SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10551-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER JAMES SCOTT Respondent

Before:

Mr P. Housego (in the chair)
Mr R. B. Bamford
Mr R. Slack

Date of Hearing: 6th November 2012

Appearances

Paul Gott QC of Fountain Court, Temple, London EC4Y 9DH, instructed by Russell Jones & Walker, 50 - 52 Chancery Lane, London WC2A 1HL for the Applicant.

Trevor Burke QC of 3 Raymond Buildings, Gray's Inn, London WC1R 5BH for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent Peter James Scott were that he:

1.1 Made improper withdrawals from client account, contrary to Rule 22 of the Solicitors Accounts Rules 1990 (sic) ("SARs");

1.2 Failed to carry out reconciliations contrary to Rule 32(7) of the SARs;

1.3 Failed to account to clients and failed to follow client's instructions, and in doing so failed to act with integrity, failed to act in their client's best interests and acted in a manner likely to diminish public confidence in the profession contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") (sic);

1.4 Failed to report to the Applicant that his firm was in serious financial difficulty which could put the public at risk, contrary to Rule 20.06 of the SCC;

1.5 Carried out reserved work without a valid practising certificate; and

1.6 Misled another solicitor as to his status as a qualified solicitor, contrary to Rules 1.02 and 1.06 of the SCC.

1.7 Employed and/or remunerated SP, without obtaining written permission of the Applicant, contrary to Rule 1(a) and (d) of the Solicitors Practice Rules 1990 up to 30 June 2008 and Rule 1.02 and 1.06 of the SCC from 1 July 2008.

2. The Applicant submitted that the conduct of the Respondent was reckless and that he took a blinkered approach to his professional duties as a solicitor with regard to all of the allegations made against him.

3. Dishonesty was not an essential ingredient of any one of the allegations. Nevertheless the case was put against the Respondent on the basis that he was dishonest with regard to allegations 1.1, 1.3, 1.6 and 1.7.

4. The Respondent admitted all the allegations but denied dishonesty.

Documents

5. The Tribunal reviewed all the documents, including:

Applicant

- Rule 5 Statement dated 11 June 2010 with exhibit;
- Written opening of the Applicant by Paul Gott QC dated 11 April 2012;
- Applicant's chronology dated 5 November 2012;
- Applicant's statement of costs for the hearing on 6 November 2012, dated 7 November 2012.

Respondent

- Respondent's statement of means dated 5 November 2012.

The Factual background

6. The Respondent was born in 1961 and admitted in 1990. His name remained on the Roll. At the material time he was the sole practitioner of Scott & Company ("the firm") of Hornchurch, Essex.

7. On 24 August 2009, the Respondent contacted the Applicant and informed it that the firm had ceased trading as of 31 July 2009. The position was confirmed in writing on 7 September 2009 when the Respondent wrote to the Applicant:

> "It is with great regret and deep personal sadness that I write to confirm that due to overwhelming financial difficulty the firm of Scott & Co ceased trading on 31st July 2009 and is in the process of closing…"
>
> "The client account has not yet been closed. The client account is not able to be reconciled and I have reported the matter to the [Applicant]. I have arranged an appointment on Wednesday 9th September next at the office address to meet with Mr Davies from your forensic accounting department…."
>
> "I am afraid that I am at the end of my tether and unable to cope with the pressure that sole practice has brought.…"

8. The Respondent had written in response to a letter dated 1 September 2009 from the Applicant's Regulatory Investigations department, enquiring as to the status of the firm and in connection with a number of complaints that the Legal Complaints Service ("LCS") had received following the closure of the firm.

9. On 9 September 2009, Mr Mike Davies Senior Investigation Officer ("SIO") and another Investigation Officer attended the firm. During an initial interview the Respondent stated, as set out in the Forensic Investigation ("FI") Report prepared at the conclusion of the investigation dated 15 September 2009 that he had been let down by his bookkeeper, SP, to the extent that "Bills [of cost] had been created against "probate" matters for a considerable time to aid cash flow." The Respondent explained that he had remortgaged his house and taken out personal loans but was "hugely short of client money". When asked by the SIO to provide a figure, the Respondent estimated it to be approximately £800,000.

10. SP had been employed by the Respondent as an accounts clerk in the past (see allegation 1.7 below).

11. Upon investigation of the firm's accounts, the Applicant discovered that the firm did not hold enough funds to meet its liabilities to its clients. The Applicant calculated, based only on the firm's liabilities to two clients, that the shortage on the client account could be calculated as at least £601,930.89.

12. At the time of the SIO's visit, the firm's client account recorded a credit of only £219.92. The Respondent as a sole practitioner was the sole signatory to the account.

13. The Respondent was adjudged bankrupt by his own petition on 24 September 2009. This led to the automatic suspension of the Respondent's practising certificate. On 29 September 2009 the Applicant intervened in the firm.

Allegations 1.1 and 1.3
Mr and Mrs McD

14. The firm had been instructed by Mr and Mrs McD in relation to the liquidation of some properties from their joint portfolio as they were getting divorced. The divorce was being conducted by another firm. The Respondent said that upon sale of the properties he was to hold the funds save for making periodic payments to Mr and Mrs McD. On 25 August 2009, D solicitors wrote to the firm referring to Mr and Mrs McD having provided the firm with authority and requesting the release of all funds being held on the McDs' behalf by the firm to the client account of D. The Respondent wrote back on 26 August 2009 stating:

> "It is with regret that we have to inform you that this firm is now closed and all client related matters will be dealt with by the [Applicant] who will doubtless be in contact with you shortly."

