SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11036-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL SOHAL First Respondent

and

[REDACTED] Second Respondent

Before:

Mr R. Hegarty (in the chair)
Mr R. B. Bamford
Mrs L. Barnett

Date of Hearing: 4th and 5th March 2013

Appearances

James Moreton, Solicitor of Field Fisher Waterhouse LLP, 35 Vine Street, London EC3N 2AA for the Applicant.

Mark Jackson, Counsel of No 8 Chambers, Fountain Court, Birmingham B4 6DR instructed by Obiter Legal, 1st Floor, 9 Lozells Road, Birmingham B19 2TN for the First Respondent who appeared.

Emma Brooks, Solicitor of Richard Nelson LLP, Priory Court, 1 Derby Road, Nottingham NG9 2TA for the Second Respondent who appeared.

JUDGMENT

Allegations

1. The allegations against the Respondents, Paul Sohal and *[NAME REDACTED]*, on behalf of the Solicitors Regulation Authority were as follows:

In respect of the First Respondent alone:

1.1 That by his actions he compromised or impaired or acted in a way which was likely to compromise or impair his integrity, contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code");

1.2 That he behaved in a way that was likely to diminish the trust the public places in him as a solicitor or the legal profession, in breach of Rule 1.06 of the Code;

1.3 That he failed to act in a client's best interests contrary to Rule 1.04 of the Code;

In respect of the First and Second Respondents:

1.4 That they failed to act in clients' best interests, contrary to Rule 1.04 of the Code;

1.5 That they failed to ensure compliance with the Solicitors Accounts Rules 1998 ("the SAR 1998") in breach of Rule 6 of those Rules;

1.6 That they failed to rectify breaches of the SAR 1998 promptly as required by Rule 7 of those Rules;

1.7 That they failed to provide clients, or the paying party, with bills of costs or other written notification of costs incurred, contrary to Rule 19(2) of the SAR 1998;

1.8 That they permitted withdrawals of money from client account other than in accordance with Rule 23, Note (ii) of the SAR 1998;

1.9 That they failed to appropriately record all dealings with client money in accordance with Rule 32(2) of the SAR 1998;

1.10 That they failed to carry out reconciliations as required by Rule 32(7) of the SAR 1998.

Dishonesty was not an essential ingredient of any of the allegations. Nevertheless the case was put against the First Respondent that he was dishonest with regard to allegation 1.1 above. The issue of dishonesty would be a matter for the Tribunal to decide but it would be open to the Tribunal to find any or all of the allegations proved without any element of dishonesty.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 31 July 2012 with exhibit
- "Without Prejudice" letter from Field Fisher Waterhouse LLP to Richard Nelson LLP dated 1 March 2013
- Handwritten note K2 prepared by the Investigation Officer dated 9 February 2011 and countersigned by the First and Second Respondents,
- Weston v The Law Society [1998] Times, 15 July
- Judgment in Weston 1998 WL 1043481
- Levy v Solicitors Regulation Authority [2011] EWHC 740 (Admin)
- SRA v Waddingham, Smith and Parsonage [2012] EWHC 1519 (Admin)
- Calendar sheet for 2010
- Schedule of costs dated 4 March 2013

First Respondent

- Statement of the First Respondent dated 27 February 2013
- Statement of the First Respondent dated 4 March 2013 referred to as "basis of plea"
- Handwritten admissions statement prepared for the First Respondent by Mr Jackson
- Witness statement of Julie Marilyn Bendle dated 26 February 2013
- Witness statement of Donna Johnson dated 27 February 2013
- Notebook used by Ms JM
- Psychiatric report of Dr Brian Harris based on interviews in February 2013
- Bundle of testimonials including some in the form of witness statements by family members (three) and one from a former work colleague
- Personal financial statement of the First Respondent undated and unsigned
- Bundle of financial information including:
    - Credit card statements
    - Tax return for 2011/2012
    - Bank statement summary for 11 January 2013 to 10 February 2013
    - Bank statements for the period 11 January 2013 to 1 March 2013

Second Respondent

- Personal financial statement dated 25 February 2013

Preliminary issue

Admissions by the First Respondent

3. For the Applicant, Mr Moreton informed the Tribunal that Mr Jackson for the First Respondent had presented a revised basis of plea document, an earlier version of which had been presented to him the previous Friday. The document was by way of a statement dated 4 March 2013 to which Mr Jackson had prepared a hand written

addition. In the earlier statement, the First Respondent accepted the facts as set out in the Rule 5 Statement in respect of each of the 10 allegations notwithstanding, as he said:

> "that some of the breaches arose as a result of acts and/or omissions on the part of staff whom he employed and at a time when he was not present due to ill-health. In this regard he accepts that his responsibility and culpability extends to being vicariously liable for the acts and /or omissions of those for whom he was responsible.
>
> He further admits in relation to his breach of Rule 1.02 of the Solicitors Code of Conduct 2007 [allegation 1.1] (specifically the allegation particularised in paragraphs 47 – 49 of the Rule 5 Statement) that his conduct was dishonest but will say that his admission of dishonest conduct is made on the basis that it took place against the background set out his witness statement, the supporting statement of Julie Marilyn Bendle and the other various references, statements and documents provided and at a time when he was suffering from mental and physical ill-health as a result of a hit-and-run accident as set out in the psychiatric report of Dr Brian Harris…"

The First Respondent went on to particularise various aspects of his conduct and his reasons for it. Mr Moreton submitted that the basis of plea was not acceptable to the Applicant because it failed to address the allegations with any particularity. The admission of dishonesty was on a very narrow issue. For the First Respondent, Mr Jackson informed the Tribunal that his written addendum, stated as follows:

> "[The First Respondent] accepts that his conduct as set out in paragraphs 47 – 49 of the Rule 5 Statement was dishonest by the ordinary standards of reasonable and honest people.
> He realised at the time that he engaged in the conduct that what he was doing was dishonest and would be regarded as such by those ordinary standards."

(The test for dishonesty used by the Tribunal was two limbed and set out in the case of Twinsectra Ltd v Yardley 2002 UKHL 12:

> "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".)

It was pointed out that the wording of the addendum did not go wider than the original basis of plea and Mr Jackson indicated that the paragraph references should read "45 – 49" rather than "47 – 49". Mr Moreton confirmed that allegation 1.1 extended to paragraphs 38 – 59 and 67 – 77 of the Rule 5 Statement. He was concerned that the nature of the proposed admission placed the Tribunal in a difficult position because it was being asked to accept a plea of dishonesty, to hear only the evidence of the First Respondent and then come to a determination of dishonesty with the First Respondent's action separated from his intent. Mr Moreton anticipated that the Tribunal would then be asked to find that this was an exceptional case in terms of the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) such that the likely sanction of striking off would not be imposed. Mr Moreton reminded the Tribunal that the High Court had taken a different view from the Tribunal in that

case. He submitted that the Tribunal should hear the application and all the evidence and then come to its determination on the basis of the evidence because the dishonesty specified in the basis of plea document was limited to a very narrow factual nexus.

4. For the First Respondent, Mr Jackson submitted that dishonesty was admitted in circumstances such that it would not be necessary for the Tribunal to make a determination. There were two primary areas of dishonesty, the first relating to a letter given to Mr B of the firm and the second his actions immediately preceding the visit of Investigation Officer Mr Howland which involved deleting items from the firm's computer and accounts and the creation of documents and other accounting entries. Both matters were admitted with dishonesty. It was Mr Jackson's intention to call the First Respondent to give an explanation of his dishonesty. He would rely on psychiatric reports, witness statements and testimonials as to the First Respondent's character and invite the Tribunal to consider whether this was not a case in which it could find exceptional circumstances within the meaning of the definition in the case of Sharma.

5. The Tribunal confirmed with the parties that the allegations of dishonesty within the Rule 5 Statement went wider than the matters outlined by Mr Jackson. The Tribunal determined that there would be a full trial of the allegations in respect of the First Respondent. The Tribunal clarified with Mr Jackson, the exact scope of the First Respondent's admissions, which are reflected later in this judgment. There were instances where matters contained in paragraphs 45 – 49 of the Rule 5 Statement were also reflected elsewhere in that Statement and where this was so, the First Respondent admitted those further paragraphs also. The First Respondent would maintain that he was not a party to the transfer of sums totalling around £58,000 from client to office account from the account of client Mr H in respect of which Mr Moreton confirmed that dishonesty was alleged.

6. Mr Moreton expressed concern that there was evidence in the form of a psychiatric report from Dr Harris which he understood would be put in mitigation. He submitted that the Applicant would not be in a position to test the report. Mr Moreton did not wish to cast any doubt upon the doctor but had issues about the basis upon which he was instructed. Dr Harris had been given some documents in preparation for his interviews with the First Respondent which Mr Moreton understood included the First Respondent's witness statement which had not been signed until the week before this hearing. Dr Harris had seen the First Respondent in February 2013. The report also referred to the First Respondent's GP records and other reports which had been requested by the Applicant but not provided by the First Respondent's representatives. The report seemed to come to conclusions based on a diagnosis of post traumatic stress disorder undertaken by a Community Psychiatric Nurse. Dr Harris said in the report that the First Respondent gave a history consistent with the development of post-traumatic stress disorder which, Mr Moreton submitted was not a diagnosis. Mr Moreton submitted that the report was presented as evidence of the First Respondent's mental state but it was evidence more of his state when he saw the doctor two weeks ago rather than conclusive evidence of retrospective post-traumatic stress disorder. The Tribunal took the view that this was a matter upon which Mr Moreton could address it at the time the First Respondent's statement was being dealt with. Mr Moreton expressed concern that there was an admission of dishonesty and untested evidence of the First Respondent's mental state which was being put as evidence

rather than mitigation. This might possibly be put in order to show that the First Respondent could not form the subjective intention required to satisfy the second limb of the test in Twinsectra. Mr Moreton also submitted that the witness statements and letters about the First Respondent were unproved. He asked the Tribunal to bear in mind the case of Sharma in considering whether there were exceptional circumstances. The Tribunal indicated that it was open to Mr Moreton to apply for an adjournment for a further psychiatric report to be prepared or for the doctor to give evidence. Mr Moreton did not seek an adjournment and the Tribunal advised that it was open to him to address the Tribunal if it seemed that the witness statements in question were to be used as evidential matters rather than mitigation.

Second Respondent, admissions and proposal for disposal of the proceedings

7. Mr Moreton referred the Tribunal to his letter of 1 March 2013 written "Without Prejudice" to Richard Nelson LLP representing the Second Respondent. It was proposed that in return for admissions as set out in that letter and the Applicant taking into account mitigation in relation to the admissions and being satisfied that the public interest would be served by the imposition of a fine, the case would be opened with sufficient detail to assist the Tribunal and the Tribunal would then be asked to consider imposing a suggested amount of fine on the Second Respondent and an order for costs in an amount agreed between the Applicant and the Second Respondent at the outset of the proceedings.

