The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 14 August 2013 in respect of findings and sanction. The appeal was heard by Mr Justice Bean on 11 March 2014, when it was dismissed in its entirety, with costs awarded to the SRA against Mr Choudhury of £11,955.12. Choudhury v Solicitors Regulation Authority [2014] EWHC 809 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11106-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAHAT ZAMAN CHOUDHURY First Respondent

and

MOHAMMAD KAMRUZZAMAN Second Respondent

Before:

Mr E Nally (in the chair)
Mr K W Duncan
Mr M R Hallam

Date of Hearing: 29-30 May 2013
and 18 June 2013

Appearances

Paul Gott QC of Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH for the Applicant.

Simeon Thrower, Counsel, of 11 Old Square, London, WC2A 3TS for the First Respondent who appeared.

Fraser Coxhill, Counsel, of QEB Hollis Whiteman, 1-2 Laurence Poutney Hill, London, EC4R OEU for the Second Respondent who appeared.

JUDGMENT

Allegations

1. The allegations against the First Respondent, Rahat Zaman Choudhury were that;

1.1 The First Respondent acted in breach of the Solicitors' Accounts Rules 1998 ("SAR") in the following respects:

1.1.1 Rule 22 in that:

(i) there was a minimum cash shortage on client account as at 31 December 2010 of £101,219.86;

(ii) there was a minimum cash shortage on client account for each of the years ended 31 January 2006 to 31 January 2010 inclusive;

(iii) client monies were improperly withdrawn from the client bank account;

(iv) the First Respondent made withdrawals from the firm's client account in excess of monies due to the firm.

1.1.2 Rule 15 in that client money was not paid into a client account without delay;

1.1.3 Rule 32(16) in that the First Respondent used a suspense client ledger inappropriately;

1.1.4 Rule 32(1) in that the First Respondent failed at all times to keep accounting records properly written up;

1.1.5 Rule 32(7) in that the First Respondent failed to carry out reconciliations within the required timescales;

1.1.6 Rule 32(8) in that the First Respondent failed to keep a central record or file of copies of bills or other written notifications of costs;

1.1.7 Rule 6 in that as Principal the First Respondent failed to ensure compliance with the SAR by himself and by everyone employed in his firm;

1.1.8 Rule 7 in that the First Respondent failed to remedy promptly on discovery the breaches alleged above;

1.2 The First Respondent acted in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC") in that he failed without delay or at all to pay client money into client account and/or instructed the Second Respondent to delay paying client money into client account and instead used such client money for his own purposes. It was alleged the First Respondent had acted dishonestly;

1.3 The First Respondent acted in breach of Rule 5.01(1)(a) of the SCC in that he failed to make arrangements for the effective management of the firm as a whole and in particular to exercise appropriate supervision over all staff;

2. The allegation against the Second Respondent was that:

2.1 The Second Respondent acted in breach of Rule 15 SAR and Rule 1.02 of the SCC in that he failed without delay to pay client money into client account and/or paid such money to the First Respondent in the knowledge that the First Respondent would use it for his own purposes or alternatively when he was reckless as to whether the First Respondent would use it for his own purposes. It was alleged the Second Respondent had acted dishonestly.

The First Respondent admitted allegations 1.1.1 (i), (ii), (iii), 1.1.3, 1.1.4, 1.1.5, 1.1.6, 1.1.7, 1.1.8 and 1.3.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents which included:

Applicant:

- Application dated 12 December 2012 together with attached Rule 5 Statement and all exhibits
- Applicant's Chronology dated 29 May 2013
- Applicant's Schedule of Costs dated 17 June 2013

The First Respondent, Rahat Zaman Choudhury:

- Statement of the First Respondent dated 30 April 2013
- Client deposit bank account statements from November 2009 to March 2010
- Office bank account statements from November 2009 to March 2010
- Letter dated 15 January 2010 from CH to GK
- Statement of Means of the First Respondent dated 24 May 2013 together with attached documents

The Second Respondent, Mohammad Kamruzzaman:

- Position Statement of the Second Respondent
- Email dated 6 April 2011 from the Second Respondent to Mr Ireland (SRA)
- Letter dated 28 July 2011 from the Second Respondent to Mr Ireland together with attached documents
- Character References for the Second Respondent
- Statement of Means of the Second Respondent dated 28 May 2013 together with various documents

Factual Background

4. The First Respondent, Rahat Zaman Choudhury, born in January 1948, was admitted to the Roll on 15 June 1980. At all material times he was the sole principal of Zaman Choudhury & Co at 6 Havergal Villas, 538 West Green Road, London, N15 3DX ("the firm").

5. The Second Respondent, Mohammad Kamruzzaman, born in October 1965, was admitted to the Roll on 3 April 2006. At all material times he was employed as an assistant solicitor by the firm.

6. On 19 January 2011 a Senior Officer ("the Investigation Officer") of the Solicitors Regulation Authority ("SRA") conducted an inspection of the books of account and other documents of the firm and produced a report dated 26 August 2011. That report raised a number of concerns.

Client account shortfall

7. During the course of the investigation, the Investigation Officer identified a minimum cash shortage on client account as at 31 December 2010 of £101,219.86. This was made up as follows:

   (i) The sum of £12,053.40 was cash received but not paid into client bank account.

   (ii) The debit balances due to over or unallocated transfers to office bank account were £79,954.37, and the debit balances due to overpayments from client bank account were £10,731.54.

   (iii) There were unidentified receipts/payments in the suspense ledger of £1,519.45.

8. At the date of the report, 26 August 2011, the client account shortfall had been reduced to £27,863.92. By 1 October 2012 the client account shortfall had been further reduced to £565.

Cash received and not paid into Client Account

9. That part of the minimum cash shortage on client account as at 31 December 2010 comprising cash received but not paid into client account came to a total of £12,053.50 and was made up of the following items:

   (i) Client S - £1,150.00

   (ii) Clients O & C - £1,150.00

   (iii) Client P - £1,035.00

   (iv) Client M-O - £4,400.00

   (v) Clients U & B - £3,018.50

   (vi) Client U - £300.00

(vii) Client K - £1,000

Mrs M-O

10. The firm acted for Mrs M-O in the purchase of a lease for a property. The Second Respondent had conduct of the matter. The client account ledger showed a receipt by the firm from the client of £7,475.26 on 28 September 2009. On the same day, and on 13 October 2009 the client ledger showed payments out in the total sum of £9,249.52. Additional amounts were paid out of client account on 8 September 2009 in the sum of £8.00 and on 28 September 2010 in the sum of £147.25. Accordingly the client ledger showed a deficit of £1,782.26 from 28 September 2010.

11. A completion statement had been prepared by the Second Respondent showing the net sum of £7,475.26 as being due from the client after three payments totalling £4,400 had been taken into account. However, there was no record of those sums having been paid into the firm's client bank account, nor was there any record of receipt of those sums in the client ledger for that matter.

12. During an interview with the Investigation Officer on 2 June 2011, the First Respondent said:

- He would have relied on the completion statement produced by the Second Respondent;
- He would have told the Second Respondent to send the money;
- He had not looked at the ledgers regularly;
- The client ledger had been showing a debit balance since the end of September 2009;
- The First Respondent accepted that if he had looked at the file and tried to find out why there was a debit balance, he might have identified the reason. He accepted he could have prevented the situation arising.

13. During an interview with the Investigation Officer on 5 April 2011, the Second Respondent said:

- The handwriting on the completion statement showing three payments totalling £4,400 was his;
- The sums of £4,400 had been paid by the client to the firm. Although he could not say whether these had been cash, he thought they probably had been.

14. In a letter to the SRA dated 7 September 2011, the Second Respondent stated:

- He now recalled that the First Respondent had been in need of £6,000-£7,000 and had asked the Second Respondent whether the firm was likely to be receiving any money within the next couple of days;

- When the Second Respondent had told the First Respondent that the firm was due to receive £3,600 from Mrs M-O for completion and costs, the Second Respondent had given him the money;

- The First Respondent had asked the Second Respondent when completion would be and, when he was told that the date had not yet been fixed, the First Respondent said he was confident that a loan he had arranged would complete in time enabling the client monies to be put back into client account;

- The First Respondent additionally told the Second Respondent that he would still be short of £2,000 and it would be good if at least two clients produced £1,000 each. However such new clients did not materialise and the Second Respondent personally borrowed £2,000 which he gave to the First Respondent.

Mr U and Mrs B

15. The firm acted for Mr U and Mrs B in their purchase of a property. The Second Respondent had conduct of the matter. A handwritten schedule was prepared by the Second Respondent showing various sums received from the clients, including cash of £3,018.50. All receipts (save for the cash receipt) set out in the schedule were shown on the client ledger.

