SOLICITORS DISCIPLINARY TRIBUNAL

<u>IN THE MATTER OF THE SOLICITORS ACT 1974</u> <u>Case No. 11085-2012</u>

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MALCOLM RONALD HANNAFORD Respondent

Before:

Mr R. Nicholas (in the chair)
Mr J. P. Davies
Mr M. Palayiwa

Date of Hearing: 20 January 2015

Appearances

Ms Katrina Wingfield, solicitor, of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, instructed by Mr Mark Barnett, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN, for the Applicant.

The Respondent, Mr Malcolm Ronald Hannaford, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, contained in a Rule 5 Statement dated 1 November 2012, were that:

1.1 Contrary to Rule 35 of the Solicitors Accounts Rules 1998 ("SAR 1998") and, with effect from 6 October 2011 Rule 32 of the SRA Accounts Rules 2011 ("AR 2011"), he failed to deliver to the SRA promptly or at all accountant's reports for the periods ending 31 March 2010, 31 March 2011 and 31 March 2012.

1.2 Contrary to Principle 6 and/or Principle 7 of the SRA Code of Conduct 2011 ("the 2011 Code"), he failed to meet the expectation of a SRA Adjudication Panel Sub-Committee given in a decision dated 12 April 2012.

2. The further allegations made against the Respondent, contained in a Rule 7 Statement dated 14 November 2013, were that:

2.1 He acted in breach of the AR 2011 and (to the extent that the relevant conduct took place before 6 October 2011) the SAR 1998 in that:

2.1.1 He failed to use each client's money for that client's matters only, contrary to Rule 1.2(c) AR 2011;

2.1.2 He failed to establish and maintain proper accounting systems, and proper internal controls over those systems, so as to ensure compliance with the accounts rules, contrary to Rule 1(e) SAR 1998 and/or 1.2(e) AR 2011;

2.1.3 He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, contrary to Rule 1(f) SAR 1998 and/or 1.2(f) AR 2011;

2.1.4 He failed to remedy breaches of the accounts rules promptly upon discovery, contrary to Rule 7 SAR 1998 and/or 7 AR 2011;

2.1.5 He made round sum withdrawals from client account on account of costs, contrary to Rule 17.7 AR 2011;

2.1.6 He withdrew money from client account other than in accordance with Rule 22(1) SAR 1998 and Rule 20.1 AR 2011, contrary to those rules;

2.1.7 He withdrew funds in respect of costs due to him other than in accordance with Rule 22(3) SAR 1998 and Rule 20.3 AR 2011, contrary to those rules;

2.1.8 He failed to ensure that money withdrawn in relation to a particular client or trust from a general client account did not exceed the money held on behalf of that client or trust in all his general client accounts, contrary to Rule 20.6 AR 2011;

2.1.9 He failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him and office money relating to client matters, contrary to Rule 32(1) SAR 1998 and 29.1 AR 2011;

2.1.10 He failed to record appropriately all dealings with client money in (i) a client cash account or in a record of sums transferred from one ledger account to another and (ii) on the client side of a separate client ledger account for each client, contrary to Rule 32(2) SAR 1998 and 29.2 AR 2011;

2.1.11 He failed to carry out reconciliations of his client account contrary to Rule 32(7) SAR 1998 and 29.12 AR 2011.

2.2 He acted in breach of the 2011 Code and (to the extent that the relevant conduct took place before 6 October 2011) the Solicitors Code of Conduct 2007 ("the 2007 Code") in that:

2.2.1 He failed to act with integrity, contrary to Rule 1.02 of the 2007 Code and/or Principle 2 of the 2011 Code;

2.2.2 He failed to act in clients' best interests, contrary to Rule 1.04 of the 2007 Code and/or Principle 4 of the 2011 Code;

2.2.3 He failed to provide a proper standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or Principle 5 of the 2011 Code;

2.2.4 He failed to behave in such a way as to maintain the trust the public placed in him and the legal profession, contrary to Rule 1.06 of the 2007 Code and/or Principle 6 of the 2011 Code;

2.2.5 He failed to protect client money and assets, contrary to Principle 10 of the 2011 Code.

2.3 For the reasons set out in relation to: a) Mr A/ 37 A High Street; b) the cash shortage on client account and improper use of clients' funds; c) the improper application of money belonging to one client in settlement of a financial obligation on the part of another client; and d) the explanation given by the Respondent for his failure to file accountants' reports it was alleged that the Respondent's conduct was dishonest, but the Tribunal could find the relevant allegations proved without finding dishonesty.

Documents

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

Applicant:-

- Application dated 1 November 2012
- Rule 5 Statement, with exhibit "MB/1", dated 1 November 2012
- Rule 7 Statement, with exhibit "MB/2", dated 14 November 2013
- Bundle of copies of extracts from SAR 1998, AR 2011, 2007 and 2011 Code

- Schedule of payments and claims on Compensation Fund
- Chronology of transactions and payments, January 2015
- Chronology of proceedings, January 2015
- Letter Penningtons Manches LLP to Tribunal 3 December 2014
- Copy letter Penningtons Manches LLP to Respondent 3 December 2014
- Copy case report R v Hayward and others [2001] EWCA Crim 168 ("Hayward")
- Copy case report Tait v Royal College of Veterinary Surgeons 2003 WL 1822941 ("Tait")

Respondent:

- Email Respondent to Tribunal 28 January 2014, indicating all allegations disputed
- Emails from Respondent to Tribunal 14 and 15 July 2014 re adjournment of hearing
- Email from Respondent to Tribunal 29 July 2014
- Letter from GP dated 21 July 2014
- Reply and First Statement of Respondent, filed 3 August 2014

Preliminary Matter – Proceeding in the absence of the Respondent

4. The Tribunal noted that the Respondent was not present or represented and so considered as a preliminary matter whether it should proceed with the hearing in his absence. The Tribunal noted that the Clerk to the Tribunal had enquired of office staff shortly before the hearing if any message (by post, telephone or email) had been received from the Respondent and had been informed that there had been no communication from him.

5. Ms Wingfield for the Applicant told the Tribunal that her firm had written to the Respondent since the last Case Management Hearing ("CMH") (on 17 December 2014) with the first version of the chronology of transactions and payments, which had subsequently been updated and that had also been sent to the Respondent. At the CMH on 17 December 2014 the Tribunal had anticipated that the Respondent may not attend and so had asked Ms Wingfield or her firm to contact the Respondent by telephone in the week or so before the hearing to enquire if he intended to attend the hearing. Ms Wingfield told the Tribunal that on Friday 16 January 2015 her colleague Mr Le Roux had tried the telephone numbers with which they had been provided by the Applicant. One of the mobile telephone numbers was "not recognised". Mr Le Roux had left messages on the Respondent's home number, on a voicemail service, on both the morning and afternoon of 16 January, reminding the Respondent of the hearing; there had been no response to those messages.

6. In response to a question from the Tribunal, Ms Wingfield told the Tribunal that the telephone numbers used had been obtained from the Respondent's last known letterhead and a mobile telephone number given to Mr Levy, the investigation officer, during the investigation in 2012. The email address used in communications with the Respondent was that from which he had sent his Reply and First Statement document

on 3 August 2014. There was nothing to suggest that the Respondent's home address had changed.

7. Ms Wingfield referred to the Chronology of Proceedings which she had prepared. These proceedings began in late 2012, at which point the allegations related to failure to file three accountants' reports. At about the same time, there was an investigation into the Respondent's practice which led to the production of a Forensic Investigation Report dated 21 November 2012 ("the FIR"). The Rule 7 Statement, based on the contents of the FIR, was lodged on 14 November 2013, as permitted by the Tribunal at a CMH on 24 October 2013.

8. The Tribunal had directed the Respondent to file and serve his response to the allegations by 9 January 2014 but he did not do so. A CMH was held on 29 January 2014, which the Respondent did not attend. However, he sent an email to the Tribunal on 28 January 2014 in which he said he would not be able to attend and would not be represented. The Respondent had indicated that he did not have all of the details of the claims against him and did not know on which documents the Applicant would rely; he indicated that he denied all of the allegations. The Tribunal's Memorandum of that CMH recorded that the Rule 5 and 7 Statements (and exhibits) set out the totality of the matters alleged against the Respondent. The Respondent was directed to file and serve his response to the allegations by 19 February 2014; the case was to be listed for substantive hearing on the first available dates after 9 April 2014, with a time estimate of 3 days. The notice of hearing, due to take place from 14 to 16 July 2014, was sent to the Respondent on 7 February 2014.

9. On 19 February 2014 the Respondent sent an email to the Tribunal which stated,

> "I am in receipt of the final hearing date and of the last set of directions – thank you…
> The case papers in this matter are locked in a secure loft room within the house. Unbelievably, the loft latch door has jammed and I cannot access the papers. I am therefore unable to lodge the formal defence document in accordance with the last set of directions. All I can do is to formally deny each and every allegation made against me by the SRA and put them strictly to proof…"

10. Ms Wingfield told the Tribunal that there had been correspondence with the Respondent concerning disclosure of documents during May 2014 and in June 2014 Ms Wingfield's firm had enquired if the Respondent was going to file an answer to the allegations.

11. The Respondent applied on 14 July 2014, by email, to adjourn the substantive hearing due to begin that day as he said he was unwell. The Tribunal's Memorandum of the hearing(s) on 14 and 15 July 2014 set out in detail the steps taken at that point and the Tribunal's decision to permit an adjournment of the hearing, despite the absence of medical evidence and the Tribunal's indication in an email at 11.23am on 14 July 2014 that such evidence would be required. On adjourning the hearing, the Tribunal had directed that the Respondent should, by 4pm on 29 July 2014 "file at the Tribunal medical evidence in relation to his illness on 14/15 July 2014. This written evidence

must be from a suitable medical practitioner who has carried out an examination of the Respondent and should state the nature of the Respondent's illness and prognosis for recovery". Further, the Respondent was directed to file and serve his response to the allegation (and any witness statements) by 4pm on 5 August 2014 and the Memorandum (dated 23 July 2014) contained notice of the adjourned hearing, due to commence on Tuesday 20 January 2015 with a time estimate of three days.

12. On 29 July 2014 the Respondent sent an email to the Tribunal with a medical report. The email read:

> "In compliance with the last set of directions a doctor's report was sent to you first thing yesterday morning by first class post. You should therefore have received it today.
>
> The report is not in the form requested. By way of explanation, when I contacted the doctor I was informed that there were no appointments available for another week unless I was very seriously ill. By the time of my contact the bug had gone, so I could not claim that. Instead, I was told that a doctor would ring me, which she duly did. I explained the symptoms and I confirmed that the illness appeared to be over. She indicated that it was probably a gastro bug that normally went after 3 to 3 days. In the circumstances she would not offer me an appointment, but she agreed to write the letter that you now have. I am afraid that this is the best I could do."

The letter from the GP, at a surgery in Salisbury, was dated 21 July 2014 and read:

> "[The Respondent] reported via telephone on 21st July 2014 that he has had diarrhoea and vomiting from the Sunday previously until the Wednesday of last week.
>
> He now says he is well and the symptoms have stopped.
>
> He did not seek medical attention prior to this time so I can only reiterate what he has told me."

13. Thereafter, the Respondent had filed a response by the due date and had requested further documents from the Applicant. Ms Wingfield told the Tribunal that her firm had provided further documents to the Respondent, as he had requested, on 22 August, 13 October and 21 November 2014. The Respondent had not acknowledged receipt of these documents. Ms Wingfield told the Tribunal that the volume of documents provided since August 2014 was not great and that the items had been provided both by first class post and by email; the total volume would not fill a lever arch file. Ms Wingfield told the Tribunal that the documents were copies of documents supplied to the Compensation Fund in connection with claims on the fund.

14. In response to a question from the Tribunal, Ms Wingfield stated that the envelopes containing the documents had not been returned to her firm; there had been no email confirmation that the scanned copies had been received. The documents had been provided in response to the Respondent's request.

15. Mr Wingfield referred to the CMH which took place on 24 November 2014. The directions made on 15 July 2014 provided that there should be a CMH in the autumn of 2014 to review compliance with the directions, to ensure that the matter was properly prepared for the hearing in January 2015. The Respondent sent an email to the Tribunal on 23 November 2014, referring to correspondence with Ms Wingfield. The Respondent stated that he would not attend the hearing on 24 November. He asked that Ms Wingfield should disclose the correspondence between the parties since the last hearing (which Ms Wingfield did), stated that he relied on the answer he had filed and served in accordance with the last directions, referred to there being documents which the Applicant had not yet disclosed and stated,

> "I will be filing and serving further statements as soon as possible. I do not see that any further directions are needed in this respect since the last set of directions already deals with this."

