SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11205-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREAS EROTHODOS ALEXANDROU Respondent

Before:

Mr J. A. Astle (in the chair)
Mr A. G. Gibson
Mr G. Fisher

Date of Hearing: 22 July 2014

Appearances

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

The Respondent appeared in person and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent contained in a Rule 5 Statement dated 26 November 2013 were that he had acted in breach of the SRA Accounts Rules 2011 ("SRA AR 2011") and (insofar as the relevant conduct occurred before 6 October 2011) the Solicitors' Accounts Rules 1998 ("SAR 1998"), in that:

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

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

1.3 Money withdrawn in relation to particular clients from his firm's general client account exceeded the money held on behalf of those clients in all his firm's general client accounts, contrary to Rule 20.06 SRA AR 2011;

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

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

1.6 He failed to carry out reconciliations every 5 weeks contrary to Rules 32(7) SAR 1998 and 29.12 SRA AR 2011;

1.7 He failed to remedy breaches of the accounts rules promptly upon discovery, contrary to Rules 7 SAR 1998 and 7 SRA AR 2011;

1.8 He failed to deliver to the SRA accountants' reports contrary to Rules 35(1) and (2) SAR 1998 and 32.1 and 32.2 SRA AR 2011.

2. The Respondent acted in breach of the SRA Principles 2011 ("the Principles"), the SRA Code of Conduct 2011 ("the 2011 Code") and (to the extent that the relevant conduct took place before 6 October 2011) the Solicitors' Code of Conduct 2007 ("the 2007 Code"), in that he:

2.1 Failed to maintain proper books of account, as detailed in allegation 1 above, in breach of Rules 1.04 and 1.06 of the 2007 Code and Principles 4, 6 and 10;

2.2 Permitted a shortfall of client funds to arise on his client account in breach of Principles 4, 6 and 10;

2.3 Failed, for a period in excess of 6 months, to pay Stamp Duty Land Tax in respect of a client's property purchase, contrary to Principles 4, 5 and 6. Further, or in the

alternative it was alleged that he thereby failed to achieve Outcome O(1.2) of the 2011 Code.

3. Allegations against the Respondent contained in a Rule 7 Supplementary Statement dated 6 May 2014 were that he acted in breach of Principles 1, 2 and 6 of the Principles in that:

3.1 On 2 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she was taking one of their children to hospital when this was untrue;

3.2 On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she was not prepared to attend when this was untrue;

3.3 On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she refused to attend when this was untrue;

3.4 On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she did not want to attend when this was untrue;

3.5. For the avoidance of doubt, dishonesty was alleged in respect of each of the allegations at 3.1 - 3.4 above, although it was not necessary to prove dishonesty in order to prove the allegations themselves.

Documents

4. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant

- Application and Rule 5 Statement dated 26 November 2013 and Exhibit "GRFH1";
- Rule 7 Supplementary Statement dated 6 May 2014 and Exhibit "GRFH 2";
- Applicant's Schedule of Costs As At 7 July 2014 dated 11 July 2014.

Respondent

- Statement of Respondent dated 25 February 2014;
- Second Statement of Respondent dated 5 June 2014;
- Emails passing between the Respondent and Penningtons Manches LLP on 3 and 4 July 2014;
- Letter from Helen Alexandrou to the Tribunal dated 19 July 2014;
- Personal Financial Statement dated 21 July 2014.

Factual Background

5. The Respondent was born on 29 March 1957 and admitted as a solicitor on 15 March 1989. At all relevant times the Respondent practised on his own account as Alexandrou & Co ("the Firm"), established in 1993. The Respondent practised in partnership until 2008, after which he became a sole practitioner. The practice dealt mainly with civil litigation but had also undertook conveyancing and family law. The Respondent was assisted by Mrs B, bookkeeper/receptionist. The Respondent's name remained on the Roll of Solicitors, but he did not hold a current Practising Certificate. His Practising Certificate for 2010/11 was subject to conditions requiring him to deliver half-yearly accountants' reports within two months of the end of each period to which they related, and to attend an accredited course on the 2011 SRA Handbook.

Rule 5 Statement

6. The allegations in the Rule 5 Statement arose from two inspections of the Firm's books of account and other documents, which began on 12 February 2013 and 27 March 2013 respectively. Interim and final reports of the Forensic Investigation Officer ("FIO"), Cary Whitmarsh, dated 15 February 2013 ("the 1st Report") and 5 April 2013 ("the 2nd Report") with appendices were exhibited to the Rule 5 Statement.

7. On 16 May 2013, a Panel of Adjudicators Sub-Committee of the Solicitors Regulation Authority ("SRA") resolved to intervene into the Respondent's practice and to refer his conduct to the Tribunal. Proceedings were issued by the Tribunal on 27 November 2013.

8. The Rule 5 Statement concerned wide-ranging apparent accounts rules breaches, including apparent minimum client account shortfalls. At paragraph 3 of the Respondent's Statement dated 25 February 2014 filed in these proceedings, the Respondent stated:

> "From the outset I admit, as I have always accepted that there has been a failure on my part to main (sic) proper accounting records at the Firm since 2011."

It was not disputed that the Respondent informed the FIO on 12 February 2013 that he had failed to maintain proper books of account since September 2010.

9. No cash book was being maintained and there was no central record of payments into and out of client account. Client account reconciliations were not being carried out. There was no single source from which the bookkeeper could complete the client ledgers. Entries in individual client ledger cards kept on spreadsheets were missing and/or incorrect. The Respondent informed the FIO that the apparent shortfall on client account was the result of unposted transactions. The FIO was unable to compare the totality of liabilities to clients with funds available in client account. The FIO calculated minimum liabilities due to clients using the Firm's bank statements to produce the figures at paragraph 10 below.

10. The minimum liabilities to clients as at 31 December 2012 and 28 January 2013 were as follows:

Client	Liability (31.12.12)	Liability (28.01.13)
Clients A	£39,929.37	£35,909.37
B Ltd	£26,600.24	£26,600.24
Client E	£59,711.13	£59,711.13
Client K	£7,102	£-621.90
Minimum liability to clients	**£133,332.74**	**£122,842.64**
Client cash available	**(£62,240.39)**	**(£73,672.31)**
Minimum cash shortage	**£71,092.35**	**£49,170.33**

11. The Firm acted for clients A on a property sale and purchase. The sale proceeds of £335,000 were received into client account on 7 December 2012. On the same day £295,070.63 was transferred from those funds to the purchase ledger and immediately paid out in relation to the purchase. The FIO was unable to attribute any further payments in and/or out of client account on A's matters. The liability to A as at 31 December 2012 was £39,929.37. On 14 January 2013 payment of £4,020 was made to estate agents, reducing the liability as at 28 January 2013 to £35,909.37. On 1 February 2013, £23,520.26 was recorded on the ledger as having been paid to A, leaving a liability of £12,389.11.

12. The Firm acted for client B Ltd in civil litigation. On 16 August 2012, payments of £5,000 and £21,600.24 were received into client account and credited to this matter (the latter payment having been initially debited against the ledger in error). The FIO was unable to attribute any further transactions to this matter. The minimum liability to B Ltd as at 31 December 2012 and 28 January 2013 was calculated as £26,600.24.

13. The Respondent was instructed by client E on his property purchase DS. On 19 September 2012, £1,496,000.40 was received into the Firm's client account, of which £1,027,636.20 was credited to the DS purchase ledger. The balance of £468,364.29 was credited to the ledger for E's separate property purchase CH. On 20 September 2012, £967,000 was transferred to the seller's solicitors from the DS property purchase ledger. On 1 November 2012, £925.07 was transferred from the DS ledger to the CH ledger and applied towards the payment of Stamp Duty Land Tax ("SDLT") on that transaction. These two transfers reduced the balance on the DS client ledger to £59,711.13. The FIO was unable to identify any further payments into or out of client account attributable to the DS matter, producing a minimum liability to client E on both 31 December 2012 and 28 January 2013 of £59,711.13.

14. The Respondent acted for client K on his property purchase. As at 18 December 2012 the balance on the client account ledger was £244,894.99. On 21 December 2012, £236,466 was paid to the seller's solicitors. On the same date, £1,326.99 was transferred to office account in respect of the Respondent's costs. The balance on the client ledger as at 31 December 2012 was £7,102. The FIO was unable to identify any further transactions in the client account bank statements attributable to this matter. The minimum liability to the client as at 31 December 2012 was therefore £7,102. On 3 January 2013, £8,250 was paid out of the client ledger account in respect of SDLT, resulting in a debit balance of £1,148. On 7 January 2013, £796 was credited to that

ledger, but a further payment out of £270 on 14 January 2013 resulted in a new debit balance of £621.90 as at 28 January 2013.

15. The Respondent's Firm's accountant's report for the year ending 31 May 2010 was to be delivered by him to the SRA by 30 November 2010. It was delivered on 14 September 2011. No further accountants' reports were filed.

16. The Respondent admitted to the FIO that his accounts had not been properly kept since at least September 2010 (paragraph 8 above). During interview by the FIO on 12 February 2013, the Respondent did not accept that there was a minimum client account shortfall of £71,092.35 as at 31 December 2012. He said that the apparent shortfall was the result of deficiencies with the keeping of his accounts. At the time of the FIO's second visit to the Firm in March 2013, the Respondent had not agreed the cash shortage and the accounts had not been rectified. The Respondent told the FIO that he intended to devote the remainder of March and all of April 2013 to dealing with open client matters, following which he would deal with any issues in respect of his accounts. On 16 May 2013, the date of the decision to intervene into the practice, the SRA had not been provided with evidence that the Firm's accounts had been brought up to date.

17. As recorded at paragraph 13 above, the Respondent acted for E on his DS property purchase. In accordance with his instructions, the Respondent purchased an "off the shelf" BVI company for this purpose, of which E and his wife were beneficial owners. The purchase was completed on 20 September 2012. On 17 October 2012, the Respondent submitted a SDLT return, with a cheque (bearing the same date) for £53,750 for Stamp Duty. The payment was not recorded on the ledger card. On 17 October 2012, the balance on the Firms client account against which the cheque was drawn was £47,161.92. There were insufficient funds in client account to cover the value of the cheque on the date that it was written. As at 5 April 2013 the cheque had not cleared client account. During interview by the FIO on 28 March 2013 the Respondent confirmed that the cheque had been sent to HM Revenue & Customs ("HMRC"). The client's SDLT liability had not been discharged as at 5 April 2013, more than 6 months after the purchase had been completed, and the client was liable for a £200 fine and interest. The Respondent said that on 22 April 2013, he paid out of his own funds £54,246.01 in settlement of the SDLT, fine and interest.

18. On 22 February 2013, an SRA caseworker sent the 1st Report to the Respondent with a letter inviting his comments. The Respondent replied by email on 11 March 2013. On 11 April 2013, an SRA caseworker sent the 2nd Report to the Respondent with a letter inviting his comments. The Respondent replied by email on 22 April 2013. Further correspondence took place between the SRA and the Respondent after that date.

