SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11007-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD DEIGHTON Respondent

Before:

Mr A. Spooner (in the chair)
Mr S. Tinkler
Mr R. Slack

Date of Hearing: 18th July 2013

Appearances

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

The Respondent appeared and represented himself

JUDGMENT

Allegations

1. The allegations against the Respondent Richard Andrew Graham Deighton made on behalf of the Solicitors Regulation Authority were:

In a Rule 8 Statement dated 31 May 2012:

1.1. He failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code"), the particulars being that he had the conduct of proceedings on behalf of Mr and Mrs R in connection with an insurance claim arising out of storm damage and during the course of which he gave them false and misleading information about their claim;

1.2 He failed to act in the best interests of Mr and Mrs R in breach of Rule 1.04 of the said Code, the particulars being that he gave false and misleading information to them about their claim and based on which they made arrangements to purchase a property thereby acting to their detriment.

In a Rule 7 Statement dated 11 June 2013, it was further alleged that:

2. He failed to act with integrity in breach of Rule 1.02 of the Code, the particulars being that he gave false and misleading information to Ms CA.

All the allegations were put as ones of dishonesty although for the avoidance of doubt it was submitted that it was not necessary to establish dishonesty in order to substantiate them.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 8 Statement dated 31 May 2012 with exhibit DEB1
- Rule 7 Statement dated 11 June 2013 with exhibit DEB2
- Notice in Form 6 under The Solicitors (Disciplinary Proceedings) Rules 2007 dated 12 June 2013 in respect of the witness statement of CA dated 10 June 2013
- Notice in Form 6 under The Solicitors (Disciplinary Proceedings) Rules 2007 dated 20 June 2013 in respect of the witness statement of GR dated 22 January 2013
- E-mail from Mr Barton to the Tribunal dated 24 June 2013 timed at 18.43
- E-mail from Mr Barton to the Tribunal dated 28 June 2013 timed at 15.35

Respondent

- First statement of the Respondent dated 29 November 2012
- Letter from the Respondent to Mr Barton dated 28 June 2013

- Submissions of the Respondent filed pursuant to the direction of the Tribunal, dated 1 July 2013
- Letter from the Respondent to Mr Barton dated 16 July 2013
- Respondent's comments on cost dated 17 July 2013 with attachment

Preliminary issues

4. In advance of the hearing on 24 June 2013, Mr Barton had informed the Tribunal that he wished to make a supplementary allegation and needed the permission of the Tribunal to file a supplementary statement because more than 12 months had passed since the application was made. Rule 7(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 provided:

> "Without prejudice to any further application which may be made, no supplementary Statement shall, unless by order of the Tribunal, be filed later than 12 months after the date of the Application or less than 30 days before the date fixed for the hearing of the application."

5. Mr Barton stated that he had served the Respondent with the supplementary allegation on 11 June 2013 and asked for his response to an application for permission. The message had been acknowledged by the Respondent but not responded to. Mr Barton asked for the application for permission to be dealt with on the papers in advance of the hearing by the Chairman of the division hearing the substantive matter. The Respondent wrote to Mr Barton, copying in the Tribunal office on 20 June 2013 indicating his opposition to the application, setting out his position in respect of documentation which had been served on him, indicating that he did not consider that either Ms CA or Mrs R should be permitted to give evidence at the hearing and that if permission were granted for the additional evidence to be given he would require both their attendance at the hearing. He also indicated that he would file formal documentation by 5 July 2013 in accordance with the Tribunal's earlier direction (made on 26 February 2013). The Respondent then made submissions on 1 July 2013 in respect of Mr Barton's application to file a supplementary statement under Rule 7, setting out the reasons why he opposed it including an assertion that the Applicant should have been aware of the allegation long before the issue of the Rule 8 statement dated 31 May 2012. The Chairman considered Mr Barton's application for permission in consultation with the other members of the panel and Mr Barton was advised that the substantive hearing under Rule 8(1) dated 31 May 2012 would be heard on 18 July 2013 and that the Tribunal would hear any application that the Applicant might wish to make regarding its supplementary statement on that date.

6. On 16 July 2013, by e-mail the Respondent sent a letter to Mr Barton informing him that on reflection he had decided not to oppose the application to admit the further statement and not to object to Mr Barton's reliance on the statement of CA dated 10 June 2013, not to object under the Civil Evidence Acts to the documents served with the statement of CA, not to object to the introduction of a statement made to the police by Mrs R dated 23 January 2013, and not to object under the Civil Evidence Acts to the documents served with that statement. The Respondent also informed Mr Barton in the letter that the Respondent had further decided not to require the attendance at the hearing of either CA or Mrs R on the basis that it would be no part

of his case to contradict what was said in those statements. The Respondent apologised for "late notification of this decision, caused by personal family problems not associated with the proceedings".

7. Mr Barton further explained that the Respondent had initially been a Respondent along with two others but his matter had been separated out by order of the Tribunal because the allegations against him were based on facts and matters wholly discrete to him. The case against the other Respondents had been concluded on 22 May 2013 after a five-day hearing in March 2013 followed by a single day on 22 May. The application against the Respondent had initially come on for substantive hearing on 19 February 2013 but had been adjourned because there had been inadequate time to conclude it on that day. Mr Barton submitted that he was only 11 days beyond the end of the 12 month period which the Rules permitted for filing a supplementary statement. The Statement had been served on the Respondent with supporting evidence on 12 June 2013 and he no longer opposed its admission. The Respondent confirmed that this was the case. He also explained that he did not think that the Tribunal would have a proper picture of what had occurred without the evidence of Mrs R and he did not therefore oppose the admission of her statement dated 22 January 2013 to evidence.

