SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11153-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL GERALD DOTCHON Respondent

Before:

Mr. J. P. Davies (in the chair)
Mr. R. Hegarty
Mr. D. E. Marlow

Date of Hearing: 17 December 2013 and 17 March 2014

Appearances

Mr David Barton, Solicitor Advocate, of Flagstones, High Halden Road, Biddenden, Kent TN27 8JG for the Applicant

Ms Emma Brooks of Richard Nelson Solicitors LLP, 88 Kingsway, London WC2B 6AA for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent, made in a Rule 5 Statement dated 20 May 2013, were that:

1.1 In breach of Rule 1.04 of the Solicitors' Code of Conduct 2007 ("the Code") he failed to act in the best interests of each client;

1.2 In breach of Rule 1.02 of the Code he failed to act with integrity. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;

1.3 In breach of Rule 1.06 of the Code he acted in a way that diminished the trust the public placed in him and/or the profession.

2. The further allegations against the Respondent, made in a Rule 7 Statement dated 15 October 2013, were that:

2.1 In breach of Rule 20 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by the said Rule. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;

2.2 In breach of Principle 7 of the SRA Principles 2011 he failed to deal with the SRA in an open, timely and co-operative manner.

Documents

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

Applicant

- Application dated 20 May 2013;
- Rule 5 Statement and exhibit "DEB1" dated 20 May 2011;
- Supplementary Rule 7 Statement and exhibit "DEB2" dated 15 October 2013;
- Copy letters dated 17 and 28 November 2013 from the Applicant to the Respondent;
- Schedules of Costs dated 16 December 2013 and 11 March 2014

Respondent

- Statement dated 13 December 2013;
- Copy ledgers – G and Mr D;
- Copy extracts from the file of Mr M;
- Draft affidavit and court order re G;
- Updated ledgers – G and Mr D;
- Testimonials;
- Letter from HMRC dated 30 January 2014 and copy bank statement

Preliminary Matter (1) – 17 December 2013

4. Ms Brooks informed the Tribunal (on 17 December 2013) that her firm had only recently been instructed by the Respondent to represent him in the proceedings. Instructions had been given prior to the deadline for the filing of the Respondent's evidence. His statement dated 13 December 2013 had to contain significant detail in order to assist the Tribunal and a short period of additional time had therefore been needed to finalise his statement. That had been filed and served slightly beyond the required date. Ms Brooks told the Tribunal that the Applicant had no objection to the late filing of the Respondent's statement and to its admission into evidence.

5. In addition there were testimonials filed on behalf of the Respondent. Mr Barton, for the Applicant, had also requested that 2 letters be admitted dated 17 and 28 November 2011 from the Applicant to the Respondent. None of these documents were objected to by either of the parties.

The Tribunal's Decision

6. The Tribunal consented to the admission into evidence of the Respondent's statement dated 13 December 2013 and to the admission of the further documents produced by the Applicant and the Respondent.

Preliminary Matter (2) – Progress of the hearing

7. The hearing commenced at approximately 10.50am on 17 December 2013. By approximately 4.20pm the Tribunal had heard the Applicant's case and had heard the Respondent give oral evidence. The Tribunal noted that it would take perhaps another two hours to conclude the case, given that the Tribunal would have to deliberate on its findings and, if appropriate, consider sanction and costs. Ms Brooks confirmed that the Respondent would agree to the matter resuming on another day. The Tribunal determined that in fairness to the parties, the matter should be adjourned, with a time estimate of half a day.

8. The hearing resumed at about 10.05am on 17 March 2014. Ms Brooks told the Tribunal that there were documents now available concerning how monies on the client matters of G and Mr D had been dealt with since the last hearing. The Tribunal determined that in order to admit these items, the Respondent should be re-sworn and give evidence about the documents and what they showed. This was done. Thereafter, the Tribunal heard submissions from Ms Brooks, considered the allegations and thereafter heard submissions in mitigation and considered the issue of costs. The hearing concluded at about 2.30pm.

Factual Background

9. The Respondent was admitted to the Roll of Solicitors on 1 July 1978. His name remained on the Roll.

10. At all material times the Respondent practised as the sole principal of Bailey and Bailey Solicitors of 82 Borough Road, Middlesbrough TS1 2JH ("the Firm").

11. On 4 October 2010 Ms Martina Hogg, an Investigation Officer ("IO") employed by the Applicant commenced an investigation of the Respondent's books of account and other documents. The investigation was completed by Mr Stephen Wallbank an Investigation Team Manager ("ITM") employed by the Applicant and Ms Lindsey Barrowclough an IO assisting Mr Wallbank. The Forensic Investigation Report ("FI Report") was dated 2 July 2012.

12. The FI Report raised no issues regarding compliance with the Solicitors' Accounts Rules 1998 but it did raise issues regarding compliance with the Code.

13. Four conveyancing transactions conducted by the Respondent were exemplified in the FI Report. In all four matters, the Respondent acted for the purchaser clients and their lender, which in three of the transactions was Birmingham Midshires ("BM"). In each case the Respondent was instructed by the lender pursuant to the Council of Mortgage Lenders' Handbook ("CML Handbook") and its Part 2 instructions. The Respondent gave certain undertakings and confirmations to the lender as the signatory to the Certificates of Title.

14. In each case the purchaser clients were the end buyers in back to back transactions completed simultaneously, with price uplifts.

15. On 2 July 2012 the Applicant sent the Respondent a copy of the FI Report and asked him to explain the matters set out in that report. The Respondent replied on 30 July 2012 and made certain admissions and denials.

16. A further forensic investigation was undertaken by another IO, Mrs Liz Bond which commenced on 26 June 2012. Her FI Report was dated 19 August 2013 ("the second FI Report"). She identified a cash shortage of £6,691.70 by comparing the total liabilities to clients with cash in the client account as at 30 April 2013. The Respondent agreed the cash shortage figure. On 1 August 2013 the Respondent informed the IO that he had replaced the shortage and she attended at the firm on 19 August 2013 to confirm that a transfer had been made from the Respondent's own funds.

17. The IO identified that the shortage arose as a result of the transfer by the Respondent to office account of three sums of money purporting to be in respect of costs where there was no entitlement to such costs. The monies represented residual balances due to clients and the Respondent agreed this. The files in issue were those of Mr M, Mr D and a matter referred to on the papers as "Mr G". On reviewing the papers produced by the Respondent on 17 March 2014 it appeared that the estate in question was that of "Mrs G". The relevant matter will be referred to as "G" in this document.

18. Correspondence was sent to the Respondent from the Applicant dated 30 August 2013 following the IO's visit but the Respondent failed to reply by the given date of 16 September 2013. A further email was sent to the Respondent dated 19 September and he was telephoned on 30 September 2013. Despite agreeing to respond by 4 October 2013 the Respondent failed to do so.

Witnesses

19. Mr Wallbank, Mrs Bond and the Respondent gave evidence.

Mr Wallbank

20. Mr Wallbank confirmed the truth of his FI Report dated 2 July 2012.

21. Mr Wallbank said that he had written to the Respondent on 17 November 2011 and had spoken to him on the telephone with regard to arranging the interview which had originally been scheduled to take place on 25 November 2011. He said that he had set out which transactions he wished to discuss with the Respondent having reviewed the documents of Mrs Hogg from which he had identified the files he wished to see and which he had detailed in his letter to the Respondent.

22. Mr Wallbank confirmed that the Respondent had contacted him on 22 November 2011 and advised that he would be unavailable on 25 November due to court commitments and the interview had therefore been re-arranged to 9 December 2011. Mr Wallbank said that he had indicated that the interview would be recorded but that when he and his colleague Ms Barrowclough had attended for the interview, Mr Bailey had objected and the Respondent had been guided by him. Ms Barrowclough had then taken handwritten notes.

Mrs Bond

23. Mrs Bond confirmed the truth of her FI Report dated 19 August 2013.

24. Mrs Bond confirmed that she had reviewed the files of G and Mr D. She said that she had seen the file of G and that the last correspondence on the file was 1999. She confirmed that the Transfer Journal showed a transfer from client to office account of £4,652.01 as at 21 September 2012.

25. Mrs Bond confirmed that she had seen the file for Mr D but had been unable to see the client ledger which she was told was not available. She told the Tribunal that she had seen the cash book and the bank statements from which she had identified the transfer.

26. In the matter of Mr M, Mrs Bond told the Tribunal that she had not seen the file as she was told that the file could not be located. She confirmed that the Respondent had initially told her that the transfer had been made in the Mr M matter as he believed that additional work had been carried out which could be billed but that subsequently he had stated that the money belonged to the client and it had been returned to the client.

27. Mrs Bond told the Tribunal that she could not recall any further work having been undertaken on the files of G or Mr D which she had seen to warrant the new activity and that the matters had completed sometime in the past. She said that to the best of her knowledge there was nothing on the files to suggest that any further work had been completed. Mrs Bond said that she could not ascertain what the transfers were for as there was no narrative to explain why they had been made.

28. Mrs Bond confirmed that she had identified the cash shortage of £6,691.70 involving the three matters of G, Mr D and Mr M. She said that she had spoken to the Respondent on 1 August 2013 when he confirmed that he had repaid the shortage out of his own funds.

29. Mrs Bond said that she had seen the G file and the last correspondence on the file had been dated 1999 but she had not seen a ledger for that matter. She said that the amount transferred in the sum of £4,652.01 had been transferred from a designated deposit account to the firm's general client account and then to the firm's office account. Mrs Bond said that the Respondent had not described the work which he believed had been undertaken to support the transfer.

