SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10846-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ALAN CHARLES CRICKMORE Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss J. Devonish
Mr D. Marlow

Date of Hearing: 11 March 2014

Appearances

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

The Respondent, Mr Alan Charles Crickmore, was not present or represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, made in a Rule 5 Statement dated 3 October 2011, were that:

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

1.2 He withdrew and/or transferred money from client bank account contrary to Rule 19(2) of the 1998 Rules;

1.3 He withdrew and/or transferred monies from client bank account other than as permitted by Rule 22 of the 1998 Rules;

1.4 Contrary to Rule 32 of the 1998 Rules he failed to keep accounts properly written up;

1.5 Contrary to Rule 1 (a), (c), (d) and (e) of the Solicitors Practice Rules 1990 ("SPR") and/or Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") he took unfair advantage of (a) client(s) by making a claim for costs which he knew he could not justify;

1.6 He misappropriated clients' funds and utilised the same for his own benefit;

1.7 Contrary to Rule 1 (a), (c) (d) and (e) of the SPR and/or Rules1.02, 1.03, 1.04, 1.05 and 1.06 of the SCC, he took unfair advantage of (a) client(s) by taking loans and/or borrowing money for his own benefit;

1.8 He acted where his own interests were in conflict with those of his client(s) contrary to Principle 15.04 of the Guide to the Professional Conduct of Solicitors, and/or Rule 3.01 (1) and (2) (b) of the SCC.

2. Whilst dishonesty was not an essential ingredient of any one of the allegations raised against the Respondent it was alleged that the Respondent acted dishonestly in the following particulars:

2.1 Culpable overcharging re KLG and W;

2.2 Improper withdrawal of monies from client account re PM and KLG;

2.3 Use of clients' funds said to be borrowing/loans in the matters of KLG, CW and JL.

3. The additional allegation against the Respondent, made in a Rule 7 Statement dated 31 January 2014, was that:

On 17 October 2013 he was upon his own confession, convicted on indictment of "*Theft – other – including theft by finding x 16, Fraud by abuse of position x 8, and dishonestly make false representation to make gain for self/another or cause loss to other/expose other to risk,"* and was on 28 November 2013 sentenced to 8 years imprisonment and as such acted contrary to all, alternatively, any of Principles 1, 2 and/or 6 of the SRA Principles 2011.

Documents

4. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 3 October 2011
- Rule 5 Statement, with exhibit "JRG1", dated 3 October 2011
- Rule 7 Statement, with exhibit "JRG1", dated 31 January 2014
- Copy emails between Mr Goodwin and the Respondent, various dates 31 October to 21 November 2013
- Statement of costs

Respondent:-

- Copy letter Respondent to Mr Goodwin, 13 February 2014

Preliminary Matter – Proceeding in the absence of the Respondent

5. The Respondent was not present or represented. The Tribunal therefore considered as a preliminary issue whether it should proceed with the hearing in his absence.

6. Mr Goodwin told the Tribunal that the Respondent was presently serving a custodial sentence at HMP Wandsworth in London, having been sentenced on 28 November 2013, following his conviction on 17 October 2013.

7. In the period prior to sentencing, Mr Goodwin had exchanged emails with the Respondent in connection in particular with the issue of the Rule 7 Statement and Mr Goodwin's application for permission to issue and serve that statement more than a year after the date of the Rule 5 Statement. In an email of 4 November 2013, the Respondent stated,

> "I confirm I have no objection to a supplemental Rule 7 statement.
> I admit all of the allegations contained in paragraph 2 (a) to (h) of your Rule 5(2) statement dated 2 October 2011."

Mr Goodwin had responded the same date, stating,

> "I am sorry to trouble you again, but whilst I note that you admit all of the allegations in the Rule 5 Statement, you do not comment on the dishonesty allegation.
> Please could you confirm your position in that regard."

In a further email, on 20 November 2013 Mr Goodwin wrote,

> "… Please could you confirm whether the admissions to the allegations includes an admission to the dishonesty allegation."

On 21 November 2013 the Respondent sent an email to Mr Goodwin in which he said,

"I have nothing to add to my previous email."

7. The Tribunal noted that a division of the Tribunal sitting on 11 February 2014 had given permission to the Applicant to file and serve the Rule 7 Statement dated 31 January 2014.

8. The Respondent wrote to Mr Goodwin on 13 February 2014; a copy of that letter was forwarded to the Tribunal. The letter confirmed receipt of the Rule 7 Statement, sent by the Tribunal and stated the following:

"1. I admit the allegation contained in the Rule 7 Statement;

2. I do not dispute the facts particularised in the Rule 5 statement and supporting documentation;

3. I do not require either Mr Ireland or Mrs Corbin to attend to give evidence;

4. I note you intend to send me a schedule of costs. In all honesty I have no interest in receiving such a schedule. I have no income, no savings or capital and am not eligible for release until November 2017 so will have no offer to make in relation to any adverse order for costs;

5. If you write again and require a reply please include a stamped addressed envelope otherwise it is unlikely that I will be able to reply for want of a stamp. Perhaps you do not realise the relative costs of a stamp as part of the allowable weekly spend.