8. For the Second Respondent, Ms Brooks submitted that she supported Mr Moreton's application and asked that the Second Respondent be dealt with separately and offered to address the Tribunal in mitigation on his behalf. She submitted that the circumstances concerning him were separate and that it was accepted by all concerned that he was not involved in any of the transfers which were the subject of the proceedings. He admitted liability only on the basis that he had been a manager/partner of the firm at the time. Ms Brooks also asked that the Second Respondent might be permitted to absent himself from the Tribunal as he had an appointment that afternoon which he had hoped to attend on the assumption that his matter would be dealt with at the outset.

9. The Tribunal considered the proposal that proceedings against the Second Respondent be disposed of before the case against the First Respondent was heard and a determination reached. The Tribunal did not consider it appropriate to make any decisions regarding the Second Respondent at the outset, as the Tribunal needed to hear all the evidence in order to determine whether it agreed with the proposed outcome in respect of the Second Respondent. Seven of the 10 allegations were brought against both the First and Second Respondents. On the basis that the Second Respondent was represented in the proceedings and proposed to admit all the allegations brought against him, he was not present for the first afternoon of the hearing.

Factual Background

10. The First Respondent was born in 1979 and admitted in 2005. His name remained on the Roll of Solicitors.

11. The Second Respondent was born in 1979 and admitted in 2003. His name remained on the Roll of Solicitors.

12. At all material times the First and Second Respondents carried on practice as directors of Benson Watkins & Co Limited ("the firm"), with its head office in Swansea and with branch offices at other locations in Swansea and Cardiff. Neither Respondent was presently working at the firm.

13. According to the Applicant's records, the First Respondent ceased to be a director of the firm on 13 February 2012.

14. Upon notice to the Respondents, arrangements were made for a representative of the Forensic Investigation Unit of the Applicant to attend the firm's head office to commence an inspection of the firm's books of account and other documentation. Adverse weather conditions prevented commencement of the investigation on 20 December 2010. The Investigation Officer ("IO") attended the Cardiff office the following day but was unable to make a substantive start to the investigation.

15. On 5 January 2011, the IO wrote to the First Respondent setting out details of the documentation and information required for review at the inspection rearranged to commence on the 11 January 2011.

16. The Forensic Investigation ("FI") Report prepared consequent on the inspection was dated 20 May 2011.

17. The IO did not consider it possible to establish the firm's total liability to its clients.

Allegations 1.5 and 1.10 against the First and Second Respondents

18. The IO discovered that the books of account were not in compliance with the SAR 1998 and summarised his findings as follows:

- During the period March to June 2010, in respect of the client matter of Mr H – sale of 16 M Street, that a total of £58,164.25 had been improperly transferred to the firm's office account and as a consequence there existed a shortage of £58,164.25;

- that entries made in the firm's computerised accounts in respect of these improper transfers had been removed from the record and substituted by other improper entries;
- that client account cash books presented to the IO contained substituted improper entries;

- the IO found backdated documents purporting to be bills which had been prepared to justify improper entries in the accounts;

- a further apparent shortage of £23,048.50 in relation to a batch of 79 improper bills, all dated 5 March 2010, purporting to be in respect of costs properly due to the firm.

19. The IO further discovered deficiencies with client account reconciliations.

Allegations 1.5, and 1.8 against the First and Second Respondents

20. The IO found signed but otherwise incomplete client bank account cheques.

21. The Respondents confirmed that they had signed otherwise incomplete client and office bank account cheques. (No allegation was made in respect of the office account cheques.)

22. Both Respondents confirmed to the IO that they had provided their Barclays Personal Cards and account passwords to staff, thereby enabling transfers of client funds via the internet without specific authority.

Allegations 1.5 and 1.7 against the First and Second Respondents

23. The IO noted 79 copy bills, each dated 5 March 2010 and totalling £23,048.50 which did not appear to be genuine. He found that:

- the bills were not addressed;
- the bills did not contain any specific detail, having a general narrative such as: "TO OUR PROFESSIONAL CHARGES for acting on your behalf in the above matter";
- the bills were for amounts varying between £8.53 and £5,043.10
- the last transactions recorded on the relevant client ledger accounts ranged from more than 1.3 years to more than 16 years prior to 5 March 2010;
- the client account balance on each ledger was reduced to zero after the transfer;
- in four matters the amount shown on the bills was greater than the amount transferred.

Allegations 1.4 and 1.6 against the First and Second Respondents

24. During a meeting on 23 February 2011, the IO informed the Respondents of his view that the transfers from client account were improper and that they created a shortage of in excess of £20,000 which the Respondents need to resolve.

25. By email dated 6 May 2011, the Second Respondent informed the IO that the improper transfers had been reversed in the firm's books account.

Other matters

26. The IO noted factors which caused him to have suspicions about the integrity of the information provided for his inspection.

27. On 12 January 2011, the IO obtained the First Respondent's authority to obtain information from the firm's accounting software supplier (Osprey) and, in due course obtained a large quantity of electronic data relating to the firm's online accounting system. The IO's analysis of that data confirmed that improper transfers had been made from the firm's client bank account, that bookkeeping entries had been removed from the system and revealed the creation of numerous spurious bills and associated transfers.

Mr H, sale of 16 M Street

28. The IO exemplified the matter of Mr H and the sale of his property in the FI Report.

29. In or about May 2005, the property came subject to a Compulsory Purchase Order ("CPO"). Mr H informed the local authority that he would accept £55,000 for the property.

30. The IO established that the matter had been conducted by Mr B, then a partner in the firm.

31. In a letter dated 12 May 2006, the local authority advised the firm that the CPO had been confirmed by the National Assembly of Wales. In due course an independent valuation of property was obtained and a note on the file dated 7 March 2007 indicated that the value of the property had been increased.

32. It was evident from the file that Mr H had not responded to the firm's letters and reminders which had been sent to an address near Salisbury, Wiltshire.

33. On 2 August 2007, the local authority wrote to the firm setting out details of the purchase and enclosing a cheque in the sum of £56,919.01.

34. The client ledger recorded receipt of £56,919.01 on 8 August 2007 and from which the firm transferred their costs of £464.12 (including VAT) in accordance with the amount notified to the local authority. The sum of £56,454.89 was then transferred to a deposit account on 10 August 2007.

35. On 13 August 2007, the firm wrote to Mr H providing details of the sale and seeking his instructions. The client appeared not to have responded to that letter or to a further letter dated 24 August 2007.

36. As at January 2008, the balance held on behalf of Mr H amounted to £56,769.99.

37. The contents of the file indicated efforts made by the firm during the period April 2008 to August 2008 to establish the whereabouts of Mr H. It was not apparent to the IO whether any further attempt had been made after August 2008.

38. The relevant client bank account statements were found to show that on 26 February 2010, the sum of £58,164.25 was transferred from deposit account into the firm's general client account being the full amount of Mr H's funds held by the firm and comprising the principal balance of £56,219.89 plus a total of £1,944.36 interest. The IO found no evidence to explain the reason for the transfer, or that there was any authority for it.

Allegations 1.1 and 1.2 against the First Respondent

39. The IO's examination of the Osprey data revealed the following improper transfers of funds due to Mr H, totalling £58,164.25:

- On 17 March 2010, as bill reference G759, the transfer of £4,700 to office account and £822.50 to VAT account (total £5,522.50);
- On 22 April 2010 as bill reference G864, the transfer of £14,000 to office account;
- On 28 April 2010 as bill reference G880, the transfer £36,191.75 to office account;
- On 28 June 2010 as bill reference G864, the transfer of £2,450 to VAT account.

40. During an interview on 23 February 2011, the First Respondent agreed that these transfers were improper. Both Respondents informed the IO that they had not instructed and/or authorised any of the transfers to be made.

41. The IO produced a schedule of postings which had been removed ("undone postings") from Mr H's ledger record.

42. The Osprey data also showed an entry which purported to record a payment of £52,641.75 from client account on 31 March 2010. The narrative described the transaction as "Transfer Out to SBF". That entry had been made and then removed from the record on 7 August 2010.

43. The First Respondent agreed that the entry made and then changed on 7 August 2010 had been done as part of the process to put Mr B "off the trail". The First Respondent later said that he was "not sure if anybody saw that as I had second thoughts after I had done it".

44. The IO found that 58 bills had been produced to replace the three bills (i.e. bill references G759, G864 and G880) which related to the improper transfers of Mr H's funds to office account and 86 new transfers had been retrospectively entered into the books of account to explain the original five transfers. The IO produced a schedule setting out "replacements".

45. The IO asked the First Respondent if he considered "that raising 58 fictitious and backdated bills to conceal the improper transfers totalling over £58,000 from the [Mr H] ledger to be fundamentally dishonest?" The First Respondent responded that he "didn't do it to be dishonest, but I suppose it is."

46. In his letter to the First Respondent dated 5 January 2011, the IO indicated his intention to attend the firm's office to resume his work at 09.30 on 11 January 2011. The IO's analysis of further information provided by Osprey revealed that the relevant changes to the firm's books of accounts took place between 23:49 hours on 10 January 2011 and 08:51 hours on 11 January 2011.

47. The IO appended to his report extracts from the firm's client account cash book records for the period ending 31 March 2010, 30 April 2010 and 30 June 2010. The IO found these documents to be inaccurate records.

48. During a meeting on 9 February 2011, the IO explained his findings to the First Respondent who agreed that the apparent replacement of Mr H's funds had been

achieved by other improper transfers. The First Respondent agreed that there was a dishonest use of client money.

49. On 10 February 2011, the IO obtained a client ledger account printout from the firm's accounting system. That ledger showed, in contrast with the actual position, that the firm retained the entirety of the funds due to Mr H in client bank account.

50. During the meeting on 23 February 2011, the First Respondent agreed that he had undertaken the changes demonstrated by the IO's schedules entitled "Undone postings 10 and 11 January 2011" and "Postings made on 11 January 2011".

51. The First Respondent agreed:

- that he had signed client account reconciliations in the knowledge of the shortfall created by the Mr H matter;
- that the month-end cash books produced for the investigation were fundamentally flawed;
- that he had produced replacement bills at the same time as making alterations to the books of accounts.

Allegation 1.9 against the First and Second Respondents

52. It was clear from the issues that the IO identified that the client ledger account printout obtained from the firm's accounting system on 10 February 2011 did not accurately record dealings with client money.

