SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10998-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
ALAN DAVID TICKELL	First Respondent
and	
[RESPONDENT 2]	Second Respondent

Before:

Mr R. Prigg (in the chair)
Miss T. Cullen
Mr S. Howe

Date of Hearing: 19th November 2012

Appearances

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

Gareth Edwards, Solicitor of Crangle Edwards Solicitors, 159 Councillor Lane, Cheadle, Cheshire SK8 2JE for the First Respondent.

Jonathan Goodwin, Solicitor of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT for the Second Respondent.

JUDGMENT

Allegations

1. The allegations in a Rule 5 Statement dated 22 May 2012 against the First and Second Respondents as amended with the consent of the Tribunal in respect of the withdrawal of allegations made against the Second Respondent were that:

1.1 The First Respondent acted in breach of all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") and Rules 1(b), 19(2), and 22(1) of the Solicitors Accounts Rules 1998 ("SAR") in that he raised invoices in respect of his firm's costs and transferred client monies to his firm's office bank account in respect of those invoices when:

(a) there was no proper reason for doing so; and

(b) he had not provided those invoices to his clients or otherwise informed them that he was taking the funds.

1.2 Withdrawn (against the Second Respondent only);

1.3 The First Respondent acted in breach of SCC Rules 1.01, 1.04 and 1.06 and SAR Rules 1(c), 22(1) and (5) in that he withdrew funds from the firm's general client bank account in respect of a client's matter when:

(a) the monies withdrawn exceeded the funds held on behalf of that client, in that the firm was holding no funds on behalf of that client; and

(b) the monies were not properly required for payment on behalf of the client, and the firm had no instructions from his client to make such payment.

1.4 Withdrawn (against the Second Respondent only)

1.5 The First Respondent acted in breach of SAR Rule 7 in that he failed to correct the breaches of the SAR identified in allegations 1.1 and 1.3 above which he had knowingly committed, for significant periods after those breaches had been committed;

1.6 Withdrawn (against the Second Respondent only);

1.7 The First Respondent acted in breach of all or alternatively any of SCC Rules 1.04, 1.05 and 1.06 by:

(a) failing to disburse the residues of estates to beneficiaries of those estates for a significant number of years;

(b) failing to register (i) the transfer of a property between his two clients and (ii) a charge over that property in favour of his lender client, for a period of more than three years after the transfer of property;

(c) repeatedly assuring his mortgagee client that the registration of its mortgage over a property was being dealt with, when in fact no such steps were being taken.

1.8 After 15 July 2008, the First Respondent acted in breach of SAR Rule 15 in that he retained client monies when there was no longer any proper reason to retain those funds;

1.9 Withdrawn (against the Second Respondent only).

2. The First Respondent acted in breach of SCC Rules 3.09 and 3.10 in that, in a conveyancing transaction not at arm's length, he acted for seller and buyer without their written consent having been obtained.

3. The First Respondent acted in breach of the following SAR provisions:

3.1 Rule 1(e), in that he failed to establish and maintain proper accounting systems, and proper internal control over those systems, to ensure compliance with the SAR;

3.2 Rule 1(f), in that he failed to keep proper accounting records to show accurately the position with regard to the money held for each client;

3.3 Rule 1(h), in that he failed to co-operate with the Solicitors Regulation Authority ("SRA") in checking compliance with the rules;

3.4 Rule 6, in that he failed to ensure compliance with the SAR by himself and by everyone employed by the practice;

3.5 Rule 7, in that he failed to remedy breaches of the SAR promptly upon discovery, including the failure to replace promptly monies improperly drawn from a client account;

3.6 Rule 24(1), in that he failed to account to clients for the interest earned on designated client accounts;

3.7 Rule 32(1), in that he failed to keep at all times accounting records properly written up to show his firm's dealing with client monies;

3.8 Rule 32(1), in that all dealings with client money were not appropriately recorded on the client side of a separate client ledger for each client account;

3.9 Rule 32(16), in that suspense client ledger accounts have been used regularly and for long periods for unidentified receipts of client funds;

3.10 The following guidelines in the "SRA guidelines – accounting procedures and systems", published under Rule 29:

(a) guideline 2.4 in that ledger account cards for clients did not include a heading which contained a description of the matter of transaction; and

(b) guideline 5.3 in that a master list of bank accounts was not kept.

(Insofar as allegation 3 was brought against the Second Respondent, the allegation was withdrawn.)

It was further alleged that the First Respondent's conduct in respect of the matters in allegations 1.1, 1.3 and 1.7(c) was dishonest, although it was not necessary to prove dishonesty to prove the allegations themselves.

The allegations in a Rule 7 Statement dated 14 August 2012 against the First Respondent were that:

4. He failed to return clients money to clients promptly after there was no reason to retain those funds, in breach of Rule 15(3) of the SAR and, after 5 October 2011, Rule 14.3 of the SRA Accounts Rules 2011 ("SRA AR");

5. He failed to promptly inform clients in writing of the amount of client money retained at the end of their matters, and the reason for those retentions, in breach of Rule 15(4) SAR and, after 5 October 2011, Rule 14.4 SRA AR;

6. He failed to remedy promptly upon discovery the breaches at 4 and 5 above, in breach of Rule 7 SAR and, after 5 October 2011, Rule 7 SRA AR.

Documents

7. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 22 May 2012 with exhibit;
- Rule 7 Statement dated 14 August 2012 with exhibit;
- Submissions on behalf of the Applicant dated 16 November 2012 by Mr Hudson;
- Regulatory Settlement Agreement between the Applicant and the Second Respondent;
- Schedule of costs dated 2 November 2012.

First Respondent

- Bundle of testimonials
- E-mail from Mr Edwards to the Tribunal office dated 17 November 2012

Second Respondent

- Exchange of emails between Mr Goodwin, Mr Hudson and the Tribunal dated 14 November 2012.