8. The Tribunal expressed concern that information relating to CA could have been found out many months ago when the Rule 8 Statement was drawn up; memoranda and file notes which had apparently been made contemporaneously by CA in February 2011 should, it appeared have been in the knowledge of the Investigation Officer in 2012. Mr Barton submitted that the material relating to CA was not within his knowledge at that time. He had been instructed in May 2012 in a matter against what were then three Respondents. He did not know of the involvement of CA in the transaction for Mr and Mrs R. The investigation carried out by the Investigation Officer Mr Cary Whitmarsh, who was present at the Tribunal, was wide ranging. The Investigation Officer did not know that CA had made the notes attached to her statement or that she had the specific knowledge set out in her statement. Mr Barton did not know the level of CA's knowledge until she gave evidence in March and May 2013 and he referred to an e-mail exchange concerning her evidence which was not before the Tribunal.

9. Mr Barton also explained that CK Solicitors had been intervened in. The intervention agents, Blake Lapthorn Solicitors took possession of a substantial volume of paperwork including hundreds of files. They focused their attention, entirely properly on money which was allegedly missing and this was the thrust of the Investigation Officer's investigation. The case had been a difficult one. It might be that there were documents regarding CA dealing with the matter of Mr and Mrs R, buried in the documentation relating to the earlier trial before the Tribunal but Mr Barton did not know until after the hearing on 19 February 2013 when the substantive hearing against this Respondent was adjourned. As to whether the Applicant should have known that the documentation was there, Mr Barton suggested that this would be a harsh view. The allegations against the Respondent focused on his dealings with Mr and Mrs R had been separated out. It was only in the run-up to the March 2013 hearing against the other Respondents that the police released a number of witness statements from clients, and one from CA which contained material wholly irrelevant to the proceedings against this Respondent and which would not have been suitable to

serve in its then form. Mr Barton informed the Tribunal that CA was a whistleblower who had introduced material into the proceedings against the other Respondents. After May 2013, matters relevant to the Respondent could be taken out of her evidence and put into a form which she approved on 12 June 2013. Mr Barton did not know until a few days before he had served it on 20 June 2013 about Mrs R's statement to the police although it was dated 22 January 2013. Mrs R had contacted him out of the blue regarding her statement and he had contacted the police who released it to him. It was in a form which was capable of being served as it was. The Respondent challenged one aspect of the accuracy of the chronology in that he asserted that one of these individuals had been in contact with the Applicant in February 2011.

10. The Tribunal noted Mr Barton's submissions and also that while the Respondent had stated that he could voice the technical objection mentioned above, he consented to the admission of the Rule 7 Statement. However there remained the requirement in Rule 6(1) that the supplementary statement had to be considered by a solicitor member of the Tribunal to certify whether there was a case to answer. Exceptionally it was possible for a member of the Tribunal not on this division to consider the Rule 7 Statement which was done during the course of a short adjournment. The statement was certified. The Respondent raised no objection to the fact that the certified statement had not been served on him 30 days before the hearing; he had had the opportunity to read it and was concerned that the matter should not be adjourned again. The Tribunal waived the time requirement under Rule 7(2). The hearing proceeded.

Factual background

11. At all material times the Respondent was employed or remunerated by CK Solicitors ("the firm") of West Sussex. He was born in 1946. He was admitted as a solicitor in 1970 but voluntarily removed his name from the Roll in July 1990.

12. On 8 March 2011, Mr Whitmarsh, an Investigation Officer ("IO") employed by the Applicant commenced an investigation of the books of accounts and other documents of the firm. Before the Tribunal was an extract from the Forensic Investigation ("FI") Report prepared dated 31 March 2011.

13. It was set out in the FI Report that the firm acted for Mr and Mrs R in respect of an insurance claim against the Co-operative Insurance ("the Co-op") relating to storm damage to their property. The fee earner for the matter was the Respondent, an unadmitted clerk.

14. Ms CA was an employee of the firm. Sometime prior to Christmas 2010, the Respondent asked CA to act for Mr and Mrs R in connection with the purchase of a property. She was informed by the Respondent that the settlement money would be available to be used towards the purchase.

15. There was a delay in the money becoming available and CA pressed the Respondent to keep her updated. She communicated with the clients.

