SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11100-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SIMON WILLIAM GRIFFITHS Respondent

Before:

Mr D. Green (in the chair)
Mr R. Hegarty
Mr M. G. Taylor CBE DL

Date of Hearing: 22 October 2013

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were:

1.1 That (in the period up to 5 October 2011) the Respondent acted in breach of Rule 10.05 of the Solicitors' Code of Conduct 2007 in that he failed to fulfil an undertaking given on 5 April 2011 to another firm of solicitors (a) to redeem a charge in favour of Bank of Scotland Plc and (b) to provide confirmation of discharge as soon as the same had been received from Bank of Scotland Plc;

1.2 That since 6 October 2011, the Respondent failed to fulfil an undertaking given on 5 2011 to another firm of solicitors (a) to redeem a charge in favour of Bank of Scotland Plc and (b) to provide confirmation of discharge as soon as the same had been received from Bank of Scotland Plc. The Respondent had thereby breached and continued to breach Principle 6 of the SRA Principles 2011. Further, or alternatively, the Respondent had thereby failed and continued to fail to achieve Outcome 11.2 of the SRA Code of Conduct 2011;

1.3 That the Respondent acted in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 in that he misled another firm of solicitors when he wrote to them on 26 September 2011 and/or on 28 October 2011 stating that a mortgage had been redeemed when that was not the case;

1.4 That the Respondent acted in breach of the Solicitors' Accounts Rules 1998 ("SAR") in that:

1.4.1 [Withdrawn]

1.4.2 In breach of Rule 32, proper accounting records were not kept by the Respondent in that:

1.4.2.1 the £208,150.12 described in the ledger for Rock Estates Limited as having been sent to Swansea Building Society on 26 April 2011 for "mortgage redemption" had not been sent to that building society in order to redeem a mortgage;

1.4.2.2 the "inter-account transfer" on 15 April 2011 recorded in the ledger for Rock Estates Limited did not indicate from which ledger the sum of £158,150.12 had been transferred;

1.4.2.3 the payment of £15,000 on 21 April 2011 was recorded in the ledger for Rock Estates Limited as being both a "payment to client" and a payment to a third party, namely "Hardplace Properties";

1.5 he made an improper withdrawal of £30,000 from client account and in so doing breached Principles 1, 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and Rules 6.1, 7.1 and 20.1 of the SRA Accounts Rules 2011;

1.6 he made false and/or incomplete statements on a proposal form for solicitors' professional indemnity insurance and in so doing breached Principles 1, 2 and 6 of the SRA Code of Conduct 2011.

1.7 For the avoidance of doubt, it was alleged that the First Respondent acted dishonestly in respect of the matters referred to in allegations 1.3 and 1.6 although it was not necessary to prove dishonesty to prove the allegations themselves.

Documents

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

Applicant

- Application dated 27 November 2012;
- Rule 5 Statement and exhibit "GRFH1" dated 27 November 2012;
- Supplementary Rule 7 Statement and exhibit "GRFH2" dated 24 April 2013;
- Additional bundle of correspondence – various dates;
- Office Copy Entries;
- Schedule of Costs dated 17 October 2013;
- Forensic Investigation costs breakdown undated.

Respondent

- Letter from Linda Edwards dated 2 October 2013;
- Summary of Allegations document dated 16 October 2013;
- Letter from the Respondent to the Tribunal dated 18 October 2013;
- Email from the Respondent to the Tribunal dated 21 October 2013;
- Respondent's Counter Schedule to the Applicant's costs undated;
- Email from the Respondent to the Tribunal dated 22 October 2013.

Preliminary Matter

<u>Preliminary Matter (1)</u>

3. Mr Hudson referred the Tribunal to the Respondent's letter dated 18 October 2013 which he understood to have been an application for adjournment. He said that he had opposed the application by his letter dated 21 October 2013 and the Tribunal had refused the application on the papers including that it did not excuse the Respondent's attendance.

4. A further email had been received from the Respondent dated 22 October 2013 on the morning of the substantive hearing which Mr Hudson read as the Respondent having clearly indicated that he had withdrawn his adjournment application. His email stated:

"…

> 4 In the circumstances I wish to draw [withdraw] my application for an adjournment of the proceedings as stated in my previous letter to the Tribunal".

5. Mr Hudson said that the Respondent had further indicated that he agreed to the case proceeding in his absence as he had stated in his email:

> "…
>
> 1. I apologies (sic) to the Tribunal for not attending today's (sic) no discourtesy is intended. I am content that the Tribunal proceeds (sic) in my absence".

6. Mr Hudson said that the Respondent had not attended and he referred the Tribunal to its own Rules, and in particular Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007") which states:

> "…
>
> 16 (2) If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing".

7. Mr Hudson submitted that the Respondent was clearly aware that the substantive hearing was taking place and the Tribunal had been referred to the document trail regarding notice given to the Respondent of the hearing date. In addition the Respondent's own email of 22 October 2013 evidenced that the Respondent was aware of the hearing and had no intention of attending. Mr Hudson submitted that the Respondent had made a conscious decision not to attend and he invited the Tribunal to proceed in the Respondent's absence.

<u>The Tribunal's Decision (1)</u>

8. The Tribunal had listened carefully to Mr Hudson's submissions and had regard to the documents to which it had been referred and in particular the Respondent's email of 22 October 2013. It also noted that Rule 16 (2) of the SDPR 2007 afforded it the power of hearing and determining an application in the absence of a Respondent on the basis that it was satisfied that notice of the hearing had been served upon the Respondent in accordance with the Rules.

9. The Tribunal was satisfied that the Respondent had been properly served and that he was fully aware of the hearing date. He had withdrawn his adjournment application and he had waived his right to attend and had clearly stated that he did not intend to appear before the Tribunal at the substantive hearing of the case against him.

10. In the circumstances, the Tribunal consented to the case proceeding in the Respondent's absence.

Preliminary Matter (2)

11. Mr Hudson informed the Tribunal that there had been a Second Respondent with whom the Applicant had entered into a Regulatory Settlement Agreement ("RSA") which the Tribunal had seen. He said that it was clear that the Second Respondent had only dealt with Wills and Probate and had had no dealings with the conveyancing work at the firm which had been the sole responsibility of the Respondent. The Second Respondent had only learned of the breach of undertaking in November 2011 and in relation to the failure to keep proper accounting records, not until the Applicant's investigation in February 2012. Mr Hudson told the Tribunal that the Applicant accepted that the Second Respondent had been distanced from what was happening at the firm which was the subject matter of the proceedings.

12. Mr Hudson confirmed that the Second Respondent had admitted the SAR 1998 breaches and the Applicant had considered it appropriate to enter into the RSA with the Second Respondent who had received an internal sanction of a Rebuke by the Applicant.

The Tribunal's Decision (2)

13. The Tribunal consented to the withdrawal of the proceedings against the Second Respondent on the basis that the Applicant had imposed its own internal sanction upon her and had entered into an RSA with the Second Respondent.