Preliminary issue

8. For the Applicant, Mr Hudson confirmed to the Tribunal that the First Respondent admitted all the allegations in the Rule 5 and 7 Statements and specifically admitted the allegation of dishonesty. In respect of the Second Respondent, as the Tribunal had been advised in advance of the hearing by way of submissions on behalf of the Applicant dated 16 November 2012, a Regulatory Settlement Agreement ("RSA") had been agreed between the Applicant and the Second Respondent subject to the approval of the Tribunal. The RSA had been signed by the Second Respondent and it was proposed that it should now be sent to the Applicant for signature and on that basis Mr Hudson asked the Tribunal to consent to proceedings against the Second Respondent being withdrawn. In his written submissions, Mr Hudson had set out that the RSA had been reached on the basis that although the Second Respondent was in his capacity as principal liable for breaches of the SAR, the breaches were caused by the actions of the First Respondent. It was accepted by the Applicant and both Respondents that it was the First Respondent, who bore a significantly greater share of the blame for the matters which had given rise to the breaches of the SAR. On the basis of the terms of the RSA set out below, the Tribunal granted the Applicant's application that allegations 1.2, 1.4, 1.6 and 1.9 against the Second Respondent and allegation 1.3 (in so far as it related to the Second Respondent) in the Rule 5 Statement should be withdrawn subject to a copy of the RSA signed by both parties being filed with the Tribunal within 28 days.

<u>Terms of the RSA between the Applicant and the Second Respondent</u>

"1. [The Second Respondent] agrees to the following outcome of the investigation into his professional conduct under reference TR1/1028052 – 2012.

Background

2. On 5 April 2011 the [SRA] started an inspection into Rex Taylor & Meadows ("the firm"). At all material times [the Second Respondent] was a partner in the firm.

3. The report identified various rule breaches by [the Second Respondent] as set out below.

Admissions

4. As a partner in the firm, [the Second Respondent] admits that, by reason of Rule 6 of the SAR he is jointly responsible for the firm's breaches of the SAR. [The Second Respondent] had no direct knowledge of the matters giving rise to the breaches in question, which were the responsibility of another partner. [The Second Respondent] therefore admits the following.

4.1 The Firm invoiced for costs and used money in the firm's client account to pay those invoices, when:

4.1.1 there was no proper reason for raising invoices; and

4.1.2 the firm had not told its clients that it was raising invoices,

in breach of SAR Rules 1(b), 19(2) and 22(1).

4.2 The firm withdrew money from the firm's general client account on behalf of a client when:

4.2.1 the client account did not hold any money belonging to that client;

4.2.2 the money was not required for that client; and

4.2.3 the client had not instructed the firm to withdraw the money,
in breach of SAR Rules 1(c), 22(1) and 22(5).

4.3 The firm did not correct the breaches identified above until a significant period after the firm had committed those breaches, in breach of SAR Rule 7.

4.4 The firm retained client money in client account when there was no proper reason to hold on to the money (in one case for 18 years), in breach of SAR Rule 15.

Regulatory Outcome

5. In relation to the admissions in paragraph 4 above, [the Second Respondent] is fined £2,000.

6. [The Second Respondent] agrees to pay the costs of the [Applicant] in the sum of £3,000.

7. This [RSA] will be published by [the Applicant] and may be disclosed by [the Applicant] as it sees fit.

8. [The Second Respondent] agrees that he would not act in any way inconsistent with this agreement such as, for example, by denying the misconduct set out in his admission.

9. If [the Second Respondent] acts in any way inconsistent with this agreement, all issues might be referred for consideration or referral of his conduct to the Solicitors Disciplinary Tribunal (or [the Applicant's] internal decision) on the original facts and allegations and also on the basis that such failure to comply with this agreement might constitute a breach of Rules 1.2, 1.3 and 1.6 of the Solicitors Code of Conduct, 2007."

Factual background

9. The First Respondent was born in 1958 and was admitted in 1982. His name remained on the Roll and he held a current practising certificate.

10. At all material times prior to the retirement of the Second Respondent from the firm, the Respondent practised in partnership in the style of Rex Taylor & Meadows ("the

firm") in West Kirby, Merseyside. Since 1 July 2011, the First Respondent was authorised to practice as a sole practitioner.

11. The Respondents were joint signatories to the firm's office and client bank accounts until 30 June 2011.

12. An inspection of the firm's books of accounts and other documents commenced on 5 April 2011. The inspection culminated in a Forensic Investigation ("FI") Report by Mr Mike Shields, Investigation Officer ("IO"), dated 3 October 2011.

13. The First Respondent admitted to the IO that he had improperly withdrawn client funds on three occasions described below.

Estate of Mrs B (deceased)

14. Mrs B died on 24 January 1993 and the First Respondent acted for the executors of her estate. Following distributions, the sum of £14,440.25 remained on a designated deposit account as at 27 February 1995.

15. Apart from interest credited to the deposit account, there was no activity in respect of the account until 30 April 2009, when £17,315.11 (the full remaining balance on the account) was transferred to the firm's general client bank account.

16. On 23 December 2010, an invoice was raised addressed to the personal representatives of Mrs B. On 1 January 2011 the sum of £3,525 (£3,000 plus VAT) was transferred from those funds to the firm's office bank account in respect of that invoice. On 5 May 2011 the sum of £3,525 was refunded by way of a transfer from the firm's office account back to its client bank.

Estate of Mrs W (deceased)

17. When discussing the matter of Mrs B, the IO asked the First Respondent whether there were any similar matters, that is, a client to office bank account transfer where little or no work had been done. The First Respondent replied, "No it was a stupid thing and (I) wouldn't do it again. No others."

18. The IO then questioned the First Respondent about the matter of Mrs W, which had been previously discussed by a Practice Standards Advisor who had visited the firm in January 2011. The First Respondent then admitted that his conduct in respect of Mrs W's matter had been similar to that in respect of the B matter, in that he had taken £3,000 plus VAT without reason, but that he planned to return this sum in the following few days.