16. The client matter file contained a letter to Mr and Mrs R dated 15 February 2011 in which Mr K summarised the facts of the matter. The letter included:

> "You instructed [the Respondent] of my firm to act for you in connection with your claim against your insurers for storm damage. The insurers have admitted part of your claim, but not the full extent of the claim...
>
> Normally, issues of these (sic) are often resolved by discussions between the parties. In this case however the Co-op appointed a Loss Adjuster …
>
> That position having been reached, you instructed [the Respondent] towards the end of 2009 to issue proceedings.
>
> Very unfortunately, he did not issue proceedings. Further, he indicated to you that proceedings had been issued, had been successful and that he was awaiting funds.
>
> Based on that, you went ahead with your proposed purchase.
>
> Eventually, [the Respondent] disclosed the position to me and I immediately arranged to see you, together with my colleague [CA]...
>
> [The Respondent] was in breach of his professional obligations to you. He should not have misled you in any way. Nor should he have misled other members of this firm.
>
> That approach is simply not acceptable and I have apologised to you both, on behalf of [the Respondent] and the whole firm, for what has happened.…
>
> As we discussed at our meeting, you do have the option to now instruct other solicitors to act on your behalf. You also have the right to make a formal complaint to the Legal Ombudsman…"

17. By letter dated 31 March 2011, the Applicant wrote to the Respondent to put allegations to him relating only to his dealings with Mr and Mrs R and to ask if he had any comments he wanted the Applicant to take into account during the course of its investigation.

18. The Respondent did not reply. On 23 December 2011, the Applicant decided to refer his conduct to the Tribunal.

Witnesses

19. There were no witnesses save for the Respondent and his evidence is recorded below.

Findings of fact and law

20. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his

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

(The submissions recorded below include those made orally at the hearing and those in the documents. Paragraph numbers in quotations have generally been omitted.)

21. Allegation 1.1 - He failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code"), the particulars being that he had the conduct of proceedings on behalf of Mr and Mrs R in connection with an insurance claim arising out of storm damage and during the course of which he gave them false and misleading information about their claim;

Allegation 1.2 - He failed to act in the best interests of Mr and Mrs R in breach of Rule 1.04 of the said Code, the particulars being that he gave false and misleading information to them about their claim and based on which they made arrangements to purchase a property thereby acting to their detriment.

Allegation 2 - He failed to act with integrity in breach of Rule 1.02 of the Code, the particulars being that he gave false and misleading information to CA.

(The allegations were considered together as they arose out of the same set of facts.)

21.1 For the Applicant, in respect of allegations 1.1 and 1.2, Mr Barton relied on the facts as set out in the Rule 8 Statement, an extract from the FI Report dated 31 March 2011 and Mr K's letter to Mr and Mrs R dated 15 February 2011. In respect of allegation 2, Mr Barton submitted that this was based on substantially the same facts; the Respondent had misled CA who had conduct of Mr and Mrs R's purchase transaction.

21.2 Mr Barton submitted that in respect of the dishonesty asserted regarding allegation 1.1 and 1.2 there was an irresistible conclusion that the Respondent had been dishonest over a period of time; from before Christmas 2010 until around February 2011 he had kept the true position regarding their claim from Mr and Mrs R, told them that he had settled the matter for £165,000 and was awaiting funds from the Co-op, all of which were untrue. The true facts did not emerge until early 2011, over a year after instructions to commence proceedings were given and shortly before the intervention in the firm (which was based on entirely different circumstances).

21.3 In respect of allegation 2, Mr Barton submitted that the Respondent had been dishonest because the Tribunal was seeing too many occasions when the Respondent had provided CA with false and misleading information. The Respondent had taken a series of discrete decisions to provide false and inaccurate information to Mr and Mrs R and CA. It was inconceivable that these decisions had been made in circumstances that were anything other than dishonest.

21.4 Mr Barton submitted that he could only seek an order under section 43 of the Solicitors Act (as amended) but in order to prove dishonesty he had to introduce evidence to enable the Tribunal to be to sure that both the objective and subjective texts for dishonesty in the case of Twinsectra Ltd v Yardley 2002 UKHL 12 had been satisfied by the Respondent's behaviour through the provision of the information and any parts of it. The test required that:

> "Before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

21.5 Mr Barton's submitted that his evidence was entirely documentary, covering the run-up to the admissions made by the Respondent. In respect of allegations 1.1 and 1.2, Mr Barton submitted that Mr K's letter had the most evidential value regarding the allegation of dishonesty particularly where he stated:

> "Very unfortunately, he [the Respondent] did not issue proceedings. Further, he indicated to you that proceedings had been issued, had been successful and that he was awaiting funds.

21.6 Mr Barton submitted that this was a material misstatement by the Respondent. There was no doubt that proceedings had not been issued for Mr and Mrs R. Mr Barton referred the Tribunal to Mrs R's statement to the police which had been admitted by the Respondent and so full evidential weight could be attached to it. Her statement included:

> "In December 2007 there was a serious storm which caused damage to the property…
>
> I had an appointment with the CK Solicitors… At CK Solicitors I met with [Mr K] who handed my case to [the Respondent]. I had not met [the Respondent] before but I had no reason to suspect he was not professional and able to do the job he had been tasked to do.
>
> I can't remember the exact date that we instructed CK solicitors to act for us but I think it was mid March 2008.
>
> …
>
> Over a period we received various correspondences (sic) from [the Respondent]. I was told that the Co-op had agreed to pay out some sums of money that covered some of the damage, but were not going to pay out the full amount that we were claiming. I understand that the Co-op sent three cheques in total to CK Solicitors in lieu of a settlement. These were for £9,653.00, £17,486.21 and £22,000.00 making a total of £49,139.21. I was advised that we should not accept these cheques…
>
> I later discovered that none of these cheques were paid into the bank and were still on the file.
>
> Our understanding after this was that we were going to court to try and reach a settlement. On 26/08/09 we received a letter from [the Respondent] stating that he was waiting for confirmation before asking for a cheque.… We subsequently sent him a cheque for £810.00 to cover the court fees.