Allegation 1.3 against the First Respondent

53. The First Respondent informed the IO that he had become aware of the shortage on Mr H's matter in about August 2010 and had borrowed £55,000 from his father. The IO found that £55,000 had been received into the firm's office account on 27 October 2010 with the reference "Singh+sohal". That day the opening balance on the office account was overdrawn in the amount £68,673.78.

54. The First Respondent said that he had paid the money into the firm's office account but that it had been used in wages and overheads, not to rectify the shortage on the Mr H matter.

55. On 23 February 2011, the IO was provided with a bank statement recording receipt that day of £58,164.25 into the firm's client bank account as replacement for the shortage. It was noted that the funds had been borrowed from friends of the First Respondent's brother.

Allegations 1.1 and 1.2 against the First Respondent

56. During the course of his investigation, the IO was provided with email correspondence passing between Mr B and the First Respondent relating to Mr H's matter. On 4 June 2010 at 4.41 pm Mr B wrote to the First Respondent:

> "Subject: Mr H] 16 [M] Street
>
> Dear Paul,
> I am very concerned that the file for the above matter cannot be located at the Swansea Office. You will remember this is a file which we gave you to sort out with the Law Society about the monies in hand.
>
> I am also very surprised that on checking the accounts I notice that you have charged the sum of £4,700 plus VAT for dealing with the post completion matters. I think a meeting should be arranged as a matter of urgency between you and me to fully discuss this file…
>
> There are also other issues I would like to take up with you."

The First Respondent replied on 4 June 2010 at 4.50 pm as follows:

> "Dear [Mr B],
> The post completion work was for trying to locate the client and liaising with the [Applicant] to sort this matter out dealing with our accountants and a variety of other matters as required by the [Applicant] and solicitors benevolent fund which I have been doing for about the last 18 months.
>
> The file left the office prior to april (sic) along with a number of other matter balances. The matter is therefore closed.
>
> I'll be around on thursday if you need to see me… (sic)"

Mr B responded on 8 June 2010 at 10.48 am:

> "Dear Paul
>
> I refer to your e-mail of Friday 4th June and would point out that I am not satisfied with your response. The matter is not closed by any means and myself and a number of people at this office are concerned at the file not being available and the level of costs charged by you. I am not available on Thursday as you well know, I am available today and tomorrow and I want to see you on this and a number of other matters which are of concern."

There was a further email exchange on 16 June 2010.

57. Mr B informed the IO that he had been visited by the First Respondent's brother who had shown him a copy of a letter apparently from the Solicitors' Benevolent Association ("SBA"). The IO was provided with a copy of a letter dated 23 April 2010 headed, "SBA -The Solicitors' Benevolent Association" ("the SBA letter"). The document referred to the SBA having received the sum of £52,641.75 on 22 April 2010.

58. The First Respondent admitted the SBA letter to be forged. When asked subsequently if he considered the fabrication of the letter to be a blatantly dishonest action, the First Respondent informed the IO that he had created the letter as an internal document, the

purpose of which was to put Mr B "off the trail" until the accounts could be sorted out.

59. The First Respondent informed the IO that:

- "Susan Perry" shown as a case worker with the SBA and signatory to the letter, did not exist
- the letter had been produced on an old computer
- the paragraph in the letter in bold type referring to the firm indemnifying the SBA was taken from the internet
- the Second Respondent believed the document was genuine.

60. The IO wrote to the Respondents by letters dated 20 May 2011 enclosing a copy of his FI Report and requesting their explanation to matters raised and requesting further information, in particular, with regard to their progress towards rectification of the apparent shortage of £23,048.50.

61. A decision was made to refer the conduct of the Respondents to the Tribunal on 5 July 2011.

Witnesses

62. **Clive Howland** gave evidence. He had joined the Applicant in 2000 as an investigator in the monitoring and investigation unit. In 2003 he had become a senior investigation officer and had remained in that post until the end of 2011 when he left the Applicant's service. He had a degree in accountancy. The witness confirmed the accuracy of the FI Report and appendices. In respect of the three bills G759, 864 and 880 under which Mr H's funds were transferred to the firm's office bank account, the witness stated that the dates given in the FI Report were in accordance with the office cash book, a copy of which for the relevant period was before the Tribunal. He testified that he had never seen any such bills. In respect of the last transfer, that for VAT in the amount of £2,450 it had shown in the cash book as 28 June 2010 but in the bank statements as 29 June. None of these transfers to office or to the firm's VAT account should have taken place without confirmation from the Law Society's Ethics department as the firm had no right without delivering a bill to the client to transfer the funds. In respect of the Undone posting schedule which the IO had prepared, it had come about because the Respondents had described to him various banking problems which they had experienced during 2010. He had looked at the documents that he was given and a couple of factors really stood out as not being consistent with what he had been told. Proper reconciliations should show differences and the ones he was given did not. This was unique in his experience. He was shown cash books which were printed off on the morning of his visit relating to the year 2010 which he also considered unusual. He therefore sought authority from First Respondent to approach Osprey and did so at the end of that week and they provided data from their server. From that data he had extracted the Undone postings schedule. His reconstruction showed that there had been about nine incarnations of the ledger. The first entry for Bill 759 had remained for three weeks, the next for four months and the final one for five months. Client account reconciliations had been dated and signed by the First Respondent. The IO had warned him that these would be needed in his letter dated 5 January 2011. He had asked for documents including all client bank account

reconciliations undertaken since 1 January 2010 and cheque counterfoils and paying-in books or slips for office and client bank accounts from 1 January 2010 and CHAPS/BACS slips (authorities) relating to all office and client bank account payments, receipts and transfers from 1 January 2010. If the IO had looked at the client account ledger for Mr H prior to 21 June 2010, it would appear that the client's funds were intact barring an improper bill G759 from 21 June to 25 July 2010 when no funds were present as bills 864 and 880 had been applied and all money transferred to office account. After that there had been one entry for a minute or two on 7 August 2010, sufficient for the entry and the ledger to be printed off to show that the money had gone to the SBA. On 28 and 30 November 2010, bills 864 and 880 were put back on and stayed there untouched until removed the night before the witness arrived at the firm and started the substantive investigation.

63. The witness confirmed that during his meeting with the Respondents on 11 January he asked if they were aware of misuse of client funds. This was part of the standard initial interview and both said "No". He was also not told anything in response to the standard question inviting the Respondents to tell him anything that they wished. At the end the First Respondent told him they wanted to be "open and honest".

64. In respect of the schedule of postings made on 11 January 2011 where various user IDs were shown either [P] or [J], the witness had hoped that he could tell from that who was responsible for importing the data but this was not the case. There were four user accounts and each had a different level of access and there was a general exchange of passwords and the user ID bore no relation to who was doing data input; individuals just used whichever ID was available or which gave them the access level that they required. The witness explained how the schedule of "replacement" bills had been constructed; each section matched exactly one of the three bills which had been removed from Osprey. His investigations also showed that bills were produced in physical form and he was able to see the balances at the date of the previous bills on the files and that after the spurious entries, in most cases the client balances had been reduced to zero. The witness also took the Tribunal to the document "Period End Client Bank Reconciliation", a report run on 11 January 2011 during his visit for the accounting period March 2010. He showed how the entries for the various files matched up to the three bills on Mr H's matter. The witness explained that the posting date shown on the Osprey system could be anything that the user chose to have appear on the ledger but the audit date was the date the entry had actually been made. Thus the various postings made overnight on 10/11 January 2011 could be shown to relate to posting dates in some cases around 300 days earlier. Around 158 postings on 58 bills had been made but other postings had also been made and undone through the course of the night; the witness thought that some of these were errors and had not looked in detail at them. There was nothing to indicate that other postings made on the morning of 11 January 2011 were not legitimate.

65. In respect of the SBA letter, the IO had obtained a copy from a secretary who worked for Mr B as a result of meeting with Mr B. The First Respondent said it had been intended for internal use but also agreed it was a forgery. The witness quoted from his handwritten notes dated 10 February 2011 which had been countersigned by the Respondents. The notes included:

> "PS said that he produced the forged letter ([the IO] said that "it's a strong word but it's forged isn't it" – PS said yes). produced on the old computers. Point was to put [Mr B] off the trail so that we could sort it out."

It was not clear to what use the letter had been put, save that the witness had to conclude that it had been shown to Mr B and the Second Respondent said that quite possibly he had been shown it. The letter purported to show it had been received on 23 April 2010 but the entries created on 7 August 2010 on Osprey purported to show a posting date of 31 March 2010. The witness could not say when it had been produced.

66. In respect of the money which the First Respondent had borrowed from his father but which had been swallowed by the office account overdraft, the witness had asked the Second Respondent what he thought the money was for and he believed it to have been related to another takeover or the merger of two further practices.

67. In cross-examination, the witness confirmed that the First Respondent had accepted that the transfers of bills G759, 864, 880 and 864 (re VAT) from the file of Mr H were improper and that the First Respondent had indicated that the Respondents had not instructed or authorised anyone to make those transfers. The witness found it astonishing that the transfers had occurred as only the Respondents could authorise transfers from client account and it was amazing that transfers of such magnitude had been made without enquiry or without their knowledge and he questioned why the bookkeeper would act unilaterally in such matters. The witness did not know who had authorised the transfers because he had not been provided with the relevant documents he had requested in his letter of 5 January 2011. It was put to the witness that there was no paper trail to confirm who had authorised transfers, to which he responded that only two people in the firm were properly authorised to make the transfers. He could not say whether Ms JM had been given the First Respondent's login details for the bank to enable her to carry out transfers. He also doubted that however incompetent the Respondents asserted Ms JM was as a bookkeeper, she would unilaterally have made transfers of such significance from the ledger of Mr H. The witness accepted that as a result of the fabricated client fund transfers made overnight on 10/11 January 2011 no physical money transfers had been made. He assumed that the purpose of the activity had been so that he would not see during the investigation that funds had been removed from Mr H's ledger. In order to achieve that, 58 clients' ledgers had to show that the firm did not hold any money for them. As to whether this was a dishonest use of client money, the witness stated that if those clients had walked in and asked how much the firm was holding for them the ledger would show nil and that was not the case.

68. The witness pointed out that in the FI Report the First Respondent had been recorded as saying that he had signed client account reconciliations in the knowledge of the shortage created by the Mr H matter. The witness agreed that it was fair comment to say that the First Respondent did not say that he signed them all knowing that the money had been transferred but he continued to sign them once he knew. The witness stated that his own position had changed since he had written the FI Report. He was troubled because the witness statements of the First Respondent and Ms JB said that the April accounts were not closed down until December 2010 and if that was the case how could the April 2010 reconciliation have been signed before then? The witness

took the view that the First Respondent had either signed the reconciliations knowing of the shortage on the H ledger or that the reconciliations were something else that had been provided to the witness for the purposes of the investigation by the First Respondent.

