

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10879-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID DAVIES

Respondent

Before:

Mr J. N. Barnecutt (in the chair)

Mr M. Fanning

Mrs N. Chavda

Date of Hearing: 5th and 6th July and 28th September 2012

Appearances

Antony Rider, Solicitor, Field Fisher Waterhouse LLP, 35 Vine Street, London EC3N 2AA for the Applicant.

David Barton, Solicitor, 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Respondent.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr David Davies, on behalf of the Solicitors Regulation Authority, were that:
 - 1.1 Contrary to Rule 1(a), (d) and (e) of the Solicitors' Practice Rules 1990 (as amended):
 - (i) He acted in a way which compromised or impaired or was likely to compromise or impair his independence or integrity;
 - (ii) He acted in a manner which compromised or impaired or was likely to compromise or impair the good repute of the solicitors' profession in that he acted in or otherwise facilitated transactions during the course of which he failed to be alert to their suspicious characteristics;
 - (iii) He acted in a manner which compromised or impaired or was likely to compromise or impair the solicitor's proper standard of work.

Dishonesty was not an essential ingredient of allegation 1.1(i). Nevertheless, the case was put against the Respondent on the basis that he was dishonest. Alternatively, that the conduct of the Respondent was reckless.

- 1.2 Contrary to Rule 15(2) of the Solicitors' Accounts Rules 1998, he paid or caused to be paid into client account money that was not client money;
- 1.3 Contrary to Note (ix) to Rule 15 of the Solicitors' Accounts Rules 1998, he permitted the firm's client account to be used as a banking facility to receive monies and make payments which had no proper connection with any legal transaction on which the firm was instructed to act.

Documents

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

Applicant:

- Application dated 16 November 2011;
- Rule 5 Statement dated 16 November 2011 with exhibit "ATBR1";
- Witness statement of Mary Caroline Ann Liddy dated 25 May 2012 with exhibit "MCAL1";
- Witness statement of Catherine Alice Spink dated 28 May 2012 with exhibit "CAS1";
- Statement of Costs dated 27 September 2012.

Respondent:

- Facts in issue and admissions dated 9 December 2011;
- Police statement of Janis Ann Curtis dated 8 January 2009;
- Police statement of Richard Plummer dated 8 January 2009;
- Statement of Janis Ann Curtis dated 3 July 2012;

- Statement of Jacqueline Sheila Davies dated 3 July 2012;
- Statement of Rachel Sandford dated 4 July 2012;
- Statement of Rachel Sandford dated 13 September 2012;
- Statement of Angela Holmes dated 13 September 2012;
- Statement of Angela Holmes dated 25 September 2012;
- Miscellaneous documentation;
- Bundle of references and testimonials;
- Financial Statement of Respondent dated 4 July 2012.

Factual Background

3. The Respondent was born on 17 December 1952 and admitted as a solicitor on 15 January 1985. His name remained on the Roll of Solicitors. At all material times, the Respondent practised as a consultant solicitor at HP Law, 98 Pier Avenue, Clacton on Sea, Essex CO15 1MJ (“the firm”).
4. On 18 May 2010, the Solicitors Regulation Authority (“SRA”) commenced an inspection at the offices of the firm (then HP Law Ltd) and Forensic Investigation Officers (“FIOs”) conducted an interview with the Respondent on 2 February 2011. At the conclusion of the investigation, the FIOs produced a Forensic Investigation Report dated 8 June 2011 (“the FI Report”).
5. On 8 June 2011, the Respondent was asked to comment on the various matters identified within the FI Report. The Respondent replied in three letters dated 20, 27 and 28 June 2011. In his reply dated 27 June 2011, he appeared to accept making one breach of the Solicitors’ Accounts Rules in relation to a payment into client account of a banker’s draft of £20,000 and its allocation to a client account ledger with no connection to it but denied any other wrongdoing. He asserted that all relevant matters were discussed with, and authorised by, Mr Plummer, a partner in the firm who had managerial responsibility for the firm’s accounts department.
6. The Respondent became a consultant solicitor with the firm on 5 April 2005 and remained with the firm as a consultant solicitor until 7 October 2007 when he became an employed solicitor.
7. Prior to joining the firm and according to information provided by the Respondent at interview with the FIOs, he practised as a sole practitioner under the name of David Davies & Co (“David Davies”). This practice then merged with another to form Groom Davies & Company (“Groom Davies”) in which the Respondent was a partner until its amalgamation with the firm in 2005.
8. Whilst working as a sole practitioner with David Davies and as a partner with Groom Davies, the Respondent specialised in criminal and licensing work and also undertook the occasional conveyancing matter.
9. At all material times in 2006, the Respondent was head of the firm’s criminal department. He also had conduct of at least one conveyancing matter, in particular, the purchase of commercial premises known as “Mark’s Stores” for his son-in-law Mr RL.

10. In or around May 2006, the firm was instructed to act on the sale and purchase of a residential property, 49 Wilton Road. Mrs SW, a solicitor in the firm's conveyancing department acted for the sellers and Ms Catherine Spink, another solicitor in the firm's conveyancing department acted for the purchaser, Mr DW and for his mortgage lender, Rooftop Mortgages Ltd ("Rooftop").
11. According to information provided by the Respondent at interview, he had previously acted for Mr DW in criminal matters and Mr DW also had associates who were clients of the Respondent.
12. In around the middle of June 2006 and according to information provided by the Respondent at interview, Mr DW telephoned the Respondent to state that he had a shortfall in his purchase monies of around £10,000, which included disbursements such as stamp duty, and that the sellers had agreed to make an allowance of £8,999 in relation to the purchase price.
13. Shortly after this call, the Respondent spoke to Mrs SW to inform her of these facts. He recalled in interview that Mrs SW had told him that this information would need to be declared to Mr DW's mortgage lender as it could affect the mortgage offer.
14. In the same conversation, the Respondent told Mrs SW that he might lend the balance of money to Mr DW from the sale of his daughter's house until such time as Mr DW had the money available. According to the Respondent in interview, the amount of this loan was to be £10,000.
15. The details of this conversation were recorded in a memorandum from Mrs SW and Catherine Spink to Ms SW(2) who was the head of the conveyancing department.
16. At around the beginning of July 2006, the Respondent received an Abbey National Banker's draft of £20,000 drawn on an account held in the name of Ms RH. Ms RH was not a client of the firm. The Respondent stated in interview that she was known to him as the partner of a Mr GM for whom he had acted on one matter. He had also acted for Mr GM's son.
17. The Respondent forwarded the banker's draft to Janis Curtis, who was the firm's legal cashier, with a request that it be paid into the firm's client account and allocated to the client ledger for Mr DW's purchase.
18. Recognising that she could not pay non-client money into client account, Janis Curtis declined to pay the banker's draft into client account but instead forwarded it to Catherine Spink (her supervisor), explaining what the banker's draft was, and why she could not pay it into client account.
19. In a memorandum to the Respondent dated 4 July 2006, Catherine Spink returned the banker's draft to the Respondent stating "I understand you passed this Banker's Draft to Janis to pay in but as this is not in our clients (sic) name we could not accept it".
20. In interview with the FIOs, the Respondent stated that he had involvement with the transactions relating to the purchases of "Mark's Stores" and 49 Wilton Road.

