SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10508-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW PETROCOKINO DALRYMPLE MURRAY Respondent

Before:

Mr R. Nicholas (in the chair)
Mr A. H. B. Holmes
Mrs L. Barnett

Date of Hearing: 12 July 2011

Appearances

Jonathan Goodwin, Solicitor Advocate, of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

Gregory Treverton-Jones QC of 39 Essex Street, London WC2R 3AT instructed by RadcliffesLeBrasseur Solicitors for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent, contained in a Rule 5 Statement dated 20 April 2010 and a Rule 7 Statement dated 5 October 2010, were that he:

1.1 Contrary to Rule 6 of the Solicitors' Accounts Rules 1998 ("SAR"), failed to ensure compliance with the Rules;

1.2 Contrary to Rule 7 SAR failed to rectify breaches to the Rules promptly;

1.3 Withdrew money from client account contrary to Rule 19(2) and/or Rule 22 SAR;

1.4 Withdrew money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) SAR;

1.5 Failed to keep accounts properly written up as required by Rule 32 SAR;

1.6 Failed to carry out the required reconciliations contrary to Rule 32(7) SAR;

1.7 Utilised clients' funds for his own benefit and/or the benefit of the Firm;

1.8 Contrary to Rule 1 SAR failed to keep other people's money separate from money belonging to himself and/or the Firm;

1.9 Contrary to Rule 7 SAR failed to rectify breaches promptly on discovery;

1.10 Contrary to Rule 13 SAR conducted personal transactions through client account;

1.11 Withdrew money from client account contrary to Rule 19 SAR;

1.12 Withdrew money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) SAR;

1.13 Failed to keep accounts properly written up as required by Rule 32(1) SAR;

1.14 Failed to carry out the required reconciliations contrary to Rule 32(7) SAR;

1.15 Contrary to Rule 1.02 and 1.04 of the Solicitors' Code of Conduct ("SCC") failed to act with integrity and in the best interests of his clients.

2. In respect of allegation 1.7, the facts of which were particularised in the Forensic Investigation Reports dated 4 September 2009 and 26 August 2010, it was alleged that the Respondent was reckless.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 20 April 2010 and Exhibit marked "JRG1";
- Application and Rule 7 Statement dated 5 October 2010 and Exhibit marked "JRG1";
- Applicant's Statement of Costs.

Respondent:

- Bundle containing tabs 1-21 inclusive.

Preliminary Matters

4. Mr Goodwin for the Applicant outlined the chronology of the proceedings. The Rule 5 Statement was dated 20 April 2010 and was listed for substantive hearing on 11 November 2010. A Rule 7 Supplementary Statement dated 5 October 2010 was served on the Respondent within the time permitted by the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). On the Respondent's application the substantive hearing was adjourned to 14 February 2011. The Respondent applied for a further adjournment on the morning of 14 February 2011, an earlier application on the papers having been refused. The application was granted and the hearing adjourned to the first open date after 30 June 2011. The Respondent's partner was dealt with on the day and received a reprimand. The Tribunal directed the Respondent to file an accountancy report and any other evidence upon which he relied by 31 May 2011. Mr Goodwin did not receive any evidence by the due date and reminded the Respondent's solicitor of the direction on several occasions. On 7 July 2011 he received a medical report dated 6 July 2011 prepared by Dr Howells, Consultant Psychiatrist. Mr Goodwin said that the Applicant relied upon the combined test for dishonesty set out in the decision of the House of Lords in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The report from Dr Howells raised the possibility that in 2008, when the matters complained of arose, the Respondent might have been subject to a medical condition causing disability or functional impairment. Adopting a pragmatic approach, the Applicant had concluded that the medical report, which had been served late in the day, might raise sufficient doubt in the mind of the Tribunal such that it could not be satisfied so that it was sure that the Respondent had behaved dishonestly as alleged in the Rule 5 and Rule 7 Statements. The Applicant therefore sought the Tribunal's consent to withdraw the allegations of dishonesty. Mr Goodwin confirmed that the remaining allegations, including an alternative allegation that the Respondent had been reckless, were very serious and were to be admitted. The facts underlying the allegations were also admitted. The Respondent was not currently practising and had indicated that he did not wish to continue in practice. Mr Goodwin referred to the letter from Munday Long & Co, Accountants, dated 11 July 2011, served by the Respondent on the morning of the hearing. For the record Mr Goodwin said that the Applicant did not accept that evidence although the point was academic if the Tribunal consented to the withdrawal of the allegations of dishonesty. Mr Treverton-Jones QC on behalf of the Respondent confirmed that Mr Goodwin's summary of the Respondent's position was correct.