15. On investigation, the Applicant discovered a client shortfall in respect of Mr and Mrs McD of £498,967.06. There was a ledger "General Matters" in the name of the McDs opened on 9 June 2009 with a balance of £533,375.53. After payments to Mrs McD and elsewhere and payment of costs in the sum of £250 plus VAT, the ledger showed a total of £513,750.28. After handwritten entries in respect of further payments an amount of £519,967.06 should have been held at 3 July 2009. The Applicant ascertained that two further payments of £6,000 and £15,000 were made during August and September 2009 thereby reducing the amount that should have been held to the amount of the shortfall.

16. The firm held a number of other ledgers on behalf of Mr and Mrs McD. The ledgers all displayed similar characteristics:

- Each of the ledgers contained regular entries on the office side for costs, even though the transactions had completed. These costs were often round sums with VAT added.

- Regular transfers were made from client account to office account to discharge the apparent cost liability.

- Regular debits were made from client account with the generic descriptions "Part payment to client" or Payment on behalf of client".

- On each ledger there was an attempt to transfer out more monies than were credited to the ledger. Each transfer was then reversed and a further transfer was made of the exact sum held on the ledger, reducing the balance to nil.

17. In a ledger in the name of Mr McD entitled "Post Completion Property Matters", the first two entries were dated 1 November 2008 under the description "Costs" with a debit of £10,000 and "VAT" £1,750 respectively. On the same day the ledger recorded three payments from client account, each for £4,086.98. This placed the ledger's client side into debit by £12,260.94. The debit was resolved on 5 November 2008 by transfers from other ledgers in the name of Mr and Mrs McD. Between 1 November 2008 and 10 March 2009, costs were transferred totalling £112,860.64 plus VAT. Payments totalling £214,152.17 were transferred from client account described as either "Part payment to client" or "payment on behalf of client".

18. The Post Completion Property Matters ledger recorded the periodical payments made to Mrs McD. They started on 2 December 2008 and occurred approximately monthly; often in the sum of £6,000. In total £34,000 was sent to Mrs McD.

19. On 14 November 2008, the firm wrote to Mrs McD at the request of Mr McD enclosing details of the funds held by the firm. The information came in the form of a number of completion statements in relation to the sale of various properties. One of these completion statements, dated 11 January 2008 related to 330 L Street. According to the completion statement the property was sold for £125,000 and the net proceeds of sale were £119,283.44 with legal fees totalling £250 plus VAT. The ledger was opened in respect of the sale of the property on 1 March 2008 even though the sale had taken place on 11 January 2008. Notwithstanding the completion statement, the ledger was opened with a balance of £245,084.55 and the following sums were debited in respect of costs with corresponding transfers to the office account: £10,000 plus VAT on 10 September 2008 and £18,037.91 plus VAT on 7 October 2008.

20. Of the opening balance of £245,084.55, £150,000 was paid to Mr McD on 27 May 2008, £10,000 was paid to Mrs McD on 23 October 2008 and a further £51,822.25 was transferred to other ledgers held by Mr and Mrs McD.

21. When the firm provided Mrs McD with the completion statement in November 2008, indicating that the firm held £119,283.44 in respect of the sale, the ledger showed a balance of nil.

22. A completion statement for the sale of a property N Lane dated 9 July 2008 was provided by the firm under cover of the letter dated 14 November 2008 referred to above. The sale price was stated to be £2 million with net proceeds due to Mrs and Mrs McD of £1,065,764.69. The completion statement detailed legal fees in the matter as a total of £550 plus VAT, although the client ledger showed a costs debit of £580 plus VAT and the receipt of only £1,800,000 purchase monies. The balance of £2 million was apparently made up by the transfer of £200,000 from another matter. This client ledger had deductions for costs as follows: £10,000 plus VAT on 3 September 2008, £11,000 plus VAT on 22 September 2008 and two sums of £15,000 each plus VAT on 7 October 2008. In total the costs recorded on the ledger between 16 July 2008 and 7 October 2008 amounted to £51,580 plus VAT. The "costs" all post-dated the legal work done, which had been billed at its conclusion.

23. Of the £1,065,764.69 available to Mr and Mrs McD, the ledger recorded one payment of £50,000 to Mr McD on 11 September 2008.

24. When the firm provided Mrs McD with the completion statement in November 2008, indicating that the firm held £1,065,764.69 in respect of the sale, the ledger showed a balance of nil.

Ms CR

25. On 16 September 2009, the LCS received a complaint from Mrs CR in relation to a conveyancing transaction conducted by the firm. Ms CR was a client of the firm who had a Power of Attorney in respect of the affairs of her uncle Mr GF and aunt Mrs NF. The Power of Attorney for her aunt was registered with the Court of Protection. The firm was instructed in the sale of Mr and Mrs F's house 40 C Drive when they moved into a care home.

26. Completion of the sale of the property took place on 6 July 2009 with a balance due to Mr and Mrs F of £192,567.50. Ms CR stated that she attended the firm's office to collect some Court of Protection documents from the Respondent and at the same time requested a cheque for the proceeds of sale. The Respondent declined to provide it explaining that he was too busy.

27. On 20 August 2009, the Respondent wrote to Ms CR in respect of her aunt's Receivership Report to be filed with the Court of Protection. The letter also contained a cheque in respect of her uncle's share of the proceeds, half the total due. However the cheque could not be cashed as it was not made payable to her uncle GF but to GR. The letter sent was on the firm's headed notepaper.

28. On 1 September 2009, Al LLP solicitors acting on behalf of Ms CR wrote to the Respondent explaining that the cheque provided was in the wrong name and could not be banked. They also explained that Ms CR had made a number of attempts to contact the Respondent to resolve the issues without success.