Preliminary Matter (3)

14. Mr Hudson informed the Tribunal that he sought leave to withdraw allegation 2.1 of the Rule 5 Statement.

15. Mr Hudson said that the allegation related to an alleged breach of Rule 15 of the SAR 1998 and there was a contest between the Respondents and the Applicant as to who the vendors had been; the Respondents had contended that it was the Respondent's company which was the vendor and the Applicant maintained that the property had been registered in the names of the Respondents and not the company.

16. Mr Hudson said that the solicitor of Mr and Mrs B [the buyers] had been a Trainee Solicitor and had noticed that the name of the vendor in the contract was not the same as the registered owner of the property. That Trainee Solicitor had discussed the matter with a supervisor who stated that they had had a conversation with the Respondent about this but the Respondent had subsequently denied that such a conversation had taken place.

17. Mr Hudson said that in the interests of proportionality, taking into account the oral evidence which would have been required to pursue the allegation and that there were no public interest issues the Applicant had decided to seek to withdraw allegation 2.1 on that basis.

The Tribunal's Decision (3)

18. The Tribunal consented to the withdrawal of allegation 2.1 on the basis that there were no public interest issues which arose from the withdrawal of that allegation.

Factual Background

19. At all material times until 26 March 2012 when the Second Respondent resigned as a partner, the Respondent had practised in partnership with the Second Respondent as Eaves Solicitors in Milford Haven, Pembrokeshire ("the firm").

20. The Respondent was admitted as a solicitor on 15 April 1989. His name remained on the Roll of Solicitors and he held a current practising certificate.

21. On 4 September 2008 Rock Estates Limited were registered at HM Land Registry as proprietors of freehold land known as 1 Maryland, Penally, Tenby, Pembrokeshire SA70 7QY under Title Number CYM414001 ("the property").

22. At all material times the Respondent was sole director of Rock Estates Limited ("RE Limited").

23. On 7 January 2010 the Respondents became registered proprietors of the property and a charge in favour of Bank of Scotland Plc was registered by them against Title Number CYM414001 ("the charge").

24. On or about 25 January 2010 Lowless & Lowless Solicitors were instructed by Mr and Mrs B in their purchase of the property from the Respondents for £335,000.

25. On 23 March 2010 contracts were exchanged for the property and £11,500 was sent to the Respondents by Lowless & Lowless via telegraphic transfer ("TT"). The deposit monies were credited to the ledger of RE Limited.

26. On 1 April 2011 Lowless & Lowless merged with Morris Roberts Solicitors and became Red Kite Law LLP ("Red Kite").

27. On 5 April 2011 the firm gave a written undertaking to Red Kite:

27.1 to redeem the charge in favour of Bank of Scotland Plc ("the Bank of Scotland charge");

27.2 to provide Red Kite with confirmation of discharge as soon as the same had been received from the Bank of Scotland;

27.3 to send Red Kite an engrossed and executed transfer.

28. The Applicant's case was notwithstanding the undertaking to redeem the Bank of Scotland charge the Respondent paid over to third parties the entirety of the deposit and net completion monies without retaining sufficient or any monies with which to redeem that charge.

29. In correspondence which commenced from 3 May 2011 onwards, Red Kite asked the firm to send them the executed transfer as a matter of urgency to enable them to register their clients' interest in the property. On 8 June 2011 by email sent to the Respondent, Red Kite advised that unless the executed transfer was sent to them in that night's post, they would refer the breach of undertaking to the Applicant.

30. Red Kite did not receive the executed transfer.

31. Red Kite allowed the firm until 28 September 2011 to send the executed transfer and on 26 September 2011 the firm delivered to Red Kite what purported to be a re-engrossed re-executed transfer. On the same day they advised Red Kite (i) that the Bank of Scotland charge had been redeemed and (ii) that they would press the lender for confirmation that the END had been sent.

32. Further correspondence ensued between Red Kite and the Respondent with regard to whether the Bank of Scotland charge had been redeemed and on 5 January 2012 Red Kite requested confirmation from the firm by close of business on 6 January 2012 that the Bank of Scotland charge had been redeemed. On 5 January 2012 Red Kite also reported the Respondent's conduct to the Applicant.

33. The Applicant alleged dishonesty on the part of the Respondent with regard to the content of letters he sent to Red Kite on 26 September 2011 and 28 October 2011 and he was alleged to have intended to mislead and did mislead Red Kite with regard to redemption of the charge.

34. Also on 5 January 2012 Red Kite lodged a complaint with the Applicant regarding the Respondent's conduct including the alleged breach of undertaking.

35. As at the date of the Rule 5 Statement and thereafter as at the date of the substantive hearing the Bank of Scotland charge had still not been redeemed.

36. There was further correspondence between the Respondent and the Applicant with regard to Red Kite's letter of complaint dated 5 January 2012.

37. On 16 August 2012 an inspection of the books of account and other documents of the firm was commenced by Mr Oliver Baker, a Forensic Investigation Officer ("FIO") of the Applicant. The FIO's Forensic Investigation Report ("FI Report") was dated 21 December 2012. Although designated an "Interim Report", an additional report was not produced and there was no such intention.

38. At all material times after 26 March 2012 the Respondent was practising on his own account at the firm, following the Second Respondent's resignation.

39. The improper withdrawal of £30,000 related to the matter of HWJ Deceased. There had been a payment out of £30,000 on the client matter ledger on 31 July 2012 designated "interim distribution". The firm's internal chit relating to the payment stated that the payment had been made to CS, one of the beneficiaries of HWJ's estate. The chit showed that the payment was authorised by "SWG" being the Respondent.

40. The payment was made to a Lloyds TSB account ("the Lloyds account") but it was not in the name of CS, the purported recipient of the £30,000. The Lloyds account belonged to a company called Harwood Court Limited ("Harwood Court") and the registered signatory to that account (which was closed on 10 August 2012) was the Respondent.

41. The Respondent was the sole director of Harwood Court and was shown in the company's Annual Return dated 2 November 2011 as its sole shareholder.

42. An email from Lloyds TSB in respect of the Lloyds account made reference to payments from that account to RE Limited. As stated, the Respondent was the sole director of RE Limited. Bank account statements for RE Limited showed, inter alia, three receipts of funds from the Lloyds account shortly after the transfer of £30,000 from the firm's client account on 31 July 2012 totalling £28,254.59 and narrative which stated "Direct Credit from Harwood Court Ltd…".

43. The improper withdrawal on 31 July 2012 led to a client account shortage on the firm's client account and as at the date of the FIO's FI Report the shortage had not been replaced by the Respondent.

44. The Applicant alleged dishonesty on the part of the Respondent with regard to the improper withdrawal.

45. On 18 September 2012 the Respondent signed a proposal form for solicitors' professional indemnity insurance for 2012/2013. Section 4a of the proposal form asked the question:

> "In the past 15 months has the Firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof (a) Been or is the subject of an investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority, the Legal Ombudsman Service or any other recognised body?".

