SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10835-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD PAUL ROBERTS Respondent

Before:

Mr D. Glass (in the chair)
Mr S. Tinkler
Mr S. Hill

Date of Hearing: 7th March 2012

Appearances

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

There was no appearance by or on behalf of the Respondent

JUDGMENT

Allegations

1. **The allegations against the Respondent were that:**

1.1 In breach of Rule 7(1) of the Solicitors' Accounts Rules 1998 ("SAR") he failed to remedy breaches thereof promptly upon discovery;

1.2 In breach of Rule 15(2) SAR he paid into or held in client account money other than client money. In so doing the Respondent was also dishonest, but for the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated;

1.3 In breach of Rule 19 SAR he retained in his office account monies paid to him for professional disbursements incurred but not yet paid. In so doing the Respondent was also dishonest but for the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated;

1.4 In breach of Rule 22(4) SAR he failed to withdraw from client account money improperly paid in;

1.5 In breach of Rule 32 SAR he failed to keep his books of account properly written up at all times;

1.6 In breach of Rule 20.05 of the Solicitors' Code of Conduct 2007 ("SCC") he failed to disclose to the Authority that on 23 December 2010 a bankruptcy order was made against him.

Documents

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

Applicant

- Application and Rule 5 Statement dated 21 September 2011 and Exhibit "DEB 1";
- Letter from David Barton to the Respondent dated 6 March 2012 incorporating details of the Applicant's costs.

Respondent

- E-mail letter from the Respondent to the Tribunal dated 6 March 2012;
- E-mail letter from the Respondent to David Barton dated 7 March 2012.

Preliminary Matters

3. The Respondent contacted the Tribunal by e-mail letter on 6 March 2012 confirming that he had received the Application and Rule 5 Statement and admitting the facts and allegations (subject to qualification contained in his e-mail letter to Mr Barton dated 7 March 2012 in relation to the dishonesty alleged at allegation 1.2). He said that he was unable to attend the hearing due to surgery for injuries sustained in an accident on

18 February 2012 (supported by a copy of the hospital record which was not, as he had suggested, attached to his email to the Tribunal). He queried whether the Tribunal had advised him of the venue or the time of the hearing. The Respondent stated that as he "accepted the Application" he was content for the Tribunal to proceed in his absence.

4. The Tribunal's Clerk confirmed that formal notice of the hearing, which included the start time of 10am and the Tribunal's address, was sent to the Respondent on 8 November 2011 by special delivery post to his last known place of abode, which was the same as the address on his e-mail letters to the Tribunal and Mr Barton. The notice of hearing was signed for at that address on 9 November 2011.

5. Mr Barton submitted that, in the light of the contents of the letter dated 6 March 2012, it was safe for the Tribunal to proceed in the Respondent's absence.

6. The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), Rule 16(2) provided that, if the Tribunal was satisfied that notice of the hearing was served on the Respondent in accordance with the Rules, the Tribunal had power to hear and determine an application notwithstanding that the Respondent failed to attend in person or was not represented at the hearing.

7. After having retired to consider the point, the Tribunal decided to proceed to hear and determine the application in the Respondent's absence. The Respondent had received the Application and Rule 5 Statement which had been properly served. Whilst the Tribunal noted the Respondent's comment about not having been notified of the venue or the time of the hearing, the Tribunal was satisfied that notice of the hearing, which included the date, start time and the Tribunal's address, had also been properly served. The Respondent was aware of the case that he had to face and had confirmed in his letter to the Tribunal dated 6 March 2012 that he admitted the facts underlying the allegations. The Respondent also admitted all the allegations except for dishonesty in respect of allegation 1.2. The Tribunal was satisfied that the Respondent had chosen not to be present at the substantive hearing, supported by the statement in his letter dated 6 March 2012 that he was content for the Tribunal to proceed in his absence.