69. As to the amount of £55,000 which the First Respondent had borrowed from his father, the witness was sure that it could have been paid directly into the firm's client account rather than into office account first. The witness questioned whether it was in fact designed to replace the money on the H ledger or for something else. He could only confirm that the money came in and was absorbed by the firm's overheads.

70. **The First Respondent** gave evidence and save as recorded below, it is set out under the appropriate allegation. The First Respondent testified that he had worked at the firm where one of the partners had been his father's solicitor. He left in August 2004. He had been approached to buy the firm in 2006 but had not felt ready. He and the Second Respondent had purchased the firm in May 2008 for the sum of £80,000 funded by bank loans of £40,000 each. He had been presented with draft accounts and saw no need to delay the purchase as his family had known the partner selling for over 20 years. He had been told by the selling partner that the accounts were up-to-date and compliant. He admitted that he had not checked those things. He had no experience of managing a firm. He was thrust into that role in October 2008 when the selling partner gave it up. His only experience of accounts was the Legal Practice Course module. He was totally reliant on Ms JM who had been doing the accounts for 14 years including while he was training at the firm. He trusted her and regarded her as a friend and had kept in touch with her while he was working elsewhere.

71. The First Respondent testified that five months after purchasing the firm they had taken over another practice G & Co to which the Second Respondent had moved as soon as they had taken it over. He lived in Cardiff and did not want to travel. They had no experience of combining and merging two distinct practices. The partners of both practices stated that they wanted to pass the firm on but remain working; the Respondents saw senior solicitors who had undertaken partnership training as an invaluable asset. They had decided to put together Ms JM and the accounts team from G & Co. Ms PJ at G & Co had 27 years experience and would do the day-to-day accounts there. Ms JM and Ms PJ worked through the accounts to combine them onto the firm's Osprey system. At the same time (around October 2008) they acquired S N & M Solicitors which was in difficulties and wanted to pass across its client list. The takeover took place just before the indemnity insurance renewal. The First Respondent had a week to do due diligence. There was 60 years of filing. They used Ms JM to effect the transfer of work from S N & M. In February 2010 the firm had taken over another Cardiff practice, HJ whose accounts clerk was Ms DJ. Ms JM undertook the accounts for the four practices.

72. In 2009, the firm's accountant advised that he was ceasing to undertake solicitors' accounts work and they approached B & B accountants. Their employee Ms JB identified more than 50 errors made by Ms JM in the accounts and two extensions of time were obtained to file the accounts. It took until the end of January/start of February 2010 to track down the former partners of S N & M to get their authority for banking purposes. The Respondents spoke to Ms JM; they were concerned because there had been no previous errors in Accounts reports for the firm. The First

Respondent thought that perhaps it was the fault of the firm's former accountant as his earlier reports were not produced to them despite numerous requests. Ms JM said that once she had been told about the errors, they would not happen again. They sent Ms JM and Ms PJ on SAR 1998 courses and Ms JB offered to be at the end of the phone. Ms JM had chosen not to accept that help. They had not forced her because they thought she was capable. Ms JB told the Respondents and Ms JM that the client account needed to be sorted out as there were a lot of monies which were on the ledgers which looked dormant or had not been billed for a period of time. Cheques had not been written back in for five or six years. In November 2009 the First Respondent had found Ms JM unwell in the office. She was then off sick and returned to work in January 2010.

73. The First Respondent was knocked down in a hit-and-run accident on the evening of his birthday 2 May 2010 when he had sustained fractures to both wrists and other injuries. He testified that he had also suffered significant psychological incapacity, because some years before his sister had been killed in a hit-and-run accident exacerbating the impact of the accident. He had become depressed and dependent on painkillers. He had no chance to convalesce and was phoned by clients and by the office the day following the accident. He had been on holiday for several days before his birthday and had given Ms JM his bank card and password as he had done previously without difficulty. The Respondents did this if both of them were out of the office because a large part of the practice was conveyancing.

74. The First Respondent testified that he had enlisted the help of management consultants as he wanted to ensure compliance and was working towards LEXCEL. One of the consultants provided monthly reports. In March 2010, they had the management consultant hold a meeting of the accounts staff in order to split the workload. They now had three accounts clerks and he wished to have everything shared out equally with one person in charge of the accounting operation. The First Respondent was travelling between the three offices for most of January, February and March 2010 on a daily basis; he was installing new phones and new computer equipment in order to achieve a virtual office with hot desking and work sharing across all the offices.

75. From January 2010, Ms JM started to take quite a lot of sick leave. She went sick from the firm permanently on 4 May 2010 and ultimately she said that she could not return to work for a year, was offered part-time work which she declined and resigned. The First Respondent had returned to work around 16 June 2010 after an absence of six weeks. He had been in contact with the office every day by email or mobile phone. When he came back no one had taken any steps to obtain cover for Ms JM. Ms PJ had tried to print out the ledgers but the postings were inaccurate. She did what she could for the fee earners in Swansea and Ms DJ in Cardiff did the same for hers but they were not talking. Fee earners from one office would call the bookkeeper in the other. One of the reasons he came back when he did was to sort out the HR issues. People were used to him sorting things out; they would say jump and he would say how high. For example he obtained files from the archive for them. He approached Ms PJ to take over the accounts but she declined. He then asked Ms DJ to come to the Swansea office (at the end of June 2010) so that he could get access to the records and they were shocked to find that there was paperwork everywhere, notebooks and unopened bank statements. He was massively concerned and felt

hugely let down by Ms JM. No transfer lists had been done. Nothing had been put on the Osprey system but the banking side of accounts had been undertaken. If the accident had not happened he would have been in the office the following Monday, seen that Ms JM was not there and had Ms DJ or Ms PJ take control and they would have found out that the February month-end had not been completed and why. Ms JM kept saying that there was not much to do before they could shut it down. She said that she would be back the following week and those were the messages he was getting when he was recovering. The First Respondent called a partner at B & B and told him there was a black hole in the accounts. There was no one who could assist because Ms JB had left. The First Respondent managed to contact her but she could only work in the evenings. She found that the February, March and April accounts had not been shut down and had to reconstruct the accounts from the bank statements, bills, paying in books and cheque stubs as well as loose pieces of paper. It was not until December 2010 that with Ms JB's help, all the accounts information was put together. The First Respondent tried to have a system where all transfers were made twice a week rather than piecemeal. It was very difficult to identify individual transactions. The First Respondent had managed to piece together the accounts for April. The month of May was in a similar state in that nothing had really been done, save for Ms DJ and Ms PJ doing some postings to keep things ticking over for day-to-day transactions. In June 2010 Ms DJ had taken full control but there had been double billing for April and August in error as papers had been lifted from Swansea which were without annotations.

Findings of fact and law

76. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' 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.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

In respect of the First Respondent alone:

77. **Allegation 1.1: That by his actions he compromised or impaired or acted in a way which was likely to compromise or impair his integrity, contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code");**

Dishonesty was alleged in respect of allegation 1.1.

77.1 For the Applicant, Mr Moreton relied on the Rule 5 Statement, the FI Report and the evidence of the IO. The allegation related to five specific matters: improper transfers of funds due to the client Mr H totalling £58,164.25 which took place under three bill references; improper alterations to postings including the retrospective entry of 86 new transfers into the books of accounts to explain the original five transfers; the creation of 58 bills to replace the three bills earlier referred to; signature of client account reconciliations knowing them to be incorrect; and the forging of a letter from the SBA dated 23 April 2010. The Applicant alleged dishonesty in respect of allegation 1.1. In respect of all the aspects of allegation 1.1, Mr Moreton referred the

Tribunal to the test for dishonesty set out in Twinsectra. He also asked the Tribunal to bear in mind the cases of Levy v Solicitors Regulation Authority [2011] EWHC 740 (Admin), Solicitors Regulation Authority v Waddingham, Smith and Parsonage [2012] EWHC 1519 (Admin) and Weston v The Law Society [1998] Times, 15 July.

Improper transfers of Mr H's money

77.2 Mr Moreton submitted that the relevant client account bank statements showed that on 26 February 2010, the sum of £58,164.25 was transferred from deposit account into the firm's general client account, this being the full amount of Mr H's funds held by the firm and comprising the principal balance of £56,219.89 plus a total of £1,944.36 interest. The IO found no evidence on the client's matter to explain the reason and/or authority for the transfer. Mr Moreton took the Tribunal through the Undone postings schedule which the IO had extracted from the data he had obtained from the Osprey system. The IO was able to determine that Mr H's funds were improperly transferred to the firm's office bank account as follows:

Date	Bill Ref	To office a/c	To VAT a/c	Total
17 March 2010	G759	£4,700.00	£822.50	£5,522.50
22 April 2010	G864	£14,000.00		£14,000.00
28 April 2010	G880	£36,191.75		£36,191.75
28 June 2010	G864		£2,450.00	£2,450.00
				£58,164.25

The First Respondent informed the IO that he had "told [JM] to do the first one [bill] but not the ones following". This was endorsed in handwriting on a meeting note dated 23 February 2011 signed by both Respondents. Mr Moreton submitted that this seemed to be in contrast with what was now being suggested by the First Respondent. Mr Moreton referred the Tribunal to the schedule of entries on the file of Mr H. It was understood that Osprey would not permit amendments but only deletions of entries followed by re-entries. It was set out in the FI Report that bill reference G759 was shown by the firm's books of account to have been for the amount of £5,522.50 that is £4,700 plus VAT. It was not apparent to the IO whether a physical bill was ever produced although none was found or provided during the investigation. From an analysis of the data obtained from Osprey, the IO noted that the posting detail on the client ledger account in connection with bill G759 was variously described as:

- "BILL – INTERIM WORK SENDING MONIES TO SOLR INDEM FUND" entered on 17 March 2010 and removed on 6 April 2010.
- "BILL – INTERIM RSENDING MONIES TO SOL INDEM FUND" entered on 6 April 2010 and removed on 8 August 2010.
- "Bill" entered on 8 August 2010 and removed on 10 January 2011 at 23.49.

After that there was no mention of the bill at all.

77.3 The first reference in the Undone postings schedule to bill 864 (for £14,000 plus £2,450 VAT) had an audit date of 10 June 2010 and a posting date of 22 April 2010.

The entry was on the system for 14 minutes and then disappeared. It reappeared on 21 June 2010 as an interim bill and remained visible on the electronic accounts until 25 July 2010 when it was undone/deleted.