16. The client ledger for the matter showed a payment out on 16 November 2009 of £220,000 to the vendor's solicitors when only £219,940 was shown on the ledger as being held on behalf of clients. This created a deficit on the ledger of £60. Further payments out were made to HMRC and HMLR totalling £2,488 on 18 and 20 January 2010 which increased the deficit on the ledger to £2,548.

17. In an interview with the Investigation Officer on 2 June 2011, the First Respondent said:

- He accepted there had been a debit balance on the client ledger of £2,548 as at 31 December 2010;

- The Second Respondent had never told him about the cash and he had never given instructions about how it was to be dealt with.

18. At an interview with the Investigation Officer on 5 April 2011 the Second Respondent stated:

- The handwriting on the completion schedule was his and it could be assumed that he had received £3,018.50 cash from the clients;

- He had given the cash to the First Respondent, alternatively he would have dealt with the cash as instructed by the First Respondent.

19. When the Investigation Officer advised the Second Respondent that the First Respondent had been in Bangladesh at the relevant date, the Second Respondent told the Investigation Officer that he would have shown the calculations to the First Respondent before he had gone to Bangladesh. When the cash had been received, he would have spoken to the First Respondent who may have asked him to put some money into the firm's office account.

20. When the Investigation Officer then advised the Second Respondent that there was no evidence of the cash having been paid into the firm's office account, the Second Respondent told the Investigation Officer that he would have dealt with the money as the First Respondent asked him to.

Clients S, P and others

21. In a letter to the SRA dated 7 September 2011, the Second Respondent stated that in December 2009, when the First Respondent had been in Bangladesh, the Second Respondent had received the total sum of £6,085 from the following clients:

(i) The sum of £1,050 from P

(ii) The sum of £1,645 from Q

(iii) The sum of £1,240 from U

(iv) The sum of £1,150 from S

(v) The sum of £1,000 from M

The Second Respondent stated the First Respondent had instructed him to make the following payments from that sum of £6,085:

- A payment to TI of £2,000
- A payment to HY of £1,050
- A payment into office account of £1,050
- To purchase air tickets to Bangladesh for the First Respondent's wife and her mother in the sum of £1,520
- To pay the Second Respondent a salary advance of £465.

Mr S and Mrs A

22. The firm acted for Mr S and Mrs A in the purchase of a property and for the lender who was advancing money for the purchase. The Second Respondent had conduct of the matter. A completion statement was prepared by the Second Respondent showing in handwriting various sums received from the clients, including cash of £4,500. All receipts, save for the cash receipt, were shown on the client ledger.

23. On 15 December 2009, £212,000 was paid to the vendor's solicitors at a time when the balance held on behalf of the clients shown on the client ledger amounted to £210,005. Accordingly, the client ledger showed a deficit of £1,995 as at that date.

24. On 13 January 2010 monies totalling £4,000 were paid into the firm's client account thereby creating a credit balance of £2,005. However following payments made in respect of SDLT and in favour of HMLR between 18 January and 10 March 2010, debits on the accounts of £115 rising to £395 arose. These were cleared by means of a payment of £115 paid into client account on 15 July 2010 and a payment from office account of £280 on 26 November 2010.

25. During the interview with the Investigation Officer on 2 June 2011, the First Respondent said:

- The Second Respondent had not given him the £4,500 cash;
- He would have relied on the completion statement produced by the Second Respondent;
- When in Bangladesh, he had given the Second Respondent (who was also in Bangladesh at the time) £6,000 of his wife's money to take back to the UK due to the limits on the amount of money that could be taken out of the country;
- When he had returned to the UK he had asked the Second Respondent what he had done with the money he had given him and had been told that he had paid it into client account;
- The Second Respondent had told him that there was a shortage on a matter and the First Respondent had accordingly told him to take the £6,000 and pay it into client account;
- He denied that he had asked the Second Respondent to pay in the £6,000 specifically to reimburse the client account with £4,500.

26. The Second Respondent, during an interview with the Investigation Officer on 5 April 2011, said:

- The handwriting on the completion statement showing receipts from clients was his;
- £4,500 cash had been paid into the account by the First Respondent;
- The money had come in from the sale by the First Respondent of some land;
- He had given the money to the First Respondent when it had been received.

27. In a letter to the SRA dated 7 September 2011, the Second Respondent stated:

- £4,500 had been received two days before the First Respondent had been due to go to Bangladesh;
- The First Respondent took the entire sum of £4,500 with him and advised the Second Respondent that he was expecting to receive money from the sale of a property and would repay the money on his return from Bangladesh;
- The First Respondent gave the Second Respondent £6,000 when they were both in Bangladesh instructing the latter to pay it into Mr S and Mrs A's account straight away;
- The Second Respondent paid the £6,000 into that account on 13 January 2010 and confirmed to the First Respondent that he had done so when the latter return to the office on 13/14 January 2010.

Debit balances on client ledgers

28. After adjusting the relevant client account ledgers to take into account cash received but not paid into client account, as at 31 December 2010 there were 33 client account ledgers in deficit in amounts varying between £0.20 and £52,960.61. The total of all those client ledger account deficits as at 31 December 2010 was £90,685.91.

Suspense ledger

29. Of the total sum of £90,685.91 of client ledger account deficits, £57,210.61 was allocated to a suspense ledger. That sum itself comprised an accumulation of unallocated client to office transfers, unallocated payments, adjustments and unallocated receipts.

30. One unallocated payment was in the sum of £4,250 for PAYE paid on 8 April 2009 from the firm's client bank account. Although the narrative against that entry stated "error rectified" there was no equivalent entry on the suspense ledger to show that the money paid out in respect of PAYE had been repaid into the firm's bank account.

31. The First Respondent advised the Investigation Officer that the repayment had been posted to a client ledger in the name of Mr and Mrs V on 16 April 2009. However, the net effect of the two adjustments required to remedy these erroneous postings was to reduce the suspense ledger debit balance by £4,250 to £52,960.61, and to create a debit balance on the client ledger for Mr and Mrs V of £1,306.

32. The Investigation Officer identified 57 client to office transfers made between 1 June 2006 and 8 June 2010 varying in amounts between £160 and £2,185.20, and totalling £54,480.06 which had not been allocated to a specific client matter. The Investigation Officer further noted that transfers totalling £11,863.97 in respect of eight matters had been made in relation to costs.

Clients F and M

33. The firm acted for Mr F and Ms M in respect of their re-mortgage. The Second Respondent had conduct of the matter which did not proceed. On 6 March 2009, £1,450 was transferred from client to office account at a time when no monies were being held for the client. This therefore created a deficit on client account.

34. On 9 March 2009, a mortgage advance of £111,270 was received and then returned on 23 March 2009. On 3 April 2009 a payment to HMLR of £13 was made out of client account and on 16 April 2009 a further payment of £17.25 was made to STL. These additional payments increased the deficit on client account to £1,480.25.

Improper use by the First Respondent of client monies

35. On 19 January 2011, the First Respondent informed the Investigation Officer that he did not have an overdraft with the firm's bank. Subsequently the Investigation Officer established that the firm had an overdraft facility with the bank of £15,000, and in December 2008 the overdraft facility had been increased to £20,000. In March 2010 the First Respondent had been informed by the bank that his overdraft had to be reduced by £1,000 per month. In November 2010 it had almost cleared by payment in of the sum of £16,377.98. Due to over transfers to office bank account, debit balances totalling £25,474.31 had arisen. Unallocated transfers to office bank account totalling £54,480.06 had been posted to the suspense ledger.

36. At interview with the Investigation Officer on 2 June 2011, the Investigation Officer put to the First Respondent that he had in effect had the benefit of amounts totalling almost £80,000 and if those transfers had not been made, the firm's bank account would have been overdrawn £80,000 in excess of the actual overdraft. The First Respondent replied that he could not believe what had happened.

Lack of Supervision

37. In January 2011 the First Respondent informed the Investigation Officer that he had first employed the Second Respondent approximately 17 years previously, initially to assist with clerical work. After the Second Respondent had qualified as a solicitor, the Second Respondent had carried out the majority of the legal work for the firm and the First Respondent's plan had been for the Second Respondent to take over the practice in due course.

38. The First Respondent explained that, when in January 2010 he had returned from a trip to Bangladesh, the Second Respondent had begun to complain about his salary and had wanted to leave the firm for another firm where he would be better paid. The First Respondent had agreed that the Second Respondent could leave.

