SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11213-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ADRIAN PATRICK SHAUN DANN Respondent

Before:

Mr K. W. Duncan (in the chair)
Mrs J. Martineau
Mr S. Marquez

Date of Hearing: 3 March 2015

Appearances

Ms Katrina Wingfield, solicitor advocate, of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR, for the Applicant.

Mr Daniel Attridge, counsel, of Trinity Chambers, Highfield House, Moulsham Street, Chelmsford, Essex CM2 9AH, instructed by Cooper Lingard Solicitors, Watson House, Broadway West, Leigh-on-Sea, Essex SS9 2DA, for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Adrian Patrick Shaun Dann, in a Rule 5 Statement dated 30 December 2013 were that:

1.1 He improperly applied clients' funds towards:

1.1.1 the repayment of a loan taken out in respect of an unconnected client matter;

1.1.2 the settlement of his costs on an unconnected client matter.

in breach of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("AR 2011").

1.2 He improperly credited clients' funds to the ledger of an unrelated client matter, in breach of AR 2011 Rules 1.2(f), 29.1 and 29.2.

1.3 He caused:

1.3.1 The client ledger on the Marks Court Phase 1 matter to become overdrawn by up to £93,110.91; and
1.3.2 A minimum client account shortage of £85,270.97 as at 28 February 2013

in breach of AR 2011 Rule 20.6.

1.4 He brought about improper inter-ledger transfers of client funds in breach of AR 2011 Rule 27.1.

1.5 He failed without good reasons to:

1.5.1 redeem a client's mortgage for a month after receiving the necessary funds;

1.5.2 complete the lease extensions of clients within a reasonable period; and

1.5.3 register the new leases of 33 clients within a reasonable period

in breach of Principles 5 and 6 of the SRA Principles 2011 ("the Principles") and thereby failed to achieve Outcome O(1.5) of the SRA Code of Conduct 2011 ("the Code").

1.6 He failed to provide the best possible information to clients about his costs, in breach of Principles 5 and 6, and thereby failed to achieve Outcome O(1.13) of the Code.

1.7 He failed to comply with/perform undertakings within a reasonable time, in breach of Principle 6, and thereby failed to achieve Outcome O(11.2) of the Code.

1.8 It was alleged that each instance of the Respondent's conduct described at allegations 1.1, 1.2 and 1.4 above comprised a breach of Principles 2, 6 and 10.

1.9 It was alleged that the Respondent's conduct described at allegation 1.3 above comprised a breach of Principles 6 and 10.

1.10 It was alleged that the Respondent's conduct in respect of allegations 1.1, 1.2, 1.3 and 1.4 (as more specifically set out below) was dishonest.

Documents

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

Applicant:-

- Application dated 30 December 2013
- Rule 5 Statement, with exhibit "KEW1", dated 30 December 2013
- Witness statement of Roger Exell, with exhibit, dated 20 May 2014
- Witness statement of Stewart Somers, with exhibit, dated 26 August 2014
- Witness statement of David Bailey dated 15 October 2014.
- Schedule of costs dated 23 February 2015

Respondent:-

- Answer to Rule 5 Statement dated 12 February 2014
- Further Answer to Rule 5 Statement dated 1 October 2014
- Letter from Cooper Lingard to Pennington Manches LLP dated 27 February 2015, with schedule of admissions
- Letter/testimonial from Cooper Lingard dated 2 March 2015.

Preliminary Matters – Admissions

3. The Tribunal noted that the Respondent had denied many of the allegations in his Answer and Further Answer. However, the letter of 27 February 2015 indicated that the Respondent admitted all of the allegations, save for that of dishonesty (allegation 1.10). This case had been listed with a time estimate of three days, but in the light of the recent admissions the time estimate had been reduced.

4. Mr Attridge, counsel for the Respondent, confirmed that the Respondent admitted all of the allegations but denied he had acted dishonestly.

Factual Background

5. The Respondent was born in 1957 and was admitted to the Roll of Solicitors in 1982. At the time of the hearing, the Respondent held a current Practising Certificate, which was subject to conditions and was in approved employment with Cooper Lingard Solicitors in Essex.