77.4 Also on 21 June 2010, entries were made regarding bill 880: there was an entry with the posting date 22 April 2010 described as "Final Bill" in the sum of £30,801.49 plus VAT, totalling £36,191.75. That entry existed for a minute then the same bill appeared with a posting date of 28 April 2010 and the same audit date of 21 June 2010, and coincided with the date of the transfer of funds which the IO found on the bank statements. On 25 July 2010, there were further Osprey entries undoing bill 880. It reappeared in slightly differing amounts for the total bill and VAT with an audit date of 28 November 2010 and was removed on 30 November 2010 only to reappear with an audit date of 30 November 2010 and was again removed on 10 January 2011.

77.5 As to who had made these entries in June 2010 and earlier, Mr Moreton submitted that the First Respondent had stated that the firm's accounts clerk Ms JM fell ill at the same time as the First Respondent had his accident and that she was on sick leave from 4 May 2010 onwards and did not return to the office. According to Ms JB's statement:

> "In May/June 2010 [the First Respondent] managed to track me down and asked if I could meet up for a chat regarding the accounts."

She was not specific about the date. Neither Ms JM nor Ms JB were present on 21 June 2010 and there was no evidence that any other accounts person could have changed the system. It seemed from the witness evidence of Ms JB that she was not involved with the accounts until July 2010. Ms DJ was not involved at the material time. In her statement she said that the First Respondent:

> "…returned to the office halfway through June and called a meeting which was held on 23rd June 2010. [The First and Second Respondents] asked me if I would take over the accounts. This was a relief but I also knew what a mammoth task was ahead but I was looking forward to the challenge. [The First Respondent] took me to the Swansea office to see what information was available for me to take over and I could not believe the mess the Accounts Department was in."

Ms DJ went on to say that she had only ever done manual accounts. She added that she had a brief spell on the computer accounts a couple of years before but nothing that could help her with the situation.

77.6 The First Respondent accepted in interview on 10 February 2011 that he first became aware of the shortage on the H ledger in August 2010. This was confirmed in the manuscript notes which he countersigned on 23 February 2011. Mr Moreton referred the Tribunal to the First Respondent's admissions to the IO about the entries he made on 7 August 2010 to put Mr B "off the trail". Mr Moreton submitted that the First Respondent had taken the monies belonging to Mr H into office account and had made entries in Osprey as shown on the Undone postings schedule to conceal what he had done.

77.7 Mr Jackson submitted that the First Respondent had not himself made or instructed or authorised anyone else to make the transfers of Mr H's money and nor had he made any entries on Osprey in respect of those transfers until 7 August 2010. Mr Jackson also wished to raise an issue as to whether these matters formed part of the 10 allegations brought against the First Respondent. Nowhere in the Rule 5 Statement was it asserted that the First Respondent had made these transfers nor was it suggested that if he had done so he did dishonestly. These matters were not referred to in the paragraphs in the Rule 5 statement that summarised the dishonesty allegation; specific reference was made to improper alterations to the firm's books of accounts on 7 August 2010 as constituting a breach of Rule 1.02 of the Code and also a breach of Rule 1.06 (allegation 1.2). This was why the First Respondent's basis of plea document made no reference to the five transfers of Mr H's money. The IO had asked both Respondents about the transfers and both had denied having anything to do with them. Mr Jackson submitted this questioning was not the same as a particularised allegation. There was no evidence about who had made the transfers and as a consequence there was no evidence that it was the First Respondent; similarly if there was no evidence as to who had made the transfers how could the Tribunal be sure that the First Respondent had instructed the unknown person to do so? The IO had said that no one other than the Respondent was authorised to make transfers; the fact that someone should not do something did not mean that they had not done it. The First Respondent had admitted forging the SBA letter (see below) and admitted working all night to hide the transfers of Mr H's money from the IO. These were admissions of the most serious misconduct. What would be his motive to deny dishonesty in respect of less serious misconduct? The First Respondent had made arrangements to borrow money from his father. He had been criticised by the Applicant because that money had been transferred into office and swallowed up. When Mr H's money was transferred there was no evidence that the office account was overdrawn and Mr Jackson questioned what the First Respondent's dishonest motives would be for making such transfers. The Applicant might then say, what about the £4,700 bill for work that was never done? The First Respondent admitted that he had told Ms JM to bill for work done but not for how much. He told her what to do so she would know exactly what the costs and disbursements would be, but he could not tell her the exact figure. Ms JM was in the office in March and April 2010 when four of the transfers were made and she was responsible for the accounts including for totting up the accounts at the end of each month. It was accepted that the accounting function had not been undertaken as it should have been but the money moved from client to office account and she could look at the bank statements. Mr Jackson submitted that Ms JM could not possibly have been unaware that £58,000 had moved into office account. If there had been dishonest misappropriation by the First Respondent, he was taking an incredible risk unless he was in a conspiracy with Ms JM which was not alleged. The First Respondent gained no benefit from the transfers and in the absence of any evidence that office account was overdrawn at the relevant time neither did the firm. What had happened had cost the First Respondent and the firm £58,000 or on another view (taking into account the second payment into the firm) £113,000. Unusually the First Respondent's admissions of very serious breaches and dishonesty entitled him to credibility regarding the denial of the lesser matters of dishonesty. Mr Jackson submitted that there was a narrow issue to be decided. The Tribunal should not be constrained by the First Respondent's basis of plea document which Mr Moreton pointed out was on a very narrow basis indeed and did not refer to the SBA letter

which the First Respondent had testified was a forgery. The Tribunal had heard the First Respondent give evidence and could draw its own conclusions.

77.8 The First Respondent testified that he had been passed Mr H's file a couple of months after buying the firm in 2008. He had been sidetracked by the merger of the three practices. In the New Year 2009 he passed the file on to Ms JM. A basic finder's search had already been commissioned and he asked Ms JM to look into the services of finders who would knock on doors and make enquiries of neighbours. The First Respondent formed the view that the money should go to the SBA. There were various other matters from the mid-1990s where it was obvious they would never find the file. Ms JB picked up with Ms JM that she did not record sufficient narrative about why money was being held. The First Respondent had printed off the Applicant's forms and guidance and passed it to Ms JM. He asked Ms JM to clear up all the ledgers before the end of the financial year; she knew a lot of the fee earners who had worked on the files and the First Respondent thought that she was best placed to undertake the work. He went through the Applicant's form with her and told her that she needed to contact the accountants because they would need to sign off the transfer. With regard to the limit of £50 imposed by the Applicant in respect of monies to be transferred to charity, the Respondent agreed that he was aware of this and that Mr H's funds exceeded it. He agreed that the Applicant's letter pointed out that there was a duty on solicitors to return client monies to their client or other person on whose behalf the money was held promptly as soon as there was no longer any reason to retain the funds. He agreed that there was quite an extensive list of requirements to be complied with before making an application to transfer monies to charity such as obtaining:

> "a letter from the firm's accountants, confirming the sum of money and the period for which it has been held, including confirmation from the accountants that they are satisfied (a) the money referred to is held on behalf of the particular client(s) or other proper recipient(s) whom the firm has been unable to trace; or (b) the proper destination of the money cannot be identified…"

Mr H's was just one of the cases he had highlighted to Ms JM as needing to be sorted out after Ms JB had reviewed the accounts. For example there was a large sum retained for the police in another matter which only came out when he explained to Ms JM what he was trying to achieve. As to whether he gave Mr H's matter priority, he had given resolving the entire accounts priority. Entire months, April, May and June also had errors of massive magnitude on them or he would not have put £120,000 into the firm. The First Respondent was looking at the overall picture. He assumed letters to Mr H had been sent because he had given instructions. He did not have any evidence with him to show efforts had been made to trace the client after he received the file in October 2008. The file had gone back and forth between him and Ms JM. He had not seen any evidence that she had carried out the work that he had instructed apart from her telling him she had done it. The First Respondent denied that he was unconcerned; he thought that they would eventually track the client down or do something with the money. They were ridiculously busy for the first two years combining the firms together and this was not his top priority. All Ms JM's papers had been taken off-site. The evidence of her activity might be in those papers. After the financial year end, he had instructed Ms JM to commission the finder search. He had written to the Applicant for guidance after Ms JB said that the client account needed

to be sorted out. He had asked Ms JM and she said there had been no response to her enquiries. When he said that he had authorised the first bill to Ms JM, which was recorded on the handwritten note dated 23 February 2011 prepared by the IO, he had misunderstood the question. He meant that he had said that she should bill the work, not that he had authorised that transaction.

77.9 The First Respondent testified that he did not authorise anyone to transfer money from Mr H's file to office account and he could not specifically recollect authorising any transfers from Mr H's ledger. He had given the staff a mandate that if there were amounts under £1,000 they should be allowed to build up. One large transfer would be done at the end of the day. He had given the Applicant's letter and guidance on forms to Ms JM the day he printed them off, 17 March 2010; the same day that the FI Report recorded that £4,700 plus VAT had been transferred from office to client account. The First Respondent said that he could well have authorised it and did not dispute that but he was never told what it was for. He would not stop and ask Ms JM what made up the total amount. He thought that she prepared lists of transfers on certain days but she did not have those lists. The First Respondent denied that all but one of transfers of money in respect of H's matter had occurred when he was in the office. He had been out of the office for a week preceding his birthday; therefore he had been out on 28 April when £36,191.75 was transferred. He was not sure whether he had been out on 22 April when an amount of £14,000 had been transferred. He could not recall the amount. It would have set alarm bells ringing because he would have regarded it as a "good day at work" to see a bill of that amount. The difficulty they ran into for April 2010 was they did not have a breakdown of the amounts which Ms JM transferred to put on Osprey; there were hardly any entries for April. The month of May was slightly better because Ms DJ and Ms PJ put on some of the entries. The First Respondent agreed that he had been in the office on 21 June 2010 when an entry was made which showed for one minute on the system described as "Final Bill" under reference 880 totalling £36,191.75. The entry had been repeated a minute later to show the posting date as 28 April 2010 as opposed to 22 April 2010. The First Respondent explained this as Ms PJ and Ms DJ trying to enter information into the system. He disputed the interpretation of Ms DJ saying in her witness statement that she could not use the Osprey system as she was not taught until July 2010. She was not familiar with it and did not have formal training but she was posting on it from the time she began work on the system and could do so easily. Ms DJ and Ms PJ were going through the bank statements but they had no names or file numbers and they were trying to post items to the ledgers. He confirmed that he believed they were posting randomly from Mr H's matter because there were funds there. They had explained to him that they were trying to keep things afloat but could not identify items because of the way Ms JM had worked. When Ms PJ and Ms DJ conducted transfers in the middle to the end of June 2010 they had not discussed them with him because he was not even in the office and they had no need to. Regarding the transfer of £2,450 on 28/29 June 2010, the First Respondent assumed that Ms PJ and Ms DJ were looking at the VAT account, a separate account which was held at a building society in Swansea and in respect of which the accounting had also fallen behind; this was money sitting in client account which should have gone to the VAT account. It was the VAT element of the £14,000 bill.