6. Please copy this letter to the SDT as my acknowledgement of their letter of 4 February last.

Yours sincerely

Alan C Crickmore

PS For the avoidance of doubt I will NOT be attending on 11 March 2014."

10. The Tribunal was satisfied that the Respondent was aware of all aspects of the proceedings, including the hearing date. He had expressly stated that he would not be attending, and had provided a response to the allegations. The Respondent had not indicated that he wished to be heard. The Tribunal was satisfied that in all of the circumstances it was appropriate to proceed with the hearing in the absence of the Respondent.

Factual Background

11. The Respondent was born in 1956 and was admitted as a solicitor in 1980. He remained on the Roll of Solicitors at the date of hearing.

12. At all relevant times the Respondent carried on practice on his own account under the style of Alan Crickmore Solicitor from offices as 49 High Street, Cheltenham GL50 1DX ("the Firm"). The Respondent also held the post of Deputy Coroner for Gloucester from 1991 until 2003, when he was appointed Coroner for Gloucester.

13. On 3 December 2010 a Panel of Adjudicators Sub-Committee resolved to intervene into the Respondent's practice. On 26 June 2011 the Respondent was made bankrupt.

14. The Forensic Investigation Department of the SRA carried out an inspection of the Firm which commenced on 25 January 2010 and led to the production of a forensic investigation report dated 6 October 2010 ("the FIR"). The inspection was led by a senior forensic investigation officer of the SRA, Mr Nick Ireland ("the SFIO"). The Applicant relied on the FIR.

15. The FIR reported that the books of account of the Firm were not in compliance with the 1998 Rules in that:

15.1 Amounts had been improperly withdrawn from client bank account and paid into the Firm's office bank account;

15.2 Amounts had been withdrawn from client bank account for costs without delivery of the bill or a written notification to the client;

15.3 Amounts had been withdrawn from client bank account for costs where work had not actually been done and the solicitor was not entitled to appropriate the money for costs;

15.4 Amounts had been withdrawn from client bank account for costs but no bill was raised at the time in relation to the transfer or at all;

15.5 Instances were noted where bills had not been posted on the office side of the appropriate client ledger;

15.6 Instances were noted where a separate office side of a client ledger was not maintained;

15.7 Transactions related to separate designated deposit accounts were not properly recorded in the account records and amounts were not transferred from designated deposit accounts to match payments made from general client account.

16. The FIR identified a cash shortage in the sum of £749,147.59 arising from:

- Failure to deliver bills or written notification of costs £738,278.25
- Improper transfers £ 6,483.13
- Debit balances £ 4,386.21

17. The Respondent partially rectified the shortage in relation to the debit balances of £4,386.21 by monies being paid into the Firm's client bank account in January 2010 and on 10 March 2010 the sum of £6,962.33 was paid into the client bank account, rectifying amounts improperly withdrawn from client bank account in relation to the matter of PM (deceased).

18. At a meeting on 27 August 2010 the Respondent agreed that a cash shortage existed of £738,278.25 as at 31 December 2009.

19. During the course of the inspection concern was raised as to the manner and level of the Respondent's costs charged in two matters:

    Mr KLG – Administration of Estate and Trust;
    Miss CW – Enduring Power of Attorney ("EPA") and Administration of Estate.

20. A costs drafting consultant, Mrs Corbin, was instructed to review these client matter files as a result of which she produced two reports. The report concerning Mr KLG was dated 2 June 2010 and was revised on 4 August 2010. The report concluded that the Respondent had overcharged in the region of £533,864.25 plus VAT, representing an overcharge of 457%. The report concerning Miss CW was dated 22 June 2010 and concluded that the Respondent overcharged in the sum of £176,000 plus VAT, representing an overcharge of 929%. The Applicant relied on both reports.

21. The inspection report identified that the Respondent borrowed monies from both the Mr KLG and Miss CW matters in his capacity as Trustee or Attorney, none of the borrowings being secured and the clients were not advised to take independent advice. The Respondent also borrowed from another client, Ms JL, which resulted in a judgment debt against him which was subsequently paid.

22. In the matter of Mr KLG, between 9 November 1998 and 18 December 2009 there were 286 transfers varying in amount between £193.87 and £26,437.50 and totalling £761,778.25 in respect of the Firm's costs. During a meeting with the SFIO on 12 March 2010 the Respondent conceded that the costs had not been calculated with any accuracy or by any reference to review of the records.

23. In the matter of PM (deceased), between 12 February 2009 and 1 December 2009 the Respondent made 11 transfers varying in amount between £287.50 and £1,265 and totalling £6,483.13 from client to office bank account. The amounts transferred did not represent amounts due to the Respondent, as costs had been agreed as a figure less than the amounts already transferred; the amounts held in client account represented monies due to a beneficiary and to another client. At the meeting on 12 March 2010 the Respondent agreed that the transfers were improper.