39. On 19 January 2011 the First Respondent admitted to the Investigation Officer that he had failed to supervise the Second Respondent. During an interview with the Investigation Officer on 2 June 2011 the First Respondent said if there had been proper supervision he would have seen the completion statements and would have asked to see the ledger to confirm what monies had come in. He accepted that part of the failure to supervise related to failing to review client reconciliations and matter

listings. He accepted that the existence of the suspense ledger and the increase of the balance on that ledger was a reflection of his failure properly to supervise the accounting records and he admitted that, whilst he had seen the Second Respondent's litigation and matrimonial work on a regular basis, he had not supervised his re-mortgage work. The First Respondent accepted that if he had supervised the Second Respondent properly, he would have identified some debit balances having arisen due to cash paid by clients not having been banked. He stated that he had relied on the Second Respondent.

40. At an interview with the Investigation Officer on 5 April 2011, the Second Respondent said the transfer of costs on transactions had not been under his control. The First Respondent would ask him whether a matter was due to complete and if so whether costs had been transferred. If the costs had not been transferred, the First Respondent would transfer them, and on some occasions transfers were made without bills being raised. The Second Respondent never had any financial responsibility and whenever he received money, whether cash or cheque, he would hand this over to the First Respondent.

41. The Second Respondent also stated that the First Respondent would periodically look at the ledger balances with the Second Respondent and explain debits. The Second Respondent had always assumed that the First Respondent would rectify such debit balances. Before a payment was made, the Second Respondent would ask for authority from the First Respondent. The First Respondent would not always have the relevant ledger in front of him. Although the First Respondent called for files from time to time as the need arose, there was no established system of file review.

S G shortfall

42. The First Respondent explained that on 1 June 2010, before the Second Respondent left the firm, the First Respondent had asked him for a list of what monies were owed. The Second Respondent had said approximately £2,000-£3,000 was owed.

43. The First Respondent told the Investigation Officer that in July 2010, the firm's accountant had told him that he could not sign the Accountant's Report as there was something he needed to explain to the First Respondent and a meeting was arranged for this. At that meeting the accountant asked the First Respondent about a matter in the name of S G.

44. The First Respondent explained that he had been requested to hold funds on behalf of this organisation for use in due course in connection with the purchase of a property. Approximately £700,000-£800,000 had been received by the firm of which all but approximately £150,000 had been paid out. The First Respondent had asked the Second Respondent to prepare a statement showing the precise amount held on behalf of the organisation. The statement showed approximately £111,000. The accountant had calculated that the firm should have been holding £155,000.

45. Further analysis showed that whereas monies received for the organisation should have totalled £672,000, in fact only £627,000 was shown in the Second Respondent's statement as having been received. The First Respondent had thought initially that he would be able to raise the £45,000 to replace the missing monies but had been unable

to do so. He had questioned the Second Respondent about the shortfall. The Second Respondent had offered to pay £20,000 by instalments and by October 2010 had paid the entire £20,000. The First Respondent had himself also repaid £20,000 following the surrender of an endowment policy.

46. The First Respondent had looked through the firm's files and identified an overall shortfall of £65,000 including the £45,000 shortfall on the S G matter. He told the Investigation Officer that the remaining shortfall was, therefore, approximately £25,000.

47. In a letter to the SRA dated 7 September 2011, the Second Respondent stated that the fact that he had paid the First Respondent £20,000 to help make up the shortfall should not be taken as an acceptance of guilt by him. The First Respondent had pleaded to him for help and the Second Respondent had felt some responsibility due to the fact that it had been his typographical error which had led to the firm's records mis-stating the amount held for the client as £627,000 instead of £672,000.

Client shortfalls in years ended 31 January 2006 to 31 January 2010 inclusive

48. The firm's accountant submitted unqualified reports for the firm for each of the years ended 31 January 2006 to 31 January 2010. His reports stated that the firm held sufficient monies to meet liabilities to clients at the two days selected for each year. However, those reports were incorrect as the firm did not hold sufficient monies to meet its client liabilities.

49. At the interview with the Investigation Officer on 2 June 2011, the First Respondent said he would not have seen the Accountant's Reports before they were submitted by the accountant and that he may have received copies at some stage but he did not look at them. The accountant had highlighted to the First Respondent that there were some problems in relation to debit balances but the First Respondent had not known the extent of the problem until the end of July 2010. He had intended to put matters right and had paid money in as quickly as he could. He had asked the accountant to submit the report as, without the report, he would not have been able to carry on his practice.

50. In letters to the SRA dated 4 October 2011 and 13 January 2012, the First Respondent stated:

- He had been shocked when he had been told about the monies missing on the S G matter;
- When the firm's accountant had warned him that there were further shortages, the First Respondent had begun to examine all of the Second Respondent's files;
- The Second Respondent had been unable to offer any explanation other than to deny any wrongdoing and to offer to pay £20,000;
- If the ledgers had been checked regularly, the situation would not have "spiralled out of control";

- He only accepted cash payments in rare circumstances and actively discouraged the Second Respondent from doing so;

- The Second Respondent was authorised to transfer client funds;

- The First Respondent had given £6,000 to the Second Respondent to pay into client account to rectify a number of small debit balances;

- The First Respondent had only discovered subsequently that the Second Respondent had created debit balances in December 2009 by not paying in client monies received and had used the £6,000 to make good the debt this had caused.

51. In a letter to the SRA dated 7 September 2011, the Second Respondent stated that:

- The financial aspects of transactions would always be under the First Respondent's control;

- At completion, if cash had been received from clients which had not been paid into client account, the First Respondent would insist on the Second Respondent providing evidence of what had happened to the cash;

- The First Respondent would encourage the Second Respondent to accept cash;

- When the First Respondent was in the office the Second Respondent would hand him any cash or cheques received which the First Respondent would keep in a drawer;

- The First Respondent would on occasion ask the Second Respondent to use such funds for personal and/or office purposes, for example to pay office or personal bills or to pay money into the bank account of members of his family.

Witnesses

52. The following witnesses gave evidence:

- Nicholas Ireland (Senior Investigation Officer from the SRA)
- Rahat Zaman Choudhury (the First Respondent)
- Mohammad Kamruzzaman (the Second Respondent)

Findings of Fact and Law

53. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of all the parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under

Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

54. Allegation 1.1: The First Respondent acted in breach of the Solicitors' Accounts Rules 1998 ("SAR") in the following respects:

Allegation 1.1.1: Rule 22 in that:

(i) there was a minimum cash shortage on client account as at 31 December 2010 of £101,219.86;

(ii) there was a minimum cash shortage on client account for each of the years ended 31 January 2006 to 31 January 2010 inclusive;

(iii) client monies were improperly withdrawn from the client bank account;

(iv) the First Respondent made withdrawals from the firm's client account in excess of monies due to the firm.

54.1 The First Respondent admitted allegations 1.1.1 (i), (ii) and (iii) and the Tribunal found them proved. By virtue of the fact that Mr Ireland, the Investigation Officer, had identified a shortage on client account, there had clearly been a breach of Rule 22 of the Solicitors' Accounts Rules 1998 ("SAR"). Mr Ireland had identified 33 client ledgers showing deficits in varying amounts. It was therefore evident that monies had been withdrawn from those client accounts in circumstances when they should not have been.

54.2 The First Respondent denied allegation 1.1.1(iv) in that he denied he had withdrawn sums from the firm's client account in excess of monies due to the firm. Mr Ireland had identified a minimum cash shortage on client account in the sum of £101,219.86 as at 31 December 2010. The sum of £57,210.61 was allocated to a suspense ledger. By the time of the Forensic Investigation Report the client account shortfall had been reduced to £27,863.92. By 1 October 2012, it had been further reduced to £565.

54.3 The Tribunal heard evidence from the First Respondent in which he accepted that there had been shortages showing on client account but he stated the suspense account also had to be considered. He claimed that whenever the accountant could not identify funds, they were placed in the suspense account. Although the First Respondent denied he had taken any client monies, he confirmed in his evidence that he had given £6,000 to the Second Respondent in Bangladesh to bring back to the UK to make up some of the client shortfall. He also confirmed that he had borrowed money to reduce the shortfall.

54.4 The First Respondent had told Mr Ireland that he had surrendered an endowment policy in order to repay the sum of £20,000 towards the shortfall on the S G matter.

54.5 The Tribunal had been referred to the case of Mr S and Mrs A where the client ledger showed a deficit of £1,995 on 15 December 2009, after payment of £212,000 to the vendor's solicitors, when the firm's client ledger showed that the firm was only holding £210,005. Further debit balances were subsequently created on that client

ledger after payments made for SDLT and HMLR. Factually, there was clearly a shortfall on client account and as the Principal of the practice, the First Respondent was strictly liable to ensure compliance with the SAR. The Tribunal was satisfied that allegation 1.1.1(iv) was proved.

