SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10894-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTHONY DAVID PRESTON Respondent

Before:

Ms A. Banks (in the chair)
Mr R. Nicholas
Mr P. Wyatt

Date of Hearing: 15th October 2012

Appearances

Geoffrey Hudson, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR, for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were:

1.1. The Respondent acted in breach of the Solicitors Accounts Rules 1998 ("SAR"), in particular:

(a) Rule 7 in that he failed to correct ledger entries posted in error and failed to correct debit balances on client ledgers in a prompt manner;

(b) Rule 22(5) in that money withdrawn in relation to clients exceeded the money held on behalf of those clients;

(c) Rule 32(5) in that the current balance on client ledger accounts was not shown or readily ascertainable;

(d) Rules 32(1) and (2) in that entries in client ledger accounts were not properly written up to show his dealings with client money;

(e) Rule 32(7) in that he did not carry out a reconciliation of the firm's deposit account at least every five weeks;

(f) Rule 32(2) in that he failed to maintain a record of all dealings with client money in a client cash account (i.e. a "cash book");

(g) Rule 22(1) in that in the transactions referred to in allegations 1.2 and 1.3 below, clients' funds (namely the difference between the price paid by the purchasers and the price received by the vendors) were improperly withdrawn from client account and paid to third parties. It was alleged the Respondent had acted dishonestly;

(h) Rule 19(2) in that he transferred funds from client to office account in respect of his fees without first sending a bill of costs or other written notification of the costs incurred

(i) Rules 15 and 22 by holding in his firm's client account monies which he was unable to identify as being client monies and subsequently paying out such monies to third parties without due authority.

1.2 The Respondent acted in breach of Rule 6(2) of the Solicitors' Practice Rules 1990 ("SPR") and (after July 2007) Rule 3.07 of the Solicitors' Code of Conduct 2007 ("SCC") in that he acted for both the seller and buyer in four conveyancing transactions without the requisite conditions being met. It was alleged the Respondent had acted dishonestly.

1.3 The Respondent acted in breach of SPR Rules 1(a), (c) and (d) and (after July 2007) SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.01 in that in the transactions referred to in allegation 1.2 above he:

(a) failed to inform his vendor and purchaser clients that he was also acting for the other party in that transaction;

(b) misled his vendor and purchaser clients as to the selling prices of properties; and/or

(c) failed to inform his vendor and purchaser clients of the discrepancy between the price paid by the purchasers and the price expected by the vendors.

It was alleged the Respondent had acted dishonestly.

1.4 The Respondent acted in breach of Rule 15 SPR and Rule 2.03 SCC in that he failed to give his clients the best information possible about the likely overall cost of matters at the outset and as the matters progressed.

1.5 The Respondent acted in breach of Rules 1(a) and (d) SPR and (after July 2007) Rules 1.02 and 1.06 SCC in that he purported to be in partnership when no real partnership existed.

1.6 The Respondent acted in breach of Rule 20.03 SCC in that he did not obtain the SRA's authorisation before practising as a sole practitioner.

The Respondent admitted allegations 1.1(a), (b), (e), (f), (h), allegation 1.2 but not dishonesty, allegations 1.3(a) and (c) but not dishonesty, and allegations 1.4 and 1.6.

Documents

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

Applicant:

- Application dated 2 December 2011 together with attached Rule 5 Statement and all exhibits;
- Submissions on behalf of the Solicitors Regulation Authority dated 10 October 2012;
- Applicant's Schedule of Costs dated 4 October 2012.

Respondent:

- Response of Anthony David Preston to the Rule 5 Statement dated 30 July 2012;
- Supplemental Statement of Anthony David Preston dated 10 October 2012;
- Letter dated 3 October 2012 from the Respondent to Mr Hudson.

Factual Background

3. The Respondent, born on 21 January 1957, was admitted to the Roll on 1 May 1982. At all material times the Respondent claimed he was practising in partnership as Preston & Company at 7a Wyndham Place, Marylebone, London, W1H 1PN ("the firm").

4. On 28 June 2010, the SRA investigated the books of accounts and other records of the firm and produced a Forensic Investigation Report dated 2 November 2010.

5. The Investigation Officers from the SRA identified six client ledgers where the entries were not in chronological order, with the result that the current balance was not shown or readily ascertainable. None of the Respondent's client ledgers showed a running balance and the Investigation Officers identified eleven matters with debit balances on the client ledger.

6. In an interview with the Investigation Officers on 10 August 2012, when the Respondent was asked why there was no running balance on his ledgers, he replied:

> "I suppose it was just difficult to do and the accounts were never that difficult to sort of work out a running balance with a calculator……"

7. The Investigation Officers found that the deposit account operated by the Respondent was not included in the reconciliations carried out. During a visit from the SRA's Practice Standards Unit on 1 November 2005, the Respondent had been advised that client account reconciliations should include monies held in designated deposit accounts. Despite this, the Respondent said during his August interview that he did not realise he needed to reconcile the deposit account and he did not recall the conversation with the PSU inspector in 2005.

8. The Investigation Officers found that no cash book was being maintained. During the August interview when the Respondent was asked if there was a reason for this, he replied:

> "No, I'm not even sure I know what one is but I have not got one ….. I have never had one".

9. The Investigation Officers found that many of the firm's client ledgers did not identify the nature of the transactions being recorded adequately or at all. It was frequently unclear whether transactions related to a sale, or purchase or other matter relating to the property. Very few of the ledgers identified the lender where mortgage advance monies had been received into client account.

10. The Respondent acted for the buyer and seller in four conveyancing transactions in which it did not appear that the conditions set out in Rule 6 SPR and Rule 3 SCC were met. In each of those transactions, the purchaser client paid substantially more for the property than the vendor client was expecting to receive. The difference was paid to Mr W-T, who acted as agent on all four transactions. The total he received was £88,000. The Respondent admitted in his August 2010 interview that in all four transactions he had acted for both the purchaser and the vendor without either client being aware that he was also acting for the other party in the transaction.