<u>Rule 7 Supplementary Statement</u>

19. On 16 March 2011, the Respondent's Bank issued proceedings in the Central London County Court against the Respondent and his wife ("Mrs A"), in order to enforce a legal charge granted over their matrimonial home to secure business debts incurred by the Respondent. At the time when the loan was taken out and secured on the matrimonial home, Mrs A sought independent legal advice from Mr K, who was

known to the Respondent. The Respondent was with Mrs A when she met Mr K for that purpose and Mrs A signed the legal charge. The Respondent told his wife that he would act for her in the possession proceedings. He considered that his wife had not received independent legal advice from Mr K, and he drew up and filed a Defence to the proceedings on that basis. The Respondent did not tell his wife of the date of the hearing of the proceedings, which was 2 – 4 July 2012. The proceedings were heard by His Honour Judge Gerald. The Respondent went to court without telling Mrs A about the hearing.

20. On Monday, 2 July 2012, the Judge expressed his concern about the Respondent acting for himself and Mrs A in circumstances where Mrs A suggested in the Defence that the Respondent had exerted undue influence on her. The Respondent disagreed that there was a possible conflict. He saw the issue as being whether the process by which his wife had received advice about the legal charge had been correct. The Judge questioned the Respondent about the whereabouts of Mrs A, as follows:

> "**HHJ Gerald:** Where is she [Mrs A]?
>
> **Respondent:** At the moment she is taking one of the children to the hospital.
>
> **HHJ Gerald:** Sorry?
>
> **Respondent:** She is taking one of the children to the hospital.
>
> **HHJ Gerald:** Why is she not here?
>
> **Respondent:** She probably will be here tomorrow."

The first hearing day concluded with the Judge telling the Respondent that he needed to make sure that his wife was at court the following day.

21. In his Second Statement, the Respondent said that at the close of the first day of the hearing, and following a discussion with the Bank's solicitors, he gained the impression that there was a possibility of a settlement, which he "resolved to do". He decided that he would not ask his wife to attend the hearing the following day or tell her that the Judge had asked her to attend. He conceded that this was not a "well-thought-out decision".

22. On Tuesday, 3 July 2012, the Judge wanted to know how a proposed settlement would affect Mrs A. The Judge asked the Respondent where his wife was. He responded:

> "Unfortunately, she was not prepared to come today…"

In his Second Statement, the Respondent described his response as "a grave error of judgment".

23. The Judge was not too concerned about the terms of the agreement from the perspective of the Bank and the Respondent. He was concerned that, despite the matrimonial home being at risk, Mrs A (represented by her husband who she alleged

had unduly influenced her) had decided not to attend court. The Judge was not content to agree the settlement until Mrs A came to court, so that he could explain to her clearly and plainly what the agreement meant. The Judge pressed the Respondent about his wife's non-attendance, and he answered the Judge as follows:

> "I had a conversation with her last night about your request and, well, it followed on from an argument. I do not really want to go into it, she simply point blank refuses."

24. During the course of the proceedings on 3 July, it became apparent that the Bank did not consider matters to be resolved as regards Mrs A. The Judge expressed his unhappiness with the situation. He told the Respondent that he would telephone Mrs A to find out exactly why she was not present and he obtained telephone numbers for that purpose. The Judge pressed the Respondent again, as follows:

> "**HHJ Gerald:** She's your client, so why has not she (sic) turned up?
>
> **Respondent:** She blames me, your Honour.
>
> **HHJ Gerald:** For what (sic).
>
> **Respondent:** For what has happened and the fact that she has never been to court and does not want to come to court."

25. His Honour Judge Gerald telephoned Mrs A in a break later on 3 July. He reported to the parties in court as follows:

> "Yes, I spoke to Mrs Alexandrou. She knows nothing of today's hearing. She knows nothing of yesterday's hearing. She was not visiting hospital with your son, […], yesterday she is horrified. She is distraught. She does not know what is going on. She has given me her word that she will be here tomorrow at 10.30. I have told her that she should get separate legal advice. That is her position. She is a very distraught lady. She asked me if this was the correct procedure and I said, 'well, if a judge thinks something funny is going on he phones'. So obviously it is unusual but as I made clear yesterday I have been concerned and I am very sorry that a solicitor who is an officer of the court has caused this concern. So that is where we are."

26. Mrs A attended court on Wednesday, 4 July 2012, and informed the Judge of the following points:

26.1 She knew that there was a claim against herself and her husband, and that her husband was dealing with it. She did not know how far it had got and that everyone was at court on 2 to 4 July 2012. She had not been involved in litigation before;

26.2 Her husband had told her that she needed to do a witness statement. They had talked about what was in the statement. Her husband wrote the statement up. Mrs A signed the statement. She asked her husband what the statement was for and he said it was just dealing with the proceedings but was nothing to worry about;

26.3 Mrs A thought that her husband was talking to the Bank and the court;

26.4 Mrs A would have attended court if "I had known";

26.5 She had not taken the child to hospital on Monday, 2 July 2012; on the morning of Tuesday, 3 July 2012 she took the child to the doctor.

27. The Judge spoke to the Respondent. He pointed out that misleading the court was very serious. The Respondent replied as follows:

> "It is a matter upon which I apologised to my wife yesterday. I apologised to learned counsel and his clients. I still need to apologise and I unreservedly apologise to you. I cannot explain the personal and the professional damage that I have done to myself."

28. His Honour Judge Gerald complained to the SRA about the Respondent's conduct by letter dated 5 July 2012. In that letter the Judge expressed his views about that conduct and its possible consequences. On 23 April 2014 an Authorised Officer of the SRA authorised the inclusion of the matters arising from the complaint in the existing disciplinary proceedings against the Respondent.

Witnesses

29. Applicant's Witness - Cary Whitmarsh

29.1 Mr Whitmarsh gave evidence on oath. He confirmed his full name and his employment as an Investigation Officer with the SRA. He prepared two Reports dated 15 February 2013 and 5 April 2013 respectively. He identified those Reports with Appendices exhibited to the Rule 5 Statement and confirmed that the contents of both were true to the best of his knowledge, information and belief. Further, he prepared a brief witness statement endorsed with a Statement of Truth signed by him and dated 25 November 2013, the contents of which were also true as before. He was tendered for cross-examination by the Respondent.

29.2 Mr Whitmarsh confirmed that his first visit to the Firm's office was "without notice". He found a working office with no documents or files put to one side for inspection.

29.3 Mr Whitmarsh could not remember whether he saw the Completion Statements relating to client A. There was more than one matter for this client but he could not remember the total number. He had no reason to dispute the Respondent's assertion that the figures on the Completion Statements added up. When one looked at individual client matters figures added up, but when one looked at client matters globally, there was a shortfall on client account because of the failure to maintain proper records. The Respondent suggested that in relation to client E, the unpresented cheque for SDLT caused the shortfall. Mr Whitmarsh agreed that this would have been a contributing factor. Mr Whitmarsh recalled reference by the Respondent to other matters for client B Ltd, but not how many. He remembered that the Respondent mentioned allocation of funds to fees in the other matters.

29.4 The Respondent explained to Mr Whitmarsh his understanding of the way in which agreed fees should be dealt with, based on information which he said was given to him by The Law Society. Provided fees were agreed, the bill did not have to be submitted at a particular time. He asked Mr Whitmarsh whether this understanding was correct. Mr Whitmarsh understood that the bill had to be posted to the office side of the client ledger account and funds transferred over. Client money became office money at the point when the bill was delivered to the client, when it should be posted to the client records. The Respondent suggested that he may have been advised incorrectly or that the Rules had changed. Mr Whitmarsh's evidence was that there were specific rules for agreed fees at Rule 17 SRA AR 2011 (the Chairman directed that Mr Hudson should address the Tribunal on the point in due course). The Respondent suggested that there was no issue about the fees and that he had been able to show Mr Whitmarsh "a couple of calculations" for two particular matters involving several thousand pounds; Mr Whitmarsh agreed. He also recollected that the Respondent was working on a matter at the time, and that there was a case on which substantial fees were due.

29.5 The Respondent put it to Mr Whitmarsh that his snapshot of minimum liabilities to clients was "not necessarily accurate" in relation to the position regarding fees and payments to the office account. Mr Whitmarsh said that he showed in his Reports that, whilst monies may have been due as fees, they should be held in client bank account until such time as they were posted to the office side of the client ledger account. At that point they became office money and could be transferred from client to office bank account.

29.6 Mr Hudson was permitted by the Tribunal to interject to provide assistance on the accounts rules relating to agreed fees. He read Rule 17.5 of the SRA AR 2011 (reproduced in the Appendix to this Judgment). Fees other than an agreed fee under Rule 17.5 had to be paid into client account. On rendering the bill, it became permissible to transfer the fees from client to office account, with an appropriate note in the ledger. Under Rule 17.5 agreed fees must be evidenced in writing, and payment of an agreed fee must be made into office account. The Rule indicated that the agreed fee payment was not dependent on the transaction being completed. Mr Whitmarsh observed that agreed fees were normally incurred where the costs involved were predictive, and were much less common in civil litigation matters. The point of agreement was usually when the client care letter was sent out and the funds received were paid direct into office bank account, having been agreed with the client in advance. Rule 17.5 required an agreed fee be paid into office account.

29.7 The Respondent referred to his specific situation involving client B. He and the client had agreed an interim fee in relation to a certain amount of work undertaken. Once that agreement was reached, would there not be an obligation on the Respondent's part to transfer the money from client to office account? Mr Whitmarsh agreed that the obligation would be to evidence the agreed fee, to post that to the office side of the client ledger account and, if the funds were held in client account, to transfer them from client to office bank account. Alternatively, the funds could come in externally and be paid direct into office bank account. There must however be evidence of the agreed fee in writing.

29.8 The Respondent referred to client B Ltd and client K as being instances where client funds shortfall was not an issue. Mr Whitmarsh reminded the Respondent that 4 matters were referred to in his Report. The Respondent said that he assumed that SDLT for client E had been paid. The client B Ltd shortfall was accounted for in interim fees. The other two matters were "technical breaches" which occurred simply because the client E money was not available. Mr Whitmarsh disagreed with the Respondent's assessment. The monies remained client money until bills were posted or evidence in writing of agreed fees was produced to show that the monies had become office money and could be transferred from client to office bank account. Mr Whitmarsh did not look at the files for the related B Ltd cases. His understanding was that those files would have been returned to the client on intervention, and he did not know whether copies were kept. He doubted that copies would have been made and retained (as the Respondent said he requested) because it would be a "demonstrative burden" on the regulator to keep copies of all the files. The proper step was to return them to clients who needed the files to complete their matters.