46. In reply to that question the Respondent had ticked the box marked "No".

47. The decision to refer both Respondents to the Tribunal was made on 29 June 2012.

48. On 21 December 2012 a Panel of Adjudicator's Sub-Committee decided to intervene into the firm.

49. On 8 February 2013 an Authorised Officer of the Applicant authorised inclusion of the supplementary Rule 7 allegations into the existing disciplinary proceedings against the Respondent.

Witnesses

50. The FIO, Mr Oliver Baker gave evidence.

51. Mr Baker confirmed the truth of his FI Report dated 21 December 2012.

52. Mr Baker was referred to the client ledger for Mrs W-J Deceased and he confirmed that the amount in the ledger had increased from £145,000 to approximately £151,000 in March 2012. He said that there had been two sizeable withdrawals; £60,000 on 31 May 2012 and £30,000 on 31 July 2012. Mr Baker confirmed that the withdrawal for £60,000 had been a genuine interim distribution which had been evidenced on the file.

53. Mr Baker said that he had been concerned about the £30,000 withdrawal which had been brought to his attention by the firm's book keeper who had asked him to look at the client matter as he had not seen supporting documentation for the transfer. Mr Baker said that he had looked at the matter the following day and had identified that there was no supporting documentation on the client file for the £30,000 "interim distribution". He had then spoken to the Respondent about it and had asked for documentation in support. Mr Baker said that he had then waited for approximately 90 minutes while the Respondent went looking for the documentation related to this transaction.

54. Mr Baker said that the book keeper had found some documentation in a folder which he said had been wrongly labelled. The Respondent had provided Mr Baker with an internet print out for the transfer but that had not assisted. He said that he had pressed the Respondent for further information as to where the money had been paid and the Respondent had contacted his bank and had purportedly spoken to someone at length on the telephone. The Respondent had then provided Mr Baker with a written statement for him to read to the bank individual over the telephone who had confirmed that the facts of the statement were correct.

55. Mr Baker said that the handwritten attendance note dated 30 July 2012, purportedly by the Respondent that he had spoken to CS's solicitors and agreed the transfer of the £30,000 had not been on the client file and had been produced to him by the Respondent after Mr Baker had asked for documentation in support of the transfer. Mr Baker told the Tribunal that CS was a vulnerable person. She and Ms C had been the two administrators of Mrs W-J's estate but it had been felt inappropriate for CS to continue in view of her vulnerability and her consent had been sought to withdraw and for Ms C to act alone.

56. Mr Baker said that he had been told by the book keeper that he had seen correspondence at the time which suggested that the firm would have to close which had not been brought to his attention by the Respondent. Mr Baker said that the book keeper told him that the Respondent was "a liar".

Findings of Fact and Law

57. 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.

58. The allegations against the Respondent were:

1.1 That (in the period up to 5 October 2011) the Respondent acted in breach of Rule 10.05 of the Solicitors' Code of Conduct 2007 in that he failed to fulfil an undertaking given on 5 April 2011 to another firm of solicitors (a) to redeem a charge in favour of Bank of Scotland Plc and (b) to provide confirmation of discharge as soon as the same had been received from Bank of Scotland Plc;

1.2 That since 6 October 2011, the Respondent failed to fulfil an undertaking given on 5 April 2011 to another firm of solicitors (a) to redeem a charge in favour of Bank of Scotland Plc and (b) to provide confirmation of discharge as soon as the same had been received from Bank of Scotland Plc. The Respondent had thereby breached and continued to breach Principle 6 of the SRA Principles 2011. Further, or alternatively, the Respondent had thereby failed and continued to fail to achieve Outcome 11.2 of the SRA Code of Conduct 2011;

1.3 That the Respondent acted in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 in that he misled another firm of solicitors when he wrote to them on 26 September 2011 and/or on 28 October 2011 stating that a mortgage had been redeemed when that was not the case;

1.4 That the Respondent acted in breach of the Solicitors' Accounts Rules 1998 ("SAR") in that:

1.4.1 [Withdrawn]

1.4.2 In breach of Rule 32, proper accounting records were not kept by the Respondent in that:

1.4.2.1 the £208,150.12 described in the ledger for Rock Estates Limited as having been sent to Swansea Building Society on 26 April 2011 for "mortgage redemption" had not been sent to that building society in order to redeem a mortgage;

1.4.2.2 the "inter-account transfer" on 15 April 2011 recorded in the ledger for Rock Estates Limited did not indicate from which ledger the sum of £158,150.12 had been transferred;

1.4.2.3 the payment of £15,000 on 21 April 2011 was recorded in the ledger for Rock Estates Limited as being both a "payment to client" and a payment to a third party, namely "Hardplace Properties";

1.5 he made an improper withdrawal of £30,000 from client account and in so doing breached Principles 1, 2, 4, 6 and 10 of the SRA Code of Conduct 2011 and Rules 6.1, 7.1 and 20.1 of the SRA Accounts Rules 2011;

1.6 he made false and/or incomplete statements on a proposal form for solicitors' professional indemnity insurance and in so doing breached Principles 1, 2 and 6 of the SRA Code of Conduct 2011.

1.7 For the avoidance of doubt, it was alleged that the First Respondent acted dishonestly in respect of the matters referred to in allegations 1.3 and 1.6 although it was not necessary to prove dishonesty to prove the allegations themselves.

Submissions on behalf of the Applicant

58.1 Mr Hudson referred the Tribunal to the Rule 5 Statement upon which he relied. He referred to a letter dated 5 April 2011 from the Respondent to Lowless & Lowless Solicitors acting for Mr and Mrs B ("the buyers"), which stated:

> "…
>
> 3 …please treat this letter as our undertaking to redeem the charge dated 21st June 2010 in favour of Bank of Scotland and let you have confirmation of discharge as soon as the same is received from the Bank of Scotland".

58.2 Mr Hudson said that this was the written undertaking which the Respondent had not complied with although it erroneously referred to 21 June 2010 which should have read 23 June 2009 as stated by the Respondent in his email to Mr Hudson dated 27 February 2013:

> "…
>
> 1 the letter of undertaking prepared and signed by me dated 5th April 2011 was an undertaking to redeem the charge dated 23rd June 2009 not withstanding (sic) that the letter refereed (sic) to the date of the charge as 21st June 2010".

58.3 Mr Hudson said that the sale transaction of 1 Maryland to Mr and Mrs B by the Respondent had completed on 6 April 2011 and £100,000 had been sent by Red Kite to the Respondent and credited to the client account ledger for RE Limited. Out of the £100,000, £10,000 was sent to RE Limited which left a balance on the client ledger of £90,000. On 15 April 2011 £158,150.12 was credited to RE Limited's client account ledger via an inter account transfer, increasing the balance on RE Limited's client account ledger to £248,150.12.

