

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11002-2012

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

IAN THOMAS HALL

First Respondent

HALL & CO

Second Respondent

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Before:

Mr A. N. Spooner (in the chair)

Miss N. Lucking

Mr R. Slack

Date of Hearing: 24<sup>th</sup> and 25<sup>th</sup> September 2013

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## Appearances

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

The First Respondent attended and was not represented. He also appeared on behalf of the Second Respondent

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## JUDGMENT

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## **Allegations**

- 1 The allegations against the First and Second Respondents were:
  - 1.1 They provided a service to their clients which was so poor as to amount to breaches of all or alternatively any of Rules 1.04, 1.05 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007"), in that they:
    - 1.1.1 failed to keep clients informed of the progress of, and/or material developments in, their cases;
    - 1.1.2 failed to respond within a reasonable time or at all to communications from clients, courts and/or opposing parties in cases;
    - 1.1.3 failed to provide to clients complete copies of those clients' files when requested to do so;
    - 1.1.4 failed to comply with court directions and/or orders in litigation being conducted on behalf of clients;
    - 1.1.5 failed, without explanation, to attend a court hearing in a client's case;
    - 1.1.6 failed to take steps to resolve a County Court claim in their client's favour in circumstances where the Defendant had failed to respond to the claim; and
    - 1.1.7 failed to properly advise a client on the merits of his case when he had the opportunity to settle the matter without court action;
  - 1.2 That (in the period up to 5 October 2011) they acted in breach of Rule 20.05 of the SCC 2007 by failing to deal with the Legal Complaints Service ("LCS") and/or the Legal Ombudsman ("LeO") and/or the Solicitors Regulation Authority ("SRA") in an open, prompt and co-operative way, in that they:
    - 1.2.1 failed to respond within a reasonable time or at all to communications from the above bodies; and
    - 1.2.2 failed to provide information and/or documents when requested to do so;
  - 1.3 That, from 6 October 2011, they failed to co-operate with and assist the investigations of the LeO and the SRA in the manner described above. The Respondents thereby breached Principle 7 of the SRA Code of Conduct 2011. Further or in the alternative, the Respondents failed to achieve outcome O (10.6) of the SRA Code of Conduct 2011;
  - 1.4 They acted in breach of all or alternatively any of Rules 1.02, 1.04 and 1.06 of the SCC 2007 in that:
    - 1.4.1 they provided misleading information to the Legal Ombudsman and their former client with regards to the whereabouts of that client's file;

- 1.4.2 they informed their client and the LCS that they had requested a disposal hearing of that client's matter, when they had not done so.

The allegations against the First Respondent only were:

- 1.5 [As amended] that the First Respondent improperly withdrew funds from client account in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") and SRA Accounts Rules 2011 ("AR 2011");
- 1.6 that there were cash shortages in client account of:
- 1.6.1 £1,253.50 on 30 September 2012; and
- 1.6.2 not less than £12,000 on 31 October 2012
- in breach of AR 2011 1.1 and 20.9;
- 1.7 that the First Respondent took payment in respect of fees from money held on client account without sending clients bills of costs or other notification of the costs incurred, in breach of Principles 4, 5, 6 and 10 and AR 2011 17.2;
- 1.8 that the First Respondent failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in that invoices and client ledgers were backdated, in breach of Principles 4 and 10 and AR 2011 1.2 (f);
- 1.9 that the First Respondent failed to rectify breaches of the Accounts Rules promptly upon discovery, in breach of AR 2011 7.1;
- 1.10 that the First Respondent made inappropriate use of a suspense ledger account, contrary to Rule 32 (16) of the Solicitors' Accounts Rules 1998 and the AR 2011 29.25;
- 1.11 that the First Respondent failed to retain for at least six years their client account reconciliations, in breach of AR 2011 29.17;
- 1.12 that the Respondents' client account reconciliations were not three-way reconciliations, in breach of AR 2011 29.12;
- 1.13 that the First Respondent misled an SRA forensic investigation officer in respect of:
- 1.13.1 his ownership of buildingdispute.com Limited; and/or
- 1.13.2 County Court Judgments ("CCJs") against him
- in breach of Principles 2 and 7;
- 1.14 that the First Respondent acted for a buyer and seller in a conveyancing transaction whose interests conflicted in circumstances where none of the permitted exceptions applied, in breach of Principles 4 and 5. Further, or alternatively, that he thereby failed to achieve outcome O (3.5) of the SRA Code of Conduct 2011;

- 1.15 that the First Respondent failed to provide clients with the best possible information about the likely cost of their matter, both at the time of engagement and as their matters progressed, in breach of Principles 4 and 5. Further, or alternatively, that he thereby failed to achieve outcome O (1.13) of the SRA Code of Conduct 2011;
- 1.16 that the First Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8. Further, or alternatively, that he failed to achieve outcome O (10.3) of the SRA Code of Conduct 2011.

For the avoidance of doubt, it was alleged that the First Respondent's conduct in respect of allegations 1.5 [as amended] and 1.13 was dishonest, although it was not necessary to prove dishonesty to prove the allegations themselves.

### **Documents**

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the First and Second Respondents, which included:

#### Applicant

- Application dated 25 May 2012;
- Rule 5 Statement and exhibit bundle "GRFH1" dated 25 May 2012;
- Supplementary Rule 7 Statement and bundle "GRFH2" dated 22 May 2013;
- Submissions document dated 5 December 2012;
- Chronologies of the Respondent's dealings with Mr V, Mr S, Ms W and the Legal Complaints Service, the Legal Ombudsman and the Applicant;
- Witness Statement of Mr Geoffrey Colin Smith dated 4 July 2013;
- Schedule of Costs dated 19 September 2013;
- Revised Forensic Investigation costs breakdown.

#### First and Second Respondents

- None

### **Preliminary Matters**

#### Preliminary Matter (1)

3. Mr Hudson referred the Tribunal to the First Respondent's email to the Tribunal dated 23 September 2013 in which the First Respondent had made admissions regarding the allegations against him.
4. Mr Hudson said that the First Respondent had initially instructed Messrs Rallis Solicitors and a substantive hearing had been listed in December 2012 in relation to the Rule 5 Statement only. Rallis had however come off the record in August 2013

and there had then been no correspondence from the First Respondent until approximately 20 September 2013 when the First Respondent had admitted all the facts of the case and the allegations against him save for the dishonesty alleged. Mr Hudson said that the First Respondent had volunteered to come off of the Roll of Solicitors and had undertaken never to seek restoration to the Roll but it had subsequently been agreed that he would not seek to be restored to the Roll for a period of 6 years. It was proposed that the dishonesty allegations would lie on the file.

5. Mr Hudson submitted that the Applicant considered that this would be a proportionate disposal of the case and that it was in the public interest to proceed on that basis. He acknowledged that it was for the Tribunal to decide as to the method of disposal of the case.
6. Mr Hudson said that he sought leave for the dishonesty allegations to lie on the file. He said that this related to the agreement reached with the First Respondent for disposal of the case, namely that the First Respondent had agreed to admit all of the allegations save for the dishonesty allegations.
7. The First Respondent told the Tribunal that if it was not minded to consent to the dishonesty allegations lying on the file he would seek to address the Tribunal as to his position and circumstances at the material time including his ill health and in relation to his comments made in interview. He accepted that with regard to allegation 1.13.2 he was not in a position to say that he had medical evidence to support that his mind had been disordered at the material time. He admitted that he had answered questions put to him by the Forensic Investigation Officer being fully aware that he had had issues with County Court Judgments and that to have flatly denied that he had ever received such a Judgment against him had been at the very least reckless as to whether he had misled the Forensic Investigation Officer and he accepted allegation 1.13.2.

#### The Tribunal's Decision (1)

8. The Tribunal had significant concerns regarding the proposed disposal of the case. It noted that these were very serious allegations which included allegations of dishonesty. Whilst the First Respondent had admitted the allegations save initially for the dishonesty allegations, the Tribunal had to bear in mind the public interest, the public's perception of such agreement between the Applicant and the First Respondent and that of the profession.
9. The Tribunal rejected the application to let the dishonesty allegations lie on the file. The Tribunal decided that the case should proceed on the basis of the Rule 5 Statement and the Rule 7 Statement as amended including the remaining allegations of dishonesty.
10. The Tribunal referred the First Respondent to the case of Twinsectra Limited v Yardley and Others [2002] UKHL 12.