19. Mrs W died on 18 July 1998 and the First Respondent acted for the executors of her estate. Interim payments were made to the beneficiaries in 1999 and 2000, but as at 4 April 2001, the sum of £7,657.53 remained in the firm's client account, and £2,357.94 remained in a designated deposit account. On 1 June 2009 the £7,657.53 on client account was transferred into the designated deposit account.

20. On 2 November 2010, an interim invoice for £3,525 (£3,000 plus VAT) was raised and that sum was transferred from the deposit account into the firm’s client bank account. On 4 November 2010, the same sum was then transferred into the firm's office bank account.

11 M Drive

21. In an interview with the IO on 5 April 2011, the First Respondent was asked whether he was aware of any instances of client funds being misused. In reply, the First Respondent raised the matter of the sale/purchase of 11 M Drive.

22. The First Respondent acted for Mr A in the purchase of 11 M Drive from Ms P and Ms G for whom he also acted in the sale of the property and in the administration of the estate of their late father Mr G. The First Respondent also acted for Cheltenham & Gloucester (“C&G”) who provided £130,050 to Mr A for the purchase.

23. The property was sold on or around 24 October 2006 for £153,000. On 28 November 2006, the Land Registry informed the firm that it could not register the transfer of the property until it had evidence that a charge in favour of BH Ltd (“BH”) (formerly known as PO Ltd (“PO”)) dated 28 March 1983 had been redeemed and that C&G's mortgage over the property could not be registered. Correspondence and events relating to the matter included the following. (For representations made by the First Respondent in the correspondence, see the Findings of fact and law relating to allegation 1.3 below.)

24. On 30 November 2006, Ms L expressed concern about the “upset and inconvenience” that was being caused by this “unexpected large outgoing” which had not previously been brought to her and Ms G's attention.

25. On 2 January 2007, the Land Registry cancelled the firm's application to register the transfer of the property because proof of the discharge of PO's mortgage had not been provided.

26. On 15 May 2007, C&G wrote to the firm to request the documents relating to its mortgage over 11 M Drive which at that stage had not been registered. C&G also noted that it had not received a response to previous letters.

27. On 23 May 2007, the First Respondent obtained confirmation that the sum required to redeem the PO mortgage was £16,593.28. Correspondence between the First Respondent and C&G continued until on 30 April 2010, C&G wrote to advise the First Respondent that his firm had been suspended from its panel on the basis that it had failed to register its mortgage within the timescale in the Council of Mortgage Lenders Handbook and had failed to respond to letters requesting a reason for the delay. On 4 May 2010, without obtaining instructions to do so, the First Respondent sent BH’s solicitors a cheque drawn on the firm's client bank account in the sum of £16,593.28 the amount required to redeem BH's charge. The client ledger card showed that it was overdrawn from 3 May 2010 until 10 January 2011 when the shortage was replaced by an inter-ledger transfer from office to client bank account. However the firm's bank statements showed the payments as having taken place on 7 May 2010 and 18 January 2011 respectively.

28. In a letter to the IO dated 14 October 2011 (“the October letter”), the First Respondent said that all monies had now been accounted for, that registration had been concluded with no loss to clients and that the lender's position was fully protected. He also said that the firm had been reinstated to the lender's panel.

Failure to pay out estate funds to beneficiaries

Estate of Mrs B (deceased)

29. In the matter of Mrs B, the last piece of correspondence with the executors of the estate was a letter to one of the executors dated 11 February 1997. At the time of that letter, the designated deposit account held approximately £15,200, interest having accrued since 27 February 1995 when it held £14,440.25. After 11 February 1997 there was no further contact between First Respondent and his clients and no activity on the matter until 30 April 2009, when the balance of the client funds was transferred from the designated deposit account to the firm's general client account.

30. In or about February 2011, the First Respondent identified an account at Alliance and Leicester in the name of Mrs B, which held a balance of £13,859. That sum (plus interest) was subsequently transferred to the designated client account where it was held by the firm, some 18 years after Mrs B's death.

31. In the October letter, the First Respondent said that he had contacted the executor and that arrangements were being made to conclude the matter.

Estate of Mrs W deceased

32. In the matter of Mrs W, the last piece of correspondence to a beneficiary on file was a letter from the First Respondent to Mrs W’s son dated 8 August 2000. As at 9 August 2000, the firm held £6,200.25 on behalf of the executors of the estate.

33. No further payments were made to the beneficiaries and, at 1 July 2011, the firm held £10,157 on behalf of the estate (£3,525 on client account and £6,632.98 on deposit).

34. In the October letter, the First Respondent stated that the main residuary beneficiary’s address had been ascertained and arrangements were being made to complete the matter.

Reconciliations

35. The firm's client bank account reconciliation for the month ended 28 February 2011 overstated the amount held on the firm's bank accounts, as against the firm's bank statements by £3,457.19.

36. The same reconciliation also detailed a difference between funds available to clients, and liabilities to clients of £6,433.80, which it explained through various adjustments, the largest of which was “West Kirby adjustments” of £6,893.12. These West Kirby adjustments were in turn broken down into further adjustments; including adjustments

designated “cheques n/e 6,290.67” and “banking n/e – 57.56”. There was also an adjustment described as “add computer error £2,065.50.”

37. In an interview with the IO on 5 April 2011 (“the April interview”), the IO asked the First Respondent to provide an explanation for each of the entries on the reconciliation and to provide supporting documents. In a letter dated 6 July 2011, the firm's accountants, P stated that bank payments not entered (i.e. designated n/e) had not been allocated to any client as P had not been provided with details and the funds were being held in suspense until P was provided with this information; and the computer error related to a problem with their computer dating back to 2003, which meant that the total shown on the month end balance was understated by £2,065.50.

38. As at the date of the FI Report, the IO had received no further explanation in respect of his queries regarding the 28 February 2011 reconciliation. As a result due to the incompleteness of the books of account, the IO was unable to express an opinion as to whether the funds held by the firm in client accounts were sufficient to meet liabilities to clients.