55. Allegation 1.1.2: Rule 15 in that client money was not paid into a client account without delay.

55.1 The First Respondent disputed allegation 1.1.2 that there had been a breach of Rule 15 of the SAR in that client money was not paid into client account without delay. The Tribunal heard evidence from both the First Respondent and the Second Respondent in relation to funds received from clients. The First Respondent maintained throughout his evidence that he had not taken any client money and that cash payments made by clients were to the Second Respondent. He denied that the Second Respondent had given these payments to him.

55.2 On the matter of Mr S and Mrs A, cash in the sum of £4,500 had been received from the clients on 11 November 2009, two days before the First Respondent had been due to go to Bangladesh. The Tribunal had been provided with a copy of the client account ledger for Mr S and Mrs A from which it was clear that the sum of £4,000 was not credited to their client account until 13 January 2010. This was a delay of over two months. It was not clear what had happened to the remaining £500.

55.3 There were other instances where client funds had not been paid into client account without delay. On the matter of Mrs M-O, the client had paid the sum of £4,400 to the firm but there was no record of those sums having been paid into the firm's client account. On the matter of Mr U and Mrs B, the clients had paid the sum of £3,018.50 cash to the firm on 29 October 2009 but, again, there was no record of this on the client ledger. The Tribunal was therefore satisfied that there had been a breach of Rule 15 of the SAR as none of these client funds had been paid into client account without delay. Allegation 1.1.2 was proved.

56. Allegation 1.1.3: Rule 32(16) in that the First Respondent used a suspense client ledger inappropriately.

56.1 The First Respondent admitted allegation 1.1.3 and the Tribunal found it proved. It was quite clear to the Tribunal that the suspense client ledger had been used as a balancing ledger and, indeed, the First Respondent in his evidence confirmed that there had been a misuse of the suspense account in this manner. He stated that whenever his accountant could not identify some funds, he would place them into the suspense account.

56.2 The Tribunal noted there was no clear correlation between individual client ledger balances and the overall sums held on client account. It appeared to be the practice of the firm to replenish overdrawn client balances from the suspense client ledger on an individual basis as each matter was dealt with. This was clearly an inappropriate use of that ledger

57. Allegation 1.1.4: Rule 32(1) in that the First Respondent failed at all times to keep accounting records properly written up.

57.1 The First Respondent admitted allegation 1.1.4 and the Tribunal found it proved. Mr Ireland, the Investigation Officer, had identified a minimum cash shortage which had arisen as a result of cash being received but not paid into client account, or debit balances which had arisen due to unallocated transfers, or over allocated transfers to office bank account and overpayments from client bank account. There were also unidentified receipts/payments in the suspense ledger. These had clearly arisen as a result of a failure to keep the accounting records properly written up.

58. **Allegation 1.1.5: Rule 32(7) in that the First Respondent failed to carry out reconciliations within the required timescales.**

58.1 The First Respondent admitted allegation 1.1.5 and the Tribunal found it proved. The First Respondent had admitted to Mr Ireland, the Investigation Officer, that reconciliation statements were prepared by his accountant, sometimes in 6 weeks, sometimes in 8 weeks. He also admitted he had failed to monitor the reconciliation statements which had shown debit balances for over 5 years. If reconciliations had been checked properly, then any irregularities could have been identified and rectified easily and quickly. This would have prevented the minimum cash shortage from arising, or reaching the scale and amount that it did.

59. Allegation 1.1.6: Rule 32(8) in that the First Respondent failed to keep a central record or file of copies of bills or other written notifications of costs.

59.1 The First Respondent admitted allegation 1.1.6 and the Tribunal found it proved. The First Respondent had admitted in his interview with Mr Ireland, the Investigation Officer, on 2 June 2011 that he did not currently have a central file for bills. He accepted there were some occasions when bills were done, and others when they were not done. He stated a bill book had been maintained by his accountant's office in the past but not recently. More recently, the firm would write to clients and tell them how much the costs would be.

60. Allegation 1.1.7: Rule 6 in that as Principal the First Respondent failed to ensure compliance with the SAR by himself and by everyone employed in his firm.

60.1 The First Respondent admitted allegation 1.1.7 and the Tribunal found it proved. The number of accounts rules breaches already found proved were clear evidence that the firm had not complied with the SAR.

61. Allegation 1.1.8: Rule 7 in that the First Respondent failed to remedy promptly on discovery the breaches alleged above.

61.1 The First Respondent admitted allegation 1.1.8 and the Tribunal found it proved. The First Respondent had admitted to Mr Ireland, the Investigation Officer, during his interview on 2 June 2011 that he had failed to remedy breaches immediately, partly due to the fact that he had not looked at client ledgers.

62. Allegation 1.2: The First Respondent acted in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC") in that he failed without delay or at all to pay client money into client account and/or instructed the Second Respondent to delay paying client money into client account and instead used such client

money for his own purposes. It was alleged the First Respondent had acted dishonestly.

and

Allegation 2.1: The Second Respondent acted in breach of Rule 15 SAR and Rule 1.02 of the SCC in that he failed without delay to pay client money into client account and/or paid such money to the First Respondent in the knowledge that the First Respondent would use it for his own purposes or alternatively when he was reckless as to whether the First Respondent would use it for his own purposes. It was alleged the Second Respondent had acted dishonestly.

62.1 The Tribunal had already found that there had been a failure by the First Respondent to pay client money into client account without delay or at all and that, as such, there had been a breach of Rule 15 of the SAR by the First Respondent. It was further alleged that the First Respondent had instructed the Second Respondent to delay paying client money into client account, that the First Respondent had used such client funds for his own purposes and that this conduct not only showed a lack of integrity on the part of the First Respondent but was also dishonest.

62.2 In relation to the Second Respondent, it was alleged that he had failed to pay client money into client account without delay, and/or that he had paid such money to the First Respondent knowing that the First Respondent would use it for his own purposes. In the alternative, it was alleged that the Second Respondent was reckless as to whether the First Respondent would use the client money for his own purposes. It was alleged that this conduct showed a lack of integrity and was dishonest. The Second Respondent admitted he had breached Rule 15 of the SAR by failing to pay client money into client account without delay, but he denied the rest of the allegation.

62.3 The Applicant's case was based on the Second Respondent's version of events and relied on four particular matters:

- Mrs M-O who had paid £4,400 to the firm
- Mr U and Mrs B who had paid the sum of £3,018.50 to the firm
- Clients S, P & Others who had paid a total of £6,085 to the firm
- Mr S and Mrs A who had paid £4,500 to the firm

62.4 On each of these matters, the Applicant alleged both Respondents had acted with a lack of integrity, and dishonestly. Mr Gott QC, on behalf of the Applicant, submitted there was no requirement necessary permanently to deprive a client of money to find dishonesty. He referred the Tribunal to the case of Bultitude v The Law Society [2004] EWHC 1370 (Admin) in which there had been an intention on the part of Mr Bultitude to repay the clients if the firm was not entitled to the sums transferred. Notwithstanding this Lord Justice Auld stated:

> "30. …such is the sanctity of the rule in the solicitors' profession of preserving a strict separation in their accounts between their own and their client's funds,

> that any deliberate and knowing breach by a solicitor of it, as in this case, is dishonest and seriously so."

62.5 Mr Coxhill, on behalf of the Second Respondent, submitted the case of Bultitude was not binding on the Tribunal as it was a High Court authority and allegations of dishonesty were fact specific. It was not intended that another layer was to be added to the test to be applied when considering dishonesty. In that case Mr Bultitude had been a partner of the firm and had made transfers for his own benefit. However, Mr Gott QC had also provided the Tribunal with the Court of Appeal decision Re A Solicitor David John Bultitude v The Law Society [2004] EWCA CA Civ 1853 in which the Divisional Court's finding on the issue of dishonesty was approved and confirmed.

62.6 Mr Gott QC submitted the Tribunal should accept the Second Respondent's version of events that the money was given to the First Respondent and that it had been used for the First Respondent's benefit. The Second Respondent had accepted he had applied client monies on the instruction of the First Respondent and Mr Gott QC submitted this showed the Second Respondent knew the First Respondent had used client money for his own purposes.

62.7 The Tribunal had also been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. First the Tribunal had to consider whether the conduct of each of the Respondents would be regarded as dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether each of the Respondents realised that by those standards his conduct was dishonest.