16. The Memorandum of that hearing, dated 26 November 2014, recorded that the Respondent had not given any indication of when he proposed to submit further statements and that he had not sought the Tribunal's permission to adduce evidence at this late stage. The Memorandum also recorded that the Tribunal was satisfied that the Applicant had done all that it could to provide the documents requested by the Respondent. Without giving permission to the Respondent to adduce further evidence, the Tribunal directed that the Respondent should file and serve any such statements by 4pm on 12 December 2014. A further CMH was listed for 17 December 2014.

17. Ms Wingfield told the Tribunal that further documents were sent to the Respondent on 3 December 2014. On the same date, Ms Wingfield's firm had written to the Respondent explaining that papers relating to three client matters referred to by the Respondent had been returned to the clients and so were not within the possession or control of the Applicant; copies of the other files requested had been provided in August and October 2014. At the CMH on 17 December 2014 the Applicant had submitted that it had done all it could to provide the disclosure requested by the Respondent. The Tribunal had accepted this, and had also directed that the chronology of transactions document produced at that hearing should be served on the Respondent. It had directed the Applicant's solicitors to endeavour to contact the Respondent in the period prior to the hearing.

18. Ms Wingfield submitted that in the light of all of the above, there could be no doubt that the Respondent was aware of the hearing date. He had been sent notice of the hearing. The hearing dates were stated in the Memorandum of the hearing(s) on 14/15 July 2014 and in his Reply and First Statement of 3 August 2014 the Respondent had stated, "This document is being filed in compliance with the directions given by the SDT at the last hearing". Ms Wingfield submitted that the Applicant had provided all of the disclosure it could and had done so in good time before the hearing.

19. Ms Wingfield submitted that the matters in issue in the case were serious, and included allegations of dishonesty. Although the Respondent was not practising, it was in the public interest for this case to be resolved without further delay. Ms Wingfield submitted that the Respondent had voluntarily absented himself from the hearing.

20. The Tribunal had considered the factors to be considered in determining whether or not to proceed in the absence of a Respondent in the course of the hearing on 15 July 2014. The judicial guidance on this was set out in the Hayward case, as approved on appeal by the House of Lords (under the name R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 ("Jones"). At paragraph 22 of the Hayward decision, which concerned a criminal matter, it was made clear that in general a defendant had a right to be present at his trial. This right could be waived. The trial judge had a discretion as to whether a trial should take place or continue in the absence of a defendant but,

> "That discretion must be exercised with great care and it (is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if a defendant is unrepresented.
> In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must take into account all of the circumstances of the case."

The judgment then set out 11 factors which should be considered.

21. Ms Wingfield submitted that not all of the 11 factors were relevant in this case – some of them referred specifically to criminal cases. The most relevant were (using the numbering in the Hayward case):

(i) The nature and circumstances of the defendant's behaviour in absenting himself from the trial… and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be legally represented at the trial or has, by his conduct, waived his right to be represented;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) the risk of the jury (or Tribunal) reaching an improper conclusion about the absence of the defendant;

(viii) the seriousness of the offence, which affects defendant, victim and public;

(ix) the general public interest… that a trial should take place within a reasonable time of the events to which it relates.

22. Ms Wingfield submitted that the Respondent had only partially engaged with the proceedings. He had given no indication that he wished to be legally represented. Taking into account all of the circumstances, the Tribunal could conclude that the Respondent had voluntarily absented himself and could proceed to hear the case.

The Tribunal's Decision

23. The Tribunal noted that under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 it could hear a case in the absence of a Respondent if satisfied that notice of the hearing had been served on the Respondent. The Tribunal was sure that the Respondent was fully aware of the proceedings and had been served with notice of this hearing date on or about 16 July 2014; that was confirmed in the Memorandum of the hearing(s) of 14/15 July 2014 which was dated 23 July 2014, to which the Respondent had referred in his First Reply and Statement of 3 August 2014. There was nothing to indicate that the Respondent had not received all the communications from the Tribunal and/or the Applicant's solicitors; he had not notified the Tribunal of any change of address or email address.

24. The Tribunal recognised that it had to act judicially in making any decision to proceed in the absence of a Respondent. The judicial guidance on this was set out in the Hayward and Jones cases, which had been applied to disciplinary proceedings in the matter of Tait.

25. The Tribunal noted the many occasions on which the Applicant's solicitors had been in contact with the Respondent, and that the Respondent had been in contact with the solicitors and with the Tribunal from time to time about the case. The Respondent had not acknowledged the three bundles of additional documents provided by the Applicant since July 2014. The Respondent had emailed the Tribunal on previous occasions to indicate that he would not attend, but had not been in contact with the Tribunal in relation to this hearing. The Respondent had not suggested at any point that the hearing date was inconvenient for him.

26. The Tribunal took into account the Respondent's failure to comply with its directions. The only order with which he had complied was that made on 15 July 2014 which required him to file his response to the allegations by 5 August 2014. Even so, the "Reply and First Statement" was stated by the Respondent to be a "first statement" and "initial indication" of the matters in dispute. It was "not intended to be a comprehensive rebuttal of the SRA's case" and "was likely to be modified in due course". The Respondent went on to say that "It is also certain that the Respondent will file a comprehensive statement together with supporting statements from other witnesses." Since 3 August 2014 the Respondent had not given any indication of when he proposed to file those additional documents, nor had he asked the Tribunal for directions concerning disclosure or any other matters, despite there being two CMHs since August 2014.

27. The Tribunal also noted the Respondent's failure to comply properly with the direction concerning medical evidence, given on 15 July 2009. According to the information provided by the Respondent and his GP, the Respondent's first contact with a medical practitioner concerning his illness was on 21 July 2014, a week after he apparently became ill.

28. The Tribunal considered the factors set out in the Hayward case, as relevant to this case. The Tribunal was sure that the Respondent had deliberately and voluntarily absented himself from the hearing and had therefore plainly waived his right to appear. In the light of the history of this matter, it was clear that an adjournment would not lead to the Respondent attending at some later date and there was nothing to indicate that the Respondent intended to obtain legal representation. It was not known for how long the hearing would be adjourned, if it had to be adjourned, but it was unlikely that a three day hearing could be listed to take place before the summer of 2015.

29. The Tribunal noted that any Respondent would be at some disadvantage in not being able to give his account of events. However, the Respondent had had plenty of opportunity to submit further evidence and statements and/or explain why he could not do so and had failed to take any steps to do so. Any disadvantage to the Respondent had therefore been caused by or contributed to by the Respondent.

30. The Tribunal did not consider factor (vii) in the Hayward case to be relevant to this matter. What was highly relevant was that the allegations were serious, including allegations of dishonesty. On the face of the papers before the Tribunal – on which it had not reached any conclusions – it appeared that there had been a loss to the profession by payments out of the Compensation Fund of over half a million pounds. It was not in the public interest to delay further the hearing, even though the Respondent was not a danger to the public as he did not hold a Practising Certificate.

31. The Tribunal proceeded carefully in reaching its conclusions. The Respondent had deliberately absented himself from the hearing, of which he was well aware and it was fair, proportionate and in the public interest to proceed with the hearing on this occasion.

32. The Tribunal noted further that in the Hayward judgment it was stated,

> "If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps… to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits…"

The Tribunal therefore determined it could and would exercise appropriate care in the conduct of the hearing.

Factual Background

33. The Respondent was born in 1958 and was admitted as a solicitor in 1984. His name remained on the Roll of Solicitors but he did not hold a Practising Certificate at the date of the hearing.

34. At all material times, the Respondent practised on his own account as Hannafords, from his residential address in Salisbury, Wiltshire ("the Firm").

Allegations 1.1 and 1.2

35. The accountants' reports for the Respondent's Firm for the periods ending 31 March 2010, 31 March 2011 and 31 March 2012 should have been delivered to the SRA by 31 October 2010, 30 September 2011 and 30 September 2012 respectively. The due date for the period ending 31 March 2010 was extended by one month by a decision of an Adjudicator of the SRA made on 3 May 2011.

36. All three accountants' reports remained outstanding at the date of the hearing.

37. On 25 October 2011 the SRA wrote to the Respondent regarding the report for the period ending 31 March 2011; the Respondent was asked to forward the report "without delay". The Respondent was also given notice that the matter, "may shortly be referred to Regulatory Investigations, as standard procedure for all reports still outstanding over one month after the due date, and either an Adjudicator or an Adjudication Panel will consider your explanation when deciding on further action".

38. On 21 November 2011, the Regulatory Investigations section of the SRA wrote to the Respondent seeking his explanation for the overdue accountants' reports for the periods ending 31 March 2010 and 31 March 2011 within fourteen days. The Respondent was given a further warning, similar to that set out in paragraph 37 above.

39. The Respondent telephoned the SRA on 7 December 2012 and replied by letter dated 5 December 2011, received on 8 December 2011. In this letter he stated:

> "The problem in filing the accountant's report has been that we have been in dispute with our accountants over the fees previously charged by them in regard to the previous accountants report. That inevitably led to the delays in preparing the outstanding reports. This dispute has now been resolved and the two outstanding reports will be prepared as a priority. At the latest they will be sent to you by the end of January 2012. We deeply regret the delays in filing these reports and we fully appreciate the obligation upon us to file the reports within the time limits specified. We can only apologise and we will ensure that in future this does not occur again".

40. On 14 December 2011, the Regulatory Investigations section wrote to the Respondent acknowledging his letter of 5 December 2011. A report which would be considered by the Adjudicator was enclosed and the Respondent was invited to make representations within the next fourteen days. He did not do so.

41. On 17 January 2012 and Adjudicator found that the Respondent had failed to comply with Rule 32 of AR 2011 by his failure to deliver the accounts' reports for the years ending 31 March 2010 and 31 March 2011. The Adjudicator expected the Respondent to deliver both reports to the SRA by 31 January 2012, failing which she decided to refer his conduct to the Tribunal without further notice. If the Respondent complied with the expectation, the matter would be considered further under the SRA (Disciplinary Procedure) Rules 2011. The Respondent was notified of the Adjudicator's decision by letter of 17 January 2012.

42. Neither the hard copy nor the electronic versions of the letter of 17 January 2012 were received by the Respondent as they were inadvertently sent to incorrect addresses. A further letter was sent to the Respondent on 30 January 2012.

43. On receipt of that letter on 1 February 2012 the Respondent telephoned and spoke to the Caseworker dealing with this matter. The Respondent made the obvious point that the date by which the Adjudicator had expected him to file the accountants' report had passed. The Caseworker informed the Respondent that the Adjudicator's decision could not be varied, as the Caseworker did not have the authority to do so. The Respondent was invited to appeal the decision, which he said he was reluctant to do, but which he did do.

44. The Respondent's notice of appeal was dated 13 February 2012 and was received on 14 February 2012. The ground of appeal was "simply [to] ask that new dates be established for us to comply with the adjudication before any disciplinary action is taken".

45. The appeal was considered by a Panel of Adjudicators Sub-Committee on 12 April 2012. The Committee decided to allow the appeal in part. As the Respondent had not received the decision letter until 1 February 2012, which made it impossible for him to comply with the Adjudicator's decision of 17 January 2012, the Committee expected the Respondent to deliver the accountants' reports for his Firm for the years ending 31 March 2010 and 31 March 2011 within 28 days of the letter notifying him of their decision.

46. The Respondent was notified of this decision by letter dated 13 April 2012, sent to him at his Firm's postal address. The letter made it clear that compliance with the Committee's expectation was due by 11 May 2012, and that failure to do so on the part of the Respondent would result in the matter being passed to the SRA's Legal Directorate for formal disciplinary proceedings to be commenced against him.

47. The Respondent did not comply with the Committee's expectation by 11 May 2012 or any later date. At the time of the Rule 5 Statement there had been no further communication with the Respondent about this matter.

SRA Investigation

48. On 1 November 2012 an inspection of the books of account and other documents of the Respondent was commenced by two forensic investigation officers (FIOs) of the Applicant, Ms Taylor and Mr Levy. Mr Levy's forensic investigation report was dated 21 November 2012 ("the FI Report").

49. On 30 November 2012 a Panel of Adjudicators Sub-Committee decided to intervene into the Respondent's practice. On 11 December 2012, the sum of £344,353.49, which was the balance on the Firm's client account on that date, was transferred to the SRA as a result of the intervention.

50. On 31 January 2013 a copy of the FI Report was sent to the Respondent under cover of a letter seeking his comments on the matters in the report. The Respondent replied in a letter of 7 March 2013.