21. On or around 6 July 2006, the Respondent submitted the same Abbey National banker's draft to the firm's accounts department with instructions that it be paid into client account and allocated to the client ledger for Mr RL's purchase of "Mark's Stores".
22. The instruction was handled by Rachel Sandford, an employee in the firm's accounts department who was junior to Janis Curtis. She paid the banker's draft into client account on around 7 July 2006 and allocated it to the client ledger for Mr RL's purchase of "Mark's Stores". In interview with the FIO's, the Respondent admitted that the money had no connection with Mr RL's purchase of "Mark's Stores".
23. The system operated by the firm at the material time was that all payments made from client bank account by whatever means, required a partner to countersign the payment authorisation form. Cheque payments received from clients could be paid into the client bank account on the instruction of the individual fee earner without requiring the authority of a partner.
24. On 19 July 2006, the Respondent spoke to Rachel Sandford in person and instructed her to transfer the sum of £30,000 from the firm's client bank account, to be debited from the client ledger for Mr RL's purchase of "Mark's Stores", to a bank account in the name of his daughter Mrs RL. Ms Sandford asked for Mrs RL's bank account details and the Respondent provided these to her. The transfer was made and this was evidenced by the entry in the client ledger card for Mr RL's purchase, where it was described as "Returned Monies".
25. In interview, the Respondent explained that the £30,000 was made up of the £20,000 received from Ms RH together with a further £10,000 that his daughter had agreed to lend to Mr DW for his house purchase.
26. The payment of £20,000 out of client account and which had been received from Ms RH had no connection whatsoever with Mr RL's purchase of "Mark's Stores" and the Respondent accepted this in interview. It had no connection whatsoever with any legal transaction in which the firm was instructed to act.
27. The transfer of £30,000 which was paid to Mrs RL on 19 July 2006 was then transmitted by her to a bank account in the name of Mr DW. The monies were then transferred from Mr DW's bank account to the firm's client bank account on 21 July 2006 as part of the completion monies for Mr DW's purchase of the property. The client ledger card for Mr DW's purchase described the money as "Part bal to comp".
28. Completion of Mr DW's purchase of 49 Wilton Road took place on 21 July 2006. Part of the £30,000 was used to make up the completion monies and this was evidenced by the client ledger card.
29. The Respondent did not inform either Catherine Spink or Mrs SW of the transmission to Mr DW's bank account of the £20,000 from Ms RH which had come via the client account for Mr RL's purchase of "Mark's Stores" and then onward to Mrs RL. It was the Applicant's case that, knowing that the accounts department had expressly rejected the banker's draft from Mrs RH on the grounds that it was not client money, the Respondent deliberately (and dishonestly) circumvented that restriction by

utilising the client account of a family member to disguise the source of the rejected banker's draft.

30. Prior to June 2006, guidance from the Law Society gave warning on money laundering to all solicitors with advice to "be on your guard". The guidance issued on 18 January 2005 contained the following warning:

"Causes for concern can include the following:

Unusual settlement requests

Anything that is unusual or unpredictable or otherwise give cause for concern should lead you to ask more questions about the source of funds. Remember, proceeds of crime can arrive through the banking system as well.

Think carefully if any of the following are proposed or occur:

- *Surprise payments by way of third party cheque"*

Witnesses

Mary Caroline Ann Liddy

31. Ms Mary Liddy gave evidence and was cross examined by Mr Barton. She confirmed that the content of her statement, subject to one correction in relation to the date that she had joined her current firm, was true to the best of her knowledge and belief.
32. Ms Liddy told the Tribunal that the firm's system for paying in cheques and banker's drafts involved a credit slip being completed in duplicate with the file details and information about the payment. The slip would be signed by the fee earner or the person who was paying in the cheque or draft and the slip would then be passed to the firm's accounts department. She confirmed that it was not necessary for a partner of the firm to authorise a credit payment. She explained that if the cheque or draft did not appear to relate to the matter in question then the accounts department would raise a query with the appropriate fee earner or a partner. She told the Tribunal that the firm would have been concerned about any money received from a third party due to the risk of money laundering. She confirmed that the firm's office manual contained a section dealing with this issue and that staff had received appropriate training.
33. The witness was asked to explain the firm's procedure for dealing with bank telegraphic transfers. Ms Liddy told the Tribunal that one of the secretaries would complete the relevant form on the computer system and it would then be signed by a partner. The transfer would be activated using the firm's internet banking system by one of the accounts staff.
34. In cross examination by Mr Barton, Ms Liddy told the Tribunal that only Richard Plummer, Ms SW(2) and herself, as the partners at the firm, were the signatories to the client account and any one of them could authorise a payment. She confirmed that the Respondent had not been a signatory to the client account and had not been authorised to make withdrawals.

35. Ms Liddy agreed that the Respondent had a “solid reputation” as a criminal solicitor in the local area. She was not able to say whether the Respondent’s attraction to the firm had been his “valuable” criminal case load as she had not been a party to the discussions at the time that the Respondent had joined the firm. She confirmed that the Respondent had dealt mainly with criminal work although she was now aware that he had dealt with two conveyancing matters. She told the Tribunal that she had not known that he was undertaking conveyancing work at the time.
36. In continuing cross examination, Ms Liddy told the Tribunal that she had become aware of a problem with the transfer from Mr RL’s ledger the day after it had taken place. She had wondered why the Respondent was undertaking conveyancing work and she had been aware that the transfer should not have been made. She confirmed that both Mr Plummer and Mrs Curtis had spoken to her about the matter and there had been a general “fuss” due to the fact that the transfer had been made to Mrs RL alone when it should have been paid to Mrs RL and her husband jointly. She confirmed that Mr RL had subsequently authorised the payment to his wife. She told the Tribunal that she had discussed matters with Mr Plummer but she could not recall the details of the conversation. She said that during the course of those discussions she had become aware that the Respondent had initiated the payment. She could not remember taking up the issue with the Respondent herself but believed that Mr Plummer had done so.
37. Ms Liddy told the Tribunal that the Respondent had been invited to stay on at the firm after he had given notice of his intention to leave. She acknowledged that the firm had wanted to retain the Respondent as he had been an experienced criminal solicitor despite the circumstances surrounding the transaction. She agreed that there had been significant personal differences between Mr Plummer and the Respondent which had led to a complete breakdown of trust between them. She told the Tribunal that she had no personal knowledge as to how Mr Plummer had dealt with the Respondent following the transaction and she did not think that Mr Plummer had reported the matter to the SRA.
38. In continuing cross examination, Ms Liddy confirmed that a form similar to the “BACS OUT” form that had been exhibited to her statement would have been completed in order to initiate the transfer from Mr RL’s ledger account. She told the Tribunal that she had not seen the form that had initiated the payment and the firm had been unable to find the computer copy. She believed that a copy would be in the firm’s archive records.
39. Ms Liddy confirmed that both she and Mr Plummer had visited the Respondent in 2010 in order to discuss some form of “collaboration” between the Respondent and the firm. She denied the suggestion that the visit had been with the specific purpose of asking the Respondent to rejoin the firm. She told the Tribunal that it had been a difficult time and she was not able to recall details of the meeting. She acknowledged that the firm had been struggling and conceded that the value of the Respondent’s criminal caseload may have been seen as a possible “way out” for the firm. She acknowledged that the Respondent had been approached despite the criminal investigation. She told the Tribunal that she did not feel comfortable in making the

approach as she did have reservations about the Respondent's trustworthiness but she had been trying to do the best for the firm's employees.

40. In re-examination by Mr Rider, Ms Liddy stated that theoretically it would not have been possible for a payment to have been made using the firm's internet banking system unless a partner had signed the appropriate form but acknowledged that this could have happened in practice.

