The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was withdrawn.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10988-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID RUDOLPH HEINRICH Respondent

Before:

Mr P. Housego (in the chair)
Mr R. Nicholas
Mrs L. McMahon-Hathway

Date of Hearing: 25th and 26th March 2013

Appearances

Mr Robin Havard, solicitor, of Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DR for the Applicant.

Mr Huw Davis, solicitor, of Clive Rees Associates, 10 Metropole Chambers, Salubrious Passage, Swansea SA1 3RT for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations against the Respondent, David Rudolph Heinrich, were that:

1.1 The Respondent submitted a Notice of Acting on behalf of Gareth Emery, Solicitor, to the Cardiff County Court on 29 April 2010 in circumstances where he knew that Gareth Emery, Solicitor, was not instructed on behalf of the Defendant contrary to Rule 11.01 of the Solicitors Code of Conduct 2007 ("SCC");

1.2 The Respondent purported to sign the Notice of Acting on behalf of Gareth Emery, Solicitor, without the knowledge of Gareth Emery when not employed by him not authorised to sign the Notice of Acting on his behalf;

1.3 He sent and/or prepared a client care letter dated 30 April 2010 to Mr Terence Forward on behalf of Gareth Emery, Solicitor, holding himself out as a consultant at the firm when he knew this was untrue;

1.4 He held himself out as a consultant at Gareth Emery, Solicitor, when he knew he was neither employed nor retained by that firm in any capacity;

1.5 He misappropriated client's money;

1.6 He failed to co-operate with the SRA contrary to Rule 20.05 of the SCC;

1.7 The Respondent failed to uphold the rule of law and the proper administration of justice and/or failed to act with integrity contrary to Rule 1.01 and 1.02 of the SCC;

1.8 The Respondent failed to act in the best interests of clients and in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rule 1.04 and 1.06 of the SCC;

1.9 In respect of allegations 1.1 to 1.5 it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.

Documents

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

Applicant:-

- Application dated 9 May 2012
- Rule 5 Statement, with exhibits, dated 9 May 2012
- Chronology
- Witness statement of Gareth Emery, with exhibit "GJE1", (pages 1-141) dated 16 October 2012
- Further witness statement of Gareth Emery, with exhibit "GJE2", (34 pages)dated 18 March 2013

Respondent:-

- Witness statement of Respondent, with exhibits (pages 1-94) dated 7 November 2012
- Witness statement of Rachel Lloyd Williams with exhibits "RLW1" to "RLW3" dated 2 November 2012
- Witness statement of Gary Cosgrove, October 2012

Preliminary Matter – documents

3. Before the hearing began, it was noted that there appeared to be two different versions of the exhibits to the Respondent's witness statement. The version seen by the Tribunal and the Applicant included over 80 pages of paginated exhibits. The version held by the Respondent appeared to include over 100 pages, but included documents such as the witness statement of Rachel Lloyd Williams, which were available to the Tribunal in any event together with several documents which had not previously been seen. The pagination of the two versions of the bundle was the same until approximately page 78 but thereafter was not the same. Some time was therefore spent before the hearing could start in ensuring that the versions of the bundle to be used were identical, with identical pagination. There was no objection by the Applicant to the inclusion in the bundle of several documents which had been obtained in response to the further witness statement of Gareth Emery.

Factual Background

4. The Respondent was born in 1965 and was admitted to the Roll in 1994. The Respondent remained on the Roll but had not held a practising certificate after 31 October 2010.

5. From 1 November 2002 until 30 September 2009 the Respondent was a partner at Lloyd Williams Solicitors ("LWS"). That firm ceased to practice on 3 September 2009. SRA records indicated that between May 2007 and 11 September 2010 the Respondent practised as an assistant solicitor at Ty Arian Limited ("TA"). The Respondent's witness statement at paragraph 6 also recorded that the Respondent had been head of the employment department and a consultant at the Cardiff office of Silver Shemmings, ("SS") a firm based in London. In oral evidence, the Respondent stated that arrangement had existed in the period 1 October 2009 until about March 2010.

6. On 7 October 2010, Mr Gareth Emery ("Mr Emery"), the sole principal of Gareth Emery, Solicitor ("GE") wrote to the SRA setting out a number of concerns regarding the Respondent's conduct, including a concern that the Respondent had used GE's name without authority.

<u>Background</u>

7. Rachel Lloyd Williams ("Ms Williams") was known to Mr Emery, having worked for his practice some years ago. Ms Williams was the personal partner of the Respondent for some years, including at the material time, and Mr Emery had a social relationship with the Respondent and Ms Williams.

8. The Respondent and Ms Williams formed a legal practice, LWS, which was based at 57 Walter Road, Swansea. In a letter to Cardiff County Court dated 30 September 2010 the Respondent confirmed that LWS ceased trading by 30 September 2009 and stated that the offices were sold in November 2009, becoming occupied by an unrelated organisation.

9. The Respondent discussed with Mr Emery the possibility of entering into a working relationship with him. There was no dispute that they had discussed setting up a legal website and/or the Respondent working with or for GE on a part-time basis. There were significant disputes about the nature and extent of those discussions and what conclusion, if any, arose from those discussions.

10. Mr Emery became aware of a County Court judgment against the Respondent. It was the Applicant's case, disputed by the Respondent, that: Mr Emery understood there would be a negative impact on his PII; that he communicated to the Respondent that he would not be able to employ him; and that there was no arrangement under which the Respondent would be employed or retained by or in any way held out to be involved in the business of GE.

Notice of Acting

11. On 1 October 2010 Mr Emery received a telephone call from the Respondent in which he informed Mr Emery that he had lodged a Notice of Acting in a matter in which there was due to be a telephone hearing at 10am that morning. Mr Emery's communications with the SRA thereafter were to the effect that: he had not seen or received any documentation in relation to the case; he did not know in which court the case was being conducted; he did not know the name or identity of the person who was supposedly a client of his firm; and that the Notice of Acting had been lodged without his permission.

12. The relevant Notice of Acting produced to the Tribunal was dated 29 April 2010 in the matter of RVB Investments v Terence John Forward ("Mr Forward") which was proceeding in the Cardiff County Court. The Notice of Acting purported to confirm that GE was instructed on behalf of the Defendant Mr Forward. The signature on the Notice of Acting was not that of Mr Emery. Although the Notice of Acting was dated 29 April 2010 it was Applicant's case that Mr Emery had been unaware of the proceedings until the morning of 1 October 2010. Although the solicitors acting for the Claimant in the proceedings did not appear to have any record of the Notice of Acting, the copy Notice of Acting showed that it was transmitted by fax to Cardiff County Court on the morning of 30 April 2010. The Notice of Acting was dated one day prior to a client care letter apparently addressed to Mr Forward. Although the Notice of Acting was dated 29 April 2010, the Court wrote to LWS on 8 July 2010 in relation to the case. On 30 September 2010 the Respondent wrote to the Court in relation to this matter on the notepaper of LWS. There did not appear to be any progress in the case between 30 April and 1 October 2010, for example there had been no correspondence between the Respondent and the solicitors for the Claimant.

Client care letter

13. By a fax dated 9 October 2010 the Respondent sent to Mr Emery what purported to be a copy of a client care letter sent to Mr Forward dated 30 April 2010. In that letter the Respondent described himself as a consultant solicitor at GE and that he would be carrying out most of the work in the matter. It was the Applicant's case that Mr Forward did not receive this letter and that he understood he was still represented by the Respondent at LWS.

Alleged misappropriation of client money

14. On 27 April 2010 the Respondent emailed Mr Forward to request payment of £646.25. That sum was transferred by Mr Forward on 29 April 2010. The circumstances in which the request for payment was made were disputed.