24. By letter of 6 October 2010 the Applicant wrote to the Respondent enclosing a copy of the FIR and asked for his explanation of the matters set out in that report. The Respondent replied on 18 October 2010 and acknowledged the seriousness of the situation. The Respondent indicated that there was little he could add to the explanations he had given to the SFIO during two recorded interviews, save to say that at no time did he act in a manner which he believed to be dishonest. The Respondent stated,

> "Whilst I accept the overcharge position in relation to (Mr KLG) and (Miss CW), the costs draftsman could not take into account the substantial unrecorded time spent on the cases but as I have not recorded the time I can't now show the true level of work and commitments given to the cases … I deeply regret the actions which have led to the adverse report and would seek to assure you that I am fully aware of the failures identified and will ensure that there are no further breaches."

Re Mr KLG

25. As noted at paragraph 21 above, between 9 November 1998 and 18 December 2009 the Respondent claimed costs totalling £761,778.25. The Respondent agreed in the course of the investigation that there was no formal calculation done in arriving at the costs figure. Mrs Corbin, the costs drafting consultant instructed by the Applicant, calculated that reasonable costs excluding VAT amounted to £116,801.85. When compared to the actual costs taken by the Respondent, the difference was £533,864.25 (excluding VAT), an overcharge of 457%.

26. Mrs Corbin's report on this matter included the following observations:

26.1 The only information which the Respondent provided to anyone about his costs was in a letter to Mrs M and Messrs I and M G dated 4 February 1999 in which the Respondent explained that he had charged the estate £20,000 on account to date, although that amount was said by him to be "considerably light, but it will do for now";

26.2 Notwithstanding that Messrs I and M G were co-executors, trustees and beneficiaries, they were provided with no further information concerning the Respondent's costs, how they were calculated, nor the amounts being deducted in respect of costs;

26.3 The Respondent provided no information to Mr TM (a co-executor) about his charges.

27. In the course of an interview on 27 August 2010 the Respondent was asked to comment on Mrs Corbin's conclusion that he had overcharged in the sum of £533,864.25 plus VAT. The Respondent said,

> "Well, having reviewed things again I accept that there is an overcharge here. Today I can't accept the figure of the overcharge because again I have not had these figures looked at by anybody on my behalf. However, what I would say is that what the costs draftsman indicates is that there is a paucity of file notes and attendance notes on this particular file and I think to some extent her calculations reflect or her assessment of overcharge perhaps reflects a considerable failure on my part to keep proper documented evidence of the amount of time and effort that I have put into this case. Having said that, looking at matters in the round, there is an overcharge and I accept that."

The SFIO pointed out that even if Mrs Corbin was 100% wrong in her calculations, there would still be hundreds of thousands of pounds overcharged, and the Respondent accepted that to be so. The Respondent said,

"Well, I accept there is a very considerable overcharge, yes."

Re Miss CW

28. On 12 March 1999 the Respondent was appointed Sole Attorney under an EPA, with general authority to act on behalf of Miss CW in relation to all her property and affairs. The EPA was registered with the Public Guardianship Office in April 2004. Miss CW died on 30 June 2009, aged 94. During her lifetime, Miss CW was entitled to the income from two trusts which were managed by another firm of solicitors, Kerseys. The income from the trusts was paid to the Respondent.

29. An analysis of the financial transactions passing through the Firm's client bank account was prepared by the SFIO from the relevant client ledger. During the period of the EPA, the total income received was £1,110,325.05 (most of which came from the two trust funds). The expenditure in the same period included loans to the Respondent of £344,680.53 (of which £320,137.92 had been repaid) and the Firm's costs of £198,027.18.

30. At the time of Miss CW's death, the balance on the client ledger was £378,551.45. With sundry receipts and refunds, the total balance was £382,136.71. The balance shown on the ledger as at 31 December 2009 was £306,237.89 after payment of funeral costs, the Firm's further costs taken by the Respondent in the sum of £30,576.44 and loans of £43,058.93.

31. The Respondent made 159 transfers in respect of costs between 29 April 1999 and 17 December 2009, varying in amount between £170.38 and £11,500. The Respondent accepted in interview with the SFIO that he did not carry out specific calculations but simply looked and thought what would be a reasonable amount to take in costs. He did not know that amount of costs charged under the EPA. In response to a question about the work he had undertaken in relation to the administration of Miss CW's estate, the Respondent said that he had attended the funeral, reviewed the situation generally, had brief correspondence with the Miss CW's nephew and had some communications with the solicitors who administered the trust funds. In response to a question about how he had calculated the costs of over £30,000 after Miss CW's death, the Respondent said,

> "I haven't calculated the costs in any accurate form at all. I think I've got to accept that if that's the figure you are saying to me then that figure is too high."

32. Mrs Corbin reviewed the Respondent's files and produced a report dated 22 June 2010, on which the Applicant relied. Mrs Corbin calculated that reasonable costs, excluding VAT, amounted to £18,991.90 which when compared to the actual costs deducted, excluding VAT, produced an overcharge of £176,478.42 (929% overcharge). Mrs Corbin's report recorded general observations that the work was largely routine and non-technical and that the only information which the Respondent provided containing his charges were in some of the invoices, where an hourly rate was either stated or could be calculated by dividing the charge by the time claimed.