30. Mrs Bond said that in relation to Mr D she had seen the client care letter dated 18 January 2002 and that a bill had been sent to the client dated 30 January 2002 in the sum of £251 including VAT but that that had been the only bill she had seen on the file. She had requested the ledger but it had never been produced. The transfer of the £1,632 had taken place approximately 10 years after the matter had completed.

31. Mrs Bond confirmed that the Respondent had told her in interview that the situation in the case of Mr D was exactly the same as in the matter of G. She told the Tribunal that she had seen no evidence of communications with the clients regarding the movement of their monies.

32. In the matter of Mr M Mrs Bond said that she had asked to inspect the file but it had not been produced. She said that she had asked the Respondent to let her know if the file was located but had not heard further from him. The client ledger had been seen and she confirmed that following the £428.78 being transferred that had left a nil balance. She said that the monies had been transferred approximately four years after the last movement on the ledger [4 November 2008] and she had seen no bill for the transfer.

33. Mrs Bond acknowledged that the monies had subsequently been repaid to Mr M by the Respondent.

34. Mr Barton referred Mrs Bond to her FI Report, which stated:

> "…
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> 28. The officer asked Mr Dotchon if the funds in the matters of D and G were transferred as the firm was close to the office overdraft limit. He said that he did not think so as the office overdraft limit at the time was £67,000.00. It was noted by the officer that the office account overdraft limit cited in the statement at the time that the transfer from G and D took place was actually £66,000. It was further noted that prior to the transfer of the £8,695.59, the office account balance was £63,627.33 overdrawn…
>
> 29. The officer asked Mr Dotchon if he agreed that at the time of the interview there was an ongoing shortage of £6,712.79. He replied:

> "Yes – it became apparent to me this morning when I spoke to Mr Bailey that the money should be in client account, I understand that there is an ongoing shortage which needs to be re-paid which I intend to do immediately".

35. Mrs Bond confirmed that that was what the Respondent had told her having spoken to Mr Bailey.

The Respondent – 17 December 2013

36. The Respondent confirmed the truth of his statement dated 13 December 2013 and this stood as his evidence in chief.

37. The Respondent told the Tribunal that his statement detailed the personal difficulties he had experienced at the material time when the breaches had occurred. He said that he had been heavily involved in tribunal work and was sitting for 2/3 days every week. His wife had also been unwell and was still suffering. He said that other matters were weighing heavily upon him at the material time.

38. The Respondent acknowledged that he had not faced problems properly and that he had been unable to address issues until he had recently prepared his statement.

39. In relation to the Mr and Mrs A transaction the Respondent said that he had only dealt with one transaction referred by A Quick Sale, being that of Mr and Mrs A. He said that there had been no repeat work.

40. The Respondent said that when he had been contacted by Mr Stephen Pickard (who acted for the claimants in the civil claim against him) and was told about the issues regarding the purported sellers, it had come completely out of the blue and he had been utterly amazed and shocked. He acknowledged that he had sworn as a result. He said that this was the first time he had been taken in by clients and that it had been a fraud.

41. The Respondent said that Mr A had appeared entirely genuine and that he had been in financial difficulty and needed the transaction to go through as a result of that and wished him [the Respondent] to push things along.

42. The Respondent told the Tribunal that he had received the letters from Mr Wallbank and had been alarmed by the implications of the matters put to him in interview and which he said had shocked him. The Respondent said that until it was put to him in interview he had not appreciated what was being raised. He said that whilst he was aware of the problems following his conversation with Mr Pickard, he had not appreciated the consequences until he had spoken to Mr Wallbank.

43. In relation to the matters of G and Mr D the Respondent said that these had been matters dealt with by Mr Bailey. He told the Tribunal that he believed that extra work had been done on these files over the years and that he had been assisted in his belief by his discussions with the firm's cashier, Mr Richardson. The Respondent said that he genuinely believed that extra work had been done and as a consequence he had authorised the billing of the balances on the two matters. He had done so without reference to Mr Bailey until the matters were raised by the IO. He had contacted

Mr Bailey and was told that the monies should not have been taken and should be returned, which he had done.

44. The Respondent told the Tribunal that it had been a complete misunderstanding and that it had been his belief that additional work had been done over the years in efforts to trace beneficiaries and that work had not been billed. The Respondent said that he believed that he was justified in taking the monies at the time.

45. The Respondent confirmed that the files of G and Mr D had been seen by the IO during the course of her investigation.

46. In relation to Mr M the Respondent confirmed that this had been his matter. He said that at the time of the inspection the file had been archived but had been located again approximately one week ago. He said that the file had been difficult to find as it had not been properly indexed and numbered.

47. The Respondent told the Tribunal that he had undertaken additional work on the file and had made numerous telephone calls which had not been recorded but for which he believed he had been entitled to claim the balance of the monies held as costs.

48. The Respondent told the Tribunal that his own problems had caused him to fall behind dealing with matters in an appropriate and proper manner and he apologised for that. He denied that he had been dishonest at all as alleged. He said that the situation had arisen as a result of poor conveyancing, the sheer pressure of work and his not having been well.

49. In cross examination the Respondent acknowledged that the letter from Mr Wallbank of 17 November 2011 had confirmed that the ITM wished to discuss the transaction of Mr and Mrs A. He acknowledged that he had been contacted by the police on 4 January 2010 and that he had prior to that been served with the civil proceedings. He agreed that his conversation with Mr Pickard had taken place in January 2010 and that during that conversation he had admitted his failure to comply with the Money Laundering Regulations and that he had witnessed the signatures of the clients in their absence.

50. The Respondent said that whilst the issues regarding the transaction of Mr and Mrs A had not been news to him, he had been shocked by the consequences and possible implications of it in his interview with Mr Wallbank. He agreed that he had never met the clients, had witnessed their signatures in their absence and had failed to comply with the Money Laundering Regulations by his failure to obtain their identification documents. It was not until he met with Mr Wallbank that he had appreciated the potential seriousness of the Applicant's view of his conduct.

51. The Respondent told the Tribunal that he understood that he had committed a serious error when he had spoken to Mr Pickard.

52. The Respondent said that he had been contacted by A Quick Sale to act for the purported sellers Mr and Mrs A and that he had sent them a retainer letter and while he had requested ID it had not been provided by them. He accepted that he had not met Mr and/or Mrs A at any time.

53. When the transfer was received the Respondent confirmed that it had already been signed by Mr and Mrs A. He was referred to the attestation clause which stated:

> "…
>
> Signed as a Deed by HA in the presence of…"

54. The Respondent admitted that he had not been present when the transfer had been signed by the clients. He said that he understood that the attestation was wrong and that he had witnessed the document when the clients had not been present. He said that he honestly believed at the material time that Mr and Mrs A were the people they claimed to be and who had lawfully signed the transfer and owned the property being sold.

55. The Respondent denied that he had acted dishonestly and only that he had witnessed the transfer deed incorrectly but in the belief that the signatures were genuine. He said that he now knew that he had made a huge mistake but it was a lapse and a one-off which he would never repeat again.

56. The Respondent told the Tribunal that he believed that Mr Bailey had undertaken additional work on the G and D files and that that had been a genuine and honest belief held by him. It had only been once he had spoken to Mr Bailey that he had been told that was not the case and he had repaid the clients. Mr Bailey told him that the monies had been held on deposit and could not be taken for costs. The Respondent said that in retrospect it had been a stupid thing to do and that he should have spoken to Mr Bailey before having transferred the monies on the G and D matters. The Respondent said that he was not aware of bills having been delivered to the clients albeit they should have been. The Respondent denied that he had not rendered bills deliberately or to keep the transfer of funds quiet.

57. The Respondent told the Tribunal that the monies for G and Mr D were still being held on deposit. He acknowledged that they had not been dealt with and that his Firm was due to shortly close but he said that they would be addressed prior to the firm's closure.

58. The Respondent said that the monies of Mr D had also been repaid as for G. The transfer of those monies had been as for G and he had believed that work had been undertaken by Mr Bailey to justify the transfer of the monies held on deposit. Mr Bailey had subsequently advised that was not the case for Mr D and the monies had been re-paid. The Respondent again denied that a bill had not been rendered deliberately. He said that the ledgers produced were the only ledgers his cashier had been able to locate. The Respondent told the Tribunal that he did not know who the executor was and he had not read the Will since Mrs Bond's investigation. He intended to deal with both the G and Mr D matters before the end of the year, when the Firm was due to close.

59. The Respondent told the Tribunal that he had been unable to account to the client in the case of Mr M because the position with the Managing Agent had never been resolved. He said that the £428.78 had been taken by him for the additional work he had done regarding the Managing Agent difficulties. He acknowledged that he had

not sent the client a bill and had not notified him of the costs. He also acknowledged that there was no evidence of the additional work on the file. The Respondent denied that he had sought to keep quiet the fact that he had taken the monies.

60. The Respondent accepted that he had not provided a proper explanation to the Applicant for his conduct. He said that in relation to the letter from the Applicant dated 30 August 2013 and whether the clients G, D and M were aware that the firm had retained monies in relation to their matters that they were aware of that. He said that Mr Bailey would have ensured that G and Mr D knew and Mr M would have been aware from the Respondent's letter dated 6 November 2008.

61. The Respondent denied that he had been dishonest.

62. The Respondent accepted that he had not replied to the Applicant despite stating that he would reply by 4 October 2013.

63. In response to a question from the Tribunal the Respondent agreed that £24,000 had been paid to A Quick Sale but said that they had set the deal up and received an enhanced share of the sale proceeds for that. In relation to the transfer he said that he was familiar with the document from his commercial work.