> We continued to receive correspondence from [the Respondent] up until 27/04/10. In this letter he said that he was confident that the claim could be settled at £120,000.00…
>
> We spoke to [the Respondent] a lot on the telephone after this. He told us that he had been to court and that he had been successful and that the claim had been settled for an amount in the region of £160,000.00. This was probably around October time 2010. We accepted this settlement as it allowed us to start the process of purchasing a new property. Since the storm damage we have been living in a caravan and alternative accommodation. Our furniture was in storage so we were eager to get a house of our own again. [CA] from CK solicitors acted for us with regards to the house purchase. We were relying on the cheque from the Co-op for (sic) to complete on the property.
>
> On Thursday, 10 February 2011 I received a phone call from [CA]. As a result of that call my husband and I went to a meeting at CK Solicitors with Mr [K] and [CA]. At this meeting we were told that [the Respondent] had done no work on our case for over 18 months. Everything he had told us after that date about attending court and obtaining a settlement was a lie. After the meeting I made my own notes…"

Mrs R then summarised her notes.

21.7 Mr Barton submitted that it was an aggravating feature of the matter that Mr and Mrs R paid the firm's fees for the work the Respondent claimed to have done. Later in her statement Mrs R said:

> "During the time the Respondent was dealing with our claim, we did pay for the service of CK Solicitors. From my file I have abstracted the following:
>
> Invoice from CK Solicitors for £2,012.50 for professional charges…
> Copy of my cheque for £2,012.50 in respect of the above…
> Handwritten note showing payments made, including our payment of £2012.50 with date 2/7/2009…
>
> …
>
> I have never received a refund from CK Solicitors for this payment, or any compensation in respect of the duress we had suffered. The whole experience has left me and my husband very distressed, and as the years go on, and not getting any younger it seems unbearable. We get very, very upset and have been to the Doctors several times. If it wasn't for our children and grandchildren we wouldn't be able to cope at all. All we want is a house of our own to get our possessions out of storage and see them again not having to keep moving from one place to another. The feeling of homeliness (sic) is sometimes overwhelming.
>
> I have calculated the amount that this has cost me in expenses from September 2010 to November 2012 and the overall figure amounts to £22,562.17. I have attached a copy of my workings…"

21.8 Mr Barton referred the Tribunal to the exhibits to Mrs R's statement. Mr Barton submitted that there was clear evidence of misstatements made. In a letter dated 27 April 2010, the Respondent said that he was of the view that Mr and Mrs R might well be able to recover more than £120,000. The Respondent told them that he had been to court, that he had settled the claim and that he had done this for £165,000, all of which were serious untruths. An attendance note prepared by Mrs R, set out her account of her dealings with the Respondent. There was also a note to Mr K from the Respondent dated 10 February 2011, exhibited to Mrs R's statement. It said:

> "I was instructed to act for Mr and Mrs [R] through [JPT, the R's chartered surveyor] in connection with a claim against their insurers (the Coop (sic)), relating to damage caused to their property [address] in March 2008. The cause of action arose in December 2007 with a second incident in March 2008.
>
> JPT acted for a neighbour (Mr [S] – also a client of ours) who made a complete recovery from his insurers without our involvement.
>
> The Coop instructed loss adjusters and neither we nor JPT could persuade them to agree to JPT's assessment of the claim at £170,000 odd.
>
> The Coop made various payments to the [Rs] storage etc. in cheques which passed through us but were payable to the [Rs].
>
> Eventually on the 24th and 30th March 2009 the Coop sent three cheques to us made payable to the [Rs] for a total of £49,139.21. These were clearly intended to be in full and final settlement and I had an informal conversation with Counsel who agreed with me that if the [Rs] accepted the money they might well have an overwhelming difficulty in recovering any more.
>
> On the 26th September 2009 the [Rs] provided a cheque for £810 paid to HMCS to enable proceedings to be issued and they had signed Particulars of Claim and a CFA in June 2009.
>
> I regret to say that there is where matters were left.
>
> I accept that I have misled the clients into believing that the proceedings were progressing and that we were succeeding in settling for £162,500 and then £165,000 because of the delay.
>
> I accept that I have misled [CA] into believing that that money was going to be paid in a variety of ways and that I went to Southampton on Tuesday in order to collect a cheque.
>
> I am truly sorry for the deceptions I have practised and the distress these have caused.
>
> I will cooperate in any way I can to rectify matters in so far as I able (sic), which I had attempted to do, probably unrealistically, without success.
>
> I will be happy to join the meeting if required."

21.9 Mr Barton also referred to the circumstances of Mr and Mrs R. The letter to Mr and Mrs R from Mr K dated 15 February 2011 made express reference to the fact that Mr and Mrs R had been living in a caravan for the preceding two years. Mr Barton informed Tribunal that to his knowledge they still were.