Preliminary Matter (2)

11. Mr Hudson referred the Tribunal to the Rule 5 and Rule 7 Statements. He said that there had previously been a substantive hearing listed in December 2012 which had been adjourned on the grounds of the First Respondent's ill health. That had been followed by the Applicant's decision dated 19 December 2012 to intervene into the Second Respondent [the firm] due to a shortage on the client account and concerns regarding the financial stability of the firm. The Rule 7 Statement followed and was issued approximately one year after the Rule 5 Statement.
12. Mr Hudson said that when the hearing in December 2012 had been adjourned the Tribunal had done so reluctantly and had directed the First Respondent to file medical evidence by the end of February 2013 but due to the Applicant seeking to file the supplementary Rule 7 Statement it had agreed an extension of time to April 2013 for the medical evidence which had never been received.
13. Mr Hudson told the Tribunal that there had not been any real engagement by the First Respondent until very late in the day prior to this hearing.
14. The First Respondent told the Tribunal that he was now in a far better frame of mind than he had been and his illness had been such that he had been incapable of addressing matters properly at the date of the previous hearing in December 2012. He said that he had been unfit for work until June 2013. Whilst he had been represented, he had been unable to retain Rallis due to the fees he had incurred and which he still owed yet he had no means to pay them.
15. The First Respondent submitted that the lack of medical evidence was due to his lack of funds. He acknowledged that was not a satisfactory response but it was the position. He submitted that his medical condition had not enabled him to face up to matters but he accepted that he could have engaged within the previous four weeks and he regretted not having done so until Friday 20 September. He confirmed that he was now deemed fit for work and better able to address matters.
16. Mr Hudson said that he sought permission to amend the Rule 7 Statement which had originally contained allegations regarding a loan from Mr M, a client of the First Respondent's. Mr M's evidence had been pivotal in order to establish that the First Respondent had misappropriated £78,400 of Mr M's money. At the point at which the original Rule 7 Statement had been filed Mr Hudson said that the Applicant was satisfied that the evidence of Mr M was sufficient to make out the allegation in question but that Mr M would have had to have been proofed between lodging the Rule 7 Statement and the hearing.
17. Mr Hudson said that the difficulty had subsequently been that Mr M had not been inclined to assist or arrangements could not be made to meet with him and when pressed, the Applicant had been informed that Mr M had suffered a stroke and was unable to be interviewed let alone give evidence.
18. Mr Hudson told the Tribunal that it had been evident from the outset that the First Respondent had challenged Mr M's version of events and the Tribunal would have

had to hear from both the First Respondent and Mr M regarding what had and had not been agreed and the oral exchanges between them.

19. Mr Hudson said that the Applicant had then formed the view that there were sufficient other serious allegations in the Rule 7 Statement upon which to proceed and that allegation 1.5 could be amended to remove reference to the alleged loan from Mr M in the sum of £78,400 especially since he would be unable to be called to give evidence regarding that issue.
20. The First Respondent confirmed that he had been advised of the application to amend. He said that he would have challenged Mr M's evidence with regard to allegation 1.5 and he did not object to the Applicant's application for amendment. He said that he had no specific recollection of having been served with the Civil Evidence Act Notice ("CEA Notice") which referred to Mr M's witness statement.
21. Mr Hudson said that the CEA Notice dated 26 July 2013 had been served upon Rallis who were at the time still representing the First Respondent and no response had been received from them to the Notice.

#### The Tribunal's Decision (2)

22. The Tribunal had listened carefully to Mr Hudson's submissions and noted that the First Respondent had no objection to the application to amend the Rule 7 Statement with regard to the alleged loan by Mr M. It had heard that Mr M was unable to give evidence and it accepted that the Applicant would have had to call Mr M with regard to allegation 1.5 as originally pleaded.
23. The Tribunal gave permission for allegation 1.5 to be amended as requested with regard to the alleged loan. It stated that the case would proceed on the basis of the amended supplementary Rule 7 Statement.

#### **Factual Background**

24. The First Respondent was admitted to the Roll of Solicitors on 16 May 1994. At all material times the First Respondent practised on his own account with one assistant as Hall & Co ("the firm") from offices in Warrington, Cheshire. The First Respondent held a current practising certificate.
25. The allegations by the Applicant included, inter alia, complaints made by clients of the First/Second Respondents with regard to the conduct of their respective matters by the First Respondent. In addition it was alleged that the First/Second Respondents had failed to co-operate with the Applicant, the LCS and the LeO. As a result of the failure to co-operate with the Applicant, on 5 January 2012 an Adjudicator had referred the Respondents' conduct to the Tribunal.
26. The Applicant also alleged that the First Respondent had breached the SAR 1998 and the AR 2011 and had misled the Forensic Investigation Officer ("FIO") in the course of her investigation. It was the Applicant's case that the First Respondent had been dishonest in that he had improperly withdrawn funds from client account and had

misled the FIO. The Forensic Investigation Report (“FI Report”) was dated 7 December 2012.

27. Further allegations against the First Respondent related to acting for a buyer and seller in a conveyancing transaction where their interests had conflicted and breaches of the SRA Principles 2011 with regard to having failed to provide the best information possible to clients with regard to costs and having failed to run his business effectively.
28. The First Respondent admitted the allegations against him including the remaining allegations of dishonesty.

### **Witnesses**

29. Mrs Carolann Shimmin, the FIO and Mr Geoffrey Smith gave evidence.

### **Mrs C Shimmin**

30. Mrs Shimmin confirmed the truth of the FI Report dated 7 December 2012.
31. Mrs Shimmin confirmed that her handwritten notes had been transcribed and she explained that they had been her own notes and those of her colleague Ms Barker. She said that the slight discrepancy between the time of commencement of interview with the First Respondent on 26 November 2012 had been because one set of interview notes was hers and the second set was Ms Barker’s and they had recorded slightly different start times.
32. Mrs Shimmin confirmed that she had attended at the firm on three separate occasions; on the first occasion she had reviewed files, ledgers and bank information; on the second occasion she had reviewed more client files due to her concerns and on the third occasion she had put to the First Respondent what she had been told by Mr M and in particular with regard to the alleged loan.
33. Mrs Shimmin confirmed that a copy bank statement had been produced which the Tribunal had seen and which showed the payment out of client account of the sum of £29,587.08 to AON being payment of the firm’s professional indemnity insurance. She said that she did not know why it had been referenced “S” but that the First Respondent had been confused about that.
34. In cross examination Mrs Shimmin said that she did not recall telling the First Respondent that she had stated prior to interview on 26 November 2012 that his background had been looked into. She said that from a regulatory perspective she had researched him and his firm.
35. In response to a question from the Tribunal Mrs Shimmin said that she only recalled having seen one letter concerning the First Respondent’s health being a letter dated 21 November 2012 from his GP. She said that there had been one occasion in interview when the First Respondent had said he needed to stop due to the way he felt but most of the time he had been happy to answer her questions and she had had no cause to think that it was inappropriate to question him.

Mr G Smith

36. Mr Smith confirmed the truth of his witness statement dated 4 July 2013.
37. In cross examination Mr Smith told the Tribunal that he recalled that the First Respondent had suffered from serious head injuries as a result of an assault five years previously but he did not recall the specifics of the incident.