77.10 The First Respondent testified that he was in denial and would not believe that Ms JM had transferred Mr H's money to office account. There were also a number of probate

matters, files which came from G & Co for example and an amount of £40,000 held for one client for six years, whom they could not track down. He thought that Mr H's money might actually have been sent off in accordance with the guidance he provided to Ms JM. He thought that the size of the £4,700 bill was driven by disbursements which had been attracted to it. He agreed that he had abrogated responsibility to an unqualified individual to transfer all these monies without confirming to him that she had undertaken the work required and that the Applicant had approved the transfer. The First Respondent was not the sort of boss "who hit someone with a big stick".

77.11 Following Ms JB's work (in July 2010), the First Respondent became aware of the problem with Mr H's funds. He had suspected what had happened to the money and it was his worst fear but he could think of no logical reason why that should have been done. When he had received the email from Mr B, the First Respondent had not gone online from home to check the position because he did not then have access. Ms JM then provided her password so that he, Ms PJ and Ms DJ could have access. In August 2010, when the management consultant presented him with the monthly list of fee earning and said that Mr B had recorded £60,000 of billing in one month, the First Respondent suspected that the money had been transferred. The First Respondent had found postings on the ledgers and that was when it came to his knowledge. He accepted that the transfers were improper and should not have been made.

77.12 The First Respondent accepted that he had made his first posting on Mr H's ledger on 7 August 2010 when he had created the posting described as "BILL – INTERIM RSENDING MONIES TO SOL INDEM FUND". The First Respondent agreed that he had made the entry on 7 August 2010 which was shown on the Undone postings schedule as "Transfer Out to SBF" for £52,641.75. It had appeared on the system for one minute. This amount constituted all of Mr H's funds, save for the £4,700 bill plus VAT. Prior to that, the First Respondent testified that he had no involvement in posting anything on the system. The firm had a dual authorisation system involving placing cards in readers where one person would input the details and the other verified. There were four individuals who had such cards, himself, the Second Respondent, Ms JM and Ms PJ. All the cards had the same status. The First Respondent testified that the full extent of the problem with Mr H's money was known in December 2010. There were still a lot of entries missing but he suspected that the money had been transferred over.

77.13 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and the First Respondent. Having regard to the improper transfer of Mr H's funds the situation was unclear; the evidence did not point to any one person. The Tribunal noted the efforts which were being made to sort out the mess in the firm's accounts and the number of other people involved at the material time. The First Respondent was the partner responsible for accounts matters but he denied making the Osprey entries before 7 August 2010 and denied making the improper transfers. The Tribunal did not necessarily agree that the dishonesty involved in misappropriating Mr H's money if such it was, was less serious than other acts of dishonesty which the First Respondent had admitted but the Tribunal could not be satisfied that the First Respondent had either taken the money or made the Osprey entries before 7 August 2010. Accordingly it was not necessary to consider the First Respondent's state of mind and mental health at the time these particular acts were committed or to consider whether it should take into account in arriving at its

findings, the opinion of Dr Harris in this respect. The Tribunal did not find the aspect of allegation 1.1 relating to the transfers of Mr H's funds and the accounting entries made in respect of them before 7 August 2010 proved.

The SBA letter

77.14 For the Applicant, Mr Moreton submitted that the First Respondent had done little if anything to trace Mr H. The First Respondent came under pressure from Mr B. On 4 June 2010, Mr B asked questions about Mr H's file by e-mail to the First Respondent who responded nine minutes later. (Those emails are quoted in the background to this judgment.) Mr Moreton referred the Tribunal to a further exchange of e-mails between the First Respondent and Mr B on 16 June 2010. At 4:35 pm Mr B emailed:

> "We had arranged a meeting at this office yesterday or indeed today but have seen no sight of you. There are a number of matters which require addressing, not only by myself but other fee earners at this office who are concerned.
>
> Would you therefore arrange a meeting for either Tuesday 22nd or Wednesday 23rd June so that matters can be fully aired."

The First Respondent replied at 5.52 pm:

> "Apologies the case today over ran. I will check and see which day I am available it may be that the meeting will have to be held over at the walter road office due to various constraints on my time getting the accounts back up to date and catching up on a months worth of work."

The First Respondent admitted to the IO in interview that the SBA letter had been created to put Mr B "off the trail". There was no clear evidence as to when it was presented to him but the logic of the flow of emails was that it was perhaps sometimes towards the end of the period June, July or August 2010. The letter purported to have been sent to the First Respondent's email address dated 23 April 2010 and began:

> "Thank you for your recent remittance. This letter contains confirmation of the amount and date of payment.
>
> The amount that has been received is £52,641.75 on the 22 April 2010."

According to the First Respondent's admission to the IO, the middle paragraph containing an indemnity for the SBA was a random clause found on the Internet. The First Respondent admitted having created this letter on the firm's old computers and said that the signatory Susan Perry did not exist.

77.15 The First Respondent testified that at the time that he had created the SBA letter he was under extreme pressure from Mr B. He had received an ultimatum from Mr B to deal with issues he had raised about another former partner. The First Respondent did not tell Mr B about the problem with Mr H's funds because people would not listen to anything he said. He was completely open with all the senior people when he came back from the accident. They just said why could the accounts not be sorted out? He had become very withdrawn. Papers had been uplifted and taken to Cardiff to be

sorted out. He was waiting for Ms JB. If he had gone to someone other than Ms JB, it would have taken time for them to understand the accounts. He needed time to sort out and replenish the accounts and so he created this letter which he gave to Mr B in mid-September 2010. He also admitted in evidence that the act would be considered dishonest by the standards of reasonable honest people and that in doing it he knew it to be dishonest.

77.16 The Tribunal considered the evidence including the oral evidence and the admissions of the First Respondent and the submissions for the Applicant. Even though the First Respondent had told the IO that the letter had only been produced for internal purposes in order to fend off Mr B's enquiries until the First Respondent could sort out the accounts and put matters right, the Tribunal agreed that the test for dishonesty in the case of Twinsectra was satisfied both objectively and subjectively. The Tribunal found this aspect of allegation 1.1 to have been proved with dishonesty, indeed it was admitted.

Improper postings and fictitious bills

77.17 For the Applicant it was submitted that upon resuming the investigation on 11 January 2011, the IO noted certain factors which caused him to have suspicions about the integrity of what he had been provided with; including the fact that all 11 month end client account reconciliations from January to November 2010 balanced without adjustment, despite bookkeeping problems that the First and Second Respondents described to the IO at their initial meeting on 11 January 2011 and which in his opinion would have caused differences to be shown in proper reconciliations. There were debit client balances found by the IO which the firm did not account for in their reconciliations. He also noted that all cash books provided for investigation from month end 31 March 2010, the firm's accounting year end, showed that they had been printed on 11 January 2011 rather than at the material time. From an analysis of the data provided by Osprey, the IO discovered bookkeeping entries which had shown that the transfer of Mr H's funds had been removed. A copy schedule of postings removed from Mr H's ledger was before the Tribunal (the Undone postings schedule). It was submitted that numerous amendments had been made to the Osprey records on the night of 10/11 January 2011 just before the IO's visit when by his own admission the First Respondent created 58 new bills and although not specifically admitted there were 158 new postings to Osprey accounts in addition to the creation of those bills. Mr Moreton referred to a schedule which was before the Tribunal prepared by the IO which showed how the original three bills had been replaced by the new entries. As a result anyone looking at Mr H's ledger would see his funds intact. Bill 759 was replaced by 16 bills of which 13 reduced the balance to zero after the cost transfers. Bill 864 was replaced by 12 bills of which nine reduced the balance to zero after the cost transfers and bill 880 was replaced by 30 bills of which 20 reduced the balance to zero after the cost transfers.

77.18 The First Respondent testified that he had only known that the IO was planning to come on 20 December 2010 when he opened the post that day. A new date was arranged and the accounts were still in chaos. He was working from 9 am until two or three o'clock in the morning looking for gaps in the accounts and seeing where various items would fit. He was not even at home on Christmas Day. He was reconciled to the fact that the IO would see there was a problem but he wanted to get

the accounts up to date and get as much work done as they could. He had decided to create the 58 bills and the fictitious postings the day before the IO was due to attend the firm on 11 January 2011. The First Respondent admitted that the creation of 58 bills and the Osprey entries during the night of 10/11 January 2011 were undertaken to conceal the improper transfers of £58,164.25 on Mr H's matter. The First Respondent stated that he took advice from individuals in the office as to what to do about the shortfall on the last day before the IO was due to return and a former partner of one of the practices and his former accounts clerk had advised that billing on other matters to replace a shortfall was the best thing to do. The First Respondent had not slept, his "brains were all over the place". He felt that this was the reason why he had survived his accident and it gave his life some meaning. He thought that the IO would visit the firm and see that everything was fine and would go away and then they would reverse all the entries that the First Respondent had made and sort out the replacement funds. As to why he had not just "come clean" with the IO and explained the problems with the accounting department, the First Respondent testified that he was in a bizarre situation; he felt very withdrawn from reality and had no one to guide him. If the others had said "hold up your hands" he would not have done what he did. It was not until it had been suggested to him that he had taken the action and he had done it without thinking. He had been dishonest and he had known these actions were dishonest when he had undertaken them. To make it right, he had borrowed £58,000 from a friend of his brother's whom his family had reimbursed. He had personally secured a further loan and paid in another £5,000 after that. He admitted that the IO had been presented with false documents created overnight and that while he might have said to the IO that he wanted to be "open and honest" he had not been and he also confirmed that when given the opportunity to say whether there was any misuse of client funds he had replied "No".

77.19 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First Respondent. Whatever the First Respondent's state of mind at the time, his actions had clearly been designed to deceive; in giving evidence he stated that he hoped the IO would look at the accounts think they were fine and go away giving him the opportunity to put things right. The Tribunal considered that this conduct was, as the First Respondent admitted, dishonest by the standards of reasonable and honest people and again as admitted, that the First Respondent knew it to be so at the time. Accordingly this aspect of allegation of 1.1 was found proved with dishonesty.