Minimum cash shortage of £7,554.30 as at 28 February 2011

39. Notwithstanding the IO's inability to judge whether the funds held by the firm in client accounts were sufficient to meet liabilities to clients, a minimum cash shortage of £7,554.30 was nevertheless identified. The First Respondent agreed with the IO the existence of a minimum cash shortage in that amount as at 28 February 2011 which was replaced during the investigation by the transfer from office to client bank account of the equivalent sum. The cash shortage was made up as follows: client monies improperly withdrawn from client bank account, £7,250.30; unpaid professional disbursement incorrectly retained in office bank account, £200; and client monies incorrectly retained in office bank account, £104.

Other SAR breaches

40. In the April interview, the First Respondent acknowledged that there were issues with regard to the firm's books of account, some of which had been raised during the Practice Standards Unit visits in 2009 and 2011. These included “hundreds” of aged credit balances held on office bank account as well as an overdrawn balance on client account.

41. The First Respondent explained that there was a problem with the accounts of the former Irby branch as they did not have a current bank statement to allow an accurate reconciliation, in spite of having asked their bank for such statements.

42. On 21 October 2010, the firm’s accountants P sent a report to the Law Society setting out their findings in respect of breaches and significant departures from the SAR. This detailed numerous breaches including: client account debit balances; lack of availability of bank statements; the fact that there was no central list of bank accounts; the fact that reconciliations were not being carried out every five weeks; and costs being transferred without notice being given to clients.

43. The following additional issues were identified by the IO;

- The balances shown on the firm's client matter listing for designated deposit accounts were incorrect in that they did not include the most recent interest credited to those accounts by the bank;
- The firm used a number of suspense ledger accounts for either aged or unidentified client funds which, at 28 February 2011 total £13,922.28. A letter from P dated 3 March 2011 confirmed that as at that date, £8,093.13 had been identified (i.e. linked to particular clients). By 6 July 2011, £13,809.60 been identified ;
- Client ledger cards did not always provide a description of the type of matter and in a number of cases, the "description" field was either blank or stated simply "Data";
- On a number of client ledgers for existing clients, transactions for new matters were recorded on client ledger cards created for earlier matters for those clients.

44. In an interview on 30 June 2011 ("the June interview"), the First Respondent told the IO that he had not dealt with the accounts issues raised by the Applicant in 2009 because he had been away ill for four months; that he had not worked with P through the list of breaches which it had identified in its October 2010 report, but that he planned to do so; that he and his partner (the Second Respondent) assumed overall responsibility for the breaches, although they had paid their accountants a fair amount of money to sort things out.

45. In the October letter, the First Respondent stated that he had had discussions with P to resolve issues regarding compliance with the SAR. He enclosed a letter from P to the Applicant dated 14 October 2011 which outlined the steps which were being taken to address concerns raised in the FI Report.

46. On 14 February 2012, the First Respondent stated that, in respect of the funds being held in suspense accounts: all but £112.68 of the £13,922.28 had been identified, i.e. linked to particular clients; £652.01 of the £13,922.28 had been paid out to clients; and that he was still in the process of ascertaining the whereabouts of the remaining beneficiaries of the funds, and that the majority of the monies held related to "old estates".

47. There was further correspondence between the Applicant's caseworker and the First Respondent in respect of the steps he was taking to address the SAR breaches identified in the FI Report. On 22 March 2012, the Applicant's caseworker wrote to the First Respondent to enquire as to his progress in dealing with the aged credit balances. In reply, on 5 April 2012, the First Respondent said that his accountants were still attempting to link the remaining £112.68 to a particular client or client. He also stated that it was taking some time to identify the beneficiaries of the balances but that he had recently made three payments totalling around £1,000 to clients.

48. On 25 April 2012 the Applicant's caseworker requested a further update from the First Respondent. The First Respondent replied that the aged credit balances had at

that stage reduced to £11,695.35 and that the firm's accountants were still trying to identify the owner of the unidentified £112.68.

49. On 10 May 2012, the caseworker sought a further update, together with the First Respondent’s explanation as to why he had not complied with his obligations under SRA AR Rules 14.3 and 14.4. In his reply on 30 May 2012, the First Respondent said that he had paid out a further £1,414.19 to beneficiaries since the caseworker’s letter of 10 May 2012 and that he had paid out a total of £3,592.31 to a cancer charity in respect of aged balances which were “small and beneficiaries untraceable” as many dated back to the 1970s, 1980s and 1990s. He also reported that he had identified that the bulk of the remaining monies related to some 15 to 20 client balances and he was in the process of identifying beneficiaries under trusts and estates.

Witnesses

50. There were no witnesses.

Findings of fact and law

51. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(References below to submissions for the Applicant are drawn from the hearing and written submissions.)

52. **Allegation 1.1: The First Respondent acted in breach of all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”) and Rules 1(b), 19(2), and 22(1) of the Solicitors Accounts Rules 1998 (“SAR”) in that he raised invoices in respect of his firm’s costs and transferred client monies to his firm's office bank account in respect of those invoices when:**

    (a) there was no proper reason for doing so: and

    (b) he had not provided those invoices to his clients or otherwise informed them that he was taking the funds.

52.1 Mr Hudson relied on the First Respondent’s conduct in respect of the estates of Mrs B and Mrs W. Dishonesty was alleged in respect of this allegation.

52.2 Mr Hudson referred the Tribunal to the history of the matter of Mrs B who died in 1993. The last letter on file was a letter dated 11 February 1997, following a letter from the Office for the Supervision of Solicitors which indicated dissatisfaction on a number of counts. The 11 February letter concluded by asking one of the executors if the remaining funds held should be retained or distributed. There seemed to have been no follow-up to that letter. Mr Hudson submitted that it would have been expected that the letter of dissatisfaction would have spurred the First Respondent to bring the matter to an end, instead in the First Respondent’s words it “just became stagnant”. His failure to disburse the residue of the estate was an admitted breach of the SCC and

of the SAR. Mr Hudson also referred the Tribunal to the invoice raised on 23 December 2010, for £3,000 plus VAT for:

> "tracing missing assets in relation to the Estate and, thereafter, following realisation of assets arranging for final distribution of the same."