21.10 In respect of allegation 2, Mr Barton referred the Tribunal to the witness statement of CA which was exhibited to the Rule 7 Statement. It included:

> "On the 27 September 2010 I commenced employment with CK Solicitors of [address] as a Licensed Conveyancer.
>
> I understood [the Respondent] was employed by CK Solicitors as a litigator.
>
> …
>
> Prior to Christmas 2010 [the Respondent] asked if I would act for his clients, named Mr and Mrs [R], on a proposed purchase of [address]. [The Respondent] was already acting for them in connection with an insurance claim arising out of storm damage and I had been informed by [the Respondent] that the settlement money from the claim would be used towards the purchase of their new property. [The Respondent] informed me that the money from the insurance claim would be £165,000.00.
>
> I had completed my enquiries on the proposed purchase. [The Respondent] would come into the office and ask if I was ready to exchange. I explained that until I had received confirmation that the purchase monies were available, I would not be able to exchange contracts. I regularly asked the Respondent for updates and he would respond by saying that he was waiting for a payout.
>
> Time passed, and the [Rs] were becoming increasingly concerned about the settlement of the claim because they could not progress their purchase. I was also concerned about why it seemed to be taking so long to settle the claim and I was not convinced that [the Respondent] was dealing with it properly. [The Respondent] had, not only geared up the [Rs] for an exchange that had asked me to obtain the deposit from the [Rs] in readiness for the exchange as the monies were due any day.
>
> The [Rs] were becoming very anxious over their purchase and were worried that the seller would re-market the property due to the length of time the insurance claim was taking (sic) made me ask the Respondent for copies of his attendance notes from his file dealing with the insurers, to find out exactly what the hold-up was, but he would not provide them. I became very suspicious about [the Respondent's] progress. I did not want to cause Mr and Mrs [R] any further stress and I was able to ask Mrs [R] during one of our telephone conversations if she had any correspondence from [the Respondent] about the insurance claim. She said that they only ever heard from him by telephone and had no letters.
>
> Finally, as I had received no attendance notes or copy correspondence from [the Respondent], I rang the Co-op Insurance to ask for an update and was

> informed that they had closed the file some two years earlier. I did not speak with [the Respondent] at this point."

21.11 Mr Barton submitted the statement was admitted and so full evidential weight could be attached to it. The statement set out the representations which the Respondent had made to CA. Mr Barton referred the Tribunal to an attendance note, which in her statement, CA said she had prepared on 3 February 2011, setting out the representations made by the Respondent. Mr Barton referred Tribunal to CA's email dated 3 February 2011 at 17.14 to the Respondent (after she had spoken to the Co-op):

> "I realise you're busy but please could you respond to my request for up to date information regarding Mr and Mrs [R] and their insurance claim.
>
> I need to contact my clients as well as the other side please."

The Respondent replied at 17.20 the same day:

> "I will have e (sic) definite answer for you by 11.00 tomorrow. I trust you satisfied yourself as to the client's account."

21.12 CA made an attendance note dated on the same day, 3 February 2011, recording that the Respondent came to see her after he had sent the e-mail. The conversation included that she asked what was happening with the Rs and he repeated that he would have a definitive answer by 11am the following day. Her attendance note of 4 February 2011 recorded that the Respondent had come to see her and said he was personally driving to Southampton on Monday to collect a cheque in the sum of £165,000 from the Co-op office. An attendance note of 7 February 2011 included:

> "14.25 – [the Respondent] phoned to say wouldn't be going this afternoon to collect cheque but would now be going tomorrow Feb 8th."

An attendance note of 8 February 2011 included:

> "[The Respondent] telephoned in to say he hadn't got anywhere and would have to go back tomorrow."

A "Note on discussion with [the Respondent] on 09.02.11" by CA commenced;

> "9.10am went to see [the Respondent]. Told him I was concerned that something wasn't quite right in respect of the [R] insurance claim.
>
> I asked how he got on in Southampton yesterday. He replied that the money should be in today as it was coming from Head Office. He hadn't got anywhere at the branch.
>
> I asked which Co-Op he attended. He said "Commercial Road".
>
> I asked again for attendance notes/copy correspondence as he hadn't supplied me with anything and I had a duty of care to my clients. He said he would sort.

> I explained, that with all due respect I had asked repeatedly and hadn't got anything.
>
> He said that considering he had just walked in, could I give him some time. I said that if nothing is forthcoming I would ask [Ms C] to come up and we would go through it together. He said "fine".
>
> Came down, phoned the Co-operative. They confirmed there was not a branch on Commercial Road – in fact there was not a cooperative insurance branch in Southampton, Vernon Road closed down 3 years ago.
>
> Asked [Ms C] to come upstairs and discuss with [the Respondent]. Explained the situation to [Ms C] in front of [the Respondent]. [The Respondent] said he was annoyed that I had gone behind his back. I explained that I hadn't. These were my clients and as a LC [licensed conveyancer] I had a duty of care to them in the first instance.
>
> He said he was not prepared to discuss the matter without a directive and [Mr K] being present. [Ms C] said that if there was a negligence claim we could easily sort it. I asked to see the file – he said it was his file and "no". He would keep it until he sorted this out. I asked to see attendance notes/copy letters. Explained that he said he had been dealing with Co-ops solicitors and who were they. He said [P] Law.
>
> He said again, I've only just come in, I'll sort out this morning. We left his office"

21.13 Mr Barton referred Tribunal to a copy of the electronic diary from the firm and the Respondent had no entry indicating that he travelled to Southampton on 9 February 2011. An attendance note made by CA on 9 February 2011, recorded that Mrs R telephoned that day at 16.55, saying that she wanted to speak with the Respondent as he had told her that he would be in Southampton that day collecting a cheque and had promised to phone her. The Respondent's assistant JM also made an attendance note about the call, as it was he who put it through to CA. Mr Barton submitted that the bulk of the remaining documents attached CA's statement were notes she had made for herself in respect of the matter. (There was also correspondence between the Cooperative Insurance and the Respondent in respect of Mr and Mrs R's claim.)