5. In accordance with Rule 11 (6) SDPR, the Tribunal consented to the withdrawal of the allegations of dishonesty

Factual Background

6. The Respondent was born on 18 October 1967 and admitted as a solicitor on 15 September 2000. His name remained on the Roll of Solicitors. He practised in partnership as Francis & How, Botley House, East Street, Chesham, Buckinghamshire ("the Firm").

7. The allegations arose from an inspection of the books of account of the Firm which commenced on 2 July 2009 and resulted in a Forensic Investigation Report ("FIR") dated 4 September 2009 by M. J. Calvert, the SRA's Head of Forensic Investigation. A further inspection commenced on 13 July 2010 and resulted in an FIR dated 26 August 2010, also prepared by Mr Calvert.

8. At the first inspection the books of account were not in compliance with the SAR for the reasons particularised. The Respondent told the SIO that the books of account were not up-to-date, that the client account reconciliation was last undertaken at August 2008 and that client account posting to the ledgers had not been undertaken since 24 December 2008. Specific issues were identified in the FIR.

9. A list of liabilities to clients as at 31 August 2008 was produced. It revealed overdrawn balances against nine client matters, including matters for the Respondent and his mother, CM.

10. On 11 August 2008 the client ledger in relation to “rent receipts” for CM was debited with a client account payment of £6,300 when the credit on the account was only £289.04. This created a shortfall on client account of £6,010.96, which increased to and remained at £6,150.96 until 22 September 2008 when “Bank Rent” was received into the account. The Respondent said that he had authorised the payments and had transferred £6,300 thinking that rent from the tenant had been received. He was asked by the SIO whether he had checked the bank statement to see if he was in funds before making the transfer. He replied, "No, pretty cavalier". The Respondent accepted that the payment had resulted in a shortfall on client bank account for six weeks and agreed that this was a misuse of client funds.

11. The client account reconciliation at 31 August 2008 revealed that from 3 March 2008 to 22 August 2008 outstanding receipts varying between £0.88p and £144,000, totalling £193,489.32, had arisen. The Respondent said that these adjustments were due to errors on the part of the bookkeeper. For example, £144,000 was recorded against JH’s client ledger. Examination of the ledger showed that a receipt of £144,000 had been erroneously entered twice during June 2008. But for this posting error the client ledger would have been overdrawn by £111.63. The Respondent said that the client had put the Firm in funds of £1,142.88 in June 2008, but this was not apparent from the client ledger.

12. On 27 August 2008 £5,000 was transferred from client to office account, allocated to an account entitled "SUSP" and described as “Transfer Client to Office to pay wages”. The Respondent said that the bookkeeper’s employee S completed and

signed the slip. He said that he did not know what "SUSP" was. When asked why there would be a transfer from client to office account to pay staff wages, the Respondent said that the accountant would have "done that" but "he did not know why".

13. The Respondent said that he had sole responsibility for ensuring that the books of account were maintained and for transferring costs from client to office account. His partner was not involved.

14. The SIO could not calculate the Firm's liabilities to clients because of the state of the books of account. Minimum liabilities of £462,682.67 were identified as at 31 May 2009. As at that date cash available in the client bank account totalled £370,727.51, giving rise to a minimum cash shortage of £91,955.16. On 12 August 2009 that figure was agreed by the Respondent, although subsequent investigation revealed that it might possibly been overstated by £20,000. The First Respondent said that the shortfall would be rectified as soon as possible. On 7 October 2009, approximately two months later, £100,000 was paid into the Firm's client bank account to remove the shortfall.

15. A review of the client and office accounts for the period August 2008 and May 2009 revealed numerous round sum transfers between the accounts. The Respondent said that he was solely responsible for undertaking the transfers. When asked why he made round sum transfers and not specific sums relating to bills, the Respondent said:

> "It was easier to do and easier to see on the statements".