Alleged failure to co-operate with the SRA

15. Following the complaint made by Mr Emery to the SRA, a letter dated 11 January 2011 was sent to the Respondent enclosing a copy of Mr Emery's complaint, summarising the allegations that had been made and requesting a response. No response was received. A further letter was sent to the Respondent dated 1 February 2011, reminding the Respondent that pursuant to Rule 20.05 SCC regulated persons were obliged to deal promptly with correspondence from the SRA. The Respondent did not reply. On 15 June 2011 a further letter was sent to the Respondent stating that the complaint was being referred for a formal decision. No response was received. On 6 July 2011 a letter was sent to the Respondent confirming that the Casenote had been referred for formal adjudication. By an email dated 19 July 2011 the Respondent asked for additional time in which to reply to the allegations. By a decision of 1 August 2011 the Adjudicator allowed the Respondent until Monday 15 August in which to respond substantively. By an email of 15 August 2011 the Respondent wrote to the SRA purporting to enclose an additional response. By an email of 23 August 2011 the SRA responded to say that the attachment to the Respondent's email of 15 August was blank, requesting him to re-send the document. The Respondent did not reply. By a further email dated 15 September 2011 the SRA indicated that any response had to be received no later than 22 September 2011. The Respondent failed to reply.

16. The Respondent subsequently stated that the initial correspondence had been sent to addresses which were incorrect and which the SRA knew or should have known were incorrect.

17. By a decision dated 7 November 2011 the Respondent was referred to the Tribunal.

Witnesses

18. Oral evidence was given on behalf of the Applicant by Mr Gareth Emery, who confirmed the contents of his witness statements dated 16 October 2012 and 18 March 2012 and was cross-examined on behalf of the Respondent by Mr Davis.

19. Oral evidence was given on behalf of the Applicant by Mr Terence Forward, who confirmed the contents of his witness statement dated 22 February 2013 and was cross-examined on behalf of the Respondent by Mr Davis.

20. The Respondent gave oral evidence on his own account, confirming the contents of his witness statement dated 7 November 2012. The Respondent was cross-examined on behalf of the Applicant by Mr Havard.

21. Ms Rachel Lloyd Williams gave oral evidence on behalf of the Respondent, confirming the contents of her witness statement dated 2 November 2012, and was cross-examined on behalf of the Applicant by Mr Havard.

22. The witness evidence in this matter was contested on many points, and relevant evidence will be summarised in relation to each allegation.

Findings of Fact and Law

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

24. **Allegation 1.1: The Respondent submitted a Notice of Acting on behalf of Gareth Emery, Solicitor, to the Cardiff County Court on 29 April 2010 in circumstances where he knew that Gareth Emery, Solicitor, was not instructed on behalf of the Defendant contrary to Rule 11.01 of the Solicitors Code of Conduct 2007 ("SCC")**

24.1 This allegation was denied by the Respondent. The factual background to this allegation is set out at paragraphs 11to 12 above.

24.2 It was the Applicant's case that at the time the Respondent submitted a Notice of Acting in the name of GE to Cardiff County Court on 29/30 April 2010 the Respondent knew that that firm was not instructed on behalf of Mr Forward and that in submitting the Notice of Acting he was in breach of his duties to the court and other parties under Rule 11.01 of the SCC. The Respondent's case was that he was authorised to submit the Notice of Acting as he did as he was engaged by Mr Emery as a consultant with the firm.

24.3 The issues concerning whether or not there existed a consultancy arrangement between Mr Emery and the Respondent are of relevance to several of the allegations and will be set out here in some detail, with reference back to this section as required.

<u>Mr Emery's evidence</u>

24.4 Mr Emery told the Tribunal that he had known the Respondent's partner, Ms Lloyd Williams, since about 1996, when she worked for his firm. Mr Emery had chosen to work part-time and from about 1999 he had worked as a sole practitioner, using an office attached to his home. From about 2004, Mr Emery and the Respondent, together with Ms Lloyd Williams, had a professional and social relationship and Mr

Emery was aware that the Respondent and Ms Lloyd Williams were practising as LWS in Swansea. On one occasion, the Respondent had accompanied Mr Emery on a trip to New York and in April 2010 the Respondent and Ms Lloyd Williams attended Mr Emery's wedding.

24.5 Mr Emery confirmed that early in 2010 he and the Respondent had had some discussions about working together in some way, including in the development of a legal website. The Tribunal noted an email from Mr Emery to the Respondent dated 9 March 2010 which briefly set out an agreement concerning what was described as "this joint venture project" and which referred to the proposed legal website. In fact, the website was not developed and/or launched. Mr Emery told the Tribunal under cross-examination that he was not aware at the relevant time that LWS had ceased trading in September 2009. He confirmed that he had understood that the Respondent worked also for TA and that he was a consultant with SS, having been given a business card by the Respondent which showed him to be a solicitor at that firm.

24.6 Mr Emery also told the Tribunal that he had been in contact with his insurance broker about the possible impact on his PII of employing or engaging the Respondent, following some discussions with the Respondent about working together. Mr Emery's position was that his broker indicated that employing the Respondent could have a negative impact on his PII and that thereafter he had made it clear that he, Mr Emery, was not committed to the idea of working with the Respondent. The Tribunal noted that there was a letter from Mr Emery to his broker dated 17 March 2010 raising the possibility of engaging the Respondent and stating that he did not want to be penalised in relation to his PII and a response from the broker dated 26 March 2010 which asked for some further information to be provided. Thereafter, there were no documents from the relevant period from the broker. Mr Emery told the Tribunal that he had not pursued the discussions with the Respondent because he was aware, probably from late March/early April 2010, that there was a potential adverse impact on his PII, which would be due for renewal in October 2010 if he engaged the Respondent. Mr Emery's position throughout was that there was no agreement between him and the Respondent, verbal or otherwise, to the effect that the Respondent would act as a consultant for GE or in any other capacity for the firm.

24.7 The Respondent relied on several instances or matters which he prayed in aid as showing the existence of a consultancy arrangement, and these were put to Mr Emery. A summary of the evidence given on those points will appear in the section dealing with the Tribunal's assessment of the evidence. Mr Emery confirmed that he had held regular meetings with the Respondent during 2010 but denied that this had been to discuss or deal with client matters.

24.8 Mr Emery's evidence was that the first he knew of the Notice of Acting dated 29 April 2010 was on 1 October 2010, when the Respondent telephoned him to inform him of an imminent hearing. Under cross-examination, Mr Emery denied knowing anything of Mr Forward or his case. It was put to him that he had received a number of emails apparently sent during the summer of 2010 by the Respondent to Cardiff County Court about the case and copied to him (and to Mr Forward), but Mr Emery denied having seen any of the emails. Mr Emery denied seeing any correspondence or emails in which the Respondent had linked himself to GE, having been referred to a number of copy emails dated between 14 and 23 June 2010, until such documents

had been provided in the course of this case. Mr Emery's evidence, in short, was that the Respondent had no authority to sign a Notice of Acting in the name of Mr Emery's practice and that he was unaware this had been done until October 2010, some 5 months after the date of the Notice.

