum cash shortage by reference to the cheques issued for SDLT which had not been presented as set out above in respect of allegation 1.2. In respect of actions taken to rectify the shortage, again his response has been quoted in connection with that allegation. He relied on all the SDLT being settled by cheques drawn on or before 5 August and counsel's fees being discharged in accordance with an instalment arrangement as well as the ongoing negotiations with Professor W about his fees. In respect of the improper transfers, as set out above he relied on difficulties which he maintained that he had experienced with the SDLT system. In the summary to his letter he maintained that if transfers became breaches, as soon as he was advised of them they were rectified.

Findings of the Tribunal in respect of allegation 1.3, 1.4 and 1.6

102.5 The Tribunal carefully considered the submissions on behalf of the Applicant, and the evidence which it had heard from the two IOs as well as the Respondent's letter of 15 September 2008 and the Respondent's various comments in respect of the allegations reported in the two FI Reports. It was satisfied that allegations 1.3, 1.4 and 1.6 were proved beyond reasonable doubt.

103. **Allegation 1.5: That he failed to inform his clients of the required costs information contrary to Rule 2 of the Solicitors' Code of Conduct 2007.**

103.1 The submissions on behalf of the Applicant and the Respondent's comments in respect of allegation 1.5 are included in the submissions in respect of allegations 1.1 and 1.2 above.

103.2 The Tribunal noted that this allegation arose out of the facts relating to allegations 1.1 and 1.2. There was a pattern of clients being provided with an estimate of fees usually in the Respondent's Terms and Conditions of Business and then being charged amounts which had no regard to what the clients had agreed. In respect of two of the clients whom the Tribunal had found to have been overcharged, Mrs FJ and

Mr S, even after the Respondent had created purported bills he had told them that he could not give them costs information. While no dishonesty was charged in respect of allegation 1.5 the Tribunal considered that the Respondent's behaviour in respect of the failure to provide costs information went to support the allegations of dishonesty in allegations 1.1 and 1.2. Allegation 1.5 was found to have been proved beyond reasonable doubt.

Previous appearances

104. There were no previous appearances.

Mitigation

105. The Respondent had made no admissions and had submitted no mitigation. The Tribunal had noted the psychiatric report of May 2011 and the Respondent's recent letter to Mr Moreton with a note from his GP outlining his current medical problems, confirmation that he continued to be in receipt of Employment and Support Allowance and the contents of the letter from the insolvency service. The Respondent had suffered from the economic downturn and money which he had borrowed to fund an office move had to be diverted to fund a locum when he was off sick.

Sanction

106. The Tribunal had found all the allegations proven against the Respondent including two allegations in respect of which, dishonesty had been found. The Tribunal had taken into account the medical reports and noted that the Respondent had been subject to a number of stressful factors in his life. It did not consider that the psychiatric report contained sufficient evidence of any health condition so as to negate the Respondent's responsibility, culpability and capacity in respect of the offences. The Respondent had embarked on a systematic and prolonged course of dishonest conduct which involved gross overcharging of his clients and the removal of monies from his client account to prop up his office account and make payments for his own benefit. The Tribunal decided that to strike off Mr Henry from the Roll of solicitors was proportionate, there being no exceptional circumstances that would justify any lesser sanction.

Costs

107. On behalf of the Applicant, Mr Moreton submitted a schedule of costs totalling £63,663.29, including Mrs Corbin's costs and preparation of the medical report. The Applicant's casework costs had not been put in. It appeared that there was an undercharge for legal costs but in the event Mrs Corbin had not been needed for both days of the hearing. Mr Moreton had not served the schedule on the Respondent as he had not considered it proper to do so because of the Respondent's uncertain mental state. As to the Respondent's financial position, in his letter received by Mr Moreton on 8 March 2012, the Respondent had said:

> "I have no other income or assets of any kind no active bank account since 15/2/11.

> I would submit: the circumstances that it would be disproportionately punitive and to a large extent pointless to pursue a costs order in this matter notwithstanding the query as to whether your costs up to 15/2/11 form part of the bankrupt estate; I have asked the IS to clarify this."

108. The Tribunal noted that the Respondent was on benefit, was recently discharged from bankruptcy and had a young child. Mr Moreton asked that the Tribunal make an enforceable order for an identifiable amount of part of the costs to enable the Applicant to obtain a charge against the Respondent's house, and that the remaining costs be assessed in the usual way with a view to the Applicant coming back to the Tribunal if that latter element was to be enforced. The Insolvency Service already had a restriction on the title to the property and Mr Moreton confirmed that a charge had been sought in respect of the intervention. The Tribunal considered the legal costs to be reasonable. It made a reduction in respect of Mrs Corbin's costs for attendance. It also considered that there were elements in the schedule which should have been overheads including copying and binding of bundles. The Tribunal assessed costs in the sum of £60,000 and having regard to the Respondent's circumstances, those costs were not to be enforced without leave of the Tribunal.

Statement of full Order

109. The Tribunal Ordered that the Respondent Paul Ashley Henry, 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 £60,00,0 such costs not been forced without leave of the Tribunal.

Dated this 16th day of April 2012
On behalf of the Tribunal

R Nicholas
Chairman