Catherine Alice Spink

41. Ms Catherine Spink gave evidence and was cross examined by Mr Barton. She confirmed that the content of her statement was true to the best of her knowledge and belief. She told the Tribunal that she was a part qualified Legal Executive.
42. Ms Spink confirmed that she could recall the circumstances surrounding the purchase of 49 Walton Road by Mr DW. She said that she had spoken to Mrs SW and Ms SW(2) in relation to this matter. She explained that the purpose of the memorandum which had been sent to Ms SW(2) had been to draw attention to the fact that there had been an increase in the purchase price in a short period of time which could have been an indicator of mortgage fraud and would have needed to have been reported to the mortgage lender. In addition, the memorandum had referred to the fact that some of the purchase monies had not come directly from the client and this was also a matter which would have needed to have been disclosed to the lender.
43. The witness confirmed that she had not spoken to the Respondent about this issue at the time and to her knowledge she had not met him during the time that she had worked at the firm. She told the Tribunal that the memorandum sent to her by Mrs Curtis on 29 June 2006 followed a conversation with the accounts department when she had explained that as the Abbey National banker's draft was not in the name of the buyer, it could not be paid into the firm's client account. She acknowledged that she had sent a memorandum to the Respondent which confirmed that she could not accept the draft. She said that if she had known that the £30,000 which formed part of the completion monies had come from a third party then she would have not have continued with the transaction as it would have been necessary to report the matter to the mortgage lender and obtain the lender's permission to proceed.
44. In cross examination by Mr Barton, Ms Spink told the Tribunal that conveyancing work at the firm was allocated by Ms SW(2) as the head of the department. She did not know who had made the decision to allow the firm to act for both buyer and seller as well as the mortgage lender. She could not recall how Ms SW(2) had responded to the memorandum but assumed that she had given her authority to proceed with the transaction as she would not have done so otherwise. She told the Tribunal that she would have reported the circumstances to the mortgage lender although she understood that there was nothing on the client file to confirm that she had done so. She stated that as the lender had forwarded the mortgage funds to the firm, she had assumed that the lender was willing to proceed with the transaction.

Richard Plummer

45. Mr Richard Plummer gave evidence and was cross examined by Mr Barton. He confirmed that he had provided a statement to one of the FIO's which, as far as he could recall, was true to the best of his knowledge and belief.
46. In lengthy and extensive cross examination by Mr Barton, Mr Plummer confirmed that he had been aware that the FIO's were investigating alleged misconduct on the part of the Respondent in relation to a particular file. He told the Tribunal that he had answered the questions put to him by the FIO's as truthfully as he could at the time. He explained that the firm had established a policy whereby fee earners were to work only within their area of expertise and he had completed the firm's indemnity insurance proposal form on this basis. He acknowledged that he had told the firm's insurers that the Respondent dealt with criminal work and licensing only. He accepted that if the Respondent had been carrying out conveyancing work then this would have been without his authority and knowledge and he told the Tribunal that he could not remember the Respondent carrying out any conveyancing work at the time. He acknowledged that a "CHAPS OUT" form dated 12 June 2007 and which contained his signature and the Respondent's reference indicated that the Respondent had been carrying out conveyancing work but told the Tribunal that he could not remember the document or the matter. Mr Plummer said that had he known that the Respondent was undertaking conveyancing work then he would have raised this issue with him but he could not recall the Respondent dealing with any conveyancing work between 2006 and 2007 and he denied that he was not being truthful in relation to this matter.
47. Mr Plummer confirmed that he had known the Respondent since the late 1970s and he held him in high regard. He acknowledged that he had provided the SRA with a file containing information about the Respondent and his wife. He explained that once the Respondent had joined the firm, letters had started to arrive relating to the Respondent's financial circumstances which had concerned him. He acknowledged that he had asked his assistant to intercept the Respondent's post and take copies. He insisted that the Respondent had known about this and had raised no objection but acknowledged that he had not told Mrs Davies that he was retaining such a file. He said that the retention of the "dossier" had assisted him in dealing with ongoing financial matters following the firm's takeover of Groom Davies.
48. In continuing cross examination, Mr Plummer acknowledged that the Respondent and his wife had owned two properties at numbers 98 and 100 Pier Avenue. He confirmed that he had purchased number 98 and had occupied number 100 for 18 months. He denied that he had broken into number 100 and occupied it without the Respondent's consent. He admitted that the Respondent had issued proceedings for recovery of rent, amongst other things, and confirmed that the proceedings had eventually settled. He acknowledged that he had spoken to Janis Curtis about the Tribunal proceedings in what he described as an "off the record" discussion but denied that he had tried to dissuade her from giving evidence.
49. Mr Plummer said that he could not recall giving permission to either the Respondent or Mrs Curtis for a ledger to be opened for the "Mark's Stores" transaction but accepted that Mrs Curtis may have a better memory in relation to this issue. He

denied that he had known anything about the Abbey National banker's draft and told the Tribunal that he had been away from the office on the day that the £30,000 had been transferred. He stated that Mrs Curtis had told him what had happened when he had returned to the office. He had understood that Ms Sandford had dealt with the transfer and he believed that he had been told that the transfer had been made without the authority of a partner. He acknowledged that Ms Sandford may have sent the money out herself but said that she would not have had permission to do so unless the transaction had been authorised by a partner. He said that his main concern had been the fact that the money had been paid to Mrs RL, who was not a client, when he believed that the ledger had been in the sole name of Mr RL. He told the Tribunal that he had arranged for Mrs Curtis to obtain retrospective approval from Mr RL for the transfer to his wife and he had made it clear that no further money was to be paid out of the ledger account without his express permission. Mr Plummer confirmed that the Respondent had not been a signatory to the client account.

50. The witness acknowledged that his statement had referred to the fact that the Respondent had had an argument with Ms Sandford. He believed that it was Ms Sandford herself who had told him about the argument. Mr Plummer told the Tribunal that he had seen a handwritten "chit" for the transfer but he had not seen the actual BACS form. He said that he had been more concerned with the fact that a payment had been made to someone who was not a client of the firm rather than with carrying out a full investigation into the circumstances surrounding the transfer. Mr Plummer confirmed that he had known about the Respondent's arrest in June 2006 when the police had attended at the firm's offices accompanied by the SRA. He acknowledged that during the time that the Respondent had been on bail, he had remained working at the firm. He had later been told that the police would not be taking any further action. He acknowledged that by June 2008, the Respondent had given notice of his intention to resign and he accepted that, by that stage, his relationship with the Respondent had reached a low point although he had asked the Respondent to reconsider his position and stay on at the firm.
51. In continued cross examination, Mr Plummer reiterated that, as far as he could recall, he had not known that the Respondent was undertaking conveyancing work in 2006. He acknowledged that a letter dated 15 January 2008 and which had been sent to the firm in relation to the "Mark's Stores" transaction contained the Respondent's reference and indicated that the Respondent must have been undertaking conveyancing work at the time. He did not accept that the Respondent had spoken to him specifically about the Abbey National banker's draft or that he had given permission for the draft to be paid into the firm's client account. He denied that the Respondent had told him that the conveyancing department had rejected the draft. He stated that even if the Respondent had spoken to him about the matter, he would not have agreed to the money being paid into a "random" third party account which had nothing to do with the transaction as there would have been no reason for him to do so.
52. Mr Plummer confirmed that he had only become aware that the accounts department had transferred the £30,000 to the wrong person when he had returned to the office the following day. He said that he had not been interested in holding a "witch hunt" and his only concern had been that the money had been paid to someone who was not a client. He had not investigated the provenance of the money. He had not discussed

the situation with the Respondent and he had not spoken to him about the alleged argument with Ms Sandford as he had not felt any need to do so. He told the Tribunal that there had been no reason to make trouble for the sake of it. He had been satisfied that Mr RL had “cleared” the payment to his wife and the matter had appeared to have been resolved. He acknowledged that he had apparently been content to allow the Respondent to undertake conveyancing work and stated that he must have “tacitly acquiesced” to this. He denied that he had been aware of the circumstances of the transaction and questioned the reason for the Respondent to have told him about it. He did not accept that the Respondent would have disclosed details of the transaction as he was an “open and honest” man and stated that, if this was the case, then the Respondent would not have paid the money into another client account.