Mr Forward's evidence

24.9 Mr Forward told the Tribunal that he had first instructed the Respondent, at LWS, in July or August 2008 in connection with a dilapidations claim brought by a former landlord. Whilst Mr Forward could not recall the details, he remembered that in the summer of 2009 the Claimant applied for a charging order; the Respondent represented Mr Forward at the hearing on that point (which the documents showed to be in June 2009) and succeeded in having a judgment in default against Mr Forward set aside. Mr Forward's evidence was that he did not hear from the Respondent very much, but believed he was progressing his matter. Mr Forward told the Tribunal that in about October/November 2009 he had driven past the offices of LWS which appeared to be shut. He had contacted the Respondent and thereafter met him at the LWS offices. The Respondent had confirmed that he was still acting. It was put to Mr Forward that it was obvious at that point that LWS had ceased trading by then and that the Respondent had told him the case would be transferred to another firm; Mr Forward denied this.

24.10 Mr Forward denied under cross-examination that he had received any letter from LWS concerning that firm's closure. He further denied that he knew that GE was instructed. His evidence was also that he first heard of GE when Mr Emery telephoned him on 14 October 2010 to explain the concerns he had about the Respondent's actions. Mr Forward denied he had received the client care letter dated 30 April 2010 (referred to in more detail in relation to allegation 1.2). When asked who he thought was representing him in or about April 2010 (when he was asked to pay some money), Mr Forward responded that LWS was acting and that he regarded the Respondent and LWS as one and the same.

The Respondent's evidence

24.11 The Respondent's evidence to the Tribunal was that he became a consultant with GE in or about February 2010. At that time, he worked part-time at TA and as a consultant at SS, although that agreement was coming to an end. The Respondent confirmed under cross-examination that the consultancy agreement was not evidenced or referred to in writing, although he told the Tribunal that the terms would be that there would be a 50/50 split. The Respondent told the Tribunal that the agreement was verbal, that he had trusted Mr Emery and that with hindsight it would have been better to put the agreement in writing. The Respondent told the Tribunal that the negotiations with Mr Emery had gone on and there had never been a point at which he was told the proposed agreement was not going forward. The Respondent further stated that Mr Emery was aware that LWS had ceased trading in September 2009

24.12 In his witness statement, the Respondent had stated that Mr Emery had given him "a wodge" of his headed paper and in oral evidence the Respondent stated that he had sent perhaps two dozen or so letters. The Respondent identified Mr Forward's matter and the matter of AY and possibly the Mr S matter as ones on which letters may have

been sent by the Respondent on GE paper. The Notice of Acting dated 29 April 2010 had included GE's address and the Respondent's evidence was that he had copied Mr Emery (and Mr Forward) in on email exchanges with the court in June 2010 so there could be no doubt that Mr Emery was aware that his firm was on record as acting. The Respondent's evidence, in short, was that because of the existence of the consultancy agreement he had authority to submit the Notice of Acting and had done so. He relied on a number of matters, set out more fully below, as illustrative of the existence and context of the consultancy agreement. The Respondent's evidence was that Mr Forward knew that the Respondent was a consultant with GE and would be representing him in the proceedings on that basis.

The Tribunal's consideration of the evidence

24.13 The note of evidence above is a summary only of some of the key points. In making its determination, the Tribunal considered other points of evidence, in particular the matters referred to by the Respondent as demonstrating the existence of the consultancy agreement with GE. Those matters will be set out with enough detail to explain the Tribunal's reasoning, but without setting out each and every document or statement which was presented to the Tribunal.

24.14 In order to determine this particular allegation, the Tribunal had to determine whether, as at 29/30 April 2010, the Respondent believed he had the authority or permission to submit a Notice of Acting to the court in the name of GE in the matter of Mr Forward. If he did not so believe, then he knew that GE was not instructed.

24.15 The Tribunal accepted that there had been some discussions between Mr Emery and the Respondent in the early part of 2010 concerning the possibility of the two working together in some capacity. The Tribunal noted that there was nothing in writing to evidence the agreement which the Respondent asserted existed from about February or March 2010. It seemed to the Tribunal inherently unlikely that two solicitors on entering a business agreement of some kind, even against the background of an established personal friendship, would not commit some record of the agreement to writing. In this context, the Tribunal noted an email dated 9 March 2010 from Mr Emery to the Respondent concerning the agreement for the website project. The fact there was no agreement in writing was not determinative of the issue. The Tribunal would require cogent evidence from both parties. The burden of proving the allegation beyond reasonable doubt, of course, rested with the Applicant.

24.16 The Applicant's case was that as at 29/30 April 2010 GE had not been instructed, that Mr Forward had not heard of GE at that point and that when the Notice was lodged stating GE was acting this was not true and, further, that the Respondent knew the Notice was untrue. Mr Forward had maintained that he had not heard of GE until 14 October 2010 and Mr Emery had maintained that he had been unaware of the matter at all until 1 October 2010 and had only become aware of the identity of his supposed client in the days thereafter. There was evidence, which the Tribunal accepted, that the first contact between Mr Emery and Mr Forward had been on 14 October 2010, at which point Mr Forward had asked Mr Emery who he was as he had not heard of him before. Whilst persuasive that there was no consultancy in existence, again this was not in itself determinative since a principal of a firm would not necessarily know the details of all cases being conducted under the auspices of that firm. However, the

Tribunal noted that Mr Emery's practice was, deliberately, small and he acted for a small number of clients, many of whom he had acted for over many years. The Tribunal considered it would be unusual in such a small practice for the principal not to know the identity of all of his clients and at least an outline of the client's matter, even if someone else was carrying out the work.

24.17 Against a background where there was nothing recorded in writing and clear evidence – which was not undermined on cross-examination – that Mr Emery and Mr Forward had each been unaware of the other until some months after the Notice of Acting was signed the Tribunal considered the matters relied on by the Respondent as supporting the existence of a consultancy arrangement.

24.18 The Respondent argued that as GE's PII would not be affected until it was due for renewal there had been no reason for Mr Emery to end the negotiations. Ms Lloyd Williams had made some enquiries in the autumn of 2012 of Mr Emery's broker to ascertain the position where a person was recruited part way through the insurance year. The broker's emailed response showed, firstly, that without full knowledge of the circumstances on which he was being asked to comment he could not comment fully. Further, the email exchange showed that there could, potentially, be difficulties in renewing insurance even if the premium for the year in question were not affected immediately.

24.19 The Tribunal noted that the Respondent appeared to be aware of the different status and implications of being a consultant and being an agent of a firm. In evidence, he told the Tribunal that a consultant was not an employee, would be covered by the firm's PII and that as a consultant he would act for clients, perhaps those for whom he had previously acted, and would pass work to the firm. The Respondent told the Tribunal that on and after 1 October 2010 he had described himself as an "agent" as he was not sure of the PII position from the renewal date but before that he had introduced himself to the court at the hearing on 30 April 2010 and in telephone discussions with the Claimant's solicitors on the Forward matter as a "consultant solicitor". Indeed, the Respondent had insisted throughout his evidence that he had been a consultant at the relevant time.

24.20 However, the Tribunal noted that on two occasions others had reported that the Respondent was acting as "agent". A Mr Pearn of Bowden Jones, solicitors, appeared as agent for the Claimant's solicitors, Sanders, at the Case Management Conference on 30 April 2010. In a letter of that date to Sanders, Bowden Jones stated,

> "...The Defendant's representative, Mr Rudy Hindrick (sic) was late. There was a delay. However, when he attended he advised the Court that he was acting as Agent for Gareth Emery & Co Solicitors and understand that their telephone number is 01443 404331..."

The Tribunal noted that this telephone number did not correspond to either of the telephone numbers on the Notice of Acting or to GE's telephone number. In evidence, the Respondent told the Tribunal that he thought the number was GE's, that it was not his number and that he had introduced himself as a consultant and not as an agent so the agent from Bowden Jones had misinterpreted what had been said.