**Findings of Fact and Law**

38. 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.
39. **The allegations against the First and Second Respondents were:**

**Allegation 1.1** They provided a service to their clients which was so poor as to amount to breaches of all or alternatively any of Rules 1.04, 1.05 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007"), in that they:

- 1.1.1 failed to keep clients informed of the progress of, and/or material developments in, their cases;
- 1.1.2 failed to respond within a reasonable time or at all to communications from clients, courts and/or opposing parties in cases;
- 1.1.3 failed to provide to clients complete copies of those clients' files when requested to do so;
- 1.1.4 failed to comply with court directions and/or orders in litigation being conducted on behalf of clients;
- 1.1.5 failed, without explanation, to attend a court hearing in a client's case;
- 1.1.6 failed to take steps to resolve a County Court claim in their client's favour in circumstances where the Defendant had failed to respond to the claim; and
- 1.1.7 failed to properly advise a client on the merits of his case when he had the opportunity to settle the matter without court action;

**Allegation 1.2** That (in the period up to 5 October 2011) they acted in breach of Rule 20.05 of the SCC 2007 by failing to deal with the Legal Complaints Service ("LCS") and/or the Legal Ombudsman

**(“LeO”) and/or the Solicitors Regulation Authority (“SRA”) in an open, prompt and co-operative way, in that they:**

**1.2.1 failed to respond within a reasonable time or at all to communications from the above bodies; and**

**1.2.2 failed to provide information and/or documents when requested to do so;**

**Allegation 1.3 That, from 6 October 2011, they failed to co-operate with and assist the investigations of the LeO and the SRA in the manner described above. The Respondents thereby breached Principle 7 of the SRA Code of Conduct 2011. Further or in the alternative, the Respondents failed to achieve outcome O (10.6) of the SRA Code of Conduct 2011;**

**Allegation 1.4 They acted in breach of all or alternatively any of Rules 1.02, 1.04 and 1.06 of the SCC 2007 in that:**

**1.4.1 they provided misleading information to the Legal Ombudsman and their former client with regards to the whereabouts of that client’s file;**

**1.4.2 they informed their client and the LCS that they had requested a disposal hearing of that client’s matter, when they had not done so.**

**The allegations against the First Respondent only were:**

**Allegation 1.5 [As amended] that the First Respondent improperly withdrew funds from client account in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 (“the Principles”) and SRA Accounts Rules 2011 (“AR 2011”);**

**Allegation 1.6 that there were cash shortages in client account of:**

**1.6.1 £1,253.50 on 30 September 2012; and**

**1.6.2 not less than £12,000 on 31 October 2012**

**in breach of AR 2011 1.1 and 20.9;**

**Allegation 1.7 that the First Respondent took payment in respect of fees from money held on client account without sending clients bills of costs or other notification of the costs incurred, in breach of Principles 4, 5, 6 and 10 and AR 2011 17.2;**

**Allegation 1.8 that the First Respondent failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in that invoices and client ledgers**

were backdated, in breach of Principles 4 and 10 and AR 2011 1.2 (f);

- Allegation 1.9** that the First Respondent failed to rectify breaches of the Accounts Rules promptly upon discovery, in breach of AR 2011 7.1;
- Allegation 1.10** that the First Respondent made inappropriate use of a suspense ledger account, contrary to Rule 32 (16) of the Solicitors' Accounts Rules 1998 and the AR 2011 29.25;
- Allegation 1.11** that the First Respondent failed to retain for at least six years their client account reconciliations, in breach of AR 2011 29.17;
- Allegation 1.12** that the Respondents' client account reconciliations were not three-way reconciliations, in breach of AR 2011 29.12;
- Allegation 1.13** that the First Respondent misled an SRA forensic investigation officer in respect of:
- 1.13.1** his ownership of buildingdispute.com Limited; and/or
- 1.13.2** County Court Judgments ("CCJs") against him
- in breach of Principles 2 and 7;
- Allegation 1.14** that the First Respondent acted for a buyer and seller in a conveyancing transaction whose interests conflicted in circumstances where none of the permitted exceptions applied, in breach of Principles 4 and 5. Further, or alternatively, that he thereby failed to achieve outcome O (3.5) of the SRA Code of Conduct 2011;
- Allegation 1.15** that the First Respondent failed to provide clients with the best possible information about the likely cost of their matter, both at the time of engagement and as their matters progressed, in breach of Principles 4 and 5. Further, or alternatively, that he thereby failed to achieve outcome O (1.13) of the SRA Code of Conduct 2011;
- Allegation 1.16** that the First Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8. Further, or alternatively, that he failed to achieve outcome O (10.3) of the SRA Code of Conduct 2011.

## Submissions on behalf of the Applicant

### Allegations 1.1, 1.2, 1.3 and 1.4

- 39.1 Mr Hudson referred the Tribunal to the Rule 5 Statement upon which he relied and his Outline Submissions document and chronologies which detailed the First Respondent's dealings with three clients namely Mr V, Mr S and Ms W. There had also been a fourth client matter exemplified in the Rule 5 Statement in relation to Mr L. He told the Tribunal that the First Respondent did not dispute the facts of the case.
- 39.2 Mr Hudson said that there were four allegations [1.1 to 1.4] set out in the Rule 5 Statement, all of which related to serious and repeated failures by the First Respondent in the course of his practice under the name of the Second Respondent, when dealing with the affairs of four clients [Mr V, Mr S, Ms W and Mr L] and in respect of the first three clients, his dealings with the LCS and/or the LeO and/or the Applicant.
- 39.3 Mr Hudson told the Tribunal that the misconduct had taken place between 2009 and 2011 and that during that time there had been a long history of the First and Second Respondent's conduct regarding Mr V, Mr S and Ms W which included repeated requests for information which were ignored by the First Respondent and/or broken promises to provide requested information and/or his failure to reply to correspondence and/or to take appropriate action in litigation in which he had been instructed [in relation to Mr L].
- 39.4 Mr Hudson said that the First and Second Respondents had let down clients very badly over an extended period.

### Mr V

- 39.5 Mr Hudson referred the Tribunal to the Chronology he had prepared with regard to the First Respondent's dealings with Mr V. He said that the First Respondent had been instructed regarding two potential litigation matters on behalf of Mr V. In April 2009 he had been asked to treat the case as "urgent" by the referrer.
- 39.6 By July 2009 Mr V was asking the First Respondent at what stage the case was and on 23 July 2009 he asked for an urgent update on his two matters. He pointed out that the firm had been instructed for some time and the issues he was facing were having onerous effects on him.
- 39.7 Mr Hudson said that on 1 September 2009 Mr V contacted the First Respondent again, anxious to hear of any progress and asking if proceedings had been issued in either or both cases. Mr V wrote on 5 September 2009 to the First Respondent and complained that his attempts to contact the office by telephone and email had failed. He asked for a substantive report on the progress of his two cases. He was then contacted by the First Respondent on 24 September 2009 to discuss progress and was told that proceedings had been issued on one matter and they were seeking to have the case settled for disposal. In relation to the second matter counsel's advice was

awaited. Mr V was told that this was an interim report and a full report would be provided within 14 days.

- 39.8 Mr Hudson said that on 25 September 2009 Mr V had complained that this was an insufficient reply which had followed many months' fruitless pursuit of "proper information". Mr V complained that what he had been told was vague and he had not seen any correspondence or proceedings.
- 39.9 Mr Hudson said that Mr V had complained again on 2 October 2009 that he had still not received a full response and on 14 October 2009 he wrote to the First Respondent and expressed disappointment at having heard nothing since speaking to the firm on 29 September 2009. He said that he would make a formal complaint to the Applicant. Mr Hudson said that the firm had then written to Mr V and advised that they were awaiting a disposal hearing date from the court in relation to one matter and that papers were with counsel regarding the second matter.
- 39.10 Thereafter Mr V had requested copies of all documentation on 19 October 2009 and after some time he wrote to the First Respondent on 17 February 2010 and requested an explanation of the exact status of his two matters. Mr Hudson said that Mr V wrote again on 3 March 2010 requesting a full status report, advice and counsel's opinion to decide whether to proceed with his two cases. Mr V requested the case number for one of the matters on 4 March 2010 and again on 6 March 2010 but to no avail and Mr Hudson said that on 9 March 2010 Mr V had dis-instructed the First and Second Respondents and asked them to prepare his files for immediate transfer to another firm.
- 39.11 Mr Hudson said that Mr V never received information from the First Respondent regarding one of his matters which if he had done, he would have discovered that the proceedings had not been progressed beyond the issue of proceedings and more particularly that no disposal hearing had been requested. With regard to his second matter, Mr Hudson said that an "updated advice from Counsel" had been received in January 2010, some nine months after Mr V had first instructed the First Respondent and no action had been taken on his behalf to obtain redress in that matter.