11. All four transactions involved properties at a block of flats where Mr W-T had formerly been a House Manager. Mr W-T was also a client and a social acquaintance of the Respondent. During the August 2010 interview, the Respondent said that in respect of all four transactions, the prices notified to his vendor and purchaser clients respectively were different, as each matter involved a sub-sale to Mr W-T. The Respondent admitted that his clients were not aware of Mr W-T's role in the transactions and that there was no documentation on the files to show that there had been a sub-sale to Mr W-T.

12. Mr W-T also received an agent's commission which was paid by either the purchaser only, or by both the purchaser and the vendor. On the majority of the files reviewed by the Investigation Officers, there was no invoice from Mr W-T or payment authorisation from the client. The Respondent stated in the August 2010 interview that he would normally receive either written or verbal authorisation and it was possible he had not printed and filed copies of emails in which such authorisation had been given.

13. During the August 2010 interview with the Investigation Officers, the Respondent:

- said he was not aware of the detail of Rule 3 SCC but was "aware where he shouldn't" act for both parties in transactions

- admitted he would not refer to the SCC if he was thinking of acting for a buyer and seller, and had not done so previously when he had so acted

- when asked if he was aware that there were restrictions on acting for the buyer and seller in conveyancing transactions, he said:

> "Yes I have always thought that if there were existing clients or you had their consent or something like that"

- said that he had not often acted for both parties in conveyancing transactions and it was always:

> "in circumstances where I had acted sort of for one or other of them before not on a regular basis like you say but I knew them"

- Said he did not think there was any conflict of interest when he had so acted and that:

> "it was always in the [block of flats] where I knew the block I had friends who live there and I'd done a lot of work in the block….."

<u>271 GE Gardens</u>

14. The Respondent acted for the vendor and the purchaser respectively in the sale and purchase of 271 GE Gardens in 2009. During his interview with the Investigation Officers in August 2010, the Respondent confirmed there was no written authority from either client to act for the other and that neither client was aware the Respondent was acting for the other. The Respondent accepted he had acted in breach of Rule 3 SCC because the conditions for acting for both parties had not been met.

15. In an email to the Investigation Officer on 8 July 2010, the purchaser said she was "totally unaware that Preston and Co represented the vendor" and that she had "absolutely no idea that [Mr W-T] had bought the property". In a letter dated 18 March 2010 from the vendor's solicitors to the firm, it was clear that the vendor was also unaware of these matters.

16. On 2 September 2009, the Respondent wrote to the vendor purporting to confirm that "after further negotiations" the vendor had agreed to accept £335,000 for his property. On the same day, and in the knowledge that the vendor had been led by the Respondent to believe the sale price of his property was £335,000, the Respondent told the purchaser that he had "exchanged at £365,000".

17. The completion statement prepared by the Respondent for the vendor dated 2 September 2009 showed a sale price of £335,000. However there was no contract on the file showing that price. The completion statement prepared by the Respondent for the purchaser, also dated 2 September 2009, showed the purchase price as £365,000. The Transfer Form TR1 dated 9 September 2009 and the application dated 8 October 2009 to register the transfer at the Land Registry, both of which were prepared by the Respondent, gave the purchase price as £365,000.

18. The purchaser paid £381,932 into the firm's client account in three payments during August and September 2009. On 9 September 2009 (the client ledger incorrectly recorded all September transactions as November) the sum of £335,000 was transferred to the vendor. After payment of costs and disbursements, the sum of £30,000 was paid to Mr W-T on 9 September 2009 from the purchaser's client account. On the same day, the sum of £5,025 was paid to Mr W-T from the vendor's account in respect of commission.

19. During the interview in August 2010 the Respondent stated there was a sub-sale to Mr W-T, who then sold the property to the purchaser for a profit. The Respondent confirmed neither client was aware of Mr W-T's role in the transaction. There was no evidence that the property was first sold to Mr W-T and then sold to the purchaser. During the August 2010 interview the Respondent stated:

- The reason there was no documentation on the files to show a sale to Mr W-T was that he had not drawn up any such documents

- A possible reason why there was no signed contract on either the sale or purchase file was that the Respondent would sometimes thin files to make them less bulky before putting them into his garage for storage

- He did not know what the price would have been on the contracts had they been available, and said that sometimes contracts were signed without a price on them

- He believed he had fulfilled his duty to his clients as each client got what they expected

20. In reply to a question about how Mr W-T had bought the property when there was no documentary evidence of his involvement, nor was there a contract where he was named and no funds had been received from him, the Respondent stated:

> "Well, he, he, well I say he didn't buy it and he didn't complete it and didn't complete the purchase on it, but he was just the middle man who flipped the contract, the [notional] contract if that's what it is"

21. The vendor, on learning that the purchaser had paid £365,000 for his flat, instructed a firm of solicitors to pursue a potential claim against the firm for breach of contract, breach of trust, misrepresentation and deceit. On 26 March 2010, the Respondent paid £30,000 into the firm's office account and on 6 April 2010 that sum was paid to the vendor's solicitors dealing with this claim. During the August 2010 interview the Respondent confirmed he had made the payment into office account to cover the payment to be made to the vendor, and that he had done so as he did not wish to become involved in litigation due to his health and because he was on the verge of retiring. He also stated that Mr W-T had repaid "some …. but not much" of the £30,000.

87 GE Gardens

22. The Respondent acted for the seller and the purchasers in connection with the sale and purchase of a property at 87 GE Gardens in 2008. During the interview in August 2010 the Respondent confirmed neither client was aware that he was acting for the other party, and he accepted he did not meet the requirements of Rule 3 in order to act for both parties.