51. On 11 July 2013 an Authorised Officer of the SRA decided to refer the Respondent's conduct (in relation to the matters in the FI Report) to the Tribunal.

Alleged failure to maintain accounts

52. The matters in this section are relevant to allegations and matters at 2.1.2, 2.1.3, 2.1.4, 2.1.9, 2.1.10 and 2.1.11, together with 2.2.2, 2.2.4, 2.2.5 and 2.3.

53. The FI Report recorded that there were no books of account available for inspection by the FIOs. On 1 November 2012 the Respondent admitted to the FIOs that he had not kept any client ledgers or other books of account for at least two years. In an interview on 2 November the Respondent said that he had stopped doing the accounts due to pressure of work.

Alleged cash shortage on client account and improper use of clients' funds

54. The matters in this section are relevant to the allegations and matters at 2.1.1, 2.1.4, 2.1.6 and 2.1.8, together with 2.2.1, 2.2.2, 2.2.3 and 2.2.4.

55. As there were no client ledgers or other books of account, the Respondent was unable to provide the FIOs with details of his liabilities to clients. However, by referring to the Respondent's client account bank statements, the FIOs were able to calculate that the minimum liability to clients as at 30 September 2012 was £166,709.37. As at that date, there was only £27.89 in client account so there was a minimum cash shortage of £166,681.48.

56. This minimum liability to clients comprised:

Client	**Description**	**Sum due to client**
K/U	Balance due - lease	£2,157.99
Mr B (deceased)	Balance – life policy	£5,985.61
Mr and Mrs P	11 WP – balance on sale	£99,948.23
Ms W	30 B Road – balance on sale/purchase	£11,577.90
Mrs G (deceased)	Balance of estate	£47,039.64
	Minimum liability to clients	**£166,709.37**

57. Further details of these matters are set out below. The FI Report recorded the FIOs' conclusions that the causes of the shortfall were improper withdrawals/transfers from client account to office account. At the date of the decision to intervene, the shortfall had not been made good.

K/U – lease of 14/14a W Street

58. The Respondent acted for the landlords of the above property in respect of the assignment of a lease over the property by the tenant.

59. On 21 March 2012 the Respondent received a cheque for £11,570.68 from the new tenant's solicitors, representing six months' rent and the landlords' costs. On 26 March 2012, the Respondent's costs of £1,440 were paid out of client account. On 2 May 2012 a payment of £5,678.56 was made to the client, followed by a further payment of £2,294.13 on 18 May 2012.

60. There was no evidence of a further payment to or on behalf of the client, such that at 30 September 2012 a net balance of £2,157 was due to the client i.e. there was a liability to the client in that sum.

61. In interview on 13 November 2012, the Respondent said that he thought that the matter had been fully settled but could not be sure of this.

Mr B (deceased)

62. The Respondent was instructed to administer the estate of Mr B (deceased).

63. On 6 June 2012 the sum of £129,985.61 was received into the Firm's client account. This was a payment in respect of two policies on the life of the deceased.

64. On 11 June 2012, £124,000 was sent by way of CHAPs transfer to one of Mr B's children, who was a co-executor. Accordingly, the Respondent should have been holding £5,985.61 on behalf of the estate as at 30 September 2012. In interview on 2 November 2012 the Respondent agreed that he should have been holding such a balance for the client.

Mr and Mrs P – 11 WP

65. The Respondent acted for Mr and Mrs P in the sale of this property for £210,000.

66. The clients had a mortgage with C Building Society and the sum required to redeem that mortgage as at 14 September 2012 was £147,605.01. The sale completed on 31 August 2012 and £210,000 was received into the Firm's client account on that date.

67. On 3 September 2012 a cheque for £62,474.86 drawn against the Firm's client account was issued to the clients as the balance due to them from the sale proceeds (i.e. as the balance due after redemption of the mortgage and payment of the Respondent's costs in the sum of £600 inclusive of VAT). The cheque was cashed on 5 September 2012.

68. Immediately prior to the receipt of the £210,000 sale proceeds on 31 August 2012, the balance on the Firm's client bank account had been £115.14.

69. On 31 August 2012, £45,000 was transferred out of client account and used in part to discharge the mortgage on another client's matter (Ms W's sale of 30 B Road – see paragraphs 72 to 77 below).

70. Following a payment of £47,576.91 to C Building Society on 27 September 2012, a further £100,028.10 remained due to the Building Society in respect of Mr and Mrs P's mortgage. On 30 October 2012 a payment of £107,000 was made to C Building Society to redeem that mortgage. This payment was made following receipt into the Firm's client account of £257,000, which comprised the proceeds of sale on an unrelated client matter (that of Mrs G (deceased) as set out below).

71. In interview with the FIOs on 2 November 2012 the Respondent:

71.1 Admitted that he applied Mr and Mrs P's monies towards the matter of Ms W; and

71.2 Confirmed that Mr and Mrs P's mortgage should have been redeemed in September 2012.

Ms W – sale of 30 B Road

72. The Respondent acted for Ms W in connection with her sale of this property for £675,000 and her purchase of 25 W Road for £425,000. Completion of both transactions took place on 22 June 2012. The amount required to redeem the outstanding mortgage with NW on 30 B Road as at 3 July 2012 was £86,457.82.

73. By 22 June 2012 the proceeds of sale of 30 B Road amounting to £675,000 had been received into client account. On the same date, £425,000 was paid out of client account in respect of the purchase of 25 W Road. Also on 22 June 2012, £124,789 was sent to Ms W as part of the net sale proceeds and on 27 Jun 2012 the estate agent's fees of £10,075 were paid. On 30 July 2012 a cheque for £13,558.10 was sent to Ms W as the balance remaining due to her in respect of the transaction.

74. On 24 and 31 August 2012, i.e. more than 2 months after completion, two payments of £45,000 were made to NW in order to redeem Ms W's mortgage on 30 B Road. As set out at paragraph 69 above the payment on 31 August 2012 was made from funds belonging to Mr and Mrs P (comprising the proceeds of sale of their property). These payments, totalling £90,000, were £3,542.18 more than the sum that had been required to redeem the mortgage on 3 July 2012.

75. On the basis of the transactions set out above, £11,577.90 should have been held against Ms W's client account ledger as at 30 September 2012.

76. By 2 November 2012, the date on which the FIOs interviewed the Respondent, Stamp Duty Land Tax ("SDLT") of £12,750 due in respect of the purchase of 25 W Road had not been paid. In addition, the Land Registry fee of £280 had not been paid. As a result of both of these defaults, it would not have been possible to register Ms W's purchase of 25 W Road at the Land Registry and, indeed, the purchase had not been registered as at 2 November 2012, over four months after completion of the purchase.

77. In interview on 2 November 2012, the Respondent:

77.1 Suggested that the apparent overpayment to NW on 24 and 31 August 2012 had been "a mistake";

77.2 Said that the fact that registration of Ms W's purchase of 25 W Road had not been completed was "an oversight" and that he would need to pay the penalties which were being incurred; and

77.3 Admitted that he could not pay the SDLT and Land Registry fee due in respect of 25 W Road because he did not have the funds.

Mrs G (deceased)

78. The Respondent was instructed by the executors of the estate of Mrs G (deceased) in September 2009.

79. The net estate was £135,856.38. Following payments in respect of several small pecuniary legacies, the residuary estate was to be divided between five beneficiaries, including Mr Alan G and Mr Anthony G, who were to receive £23,269.82 each.

80. Whilst the other three residuary beneficiaries were sent cheques for their respective shares of the estate on 6 September 2010, neither Mr Alan G nor Mr Anthony G had received their legacies, in spite of having been asked by the Respondent for identification during 2010. Mr Alan G complained to the SRA that there had been a delay in paying his legacy.

81. As at 30 September 2012, the Respondent should have been holding £47,039.64 in respect of the unpaid legacies to Mr Alan G and Mr Anthony G, and £500 for the remaining small pecuniary legacies.

82. Letters on the matter file indicated that all the outstanding legacies were paid by cheque on 30 October 2012. This was the day on which £257,000 was received into client account in respect of a property sale in an unrelated matter (Ms GR (deceased) as set out at paragraphs 93 to 94 below. Immediately prior to that receipt, the balance on client bank account was £30.99.

83. In interview on 13 November 2012 the Respondent accepted that he had used the funds received on the Ms GR (deceased) matter to pay the legacies on the Mrs G (deceased) matter and that he had overlooked paying out the remaining bequests.

Further alleged instances of improper use of clients' funds

84. The matters in this section are relevant to the allegations and matters at 2.1.1, 2.2.1, 2.2.2, 2.2.4 and 2.2.5.

Mr A – 37 A High Street

85. The Respondent acted on the sale of this property by Mr A for £280,000. There was no mortgage on the property. The transaction had been due to complete on 30 May 2012 but in fact completed on 25 May 2012.

86. A deposit of £28,000 had been received into the Firm's client account on 9 March 2012. On completion on 25 May 2012 a further £251,820 was received, bringing the total funds received to £279,820.

87. A completion statement for the transaction indicated that the net proceeds of sale, £279,195, would be paid to Mr A in two tranches, as follows:

87.1 £247,729.33 immediately; and

87.2 £31,465.67 "to be paid to [Mr A] in the week commencing 4th June after being drawn down from deposit, together with accrued interest".

88. On 30 May 2012 a cheque in the sum of £247,729.33 was sent to Mr A. Following that payment, the balance on the client bank account was nil i.e. this payment comprised all of the funds available in client account.

89. With regard to the second tranche payment, on 12 June 2012 a cheque in the sum of £29,470.35 was sent to Mr A, with a covering letter signed by the Respondent stating,

> "… for some reason the balance of £1,995.32 has not been released from our deposit account by the bank. We are chasing this and I will forward a further cheque to you for this sum plus interest in the very near future".

90. The balance in client account on that date (12 June 2012) was £29,470.35; this payment comprised all of the funds available in the client bank account.

91. In interview on 2 November 2012, the Respondent confirmed that there had not been a deposit account and that his statement to the client in this regard had "been an excuse".

92. On 25 June 2012 the Respondent sent a cheque in the sum of £2,195.32 to Mr A, which was £200 more than the sum due to him.

Ms GR (deceased) – 42 B Close

93. The Respondent was instructed by the executor of the estate of Ms GR (deceased).

94. On 30 October 2012 the sale of Ms GR's former home, 42 B Close, completed and the full sale proceeds of £257,000 were received into the Respondent's client account. Immediately prior to receipt of those funds, the balance on the account had been £30.99.

95. On the same day, 30 October 2012, £107,000 of the funds were paid out in order to discharge Mr and Mrs P's mortgage in respect of 11 WP (see paragraph 70 above). Further, using those funds, the Respondent issued cheques totalling £47,039.64 to the beneficiaries of Mrs G (deceased), as set out in paragraph 81 above.

Alleged improper withdrawals from client account (round sum transfers)

96. Between 3 October 2011 and 30 October 2012, the Respondent made numerous round sum transfers from client to office account, often when the office account was approaching its £20,000 overdraft limit. The value of these transactions exceeded £170,000.

97. The Respondent's office account bank statements showed, amongst other transactions:

Date	Sum received £	Balance before transfer £	Comments
03/10/11	26,000	973.44	Same date, £336,446.42 paid to HMRC
20/10/11	18,600	-16,219.89	
28/11/11	10,000	5,599.24	30/11/11, £9,354 paid to Mercedes Benz
14/12/11	24,000	-8,059.67	
13/03/12	20,360	-18,284.37	
30/03/12	10,600	-2,064	2/4/12, cheques cashed totalling £8,145.35
18/05/12	1,200	-19,356.92	
25/05/12	600	-18,462.85	
19/06/12	2,040	-19,392.41	
02/07/12	5,000	-18,651.24	
09/07/12	2,000	-18,670.66	
19/07/12	5,000	-19,344.64	
17/08/12	2,000	-18,613.27	
24/08/12	2,000	-17,765.70	
31/08/12	5,000	-19,521.93	
24/09/12	50,000	-16,949.48	25/09/12 – payment of £30,000 to HMRC 26/09/12 – payment of £16,501.62 to HMRC
30/10/12	1,390.80	-18,904.70	

98. The office account bank statements showed few other credits apart from those listed above. They also recorded numerous payments out in respect of the Respondent's personal living expenses, including holiday and car payments.

99. On 3 October 2011, when the balance on office account was £973.44 a transfer of £26,000 was made from client to office account. The balance in client account at the time of the transfer had been £26,650.33; the £26,000 transferred comprised almost all of the funds available on client account. On the same day, £36,446.42 was paid to HMRC. As a result, the office account became overdrawn in the sum of £9,733.40. The office account overdraft limit was £20,000 and the payment to HMRC would not have been possible without the transfer from client account of £26,000.