29.9 The Respondent suggested that he could not now say to the SRA that if the file for A (an associated company of B Ltd) was looked at, work had been done and a number of agreements reached regarding fees to which the Respondent was entitled in relation to that work. Mr Whitmarsh said "no", but that it would have been possible for the Respondent to contact the client to ask whether he could provide that information. The Respondent described that situation as "unusual". He had (on a rough estimate) £250,000 - £300,000 worth of unbilled work outstanding, including for client B Ltd, the associated clients and the individual behind those companies. How was he expected to ask these gentlemen to bring him the files in order for them to be billed? Mr Whitmarsh responded that archiving of files following intervention was not within his remit. The Chairman invited the Respondent to explain the relevance of his questions to the alleged accounts rules breaches. The Respondent decided not to pursue the line of questioning and ended his cross-examination of Mr Whitmarsh.

30. <u>The Respondent</u>

30.1 The Respondent was undecided as to whether he should give evidence from the witness box or make submissions from the advocates' bench. The Chairman explained that if the Respondent gave evidence on oath from the witness box, the Tribunal may place greater weight on that evidence than anything said by way of submissions from the bench. The Respondent decided that it would be "more appropriate" for him to give his evidence from the witness box.

30.2 The Respondent gave his evidence on oath. He adduced in evidence his statements dated 25 February 2014 and 5 June 2014, each signed by him and bearing a statement of truth: the contents of those statements were true.

30.3 The Respondent had been in practice for a long time. He was hard-working, and enjoyed his work and working with his clients. He believed that his clients enjoyed working with him. He was concerned about his cases and thought that he had done "quite well". He had a good reputation. In late 2008/early 2009, the Respondent's workload was similar to what it had been previously, but he seemed to run out of energy and enthusiasm. The office work "seemed to accumulate" and he was struggling with the administration. It took the Respondent some time to get the 2010

accounts together, and by that time he was more behind in relation to accounts for 2011 onwards. To make matters worse, the SRA required two sets of accounts each year when he was struggling to provide one set. The Respondent had "given up". He had three major ongoing cases and the usual office work. Cases were becoming complicated and hearing dates were being adjourned, largely by the court, resulting in cases not finishing. The Respondent had difficulties with serious health issues concerning close relatives. He had become a partner 3 years after qualification and had been working, effectively self-employed, since then. It had always been the case that he could cope, but in this instance he could not cope and had difficulty in admitting that to himself.

30.4 In relation to the proceedings before His Honour Judge Gerald, the Respondent was satisfied that there was no conflict between the interests of himself and his wife when he acted for both of them. He had a friendly relationship with his previous Bank Manager. The Bank adopted a new approach to customers, and the flexibility in the management of his business account that he had previously enjoyed changed suddenly. The Respondent was in dispute with the Bank regarding its charges and service. The Bank issued proceedings against the Respondent and his wife. The Respondent wanted to state his case as far as his issues with the Bank were concerned. He looked more deeply into the independence of the legal advice given to his wife. The meeting with Mr K was arranged by the Respondent's Bank Manager. Mr K, whom the Respondent knew quite well, was a local solicitor working a few blocks away from the Bank. Mrs A was told by Mr K that she was entering into a mortgage, with a risk of repossession. "At the time we all seemed to be in agreement". When the proceedings started, and the Respondent thought about it in more detail, it seemed to him that the situation was unfair on his wife. The giving of independent legal advice had become more of a serious subject, and very few solicitors gave such advice nowadays. The Respondent had a discussion with his wife about this when their Defence was filed. She was suffering from stress and was emotional at this time. The Respondent was still struggling at the office. When the Respondent received a hearing date, he did not feel that he could tell his wife and take her to court and make her face "all that". Seeing his wife at court (on 4 July 2012) and how distressed she was summed up his fears.

30.5 The Respondent had become confused concerning the hospital appointment for their child. He genuinely thought that the appointment was on the Monday. As it turned out, his wife went to the GP with their child on the Tuesday. The Respondent did not believe that he was being dishonest to the Judge insofar as he gave a truthful answer, but the Respondent knew that the Judge wanted to know why Mrs A was not at court. She was not there because she did not know about the hearing.

30.6 The Judge intervened throughout the hearing. The Bank produced a witness who had no knowledge of the case, and no records of what had been said. The Bank's witness evidence was hearsay. In terms of the Respondent's evidence and potential evidence from his wife, the Bank could not respond. Despite that, by the end of the day, the Judge had clearly made up his mind that the Respondent was liable. After the first day of the hearing, the Respondent discussed the matter with Counsel for the Bank. The Bank was content to stay proceedings against Mrs A, and to settle with the Respondent. If the case had been settled, that was the end of the issue in relation to his wife. The Respondent was satisfied that the Bank was going to settle the case in a

satisfactory way as far as his wife was concerned, so there could not be any complaint. He was however "stressed out".

30.7 The next morning discussions continued and an agreement was reached. The agreement in relation to Mrs A was that the proceedings against her would be stayed, which was the "perfect solution" as far as she was concerned. However, the Judge effectively convinced the Bank to renege on the agreement in relation to Mrs A. Counsel for the Bank had not appreciated that staying the proceedings against Mrs A could cause issues for the Bank at a later date. The Respondent was stuck in a situation where the Judge had effectively "killed off" the agreement in respect of Mrs A (but not the agreement in respect of the Respondent). "Stupidly" when the Judge asked the Respondent where his wife was, he "lied". The Respondent had practised, starting as a trainee, since 1982 and could "feel the walls coming down on me". He had "dug himself into a hole". The correct response would have been simply to say that he had not told his wife. He felt under so much pressure and was not sure what was happening. Even if the Judge had not telephoned Mrs A it was clear that he would have adjourned the case so that she could be brought to court. The Respondent did not know where he was "going with that". It was a relief when the Judge called Mrs A because once he had spoken to her all the Respondent could do was apologise. The Respondent regretted his actions.

30.8 The Respondent went into detail concerning the family difficulties which arose for the Respondent and his wife during the period 2011 to 2013. It was unnecessary for the purposes of this Judgment to repeat those details here, but the Tribunal took careful note of what the Respondent had to say. The Respondent said that these were "not years when he was thinking straight". "Something clicked" after the case heard by Judge Gerald, and the Respondent could not go on. After the intervention, the Respondent was surprised that the SRA was happy to give him back his Practising Certificate with conditions (it had been suspended at the time of the intervention). The Respondent found a firm happy to take him on under supervision. It was a relief to be doing pure legal work without the complications of running an office.

30.9 The Respondent's health was an issue. A previously undiagnosed medical condition was identified and medication provided, which left the Respondent feeling "beaten up" and with side effects. In 2013 he was in constant pain. By the end of October 2013, when his Practising Certificate had to be renewed, the Respondent made the decision not to renew, in spite of the prospect of supervised work. The office had been closed since the intervention. Creditors could not be dealt with. HMRC issued a bankruptcy petition in September 2013. He asked the SRA to remove his name from the Roll of Solicitors, thinking this would be appropriate (the request was refused). He could return to the profession but he would have to prove himself. The Respondent was declared bankrupt on 17 January 2014. "Strangely enough" the Respondent was currently feeling quite healthy. A lot of weight seemed to have been lifted from his shoulders. He had no responsibilities or legal liabilities. He did sometimes think about coming back to the profession but felt that it was a little bit early this stage.

30.10 In summary, the Respondent had always taken great care with his clients and client money. There had been a significant failing in the last few years. A lot of the Respondent's clients still called him and wished him well. None of his clients had complained about the standard of his work. Hopefully, he and his family would not

have any other major issues to face. The Respondent invited the Tribunal not to strike him off the Roll, but to suspend him for a period of time whilst he got himself together.

30.11 Under cross-examination, the Respondent accepted that, looking back, he had started to fall behind in 2009. He had obtained extensions from the SRA and was able to catch up in 2010, after which he "gave up". He had clients to look after and spent a lot of time at home. Then two sets of accounts had to be rendered every year. There was never any time to catch up and life was devoted to home or work. The part-time bookkeeper/receptionist kept trying to talk to the Respondent with questions about the accounts. The work never finished. Most of the clients had been with the Respondent since he started in practice, and he had acted for them and generations of their families. He did not look for business, work just came. The Respondent should have found time to deal with the accounts, but did not do so.

30.12 Although there was no central register, there was a blank ledger on the side of each file to be completed when money came in or went out. In terms of the individual cases, the Respondent always thought that he had a good idea where the finances were. For example, the Completion Statements on the inspected files were full and accurate. There was no shortfall in respect of client money on client E. The failure of not having a central register and not being able to do reconciliations meant that the Respondent had not kept track of the non-presentation of the cheque for SDLT for client E. When there was an error in the accounts and a shortfall, the Respondent did not realise that there was a shortfall. He always thought that there was plenty of money in the account. There was never a shortfall in relation to the other client files considered by Mr Whitmarsh; the Respondent could account for every penny of their money. Mrs B, the bookkeeper/receptionist was not provided by the Respondent with the information she needed to complete the books and he was at fault for that.

30.13 The Respondent had always been capable and able to cope. Hard work was a way of life. He now recognised that he had needed help. He attended the course at Middlesex University where it was made clear that the new regulations would result in solicitors having to spend at least 50% of their time on administrative work. The course and its implications "horrified" the Respondent. It was not only made clear that reconciliations were required, but there had to be registers and a Financial Officer dealing with forward and financial planning. The Respondent had "never done a financial plan". He had never been in a situation where anyone had asked him for a financial plan. All his clients came to him through recommendation or were repeat clients, and he had never had to look for work. He took it for granted that the work would come and the fees would come. At an earlier point in time it would not have been difficult for the Respondent to run a cash book and carry out reconciliations. The situation changed towards the end of 2009 as a result of the difficulties referred to above. The Respondent walked out of the seminar thinking in terms of when he could close his office. At that time he was more interested in the family health issues and dealing with ongoing litigation cases.

30.14 Mr Hudson asked the Respondent how he had protected the interests of client E, where issues had arisen because of lack of reconciliations. The Respondent said that this was a "technical thing". He made a mistake because he did not do the reconciliations and could not keep track of cases that he thought were settled and

could be settled. "When that was looked into" and he realised there was an error, he resolved it. He always looked after his clients and would never let them make a loss. The Respondent agreed that it was very important to maintain accounting records and understood why the SRA imposed these requirements. He accepted that he had fallen behind with basic disciplines which were not new. It had been easy to ask the SRA for extensions of time and the SRA was always obliging. This was a trap where obtaining 2 or 3 extensions meant that he fell further behind. He had ongoing litigation and 2 or 3 years' worth of accounts to prepare. The Respondent recognised that he should have got someone in to help, but they would have wanted time with him to receive instructions. The Respondent had given up and was concentrating on sorting out the issues at home. There came a point where the last big case was finishing and the Respondent expected to take a break, sort out his paperwork, and look for work with another firm. He wanted to bring his practice to a conclusion to the satisfaction of the SRA. He had a number of conversations with Miss G at the SRA without adverse comment from her. In relation to client E, the Respondent accepted that the client accounts were in disarray. If he had done his reconciliations he would have known that the SDLT had not come out of the account. He needed to know what the balances were to resolve that problem. The accounts were in disarray because they had not been done. The Respondent accepted that this was his fault.