58.4 Mr Hudson said that on the same date £25,000 was sent to RE Limited which reduced the balance on RE Limited's client ledger to £223,150.12. On 21 April 2011 a further £15,000 was sent to an entity described as "Hardplace Properties" which reduced the balance on RE Limited's client account ledger to £208,150.12. The entry on the ledger for that transfer stated that the payment was in respect of "monies to client".

58.5 Mr Hudson said that on 26 April 2011 £208,174.95 was transferred by the firm to Swansea Building Society for the credit of RE Limited which reduced the balance on RE Limited's client account ledger to nil. Mr Hudson told the Tribunal that although the entry on RE Limited's ledger stated that the transfer was in respect of "mortgage redemption", it was not used to redeem a mortgage but was instead credited to RE Limited's premier account with Swansea Building Society.

58.6 The Respondent had accepted that the entry was wrong but maintained that it was the fault of the book keeper. Mr Hudson referred the Tribunal to the Respondent's letter dated 28 January 2013, which stated:

> "…
>
> …In respect of Para 50.2 we had never sought to hide that the entry made on the ledger in respect of the transfer to the Swansea Building Society had been wrong".

58.7 Mr Hudson referred the Tribunal to the RE Limited client account ledger and the entries detailed in the Rule 5 Statement in tabular form:

Date	Debit	Credit	Balance	Narrative
23.03.10		£11,500.00	£11,500.00	Deposit monies from Lowless & Lowless
24.03.10	£11,500.00			Monies sent to client
06.04.11		£100,000.00	£100,000.00	Purchase monies from Red Kite
14.04.11	£10,000.00		£90,000.00	Monies to client
15.04.11		£158,150.12	£248,150.12	Inter acc transfer
15.04.11	£25,000.00		£223,150.12	Monies to client
21.04.11	£15,000.00		£208,150.12	Monies to client – Hardplace Properties
26.04.11	£208,150.12		£0.00	Mortgage redemption – Swansea Building Society

58.8 Mr Hudson told the Tribunal that no explanation had been given by the Respondent for the inter account transfer of £158,150.12 on 15 April 2011. He said that there was no further description for the transfer and the ledger did not therefore meet the requirement under the SAR 1998 to be able to identify easily the source and destination of the payment.

58.9 Mr Hudson submitted that, as was clear from the table of ledger entries, as at 26 April 2011 and notwithstanding the Respondent's undertaking to redeem the Bank of Scotland charge, the entirety of the deposit and net completion monies had been paid over to third parties without retaining sufficient or any monies with which to redeem the charge. Mr Hudson told the Tribunal that the undertaking had been breached by virtue of the mortgage not having been redeemed and the Respondent had continued to fail to either fulfil the undertaking or to redeem the mortgage.

58.10 Mr Hudson said that these events had then given rise to the misleading letters to Red Kite and the alleged dishonesty in relation to that. He referred the Tribunal to a series of emails between the Respondent and Lowless & Lowless/Red Kite, which stated:

Email dated 3 May 2011 from Lowless & Lowless to the Respondent:

> "Dear Sirs
>
> …
>
> We look forward to receiving this [a signed Transfer] as a matter of urgency as our clients' lender is becoming increasingly concerned that their charge has not yet been registered".

Email dated 24 May 2011 from Lowless & Lowless to the Respondent:

> "Dear Sirs
>
> …
>
> Please note that our clients' lender is becoming increasingly frustrated that their charge has not been registered.
>
> We would be very grateful if you would please send the signed Transfer to us as a matter of urgency".

Email dated 1 June 2011 from Lowless & Lowless to the Respondent:

> "Dear Sirs
>
> We still have not received the transfer as requested. We are now being put under pressure by our clients' lender and we would be grateful if you would please provide this as a matter of urgency".

Email dated 8 June 2011 from Lowless & Lowless to the Respondent:

> "Dear Sirs
>
> …
>
> We now feel that unless you forward to us the Transfer and other outstanding documentation in tonight's post that, as you are the Senior Partner and there is no-one else in the Firm to take this matter up with initially, regretfully we seem to have no other option but to refer the matter to the SRA as a serious breach of a professional undertaking".

58.11 Mr Hudson told the Tribunal that by 21 September 2011 Red Kite had sent a draft letter to the Respondent which it stated it intended to send to the Applicant unless it heard from him by 23 September 2011 regarding the Transfer and redemption of the charge. The Respondent wrote to Red Kite on 26 September 2011 and stated:

> "Dear Sirs
>
> …

> 1 You now have the original of the re-engrossed Transfer as re-executed by our client…
>
> 4 The mortgage has been redeemed. We understand that the lender uses the END system rather than DS3. We will press the Lender for confirmation that the END has been sent".

58.12 Mr Hudson submitted that the Respondent's statement that the mortgage had been redeemed was unequivocal and untrue. He said that the Respondent admitted that he had written that letter to Red Kite. In his letter to Mr Hudson dated 28 January 2013, the Respondent stated:

> "…
>
> Para 57 – I accept and have always accepted that the letters of 26th September 2011 and 28th October 2011 which were prepared by me and sent without SGG [the Second Respondent's] knowledge were misleading".

58.13 Mr Hudson said that the Respondent knew that Red Kite, as the buyers' solicitor, was anxious to know that the mortgage had been redeemed. He knew that it had not been redeemed yet he had sent the letter dated 26 September 2011 to Red Kite and stated that the mortgage had been redeemed and in doing so intended to mislead Red Kite and had misled Red Kite. Mr Hudson submitted that the Respondent had deliberately sought to deflect the pressure from him including the threat by Red Kite to report him to the Applicant. As solicitors being told by another solicitor that a charge had been redeemed, Red Kite had been entitled to believe that it was true yet it was not.

58.14 Mr Hudson submitted that by acting as he did, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people per the objective test as set out in Twinsectra Limited v Yardley and Others [2002] UKHL 12 and that the Respondent was aware that by his conduct he acted dishonestly per the subjective test in Twinsectra.

58.15 Mr Hudson said that Red Kite wrote again to the Respondent by email on 28 October 2011 and stated:

> "Dear Sirs
>
> …
>
> We have now received a letter from the Land Registry confirming that our application has been cancelled as notification of discharge has not been received by them.
>
> You have now left us with no other option than to make contact with the Solicitors Regulation Authority".

58.16 The Respondent replied by email dated the same date:

> "Dear Sirs
>
> …As far as we are concerned the charge has been redeemed and the lender has advised that appropriate notification will be sent to the Land Registry…".

58.17 Mr Hudson submitted that this was a further misleading statement by the Respondent and was untrue. The Respondent knew that the charge had still not been redeemed and that the lender had not advised that appropriate notification would be sent to the Land Registry. Mr Hudson submitted that the sole purpose of the Respondent's misleading further statements was to again deflect pressure from him as before and on the same basis he acted dishonestly on the objective and subjective standards per the combined test in Twinsectra.

58.18 Mr Hudson told the Tribunal that whilst this had brought the Respondent some more time, by January 2012 the patience of the buyers' solicitors had expired and Red Kite had reported the Respondent's conduct to the Applicant.