8. Mr Barton applied for permission to amend allegation 1.6 to refer to a breach of Rule 20.05 SCC instead of the incorrect reference to Rule 20.03 pleaded in the Rule 5 Statement. The Tribunal was satisfied that there was no prejudice to the Respondent in allowing the amendment and permission to amend was given.

Factual Background

9. The Respondent was born on 8 April 1951 and was admitted as a solicitor on 16 July 1979. His name remained on the Roll of Solicitors. His practising certificate was suspended by the Solicitors Regulation Authority ("SRA") following the making of a bankruptcy order against him on 23 December 2010. At all material times the Respondent practised on his own account as Paul Roberts Solicitors ("the Firm") at 60 Mark Lane, London EC3R 7ND.

10. The allegations arose from a "without notice" investigation of the Firm's books of account and other documents by Jonathan Chambers, Investigation Officer ("IO")

appointed by the SRA which commenced on 5 January 2011. The IO conducted an interview with the Respondent on 12 January 2011. All comments attributed to the Respondent in the Forensic Investigation Report ("FIR") dated 2 February 2011 were made by him during that interview unless otherwise stated.

11. The Respondent informed the IO that he established the Firm on 2 January 2000 and from that date practised as a sole practitioner. He operated the Firm's client bank account alone and was one of three signatories on the Firm's office bank account. From 1 January 2010 the office bank account had been operated on many occasions above the agreed overdraft limit of £85,000. Direct debits and cheque payments had been dishonoured by the bank when presented for payment. As at 30 July 2010 the overdrawn balance was £90,953.48. The agreed overdraft limit was exceeded on 10 of the 22 working days during July 2010, resulting in 15 dishonoured payments totalling £23,652.25. The Respondent informed the IO that in December 2010 the bank had rescinded the agreed overdraft facility of £85,000 and had frozen the office bank account so that it could not be operated by the Firm. The Respondent's Office Manager provided the IO with a complete list of the Firm's creditors as at 4 January 2011, which totalled £484,841.62. The list included unpaid professional disbursements totalling £167,278.90, in respect of which the Respondent had been put in funds by his clients, and which consequently represented a client account shortage. He was unable to discharge the disbursements because the money had been used for other purposes.

12. The Office Manager also provided the IO with a schedule of 28 unpaid counsels' fees dating back to 25 April 2007 totalling £125,498.09. A separate schedule contained a further 20 unpaid disbursements totalling £41,780.81, some of which related to funds received by the Respondent back in June and November 2009. The Respondent told the IO that it had been his understanding that the SAR permitted disbursement monies from clients to be received into office bank account provided that the relevant disbursements were paid promptly. He informed the IO that he knew that he was in breach of the SAR by not paying counsels' invoices promptly. He confirmed that the monies had been used to provide cash flow for the practice. When asked why he continued to receive counsels' fees into office bank account and did not pay the invoices promptly, he said that the reason for his actions was pressure from creditors and that he intended to pay the fees as soon as he could. The Respondent said that his expectation as a client of the Firm would have been that the fees would be paid by the Firm and that he knew that what he was doing was wrong.

13. Following the rescission of the Firm’s overdraft facility in December 2010, the Respondent was unable to use office account. On 22 October 2010 the Respondent drew a client account cheque for £10,000 made payable to HM Revenue & Customs ("HMRC") for PAYE, which cleared on 29 October 2010. Payment of PAYE was an office disbursement. On the same day further cheques made payable to HMRC were issued on client account by the Respondent post-dated for 1 and 8 November 2010, but were later stopped by the Respondent. The Firm's financial position was therefore precarious prior to the freezing of the overdraft on office bank account. Amounts received from clients in respect of the Firm’s profit costs, or amounts already held in client bank account and earmarked as due to the Firm for profit costs, were retained in client bank account and used to fund office payments which were made from that account.