29. On 14 September 2009, Al LLP wrote and acknowledged that Ms CR had received a cheque made out correctly to her uncle for half the proceeds of sale. However they commented that the firm continued to hold £96,283.75 due to Mrs NF.

30. The Respondent wrote to Al LLP on 21 September 2009 and expressed his sincere apologies for the distress and inconvenience caused to Ms CR as a result of the closure of the firm. He further stated:

> "I shall continue to assist where I can to ensure that your client is paid what is due to her. It seems inevitable that at some stage a claim will need to be made on the Compensation Fund."

31. The matter ledger recorded the receipt of £200,000 on 6 July 2009. Notwithstanding the completion statement detailing the legal fees of £550 plus VAT, the ledger recorded a further costs liability of £5,000 plus VAT on 8 July 2009. This was fully discharged on 9 July following a number of transfers from client account to office account made on 8 and 9 July 2009.

32. A copy of the Respondent's bank statement showed payment of a cheque for £96,283.75 on 3 September 2009, half the sum due to the clients. This payment reduced the client account balance to £219.92. At that date Respondent still owed Mrs NF her share of the proceeds, £96,283.75.

33. On 3 February 2010, the Applicant wrote to the Respondent seeking his explanation for his delays in accounting to Ms CR's uncle and his failure to account to her aunt. On 19 February 2010, the Applicant sent a reminder letter to the Respondent.

34. On 5 April 2010, the Respondent wrote to the Applicant apologising for the delay in his response. The letter enclosed a short witness statement described as a "preliminary proof of evidence" which the Respondent hoped would:

> "...allow you to understand how it was that [Ms CR] was unable to receive her money.
>
> I deeply regret the unhappiness this has caused to [Ms CR] and indeed to a number of others in similar circumstances as your records will no doubt bear out."
>
> I wish to make it very clear however that it was only as a result of the "bombshell" that my accounts cashier dropped on me in June/July that I became aware of the hopelessly inadequate way in which the firm's accounts had been run which has brought me to where I am today…"

Allegation 1.2

35. The FI Report commented that no reconciliations had been carried out since April 2009. In respect of the accounting systems of the firm, the Respondent said in his preliminary proof of evidence, omitting the paragraph numbering:

> "As part of my duties and responsibilities was the control of client money. In order to ensure that things were run properly I did three things namely (i) Kept computerised books of account (ii) submitted an annual accountants report and (iii) employed a legal cashier to have the day to day conduct of the running of the business, the keeping of records and the control of client money.
>
> The individual I employed as a cashier lives in Cambridge. His duties and responsibilities included both practice management and compliance work. His role included the creation of cash flow sufficient to run the practice which consisted of five fee earners and nine support staff. To do that he was entasked with meetings with fee earners and provision of information for the monthly billing to be achieved, together with monitoring the results.
>
> He was not an easy man to work with on account of the fact that his performance was so inconsistent. He would become unavailable for sometimes weeks at a time and it was therefore hugely difficult for me to keep an eye on things without his input. However, I remained confident that when he applied himself he was able to do the job very well. The results of the last annual

accounts report submitted in October 2008 would seem to suggest that he was more than up to the job.

In or about the middle of June 2009 my cashier was in the office but I didn't see him all day. At 5 pm he telephoned me to arrange a meeting at a local pub. I went to see him as arranged. He was very drunk. He told me that there were irremediable problems with the client account and that the cash book balance showed it to be overdrawn. This was complete news to me and very shocking. He told me that the firm would have to close.

The following day I went to the office to investigate the position. I looked at a list of client matters which had balances attached to their respective client account ledgers. On the face of it there did not seem to be a problem until the point where the list is reconciled to the bank balance. When I looked at the balance in the bank I could see that the two bore no resemblance to each other.

Upon further investigation it became apparent that there had been very little, if any posting of transactions for several weeks, at least since the beginning of May. The more I looked at it the more I realised that I could have no confidence at all in what the list of matters presented to me as the balance held by this firm. It was a situation of chaos which suddenly faced me and for which I had no answer. I simply was unable to say whether any of the matters listed were accurate at all.

At about the same time I was contacted by a client called [Ms CR] to request that the net sale proceeds of her aunt's house could be sent to her. I was in a situation of panic and decided that it would be advisable to send her half the money (the share due to her uncle with the remaining half to follow on shortly once I had had an opportunity to ascertain that the monies were there.)

It is a matter of deep regret to say that my enquiries revealed that there was insufficient funding in the client account to enable me to account to [Ms CR]. I became sickened with worry. I decided that I would have to report myself to the [Applicant] which I did.

I still do not know exactly why we were unable to account to [Ms CR]. There were so many transactions through the client account at that time that it was impossible to say. Monies were sent out with regard to other conveyancing transactions and clients were paid sums by way of legacy at the same time which must have affected the position. I never had the conduct of any of these transactions nor did I ever input any entries on to the client ledger or authorise any transactions. I was never asked to do so. The only person who had had the conduct of both was my cashier. I was never asked to approve any of the transactions, I just trusted him to do his job.

I find myself responsible for this nightmare situation which was not of my making and where I still do not fully understand how the situation became as out of control as it did…"

Allegation 1.3

36. For background see allegation 1.1 above.

Allegation 1.4

37. According to the Respondent, the bookkeeper SP, disclosed the shortages on client account to him in mid-June 2009. The Respondent reported this to the Applicant on 24 August 2009, according to his letter to the Applicant of 7 September 2009, during the course of a telephone conversation between himself and the Applicant's red alert telephone line, when he notified the Applicant that he was no longer trading under the style of the firm.

Allegation 1.5

38. The firm ceased practising on 31 July 2009. The Respondent's practising certificate was suspended automatically upon his bankruptcy on 24 September 2009 and the intervention into the firm. The suspension was lifted on 26 February 2010.