6. At all relevant times the Respondent practised on his own account under the style of Adrian Dann & Company (Solicitors) Limited ("the Firm") from offices at Admiral House, 18 Nelson Street, Southend-on-Sea, Essex SS1 1EF.

7. An inspection of the books of account and other documents of the Respondent commenced on 18 March 2013 and was carried out by a Forensic Investigation Officer ("FIO") of the Applicant, Mr David Bailey. The Forensic Investigation Report ("FIR") produced by Mr Bailey was dated 15 April 2013 and was relied on by the Applicant, together with its exhibits.

8. On 8 May 2013 the Applicant intervened into the Firm.

9. On 8 July 2013 the Respondent was sent a copy of the FIR and was asked to comment on the matters in that report. The Respondent replied on 2 August 2013. On 6 September 2013 an Authorised Officer of the Applicant decided to refer the Respondent's conduct to the Tribunal.

10. Following the intervention into the Firm, the Applicant received complaints that the Respondent had failed to register new leases completed for clients at the Land Registry. On 11 October 2013 the Applicant sought the Respondent's comments on those complaints; the Respondent replied on 26 October 2013. On 25 November 2013 an Authorised Officer of the Applicant decided to refer the Respondent's conduct in respect of those matters to the Tribunal.

Cash shortage on Marks Court matter

11. The Respondent was instructed by owners of flats in an area known as Marks Court in Essex in respect of extending their leases. These extensions were done in two phases, Phase 1 and Phase 2, and separate files and ledgers were operated for the two phases. In this judgment, references to Marks Court are to Phase 1, unless otherwise specified. The Respondent dealt mainly with a Mr Exell, who was Chair of the Residents' Committee and liaised with the owners of the flats at Marks Court.

12. The Respondent was instructed on behalf of (initially) 44 leaseholders at Marks Court, in or about February 2011; over time, several of the leaseholders dropped out of Phase 1, such that towards the end of 2011 the Respondent was instructed on behalf of 37 leaseholders. The Respondent sent a letter to Mr Exell on 9 February 2011 setting out his terms of business and costs estimate, which made provision for discounts depending on the number of leaseholders who gave instructions, and for the costs of Leasehold Valuation Tribunal ("LVT") proceedings, if those were necessary.

13. On 27 April 2011 Mr Exell forwarded a cheque for £30,392.76 to the Respondent which, he understood, was the sum required to cover a 10% deposit for the premium estimated for the lease extensions and 50% of the Respondent's fees.

14. LVT proceedings were required and were settled in April 2012, when the premiums and terms of the new leases were settled; Mr Exell arranged for the payment of £8,056 in respect of the 2LVT costs in May 2012.

15. On 8 June 2012 the Respondent sent to Mr Exell a letter setting out the balance of premium required in respect of each of the 37 properties which remained in Phase 1, together with the balance of the Respondent's fees. The total sum requested was £244,316.50. Mr Exell arranged for payment by way of a transfer of £238,315.50 (sic) on 22 June 2012 and a cheque for £6,000 on 25 June 2012.

16. During November 2012 the Respondent completed the lease extensions of 23 of the Marks Court Phase 1 properties and in doing so made payments of £6,047.03 on 1 November 2012 and £128,533.68 to Tolhurst Fisher, solicitors for the landlord by way of completion monies i.e. a total of £135,580.71 was disbursed in completion monies.

17. The lease extensions of the remaining 14 properties in Marks Court Phase 1 was due to complete on 19 December 2012. As at 17 December 2012 the balance on the client account ledger for this matter was £2,203.83; there were no further receipts on that ledger until 7 January 2013. In the period June to December 2012, over £114,000 was transferred from client to office ledger on the Marks Court matter with notes on the ledger indicating those transfers were in respect of costs.

18. On 19 December 2012 the Respondent made a payment of £91,285.34 to Tolhurst Fisher in respect of the completion of the lease extensions. The client ledger showed that immediately after this transfer, the client account in this matter was in debit in the sum of £90,900.31. Further payments out in respect of the Marks Court matter increased the debit balance to £93,110.91 by 10 January 2013.