53. Mr Plummer told the Tribunal that the balance held in the client account of Groom Davies had been transferred to the firm at the time of the takeover. He accepted that some of the balance could have been fees due to the Respondent which had not yet been distributed and he acknowledged that the firm had charged an administrative fee for holding the money. He explained that this had been done on the advice of the firm’s auditors and the matter had been reported to the SRA. He conceded now that this may not have been correct but told the Tribunal that the firm had dealt with the matter entirely properly. He acknowledged that the Respondent had not given his permission for the firm to make a charge in this way and he confirmed that he was aware that the Respondent had reported the issue to the SRA.
54. In re-examination by Mr Rider, Mr Plummer told the Tribunal that he was now aware of the circumstances surrounding the provenance of the monies but he had not known at the time. He told the Tribunal that his relationship with the Respondent had started well but had sadly deteriorated. He believed that the reason for much of the conflict between them both had been the situation regarding the Respondent’s financial affairs and he was sorry that the relationship between them had suffered. He said that he had no knowledge of matters until the SRA had started to investigate. He conceded that he had had very little knowledge of the Respondent’s legal work at the time as they had not spoken much and the Respondent had often been out of the office. He told the Tribunal that he had always assumed that the Respondent had been doing “the right thing”.
55. Mr Plummer was recalled to give further evidence and was cross examined by Mr Barton. In cross examination, he confirmed that he had provided Essex Police with a statement which was dated 8 January 2009 although he said that he could not remember the statement at all. He acknowledged that his police statement did not mention the alleged argument between the Respondent and Ms Sandford and he accepted that this was in contrast to the statement that he had given to the FIO’s some two years later. He accepted that his statement to the FIO’s had referred to the fact that the Respondent had no authority to make demands of Ms Sandford and that he had not mentioned this to the police. He told the Tribunal that he could not recall the specific questions that he had been asked by the police and he could not remember making the statement.
56. Mr Plummer told the Tribunal that he could not say who had told him about the alleged argument between the Respondent and Ms Sandford. He said that on his return to the office the day after the transfer, Mrs Curtis had asked him to go to the

accounts department and he had thought that Ms Sandford had seemed upset. He did not think that the FIO's had referred to the argument and suggested that, perhaps, he had formed the impression that there had been an argument or his knowledge had been based on hearsay. He could not be sure whether the FIO's had asked him about the Abbey National banker's draft or the transfer and he could not recall whether he had been shown a copy of the draft or the client ledger. He was unable to remember the specific questions that he had been asked. He said that he was not aware that the Respondent had claimed that he had known about the transaction and had been involved in it. He did not accept Mr Barton's assertion that he had told the FIO's about the alleged argument with Ms Sandford in order to distance himself from the transaction. He said that he had no reason to do this and, in any event, he had been away from the office on the day that the transfer had taken place. He said that he would not have arranged for Mr RL to come into the office and approve the transfer to his wife if he had been trying to place the blame on the Respondent.

57. In continued cross examination, Mr Plummer acknowledged that by 2011, the SRA had been investigating matters and he confirmed that he had provided an explanation for the way in which he had acted. He accepted that his police statement had referred to the fact that, generally, fee earners were supposed to work within their areas of expertise. He conceded that there had been exceptions to this and there were occasions when the Respondent had undertaken conveyancing work. He did not accept that his police statement suggested that Mrs Curtis had told him that the Respondent was dealing with the transaction before the money had left the firm's account. He said that he could not have known that the Respondent was dealing with the matter before the transfer had been made because he had been away from the office on the day in question and, even if he had been present, it would not have made sense for him to have authorised the transfer of money to someone who was not a client. He told the Tribunal that he had not raised this issue with the Respondent because he had only been concerned with the fact that the money had been paid to the wrong person and not with the provenance of the funds and, in any event, the matter had been put right.
58. In re-examination by Mr Rider, Mr Plummer told the Tribunal that he had first become aware of the Abbey National banker's draft when he had been asked about the matter some time later by either the police or the SRA. The witness was asked to consider an attendance note which he had sent to the Respondent dated 13 March 2006 and which had referred to his "black file". Mr Plummer told the Tribunal that this was a reference to two files which contained letters and documents relating to the Respondent's debts. He confirmed that the Respondent knew that he was keeping these documents and that he had been concerned about the Respondent's financial position. He explained that the note also referred to a Mr G, who had been the Respondent's accountant at the time. Mr Plummer told the Tribunal that the Respondent had invited him to a meeting with Mr G in order to discuss an Individual Voluntary Arrangement (IVA). He had written to Mr G in order to set up an appointment and had attended at a subsequent meeting.
59. In answer to a question put by Mr Barton arising out of re-examination, Mr Plummer acknowledged that he had been pleased that the Respondent had agreed to go and see Mr G. He accepted that he had been in charge of the arrangements but said that he had been very concerned about the Respondent's financial position as he had been in

a huge amount of debt and had not filed any tax returns for a number of years. He acknowledged that he had intercepted mail and documents addressed to the Respondent and his wife but told the Tribunal that he had the Respondent's permission to retain the papers in a file. He added that he had dealt with a number of financial matters on behalf of the Respondent out of genuine concern. He conceded that the firm, under his stewardship, had later gone into liquidation but denied that this had anything to do with the events in question.

Trevor Alan Linn

60. Mr Trevor Linn gave evidence on behalf of the Respondent. He told the Tribunal that he had been admitted as a solicitor in 1994 and he was currently a sole practitioner of Linn & Associates, which was a firm that dealt almost exclusively with criminal defence work. He confirmed that the Respondent had been employed as a consultant at the firm since July 2009.
61. Mr Linn told the Tribunal that he had known the Respondent in a professional capacity for at least sixteen years. He confirmed that he had provided a reference on behalf of the Respondent during these proceedings and he regarded him as an honest man. He said that he had been aware of the police investigation at the time that the Respondent approached him with a view to joining the firm and he had decided to take the Respondent on nevertheless. He told the Tribunal that he could not speak highly enough of the Respondent who was well regarded by local practitioners and the police service. He confirmed that he had been willing to cancel a hospital appointment in order to give evidence as he wholeheartedly believed in the Respondent's integrity.
62. The witness told the Tribunal that he had been away from work for extended periods following heart surgery in 2009 and he had suffered a heart attack in May 2012 which had resulted in him spending a fortnight in hospital. He explained that the Respondent had ensured that client matters were dealt with properly and had kept him up to date with the situation at the firm. He told the Tribunal that the Respondent's involvement at the firm had helped him a great deal during this period.