14. The Respondent operated a rudimentary bookkeeping system. The full extent of payments of office expenses from client account occurring since at least 17 December 2009 was obscured because the bookkeeping system did not identify the recipients of such payments. The IO calculated that during the six months from 1 July 2010 to 31 December 2010 there were at least 32 payments totalling £78,661.32 made from client account in respect of office liabilities, including for the Respondent's personal drawings. The Respondent told the IO that each of the payments was made on his specific authority either by signature on a cheque or by operation of the Firm's online banking facility. The Respondent explained that because of cash flow constraints on office bank account, monies which had been received into client bank account for the Firm's profit costs were retained and applied to the payment of the office expenses. However the Respondent was adamant that all office payments made from the client bank account were funded by equivalent amounts of office monies held in the account. The Respondent said that he viewed the office payments he had made as being in lieu of making costs transfers to the office bank account and that he thought this was in compliance with the SAR. The Respondent informed the IO that at the time when he provided the three client account cheques to the HMRC Enforcement Officer, he knew that he was holding sufficient office monies in client bank account to fund payment of the first cheque dated 22 October 2010 for £10,000, which duly cleared. The payment appeared in the bookkeeping system charged to an apparently unrelated client matter for H & L. The Respondent said that the two post-dated cheques provided to HMRC on the same day totalling £21,304.58 were later cancelled on his instruction because there were no further office monies standing to the credit of client bank account to fund the payments.

15. The IO identified that the Respondent had received £167,278.90 into office account in respect professional disbursements incurred but not paid. The sum consisted of unpaid counsels' fees of £125,498.09 and unpaid professional disbursements of £41,780.81. As previously stated, during interview the Respondent said that he understood the SAR permitted him to pay such receipts from clients into his office account as long as the disbursement element was paid promptly. He knew he was in breach of the SAR by not paying counsels' fees promptly. The money had been used to support his practice. He attributed his failure to pay fees to pressure from creditors and said that he intended to pay as soon as he could. He was asked by the IO whether he knew that what he was doing was wrong, to which he replied "yes".

16. The bookkeeping system used to record debits and credits to client account consisted of a spreadsheet, and did not include a narrative identifying the detail or purpose of receipts into or payments from the account other than references to dates and payment methods. Further it did not provide for the recording of office ledger account transactions which would have shown, amongst other things, the value of bills of costs issued for individual client matters.

17. On 7 January 2011 The Insolvency Service wrote to the SRA informing it that a bankruptcy order had been made against the Respondent on 23 December 2010 and requesting that the Firm be intervened. The Respondent did not notify the IO or the SRA of his bankruptcy.

18. On 23 February 2011 the SRA sent the FIR to the Respondent with a request for answers to certain questions. No reply was received, so a further letter was sent on 11 March 2011. On 18 April 2011 the Respondent was notified that an SRA Authorised

Officer had made a decision to refer the Respondent's conduct to the Tribunal on 7 April 2011. The Rule 5 Statement was received at the Tribunal on 29 September 2011.