64. The Respondent said that he had panicked when Mrs Bond had come to see him and whether he could justify having taken the monies from clients G, D and M. He said that he had then taken a more guarded view and had returned the monies on all three matters but that in relation to Mr M he felt he should have stood his ground and that he could justify the additional work in that matter but he had not done so and had returned those monies also.

<u>The Respondent – 17 March 2014</u>

65. The Respondent was re-sworn in order to put into evidence documents concerning dealings with monies on the ledgers of G and Mr D since 17 December 2013.

66. The Respondent referred to a ledger card in the matter of G. This showed that on 23 December 2013 the client account had been debited £175 for a Court fee and £4,477.01, being the balance on the account. The Respondent told the Tribunal that both sums had been sent to the Court, the latter being to make a payment into Court. The Respondent told the Tribunal that an application had been made to pay the remaining monies on the client account into Court. After that application had been filed, Mr Bailey had been given notice of the hearing date, which was 7 February 2014. A draft of the order sought was produced by the Respondent to the Tribunal. The Respondent told the Tribunal that Mr Bailey had made the application as Executor of the estate of G and that the Court had made the order for payment into Court on 7 February 2014.

67. In response to the Chair's observation that it would be helpful to understand what information had been given to the Court, given that when the cheque was sent to the Court on 23 December 2013 the Court had no authority to accept it – as no order had been made at that point – the Respondent stated that he had a copy of Mr Bailey's affidavit in his briefcase. This document was produced and copied. The Respondent

told the Tribunal that he had prepared the affidavit for Mr Bailey. It was noted that the affidavit as produced was unsigned/unsworn and so was a draft and that the form of order which had been produced was not sealed and did not name the Judge who had dealt with the matter. The Respondent told the Tribunal that the Court had accepted both cheques which had been sent on 23 December 2013 and had made the order as asked on 7 February 2014.

68. The Respondent told the Tribunal that he was not present when the order was made but Mr Bailey had made the application and had attended the hearing. Mr Bailey had telephoned the Respondent to say that the order had been made. The Respondent told the Tribunal that the order must have been sent to Mr Bailey's home address, which was the address he had used in making the application. The Respondent agreed that paragraph 1 of the draft affidavit used the Firm's office address. The Firm had closed as of 29 December 2013.

69. With regard to the matter of Mr D, the Respondent told the Tribunal that he had spoken to Mr Bailey. It appeared that the beneficiaries were untraceable, but the Respondent had used what he called an online "tracing programme" and had traced Mrs D, the remaining beneficiary. He had arranged for a cheque for the balance of £1,632 to be sent to her. The Respondent explained that Mrs D was the widow of the late Mr D. She still lived in the Teeside area, but had moved to a different address.

70. Under cross examination, the Respondent told the Tribunal that the draft affidavit he had produced was the same as the document sworn by Mr Bailey. Mr Bailey had sworn the document and taken it to Court. The affidavit had been drafted by Mr Bailey and the Respondent, and they had gone through it together. The Respondent told the Tribunal that he had emailed a draft to Mr Bailey, who then made some alterations, and they met on the day Mr Bailey came in to take the affidavit for swearing. The Respondent told the Tribunal that he had had the matter file available when he had spoken to Mr Bailey on the telephone about the alterations. It was put to the Respondent that he had told Mr Bailey that he was part way through these disciplinary proceedings and needed to resolve the issue of the balances on client account; the Respondent told the Tribunal that Mr Bailey was aware of the proceedings.

71. In response to further questions, the Respondent told the Tribunal that he could not recollect whether Mr Bailey had had the G matter file when they spoke. The Respondent had initiated the process of making the application to the Court as he had spoken to Mr Bailey after the 17 December hearing and expressed the view that they needed to deal with the funds. The Respondent had researched online how to deal with matters and it had appeared that making an application to the Court was appropriate. The Respondent could not recall when he had raised the issue with Mr Bailey, but it was after the last hearing; the Respondent could not recollect if it was "shortly" after the last hearing or not. He could not recollect whether or not he had the file when he contacted Mr Bailey but told the Tribunal that he must have done in order to put some detail into the affidavit. The Respondent told the Tribunal that the file must have been in the office, although he could not recall where in the office it had been. The Respondent told the Tribunal that the IO had seen the file during the investigation.

72. The Respondent told the Tribunal that he imagined he had recalled that Mr Bailey was the executor when he had read the papers, after the last hearing, but he must have spoken to him during the investigation. It had been natural to speak to Mr Bailey, as he was the executor of the estate of G, but at the last hearing the Respondent did not remember that Mr Bailey was the executor. The Respondent told the Tribunal that his answer on the previous occasion was truthful; he could not recollect at that time that Mr Bailey was the executor. He had discovered that Mr Bailey was the executor after the last hearing.

73. The Respondent told the Tribunal that he had drawn and signed the client account cheques making the payments to the Court but Mr Bailey had taken them to Court as he was dealing with the application in his personal capacity. The Respondent told the Tribunal that he had not thought to bring the letter to the Court which referred to the documents and cheques enclosed. The Respondent confirmed that the application to the Court had been made by Mr Bailey personally, but he had had a letter on the Firm's headed notepaper and the cheques had been drawn on the Firm's client account.

74. The Respondent was asked about the work which had been done to trace the beneficiaries of the G estate. He told the Tribunal that this was work which Mr Bailey had done and that he, the Respondent, had not done anything. It was put to the Respondent that the money was under his stewardship but he had taken no steps to check the work done to trace beneficiaries: the Respondent told the Tribunal that he had spoken to Mr Bailey, who had been handling the estate. No work had been done on the estate since 1999, and the Respondent had relied on Mr Bailey as he had conduct of the matter. The Respondent told the Tribunal that the money had been on deposit and interest had been added to it. It was queried whether it was right for the client account to bear the Court fee in these circumstances to which the Respondent replied that he had acted in accordance with the relevant Practice Direction (PD37 to the CPR) and that the Firm could have claimed costs, but did not.

75. The Respondent was asked about the statement in the draft affidavit that,

> "Efforts have been made to trace the whereabouts of the descendants of… but no response was received and all enquiries have failed to reveal their present whereabouts."

The Respondent could not state what steps had been taken and Mr Bailey would have to be asked. It was noted that Mr Bailey had not been called to give evidence. The Respondent told the Tribunal that Mr Bailey was an experienced solicitor, who had been head of the probate department of the Firm, and the Respondent had believed he had done the work, so he had been content to sign client account cheques without checking what he had done. The Respondent told the Tribunal that Mr Bailey could have written into the affidavit the steps he had taken, but in any event what he said must have satisfied the Judge. Mr Bailey had spoken to the Respondent over the years had said he had tried to trace the beneficiaries, and he had set this out in his affidavit. The Respondent told the Tribunal that he was sure that Mr Bailey had made relevant enquiries but he accepted that the affidavit was silent on what had been done since 1999 in this matter.

76. The Respondent told the Tribunal that everything had been done properly since the last hearing. He had not seen a sealed order from the Court, and had not asked for one. He had trusted that the documents he had brought with him would be sufficient for the Tribunal.

77. In relation to the matter of Mr D, the Respondent told the Tribunal that he had used a particular website to trace Mrs D, who had been pleased to learn she was to receive some money. The Respondent could not say if she was surprised. The Respondent had told Mrs D that Mr Bailey had been looking after Mr D's estate and that there was some money left and that he had now found where she was living in order to send her a cheque. The cheque was paid on 23 December 2013. The Respondent told the Tribunal that he had traced Mrs D within a few days of the last hearing and it was likely that he had told Mr Bailey that he would try to find out where Mrs D was. The Respondent told the Tribunal that it did not occur to him to try to trace the beneficiaries in the G matter. He told the Tribunal that he, not Mr Bailey, had the files in both matters. The Respondent denied that he knew, as at the time of the 17 December hearing, that Mr Bailey was the executor of the estate of Mr D. The Respondent told the Tribunal that after the last hearing he had checked the files and, having established that Mr Bailey was the executor, had dealt with matters as quickly as possible.

78. The Respondent told the Tribunal that it had taken one day to trace Mrs D and that Mr Bailey had given him authority to send the remaining money to her on the telephone. The estate was now fully administered.

79. There was no re-examination, but the Tribunal had some questions for the Respondent.

80. The Respondent told the Tribunal that where beneficiaries cannot be traced an application can be made to pay the money into Court, under CPR 37 and the Practice Direction 37.6. The Respondent told the Tribunal he understood that the money (in the G matter) would go to the Crown as bona vacantia, eventually, but he did not know the process by which this would happen. The Respondent did not know the name of the Judge who made the order on 7 February and did not have with him any communications from the Court to confirm the authenticity of the affidavit and order, but he understood that Mr Bailey had a receipt from the Court. The Respondent told the Tribunal that Mr Bailey had telephoned to say that the order had been made. Although the form of order produced directed that Mr Bailey's costs should be subject to detailed assessment, the Respondent told the Tribunal that no costs were being claimed from the estate.

81. The Respondent confirmed that the Firm had closed on 29 December 2013, after which the old files had been placed in secure storage and live files had been collected by clients or sent to new solicitors. The Respondent told the Tribunal that as it was his intention to join the firm of Wren Martin, the Wills and Title Deeds had been transferred to that firm. The Respondent was aware that the Applicant was liaising with Wren Martin about access to the files in the interim. Mr Martin of Wren Martin was awaiting the outcome of these proceedings before deciding what steps to take. The Respondent told the Tribunal that he intended to join Mr Martin as a consultant,

dealing with commercial property matters. Some clients had agreed to transfer their files to Wren Martin but others had not.