39. On 6 November 2009, the Law Society received a complaint from Mrs RS by letter dated 3 November. The Respondent had been acting for Mrs RS in relation to the case of S v S, proceedings under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996. Mrs RS stated that she had recently discovered that the Respondent had been suspended from acting as a solicitor; she had recently been informed by the Respondent that substantial fees would be due from her, including for work done while the Respondent was suspended; on 6 August 2009 the Respondent had informed her that he had to close his firm but would continue to act for her, subsequently informing her that he was working from home at a reduced hourly rate; in September 2009 the Respondent had informed her that he had joined another firm, B & Co and taken her file with him. On contacting B & Co, a secretary informed Mrs RS that the Respondent had joined the company as a civil litigation solicitor and brought a number of clients to the practice. Mrs RS enclosed copies of correspondence showing that the Respondent was continuing to act as a solicitor in S v S. Inter alia, Mrs RS alleged that the Respondent failed to follow instructions, acted without instructions and acted contrary to instructions. The letter contained correspondence sent to and from the Respondent while he was acting on behalf of Mrs RS. It displayed the firm's e-mail address. On 11 September 2009, Mrs RS began to e-mail the Respondent using a B & Co account. On 15 and 22 September 2009 the Respondent wrote to Mrs RS, using B & Co headed notepaper. The Respondent subsequently wrote to Mrs RS on 2, 8, 19 and 22 October 2009. On 2 October 2009, the Respondent also wrote to J solicitors who were acting for the other party in Mrs RS's matter. The letter attached a draft restriction which the Respondent had prepared, using the Land Registry's Practice Guide.

Allegation 1.6

40. By an undated letter, solicitors on behalf of the Respondent made an application to the Applicant to lift the suspension on the Respondent's practising certificate. According to the letter the reason for the application was that the Respondent had been offered a position as an assistant solicitor with the firm of B & Co. The letter stated:

> "[Mr B] has been made fully aware by [the Respondent] of the intervention and the circumstances surrounding the intervention."

41. The letter also enclosed a letter from B & Co, dated 15 October 2009 which confirmed that the Respondent would be employed as a civil practitioner, with no access to the firm's accounting records other than was necessary for the proper conduct of his work. The letter further stated that Mr B was aware of the circumstances of the closure of the firm and was also aware of the nature of the allegations being put to the Respondent.

42. On 2 November 2009 the Applicant wrote to Mr B and requested further information as to the details of the Respondent's employment, including job description, supervision responsibilities and general details about the firm including a list of staff. On 30 November 2009 Mr B provided his response. He stated that the Respondent would be employed as a consultant and would have day-to-day conduct of civil litigation matters under B's supervision.

43. Further correspondence followed and culminated in letters to the Applicant from solicitors on behalf of the Respondent on 19 February 2010 and on behalf of the Respondent and Mr B on 16 March 2010. The letter of 19 February admitted that the Respondent had been practising from B & Co and did carry out a limited amount of work for the firm. It asserted that the Respondent had been suffering from severe depression for which he was receiving treatment and made various admissions. The letter of 16 March 2010 expressed the Respondent's shame at what he had done and commented on his health.

Allegation 1.7

44. The Tribunal had made an order dated 14 September 1999 under section 43(b) of the Solicitors Act 1974 against SP the firm's cashier. The Order prohibited SP from being employed by any solicitor without the permission of the Law Society. The judgment of the Tribunal recorded that SP had dishonestly misappropriated cash sums totalling £4,029.95 paid to the firm by clients. The judgment also recorded that the Respondent had dismissed SP.

Witnesses

45. There were no witnesses.

Findings of Fact and Law

46. In arriving at its findings the Tribunal had regard to its duties under what Articles 6 and 8 of the European Convention on Human Rights.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

47. **The allegations against the Respondent Peter James Scott were that he:**

Allegation 1.1: Made improper withdrawals from client account, contrary to Rule 22 of the Solicitors Accounts Rules 1990 (sic) ("SARs");

Allegation 1.3: Failed to account to clients and failed to follow client's instructions, and in doing so failed to act with integrity, failed to act in their client's best interests and acted in a manner likely to diminish public confidence in the profession contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC")(sic);

47.1 For the Applicant, Mr Gott submitted that these allegations related to the handling of client money and that the Respondent's failures were evidenced from an analysis of the matters dealt with by the firm on behalf of Mr and Mrs McD and Ms CR. In the case of the Post Completion Property Matters ledger in the name of Mr McD, Mr Gott submitted that the Respondent had removed monies and there was no indication where they had gone. In the case of 330 L Street, the completion statement provided in November 2008 stated that the net proceeds of sale were £119,283.44 while the ledger had a nil balance. The same modus operandi had been operated in respect of N Lane. The origin of the shortfall in funds due to Mr and Mrs McD was clear. The clients' funds were plundered by transfers said to be referable to "costs" when the relevant transactions, the sale of property with minimal costs due to the firm, had been completed. Mr Gott submitted that the adoption of a position on the part of the Respondent that he was unaware that this was happening, given the size and frequency of the deductions was simply not credible. In support of this submission, Mr Gott referred the Tribunal to the statement made by the Respondent on the commencement of the investigation and recorded in the FI Report that "Bills had been created against "probate" matters for a considerable time to aid cash flow" and to his preliminary proof of evidence where he said that SP's role "included the creation of cash flow sufficient to run the practice which consisted of five fee earners and nine support staff." Mr Gott submitted that a cashier could not create cash flow; that was for fee earners to do. Mr Gott said that SP had been employed in remarkable circumstances to create cash flow. He submitted that costs were being improperly charged and that the firm was operating on monies arising from such withdrawals. In these circumstances in the absence of an explanation from the Respondent, Mr Gott submitted that at the very least, the Respondent must have been wilfully blind or culpably reckless in respect of such withdrawals. This was conduct of the most serious kind.