30.15 Moving to the shortfall, the fees had been invoiced and were agreed fees. The Respondent had agreed with the client that he would receive an agreed amount from the funds that he held. The Respondent referred to client B Ltd, a property investor, for whom he was dealing with a number of matters at the same time. He had discussions with clients concerning payment of Counsel's fees and so on. There were agreements in respect of fees with client B Ltd. When asked about Rule 17.5, the Respondent observed that Mr Hudson had to look the Rule up in a book and Mr Whitmarsh had difficulty answering when he was asked about it. The Respondent's understanding of the definition of agreed fees came from a Law Society officer, when he was told specifically that once fees were agreed, the money had to be taken out of client account and put into office account. Some of the fees were fees that had been invoiced but not posted. Others were agreed fees, evidenced by a note or (more probably) an email exchange on the file. Monies for agreed fees were to be paid into office account; the Respondent agreed with Mr Hudson that they should not feature at all in client account. On one file there was £26,000 in credit, but that was not a genuine balance because fees had already been taken from the client account for that client and his associated companies and distributed in relation to fees agreed and payable in relation to the other accounts. If there was a fee that had not been confirmed by email, formal correspondence or a note of some type, it was an odd one out. It was difficult for the Respondent to comment because the SRA had all the files. However all fees were agreed. Mr Hudson observed that it should have been possible to establish the correct position from the accounts but the accounts were deficient.

30.16 At the point when the Respondent wrote a cheque for £53,750 to pay SDLT on client E's transaction when there was only £47,000 in client account, he accepted that there was a shortfall because he had not kept track and had erroneously paid monies to one client matter believing that there was money available when that was not the case. Because the Respondent had not kept a central register and had fallen behind on the reconciliations, he had not noticed that the cheque had not been presented, and there was a shortfall which the Respondent had to make up. The Respondent was not sure

of the amount and paid about £4,000 more than he should have paid. There should have been a credit balance, and not a shortfall. The Respondent told Miss G that he would leave the payment in the account until matters were resolved, just in case there were any other matters that he had missed. The Respondent also accepted that the debit balance on client K's ledger demonstrated that there had been use of other clients' funds to make payments.

30.17 The Respondent was cross-examined on the allegations in the Rule 7 Supplementary Statement. He was asked to consider allegation 3.1 and the statements made to the Judge on 2 July 2012. It was alleged by the Applicant that what the Respondent told the Judge was a lie. The Respondent said that he was under the impression from conversations he had had with his wife that she was taking the child to the doctor. When asked by the Judge, the Respondent said the word "hospital" rather than "doctor". This was not a lie. If the Respondent had told his wife that there was a hearing and that she needed to be there, she would have been there. She would have rescheduled the appointment. The Respondent was not specifically asked by the Judge "does your wife know about this case?" He asked where she was and the Respondent replied. The Respondent knew what answer the Judge wanted, which was that the Respondent had not told her. In the way the question came out, it was "convenient" to give an answer that the Respondent thought was true at the time. In fact, the Respondent's wife was not taking the child to the doctor until the next day.

30.18 The Respondent was asked to consider allegation 3.2 and the statements made to the Judge on 3 July 2012. The Respondent "definitely" accepted that his statement on 3 July 2012 to the Judge that his wife "unfortunately, [she] was not prepared to come today" was a lie. The Respondent was asked by Mr Hudson whether he accepted that a reasonable, ordinary, honest person would regard it as being dishonest to answer a Judge in that way. The Respondent repeated his question "what is the difference between a lie and dishonesty? They must be the same thing". He lied to the Judge and that must be dishonest. The Judge put the Respondent in a situation where he thought he had resolved everything and all of a sudden the Judge wanted to know where his wife was. He thought "I do not want to bring my wife to court, she is stressed out, she is anxious, she is depressed, she is crying every other day" over family issues. He was not thinking straight and some antagonism had built up between him and the Judge in relation to the way the Judge was, in the view of the Respondent, conducting the case.

30.19 The Respondent was asked to consider allegation 3.3 and the statement made to the Judge later on 3 July 2012. The Respondent accepted that his statement to the Judge that his wife "point blank refuses to come to court" was a lie. This conversation followed on within a very short time span. He started with the first lie and had "dug himself into a hole and did not know how to get out of it". He did not want to go into the matter any further, and was trying to bring the conversation to an end. Mr Hudson accepted that the statements were made within a relatively short time of each other, and referred to allegation 3.4. He asked the Respondent whether his answers in respect of allegations 3.3 and 3.4 were the same as those for allegation 3.2, namely, that in each case the Respondent told a lie and realised that that was something that reasonable, honest people would regard as dishonest and the Respondent knew that to be so but nevertheless lied. The Respondent said "yes".

30.20 Mr Hudson asked the Respondent about his perception that there was a difference between allegation 3.1 and allegations 3.2, 3.3 and 3.4. In relation to allegation 3.1 the Respondent's case was that at the time he believed what he said to be true. The Respondent agreed. The Respondent accepted that there was a visit to the General Practitioner and not to the hospital. He made a mistake in thinking that the visit was on the first day of the hearing. The appointment was discussed at the beginning of the week before. It was not particularly important or something that stayed in the Respondent's mind. There was nothing seriously wrong with the child. The Respondent did not think that he saw his wife before he went to court; he would have got up early and left the house. There was no discussion about the child going to the doctor or the hospital that morning. It was always of concern to the Respondent that he had not told his wife about the hearing and the Judge might want to know where she was. It was not normal to turn up at court without a client. Mr Hudson put it to the Respondent that faced with that prospect, he invented an excuse. The Respondent said that he had been very frank; he lied on the second day when what he said was clearly a fabrication. Why would he not admit that he had been at fault, when he had admitted the other three occasions? It would not make any difference, save that it made a difference to him because on that particular day he genuinely believed that the child was going to see the doctor. On the evening of the first day of the hearing, the Respondent asked his wife about the hospital visit, and she said it was the next day. She kept mentioning the word "doctor" (they do not normally use the word GP). For some reason from the conversations they had had the previous week, the Respondent thought it was a hospital appointment. He did not perceive any difference between doctor and hospital. It was not particularly serious and was an excuse given to the Judge at a time when the Respondent was digging a hole and getting more agitated with the Judge and vice versa. The Respondent knew the real purpose behind the Judge's question and did not answer it in the way he knew the Judge intended. The Respondent did not agree that a reasonable, honest member of the public would regard that as dishonest. He did not accept that, in giving the Judge an excuse, and failing to answer his question directly he was being dishonest. He referred to the way in which the question had been put to him by the Judge, who asked a question which the Respondent answered. The Respondent knew what was behind the question and he could have at that point been frank but he was instead "reserved", or (as suggested by the Chairman) "economical with the truth".

30.21 The Lay Member of the Tribunal referred the Respondent to the transcript of the hearing on 3 July 2012 concerning a statement by the Respondent to the Judge about which child had been taken to the hospital/GP and when. The Respondent said that he made this statement because he was confused and not thinking straight. He was familiar with litigation and courts. He was asked whether this familiarity made lying to the Judge even more serious. The Respondent said he could hear the words coming out, but for some reason he could not stop them. At that particular point of his life he had never been so low. Normally he would have wanted to do what was right. The Tribunal could tell the Respondent that he had done wrong, but he had told himself the same a hundred times or more. He agreed with the Lay Member that for a solicitor who conducted litigation and was familiar with courts this was an extremely serious matter.

30.22 The Chairman asked the Respondent to take a little time to look at the allegations in the Rule 5 Statement. The Respondent had explained forcefully and clearly what he

said were agreed fees. If the Tribunal was to assume that what the Respondent said about agreed fees was in some cases correct, how would that bear on any one of the alleged breaches? In what respect would the existence of agreed fees affect the Respondent's liability for any single one of those non-compliances? The Respondent observed that because of the error in respect of client E, there was a shortfall and a breach and in relation to the other matters, they were additional points. The Chairman asked the Respondent whether he would be right to assume that, notwithstanding what the Respondent said about agreed fees, he accepted that in each and every one of these cases the non-compliances alleged took place. The Respondent replied "yes, over 3 years". The Chairman asked the Respondent whether he was saying that, in respect of some specific client ledger shortfalls, the amount indicated was more than the actual shortfall, because of agreed fees. The Respondent said that he drew a distinction because client E was clearly an error. In relation to the others, he was entitled to the fees which were agreed with the client.

Findings of Fact and Law

31. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove all disputed facts and the allegations beyond reasonable doubt.

32. The allegations made by the Applicant in the Rule 5 Statement of breaches of the Accounts Rules (1998 and 2011) were admitted by the Respondent , but he said that there was an explanation for the shortfall on client account. In relation to the Rule 7 Supplementary Statement, the Respondent admitted that on the second day of the hearing he wrongly informed His Honour Judge Gerald as to why Mrs A was not present in court. The Respondent clarified his case in respect of the shortfall on client account and the allegations in the Rule 7 Supplementary Statement during the course of giving evidence as recorded above and below.

33. **Allegation 1 - The Respondent acted in breach of SRA AR 2011 and (insofar as the relevant conduct occurred before 6 October 2011) SAR 1998, in that:**

Allegation 1.1 - He failed to establish and maintain proper accounting systems, and proper internal controls over those systems, so as to ensure compliance with the accounts rules, contrary to Rules 1(e) SAR 1998 and 1.2(e) SRA AR 2011;

Allegation 1.2 - He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, contrary to Rules 1(f) SAR 1998 and 1.2(f) SRA AR 2011;

Allegation 1.3 - Money withdrawn in relation to particular clients from his firm's general client account exceeded the money held on behalf of those clients in all his firm's general client accounts, contrary to Rule 20.06 SRA AR 2011;

Allegation 1.4 - He failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him and office money relating to client matters, contrary to Rules 32(1) SAR 1998 and of 29.1 SRA AR 2011;

Allegation 1.5 - He failed to record appropriately all dealings with client money in (i) a client cash account or in a record of sums transferred from one account to another and (ii) on the client side of a separate client ledger account for each client, contrary to Rules 32(2) SAR 1998 and 29.2 SRA AR 2011;

Allegation 1.6 - He failed to carry out reconciliations every 5 weeks contrary to Rules 32(7) SAR 1998 and 29.12 SRA AR 2011;

Allegation 1.7 - He failed to remedy breaches of the accounts rules promptly upon discovery, contrary to Rules 7 SAR 1998 and 7 SRA AR 2011;

Allegation 1.8 - He failed to deliver to the SRA accountants' reports contrary to Rules 35(1) and (2) SAR 1998 and 32.1 and 32.2 SRA AR 2011.

Allegation 2 - The Respondent acted in breach of the Principles, the 2011 Code and (to the extent that the relevant conduct took place before 6 October 2011) the 2007 Code, in that he:

Allegation 2.1 - Failed to maintain proper books of account, as detailed in allegation 1 above, in breach of Rules 1.04 and 1.06 of the 2007 Code and Principles 4, 6 and 10;

Allegation 2.2 - Permitted a shortfall of client funds to arise on his client account in breach of Principles 4, 6 and 10;

Allegation 2.3 - Failed, for a period in excess of 6 months, to pay Stamp Duty Land Tax in respect of a client's property purchase, contrary to Principles 4, 5 and 6. Further, or in the alternative it was alleged that he thereby failed to achieve Outcome O(1.2) of the 2011 Code.