Mr Hudson submitted that there had been no such work done and certainly no final distribution and that it was not surprising that this false and misleading invoice was not sent to the client. However on 23 December 2011, £3,525 was transferred from client to office account. On 1 January 2011 the transfer was recorded in the client ledger. This was an admitted breach of the SCC and SAR. In respect of these matters, Mr Hudson reminded the Tribunal that the First Respondent had made various admissions on 30 June 2011 to the IO:

- He had raised an invoice in the sum of £3,525 and transferred funds when there was no justification for doing so;
- The transfer had been "prompted in part by cash flow issues at the time";
- It was not "appropriate to charge …the estate";
- He had effectively wrongly taken the money and was "not proud about it";
- No bill had been sent to the executors and the firm had had the benefit of the money;
- There had been no intention to deprive the beneficiary and the monies had been returned;
- He had not acted in his clients' best interests;
- There was no particular explanation why he had not distributed the remaining funds.

52.3 Mr Hudson accepted that it was correct that by the time the IO spoke to the First Respondent on 30 June 2011, the money had been repaid (on 5 May 2011), but the delay in making good the wrongful transfer was itself a breach of the SAR. The First Respondent had also been asked by the IO if there were any other similar matters and had said that there were not. This turned out to be untrue.

52.4 In the estate of Mrs W, who died on 18 July 1998, the £7,657.53 on client account was transferred onto designated deposit account on 1 June 2009 by which stage the firm was holding £10,150.77. Mr Hudson submitted that the First Respondent's failure to disburse the residue of the estate was another admitted breach of the SCC and of the SAR. On 2 November 2010, some 10 years after the last letter on file had been written an interim invoice for £3,000 plus VAT was raised and that sum transferred from client to office account. The invoice was not sent to the client. This was an admitted breach of the SCC and of the SAR. On 30 June 2011, the First Respondent admitted to the IO that £3,000 had been taken but not replaced. He said that he planned to replace it within the next few days. On 1 July 2011, after the IO knew of the irregularity, the money was replaced. The First Respondent also admitted that, by failing to pay out client monies, he had not been acting in the clients' best interests. The First Respondent was asked why he had not mentioned this matter when asked, in

the context of discussions regarding the Mrs B matter, whether there were any other similar matters and he said he had not mentioned it as he was "going to deal with it". On 31 August 2011, the First Respondent told the IO that he had not sent the bill and that if he had not made this transfer and the transfer on Mrs B's matter, the firm's office account would have been overdrawn past its limit. Mr Hudson submitted that although the wrongful transfer was made good on 1 July 2011, the delay in making good the wrongful transfer was itself a breach of the SAR.

52.5 In respect of the allegation of dishonesty connected with the matters of Mrs B and Mrs W, Mr Hudson submitted that on the First Respondent's own admission, the impetus for taking costs unjustifiably was the simple fact that had the transfer not been made the firm would have exceeded its overdraft limit. Whether or not the First Respondent recalled that he was holding funds on these two probate matters, a check of his firm's client balances would have quickly revealed that he was. He would also have known that these were matters that had not moved for some considerable time, in the case of Mrs B for 13 years and Mrs W 10 years. This would necessarily have made it easier to conceal any misuse of funds. Mr Hudson submitted that faced on two separate occasions with having to do something urgently to deal with cash flow crises, the First Respondent decided to raise an invoice which he had no intention of sending out and then simply to transfer the amount of the invoice. On each occasion, he apparently decided that an appropriate sum to take was £3,000. Mr Hudson submitted that he knew that what he was doing was wrong; that he admitted as much in the matter of Mrs B and that there was no reason to believe that it was a different regarding Mrs W; and that even though there may have been an intention to return the money taken on both matters at some point in the future, the First Respondent knew his respective clients would not have consented, in effect to his "borrowing" the money for an unspecified period of time in order to bolster his firm's shaky finances. Mr Hudson submitted that for a solicitor, trusted to look after his clients' money, to use that money for his own purposes without their knowledge and knowing that they would not have consented was to have acted dishonestly by the ordinary standards of reasonable and honest people. The First Respondent was aware that what he was doing was dishonest by those standards; in his own words he had effectively wrongly taken the money and was "not proud about it". It was also the case that this was not a single incident. When the First Respondent, confirmed to the IO that there were no instances apart from Mrs B's matter, of invoices being improperly raised and payment taken, he also knew this was not the case. His explanation as to why he had not mentioned the W matter was that he was "going to deal with it". This indicated that he knew about it. Mr Hudson submitted that there was no doubt about what the First Respondent was being asked and the importance of the question. He must also have been in no doubt that the answer he gave would lead the IO to believe that the Mrs B matter was an isolated one. Mr Hudson submitted that to lie was to act dishonestly by the ordinary standards of reasonable and honest people and the First Respondent must have known that by lying he was, by those standards, acting dishonestly.

52.6 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.1 to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted. As to dishonesty, the Tribunal applied the two limbed test in the case of Twinsectra Ltd v Yardley 2002 UKHL 12. The Tribunal found that it had been proved beyond reasonable doubt that what the First Respondent had done was dishonest by the standards of reasonable and

honest people and that he demonstrated by his conduct that he was aware that what he was doing was dishonest by those standards, indeed the First Respondent had admitted dishonesty.

53. **Allegation 1.3: The First Respondent acted in breach of SCC Rules 1.01, 1.04 and 1.06 SCC and SAR Rules 1(c), 22(1) and (5) in that he withdrew funds from the firm's general client bank account in respect of a client's matter when:**

(a) the monies withdrawn exceeded the funds held on behalf of that client, in that the firm was holding no funds on behalf of that client; and

(b) the monies were not properly required for payment on behalf of the client, and the firm had no instructions from his client to make such payment.