The Tribunal noted that in a letter from the Claimant's new solicitors, Cutler Buttery, to the Court dated 30 September 2010 (i.e. the date before the CMC was to take place) it was stated,

> "...The Defendant's solicitors presently on the record are Messrs Lloyd Williams of (address and telephone number). We have received no Notice of Change indicating that another firm are instructed in place of Lloyd Williams. We have gone through the files of the solicitors formerly instructed by our client... and there is no Notice of Change on those files.
>
> ...We then heard from a Mr Heinrich by telephone who said that another firm of solicitors were now on the record acting for the Defendant, Messrs Lloyd Williams having ceased to trade. Mr Heinrich explained that he was agent for the new firm of solicitors acting for the Defendant. We asked him to provide us with contact details to finalise the arrangement of the telephone conference. Unfortunately, those details have not been provided".

24.21 The Tribunal further noted that in an email from the Respondent to Cutler Buttery on 6 October 2010 it was stated,

> "Further to our telephone conversation on or about 9.10am on Friday 1st October 2010 whereby I introduced myself as the agent for Gareth Emery Solicitor..."

and the letter was electronically signed off,

> "Regards
> Rudi Heinrich
> Appointed agent for Gareth Emery Solicitor".

The Respondent explained this as arising from being unsure of his status after 1 October and that Mr Emery had told him to go to court that day as his agent.
There is and was no connection between these two firms and so these accounts were independent of one another.

24.22 The Tribunal noted that there was some evidence that there had been an administrative mix up at Cardiff County Court such that the Notice of Acting had not been filed properly and/or sent out to the Claimant's solicitors. This could reasonably explain why there had been no correspondence between the Claimant's solicitors and the Respondent in the summer of 2010. The Tribunal was satisfied on the evidence presented that the Notice of Acting had been filed as asserted by the Respondent on the morning of 30 April 2010.

24.23 The Tribunal noted the copy email exchanges between the Respondent and the Cardiff County Court in June 2010, relied on by the Respondent as evidence of the consultancy agreement and that Mr Emery knew of Mr Forward's case as the Respondent asserted those emails had been copied to Mr Emery and some to Mr Forward. The Respondent's evidence was that the emails had been retrieved from his damaged computer server by a computer expert but he had been unable to afford to pay for all documents to be retrieved. The court no longer held any emails from the

relevant period. The email exchange appeared to be a little unusual, in that in an email timed at 11.16 on 14 June 2010 the Respondent had asked the court officer,

> "Are you in a position to provide me with an outline of those directions (including dates) in whatever format you can..."

in relation to the directions given on 30 April, a hearing which the Respondent had attended, so it was unclear why such a request would have been needed.

24.24 The clear and unshaken evidence of Mr Emery and Mr Forward was that neither of them had received any emails or correspondence from the Respondent on which he was identified as a consultant with GE or otherwise linked to Mr Emery's practice. The Tribunal did not need to determine whether or not the emails had been sent, but it found that they had not been received by Mr Emery and/or Mr Forward.

24.25 The Tribunal noted that there was an email from Mr Forward to the Respondent on 6 April 2010, using the Respondent's LWS email address stating,

> "We have received a letter and Notice of Case Management Conference from Sanders Solicitors...Date of case is 30.04.10 at 11am Cardiff County Court".

The Respondent replied on 7 April 2010, using the LWS email address which stated at the foot, under the office address, "This firm ceased trading on 30-09-09".

Thereafter, the Tribunal noted the email from the Respondent to Mr Forward on 27 April 2010 requesting payment was again sent from the LWS email address, which noted at its foot that the firm had ceased trading. There was no mention in those emails of GE.

24.26 The Tribunal further noted that on 30 September, the Respondent wrote to Cardiff County Court in the matter of Mr Forward on LWS headed paper stating, "...We note that we appear to be still on record which is a clear mistake..." It was unclear why, if acting as consultant for GE, the Respondent had not written to the court on GE headed paper to correct the court's mistake.

24.27 The Tribunal considered the four matters, excluding the Forward matter, on which the Respondent relied as showing the existence of a consultancy arrangement between himself and GE. It was confirmed by the Respondent in evidence that there were no other matters on which he relied. It was also confirmed in evidence that he had not submitted any claim for payment or been paid anything for any work allegedly undertaken as a consultant for GE.

<u>Mr AY</u>

24.28 Mr AY had been a client of the Respondent at LWS. It was not disputed that in or about February 2010 Mr AY had required some advice in connection with a property dispute. The Tribunal was shown a copy of a letter dated 26 February 2010 addressed to solicitors in Neath, who acted for the other party, written by the Respondent. The letter dealt with a number of issues in the dispute and ended,

> "...It would be useful if we could have your client's response today so that we can agree terms before 1st March 2010. We look forward to your comments in relation to the above at your earliest convenience.
> Yours faithfully
> Rudi Heinrich Ll.B (Hons)
> Consultant Solicitor".

The Respondent's evidence to the Tribunal was that he had sent a copy of that complete letter to Mr Emery, for him to check as it was the first letter the Respondent had written on GE paper under the consultancy agreement. The Respondent relied also on an email from Mr Emery dated 1 March 2010 which stated, amongst other matters, "I received the copy of the letter that you wrote" as showing that Mr Emery knew that the Respondent was by that point acting as a consultant and describing himself as such.

The Tribunal noted that Mr Emery's evidence was that whilst he had seen the copy of the letter, he had not seen the version of the letter on headed paper. In the absence of that detail, he had not been aware that when stating he was a "consultant solicitor" that that referred to GE in any way. It was Mr Emery's evidence that at that point he believed LWS was still trading and had assumed that the Respondent was dealing with Mr AY under the auspices of LWS.

The Respondent explained the description by Mr Emery of Mr AY as "your client" in the same email as simply a reference to the fact that Mr AY had been a client of the Respondent previously. Mr Emery's evidence was that he had fielded a number of telephone calls from the solicitors in Neath and had not been happy at doing so when the matter was not one his firm was handling; there was no file or papers, no client care letter and no bill for any work done. Mr Emery also gave evidence that he had received no further communication from the solicitors in Neath.

MBNA

24.29 The Respondent relied on a matter involving MBNA on which he had worked for Mr Emery. It was acknowledged by the Respondent that this had been a personal matter of Mr Emery's, not involving any client of the firm. In short, Mr Emery's evidence was that he had a dispute with MBNA but had little time to deal with it as it occurred about the time of Mr Emery's marriage. The Respondent had offered to help; it was noted that in the email of 1 March 2010, Mr Emery had referred to giving the Respondent the MBNA file "on Thursday night". The Respondent's assertion was that what he had done was more than just helping out Mr Emery and that in carrying out work, including reading the file, he had been acting as a consultant.

Lease

24.30 The Respondent gave evidence that Mr Emery had asked him to work on an old lease, which for renewal required updating by the insertion of the prescribed l clauses required by the Land Registry, and that this evidenced the work done as part of the consultancy arrangement. Mr Emery's evidence was that he had been unable to scan the old lease into his computer in order to work on it and in the course of one of their meetings (which he maintained was in connection with the website) the Respondent

had agreed to scan the document and email it to Mr Emery, which he had done. The Respondent's evidence was that he had amended the document before returning it to Mr Emery.

The Tribunal noted that an email from Mr Emery to the Respondent on 17 May 2010 with the subject "Lease", read:

> "Hi Rudi,
> I need to urgently send out the draft lease. Have you managed to scan it yet. If so, could you send to me as an attachment please?"

The response was from the email address "rachel@lloyd-williams.com" on 19 May 2010 and under the heading "Draft Lease" it read,

> "Hi Gareth
> I attach the old lease for your reference.
> Regards,
> Rudi"

The email had the LWS footer and address and no statement that the firm had ceased trading.