#### Mr S

- 39.12 Mr Hudson referred the Tribunal to the Chronology regarding the First Respondent's dealings with Mr S. He said that Mr S had instructed the First Respondent and his firm in early 2009 in connection with proceedings brought against him by a bank. A brief defence had been lodged by the First Respondent towards the end of March 2009. A Request for Further Information was made and in due course in July 2009 an Order had been made requiring the production of that information. Mr Hudson said that this had been followed on 4 September 2009 by a costs order against Mr S in the sum of £827.33.
- 39.13 Mr Hudson told the Tribunal that Mr S had chased the First Respondent for updates in March 2010 on three occasions. On 12 April 2010 Warrington County Court had made an order that unless Mr S filed with the court a pre-trial checklist by 28 April 2010 his defence would be struck out and the bank would be at liberty to enter judgment against him.

- 39.14 Mr Hudson said that the bank's solicitor were prompted to write to Mr S direct in April 2010 because letters to the Second Respondent had all been ignored and they wished to advise him that they would be enforcing the costs order against him and whether he would reach agreement with them regarding the claim.
- 39.15 Mr Hudson said that as a result of Mr S's non-compliance with the Unless Order of 12 April 2010 the bank entered judgment against him in the sum of £19,850.59 and secured a charging order against his property. A hearing had been fixed for 20 September 2010 to decide whether the charge should be continued or discharged but Mr S failed to attend the hearing and the court made an order that the charge should continue with interest and costs added.
- 39.16 Mr Hudson said that Mr S dis-instructed the First and Second Respondents and his new solicitors had written to the firm as at 5 October 2010 that despite having made four formal requests and a telephone conversation, they had still not received Mr S's file. His new solicitors had subsequently lodged a complaint with the LeO.
- 39.17 Mr Hudson said that in view of the difficulties encountered by Mr S's new solicitors in obtaining his file of papers, they had been unable to advise him properly on what redress might be available to him.

#### Ms W

- 39.18 Mr Hudson referred the Tribunal to the Chronology regarding the First Respondent's dealings with Ms W. He said that Ms W and her co-tenants had instructed the First Respondent in 2009 in connection with their claims against their landlord. Proceedings had been issued in February 2009 but matters had then gone very quiet until Ms W had been written to by her landlord in April 2010 regarding his claim for costs arising out of the proceedings she had presumed were being pursued against him. Mr Hudson said that on 23 May 2010 Ms W had sent the First Respondent a copy of the landlord's letter and indicated that she had not replied as she had wanted to contact the First Respondent from whom she had not heard about the case for some time.
- 39.19 The landlord obtained an Unless Order from Sheffield County Court on 20 January 2011. On 18 March 2011 the court ordered Ms W and her co-tenants to pay £4,659 on or before 1 April 2011 and enforcement action was threatened by the landlord's solicitors. Mr Hudson said that on 5 April 2011 Ms W emailed the First Respondent that she had received a copy judgment against her for £9,291.05 and that she had not heard from him for nearly two years. No response was received by Ms W. Her father subsequently emailed the First Respondent but received no reply. Mr Hudson told the Tribunal that on 1 August 2011 Ms W had complained to the LeO.

#### Mr L

- 39.20 Mr Hudson said that this was a slightly different matter albeit it was exemplified in the Rule 5 Statement and relied upon by the Applicant. He said that in this matter the First Respondent had acted for Mr L in proceedings where on 11 August 2011 Warrington County Court had made an order dismissing Mr L's claim and ordering him to pay costs. Mr Hudson said that the order had indicated that:

- The First Respondent had not attended the hearing;
- He had given no explanation for his absence;
- The claimant had not complied with earlier directions given in the matter; and
- Correspondence had not been dealt with by the First and Second Respondents.

39.21 The report which had been made to the Applicant advised that the District Judge who had made the Order had directed solicitors on the other side to write to the Applicant. Mr Hudson said that was how the matters had come to the attention of the Applicant.

The First's Respondent's dealings with the LCS, the LeO and the Applicant

39.22 Mr Hudson told the Tribunal that Mr V, Mr S and Ms W had taken matters further with the result that the First and Second Respondents had had to account for their failings to the LCS and/or the LeO and in all three cases to the Applicant. There had been further serious failures to respond, broken promises and the provision of misleading information by the First Respondent. Mr Hudson submitted that in particular where a solicitor is referred to its regulatory body that should be a wake-up call but regrettably the pattern of the First Respondent's conduct had continued.

Mr V

39.23 Mr V's complaint was initially dealt with by the LCS. Mr Hudson said that the First Respondent had initially explained that he had been awaiting a disposal hearing in one of the matters for Mr V but Mr Hudson submitted that had been untrue. Although the LCS had initially closed its file the LeO had been unhappy about that and the LCS had re-opened its file in July 2010. Mr Hudson said that there had followed three months of the LCS pressing the First Respondent and the firm to provide its file and on 4 October 2010 the First Respondent had produced what he described as "the entirety of the file presently available". The First Respondent's promise to provide his response to the complaint later that day was broken.

39.24 Mr Hudson said that the LCS made its decision based on the information available to it and found that the First Respondent and the Second Respondent [the firm] had provided inadequate service to Mr V in five different respects. The First and Second Respondents were also called upon by the Applicant to account for themselves and were first asked for their response at the beginning of May 2011 but by September 2011 the First Respondent had not produced his response nor had he produced his files.

39.25 Mr Hudson told the Tribunal that the Applicant was forced to serve a Section 44B Notice [Solicitors Act 1974] upon the First Respondent requiring him to produce his files and relevant ledgers within 7 days. The Notice was served upon him on 19 September 2011 but by 7 October 2011 the files and ledger had not been produced and the First Respondent's response had not been sent. Mr Hudson said that the First Respondent told the Applicant that he had sent the original files to the Applicant by post and copies of the ledger and of the files electronically on at least two occasions when none of that was correct.

39.26 Mr Hudson said that a case note was prepared without the benefit of the First Respondent's response. The First Respondent was asked to respond by 5 November 2011 and had asked for an extension of time to 14 November 2011 but no response had ever been sent. Mr Hudson referred the Tribunal to the Adjudicator's Decision dated 5 January 2012 to refer the First and Second Respondent's conduct to the Tribunal. He said that to the First Respondent's credit he had paid compensation ordered in favour of Mr V.

#### Mr S

39.27 Mr Hudson said that Mr S had complained to the LeO and the First Respondent had been asked on 22 November 2010 to send his files to Mr S's new solicitors which he had agreed to do but by 20 December 2010 the files had not arrived. The First Respondent stated that he thought they had been sent six weeks previously and had agreed to search his office.

39.28 Mr Hudson said that the Applicant continued to press the First Respondent for his response to Mr S's complaint and for documentation but by February 2011 neither had been received and the LeO made its decision without the documents and without the benefit of the First Respondent's response. The decision of the LeO was that the First Respondent should pay £10,000 compensation on the basis that the Second Respondent had provided an inadequate service to Mr S's detriment.

39.29 Mr Hudson said that on 8 August 2011 the First Respondent was called upon to provide the Applicant with his response to the allegation that he had failed to deal with the LeO in an open, prompt and co-operative way, had misled the LeO and/or Mr S and/or Mr S's new solicitors as to the whereabouts of Mr S's file and that he had provided a service so poor as to amount to professional misconduct.

39.30 Mr Hudson told the Tribunal that by 2 September 2011 the First Respondent had failed to provide his response to those allegations and was given a further 8 days within which to do so. The First Respondent contacted the Applicant after that time and stated that he had sent his response 2 weeks previously. It had not been received and he was asked to re-send it. His response was chased again on 28 September 2011 and he said that it would be sent later that day and then the next day. Mr Hudson said that it was never sent.

39.31 Mr Hudson referred the Tribunal to the Adjudicator's Decision dated 28 February 2012 to refer the First and Second Respondent's conduct to the Tribunal.

#### Ms W

39.32 Mr Hudson said that the First Respondent's dealings with the LeO regarding Ms W's complaint followed a similar pattern. On 26 August 2011 he had been asked for a response to the complaint and had been given a deadline of 5 September 2011 but by 10 October 2011 it had not been received. The First Respondent had requested and been granted an extension of time to 14 October 2011. Mr Hudson said that by 8 February 2012 his response had not been received and a final deadline of 16 February 2012 was set but no response was ever received.