Signing incorrect client reconciliations

77.20 For the Applicant it was submitted that the First Respondent had signed a number of client account reconciliations which he knew to be incorrect because they did not reflect Mr H's missing funds and further a number of them were backdated having all been signed at the same time in December 2010. Mr Moreton submitted that the client account reconciliation for the period ending 31 March 2010 showed zero differences but his understanding of the First Respondent's witness statement was that the March account was not resolved until much later in 2010 but the reconciliation was dated 13 April 2010. The client account reconciliation signed off by the First Respondent on 2 September 2010 for the period ended 30 April 2010 showed a three-pence difference; for the period ended 31 May 2010 again a three pence difference and on 6 September 2010 he signed off two further client account reconciliations for the period ended 30

June and 31 July 2010 both of which showed differences of three pence. Mr Moreton referred the Tribunal to the monies paid in by way of borrowing shown as "Singh+sohal" when office account was overdrawn on 27 October 2010 and the payment in of a subsequent loan. On 10 November 2010, the First Respondent signed the client account reconciliation as at 31 October 2010 again showing a three pence difference. Meanwhile the Osprey transactions continued in respect of bills 864 and 880 as set out in the FI Report. A number were made and undone on 28 and 30 November 2010. The former related to bill 880 and the VAT on the bill and each entry showed for one minute. The latter five entries made on 28 November and removed on 30 November related to bills 864 and 880. References to bills 759, 864 and 880 were finally removed on the night of 10/11 January 2011. On 8 December 2010, the First Respondent signed the reconciliation for the period ending 30 November 2010 again showing the three pence difference and not reflecting the 49 debit balances totalling £18,910.99. That reconciliation was presented to the IO when he attended the offices. The 31 December reconciliation signed on 14 January 2011 showed a difference of £1,852.28 and the January reconciliation signed on 8 February 2011 again showed the three pence difference.

77.21 The First Respondent gave evidence about his efforts to resolve the chaos in the accounts which he had discovered upon his return from sick leave in July 2010. He relied on the witness statements of Ms DJ and Ms JB about the state of the accounts and the magnitude of the task as well as the work that had been done. He denied that he had dishonestly signed these statements rather that he had merely signed what was put in front of him and that he had produced them to the IO.

77.22 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Tribunal was satisfied that the First Respondent and staff had made a genuine effort to sort out the chaos in the accounts, to close out the months one by one and had then signed reconciliations many of them at the same time in December 2010. the First Respondent admitted that the dates were false but the Tribunal was not satisfied to the required standard that honest and reasonable people would consider that what he had done in the particular circumstances was dishonest and the Tribunal did not find that he had considered it to be dishonest. Rather what he had done was part of his honest efforts to put matters right. The Tribunal did not find this aspect of allegation 1.1 to have been proved to the required standard.

<u>Summary of Tribunal's findings in respect of allegation 1.1</u>

77.23 The Tribunal found three of the five aspects of matters covered by allegation 1.1 proved to the required standard with dishonesty, indeed they had been admitted by the First Respondent. The Tribunal found proved that by his conduct in these three aspects of the allegation, the First Respondent had acted in a way which was likely to compromise or impair his integrity contrary to Rule 1.02 of the Code. The Tribunal found that allegation 1.1 was proved with dishonesty.

78. **Allegation 1.2: That he behaved in a way that was likely to diminish the trust the public places in him as a solicitor or the legal profession, in breach of Rule 1.06 of the Code;**

78.1 For the Applicant, it was submitted that by the same conduct which gave rise to allegation 1.1, the First Respondent had breached Rule 1.06 of the Code including by making improper alterations to the firm's books of account on 10/11 January 2011.

78.2 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First Respondent. The Tribunal was satisfied that by the conduct which it had found proved against him under allegation 1.1 including his dishonesty, the First Respondent had acted in a way that was likely to diminish the trust public placed in him as a solicitor or the legal profession in breach of Rule 1.06 of the Code and found that allegation 1.2 was proved, indeed it was admitted.

79. **Allegation 1.3: That he failed to act in a client's best interests contrary to Rule 1.04 of the Code;**

79.1 For the Applicant, Mr Moreton relied on the history of the First Respondent's dealings in respect of the client Mr H from the time that he became aware of the shortage on his matter in about August 2010 including that the money which he had raised by way of a loan from his father had not been applied to deal with the shortage but instead had been absorbed into office account which was in overdraft. It was not until 23 February 2011 that the missing monies were replaced by means of a loan from friends of the First Respondent's brother. Mr H's funds had been taken off deposit on 26 February 2010 and the firm had had the benefit of the entirety of his funds for almost eight months but the replacement monies did not include any amount in lieu of interest.

79.2 The First Respondent admitted this allegation and based on his admission and the evidence, including the oral evidence and the submissions for the Applicant, the Tribunal found allegation 1.3 to have been proved.

Allegations against the First and Second Respondents

80. **Allegation 1.4: That they failed to act in clients' best interests, contrary to Rule 1.04 of the Code;**

80.1 For the Applicant, Mr Moreton relied on transfers from client account by means of 79 bills each dated 5 March 2010 totalling £23,048.50 which did not appear to be genuine (as described in the background to this judgment). They created a shortage of in excess of £20,000. The First and Second Respondents admitted allegation 1.4.

80.2 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

80.3 In respect of the First Respondent, the Tribunal found allegation 1.4 proved.

80.4 In respect of the Second Respondent, the Tribunal found allegation 1.4 proved.

81. **Allegation 1.5: That they failed to ensure compliance with the Solicitors Accounts Rules 1998 ("the 1998 Rules") in breach of Rule 6 of those Rules;**

81.1 For the Applicant, Mr Moreton relied on the IO's finding that the books of account were not in compliance with the SAR 1998 as set out in the Rule 5 Statement and summarised in the background to this judgment including that the improper transfer of Mr H's money had created a shortage of £58,164.25 on client account; that there was a further apparent shortage of £23,048.50 relating to the 79 improper bills. Also the Respondents signed otherwise incomplete client bank account cheques and provided their bank cards and passwords to staff thereby enabling transfers of client funds via the internet without specific authority. The First and Second Respondents admitted allegation 1.5.

81.2 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

81.3 In respect of the First Respondent, the Tribunal found allegation 1.5 proved.

81.4 In respect of the Second Respondent, the Tribunal found allegation 1.5 proved.

82. **Allegation 1.6: That they failed to rectify breaches of the 1998 Rules promptly as required by Rule 7 of those Rules;**

82.1 For the Applicant, Mr Moreton relied on the Respondents being made aware on 23 February 2011 of the potential client account shortage arising out of the improper transfers of £20,000 and their failure to replace the funds. On 10 May 2011, the Second Respondent emailed the IO advising that they hoped to "have the funding in before the end of May…" By letter dated 17 June 2011, Richard Nelson LLP responded on behalf of both the First and Second Respondents. It was apparent from the letter that the shortage of £23,048.50 had not been replaced. Mr Moreton also relied on the time taken to rectify the shortage created by the improper transfer of Mr H's funds.

82.2 The First Respondent testified that once his father had agreed to help with a loan of £55,000, he had asked Ms DJ how to pay in the money as they might need to rectify shortfalls. She had said that it was capital being introduced and had to be paid into office account. On the day that the money was paid in, the First Respondent had not been aware of the extent of the office account overdraft, around £68,000. The bank had been quite flexible around the overdraft. If it went over the limit, the firm got it down quite quickly. The Respondent had a completely false view of the position at that time. He had thought that the firm was completely up-to-date with its accounting as at April 2010 but bills had been double transferred which gave the illusion of a bumper month. The First and Second Respondents admitted allegation 1.6.

82.3 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

82.4 In respect of the First Respondent, the Tribunal found allegation 1.6 proved.

82.5 In respect of the Second Respondent, the Tribunal found allegation 1.6 proved.

83. **Allegation 1.7: That they failed to provide clients, or the paying party, with bills of costs or other written notification of costs incurred, contrary to Rule 19(2) of the 1998 Rules;**

83.1 For the Applicant, Mr Moreton relied on the evidence of the 79 copy bills noted by the IO, each dated 5 March 2010 totalling £23,048.50 which the Respondents later reversed when the bills were draw to their attention.

83.2 The First Respondent said in his statement that a slight confusion occurred regarding these transactions. He had no knowledge of them whatsoever until the IO asked the Respondents to look at them. The First and Second Respondents admitted allegation 1.7.

83.3 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

83.4 In respect of the First Respondent, the Tribunal found allegation 1.7 proved.

83.5 In respect of the Second Respondent, the Tribunal found allegation 1.7 proved.

84. **Allegation 1.8: That they permitted withdrawals of money from client account other than in accordance with Rule 23, Note (ii) of the 1998 Rules;**

84.1 For the Applicant, Mr Moreton relied on the Respondents signing incomplete client bank account cheques and providing security details to staff enabling client funds to be transferred via the internet without specific authority.

84.2 The First Respondent confirmed in giving evidence that non-qualified staff could conduct transfers of money. Transactions had to continue in the Respondents' absence. Ms PJ worked part time and usually took Friday off so if he was to be out on Friday he would leave his bank card and password with Ms JM. The First and Second Respondents admitted allegation 1.8.

84.3 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

84.4 In respect of the First Respondent, the Tribunal found allegation 1.8 proved.

84.5 In respect of the Second Respondent, the Tribunal found allegation 1.8 proved.

85. **Allegation 1.9: That they failed to appropriately record all dealings with client money in accordance with Rule 32(2) of the 1998 Rules;**

85.1 For the Applicant, Mr Moreton relied on the FI Report which detailed the issues with the books of account and on the client ledger account printout obtained from the firm's accounting system by the IO on 10 February 2011 which showed that the system failed to record accurately dealings with client money. The First and Second Respondents admitted allegation 1.9.

85.2 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

85.3 In respect of the First Respondent, the Tribunal found allegation 1.9 proved.

85.4 In respect of the Second Respondent, the Tribunal found allegation 1.9 proved.

86. **Allegation 1.10: That they failed to carry out reconciliations as required by Rule 32(7) of the 1998 Rules.**

86.1 For the Applicant, Mr Moreton relied on the fact that a client account reconciliation as at 30 November 2010 did not reflect the existence of 49 debit balances of various amounts ranging from £0.05 to £2,307 and totalling £18,910.99; client account reconciliations for the period from April 2010 had been signed by the First Respondent despite his being aware of a shortage not shown by the books of account in the matter of Mr H; and client account reconciliations were not undertaken on a timely basis.