82. The Respondent told the Tribunal that he was liaising with the Applicant about the closure of the Firm. The Respondent told the Tribunal that he had written to clients and they were given both the Respondent's and Mr Martin's telephone numbers. The offices had been handed back to the landlord. There had been no notice on the office about who to contact. Some concern was expressed by the Tribunal about how, for example, the beneficiaries named in the G matter would contact the Firm or Mr Bailey. It was noted that these points had not arisen directly from the new documents; Ms Brooks had no matters to raise arising from these additional points.

Findings of Fact and Law

83. 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.

84. The allegations against the Respondent were that:

Allegation 1.1 - In breach of Rule 1.04 of the Solicitors' Code of Conduct 2007 ("the Code") he failed to act in the best interests of each client;

Allegation 1.2 - In breach of Rule 1.02 of the Code he failed to act with integrity. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;

Allegation 1.3 - In breach of Rule 1.06 of the Code he acted in a way that diminished the trust the public placed in him and/or the profession;

Allegation 1.4 - In breach of Rule 20 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by the said Rule. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;

Allegation 1.5 - In breach of Principle 7 of the SRA Principles 2011 he failed to deal with the SRA in an open, timely and co-operative manner.

<u>Submissions on behalf of the Applicant</u>

84.1 Mr Barton referred the Tribunal to the Rule 5 Statement upon which he relied. He told the Tribunal that the Rule 5 allegations and underlying factual matters were admitted by the Respondent, save in relation to the allegation of dishonesty. The Applicant's submissions were all made at the 17 December hearing, before the Respondent had given any evidence.

84.2 Mr Barton said that the investigation by Mr Wallbank and Ms Barrowclough had identified issues over compliance with the Code in relation to the Respondent's conduct of or supervision of 4 conveyancing transactions, exemplified as follows:

Mr NA and Miss EK – 4 E, Georgetown

84.3 The file was inspected by the IOs and it was apparent that the seller was Spectrum (PCK) Limited ("Spectrum"). The file contained two transfer forms ("TR1") showing firstly the transfer to Spectrum and secondly the transfer from Spectrum to Mr NA and Miss EK. Both transfers were dated 29 January 2010. Mr Barton said that they showed an uplift in the price from £82,000 to £105,000. It was submitted that same day transfers, where there was an uplift in price, was a well-known indicator of mortgage fraud.

84.4 Mr Barton referred the Tribunal to the mortgage offer which showed an anticipated purchase price of £115,000. The mortgage advance was £78,750 and the ledger showed that monies were received from other sources to make up the balance of the purchase price.

84.5 Mr Barton said that Spectrum had not been registered as the proprietor for at least 6 months. Mr Barton told the Tribunal that in those circumstances lenders required a report from solicitors there was the possibility of a back to back sale and purchase and a report enabled the lenders to assess the position.

84.6 Mr Barton said that this transaction had been conducted under the Respondent's supervision. The Respondent had admitted that certain material facts had not been brought to the attention of the lender. Mr Barton submitted that the Respondent had failed to report to the lender, BM, the matters set out below and had thereby failed to act in its best interests:

84.6.1 that Spectrum had been the registered proprietor for less than 6 months and had in fact never been the registered proprietor. The FI Report stated:

> "…
>
> 16. Section 5.1.1 of the Part 1 of the CML Lenders' Handbook stated the following:
>
> "Please report to us if the owner or registered proprietor has been registered for less than six months or the person selling to the borrower is not the owner or registered proprietor".
>
> 17. On 9 December 2011, Mr Wallbank asked Mr Dotchon whether he had had (sic) informed the lender that Spectrum had been the registered owner for less than six months. Mr Dotchon said that he could not recall whether he had informed the lender. He said that as far as he was concerned the disclosure would have come from the Independent Financial Adviser (IFA)…He said that the failure to inform the lender of this fact was an "oversight"…;

84.6.2 that the buyers were obtaining the balance of the purchase money from other sources;

84.6.3 that there was a difference of £10,000 between the purchase price as stated in the transfer and as stated in the mortgage offer. Mr Barton referred the Tribunal to the Certificate of Title signed by the Respondent and which contained his confirmation that the price of £115,000 was stated in the transfer; this was incorrect. Mr Barton said that the Respondent had been interviewed on 9 December 2011 and had accepted the COT was incorrect. The FI Report stated:

> "…
>
> 21. Mr Wallbank showed Mr Dotchon a copy of the completed COT [Certificate of Title] which was sent to the lender and which stated that the purchase price was £115,000.00. Mr Dotchon said "I agree this". Mr Wallbank then showed Mr Dotchon a copy of the Sale Agreement which gave the purchase price as £105,000. Mr Dotchon said: "It appears to be correct"…Mr Wallbank asked Mr Dotchon why there was a difference of £10,000.00 in the purchase price stated in the COT and the actual amount paid for the property. Mr Dotchon said: "Again I cannot comment on that. I cannot think of any reason. That is a mystery".

84.7 Mr Barton said that when asked by Mr Wallbank why he had not reported that the buyers were obtaining finance from other sources the Respondent had accepted that was a valid point and could offer no comment. He said the same when asked about the different purchase prices in the mortgage offer and transfer.

Client D – 15 A Court, Leeds

84.8 Mr Barton said that this had also been a back to back transaction with a price increase from £82,500 to £150,000 which had not been reported to the lender. Mr Barton referred to the FI Report which stated:

> "…Miss Barrowclough asked Mr Dotchon to explain the reason for the increase in the purchase price between the two sales, when they both took place on the same day. Mr Dotchon said he did not know as he was not a Valuer".

84.9 Mr Barton said that the Respondent had also not reported that the seller had owned the property for less than 6 months and when asked why he had asserted that he had relied on the financial adviser. The Respondent had also not reported that the buyers had obtained finance from another source.

Client N – 12 H Court, London

84.10 Mr Barton said that the Respondent had acted for the purchaser and the lender in this transaction. The transaction had been commenced by BW, an unadmitted clerk working for the Respondent's firm at the material time and was completed by the Respondent on 19 March 2010. The transaction completed on 19 March 2010.

84.11 Mr Barton said that the copy register entries dated 21 June 2010 showed that registration of the purchase and mortgage had not been completed despite the passage of 3 months. The Respondent confirmed that it appeared to have been a back to back transaction. Mr Barton referred to the FI Report in this regard which stated:

> "…
>
> 34. A letter dated 15 March 2011 from the firm to Williamson Hill stated that the firm were "having extreme difficulty in obtaining the Certificate for the Restriction required to have our client registered as owner"… Miss Barrowclough asked why the property had not been registered in Mr N's name almost twelve months after completion of the purchase. Mr Dotchon said that the Management Company would not release the certificate of compliance for the property because there were service charges to be paid…".

84.12 Mr Barton told the Tribunal that the registration had finally been completed by other solicitors.

Mr and Mrs A – 103 HS Lane, Bolton

84.13 Mr Barton referred the Tribunal to this transaction in which the Respondent had acted for persons purporting to be the owners of 103 HS Lane. He referred the Tribunal to the case of Twinsectra Limited v Yardley and Others [2002] UKHL 12 ("Twinsectra") upon which he relied in relation to the test for dishonesty as alleged against the Respondent regarding this particular transaction. The objective test set out in that case required the Applicant to prove that by the ordinary standards of reasonable and honest people the Respondent's conduct was dishonest and the subjective test required that by those same standards the Respondent knew his conduct was dishonest. Mr Barton acknowledged that it was for the Applicant to prove its case and that the Tribunal had to be satisfied so that it was sure that both tests were met for the dishonesty allegations to be proved.

84.14 Mr Barton said that the Respondent had not identified his clients properly or at all. He had not verified who they were and said that he had relied on A Quick Sale to do that. A Quick Sale Limited had referred the matter to the firm and had arranged the buyer for Mr A's property. Mr Barton told the Tribunal that the Respondent had not personally seen any identification documents and had not properly identified his clients as the true owners of the property.

84.15 Mr Barton said that an attendance note dated 29 October 2009 to which he referred the Tribunal should have put the Respondent on immediate enquiry because in a telephone conversation with Mr A he was told that Mr A had moved out of the property into rented accommodation and had no telephone number or email which he could be contacted on.

84.16 Mr Barton told the Tribunal that the matter file had contained two documents entitled "Irrevocable Authority and Terms of Business" which stated that Mr and Mrs A would receive £56,000 of the sale monies with the remaining sum being paid to Amity Commercial Services. Both contained signatures for AA and HA [Mr and Mrs A].

84.17 The matter completed on 15 December 2009 and a CHAPS payment confirmation showed that funds of £55,274 were remitted to Mr and Mrs A on 16 December 2009. Mr Barton said that in a letter dated 15 September 2010 to the firm's insurers AON the Respondent stated that when the firm had attempted to transfer the funds to this account the bank had informed him that it would not go through. He had then been given the bank details for an account at NatWest in the name of "Mrs R Khanum" and had sent the sale proceeds to that account in the sum of £55,274. Mr Barton submitted that the way in which the sale proceeds had been distributed should have caused the Respondent concern.

84.18 In relation to the transfer document Mr Barton referred the Tribunal to the transfer and said that the Respondent had witnessed the signatures on the transfer purporting to be those of the registered proprietors. On its face the transfer showed that the form had been signed in his presence. The Respondent had not retained a copy of the transfer and in his letter of explanation dated 30 July 2012 he stated "…I admit that I did not see the parties sign the transfer and I stated in the transfer that I had witnessed the signatures, that is my error, it is wrong for me to have done this and I apologize".