The SIO reviewed a file of copy bills and other written notifications of costs. Bills which would have been settled by cheques received from clients and paid direct into the Firm's office account were identified. A schedule of the remaining bills, which would have been available for transfer of costs from client to office account, was prepared. It was compared with the round sum transfers made by the Respondent. The Respondent was shown the resulting schedule at the meeting with the SIO on 12 August 2009, which he checked against the bank statements and agreed. The Respondent produced a number of bills which he believed were not on the file produced to the SIO. He was asked to scrutinise the bills to eliminate any duplication and to work out which had been settled by cheque. The schedule was then updated to reflect the additional bills. The result was that between August 2008 and May 2009 transfers totalling £209,469.81 were made from client to office account when only £93,071.95 of bills were available for transfer assuming that all bills had been delivered to the clients. The discrepancy was £116,397.86. When asked about this, the Respondent said:

> "I think I may have double transferred some of these when I was at home off sick during January to March 2009. I think I may have transferred some of the bills which had been paid by cheque so they would have been transferred twice."

16. The SIO identified a client ledger entitled "Murray, Andrew 01 – General". The ledger showed that on 21 April 2008 an amount of £15,000 was credited to client account and then transferred to office account on the same day. The Respondent said

that the funds were from him but he did not know why they had been credited to client account.

17. The client ledger and bank statements exhibited to the Rule 5 Statement showed that on 22 April 2008 the ledger was charged with a client account payment of £10,000 when no funds stood to the credit of the ledger. Two further payments of £5,000 were made on 28 and 29 May 2008, increasing the overpayment to £20,000. This remained the position until the end of June 2008 when the shortfall was rectified by credits described as loans and partly by offset against a transfer of costs. The Respondent conceded that he had made the payments from the client account and could offer no explanation as to why he had done so. He also accepted that the payments resulted in a shortfall on the client account at the relevant dates.

18. There was a further charge of £5,000 to the same ledger on 24 July 2008 when there were no funds to its credit. The Respondent said that he had authorised the payment but could not explain what it was for. He was asked by the SIO whether he was misusing client funds. He said, "Well it looks like it yes". He accepted that the overdrawn position which had arisen on 24 July 2008 remained uncorrected and said he would correct the same. He admitted that he had been very careless but denied that he had been dishonest. When further questioned concerning the round sum transfers from client to office account without proper breakdowns of costs being prepared, and transferring funds to office account when the ledger showed there were no funds available for transfer, he said that he had added the bills up from the Firm's billboard and transferred round sums from that amount. In respect of the ledger he said he thought he had the money from his brother. When he was asked whether he had checked the bank statement to find out if he was in funds, he said "No". When asked if he accepted that he had made transfers without knowing or caring whether he was in funds or whether he was entitled to make those transfers, he replied:

> "I did think we were in funds".

When asked if he had cared to check whether he was actually in funds, he said:

> "This is where I was careless".

19. The SRA wrote to the Respondent on 23 September 2009 with a copy of the FIR, seeking an explanation. The Respondent was cooperative and contacted the SRA on a number of occasions by telephone and email between 24 September and 21 October 2009. By email dated 30 October 2009 the Firm's accountants provided information to the SRA. On 23 October 2009 the Respondent provided his representations to the SRA by letter. On 9 November 2009 RadcliffesLeBrasseur instructed on behalf of the Respondent wrote to the SRA.

20. The Respondent's responses set out in detail the difficulty that he had encountered with the Firm's accountant, AM, in June 2008. He confirmed that the accountant last worked for the Firm in September 2008 when other accountants were appointed. However that accountant could not start work immediately, so the Respondent dealt with day-to-day entries in the accounts until 24 December 2008. He was on sick leave from January to March 2009, at which point he dealt with day-to-day financial matters from home, including transfers from client to office accounts. His accountant

identified that his software was not up-to-date and suggested a new package. The accountant himself appeared over-stretched. The software was expensive and could not be purchased immediately which caused delay in updating the accounts and the accountant's other work. The task was more extensive than had been anticipated. The Respondent set out in detail steps taken to correct errors and provided explanations for the matters raised in the FIR. RadcliffesLeBrasseur expanded upon these explanations in their letter. In summary the Respondent accepted that errors in respect of the accounts had arisen, but denied any dishonesty.