Billing on Marks Court matter Phase 1/provision of costs information

19. As noted above, on 9 February 2011 the Respondent sent to Mr Exell, on behalf of the Marks Court residents, a letter containing detailed provisions concerning charges for the work on the Marks Court lease extensions. The letter provided for a discount of 66% if more than 20 leaseholders confirmed instructions (as proved to be the case) and provided for contingencies such as proceedings before the LVT.

20. The FIO reviewed the costs provisions and calculated that the Respondent's profit costs on the Marks Court matter (Phase 1) should not have exceeded £59,280.16 after taking into account discounts and contingencies. The FIO calculated that the total sum billed by the Respondent on this matter, after taking account of credit notes worth £24,169.66, was £108,388.70 i.e. £49,108.54 more than the FIO had calculated was the maximum amount properly due to the Respondent. A schedule of invoices and credit notes was provided with the FIR.

21. The FIO reported that in respect of an invoice dated 20 July 2012, the Respondent had transferred to office account £2,000 more than the sum on the invoice; £17,784.20 was transferred, whilst the invoice was for £15,784.20).

22. In interview with the FIO on 3 April 2013 the Respondent said that he had informed Mr Exell verbally of the costs position but had not made an attendance note of that conversation.

23. There was a letter on the file dated 9 August 2012 from the Respondent to Mr Exell which referred to the recent issue of proceedings in Southend County Court relating to the 37 flats in Phase 1, for which a Court fee of £175 per flat had been paid and additional costs of £260.40 per flat had been incurred in respect of each flat. The letter referred to there being a request in the Court proceedings for the landlord to pay those costs and stated,

> "There is, as I have said, always an outside possibility that I will have to acquire these additional funds from you and your colleagues in order to complete. However, please reassure your colleagues that, as I have said, I do not anticipate that this will be necessary…"

(Mr Exell stated in his witness statement in these proceedings that he did not believe he had received this letter). The FIO's calculation of the maximum costs due to the Respondent included the figures in respect of the County Court proceedings noted above. A Tomlin Order made in the County Court proceedings in October 2012 provided for the landlord to pay the costs of the proceedings in the sum of £10,915.

24. In a letter to the Applicant dated 2 August 2013 the Respondent stated that the Marks Court matter had been extremely complex and time consuming and that the bills raised were, in his view, at the time justified; a general reconciliation would have taken place at the end of the transaction.

Inter-ledger transfers of funds to the Marks Court matter

25. On two occasions funds were transferred to the Marks Court ledger from the ledgers of clients who were unconnected with the Marks Court matter.

Mr and Mrs R – Sale of 1 SW

26. The Respondent acted for Mr and Mrs R in the sale of 1 SW.

27. On 18 December 2012 the sum of £113,784.16, which comprised sale proceeds, was credited to Mr and Mrs R's client ledger. On 21 December 2012 the Respondent provided an undertaking to the buyer's solicitors to discharge the mortgage over 1 SW and to forward the DS1 (confirming the discharge of the mortgage) to them upon receipt. It would not be possible for the buyer's solicitors to register the transfer of the property at the Land Registry without the DS1 form.

28. On 14 January 2013, an inter-ledger transfer of £97,843.56 took place from the client ledger of Mr and Mrs R to the Marks Court matter.

29. On 21 January 2013 the Legal Ombudsman ("the LeO") informed the Respondent in a letter that Mr R had lodged a complaint in respect of the Respondent's failure to redeem the mortgage over 1 SW.

30. On 22 January 2013 £55,000 was received into the client bank account and credited to the Marks Court ledger with the narrative "loand (sic) to client". These funds comprised a loan taken out by the Respondent. Following receipt of these funds, on 22 January 2013, the Respondent made an inter-ledger transfer of £97,659.12 from the Marks Court ledger to the ledger of Mr and Mrs R, following which there was a debit balance of £9,800.95 on the Marks Court ledger. On the same date, £98,579.72 was remitted to NatWest to redeem the mortgage over the property.