62.8 The Tribunal had also been referred to a number of character references in relation to the Second Respondent. The Tribunal took into account the cases of Donkin v The Law Society [2007] EWHC 414 (Admin) and Bryant v Bench [2009] 1 WLR. In the latter case it was confirmed that character references were:

> "cogent evidence of positive good character and were of direct relevance to the issue of dishonesty."

The Tribunal took the Second Respondent's character references into account, in view of the fact that dishonesty had been alleged against him.

62.9 The Tribunal considered each of the client matters relied upon by the Applicant in turn. On each matter the First Respondent, in both his evidence and in his responses to Mr Ireland, the Investigation Officer, had consistently denied that he had received any client money from the Second Respondent. He accepted on cross examination that a solicitor who used client money for his own purposes was dishonest. The Tribunal found the First Respondent was not a credible witness. He was flippant in many regards and very cavalier in his responses to questions put to him. He was unable to provide rational explanations to various matters when put to him and generally deflected all matters towards the Second Respondent blaming him for everything.

62.10 The Tribunal considered carefully the Second Respondent's version of events. The Tribunal found he was a more plausible witness and accepted his evidence, although it noted there were a few inconsistencies in his evidence when also compared with his responses to Mr Ireland and his letter of 7 September 2011 to the SRA.

62.11 The Second Respondent had been employed by the First Respondent for a short period in 1993/1994 and then since 1996, initially as an office junior, progressing to a trainee solicitor and finally as an assistant solicitor since 2006. He had spent his entire legal career working with the First Respondent and there had been discussions about the Second Respondent taking over the firm after the First Respondent retired.

62.12 At the time of these allegations the Second Respondent had been a solicitor for just over three years. He spoke highly of his respect for and the regard in which he had held the First Respondent over the years. He stated that throughout his employment, he had always given any money received from clients to the First Respondent who was the Principal of the practice. The Second Respondent also confirmed that he made a record on the file of all cash received from clients and this was evident from the documents provided. He said he had never done anything in the firm or with any money related to the firm without the permission of the First Respondent. The Second Respondent confirmed that the First Respondent had given him the password to be able to make bank transfers in the First Respondent's absence but submitted he had never done this without the First Respondent's knowledge.

62.13 During his interview with Mr Ireland the Second Respondent accepted that although monies from clients should be paid directly into client account, in some circumstances, such as where there was "no ink in the office" or "stationery is not working", some money would be spent when the First Respondent was absent and the Second Respondent would, once the First Respondent returned, hand the money to him with an explanation. On cross examination the Second Respondent confirmed this was the case on one or two occasions.

62.14 During the course of the cross-examination of the Second Respondent, his Counsel, Mr Coxhill, raised an objection to the Second Respondent being cross-examined on the contents of his Position Statement. Mr Coxhill reminded the Tribunal that the Position Statement had been produced and served as a result of an Order of the Tribunal at a Case Management Hearing on 16 April 2013. The Second Respondent had no choice but to serve the Position Statement and had he not done so, he would have been in breach of an Order of the Tribunal. Mr Coxhill submitted there was no basis in law for the Position Statement to be served and it was wrong for the Second Respondent to be examined upon it. Mr Gott QC, on behalf of the Applicant, submitted the Position Statement had been produced with the permission of the Second Respondent and there were inconsistencies in the Position Statement and the oral evidence given by the Second Respondent which he wished to clarify. Mr Thrower, Counsel for the First Respondent, submitted that there was no reason why contradictions between the Position Statement and the oral evidence given could not be raised.

62.15 The Tribunal considered carefully the Memorandum of the Case Management Hearing dated 16 April 2013 and the Order made by a previous division of the Tribunal for each Respondent to serve a Position Statement. It was clear that the purpose of the

Position Statement was to set out any admissions, clarify which facts were disputed and set out each Respondent's defence for those matters disputed. The document was prepared for the purpose of assisting the Tribunal and narrowing the issues. The Tribunal noted the Position Statement had not been signed by the Second Respondent and it appeared to have been produced by his legal representatives, particularly in view of the fact that the Statement alternated between referring to the third person, "the Second Respondent", and the first person, "I", throughout. It was therefore a matter for the Second Respondent to indicate which words were his. It was proper for the Applicant and the First Respondent to explore the factual matrix upon which the Position Statement was based and the Tribunal would attach due weight to that document at its discretion.

62.16 The Second Respondent during his interview with Mr Ireland on 5 April 2011 did not make reference to a number of matters which were subsequently raised in his letter to the SRA dated 7 September 2011. Mr Ireland, confirmed that at the time of the interview the Second Respondent had not received some of the documents sent to him and Mr Ireland had offered to defer the interview to send further copies of those documents. The Second Respondent, however, agreed to carry on with the interview. In his evidence, the Second Respondent stated that he had agreed to carry on with the interview as he had "nothing to hide". He said that after the interview, when he had got home, the documents had arrived and, when he went through them, they had jogged his memory. This led to him sending an email to Mr Ireland the following day on 6 April 2011, and then spending some time writing his letter of 7 September 2011 to the SRA.

Mrs M-O

62.17 The Second Respondent confirmed he had received cash in the sum of £4,400 from this client although he could not recollect the exact date. He stated that the sum of £800 had been brought in by the client at the initial stage of the transaction, then on another date £1,600 had been brought in and on the same day a further sum of £2,000 was deposited with him. He stated that on the same evening the last two amounts were paid, he attended the First Respondent's home at about 7:30pm to 8pm to sign a loan agreement. In his letter to the SRA dated 7 September 2011, the Second Respondent said that when he had attended the First Respondent's home, the First Respondent had told him he needed another £6,000 to £7,000 for his daughter's wedding and he asked the Second Respondent if he had received any money or was likely to receive any money within the next couple of days. The Second Respondent had told him that he had that day received the sum of £3,600 from Mrs M-O and he gave the cash to the First Respondent. The First Respondent had asked when completion of the matter would be and the Second Respondent had said it had not yet been fixed but would be shortly. The Second Respondent had said in his letter to the SRA that the First Respondent had said:

> "….don't worry, hopefully the [B] Loan will complete before that and we can put that money back into the client account."

62.18 The Second Respondent initially stated in his evidence that the First Respondent did not tell him how he would use the cash but on cross examination, the Second Respondent stated the First Respondent had told him he would use the money for his

daughter's wedding. The Second Respondent stated that he had not given the money to the First Respondent specifically for him to use for his daughter's wedding, and that the Second Respondent would have given him the money anyway, as he was the Principal of the firm. The Second Respondent accepted the funds had been used for the First Respondent's own purposes but submitted the First Respondent was responsible, and the Second Respondent did not consider he had breached the trust the client placed in him.

62.19 The Second Respondent had stated in his letter of 7 September 2011 to the SRA that the First Respondent had told him the same evening that he needed:

> "another couple of thousand pounds and it would be great if at least 2 clients came and paid a £1,000 pounds [sic] each."

This did not happen and the Second Respondent had said that he borrowed £2,000 from a relative and gave it to the First Respondent a day or two later.

62.20 The First Respondent denied having received this money from the Second Respondent but, when asked why he had not notified the police about the matter, he stated that he would not notify the police in relation to another solicitor colleague.

62.21 The Tribunal accepted the evidence of the Second Respondent that he had indeed given the sum of £3,600 client money to the First Respondent as he had indicated. The Tribunal was satisfied that the First Respondent had intended to use this money for the purposes of his daughter's wedding and that the Second Respondent had known this. Mrs M-O had not provided these funds for this purpose and there was no evidence that Mrs M-O knew about this use of her funds. Indeed the Second Respondent confirmed in cross examination that the client was not aware that her money was being used for the First Respondent's daughter's wedding.

62.22 The Tribunal was satisfied both Respondents' conduct, the First Respondent by intending to use Mrs M-O's money and the Second Respondent knowing that her money was to be used for the First Respondent's daughter's wedding, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

62.23 Both Respondents knew that Mrs M-O had provided these funds for the purposes of the completion of her purchase transaction and they both knew that the money was intended to be used for the First Respondent's daughter's wedding. The Tribunal was satisfied that the First Respondent, in stating that he would use Mrs M-O's funds for a purpose other than that for which they had been given to the firm, and that he would replace these funds when a loan he had applied for came through, knew his conduct was dishonest by the ordinary standards of reasonable and honest people.