47.2 Mr Gott submitted that the position regarding Ms CR was even more serious. She was acting under a Power of Attorney for vulnerable individuals whose house was being sold after they had moved into residential care. Even taking the Respondent's preliminary proof of evidence at face value, exchange of contracts on 30 June and completion of the sale on 6 July 2009 had both occurred after the Respondent was aware of the "irremediable problems with the client account". The Respondent had accepted in the course of the proceedings that the conversation with his cashier was in mid June 2009. In that knowledge, the Respondent freely took the completion monies into the client account and immediately withdrew costs almost 10 times the amount shown on the completion statement. Mr Gott referred the Tribunal to Ms CR's letter of complaint to the LCS dated 16 September 2009 where she set out the difficulties she

had with the Respondent and the delays in receipt of the completion monies. She had offered to go to his office "after much chasing" but he refused. She attended the office and using a telephone number which she found on the door, she got through to the person who had carried out the sale and obtained a private number to telephone the Respondent who said he would post another cheque. She then received a cheque for half the sum made out to an incorrect payee GR and felt that this was a delaying tactic. She never received the balance of the monies. As the statement on the firm's client account showed, when the cheque for half the proceeds of sale cleared, the client account was left with a balance of only £219.92. Mr Gott clarified for the Tribunal, as there were no details of the mechanics of transfers in the documents, that the Respondent said that he signed all the documents that SP put before him. In his preliminary proof of evidence, the Respondent said that when Ms CR asked for the net proceeds of sale he was in "a situation of panic" and decided to send her half the money but he did not explain why the transaction went ahead after he had become aware of the difficulties with client account and when it was clear that the other half of the money was not available. The Tribunal was asked to consider the withdrawals from the McDs' accounts in the light of what had occurred with Ms CR. The modus operandi was the same. It was submitted that in the absence of a cogent explanation from the Respondent and in the absence of any sworn witness statement that he had been directed by the Tribunal to deal with, the Tribunal was entitled to and should find that the withdrawals spoke for themselves and that the Respondent as sole principal of the firm was responsible.

47.3 In respect of allegation 1.3 particularly, Mr Gott submitted that the facts concerning Mr and Mrs McD and Ms CR showed that the Respondent had failed to follow his client's instructions and that this was patently clear from the ledgers of Mr and Mrs McD and quite shocking in the case of Ms CR. She had received only half the money and the Respondent had failed to pay her on request. Any withdrawal of client money from client account without the client's instructions was a failure to follow instructions. Mr Gott submitted that the letter from the Respondent to Mr and Mrs McD's solicitors of 26 August 2009 informing them that the firm was closed and that all client matters would be dealt with by the Applicant, was extraordinary. It was a brazen letter saying that these matters were not his problem any more. The Respondent did not explain what had occurred and just said that the firm was closed while in fact it was clear from other documents that he was still using his headed notepaper and e-mail address to deal with matters for another client Mrs RS at this time. At best it was an insubstantive response from someone who should have been holding almost £500,000 for Mr and Mrs McD.

47.4 Mr Gott submitted that the improper withdrawals in the cases of McD and CR were the essence of the case of dishonesty against the Respondent and he referred the Tribunal to the two limbed test for dishonesty set out in the case of Twinsectra Ltd v Yardley 2002 UKHL 12. He submitted that the Respondent had not acted honestly by the standards of reasonable and honest people and he himself realised that by those standards his conduct was dishonest. The Respondent's attempt to blame SP was incredible. Mr Gott submitted that it was always open to a Tribunal of fact to find that an individual had deliberately shut their eyes to the obvious when they did not want to have it confirmed. It was the Applicant's case that the Respondent had actually been dishonest but at best had been wilfully blind. He referred the Tribunal to the case of

Westminster City Council v Croyalgrange Ltd (1986) 83 Cr App R 155 and Lord Bridge's comments:

> "…knowledge may be proved either by proving actual knowledge or by showing that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicions confirmed;"

47.5 In his representations for the Respondent, Mr Burke explained that the Respondent did not dispute any of the allegations and recognised the sanctions which the Tribunal might impose. He had been instructed because the Applicant persisted in its allegation of dishonesty and the Respondent was solely concerned to defend himself from that allegation particularly in respect of allegation 1.1 with its implication that he had dishonestly enriched himself to the amount of £600,000 from the accounts of the firm in which he was the senior partner and sole practitioner. Mr Burke informed the Tribunal that once the deficit on client account had been identified, the police had been involved and the Respondent had been arrested and interviewed at length in October and November 2009. He had fully co-operated with the Fraud Squad; his bail had been enlarged five times during the course of the investigation. At the Crown Court, the prosecution had offered no evidence against the Respondent on an allegation of fraud. Mr Burke emphasised the distinction between no evidence being offered and an allegation being left to lie on the file and not proceeded with. In this case the police had concluded that there was not sufficient evidence to place before the jury after a thorough investigation which had lasted a year and Mr Burke submitted that this constituted a powerful argument that there had been no dishonesty involved in respect of the conduct the subject of allegation 1.1. During the course of the investigation there had been no evidence that SP had authority to sign cheques on the client account. All the transactions were conducted electronically by internet banking. A swipe card was used to deal with the accounts. The Respondent accepted that it did not reflect well on him that he surrendered all control of the banking to SP who undertook daily transactions on the accounts without reference to him. The Respondent had an accounting system with which he was totally unfamiliar. SP confessed to him in June 2009, having behaved erratically for some months, that the accounts were in disarray and that the firm would have to close. The Respondent then turned to another bookkeeper with whom he was acquainted, Ms W, but neither he nor she could reconcile the accounts and it dawned on the Respondent that he needed to notify the Applicant of the position. SP had operated the day-to-day running of the accounts and the Respondent had made no attempt to reconcile them himself and so he was unaware of the transactions which had occurred and it was not necessary to impute dishonesty to him. The Respondent accepted that it was not creditable conduct not to monitor client account but he did not accept that he had plundered it. The Respondent had notified the police of SP's part in this series of events. The Fraud Squad had attempted to contact SP on a number of occasions and a solicitor acting for him had informed them that he would answer no questions at interview. Faced with the fact that he would refuse to cooperate, the police did not pursue the matter. Mr Burke informed the Tribunal that it was not known what had happened to the £600,000 removed from client account. It was probable that in part it had been consumed by the practice but that did not rule out that SP had taken some of it. The Respondent certainly had not done so. Mr Burke submitted that once the Tribunal accepted the possibility that transactions have been conducted electronically and