31. In a written statement provided to the FIO, the Respondent said:

31.1 The Firm had been due to close over Christmas from noon on 20 December 2012 to 2 January 2013;

31.2 In the rush to get things done in advance of this, he had failed properly to check a CHAPs form, with the result that he mistakenly sent completion funds on the Marks Court matter instead of redemption funds to Nat West in respect of Mr and Mrs R's mortgage;

31.3 The error was not identified until the New Year, following which he began negotiations for a personal loan to cover the shortfall;

31.4 When the loan funds were available on 21 January 2013, he redeemed Mr and Mrs R's mortgage.

Mr and Mrs M – Estate of CP (deceased)

32. The Respondent was instructed by Mr and Mrs M in respect of the administration of the estate of CP (deceased).

33. On 29 and 31 January 2013 respectively, the sums of £2,356.56 and £16,168.10 were credited to Mr and Mrs M's client ledger following the closure of the deceased's bank accounts.

34. On 1 February 2013 an inter-ledger transfer of £8,085.73 was carried out from Mr and Mrs M's client ledger to the Marks Court ledger. On the same date, there was a "paper" transfer of £10,000 from the Marks Court client account ledger to the office account ledger with the narrative "Tfr repay office loan". On the same date, there was a corresponding physical transfer of funds from the Firm's client bank account to the office account, followed by a physical transfer of £10,000 from the office account to the Respondent's private account.

Funds wrongly credited to Marks Court ledger

35. On 6 occasions, funds received on behalf of clients unconnected with the Marks Court matter were wrongly credited to the Marks Court client ledger.

Mr NK and Ms LP – 15 V Drive

36. On 11 January 2013, £15,960.65 from Alan Simpson & Co, solicitors, ("AS & Co") was credited to the Marks Court client ledger.

37. These funds had been received on behalf of Mr NK and Ms LP and comprised completion monies for the extension of a lease by one of their tenants, for whom AS & Co were acting. On 10 January 2013 the Respondent had received a letter from AS & Co asking that the funds be held to order pending completion of the new lease. At the time to FIR was being finalised (early April 2013) the transaction had not completed and no funds had been credited to Mr NK and Ms LP's ledger. An updated ledger for the Marks Court matter showed that on 15 April 2013 (the date of the FIR) £52,043.08 received from Mr Exell was posted to the Marks Court ledger, following

which corrective inter-ledger transfers were made to the six clients whose matters are discussed in this section.

38. In interview with the FIO on 3 April 2013, the Respondent: confirmed that he understood "held to order" to mean that the relevant funds could not be used for any other purpose; and said that he had credited the funds to the Marks Court ledger by mistake.

Mrs JM 4 TO

39. On 28 January 2013, £10,952.20 was credited to the Marks Court matter.

40. The Respondent was acting for Mrs JM in respect of a lease extension over her property, and the funds provided by Mrs JM were to be used to settle the premium agreed with the landlord, plus costs and should have been credited to her ledger.

41. At the time the FIR was being finalised, Mrs JM's new lease had not been completed and no funds had been credited to her ledger. As noted at paragraph 37 above, following the receipt of funds from Mr Exell on 15 April 2013, corrective inter-ledger transfers were made.

42. On 28 January 2013, following the incorrect crediting of Mrs JM's funds to the Marks Court ledger, a paper transfer of those funds to the office account ledger was made, with the narrative "Tfr part repay loan". On the same day, there was a corresponding physical transfer of those funds from the Firm's client bank account to its office bank account, following which there was a physical transfer of those funds to the Respondent's private bank account.

Ms LH – 17C TG

43. On 30 January 2013, £16,837 was credited to the Marks Court client ledger.

44. The Respondent acted for Ms LH in respect of the extension of the lease over her property. The payment of £16,837 received on 30 January 2013 comprised completion monies of £15,990 plus costs, sent by Ms LH, which funds should have been credited to her ledger.

45. Following receipt of these funds, a paper transfer from client to office account ledger was carried out, with the narrative "Marks Court tfr part loan". On the same day, there was a corresponding physical transfer of funds from the Firm's client bank account to its office account, following which there was a physical transfer of those funds from office account to the Respondent's private bank account.

46. On 14 February 2013 completion monies in the sum of £15,990 were paid from the Firm's client bank account to the solicitors acting for Ms LH's landlord. This payment was debited against the Marks Court client ledger, resulting in a debit balance of £1,914.27 on that ledger.