23. On 4 February 2008 in a telephone conversation with one of the purchasers, the Respondent noted the purchase price was £540,000. On 7 February 2008, the Respondent sent an email to the vendor stating his understanding that the flat was to be sold for £520,000. On 20 February 2010 the Respondent received an email from one of the purchasers stating:

> "Perhaps you can contact [Mr W-T] to get the vendors soliciters [sic] details".

The Respondent did not respond to this email or at any time inform the purchasers that he was acting for the seller.

24. In an email dated 15 April 2008 from Mr W-T to the Respondent, Mr W-T stated he was to receive a commission of 1.5% from the seller. There was no authorisation from the seller on the file for this payment, although it was shown in the completion statement prepared for the seller. A contract signed by the purchasers dated 3 April 2008 showed a purchase price of £540,000. It recorded details of the seller. However, there was no contract on the sale file.

25. A completion statement dated 4 April 2008 prepared by the Respondent for the purchasers showed a purchase price of £540,000. A completion statement dated 4 April 2008 prepared by the Respondent for the seller showed a sale price of £520,000.

26. In addition to the purchase, the Respondent was acting for the purchasers in relation to a lease extension for the property. The premium for the extension was £25,000 higher than anticipated and the parties agreed they would split the cost of the increase so that each would pay £12,500 towards it. The purchasers therefore in fact paid £527,500 (£540,000 less £12,500) which was shown on the relevant completion statement as an "adjustment to buyer" of £12,500, and the vendor received £507,500 (£520,000 less £12,500) which was shown on the relevant completion statement as "vendor's allowance".

27. During the interview in August 2010, the Respondent confirmed he did not inform the lender that he was acting for both the vendor and the purchasers as it had not occurred to him to do so. A certificate of title prepared for the purchasers' lender and signed by the Respondent on 4 April 2008 showed the purchase price as £540,000.

28. A total of £529,424.69 was transferred by the Respondent from the purchasers' client account to the seller's account comprising £527,500 (£540,000 less £12,500) plus £1,924.69 in respect of an apportionment of service charge. On 17 April 2008 commission was paid to Mr W-T and another agent in two payments of £3,806.25 respectively. On the same day a further payment of £20,000 was made to Mr W-T.

29. During the interview in August 2010, the Respondent again stated there had been a sale to Mr W-T. There was no documentary evidence on either the sale or purchase file to support this. The Investigation Officers asked the Respondent if he had acted in the best interests of both his clients by not informing them of Mr W-T's involvement. The Respondent replied:

> "……. well at the time definitely yes, now in the way you've put things to me I suppose I'm not so sure but uh at the time I thought I was putting into effect what they both wanted……."

He also said he did not believe he had misled his clients or that his actions were dishonest.

<u>88 GE Gardens</u>

30. The Respondent acted for the seller and the purchasers respectively in relation to the sale and purchase of 88 GE Gardens between December 2006 and March 2007. The Respondent also acted for the purchasers' lender. There was no evidence that the Respondent met the requirements for acting for both parties in a conveyancing transaction, or that the parties were informed or aware that he was acting for both of them. When asked during the interview in August 2010 whether either the purchasers or the seller knew of Mr W-T's involvement in terms of the £18,000 paid to him, the Respondent replied "no, um, unlikely".

31. There was no sale/purchase contract on either the seller's or purchasers' files. A letter sent to the purchasers by the Respondent on 4 December 2006 gave a purchase price of £408,000. A certificate of title signed by the Respondent on 23 January 2007 for the lender also represented the purchase price as being £408,000. Completion statements prepared by the Respondent for the purchasers dated 5 February 2007 also gave the price of £408,000. However, a completion statement prepared by the Respondent for the seller on 9 February 2007 gave a purchase price of £390,000.

32. On 8 February 2007 the Respondent transferred £390,000 from the purchasers' client ledger to the seller's client ledger. On the same day, the Respondent made a payment of £7,800 from the seller's client account to Mr W-T with respect to an agreed agent's commission of 2%. On the same day the Respondent also transferred £18,000 to Mr W-T from the purchasers' client account. There was no evidence that the purchasers were informed about, or consented to, that payment. There was no documentary evidence to suggest there was a sub-sale of the property to Mr W-T.

33. During the interview in August 2010 the Respondent was asked if the lender had been informed of the difference between the sum paid by the purchasers and the sum received by the seller. He replied "No I don't know". He also said that he doubted that he would have told the lender that he was acting for both parties, and that he was not aware it was a requirement under the standard certificate of title annexed to Rule 6 of the SPR to inform the lender that he was acting for both parties.

34. The Respondent subsequently acted for the same purchasers again, when they sold the property at 88 GE Gardens to another purchaser in 2009. During his interview in August 2010, the Respondent confirmed neither of the clients were aware he was acting for the other, the clients were not aware of Mr W-T's involvement in the matter and that the Respondent had not met the requirements in Rule 3 SCC for acting for both parties.

35. There was no sale/purchase contract on either party's file and no documents to suggest there had been a sub-sale to Mr W-T. The completion statements prepared by the Respondent for the sellers dated 4 August 2008 (which date appears to be incorrect as the transaction took place in 2009) showed the sale price as £470,000. The completion statement for the purchasers dated 28 July 2009 showed the purchase price as £490,000. The Land Registry title stated the price paid for the property by the second purchaser was £490,000.

36. On 27 July 2009 the Respondent transferred a deposit of £49,000 from the purchaser's ledger to the sellers' ledger and on 4 August 2009 he transferred a further £441,800 from the purchaser's ledger to the sellers' ledger making a total of £490,800 (which appear to include an allowance of £800 with respect to a service charge apportionment). Sums of £4,200 and £20,000 were subsequently transferred to Mr W-T although it was not clear from the ledger on which date these transfers were made. A further transfer of £500 was made to Mr W-T's ledger (again the date was unclear). There was no written authority on the file for any of these transfers and no other evidence that the sellers were informed of, or consented to, such payments.