21. On 18 November 2009 an SRA Adjudication Panel resolved to refer the conduct of the Respondent to the Tribunal. The Rule 5 Statement was received by the Tribunal on 21 April 2010.

22. A further SRA inspection began on 13 July 2010. The books of account were still not in compliance with the SAR. The Respondent's father AM had rejoined the Firm as Senior Partner. Similar issues in relation to the books of account were identified by the SIO during her inspection. The books of account and client reconciliations were not up-to-date, the Respondent had made round sum transfers from client to office account and had conducted personal transactions through client account. The Firm's auditors and accountants informed the SIO that they had posted everything that they had been given up to the start of June 2010 but that there were outstanding queries.

23. The Respondent said that client account reconciliations were not up to date and that the last client account reconciliation had been undertaken as at 31 March 2010. The Firm's extraction of client ledger balances showed 32 debit balances ranging in value from a penny to £70,551.43, totalling £92,599.12.

24. A review of the client account bank statements for June 2009 to June 2010 revealed that the Respondent, who remained solely responsible for authorising all transfers from client to office account in respect of costs, continued to make round sum transfers from and to those accounts. A schedule of transfers was prepared and the Respondent was asked to provide a breakdown of costs in support of each to justify his entitlement to make the transfers. A copy of the schedule annotated by the Respondent was exhibited to the Rule 7 Statement. In a number of cases he was unable to locate the relevant blue slip, used by the Firm as evidence to support the transfers. He could not produce breakdowns of costs in respect of transfers made in bulk, nor could he explain why he had made those transfers.

25. The Respondent thought that he might have billed twice: £1,500 on 13 May 2010 and £1,725 on 20 November 2009. An amount of £5,175 might also have been duplicated. However several other queries arising out of the transfers detailed on the schedule remained unanswered. The Respondent said that he had engaged a forensic accountant with effect from June 2010 to investigate the last two years' accounts including the suspense account. He provided the SIO with a copy of the terms of engagement for that accountant.

26. A review of client account bank statements revealed that a number of payments had been made to "A Murray" and to "cash" as set out in detail in the FIR.

27. A client ledger for the Respondent's brother AlM was charged with four payments in respect of cheques when no funds stood to the credit of the ledger at the time the payments were made. The ledger remained overdrawn by £600. A client ledger for the Respondent's mother CM had been charged with two payments of £1,000 and £500 when no funds stood to the credit of the ledger at the time the payments were made.

28. The Respondent's own client ledger entitled "General" referred to in the earlier FIR was charged with a payment of £1,000 when no funds stood to the credit of the ledger. The ledger remained overdrawn by £6,000. When the Respondent was asked if he accepted that he was misusing client account and client funds to make personal and office related payments, he said:

> "No, I think my dad gave me some money from his Nationwide account".

He was unable to provide details of exactly how much and when funds from his father had been paid into the client account or to which ledger the funds had been posted.

29. The Respondent was asked to explain why £25,000 had been credited to client bank account on 2 June 2010 and what the source of the money was. He said:

> "This was to help with the cash flow and was paid into the client account so that office staff were not deluded into thinking the state of finances was better than they had been told. The staff are aware that the firm is in financial difficulty and to suddenly produce £25,000 would perhaps have lead them into a sense of false security (sic)".

He also said that if they had put £25,000 into office account the Firm's bank might have used it to clear the £20,000 overdraft and not renew the facility. He said that the funds were from his parents. The entire amount credited to the account was withdrawn on 1, 4 and 25 June 2010.

30. The SIO was unable to express any opinion as to whether the funds held on client account were sufficient to cover liabilities to clients.

31. The SRA sent the Respondent the further FIR on 15 September 2010. RadcliffesLeBrasseur replied on his behalf on 27 September 2010, referring to their earlier letter. They set out the steps taken by the Respondent to resolve the difficulties relating to the accounts. They referred to problems that had arisen with the accountants instructed in November 2009. They were replaced with accountants who were to bring the accounts up-to-date, carry out reconciliations, investigate the reasons for the suspense account and deal with all other matters. The accountants completed postings around 25 September 2010 and completed the client account reconciliation by 27 September 2010. It was said that the reconciliation demonstrated that there was a surplus on client account of £293,636. The accountants confirmed to the SRA by letter dated 29 September 2010 that reconciliation showed a surplus of client funds of £136,097, and set out steps taken to put in place accounting controls.