33.1 It was convenient for the Tribunal to deal with these allegations together as they arose from the same factual matrix and were admitted by the Respondent, save for clarification of his position in relation to the alleged shortfall on client account. The relevant Rules, Principles and extracts from the Codes are provided in the Appendix to this Judgment in the order that they appear in the Rule 5 Statement.

33.2 The Respondent admitted allegation 1.1, namely that he failed to establish and maintain proper accounting systems, and proper internal controls over those systems so as to ensure compliance with the accounts rules, contrary to the Rules pleaded. He agreed that he had not had proper accounting systems in place since 2010. The accounting system consisted of bank statements, some spreadsheets for clients, and a blank ledger card on the inside of each file to be completed with payments in and payments out. No reconciliations were carried out. The Respondent recognised that his bookkeeper could not perform her job properly because she did not have sufficient information from the accounting systems to enable her to do so and he did not have time to instruct her. When necessary the Respondent relied on memory in relation to what money had been received and paid out. He had obtained extensions of time from the SRA, in order to bring his financial records up-to-date for the year ended 31 May 2010, but in spite of these extensions his 2010 accountants' report was not provided until September 2011. By then the Respondent was further behind in respect of his

financial records for subsequent years, and "never seemed to find the time" to address that issue. The Tribunal noted the Respondent's frank admission that by 2009 onwards he had effectively "given up" on the accounts because he was getting further behind, had significant family issues to deal with, client work was occupying his time and he "could not cope" with the overall administrative burden of running a solicitor's office as a sole practitioner. In relation to client E, for example, the Respondent did not identify the fact that the cheque to HMRC had not been cashed because he did not have proper internal controls over his accounting systems, such as they were, in place. The Tribunal found allegation 1.1, which was admitted, proved beyond reasonable doubt.

33.3 The Respondent admitted allegation 1.2, namely failure to keep proper accounting records to show accurately the position with regard to the money held for each client, contrary to the Rules pleaded. The Respondent accepted in his evidence that he was unable to identify the accurate financial position with regard to each client. In relation to specific shortfalls identified by Mr Whitmarsh, the Respondent said that the overall calculation was incorrect because it did not take into account agreed fees. This took nothing away from the fact that the Respondent did not keep proper accounting records with regard to the money held for each client. If he had done so he would have been able to identify that the cheque in respect of the SDLT payment for client E had not been cashed and if it had been presented for payment there was insufficient money in client account to meet the cheque's value. The Tribunal found allegation 1.2, which was admitted, proved beyond reasonable doubt.

33.4 The Respondent admitted allegation 1.3, namely that money was withdrawn in relation to particular clients from his firm's general client account which exceeded the money held on behalf of those clients in all his firm's general client accounts, contrary to the Rule pleaded. This allegation was proved by the fact that the client ledger for K was overdrawn as at 28 January 2013 to the extent of £621.90. Further, the cheque dated 17 October 2012 for £53,750 for SDLT in respect of client E was written by the Respondent when there was only £47,161.92 in client account. The minimum cash shortages calculated by the FIO indicated that the Respondent must have withdrawn more money in respect of particular clients than was being held on behalf of those clients, regardless of any agreement in respect of fees. The Tribunal found allegation 1.3, which was admitted, proved beyond reasonable doubt.

33.5 The Respondent admitted allegation 1.4, namely that he failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him and office money relating to client matters, contrary to the Rules pleaded. The Respondent admitted that he did not maintain a cash book or a central register. In evidence, he identified this lack as a source of his (and his bookkeeper's) accounting difficulties. He did, he said, have a ledger on the front of each file, but on his own evidence such ledgers could not have been kept up to date in respect of the matters identified by the FIO. If they had been up to date the FIO would have been able to attribute payments in and out on the client matters sufficient to identify accurate liabilities to clients without having to have recourse to bank statements save, perhaps, for the purpose of double-checking the figures. There was no evidence in the accounting records available to the FIO to show that the Respondent had agreed fees, which would in any event have had to be paid directly into office account and would have had no bearing on the contents of client account,

either for specific clients or the Firm's general client account. The Tribunal found allegation 1.4, which was admitted, proved beyond reasonable doubt.

33.6 The Respondent admitted allegation 1.5, namely that he failed to record appropriately all dealings with client money as specified in the allegation, contrary to the Rules pleaded. The Tribunal referred to its findings at paragraph 33.5 above. It was clear from the Respondent's evidence that he did not record all dealings with client money. He did not maintain a cash book or central register. The Tribunal found allegation 1.5, which was admitted, proved beyond reasonable doubt.

33.7 The Respondent admitted allegation 1.6, namely that he had failed to carry out reconciliations every 5 weeks, contrary to the Rules pleaded. His evidence was that he had not carried out reconciliations for some time. He blamed the absence of reconciliations, amongst other things, for his failure to identify the non-payment of the cheque for SDLT for client E. The Tribunal found allegation 1.6, which was admitted, proved beyond reasonable doubt.

33.8 The Respondent admitted allegation 1.7, namely that he had failed to remedy breaches of the accounts rules promptly upon discovery, contrary to the Rules pleaded. The Respondent asserted, however, that when he became aware of the breaches of the accounts rules he took prompt action to resolve problems. He had admitted that by the time he sorted out and submitted his accounts for 2010 on 14 September 2011 he was already behind in respect of 2011. It took the Respondent 6 months to address the issue of SDLT on client E's transaction, by which time a late fee and interest were payable. The SRA inspections had taken place before the problem was remedied by the Respondent. The Respondent admitted that this problem arose due to lack of reconciliations and a central register i.e. breaches of the accounts rules. The Tribunal recognised that the Respondent paid the SDLT and penalties in due course, but he did not do so promptly. If his accounts had been in good order he would have been aware of non-presentation of the cheque and could have addressed the problem with HMRC immediately. The Tribunal found allegation 1.7, which was admitted, proved beyond reasonable doubt.

33.9 The Respondent admitted allegation 1.8, namely failure to deliver accountants' reports, contrary to the Rules pleaded. The Respondent failed to deliver any accountants' reports after 14 September 2011, notwithstanding the conditions on his Practising Certificates. The Tribunal found allegation 1.8, which was admitted, proved beyond reasonable doubt.

33.10 The Respondent admitted allegation 2.1, namely that his failure to maintain proper books of account as detailed in allegation 1 put him in breach of the pleaded Rules of the 2007 Code and Principles 4, 6 and 10 of the 2011 Code. The Code and the Principles required the Respondent to act in the best interests of each client and not to behave in a way that was likely to diminish the trust the public placed in him or the legal profession (must behave in a way that maintained the trust the public placed in him and in the provision of legal services [the Principles]). Principle 10 required the Respondent to protect client money and assets. Mr Hudson referred the Tribunal to its 2011 decision in Levy v Solicitors Regulation Authority. A very high standard was set by the Tribunal in relation to solicitors' compliance with the accounts rules. Client money was sacrosanct. A proper stewardship in relation to client monies was vital.

The Respondent had failed to meet those standards. The Tribunal found allegation 2.1, which was admitted, proved beyond reasonable doubt.

33.11 The Respondent, somewhat equivocally, admitted allegation 2.2, namely that he permitted a shortfall of client funds to arise on his client account in breach of Principles 4, 6 and 10, set out at paragraph 33.10 above. He denied that there was a shortfall on the accounts referred to by the FIO in his Reports and oral evidence. The Respondent did not dispute the minimum cash shortage identified by the FIO as £71,092.35 as at 31 December 2012 and £49,170.33 as at 28 January 2013. However, he complained that the FIO's figures were inaccurate because they did not take into account fees that he said were agreed and which he was entitled to claim regardless of the fact that no bills had been posted to the ledger accounts. The Tribunal noted the Respondent's explanation. However, the Tribunal did not have to identify the precise amount and/or reason for the shortfall, but merely whether a shortfall existed. There was no doubt in the Tribunal's mind that there was a shortfall regardless of any agreed fees (which should in any event have been paid direct into office account and not retained in client account). The account for client K was overdrawn as at 28 January 2013. There was insufficient money in the Firm's client account as at 17 October 2012 to meet client E's SDLT obligation. The Respondent had breached the Principles pleaded for the reasons set out in paragraph 33.10. The Tribunal found allegation 2.2 proved beyond reasonable doubt.

33.12 The Respondent admitted allegation 2.3, namely that he failed, for a period in excess of 6 months, to pay SDLT in respect of client E's property purchase, in breach of the Principles alleged. Failure to achieve Outcome O(1.2) of the 2011 Code was pleaded in addition and in the alternative to breaches of Principle 4. Principle 5, also pleaded, required the Respondent to provide a proper standard of service to his clients, E in this instance. Outcome O(1.2) of the 2001 Code required the Respondent to provide services to his clients in a manner which protected their interests in their matter, subject to the proper administration of justice. The Tribunal had not been told what had happened to the SDLT cheque, although the Tribunal noted that there were insufficient funds in client account to meet the full value of the cheque on the day it was written in the event that it had been presented for payment by HMRC. The cheque had not been cashed by 5 April 2013, the time of the 2nd Report. This was more than 6 months after completion of the purchase of the property. The delay in making payment resulted in client E becoming liable for a fine of £200 and interest on the sum due. The Respondent confirmed to the SRA by email dated 22 April 2013 that he paid £54,246.01 (inclusive of penalties and interest) on that day to discharge the SDLT liability. He accepted both in his correspondence with the SRA and in his evidence to the Tribunal that an error had occurred, as a result of what could be paraphrased as the disarray of his accounts. The Tribunal noted that, following the payment, the Respondent believed that a credit of £4,570.67 should exist on the client account for client E. It was not acting in the best interests of client E or protecting that client's interests to have so little idea of what was going on with the accounts that a cheque was written when there were insufficient funds to meet the value of the same. The error was compounded by the Respondent's failure to notice that fact until 6 months later when penalties and interest had been incurred because SDLT had not been paid. Client E presumably thought that the payment had been successful and all was in order. This was far away from being a proper standard of service to client E and demonstrated little protection of client money. The Tribunal found allegation 2.3,

which was admitted, proved beyond reasonable doubt, including in respect of the breach of Outcome O(1.2) of the 2011 Code.

34. **Allegation 3 - The Respondent acted in breach of Principles 1, 2 and 6 of the Principles in that:**

Allegation 3.1 - On 2 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she was taking one of their children to hospital when this was untrue;

Allegation 3.2 - On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she was not prepared to attend when this was untrue;

Allegation 3.3 - On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she refused to attend when this was untrue;

Allegation 3.4 - On 3 July 2012, during the course of proceedings brought against him and his wife in the Central London County Court, he told the presiding judge that his wife was not present for the reason that she did not want to attend when this was untrue;

Allegation 3.5 - For the avoidance of doubt, dishonesty was alleged in respect of each of the allegations at 3.1-3.4 above, although it was not necessary to prove dishonesty in order to prove the allegations themselves.