21.14 Mr Barton submitted that CA's statement had been made in anticipation that there would be some opposition to CA's evidence and the documents in the exhibit powerfully corroborated what she said in her statement. They showed that there had been a series of discrete occasions when the Respondent misled CA by providing false information and when he had the opportunity to tell her the correct position he chose not to do so. Mr Barton concluded by submitting that the statements of CA and Mrs R and the exhibited documents supported all three allegations. Mr Barton submitted that a finding of dishonesty was made irresistible, both on the objective and subjective tests, by the period of time during which the deception took place which lasted from Christmas 2010 to February 2011, some two months, the Respondent's withholding the true position from CA and Mr and Mrs R, and the number of individual untruths about the issue of proceedings, the fact of settlement, the amount

of settlement, and the Respondent's purported travel to Southampton to collect the cheque.

Submissions and evidence of the Respondent

(Before he gave sworn evidence and made submissions, the Tribunal provided the Respondent with a summary of the judgment in the case of Twinsectra and directed him to relevant parts of the Solicitors Handbook 2013 regarding the test for dishonesty applied by the Tribunal.)

21.15 The Respondent referred the Tribunal to his statement dated 29 November 2012 and confirmed that its contents were true. He particularly directed the Tribunal's attention to that part of the statement where he had set out that he had drafted Particulars of Claim in the matter for Mr and Mrs R, that they had attended the firm's offices to sign them and that the invoice which he had delivered was for work which had been carried out. In respect of the schedule of losses which Mrs R had appended to her statement to the police, the Respondent submitted that as the proceedings were ongoing and the losses were incurred during the limitation period, they could be legitimately claimed within the Rs' proceedings against the Co-operative Insurance. The Respondent also stated that it was a matter of regret and sadness to him that he had no had no opportunity to apologise to Mr and Mrs R; he had been told not to because that could prejudice (the firm's) insurance claim and because of the possibility of proceedings against him in the Tribunal.

21.16 In respect of the issue of dishonesty the Respondent stated in his statement:

> "I can only say that I was not dishonest because I did not act save in the manner I have described."

21.17 His admission was as to misleading the Rs about what had happened. When it came to a discussion of figures he was already backed into a corner. In his statement he had explained about his psychological problems:

> "When I commenced work at CK Solicitors the principal was aware that I had been diagnosed as having an avoidant personality for which I had been treated by Mr [WR] a Consultant Psychologist. Although Mr [WR], formerly the senior Consultant Psychologist at [G] Hospital, is still in private practice, he no longer provides Reports for Courts or Tribunals. My condition was kept under control so long as I was not subjected to stress."

21.18 The Respondent submitted that someone without these problems would have recognised what they had done as dishonest but he did not. He submitted that if the Tribunal found that misleading was dishonesty, he admitted it. In cross-examination by Mr Barton, the Respondent agreed that he recollected accepting instructions in respect of the insurance claim and that Mr and Mrs R both asked him to start proceedings in the hope of compensation. The Respondent added that in doing so they were acceding to his suggestion. They had not made a cheque payable to the firm but given him a cheque made out to HMCS with instructions to pursue proceedings. The Respondent stated that he had drafted the Particulars of Claim but that he was not happy that they were drafted properly. He had wanted to obtain counsel's opinion

about the Particulars of Claim but had not had time to put the papers together and he was concerned about filing the claim without advice. He was under the most enormous pressure at the firm and referred to the way the firm was run; he was left to do far more work than he should have been. The Respondent agreed that he had told the Rs that he had issued proceedings and that this was not true and he knew that to do so was wrong. When asked if he understood that he was telling them a lie, the Respondent stated that he understood that he was misleading them. He agreed that he had not any stage up to their meeting with Mr K on 10 February 2011 provided them with the correct information, that he had told them he could settle the claim at £165,000 which he knew was not true but when asked whether he knew it was a lie he said that he knew that he had misinformed them and stated that he knew that to do so was wrong. The Respondent agreed that he took no opportunity thereafter to correct what he had told them. He stated that Mr Barton was talking about period very shortly before Mr K had written his letter to Mr and Mrs R on 15 February 2011.

21.19 In respect of Mrs R's statement, the Respondent was asked about the telephone calls she stated that he had made to her on 3 and 4 February 2011 about going to Southampton. The Respondent stated that he did not remember them but he agreed he did not go to the Co-op in Southampton and accepted that they no longer had an office there. He confirmed that he did not go to any Co-op office to collect a cheque. He agreed that the provision of that information was false and that he knew it to be so. He agreed that he knew that CA had been instructed regarding the property purchase and that the purchase was reliant on the settlement money coming in. When it was put to him that without it, Mr and Mrs R could not complete their purchase, the Respondent stated that without it they could not exchange contracts and he could not see them entering a commitment for a purchase in respect of money that they did not have. The Respondent agreed that he had told both Mr and Mrs R and CA that £165,000 was on its way. He confirmed that he had prepared the memorandum dated 10 February 2011 from himself to Mr K (making admissions) and that he probably would have typed it himself. It was prepared in advance of the meeting between Mr K, CA and Mr and Mrs R which he offered to join. The Respondent accepted that he had misled the clients and by 10 February 2011 this had been going on for a period of time. It was put to him that this was not an isolated event and the Respondent stated that it was a process following the same lines for around two months; it was established.