100. On 24 September 2012, when the office account was overdrawn by £16,949.48, a transfer of £50,000 was made from client into office account. On the following two days, payments of £30,000 and £16,501.62 respectively were made to HMTC, leaving the office account overdrawn by £13,470.66. As the office account overdraft limit was £20,000, the payments to HMRC would not have been possible without the transfer in of £50,000.

101. The FIOs discussed the round sum transfers with the Respondent in interview on 2 November 2012. The Respondent said that he could not quite remember why he had made the payment to HMRC in November 2011. The Respondent suggested that

the round sum transfers reflected his entitlement to costs, but admitted he had not raised invoices in respect of the sums transferred. The FIOs did find copies of bills on some of the files inspected. When it was put to the Respondent that the net transfers he had made from client to office account totalled approximately £169,000, the Respondent accepted that the total sum transferred appeared to exceed any fee entitlement he may have had. The Respondent's last profit and loss account, dated March 2010, showed a gross income of under £88,000; transfers of about £169,000 in a period of about 13 months appeared substantially to exceed his usual gross annual income.

Explanation re failure to file accountants' reports

102. As noted at paragraph 39 above, in a letter of 5 December 2011 the Respondent had indicated that the difficulty in filing his accountants' reports was due to a dispute with the accountants concerning their fees. The Applicant alleged that this explanation was not true as, from the matters set out above, the Respondent had not been in a position to file accountants' reports as by the time the letter was written he had not kept accounts for at least a year.

Witnesses

Mr David Levy

103. Mr David Levy, a FIO with the Applicant, gave evidence on behalf of the Applicant. Mr Levy told the Tribunal that he was a solicitor by background and had been in private practice for about 10 years and 25 years prosecuting serious crime.

104. Mr Levy told the Tribunal that he was commissioned to investigate the Respondent's Firm. He visited the Firm's premises on 31 October 2012, at which point he realised that the premises were also the Respondent's home. In accordance with SRA protocol, which required attendances at a home address to be carried out by two FIOs, Mr Levy arranged to return the following day (1 November 2012) with a colleague, Ms Taylor.

105. Mr Levy confirmed that the FI Report appended to the Rule 7 Statement was his report, prepared from his findings during the inspection, and the contents were true to the best of his knowledge and belief. Mr Levy told the Tribunal that the investigation had identified a minimum shortage on client account of over £167,000, after looking at matters and files presented by the Respondent.

106. Mr Levy told the Tribunal that the transcript of an interview with the Respondent which took place on 2 November 2012 was appended to the FI Report. The Tribunal noted that in the Respondent's Reply and First Statement document, he stated,

> "The Respondent will be considering challenging the admissibility of the interview between himself and [Mr] Levy. In any event, the Respondent will dispute some of the statements claimed to have been made to [Mr] Levy and will resile from some of them if the interviews are admitted. In that regard medical evidence will be filed regarding a serious illness suffered by the

Respondent shortly before [Mr] Levey arrived, making him particularly vulnerable to the form of questioning adopted by [Mr] Levy".

107. Mr Levy told the Tribunal that no medical matters were mentioned to him by the Respondent during the investigation. The Respondent had seemed very active; when Mr Levy had called at the property on 31 October 2012 the Respondent told him that he was about to go to a client business meeting in Dorset which, he said, would last all day. The Respondent initially said he could not meet with Mr Levy on 1 November 2012 as he was busy for the rest of the week, and suggested a meeting on the following Monday, 5 November 2012. After discussion, it was agreed that Mr Levy would return on the afternoon of 1 November 2012.

108. Mr Levy told the Tribunal that when he returned on 1 November the Respondent was affable, appeared to be in control of his faculties and did not display any physical or mental difficulties. That said, the Respondent had initially told the FIOs that he had no accounts for the last six months but later changed that to say there were no accounts for the last two years. Mr Levy told the Tribunal that the Respondent appeared to be in control and the interviews were relaxed. Mr Levy told the Tribunal that in the course of his work he had seen people in many stages of physical or mental difficulties and had not noted any such symptoms in the Respondent. Mr Levy told the Tribunal that he had offered the Respondent a copy of the recording of the interview of 2 November 2013 and the Respondent had appeared relaxed at that stage. Mr Levy confirmed that the transcript of the interview of 2 November 2012 within the bundle was a true reflection of the interview.

109. The Tribunal noted that in his Reply and First Statement the Respondent had queried Mr Levy's qualifications and asked if Mr Levy had told the Respondent what his qualifications were. Mr Levy told the Tribunal that he may have said he was a solicitor. Mr Levy told the Tribunal that his colleague, Ms Taylor, was an investigator. The Respondent had appeared willing to co-operate with them.

110. Mr Levy told the Tribunal that a second interview took place with the Respondent as concerns had been raised by a complaint about the estate of Mrs G (deceased). Mr Levy told the Tribunal that notes of that interview were made contemporaneously and the typed note was an accurate record of the discussion.

111. In response to a question from the Tribunal, Mr Levy told the Tribunal that a SRA officer would read a draft transcript and listen to the recording, to check if the transcription was accurate. That had been done here.

112. With regard to the Respondent's entitlement to fees, Mr Levy referred to a handwritten profit and loss account prepared by the Respondent which appeared to be for the period ending 31 March 2010. This was the last period for which accounts had been prepared. The gross fee income of around £87,000 for that period accorded with Mr Levy's recollection of what had been discussed about the Respondent's fees.

113. Mr Levy was referred to the matter of Ms W (sale of 30 B Road) and what appeared to be a discrepancy between the reported shortfall and the amount paid by the Compensation Fund. Mr Levy told the Tribunal that he had not seen the Chronology document until the day of the hearing. Mr Levy was unable to assist with this issue.

114. In response to a question from the Tribunal, Mr Levy confirmed that when he first visited the Respondent's practice address he was unaware that it was also his family home. He could not recall there being a plate on the wall to indicate it was a solicitor's practice address. When he rang the bell, the door was answered by a lady who showed him to the dining room (where some pet guinea pigs were housed). The Respondent had met Mr Levy and informed him that he had a meeting in Dorset. Mr Levy had handed him the official letter concerning the investigation. Mr Levy confirmed that this was a "walk-in" inspection, of which no notice had been given. The Respondent had agreed that Mr Levy could return the next day.

The Respondent's Position

115. The Respondent did not attend the Tribunal and did not give evidence. The Tribunal had before it within the Applicant's bundle various items of correspondence from the Respondent, together with notes of what he had said during the investigation in November 2012. It also had available his Reply and First Statement document, which is summarised here.

115.1 Initial comments: The document was intended to double as a first statement of the Respondent and as an initial indication of the matters in dispute. It was not intended to be a comprehensive rebuttal of the Applicant's case and was likely to be modified in due course. The Respondent stated that it was certain that he would file a comprehensive statement together with supporting statements from other witnesses. This was stated to be because there was significant information that the Respondent needed before he could finalise his response and case. The Respondent acknowledged that (in accordance with a direction of the Tribunal on 24 July 2014) he would need the leave of the Tribunal for these steps. The Respondent anticipated producing these documents as soon as possible and submitted that as the final hearing was not for over 6 months (from 3 August 2014) it was not anticipated that the Applicant could suffer any disadvantage.

115.2 Caveat: The Respondent stated that every allegation, fact, assertion, argument and conclusion contained within the documents filed by the Applicant in these proceedings was denied by the Respondent in totality, unless expressly admitted.

115.3 Background: The Respondent referred to the investigation conducted by Mr Levy and his colleague in November 2012, their attendance at his offices for two days and their reappearance later that month. The Respondent stated that as a result of Mr Levy's report of 21 November 2012 his practice was intervened in December 2012, since which time the Respondent had been suspended from practice. The Respondent stated that he had assumed that since the investigation had been ongoing for about 18 months, further evidence and reports would have been produced but it appeared from the Applicant's papers that nothing had been done since the FI Report other than to formalise the allegations. The Respondent stated that as a result, significant additional evidence would have to be obtained by the Respondent himself, in addition to obtaining disclosure from the Applicant.

115.4 General approach of this document: The Respondent stated that because of the need for further evidence and information and because further statements would be produced, a broad brush approach was being taken to avoid unnecessary repetitions.

However, the document would indicate the main areas of contention so that the Applicant and Tribunal would be on notice of what was to come.

115.5 The interview with [Mr] Levy: This section is noted above, at paragraph 106.

115.6 Shortfall: The Respondent referred to the alleged shortfall in client account which Mr Levy "was supposed to have discovered". The Respondent noted that the Applicant's papers were silent as to Mr Levy's qualifications; whilst he was referred to as a "senior investigation officer", it was not clear from the papers what that meant. The Respondent stated that "From the nature of his report one would conclude that he is not an accountant but one does not know for sure." The Respondent commented that from the report of the last hearing (presumably, the Memorandum of the 24 July 2014 hearing) it appeared that the amount of the shortfall, if any, was not known. The Respondent commented that this was particularly surprising, given the length of the investigation, "the number of firms of solicitors employed by the SRA, and the fact that part of the intervention team was introduced to me as a forensic accountant who apparently was present to take all of my accounting records in order to produce a report". The Respondent noted there was no further report in the Applicant's papers. The Respondent commented that there appeared to be a substantial doubt on the part of the Applicant about who was currently in possession of all of the records (other than those in the papers already filed). The Respondent stated that he was left with no choice but to investigate this issue himself and stated, "Until he is quite satisfied on this important issue, he denies the existence of any shortfall and puts the Applicant strictly to proof of its allegations in this respect".

115.7 Compensation Fund: The Respondent submitted that it appeared to be unclear how much had been paid out by the Compensation Fund. The Respondent stated that he had not been consulted by the Fund about any but two very small claims and could not assist because of the lack of information provided to him, despite requests for this information. The Respondent put the Applicant strictly to proof of the amount paid out by the Fund, together with full details of each and every claim, why it was paid out and why the Respondent was not consulted before a decision was made, in accordance with the Fund's own rules. The Respondent stated that until this information was provided, he denied any liability to the Compensation Fund.

115.8 Dishonesty: The Respondent expressly denied any dishonesty at all.

115.9 Misuse of client funds: The Respondent denied knowingly or deliberately misusing funds in any manner, with regard to any and all of the allegations, and put the Applicant strictly to proof of this. The Respondent sated that further evidence would be filed about this when the Respondent's investigations were concluded.

115.10 Accounts: The Respondent admitted that the Firm's accounts were not properly maintained for a period of about 3 years. The Respondent stated that the reasons for this would be given in a further statement, which would be backed with medical evidence. The Respondent denied that he had lied when he indicated to the applicant that the initial delay was caused by a dispute with his then accountants; the Respondent went on to say that those accountants issued County Court proceedings against the Respondent in respect of a disputed invoice. The Respondent denied that

the failure to maintain the accounts was in any way caused by a dishonest intent on the part of the Respondent.

115.11 Specific allegations:

- *K/U – 14/14a W Street*

The Respondent stated that it would be proved that all monies due were paid to the clients and he would obtain a statement from them confirming this. The allegation was denied.

- *Mr B (deceased)*

The Respondent admitted that the amount due on the invoice was transferred before the invoice was raised. The Respondent accepted that this was a breach of the accounts rules, but it was merely an oversight which would have been corrected. The Respondent stated that this was a £1 million plus value estate which required a great deal of work under significant time pressures because one of the executors lived abroad and could only travel at particular times to execute documents. The Respondent stated that the amounts of fees were entirely justified and reasonable. The executors never made any complaint about the work, and were grateful for the work undertaken. The Respondent stated that the clients received all monies due and a statement from them to that effect would be produced. The Respondent denied that there was a shortfall as alleged, and the claim was denied save for the technical breach admitted.

- *Mr and Mrs P – 11 WP*

The Respondent stated that all of the monies due to the C Building Society had been paid well before the investigation; the client suffered no loss and the allegation was denied in total.

- *Ms W – sale of 30 B Road*

The Respondent stated that all transactions were properly carried out at very reasonable costs and the allegation was denied in total.

- *Mrs G (deceased) – balance of estate*

The Respondent stated that the balance of the funds had been paid to the beneficiaries by the time of Mr Levy's second visit (13 November 2012). The Respondent stated that the fees for this matter were kept very low. All funds were paid to the beneficiaries and the allegation was denied in total.

- *Mr A – 37 A High Street*

The Respondent stated that all monies were paid to the client, who was more than happy with the service received, at very reasonable rates. The allegation was denied in total.