62.24 In relation to the Second Respondent, the Tribunal took particular note of his letter to the SRA dated 7 September 2011. It was clear from the contents of that letter that the Second Respondent knew that the First Respondent intended to repay Mrs M-O's money from a loan which was due to complete. He knew that her funds were to be used for the First Respondent's personal benefit and that the First Respondent intended to replace them. The Tribunal was therefore satisfied that the Second Respondent, by knowing this and allowing the First Respondent to retain and use Mrs

M-O's money for the purposes of contributing to the funding of his daughter's wedding, albeit with the intention of repaying it in future, was aware that his conduct was dishonest by the ordinary standards of reasonable and honest people.

Mr U and Mrs B

62.25 The Second Respondent confirmed these clients had paid the sum of £3,018.50 cash to him on 29 October 2009. Initially, when he was interviewed by Mr Ireland, the Second Respondent stated that he had given this money to the First Respondent, but having been informed that the First Respondent was in Bangladesh when that money came in, the Second Respondent then said that he would have dealt with the money as the First Respondent asked him to. In his email to the Investigation Officer dated 6 April 2011, the Second Respondent stated that he was:

> "……almost sure, though not entirely certain, that most of this cash sum was paid into the office account as per Mr Choudhury's direction, as the office account was running short or about to run short."

62.26 In his evidence before the Tribunal the Second Respondent said that he had paid this money into the firm's office account because he had been asked to do so, as it was the end of the month and there were various direct debit payments due to go out of that account at that time. He confirmed that the office account was always "floating around" the overdraft limit and unless payments were made into office account, the direct debit payments would be returned. The Second Respondent stated that as he had not been provided with the firm's relevant bank statements, he was unable to produce evidence of this sum being paid into the firm's office account. On cross examination the Second Respondent accepted he had placed his duty to the First Respondent above his duty to the client.

62.27 The First Respondent stated he knew nothing about this money or about this file. There was some dispute between the two Respondents' evidence about how often they spoke whilst the First Respondent was abroad. The Second Respondent stated it was almost daily, however, the First Respondent stated it was not regular, 5 or 6 times in a month, and that they never discussed on the telephone which client monies had been received while he was in Bangladesh because this was not practical. He said he did not know what the Second Respondent had received and that he had trusted him while he was abroad.

62.28 In the absence of having been provided with the relevant bank statements, or the firm's paying in book for this particular period, the Tribunal was unable to reach a clear conclusion as to what had happened to the sum of £3,018.50 from Mr U and Mrs B. The Tribunal was therefore not satisfied that their conduct in relation to Mr U and Mrs B would be regarded as dishonest by the ordinary standards of reasonable and honest people, or that they had acted with a lack of integrity, and found this matter not proved.

Clients S, P & Others

62.29 The Second Respondent confirmed he had received cash in the sum of £6,085 from a number of clients in December 2009 when the First Respondent had been in Bangladesh. He had made a handwritten note of the amounts received from each client and had also recorded on the same note the payments he had made from those monies received which were as follows:

- He had paid the sum of £2,000 to TI in relation to the First Respondent's loan;
- He had paid the salary of an employee of the firm, HY, in the sum of £1,050.00;
- He had paid the sum of £1,050.00 into the firm's office account for mortgage payments that were due;
- He had paid the sum of £1,520 for airline tickets for the First Respondent's wife and her mother to fly to Bangladesh;
- He had paid himself the sum of £465 as an advance for his January salary.

62.30 The Second Respondent provided the Tribunal with detail regarding these payments and stated that all the payments had been made on the instruction of the First Respondent. The Second Respondent stated in his evidence particularly in relation to the breach of Rule 15 of the SAR and the payment of £465 to himself as an advance on his salary:

> "Strictly speaking, yes, I am aware that this was not right thing [sic] to do but at the same time I believe I have explained in my letter that of those funds, you know, at least one of them I know it for sure that Mr [M] ….. that was our agreed costs."

On cross examination, the Second Respondent accepted he had taken an advance from client money and that the First Respondent had also benefited from client money which had been used for purposes that had nothing to do with those clients. He accepted that they had both benefited from the use of this money.

62.31 The First Respondent in his evidence denied knowing anything about these funds and denied having any discussions or providing any instructions, or authorisation concerning them while he was in Bangladesh. He admitted that he owed money to TI for a loan but denied he had instructed the Second Respondent to make this payment from client money. In relation to the airline tickets for his wife and her mother, the First Respondent said that he had himself telephoned the travel agent he used regularly from Bangladesh, asked him to issue the airline tickets and confirmed he would settle the cost when he returned to the UK. When the First Respondent came back to the UK, he contacted the travel agent and was told the tickets had been paid. He claimed the travel agent could not explain who had paid for the tickets or when because the First Respondent had purchased so many airline tickets from this agent, and the agent had said there was nothing outstanding on the account. The First Respondent stated:

"It was convenient for me not to push him any further."

62.32 The First Respondent stated he did not ask the Second Respondent if he had paid for the airline tickets and that this was not the first time the Second Respondent had paid bills for him. On cross examination, the First Respondent claimed that he might have had another trainee/assistant who had been working for him over a brief period of three months at that time and he may have told that employee to make the payment. However, he was unable to remember the name of that employee. The Tribunal found the First Respondent's explanation in relation to the airline tickets implausible and did not believe it. The Tribunal accepted the evidence of the Second Respondent.

62.33 The Tribunal had no doubt on the evidence it had heard that the cash paid to the Second Respondent on behalf of the firm by these various clients benefited the First Respondent directly. Examples of this were the payment of part of his personal loan of £2,000, the payment of a staff member's salary and the payments into office account with no apparent matching liability or justification. Furthermore, the Second Respondent had also benefited directly from these client funds by receiving part of his salary in advance. The fact that the Second Respondent recorded the receipt of monies paid was to record the figures, and to enable the Respondents to be able to later reconcile client transactions and complete them.

62.34 The Tribunal was satisfied that using clients' money in this way would be regarded as dishonest by the ordinary and reasonable standards of honest people. Both Respondents knew that the sum of £6,085 belonged to various clients and yet instead of depositing the funds in the firm's client account, they had allowed that money to be used to pay for various personal expenses of the First Respondent and for the salary advance to the Second Respondent. They had both benefited from the use of that money and there was no evidence that the clients were aware of, or had agreed to, their money being used in this way. Nor was there any evidence that some or all of the client's money had been billed as costs properly due to the firm. The Tribunal was satisfied that both Respondents knew that their conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Second Respondent admitted he had known it was not the right thing to do. The First Respondent had known this money did not belong to him and yet he allowed it to be used to pay his personal expenses. The Tribunal found that both Respondents had acted dishonestly in relation to these clients.

<u>Mr S and Mrs A</u>

62.35 The Second Respondent confirmed he had received the sum of £4,500 in cash and a cheque for £13,000 from Mr S and Mrs A on 11 November 2009 and had recorded this on the file. He stated that he gave the money to the First Respondent that day together with the cheque. The Second Respondent knew the First Respondent was due to go to Dubai and then on to Bangladesh in a couple of days, and when he gave the money to the First Respondent, he said that the First Respondent told him "things need sorting out" and there was not enough money. The First Respondent suggested he would take Mr S and Mrs A's money with him abroad.

62.36 The Second Respondent stated that he later met the First Respondent in Bangladesh and the First Respondent gave him £6,000 to bring back to the UK. He said that the First Respondent told him to put the money into Mr S and Mrs A's account and also to pay money into various other client accounts to clear balances where funds were short. The Second Respondent stated the First Respondent was replacing the money. The Second Respondent confirmed on cross examination that both he and his wife had brought £3,000 back to the UK - £3,000 being the maximum amount an individual can take out of Bangladesh - and the entire amount was paid into client account. He stated that the bank statements for that period would confirm that £4,000 was paid into Mr S and Mrs A's client account.

62.37 On cross examination the Second Respondent stated that he had not known the First Respondent would use Mr S and Mrs A's money for his own personal use when the Second Respondent gave him the money, but was told later by the First Respondent that he would do so. He initially said this was 10/15 minutes after he gave the First Respondent the money, then subsequently said it was maybe half an hour or two hours later, but he was not sure. When asked why the Second Respondent had not requested the money back so that it could be used for the completion of the transaction, the Second Respondent replied:

> "I probably didn't have the strength of character to say don't do that" and
>
> "I did not have the guts to say, don't do that".

The Second Respondent accepted that:

> "stupidly enough naively enough, like an idiot, I did follow Mr Choudhury's instructions, yes."

62.38 In his letter to the SRA dated 7 September 2011, the Second Respondent stated the following:

> "As he [Mr Choudhury] had no money to take with him and to meet various other liabilities including paying money into NatWest office account to pay office mortgage, various personal and household bills and leaving some money with his wife and family before he left and this £4500 fitted in nicely."