- 39.33 The Adjudicator's Decision to refer the First and Second Respondent's conduct to the Tribunal was also dated 28 February 2012.
- 39.34 In conclusion with regard to the Rule 5 Statement Mr Hudson submitted that the conduct of the First and Second Respondents in these matters had demonstrated a chronic lack of communication and of inactivity over long periods of time during which clients who had entrusted their matters to him and his firm had been left in the dark as to the status of their proceedings. The lack of communication was compounded by the fact that during the long periods of silence their matters were not being progressed.
- 39.35 Mr Hudson told the Tribunal that complaints by affected clients to the LCS and/or the LeO did not cause any change in the First Respondent's approach. Having failed to co-operate with those bodies whose role it was to obtain some form of redress for his clients, the First Respondent was then called upon by the Applicant to explain himself yet there was still no change in his approach which Mr Hudson submitted had been to prevaricate and when pressed to have given misleading information and/or to have failed to meet promises.
- 39.36 Mr Hudson submitted that these had been serious and repeated failings over a long period of time by the First and Second Respondents which had placed him and his firm in stark breach of the core duties of solicitors.
- 39.37 Mr Hudson referred the Tribunal to the amended Rule 7 supplementary statement upon which he relied. He said that the allegations in the Rule 7 statement related to the First Respondent only. He told the Tribunal that the firm [the Second Respondent] had been intervened into in December 2012.
- 39.38 Mr Hudson submitted that on the part of the First Respondent there had been serious Accounts Rules breaches under the SAR 1998 and the AR 2011, allegations of dishonesty in relation to allegations 1.5 and 1.13, a conflict of interest, failing to provide proper costs information to clients and failing to run his business properly.

#### Allegations 1.5, 1.6 and 1.13

- 39.39 Mr Hudson said that the background to allegations 1.5, 1.6 and 1.13 included a former client of the First Respondent's namely Mr M. He referred the Tribunal to Mr M's Statement dated 14 November 2012 which stated:

“Around 18 months ago I was introduced to Ian Hall, a solicitor who works for Hall & Co Solicitors, Orford Rd, Warrington.

In mid-July 2012, I met with Mr Hall at his office to discuss a purchase of land that I wanted to make as a personal investment. He agreed to act for me, the purchase of the land was to cost around one hundred and fifty thousand Pounds including fees.

On 3 August 2012, I transferred the sum of one hundred and ninety four thousand five hundred and thirty six Euros and thirty eight Cents, the equivalent of one hundred and fifty thousand Pounds from S Bank in

Marbella, which is my private bank account, into the client account of Hall & Co. The only reason that I transferred the money was for my land purchase and no other reason. Mr Hall was made aware of that. I have since requested my money to be returned to me, but it has not. The reason is that the purchase of the land fell through...”

- 39.40 Mr Hudson referred the Tribunal to the witness statement of Mr Geoffrey Smith dated 4 July 2013 who had been the First Respondent’s book keeper. In his witness statement he stated that:

“ ...

35. I also suggested to Mr Hall that he was unwell and not in control of his practice, that he should seek expert assistance by, if necessary, contacting the Solicitors Assistance Scheme (which I understand he later did). I also suggested that he should find finance in the region of £100,000 to enable his office account to be properly funded, thus allowing him to take time off from the practice to regain his composure and health. I suggested that Ms B would be competent enough to run the practice in his absence.

...

38. When I had previously suggested to Mr Hall that his practice needed a cash injection of £100,000 (see paragraph 35 above), he had immediately suggested that this would be effected by way of a loan from Mr M out of funds he was holding in his client account (against matter M295/4, which is the file designated ‘Purchase of D Land’). I told Mr Hall on at least two occasions that this might put him in quite a difficult position. Firstly, I advised him that Mr M would be required to seek independent legal advice. Second, in a situation where Mr Hall would, by his own account, be very reliant on fee income from Mr M, it might compromise Mr Hall’s independence insofar as Mr M’s matters were concerned. I also said it was clear from the files that the monies were held for specific purposes and that any release for any other purpose would need to be clearly evidenced by appropriate documentation...”

- 39.41 Mr Hudson told the Tribunal that there was a substantial dispute between the First Respondent and Mr M regarding certain monies belonging to Mr M. Mr Hudson referred the Tribunal to the Rule 7 Statement which stated:

“ ...

Transfer of £51,560 re “Building Dispute share purchase”

15. Mr M told Ms Shimmin on 26 November 2012 that he did not know why £51,650 had been paid to BDL [buildingdispute.com] on 20 August 2012...

16. When questioned about this matter on 26 October 2012, the First Respondent told Ms Shimmin that BDL was owned by a Mr Bone, who was also the director of the company and that he had introduced BDL to Mr M.

However, Mr M's evidence is that he had never heard of BDL. Mr Bone is the First Respondent's son-in-law.

17. BDL's incorporation documents show that the First Respondent owned 90% of BDL's share capital, and that Mr Bone owned only 10%. The latest annual return for BDL filed with Companies House, dated 16 February 2012, shows that as at 26 October 2011 the First Respondent and Mr Bone continued to own the shares of BDL in the same proportions, i.e. 90% to Mr Hall and 10% to Mr Bone.

18. On 26 November 2012 Ms Shimmin again asked the First Respondent whether he owned any shares in BDL, and the First Respondent said he did not. When confronted with the evidence in the company's incorporation documents the First Respondent said he had been "genuinely mistaken" in his recollection and it was something he was "closely connected to" but he thought he had "distanced himself from it".

19. Following the withdrawal on 20 August 2012 of the two amounts totalling £129,960, there was a balance of £19,950 on the client ledger of this matter. On 31 August 2012 that sum (£19,950) was transferred to another of Mr M's matters, namely the 'Dispute re David Lloyd'...Mr M told Ms Shimmin that he had no idea of the reason for this transfer..."

39.42 Mr Hudson submitted that the First Respondent's replies regarding BDL had not been credible. He referred the Tribunal to the FI Report, which stated:

"...

54. The client ledger also records that the sum of £51,650.00 was paid on 20 August 2012 to a company called 'Building Dispute' in respect of a share purchase. Mr M informed Ms Shimmin and Mr Lees that he has no idea why £51,650.00 was sent to Building Dispute but believes it is a company owned by Mr Hall. Mr M also did not know why £19,950.00 had been transferred to another ledger in his name.

55. ...There is a copy client care letter dated 17 August 2012 from the firm addressed to Mr M in respect of engaging "in a company called buildingdispute.com with a view to services, utilising the date and the domain name". Mr M informed Mrs Shimmin and Mr Lees that he had never seen this letter and had never in fact received a client care letter or similar from the firm.

56. During a meeting on 26 October 2012 Mrs Shimmin asked Mr Hall who owned Building Dispute.com (sic) Mr Hall said that it was owned by Mr Bone, who was also the director of the company and he had introduced Building Dispute.com to Mr M. On 26 November 2012 Mrs Shimmin asked Mr Hall again the question as to who owned the company Building Dispute.com and did he own any shares in the company. Mr Hall said that it was Mr Bone's company and he did not have any shares in the company. Mrs Shimmin said that Companies House records that Building Dispute.com

is 90% owned by Mr Hall. Mr Hall said “I am genuinely mistaken of my recollection of it if I have put my name down. I look back...it was something I was closely connected to. I thought I had distanced myself from it...”

- 39.43 Mr Hudson said that the First Respondent had been asked on two separate occasions about his involvement with BDL and he had twice sought to mislead the FIO in that regard which Mr Hudson submitted had been deliberate. Mr Hudson also referred the Tribunal to the interview notes of the FIO in this regard, which stated:

“ ...

CS [Ms Shimmin] – please explain £51,650.00 to building dispute?

IH [the First Respondent] – “that is a company – the plan Mr M envisaged there is a gap in the market – where you have developers who bought the land but ran out of money and you have disputes between developer and builder – Mr M envisaged advertising – provide an advertising budget and use company to promote that concept”

CS – why pay to your ledger?

[IH] “It was originally for draw down on land – did not go ahead and question was how to utilise money”

...