33. At the meeting on 27 August 2010 the SFIO asked the Respondent to comment on Mrs Corbin's report that he had overcharged in the region of £176,000 plus VAT, representing a 929% overcharge. The Respondent said,

> "Having read the report it is evident to me that I have claimed more costs than was fair and reasonable in relation to this matter. I haven't had the files looked at by a costs draftsman myself to check the views of this costs draftsman. I intended to do so but I have not had the files back long enough really for that purpose so I can't say that I accept the figures that she puts forward. But I do accept the principle having reviewed the matter and that there is certainly an overcharge of costs."

The SFIO pointed out that bearing in mind the costs draftsman viewed a reasonable figure for costs was just under £19,000, even if she was 100% wrong, there would still be approximately £150,000 overcharged, to which the Respondent said,

> "Yes, I accept that."

Loans – Mr KLG

34. The Respondent was a co-trustee in the trust of Mr KLG. The SFIO prepared a schedule of monies borrowed by the Respondent from the KLG Trust between 16 November 2005 and 2 December 2009, based on transactions on the relevant client ledger and a Memorandum of Loans provided by the Respondent.

35. The loans accumulated between 16 November 2005 and 29 July 2008 amounted to £124,550. On 29 July 2008 the sum of £60,050 was borrowed by the Respondent from another client, JL, which had the effect of reducing the loans outstanding to the KLG Trust to £64,500. As at 31 December 2009 the SFIO calculated that the loans due to the KLG Trust amounted to £106,650 excluding interest.

36. The borrowings were discussed with the Respondent during interview on 12 March 2010. The Respondent was asked if it was correct that he had borrowed monies to fund a lifestyle that his earnings from his practice and as a Coroner could not support. The Respondent replied, "Yes". The Respondent was asked if he had advised the residual beneficiaries of the loans, to which the Respondent said that he had not. The Respondent conceded that he did not advise his co-trustee and co-executor, Mr M, to take any independent legal advice concerning the Respondent's borrowings from the Trust.

Loans – Miss CW

37. The SFIO prepared a schedule of the borrowings taken by the Respondent during Miss CW's lifetime and following her death on 30 June 2009, in the period 31 July 2003 to 29 December 2009, based on transactions on the relevant client ledger and a Memorandum of Loans provided by the Respondent.

38. The first loan was in the sum of £100,000 made on 31 July 2003 to another client ledger (that of KLG), which was repaid on 24 February 2004 with interest. Subsequent loans were all made to the Respondent and accumulated between 2 September 2005 and 12 June 2008 to a sum of £177,105.53.

39. On 29 July 2008 the sum of £135,945 was borrowed by the Respondent from another client, JL, which had the effect of reducing the loans outstanding on the Miss CW matter to £41,160.53. As at 31 December 2009 the SFIO calculated the loans due to the estate of Miss CW amounted to £70,743.46 excluding interest.

40. The borrowings were discussed with the Respondent on 12 March 2010. The Respondent was asked if it was correct that he had borrowed monies to fund a lifestyle that his earnings from his practice and as a Coroner could not support, to which the Respondent replied, "Yes". When asked what he would have had to do had he not borrowed the monies from the Miss CW estate, the Respondent said he would have had to have borrowed against his home, or other property that he and his wife owned, which the Respondent agreed would have involved borrowing the money commercially. The Respondent confirmed that no security was taken for the borrowings and that his duty as Attorney required him always to act in the best interests of his client.

Loans – Ms JL

41. In a professional history form provided by the Respondent to the SFIO the Respondent stated in answer to one of the questions that a Judgment had been entered against him in 2009.

42. A loan had been taken by the Respondent from Ms JL in the sum of £195,995. On 5 August 2009 an order was made for the Respondent to pay the sum of £205,630.05 to Ms JL. In August 2009 an interim charging order was obtained in relation to a property owned by the Respondent jointly with his wife, with a further interim charging order being obtained in September 2009 in respect of another property owned by the Respondent jointly with his wife. By letter dated 4 January 2010 Ms JL's solicitors wrote to the Court advising that the Judgment had been satisfied.

43. On 29 July 2008 the sum of £198,085.76 was received into the Respondent's client bank account, being proceeds of sale of an overseas property owned by Ms JL. The Respondent's accounting records showed that the money was allocated as to £2,090.76 to the ledger for Ms JL, £60,050 for the estate of Mr KLG and £135,945 to the ledger of Miss CW. The sums of £60,050 and £135,945, totalling £195,995, were borrowed from Ms JL and utilised to repay loans obtained by the Respondent from the matters of Mr KLG and Miss CW.

44. A letter dated 6 March 2009 from Attorneys at Law in the USA, writing on behalf of Ms JL, raised a number of queries. The Respondent replied by letter dated 10 March 2009 and, inter alia, stated,

> "Over a number of years I had failed to make adequate provision for the payment of my tax bills and had lived beyond my means. I had borrowed periodically for this purpose".