possibly by SP and noted the outcome of the police investigation, the requirements for the inference that the Respondent had not been dishonest, were met. The Respondent accepted the sanction that would be imposed having regard to his high degree of recklessness but Mr Burke submitted that there was no need for the Tribunal to go beyond that and find dishonesty.

47.6 The Tribunal considered the evidence and the submissions. It found allegation 1.1 proved on the evidence beyond reasonable doubt indeed it had been admitted. As to dishonesty, in June 2009, SP (the firm's cashier) told the Respondent that client account was seriously depleted. On his own statements to the Applicant, the Respondent had then looked at the financial situation of the firm. Nevertheless the Respondent permitted Ms CR's conveyancing transaction to conclude and two hundred thousand pounds flowed into client account as a result. Two days after completion £5,000 was removed from that money as "costs" in addition to the proper fee of some £550. The Tribunal found proved beyond reasonable doubt on the evidence that by the standards of reasonable and honest people what the Respondent had done was dishonest. At the very best the Tribunal found that the Respondent had displayed wilful blindness in respect of these deductions. Both the objective and subjective tests in the case of Twinsectra were met and the Tribunal found dishonesty proved against the Respondent in respect of Ms CR's matter.

47.7 In respect of the transactions for Mr and Mrs McD there was a deficit of £498,967.06 on client account. The Tribunal had noted the similarities in the way that the defalcations were made in these transactions with what later happened to Ms CR. It had considered the evidence including the Respondent's own statement that the cashier's duties included the creation of cash flow sufficient to run the practice and his statement to the investigators that bills had been created against probate matters for a considerable time to aid cash flow. The Tribunal had also borne in mind that the Respondent was a practitioner of 15 years experience who had apparently run his practice satisfactorily until 2009 including obtaining accountants reports. He had chosen not to give evidence to the Tribunal and on the simple facts it did not seem likely that he had no idea what was happening to client account before June 2009. However on the evidence the Tribunal could not be satisfied to the required standard of proof - beyond reasonable doubt - that before mid June 2009 the Respondent was aware of the state of client account and had either been personally involved in the improper removal of Mr and Mrs McD's monies or that he had been wilfully blind in respect of it. Accordingly the Tribunal found that the allegation of dishonesty in respect of the transactions for Mr and Mrs McD was not proved.

47.8 In respect of allegation 1.3 the Tribunal considered the evidence and the submissions and found the allegation proved on the evidence. Indeed it had been admitted. As to dishonesty in respect of the proceeds of sale of Ms CR's aunt and uncle's property, the Tribunal found that in doing what he admitted he had done; failing to account to clients and failing to follow her instructions, the Respondent had behaved in a way that by the standards of reasonable and honest people was dishonest and that having regard to his knowledge of the state of client account at the time he knew that he was behaving dishonestly in allowing the transaction to proceed and taking money into client account which he knew would at least in part disappear. It was immaterial that the conveyancing had been carried out by a member of staff; the responsibility and the

dishonesty was the Respondent's and the Tribunal found dishonesty proved beyond reasonable doubt in respect of allegation 1.3.

48. **Allegation 1.2: [The Respondent] failed to carry out reconciliations contrary to Rule 32(7) of the SARs;**

48.1 For the Applicant, Mr Gott submitted that the Respondent claimed that he was unaware that there were irremediable problems with the client account and that this "bombshell" was complete news to him until he was informed of this by SP in mid June 2009, a supposed revelation which was established when he attempted a reconciliation the following day. Even if this statement were taken at face value, there would have been no revelation if reconciliations had been performed by the Respondent as required by Rule 32(7). It was clear that no such reconciliations took place.

48.2 The Tribunal considered the evidence and the submissions. It found allegation 1.2 proved on the evidence beyond reasonable doubt. Indeed it had been admitted.

49. **Allegation 1.4: The Respondent failed to report to the Applicant that his firm was in serious financial difficulty which could put the public at risk, contrary to Rule 20.06 of the SCC;**

49.1 For the Applicant, Mr Gott submitted that the establishment of allegation 1.4 emerged clearly from the chronology of the events underlying allegations 1.1, 1.2 and 1.3 and the eventual outcome of the conveyance of 40 C Drive. The Applicant did not accept that the Respondent's pleas of ignorance could realistically be taken at face value; but by his own admission he was informed of irremediable difficulties with the client account in mid June 2009, a matter established by his attempt to perform a reconciliation the following day. The Respondent did not report the financial difficulties until 24 August 2009. The shortfall on the client account was enormous, a sum in excess of £600,000 in respect of two clients alone. Further, the financial difficulties of the firm manifestly put the public at risk. Indeed, the Respondent in continuing to act for Ms CR in the face of these financial difficulties caused her immediate financial loss. The Respondent put Ms CR in a position whereby the firm was unable to account to her for the monies arising from the sale of 40 C Drive and the Respondent's response was that she should look to the Compensation Fund.