58.19 Mr Hudson told the Tribunal that the Bank of Scotland charge remained unredeemed and the breach of undertaking continued to date. He said that he had spoken to Red Kite on 21 October 2013 and had been told that the Respondent's firm's professional indemnity insurers had agreed to discharge the charge but that had yet to be done.

58.20 Mr Hudson said that the Respondent had replied to the Applicant by letter dated 20 March 2012, which stated:

> "…
>
> In my discussions with S regarding this matter I advised her that I knew when I wrote to Redkite (sic) on 26th September that the mortgage in favour of the Bank of Scotland had not been redeemed. I had hoped to repay the mortgage shortly but had not done so at that point. Following sending that letter I did not make any progress towards doing so. I admit that I "stuck my head in the sand" regarding this particular file. Therefore I can only agree that the letter to Redkite (sic) was misleading.
>
> …
>
> There was never any intention to mislead you regarding the completion monies from Redkite (sic). We apologise for the narrative fields being truncated on the client ledger. This was how the system is set up on our case management system and had never been altered. Since receiving your letter of 9th March we have altered these with the advice of the technical support team of the case management system, so the fields now show more of the narrative.
>
> The reference in the narrative to Swansea Building Society refers to the Swansea Building Society account of our clients Rock Estates Limited (now known as REL Property Development Limited). The monies did not redeem

> another mortgage with the Swansea and the entry here is erroneous. This entry was made by our former bookkeeper who no longer works for this firm…
>
> …
>
> I am unable to send you evidence of the discharge of the mortgage in favour of Bank of Scotland as this has not yet been redeemed…The redemption of the Bank of Scotland is dependent on the sale of two properties by our client which has been delayed and I am keeping the purchasers (sic) solicitors and the solicitors of the borrower informed of progress. I will be writing to you within the next 14 days concerning the discharge".

58.21 By letter dated 24 April 2012 the Respondent also wrote to Gordons LLP acting on behalf of the Applicant and stated:

> "…
>
> 5 Yes – I accept that the e-mail of the 28th October 2011 to Red Kite was misleading".

58.22 Mr Hudson referred the Tribunal again to the letter dated 28 January 2013 from the Respondent to Mr Hudson which stated:

> "…
>
> 1.5 For the reasons set out further in this letter I accept full responsibility for the matters which are the subject of these disciplinary proceedings…I am happy for it [this letter] to stand as my statement for the purposes of these proceedings…
> …
>
> Para 3 [the dishonesty allegation 1.7] Noted
>
> …
>
> 2 In this letter I have accepted full responsibility for this matter…".

58.23 Mr Hudson submitted that by stating "Noted" in relation to allegation 1.7 [in relation to allegation 1.3], the Respondent did not seek to deny the dishonesty allegation albeit he had subsequently denied that allegation. Mr Hudson referred to the Respondent's email to him dated 27 February 2013 in which he stated:

> "…
>
> In respect of allegations 1.1 and 1.2 the legal charge has not been discharged but I have received letters today from solicitors acting for the insurers of Eaves Solicitors and so I hope shortly that the legal charge will be redeemed. In respect of allegation 1.3 and 3 [allegation 1.7] I admit the same".

58.24 In an email to the Tribunal dated 5 March 2013 and copied to Mr Hudson the Respondent stated:

> "…
>
> 4 …With?(sic)regard?(sic)to allegation 1.3 and 3 [1.7] I plead guilty(all?(sic)paragraph?(sic)references are to Mr Hudson's Statement [Rule 5] dated 27th November 2013 [2012])…".

58.25 Mr Hudson referred the Tribunal to the Rule 7 Statement upon which he relied. He said that the Second Respondent had retired from the firm on 26 March 2012 and that resignation had been accepted by the Respondent as at 31 March 2012.

58.26 During the course of the FI investigation commenced on 16 August 2012 the FIO had identified an improper withdrawal of client monies in the sum of £30,000. Mr Hudson told the Tribunal that a decision to intervene into the firm was made in December 2012.

58.27 The improper withdrawal related the administration of an estate of a client, Mrs W-J Deceased in relation to which the Respondent had conduct. The ledger for that client showed a payment out of £30,000 on 31 July 2012 designated "interim distribution". Mr Hudson referred the Tribunal to the client ledger for Mrs W-J Deceased which showed a balance of £145,000 by January 2012 and £151,000 by May 2012. He said that there had then been two withdrawals of £60,000 and £30,000 on 31 May 2012 and 31 July 2012 respectively [the £60,000 withdrawal was not in issue].

58.28 Mr Hudson said that the FIO had identified the payment slip initialled by the Respondent requesting the £30,000 transfer from client account and dated 31 July 2012. The payment slip referred to the sum being payable to "CS" being one of the two beneficiaries of Mrs W-J's estate.

58.29 Mr Hudson said that the FIO asked the Respondent on 27 September 2012 about the transfer of the £30,000. The Respondent told the FIO that there was some missing documentation from the file which was on his desk but despite searching for this documentation nothing further was produced to support the transfer made. Mr Hudson said that the Respondent agreed to the FIO calling the Respondent's bank being HSBC to request verification of the transfer which he did and the details were confirmed. Mr Hudson referred the Tribunal to the attendance note of the call and he submitted that the sort code and account number had been taken note of but not necessarily the name.

58.30 The FIO had subsequently found an attendance note in the Respondent's handwriting but which had not been on the client file and which purported to evidence an agreement with CS's solicitors regarding the transfer of the £30,000.

58.31 Mr Hudson said that the FIO discovered that the bank account and sort code to which the £30,000 transfer had been made had not been that of CS but of a company called "Harwood Court Limited" of which the Respondent was the registered signatory and he referred the Tribunal to an email from Lloyds TSB which confirmed the company details and the details of signatory. He also referred to an extract from the Company

Record for Harwood Court Limited which stated that the Respondent was a director of the company.

58.32 Mr Hudson told the Tribunal that after the transfer of £30,000, further transfers were made totalling £28,254.59 to RE Limited of which the Respondent was also a director from the Harwood Court Limited bank account.

58.33 Mr Hudson submitted that in spite of the Respondent having sought to portray the transfer of £30,000 as having been a legitimate transfer, the reality was that it had not been legitimate and had not gone to CS but to one of his companies and had then been transferred to another of his companies.

58.34 Mr Hudson told the Tribunal that the Respondent had admitted the improper use of client monies but denied that he had been dishonest in that regard. He submitted that for a solicitor to use client monies for his own purposes satisfied the objective test in Twinsectra. In relation to the subjective test, Mr Hudson submitted that by the Respondent having taken careful steps to conceal his actions, he knew that what he had done in transferring the £30,000 and having created a false attendance note, having made false representations to the FIO and the entry on the ledger having referred to "interim distribution" when the money had been transferred to his own company's account and not that of CS, his conduct was dishonest.