84.19 Mr Barton submitted that the Respondent's deliberate act of witnessing the signatures of two people he had never met or identified was the result of a conscious decision and was dishonest. He said that it represented a very serious dereliction of duty by the Respondent which had facilitated the transaction.

84.20 Mr Barton submitted that the purchasers and their solicitors were entitled to rely on the transfer deed and the information contained within it. They would have had no reason not to believe that the signatures had been obtained and witnessed in the proper way, but that was not the case. Mr Barton submitted that it was irrelevant for the Respondent to suggest that the fraud could have been perpetrated in any event even had he seen or met with the purported Mr and Mrs A since he had not done so. This was simply a post-event justification for what the Respondent had done.

84.21 Mr Barton told the Tribunal that on 4 January 2010 the Respondent had been contacted by Greater Manchester Police who had asked for details of the Mr and Mrs A sale. The Respondent had been advised that Mr and Mrs A had not sold the property but that it was possible that the tenants of the property may have done so. Mr Barton said during his meeting with Mr Wallbank and Ms Barrowclough on 9 December 2011 that a civil claim had been brought against the firm by Mr and Mrs S [the purchasers]. Mr Barton referred the Tribunal to the Particulars of Claim which stated, inter alia:

> "…
>
> 4. The Defendant [the Respondent] is a solicitor who, at all material times, has held himself out and held out those who he employs or for whom he is otherwise liable as experienced, skilled and competent solicitors, particularly in the field of conveyancing, and conveyancers".

84.22 Mr Barton submitted that by the Respondent's serious dereliction of duty, even absent dishonesty, his conduct had fallen well below the standard expected of a competent

legal practitioner. Mr Barton referred to the letter from the Respondent to his insurer AON dated 15 September 2010 which stated:

> "…
>
> Proceedings have now been issued, and we enclose the Court Papers.
>
> The background to the case is that the instructions for the sale came from A Quick Sale who we relayed (sic) upon to interview the sale and provide us with the necessary details for the sale.
>
> Letter of Engagement was sent to Mr and Mrs A on 8th October 2009 and it would appear that contrary to our usual procedure, a ID check was not carried out.
>
> Again, we relayed (sic) upon the company A Quick Sale to have undertaken at least the very basic investigations for us.
>
> On completion, we attempted to transfer the money to an account given to us by the fraudsters but when the Bank informed us that it would not go through, they give (sic) us another account for a Mrs R Khanum, who banked with Natwest… and the money was sent to that account.
>
> Now that proceedings have been issued, please let us know what is to be done next".

84.23 Mr Barton said that the solicitors for Mr and Mrs S had contacted the Respondent as referred to in the Particulars of Claim:

> "…
>
> 25. Further, in January 2010 Stephen Pickard of the Claimants' said solicitors spoke with the Defendant [the Respondent]. During said conversation:
>
> a. The Defendant admitted that he had failed to comply with the Money Laundering regulations and/or the policies and procedures which he had put in place to comply with them;
>
> b. When asked by the said Mr. Pickard how he had been able to witness the signatures of the sellers on the said TR1 [transfer deed], the Defendant responded by uttering a swear word.
>
> 26. In the context of the said conversation between the said Mr. Pickard and the Defendant, the Claimants [Mr and Mrs S] aver that the Court can reasonably infer that, by uttering the said swear word, the Defendant was admitting that he had not, in fact, witnessed the signing of the said TR1 by the person(s) who signed the said TR1 purportedly as the True Owners but that he had received it signed and unwitnessed".

84.24 Mr Barton told the Tribunal that this was the admitted position. He referred to the FI Report in this regard which stated:

> "47. Mr Wallbank said that in paragraph 25 of the Particulars of Claim, Mr Stephen Pickard, the claimants' solicitor had stated that he asked Mr Dotchon in January 2010 how he had witnessed the signatures of the sellers on the TR1. Mr Dotchon had responded by uttering a swear word. The following discussion then took place:
>
> SW: Are you saying that you can't recall witnessing the signatures?
>
> MD: My recollection. I need to think about it".

84.25 In relation to the lack of identification checks by the Respondent, Mr Barton referred the Tribunal to the FI Report which stated:

> "…
>
> 44. Mr Wallbank asked whether Mr Dotchon had completed an identification (ID) check for Mr and Mrs A. The following discussion then took place:
>
> MD: I relied on Quick Sale to do it. It came quickly out of the ether. Normally I would do an ID check on every client. I didn't. This was a one off. I don't know why it didn't happen.
>
> SW: Did you see the clients' ID?
>
> MD: I never saw the ID but I understand from the police that the chap has ID.
>
> SW: You sent a client care letter yet you saw no proof of ID or verification of a signature?
>
> MD: Apparently so. That is not the norm for this firm
>
> SW: Why in this case?
>
> MD: I can't tell you. I don't know. Pressure of work.
>
> SW: What about the Money Laundering Regulations? How did you comply with those requirements?
>
> MD: I can't see I have any ID on the file. I can go no further than that. I am not making any further comment about compliance other than that".

84.26 Mr Barton said that the Respondent had replied to the Applicant by letter dated 30 July 2012 in which he stated:

> "…
>
> The Case of A

When dealing with clients I always require details of identity but on this occasion I relied on the Agents Quick Sale Investments to make all the necessary contact enquiries and identification. I did not verify the information on this occasion.

The transaction was normal and I did not have knowledge or suspicions that one of the parties to the transaction were not who they were purported to be. If I had any suspicion I would have stopped the transaction and informed the Police.

The false transaction was discovered after completion had taken place after the funds had been sent out by electronic transfer.

On the question of my witnessing the signature of Mr and Mrs A on the transfer I admit that I did not see the parties sign the transfer and I stated in the transfer that I had witnessed the signatures, this is my error, it is wrong for me to have done this and I apologise.

In this case I was completely taken in by the duplicity of the sellers in the transaction I had no idea that a subterfuge was taking place this was only discovered afterwards when the transaction had been completed".

84.27 Mr Barton referred the Tribunal to the Respondent's statement in relation to the transaction and the transfer, which stated:

"…

83. My recollection is that I was being called by the agents A Quick Sale chasing completion on a regular basis. Whilst this was common practice, I was under a lot of pressure at the time and anxious to look after the clients' interests and I knew that their circumstances meant they wanted the money.

84. The transfer documents came in and were signed but not witnessed and, when the agent rang up and asked what was happening, I told him what had happened. Under normal circumstances, I would return the document to them and ask them to re-sign this and get it witnessed but the agent put more pressure on, asking me to get it witnessed because the matter needed to be completed. I was under pressure to complete. I spoke to the client to explain the position and he asked me to witness the signatures and, because he acknowledged it was his signature and because the signature was the same as before and because I had no reason to doubt him at the time, I said that on this one occasion I would do it.

85. I was satisfied I was talking to the same person whom I knew to be my client.

86. What I did was wrong but it was not dishonest. I was, in effect, witnessing a signature which was being acknowledged to me. I know now that, had they come into the office and I had witnessed the signature in the office, they could have produced identification to me and I would have accepted that they had

> signed the document and would have witnessed it in the same way. I realised I was stretching a point and behaving in a way which I would not normally agree to, but I was utterly convinced that I was merely identifying that my clients, or who I understood to be my clients, were acknowledging that they were signing.
>
> 87. The fraud has never been that this was not the signature applied by the people I believed to be my clients, or indeed the people who were my clients. The fraud is that they, despite being my clients, were not authorised to sell the property".

84.28 Mr Barton acknowledged that this appeared to summarise the Respondent's state of mind at the relevant time albeit his explanation had only been produced in December 2013, some 2 years since he was interviewed by Mr Wallbank.

84.29 In witnessing the signatures when the purported sellers were not present Mr Barton submitted that this was objectively dishonest and that the Respondent could not possibly have believed that what he was doing was honest. A solicitor of his experience could not think that this was a proper thing to do.

84.30 Mr Barton referred the Tribunal to the Rule 7 Statement upon which he relied. He told the Tribunal that the allegations were admitted save in relation to dishonesty which was denied.

84.31 The IO Mrs Bond had identified a cash shortage on the firm's client account during her investigation in June 2012. The shortage of £6,691.70 had arisen as a result of the transfer by the Respondent of three sums of money purporting to be in respect of costs but to which he was not entitled. The monies were residual balances owing to the respective clients. Mr Barton submitted that the Respondent acted opportunistically in taking the monies and it was not for the Applicant to have to establish a motive for his conduct. The three matters were exemplified.

<u>G Deceased</u>

84.32 The firm had acted in the probate of the estate of G and the last correspondence on the file was dated 1999. Mr Barton said that the relevant client ledger could not be located by Mrs Bond during the investigation.

84.33 Mr Barton referred the Tribunal to the FI Report of Mrs Bond, which stated:

> "…
>
> 12. The Transfer journal for September 2012 showed a transfer from the client to office account of £4,652.01 for G on 21 September 2012 which was part of a larger costs transfer of £8,965.59.
>
> 13. During the interview on 8 July 2013 the officer asked Mr Dotchon about the transfer on the matter of Green. He replied:

"A review was carried out in September and I thought they were outstanding fees. The files belonged to John Bailey and when I spoke to him today he said that the funds were not costs and should be put back."

14. The officer asked Mr Dotchon if he thought that he had acted in an honest manner. He replied:

"There was no dishonesty what so ever. It (sic) was a misunderstanding between myself and John Bailey".