49.2 For the Respondent, Mr Burke submitted that the Respondent's letter self reporting was not prompted by anyone else and the Respondent accepted that he should have reported the situation earlier.

49.3 The Tribunal considered the evidence and the submissions. It found allegation 1.4 proved on the evidence beyond reasonable doubt. Indeed it had been admitted.

50. **Allegation 1.5 The Respondent carried out reserved work without a valid practising certificate;**

50.1 For the Applicant, Mr Gott submitted that the Respondent's practising certificate was automatically suspended from when he became bankrupt (and the firm was intervened into) in September 2009. The suspension was lifted on 26 February 2010. Despite the

suspension of his practising certificate, the Respondent continued to perform reserved work within the definition of Section 12 of Schedule 2 of the Legal Services Act 2007 as evidenced by the complaint of Ms RS to the Law Society dated 3 November 2009. Four letters were written in October 2009. The letter of 2 October 2009 contained a draft restriction which had been produced by the Respondent. A restriction was an instrument relating to real or personal estate pursuant to paragraph 5 of Schedule 2 of the Legal Services Act 2007 and was therefore reserved work. Under the circumstances Mr Gott submitted that it was clear that the Respondent was performing reserved work without practising certificate.

50.2 The Tribunal considered the evidence and the submissions. It found allegation 1.5 proved on the evidence beyond reasonable doubt. Indeed it had been admitted.

51. **Allegation 1.6 The Respondent misled another solicitor as to his status as a qualified solicitor, contrary to Rules 1.02 and 1.06 of the SCC.**

51.1 For the Applicant, Mr Gott referred the Tribunal to the correspondence in this matter between Mr B and the Applicant and solicitors acting for Mr B and the Respondent, and the Applicant. A letter from those solicitors dated 19 February 2010 stated;

> "[The Respondent] admits that he did not disclose the fact that he had been suspended to Mr [B] or that he had been adjudged bankrupt and the first Mr [B] knew was when he received a letter from the [Applicant] dated 23 November. While Mr [B] was concerned on learning what had happened, he was extremely supportive of [the Respondent] and was anxious that he should not suffer overly on account of this. [The Respondent] realises that he was completely wrong not to have disclosed this at the outset, but at the time was seriously traumatised by the course of events. It was a serious error of judgment brought about by the catastrophic turn of events and the severe depression that resulted from them."

The letter dated 16 March 2010 stated:

> "Of course [the Respondent] is deeply ashamed of his failure to inform Mr [B] of his suspension, but he had become seriously traumatised by the events and was depressed to the point of a serious illness and furthermore started receiving treatment for depression in December. Indeed his GP was seriously concerned at his state of health."

51.2 Mr Gott submitted that the correspondence leading up to these letters was convoluted and sometimes contradictory but that in the light of these admissions and statements it was clear that the Respondent misled Mr B after the suspension of his practising certificate, by failing to inform Mr B of the suspension, up to the point on 23 November 2009 when Mr B became aware of the suspension nearly two months after the event. Mr Gott submitted that this was clearly a failure on the part of the Respondent to act with integrity and was conduct which was likely to diminish confidence in the legal profession. Further, despite the assertions concerning the Respondent's medical condition at the time, the Respondent clearly acted deliberately in failing to inform Mr B of the suspension and thus it was submitted acted dishonestly.

51.3 Mr Burke informed the Tribunal that the Respondent accepted that the suspension of his practising certificate had been notified to him in September 2009. He had wrongly believed that an application to reinstate the practising certificate was a formality that would only take seven days. In fact it was not reinstated until the following February. The Respondent accepted that he did not make the appropriate disclosure to Mr B. Mr Burke clarified for the Tribunal that the Respondent had not appreciated that he was obliged to tell Mr B and that his actions had not been wilful. Mr B knew of the intervention into the Respondent's firm and with everything that was going on at that time the Respondent had not taken the necessary step to avoid prosecution on this basis. The Respondent had made the position clear to Mr B when Mr B had faced his own difficulties arising from the Respondent's involvement in Mr B's practice.

51.4 The Tribunal considered the evidence and the submissions. It found allegation 1.6 proved on the evidence beyond reasonable doubt. Indeed it had been admitted. As to dishonesty, the Tribunal found the Respondent's conduct in deliberately not telling Mr B of the suspension of his practising certificate to be dishonest by the standards of reasonable and honest people. As to the subjective test, the admissions which the Respondent made that he had acted deliberately, notwithstanding that this was on the basis that he expected to get the practising certificate back in seven days, were consistent only with dishonesty and accordingly the Tribunal found dishonesty to have been proved on the evidence in respect of allegation 1.6 beyond reasonable doubt.

52. **Allegation 1.7: The Respondent employed and/or remunerated SP, without obtaining written permission of the Applicant, contrary to Rule 1(a) and (d) of the Solicitors Practice Rules 1990 up to 30 June 2008 and Rule 1.02 and 1.06 of the SCC from 1 July 2008.**

52.1 For the Applicant, Mr Gott submitted that it was a truly astonishing feature of this case that SP, the bookkeeper whom the Respondent sought to blame for the very serious financial irregularities at the firm, had previously been employed by the Respondent. In its judgment, the Tribunal at the time had stated:

> "the respondent who was not a solicitor was employed as an accounts clerk by Mr Scott & Co, solicitors of… Hornchurch, Essex. The respondent misappropriated sums of money totalling £4,029.95p. The respondent was dismissed on 22 June 1998. On two occasions the respondent had appropriated cash paid to the firm in respect of the firm's costs and the clients' business in one matter and in the other matter a sum paid to the firm in cash in respect of Counsels' fees. "

and in its findings the Tribunal said:

> "The Tribunal accepted evidence (which was not challenged) that the respondent had dishonestly misappropriated cash sums paid by clients of the firm to the firm by which he was employed and made an order that the respondent's future employment within the solicitors' profession should be subject to control."