58.35 The improper withdrawal of £30,000 on 31 July 2012 had led to a client account shortfall in the same sum and as at the date of the FI Report the shortage had not been replaced by the Respondent.

58.36 In relation to completion of the professional indemnity insurance ("PII") form Mr Hudson said that the Respondent had signed the form as at 18 September 2012 and that he had answered "No" to the question at Section 4a of the form as to whether the firm or any prior practice or present or former principals had had within the previous 15 months been the subject of an investigation which had been upheld or any investigation or intervention by any regulatory department of, inter alia, the Applicant.

58.37 Mr Hudson told the Tribunal that the decision to refer the Respondent's conduct to the Tribunal had been made as at 29 June 2012 and that decision had been preceded by an investigation by the Applicant of which the Respondent had been well aware. The FIO's investigation had also commenced on 16 August 2012.

58.38 The final page of the proposal form stated, under a heading "Duty to disclose material information":

> "…
>
> Material information is information that would influence an insurer in deciding whether a risk is acceptable and, if so, the premium, terms and conditions to be applied…All material information must be disclosed to insurers to enable terms to be negotiated and cover arranged".

58.39 Mr Hudson submitted that the Respondent knew or alternatively must have known that the two investigations by the Applicant and including the referral to the Tribunal were "material information" as defined in the proposal form but he failed to disclose it. The form also contained a declaration on the part of the signatory that:

> "I/We are satisfied that…the above details are correct to the best of my/our knowledge and belief and that I/we have not suppressed or misstated any material facts".

58.40 Mr Hudson referred the Tribunal to an email from the Respondent to him dated 12 June 2013 which stated:

> "Dear Mr Hudson
>
> …
>
> I comment as follows in respect of the allegations you make (adopting the numbering in your statement unless otherwise stated) being:
>
> (a)I accept that the withdrawal of £30,000 as referred to in paragraph 1.1 [of the Rule 7 Statement] was improper.
>
> (b)I accept that I made false and/or incomplete statements in the proposal form referred to in paragraph 1.2 [of the Rule 7 Statement] [allegation 1.6]".

58.41 By a further email to Mr Hudson dated 22 July 2013 the Respondent stated:

> "Dear Mr Hudson
>
> …
>
> 4 I accept that I should have provided our Professional Indemnity Insurers with additional information other than what was contained in the application form.
>
> 5 The withdrawal of the £30,000 was unauthorised".

58.42 Mr Hudson referred the Tribunal to the Respondent's reliance on medical evidence. He said that the Respondent had referred in his email dated 22 October 2013 to the letter of Linda Edwards dated 2 October 2013 that:

> "…
>
> 7 In respect of Allegation 2 [1.3] (as set out in my summary of allegations) I accept that my correspondence was misleading but not dishonest. With regard to allegation 4 [1.5] (in the same document) I accept that the withdrawal was improper but not dishonest. In support of my position I rely on my medical condition as set out in Linda Edwardes (sic) letter".

58.43 In addition the Respondent had stated in his email dated 27 February 2013 that:

> "…
>
> Since 2010 I have been undergoing Counselling for what I now know as Bipolar Tendencies/Personality Disorder and I was refereed (sic) by my GP to a Psychiatrist who confirmed the diagnosis. My counselling continues. I have no desire to practice law in the future and would ideally like to come off the roll but I understand that I cannot do this as there are current disciplinary proceedings against me. I have looked at a number of SDT decisions and consider that the Tribunal will strike me off the roll".

58.44 Mr Hudson said that the Respondent had been asked by him in an email dated 18 March 2013 if he intended to produce medical evidence to rely upon in the proceedings:

> "Dear Mr Griffiths
>
> …
>
> I would, however, like to raise one issue at this stage. You stated in your email to me of 27 February that since 2010 you have been undergoing Counselling for Bipolar Tendencies/Personality Disorder and that you had been referred to a psychiatrist for treatment, which is ongoing. I also understand that you have told Ms Dickerson of the SRA (in the context of discussions regarding the publication of the decision to refer your conduct to the SRA) that, if the matter proceeded to a hearing, you would rely on medical evidence.
>
> Please would you let me know urgently whether it is your intention to produce a medical report from your psychiatrist and, if so, when I can expect to be served with a copy".

58.45 The Respondent stated in an email dated 22 March 2013 that:

> "…
>
> 5 I have advised Mr Hudson that I will be serving medical evidence about my medical condition and I am not sure when the medical evidence will be available to be served on Mr Hudson".

58.46 Mr Hudson said that there had then been a case management hearing on 14 May 2013 when the Tribunal directed that:

> "…
>
> 9.4 The First Respondent do within 35 days serve on the Applicant any medical evidence on which he proposes to rely.

> 9.5 The Applicant do have leave to serve within 56 days of receipt of any medical evidence served by the First Respondent its own medical evidence relating to the matters dealt with by the First Respondent's medical evidence…".

58.47 Mr Hudson told the Tribunal that he had wanted to ensure that the Respondent's medical evidence was provided in good time and that the Applicant would have the opportunity to adduce its own medical evidence, if applicable. The Respondent did not comply with the direction and nothing was received from the Respondent until the letter from Linda Edwards dated 2 October 2013. Mr Hudson referred the Tribunal to the letter from Linda Edwards which stated:

> "Dear Sirs
>
> …
>
> Simon [the Respondent] has been to see me regularly since 8th November 2010 for counselling and our work together is continuing…He has worked hard and has sought help from me to change long term behavioural patterns which have impacted on his professional life and his family relationships.
>
> I am not a Psychiatrist but I am versed in psychopathology and have 20 years (sic) experience of working with a wide variety of client issues. After being in therapy for several months I hypothesized that Simon was on the Bi-Polar spectrum. On my advice he sought the opinion of two psychiatrists one being Dr Rowan Wilson last year who diagnosed that Simon was suffering from personality disorder and recommended that he continue with counselling. I know that Simon has been to another Psychiatrist recently who has also diagnosed a personality disorder and prescribed a course of medication with a further appointment to be attended at the end of the course of medication…
> I can report with confidence that Simon has shown signs recently of improvement in his mental health…".

58.48 Mr Hudson said that the Respondent had written to him by letter dated 4 October 2013 and had stated that he hoped to be in a position to send a copy of Dr Rowan Wilson's report shortly thereafter but the report had not arrived. He had written to the Respondent on 11 October 2013 that:

> "…
>
> On 4 October 2013 you sent me a copy of a letter dated 3 October 2013 [2 October 2013] from Linda Edwards. You also indicated that you hoped to be in a position to send me on Monday 7 October 2013 a copy of a report from Dr Rowan Wilson. The latter has not yet been received.
>
> You will be aware from the Directions made on 14 May 2013 that any medical evidence you proposed to rely on before the Tribunal had to have been served within 35 days ie on or before 11 June 2013. If you propose to rely on Linda Edwards' and/or Rowan Wilsons's report you will need to apply to the tribunal in advance of the substantive hearing on 22 October 2013 for leave. I

anticipate that my instructions will be to resist such an application on the grounds that service of medical evidence will have been out of time by many months…".