45. The SFIO asked the Respondent if it was correct that he had borrowed both from the Miss CW and Mr KLG matters to fund a lifestyle that his income from his practice and as a Coroner could not sustain. The Respondent replied, "Yes, I think it has".

The Respondent's Conviction

46. On 17 October 2013 at Southwark Crown Court the Respondent was, upon his own confession, convicted of theft, fraud by abuse of position and dishonestly making a false representation to make gain for self/another, or cause loss to other/expose other to risk.

47. A copy of the Certificate of Conviction dated 19 December 2013 was produced to the Tribunal, together with a copy of the sentencing remarks of the trial judge, His Honour Judge Leonard QC.

48. The Judge's sentencing remarks were available in full to the Tribunal, but included the following:

> "… between 1998 and 2010, you used your position as a solicitor to act fraudulently towards and steal from clients who came to you for advice and assistance with divorce, conveyancing, wills, probate and property matters.
>
> You could only commit these criminal acts because you were a qualified solicitor, committed to deal with clients' money. You could only commit these criminal acts because you held a position of trust and because your clients would assume from your status as a solicitor and, to some of them, as a valued friend, that you were trustworthy and would be acting in their best interests.
>
> You did some from some clients who were no doubt suffering from grief and anxiety because of the cause which had brought them to make use of the services of a solicitor in the first place.
>
> … in order to commit these fraudulent acts, you breached a substantial number of the Solicitors' Practice Rules, now enshrined in the Solicitors' Code of Conduct.
>
> Using principally your client account, you stole money from clients or from their estates, hiding what you had done by describing the purpose of the thefts as costs incurred or loans from clients. This involved creating false records good enough, you hoped, to fool the accountants who had to prepare annual accounts, which would satisfy The Law Society that your practice was solvent and that you were entitled to hold a practising certificate.
>
> … Overall, you falsified records so that a total of £1.8 million could be taken from monies which belonged to your clients. I do not suggest that the amount of money which you had for your own use was as great as this, because some of the money held in favour of one client would have had to be used to pay out on another client's behalf.
>
> … You used most of that money to keep an ailing practice afloat, but you also used it to maintain a standard of living far exceeding your income.

> By way of examples, in March 2007, you and your wife celebrated your silver wedding anniversary with a day at Cheltenham with a hospitality package which allowed for a champagne reception and four-course lunch, to be enjoyed with ten of your friends. The £5,076 needed to fund that came from the client account and represented, as I understand it, funds belonging to [Ms JL].
>
> In December 2010, well after the SRA investigation into your affairs had begun, you chose to go on a cruise with members of your family, again paid for out of clients' funds.
> What I find hard to understand is why you allowed this fraud to continue over such a long period of time. If I accept, as I do, that it was to keep an ailing business afloat, then a man of your perspicacity and general reputation for honesty, to you it must have been crystal clear that your business would never recover and yet you carried on,
>
> I am driven to the conclusion that you preferred to continue a life of dishonest activity rather than lose face in the community and lose the position in the community you had achieved. That included the inevitable loss of your position as a coroner.
>
> … It is sufficient to say that I have had difficulty thinking of a like example of such dishonest and fraudulent conduct committed by a practising solicitor over such a long period and with so many devastated victims…"

Witnesses

49. No oral evidence was given. The Respondent had admitted the factual basis of all of the allegations, and had stated in his letter of 13 February 2014 that he did not require either the SFIO or the costs consultant to attend to give evidence. The matter therefore proceeded on the Rule 5 and Rule 7 Statement and their exhibits.

Findings of Fact and Law

50. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

51. **Allegation 1.1 - Contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("the 1998 Rules") he failed to ensure compliance with the Rules**

51.1 This allegation was admitted by the Respondent. The factual matters on which the allegation was based are set out at paragraphs 15 to 45 above. In particular, the allegation was based on improper transfers of costs without delivery of bills or written notification of costs amounting to £738,278.25 and improper transfers of £6,483.13.

51.2 The Tribunal reviewed the FIR and was satisfied to the required standard that on the evidence presented this allegation had been proved. There had been widespread and prolonged failures to comply with the 1998 Rules and he had failed to exercise a proper stewardship of client account.

52. **Allegation 1.2 – He withdrew and/or transferred money from client bank account contrary to Rule 19(2) of the 1998 Rules**

52.1 This allegation was admitted by the Respondent. The factual matters on which the allegation was based are set out in particular at paragraphs 15 and 25 to 28 above.

52.2 The Tribunal reviewed the FIR and was satisfied to the required standard that on the evidence presented this allegation had been proved. The Respondent had not sent bills on the matter of Mr KLG to his co-trustee and had transferred the money for costs without either sending a bill or written notification of costs. Further, the Tribunal was satisfied that the Respondent was not entitled to all of the sums he had transferred for costs, as set out in more detail in relation to allegation 1.5 below. There could be no doubt that the Respondent had acted, repeatedly, in breach of Rule 19(2) of the 1998 Rules.