37. The Investigation Officers reviewed 17 conveyancing files and on 10 of those files could not find evidence of any costs information being provided to the clients. During the interview in August 2010, the Respondent stated he had no set scale for fees on conveyancing matters and his charges depended on a number of factors. When the Respondent was reminded of a conversation during the investigation in which he had said that if a client was wealthy he might charge more, the Respondent said:

> "Well that's a factor I suppose, if it was a very expensive property whether it's more consideration involved then we would charge a little bit more to reflect what the extra risk ……."

The Respondent said he would usually send out costs information, but that there were some matters that had slipped through the net.

38. The Respondent acted for Ms M in respect of registering a mortgage over her property. The matter was straightforward with the firm receiving £332,465 from the lender on 31 March 2010 and subsequently transferring the funds to another of Ms M's ledgers to purchase a new property. The Respondent then dealt with the registration of the charge for the advance. The file contained no client care letter or

evidence that Ms M had been given costs information at the outset. The firm's costs were £2,500 plus VAT and Ms M was also charged £15 for postage/courier, £15 photocopying and £125 for an insurance contribution.

39. The Respondent also acted for Ms M in relation to transferring a property from the joint names of Ms M and her former husband, to Ms M alone. Two separate titles were involved relating to the house and the garden respectively. There was no evidence that Ms M was given a costs estimate at the outset. The Respondent requested £1,500 from Ms M to cover Land Registry fees when the Land Registry fees were only £333. During the interview in August 2010, the Respondent said he did not believe his request was misleading, but that it sounded strange and may have been wrong. The matter involved preparing transfer documents and submitting them to the Land Registry. The firm's costs were £2,000 plus VAT and the client also paid £333 for Land Registry fees, £25 for postage/copying and £125 for an insurance contribution.

40. The Respondent acted for the same client, Ms M, in respect of the purchase and lease extension of a property. During the interview in August 2010 the Respondent admitted he had not met the requirements for providing Ms M with costs information about this matter. Ms M had sent the Respondent an email on 4 March 2010 asking what his charges would be. In reply the Respondent said he did not yet know what his costs would be, but he noted the bank appeared to be charging Ms M administration fees of over £11,000 and he assured Ms M that his charges would be "well below" that figure. The Respondent charged £2,975 plus VAT for the purchase element and an additional £6,000 plus VAT for the lease extension. On 5 May 2010, the Respondent sent a letter to Ms M stating he had held onto £965 "to cover any unexpected expenses". This amount was transferred from client to office account on 5 May 2010 but an invoice was not raised until 28 June 2010, which Ms M subsequently disputed and requested a return of the funds.

41. During the course of the investigation, the Investigation Officers identified three matters where payments had been made from client account with no explanation or authorisation on the file. On the matter of 87 GE Gardens the client ledger listed a payment of £2,016.75 with the narrative "To agent (bal)" however there was no reference to this payment on the file and the Respondent could not recall, during the interview in August 2010, why that payment was made.

42. On the matter of the purchase of 92 GE Gardens for £560,000 in November 2007, Mr W-T and Mr Z acted as agents in connection with the transaction. In an email dated 16 November 2007 from Mr W-T to the Respondent, the purchaser was to pay 1% commission (£5,600) and a completion statement dated 19 March 2008 showed the commission as £5,600. However, a later completion statement dated 16 April 2008 showed the commission to be £7,000 (1.25%). There was no explanation or authorisation on the file for the increased payment and the Respondent was unable to explain it during the interview in August 2010.

43. In September 2007 the Respondent acted for the purchaser of a property at 206 GE Gardens and Mr W-T and Mr Z acted as agents. Commission of 2.5% (a total of £13,250) was to be paid, which was made up as 1.5% payable by the seller and 1% payable by the purchaser. There was no evidence that the purchaser authorised his share of this payment. On 10 September 2007 £8,600 was sent to Mr W-T and £4,600

was sent to Mr Z. The client ledger recorded a further payment of £650 on that date with the narrative stating "to agent" and a further payment of £930 on 27 September 2007 again stated to be made "to agent". A letter from the Respondent to Mr W-T stated the payments of £650 and £930 were sent to "L" but there was no mention of "L" or the additional payment of £930 on the file. The Respondent could not provide an explanation for this payment during the interview in August 2010.

44. Mr P was held out as a partner in the Respondent's practice and at the same time, Mr P was also a partner in another practice. During an interview with the SRA on 28 June 2010 the Respondent stated Mr P did not attend the firm's offices, Mr P had no share in the equity of the practice, Mr P would cover any holidays and provide advice to the Respondent on the phone if required, and there was a reciprocal arrangement whereby the Respondent was also named as a partner in Mr P's practice.

45. During the interview in August 2010, the Respondent confirmed:

- he and Mr P kept separate books and separate insurance
- he did not conduct any matters at Mr P's other practice and Mr P did not conduct any matters for the firm
- he had:

  "always thought it a bit debatable whether there are in fact two practices or not, they might have different names in different locations but if we're both partners there is every argument for saying it is one firm…"

- when asked why it had been necessary to set up a partnership simply to provide holiday cover, the Respondent said

  "we both wanted to be partners because we wanted to be able to do all the mortgage work for the conveyancing"

- said it was accurate to describe him and Mr P as partners because they spoke a lot and "bounce ideas off each other……"
- agreed that "in many respects" the two firms were distinct and separate firms

46. The professional indemnity insurance proposal form for 2009-10 completed by the Respondent stated there was one full-time and one part-time partner at the firm and that both had been at the firm for 11 years. The Respondent also selected "yes" in reply to a question on the form which stated:

> "Do all partners, principals and members in the practice devote all of their work time and attention to the business of the practice?"

He told the Investigation Officers that he believed the form had been pre-filled by the insurer and when pressed, he stated that on reflection his answer may not have been

completely accurate. The relevant insurer subsequently confirmed to the Investigation Officers that the form had not been pre-completed.