58.49 The Respondent replied by letter dated 18 October 2013 and stated:

"4 My Medical Condition

4.1 As you are aware directions were given for the service of medical evidence in this matter. I have not been able to serve the medical evidence in compliance with the directions.

4.2 I believe that I have or are (sic) suffering from the bipolar disorder and one of the symptoms is that the disease affects the judgment of the sufferer. I sought Counseling (sic) at the suggestion of my former partner…in 2010. In approximately September 2012 I saw a Consultant Psysiatrist (sic) who diagnosed that I had a personality disorder and suggested that I continue with the Counseling (sic).

4.3 …I saw a further Consultant on the 27th August 2013 who again diagnosed that I had a personality disorder and prescribed a course of medication for 2 months which I am taking, and a follow up appointment at the end of the 2 month period i.e. sometime in November 2013.

4.4 Mr Hudson has properly pointed out to me that if I intend to rely on the medical evidence I must obtain leave and make sure that the authors of the reports are available for cross-examination. I enclose a copy of Linda Edwards's letter of the 3rd October 2013 [2 October 2013] to the SRA and I am still awaiting a copy of the Physiatrists (sic) report for September 2012.

4.5 I accept that I have been late in serving my medical evidence.

4.6 As I no longer want to practice as indicated in paragraph 3.2 above the costs of making such an application for leave at this stage would not serve any purpose as I do not wish to practice in the future and I would rather wait until after I have seen the Physiatrist in November for my follow up appointment as mentioned in paragraph 4.2 above, and the necessity of such a report is required for proceedings brought against me by my professional indemnity insurers…".

58.50 Mr Hudson told the Tribunal that the Respondent had not sought leave to file his medical evidence out of time and he had not filed or served any medical evidence other than the letter from Linda Edwards. Mr Hudson submitted that the Respondent was not entitled to rely on the report of Linda Edwards as it had been filed out of time and in breach of direction 9.4.

58.51 Mr Hudson submitted that if the Tribunal was minded to admit the report of Linda Edwards it should be afforded minimal weight. The Respondent had been on notice for some time that he was required to file his medical evidence by June 2013 and that the Applicant was to be afforded an opportunity to cross examine any medical expert

on whose evidence he sought to rely. The Respondent had not filed Linda Edwards' report until October 2013 and she was not present to be cross-examined. In addition Mr Hudson said that it was not clear for what purpose the Respondent sought to rely on the report of Linda Edwards since she had only hypothesised in her report that he was suffering from a bipolar condition.

58.52 Mr Hudson submitted that there was also no medical evidence as to whether the Respondent's purported condition had affected his judgment at the material time and if so, to what extent.

58.53 Mr Hudson referred the Tribunal to the case of Iqbal v the Solicitors Regulation Authority [2012] EWHC 3251 (Admin) and he submitted that the Tribunal could draw an adverse inference from the Respondent's decision not to attend to give evidence in person.

Submissions of the Respondent

58.54 As the Respondent had decided not to attend and was not represented, the Tribunal ensured that it had regard to all of his correspondence, any written submissions and any documentation he sought to rely on including his most recent email dated 22 October 2013 received on the morning of the substantive hearing.

The Tribunal's Findings

58.55 In relation to allegations 1.1 and 1.2 the Tribunal found these proved on the facts and on the documents. It noted that these allegations had been admitted by the Respondent.

58.56 The Respondent had clearly given the undertaking on 5 April 2011 to redeem the charge in favour of Bank of Scotland and to provide confirmation of said discharge as soon as the same had been received but he had failed to do either and it was evident that the charge remained unredeemed and the undertaking remained unfulfilled.

58.57 In relation to allegation 1.3 the Tribunal found this proved on the facts and on the documents. It noted that this allegation had been admitted by the Respondent.

58.58 The Respondent had admitted that by his letters dated 26 September 2011 and 28 October 2011 the mortgage in favour of Bank of Scotland had been redeemed when it had not. It was clear from those letters that the Respondent had told Red Kite [previously Lowless & Lowless] that the charge had been redeemed when that was blatantly untrue and his statements that the mortgage had been redeemed were unequivocal.

58.59 In relation to allegation 1.4 and 1.4.2, 1.4.2.1, 1.4.2.2 and 1.4.2.3, the Tribunal treated these as having been denied but it found them proved on the facts and on the documents.

58.60 The Tribunal was satisfied so that it was sure that the Respondent had not maintained proper accounting records in relation to the sale of 1 Maryland. The client ledger entry of 15 April 2011 recorded as "inter acc transfer" did not indicate from which

ledger the sum of £158,150.12 had been transferred. It was also satisfied that the payment of £15,000 on 21 April 2011 whilst having been recorded as a "payment to client" had also been recorded as a payment to a third party being "Hardplace Properties" which was a company of which the Respondent was a director. In addition, the Respondent was a director of RE Limited and the entries had been made on the client ledger for RE Limited.

58.61 The further transfer of £208,150.12 on 26 April 2011 was described in the ledger for RE Limited as having been sent to Swansea Building Society for "Mortgage redemption" but the Tribunal was satisfied that it had not been sent to that building society to redeem a mortgage. The Tribunal also did not accept as credible that the narrative entry had been erroneously made by the book keeper.

58.62 In relation to allegation 1.7 and the dishonesty allegation against the Respondent in relation to allegation 1.3, the Tribunal found this proved on the facts and on the documents. This allegation was denied by the Respondent.

58.63 The Tribunal had regard to the combined test in Twinsectra with regard to dishonesty. It was satisfied that on the objective test and by the ordinary standards of reasonable and honest people, by having misled Red Kite when the Respondent wrote to them on 26 September 2011 and 28 October 2011 that the mortgage had been redeemed when it had not, he was dishonest.

58.64 The Tribunal noted that the Respondent had continued to seek to conceal that the mortgage had not been discharged and he had continued to mislead the buyers' solicitors, a fact which he had admitted. In knowingly hiding the truth the Tribunal was satisfied that the Respondent knew that his actions were dishonest and the subjective test was met. The Tribunal found that there was compelling evidence that the Respondent had been dishonest on both the objective and subjective standards; the statement of the Respondent in the letter dated 26 September 2011 was clear that the mortgage had been redeemed but that was untrue. The Respondent's email dated 28 October 2013 had again referred to the charge having been redeemed but that was also untrue and the Respondent knew it to be untrue.

58.65 In relation to allegations 1.5 and 1.6, the Tribunal found these proved on the facts and on the documents. It noted that these allegations were admitted by the Respondent. The Tribunal was satisfied that the Respondent had improperly transferred the sum of £30,000 from the client ledger of his client Mrs W-J Deceased to his own company account for Harwood Court Limited and from that account to RE Limited, another of his companies.