Janis Ann Curtis

63. Mrs Janis Curtis gave evidence and was cross examined by Mr Rider. She confirmed that her statement was true to the best of her knowledge and belief. She told the Tribunal that she had worked as a legal cashier since 1988 and that currently she was employed part time by both Linn & Associates where her employer was Mr Linn and by Powells Law LLP where her employers were Mr Plummer and Ms Liddy. She said that she had known the Respondent since 1999 and she considered that he was somebody to whom she could turn to when needed. She said that she had always trusted the Respondent and believed him to be honest. She confirmed that she had also given a statement to Essex Police.
64. Mrs Curtis stated that she was very familiar with the requirements of the Solicitors' Accounts Rules. She explained that, at the time of the transaction, the firm had employed three cashiers and any one of them could initiate a payment from the firm's client account using the on-line banking system but could not authorise the

withdrawal which could only be done by a partner or director signing the relevant form. She told the Tribunal that she was not aware of any circumstances where money had left the client account without the authority of a partner or director.

65. The witness told the Tribunal that she had asked Mr Plummer for permission to open a conveyancing file in the Respondent's reference on or about 2 May 2006. Mrs Curtis said that Mr Plummer had confirmed that she could do so as the file related to a member of the Respondent's family. She told the Tribunal that there were certain ledgers which Mr Plummer referred to as the Respondent's "matters" because these did not form part of his usual criminal caseload.
66. Mrs Curtis told the Tribunal that she had discussed these proceedings with Mr Plummer as she had thought it best to inform him that she would be attending as a witness. She said that he had told her that she did not have to give evidence and he had asked her to "go over" the circumstances following the transfer of the £30,000 with him. Mrs Curtis said that her recollection of events differed from that of Mr Plummer. She said that she had never seen Ms Sandford cry. She could recall that, on her return to the office from holiday, Mr Plummer had told her that no money was to leave Mr RL's ledger account but he had not explained why. She said that she had spoken to Ms Sandford who had told her that money had been sent to Mrs RL in error. Mrs Curtis pointed out that Ms Sandford would not have been able to secure the release of the £30,000 herself because the bank system required a second person to authorise this by way of a PIN number. She said that herself, Ms Sandford and Ms Holmes were the three individuals who held the relevant PIN numbers.
67. Mrs Curtis said that Mr Plummer had claimed that the Respondent had "stood over" Ms Sandford and had "made" her carry out the transaction when, in fact, the accounts room was small and it would have been necessary for him to stand close by when talking to her. She said that Mr Plummer had become quite angry with her when she had told him that their recollections of the events in question differed. She commented that he would often get angry if someone did not agree with him as he liked to have his own way and she was used to this.
68. In continuing evidence, Mrs Curtis told the Tribunal that she was aware that monies had been transferred to the firm from Groom Davies. She said that the Respondent had always maintained that some of the money was owed to him in costs. She stated that Mr Plummer and Ms Liddy had decided to make a charge for the administrative costs of dealing with the funds. She said that the bill had later been cancelled and the auditors had told Mr Plummer that the money would have to be returned to the client account. She said that Mr Plummer and Mrs Liddy had then given instructions for the money to be transferred to the firm's office account as a "disbursement".
69. In cross examination by Mr Rider, Mrs Curtis confirmed that if she was away from the office then Ms Sandford would organise any transfers and would input the details on to the banking system. The relevant form would then be signed by either Mr Plummer or Ms Liddy and would be faxed to Ms Holmes who would check the details and release the money. She explained that if there was no partner available at the time then the form would have to be signed by a partner in the firm's other office. She explained that her police statement did not refer to this system because, by the time that she had spoken to the police, the firm was using a different procedure.

70. Mrs Curtis said that she understood that the details for the £30,000 transfer had been given to Ms Sandford to input on to the system and had then been passed to Ms Holmes in order for the money to be released. She did not know what type of form would have been used and said that she had not seen the form herself. Mrs Curtis told the Tribunal that she did not think that Ms Holmes would have released the money unless an authority had been signed by a partner or director as there would have been no documentation for her to check against in order to make sure that the details of the transaction were correct.
71. In continuing cross examination, Mrs Curtis was asked to consider a handwritten note which referred to a "TT" and the name of Mrs RL. She acknowledged that this appeared to be the document that she had described in her police statement as a copy of the BACS/CHAPS transfer but she told the Tribunal that this would not have been the authority for the withdrawal. She said that there must have been a form for the transfer but she could not recall having seen one. She told the Tribunal that having now reviewed the contents of her police statement, it appeared that she had not seen the signed form. The witness was then referred to an HSBC Bank "screen shot". Mrs Curtis told the Tribunal that she believed that she had seen the document before and she assumed that this was referred to in her police statement as the BACS/CHAPS transfer. She said that it was possible that this "screen shot" could have been signed by a partner or director as internal forms were not always completed. She noted that this version of the "screen shot" had not been signed and she assumed that any signed copy would still be held amongst the firm's records.
72. In answer to questions from the Tribunal, Mrs Curtis said that she could not recall if any other documents, other than the HSBC Bank "screen shot" and handwritten note had been exhibited to her police statement. She could not recall whether a BACS/CHAPS form had ever been mentioned to her by the police and she could not remember whether she had told the police that there needed to be a second accounts clerk in order to withdraw money from the client account.

Jacqueline Sheila Davies

73. Mrs Jacqueline Davies gave evidence and was cross examined by Mr Rider. She confirmed that the content of her statement was true to the best of her knowledge and belief. She told the Tribunal that she had been married to the Respondent for 38 years and they had three children and three grandchildren. She had worked with her husband since 1988.
74. Mrs Davies told the Tribunal that she could clearly recall the day that her husband had been arrested. She said that the police had removed a significant amount of paperwork from their home and it had been an extremely stressful experience. She described the Respondent as a "proper family man" who spent a great deal of time with his grandchildren. She said that he had never let her down. Mrs Davies told the Tribunal that the Respondent enjoyed his work and she did not know of anyone who did not like him. She said that he had never been dishonest in his work and she would not expect him to be.

75. The witness confirmed that the properties at 98 and 100 Pier Avenue had been owned by the Respondent. Mrs Davies told the Tribunal that the premises at number 98 had been sold to Mr Plummer. She explained that at the time in question, the property at number 100 had been let out as a shop and the flat above had been empty. She stated that whilst she and the Respondent had been abroad, Mr Plummer had knocked through into the first floor of the premises from number 98. She recalled that there had been some discussions at the time about Mr Plummer taking over the property at number 100 but nothing had been agreed and the Respondent had not given his permission for Mr Plummer to gain access to the property in this way.
76. Mrs Davies told the Tribunal that Mr Plummer had not paid any rent for the premises and the Respondent had been forced to issue legal proceedings. In addition, she said that the Respondent had taken legal advice in order to recover money that he was owed in outstanding billing from the time that Groom Davies had been taken over. She said that the legal action against Mr Plummer together with the police investigation and the subsequent Tribunal proceedings had made her very ill. She told the Tribunal that Mr Plummer had treated the Respondent with “utter contempt”. She said that her husband had always worked hard for the firm and he did not deserve this.
77. In cross examination by Mr Rider, Mrs Davies told the Tribunal that she had not been involved in the negotiations to take over Groom Davies in 2005 and she did not know the full terms of what had been discussed or agreed. She acknowledged that Groom Davies had been in some financial difficulties before the takeover and she confirmed that she did not have any detailed knowledge of her husband’s legal action against Mr Plummer.

Rachel Sandford

78. Ms Rachel Sandford gave evidence and was cross examined by Mr Rider. She confirmed that her statements were true to the best of her knowledge and belief and told the Tribunal that she had been employed by the firm as an accounts clerk.
79. In cross examination by Mr Rider, Ms Sandford explained that in the absence of Mrs Curtis, a BACS/CHAPS payment form would be completed, usually by the fee earner’s secretary and would then be signed by the fee earner and also by a partner or director. She explained that Mr Plummer and Ms Liddy were the partners in the office where she had worked. She stated that if neither of them was available when a BACS/CHAPS payment was required then the request would be faxed to Ms Holmes in the firm’s other building who would have the form checked and signed by Ms SW (2) who worked from that office. She denied that the form would be signed and completed retrospectively if an urgent transfer needed to be made.