34.1 It was convenient for the Tribunal to deal with these allegations together as they arose from the same factual matrix and were admitted by the Respondent, save for clarification of his position in relation to allegation 3.1, and allegation 3.5 (the allegations of dishonesty) which were treated as being denied.

34.2 The Tribunal had read the transcript of the hearing before His Honour Judge Gerald on 2 to 4 July 2012 closely and carefully. It had considered the Respondent's Second Statement dated 5 June 2014 and had listened to the Respondent's explanation for his confusion in relation to his answers to the Judge on Monday, 2 July 2012. He referred to his wife not being present at the hearing as she was "taking one of the children to hospital" and that she "probably will be here tomorrow". The Respondent's case was that he gave those explanations to the Judge, in the genuine belief that they were correct at the time they were given. The Tribunal noted that the Respondent informed the Judge on 3 July 2012 (after the Judge had spoken to Mrs A and the cat was out of the bag) of his understanding that his wife took a different child to the hospital and took the child that the Respondent had in mind to the doctor on the morning of 3 July 2012. When the Respondent gave this explanation, the Judge replied: "Anyway, so far as she [Mrs A] is concerned she has not got a clue what is going on here today and yesterday." In his evidence to the Tribunal, the Respondent referred to the medical appointment, as being "the excuse given to the Judge at the time. I was digging a hole

because the Judge was agitated with me and I was agitated with him. I knew the real purpose behind his question and I did not answer it." The Respondent accepted the Chairman's suggestion that he had been "economical with the truth". The simple fact was that the Respondent knew all along why his wife was not present at the hearing on 2 July 2012; he had decided not to inform her that it was taking place. Discussions about medical appointments, whether they be with a doctor or a General Practitioner or at a hospital or whether they were to take place on 2 or 3 July, were red herrings. If such appointments existed (and Mrs A informed the Judge on 4 July 2012 that she did not take a child to the hospital on 2 July but did take a child to the doctor on 3 July) Mrs A was not given the opportunity by the Respondent to reschedule because he did not tell her about the hearing, either before it commenced or on the evening of 2 July when he knew that the Judge wished her to be present at court. The Respondent informed the Judge of the medical appointment knowing that this was not the true reason why his wife had not attended court. He made an excuse to the Judge which he knew to be false. To suggest, as the Respondent did, that the Judge contributed to the giving of the excuse by not asking the correct question – does your wife know about this hearing? - demonstrated a worrying lack of insight and was in itself evidence of false and dishonest thinking. The Tribunal therefore had no difficulty in finding that the Respondent was in breach of Principles 1, 2 and 6 of the Principles as set out in the Appendix to this Judgment. He had failed to uphold the rule of law and the proper administration of justice; as a solicitor and officer of the court, purporting to act on behalf of himself and his wife in proceedings being heard by the Judge, he had failed to answer directly the question that he knew that the Judge was asking him in order to conceal the true reason for his wife's absence, and had dressed this up before the Tribunal by suggesting that he had answered the question that the Judge had asked him. For an officer of the court to provide misleading information to a Judge was without any doubt failing to uphold the rule of law and the proper administration of justice. The Tribunal found that the Respondent had failed to act with integrity and to behave in a way that maintained the trust that the public placed in him and in the provision of legal services. The Respondent knew what the Judge wanted to hear from him, but instead he made excuses which were wholly inconsistent with his obligation to act with integrity as an officer of the court. It was difficult to envisage a situation where trust in the Respondent and the provision of legal services would be more likely to be diminished than by such actions. Judges should not be put in the position of having to write letters of complaint about solicitors to the SRA and the fact that Judge Gerald had felt it necessary to do so provided evidence of his diminution of trust in the Respondent in particular. The Tribunal therefore found allegation 3.1, which was treated as being denied by the Respondent, proved beyond reasonable doubt.

34.3 Allegation 3.1 included an allegation of dishonesty, which was denied by the Respondent. The Tribunal considered this allegation, applying the two-limbed test for dishonesty set out in the House of Lords decision in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, which was settled law on the point. Applying the objective limb of the test, the Tribunal had to be satisfied beyond reasonable doubt that the Respondent's conduct as pleaded by the Applicant and as found proved by the Tribunal had been dishonest by the ordinary standards of reasonable and honest people. The Tribunal had no doubt that reasonable and honest people applying their ordinary standards would find the Respondent's conduct in giving the Judge false excuses as set out in paragraph 36.2 above to be dishonest. The subjective limb of the

test required that the Respondent himself had to realise that by the standards of reasonable and honest people his conduct was dishonest. The Tribunal, having read the documents and heard the evidence from the Respondent, did not accept that the Respondent did not know that his conduct on 2 July 2012 was dishonest by the standards of reasonable and honest people. In his evidence the Respondent said that it was convenient to him to give an answer which he thought was true at the time. Use of the word "convenient" satisfied the Tribunal beyond reasonable doubt that the Respondent did not believe what he told the Judge; he said what he said because his answer met his particular purpose at the time of the Judge's questioning. Even if the Tribunal was to accept that the Respondent genuinely believed that his wife had taken their child to hospital on 2 July 2012, it was dishonest of the Respondent to provide that reason to the Judge because he knew that it was not the true reason why his wife was not present in court. The honest answer to the Judge's question was "my wife is not in court because I have not told her that the hearing is taking place today and for the next two days." The Tribunal therefore found the allegation of dishonesty in respect of allegation 3.1, which was denied by the Respondent, proved beyond reasonable doubt on both limbs of the test in Twinsectra.

34.4. The Respondent admitted allegations 3.2, 3.3 and 3.4, namely that on 3 July 2012 during the course of the same proceedings he told the Judge that his wife was not present in court for the reason that she was not prepared to attend, because she refused to attend, and because she did not want to attend, when all of these reasons were untrue. The Tribunal noted the Respondent's evidence that these statements to the Judge were made within a short time of each other on the same day during the course of the same proceedings. The Tribunal interpreted the exchange as the Judge attempting to give the Respondent every opportunity to tell him honestly what was going on, in circumstances where the Judge had concerns about the Respondent acting for Mrs A when she was not in court, and where it was suggested in the Defence drafted by the Respondent that Mrs A alleged that the Respondent had exerted undue influence over her. The Tribunal noted that the Judge requested Mrs A's telephone numbers at a point shortly after the Respondent had informed him that Mrs A was not prepared to attend and refused to attend court as pleaded at allegations 3.2 and allegation 3.3. The Respondent provided landline and mobile numbers immediately and the Judge made a failed attempt to contact Mrs A by telephone in the presence of the parties in court. The Judge gave the Respondent another opportunity to tell him what was going on, which the Respondent failed to take. Instead, he made the further statement pleaded at allegation 3.4. The Judge successfully made the telephone call to Mrs A during a break, having informed the Respondent that he was going to do so. The Respondent therefore had several opportunities to correct the statements that he had given to the Judge which he failed to take. The Tribunal therefore found allegations 3.2, 3.3 and 3.4, which were admitted by the Respondent, proved beyond reasonable doubt.

34.5 Allegations 3.2 to 3.4 also included allegations of dishonesty, which appeared to be denied by the Respondent. He admitted that he had misled the Judge in respect of these allegations. He suggested that he could not distinguish a difference between misleading and dishonesty, but it was not clear whether he was saying that the words had different or the same meanings. The Respondent did however admit in his evidence that he had been dishonest (see paragraph 30.19 above). For the avoidance of any later doubt, the Tribunal considered each allegation, applying the two-limbed

test for dishonesty set out in the decision in Twinsectra Ltd v Yardley and Others *(ibid)*. The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct, as pleaded by the Applicant and which he had admitted, was dishonest by the ordinary standards of reasonable and honest people. The reason why his wife was not at court on 3 July 2012 was because she did not know of the hearing and the Respondent had not told her of the Judge's request that she be present on the evening of 2 July 2012. The Respondent by his own admission lied to the Judge. Further, the Tribunal was satisfied beyond reasonable doubt that the Respondent realised that by the standards of reasonable and honest people his conduct was dishonest. He admitted as much. The Tribunal therefore found the allegations of dishonesty in respect of allegations 3.2, 3.3, and 3.4, which were treated as being denied by the Respondent, proved beyond reasonable doubt on both limbs of the test in Twinsectra.

Previous Disciplinary Matters

35. None

Mitigation

36. The Respondent referred to the points on mitigation made in his Statements and his oral evidence. He placed emphasis on the situation in which he found himself and explained his difficulty in expressing his feelings as they were at the time. He was very concerned for his wife, having witnessed her strong emotions. The Respondent too had become distressed as a result of the difficult family issues with which he had been dealing. He was not behaving normally and also had undiagnosed health issues. The Respondent now felt more settled and was in a routine in respect of his medication. The Respondent was in a much clearer frame of mind now than before, although he and the rest of his family still had their memories which would never go away. The Respondent recognised that he had made some very serious errors of judgement in relation to his conduct in the court proceedings before His Honour Judge Gerald. He regretted what had happened but could not change past events. He apologised at the time and continued to apologise. In relation to the accounts rules breaches, the Respondent had run a long-standing practice. With hindsight, he should have closed his practice earlier. His wife had suggested that he should see a General Practitioner long before the Respondent did so, which might have helped. The Respondent should have realised that there were limitations in what he could do at work, but he had never thought that way before. The office administration had become a chore and a burden and he had put issues to one side which he should not have done. The office administration appeared to be the most expendable issue when clearly it was not. The Respondent had been found at fault, having come to the Tribunal and said he was at fault. He had complained about some of the peripheral issues, but basically he had been in the wrong.

37. The Chairman referred the Respondent to the contents of the Tribunal's Guidance Note on Sanctions. The Chairman reminded the Respondent that, in cases where dishonesty had been found proved, the sanction was striking off the Roll of Solicitors save for in the most rare and exceptional circumstances. The Chairman asked the Respondent what such exceptional circumstances, if any, he suggested the Tribunal should take into account in his case, justifying divergence from that sanction, bearing in mind that the Respondent had invited the Tribunal to impose a term of suspension.

The Respondent recognised that what he had said to Judge Gerald constituted a very serious matter. In his submission, at that particular time there were exceptional circumstances particular to the Respondent which would ordinarily never have obtained. A series of circumstances and problems had built up to that moment before Judge Gerald and had been influenced by the Respondent's desire not to have his wife go through the hearing process. The Respondent did not know to what extent his underlying undiagnosed medical illness played a part. Had the hearing occurred on another day a few years before, the events that took place would never have happened. His conduct on that day was not him. A little before October 2013, the Respondent had already decided that he did not want to practise as a solicitor again. Some time had passed since then and his physical circumstances and those in relation to his family had improved. The Respondent said that he had been thinking about the possibility at some time in the future of reapplying for his Practising Certificate. He did get distressed sometimes when he thought about what had happened, and when former clients talked to him. He thought that it would be nice in 2 or 3 years' time or another appropriate time to be able to reapply for his Practising Certificate.