53. **Allegation 1.3 – He withdrew and/or transferred monies from the client bank account other than as permitted by Rule 22 of the 1998 Rules**

53.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out in particular at paragraphs 15 and 23.

53.2 The Tribunal reviewed the FIR and was satisfied to the required standard that on the evidence presented this allegation had been proved. Between February and December 2009 the Respondent made 11 transfers from client to office bank account, totalling £6,483.13 in the matter of PM (deceased) when these sums were not properly due as costs or otherwise. The Respondent had agreed in the meeting on 12 March 2010 that the payments were improper, and the Tribunal found that they were in breach of Rule 22 of the 1998 Rules.

54. **Allegation 1.4 - Contrary to Rule 32 of the 1998 Riles he failed to keep accounts properly written up**

54.1 This allegation was admitted by the Respondent. The matters underlying this allegation are set out at paragraph 15 above and were set out in more detail in the FIR, which the Tribunal reviewed.

54.2 The Tribunal was satisfied on the facts set out in the FIR that this allegation had been proved.

55. **Allegation 1.5 – Contrary to Rule 1 (a), (c), (d) and (e) of the Solicitors Practice Rules 1990 ("SPR") and /or Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2004 ("SCC") he took unfair advantage of (a) client(s) by making a claim for costs which he knew he could not justify**

55.1 This allegation was admitted by the Respondent. The allegation was based on the apparent overcharging in the matters of Mr KLG and Miss CW, as set out in particular at paragraphs 25 to 33 above.

55.2 The Tribunal reviewed the reports of Mrs Corbin which set out her methodology and calculation of reasonable costs in each of these two matters. The Tribunal was

satisfied that the reports took into account relevant factors, including making due allowance for work which might reasonably have been undertaken but which had not been fully recorded on the file, and that the conclusions in the reports were sound. It noted that even if Mrs Corbin had been wrong in her calculations by 100% there would still have been very significant overcharging; in the event, the Tribunal accepted that Mrs Corbin's assumption and calculations were correct.

55.3 It was noted that the matter of Mr KLG was complex and of quite high value, such that costs of around £117,000 would have been reasonable. In this matter, the Respondent had overcharged the estate by almost £534,000 (plus VAT). The matter of Miss CW was less complex, and a charge of something around £19,000 plus VAT would have been reasonable. The Respondent had charged some £176,000 more than was justified.

55.4 These were not matters in which the Respondent had "rounded up" his costs a little. There had been no proper basis on which he could have charged anything like the amount he had transferred in costs. Further, he had failed to inform his co-trustee and/or residuary beneficiaries of the charges he was making. This course of conduct, over a period from about November 1998 to December 2009, clearly showed that the Respondent had acted without integrity, had allowed his independence to be compromised, had not acted in the best interests of his clients, had failed to provide a good standard of service to his clients and had behaved in a way which would be likely to diminish the trust the public would place in the Respondent and/or the profession. The breaches occurred both before and after the introduction of the SCC and the pleaded breaches of both the SCC and SPR were established. The Respondent had taken unfair advantage of his clients by overcharging when he knew there was no justification for claiming costs in the amounts he actually claimed. The allegation, which had been admitted, had been proved to the required standard.

56. **Allegation 1.6 – He misappropriated clients' funds and utilised the same for his own benefit**

56.1 This allegation was admitted by the Respondent. The facts on which the allegation was based included the overcharging in the matters of Mr KLG and Miss CW (as set out in relation to allegation 1.5) and also the unauthorised loans, set out at paragraphs 34 to 45 above.

56.2 The Respondent had admitted that he had used client monies for his own purposes, which included both maintaining his Firm and a standard of living which he could not afford from his lawful earnings. The Respondent's misconduct in misappropriating clients' funds for his own benefit occurred in circumstances where he was a co-trustee (the Mr KLG matter) and sole attorney and executor (the Miss CW matter). Having reviewed all of the evidence, the Tribunal was satisfied to the required standard that this allegation had been proved.

57. **Allegation 1.7 – Contrary to Rule 1 (a), (c), (d) and (e) of the SPR and/or Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the SCC, he took unfair advantage of (a) client(s) by taking loans and/or borrowing money for his own benefit**

57.1 This allegation was admitted by the Respondent. The facts on which this allegation was based are set out at paragraphs 34 to 45 above.

57.2 During the period July 2003 to July 2009 the Respondent borrowed substantial sums from the client accounts of three clients; in two of the matters he was a trustee/attorney/executor and in the other he was a friend of the client. Whilst the sums borrowed had been paid to Ms JL, after she obtained a Judgment against the Respondent, there was no evidence that the Respondent had repaid the monies he had taken from the estates of Mr KLG and Miss CW. It was clear on all of the evidence that he had not sought the permission of his co-trustee in the matter of Mr KLG, or his client, in the matter of Ms JL, to use their money. In the matter of Miss CW, the Respondent was the sole attorney and executor and as such would have a particular duty to ensure he dealt with the estate entirely properly.