52.2 Mr Gott submitted that it was incumbent on any solicitor to ensure that unadmitted members of staff had nothing like a section 43 order against them. Without such checks being made, the force of section 43 orders was rendered nugatory. Mr Gott submitted that Respondent must have known about the section 43 order as it arose from an accounting investigation into his firm but notwithstanding that and the fact that the Respondent had described SP's performance as inconsistent, he consciously ignored the prohibition and re-employed SP; exactly when was not known. Mr Gott submitted that this conduct lacked integrity and that it clearly was such as to diminish public confidence in the profession. He also submitted that the Respondent acted dishonestly in respect of the re-employment of a previously dishonest employee because he must have known that he should not have employed him without approval or at the very least been wilfully blind to that issue.

52.3 For the Respondent, Mr Burke submitted that there was no doubt that the Respondent should not have re-employed SP but the Respondent did not know that he was not permitted to do so. He acted in complete ignorance of the rules which governed his conduct as a solicitor. Mr Burke submitted that the Applicant's attempts to impute dishonesty would have been strengthened if they could produce a letter informing the Respondent of the disciplinary action and its results but there was no evidence of such a letter. It had not dawned on the Respondent to check when re-employing SP. In many circumstances it would have been seen to be commendable to re-employ him. The Respondent would accept the consequences in terms of sanction but strongly disputed the dishonesty which was imputed to him. The Respondent had reported SP to the police but he did not instigate the proceedings against SP before the Tribunal. There had been an audit of his firm's books as a result no doubt of his reporting SP to the police. The Respondent had made up the shortfall on his client account. The Respondent had not been a witness in the Tribunal proceedings and had not provided a statement. He was not aware that the proceedings had been instituted. Mr Burke submitted that possibly the Respondent had not been asked for a witness statement because SP had indicated that he accepted the allegations. Mr Burke also submitted that there was no incentive for the Respondent to re-employ him if the Respondent knew that it would put him in breach of the regulations. There were many bookkeepers available.

52.4 The Tribunal considered the evidence and the submissions. The Tribunal found allegation 1.7 proved on the evidence beyond reasonable doubt. Indeed it had been admitted. While this was a strict liability matter and the Tribunal agreed that Mr Gott's description of SP's re-employment as "truly astonishing" was accurate, as to the allegation of dishonesty, there was no evidence that the Respondent had been notified of the Tribunal proceedings against SP or of the making of the section 43 order and accordingly the Tribunal found that dishonesty had not been proved beyond reasonable doubt in respect of allegation 1.7.

Previous disciplinary matters

53. None.

Mitigation

54. Mr Burke submitted that this matter had been hanging over the Respondent for some three years and had had disastrous consequences including personal bankruptcy and that his career had been ruined. The Respondent accepted that it might make no difference to sanction but he was keen to ensure that whatever the sanction was, it did not involve an element of dishonesty. He was of good character and had been a sole practitioner for 15 years before 2009. At its highest his practice had employed 18 staff including fee earners. Once it had unravelled he had been bankrupted in the space of a few months. He had been discharged from bankruptcy in October 2010. The Respondent was being pressed for £143,000 costs of the intervention into his firm and it was indicative of his state of mind at that time that he had not sought to incorporate that sum into his bankruptcy which he could have done if he had timed it appropriately. He was presently working part-time locally earning between £1,000 and £1,500 a month providing legal advice on an hourly rate basis for a commercial entity. No doubt after the outcome of the hearing he would lose that employment as it required a practising solicitor. His future looked bleak. Mr Burke informed the Tribunal about the Respondent's financial and family circumstances and referred to his statement of means dated 5 November 2012. Mr Burke submitted that the Respondent could not meet the costs of this hearing or of the intervention but that he did not dispute the Applicant's costs. Mr Burke invited the Tribunal not to make an order for costs against the Respondent.

Sanction

55. The Tribunal had regard to the mitigation which had been made on the Respondent's behalf and to its own Guidance Note on Sanctions. As Counsel for the Respondent had presaged, even without any findings of dishonesty, the series of events in this matter could only lead to striking off as the Respondent had run his practice in a way which placed the public at serious risk and resulted in a substantial financial loss. Dishonesty had also been proved and the Tribunal considered that there could be no other sanction.

Costs

56. For the Applicant, Mr Gott sought costs in the amount of £47,513.86. He submitted that a not insubstantial amount arose from various interlocutory matters, in particular from directions hearings and disclosure applications none of which had come to fruition as the Respondent had not filed a witness statement or dealt with disclosure although six lever arch files of disclosure had been involved. There had also been the prospect of expert evidence at an earlier stage and the Respondent's then representative had asked for a three-day hearing. The Respondent had recently made admissions but preparations had had to be made for a heavily contested three-day hearing. The Tribunal assessed costs in the amount sought but having regard to the information provided in respect of the Respondent's financial position (and the sanction imposed would deprive him of his livelihood), it ordered that costs should not be enforced without leave of the Tribunal.

Statement of Full Order

57. The Tribunal Ordered that the Respondent, Peter James Scott, 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 £47,513.86 such costs not to be enforced without leave of the Tribunal.

Dated this 21st day of November 2012
On behalf of the Tribunal

P. Housego
Chairman