38. The Solicitor Member asked the Respondent about his submission that suspension would be a fitting sanction so that he could practise again at some future time. The Solicitor Member referred the Respondent to the list of creditors which had arisen whilst he was a solicitor. The Respondent agreed that he had very substantial indebtedness. The Solicitor Member asked the Respondent whether he thought he was a good solicitor. The Respondent said that he was a good solicitor in terms of the work that he did, but was a "terrible" solicitor in relation to administration of an office. It was a sole practice, and he got on with the cases but was not good at planning. He was not interested in setting up his own practice again or being involved in that side of things. All he wanted to do in future was legal work.

39. Mr Hudson referred to the Guidance Note on Sanctions. Dishonesty constituted misconduct at the highest level. He did not wish to trespass on the Tribunal's province of deciding sanction. However, in his submission the Tribunal and the Applicant had not seen the presence of truly compelling exceptional and personal mitigation sufficient to make striking off unjust. Mr Hudson contended that, where there were instances of a solicitor having lied to the court, there were also at issue questions of protection of the public and/or the protection of the profession. The Respondent stated that, bearing in mind his situation at the time, it was difficult to see what other circumstances could be more exceptional. The Chairman confirmed that the Tribunal understood the submissions that he had made.

Sanction

40. The Tribunal retired to consider its decision on sanction. The Tribunal referred to its Guidance Note on Sanctions (September 2013) when considering the proportionate and appropriate sanction. The Tribunal had taken all the submissions in respect of mitigation into account when reaching its final decision:

40.1 The Respondent had admitted 11 allegations in the Rule 5 Statement (save for some discussion concerning the explanation for the client shortfall). He had admitted 3 allegations in the Rule 7 Supplementary Statement and had provided an equivocal admission in respect of one allegation. The Respondent had also denied the

allegations of dishonesty pleaded in respect of the 4 Rule 7 allegations, although he accepted that he had misled the Judge. All the allegations had been found proved by the Tribunal.

40.2 In deciding which sanction to impose, the Tribunal must have regard to proportionality. The most serious conduct involved dishonesty, whether or not it led to criminal proceedings and penalties. Four allegations of dishonesty in respect of one factual matrix had been found proved by the Tribunal. This intimated that the sanction to be imposed by the Tribunal would be to strike the Respondent's name off the Roll of Solicitors, save for in exceptional circumstances which were rare. The Tribunal was well aware of the full range of sanctions open to it, but in view of the dishonesty allegations found proved, the Tribunal started from the premise that the appropriate and proportionate sanction for the protection of the public and the maintenance of public confidence in the reputation of legal services providers was striking off the Roll.

40.3 The Tribunal had been at some pains to identify with the Respondent what he considered to be the exceptional circumstances in his case. He referred to the situation that he found himself in at the time in relation to what were clearly very difficult personal family matters. Dishonesty which involved the deliberate misleading of a Judge by an officer of the court in the course of court proceedings was, in the view of the Tribunal, dishonesty of the most serious kind. This was repeated dishonesty, albeit over a short period of two days, during which the Respondent was given opportunities by the Judge to correct his false and misleading statements. Such conduct was inevitably damaging to the trust that the public placed in providers of legal services, and in particular, solicitors, which in turn damaged the reputation of the profession. This was misconduct which the Respondent knew or ought reasonably to have known was in material breach of his obligations as a solicitor to protect the public and the reputation of the profession, and the manner in which he should behave in court when answering questions posed by a Judge. One might put more store by the Respondent's suggestion that he had dug himself into a hole had the misleading of the Judge taken place on one occasion on one day for a short period. That was not the case here, where the misconduct occurred on four occasions over a period of two days. The Respondent had time to think about his position overnight on 2 July 2012. The Judge had given him every opportunity and a strong hint that he should do so by requesting that the Respondent's wife attended court on 3 July. The Respondent was solely culpable for his decision not to tell his wife about the hearing either before 2 July or on the night of 2 July 2012. No one else was to blame but the Respondent. Further, the Respondent's conduct on 3 July 2012 was planned to the extent that he knew what the Judge wanted, namely his wife to attend court, but he had not told his wife of that request and he lied to the Judge on three separate occasions in a premeditated manner. The Respondent's lies were unconvincing to the Judge who insisted on calling Mrs A himself, with the Respondent's full knowledge, but still he said nothing. The Judge was rightly very concerned about the protection of Mrs A's interests which was why he took this unusual step. The Respondent had placed himself in a position of trust in respect of the management of her interests in the proceedings which he had, in the view of this Tribunal, broken. He was a solicitor well used to carrying out litigation and familiar with the court process, which made his actions inexcusable. The Respondent was in direct control and had sole responsibility for the circumstances giving rise to his misconduct.

40.4 The Tribunal took into account the Respondent's previous good character. He was given credit for the admissions that he had made relatively promptly. In his oral evidence, the Respondent accepted that he had lied and had been dishonest in three out of the four allegations in the Rule 7 Supplementary Statement. He said that he had argued the points that were important to him. The Tribunal noted the letter in mitigation from the Respondent's wife dated 19 July 2014, which it read carefully. The Tribunal recognised that the Respondent found himself in very difficult and demanding personal situations from late 2009 onwards. However the Tribunal did not accept that those circumstances and situations were exceptional in the context of respondents who appeared before this Tribunal. Time and time again the Tribunal had to determine cases and impose sanction on those in very similar circumstances. Many, if not all solicitors, suffered from similar difficult and tragic personal situations at some point in their career but the overwhelming majority did not resort to dishonesty. The Respondent had provided no medical evidence to substantiate his underlying medical condition or the length of time for which he had suffered from the same. It was made clear in the Tribunal's Guidance Note on Sanctions at paragraph 45 that such evidence was an essential requirement if a medical condition was to be relied upon when the Tribunal considered the imposition of sanction.

40.5 The Tribunal's findings of dishonesty were of primary importance. However the Tribunal must not overlook the admissions and its findings in respect of the accounts rules breaches set out in the Rule 5 Statement, all 11 of which had been admitted (save for the discussion concerning the nature of the client shortfall) and found proved. The Tribunal took a dim view of the accounts rules breaches. The Respondent had not produced accounts for 3 years and had flouted the conditions imposed by the SRA on his Practising Certificate that he should produce half yearly accounts. The Respondent seemed to think that it was unfair that he had been required to produce two accountants' reports each year because he was unable to achieve the provision of one. The Tribunal had difficulty in understanding this thought process. These matters were very serious absent any allegation of dishonesty. The Respondent was aware that he was getting into difficulty because he "had lost his energy and enthusiasm" from late 2008 onwards. He obtained extensions of time from the SRA. He said that by 2010 he had "given up" yet he continued to practise until the intervention by the SRA in May 2013. The regular filing of accounts was one of the cornerstones of the SRA's proactive and rigorous regulation of the profession. The Respondent should have ensured that he obtained help with the administration of his office; this would have been the action of a responsible sole practitioner who knew that he was struggling. The Respondent said that he did not have to look for work and that he had many regular long-standing repeat clients. On that basis he could have afforded to recruit assistance in the office on a full-time basis if that was necessary or could have instructed external accountants to resolve his accounting issues and to bring the documents up to date. The Tribunal would have been minded to strike the Respondent's name off the Roll of Solicitors or to impose a lengthy period of suspension for the accounts rules breaches alone taking all the circumstances into consideration. As it was, the findings of dishonesty on the Rule 7 Supplementary Statement allegations made the sanction of striking off inevitable.

40.6 The Tribunal therefore ordered that the Respondent's name should be struck off the Roll of Solicitors with immediate effect.

41. **Costs**

41.1 There was an application for costs of £25,044.88 on behalf of the Applicant, as set out in a Schedule dated 11 July 2014 handed up to the Tribunal. A copy of the Schedule had been served by Mr Hudson on the Respondent. The Schedule included costs to be claimed by the Applicant in respect of its internal costs and Pennington Manches LLP's costs. The Applicant effectively dealt with two sets of proceedings brought together by means of the Rule 7 Supplementary Statement, which was only fair to the Respondent. Time was spent in perusal of papers and in preparation of both the Rule 5 Statement and Rule 7 Supplementary Statement, and in respect of the former the witness statement of Mr Whitmarsh. The amount of time engaged had been identified and costed. Mr Hudson submitted that the costs incurred were reasonable. The Rule 5 Statement had to be considered to a greater extent than appeared from the bundle because there were necessarily additional files which had to be looked at to ensure that the materials placed before the Tribunal were the sum total of the evidence that should be submitted. The Tribunal would have seen that the Applicant was not assisted by the Respondent's failure over a number of months to provide a complete Answer to the Rule 5 Statement. That document was only provided very recently, and also included Mr Hudson having to ask for directions at a Case Management Hearing. The Solicitor Member asked Mr Hudson whether that hearing related only to pages missing from the Statement. Mr Hudson agreed. Penningtons did not know how many pages were missing because the pages were not paginated. When read, the Statement did not make sense. Penningtons pointed out to the Respondent that there were missing pages, and it took a number of months before they were received. In the event only 2 pages were missing. The Respondent said that he sent copies to Penningtons but it was not clear to him what was missing until he received a recent email. He looked at his copy and saw that paragraphs were missing which he copied to Penningtons from his original draft Statement. Mr Hudson said that the Answer was served on 25 February 2014. On 27 February 2014 Penningtons wrote to the Respondent to request a complete copy, and Mr Hudson read that letter to the Tribunal. The Applicant did not accept what was said regarding bafflement as to what was required. These events had delayed the Applicant in its consideration of the Statement and also generated unnecessary communications. The drafting of the Rule 7 Supplementary Statement was relatively straightforward, but still required consideration of the documents in a careful way.

41.2 Mr Hudson invited the Tribunal to assess summarily the costs set out in the Schedule. He confirmed that a notice had been sent to the Respondent under Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 3645 (Admin). The Respondent replied with the Official Receiver's letter and relatively sparse "Personal Financial Statement". The Applicant was aware that the Respondent had been made bankrupt. It also had Office Copy Entries in respect of the Register relating to the matrimonial home, which were handed up to the Tribunal. These showed that the Respondent and his wife had owned the property since 1992 subject to a charge in favour of a bank (not the Bank which brought the proceedings against the Respondent and his wife). The Respondent interjected that that charge had been cleared under his agreement with the Bank. Mr Hudson had also approached the Official Receiver who had provided information which was handed to the Tribunal on a strictly limited confidential basis and in consequence is not detailed in this Judgment. The Tribunal briefly read the document provided, and Mr Hudson did not address the Tribunal on

the specific contents. The Respondent corrected an error in relation to a date. Having seen that information, the Applicant applied for an immediately enforceable order for costs without restriction. If such an order was made, there would be discussions with the Trustee in Bankruptcy as to what funds may be available in terms of assets after the Trustee in Bankruptcy has completed his investigations and administered the estate.