57.3 There was no doubt that the Respondent had taken unfair advantage of his clients (the Mr KLG Trust, the Miss CW estate and Ms JL) by taking unsecured loans from them for his own benefit. The Tribunal was satisfied to the required standard that all aspects of this allegation had been proved.

58. **Allegation 1.8 – He acted where his own interests were in conflict with those of his clients(s) contrary to Principle 15.04 of the Guide to the Professional Conduct of Solicitors, and/or Rule 3.01 (1) and (2) (b) of the SCC.**

58.1 This allegation was admitted by the Respondent. The facts relied on by the Applicant were those concerning the Respondent's borrowing from the estates/clients Mr KLG, Miss CW and Ms JL as set out at paragraphs 34 to 45 above.

58.2 The Respondent had borrowed substantial sums from his clients without notification to the relevant clients, let alone their permission. The borrowing was not secured. It was to the Respondent's advantage, as he did not have to seek commercial loans, but to the detriment of his clients/their estates. He did not advise his co-trustee in the Mr KLG matter or Ms JL to take independent legal advice. There was a clear conflict of interest and yet he continued to act, in breach of Principle 15.04 of the Guide to the Professional Conduct of Solicitors, and Rule 3.01(1) and (2)(b) of the SCC. The Tribunal found the allegation proved to the required standard.

59. **Allegation 2 – Whilst dishonesty was not an essential ingredient of any one of the allegations raised against the Respondent it was alleged that the Respondent acted dishonestly in the following particulars:**

2.1 – Culpable overcharging re KLG and W;

2.2 – Improper withdrawal of monies from client account re PM and KLG;

2.3 – Use of clients' funds said to be borrowing/loans in the matters of KLG,CW and JL.

59.1 This allegation was neither admitted nor denied by the Respondent. The Tribunal considered the evidence presented to determine if the allegation had been proved to

the highest standard. The Tribunal applied the combined test for dishonesty as set out in Twinsectra v Yardley and others [2002] UKHL 12.

59.2 The Tribunal was satisfied on the evidence that in the matter of KLG the Respondent had overcharged by over £533,000 and in the matter of Miss CW he had overcharged by about £176,000. The Tribunal noted that in his response to the FIR, dated 18 October 2010, the Respondent had accepted the overcharging but also said,

> "… the costs draftsman could not take into account the substantial unrecorded time spent on the cases but as I have not recorded the time I can't now show the true level of work and commitment given to the cases."

59.3 Given that the Respondent had not recorded the time spent and that the work on the files did not justify costs higher than those indicated by Mrs Corbin, the Respondent had culpably overcharged to a significant degree. The Respondent had not informed his co-trustee in the KLG matter about the costs he had charged and in the Miss CW matter the Respondent was the sole attorney/executor. Overcharging to such a large degree, where those affected were not in a position to challenge the costs, was clearly dishonest by the standards of reasonable and honest people.

59.4 In the matters of PM and KLG the Respondent had made improper transfers from client account, where there was no good reason to do so and where the 1998 Rules were clearly breached. Transferring funds in this way, over a number of years, was dishonest by the standards of reasonable and honest people.

59.5 The use of money belonging to clients KLG, Miss CW and Ms JL when those "borrowings" were not authorised for the Respondent's own purposes would also be regarded as dishonest by the standards of reasonable and honest people.

59.6 The Tribunal considered whether the Respondent knew that his conduct in the above respects was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied to the required standard that the Respondent undertook the overcharging, improper transfers and borrowings in full knowledge that he was not entitled to charge and/or transfer those sums for his personal benefit. The Respondent had acknowledged in his interviews with the SFIO that he had used his clients' money to fund a lifestyle which he could not afford. He had maintained his Firm when it was not profitable or sustainable. The Tribunal noted that the objectively dishonest conduct had occurred over a period of over 10 years. There had been no suggestion that the Respondent suffered from any mental impairment such that he was unable to tell right from wrong. The Respondent's motivation for misuse of his clients' money, the length of time over which it had occurred and the steps he had taken to conceal his wrongdoing satisfied the Tribunal beyond any doubt that the Respondent knew his conduct – as summarised above – was dishonest by the standards of reasonable and honest people.

60. **Allegation 3 – On 17 October 2013 he was upon his own confession, convicted on indictment of *"Theft – other – including theft by finding x 16, Fraud by abuse of position x 8, and dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk,"* and was on 28 November**

2013 sentenced to 8 years imprisonment and as such acted contrary to all, alternatively, any of Principles 1, 2 and/or 6 of the SRA Principles 2011.

60.1 This allegation was admitted by the Respondent. The facts relied on by the Applicant are set out at paragraphs 46 to 48 above.

60.2 A copy of the Certificate of Conviction was produced to the Tribunal and was sufficient to prove the fact of the conviction. The Respondent was currently in prison. He had admitted the allegation and had been convicted on his own confession. There was no doubt about the conviction. The Respondent had been convicted of offences involving dishonesty so there could be no doubt that he had failed to uphold the rule of law and the proper administration of justice, had failed to act with integrity and had behaved in a way which would damage the trust the public would place in the Respondent and the provision of legal services. The allegation had been proved to the required standard.