Mr SNI

24.31 The Respondent referred to a number of emails and other documents concerning the matter of Mr SNI. Mr Emery and the Respondent agreed in evidence that Mr SH, an established client of GE, telephoned Mr Emery's office concerning the bankruptcy of his brother-in-law, Mr SNI. Mr Emery's evidence was that he had referred the matter to the Respondent, whom he believed was still trading as LWS and/or was an assistant solicitor at TA whilst the Respondent's evidence was that the referral had been to the Respondent as an individual working with GE. The Tribunal noted that there were emails from Mr Emery to the Respondent on 16 and 18 March 2010 forwarding documents and a message from Mr SH.

Mr AT – Estate of S

24.32 The Respondent had acted for Mr AT, the executor of the estate of S deceased whilst at LWS. There was no dispute that in or about September 2010 certain papers in the matter had been handed to Mr Emery by the Respondent. The agreed circumstances were that there was due to be an auction of an estate property and the Respondent was about to undertake a week long course and so would be unable to carry out certain tasks so Mr Emery agreed to help. The Respondent relied on this to show that he and Mr Emery were working together, whereas Mr Emery maintained that he had wanted to help a friend who was in difficulty as the file had been inactive and there had been no Grant of Probate (and so no sale of property could take place). The Respondent further referred to the fact that Mr Emery had asked him to take statements from two witnesses on this matter (as shown in an email of 29 September 2010). It was clear from the emails produced by the Respondent to the Tribunal that Mr Emery had been in contact with Mr AT towards the end of September 2010. On 24 September 2010 Mr Emery had emailed Mr AT and amongst other points stated,

> "I also need to discuss this with Rudi and whether he wishes me to take over the file completely and if so I will need terms and conditions etc signed by you".

In due course Mr AT had instructed GE; Mr Emery's evidence to the Tribunal was that he would not charge Mr AT for any work done prior to his terms and conditions of business being signed. The Respondent's evidence was that he had not done any work on this matter as consultant to GE.

24.33 The Tribunal noted that after the telephone conversation on the morning of 1 October 2010 concerning the hearing in the matter of Mr Forward, Mr Emery had sent an email to the Respondent in the early morning of 3 October 2010 which stated,

> "...I cannot sleep worrying about things you appear to have done in my name and the fact that you have failed to reply to my telephone messages and emails reinforces that anxiety and disappoints me".

On 5 October 2010 Mr Emery emailed the Respondent referring to a telephone conversation he had had with the SRA's ethics department in which he had been informed that he had to report the Respondent's conduct. The email went on to record that Mr Emery considered he was the only person who could file a Notice of Acting and that "I would not dream of doing so if I did not open a proper file with the normal ID checks, client care letter and agreed terms and conditions and an agreed charge out rate..."

24.34 On 6 October 2010 the Respondent emailed Mr Emery stating he had "responded in full to all these points so far as I can" but this contention was not accepted by Mr Emery in his email to the Respondent a little later on 6 October and in further emails later that day. On 7 October 2010 Mr Emery wrote to Cardiff County Court setting out his understanding of the circumstances and asking to come off record. On the same day he wrote to the SRA setting out his concerns. On 8 October the Respondent sent to Mr Emery a fax with copies of emails dated 6 and 7 October 2010. The first of these was from the LWS email address which, in the footer immediately below the address, stated "This firm ceased trading on 30-09-09".

<u>The Tribunal's findings of fact</u>

24.35 There was no written consultancy agreement, nor was there any record in writing of such an agreement. It was for the Applicant to prove that there was no verbal agreement and/or that the Respondent did not believe as at 29/30 April 2010 that he could file a Notice of Acting in the name of GE. The Notice of Acting had undoubtedly been submitted to the court on 29 or 30 April 2010 and this was accepted by the Respondent.

24.36 The Tribunal found the evidence of Mr Emery to be more credible than that of the Respondent in all respects relating to the existence or otherwise of a consultancy agreement. Attempts had been made to cast doubt on Mr Emery's credibility by reference to a pre-nuptial agreement which the Respondent had discussed with Mr

Emery's then fiancée but the Tribunal did not find this area of questioning undermined Mr Emery's credibility on the fundamental issues.

24.37 Mr Emery had consistently maintained that, whilst he had discussed the possibility of entering into a business arrangement with the Respondent, he had not been prepared to do so if it would adversely impact his PII position. At some point in March 2010 he had become aware that there would, or could, be such an adverse impact and so took no further steps to progress any consultancy or other arrangement with the Respondent. Mr Emery's reaction to the telephone call on 1 October 2010 from the Respondent was a very strong reaction and within days had led to the Respondent being reported to the SRA. The Tribunal found that this reaction was consistent with Mr Emery's evidence that he had known nothing of Mr Forward or his case and specifically had not agreed that his firm should go on record. Had Mr Emery known of the matter before 1 October, there was no reason for him to react as he had done.

24.38 The Tribunal further accepted that, given the size and nature of his practice, Mr Emery would have known of all matters being conducted in the name of his firm. The Tribunal further accepted that Mr Emery had not been aware that LWS had ceased trading until at least September 2010 (in connection with the matter of Mr AT/the S estate). The Tribunal accepted that Mr Emery had not seen the batch of emails in June 2010 which had supposedly been copied to him by the Respondent; it did not need to find specifically that the Respondent had not sent such emails, simply that they had not been received.

24.39 On the question of whether or not Mr Emery had provided the Respondent with "a wodge" of his firm's notepaper, the Tribunal preferred Mr Emery's evidence which was to the effect that the Respondent may have obtained some such notepaper, albeit only one or two sheets, in connection with the proposed website.

24.40 The Tribunal found that the Notice of Acting recorded GE's address, but the telephone numbers used on the Notice were not those of GE. Further, the telephone number for GE given by the Respondent to the Claimant's agent on 30 April 2010 was not GE's telephone number.

24.41 The Tribunal had heard the evidence of Mr Forward and accepted that he, as a lay client, had had no "axe to grind" with the Respondent. Indeed, it appeared that Mr Forward had been very happy for the Respondent to represent him as he believed that the Respondent had done a good job for him during 2009. Mr Forward had told the Tribunal that he had understood at the relevant time that he was being represented by the Respondent/LWS. In the days before the 30 April hearing, he had exchanged emails with the Respondent using the LWS email address. The Tribunal accepted that the footer of those emails from the Respondent stated that the firm had ceased trading but also accepted that Mr Forward had either not noticed or not understood the significance of such a statement. The Tribunal accepted that Mr Forward had been reassured by the Respondent at some time in the autumn of 2009 that he, the Respondent, would continue to represent Mr Forward. There was no mention in the emails between the Respondent and Mr Forward in April 2010 of GE. The request for payment made in the email of 27 April 2010 (dealt with in more detail at allegation 1.5 below) appeared to be from LWS and not GE. The Tribunal accepted that Mr Forward had not received copies of the emails dated June 2010 between the

Respondent and the court. The Tribunal further accepted that Mr Forward had not received a letter from LWS when that firm closed about making alternative arrangements for his file.

24.42 Further, and importantly, the Tribunal found that Mr Forward had not heard of Mr Emery or his practice until 14 October 2010, over five months after a Notice of Acting had been filed stating that that firm was acting for Mr Forward. The accounts given by Mr Forward and Mr Emery of the telephone discussion they had had that day were consistent. Further, Mr Emery's reaction to the events of 1 October 2010 was consistent with his evidence that he had been unaware his firm had gone on the court record as acting in Mr Forward's case. Mr Forward could not have thought he was paying Mr Emery's firm, which bears his name, as at the time he had not heard of Mr Emery.