Allegation 1.7: The First Respondent acted in breach of all or alternatively any of SCC Rules 1.04, 1.05 and 1.06 by:

(b) failing to register (i) the transfer of a property between his two clients and (ii) a charge over that property in favour of his lender client, for a period of more than three years after the transfer of property;

(c) repeatedly assuring his mortgagee client that the registration of its mortgage over a property was being dealt with, when in fact no such steps were being taken.

(These allegations were taken together as they arose out of the same set of facts. For allegation 7(a) see below).

53.1 For the Applicant, Mr Hudson relied on the First Respondent's conduct in respect of 11 M Drive. Dishonesty was alleged in respect of this allegation. Mr Hudson submitted that the First Respondent having acted for the vendors and the purchaser, without coming within the relevant exemptions, was an admitted breach of the SCC. Mr Hudson reminded the Tribunal of the facts of the matter. The First Respondent knew the true position regarding PO's charge when on 22 November 2006, BH had written to Mr G's executors to give them notice of the existence of an equity mortgage granted in 1983 by PO, whereby the borrower had to repay 10.78% of the sale value. On 30 November 2006, Ms L had sent this letter on to the First Respondent. The letter clearly stated that PO was now known as BH. By 15 May 2007 almost seven months after completion C&G threatened to report the First Respondent to the Applicant. This appeared to have prompted him to request a redemption figure. When the First Respondent sent a cheque from the client bank account to BH's solicitors to redeem the charge, the firm was not holding any funds from the vendors and accordingly a shortfall on client funds held by the firm arose in the amount of the redemption which remained until 10 January 2011. The firm's panel status with C&G was subsequently restored. The delay in making good the wrongful transfer was itself a breach of the SAR. The failure to register the transfer and C&G's charge over a period of some three years was another admitted breach of the SCC.

53.2 Mr Hudson submitted that in the June interview, the First Respondent said that because BH had "gone into liquidation and disappeared" he had wrongly assumed the liability under the charge ceased; and he "should have investigated to see that there was still a legal entity" and he was "embarrassed and frustrated because of it"; he had not redeemed the mortgage earlier because of "cash flow" and that it was a case of "burying your head, thinking it would go away when it won't. It was [the] threat of being taken off the panel that led me to make payment". He said that he thought that he might have been able to repay the funds from office account, but in the end he took out a bank loan to repay the funds. The First Respondent said that he believed that he had acted in the interests of his vendor clients as the firm had paid to redeem the mortgage in the end but he accepted that he had not acted in the best interests of his lender clients. He accepted that he had acted in breach of the SAR, although there was "no intention to deprive other clients of funds, and they weren't".

53.3 As to the allegation of dishonesty in respect of 11 M Drive, Mr Hudson took the Tribunal through a series of letters in which he submitted that the First Respondent made untrue statements:

- On 23 May 2007, stating that paperwork was still with the Land Registry in relation to the registration when the application to register had been cancelled on 2 January 2007 and not renewed; that attempts had been made to trace the successor in title to a developer company which had a second charge but had gone into liquidation when on 23 May 2007 the First Respondent had been sent a copy of the Certificate of Incorporation on Change of Name of PO to BH and he had been in touch with BH since November 2006; and that the form DS1 was awaited when no form would be sent out until the charge had been redeemed.
- On 2 October 2007, advising C&G that he was still resolving the position; and that he had traced further documentation and information with BH and was "now in the process of redeeming the same" when no steps were being taken.
- On 7 January 2008, advising C&G that he was still in the process of resolving the removal of the second charge; and that he was in contact with the relevant solicitors who acted for the original developers and expected to be in a position to conclude C&G's registration in the very near future. The developers had not changed so there were no original, as opposed to current, developers to contact and the First Respondent had been in touch with the developers since May 2007 and not with their solicitors.
- On 26 February 2009, advising C&G via a Progress Update Sheet that he had been advised by the Land Registry that an estimated time for dealing with the matter was six weeks; and stating that:

  > "The property was subject to an equitable charge in favour of original loan for deposit. The company went into liquidation. Its successor in title has now been traced and the charge is in process of being removed in order to finalise registration."

53.4 Mr Hudson submitted that the history of the matter showed that the First Respondent chose to give false information to his lender client C&G over a long period of time, two and a half years, and repeatedly, telling no less than 12 lies in six separate communications,. The purpose was clear, to keep them at bay while he attempted to

resolve the issue he should have picked up prior to completion. An ulterior motive might, it was submitted, also have been the desire to remain on the lender's panel. The First Respondent should have taken the opportunity to explain the situation to C&G as soon as he knew of the problem by the end of November 2006. Initially it seemed he ignored their letters but when threatened with being reported to the Applicant in May 2007, he began the process of sending a series of letters designed to gain more time by concealing the true position. For a solicitor to give information to his clients that was intentionally untruthful would be viewed by any decent and honest person as amounting to dishonesty. Mr Hudson submitted that; the First Respondent was aware of this but continued to deceive his client until he decided that the only solution was to redeem the charge by "borrowing" from funds kept in the firm's general client account which was also dishonest; and that the First Respondent knew when he wrote the cheque in favour of BH that it was wrong to do so because he knew that he had no authority to make the payment and that the clients of the firm whose funds were being used would not have consented, however he deliberately went and used £16,500 of other clients' monies and did not put it back for eight months.

53.5 As to allegation 1.3 the Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.3 to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted. As to dishonesty, the Tribunal found that it had also been proved beyond reasonable doubt that the First Respondent's conduct in taking monies from client bank account to discharge BH's charge as set out in the allegation 1.3(a) and (b) was dishonest by the standards of reasonable and honest people and that he demonstrated by his conduct that he was aware that what he was doing was dishonest by those standards, indeed the First Respondent had admitted dishonesty.