Previous Disciplinary Matters

61. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

62. The Respondent was not present and had not submitted any mitigation.

Sanction

63. The Tribunal had regard to its Guidance Note on Sanctions, and all of the circumstances of the case including the admitted and proved allegations.

64. The Tribunal was concerned that the Respondent's misuse of client money had not been detected by the reporting accountants over a number of years. It appeared that questions had only been raised when new accountants were appointed. There was evidence that the Respondent had concealed his misconduct, but the Tribunal was concerned that the normal reporting procedures had not been adequate to detect what he was doing. This did not detract from the Respondent's personal culpability, but it would have been better for all concerned if his misconduct had been detected earlier and stopped.

65. The allegations which had been admitted and proved were all very serious and would have justified a most severe sanction even if dishonesty had not been found. The Respondent had overcharged clients to an extraordinary degree. He had transferred very large sums, with which he had been entrusted as a solicitor, for his own benefit, both in respect of the overcharged costs and by way of unauthorised and improper loans. In addition, the Respondent had been convicted of a number of serious offences of dishonesty, which had resulted in him being sentenced to 8 years imprisonment.

66. The Respondent alone was responsible for what had happened. He had caused substantial harm to a number of clients and to the reputation of the profession. The

Respondent's misconduct had been carried out repeatedly, over a long period. He had breached the trust which had been placed in him. Other than the fact that the Respondent had made admissions before the hearing, there were no mitigating factors. The Tribunal noted the sentencing remarks of His Honour Judge Leonard QC, extracts from which are set out at paragraph 48 above. Of course, the Tribunal formed its own view of the seriousness of the misconduct; having done so, it considered the trial judge's remarks to be a useful indication of the circumstances of the Respondent's misconduct and how those matters would be viewed by the public.

67. The Tribunal rarely saw such conscious impropriety, on such a scale, over such a sustained period of time. The misuse of clients' money was undertaken by an experienced solicitor who held a judicial appointment and who acted as solicitor, trustee and attorney in relation to many client matters.

68. The damage done to the reputation of the profession in the eyes of the public by the Respondent's misconduct was grave. The public had the right to be able to trust any solicitor to the ends of the earth, as stated by Bingham LJ in somewhat Biblical terms in the case of Bolton v Law Society [1994] 1 WLR 51. The public needed to know that in a case such as this both the criminal law and the Tribunal would deal with solicitors appropriately and that the profession generally would make good the loss caused to the victims by the Respondent's misconduct insofar as the Respondent himself did not. It appeared that the Compensation Fund would meet any losses over and above those the Respondent repaid.

69. The usual sanction where a solicitor had been found to have acted dishonestly, unless there were exceptional circumstances, was to order that solicitor to be struck off. Here, there were no exceptional circumstances. Indeed, the Respondent's misconduct was so grave that striking off would have been appropriate even without the finding of dishonesty. The only proportionate and appropriate sanction in this case was to strike the Respondent from the Roll of Solicitors.

Costs

70. On behalf of the Applicant, Mr Goodwin made an application for the costs of the proceedings to be paid by the Respondent. He submitted a statement of costs in the total sum of £66,448.68, including forensic investigation costs of £26,217.63 and costs consultant report fees of £9,576.25 including VAT.

71. The Tribunal noted that it had received no submissions from the Respondent on the amount of costs claimed. It reviewed the statement of costs and considered the hourly rates claimed and the amount of work which had reasonably been undertaken in this case. The Tribunal was satisfied that the costs claimed by the Applicant were reasonable in amount as the rates claimed and the amount of work done were reasonable. The costs could properly be assessed in the sum claimed, i.e. at £66,448.68.

72. The Tribunal noted the Respondent's statement in his letter of 13 February 2014 (at paragraph 9 above) to the effect that he had no income or capital. However, the Tribunal also noted that the Respondent had been prompted to provide full information and to give such information with a statement of truth. He had not done

so. The information before the Tribunal was that the Respondent's bankruptcy had been discharged in 2012. In the absence of proper information on the Respondent's assets and liabilities there was no reason to reduce the amount of costs to be awarded in favour of the Applicant. The Tribunal noted that the Respondent was facing restraint proceedings arising from the criminal proceedings. It might well be the case that after those proceedings had taken effect there would be no remaining assets from which the Applicant could recover its costs. However, it would not be appropriate to place the Applicant at a disadvantage by making any order which would restrict its ability to pursue the reasonable costs of these proceedings. Accordingly, the Tribunal would make an order for the Respondent to pay the assessed costs of the proceedings.

Statement of Full Order

73 The Tribunal Ordered that the Respondent, ALAN CHARLES CRICKMORE, 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 £66,448.68.

DATED this 23rd day of April 2014
On behalf of the Tribunal

J.C. Chesterton
Chairman