Witnesses

32. None.

Findings of Fact and Law

33. **Allegation 1.1: Contrary to Rule 6 SAR failed to ensure compliance with the Rules;**

Allegation 1.2: Contrary to Rule 7 SAR failed to rectify breaches to the Rules promptly;

Allegation 1.3: Withdrew money from client account contrary to Rule 19(2) and/or Rule 22 SAR;

Allegation 1.4: Withdrew money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) SAR;

Allegation 1.5: Failed to keep accounts properly written up as required by Rule 32 SAR;

Allegation 1.6: Failed to carry out the required reconciliations contrary to Rule 32(7) SAR;

Allegation 1.7: Utilised client funds for his own benefit and/or the benefit of the Firm;

Allegation 1.8: Contrary to Rule 1 SAR failed to keep other people's money separate from money belonging to himself and/or the Firm;

Allegation 1.9: Contrary to Rule 7 SAR failed to rectify breaches promptly on discovery;

Allegation 1.10: Contrary to Rule 13 SAR conducted personal transactions through client account;

Allegation 1.11: Withdrew money from client account contrary to Rule 19 SAR;

Allegation 1.12: Withdrew money from client account in excess of money held on behalf of a client(s) contrary to Rule 22(5) SAR;

Allegation 1.13: Failed to keep accounts properly written up as required by Rules 32(1) SAR;

Allegation 1.14: Failed to carry out the required reconciliations contrary to Rule 32(7) SAR;

Allegation 1.15: Contrary to Rule 1.02 and 1.04 SCC failed to act with integrity and in the best interests of his clients.

33.1 The Respondent admitted the allegations in the Rule 5 and Rule 7 Statements, namely allegations 1.1 to 1.15 set out above. The allegation of dishonesty was withdrawn with the consent of the Tribunal. The Respondent admitted the alternative allegation that he had been reckless. The underlying facts were also admitted. The particulars of recklessness against the Respondent were as follows:

- The transfer from client to office bank account on 27 August 2008 of £5,000 for the payment of wages;

- The round sum transfers from client to office account resulting in a discrepancy of £116,397.86;
- The personal transactions conducted through client account by the Respondent;
- Transfers from client to office bank account as particularised in the second FIR;
- Cash payments to the Respondent as particularised in the second FIR.

33.2 The Tribunal carefully read the explanations for the Respondent's conduct as set out in his letter and witness statement and in the letters of RadcliffesLeBrasseur to the SRA.

33.3 Mr Goodwin submitted that client funds should be withdrawn only when the solicitor was properly entitled to make necessary withdrawals and strictly in accordance with the SAR. He further submitted that the SAR breaches were serious and that the Respondent had adopted an entirely reckless approach to the SAR.

33.4 The Tribunal agreed with Mr Treverton-Jones's submission that this was a sad and tragic case. The Respondent should not have assumed or have been allowed to assume responsibility for the practice when he had no external experience and when he evidently knew very little about the management of a law firm including the requirements of the Solicitors' Accounts Rules. That decision was ill-advised. At the very least the Respondent should have been aware that responsibility for compliance with the SAR remained with him regardless of the fact that he had tried to delegate specific tasks to his bookkeepers and/or accountants. In short, the buck stopped with him. The Respondent's case was put on the basis that his bookkeeper and accountants were largely responsible for the mess in which the accounts had ended up. The Tribunal noted that the Respondent had spent considerable sums of money in an attempt to put matters right by employing a number of different accountants. It was difficult, indeed close to impossible, for any accountant to produce accounts and reconciliations without accurate source materials. Inevitably such an exercise would be expensive because the accountants had to piece together a forensic picture of the Firm's financial transactions going back over a period of many months to try to work out what had happened. The Respondent was unable to tell the SIO what many of the transfers related to; it was easy to envisage how complex the accountants' task might have been. The fact that such a task was necessary at all demonstrated to the Tribunal how little control or interest the Respondent had in the financial management of the Firm. Any businessman who adopted that approach was setting himself up for failure. This approach was particularly unacceptable for an individual who was required by his regulator to comply with the SAR and who had control of client money.