84.34 Mr Barton told the Tribunal that there was no evidence on the matter file of any further work having been undertaken after 1999 which justified the transfer of any further costs.

Mr D Deceased

84.35 Mr Barton said that this was also a probate matter conducted by Mr Bailey. A client care letter dated 18 January 2002 was seen which included a cost estimate of £220 plus VAT and a bill was sent to the client dated 30 January 2002 in the sum of £251 inclusive of VAT.

84.36 Mr Barton said that the IO had asked for the manual client account ledger but that could not be located during the investigation.

84.37 Mr Barton told the Tribunal that the client account bank statement recorded a credit of £1,632 on 20 September 2012 and the narrative stated "re D". He said that there was a debit transfer to the office account on the same day in the sum of £8,965.59. The Transfer Journal for September 2012 showed a transfer from the client to office account of £1,632 on 21 September 2012 which was part of a larger costs transfer of £8,965.59.

84.38 Mr Barton told the Tribunal that during interview on 8 July 2013 the IO asked the Respondent about the transfer on the matter of client D. The Respondent said that the situation was exactly the same as in the matter of client G.

Mr M

84.39 Mr Barton told the Tribunal that this was a lease transaction. The client ledger for this matter recorded a client to office account transfer dated 4 November 2008 for costs of £498.50. Further transfers were made to the client and to pay for disbursements during November 2008 which left a client account ledger balance of £428.78. Mr Barton said that the Transfer Journal recorded a transfer from the client to the office account of £428.78 against the name of RM [Mr M] dated 31 January 2013. The client ledger for the matter recorded the transfer described as "profit costs and VAT".

84.40 Mr Barton told the Tribunal that during the investigation the file could not be located. Mr Barton referred to the FI Report which stated:

> "26. The officer asked Mr Dotchon during the interview why there was a costs transfer when the file appeared to be completed in 2008. He replied:
>
> "I imagine that additional work was carried out but I will look for the file."
>
> 27. During the interview on 19 August 2013 the officer asked Mr Dotchon if he had located the file. He replied, "only on the system". The officer asked him if he knew why the transfer of £428.78 was made on 31 January 2013. He replied:
>
> "I thought at the time we transferred it we had a claim to it but I've now taken a guarded view that if there is any doubt then send it back to the client. We took the view that the money actually belonged to the client and have sent it back to him".

84.41 After the lunch break on 17 December 2013 the file for Mr M and the ledgers for G and Mr D were produced by the Respondent. Ms Brooks told the Tribunal that the Respondent had not intended to rely upon the file contents or the ledgers. She said that she had taken the first opportunity to speak to the Respondent regarding disclosure of the documents which had been done. In relation to the Memorandum which required the Respondent to file any documents upon which he intended to rely, Ms Brooks repeated that he had not intended to rely upon these documents.

84.42 Mr Barton asked to re-open the Applicant's case to introduce the ledgers into evidence and the documents extracted from the Mr M file. He said that these were documents which should have been produced to the IO during the course of her investigation.

84.43 Ms Brooks acknowledged that there was nothing on any of the three files to evidence further work undertaken by the Firm but that the Tribunal would hear evidence from the Respondent that he believed at the time that work had been done to justify the monies transferred.

84.44 In relation to the G ledger Mr Barton said that this was for the designated deposit account only and not for the general client ledger which Ms Brooks said was not available. Mr Barton said that the ledger showed the transfer of the £4,652.01 on 20 September 2012 with the narrative "Transfer to Client Account".

84.45 Mr Barton referred the Tribunal to the Mr D ledger which was also the designated deposit account ledger and showed the credit balance as at 1 December 1998 of £1,399.87. Mr Barton said that interest was then shown as having been added over time and the total transferred as at 20 September 2012 was £1,632 which was the last entry on the ledger.

84.46 Mr Barton said that there was also a separate ledger document for Mr D which the Respondent said was a general client ledger for that matter and which showed "Transfer from Deposit Account" as at 20 September 2012. However Mr Barton said that this ledger showed no other historical entries.

84.47 Mr Barton told the Tribunal that the IOs had raised concerns as to the authenticity of the documents. He submitted that the general client ledger for Mr D was incomplete and that this raised the question as to when the document had been created.

84.48 In relation to the Mr M file, Mr Barton said that he had extracted documents he wished the Tribunal to see. He acknowledged that in the Respondent's statement he had referred to the Mr M file having been located and available for inspection. Mr Barton referred the Tribunal to the client care letter to Mr M which stated:

> "…
>
> We will charge you £270.00.
>
> We will add VAT to our charge at the rate that applies when the work is done. At present the rate is 17.5% (£47.25)".

84.49 Mr Barton referred to a further letter to Mr M dated 6 November 2008 from the Respondent which stated:

> "…
>
> I am pleased to confirm that completion of your purchase took place as instructed and I enclose the following:-
>
> 1. Receipted Bill of Costs
> 2. Statement of Account
> 3. Cheque for £1,037.22
>
> You will note that I have retained two amounts for the ground rent/service charge and the Landlords (sic) registration fee.
>
> I have written to the Landlord asking for details of the fee and will account to you finally hopefully in the course of the next weeks".

84.50 Mr Barton told the Tribunal that there had been no activity on the file after the date of that letter and no bill. There had then been no further correspondence with the client until the Respondent's letter dated 16 August 2013 when the monies [£428.78] had been returned to the client.

<u>G, Mr D and Mr M</u>

84.51 Mr Barton said that although a number of documents had been produced very late in the day by the Respondent, the Applicant was content to proceed. He accepted that the position appeared to be that the Respondent admitted that the files for Mr G, Mr D and Mr M contained no documentary evidence of any work having been done to justify the transfers made by him and that was the Applicant's case. Mrs Bond's view of the matter was not changed by the documents which the Respondent had produced.

84.52 In relation to the matters of G, Mr D and Mr M, Mr Barton told the Tribunal that Mrs Bond's evidence was that there were no bills on the files and that the IO had only seen the cash book and bank statements from which she had identified the transfers. In the case of G, the last correspondence seen by the IO had been in 1999 and then monies had been transferred from that client's matter in 2012.

84.53 Mr Barton said that under Rule 20 of the SRA Accounts Rules 2011 specific circumstances were set out in which client monies could be transferred and there would have been an obligation on the Firm to maintain a central register of bills and to retain bills on the client matter files. Mr Barton said that no bills had been produced and he submitted that that was irregular. In addition there was no evidence that the clients had been notified of the transfer of funds.

84.54 Mr Barton submitted that the monies had been "swept up"; after these matters had been raised with the Respondent he had re-paid the monies to the respective client accounts.

84.55 Mr Barton said that the Respondent had admitted that the money had improperly been taken from the clients' respective accounts in breach of Rule 20 and that he had failed to reply to the Applicant's correspondence in breach of Principle 7. Mr Barton submitted that per the case of Iqbal v the Solicitors Regulation Authority [2012] EWHC 3251 (Admin) a solicitor should always be able to explain what had been done with client money.

84.56 Mr Barton confirmed that in considering the allegations of dishonesty the Tribunal was entitled to take into account the testimonials which had been provided for the Respondent, but it was for the Tribunal to determine how much weight they should be given. The testimonials might be relevant to the subjective part of the Twinsectra test. There did not appear to be any contention by the Respondent that in purporting to witness signatures which he did not actually witness and in transferring monies to client account when there was no actual entitlement to do so his behaviour was dishonest by the standards of reasonable and honest people i.e. it appeared to be conceded that his actions were objectively dishonest. It was for the Applicant to prove that the Respondent knew that what he was doing was dishonest, at the relevant time, by the standards of reasonable and honest people.

84.57 In response to the new evidence given on 17 March, Mr Barton submitted that it was now clear that Mr Bailey had been the executor on the matters of G and Mr D. This had made it easier to move money from client to office account, as there was no-one outside the Firm with whom the Respondent had needed to communicate about these matters. It was submitted that the Respondent's denial of any knowledge that his former partner was the executor in the G and Mr D matters, in the course of the hearing on 17 December 2013, was not credible.

85. Submissions on behalf of the Respondent

85.1 Ms Brooks referred the Tribunal to the Respondent's very full written statement and the oral evidence he had given. In his evidence, he had admitted making some very serious mistakes.

85.2 Ms Brooks asked the Tribunal to consider the allegations of dishonesty in the circumstances which prevailed at the relevant time. The Respondent had been running the Firm on his own, with a significant workload. He had been stressed and depressed, was not sleeping properly and was concerned about his wife's ill-health. The Tribunal was asked to consider whether the Respondent could be believed when he told the Tribunal he had made serious mistakes. The fact that in hindsight the Respondent's mistakes were obvious did not mean that he had been dishonest.

85.3 The Respondent had accepted that he should have checked with the fee-earner (Mr Bailey) before billing two of the matters in issue (G and Mr D). The Respondent had maintained in his evidence that he genuinely believed the money he had transferred had been due in costs. When he had found it was not, he had returned the money to client account. The Respondent accepted that there were no documents on the files which would support the Respondent's genuine belief that work had been done which would justify the amounts which had been transferred for costs. The Tribunal had heard during the hearing on 17 March that the Respondent had paid the monies on the G matter into Court and had sent monies on the Mr D matter to the residuary beneficiary.