58.66 The Tribunal did not accept as credible the Respondent's handwritten attendance note dated 30 July 2012 purportedly recording a conversation between the Respondent and the solicitors for CS authorising the transfer of the £30,000. It was satisfied that this had been part and parcel of the Respondent's efforts to conceal his misconduct.

58.67 The Tribunal found that the Respondent had made false statements on his PII proposal form and it was satisfied that he had done so knowingly.

58.68 In relation to allegation 1.7, the Tribunal found this proved on the facts and on the documents in relation to allegation 1.6. This allegation was denied by the Respondent with regard to the improper withdrawal of the £30,000.

58.69 The Tribunal was satisfied that the Respondent had used client monies [the £30,000] for his own purposes which it found dishonest on the objective standard and it was satisfied that he knew that his conduct was dishonest on the subjective standard due to the efforts he had made to conceal the payment of the £30,000.

58.70 The Tribunal had regard to the medical evidence produced by the Respondent. It noted that this had been produced significantly out of time and not in accordance with the direction given in May 2013. However the Tribunal had considered the content of Linda Edwards' letter but afforded it little weight in view of the content and status of the author. As stated in her letter, Ms Edwards is not a Psychiatrist and she had only hypothesised as to the Respondent's medical condition. No other medical evidence had been produced by the Respondent including no evidence as to the effect, if any, that his stated medical condition may have had on his judgment at the material time.

58.71 The Tribunal also took into account that the Respondent had chosen not to attend the substantive hearing and had not, as a result of that, given oral evidence upon which he could be cross examined. The Tribunal had regard to the case of Iqbal in which Sir John Thomas stated "ordinarily the public would expect a professional man to give an account of his actions". The Tribunal drew an adverse inference as it was entitled to do in the circumstances.

Previous Disciplinary Matters

59. None.

Mitigation

60. None.

Sanction

61. The Tribunal had regard to its Guidance Note on Sanctions.

62. The Tribunal had found all of the allegations proved including allegations of dishonesty in relation to two of the allegations.

63. The Tribunal was satisfied that these were extremely serious allegations which had involved the improper withdrawal of client monies, breaches of the core duties and dishonesty for which the Respondent was wholly culpable. The harm to the public interest and to the reputation of the profession was significant. The Tribunal had regard to the case of Bolton and the Judgment of Sir Thomas Bingham in which he stated:

> "Any solicitor shown to have discharged his duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal".

64. The Tribunal found that there could be no lesser sanction imposed in all the circumstances of this case than that the Respondent be struck off the Roll of Solicitors.

Costs

65. Mr Hudson referred the Tribunal to the Schedule of Costs. He said that he understood that the Respondent did not challenge the Applicant's entitlement to costs but that there were issues as to quantum as referred to in the Respondent's email dated 21 October 2013 and his Counter Schedule of Costs.

66. Mr Hudson said that reference in the Schedule to an Administrator was a Paralegal in his firm who had assisted with the collation of bundles and exhibits. The costs claimed were separate from those of fee earners.

67. In relation to perusal of documents Mr Hudson agreed a reduction to £814. In relation to correspondence Mr Hudson told the Tribunal that the time claimed was a reflection of the correspondence undertaken including communication with the Applicant, the Respondents separately when applicable and the buyers' solicitors. In relation to the time taken for preparation of the Schedule of Costs Mr Hudson said that it had taken 1.5 hours.

68. In relation to preparation for the hearing Mr Hudson said that he had had to anticipate the Respondent attending and there had been last minute email correspondence which had had to be dealt with but he agreed the suggested reduction and also for the hearing itself which would not take two days. He also agreed the reduction for travel and waiting.

69. Mr Hudson said that the FI costs were calculated on an hourly rate of £94 and not £75 as estimated by the Respondent. The case worker's costs were claimed for both the Rule 5 and Rule 7 Statements. Mr Hudson said that these costs were not a duplication of his costs but had been incurred for work undertaken separately by the caseworker including preparation of the Applicant's case leading to the referral and prior to Mr Hudson's firm being instructed.

70. Mr Hudson referred to the Respondent's email dated 21 October 2013 in which he stated that he was in discussion with the Applicant regarding the costs of the intervention into his former firm. Mr Hudson said that the intervention costs totalled £44,137.80 and that the Respondent had made no payment towards those costs to date although the Costs Recovery Unit of the Applicant had written to him. Mr Hudson read to the Tribunal details of the limited discussion there had been between the Applicant and the Respondent regarding the intervention costs and that reference had been made to the Respondent having offered debentures as security for these costs which he submitted suggested that the Respondent had some assets.

71. Mr Hudson also referred the Tribunal to Office Copy Entries which he said showed that the Respondent's correspondence address in Pembroke was owned by Rock Investments (Pembrokeshire) Limited, a company of which the Respondent was sole director. It was subject to a legal charge and its value unknown.

72. Mr Hudson said that the Respondent had been advised regarding the case of Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) in relation to his providing details of his finances if he wished the Tribunal to take that into account in making any order as to costs. He said that both he and the Tribunal had notified the Respondent of the case and the obligations upon him with regard to evidence of finances but nothing had been received from the Respondent in that regard.

73. Mr Hudson asked the Tribunal to summarily assess the costs and make an order for costs in favour of the Applicant in the sum sought of £36,915.70. He rejected the Respondent's request that any order for costs not be enforced without leave of the Tribunal and submitted that there was evidence of means on the part of the Respondent and there was no evidence of lack of means.

74. The Tribunal had listened carefully to Mr Hudson's submissions on costs and had regard to the documentation to which it had been referred. It noted that it had no documentary evidence of the Respondent's means despite the Respondent having been referred to the authority of Davis and McGlinchey. The Respondent had stated in his email dated 21 October 2013 that;

> "…My financial position is uncertain at present".

75. In the Respondent's email dated 22 October 2013 he stated that:

> "…
>
> 9 I am not seeking to deny that I am obliged to pay the Applicants (sic) costs and I am currently dealing with the Applicant in respect of the costs of the intervention. So my ability to pay the Applicants (sic) costs of these proceedings is not clear…".

76. The Tribunal had no information from the Respondent as to why his financial position was uncertain or why his ability to pay any costs order was not clear. The Respondent had not provided any evidence as to his means, including income, assets or liabilities. He had referred to the costs of the intervention but there was no evidence that he had paid any of those costs to date and in any event the Tribunal questioned the relevance of the intervention costs in these proceedings.

77. The Tribunal considered that the costs were on the high side and it made some reduction as sought by the Respondent and as agreed on behalf of the Applicant. It noted that there was no breakdown of the case worker's costs and that there may have been some duplication of costs as between the case worker and the solicitors' costs.

78. The Tribunal considered the case to have been properly brought and it summarily assessed the costs in the sum of £31,200. The Tribunal rejected that the order not be enforced without leave as it had no evidence of the Respondent's means to support that application.

Statement of Full Order

79. The Tribunal ORDERED that the Respondent, Simon William Griffiths, 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 £31,200.00.

Dated this 4th day of November 2013
On behalf of the Tribunal

D. Green
Chairman