Witnesses

19. Jonathan Chambers, the SRA's Investigation Officer, gave evidence on oath on behalf of the Applicant. He confirmed that the contents of his FIR dated 2 February 2011 were true to the best of his knowledge and belief. He conducted an interview with the Respondent on 12 January 2011 and the comments attributed to the Respondent in the FIR were made by him to Mr Chambers during the course of that interview. Mr Chambers said that the Firm's office bank account was under significant financial pressure evidenced by the number of direct debits returned by the bank. Client bank account contained a mixture of client and office monies and for a long period of time was effectively being used as the office account as well. When clients paid bills, the monies were paid into the client bank account and held in that account rather than being transferred to the office bank account. As detailed in the FIR, a number of payments made over a period of six months were in respect of office and the Respondent's personal liabilities. Mr Chambers said that he looked at the Firm's client account cheque book stubs. He found four sequential stubs bearing narratives relating to payments to HMRC. The Respondent had received a visit from HMRC, during which the Enforcement Officer made immediate demands for payment on account in respect of tax arrears. The Respondent provided the Enforcement Officer with three client account cheques, the first of which, for £10,000, cleared the bank account. The Respondent explained to Mr Chambers that he had stopped the other two cheques because there were insufficient office monies in the bank account to make the payments. The Respondent received office monies, to which the Firm was properly entitled, into client bank account, but the books of account were so deficient that it was not possible to calculate the amount of office monies that were received and retained in client account. Office expenses had been paid from client bank account since at least 17 December 2009. Appendix G1 of the FIR consisted of the client bank account record in the form of a spreadsheet. There was no separate ledger for each client and no narrative against each entry identifying the nature of the payment out or in. On the face of the records it was impossible to distinguish between proper client payments and improper office and personal payments. The only means of identifying payments was by looking at the cheque book stubs to see what was written on them or by looking at CHAPS transfer forms as applicable. Mr Chambers said that for the six months from 1 July 2010 to 31 December 2010 he identified and confirmed with the Office Manager at least 32 payments out of client account totalling £78,661.32 in respect of office liabilities. The Respondent told Mr Chambers that each of the payments was authorised by him either by signing the client account cheque or by his operation of the Firm's online banking facility. The Respondent explained that, because of cash flow constraints on office bank account, monies which had been received into client bank account for the Firm’s profit costs were retained and applied to the payment of office expenses. He was "absolutely adamant" that all office payments made from client bank account were funded by equivalent amounts of office monies held in the account. Mr Chambers said that the Office Manager maintained the books of account, and had day-to-day "hands on" responsibility for writing up the books and generating cheques for the Respondent to sign. Mr Chambers said that it was apparent from his dealings with the Office Manager and the Respondent that the latter was aware of "pretty much everything".

When Mr Chambers showed the Respondent schedules prepared by the Office Manager, he was very familiar with all of the documentation discussed.

20. Mr Barton specifically referred Mr Chambers to an example set out in the FIR. On 3 November 2010 client bank account was charged with a cheque payment of £5,000. The client bank account spreadsheet identified the payment only by cheque number "100330" posted against a specific client matter; there was no narrative against the payment. Mr Chambers' evidence was that he reviewed the cheque book stubs which showed that this cheque was payable to the Respondent for drawings (later confirmed by the Office Manager). The £10,000 payment to HMRC had also been allocated on the same spreadsheet to a specific apparently unrelated client matter. Whilst the Respondent was adamant that he had spent only office monies held in client account, Mr Chambers' evidence was that the books of account were a muddle of payments in and out bundled together and therefore he was unable to confirm the Respondent's assertion.

21. Mr Chambers said that the interview between him and the Respondent on 12 January 2011 took between 60 and 90 minutes. He could recall the Respondent's demeanour clearly and he was quite down to earth in his explanations. The Respondent was several hours late for the meeting (which had been prearranged the day before), and seemed uncomfortable whilst it was taking place.

Findings of Fact and Law

22. **Allegation 1.1 - In breach of Rule 7(1) SAR failed to remedy breaches thereof promptly upon discovery**

22.1 The Respondent admitted the facts and the allegation.

22.2 Rule 7(1) SAR required any breach of the Rules to be remedied promptly upon discovery. The IO had identified a minimum cash shortage of £167,278.90, namely instances where professional disbursement monies had been billed to and received from clients into office bank account, but where the disbursements remained unpaid by the Firm. Counsels' fees (28 unpaid amounts) represented £125,498.09 of that shortage dating from 25 April 2007 onwards. Other unpaid professional disbursements totalled £41,780.81; some related to disbursement monies received by the Respondent back in June and November 2009. The Respondent told the IO that he knew he was in breach of the SAR by not paying counsels' invoices promptly. Further, in his letter to the Tribunal dated 6 March 2012 the Respondent said that he had entered into agreements with certain Counsels' chambers to pay arrears of fees by instalments, but was unable to maintain the payments.