24.43 In contrast, the Tribunal found the Respondent's evidence on most points where there was any dispute to lack credibility. The Tribunal did not doubt the evidence in support of the allegation by reason of anything said by the Respondent in his evidence.

24.44 The Respondent was unable to answer questions satisfactorily concerning the "wodge" of headed paper he had allegedly been given by Mr Emery. In response to questions from the Tribunal, he had stated that he had written perhaps two dozen letters on headed paper, had none left, was unsure about the last letter that he had written, revised his estimate to "several" sheets and could only identify the Forward, AY, AT and SNI matters as ones on which he had acted or might have sent letters on headed paper. The Tribunal was able to identify only a letter to the court on the Forward matter enclosing the Notice of Acting, the client care letter to Mr Forward (dealt with under allegation 1.3 below) and the letter of 26 February 2010 in the matter of AY as ones in which the Respondent had used or may have used headed paper. The Tribunal did not accept that Mr Emery had allowed the Respondent to take sheets of his headed paper and certainly had not provided a substantial amount for use as part of a consultancy arrangement. Mr Emery's evidence was clear and consistent. He had given the Respondent no notepaper, but there was an occasion when he might have taken some. In connection with the proposed website venture he might (he could not recall) have given him a sheet for the details upon it, but certainly never more than that, and never for the Respondent to write letters upon.

24.45 The Respondent's evidence in relation to the various matters on which he had allegedly worked with Mr Emery was unconvincing. In the matter of Mr AY, there was nothing to suggest that Mr AY had become a client of GE other than the letter dated 26 February 2010 which, when printed on GE's headed paper, appeared to show that the Respondent was a consultant with the firm. However, the Tribunal accepted that Mr Emery had not seen the version on headed paper; he had been unshakeable in his contention that he had only seen a "carbon" or plain copy. Further, it was clear on the Respondent's own evidence that no bill had been rendered to Mr AY; indeed, he had stated that the work had involved only a "one-off letter". It was difficult to believe, therefore, that the matter of Mr AY supported the contention that there was a consultancy arrangement.

24.46 With regard to Mr SNI, it was clear on the Respondent's own evidence that apart from a telephone conversation and, perhaps, consideration of some documents very little if any work had been done. In any event, the Tribunal preferred the evidence of Mr Emery that the work had been referred to the Respondent in the belief that he would act on it, through LWS or otherwise. An email from Mr Emery indicated that he had no objection to the Respondent acting for Mr AY provided Mr AY paid the Respondent's account. This did not look like the start of a matter to be run by the Respondent as consultant to Mr Emery. At that point, in March 2010, the Tribunal accepted that Mr Emery had not known LWS had ceased trading and in any event knew that the Respondent was working part-time at TA.

24.47 The matter of the lease was one on which the Respondent had shown himself to be a particularly unreliable witness. The Respondent had told the Tribunal that he had worked on the lease before emailing it back to Mr Emery but was unable to explain why in an email of 19 May 2010, sent from LWS (with no statement on the footer that the firm had ceased trading) he had said, "I attach the old lease for your reference". There was no mention in the email of having amended the document, added clauses or otherwise having worked on it. The Respondent could only offer that he "may have phrased it (the email) the wrong way".

24.48 The matter of Mr AT/estate of S was particularly troubling. It did not seem to be suggested by the Respondent that Mr Emery had known anything about this matter until about the middle of September 2010, at a point at which the Respondent was about to go away for several days and an auction was imminent. Under cross-examination, the Respondent had told the Tribunal that Mr Emery's comments that the file had been disarray when received by him was not correct and neither was it correct that not a lot had happened on the file over the previous year. In response to a question about who had acted for Mr AT in the period from October 2009 to September 2010, the Respondent had said that he was representing Mr AT with the management of the estate property, which was dilapidated. In response to a further question, the Respondent stated that he had intended the file to be passed to SS, for whom he had been working from 1 October 2010. The file had not been "fully transferred over". The Respondent had gone on to tell the Tribunal that there had been no legal aspect to the work he had continued to do for Mr AT and that rather it was in the nature of property management work. The Respondent told the Tribunal that he had intended to pass the file to GE when there were legal aspects to the work, but he continued to act albeit not as a solicitor in order to protect the main asset of the estate. Having given this evidence, the Respondent was unable to explain why a firm called Berry, Redmond and Robinson had written to him at TA on 30 November 2009 concerning the estate. The Respondent was unable to say if he had responded to the letter but stated that if he had done so it would not have been from TA. Further, the Tribunal noted that after the Respondent and Mr Emery had fallen out in October 2010 the Respondent had purported to exercise a lien in favour of LWS over the files until that firm's fees were paid. The Respondent appeared unable to grasp that this was inconsistent with the files having been within the remit of GE but stated he had only started to exercise the lien after the 1 October 2010, when he was no longer a consultant with GE. Nor could the Respondent explain why work involved in putting the property to auction or discussion with those who had lodged a caveat in the estate of the deceased owner was not legal work: which, if there was a consultancy would be work to be done through it.

24.49 The Tribunal found the Respondent's evidence in relation to the matter of Mr AT/estate of S to be incredible. It was inconsistent and evasive. If what the Respondent had asserted was true, the Respondent had left his client legally unrepresented when there were clearly legal issues to be addressed, such as obtaining a Grant of Probate. The evidence pointed to the Respondent retaining the file, doing nothing of substance after the closure of LWS, failing to transfer the file to another firm and then giving incorrect information to the Tribunal about what had happened. The Respondent had only passed any papers to Mr Emery when the impending auction meant that the inactivity on the file would become apparent. The assertion of a lien in favour of LWS was inconsistent with the assertion that GE had had conduct of the matter with the Respondent having day to day conduct under the terms of the alleged consultancy arrangement. If there were fees outstanding they would have been fees due to GE under the consultancy which the Respondent asserted was covering his legal work.

24.50 In any event, the only matters prior to the signing of the Notice of Acting on which the Respondent relied were to show the consultancy were the matters of Mr AY, Mr SNI, the lease and the MBNA matter. The Tribunal found the latter was a purely personal matter to assist Mr Emery. The Tribunal was not satisfied that what the Respondent asserted in relation to the matters of Mr AY and/or Mr SNI was true, in particular in relation to whether Mr Emery had ever seen a letter in the Respondent's name on GE headed paper. Even if the Respondent's assertions were true, that would not be sufficient to cast doubt on the Applicant's evidence to the effect that there was no consultancy in place. The Tribunal found the Respondent's evidence in relation to the lease matter to be evasive and untrue; the documents he had produced clearly showed he had not undertaken any work other than scanning the old lease and emailing it to Mr Emery.

24.51 The Tribunal found the Respondent to be an unreliable and evasive witness. The documents he had produced and his oral evidence did not raise any reasonable doubt in the matter. There was no consultancy agreement in place and so no reason for the Respondent to believe that he had any authority to sign and submit a Notice of Acting in the name of GE. The Tribunal found as set out at paragraphs 24.34 to 24.49 above that neither Mr Emery nor Mr Forward had known that the Respondent had submitted a Notice of Acting to the Cardiff County Court at the end of April 2010. The Tribunal found that the Respondent had no specific authority to submit the Notice of Acting and there was no general consultancy agreement in place under which the Respondent could take such a step. Further, the Respondent knew this. The Court received a document which was misleading and the submission of the Notice of Acting was clearly a breach of Rule 11.01 SCC.