33.5 Compliance with the SAR was necessary to protect client money which was sacrosanct and to prevent damage to the public and its confidence in the reputation of the solicitors' profession. Compliance enabled reporting accountants and the SRA as regulator to identify potential problems quickly. For example, round sum transfers were often indicative of impropriety. Their presence alerted reporting accountants that there might be a problem with the practice. Every solicitor should know that money must not be drawn out of client account unless there were sufficient funds

available and the withdrawal was being made strictly in accordance with the Rules. The Respondent did not trouble himself to find out whether money was there or not. It seemed to the Tribunal that he made a series of assumptions and hoped that they were right. What was even more surprising was that the SIO found many of the same errors had been repeated when she carried out the second inspection, in spite of the fact that the Respondent's father had by then rejoined the Firm. This demonstrated an almost unexplainable lack of attention on the part of the Respondent. It may be that his, in his own words, "pretty cavalier" approach was a product of his mental state as suggested by the medical report from Dr Howells dated 6 July 2011. This report was served on the Applicant very late in the day. No request for an adjournment was made in order to enable further investigations to be carried out. It therefore provided a possible explanation for the Respondent's behaviour. Perhaps the accounts were in such a state of disorder that the Respondent could not apply himself mentally to working out what had gone wrong and putting it right, with the help of his accountant.

33.6 The allegations were admitted by the Respondent, and found proved by the Tribunal.

Previous Disciplinary Matters

34. None recorded against the Respondent.

Mitigation

35. Mr Treverton-Jones referred to this as being an unusually sad case. The Respondent was 43 years old and single. He accepted that his career as a solicitor was all but over. His health was not good. The Firm was a High Street practice with a long and distinguished history. The Respondent joined the Firm as a trainee solicitor in 1998. The Firm was then owned by his father, who had himself joined the practice 40 years earlier. The Respondent was admitted as a solicitor in 2000 and specialised in conveyancing. His father, the senior partner, retired in 2005, at which point the Respondent became a partner and took over the management of the practice. He had no previous experience of overseeing the accounts or indeed practice management.

36. After the Respondent's father retired the Respondent changed accountants in order to reduce costs. He employed a Chartered Accountant to oversee the day-to-day bookkeeping and carry out all accounting matters. The accountant made arrangements for one of his employees to visit the Firm on a daily basis to make postings and carry out other bookkeeping work. The accountant was also responsible for reconciliations, the audit and the annual accountants' reports.

37. Mr Treverton-Jones said that the Respondent carried out round sum transfers from client to office account after he had been advised by the accountant to do so. He did not know that that was a breach of the Rules. As the Respondent said in his statement, the inadequacies of the way in which the accounts had been maintained meant that he could not rely on the ledgers to identify accurately what sums could validly be transferred to pay bills. He knew that postings were not always up-to-date and that there were mispostings that required correction. Mr Treverton-Jones said that the Respondent made no attempt to conceal the round sum transfers and was entirely cooperative with the SIO and SRA. Indeed, he was told by the SIO that he was one of the most cooperative individuals that she had had to deal with.

38. The second tranche of round sum transfers came from family accounts. Mr Treverton-Jones stressed that the family was close, happy and supportive. Family members regularly put money into the Firm in order to plug shortages; the witness statement set out in detail the sums of money paid into the Firm by the Respondent's parents. In addition, the Respondent had remortgaged his interest in his flat on two occasions in order to inject funds. In 2010 he sold his remaining interest in order to repay some of the monies provided by his parents. All shortages on client account were made good.

39. The Respondent's mother had periodically given money to him when he had asked her to do so to assist in the running of the practice. She had instructed him to make payments out of the rental income held on her behalf on client account.

40. Mr Treverton-Jones said that the Respondent was a "decent, honest man from a decent, honest family". The Firm, which was one of the oldest firms in the country, had suffered during the recession. A combination of factors had contributed to what had gone wrong, including the Respondent's youth and inexperience, the 2008 recession with the resulting drop in the property market and the difficulty with accountants. For example, one accountant instructed to resolve the accounts issues had charged the Firm £40,000. Mr Treverton-Jones referred the Tribunal to the letter from Raymond Long, Chartered Accountant, dated 11 July 2011, instructed by RadcliffesLeBrasseur. Mr Treverton-Jones acknowledged that the Applicant did not accept the contents of the letter, which had been served that morning. However he referred to it solely to demonstrate the way in which errors in the accounts had carried through over a period of time. Mr Long was still not able to resolve the accounting problems fully as a result.