22.3 The Tribunal accepted Mr Barton's submission that the above facts represented an ongoing uncorrected breach of the SAR, and found the allegation, which was admitted, substantiated on the facts and the documents beyond reasonable doubt.

23. **Allegation 1.2 - In breach of Rule 15(2) SAR paid into or held in client account money other than client money. In so doing the Respondent was also dishonest, but for the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated**

23.1 The Respondent admitted the facts and the underlying allegation that in breach of Rule 15(2) SAR he paid into or held in client account money other than client money. The Respondent denied that he had been dishonest by his e-mail letter to Mr Barton dated 7 March 2012.

23.2 Amounts received from clients for the Firm's profit costs or amounts already held in client bank account and earmarked as due to the Firm for profit costs were found by the IO to have been retained in client bank account and used to fund office payments made from that account. Payments of office expenses totalling at least £78,661.32 were identified as having been made from client account from 1 July 2010 to 31 December 2010, including payments for office rent, staff salaries, and the Respondent's drawings. Payments were made either by cheque drawn on the client account on which the Respondent was the sole signatory, or by online banking which only the Respondent was authorised to use. The Respondent's Firm's financial position had been precarious for some time and in December 2010 the bank rescinded the overdraft facility of £85,000 on office account.

23.3 Mr Barton relied during his submissions on the three client account cheques dated 22 October 2010, 1 November 2010 and 8 November 2010 provided to the HMRC Enforcement Officer. Mr Barton submitted that the payments to HMRC represented office payments in respect of the Respondent's personal liabilities. Further, if he was holding his own money in client account he should not have been doing so and it was a breach of the SAR, which was not disputed by the Respondent. Mr Barton submitted that the Respondent deliberately retained his own money in client account in order to keep it away from the bank. This submission was, he said, supported by the rudimentary bookkeeping in relation to client account. Mr Barton relied upon the explanation given by the Respondent to the IO that at the time he provided the three client account cheques to the HMRC Enforcement Officer, he knew that he was holding sufficient office monies in client bank account to fund the cheque dated 22 October 2010 for £10,000. This cheque cleared client bank account on 29 October 2010 and the bank account spreadsheet improperly charged the payment to an unrelated client matter for H & L. Further the Respondent said that the two post-dated cheques totalling £21,304.58 were later cancelled on his instruction because there were no further office monies standing to the credit of client bank account to fund the payments. The position presented to the IO by the Respondent was of the client account effectively being used as a second office account. Mr Barton submitted that the Tribunal had to be satisfied so that it was sure that the Respondent was objectively dishonest and that the subjective element of the test was also satisfied. In Mr Barton's submission, if the Respondent had an honestly held belief that he was entitled to keep his own money in client account, he had no need to disguise the payment to HMRC by reference to an unrelated client matter. He could have operated an additional column in the ledger or other documentation to show that the payment drawn on client account was attributable to his personal liability. Mr Barton submitted that the Respondent was dishonest; if he had been honest he would have had no need to disguise the payment. There was evidence of concealment and disguise, which was wholly inconsistent with somebody who honestly believed they were doing something they were entitled to do.

23.4 The Tribunal considered what the Respondent said on this issue. He informed the IO on 12 January 2011 that because of cash flow constraints on office bank account, monies which had been received into client bank account for the Firm's profit costs

were retained and applied to the payment of office expenses. The Respondent said that he was absolutely adamant that all office payments made from client bank account were funded by equivalent amounts of office monies held in the account. He went on to say that he viewed the office payments he had made as being in lieu of making costs transfers to office bank account, and that he had thought that this was acceptable and in compliance with the SAR. The Respondent said in his letter to the Tribunal dated 7 March 2012 that he denied dishonesty. He said he was of the view that the money in client account was the Firm's money and that he was unaware of the requirement that the funds should first be transferred to office account before making payments. The Respondent said that he had done this for several years and the auditors had never queried the practice.