IH said he approached Mr M for a loan – as there was no credit from the bank to fund good ideas, - “there was (sic) other people I was looking to but the view I took was when done...they...referrals...and I avoided that option years ago. I was introduced to PW re RTA referrals needed...price of RTAs £750 a pot therefore needed funds to do this. Mr M has been a client for 12 to 18 months – only 4 matters. Building Dispute is separate to Mr M – Building Dispute is based – local company.”

CS asked who owns the company?

IH said “The director is Mr Bone – in reality Mr Bone is the owner. Mr M is not the owner...”

- 39.44 Mr Hudson said that Ms Shimmin and her colleague Mr Lees had also met with Mr M on 14 November 2012. The interview notes stated:

“ ...

EM [Mr M] said

...

No idea why £51k...sent to BD (Building Dispute)

I think it is a company he [the First Respondent] owns

No – do not know why £9,950 transferred

Client care letter re BD – EM has not seen this letter – no previous agreement/instructions...”

39.45 Mr Hudson submitted that by virtue of paragraphs 15 to 20 of the Rule 7 Statement and as referred to in the FI Report with regard to Building Dispute.com and Mr M and the FIO’s interview notes, it was the Applicant’s case that the First Respondent had acted dishonestly by the standards of reasonable and honest people and that he was aware that by those standards his conduct was dishonest [per the combined test in Twinsectra].

39.46 Mr Hudson said that there had been a cash shortage of not less than £12,000 on 31 October 2012. He referred the Tribunal to the ledger of Mr M regarding the purchase of D Lane which showed that after the payment out of £51,650 on 20 August 2013 and a further sum of £78,400 which was not in issue, a balance remained of £19,950. Mr Hudson told the Tribunal that that sum had been transferred to another ledger entitled “Dispute with David Lloyd” which had left a zero balance. Mr M had told the FIO that he had no knowledge why the monies had been transferred and he had subsequently requested return of his monies but had only been sent £12,000 at the end of October 2012.

39.47 Mr Hudson referred again to the D Lane ledger which he said showed the debit of £12,000 to Mr M but because there was a zero balance there was then a debit balance on client account which meant a cash shortage of all client monies since other client money must have been used to make the payment to Mr M. Mr Hudson referred to the FI Report which stated:

“ ...

During interview on 26 November 2012, Mr Hall agreed that there was a cash shortage of at least £12,000.00 on client account at 31 October 2012 as he paid Mr M £12,000.00 from client account on 29 October 2012, when these funds were not held by the firm for Mr M. Mr Hall confirmed that the shortage continues to exist...”

39.48 Mr Hudson said that there had been a further cash shortage of £1,253.50 as at 30 September 2012. He also referred the Tribunal to the withdrawal of £29,587.08 on 8 October 2012 from the firm’s client account to AON, the firm’s professional indemnity insurer. He said that the reference on the bank transfer had been “S” which was one of the First Respondent’s clients but that neither of the client ledgers for client S recorded any such transfer. On 24 October 2012 £29,567.08 had been transferred from the firm’s office account to its client account which had substantially rectified the shortfall which had arisen.

39.49 Mr Hudson told the Tribunal that in interview with the FIO on 28 November 2012 the First Respondent had admitted that the payment to AON should have been made from office account and that the payment from client account had been his “error in its

entirety". The First Respondent had been unable to explain why the payment had been referenced in the name of client S. Mr Hudson said that when put to the First Respondent by the FIO that had the payment originally been made from office account it would have exceeded the firm's office account overdraft limit of £10,000, the First Respondent had replied that he had intended to make the payment from his personal account and "was horrified" when he found out he had used the wrong account.

#### Allegation 1.7, 1.8 and 1.15

39.50 Mr Hudson told the Tribunal that invoices had been raised on ledgers but there was no evidence that the invoices had been sent to the clients. In the case of the "Dispute with David Lloyd" ledger in relation to Mr M, Mr Hudson said that a number of invoices had been raised in July 2012 which Mr M told the FIO he had no record of having ever received. Mr Hudson referred the Tribunal to the FI Report which stated:

" ...

Mr M informed Mrs Shimmin and Mr Lees on 14 November 2012 that he had never received an invoice from the firm on any of his matters. Mr M was shown a copy of the client ledger for his file and said he did not understand any of the entries that had been made. The ledger also records that from 3 August 2012 until 31 August 2012 the client ledger was overdrawn by £17,968.19".

39.51 Mr Hudson said that the First Respondent had told the FIO that his intention had been to hand invoices to Mr M when he had returned to the UK from Spain but there was no evidence that he had done so. Mr Hudson told the Tribunal that there had been another file for Mr M called "Defamation (file M295/3)" in relation to which three invoices had been raised between 17 July 2012 and 25 July 2012 totalling £1,119.80 but that Mr M had not received any of these invoices. The FI Report recorded that:

" ...

61. ...Mr Hall accepted that Mr M may never have received any invoices as he lived in Spain and the invoices were meant to be given to Mr M in person".

39.52 Mr Hudson said that the FIO had identified 290 cases in total where costs had been taken before clients had received invoices and the First Respondent had accepted that his practice in this regard was wrong. The FI Report stated:

" ...

#### Backdated invoices and ledgers

34. During an interview on 23 October 2012 Mr Hall informed Mrs Shimmin and Ms Barker [another FIO] that on RTA client matters as soon as funds were received from the insurer he would transfer funds from client to office account in payment of his fees before ensuring that invoices were sent to the client. Mr Hall said that he became complacent in this respect..."

39.53 Mr Hudson referred the Tribunal to a schedule of the firm's invoices for the period 6 March 2012 to 22 November 2012. From the 290 invoices on the schedule Mr Hudson said that 83 invoices had been backdated. He exemplified the matter of client CS. The invoice in the sum of £300 inclusive of VAT was dated 30 October 2012 and was recorded on the client ledger as this date but the firm's schedule of invoices recorded that the invoice was raised on a date on or after 19 November 2012. The ledger also recorded that when client damages of £3,000 were received into the client account on 13 June 2012 the First Respondent had transferred £3,000 from client to office account in settlement of his bill dated 13 June 2012 and on 5 July 2012 he had raised a bill and transferred £1,400 on the same day in settlement of that bill.

39.54 Mr Hudson referred the Tribunal to a letter from the First Respondent to a client Mr H dated 6 September 2012, which stated;

“ ...

...The costs of taking matters to that stage would probably total £2,200.00...”

39.55 Mr Hudson said that there had been no breakdown of work involved and no reference to whether VAT was included or not.

39.56 Mr Hudson referred the Tribunal to a letter to another client Mr M2 dated 18 January 2011 from the firm and which stated:

“Dear Mr M

...

To attend to the collecting and distributing of your wife's estate, other than the house, we will charge you £250 + vat...”

39.57 Mr Hudson said that the invoice for client Mr M2 dated 17 July 2012 was in the sum of £800 profit costs plus VAT yet there was no evidence that the client had been advised of the increased costs or that the invoice had been sent to the client.

#### Allegations 1.5, 1.9, 1.10, 1.11 and 1.12

39.58 Mr Hudson referred the Tribunal to Mr Smith's witness statement in relation to the firm's suspense ledger, which stated:

“ ...

10. Following the dissolution of Hall Moore (which pre-dated my involvement with Mr Hall), Mr Hall took responsibility for a number of matters which were in the name of the former partnership and at the same time took into his client account various unidentified client account balances which were (until at least September 2012), held in a suspense account. In spite of raising the matter with Mr Hall on a regular basis, I wasn't able to make much headway with disposing of this sum, in large part because Mr Hall was not very co-operative in this regard.

11. In the period from January 2003 to August 2011 the practice of Hall and Co seemed to be running smoothly, albeit I became aware in the course of my work that Mr Hall had financial difficulties with payment of liabilities such as VAT and PAYE. Payment of wages was also an issue but this was usually dealt with by frantic billing on the last day of the month”.

39.59 Mr Hudson told the Tribunal that the suspense ledger should only ever have been used as a temporary measure for holding client monies. He said that Mr Smith’s statement continued:

“14. Every month the firm’s client account reconciliation recorded a number of un-reconciled client account credits and debits (that is, receipts into and payments out of client account which had not been identified and posted to a particular client ledger). Over time these had built up and, once the debits had been offset against the credits, there was a credit balance of around £9,000 showing on the client account reconciliation each month.