- *Mrs GR (deceased) – 42 B Close*

The Respondent stated he did not have the file in this matter any longer, but as far as he was aware all funds were paid out in the proper manner; the allegation was denied in total.

115.12 Conclusion: The Respondent indicated that the above was all he could say at present; further statements would be filed in due course and disclosure of various material would be requested from the Applicant/Penningtons Manches LLP. All allegations were denied, save where expressly admitted.

Findings of Fact and Law

116. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal took particular care to consider any weaknesses in the Applicant's case, given that the Respondent was not present or represented.

117. The Tribunal took into account the written and oral evidence presented on behalf of the Applicant. This included a schedule showing payments from the Compensation Fund in respect of the Respondent's Firm, which showed total payments made of £507,135.94 as at 29 December 2014. The total of claims against the Compensation Fund in respect of the Firm was £728,419.20. After receipt of approximately £351,000 from the Firm's client account on the statutory trusts (of which £344,353.49 was transferred to the SRA on 11 December 2012), and compiling the best list of liabilities to clients as at the date of intervention (which indicated liabilities of about £708,000) the difference between the liabilities and the sums held in client account was approximately £357,000. Ms Wingfield informed the Tribunal that the latest enquiries of the Compensation Fund indicated that approximately £545,000 had been paid out as at 5 January 2015.

118. The Tribunal noted that in his Reply document the Respondent had specifically stated,

> "The Respondent has not been consulted by the Fund about any but two very small claims, and cannot assist (in clarifying the amount paid out) because of the lack of information provided to him. This is despite requests for this information to be made available. Accordingly, the Respondent puts the SRA strictly to proof of the amount paid out by the Fund, together with full details of each and every claim, why it was paid out, and why the Respondent was not consulted before a decision was made in accordance with the Fund's own rules. Until this information is provided, the Respondent denies any liability to the Compensation Fund".

The Tribunal found that the amount paid out by the Compensation Fund was not an essential part of the Applicant's case, and there was no specific claim that the Respondent should reimburse the Compensation Fund. That said, it was useful for the Tribunal and the profession to have some idea of the scale of the payments. It was not necessary for the Applicant to prove exactly why and in what circumstances the payments had been made; this information simply helped to illustrate the level of the alleged losses, not all of which arose from transactions considered in the proceedings. Where the payments from the Compensation Fund related to matters relied on in the Rule 7 Statement, the reasons for the payments could usually be seen. However, in one matter, that of Ms W, it was not clear how the amount of compensation paid related to the losses which could be assessed from the case papers. The Tribunal could

not make an absolute determination of the net loss to the Compensation Fund, as the figures and how they were explained varied, but even on the best possible view of the figures for the Respondent, there was a net loss of around £156,000 (£507,000 less recoveries of £351,000); it seemed more likely that the true net loss was of the order of £357,000. In any event, the scale of the losses was significant, particularly given that the Respondent had been a sole practitioner, with no fee-earning support, and so dealt with a limited number of clients and transactions. As noted, the Applicant did not have to prove the losses to the Compensation Fund in order to prove any of the allegations, as the facts and matters relied on in support of the allegations did not include any references to the Compensation Fund.

119. The Tribunal found the Chronology of transactions produced by the Applicant to be useful. The Tribunal had indicated in July 2014 that it would be helpful to have a flow-chart to show what had happened to the various sums of money in the Firm's client account. At the CMH in December 2014 Ms Wingfield had produced the first version of the Chronology document, as producing a flow-chart was proving difficult and was not thought to be helpful. The Tribunal considered that the Chronology was a useful tool in understanding the flows of money into and out of the Firm's client account; it noted that the information in the document was not new but was based on information in the FI Report and supporting documents. Whilst not determinative of any issue, the presentation of information in this form had assisted the Tribunal in understanding the way in which money in the Respondent's client account had been used.

120. In respect of the matters set out in the "Factual Background" section above, the Tribunal was referred to supporting documents, such as bank statements, completion statements and correspondence which confirmed that those matters were accurately stated.

121. With regard to the interviews with the Respondent, particularly that on 2 November 2012, the Tribunal noted that the Respondent had raised an issue about the admissibility of the transcripts of interview, and had indicated that he would resile from some statements if the interviews were admitted in evidence. The Tribunal had questioned Ms Wingfield on this issue and was told that the transcript in the bundle of the 2 November 2012 interview was taken from a disk, as the interview had been recorded. The Respondent had been provided with a copy of the disk shortly after the investigation and a further copy of the disk was sent to him after the Respondent sent his Reply and First Statement, together with a request for disclosure. Ms Wingfield told the Tribunal that the second interview, on 13 November 2012, had not been recorded. Ms Wingfield told the Tribunal that the Respondent had been served with Civil Evidence Act Notices ("CEA Notices") with regard to all of the Applicant's documents in the bundles, and so those documents (including the transcript and the notes of interview on 13 November 2012) were admissible in evidence. Ms Wingfield had submitted that in any event the Respondent had not indicated which sections of the interview(s) he did not accept.

122. The Tribunal noted that the Respondent had not produced any medical evidence in support of his apparent contention that he had been vulnerable to the form of questioning used by the FIOs. It also noted, and accepted, the evidence of Mr Levy that the Respondent had not mentioned any medical matters to him during the course

of the investigation and had presented as busy, affable and in control of his faculties. Mr Levy had given evidence, which the Tribunal accepted, that the Respondent did not display any recognisable symptoms of physical or mental difficulties. Further, the Tribunal noted that the Respondent had not identified any particular sections of the interview notes or any statements or comments made by him which he now contended were inaccurate. Given that the Applicant had served CEA Notices in respect of all the documents on which it relied, including the transcript and the note of interview on 13 November 2012, the Tribunal determined that those items were admissible in evidence. Further, the Tribunal was satisfied on the basis of Mr Levy's evidence that the transcript and notes were substantially accurate and reliable; indeed, the Respondent had not pointed out any comments attributed to him which he now said were incorrectly recorded. The Respondent had had plenty of opportunity to do so since the Rule 7 bundle was served on him in November 2013.

123. The Tribunal noted carefully what the Respondent said in his Reply and First Statement document, but could accord it little weight as the Respondent had not attended to give evidence. The Tribunal noted that the Respondent had failed to produce any information or statements since that document was served, such as medical evidence or statements from clients. The Tribunal also noted that although there had been CMHs in November and December 2014, the Respondent had not made any representations to the Tribunal about why he was unable to produce the further statements and evidence to which he had referred in August 2014. As will be noted below, with regard to certain specific allegations, the Tribunal could not imagine what evidence the Respondent could possibly produce which would cast any doubt on the Applicant's case.

124. **Allegation 1.1 - Contrary to Rule 35 of the Solicitors Accounts Rules 1998 ("SAR 1998") and, with effect from 6 October 2011 Rule 32 of the SRA Accounts Rules 2011 ("AR 2011"), he failed to deliver to the SRA promptly or at all accountant's reports for the periods ending 31 March 2010, 31 March 2011 and 31 March 2012.**

124.1 The factual background to this allegation is set out at paragraphs 35 to 47 above. This allegation appeared to be denied by the Respondent, in that he did not mention it and his Reply document indicated that all allegations were denied unless specifically admitted. That said, the Respondent did not appear to have asserted that he had filed the accounts, either by the due date or at all.

124.2 The Applicant submitted that the Respondent had had ample opportunity and, indeed, had been given extra time in which to file his accountants' reports. The reports were now more than 2, 3 and 4 years overdue. The Respondent had not disputed that the reports were due and had not asserted that the relevant accounts rules did not apply to him; indeed, in his letter of 5 December 2011 he had acknowledged that the reports were due. The Applicant submitted that it was a fundamental obligation that accountants' reports were delivered promptly to the SRA. Failure to do so inhibited the SRA in performing its regulatory functions effectively, which had a detrimental effect on public confidence in the profession and its regulator.

124.3 The evidence was clear that the Respondent had failed to file accountants' reports for three successive years. This was contrary to Rule 35 of SAR 1998 in respect of the reports for the years ended 31 March 2010 and 31 March 2011 and contrary to Rule 32 AR 2011 in respect of all three years. The Tribunal was satisfied to the required standard that this allegation had been proved.

125. **Allegation 1.2 - Contrary to Principle 6 and/or Principle 7 of the SRA Code of Conduct 2011 ("the 2011 Code"), he failed to meet the expectation of a SRA Adjudication Panel Sub-Committee given in a decision dated 12 April 2012.**

125.1 The factual background to this allegation is set out at paragraphs 40 to 47 above. The allegation appeared to be denied by the Respondent, but he had not asserted that he had complied with the expectation set out in the decision of 12 April 2012.

125.2 The Applicant submitted that the Respondent's failure to meet the expectation of the Adjudication Panel Sub-Committee was a failure to maintain the trust the public placed in him and the profession and that he had failed to deal with his regulator in an open, timely and co-operative manner.

125.3 The Tribunal found that an Adjudicator's expectation, expressed in a decision of 17 January 2012, was not conveyed until after the deadline specified in that document. The expectation of the Adjudication Panel Sub-Committee of 12 April 2012 was notified to the Respondent by a letter of 13 April 2012. He failed to comply with that expectation by the specified deadline and, indeed, had not filed the necessary accountants' reports at any time prior to the hearing, some two and a half years after the Panel's decision.

125.4 The Tribunal was satisfied on the evidence presented that this allegation had been proved to the required standard.

126. **Allegation 2.1 - He acted in breach of the AR 2011 and (to the extent that the relevant conduct took place before 6 October 2011) the SAR 1998 in that:**

2.1.1 **He failed to use each client's money for that client's matters only, contrary to Rule 1.2(c) AR 2011;**

2.1.2 **He failed to establish and maintain proper accounting systems, and proper internal controls over those systems, so as to ensure compliance with the accounts rules, contrary to Rule 1(e) SAR 1998 and/or 1.2(e) AR 2011;**

2.1.3 **He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, contrary to Rule 1(f) SAR 1998 and/or 1.2(f) AR 2011;**

2.1.4 **He failed to remedy breaches of the accounts rules promptly upon discovery, contrary to Rule 7 SAR 1998 and/or 7 AR** 2011;

2.1.5 **He made round sum withdrawals from client account on account of costs, contrary to Rule 17.7 AR 2011;**

2.1.6 **He withdrew money from client account other than in accordance with Rule 22(1) SAR 1998 and Rule 20.1 AR 2011, contrary to those rules;**

2.1.7 **He withdrew funds in respect of costs due to him other than in accordance with Rule 22(3) SAR 1998 and Rule 20.3 AR 2011, contrary to those rules;**

2.1.8 **He failed to ensure that money withdrawn in relation to a particular client or trust from a general client account did not exceed the money held on behalf of that client or trust in all his general client accounts, contrary to Rule 20.6 AR 2011;**

2.1.9 **He failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him and office money relating to client matters, contrary to Rule 32(1) SAR 1998 and 29.1 AR 2011;**

2.1.10 **He failed to record appropriately all dealings with client money in (i) a client cash account or in a record of sums transferred from one ledger account to another and (ii) on the client side of a separate client ledger account for each client, contrary to Rule 32(2) SAR 1998 and 29.2 AR 2011;**

2.1.11 **He failed to carry out reconciliations of his client account contrary to Rule 32(7) SAR 1998 and 29.12 AR 2011.**

126.1 The factual background to this allegation is set out at paragraphs 53, 55, 85 to 95 and 96 to 101 above.

126.2 The Applicant submitted that the Respondent, as the sole principal of the Firm, was required to comply with the provisions of the SAR 1998 and AR 2011. In failing to maintain accounts at all, including a failure to carry out client account reconciliations, the Respondent was in breach of these rules, in particular as alleged.

126.3 It was further submitted that the Respondent was bound to remedy breaches of the accounts rules promptly; by failing to keep any accounts for over two years, the Respondent was in breach of Rule 7 of SAR 1998 and Rule 7 of AR 2011.

126.4 In relation to the client account shortages, the Applicant submitted that the Respondent was required to ensure that money withdrawn in relation to a particular client or trust from a general client account did not exceed the money held on behalf of that client or trust in all his general client accounts (Rule 20.6 AR 2011). The Applicant submitted that the minimum cash shortage indicated that the Respondent must, necessarily, have paid out more than he was holding for particular clients and, accordingly, that the Respondent breached this rule.

126.5 It was further submitted that the Respondent's failure to take prompt steps to remedy the shortage, after it had been brought to his attention in the interview on 2 November 2012, was a breach of Rule 7 AR 2011.