85.4 Ms Brooks told the Tribunal that the Respondent was a solicitor of previous good standing, with over thirty years of unblemished practice. The Tribunal was asked to give sufficient weight to the eight character references which had been provided by fellow professionals and clients. These included a reference from Mr Bailey, who had been the Respondent's business partner and had known him well for many years; Mr Bailey spoke of the Respondent's integrity and competence. A reference from a client for whom the Respondent had acted for about 20 years referred to the Respondent's honesty and integrity and a testimonial from another firm referred to the Respondent as being reliable and trustworthy. The referees made it clear that they had complete faith in the Respondent's integrity. This could be taken as an indicator that the Respondent was telling the truth when he admitted he had made mistakes but denied that he had been dishonest.

The Tribunal's Findings

86. **Allegation 1.1 - In breach of Rule 1.04 of the Solicitors' Code of Conduct 2007 ("the Code") he failed to act in the best interests of each client;**

86.1 The Respondent had admitted this allegation, and the facts underlying the allegation.

86.2 There could be no doubt that in his conduct of the transactions of Mr NA and Miss EK (4 E, Georgetown), Client D (15 A Court, Leeds) and Client N (12 H Court, London) the Respondent had failed to inform his lender clients of material information, which he was obliged to pass to them under the terms of his instructions. That information, across the three transactions, included the fact that the vendors had owned the properties for less than six months, that there were "back to back" sales and purchases, that the purchasers were obtaining the balance of purchase monies from other sources and that there was a significant uplift in price. In the matter of Client N, the mortgage was not registered some 12 months after the purchase.

86.3 In all three matters which had been exemplified in the FI Report, the Respondent had failed to act in the best interests of his lender clients. This allegation was proved to the required standard on the evidence and on the admission.

87. **Allegation 1.2 - In breach of Rule 1.02 of the Code he failed to act with integrity. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;**

87.1 This allegation was admitted by the Respondent, together with the facts underlying the allegation. However, the Respondent denied that he had been dishonest.

87.2 In the matter of Mr and Mrs A (103 HS Lane, Bolton) the Respondent had failed to identify his clients properly or at all; he did not see any identification documents, nor did he identify his clients as the true owners of the property. Further, he witnessed signatures on the Transfer Form which purported to be those of the registered proprietors. The document appeared on its face to show that the Transfer had been signed by the vendors in the Respondent's presence. However, the Respondent had admitted that he had not been present when the transfer had been signed by the purported vendors. He had told the Tribunal that he understood that the attestation was wrong but that he honestly believed at the material time that Mr and Mrs A were the people they claimed to be and who had lawfully signed the transfer and owned the property being sold. The Respondent had further told the Tribunal that he now knew that he had made a huge mistake but it was a lapse and a one-off which he would never repeat again.

87.3 There could be no doubt that in purporting to witness two signatures when those who signed the documents were not present, the Respondent had acted without integrity and the allegation was proved on the facts and on the admission. The Tribunal went on to consider whether this action was dishonest, in the light of the Twinsectra test, noting that the burden was on the Applicant to prove any allegation made.

87.4 There was no doubt that in purporting to witness signatures on a document, where the attestation clause clearly stated, "Signed as a Deed by… in the presence of…" when those signing the document were not present, the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal considered whether the Respondent knew that by those same standards his action was dishonest. The Tribunal took into account the testimonials, which indicated that the Respondent did not have a general inclination towards dishonesty. It also took into account what he said about working under stress and suffering from depression at the relevant time. Nevertheless, the Tribunal had heard the Respondent admit in evidence that he had understood that the attestation was wrong, in that it clearly did not match the reality. The Respondent was fully aware that those who had signed the documents were not present when he purportedly witnessed their signatures; he was also aware that he had never met the "Mr and Mrs A" who had signed the Transfer document and had not obtained any proper ID for them. The Respondent's misconduct had come to light because it appeared that the transaction was fraudulent. However, even if the transaction had been genuine and the documents had been signed by the true owners of the property it would be wrong to purport to witness signatures as the Respondent had done. The Tribunal was satisfied to the required standard that in deliberately "witnessing" the signatures of two persons he had never met or identified was a

conscious decision, which the Respondent knew was dishonest at the relevant time. Accordingly, the Tribunal found that the Respondent had been dishonest.

88. **Allegation 1.3 - In breach of Rule 1.06 of the Code he acted in a way that diminished the trust the public placed in him and/or the profession.**

88.1 This allegation was admitted by the Respondent. It was based on the same transaction as was considered in allegation 1.2 and the factual basis of the allegation was admitted.

88.2 In addition to failing to identify his clients properly and falsely witnessing signatures, the Respondent accepted verbal and undocumented instructions to send the sum of £55,274 to an account in the name of Mrs R K, instead of to an account in the name of the purported clients, Mr and Mrs A. There was no doubt that the Respondent's conduct of this transaction was such as would diminish the trust that the public would place in him and/or the profession. The allegation was proved on the evidence and on the admission.

89. **Allegation 2.1 - In breach of Rule 20 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by the said Rule. In so doing he was dishonest although it was not necessary to establish dishonesty for this allegation to be proved;**

89.1 The core allegation was admitted by the Respondent, together with the facts underlying the allegation. However, the Respondent denied the allegation that he had acted dishonestly in withdrawing money from client account when he was not permitted to do so.

89.2 In considering the allegation of dishonesty, the Tribunal had regard to the testimonials provided for the Respondent, which referred to his honesty and integrity. However, the evidence of what had actually happened was of far more weight than references which simply supported the Respondent's position that he had no general propensity to dishonesty.

89.3 It was not disputed that in the matters of G, Mr D and Mr M the Respondent had transferred the sums of £4,652.01, £1,632 and £428.78 respectively from client to office account, on 20 September 2012 in the first two matters and on 31 January 2013 in the matter of Mr M. In each case, the transfers purported to be for costs.

89.4 When the first two transfers occurred, the Firm's overdraft facility was £66,000 and the Firm's overdraft stood at £63,627.33; it was clearly the case that transferring the monies on G and Mr D in September 2012 helped to keep the Firm within its overdraft limit.

89.5 The Respondent had accepted that there were no documents on any of the three files which indicated that work had been done which would justify raising a bill in 2012/13. In the matter of G, it appeared that no work had been done since 1999. The Respondent himself had had conduct of the matter of Mr M; he had not been able to locate the file at the time of the inspection by Mrs Bond. On the matters of G and

Mr D, it was clear that Mr Bailey had had conduct and yet the Respondent had not checked with him whether any costs were due before making the transfers.

89.6 The Tribunal noted the evidence given by the Respondent, including his insistence that he had not been dishonest. However, the Tribunal found him to be an unsatisfactory witness. It was incredible that the Respondent had neither known nor checked that Mr Bailey was the executor in the G and Mr D matters prior to the 17 December hearing. His approach to dealing with the remaining monies on the G and Mr D matters, about which he had told the Tribunal on 17 March, had been cavalier. He had taken no steps to put matters right until after the first part of this hearing, which was just before his Firm was due to close. The documents he had produced were not the final signed or sealed documents (in relation to the application to pay the G monies into Court). The Respondent had been able to trace Mrs D in a day, but had neither taken any steps to trace the beneficiaries in the G matter nor to check exactly what Mr Bailey had done since 1999 to find them. With the money now being in Court and there being no clear way of the beneficiaries tracing this money – save by enquiry to the Applicant – it seemed likely that the beneficiaries would never receive the monies to which they were entitled.

89.7 The Tribunal noted that the three transfers in issue had all occurred after the first part of the investigation. It would normally expect a solicitor under investigation to ensure that the Firm was fully compliant and to be scrupulous with regard to all dealings with client money. The Respondent had, properly, accepted that the transfers had been in breach of the relevant Accounts Rules. He had not checked, either with the file or with Mr Bailey, whether the Firm was entitled to "sweep up" the balance held on client account on each matter in costs.

89.8 The Tribunal was satisfied – indeed, it was not disputed – that in transferring money in three matters from client account, purportedly for costs where there was no entitlement to costs the Respondent's actions were dishonest by the standards of reasonable and honest people. Further, in failing to satisfy himself that costs were properly due by taking any steps at all to consider the files or discuss matters with the former fee-earner and in proceeding to make the transfers in any event, the Respondent knew that he was being dishonest by those same standards. This finding was reinforced by the fact that on both the G and Mr D matters there was no-one external to the Firm who was expecting any money or an account of the estates, and that both estates had been dormant for many years. Further, the transfers on the G and Mr D matters contributed to keeping the Firm's overdraft within the agreed limit. In the light of all of the evidence, the Tribunal was satisfied to the required standard that the allegation had been proved.

90. **Allegation 2.2 - In breach of Principle 7 of the SRA Principles 2011 he failed to deal with the SRA in an open, timely and co-operative manner**.

90.1 This allegation was admitted by the Respondent.

90.2 The Applicant had written to the Respondent on 30 August 2013 requesting a reply to the matters raised in the second FI Report by 16 September 2013. No response was received, so the Applicant sent an email on 19 September 2013 and telephoned on 25 September 2013. The Respondent stated he would reply by 4 October 2013, but

did not do so. The Tribunal was satisfied to the required standard that in failing to respond promptly or at all to the serious concerns raised by the Applicant in the second FI Report the Respondent was in breach of Principle 7 of the SRA Principles 2011; the allegation was proved on the evidence and on the admission.

Previous Disciplinary Matters

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

Mitigation

92. On behalf of the Respondent, Ms Brooks urged the Tribunal to take into account the Respondent's long and previously unblemished record, together with the character evidence provided in the testimonials.

93. Ms Brooks told the Tribunal that the Respondent had been offered a position as a consultant solicitor with another firm, undertaking commercial property work. He would lose his position as a Tribunal Judge as a result of these findings.