47. The Respondent selected "no" in reply to a question on the form which stated:

> "Are any partners, principals and other members in the practice also a partner in another firm of solicitors or other business activity?"

The Respondent admitted that the answer should have been "yes" and added it had been an error and that the insurer would have known of the arrangement with Mr P, because Mr P also used them. The relevant insurer subsequently confirmed this.

48. In a letter to the SRA dated 7 June 2011 the Respondent reported he had dissolved his partnership with Mr P in October 2010. He stated that he was "totally unaware that a solicitor needed consent" to practise as a sole practitioner and he enclosed the application form for approval to practise as a recognised sole practitioner to rectify the position.

Witnesses

49. The following witnesses gave evidence:

- Sara Houchen (Forensic Investigation Officer with the SRA)

Findings of Fact and Law

50. The Tribunal had carefully considered all the documents provided, the evidence given, the Respondent's Response dated 30 July 2012, his supplemental statement dated 10 October 2012 and the submissions of both parties. The Respondent had not given evidence on oath and, in any event, the Tribunal noted his Response of 30 July 2012 did not contain a Statement of Truth. Accordingly the Tribunal attached due weight to that Response. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

51. **Allegation 1.1: The Respondent acted in breach of the Solicitors Accounts Rules 1998 ("SAR"), in particular:**

(a) Rule 7 in that he failed to correct ledger entries posted in error and failed to correct debit balances on client ledgers in a prompt manner

(b) Rule 22(5) in that money withdrawn in relation to clients exceeded the money held on behalf of those clients

(c) Rule 32(5) in that the current balance on client ledger accounts was not shown or readily ascertainable

(d) Rules 32(1) and (2) in that entries in client ledger accounts were not properly written up to show his dealings with client money

(e) Rule 32(7) in that he did not carry out a reconciliation of the firm's deposit account at least every five weeks

(f) Rule 32(2) in that he failed to maintain a record of all dealings with client money in a client cash account (i.e. a "cash book")

(g) Rule 22(1) in that in the transactions referred to in allegations 1.2 and 1.3 below, clients' funds (namely the difference between the price paid by the purchasers and the price received by the vendors) were improperly withdrawn from client account and paid to third parties. It was alleged the Respondent had acted dishonestly.

(h) Rule 19(2) in that he transferred funds from client to office account in respect of his fees without first sending a bill of costs or other written notification of the costs incurred

(i) Rules 15 and 22 by holding in his firm's client account monies which he was unable to identify as being client monies and subsequently paying out such monies to third parties without due authority

51.1 The Respondent had admitted allegations 1.1(a), (b), (e), (f) and (h). Accordingly, the Tribunal found these allegations proved.

51.2 In relation to allegation 1.1(c) the Respondent had partly admitted this allegation on the basis that the current balance was not readily ascertainable as he did not have had a third column showing the balance, but he submitted most of his ledgers were very short and it was always easy to see what was on the ledgers.

51.3 Rule 32(5) of The Solicitors Accounts Rules 1998 states:

> "The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept in accordance with paragraphs (2) and (3) above."

The Tribunal had heard evidence from Ms Houchen in which she confirmed that the entries on the ledgers were not in chronological order, and no running balance had been maintained. Ms Houchen stated that she had to reconstruct the ledgers and once they had been placed in chronological order, the balances could be ascertained. The Tribunal accepted Ms Houchen's evidence and was satisfied that as the current balance on client ledger accounts was not shown, allegation 1.1(c) was proved.

51.4 In relation to allegation 1.1(d), Rules 32(1) and (2) of The Solicitors Accounts Rules 1998 stated:

> "(1) A solicitor must at all times keep accounting records properly written up to show the solicitor's dealings with:
>
> (a) client money received, held or paid by the solicitor, including client money held outside a client account under rule 16(1)(a);
>
> (b) controlled trust money received, held or paid by the solicitor, including controlled trust money held under rule 18(c)

in accordance with the trustee's powers in an account which is not a client account; and

(c) any office money relating to any client matter, or to any controlled trust matter.

(2) All dealings with client money (whether for a client or other person), and with any controlled trust money, must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each client (or other person, or controlled trust)

No other entries may be made in these records."

51.5 Ms Houchen had already confirmed it was not clear from the ledgers what the current balances were and that they were not in chronological order. She had identified 11 client ledgers with debit balances and confirmed that no cash book was being maintained. On a number of the firm's client ledgers the nature of the transaction was not identified or properly recorded and where mortgage advance monies had been received into client account, the lender was not identified.

51.6 The Respondent in his Response dated 30 July 2012 stated most ledgers on conveyancing matters were written up upon completion and that they balanced at the close of each matter. He stated his view was that the ledgers were adequate for the size and nature of his small practice. Concerning the 11 client account debit balances, the Respondent provided a number of explanations for these various debits, but the fact that there were debit balances on these ledgers showed that the entries had not been properly written up to show his dealings with client money. Accordingly, the Tribunal was satisfied that allegation 1.1(d) was proved.

51.7 Allegation 1.1(g) referred to Rule 22(1) of The Solicitors Accounts Rules 1998 which set out the circumstances where client money could be withdrawn from client account. The Tribunal's attention had been drawn to four transactions where payments from client funds had been made to Mr W-T without the clients' authorisation. On the matter of 88 GE Gardens, the Respondent accepted neither the purchaser nor the seller were aware of Mr W-T's involvement in terms of the £18,000 paid to Mr W-T. The Respondent's explanation for the payments to Mr W-T on four property transactions was that there had been a sub-sale to Mr W-T in each matter and that the respective sellers/buyers had been happy to sell/buy the property at the price negotiated. The Respondent stated in his Response dated 30 July 2012 that:

> "Each of the buyers paid out precisely what he or she had expected to pay out and each of the sellers received precisely what he or she had expected to receive. Mr WT, in the middle made a profit for putting the deals together. I saw nothing wrong with this in the capitalist society in which we live."