Angela Holmes

80. Ms Angela Holmes gave evidence and was cross examined by Mr Rider. She confirmed that the contents of her statements were true to the best of her knowledge and belief. She told the Tribunal that she had worked as an accounts clerk at the firm’s conveyancing office from 2006 until the date of her redundancy in 2008. She explained that communication between the firm’s offices would be by telephone or staff would walk between the two buildings.

81. Ms Holmes explained that she had seen a number of BACS/CHAPS payment forms during the time that she had been employed at the firm. She explained that the firm's system operated so that the cashier who had set up the payment would not be able to release the money. If she had initiated the payment then she would send the relevant form over to either Mrs Curtis or Ms Sandford in order to release the money. She said that if the payment was set up by one of the cashiers in the other office then it would be faxed over to her and she would check the details and get Ms SW (2) to sign the form. If she discovered that there was a problem with the form then she would notify the other office who would arrange for the form to be amended and sent back to her so that the money could be released.
82. In cross examination by Mr Rider, Ms Holmes confirmed that there would always be at least one cashier in each office at all times. She said that her checks would be restricted to ensuring that there was sufficient money in the account in order to make the withdrawal and that the correct details had been entered on the form.

Findings of Fact and Law

83. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.
84. **Allegation 1.1: Contrary to Rule 1 (a), (d) and (e) of the Solicitors Practice Rules 1990 (as amended):**
- (i) **He acted in a way which compromised or impaired or was likely to compromise or impair his independence or integrity;**
 - (ii) **He acted in a manner which compromised or impaired or was likely to compromise or impair the good repute of the solicitors' profession in that he acted in or otherwise facilitated transactions during the course of which he failed to be alert to their suspicious characteristics;**
 - (iii) **He acted in a manner which compromised or impaired or was likely to compromise or impair the solicitor's proper standard of work.**

Dishonesty was not an essential ingredient of allegation 1.1 (i). Nevertheless, the case was put against the Respondent on the basis that he was dishonest. Alternatively, that the conduct of the Respondent was reckless.

Allegation 1.2: Contrary to Rule 15 (2) of the Solicitors Accounts Rules 1998, he paid or caused to be paid into client account money that was not client money;

Allegation 1.3: Contrary to Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998, he permitted the firm's client account to be used as a banking facility to receive monies and make payments which had no proper connection with any legal transaction on which the firm was instructed to act.

- 84.1 Mr Rider told the Tribunal that the Respondent had worked at the firm as a consultant and later as an employee. During his time at the firm, the Respondent had been the head of the criminal department and had dealt with at least one conveyancing matter, including the purchase of “Mark’s Stores” for his son in law, Mr RL. Mr Rider stated that in interview with the FIO’s, the Respondent had admitted that he had not known the detail of the Law Society’s “Warning cards” in relation to money laundering and property fraud and that he did not have an in-depth knowledge of the provisions of the CML Handbook. However, Mr Rider said that it could be assumed that the Respondent must have had at least a basic knowledge of the relevant requirements.
- 84.2 The Tribunal was reminded that Mrs SW had acted for the seller and Ms Spink had acted for the buyer and mortgage lender in relation to the property at 49 Wilton Road. Mr Rider told the Tribunal that, in interview with the FIO’s, the Respondent had confirmed that the purchaser, Mr DW, had been known to him as a client. He had also confirmed in interview that he had spoken to Mrs SW about this matter and he had indicated that he may be able to lend the balance of the purchase price to Mr DW, limited to the sum of £10,000 through the sale of his daughter’s house. Mr Rider stated that following this conversation, Ms Spink and Mrs SW had sent a memo to Ms SW(2) which had highlighted their concerns about the fact that the value of the property had increased within a six month period and which had referred to the Respondent’s conversation with Mrs SW.
- 84.3 Mr Rider told the Tribunal that on around 29 June 2006, an Abbey National banker’s draft in the sum of £20,000 from an account held in the name of Ms RH had arrived at the office. He stated that the Respondent accepted in interview that the draft had been delivered by Mr DW. Mr Rider stated that, according to Ms RH, the £20,000 had been a loan obtained by her partner and she had arranged for it to be transferred to the firm. In interview with the FIO’s, the Respondent had confirmed that he had known Ms RH vaguely as the partner of his client, Mr GM. Mr Rider said that the memorandum sent to Ms Spink from Mrs Curtis made it clear that the Respondent had given the banker’s draft to Mrs Curtis and that she had spoken to Ms Spink’s secretary who had asked her to send it to Ms Spink and not to pay it in. Mr Rider told the Tribunal that Ms Spink had then sent a memorandum to the Respondent on 4 July 2006 which had returned the draft to him. Mr Rider stated that the memorandum from Ms Spink had put the Respondent on notice that the money could not be paid into the firm’s client account as it was from a third party source.
- 84.4 Mr Rider explained that on about 6 July 2006, the banker’s draft had been paid into the firm’s client account by Ms Sandford and it had been allocated to the ledger for Mr RL’s purchase. Mr Rider told the Tribunal that the Respondent claimed that he had discussed the matter with Mr Plummer but Mr Plummer denied this. Mr Rider said that, in interview, the Respondent had admitted that the money had no connection with Mr RL’s purchase. In addition, the Respondent had accepted that the money should not have been paid into client account but he had claimed that this had been done on Mr Plummer’s instruction. Mr Rider reminded the Tribunal that the Respondent’s explanation for not returning the money to Ms RH had been because his daughter had intended to make £10,000 available as a short term unsecured loan in order to assist Mr DW with his purchase.

- 84.5 The Tribunal was told that on 19 July 2006, the Respondent had spoken to Ms Sandford and had asked her to transfer £30,000 from the firm's client account into a bank account in the name of his daughter. Mr Rider said that the Respondent accepted that the £30,000 represented the £20,000 that had originally been paid by Ms RH and the £10,000 loan from his daughter. Mr Rider referred the Tribunal to a statement given to the police by Ms Sandford in which she had explained that the Respondent had given her a piece of paper containing some bank details. Mr Rider said that, in interview, the Respondent had not accepted that this piece of paper contained his handwriting. Mr Rider reminded the Tribunal that the monies had then been paid from the bank account of the Respondent's daughter to an account in the name of Mr DW and then in turn were transferred from Mr DW to the firm. He said that the Respondent had claimed that this "circular" payment had been discussed and authorised by Mr Plummer but this was denied by Mr Plummer.
- 84.6 Mr Rider told the Tribunal that Ms Spink had believed that the balance of the purchase funds had come from Mr DW himself as the Respondent had not informed her that the money had come from Ms RH and his daughter. Mr Rider said that had Ms Spink known the true facts, she would have thought that this was significant as she would have been under an obligation to disclose this information to the mortgage lender. Mr Rider said that from the moment that the banker's draft had been paid in, it had always been intended that the transfer would take place. He told the Tribunal that the transaction had been suspicious and had resulted in a police investigation although, ultimately, no criminal charges had been brought against the Respondent.
- 84.7 Mr Rider stated that the Respondent had acted dishonestly in relation to this transaction and he referred the Tribunal to the "combined" test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. He said that the objective part of the "combined" test was satisfied because reasonable and honest people would consider that the Respondent's actions had been dishonest. In addition, he claimed that the Respondent had known that the banker's draft had been provided by Ms RH for Mr DW's purchase. He had known that Ms Spink had rejected the money because it had come from an unknown third party and he had known that it would have been necessary for the mortgage lender to have been informed about this. Mr Rider said that the Respondent had been instrumental in placing the £20,000 into the firm's client account by allocating it to his son-in-law's ledger with the intention that the money, together with the sum of £10,000 from his daughter, would be forwarded to his daughter and then on to Mr DW and ultimately to the firm. Mr Rider said that the Respondent had been unable to pay the money into Mr DW's account direct and so he had circumvented this by arranging a "circular" payment. He said that the Respondent had not informed Ms Spink of the situation as she would have been obliged to report this to the mortgage lender. Mr Rider claimed that this had been a deliberate deception on the part of the Respondent and he had known that what he was doing was dishonest.
- 84.8 In his closing submissions, Mr Rider reminded the Tribunal that the Respondent admitted to having facilitated the payment of the banker's draft into the firm's client account and the transfer of the £30,000. He told the Tribunal that the Respondent had initially proposed paying the banker's draft into Mr DW's account but when it had been returned by Ms Spink he had then arranged for the money, together with the £10,000 belonging to his daughter to be debited from Mr RL's ledger and paid to his