62.39 When questioned further about the use of the words "fitted in nicely", the Second Respondent accepted that he knew Mr S and Mrs A's money was for the purchase transaction and should have been paid into client account. He confirmed that he had paid the sum of £4,000 into Mr S and Mrs A's account on 13 January 2010 even though the amount he had received from Mr S and Mrs A was £4,500. He stated this was an oversight or there may have been a pressing need to put some money into other ledgers.

62.40 The First Respondent denied using £4,500 cash from this client. He said the Second Respondent had received the money from the client and that he, the First Respondent, did not know what the Second Respondent had done with it. He claimed he did not know about the existence of this money and that in fact he had withdrawn the sum of £1,500 on 13 November 2011 from office account, the day he left the country, and

therefore he had no need to take the £4,500. His explanation as to why he gave the Second Respondent £6,000 to bring back from Bangladesh was that he had received £90,000 in Bangladesh from the sale of a property and needed to bring it back to the UK. He asked several people to help him and the Second Respondent was one of them.

62.41 On cross examination the First Respondent accepted that he had told Mr Ireland, the Investigation Officer, during his interview on 2 June 2011 that he had given the Second Respondent £6,000 as his wife was travelling with him and they could take £3,000 cash each back to the UK. On cross examination the First Respondent also accepted that this money was to be used to pay for some shortfall in client funds but that he had expected to get some back.

62.42 The First Respondent had told Mr Ireland during his interview on 2 June 2011 that the Second Respondent:

> "..told me there was some shortage in some, I can't remember the exact name, but he said there is some shortage, I need some money, I said take the £6,000, pay into the client account, I did say …….. I didn't specify any client no, any particular client no…… "

62.43 When Mr Ireland asked the First Respondent if the Second Respondent had specified which clients the shortages were for, the First Respondent replied:

"No he didn't tell me, that was the basis of, err, extent of trust, that he would have, because he knows where the difficulties are, where the shortage is, so he would put the money, that was why I gave the money"

62.44 The Tribunal accepted the evidence of the Second Respondent and found as fact that the Second Respondent had given the sum of £4,500 cash to the First Respondent. The Tribunal further found that the First Respondent had given the Second Respondent £6,000 to bring back to the UK from Bangladesh in order to repay the £4,500 due to Mr S and Mrs A, together with shortfalls on other client accounts. Indeed, this had been acknowledged by the First Respondent in his interview with Mr Ireland.

62.45 The Tribunal was satisfied that by the ordinary standards of reasonable and honest people, it would be considered dishonest for the First Respondent to take money belonging to a client and use it for his personal expenses instead of paying it immediately into client account. The Tribunal was further satisfied that by the same standards it would be considered dishonest for the Second Respondent to have paid Mr S and Mrs A's money to the First Respondent knowing he was taking it for his own personal use. The Tribunal was satisfied that the Second Respondent knew of the First Respondent's intention to take the client's money abroad for his own use and the Second Respondent took no steps to prevent this from happening.

62.46 The Tribunal was further satisfied that both Respondents knew that their conduct was dishonest by those standards by the fact that (i) the First Respondent gave the Second Respondent the sum of £6,000 to bring back to the UK as he knew he should not have used the £4,500 belonging to the client and had to repay it to Mr S and Mrs A's

account and (ii) the Second Respondent knew that money had been used for a purpose for which it was not intended and that it must be repaid. He did indeed pay £4,000, which was part of that money, into Mr S and Mrs A's client account on 13 January 2010, over two months after the clients had paid it to the firm. The Tribunal was satisfied both Respondents had acted dishonestly on this matter.

Breach of Rule 1.02 of the Solicitors' Code of Conduct 2007

62.47 The Tribunal was satisfied that the First Respondent had acted with a lack of integrity in that he had promoted a culture and environment where cash funds were received from clients and were not immediately paid into client account. They were used for purposes for which they were not intended and this put client funds at risk.

62.48 Furthermore, the Second Respondent had also acted with a lack of integrity as he knew that client funds were not being paid immediately into client account and he took no action to rectify the position, and indeed allowed client funds to be used for purposes for which they were not intended.

63 Allegation 1.3: The First Respondent acted in breach of Rule 5.01(1)(a) of the SCC in that he failed to make arrangements for the effective management of the firm as a whole and in particular to exercise appropriate supervision over all staff.

63.1 The First Respondent admitted this allegation and accordingly the Tribunal found it proved. The First Respondent had admitted to Mr Ireland, the Investigation Officer, during the interview on 2 June 2011 that he had failed to supervise, and proper supervision would have required him to look at the client ledgers, and check what monies were coming in and going out. He accepted he had failed to do this. He accepted he had not supervised the Second Respondent's re-mortgage work.

63.2 There were numerous examples of the First Respondent's failure to effectively manage his firm and to exercise appropriate supervision over staff. Indeed, in his own evidence he claimed he had no idea what money the Second Respondent had been taking from clients, or what the Second Respondent had done with those funds. When asked about one particular file, the First Respondent's response was:

> "I didn't know the workings of this file, who was buying, who was selling, whether it was leasehold, whether it is freehold, whether somebody has got a mortgage, I didn't know anything, I still don't know. I don't care to know. ….. It is gone, finished. The transaction is complete, no complaint….. there is no purpose of my going back and examining the legal side of the work ….."

63.3 The First Respondent admitted in his evidence that he would not report a colleague to the police or the SRA where there were concerns about client money and he claimed that whilst he was abroad he trusted the Second Respondent and would only speak to him five or six times in a month. He confirmed he did not check client ledgers when signing cheques and simply signed cheques based on what the Second Respondent told him. He considered his role in writing cheques to be "an administrative job".

63.4 The First Respondent admitted the Second Respondent could make bank transfers without the First Respondent's authorisation as he had been given the relevant code. The First Respondent also stated that he would ask the Second Respondent if the matter had completed and whether they had costs, and if the Second Respondent said yes, the First Respondent would authorise withdrawals from client account without checking the ledger.

Previous Disciplinary Matters

64. None.

Mitigation of the First Respondent

65. Mr Thrower, on behalf of the First Respondent, expressed the First Respondent's sorrow and confirmed the First Respondent bitterly regretted that the last time he would be involved in work relating to his career would be these proceedings. He had been involved in two previous SRA inspections which had been satisfactory. The accountants he had previously been using had been found to be incompetent and he had appointed new accountants to remedy the situation. As soon as he had become aware of shortfalls, he had paid monies to reduce those shortfalls.

66. The First Respondent had tried to assist the Tribunal as best he could and the Tribunal was reminded that the amount involved was relatively small given that the firm had 7,500 files and a great deal of money had passed through the firm's account from mortgage companies and sales of properties. The First Respondent had never intended to deprive any client of money and, indeed, the Second Respondent had confirmed they always intended to replace cash. The Tribunal was referred to the First Respondent's Statement of Means for details of his financial circumstances. The First Respondent had limited means despite his long career as a senior solicitor.

Mitigation of the Second Respondent

67. Mr Coxhill, on behalf of the Second Respondent, reminded the Tribunal of the stress and health problems that the Second Respondent had suffered as a result of these proceedings. He submitted that although the Tribunal had found the Second Respondent had acted dishonestly, this was a case which fell into the exceptional category for the following reasons:

- The Second Respondent had assisted the SRA a great deal and, indeed, the charges had been brought as a result of his admissions

- The Second Respondent was relatively inexperienced and, although he had worked for the First Respondent for about 17 years, he had only been a qualified solicitor since 2006. The Tribunal was asked to take into account his culture and the changes he had made since these events.

- The amount of money involved was a relatively small sum

- There was no intention to permanently deprive any client of cash and it had always been the First Respondent's intention to repay client funds which is exactly what he did.

- There was no benefit to the Second Respondent as a result of the conduct. All the monies had benefited the First Respondent apart from the sum of £465 salary advance that the Second Respondent had received. The Second Respondent was a solicitor who did not receive any drawings from the firm.

- The Second Respondent had harboured a misguided sense of loyalty in acting the way that he did and the Tribunal was asked to take this into account together with his background, the history of his arrival in this country, and the fact that the First Respondent had taken him under his wing. It was clear where the power lay and Mr Coxhill submitted these factors must feed into the Tribunal's decision on sanction.

- The Tribunal had been provided with glowing character references, which included references from his recent employers, and it was submitted that with proper guidance and structure, the Second Respondent could operate properly and as expected by the profession.

68. The Second Respondent had left the firm and started working elsewhere in June 2010. However, due to health issues he was no longer working with that firm. The Tribunal was provided with a Statement of Means from the Second Respondent. He had young children and was the only breadwinner of the family on a modest income.