51.8 The Respondent had submitted he was not misleading anyone or doing anything any of his clients did not want and that he was doing them all a favour. The Respondent accepted he probably should have had a separate file and ledger for Mr W-T but he

maintained none of his clients had been deceived or mislead as they had told him what to do. Nobody had suffered or got less than what they wanted. The Respondent submitted he had not taken a conscious decision or any decision to mislead his clients. Although one of his clients had instructed solicitors to pursue a claim against his firm, the Respondent had not accepted the allegations, and had made a "without prejudice" payment due to his ill health even though he did not accept that client was entitled to any money.

51.9 As there was no evidence of any authority on the file that the clients had consented to the payment to Mr W-T, the Tribunal was satisfied that there had been a breach of Rule 22(1) and that clients' money had been withdrawn from client account in circumstances when it should not have been.

51.10 Allegation 1.1(g) also contained an allegation of dishonesty. The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

51.11. Whilst the Tribunal accepted that the seller and buyer received/paid the amount they had expected to receive/pay, it was quite clear that none of these parties knew of the difference in the price paid by the other party in the transaction, or expected a large amount of the funds to be paid to a third party. In each of the four transactions none of the clients were informed of the payment to Mr W-T nor were they aware of his role in the transaction. Indeed on one matter the seller client, on learning the buyer had paid £30,000 more than he had received, instructed solicitors to pursue a claim against the Respondent's firm for deceit, which illustrated that he clearly thought the Respondent had acted dishonestly. In such circumstances, the Tribunal was satisfied that failing to inform clients of payments being made to Mr W-T and of Mr W-T's role in the transaction would be regarded as dishonest by the ordinary standards of reasonable and honest people.

51.12 The Tribunal then had to consider whether the Respondent himself realised that by those standards his conduct was dishonest. In these four transactions the Respondent had made representations to each of his clients which were put in such a way that the respective client would not know the difference in the price which was to be paid/received. On the matter of 271 GE Gardens, the Respondent wrote to the seller on 2 September 2009 confirming "after further negotiations" the seller had agreed to accept £335,000 for his property. On the same day, knowing he had led the seller to believe the sale price of his property was £335,000, the Respondent told the buyer that he had "exchanged at £365,000". The Respondent had actively prevented his seller and buyer client from knowing the true amount paid/received by the other party in the transaction, and that the difference was being paid to a third party, who also happened to be the Respondent's acquaintance.

51.13 Furthermore on that same matter of 271 GE Gardens, the purchaser confirmed she had "absolutely no idea that [Mr W-T] had bought the property", and the seller, on finding out he had received £30,000 less than the buyer paid, instructed solicitors to pursue a claim against the Respondent's firm for breach of contract, breach of trust,

misrepresentation and deceit. By concealing information about the actual sale/purchase price and Mr W-T's involvement from his seller and buyer clients, and by making payments to Mr W-T without his clients' knowledge or consent on this case, the Respondent had deliberately deceived his clients and prevented them from knowing the full picture. The Tribunal was satisfied that the Respondent knew that by those standards his conduct was dishonest. Accordingly, the Tribunal was satisfied the Respondent had acted dishonestly.

51.14 Concerning allegation 1.1(i) the Tribunal had already found the Respondent had made payments from client funds to third parties without any authority from those clients. The Tribunal's attention had also been drawn to two client ledgers where payments had been made with the narrative simply stating "to agent". On another matter a commission payment had been made which was in excess of the amount notified to the client and there was no explanation or authorisation for this. The Respondent had stated in his Response dated 30 July 2012 that he believed clients had given verbal authority for these payments. However, in the absence of any evidence of authority given by clients for these monies being paid to third parties, the Tribunal was satisfied allegation 1.1(i) was proved.

52. Allegation 1.2: The Respondent acted in breach of Rule 6(2) of the Solicitors' Practice Rules 1990 ("SPR") and (after July 2007) Rule 3.07 of the Solicitors' Code of Conduct 2007 ("SCC") in that he acted for both the seller and buyer in four conveyancing transactions without the requisite conditions being met. It was alleged the Respondent had acted dishonestly.

52.1 The Respondent had admitted allegation 1.2 but denied he had acted dishonestly. He stated in his Response dated 30 July 2012:

> "I did not see that there was a possible conflict of interest as long as I did what all the parties wanted. I thought that what I was doing was in order but now accept that I was mistaken in this. I believe that what I was doing was no different in principle to acting for lender and borrower, which is permitted. I also bore in mind that in many EU Countries it is customary for one lawyer to act for all parties to a transaction and I believe that what I was doing was simply make things easier for the clients and doing them a favour…... With hindsight, I can see that I was mistaken in acting for more than one party in each transaction. I would not do this again and apologise for my mistake."

The Respondent had submitted that whilst he accepted he should not have acted for all parties, at the time he did not think he was doing anything that would prejudice any of the clients.

52.2 The Tribunal once again considered the test for dishonesty set out in the case of Twinsectra Ltd v Yardley & Others, namely whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal considered carefully Rule 6(2) of the SPR and Rule 3.07 of the SCC. These rules set out the conditions that needed to be met where a solicitor acted for both buyer and seller in conveyancing transactions. The conditions included both parties being established clients, obtaining the written consent of both parties, and where no conflict of interest existed or arose.

52.3 In this case, the Tribunal was not satisfied that a reasonable and honest person would consider the Respondent's conduct to be dishonest, on the narrow basis that he had acted for both seller and buyer where the requisite conditions had not necessarily been met. Accordingly, although the Tribunal found allegation 1.2 proved, the Tribunal was not satisfied that the Respondent had acted dishonestly.