24.52 For the reasons set out above, the Tribunal was satisfied to the highest standard that this allegation had been proved.

25. **Allegation 1.2: The Respondent purported to sign the Notice of Acting on behalf of Gareth Emery, Solicitor, without the knowledge of Gareth Emery when not employed by him not authorised to sign the Notice of Acting on his behalf**

25.1 The Respondent denied this allegation.

25.2 The factual matters, evidence and findings relating to this allegation are substantially as set out at paragraphs 24.2 to 24.50 above and are not repeated.

25.3 For the reasons set out above, the Tribunal was satisfied to the highest standard that Mr Emery did not know the Respondent had signed a Notice of Acting purporting to be from GE. Further, Mr Emery did not employ the Respondent and had not authorised the Respondent either expressly or impliedly to sign the Notice of Acting. Accordingly, the Tribunal was satisfied to the required standard that the allegation had been proved.

26. **Allegation 1.3: He sent and/or prepared a client care letter dated 30 April 2010 to Mr Terence Forward on behalf of Gareth Emery, Solicitor, holding himself out as a consultant at the firm when he knew this was untrue**

26.1 This allegation was denied by the Respondent.

26.2 The circumstances, evidence and findings relating to this allegation are substantially as set out under paragraphs 24.2 to 24.50 above.

26.3 In addition, the Tribunal noted that the client care letter which was prepared and dated 30 April 2010 was not in the format generally used by Mr Emery, an example of which had been referred to in evidence. The Respondent's charge out rate of £150 per hour was greater than that generally used by Mr Emery. Further, the client care letter referred to payment of VAT whereas GE was not registered for VAT as the practice's turnover was below the relevant threshold. The Tribunal did not believe that Mr Emery had either expressly or impliedly approved the preparation of a client care letter on his firm's headed paper where the terms and format differed so substantially from his usual terms and conditions of business. Further, the Tribunal noted that in the letter it was stated that Mr Emery, "...will be familiar with your matter". This, the Tribunal found, was untrue as it accepted that Mr Emery had been unaware of the matter until some months after the date of the letter. The Tribunal found that even if sent, Mr Forward had not received this letter and no copy of the letter signed by Mr Forward had been located. The Respondent had not been a consultant at the firm and knew he was not, for reasons set out under paragraphs 24.34 to 24.50 above.

26.4 As the Tribunal could not be sure that the letter had been sent, it found that the Respondent had prepared the client care letter dated 30 April 2010. In that letter he had clearly held himself out to be a consultant at the firm when he knew as at the date of the letter that he did not have that status. Accordingly, the Tribunal was satisfied to the highest standard that the allegation had been proved.

27. **Allegation 1.4: He held himself out as a consultant at Gareth Emery, Solicitor, when he knew he was neither employed nor retained by that firm in any capacity**

27.1 The Respondent denied this allegation.

27.2 As set out at paragraphs 24.2 to 24.50 above, it was clear that the Respondent had held himself out as a consultant at GE, in particular in the period late April to October 2010 in the matter of Mr Forward. Indeed, it was the Respondent's contention that he

had also held himself out as a consultant at GE in the matter of Mr AY, where he told the Tribunal he had written a letter to the other party's solicitor on GE notepaper. Whilst there was some evidence that at the court hearings on 30 April and 1 October 2010 in Mr Forward's matter the Respondent had described himself as an "agent" the Respondent had been adamant when giving evidence that he had described himself as a consultant at GE and that those who had mentioned he was an "agent" were mistaken or had misinterpreted what he had said. The fact that Mr Emery had discussed with the Respondent on the morning of 1 October the need for the Respondent to attend the hearing was not sufficient to show that the Respondent had been "retained". Mr Emery had been in a difficult position in that he was apparently on record in a matter about which he knew nothing and needed to try to ensure that a member of the public (whom the world might regard as Mr Emery's client) was not prejudiced. There could be no doubt on the evidence presented, including the Respondent's own evidence, that the Respondent had held himself out to the court and to others as a consultant with GE.

27.3 The Tribunal found that, for the reasons set out from paragraphs 24.34 to 24.50 inclusive, the Respondent had not been employed or retained by GE in any capacity, and that he knew that to be the case. Accordingly, the Tribunal found the allegation proved to the highest standard.

28. **Allegation 1.5: He misappropriated client's money**

28.1 The Respondent denied this allegation.

28.2 The factual background underlying the allegation is set out at paragraph 14 above and some of the relevant evidence is set out at paragraphs 24.10. 24.25 and 24.40.

28.3 Mr Forward's evidence in relation to the request for payment made by the Respondent in April 2010 was that he could not recall receiving an invoice from LWS for the work done in 2009, nor could he locate such an invoice. The request for payment had been made in a telephone conversation and there had then been an email, dated 27 April 2010. At the time of the request for payment, Mr Forward had understood it to be for work previously done by the Respondent at LWS. He accepted that work had been done, for example in connection with a court hearing in June 2009. Mr Forward also accepted that when he had spoken and written to Mr Emery in October 2010 he had been mistaken in stating both the amount of the payment made and that the request had been for payment on account of costs.

28.4 The Tribunal noted that the email of 27 April 2010, just three days before the Case Management Hearing in Mr Forward's case, read:

> "Dear Terry,
>
> Further to my previous e-mail I confirm my attendance attend (sic) the Case Management Conference listed in Cardiff on Friday 30th April 2010. However, I will need settlement (clear funds) of a prior invoice which amounts to £550 plus VAT first TOTAL £646.25"

There followed details of a bank account stated to be for LWS. The email was sent from a LWS address, with the firm's address noted in the footer together with the statement "This firm ceased trading on 30-09-09".

28.5 The evidence of both the Respondent and Ms Lloyd Williams was that there would have been a bill from LWS prior to that firm ceasing to trade. The absence of a client ledger and copy of the bill was explained as being due to the firm's server not working. The Respondent contended that although LWS had ceased trading, he remained a partner in that firm and had a responsibility to collect in for the partnership any outstanding monies.

28.6 The allegation as pleaded required the Applicant to prove that the Respondent "misappropriated" Mr Forward's money. Mr Forward had accepted that the Respondent had asked for money in respect of work previously done and accepted that there may have been a bill from LWS for that work which remained outstanding. Although there were other aspects of the Respondent's conduct in respect of his request for payment which were relevant to allegations 1.7 and 1.8, (as set out in 30.4,) the Tribunal was not satisfied that the money was not due to LWS. Accordingly, this allegation had not been proved.

29. **Allegation 1.6: He failed to co-operated with the SRA contrary to Rule 20.05 of the SCC**

29.1 This allegation was denied by the Respondent.

29.2 The factual background to this allegation is set out at paragraphs 15 to 16 above. The Tribunal considered the Respondent's evidence that the SRA's correspondence had been sent to incorrect addresses. The Tribunal noted that the SRA's first letter to the Respondent, dated 11 January 2011 was sent to the address of LWS, a firm which had ceased trading in September 2009. The Respondent had given evidence that the building had been disposed of late in 2009. A further letter, dated 1 February 2011, was sent to an incorrect address for LWS and to a residential address which the Respondent stated had not been his address for some time. The first letter sent to the correct residential address was that dated 15 June 2011. Thereafter, there had been some email correspondence between the Respondent and the SRA. The Applicant's position was that although there may be mitigating circumstances, the Respondent had failed to send the information requested in the period after June 2011.

29.3 The Tribunal was not satisfied that the Respondent had received the initial correspondence from the Applicant, which had been wrongly addressed. The Respondent had produced some email correspondence between himself and an appropriate officer of the SRA. Although there were some issues concerning whether or not the Respondent had attached a proper response to his email of 23 August 2011 to the SRA, the Tribunal was not satisfied that the allegation had been proved to the required standard.