23.5 The test to be applied by the Tribunal when considering the allegation of dishonesty was that set out by Lord Hutton in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In short, before there could be a finding of dishonesty it must be proved by the Applicant to the satisfaction of the Tribunal so that it was sure that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. The Tribunal had carefully considered the facts and the documents, had heard evidence from Mr Chambers and submissions from Mr Barton. The Respondent had been consistent in his assertion that he believed there to be sufficient office monies held, albeit wrongly and in breach of the SAR, in client account to meet the office liabilities paid by him out of that account. Evidence for this could be found in the Respondent's statements to the IO, repeated in the letter to the Tribunal dated 6 March 2012, and supported by his decision to stop the two post-dated cheques to HMRC totalling £21,304.58 because he said that there were no further office monies standing to the credit of the client bank account to fund the payments. The Respondent did not conceal from the IO the fact that monies paid by clients for profit costs had been retained in client account because of cash flow constraints on office bank account. He was candid about his motives. The Tribunal noted that the cheque dated 22 October 2010 for £10,000 to HMRC which cleared the client bank account was charged to the apparently unrelated client matter of H & L. However the Tribunal had seen no evidence on behalf of the Applicant to justify a finding that this was done dishonestly. The Firm might have received office money on client matter H & L which was being held in client account, and out of which the payment to HMRC was made, which could explain the charge against that matter. The Tribunal had therefore concluded, with some hesitation and after very careful thought, that the Applicant had not provided evidence sufficient to satisfy the Tribunal so that it was sure that the Respondent's conduct in paying into or holding in client account money other than client money in breach of Rule 15(2) was dishonest by the ordinary standards of reasonable and honest people. Having found dishonesty not proved on the objective test, it was unnecessary for the Tribunal to proceed to consider the subjective test.

23.6 The Tribunal therefore found the underlying allegation, which was admitted, substantiated beyond reasonable doubt on the facts and the documents, but without the allegation of dishonesty.

24. **Allegation 1.3 - In breach of Rule 19 SAR he retained in his office account monies paid to him for professional disbursements incurred but not yet paid. In so doing the Respondent was also dishonest but for the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated.**

24.1 The Respondent admitted the facts and the underlying allegation with dishonesty on the basis that he knew that he should have paid counsels' fees promptly but failed to do so, and further failed to keep to agreed planned instalment repayments.

24.2 Mr Barton referred to what he described as the express admission contained in the Respondent's letter to the Tribunal dated 6 March 2012, which picked up on the admission that the Respondent had made to the IO during the course of the investigation. The allegation related to a breach of Rule 19 SAR, namely that the Respondent retained in his office account money that had been paid to him to enable him to discharge professional disbursements incurred by him but which were not paid. The practice was being shored up by the retention of those disbursements receipts. The IO asked the Respondent why he continued to receive counsels' fees into office bank account without paying the invoices promptly. The Respondent replied that the reason for his actions had been pressure from creditors and that he intended to pay the fees as soon as he could. When asked by the IO what his expectation would have been as a client of the Firm, the Respondent said that he would have expected that the fees would be paid by the Firm. The IO asked the Respondent whether he knew that what he was doing was wrong. The Respondent replied "yes". Mr Barton said that the e-mail letter from the Respondent very candidly and openly picked up essentially what he had said to the IO; perhaps on the facts revealed he had no option but to make that concession. The amount of money being retained in office account in respect of unpaid disbursements was significant. Mr Barton submitted that these facts enabled the Tribunal to be satisfied so that it was sure on both the objective and subjective tests for dishonesty that the retention of that money in office account was dishonest.