53. Allegation 1.3: The Respondent acted in breach of SPR Rules 1(a), (c) and (d) and (after July 2007) SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.01 in that in the transactions referred to in allegation 1.2 above he:

(a) failed to inform his vendor and purchaser clients that he was also acting for the other party in that transaction

(b) misled his vendor and purchaser clients as to the selling prices of properties and/or

(c) failed to inform his vendor and purchaser clients of the discrepancy between the price paid by the purchasers and the price expected by the vendors.

It was alleged the Respondent had acted dishonestly.

53.1 The Respondent admitted allegations 1.3(a) and (c) but he did not admit he had acted dishonestly. Dealing firstly with allegation 1.3(b) the Respondent had submitted he had not misled his clients and that they knew what price they were prepared to pay/receive. However, it was clear to the Tribunal that in each of the four transactions the Tribunal had been referred to, the respective purchaser and seller/vendor clients in each transaction were not aware of the amount being paid/received by the other party in that transaction. The Respondent had given one price to the seller client and had given a different price to the purchaser client. In each case the purchaser paid substantially more for the property than the seller received. The Tribunal was satisfied that by failing to inform each purchaser of the exact amount being paid to the seller, and by failing to inform each seller of the exact amount being paid by the purchaser, the Respondent had misled his vendor and purchaser clients as to the selling price of the property in each respective transaction. The Tribunal found allegation 1.3(b) proved.

53.2 This allegation also contains an allegation that the Respondent had acted dishonestly. The Tribunal once again considered the test for dishonesty set out in the case of Twinsectra Ltd v Yardley & Others, namely whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal was satisfied that failing to inform vendor/purchaser clients that the Respondent was also acting for the other party in the transaction in circumstances where each client had been misled as to the true selling price of the property, and where the actual amount paid by the purchaser was not paid in full to the seller would be regarded as dishonest by the ordinary standards of reasonable and honest people.

53.3 The Tribunal then considered whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal had already found in relation to

allegation 1.1(g) that the Respondent had actively concealed from his seller and buyer client the true circumstances of the transaction, and that money was being paid to a third party, who also happened to be the Respondent's acquaintance. The Tribunal had also found the Respondent had concealed information about the actual sale/purchase price, and Mr W-T's involvement, from his seller and buyer clients. The Tribunal was mindful that in the matter of 87 GE Gardens, one of the purchasers had sent an email to the Respondent stating:

> "Perhaps you can contact [Mr W-T] to get the vendors soliciters [sic] details".

The Respondent did not reply to this email but nor did he advise the purchasers that he was also acting for the seller in that transaction. However, it was clear from the email that the purchasers were under the impression that the seller was represented by a different firm of solicitors. In addition, the contract signed by the purchasers dated 3 April 2008 showed the purchase price as £540,000 but there was no contract on the seller's file. A completion statement dated 4 April 2008 for the purchasers showed a purchase price of £540,000 whereas a completion statement dated the same day for the seller showed a sale price of £520,000.

53.4 In the transaction involving the property at 271 GE Gardens, the purchaser had confirmed she was:

> "totally unaware that Preston and Co represented the vendor"

On that particular transaction the seller instructed solicitors to pursue a claim against the firm when he found out about the difference between the price paid for the property and the price that he had received. It was particularly pertinent that the completion statement to the seller showed a sale price of £335,000, whereas the completion statement for the buyer showed the purchase price as £365,000.

53.5 The Respondent dealt with the property at 88 GE Gardens for both parties, and for the purchaser clients, he acted again when they subsequently sold the property. In the first transaction the Respondent prepared a completion statement for the seller showing a sale price of £390,000 dated 9 February 2007, yet a completion statement prepared for the purchaser four days earlier, on 5 February 2007 gave a sale price of £408,000. In the second transaction the sellers (who had previously purchased the property) were provided with a completion statement incorrectly dated 4 August 2008 when it should have been 2009, showing a sale price of £470,000 yet a few days earlier a completion statement was prepared for the purchaser dated 28 July 2009 showing the purchase price as £490,000. It was particularly pertinent that the completion statements in these four transactions did not make any reference to a payment being made to Mr W-T.

53.6 The Tribunal was very concerned to note that on these files important documents were not available such as some of the contracts, or any documents relating to the alleged sub-sale to Mr W-T. The Respondent's explanation for this was that he had not drawn up any documents relating to the sub-sale and that he would sometimes thin files to make them less bulky before putting them into his garage for storage. Where contracts were available, some of these were incomplete in that they were undated or the purchase price was left blank.

53.7 Given all of these circumstances, the Tribunal found it quite incredulous that the Respondent could not see any wrong doing. He had submitted there had been no loss to clients but clearly clients had lost monies which had been paid to Mr W-T without their authority. The Tribunal was satisfied that by providing completion statements to the respective buyer/seller in the same transaction which contained different prices for the sale/purchase of the same property taken with the fact that the Respondent had concealed from his clients that he was acting for both parties in circumstances where there was a discrepancy between the price paid by the purchaser and the price received by the vendor, the Respondent knew he had acted dishonestly. The Tribunal was satisfied that allegation 1.3 was proved in its entirety and that the Respondent had acted dishonestly.

54. Allegation 1.4: The Respondent acted in breach of Rule 15 SPR and Rule 2.03 SCC in that he failed to give his clients the best information possible about the likely overall cost of matters at the outset and as the matters progressed.

54.1 The Respondent admitted this allegation and the Tribunal found it proved.

55. Allegation 1.5: The Respondent acted in breach of Rules 1(a) and (d) SPR and (after July 2007) Rules 1.02 and 1.06 SCC in that he purported to be in partnership when no real partnership existed.

55.1 The Respondent had submitted it had always been his belief that he could agree whatever terms of practice he wished with a partner. He confirmed that his agreement with Mr P was that they had an arrangement where they referred work to each other, they would cover each other's holidays and sickness absence, and nobody was misled about this. In his Response dated 30 July 2012 the Respondent stated he regarded the arrangement as a partnership, with Mr P practising in one office and the Respondent practising in another office.