126.6 The Tribunal noted that the Respondent had told Mr Levy that he had not kept books of account for about two years. That statement was clearly supported by the evidence in the FI Report to the effect that there were no proper accounts records which the investigation officer could review. The Tribunal noted that the Respondent had confirmed in his Reply document of 4 August 2014 that "the Firm's accounts were not properly maintained for a period of about 3 years". It was clear beyond any doubt that there had been a complete failure to keep proper accounts records and reconciliation statements had not been prepared; indeed, to do so would have been impossible in the absence of reliable information about liabilities to clients. The Tribunal noted that the Respondent had suggested in his Reply that there was medical evidence which would provide a reason for the failure to maintain records. No such evidence had been produced and in any event any explanation provided in such a way could only go to mitigation and not to whether or not a breach had been established. The Tribunal was satisfied to the required standard that the particulars set out at 2.1.2, 2.1.3, 2.1.9, 2.1.10 and 2.1.11 had been proved. Further, given that this state of affairs persisted for over two years, there was a clear failure to remedy breaches of the accounts rules promptly upon discovery; the Respondent knew throughout the period that he was not keeping accounts records and did not put this right. The particulars set out at 2.1.4 had been proved to the required standard.

126.7 The Tribunal reviewed the evidence concerning the particular transactions relied on in the Rule 7 Statement and found the following facts proved.

126.8 *K/U – 14/14a W Street*

126.8.1 On 21 March 2012 the Respondent received a cheque for £11,570.68 in respect of rent and the client's costs, in respect of an assignment of a lease. The Respondent's costs of £1,440 were paid from client account on 26 March 2012. The sum due to the client at that stage was £10,130.68. By way of two payments, £7,972.69 was remitted to the client by 18 May 2012, such that the sum due to the client was at that stage £2,157.99. That sum had not been paid to the clients by the time of Mr Levy's investigation in November 2012.

126.8.2 The Tribunal found that at various points from May to November 2012 the Firm's client account was in credit to less than the sum due to K/U. For example, on 24 August 2012 only £115.14 was held on client account and on 27 September 2012 only £27.89 was held.

126.8.3 The Tribunal noted that the Respondent asserted in his Reply that K/U had been paid all of the money due to them. The Tribunal saw no evidence to gainsay this – for example, K/U had not made a claim on the Compensation Fund – but the Tribunal was satisfied that the money due to the client was not remitted before the investigation and that at various points between receipt and discharge of the liability to the clients the Respondent had not held client funds sufficient to pay what was owed. It was clear beyond any doubt that there was a shortfall on the ledger of at least £2,157.99 in respect of this matter at various points during a six month period in 2012.

126.8.4 The Tribunal was satisfied that this course of dealings demonstrated significant breaches of the relevant accounts rules, in particular Rule 1.2(c) AR 2011, Rule 7 AR 2011, Rule 20.1 AR 2011 and Rule 29.1 AR 2011.

126.9 *Mr B (deceased)*

126.9.1 The Tribunal found that the Respondent received funds of £129,985.61 into client account during June 2012 in respect of the deceased's insurance policies. £124,000 was sent to a co-executor on 11 June 2012, such that the Firm should have been holding £5,985.61 on this matter from that point onwards. As noted above, the Firm's client account did not hold this sum (or more) throughout the period prior to the investigation, such that there must have been a shortfall on the client ledger.

126.9.2 The Tribunal noted the Respondent's assertion in his Reply that there had been no complaint by the executors and that all monies had been received by those to whom it was due. There was no evidence to gainsay the assertion that the clients/beneficiaries had at some point been paid what was due to them; indeed, the Tribunal noted that there was no claim against the Compensation Fund in this matter. However, there could be no doubt that there was a shortfall on client account in respect of this estate during 2012.

126.9.3 The Tribunal was satisfied that in the course of these dealings, the Respondent was in breach of the relevant accounts rules and in particular Rule 1.2(c) AR 2011, Rule 7 AR 2011, Rule 20.1 AR 2011 and Rule 29.1 AR 2011.

126.10 *Mr and Mrs P – 11 WP*

126.10.1 The Tribunal found that in the course of acting on the sale of a property for Mr and Mrs P the Respondent received the sale proceeds of £210,000 into his client account on 31 August 2012. Immediately prior to this receipt, the balance on the Firm's client account was £115.14, i.e. all but £115.14 of the money on client account was Mr and Mrs P's money. On 31 August 2012, £45,000 was transferred out of client account in order to discharge the mortgage of Ms W on 30 B Road, further details of which are set out below. There could be no doubt that money which should have been used for the purposes of Mr and Mrs P was used, in part, for the benefit of Ms W, an entirely unrelated client.

126.10.2 The sum required to redeem Mr and Mrs P's mortgage as at 14 September 2012 was £147,605.01. On 3 September 2012 the Respondent sent a cheque to Mr and Mrs P for £62,474.86 and so should have been holding £147,525.14 for these clients. The actual balance immediately after the payment to the clients was £97,620.28, so the Respondent was clearly not holding enough on his client account at that point to discharge Mr and Mrs P's mortgage, having improperly used some of their money towards the discharge of Ms W's mortgage.

126.10.3 On 27 September 2012 the Respondent sent £47,576.91 to the C Building Society in partial discharge of the mortgage, leaving £101,028 still due to the Building Society. The balance on the Firm's client account immediately before the £47,576.91 was sent was £47,628.80, so just £47.89 was left on client account. There was clearly nowhere near enough on client account to discharge Mr and Mrs P's mortgage; there should have been the funds to do so.

126.10.4 On 30 September 2012 £257,000 was received into client account in respect of the matter of Ms GR (deceased), further details of which are set out below. Immediately prior to the receipt of this sum, the balance on client account was just £30.99. Also on 30 October 2012, the Respondent sent £107,000 to C Building Society to redeem the mortgage of Mr and Mrs P. The Tribunal was noted that this was above the sum due to the Building Society. The Tribunal found that the £107,000 used to discharge Mr and Mrs P's mortgage was money belonging to the estate of Ms GR (deceased); there was no other source for that money at the time the payment was made.

126.10.5 The Tribunal noted that in his Reply, the Respondent stated that the monies due to the Building Society had been paid well before the inspection began and the clients suffered no loss. The Tribunal accepted that the position in this matter had been rectified by the time of the investigation, but only by the improper use of other clients' money. The Respondent did not appear to have acknowledged that he had misused the money of one client (the GR estate) in order to pay liabilities of other clients (Mr and Mrs P). The Respondent had also failed to acknowledge that he had used Mr and Mrs P's money in partial discharge of a liability of Ms W.

126.10.6 The Tribunal was satisfied to the highest standard that in dealing with the monies due to Mr and Mrs P as he had, and then in using money due to a different client to redeem their mortgage, the Respondent had committed breaches of the relevant accounts rules and in particular Rule 1.2(c) AR 2011, Rule 7 AR 2011, Rule 20.1 AR 2011 and Rule 29.1 AR 2011.

126.11 *Ms W – Sale of 30 B Road*

126.11.1 The Tribunal found that Ms W's sale of 30 B Road for £675,000 and purchase of 25 W Road for £425,000 completed on the same date, 22 June 2012. The client was sent the sum of £124,789 on 22 June 2012 in part settlement of the amount due to the client. The estate agent's fees of £10,075 were paid on 27 June 2012.

126.11.2 The sum required to redeem the mortgage on 30 B Road was £86,457.82 as at 3 July 2012. However, at that date only £67,310.16 was held on the Firm's client bank account, which was clearly insufficient.

126.11.3 On 30 July 2012 a cheque for £13,558.10 was sent to Ms W as the balance of the sale proceeds of 30 B Road. As at that date, the sum which should have been held for Ms W (after the payments mentioned above) should have been £101,578 but only £49,131.10 was held on general client account. £45,000 of this amount was paid on 24 August 2012 in partial discharge of Ms W's mortgage; at that point the balance on client account was £47,135.

126.11.4 As noted at paragraph 126.10.1 above, a further £45,000 was paid on behalf of Ms W to discharge her mortgage on 31 August 2012 on receipt of Mr and Mrs P's sale proceeds. The Tribunal found that immediately prior to the receipt of Mr and Mrs P's money on 31 August 2012, the balance of funds held on client account was just £115.14 i.e. it would have been impossible for Ms W's mortgage to be redeemed without the receipt of Mr and Mrs P's money.

126.11.5 As at 2 November 2012, SDLT of £12,750 which was due in respect of the purchase of 25 W Road had not been paid and the Land Registry fee of £280 had not been paid. As at 30 September 2012 the balance on client bank account was only £27.89 and no additional funds were received from Ms W thereafter. The Respondent did not hold the funds required to register Ms W's purchase of 25 W Road and had not registered her interest as at 2 November 2012, over four months after the purchase was completed.

126.11.6 The Tribunal noted the Respondent's denial of the allegation in respect of Ms W and his assertion that the transaction was properly carried out at very reasonable cost. It was clearly nonsense to assert that the transaction was properly carried out as he had used money belonging to Mr and Mrs P to make a payment for Ms W. For the purposes of these allegations, it was irrelevant that Ms W's mortgage had been discharged by the time of the investigation.

126.11.7 The Tribunal noted that Ms W had made two claims against the Compensation Fund arising from this matter, one for £13,030 and one for £17,272. The calculation of these claims, and whether or not they had been paid, was not determinative of any issue but it was clear that the client must have considered that she had suffered a loss at the hands of the Respondent, which loss had not promptly been made good by him.

126.11.8 In the light of these findings, there was no doubt that the Respondent was in breach of the relevant accounts rules and in particular Rule 1.2(c) AR 2011, Rule 7 AR 2011, Rule 20.1 AR 2011 and Rule 29.1 AR 2011.

126.12 *Mrs G (deceased)*

126.12.1 The Tribunal found that the Respondent acted in this estate, the net value of which was £135,856.38. After payment of legacies to certain beneficiaries in September 2010 the sums due for payment were £23,269.82 to each of Mr Anthony G and Mr Alan G and £500 for some

small pecuniary legacies. The total sum of £47,039.64 should have been held on the ledger for this matter from September 2010. In or about November 2012 Mr Alan G made a complaint to the Applicant that he had not received his legacy; it was this which prompted Mr Levy's return to the Respondent's Firm on 13 November 2012.

126.12.2 As noted above, at various points the Respondent's client account held small balances, for example £632.58 on 15 February 2012, £578.56 on 17 April 2012 and £115.14 on 24 August 2012. This illustrated to a startling degree that the Respondent was not, in fact, holding the client money due on this estate as he should have been.

126.12.3 On 30 October 2012, £257,000 was received into client account on the matter of Ms GR (deceased), further details of which are given below. The balance on client account immediately prior to receipt of this sum was only £30.99. On 30 October 2012 the Respondent paid out £46,539 to Mr Alan and Mr Anthony G. As the money on the Ms GR matter was the only significant sum received into client account at that time, it was beyond any doubt that the Respondent used the money belonging to the Ms GR matter to pay liabilities on the Mrs G (deceased) matter.

126.12.4 This was clearly an improper use of client funds as money belonging to one client was used for another. This situation arose as the Respondent had ceased to hold the money received on the Mrs G matter on client account; the reasons for this are explored further below.

126.12.5 The Tribunal noted that the Respondent stated in his Reply that the balance of the funds due had been paid to the beneficiaries by the time Mr Levy returned on 13 November 2012 and asserted that the fees for this matter were kept very low. This response did not even begin to address the fact that two beneficiaries had not received the money due until about two years after the other beneficiaries and that, when paid, the money used belonged to another client.

126.12.6 There was no doubt on these facts that the Respondent was in breach of the relevant accounts rules. This was the one matter which straddled the pre and post 6 October 2011 professional rules. The Tribunal found to the required standard that the Respondent was in breach of Rules 1.2(c) AR 2011, Rule 7 SAR 1998 and Rule 7 AR 2011, Rule 22(1) SAR 1998 and Rule 20.1 AR 2011, and Rule 20.6 AR 2011.

126.13 *Mr A – 37 A High Street*

126.13.1 The Tribunal found that the Respondent acted on the sale of this property for Mr A for £280,000; completion took place on 25 May 2012. The deposit of £28,000 was received into client bank account on 9 March 2012 and on 25 May 2012 a further £251,820 was received, bringing the total to £279,820. Following receipt of the funds on 25 May 2012 the sum held on client account was £272,729 i.e. at least £20,909 which should have been in the client bank account in respect of this matter was no longer

there. As at 25 May 2012 the sum due to the client was £279,195 (after payment of the Respondent's costs and disbursements).