15. Mr Hall believed that this money was rightfully his, because he had paid disbursements on behalf of clients from office account in circumstances where he believed that he had received funds from clients on account of those disbursements, but could not prove it because those receipts into client account had not been properly accounted for. Mr Hall and I spoke about this on a number of occasions but I always made it clear to him that he could not touch this money (i.e. the surplus on client account) unless he properly identified the clients who had sent and the purpose for which the funds had been sent...”

...

18. In or around April 2011 I became aware that Mr Hall had paid £18,434.65 from the client suspense account to HMRC in respect of his VAT liability...”

39.60 Mr Hudson referred the Tribunal to the suspense account ledger which showed a debit from the client side of the ledger in the sum of £18,434.65 paid to HMRC but which he said should have been shown as an office account debit. Mr Smith had emailed the First Respondent on 4 May 2011 and stated:

“Ian

You have paid £18,434.65 from client account on 18 April 2011 to HMRC and I have now been provided with a pink.

The narrative says VAT – IH.

In the first instance, as you are fully aware, the payment of VAT is an office item and not a client account item. That in itself is a serious breach of the solicitors accounts rules (sic).

Second the matter number quoted is in relation to the suspense account. You telephone me in Friday, 15 April since you had been aware of a sudden increase in the balance on the suspense account. I told you that this was due to

a tidying up exercise in relation to the bank reconciliation and that this was not for the purpose of making any payments. I told you that the items had been around for a considerable time and that only when they were identified could they be properly dealt with.

I also sent you an email on 18 April 2011 advising you that the suspense account had been reduced by another entry. The balance prior to your withdrawal is nearer £10,000 and, notwithstanding what appears to be a blatant disregard of what I have said you have created a third breach of the solicitors accounts rules (sic). I really do think that you knew what you were doing.

I am extremely disappointed at your action which clearly shows little or no regard for our relationship and has severely compromised the relationship...”

- 39.61 Mr Hudson told the Tribunal that the First Respondent had made a further payment out of the suspense account on 13 May 2011 which he said had been for part-payment of monies owed to his father and thus for personal use.
- 39.62 Mr Hudson submitted that such payments out of the suspense account had been wrongful use of the suspense account and improper withdrawals.
- 39.63 In relation to the one Reconciliation Statement seen by the FIO Mr Hudson said that it was clear that it had not been a three-way reconciliation as it had not included the cash book as required by the Rules. It had also not shown four client ledgers which recorded debit balances. Mr Hudson told the Tribunal that the firm also had not held copies of its client account reconciliations and supporting documents for the previous six years.
- 39.64 Mr Hudson submitted that there had been a failure by the First Respondent to rectify the breaches of the SAR 1998 and the AR 2011 promptly.

#### Allegation 1.13

- 39.65 Mr Hudson had already addressed the Tribunal with regard to allegation 1.13.1 in relation to Building Dispute.com. He said that it was also alleged that the First Respondent had misled the FIO with regard to County Court Judgments (“CCJs”) against him [allegation 1.13.2].
- 39.66 Mr Hudson told the Tribunal that on 19 December 2012 a Panel of Adjudicators Sub-Committee decided to intervene into the firm due inter alia to there being a shortfall on client account of £13,381 identified as at 31 October 2012 and that the First Respondent owed a minimum of £150,000 to friends, family, clients and other creditors.
- 39.67 Mr Hudson said that on 31 October 2012 the First Respondent had informed Mrs Shimmin that he had one CCJ against him in favour of “Office World” in the sum of £838. He told the FIO that this had been satisfied and agreed to provide evidence of this but had not done so despite having been reminded on five occasions by the FIO in October and November 2012.

39.68 Mr Hudson told the Tribunal that the First Respondent had told the FIO that he had no other CCJs against him but she had identified two further CCJs against him in court records in the sum of £813 and £23,562 respectively. As at 16 May 2013 both showed as being unsatisfied. The FIO found a further CCJ against the First Respondent whilst reviewing a client file. This was in the sum of £7,035.39 and showed as being unsatisfied as at 16 May 2013. A search of the register of CCJs carried out on 16 May 2013 showed a further CCJ against the First Respondent in the sum of £456 dated 7 December 2012.

39.69 Mr Hudson referred the Tribunal to the FI Report which stated:

“... ”

County Court Judgments (CCJ)

66. Mr Hall informed Mrs Shimmin on 31 October 2012 that he had one CCJ against him in favour of ‘Office World’ in the sum of £838.00 but that this judgment had been satisfied. Mr Hall said that he did not have any other CCJs. Mr Hall agreed to provide Mrs Shimmin with evidence that the CCJ in favour of Office World had been satisfied. But no evidence has been provided to date...

67. Further to a check of the court records Mrs Shimmin found that Mr Hall has two further CCJs recorded against him...

28. On 27 November 2012 whilst reviewing the client file of C, Mrs Shimmin found another CCJ issued in the Northampton County Court against Mr Hall...in the sum of £7,035.39...”

39.70 Mr Hudson submitted that the First Respondent’s conduct with regard to the CCJs and his responses to the FIO’s questions in that regard had been dishonest on the objective and subjective basis per Twinsectra and that the First Respondent had deliberately sought to mislead the FIO with regard to the truly parlous state of the firm’s finances.

Allegation 1.14

39.71 Mr Hudson submitted that the First Respondent had acted in a conflict situation in breach of Principles 4 and 5. He said that the firm had acted for both buyer and seller in a conveyancing transaction but without any of the permitted exemptions applying. He said that an unqualified fee earner at the firm who had acted for the purchaser under the First Respondent’s supervision had told the FIO that the First Respondent and the solicitor in the firm acting for the seller had told her that acting for both parties was in order as matters were being dealt with by two separate fee earners at the firm.

39.72 Mr Hudson said that the unqualified fee earner had also confirmed that a potential conflict of interest and the SCC 2007 were not discussed and there was no written consent from the clients that the firm could act for both parties.

### Allegation 1.16

- 39.73 Mr Hudson submitted that having regard to all of the allegations and the facts overall it was the Applicant's case that the First Respondent had failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles. He said that in the Intervention Decision it had been noted that the First Respondent had run up significant debt in excess of £150,000 including the four CCJs.
- 39.74 Mr Hudson submitted that these were serious allegations which included breaches of the core duties, the Accounts Rules and the SCC 2007 and SRA Principles. He submitted that the most serious of the allegations were the misuse of client monies and the dishonesty of the First Respondent.

### Submissions of the First and Second Respondents

- 39.75 The First Respondent did not choose to make his submissions on oath.
- 39.76 The First Respondent thanked the Tribunal for providing copies of the cases of Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) and Twinsectra to which he had had regard.
- 39.77 In relation to Twinsectra, the First Respondent said that he acknowledged the combined test for dishonesty being the objective and the subjective tests and that having given further consideration to allegation 1.13, he admitted the allegations of dishonesty with regard to Building Dispute.com and in relation to the CCJs. He said that when asked about the CCJs against him he was aware of his history in that regard and he had attempted to be clever in deflecting the true position and he accepted that his conduct had been dishonest. With regard to Building Dispute.com the First Respondent said that he had flagged up his involvement in the company but that he had deliberately misled the FIO when she had questioned him about it. He told the Tribunal that he had originally considered that he was unfit for interview but acknowledged that he had attempted to fudge the issue when questioned by the FIO and by his failure to make a positive assertion as to his interest in the company his conduct had amounted to dishonest conduct.
- 39.78 The First Respondent told the Tribunal that he did not contest any of the allegations against him. He asked the Tribunal to take into account the background to events. He said that he had emerged ten years ago from a difficult business partnership almost unscathed and that rather than having learnt from that he had deluded himself that he was a very efficient businessman and his character had led him to believe that he could do better than others and that he knew better than others. He said that he had embarked upon a number of ventures which had included taking on a raft of cases from all over the country amounting to approximately 1000 cases but without proper planning, forethought or funding.
- 39.79 The First Respondent told the Tribunal that he had been the subject of a serious assault some five years previously and that he had sustained serious head injuries. He had then developed cluster headaches which had originally been episodic and, for

example, for six weeks he would be severely impaired and would then emerge from that. He said that his condition had worsened and had become chronic over time.