55.2 The Tribunal noted that during his interview with the SRA on 28 June 2010, the Respondent had confirmed Mr P did not attend the firm's offices and had no share in the equity of the practice. During the interview with the Investigation Officers in August 2010 the Respondent had confirmed Mr P kept separate books and insurance, that neither of them conducted matters for the other and that the partnership had been set up:

> "….. because we wanted to be able to do all the mortgage work for the conveyancing"

The Respondent had also accepted during that interview that he had

> "always thought it a bit debatable whether there are in fact two practices or not, they might have different names in different locations but if we're both partners there is every argument for saying it is one firm…"

55.3 The Tribunal was not satisfied that the arrangement the Respondent had with Mr P was a genuine partnership. The two firms had completely different names, separate professional indemnity insurance policies and maintained separate books of accounts. It was clear to the Tribunal that the purpose of the Respondent's agreement with Mr P was simply to satisfy the necessary requirements to enable the Respondent to carry

out conveyancing work for lenders. The Tribunal was not satisfied that this was a real partnership and found allegation 1.5 proved.

56. Allegation 1.6: The Respondent acted in breach of Rule 20.03 SCC in that he did not obtain the SRA's authorisation before practising as a sole practitioner.

56.1 The Respondent admitted this allegation and the Tribunal found it proved.

Previous Disciplinary Matters

57. None.

Mitigation

58. The Respondent referred the Tribunal to his Response dated 30 July 2012 and supplementary statement dated 10 October 2012 which contained details of mitigation as well as information about his personal and financial circumstances. The Respondent's practice had been small and, until the recession in 2007, he had been doing well. The Respondent became ill and this also affected his income. The Respondent reminded the Tribunal that around £150 million had passed through his client account during the existence of his firm, all of which was properly recorded and entered in ledgers. The Respondent had tried to do things properly and had never received a request for a remuneration certificate or an assessment of costs. His clients had been happy with the work he was doing.

59. In relation to the allegations, the Respondent had no idea that authorisation was required to practise as a sole practitioner and as soon as he had become aware of this, he had completed the appropriate forms and rectified the position. On the matter of providing clients with costs information, the Respondent had many clients who had been happy with the work and the charges, and had returned to him again. Costs information was given to clients and the Respondent accepted there had been an oversight on some files where this had not happened.

60. The Respondent regularly maintained his ledgers himself and would often complete the ledge on completion of the conveyancing transaction when preparing a completion statement. Otherwise he would write up the ledgers when the money came in at the end of the month. The Respondent would first make entries from the client account payments, then from the cheque books and this was the reason why the entries were not chronologically entered. The ledgers were prepared so that the Respondent could understand them and he knew what they were about.

61. The Respondent confirmed that when the SRA’s Practice Standards Unit visit took place in November 2005, the SRA representative spent one or two days at the office and was happy overall with everything. She had given the Respondent some advice and information but generally she was pleased that everything was in order. The Respondent asked the Tribunal to take into account his age, his lack of income, the fact that he was no longer practising, that he was in poor health and that he had provided a good service for all his clients who, he believed at the time, were happy with his work. He had been practising law for 35 years with next to no complaints.

Sanction

62. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

63. The Tribunal had found that the Respondent had acted dishonestly and as a result of his conduct, clients had suffered substantial financial losses. The Tribunal had also found a number of breaches of the Solicitors Accounts Rules 1998 and various breaches of the Solicitors Code of Conduct 2007/Solicitors' Practice Rules 1990 as well as finding the Respondent had dishonestly acted for seller and buyer clients in conveyancing transactions and misled them about the selling price of the property involved, dishonestly failed to inform those clients that he acted for the other party in the transaction, dishonestly made payments to a third party without authorisation, failed to give proper costs information to clients, purported to be in a partnership where no real partnership existed and practised as a sole practitioner without the SRA's authorisation. In this case the Respondent had dishonestly deprived clients of information which went to the heart of the trust upon which a solicitor/client relationship is based. These were all extremely serious matters and the Respondent's conduct had caused a great deal of damage to the reputation of the profession.

64. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

The Tribunal was satisfied that in this case there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

65. The Applicant requested an Order for his costs in the total sum of £36,509.64. He provided the Tribunal with a Statement of Costs containing a breakdown of those costs which had been sent to the Respondent two weeks ago.

66. The Respondent submitted the costs were outrageously high. Whilst he did not argue with the hourly rate for Mr Hudson, he was concerned that many people appeared to be working with him and the time spent on the work was excessive. The Respondent did not know how the forensic investigation costs had been calculated and confirmed that the Forensic Investigation Officers had been at his office for possibly 10/11 days but they were short days.

67. The Respondent reminded the Tribunal of his personal situation. He had responsibilities as a parent and his family were assisting him with paying for schooling. The Respondent had made applications for state benefits and was due to attend an appointment in the next few days regarding these. The Respondent confirmed that he owned a property which did not have a mortgage. He provided the

Tribunal with his estimated valuation of this property. The Respondent had some savings which he would be using to pay for the run-off cover on his Professional Indemnity Insurance. He anticipated he had enough money to last him until Spring 2013 and, although he did not have any loans to pay, there would be a tax liability in the future.

68. The Tribunal had considered carefully the matter of costs and was of the view that the amount of costs claimed was high. The Tribunal assessed the costs in the sum of £30,000 and Ordered the Respondent to pay this amount. In relation to enforcement of those costs, the Tribunal noted the Respondent had a large asset with no mortgage, and clearly had some savings. He did not have any loans or debts or other commitments. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. However, in this case, although the Respondent was aged 55 years, he had a substantial asset and some savings. The Tribunal was of the view that the Respondent did have the ability to meet the order for costs in such circumstances.

Statement of Full Order

69. The Tribunal Orders that the Respondent, Anthony David Preston, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00.

Dated this 16th day of November 2012
On behalf of the Tribunal

Ms A. Banks
Chairman