Mr SS – 224A R Road

47. On 1 February 2013, £6,430.80 was credited to the Marks Court ledger.

48. The Respondent was acting for Mr SS in respect of a lease extension over his property. The funds received on 1 February 2013 comprised completion monies of £6,000 plus costs, sent by Mr SS, and should have been credited to his ledger. The narrative against the Marks Court ledger entry was Mr SS's name.

49. The balance on the Marks Court client account ledger immediately prior to receipt of Mr SS's funds was nil. On the date of receipt, £1,848 was physically transferred from the Firm's client bank account to its office account in settlement of in an invoice for the Respondent's costs on the Marks Court matter; £1,848 of Mr SS's money was thereby used to pay part of the Respondent's costs on the Marks Court matter.

50. At the time the FIR was being finalised the transaction had not completed and the £6,430.80 provided by Mr SS had not been credited to his ledger. Corrective inter-ledger transfers were made following receipt of funds on the Marks Court matter on 15 April 2013.

Ms ES – 41 LG

51. On 7 February 2013, £11,824.33 was credited to the Marks Court ledger.

52. The Respondent acted for Ms ES in respect of the extension of the lease over her property. The £11,824.33 received by the Respondent from Ms ES on 7 February 2013 comprised completion funds plus costs and disbursement and should have been credited to her ledger. The narrative against the Marks Court ledger entry was Ms ES's name.

53. On receipt of the funds from Ms ES, there was a paper transfer of £10,877.72 from the Marks Court client ledger to the Firm's office ledger account.

54. At the time the FIR was finalised, the transaction had not completed and the funds provided by Ms ES had not been credited to her ledger. Corrective inter-ledger transfers occurred following receipt of funds on the Marks Court matter on 15 April 2013.

Marks Court Phase 2

55. As noted above, the Respondent acted for residents of Marks Court in relation to a second phase of lease extensions. This work was conducted on a separate file, with a separate client ledger account.

56. On 19 February 2013, £3,699.01 was received on behalf of the residents in Phase 2. Those funds were incorrectly credited to the ledger of Phase 1. On 22 February 2013 £2,841.74 was paid out of the Phase 1 client ledger to "Long Term Reversions" in respect of completion funds. As the balance against the ledger immediately prior to receipt of the funds on 19 February 2013 was £825.27, at least a portion of the funds

provided by the leaseholders in relation to Phase 2 was utilised towards the payment made on the Phase 1 matter.

Respondent's representations in relation to funds wrongly credited to the Marks Court ledger

57. In his letter to the Applicant dated 2 August 2013 the Respondent said it was true that in the early part of the year he "lost focus and inadvertently allowed receipt (sic) to be credited to the wrong accounts". He went on to say that he did not do this deliberately, and no client had suffered because of the error.

Inter-ledger transfers using credit notes

58. The FIO identified four instances where the Respondent used a process of invoices and credit notes to bring about "paper" transfers of funds to the Marks Court ledger from ledgers of clients unconnected to the Marks Court matter.

59. The process used involved the Respondent raising invoices, which the Applicant alleged were false invoices, in respect of clients' matters. He would then use a "costs transfer form" to offset the sums purportedly due to him in respect of those invoices against sums he purportedly owed to the Marks Court clients pursuant to credit notes. The effect of this was that there would be no physical transfer of funds from client to office bank accounts in respect of the sums purportedly due to the Respondent pursuant to the (false) invoices. There were "paper" transfers of funds from unrelated clients' ledgers to the Marks Court ledger. This system is explained by reference to the four instances identified by the FIO.

Mr RW – 14 HW

60. The Respondent acted for Mr RW in relation to a lease extension over the above property. A completion statement provided to the client on 11 December 2012 indicated that the Firm's costs and disbursements would amount to £537.

61. On 1 February 2013 a bill of costs was raised in this matter in the sum of £5,617.79. There was no information on the file to indicate why the bill was so much higher than the figure on the completion statement or which showed that the bill was sent to the client.