daughter. The money had then been transferred on to Mr DW who had arranged for it to be paid back into the firm's client account. Mr Rider said that the transaction had completed on the basis that the lender had not been told about the true source of the monies.

- 84.9 Mr Rider said that the Respondent denied being dishonest on the basis that the two transactions had been authorised by Mr Plummer. He stated that Mr Plummer had given evidence at length and attempts had been made to undermine his credibility. He suggested that it did not matter whether Mr Plummer had known that the Respondent was carrying out conveyancing work or not as this had no bearing on the central aspect of the case. He acknowledged that Mrs Curtis had said that she had spoken to Mr Plummer about the matter and he conceded that Mr Plummer's memory may not have been as good as it might have been. He said that, notwithstanding this, Mr Plummer had been unequivocal in stating that he did not have any knowledge of the banker's draft or the transfer of the £30,000 to Mrs RL. Mr Rider pointed out that no evidence had been adduced to show how or when Mr Plummer may have become aware of these transactions. He suggested that the transactions had been instituted by the Respondent with a view to ensuring that the money ended up at the firm and to enable Mr DW's purchase to complete. Mr Rider claimed that this was a subterfuge on the part of the Respondent and was dishonest. Mr Rider reminded the Tribunal that Mr Plummer had admitted to keeping files on the Respondent but had stated that he had done so with the express knowledge of the Respondent and documentation had been produced to substantiate this. Mr Rider submitted that it was perfectly understandable that Mr Plummer should have had serious concerns about the Respondent's financial position and the fact that he had retained so called "secret files" should not undermine his credibility.
- 84.10 In his submissions to the Tribunal, Mr Barton stated that unless the Applicant could demonstrate that the Respondent had carried out the transactions knowing that it was intended that these monies would be transferred by Mrs RL to Mr DW and then by Mr DW to the firm then the case against the Respondent should fail. He said that it would be necessary for the Applicant to prove that the Respondent had deliberately deceived the firm and there was no evidence to support this. He claimed that the Tribunal would need to be sure that Mr Plummer had not known anything about the transactions and it would need to find that the Respondent had been lying in order to establish that he had acted dishonestly to the required standard of proof.
- 84.11 Mr Barton acknowledged that the Respondent had not given evidence to the Tribunal. He explained that the Respondent had provided a full defence to the allegations in the responses that he had sent to the SRA on 20 and 27 June 2011. He submitted that these responses had been adopted by the Applicant when it had served its Civil Evidence Act Notice which confirmed that it would be relying on the documentation contained within the proceedings as proof of the truth. In view of this, Mr Barton stated that the responses should be treated as the Respondent's evidence. Mr Barton claimed that the transcript of the interview with the FIO's demonstrated that the Respondent had consistently maintained that Mr Plummer had known about and authorised the transactions. Mr Barton said that if that explanation might be right then the Respondent was entitled to the benefit of the doubt. He submitted that Mr Plummer had done his best to obfuscate and avoid answering direct questions during his evidence and had tried to distance himself from the allegations. Mr Barton

claimed that Mr Plummer was a disingenuous witness who was seeking to serve his own purposes.

- 84.12 Mr Barton stated that Mr Plummer had accepted in evidence that the costs that had been transferred to the firm for holding the money received from Groom Davies had to be returned and he submitted that this was an example of a person who was acting expediently. He said that this was not the standard that would be expected of a solicitor who was giving evidence against a fellow professional. He claimed that Mr Plummer's police statement was yet another example of his expediency as, in that statement, Mr Plummer had accepted that there were occasions when fee earners did undertake work outside of their areas of expertise. Mr Barton said that by the time that Mr Plummer had given his statement to the FIO's in February 2011, he would have known that the Respondent had been interviewed by the SRA and he would have been aware of the Respondent's claim that he had known what was going on and had sanctioned the transfer. Mr Barton told the Tribunal that this was the reason for the differences between the statements given to the FIO's and to the police and he suggested that Mr Plummer's absence of clarity in relation to this matter was extraordinary.
- 84.13 The Tribunal was told that the Respondent was currently aged 59. He had worked as a court clerk since 1974 and qualified as a solicitor in 1985. Mr Barton submitted that it was simply inconceivable that the Respondent would throw his career away for the sake of two isolated transactions such as these. He pointed out that the police had investigated and had decided not to prosecute the Respondent and it would be necessary for the Applicant to prove its case to the same standard. Mr Barton said that it was being suggested that the Respondent had dishonestly assisted Mr DW but there was no evidence to demonstrate the Respondent's motive for doing so and there would have been no benefit to the Respondent in helping Mr DW in this way. Mr Barton submitted that the Applicant was trying to construct a case by alleging that the Respondent had helped Mr DW to purchase a property in a way that avoided telling the mortgage lender that not all of the money had come from Mr DW personally. Mr Barton said that this was quite a case to put against a solicitor of the Respondent's standing and he referred the Tribunal to the testimonials that had been provided as evidence of the Respondent's integrity. Mr Barton said that the case against the Respondent relied on Mr Plummer and if the Tribunal considered that Mr Plummer was an unreliable witness then the case against the Respondent must fail.
- 84.14 Mr Barton reminded the Tribunal that the Respondent had accepted in interview and subsequently that the banker's draft should not have been paid into the firm's client account. He said that the Respondent had admitted the allegations against him from the start but denied that he had been dishonest. Mr Barton said that the SRA had believed that a single accounts clerk, instructed by Mr Plummer, could despatch money herself but it was now apparent that this was not the case. Mr Barton said that the SRA had failed to investigate matters properly. In addition, he claimed that the Applicant's case relied on Mr Plummer's assertion that there had been an argument between the Respondent and Ms Sandford whereby the Respondent had applied improper pressure on Ms Sandford to make the withdrawal. Mr Barton stated that the evidence from both Ms Sandford and Ms Holmes showed that this was not the case and Mr Plummer's evidence on this point was either made up or exaggerated.