21.20 The Respondent accepted that he had led CA to believe that the money was coming and did not correct that impression and that when she became concerned and wanted information; he did not provide it and was resistant to doing so. He agreed that he had told CA that he was going to the Co-op to get the cheque and that he knew that this was not true. When asked if he understood why she wanted information in order to progress the conveyancing, the Respondent replied that he understood that it was reasonable for her to ask and that he did not provide it because he did not have it. He should have told those involved the true position. As to whether he should have told CA as a professional colleague, the Respondent replied that she would have known after he had told Mr and Mrs R (if he had told them).

21.22 The Respondent was referred to the detail of the documents:

- CA's attendance note of 4 February 2011 which said:

> "The Respondent popped into the office to see me. He said he was personally driving to Southampton on Monday to collect a cheque in the sum of £165,000 from the Co-op office and would sit and wait until he had it. He said he was fed up with not hearing anything and one Co-op was the same as the other and he would just wait for it."

The Respondent stated that he did not remember the precise words but he had said he was going to Southampton; he accepted that this was wrong and that he knew it to be so.

- Regarding the attendance note of 7 February 2011 which recorded that the Respondent had telephoned to say he was not going that afternoon to collect the cheque but the following day 8 February 2011, he could not answer if that had happened or not; he had no reason to doubt it. Again he accepted that it was wrong information and that he knew it to be so.

- Regarding CA's attendance note of 8 February 2011 which recorded that the Respondent had telephoned to say that he had not got anywhere and would have to go back the following day, when asked if he recollected saying that, he responded that he might have done.

21.23 Mr Barton put it to the Respondent that he did not go to Southampton on 9 February 2011 and had no intention of doing so, to which the Respondent replied that he could not tell Mr Barton what his state of mind was at the time; when he read the notes they were "fantastical" to say the least and he could not believe that he had behaved in that way. He stated that he accepted that he had said things to Mr and Mrs R and CA that he knew were wrong and he was not acting on what someone had told him. He consciously knew that it was wrong.

21.24 In answer to questions from the Tribunal, as to the nature of an "avoidant personality", the Respondent stated that this was one of the DSM (Diagnostic and Statistical Manual of Mental Disorders") categories. When confronted with a situation with which the patient knew he could not deal, it was as if the situation had not occurred; one put off what one could not face where a normal person would not do so. Before going to work at the firm, the Respondent stated that he had some treatment from Mr WR. The Respondent took the job on the basis it would be part-time and that he would not be put under stress. He knew there was a danger that if he was put under stress he might revert. He was sure that Mr K saw the report from Mr WR. He had last been treated by Mr WR sometime before he took the job at the firm and had ceased treatment because he could not afford it.

21.25 As to the two limbed test for dishonesty applied by the Tribunal, the Respondent stated that in respect of the subjective test he could only explain his behaviour by reference to his condition. He had been in practice from 1970 until he transferred to the Bar in 1990 and had a clear record; no one had complained about him. He could only think that he behaved in this manner because he was irrational and believed he could put the case back on track in the end if he had more time to do so. It was irrational because he could not "magic" £165,000 out of the air. He was sure that he had never done anything like it before. He understood the logic of Mr Barton's questions about the opportunities he had had; he could have taken the opportunities

and the case would have been removed from him and there might have been a claim under the firm's professional indemnity insurance. The Respondent thought that such a claim was unlikely because the evidence to pursue the Rs' claim was there save for checking with counsel. The Respondent stated that he had not acted for personal gain. He agreed that taking one of the opportunities would have got over the issue of proceedings point but would not have addressed the issue of the £165,000. The Respondent accepted that and stated that one followed from the other. Once he started to mislead it continued "until the balloon went up".

21.26 The Tribunal considered the submissions of Mr Barton and the submissions and evidence of the Respondent. The facts of what had occurred in respect of the representations made by the Respondent to his clients Mr and Mrs R and to his professional colleague CA were not disputed by the Respondent. He had been taken through the representations in detail by Mr Barton and admitted every aspect in evidence and that he knew what he did was wrong. The Respondent denied however that his representations constituted dishonesty.

21.27 The Tribunal found proved on the evidence that the Respondent gave false and misleading information to Mr and Mrs R about their claim and that in making the representations he had failed to act with integrity and thus breached Rule 1.02 of the Code. Accordingly the Tribunal found allegation 1.1 proved.

21.28 The Tribunal also found proved on the evidence that in giving false and misleading information to Mr and Mrs R based on which they made arrangements to purchase a property, thereby acting to their detriment, the Respondent failed to act in their best interests and thus breached Rule 1.04 of the Code. Accordingly the Tribunal found allegation 1.2 proved.

21.29 The Tribunal also found proved on the evidence that the Respondent had given false and misleading information to his professional colleague CA and that in doing so he had failed to act with integrity and again breached Rule 1.02 of the Code. Accordingly the Tribunal found allegation 2 proved.