41.3 The Chairman referred Mr Hudson to the date of the letter of complaint from Judge Gerald to the SRA, 5 July 2012. He observed that the Rule 5 Statement was dated 26 November 2013, at which point the letter from the Judge had been received by the SRA more than 12 months before. The Rule 7 Supplementary Statement was dated 6 May 2014. It was clear that the subject matter of the Judge's letter was known to the SRA long before the Rule 5 matters were processed. The Chairman asked Mr Hudson why the two matters were not dealt with together to save time and costs. Mr Hudson said that he would need to look for information in the files to answer the question. He was first instructed on the Rule 7 matters after the Rule 5 Statement had been issued. He did not have the information at his fingertips in relation to what happened concerning the Rule 7 matters within the SRA. He offered to look at the files. The Tribunal retired to read the Official Receiver's information while further investigations were carried out.

41.4 On resumption of the hearing, the Chairman asked Mr Hudson to direct the Tribunal to the purpose behind looking at the document from the Official Receiver. Mr Hudson identified the key points. There was no independent valuation of the matrimonial home before a transfer took place. There may be further enquiries to be made in respect of the transfer. The valuation came from the Respondent. It was not clear whether there had been independent verification of the debts, and in particular private loans. There were a number of matters which needed to be looked into before a view could be taken as to whether there were net assets. Mr Hudson submitted that the Tribunal should make a summary assessment of costs based on the work done.

41.5 The Respondent submitted that he did not know whether the time spent was excessive. He was already in discussion with the SRA about the accounts rules breaches long before the matter came to court, went to Penningtons and the SRA intervened. In those circumstances, this was not the most difficult of cases. The Applicant knew well in advance and it was clear from the Respondent's Statements, that he was effectively admitting all bar certain issues which were important to him, but which were not necessarily relevant in terms of the final outcome and the determination of the case. The Respondent wondered whether too much time had been spent or allocated to the case when compared with the general work described in the costs schedule. He adopted the comments of the Chairman concerning the timing of the complaint by Judge Gerald to the SRA and the issuing of the proceedings before the Tribunal. The Judge copied the Respondent into his letter to the SRA. This had been hanging over the Respondent for some time. It was a puzzle to the Respondent as to why the SRA did not get on with the case. The Respondent had accepted that he had done what it was said he had done. He had apologised to the Judge. Again this was not the most difficult of cases. This was a situation where all matters could have been dealt with in one go.

41.6 Mr Hudson provided the Tribunal with a brief chronology of events. The Judge's letter was dated 5 July 2012. The SRA department charged with looking into those matters realised that it was necessary to obtain the CD recordings of the hearing from the court in order to prepare the transcripts. They had difficulty in obtaining the CDs. In September 2013, a representative from the SRA's Supervision Department met with a representative from the Legal Department to discuss the situation and also to discuss which allegations might be pursued amongst those identified by the Judge. The person dealing with the matter in the Supervision Department went on maternity leave at the end of November 2013 with the problem still not having been resolved. When the file went to the Legal Department in March 2014, that department decided that it should take over the task of obtaining the CDs which they did in short order. The matter was authorised for referral to the Tribunal on 23 April 2014 and lodged on 6 May 2014. Mr Hudson confirmed that it had taken from July 2012 to March 2014 for the SRA to obtain the CDs.

41.7 The Tribunal decided that summary assessment of costs was appropriate in the circumstances of this case, where the Respondent was bankrupt and referral to detailed assessment would effectively run up additional costs to be borne either by the Respondent or the profession. Taking a broad brush approach, the Tribunal considered that the costs claimed by the Applicant as set out in the Schedule should be reduced from £25,044.88 to £21,500. This reduction was intended to reflect what the Tribunal considered to be an excessive amount of time (14 hours) spent on preparation for hearing. It also appeared that there was some duplication in respect of the cost of preparing witness statements. Penningtons had recorded 21 units for drafting and preparing a witness statement (in addition to time claimed for preparing the Rule 5 and Rule 7 Statements). Mr Whitmarsh prepared his own report, and his witness statement ran to 3 A4 pages. It was difficult to identify why preparation of that statement should have taken experienced solicitors just over 2 hours. The Tribunal had particular concerns about the requirement for a Rule 7 Supplementary Statement. It should not have been necessary for such a Statement to be issued by the Applicant. The events complained of occurred in July 2012 and were notified to the SRA very promptly by His Honour Judge Gerald on 5 July 2012, being the day after the hearing at which the events occurred. The Tribunal could not understand why it had taken the various departments at the SRA from July 2012 until March 2014 to obtain recordings of the hearing. The Rule 5 Statement was dated 26 November 2013, but the Tribunal was informed by Mr Hudson that a meeting took place between the relevant departments of the SRA in September 2013 at which the allegations to be made in respect of the Judge's complaint were discussed. The Tribunal had to ask itself the question why the SRA proceeded with the Rule 5 Statement when it knew that there were allegations pending subject to obtaining the recordings. It should have been a simple enough matter for the SRA to have issued one set of proceedings in November 2013.

41.8 The Tribunal considered carefully whether an order for immediate payment of £21,500 in respect of costs should be made against the Respondent. It had reviewed the "Personal Financial Statement" provided by the Respondent to the Applicant and the Tribunal, and the Report from the Official Receiver. The Tribunal noted that the Respondent was currently an undischarged bankrupt. It agreed with Mr Hudson that there were further enquiries to be carried out and discussions to take place in relation to the Respondent's financial circumstances, both by the Trustee in Bankruptcy and

the Applicant. In those circumstances there was no prejudice to the Respondent in making an immediately enforceable order for costs against the Respondent in the sum of £21,500 and the Tribunal so ordered. No doubt that costs order would join the queue of the Respondent's creditors.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, Andreas Erothodos Alexandrou, 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 summarily assessed and fixed in the sum of £21,500.00

DATED this 9th day of September.2014
On behalf of the Tribunal

A. G. Gibson
Solicitor Member

On behalf of J.A. Astle, Chairman

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11205-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREAS EROTHODOS ALEXANDROU Respondent

Before:

Mr J. A. Astle (in the chair)
Mr A. G. Gibson
Mr G. Fisher

Date of Hearing: 22 July 2014

APPENDIX

The Solicitors' Accounts Rules 1998

Rule (1) - Principles

A solicitor must comply with the requirements of Rule 1 of the Solicitors' Code of Conduct 2007, and in particular must:

(a) ...
(b) ...
(c) ...
(d) ...

(e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules; **(Allegation 1.1)**

(f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust; **(Allegation 1.2)**

(g) ...
(h) ...
(i) ...

Rule 32(1) – Accounting records for client accounts, etc

Accounting records which must be kept

A solicitor must at all times keep accounting records properly written up to show the solicitor's dealings with:

(a) client money received, held or paid by the solicitor; including client money held outside a client account under rule 16(1)(a) or rule 17(ca); and

(b) [deleted]

(c) any office money relating to any client or trust matter.

(Allegation 1.4)

Rule 32(2)

All dealings with client money must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each client (or other person, or trust).

No other entries may be made in these records.

(Allegation 1.5)

Rule 32(7)

Reconciliations:

The solicitor must, at least once every fourteen weeks in the case of money held by solicitor-trustees in passbook-operated separate designated client accounts, and at least once every five weeks in all other cases:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which the solicitor holds client money under rule 16(1)(a) or rule 17(ca), and any client money held by the solicitor in cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

(Allegation 1.6)

Rule 7 – Duty to remedy breaches

(1) Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

(2) In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the practice. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the Solicitors' Indemnity or Compensation Funds or on the firm's insurance.

(Allegation 1.7)

Rules 35(1) and (2) – Delivery of accountants' reports

(1) A solicitor who or which has, at any time during an accounting period, held or received client money, or operated a client's own account as signatory, must deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period. This duty extends to the directors of a company, or the members of an LLP, which is subject to this rule.

(2) In addition the SRA may require the delivery of an accountant's report in circumstances other than those set out in paragraph (1) above if the SRA has reason to believe that it is in the public interest to do so.

(Allegation 1.8)

Solicitors Regulation Authority Accounts Rules 2011

Rule 1: The overarching objective and underlying principles

Rule 1.2(e) You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

(a) ...
(b) ...
(c) ...
(d) ...

(e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules; **(Allegation 1.1)**

(f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust; **(Allegation 1.2)**

(g) ...
(h) ...
(i) ...

Rule 20.6: Withdrawals from a client account

Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts (except as provided in rule 20.7 below).

[Rule 20.7 - You may make a payment in respect of a particular client or trust out of a general client account, even if no money (or insufficient money) is held for that client or trust in your general client account(s), provided:

(a) sufficient money is held for that client or trust in a separate designated client account;

and

(b) the appropriate transfer from the separate designated client account to a general client account is made immediately.]

(Allegation 1.3)

Rule 29.1, 29.2 and 29.12 – Accounting records for client accounts, etc

Accounting records which must be kept

29.1 You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and

(b) any office money relating to any client or trust matter.

(Allegation 1.4)

29.2 All dealings with client money must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each client (or other person, or trust).

No other entries may be made in these records.

(Allegation 1.5)

Reconciliations:

29.12 You must, at least once every five weeks:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

(Allegation 1.6)

Rule 7 – Duty to remedy breaches

7.1 Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

7.2 In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund.

(Allegation 1.7)

Rules 32.2 and 32.1 – Delivery of accountants' reports

32.1 If you have, at any time during an accounting period, held or received client money, or operated a client's own account as signatory, you must deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period. This duty extends to the directors of a company, or the members of an LLP, which is subject to this rule.

32.2 In addition the SRA may require the delivery of an accountant's report in circumstances other than those set out in rule 32.1 above if the SRA has reason to believe that it is in the public interest to do so.

(Allegation 1.8)

Rule 17.5 – Receipt and transfer of costs

A payment for an agreed fee must be paid into an office account. An "agreed fee" is one that is fixed - not a fee that can be varied upwards, nor a fee that is dependent on the transaction being completed. An agreed fee must be evidenced in writing.

Solicitors' Code Of Conduct 2007

Rule 1 – Core Duties

Rule 1.04 – Best interests of clients

You must act in the best interests of each client.

Rule 1.06 – Public confidence

You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession.

(Allegation 2.1)

Solicitors Regulation Authority Principles 2011

1: SRA Principles

These are mandatory Principles which apply to all.

You must:

1. uphold the rule of law and the proper administration of justice; (**Allegation 3)**
2. act with integrity; **(Allegation 3)**
3. ...
4. act in the best interests of each client; **(Allegations 2.1, 2.2, and 2.3)**
5. provide a proper standard of service to your clients; **(Allegation 2.3)**
6. behave in a way that maintains the trust the public places in you and in the provision of legal services; **(Allegations 2.1, 2.2, 2.3, and 3)**
7. ...
8. ...
9. ...
10. protect client money and assets. **(Allegations 2.1 and 2.2)**

SRA Code Of Conduct 2011
Outcome O(1.2)

You must achieve these outcomes:

O(1.2) you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice; …