- 84.15 Mr Barton pointed out that the document which had initiated the withdrawal from the firm's client account had never been found despite a thorough police investigation and the Respondent had not had access to the firm's accounts software. Mr Barton said that although the Respondent accepted that the withdrawal had not been connected with any legal transaction, he did not admit that he had been dishonest and there was nothing to indicate otherwise. Mr Barton submitted that there would need to be an "irresistible inference" that the Respondent had been dishonest before the Tribunal could make such a finding. He stated that there was no evidence that the mortgage lender had actually been deceived and he reminded the Tribunal that in interview, the Respondent had made it clear that Mr Plummer was fully aware of the sequence of events although it appeared that the SRA had not believed him. Mr Barton told the Tribunal that during the investigation, the Respondent had accepted that, in the light of what had transpired, the transaction had been wrong but he had not believed that he was doing anything wrong at the time.
- 84.16 Mr Barton submitted that it was not surprising that the police had decided not to prosecute the Respondent as a criminal court would have had no difficulty in concluding that the Respondent had not been dishonest. Mr Barton told the Tribunal that that there would need to be some context or reason for the Respondent to have acted dishonestly and the suggestion that the Respondent had orchestrated the transaction to allow Mr DW to mislead his mortgage lender was improbable. In conclusion, Mr Barton stated that the case against the Respondent relied on Mr Plummer's evidence and on the assertion that the Respondent had deliberately deceived the firm and the Respondent was entitled to receive the benefit of any doubt in relation to this matter.
- 84.17 The Tribunal had considered the facts and documents before it and attached such weight to the evidence as it saw fit. All the allegations in this case were admitted by the Respondent and the Tribunal found them to be substantiated but the Respondent denied that he had been dishonest. It was the Applicant's case that from the date that the Respondent received a memorandum from Ms Spink stating that the banker's draft received from Ms RH should not be paid into the firm's client account, as it was not client money, he knew that the funds could not be utilised legitimately. He then took deliberate steps to ensure that the funds reached Mr DW's client account by disguising the source of them, using his son in law's client account for that purpose – deceiving the firm's cashiers, and in turn undermining the protection of the mortgage lender. By taking these deliberate and calculated steps the Tribunal accepted the Applicant's case against the Respondent and found that the Respondent had acted dishonestly.
- 84.18 In making this finding, the Tribunal applied the twin test set out in Twinsectra. It was clear that a member of the public would consider that such action was dishonest and further, having been given an explicit warning that he could not pay the money into his firm's client account, the Respondent must have realised that in so doing, he was being dishonest. The Respondent was an experienced solicitor who had been qualified for a number of years and who had run his own practice. The Tribunal accepted Mr Plummer's evidence that he had not authorised the transactions and there was no evidence to the contrary. Even if he had given such authority, this would not have allowed the Respondent to do what he did and would not have converted a dishonest transaction into an honest one.

Previous Disciplinary Matters

85. None.

Mitigation

86. Mr Barton invited the Tribunal to consider a penalty other than an order that the Respondent should be struck off the Roll of Solicitors. He said that in the event that the Tribunal decided that the Respondent should be struck off, he wished to apply for the order to be suspended as, otherwise, there would be serious implications for Mr Linn's practice where the Respondent was currently working.
87. Mr Barton stated that Salisbury v The Law Society (2009) 2 ALL ER 487 allowed the Tribunal to consider a course of action other than a strike off. He suggested that it would be unfair for the Respondent to take full responsibility for this matter if the Tribunal were of the view that Mr Plummer had been involved in some way. Mr Barton said that the Respondent posed no risk to the public or the reputation of the profession and he referred the Tribunal to the references and testimonials that had been produced on behalf of the Respondent. He observed that these events had taken place over six years ago and had been an isolated incident in what was an otherwise long and productive career. There had been no suggestion that the Respondent had gained anything from the transaction and no criminal charges had been brought against him. Mr Barton acknowledged that the Tribunal's main consideration must be the protection of the public and the reputation of the profession. He submitted that, on the facts, the Tribunal could properly consider a period of suspension as an alternative to a strike off. He suggested that it was difficult to understand what had occurred here as there had been no motive for the Respondent to act dishonestly and no pressure had been put upon him. Mr Barton told the Tribunal that this was not a case of serial mortgage fraud but, rather, was at the opposite end of the spectrum in terms of the severity of the misconduct.
88. The Tribunal was told that the Respondent was the "lynch pin" of Mr Linn's practice and Mr Barton invited Mr Linn to directly address the Tribunal. Mr Linn explained that he was currently on sabbatical from his firm due to ill health. He confirmed that he was a sole practitioner and described the Respondent as the "backbone" of the practice. He told the Tribunal that the Respondent was now the most experienced member of staff at the firm and if the Respondent was no longer able to practice as a solicitor then he would need to seriously consider whether he could continue to run the firm. He confirmed that he employed a caseworker, two administrative staff and two solicitors, one of whom was very newly qualified. He said that the current turnover at the firm was in the region of £500,000 per annum and the Respondent was responsible for approximately 40% of the firm's fee income. He was unsure whether he would be able to employ someone to take the Respondent's place as the firm was located in a fairly remote area and it was difficult to recruit suitable candidates. He told the Tribunal that it would be very unfortunate if the firm could no longer continue to trade as it had a good reputation in the local area.
89. In reply to the Respondent's mitigation, Mr Rider acknowledged that the Tribunal must consider the public interest when deciding the appropriate sanction in this case.

He stated that a finding of dishonesty against a solicitor suggested that the public needed to be protected but it was for the Tribunal to make this decision.

Sanction

90. The Tribunal considered its own Guidance Note on Sanctions. This referred to Bolton v The Law Society (1994) 1 WLR 512 in which it was stated that the fundamental principle and purpose for the imposition of sanctions by the Tribunal was "...to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth...". All of the allegations had been admitted and had been substantiated and the Respondent had been found to have been dishonest. In cases where dishonesty had been proved, this almost invariably lead to striking off, save in exceptional circumstances.
91. The Tribunal did not consider that this case came within the small residual category of cases where striking off was not appropriate. The dishonesty was not at the very lower end of the scale and the Tribunal did not find that any exceptional facts applied which would justify the imposition of a penalty other than striking off. The Tribunal had determined that the Respondent's misconduct was at the very highest level, as he had been found to have been dishonest and in view of this and in order to protect the public and the reputation of the profession, the Tribunal considered that the appropriate penalty in this case was that the Respondent be struck off the Roll of Solicitors.
92. The Tribunal had been invited to suspend any order for strike off. The Respondent was not practising on his own account and although the Tribunal had sympathy with Mr Linn's position, there were other solicitors employed at the firm who could manage the running of the practice, at least in the short term. Accordingly, the Tribunal decided that it was not appropriate to suspend the order for strike off.

Costs

93. The Applicant's claim for costs was £27,734.49. Mr Barton told the Tribunal that there had been a lack of disclosure by the Applicant in this case which had increased costs and was one of the reasons why it had not been possible to conclude matters on the first occasion. He said that he could not object to an order for costs being made in principle and he was content for the Tribunal to make a summary assessment of costs. He confirmed that the Respondent had supplied details of his financial means to the Tribunal.
94. The Tribunal made a summary assessment of the Applicant's costs fixed in the sum of £25,000. The proceedings had been properly brought and it was appropriate that the Respondent should pay the Applicant's costs. The Tribunal considered Merrick v The Law Society (2007) EWHC 2997 (Admin) and D'Souza v The Law Society (2009) EWHC 2193 (Admin) in deciding whether the Respondent, who was effectively being deprived of his livelihood, had the means to satisfy the order for costs. The Tribunal decided that the Respondent had sufficient assets in order to enable him to meet his costs liability and accordingly ordered that the Respondent should pay the Applicant's costs fixed in the sum of £25,000.

Statement of Full Order

95. The Tribunal Ordered that the Respondent, David Davies, 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 £25,000.00.

Dated this 12th day of November 2012
On behalf of the Tribunal

J. N. Barnecutt
Chairman