- 39.80 The First Respondent told the Tribunal that he had continued working and that even without the condition he had made decisions to expand the practice which had been poor decisions in any event. He said that whilst some of his conduct had been a blur to a certain extent he acknowledged that he should properly have dealt with matters and he had not done so. He had not been frank with clients and had not had proper personnel. The net result had been that he had found himself in a maelstrom with complaints not dealt with and which had escalated to the LCS and/or the LeO. He said that he had been overwhelmed but did not seek to excuse his conduct over the last two year period. The First Respondent acknowledged that there was very little medical evidence before the Tribunal and that he had not seen fit to provide the same contrary to the directions which had been given. He admitted that he had not engaged until very recently.
- 39.81 The First Respondent said that he was desperately sorry for what had happened and he was aware of the difficulties actions such as his caused the profession including for other sole practitioners. He said that he had also caused exceptional distress to his family and friends and himself.
- 39.82 The First Respondent stated that he would be seeking employment but not in the legal profession or any related profession. He said that his financial circumstances were desperate and he had no assets whatsoever and debts in the region of £400,000. He told the Tribunal that he did not have any property and was separated from his spouse as a result of these events. He said that he anticipated that he would be made bankrupt in due course.
- 39.83 The First Respondent told the Tribunal that his income was approximately £1,000 per month for temporary work he had begun five weeks previously.
- 39.84 The First Respondent said that he whilst he had known that the case was listed for two days he had thought that having discussed matters with the Applicant and having put forward the proposal at the outset for disposal, the case would not have taken the two days listed. He told the Tribunal that he did not have any spare funds to stay in London overnight or to pay for another train journey the following day and that whilst he would make efforts to do so, he could not confirm that he would be able to attend on the second day. He said that no offence was intended if he was unable to return for the second day.
- 39.85 On the second day of the hearing an email was received from the First Respondent dated 25 September 2013 timed at 09:24 which stated that the First Respondent “could not secure funds to allow me to remain in London overnight. Nor could my rail ticket be changed to todays (sic) date” and “I would dearly hope that my absence does not appear to show lack of regard for my professional body”.

### The Tribunal's Findings

- 39.86 The Tribunal found all of the allegations proved on the facts and on the documents. It noted that the First Respondent had admitted all of the allegations against him including the allegations of dishonesty, allowing for the amendment of allegation 1.5.
- 39.87 The Tribunal had listened carefully to the submissions of both parties. It was satisfied that this was a case which involved a number of very serious allegations which included, inter alia; poor service to clients and failures to comply and co-operate with the LCS and/or the LeO and the Applicant when they became involved; breaches of the Accounts Rules; the improper withdrawal of client funds and fees being taken before bills had been rendered and allegations of dishonesty in misleading the FIO in respect of Building Dispute.com and the CCJs against the First Respondent.
- 39.88 As a matter of observation the Tribunal found that the poor service to clients and lack of co-operation with the regulatory bodies were of chronic proportion.
- 39.89 The Tribunal found that the breaches of the Accounts Rules were blatant and deliberate and took place over a long period of time, despite the First Respondent having received advice from his in-house accountant in respect of those matters.
- 39.90 Regrettably, the First Respondent had not engaged with the proceedings until the day before the substantive hearing when, on 23 September 2013, he had indicated that he would admit all of the allegations save for the dishonesty allegations and that he would agree to be struck of the Roll of Solicitors and not to re-apply to be restored to the Roll for six years. The Applicant was minded to accept this proposal and to request that the allegations of dishonesty lie on the file.
- 39.91 The Tribunal was concerned about the public perception of consenting to this proposed course of action. The allegations were very serious and to have left the question of dishonesty hanging in this way, possibly to be revived if any application was made by the First Respondent to be restored to the Roll in the future, was not a satisfactory way of proceeding.
- 39.92 The Applicant had therefore presented its case and during the course of the hearing the First Respondent had been referred to the cases of Iqbal and Twinsectra, the latter setting out the combined test of dishonesty and the former relating to the inference to be drawn if a Respondent does not give evidence. The First Respondent chose not to give evidence and accepted that he had been dishonest on both the objective and subjective basis per Twinsectra.
- 39.93 The Tribunal had other concerns as at an earlier stage in the proceedings the First Respondent had produced a doctor's letter concerning cluster headaches which had apparently affected his ability to work. The Tribunal heard from the FIO, Mrs Shimmin that the First Respondent had on one occasion asked to halt an interview due to the way he felt but she had no cause to think that it was inappropriate to question him. Happily the First Respondent had informed the Tribunal that within the last four weeks he had recovered from the condition and despite directions having been given on two occasions to produce medical reports in support of his condition,

he had failed to do so. The Tribunal had therefore had no satisfactory evidence before it concerning the condition.

39.94 The Tribunal further noted with regard to the First Respondent's medical condition that he had not sought to argue that the alleged dishonesty or any of the other allegations against him had resulted from his medical condition.

39.95 Having heard the evidence and read all of the documents, the Tribunal was satisfied beyond reasonable doubt that the Respondent knew when he gave answers to the Applicant's FIO concerning the company and the CCJs that the information he gave was wrong and that he was dishonest in knowingly misleading the FIO.

### **Previous Disciplinary Matters**

40. None

### **Mitigation**

41. The First Respondent mitigated in his submissions to the Tribunal.

### **Sanction**

42. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

43. In all the circumstances of the case the Tribunal considered that no lesser sanction was appropriate than that the First Respondent be struck off the Roll of Solicitors.

44. The Tribunal made no order with regard to the Second Respondent being the firm. The firm had been intervened in December 2012 and effectively no longer existed. The First Respondent had been a sole practitioner and it was his firm and the ultimate sanction had been imposed upon the First Respondent.

### **Costs**

45. Mr Hudson confirmed that he had served the Schedule of Costs upon the First Respondent who had been requested to provide a breakdown of his means but had not done so.

46. Mr Hudson referred the Tribunal to the FI costs which he said had been amended and reduced due to a new hourly rate having been introduced. He said that the FI costs figure had therefore reduced from £17,181.68 to £14,550.70.

47. The First Respondent said that he had received the Schedule of Costs by email on Friday 20 September 2013. He said that he was in difficulty with regard to disputing any costs since he had had solicitors acting for him. He said that his own solicitor's bill was approximately one fifth of the Applicant's costs but that none of the calculations he had seen in the Schedule of Costs stood out as calculations to which he could have any meaningful objection.

48. Mr Hudson asked the Tribunal to summarily assess the costs which were claimed in the sum of £56,921.08 but which he acknowledged would have to be reduced to allow for the FI costs reduction and time spent at the substantive hearing. With regard to the Outline Submissions document he said that that had been prepared by him together with the Chronologies which had greatly assisted him in his preparation for the re-listed substantive hearing as he had not had to re-read some 400 pages. He submitted that the Rule 5 Statement had been detailed and the papers before the Tribunal had had to be collated from various sources.
49. Mr Hudson said that whilst the hearing in December had adjourned it had still had to be prepared for as if it was going ahead. He said that the First Respondent had had to be pressed to provide information and comply with directions albeit that had not happened. There had then been the intervention and the Rule 7 Statement had had to be prepared and a conference with the FIO had been required.
50. The Tribunal had heard from the First Respondent about his parlous financial position and that in relation to the Second Respondent following the intervention he had debts in the region of £400,000.
51. The Tribunal considered the Schedule of Costs of the Applicant and had taken into account the representations of Mr Hudson with regard to the costs claimed. The Tribunal considered that the costs were on the high side in that there appeared to have been some duplication of work with regard to the Rule 5 and Rule 7 Statements, the costs for attendance at the substantive hearing were less than the 10 hours claimed and the FI costs had in any event been reduced by approximately £2000 plus VAT.
52. The Tribunal summarily assessed the costs and ordered that the First Respondent do pay costs in the sum of £50,000, not to be enforced without leave of the Tribunal.

### **Statement of Full Order**

53. The Tribunal Ordered that the Respondent, IAN THOMAS HALL, 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 £50,000.00 not to be enforced without leave of the Tribunal.

Dated this 10<sup>th</sup> day of October 2013

On behalf of the Tribunal

Mr A N Spooner  
Chairman