126.13.2 On 31 May 2012 the Respondent sent £247,729.33 to the client, as part payment of the sale proceeds. Immediately after that payment was made, the balance on client bank account was nil i.e. the Respondent had used all of the contents of client account at that point to pay Mr A this sum; £31,465.67 was still due to the client but that money was not on client account, despite receipt by the Firm of the full sale proceeds.

126.13.3 On 12 June 2012 a further £29,470.35 was sent to Mr A, as a further payment towards the sum due to him. Immediately after that payment was made, again the balance on client bank account was nil; the Respondent had used all of the contents of client account to make the payment to Mr A, at a time when £1,995.32 was still due to the client. The reason given by the Respondent to Mr A for not paying the sum in full are considered in relation to allegations 2.2 and 2.3 below.

126.13.4 On 25 June 2012 the Respondent sent a cheque for £2,195.32 to Mr A; this sum included the balance of the sale proceeds due to him and an extra £200.

126.13.5 The Tribunal noted that the Respondent stated that he had paid all the monies due to the client, who was happy with the service rendered at very reasonable rates. The Respondent had denied the allegation with respect to Mr A.

126.13.6 The Tribunal had no doubt that the Respondent had failed to retain Mr A's money and, instead, had used money belonging to other clients to settle the sums due to Mr A and Mr A's money had been used for the benefit of other clients. The Tribunal accepted that Mr A had received the monies due to him, about a month after completion, but found that at various points (including on the day of completion) the Respondent was not in a position to pay the sums due. There was clearly a shortage on client account.

126.13.7 The Tribunal was satisfied to the highest standard that the Respondent was in breach of the relevant accounts rules, in particular Rule 1.2(c) AR 2011.

126.14 *Ms GR (deceased) – 42 B Close*

126.14.1 The Tribunal found that the Respondent was instructed in the estate of the late Ms GR. The sale of her former home was completed on 30 October 2012 (i.e. very shortly before the Applicant's investigation began) and the sale proceeds of £257,000 were received into client account. Immediately prior to this receipt, the balance on the Firm's client bank account was only £30.99, so almost all of the money on the account at that date was due to the estate of Ms GR.

126.14.2 Despite this, on the same day (30 October 2012) £107,000 of those funds were used to discharge Mr and Mrs P's mortgage in respect of 11 WP (for further details of which, see paragraph 126.10 above). Further, on the same day the money received in respect of Ms GR was used to pay £47,039.64 to beneficiaries in the estate of Mrs G (deceased) – see paragraph 126.12 above.

126.14.3 The Tribunal further considered the Respondent's actions thereafter in relation to Ms GR's estate, in connection with allegations 2.2 and 2.3 below.

126.14.4 The Tribunal noted the Respondent's indication in his Reply to the effect that he did not have the file but so far as he was aware all funds were paid out in the proper manner; the allegation was denied.

126.14.5 The Tribunal found that, whatever happened subsequently, it was beyond any doubt that the Respondent had used money due to the Ms GR estate to pay liabilities for other clients, namely Mr and Mrs P and Mrs G's estate. The Tribunal noted that this was a matter in which a substantial claim had been made on the Compensation Fund, which had paid out £252,942.25 in this matter. As noted above, the Tribunal did not rely on the fact of the payments from the Compensation Fund save to the extent that the fact that claims were made illustrated that some clients believed they had suffered a loss, and the Compensation Fund had accepted that.

126.14.6 In all the circumstances of this matter, the Tribunal was satisfied that the Respondent had made improper payments from client account and was in breach of Rule 1.2(c) AR 2011.

126.15 In respect of all of the matters set out at 126.8 to 126.14, the Tribunal was satisfied that the Respondent had engaged in what was often referred to as "teeming and lading" or "robbing Peter to pay Paul". It was, of course, the case that some clients had received the money due to them before the intervention, but this was only possible because the Respondent used other clients' money to make those payments.

126.16 The Tribunal noted that one substantial claim had been made on the Compensation Fund (for about £250,000), the details of which had not formed part of the Applicant's case. The Tribunal was satisfied that it did not need to have details of all the Compensation Fund claims, or to go beyond the matters in the Rule 7 Statement, in order to be satisfied that the allegations referred to above had been proved.

126.17 With regard to the round sum transfers made by the Respondent, the Tribunal was satisfied that the facts set out at paragraphs 96 to 101 above were proved.

126.18 The Tribunal noted that from 6 October 2011, the AR 2011 specifically prohibited round sum transfers on account of costs: Rule 17.7 AR 2011 stated:

> "*Costs* transferred out of a *client account* in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of *costs*, and covered by the amount held for the particular *client* or *trust*. Round sum withdrawals on account of *costs* are a breach of the rules."

126.19 The Tribunal found that, as reported in the FIR, the Respondent had no bills ledger and there were no letters on files to demonstrate that he had authority to transfer money from client account for costs, although there were bills on some files. The Tribunal was satisfied that the round sum transfers were made at times when the Respondent had not issued bills to clients for the amounts transferred. The Tribunal was satisfied that from 6 October 2011 the Respondent had breached Rule 17.7 AR 2011 on about 15 occasions up to 24 September 2012.

126.20 The Tribunal also found on the evidence presented that many of the transfers occurred when the Firm's office bank account was close to its overdraft limit. For example, on 13 March 2012 £20,360 was transferred from client to office account when the client bank account was in credit in the sum of just under £71,300 and the office bank account was overdrawn in the sum of £18,284.37 (when the overdraft limit was £20,000).

126.21 The Tribunal found that the office bank account statements did not include many transfers into the account, other than the round sum transfers set out at paragraph 97 above. The office bank account did reveal a number of payments for the Respondent's personal living expenses, for example £1,800.66 to P&O Cruises on 29 December 2011 and £9,354 to Mercedes Benz on 30 November 2011.

126.22 The Tribunal was satisfied to the required standard that from 6 October 2011 the Respondent was in breach of Rule 17.7 AR 2011. One of the round sum transfers pre-dated this rule. The Tribunal was satisfied that in respect of the transfer on 3 October 2011 the Respondent was in breach of Rules 22(1) and 22(3) SAR 1998 in that he withdrew money from client account and funds in respect of costs other than in accordance with those rules. The Tribunal was satisfied that in respect of the transfers after 6 October 2011 the Respondent was in breach of Rules 20.1 and 20.3 AR 2011 as he had withdrawn money from client account and in respect of costs other than in accordance with those rules.

126.23 The Tribunal noted that the Respondent had denied that there had been a shortfall on client account and that the Applicant's evidence was deficient in this respect. The Tribunal rejected these propositions. There had clearly been shortfalls on the client account, as at many points from late 2011 until the intervention there was insufficient money on client account to meet liabilities due to clients. The Respondent could not rely on his own gross failure to keep accounts records to criticise the Applicant for not producing more evidence. There was more than sufficient to prove beyond reasonable doubt that the Respondent was in breach of the Accounts Rules, as alleged. This allegation had been proved.

127. **Allegation 2.2 - He acted in breach of the 2011 Code and (to the extent that the relevant conduct took place before 6 October 2011) the Solicitors Code of Conduct 2007 ("the 2007 Code") in that:**

2.2.1 **He failed to act with integrity, contrary to Rule 1.02 of the 2007 Code and/or Principle 2 of the 2011 Code;**

2.2.2 **He failed to act in clients' best interests, contrary to Rule 1.04 of the 2007 Code and/or Principle 4 of the 2011 Code;**

2.2.3 **He failed to provide a proper standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or Principle 5 of the 2011 Code;**

2.2.4 **He failed to behave in such a way as to maintain the trust the public placed in him and the legal profession, contrary to Rule 1.06 of the 2007 Code and/or Principle 6 of the 2011 Code;**

2.2.5 **He failed to protect client money and assets, contrary to Principle 10 of the 2011 Code.**

127.1 The factual background to this allegation are set out at paragraphs 53, 54 to 83, 85 to 95, 96 to 101 and 102 above.

127.2 The Applicant submitted that in failing to maintain accounts at all, and in failing to carry out client account reconciliations, the Respondent was in breach of the Code, in particular as alleged at 2.2.2, 2.2.4 and 2.2.5. His actions failed to maintain the trust the public placed in him or the profession. He had failed to act in the best interests of clients and had failed to protect client money and assets (in the period after 6 October 2011).

127.3 In the light of all of the findings set out above, in particular at paragraphs 126.6 above, there could be no doubt that the Respondent had failed to act in a way which would maintain the trust the public would place in him or the profession. The public, rightly, would expect a solicitor to maintain proper and accurate books of account and to protect their money and assets; the Respondent had clearly failed to do so.

127.4 The Tribunal had made findings in respect of the Respondent's improper use of client money, in relation to a number of clients and transactions, as set out in detail above. Any misuse of client money was very serious and this was aggravated where the conduct was repeated and was deliberate.

127.5 With regard to Mr and Mrs P, the Tribunal was satisfied that in using their money for the benefit of another client (Ms W) and in failing to redeem their mortgage for over two months after the sale, the Respondent had: failed to act with integrity; failed to act in the best interests of Mr and Mrs P; failed to provide a proper standard of service to them; acted in a way which would undermine the trust the public would place in him or the profession; failed to protect client money and failed to provide services to them in a manner which protected their interests. The Tribunal noted that in interview with Mr Levy on 2 November 2012 the Respondent had (rightly) accepted that he had used Mr and Mrs P's monies towards Ms W's matter and that Mr and Mrs P's mortgage should have been redeemed in September 2012. The Tribunal expressly rejected any

suggestion that there had simply been an error; the Respondent's conduct was deliberate and had concealed his misconduct until the investigation took place.

127.6 With regard to Ms W, the Tribunal was also satisfied that in making improper use of her money and in failing to take the necessary steps to pay SDLT and register her purchase, the Respondent was in breach of Principles 2, 4, 5, 6 and 10 and failed to achieve Outcome O(1.2). Again, the Tribunal was satisfied that the Respondent's misconduct was deliberate and did not arise from a simple error.

127.7 On the estate of Mrs G (deceased) the Respondent had again made improper use of client money, in breach of the relevant accounts rules. In this case, the breaches spanned the introduction of the AR 2011. The Tribunal was satisfied that the Respondent had made improper use of the funds due to the estate of Ms GR in order to pay legacies on the Mrs G (deceased) matter and had delayed (for no good reason) in paying out the legacies which should have been paid in 2010. The Tribunal was satisfied that the Respondent had clearly been in breach of Principle 2 in making improper use of client money; his actions had been deliberate. Further, the Tribunal was satisfied that in failing to pay out legacies within a reasonable time, the Respondent was in breach of Principles 4, 5, 6 and 10 and had failed to achieve Outcome O(1.2).

127.8 In the matter of Mr A (37 A High Street), there had been no direct misuse of the client's money. However, the shortage on client account meant that the Respondent did not hold enough money to pay to Mr A everything that was due in one tranche; instead, payments were made when money from other clients had built up the contents of client account.

127.9 The Tribunal considered the reasons given by the Respondent to Mr A for failing to pay over the full sum at once. In the completion statement, the balance due to the client was noted to be £279,195 and it was indicated there would be a payment of £247,729.33 with the balance of £31,465.67 "to be paid to you in the week commencing 4th June after being drawn down from deposit, together with accrued interest". The Tribunal found that this statement had been made by the Respondent and the clear meaning of it was that the balance was held on deposit, such that the deposit account would have to be "drawn down", a process which might take a week or so.

127.10 The Tribunal found that thereafter, on 12 June 2012, the Respondent sent a cheque to Mr A for £29,470.35 with a letter which stated, "… for some reason the balance of £1,995.32 has not been released from our deposit account by the bank. We are chasing this and I will forward a further cheque to you for this sum plus interest in the very near future". The clear meaning of this statement was that there was a deposit account but due to a problem with the bank not all of the funds had been released from it.

127.11 In the interview on 2 November 2012 the Respondent had admitted to Mr Levy that there had not been a deposit account. The Tribunal found that this was clearly the correct position, as there was no evidence at all that such an account existed at or around the relevant time. Further, the Respondent had admitted in the course of the interview that the reference to the deposit account was an excuse for the delay in

sending the balance. The Tribunal was satisfied that on both occasions when he had referred to a deposit account he did not in fact hold sufficient funds to pay the sums due at those points to the client. The issues of the "excuse" is dealt with further under allegation 2.3 below, but for the purposes of this allegation, the Tribunal was satisfied that there was no deposit account and the Respondent was not being open and honest when he referred to such an account. In making an untrue statement, the Respondent had clearly acted without integrity, in breach of Principle 2. Such behaviour was also clearly such as would damage the trust the public would place in the Respondent and/or the provision of legal services, and amounted to a breach of Principle 6. The Respondent had failed to act in his client's best interests, in that he had failed to give accurate information and had delayed in paying the sums due, in breach of Principle 4. In all of the circumstances, the Respondent had failed to protect Mr A's money and he was in breach of Principle 10 of the Code.