24.3 The Tribunal was satisfied on the facts and the documents beyond reasonable doubt that the Respondent had retained in his office account monies paid to him for professional disbursements, including counsels' fees incurred but not yet paid, in breach of Rule 19 SAR. For example, on 27 May 2009 £60,000 was received into office account in respect of invoice number 865, including counsel's unpaid fees of £20,650. As at 31 December 2010 no monies were held in client bank account in respect of that client matter as evidenced by the client bank account spreadsheet. Counsel's fee note dated 11 March 2010 showed that £15,000 had been received from the Firm on 17 February 2009, leaving an outstanding balance of £20,650. The Respondent said that he had reached agreement with Counsel's Chambers for payment of arrears of fees by instalments but was unable to maintain the payments. This statement had to be viewed in the context of the undisputed fact that the Respondent's Firm had had the benefit of the money intended for payment of the fees since 27 May 2009. The Respondent informed the IO that the reason for his action in not paying the fees promptly had been pressure from creditors. The only conclusion that could be drawn by the Tribunal was that the money must have been retained in office account and ultimately used for purposes other than that for which it was intended by those who provided it. The Tribunal was therefore satisfied so that it was sure that the conduct of the Respondent in retaining in office account monies paid to him for professional disbursements incurred but not yet paid was dishonest by the ordinary

standards of reasonable and honest people. Further, the Tribunal was satisfied so that it was sure that the Respondent himself realised that by those same standards his conduct was dishonest.

24.4 The Tribunal therefore found the underlying allegation, which was admitted, and the allegation of dishonesty, to have been substantiated on the facts and the documents beyond reasonable doubt.

25. **Allegation 1.4 - In breach of Rule 22(4) SAR failed to withdraw from client account money improperly paid in.**

25.1 The Respondent admitted the facts and the allegation.

25.2 Rule 22(4) SAR provided that money paid into a client account in breach of the Rules must be withdrawn from the client account promptly upon discovery. The Respondent paid into or held in client account office money which he then failed to transfer to office account. He said that he had done this for several years and the auditors had never queried the practice.

25.3 The Tribunal found the allegation, which was admitted, substantiated beyond reasonable doubt on the facts and the documents.

26. **Allegation 1.5 - In breach of Rule 32 SAR failed to keep his books of account properly written up at all times.**

26.1 The Respondent admitted the facts and the allegation. The Respondent failed to keep his books of account properly written up at all times. This was exemplified by the client bank account spreadsheet, the difficulty in interpreting which was made clear by the IO in his report. When giving evidence he described the books of account as a "muddle" and said there were no narratives next to entries so that it was impossible for him to be able to identify to whom money had been paid or from whom received. The Tribunal therefore found the allegation substantiated beyond reasonable doubt on the facts and the documents.

27. **Allegation 1.6 - In breach of Rule 20.05 SCC failed to disclose to the Authority that on 23 December 2010 a bankruptcy order was made against him.**

27.1 The Respondent admitted the facts and the allegation.

27. 2 The Respondent was declared bankrupt on 23 December 2010. He did not tell either the SRA or the IO (who met him on 5 and 12 January 2011) about his bankruptcy. Mr Barton submitted that Rule 20.05 required solicitors to provide the SRA with information necessary in order to issue practising certificates and during the period of a practising certificate to notify the SRA of any changes to relevant information about the solicitor. He said that the fact of bankruptcy automatically operated so as to suspend the practising certificate. The SRA became aware of the Respondent's bankruptcy when it received a letter from The Insolvency Service dated 7 January 2011 with a request for intervention in the practice.

27.3 The Tribunal found that the Respondent's bankruptcy was relevant information about himself which he should have passed to the SRA, not least because it would have

resulted in the automatic suspension of his practising certificate. The Tribunal found the allegation, which was admitted, substantiated beyond reasonable doubt on the facts and the documents.