41. Mr Treverton-Jones referred the Tribunal to the Respondent's medical history. The Tribunal carefully read the reports from Dr Howells dated 10 February 2011 and 6 July 2011.

42. The Respondent's practising certificate had expired and was not renewed. It had proved difficult to sell the Firm as a going concern. In due course the files had been given to other solicitors. The premises were now up for sale. Mr Treverton-Jones confirmed that there were no cash shortages on files when they were transferred.

43. It was the Respondent's intention to move to Scotland and to try to put this matter behind him. It might be some time before he received a substantial inheritance which was due to him, but it would be released at some time in the future. The Respondent's medical evidence revealed that his symptoms had not improved since February 2011. His health would not permit him to practise as a solicitor even if he held a practising certificate.

44. Mr Treverton-Jones invited the Tribunal to consider imposing an indefinite suspension on the Respondent. It was, he conceded, impertinent for Counsel to suggest penalty, which remained the exclusive domain of the Tribunal. However he had discussed his intentions in advance with Mr Goodwin, and on behalf of the Applicant he had expressed support for Mr Treverton-Jones's view. He stressed that an indefinite suspension would protect the public interest and that any attempt by the Respondent to lift the suspension would have to be accompanied by medical evidence

which demonstrated that he was fully recovered from his past illness and was fit to be a solicitor. Mr Treverton-Jones said that the Respondent was very regretful for what had occurred. If he was struck off he would feel extremely ashamed and humiliated. He knew that he had let himself and his family down and it was to their credit that they had stood by him. The Respondent was a proud and decent man who wanted to put his life together in Scotland, but that would take time. He lived in dread of the ultimate sanction of striking off. Mr Treverton-Jones therefore respectfully invited the Tribunal to give consideration to imposing the penalty of indefinite suspension.

Sanction

45. The Respondent admitted a total of 16 allegations, including an allegation of recklessness, arising out of breaches of the SAR over a sustained period. The Tribunal was particularly concerned to note that, following disclosure of the FIR dated 4 September 2009, the SIO had discovered similar breaches when she inspected the Firm for a second time in July 2010. It was a matter of grave concern to the Tribunal that the Respondent had not made efforts to resolve the issues concerning the accounts as quickly as possible following the first inspection and report. The seriousness of his and the Firm's situation should have been apparent to him. It was disappointing that the same errors and omissions were identified on the occasion of the second inspection. The Respondent was quick to blame his bookkeeper and accountants, but it was significant that he had encountered the same difficulties with any bookkeeper or accountant used. This was not a situation where one accountant had let him down. It appeared that at least three accountants had not lived up to the Respondent's expectations. The Tribunal's perception was that the Respondent had recklessly abandoned all responsibility for proper management of the accounts on the assumption that he could just leave it to others to get on with. The Respondent chose to change the bookkeeper in 2005 in order to reduce costs when he took over the practice from his father. His inadequate experience and lack of knowledge of the SAR in particular and accounting procedures in general should have made it obvious to him that it was reckless to change providers at that point in order to save money. What he needed was stability. The Tribunal could only repeat what it had said before, namely that the Respondent should not have taken over or have been allowed to take over the practice when he knew as little as he did about management of a business and was so obviously ill-suited to a management role.

46. The Tribunal heard what Mr Treverton-Jones had to say about sanction. It was grateful to Mr Treverton-Jones for his clear acknowledgment that the determination of sanction was for this Tribunal alone as an experienced Tribunal used to deciding such cases in a proportionate and consistent manner. The Tribunal's well-established duty was to protect the public and to protect the public's confidence in the reputation of the solicitors' profession. The Tribunal took little note of the shame and humiliation that a respondent might feel if, in Mr Treverton-Jones's words, the "ultimate sanction" of striking off was imposed. The Tribunal took heed of the words of the then Master of the Rolls, Lord Bingham, in Bolton -v- The Law Society [1994] 1 WLR 512 CA that a solicitor should be "trusted to the ends of the Earth". Any solicitor who behaved in a reckless and cavalier way must be prepared to be struck off regardless of the shame and humiliation he might feel as a result. It mattered not at all that the Applicant supported the respondent's advocate's suggested sanction, no matter how respectfully that proposal was made. The Tribunal would always draw its conclusions based on

the facts and evidence put before it and its own independent, impartial assessment of a respondent.