94. Ms Brooks told the Tribunal that the events in question had occurred during a stressful period for the Respondent in which he had been struggling to cope with his workload. His wife's health problems had contributed to his difficulties, and he had been both depressed and stressed. The Respondent had not sought help, but had tried to deal with matters on his own; the Respondent would say that this had led to him dealing with the conveyancing and transfer of monies matters in the way he had.

95. Ms Brooks submitted that the Respondent's misconduct had occurred over a very brief period, compared to the length of his career overall. The monies on the matters of G, Mr D and Mr M had either been paid into Court or returned to the relevant client/beneficiary. There had been no personal gain for the Respondent in any of his misconduct.

96. Ms Brooks invited the Tribunal to allow the Respondent to continue working, perhaps by imposing a suspended suspension order as an alternative to striking him off the Roll. It was submitted that this would send a message to the profession and public that this was a serious matter, with serious consequences. Conditions could be attached to the Respondent's ability to practise, for example to ensure that he was not a principal in a firm, which would alleviate any fears concerning his access to client account.

97. Ms Brooks was invited to comment further on whether there were exceptional circumstances in this case. Ms Brooks relied on the Respondent's previous good character, his health and that of his wife and the stress under which he had been working.

Sanction

98. The Tribunal had regard to its Guidance Note on Sanctions (September 2013) when considering sanction.

99. The Tribunal had found that the Respondent had been dishonest, in two respects. In the first instance, he had been dishonest in December 2009 in purporting to witness signatures; in the second set of circumstances, he had made transfers dishonestly in September 2012 and January 2013. Even without the findings of dishonesty, the matters which the Respondent had admitted (and which had been proved) were very serious and would have justified a significant sanction. The Respondent had been in breach of a number of the core duties and principles of the profession and had breached the Accounts Rules, which were intended to protect client money and ensure that it was handled with proper stewardship by any solicitor.

100. The Tribunal noted that in the case of SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma"), it was made clear, in particular at paragraph 13 of the judgment, that save in exceptional circumstances a finding of dishonesty would lead to a striking off order and such an order was the normal and necessary penalty. The judgment in Sharma went on to note that there was a small residual category of cases where striking off would be disproportionate. The relevant factors in determining whether a case was exceptional were noted to include the nature, scope and extent of the dishonesty itself, whether it had been momentary or over a lengthy period of time, whether there had been benefit to the solicitor and whether there had been an adverse effect on others. The Tribunal had invited Ms Brooks to comment specifically on these factors before it determined sanction.

101. The Tribunal could not find that there were any exceptional circumstances. There had been no medical evidence produced of the stress and depression from which the Respondent had stated he was suffering. Whilst the Tribunal could not reject the Respondent's evidence on this point, it was not supported by independent evidence and the Tribunal noted that the Respondent had been able to work for 2 to 3 days per week as a Tribunal Judge during the relevant periods. The dishonest acts had occurred on three separate occasions, over a period of more than three years and so could not be said to be momentary There may have been limited personal gain to the Respondent but the harm to the reputation of the profession was substantial.

102. This was a very sad case, given the Respondent's long career and his service as a Tribunal Judge in the Social Entitlement Chamber. Having heard all of the evidence and taken into account all relevant factors, including the testimonials, the Tribunal determined that in this case the only appropriate and proportionate sanction was to strike the Respondent from the Roll of Solicitors.

Costs

103. Mr Barton submitted two schedules of costs on behalf of the Applicant. The first had been prepared prior to the hearing on 17 December 2013 and the second dealt with costs since that hearing, including an estimate of the costs of the hearing on 17 March 2014. The overall total sought in costs from the Respondent was £24,780.08, which included legal costs of £14,301 and investigation costs of £7,514.08. Mr Barton invited the Tribunal summarily to assess the costs, which had not been agreed by the Respondent. It was noted that the costs of the hearing on 17 March had been based on eight hours of attendance, but it was clear that less time would be spent. Mr Barton accepted this, but noted that he had not included in the schedule a claim for his travel time, which was about 2 hours each way, charged at half of his normal hourly rate.

104. Ms Brooks submitted that there was not enough detail in the schedules to be able to make detailed representations on the quantum of costs. In particular, more information was needed about the work done, particularly by the Applicant's investigators.

105. Mr Barton referred Ms Brooks to the breakdown of time in relation to the investigation which showed that 59.5 hours had been spent at the Firm during the first investigation and 13 hours during the second investigation. The latter investigation had started on 26 June 2012 and interviews with the Respondent had taken place on 8 July and 19 August 2013. Ms Brooks told the Tribunal that the Respondent's recollection was that less time had been taken than 13 hours. The Tribunal gave Ms Brooks an opportunity to take instructions on the quantum of costs, and also invited submissions on the Respondent's ability to pay.

106. On the latter point, Ms Brooks produced a letter from HMRC dated 30 January 2014 concerning an outstanding tax liability of the Respondent's in the sum of £48,837.54. Ms Brooks also produced a copy of the Respondent's personal bank statement showing the account was overdrawn by over £7,000. The Tribunal was told that this was his only bank account. The Respondent had previously earned about £4,000 per month from his Tribunal work but as a result of the findings which had been made he would not be able to continue that work. Until December 2013 the Respondent had drawn about £1,000 per month from the Firm. The Firm's office account was overdrawn by about £53,000. Ms Brooks told the Tribunal that the Respondent's home was in in his sole name and there was equity of about £170,000. He was in arrears with his mortgage, the payments on which were around £1,700 per month on an outstanding loan of about £130,000; the Respondent had not paid the mortgage for the last two months. The Tribunal was told that the Respondent had no other assets, having taken a lump sum payment of his pension fund; about £85,000 of the fund could be taken when the Respondent reached the age of 70. Ms Brooks told the Tribunal that the Respondent owed £9,000 plus VAT in his own legal fees, about £2,300 to the Firm's accountant, about £5,600 on a car loan and £6,000 to a client in respect of a Legal Ombudsman order.

107. The Tribunal asked Ms Brooks to clarify some of this information with the Respondent, whilst also taking instructions on the question of quantum.

108. On resuming the hearing, Ms Brooks told the Tribunal that she had no further submissions with regard to the quantum of costs. On the Respondent's financial circumstances, Ms Brooks told the Tribunal that approximately £24,500 of the sum owed to HMRC was in respect of the Respondent's income tax for 2009/10. The remainder was in relation to VAT and penalties. The Respondent's accountant had advised that the Respondent was due tax refunds for 2010/11 and 2011/12 of a little over £5,000. In addition to the debts mentioned in paragraph 106 above, Ms Brooks told the Tribunal that the Respondent owed money for photocopier and telephone contracts of around £1,750 and £24,000 in respect of a personal loan from a bank, towards which the Respondent was paying £800 per month. Further, the Respondent had credit card debts of around £6,000. The Respondent had tried to borrow money against his home to pay the debt to HMRC but remortgaging had taken several months, by which point HMRC had secured a judgment against the Respondent and the proposed lenders had decided not to proceed.

109. Mr Barton submitted that the information which had been given was not as required by the guidance in SRA v Davis and McGlinchey [2011] EWHC 232 (Admin). It was submitted that this was not a case in which the Respondent was impecunious. Whilst the Respondent's financial position was not good, it was submitted that the Applicant should be allowed to try to recover its costs, albeit other creditors were pursuing the Respondent. The Applicant was not able to challenge the information on means which had been submitted. In response to a question, Ms Brooks told the Tribunal that the Respondent had not been paid for the Will and Deeds banks which had been transferred to Wren Martin.

110. The Tribunal considered carefully the Applicant's claim for costs and the submissions of the parties.

111. There was no need or proper reason to order a detailed assessment of costs in this case. The schedules were sufficiently clear and contained enough information for the Tribunal to be able to carry out a summary assessment, and thus avoid the additional time and costs involved in detailed assessment. Further, the allegations had been proved in their entirety and it was appropriate in principle to order the Respondent to pay the costs of the proceedings so that those costs would not all fall on the profession generally.

112. Overall, the Tribunal considered that the Applicant's claim was reasonable. The hourly rates and time spent were reasonable. The Tribunal was satisfied that the claim for the costs of the investigation were appropriate. The FI Report and the second FI Report had been admitted, and both recorded some of the work done e.g. the dates of visits to the Firm and interviews with the Respondent. The Tribunal was satisfied that the work set out in the schedules had been done, and that the time spent was reasonable for a case of this type. Some small adjustment was required to the legal costs as the time estimated for the hearing on 17 March had proved to be an overestimate, but this was offset to some extent by the fact that Mr Barton's travelling time had not been included in the schedule. After making the appropriate adjustments, the Tribunal concluded that the appropriate quantum of costs for this case was £24,380.

113. The Tribunal noted that whilst the Respondent had a number of debts he had approximately £170,000 equity in his home. There was no need, in the light of this, either to reduce the amount of costs properly payable by the Respondent or to defer enforcement of an order for costs. The Tribunal would expect the Applicant to proceed reasonably in any efforts it made to enforce the costs order, but it did not see any reason to tie the Applicant's hands or prevent them from taking action when other creditors might be seeking charges over the Respondent's property. In all of the circumstances, the reasonable and proportionate order was that the Respondent should pay the Applicant's costs, assessed at £24,380.

Statement of Full Order

114. The Tribunal Ordered that the Respondent, MICHAEL GERALD DOTCHON 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 £24,380.00.

DATED this 28th day of April 2014
On behalf of the Tribunal

J.P. Davies
Chairman