53.6 As to allegation 1.7(b) and (c) the Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.7(b) and (c) to have been proved beyond reasonable doubt against the First Respondent; indeed they had been admitted. As to dishonesty, which was alleged in respect of allegation 1.7(c), the Tribunal found that it had been proved beyond reasonable doubt that what the First Respondent had done, in the sustained and repeated deception of his lender client, was dishonest by the standards of reasonable and honest people and that he demonstrated by his conduct that he was aware that what he was doing was dishonest by those standards, indeed the First Respondent had admitted dishonesty.

54. **Allegation 1.5: The First Respondent acted in breach of SAR Rule 7 in that he failed to correct the breaches of the SAR are identified in (allegations) 1.1 and 1.3 above which he had knowingly committed, for significant periods after those breaches had been committed.**

54.1 For the Applicant in respect of allegation 1.5, Mr Hudson relied on the First Respondent's conduct in connection with the estates of Mrs B and Mrs W and in respect of 11 M Drive.

54.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.5 to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted.

55. **Allegation 1.7: The First Respondent acted in breach of all or alternatively any of SCC Rules 1.04, 1.05 and 1.06 by:**

    (a) failing to disburse the residues of estates to beneficiaries of those estates for a significant number of years;

55.1 For the Applicant in respect of allegation 1.7(a), Mr Hudson relied on the First Respondent's conduct in respect of the estates of Ms B and Ms W.

55.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.7(a) to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted.

56. **Allegation 1.8: After 15 July 2008, the First Respondent acted in breach of SAR Rule 15 in that he retained client monies when there was no longer any proper reason to retain those funds.**

56.1 For the Applicant, Mr Hudson relied on the First Respondent's conduct in respect of the estates of Ms B and Ms W. Regarding Mrs B, in the June interview, the First Respondent said that he had had no response to his letter of 11 February 1997 and the executor had "gone silent"; that there was "no particular explanation" for why he had not distributed the remaining funds to the beneficiaries of Mrs B's estate, it "just became stagnant"; he had missed the Alliance and Leicester account in error in the past, but it had come to light when he had reviewed the file in the course of the visit by the Practice Standards Adviser in January 2011. In respect of Mrs W, in the June interview, the First Respondent admitted that, by failing to pay out the funds, he had not acted in his client's best interests.

56.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 1.8 to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted.

57. **Allegation 2: The First Respondent acted in breach of SCC Rules 3.09 and 3.10 in that, in a conveyancing transaction not at arm's length, he acted for seller and buyer without their written consent having been obtained.**

57.1 For the Applicant in respect of allegation 2, Mr Hudson relied on the First Respondent's conduct in respect of 11 M Drive. In a letter to the IO dated 14 October 2011, the First Respondent confirmed that he had acted for both parties in this matter and did not have written authority from the clients for doing so, although both parties had "specifically agreed" to the arrangement.

57.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 2 to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted.

58. **Allegation 3: The First Respondent acted in breach of the following SAR provisions:**

3.1 Rule 1 (e), in that he failed to establish and maintain proper accounting systems, and proper internal control over those systems, to ensure compliance with the SAR;

3.2 Rule 1(f), in that he failed to keep proper accounting records to show accurately the position with regard to the money held for each client;

3.3 Rule 1(h), in that he failed to co-operate with the Solicitors Regulation Authority ("SRA") in checking compliance with the rules;

3.4 Rule 6, in that he failed to ensure compliance with the SAR by himself and by everyone employed by the practice;

3.5 Rule 7, in that he failed to remedy breaches of the SAR promptly upon discovery, including the failure to replace promptly monies improperly drawn from a client account;

3.6 Rule 24(1), in that he failed to account to clients for the interest earned on designated client accounts;

3.7 Rule 32(1), in that he failed to keep at all times accounting records properly written up to show his firm's dealing with client monies;

3.8 Rule 32(1), in that all dealings with client money were not appropriately recorded on the client side of a separate client ledger for each client account;

3.9 Rule 32(16), in that suspense client ledger accounts have been used regularly and for long periods for unidentified receipts of client funds;

3.10 the following guidelines in the "SRA guidelines – accounting procedures and systems", published under Rule 29:

(a) guideline 2.4 in that ledger account cards for clients did not include a heading which contained a description of the matter of transaction; and

(b) guideline 5.3 in that a master list of bank accounts was not kept.

58.1 For the Applicant, Mr Hudson referred the Tribunal to his written submissions in respect of the SAR breaches. The reconciliation for the month ended 28 February 2011 had raised a number of questions for the IO which led him to request further information from the First Respondent. When this was produced in September 2011, it still left a number of unexplained matters which the IO had to work through. In respect of the shortfalls on client account, these apparently included a computer error going back to 2003 which the First Respondent said he had never noticed. This had caused ongoing problems in the accounts for subsequent years. Although the IO was unable to say with certainty what the precise position was in terms of the firm being able to pay its liabilities to its clients, he was able to identify a minimum cash shortfall of £7,554.30 at 28 February 2011 which the First Respondent was prepared to agree and to put right. The monies improperly withdrawn on the B and W matters had been replaced for Mrs B's estate on 5 May 2011 and for Mrs W on 1 July 2011. The two much smaller matters were also rectified by the First Respondent. In addition £16,593.28 was wrongfully withdrawn from client account in respect of the 11 M Drive matter on 4 May 2010 and not put back until 10 January 2011, a period of approximately nine months. Mr Hudson also referred the Tribunal to the long running SAR breaches relating to old balances which had not been corrected since the Practice Standard Unit visits in 2009 and 2011. The problem of the aged credit balances

totalling £13,922.28 was identified by the IO in February 2011 but no sufficient steps were taken to resolve it. Mr Hudson also referred to breaches identified by the firm's accountants for the year ended 30 April 2010. Mr Hudson also cited the additional SAR breaches identified by the IO and gave examples.

58.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegation 3 in all its aspects to have been proved beyond reasonable doubt against the First Respondent; indeed it had been admitted.