47. The Respondent had cooperated with the SRA. He had immediately absolved his partner, who had been reprimanded at an earlier hearing, from all responsibility for the SRA breaches. There were no complaints from clients concerning his conduct. There was no money lost by clients. However the Tribunal gave this last point little weight. This Respondent was in the fortunate position of having a supportive family around him and his parents had the resources to be able to inject copious funds into the practice in order to make up the shortfall on client account. A respondent who was fortunate to have parents who were able to help him out in this way should be treated no differently from a respondent without that support. The public would find it abhorrent if a respondent could avoid the ultimate sanction merely because of his family's personal circumstances.

48. The saving grace in so far as this Respondent was concerned was the medical evidence stating that his mental health and the symptoms arising from it caused substantial problems in his functioning in routine activities. The Tribunal took note of Dr Howells' conclusion that there had been no change in his symptoms between January 2011 and July 2011. Dr Howells formed the view that in 2008 it was entirely possible that the Respondent had had a similar reaction to the stress that he was under, which could in turn have resulted in disability or functional impairment, making it very difficult for him to deal with the problems with cash flow, the slump in the property market, and the Firm's financial difficulties aggravated by the errors and omissions on the accounts and the problems, probably of his own making, with the bookkeeper/accountants.

49. The Tribunal had concluded that it would be disproportionate to strike the Respondent off the Roll of Solicitors, taking into account all the circumstances of this unusual case. Having concluded that the Respondent should not be struck off the Roll, the appropriate sanction was indefinite suspension. This penalty would protect the public from future damage and would also help to maintain the public's confidence in the reputation of the solicitors' profession. In suspending the Respondent indefinitely the Tribunal made clear that it would not expect an application for termination of the suspension to be submitted until such time as the Respondent was fully recovered, which was expected to take some time. As a minimum on such an application the Tribunal would expect robust expert medical evidence as to the Respondent's mental capacity and health to be provided. It would also expect to see evidence of his professional competence including successful attendance at appropriate courses recognised by The Law Society. Of course the Tribunal could not fetter the decision of any future Tribunal as to whether the indefinite suspension should be lifted. However this Tribunal wished to stress that the Respondent should not be allowed to practise again until he was able to show that his rehabilitation was complete.

50. The Tribunal therefore ordered that the Respondent be suspended from practice as a solicitor for an indefinite period to commence on 12 July 2011.

Costs

51. The Applicant's costs were agreed at £18,000. Mr Treverton-Jones asked the Tribunal to make an order for costs not to be enforced without leave of the Tribunal on the basis that the Respondent would inform the SRA when his circumstances changed, and in particular when he received his inheritance. Mr Goodwin said that the Respondent had provided a statement of means unsupported by documentary evidence. A fixed costs order would give the SRA the opportunity to explore the Respondent's means with him in more detail at the appropriate time. The SRA was accommodating; if the Respondent had no ability to pay costs immediately the SRA would recognise that. It was however important to take into account the fact that any unpaid costs would fall as a burden on the profession.

52. The Tribunal noted that costs had been agreed at £18,000. It heard submissions from the parties and considered the statements of means of the Respondent dated February 2011 and 12 July 2011. Whilst noting the Respondent's belief that it would be some time before he received his substantial inheritance, and that he was unclear as to the precise amount involved, the Tribunal was entirely satisfied that costs should be fixed in the sum of £18,000 without further order. The Respondent would have the means to pay the costs in the near future. It was not in his financial or health interests for the matter to come back before the Tribunal for leave to enforce to be obtained at that point. The best way for the Respondent to put this episode behind him was for him to pay the SRA's costs as quickly as possible without prevarication.

Statement of Full Order

53. The Tribunal ordered that the Respondent, Andrew Petrocokino Dalrymple Murray of Francis & How Solicitors, Botley House, East Street, Chesham, Buckinghamshire HP5 1DQ, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 12th day of July 2011 and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.

Dated this 11th day of August 2011
On behalf of the Tribunal

R. Nicholas
Chairman