Previous Disciplinary Matters

28. None.

Mitigation

29. The Tribunal read the Respondent's letter dated 6 March 2012 and his letter to Mr Barton dated 7 March 2012. The Respondent asked the Tribunal to have regard to his circumstances when considering any financial penalty. The Respondent said that he had no assets as they had all passed to his trustee in bankruptcy. He was living in the property that he attempted to sell prior to his bankruptcy but was expecting his mortgagees to seek possession at a hearing due to take place on 12 March 2012. He was unemployed, and, except for some casual work, he had been in receipt of Jobseeker's Allowance with an income since bankruptcy of less than £7,500. The Respondent said that he had liabilities for council tax, utility bills, income tax and traffic fines which predated the bankruptcy and which he was unable to pay. There were also intervention costs outstanding. The Respondent said that he was unable to provide documentary evidence of his financial circumstances due to "difficulty in providing evidence of a negative".

Sanction

30. The Tribunal retired to consider sanction. It had found six allegations admitted by the Respondent substantiated beyond reasonable doubt. The Tribunal had found the allegation of dishonesty in respect of allegation 1.3, which was also admitted by the Respondent, substantiated. The Tribunal had found dishonesty in respect of allegation 1.2, which was denied by the Respondent, not substantiated. Breaches of the SAR were matters of grave concern to the Tribunal. Compliance with the SAR provided the regulator with a snapshot of a practice so that it could be reassured that the public and the reputation of the profession were being protected. Non-compliance with the SAR could be, as in this case, an indication that something was going badly wrong so that the public was placed at risk of harm. The Respondent received money into his Firm's office account from or for clients to be used for its intended purpose, namely payment of counsels' fees and other professional disbursements. He failed to pay those disbursements either promptly or at all in some cases. He readily accepted when being interviewed by the IO that if he had been a client he would have expected the fees to be paid by the Firm and that he knew that what he was doing was wrong. The practice was in desperate financial straits. Money was owed to HMRC in respect of PAYE and an HMRC Enforcement Officer visited the Firm in October 2010 demanding payment. The bank rescinded the Firm's overdraft of £85,000 in December 2010. The Respondent was made bankrupt on 23 December 2010. The Respondent badly let down those who had paid money to him in respect of professional disbursements trusting that he would use the money for the purpose for which it was intended. He also let down those to whom that money was owed. One important privilege of being a solicitor was the ability to obtain services on behalf of clients from counsel and other professionals without having to make payment of fees upfront. That privilege was founded on trust between members of the professions to

honour the obligation to pay fees promptly, particularly when in funds. Failure to do so was unacceptable and unfair, not least because it put the financial security of those to whom money was owed at risk.

31. When imposing sanction the Tribunal had to have in mind its duty to protect the public and confidence in the reputation of the profession, whilst also giving due consideration to the need to be proportionate. The Tribunal would customarily strike the name of a solicitor who had been found to have been dishonest off the Roll. There were no exceptional circumstances in this case justifying anything other than a striking off order. The Respondent was responsible for a litany of wrongdoing. He had betrayed the trust that had been put in him to pay professional fees and disbursements promptly on receipt of funds in accordance with the SAR. He had also betrayed the trust that those entitled to those fees had placed in him to make prompt payment on receipt of funds. The Tribunal was in no doubt at all that the appropriate sanction was one of striking off the Roll.

Costs

32. The Applicant applied for costs of £8,151.50, details of which had been served on the Respondent. The figure for costs was neither disputed nor agreed by the Respondent. Mr Barton confirmed that the Firm had been intervened. He was unable to say whether the bankruptcy order had been discharged. Mr Barton asked the Tribunal to make an unqualified order for costs against the Respondent, leaving it to the Applicant to decide what costs could be recovered.

33. The Tribunal considered the claim for costs of £8,151.50 to be reasonable in all the circumstances. It seemed to the Tribunal to be a fair reflection of the work done by Mr Chambers and Mr Barton. The Tribunal was also satisfied that it was appropriate to leave it to the SRA to discuss the recovery of costs with the Respondent. It therefore placed no conditions or limitations on the Order that the Respondent should pay the costs in the sum of £8,151.50.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, Richard Paul Roberts, 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 £8,151.50.

Dated this 3rd day of April 2012
On behalf of the Tribunal

Mr D. Glass
Chairman