127.12 In the matter of Ms GR (deceased), on the facts and matters set out above, the Tribunal was satisfied that the Respondent had improperly used his client's money and was thereby in breach of Principles 2, 4, 6 and 10 of the Code.

127.13 The Respondent knew at all material times that he was making transfers which were improper. The absence of proper accounts records meant it may have been more difficult for the Respondent to keep track of each client's money, but that was an aggravating and not mitigating factor. The Respondent knew that he was receiving money on one matter and using it for another.

127.14 The Tribunal had made a number of findings of fact relating to round sum transfers made by the Respondent, as set out at paragraph 126.17 to 126.21. Of relevance to this allegation, the Tribunal considered the use made by the Respondent of sums transferred from client to office account by way of round sum transfers.

127.15 The Tribunal found that two round sum transfers occurred immediately before substantial payments were made to HMRC. On 3 October 2011, when the balance on office account was just £973.44 there was a transfer of £26,000 from client account. This enabled the Respondent to pay £36,446.42 to HMRC, leaving an office account overdraft of £9,733.40; without the transfer from client account, the Firm would have exceeded its £20,000 overdraft limit and the payment to HMRC therefore could not have been made. About a year later, on 24 September 2012, at a time when the office account was overdrawn by £16,949.48 a transfer of £50,000 was made from client to office account. On the following two days, payments were made to HMRC in the sums of £30,000 and £16,501.62 respectively. After these payments were made, office account was overdrawn by £13,470.66. These payments to HMRC would not have been possible but for the round sum transfer from client account.

127.16 The Tribunal also noted and found that in interview with the investigators on 2 November 2012 the Respondent was asked about the October 2011 payment to HMRC and in particular was asked if it was in respect of a tax liability. The Respondent was recorded as replying, "Well, I don't know is the honest answer, but I mean if it's HMRC one would have to assume that to be correct".

127.17 When asked about the round sum transfers, the Respondent initially indicated that the transfers reflected his entitlement to costs. The Tribunal found that whilst the Respondent had raised invoices for some matters, the transfers did not reflect what had actually been billed. Further, and of significance in the context of this allegation, the Tribunal found that the total of the round sum transfers in the period 3 October 2011 to 30 October 2012 was approximately £170,000. When this was put to him in the course of the interview on 2 November 2012 the Respondent replied, "Well, it seems too much, I mean, I accept it seems too much…" The Respondent also confirmed in the course of the interview that the last period for which he had a profit and loss account (March 2010) indicated that his gross income in that period had been just under £88,000. The Tribunal found that transfers of around £170,000, allegedly for costs, would substantially exceed the Respondent's likely gross income; the Respondent had not given any indication that his fee income had doubled in the two years from 2010 to 2012.

127.18 In all of these circumstances, the Tribunal was satisfied to the required standard that the Respondent had made improper round sum transfers for which there was no justification and had used that money for his own purposes. The Respondent had clearly withdrawn money from client account when he was not permitted to do so pursuant to SAR 1998 and/or AR 2011. The payments to HMRC were clear, and the Tribunal also found from the office account bank statements that the sums transferred had been used for the Respondent's personal expenditure, in respect of a car, a holiday and other domestic expenses.

127.19 The Tribunal was satisfied that in making round sum transfers as he had, and using the improperly withdrawn sums for his own purposes, the Respondent had acted without integrity and in a way which would damage the trust the public placed in him and/or the provision of legal services. Further, the Respondent had failed to protect his clients' money. There was no doubt he was in breach of Principles 2, 6 and 10 of the Code. The Tribunal noted and found in particular that the "teeming and lading" exercise, of using one client's money for the benefit of another, was a method of concealing the shortage for as long as possible.

127.20 The Applicant alleged that the Respondent had failed to act with integrity and/or had failed to behave in a way which would maintain the trust the public placed in him and the legal profession in relation to his explanation for his failure to provide accountants' reports (as dealt with under allegations 1.1 and 1.2 above).

127.21 The Tribunal noted that in his letter to the SRA of 5 December 2011 the Respondent had stated,

> "The problem in filing the accountant's reports has been that we have been in dispute with our accountants over the fees previously charged by them in regard to the previous accountants' reports. This dispute has now been resolved and the two outstanding reports will be prepared as a priority. At the latest they will be sent to you by the end of January 2012".

127.22 The Applicant submitted that the reports were never received and, as shown by the evidence in the FIR (and as found by the Tribunal) the Respondent had not had any proper accounts records for a period of at least a year as at December 2011. The

Applicant submitted that the Respondent was not, therefore, in a position to be able to file an accountants' report. The Applicant submitted that the Respondent's letter to the SRA of 5 December 2011 was untrue and the Respondent was thereby in breach of Principles 2 and 6 of the Code.

127.23 The Tribunal considered this issue carefully. The Respondent had stated in his Reply that the initial delay was caused by a dispute with his accountants and that the accountants had issued County Court proceedings against him in respect of a disputed invoice. Whilst the Respondent's letter was clearly not full and frank, in that it did not state there was a difficulty caused by the Respondent's failure to keep proper records, the Tribunal did not find to the highest standard that the Respondent's statement about a dispute with the accountants was untrue. Accordingly, this part of the allegation was not proved to the required standard.

127.24 Save as set out in paragraphs 127.19 to 127.22, the Tribunal was satisfied to the required standard that this allegation had been proved.

128. **Allegation 2.3 - For the reasons set out in relation to: a) Mr A/ 37 A High Street; b) the cash shortage on client account and improper use of clients' funds; c) the improper application of money belonging to one client in settlement of a financial obligation on the part of another client; and d) the explanation given by the Respondent for his failure to file accountants' reports it was alleged that the Respondent's conduct was dishonest, but the Tribunal could find the relevant allegations proved without finding dishonesty.**

128.1 The factual background to this allegation is set out at paragraphs 53, 85 to 92, 93 to 95 and 102 above.

128.2 The Tribunal noted and accepted that the test for dishonesty to be applied was that set out in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra").

128.3 As set out above, the Tribunal was satisfied to the required standard that the Respondent had given an untrue explanation to Mr A about why the balance due to him of £1,995.32 was not available on 12 June 2012; the Respondent had referred to the money being drawn down from a deposit account, but there was no such account and the Respondent knew this.

128.4 The Tribunal had also been satisfied that the Respondent had improperly used client money, in particular during 2012, although the matter of Mrs G deceased indicated that the shortage on client account may well have existed from late 2010. The Tribunal was satisfied that the way the Respondent operated was by "teeming and lading"; he had on numerous occasions used the money of one client to pay obligations on behalf of another and to cover up the fact that there was a shortage on client account. The Tribunal was also satisfied that the shortage had occurred largely because the Respondent had made round sum transfers from client to office account, ostensibly for costs in circumstances where the transfers were for substantially more than was due in costs. The shortfalls which had occurred were entirely the fault of the Respondent. The Tribunal had not been satisfied to the required standard that the Respondent's explanation for his failure to file accountants' reports was untrue, although the letter of 5 December 2011 was not full and frank.

128.5 The Tribunal noted that the Respondent had asserted that he had not had any dishonest intent. However, he had failed to attend the Tribunal to give an account of himself and had failed to provide the detailed explanations which he had asserted (in August 2014) would follow. The Tribunal did not have to go so far as to draw adverse inferences concerning the Respondent's failure to explain himself; the evidence presented on behalf of the Applicant was overwhelming. The Tribunal did not have to find that the Respondent set out with a dishonest intent or that he did not intend to repay the client money. The Respondent had not actually stated he had such an intention as he denied there was any loss; such a denial was completely unrealistic in the light of the evidence.

128.6 The Tribunal was satisfied to the required standard that in: i) giving an explanation to Mr A which was false and which he knew to be false at the time he gave it; ii) creating and allowing a shortage on client account for a substantial period, in circumstances where the shortage was the result of his own default; iii) knowingly using the money of one client to settle financial obligations of another and iv) taking steps to cover up the shortage without rectifying it the Respondent was dishonest by the standards of reasonable and honest people. Further, the Tribunal was satisfied beyond reasonable doubt that in each of those respects the Respondent knew that what he was doing was dishonest by those same standards. Accordingly, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly in the respects noted.

Previous Disciplinary Matters

129. There were no previous matters in which findings had been made against the Respondent.

Mitigation

130. The Respondent had not attended or offered mitigation, other than the explanations and issues contained in his Reply and First Statement document.

Sanction

131. The Tribunal had regard to its Guidance Note on Sanction (December 2014), in which the primary purpose of sanction in the Tribunal was noted to be the maintenance of the reputation of the profession as one whose members could be trusted to the ends of the earth.

132. The Tribunal noted that there were no previous findings against the Respondent and that he had had a long career.

132. However, the Tribunal had found that dishonesty had been proved. In those circumstances, unless there were exceptional circumstances, the appropriate and proportionate sanction was to make an order striking the Respondent off the Roll of Solicitors. The Tribunal considered the circumstances of this case. There were no exceptional circumstances, so the only order commensurate with the misconduct was a striking off order.

133. The way in which the Respondent had operated his firm had been wholly wrong. He had engaged in what was often referred to as "teeming and lading" and thus had improperly used client money. Further, he had made round sum transfers which were unjustified and by this means had used about £169,000 of client money for his own purposes, whatever those were. At the time of the intervention into his practice, clients had suffered losses of about £357,000, which losses had to be met from the Compensation Fund. The Respondent had indicated repeatedly that he would explain what had happened but had not done so and had not produced any witnesses or documentary evidence which cast any doubt on the Applicant's case (in relation to each of the proven allegations).

134. In the circumstances of this case, the Respondent's misconduct was so serious that even without the finding of dishonesty an order striking off the Respondent would have been entirely appropriate and proportionate.

Costs

135. On behalf of the Applicant, Ms Wingfield applied for an order that the Respondent should pay the Applicant's costs of the proceedings and investigation.

136. Ms Wingfield referred to the Schedule of Costs, a copy of which had been served on the Respondent, which set out total costs of £39,134.20. This was based on costs incurred to 5 January 2015 and estimated costs thereafter. Ms Wingfield noted that the estimate of costs of this hearing was based on the time estimate for the hearing of 3 days; in fact, the hearing was likely to finish in about two-thirds of a day. Ms Wingfield submitted that it would therefore be appropriate to reduce the costs by around £3,000 (including VAT).

137. In response to a question from the Tribunal, Ms Wingfield confirmed that it was understood that the Respondent became subject to a bankruptcy order on 14 June 2014. It was understood that the costs of these proceedings (which began before the bankruptcy order) would fall into the bankruptcy. The Respondent had not submitted information about his means; directions that he should do so if he wanted to rely on his financial circumstances in relation to sanction or costs had been made in the course of the proceedings.

138. The Tribunal considered the schedule of costs, and agreed that it was appropriate to reduce the costs claimed by about £3,000 (including VAT) as the hearing had been shorter than anticipated. The Tribunal noted that the costs claimed included forensic investigation costs of £8,574.20, SRA caseworking costs of £812 and the SRA's legal department costs of £2,632.50. The remaining costs related to work done by Penningtons Manches LLP, and VAT on those costs. The Tribunal was satisfied that the costs claimed were reasonable and proportionate to the issues in the case; the time spent and rates charged were appropriate. Accordingly, the Tribunal assessed the reasonable costs of the case at £36,000 (inclusive of VAT and disbursements), having made an allowance for the shorter length of the hearing.

139. The Tribunal then considered whether it should order the Respondent to pay those costs. The Tribunal had not been provided with any information concerning the Respondent's means. It was understood that the Respondent was currently subject to

a bankruptcy order, made in June 2014. The Tribunal noted that in the light of the Nortel/Lehman case aka Bloom v Pensions Regulator [2013] UKSC 52 it appeared that a costs order made by the Tribunal would be a contingent liability in the Respondent's bankruptcy. There was no reason either to reduce the costs order or make it unenforceable without further permission. The Tribunal therefore ordered the Respondent to pay the Applicant's costs, assessed in the sum of £36,000.

Statement of Full Order

140. The Tribunal Ordered that the Respondent, Malcolm Ronald Hannaford 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 £36,000.00.

Dated this 19th day of March 2015
On behalf of the Tribunal

R. Nicholas
Chairman