Sanction

69. The Tribunal had considered carefully both Respondents' submissions and the documents provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

70. The overall picture that the Tribunal had of the firm and its Principal, the First Respondent, was a sorry one. The papers before the Tribunal and the oral evidence it had heard, particularly from the First Respondent provided a confused, contradictory and at times chaotic picture. The Accountant's Report for 2011 could not be more damning. The findings indicated that there were substantial departures from the guidelines as follows:

> "No policy or systems to ensure compliance with the rules including any procedures to verify that controls are operating effectively.
> There are no procedures for identifying client money when received in the firm.
> There are no procedures that all withdrawals from client account are properly authorised.
> No system established for checking the balances on client ledger to ensure no debit balances occur.
> No system established for the transfer of costs from client account to office account."

71. It was unsurprising that the shortfall on client account had arisen as the First Respondent's attitude to controlling the client account had presented throughout as one of abdication of responsibility, and of passing the blame across to the Second Respondent.

72. The Tribunal had not found the First Respondent's evidence to be credible or plausible. The repatriation of the sum of £6,000 from Bangladesh to the UK via the Second Respondent and his wife was perhaps symptomatic of the First Respondent's attitude to regulation as the use of the Second Respondent and his wife was a device to subvert the Bangladesh exchange control limits.

73. The inappropriate use of a suspense ledger account further exacerbated the position and made the proper accounting of client money almost impossible and opaque. The Investigation Officer had found debit balances had been showing on every reconciliation statement he had looked at since 2005. The First Respondent had admitted a failure properly to supervise his staff or effectively manage his firm. These were grave breaches supported by the First Respondent's cavalier and reckless disregard of the proper obligations of a solicitor.

74. The Tribunal had found the First Respondent had acted dishonestly by utilising client funds for his own purposes and then subsequently later replacing these by making payments from his own funds into client account to remedy shortfalls. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

The Tribunal was satisfied that there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the First Respondent off the Roll of Solicitors.

75. In relation to the Second Respondent, the Tribunal had found that he had also acted with a lack of integrity in allowing client money to be deployed as it was, and he had acted dishonestly in that he had paid client funds to the First Respondent knowing that the First Respondent would use these funds for his own purposes or had used those funds for purposes for which they were not intended. This was very serious misconduct. Although the Second Respondent had qualified as a solicitor in 2006, he had worked for the First Respondent for 17 years and it was clear that the accepted practise at the firm was for the First Respondent to use client funds as he chose and later replace them. The Second Respondent should have known, at the very least by the time of his qualification as a solicitor, that this was a serious breach of a solicitor's duty to his clients.

76. Whilst the Tribunal accepted the Second Respondent felt he owed a huge debt of gratitude to the First Respondent for helping him to qualify as a solicitor, the Second Respondent had still, on qualification, allowed the practice of using client funds and later replacing them to continue. He accepted in his evidence that he knew the funds had been provided by clients for the specific transaction for which the firm had been

instructed and the clients were not aware that those funds had been used by the First Respondent for his own personal use. Furthermore, the Second Respondent had himself had the benefit of receiving an advance on his salary early as a result of this on one occasion. Client funds were sacrosanct and must be treated as such. It was no excuse that those client funds had later been repaid, as they should never have been used for any purpose other than that for which the client had paid them.

77. The Tribunal had taken into account the good references provided in support of the Second Respondent, but had to balance these with the dishonesty it had found proved. The conduct had taken place over a number of months and although the Second Respondent had co-operated with the SRA, the Tribunal had to bear in mind that his conduct had caused client funds to be placed at risk.

78. Again, the Tribunal considered the case of SRA v Sharma and took into account the factors submitted by the Second Respondent's Counsel in relation to exceptional circumstances. The Tribunal did not consider those factors were exceptional. Public confidence and the protection of the reputation of the profession demanded no less than a sanction of removal from the Roll for this type of serious misconduct, and accordingly the Tribunal Ordered the Second Respondent be struck off the Roll of Solicitors.

Costs

79. Mr Gott QC, on behalf of the Applicant requested an Order for his costs in the total sum of £66,858.23. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He submitted the costs were reasonable and reminded the Tribunal that this had been a strongly fought case by both Respondents. The Investigation Officer had spent 14 days at the firm and more than 49 hours in the office dealing with these matters which were very serious. Mr Gott QC also pointed out that the First Respondent did have assets and so was in a position to make some payment towards costs. Mr Gott QC requested an order for costs to be paid on a joint and several liability basis.

80. Mr Thrower, on behalf of the First Respondent, submitted the costs were extraordinarily high in a case where admissions had been made in relation to the accounting and management of the firm. The disputed issue had been on dishonesty only. He submitted the fees for Mr Gott QC were not reasonable or proportionate for this type of hearing. He submitted that whilst the parties had agreed to contribute to the cost of a transcript from the first day of the hearing, they had not agreed to pay the fees for both Counsel and a Partner to read through those transcripts. Mr Thrower also reminded the Tribunal that the First Respondent's assets were owned jointly with his wife.

81. Mr Coxhill, on behalf of the Second Respondent, also submitted the costs were high. It had not been necessary for the SRA to instruct a QC to deal with this type of case, and nor was it necessary for a Partner to draft a Schedule of Costs. The Case Management Hearing on 16 April 2013 had been listed at the request of the SRA who wanted a Position Statement and the Tribunal was asked to consider whether it was appropriate for the Second Respondent to be required to pay for the costs of that. Mr Coxhill also submitted that the Respondents should not bear the entire costs of the

transcript as this had been used by all the parties. He submitted that as both Respondents had presented a "cut throat" defence, they had effectively prosecuted each other. The SRA had charged for a Skeleton Argument but yet one had not been produced. The time spent by the Investigation Officer was excessive for this particular case. Mr Coxhill submitted any costs ordered should reflect the status of each Respondent within the practice and should be a several liability order in any event.

82. The Tribunal had considered carefully the matter of costs. The costs claimed were too high and were not proportionate to the case. The SRA investigation costs were excessive and it was unreasonable to charge the Respondents for a both Partner and Counsel to read through the transcript. It was also unreasonable to place the entire burden of the shorthand fees on the Respondents. These should be divided between all three parties. The Tribunal took the view that the solicitors' costs claimed were too high and should be reduced by £5,000, Counsel's fees were also high and should be reduced by £5,000, the shorthand fees should be divided by three and the costs of the SRA investigation were to be reduced by £5,000. Taking all this into account the Tribunal reduced the Applicant's overall costs figure to £52,000.

83. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondents' ability to pay those costs.

84. This was a case where the First Respondent was the Principal of the practice and was therefore more culpable for the misconduct. The Tribunal was mindful that the First Respondent was now aged 65 years old and probably at the end of his legal career. It was unlikely he would be able to secure other employment and his income was limited leaving little surplus each month. However he appeared to have some assets. Accordingly, the Tribunal Ordered the First Respondent pay £35,000 towards the Applicant's costs, such costs not to be enforced without leave of the Tribunal, save that the SRA shall if it so wishes, be at liberty to seek a charging order against the interest of the First Respondent in any freehold or leasehold properties owned by him either alone or jointly.

85. The Second Respondent was ordered to pay the sum of £17,000 towards the Applicant's costs. He was now aged 47 years old, he was not currently in full time employment due to his ill-health, and had been working on an ad hoc basis for the last few months. His liabilities exceeded his assets and he had now been deprived of his livelihood as a result of the Tribunal's order. Accordingly, the Tribunal Ordered that the Order for costs made against the Second Respondent was not to be enforced without leave of the Tribunal.

86. The Tribunal granted both Respondents an extension of time for lodging any appeal to 21 days from the date of receipt of the Tribunal's written judgment.

Statement of Full Order

87. The Tribunal Ordered that the Respondent, Rahat Zaman Choudhury, 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 £35,000.00, such

costs not to be enforced without leave of the Tribunal save that the SRA shall if it so wishes be at liberty to seek a charging order against the interest of the Respondent in any freehold or leasehold properties owned by him either alone or jointly.

88. The Tribunal granted an extension of time for lodging an appeal to 21 days from the date of receipt of the written Judgment.

89. The Tribunal Ordered that the Respondent, Mohammad Kamruzzaman 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 £17,000.00, such costs not to be enforced without leave of the Tribunal.

90. The Tribunal granted an extension of time for lodging an appeal to 21 days from the date of receipt of the written Judgment.

Dated this 14th day of .August 2013
On behalf of the Tribunal

E Nally
Chairman