86.2 The First Respondent testified that the client account reconciliations which he had provided to the IO had not been signed by him on the dates that they purported to be. They did not get the system up to date until December 2010. Once they had got past April 2010, they printed out the April accounts and he signed the reconciliation. The First Respondent agreed that he had falsified the dates. The April, May June and July reconciliations had all been signed on the same date. The August reconciliation had also been signed in December 2010. The First Respondent maintained that the reconciliations were accurate regarding the amounts of money that were there as recorded on the system by Ms DJ. The reconciliations had been printed out and put in front of him. The First and Second Respondents admitted allegation 1.10.

86.3 The Tribunal considered the evidence including the oral evidence, the submissions for the Applicant and the admissions of the First and Second Respondents.

86.4 In respect of the First Respondent, the Tribunal found allegation 1.10 proved.

86.5 In respect of the Second Respondent, the Tribunal found allegation 1.10 proved.

Previous disciplinary matters

87. None, in respect of either the First or Second Respondent.

Mitigation

<u>First Respondent</u>

88. For the First Respondent, Mr Jackson referred to the testimonials including those submitted by his family and 15 other people; a lot more could have been obtained. It was accepted that the breaches which he had committed were serious individually and more so cumulatively and the most serious was dishonestly forging the SBA letter and the steps that he dishonestly took to hide from the IO the transfers from client account to office account in respect of Mr H's funds. There was also systematic failure to

comply with the SAR 1998. With hindsight the First Respondent was ill-prepared to take over a firm. There was rapid expansion before he made sure he had the basis right and that staff could comply with the rules and regulations. He had placed far too much faith in Ms JM and when the other practices were acquired he asked her if she could manage, when it was plain she could not and did not. The First Respondent had his mind on other things. His empire was built on shaky foundations and was bound to end in tears. It all came to a head at the worst time in his life when the psychiatric report showed that he was as poorly equipped as he could be to deal with problems that came his way. Mr Jackson submitted that there were exceptional circumstances here and that an indefinite suspension might be imposed instead of strike off. Even the most serious breaches could be committed in more or less serious ways. In respect of Mr H's money, the First Respondent had sought the Applicant's guidance but had not applied it as he should. After his accident, he came back to work far too quickly when he was physically and mentally unwell. Mr Jackson submitted that post-traumatic stress disorder was a major contributor to the impairment of the First Respondent's functioning as the psychiatric report showed and all the instances of dishonesty arose after he was injured. The First Respondent was decent and hard-working but had made a string of foolish, naive and dishonest decisions. He had invested his life into the firm. When he had realised that Mr H's funds had gone, he hoped that he could find the money and transfer it back. He had tried to restructure the accounts staff and borrow money from his father. He created the forged letter to get Mr B off his back. He then made more foolish and naive mistakes resorting to dishonesty thereafter. He should have come clean with the IO and said that he was not responsible for the transfers in the first place. However appalling the mistakes in the accounts were, they were not his responsibility. Instead he decided to be dishonest. Mr Jackson submitted that the impairment of his function affected his ability to make the commonsense rational decisions that he was capable of and normally would have made as when he made his admissions promptly at interview and before the Tribunal. His dishonesty was not at the top of the scale and all the money had been repaid through family and friends to the amount of £113,000 to make up for the accounting blunders of others. The First Respondent and his family had paid a heavy penalty. The Tribunal was asked to bear in mind the pressure he had been under; he lacked support and guidance. The First Respondent testified about his symptoms and treatment. He had so badly wanted to have a reason to have survived the accident. He felt that he was looking through a veil at the time of these events. The First Respondent admitted that he had been naive and ridiculously stupid to trust people and take them at their word. It was never his intention to cause any problems or defraud anyone. His motivation had been to put things right. As to his financial position, the First Respondent testified that he had not worked since he left the firm in October 2011 and had no income. His tax return for 2011/2012 showed earnings before tax from the firm as £3,325. He had applied for numerous jobs and would do anything. The First Respondent had married in February 2011 and they lived with his parents. He had no income and was dependent on his wife and family for support. His personal financial statement showed his credit card debts and loans as well as the significant amount of money owed to his father in respect of money introduced into the firm. His father was funding his representation.

Second Respondent

89. For the Second Respondent, Ms Brooks reminded the Tribunal that he had been admitted in 2003 and until 2008 worked as an employed solicitor in private practice. The First and Second Respondents met at university and became friends. In 2008 the First Respondent suggested that they acquire the firm and go into business together. They had acquired a number of high street practices in a short space of time. There had been quick expansion which neither of them had coped with very well. The Second Respondent had no practice management experience. The First and Second Respondent had distinct roles in the firm. The First Respondent was responsible for the accounts department based at one of the Swansea offices while the Second Respondent was the fee earner who looked after marketing, networking and the practice which they had taken over in Cardiff. The Second Respondent believed naïvely that the accounts department was being run properly under the control of the First Respondent and the experienced accounts assistants who were there at the time. The Second Respondent accepted with hindsight that he had made a serious mistake and was too trusting, naive and inexperienced to become a partner when he did. He accepted that serious breaches had occurred and he admitted them on the basis that he had no knowledge of them whatsoever and the first he had known about them was when they were raised in meetings with the IO as the FI Report confirmed. The First Respondent told the IO that he had kept his actions regarding the SBA letter concealed from the Second Respondent because of personal problems and felt he could not talk to anyone. The Tribunal had heard in evidence how accounting records had been changed to cover improper transfers and Ms Brooks submitted that even if the Second Respondent had played a more active role, he might never have had a true picture of what was going on in the firm. If he had, he might have been more involved and played a bigger part. It was significant that while the Tribunal had heard about the First Respondent's problems, there had been no mention of the Second Respondent. The First Respondent sought advice of senior solicitors and others but not from him. The Second Respondent had learnt harsh lessons as his personal financial statement showed. He had also put in some of his own money which he had borrowed to make up the shortfall. His parents were supporting him financially and he owed them a substantial amount of money. His life had been on hold since he had left the firm in February 2012 which had been at his own decision. He had felt that in view of the pressures of the investigation and these ongoing proceedings that he could not continue as a partner and manager of the practice and it had been acquired by another solicitor. He had received no financial benefit from passing the firm over. The Second Respondent now worked as a football agent and he required a practising certificate to do that work. He was in effect a Football Association registered lawyer and needed to be able to continue to practice for that role. Ms Brooks referred to the Times Law report of the case of Weston. It recorded:

> "The striking off of any solicitor found to have acted dishonestly in relation to clients' monies had now to be seen as all but automatic. The position of a partner guilty of non-compliance with the accounts rules but without dishonesty would depend on the circumstances of the case."

Ms Brooks referred the Tribunal to the Second Respondent's personal financial statement and asked the Tribunal to bear in mind that the Second Respondent was in a parlous financial state including a debt to HMRC in the amount of £60,000. Ms

Brooks asked the Tribunal to make an order reflecting the agreement between the Applicant and the Second Respondent as fairly reflecting the Second Respondent's culpability.

Sanction

First Respondent

90. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation made by Mr Jackson, the glowing testimonials submitted and the authorities to which it had been referred. In Sharma, Mr Justice Coulson stated:

> "... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary, such as Burrowes or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes) and whether it had an adverse effect on others…"

The Tribunal had been asked to consider whether this was an exceptional case for the purposes of sanction and rather than striking off the First Respondent to impose an indefinite suspension. In its Guidance Note on Sanctions, the Tribunal set out that indefinite suspension might be imposed in circumstances that included where the seriousness of the misconduct was so high that striking off was the most appropriate sanction but the presence of truly compelling and exceptional personal mitigation made that course of action unjust. The Tribunal considered that these were very serious matters, too serious for any sanction but either strike off or suspension. The First Respondent had admitted dishonestly forging a letter and creating a significant number of false accounting entries and bills in order to conceal the disappearance of client money. The Tribunal had taken into account that the First Respondent was not found to have had any hand in that disappearance and that he had not been motivated by personal gain, had ultimately made good the loss which he had been seeking to conceal and that he had made admissions to the Applicant and to the Tribunal. The Tribunal had borne in mind that he had suffered a serious road accident in the months preceding his misconduct. In respect of the medical evidence, at most the Tribunal considered that it could attach weight to it as follows, that it could take account of a conclusion in the report that the First Respondent gave a history that was consistent with the development of post-traumatic stress disorder. However the First Respondent frankly admitted that he knew what he had done to be dishonest. He had been found to have been dishonest in a way which was deliberate and calculated. His dishonesty was not momentary. There were two distinct instances of dishonesty which although related to the same problem, occurred some time apart. The First Respondent knew or reasonably ought to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the profession. He had admitted that he knew what he was doing was dishonest. He also admitted having made a stream of foolish and naive decisions and things had gone dramatically wrong. His actions had placed client money at serious risk. The Tribunal did not consider that this case fell into the residual category. For the protection of the public and the reputation

of the profession, the Tribunal considered that the First Respondent must be struck off the Roll.

Second Respondent

91. The Tribunal had regard to its Guidance Note on Sanctions and the mitigation made by Ms Brooks. The Second Respondent had hardly been mentioned during the proceedings and there was little reference to him in the documentation. Having bought the firm, he seemed to have little if any involvement in the accounting function, instead he concentrated on marketing, networking and fee earning. It appeared that the First Respondent did not consult him but looked to others for advice. The Second Respondent admitted all the allegations against him and accepted that he could have taken a more active interest in the management of the fast expanding organisation. He had agreed a proposal from the Applicant that he be fined. Having regard to the Second Respondent's limited involvement in the running of the firm and that in the main he was involved on a strict liability basis, the Tribunal considered that a fine would be appropriate and the amount proposed £3,000 seemed appropriate.

Costs

92. For the Applicant, Mr Moreton sought an order for costs in the amount of £53,074.57, of which the Second Respondent had agreed to pay a contribution in the sum of £18,235. Mr Moreton submitted that he had done his best to arrive at an apportionment of costs between the two Respondents on a two thirds/one third basis respectively but submitted that while the Second Respondent was not involved in the accounting function both were liable as Principals. Mr Jackson submitted that the total amount sought was very high bearing in mind that the First Respondent had made admissions as soon as he was asked in interview. The Tribunal summarily assessed costs in the sum of £52,000 in favour of the Applicant, of which the First Respondent was to be liable for £34,000 and the Second Respondent for £18,000. Having regard to the poor financial circumstances of the First Respondent, the Tribunal determined that the costs order should not be enforced against him without its leave.

Statement of Full Orders

93. The Tribunal Ordered that the Respondent, Paul Sohal, 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 £34,000.00 such costs not to be forced without leave of the Tribunal.

94. The Tribunal Ordered that the Respondent, REDACTED, Solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00.

Dated this 15th day of April 2013
On behalf of the Tribunal

R. Hegarty
Chairman