59. **Allegation 4: He failed to return clients money to clients promptly after there was no reason to retain those funds, in breach of Rule 15(3) of the SAR and, after 5 October 2011, 14.3 of the SRA Accounts Rules 2011 ("SRA AR").**

Allegation 5: He failed to promptly inform clients in writing of the amount of client money retained at the end of their matters, and the reason for those retentions, in breach of Rule 15(4) SAR and, after 5 October 2011, Rule 14.4 SRA AR.

Allegation 6: He failed to remedy promptly upon discovery the breaches at 4 and 5 above, in breach of Rule 7 SAR and, after 5 October 2011, Rule 7 SRA AR.

(Allegations 4, 5 and 6 were dealt with together as they arose out of the same facts.)

59.1 For the Applicant, Mr Hudson submitted that the Rule 7 Statement contained additional allegations arising from the First Respondent's failure to repay promptly the £13,809.60 held on suspense account which had been identified as belonging to clients. By 14 February 2012 only £652.01 had been repaid. By 30 May 2012, £6,680 had still not been repaid. The First Respondent advised the Applicant that further steps would be taken to trace former clients so that the remainder could be repaid. It was submitted in the Rule 7 Statement that for a period in excess of seven months, the First Respondent had substantially failed to take steps to remedy the breaches which had arisen as a result of the firm's retention of those funds contrary to the provisions of the SAR and SRA AR. It was also submitted that as at 30 May 2012, approximately £6,680 remained to be dealt with. Accordingly for a period in excess of 10 months between July 2012 and May 2012 the First Respondent failed to resolve more than half of the aged credit balances which existed in July 2012.

59.2 The Tribunal considered the evidence and the submissions by Mr Hudson for the Applicant. The Tribunal found allegations 4, 5 and 6 to have been proved beyond reasonable doubt against the First Respondent; indeed they had been admitted.

Previous disciplinary matters

60. None

Mitigation

61. For the First Respondent, Mr Edwards submitted that his client accepted that the outcome of the hearing was a foregone conclusion but he had come to the Tribunal and wanted to depart with dignity. It was a matter of credit to him that he had admitted the substantive allegations from the outset. The test for dishonesty set out in the cases of Twinsectra and of Bryant and Bench v the Law Society [2007] EWHC

3043 (Admin) had been discussed at length with the First Respondent and he had made an informed decision to accept that it had been met. The First Respondent had admitted dishonesty at this late stage to save time, trouble, cost and embarrassment. He had 30 years unblemished service in the profession. The First Respondent had crossed the line into dishonesty but these were the actions of someone under great pressure and in retrospect with more support the situation would not have arisen. In respect of 11 M Drive the First Respondent had also been embarrassed by his failure in respect of the charge and had not told his insurers but resolved the matter in an unacceptable manner. The First Respondent was a decent, quiet and very modest man and this was without doubt the worst day of his professional life. He had found himself practising alone following the death of one partner and the long drawn out retirement of another. He had struggled manfully with his difficulties. The First Respondent wholly supported the RSA for the Second Respondent because he felt that it was fair and just to do so. Mr Edwards asked the Tribunal to consider the First Respondent's actions against the background of the recession and the circumstances of his career; he was self educated and his training had been financed largely through his own efforts. He had joined the firm as a trainee and worked his way up to partnership. With the benefit of hindsight when he found himself the sole practitioner he possibly would have been better off to join another partnership. It had been agreed that Mr Edwards would assist the First Respondent to close his practice. The First Respondent did not wish clients to suffer or be inconvenienced unnecessarily. Mr Edwards referred the Tribunal to the bundle of testimonials which showed that the First Respondent was respected in his community and been involved with voluntary activities. As to his finances, the First Respondent hoped to close the firm after making arrangements for redundancies and run-off cover without going bankrupt. The First Respondent and his wife would both lose their jobs Mr Edwards informed the Tribunal about the First Respondent's finances including the value of the family home in which he had a half interest and which was about twice the amount of the mortgage. His savings were very modest.

Sanction

62. The Tribunal considered the submissions by Mr Edwards and the content of the First Respondent's testimonials. The First Respondent had embarked on a course of dishonest behaviour over a considerable period and in respect of several client matters. The Tribunal did not find there to be any exceptional circumstances and therefore determined that he should be struck off.

Costs

63. For the Applicant, Mr Hudson applied for costs in the amount of £25,184.32. He submitted that an amount of £3,000 should be deducted to reflect the costs which were to be paid by the Second Respondent under the RSA. An allowance was also needed because the hearing had been shorter than anticipated. Mr Hudson suggested that an appropriate amount would be £20,000; considerable material had to be looked at and a relatively extensive Rule 5 Statement prepared; the volume of papers was significant and it has also been necessary to prepare a Rule 7 Statement. Mr Hudson asked that an order be made which was enforceable against the First Respondent; no evidence of means had been provided and the Applicant would engage in a reasonable dialogue with him about payment. For the First Respondent, Mr Edwards considered

the rates claimed to be reasonable, He noted that Mr Hudson had to prepare for a contested trial and that the First Respondent had been consulted about the RSA. He reminded the Tribunal that the First Respondent faced a most uncertain financial future. Any sums which remained after the practice had been closed would have to be reported to the Applicant so that it would be aware of his financial circumstances. Mr Edwards asked the Tribunal to make any award of costs not enforceable without its leave. He submitted that although the Applicant would engage in dialogue this was usually about method of payment rather than the means of the Respondent. The Tribunal summarily assessed costs in the amount sought, £20,000. It noted that this had been a very detailed case and that the hourly rate charged was low. It noted the information provided about the First Respondent's finances and having regard to the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) had borne in mind that by its decision the Tribunal was depriving the First Respondent of his livelihood. The Tribunal awarded costs in the amount of £20,000 but ordered that they should not be enforced without leave of the Tribunal.

Statement of Full Order

64. The Tribunal Ordered that the Respondent, Alan David Tickell, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000, such costs not be enforced without leave of the Tribunal.

Dated this 20th day of December 2012
On behalf of the Tribunal

R. Prigg
Chairman