30. **Allegation 1.7: The Respondent failed to uphold the rule of law and the proper administration of justice and/or failed to act with integrity contrary to Rule 1.01 and 1.02 of the SCC**

30.1 The Respondent denied this allegation.

30.2 The allegation related to all of the factual matters set out at paragraphs 11 to 14 inclusive. The particular areas to which it related were the allegations set out at 1.1 to 1.5 above.

30.3 The Tribunal had found allegations that the Respondent had signed and submitted to a court a Notice of Acting when he had no status which entitled him to do so. He had prepared a client care letter in which he had purported to be a consultant solicitor with GE, and had held himself out as a consultant when he knew he was not. These were serious matters. In submitting a misleading document to the court, the Respondent had failed to uphold the rule of law and the proper administration of justice. In doing this, and in taking steps to hold himself out, wrongly, as a consultant with GE, the Respondent had failed to act with integrity.

30.4 The Tribunal had not found proved the allegation of misappropriation of Mr Forward's money. However, the circumstances in which the Respondent had obtained the payment showed a lack of integrity. The Tribunal found as facts that the Respondent had requested payment of a total of £646.25 in cleared funds within a few days of a case management hearing due to take place on 30 April 2010. Mr Forward had given evidence, which the Tribunal accepted, that he had understood that he needed to make payment in order to ensure that the Respondent would attend the hearing on 30 April on his behalf. The money was apparently requested on behalf of LWS, and the money may have been properly due. The Respondent was, in his own evidence, seeking payment of money to LWS whilst at the same time purporting to be acting in the matter as a consultant with GE. There was no basis on which payment of costs or other sums to another firm should have been used as a lever to ensure that GE would represent Mr Forward at the hearing. Whilst the Respondent's evidence was that he would have attended the hearing even if payment had not been made, this was not what he had written at the time and nor was it Mr Forward's understanding; his clear evidence to the Tribunal had been that he had to provide the money before the Respondent would do any further work on his behalf. The Tribunal further found as a fact that the Respondent had not informed Mr Forward that GE would be acting for him in respect of the hearing or otherwise. In those circumstances, although the money may have been owed to LWS by Mr Forward, the way in which it was demanded showed a lack of integrity.

30.5 The Tribunal found this allegation proved to the highest standard in respect of allegations 1.1 to 1.4, as set out above, and also in relation to the facts underlying allegation 1.5, although that allegation had not been proved as pleaded.

31. **Allegation 1.8: The Respondent failed to act in the best interests of clients and in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rule 1.04 and 1.06 of the SCC**

31.1 The Respondent denied this allegation.

31.2 The Tribunal had found allegations 1.1 to 1.4 proved, as set out above. The Respondent had failed to act in the best interests of Mr Forward in failing to ensure his proper representation in litigation and in particular in the way in which he had

linked payment of sums of money to representation at the hearing on 30 April. Indeed, the Respondent had taken advantage of Mr Forward in the manner in which he had asked for payment. Further, the Respondent had failed to ensure in good time that Mr Forward would be properly represented at the hearing on 1 October 2010, a hearing date of which the Respondent had been aware since his attendance at the 30 April hearing.

31.3 The matter relating to Mr AT/estate of S did not form part of the allegations against the Respondent and had been relied on by the Respondent to support his contention that there had been a consultancy arrangement. Accordingly, whilst the Tribunal was concerned about a number of points which emerged during the Respondent's evidence, it made no specific findings in those matters as the allegations in the Rule 5 Statement related only to Mr Forward's case.

31.4 Submitting to the court a misleading Notice of Acting, preparing a client care letter when he had no authority to do so and holding himself out as a consultant at a firm when there was no agreement that he was a consultant were all actions which would diminish the trust the public would place in the Respondent and the profession.

31.5 The Tribunal was satisfied to the highest standard that this allegation had been proved, as set out above.

32. **Allegation 1.9: In respect of allegations 1.1 to 1.5 it was alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.**

32.1 The Respondent had denied he had been dishonest.

32.2 The Tribunal had found allegations 1.1 to 1.4 proved and went on to consider whether in respect of those matters the Respondent's conduct had been dishonest.

32.3 Mr Davis on behalf of the Respondent had submitted that the reasonable and honest person would not regard the Respondent's actions as dishonest and that the Respondent did not regard his actions as dishonest by those same standards. The Tribunal noted that the test it needed to apply in considering the allegation of dishonesty was that set out in the Twinsectra case.

32.4 The Tribunal could not speculate on the Respondent's motives for his conduct. However, it noted that the main allegations arose from circumstances where there was an imminent court hearing at which if the Respondent did not represent Mr Forward, or revealed that he had retained the file when LWS had ceased trading, he would have faced significant professional difficulties. In particular, files held and acted on by the Respondent which were formerly LWS files would not be covered by any PII.

32.5 The Tribunal found that in submitting a misleading Notice of Acting to the court, in holding himself out as a consultant for GE when he was not and in preparing a client care letter dated 30 April 2010 when he knew he had no right, authority, permission or entitlement to take any of those actions was dishonest by the standards of reasonable and honest people. Further, the Respondent knew that by those same standards his actions were dishonest. He had misled a court, which could not be an

honest action. He had continued the deception over a period of months as neither Mr Emery nor Mr Forward knew what he had done until a crisis point, being a court hearing on 1 October, led to the revelations about which Mr Emery had complained to the Applicant. The Respondent's evidence to the Tribunal had been contradictory and evasive on a number of points.

32.6 The Tribunal was satisfied beyond reasonable doubt that the allegation of dishonesty had been proved in respect of the matters set out under allegations 1.1 to 1.4 inclusive.

Previous Disciplinary Matters

33. There were no previous findings against the Respondent.

Mitigation

34. Mr Davis informed the Tribunal that the Respondent was disappointed with the Tribunal's findings. The Tribunal was asked to impose a sanction short of striking off, such as a reprimand, but if striking off were to be ordered it was submitted that the Respondent ought to be able to reapply to join the Roll within a reasonably short time.

35. The Tribunal was told that the Respondent was bankrupt, that he apologised for his conduct and threw himself on the mercy of the Tribunal.

Sanction

36. The Tribunal had regard to its Guidance Note on Sanctions (August 2012).

37. In this case, the Tribunal had found that the Respondent had been dishonest. This was not one of the small residual category of cases in which a finding of dishonesty need not necessarily lead to a striking off order. The Tribunal noted in particular that the dishonesty was not an aberration and had been pursued for a considerable period, rather than as a momentary failing. The Tribunal had found the Respondent to be an unreliable and evasive witness, who had shown no insight into his misconduct. In all of the circumstances of the case, there was no alternative but to order the Respondent to be struck off the Roll. Even without the finding of dishonesty, the proven allegations were very serious, including as they did several breaches of the Respondent's core duties as a solicitor and would have justified a sanction at the upper end of the range of sanctions available.

Costs

38. The Tribunal was informed by the representatives of the parties that they had agreed that the Respondent should pay the costs of the proceedings in the agreed sum of £25,000.

39. The Tribunal was satisfied that this was an appropriate order and that the sum agreed was reasonable given the nature of the case and the work which would have been required to prepare and present the case. The Tribunal incorporated the agreed costs order into the Order it made.

Statement of Full Order

40. The Tribunal Ordered that the Respondent, David Rudolph Heinrich, 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 agreed sum of £25,000.00.

Dated this 17th day of April 2013
On behalf of the Tribunal

P. Housego
Chairman