21.30 As to the allegation of dishonesty which was put in respect of allegations 1.1, 1.2 and 2, the Tribunal was satisfied that the Respondent's conduct in making false and misleading representations to Mr and Mrs R and to CA was dishonest by the standards of reasonable and honest people and that the objective test in Twinsectra had been satisfied. As to the subjective test, the Respondent sought to rely on a mental condition of "avoidant personality". The Respondent had produced no medical evidence to support his assertion. There was no supporting information or report from a consultant, although the Respondent said that he had provided Mr K with such a report when he joined the firm. The Respondent had not even taken the step of obtaining a report from his GP. Accordingly the Tribunal could attach no weight to the Respondent's assertion about his mental health at the material time. Mr Barton had cross examined the Respondent most carefully about his state of knowledge as his conduct proceeded; in every instance the Respondent acknowledged that he knew what he had done was wrong; he admitted that he knew at the material time that it was wrong to make up the "fact" of having issued proceedings, of saying that he had settled those proceedings and in a particular sum, and of saying that he was going to collect a cheque from the insurers for Mr and Mrs R. The Tribunal was satisfied that

the Respondent knew at the material time that by the standards of reasonable and honest people his conduct was dishonest. The Tribunal therefore found that dishonesty had been proved to the required standard in respect of all the allegations 1.1, 1.2 and 2.

Previous disciplinary matters

22. None

Mitigation

23. The Respondent chose not to make any mitigation beyond the evidence that he had given, as he considered it inevitable that a section 43 order would be made as a finding of dishonesty had been made.

Sanction

24. The Tribunal had found a number of serious allegations proved against the Respondent all of which involved dishonesty. In those circumstances the Tribunal considered it appropriate to impose the only order which was open to it in respect of an unadmitted person, that under section 43 of the Solicitors Act (as amended).

Costs

25. Mr Barton informed the Tribunal that costs had been agreed at £9,000 plus VAT and he applied for an order to be made in favour of the Applicant in that amount. The Respondent provided written comments on costs to which he had attached a Statement of Income and Expenditure from 6 April 2011 to 5 April 2012. He also gave evidence about his financial position. He stated that he had been made bankrupt and currently owed around £15,000 on an agreed repayment programme sanctioned by the Court. His trustee in bankruptcy had accepted that the property in which he lived was not part of his estate. Mr Barton had only invited him to provide financial details the previous evening. (However the Tribunal had written to the Respondent by email on 12 March 2013 explaining that he should provide details if he wished his means to be taken into account. He had replied to the email "Acknowledged and understood" on the same day.) The Respondent had not brought any financial information about his earnings from work. In cross examination, the Respondent stated that he had been made bankrupt on the petition of HMRC for historical tax some two years previously and agreed that he would have been automatically discharged after a year. He had not received a P60 or P45 when leaving the firm and payments from the firm had been by cheque, transfer and cash under a haphazard arrangement. He had estimated what he thought his tax should be but HMRC disagreed. He had paid his "current" tax but he had not made payments to HMRC of the outstanding historical tax for some 18 months; the debt would not go away. The Respondent was doing some work for a firm of solicitors and also had a consultancy relating to liquor and game licences (although he had only dealt with the former) which was not overly busy at present. The consultancy work varied from year to year as did the nature and magnitude of the work. Working for solicitors had been likely to produce the majority of his income and he would now lose that. He had a state and private pension but had already taken the maximum permitted capital out of the latter. He gave estimates of his pension

income. The Respondent submitted that while he agreed the figure for costs he could only meet a nominal order for costs and asked that the Tribunal order that costs should not be enforced without its leave. The Tribunal had regard to the recent case of Matthews v Solicitors Regulation Authority [2013] EWHC 1525 (Admin) where the Respondent's ability to pay agreed costs was also an issue. Having heard what the Respondent had to say about his financial position and, in particular, his pension, the Applicant indicated that he did not seek an adjournment for further information to be produced. Having heard the Respondent's explanation, the Tribunal considered that his income was too low for him to be able to pay costs and it noted that he had no remaining capital and ordered that costs should not be enforced without leave of the Tribunal.

Time limit for appealing

26. There was no longer a general exception from the "21 days after the date of the decision" default time limit (CPR Rule 52.4(2)(b)) for lodging an appeal from a decision of the Tribunal comparable to the former provision contained in Practice Direction 52 paragraph 17. This provided for appeals from Tribunal decisions to be lodged 28 days from the date of receipt of the Judgment containing the reasons. Following the hearing and before the judgment was signed off the Respondent made an application for an extension of time in which to appeal the decision of the Tribunal until 14 days from the date of receipt of the Tribunal's Judgment. The Tribunal granted an extension of time to appeal in the terms sought.

Statement of full order

27. The Tribunal Ordered that as from 18th July 2013, except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Richard Deighton

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Richard Deighton

(iii) no recognised body shall employ or remunerate the said Richard Deighton

(iv) no manager or employee of a recognised body shall employ or remunerate the said Richard Deighton in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Richard Deighton to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Richard Deighton to have an interest in the body;

28. And the Tribunal further Orders that the said Richard Deighton do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £10,800.00, such costs not to be enforced without leave of the Tribunal.

Dated this 20th day of August 2013
On behalf of the Tribunal

A. Spooner
Chairman