62. A costs transfer form showed that this invoice was offset against a credit note for the same sum on the Marks Court matter, such that there was no physical transfer of funds from client to office bank accounts in respect of the invoice.

63. On Mr RW's client ledger, a transfer of £5,617.79 from client to office account was shown on 1 February 2013, ostensibly in settlement of the invoice. The Marks Court client account ledger showed a corresponding transfer of that sum from office to client account ledger. The effect was that the sum of £5,617.79 was transferred from Mr RW's matter to the Marks Court matter.

64. On the same date, 1 February 2013, the sum of £10,000 was transferred from the Marks Court client ledger to the office ledger (with the narrative "Tfr repay office loan", with a corresponding physical transfer of funds between client and office bank

accounts. The funds were then paid out of office account into the Respondent's private bank account.

65. On 21 March 2013 the Respondent told the FIO that he had transferred the funds from Mr RW's matter in order to help pay the bank loan he had taken to cover the shortfall on the Marks Court matter.

66. On 11 February 2013 a further £5,269.01 was transferred from Mr RW's client account ledger to the Firm's office account ledger, apparently in settlement of the invoice dated 1 February 2013. However, a transfer had already been made on 1 February 2013 in respect of that invoice, as set out at paragraphs 62 and 63 above. As at 11 February 2013 £5,269.01 was the full balance shown against Mr RW's client account ledger.

67. In interview, the Respondent told the FIO that the second transfer in respect of the invoice had been due to his own incompetence.

68. As at the date of the FIR, Mr RW's lease extension had not been completed.

Mr PC – 33 L Road

69. The Respondent acted for Mr PC and his company in respect of a proposed extension of his lease over the above property.

70. On 11 February 2013 a cheque in the sum of £1,440 was received from Mr PC and credited to Mr PC's client account ledger. The payment was made in respect of an undertaking given by the Respondent on 11 February 2013 to be responsible for the landlord's costs up to £1,200 plus VAT.

71. On 13 February 2013 the Respondent raised a bill for £1,200 plus VAT (i.e. £1,440). However, the FIO found no evidence on the file to justify the bill and to show that it was sent to Mr PC. That invoice was partially offset against a credit note in favour of the Marks Court clients in the sum of £1,057, with the net effect that there was an inter-ledger transfer of £1,057 from Mr PC's client ledger to the Marks Court client ledger. The balance of £383 (i.e. the difference between the invoiced sum of £1,440 and the £1,057 offset against the Marks Court credit note) was then physically transferred from client to office bank account.

Mr SHS – 2 AW

72. The Respondent acted for Mr SHS in relation to the grant to a new lease over the above property.

73. On 8 October 2012 the Respondent asked Mr SHS to remit £11,850 to him for the purpose of paying SDLT on the transaction. Mr SHS transferred that sum to the Firm on 31 October 2012.

74. A file opening form for the matter showed an estimated fee income of £1,085. Between 6 November and 17 December 2012, the Respondent made 6 withdrawals from Mr SHS's funds in respect of costs, totalling £4,467.58.

75. On 14 January 2013, the Respondent raised an invoice in respect of his costs for £781.20 i.e. £651 plus VAT and transferred that sum to office account.

76. On 22 January 2013 the Respondent amended this invoice to include an additional £7,200 (including VAT), taking the total of the invoice to £7,981.20. The Respondent then offset £7,101.21 (i.e. the sum credited to Mr SHS's client account ledger as at that date) against a credit note for £12,164.87 on the Marks Court matter. The net effect was to transfer £7,101.21 from Mr SHS's ledger to the Marks Court ledger.

77. The Respondent told the FIO that the money provided by Mr SHS was no longer required for SDLT but that: (i) he had agreed a fixed fee with Mr SHS for work to be done in the future regarding a number of lease extensions; and (ii) this agreement had not been put into writing. The FIO was unable to identify any such additional work done by the Respondent or find evidence to show that the amended invoice had been sent to Mr SHS.

Mr MH – 6 WM

78. The Respondent acted for Mr MH in respect of the purchase of the freehold of the above property for £5,000.

79. On 12 December 2012 £780 was received from the client. On 17 December 2012 an invoice was issued for £780 and that sum was transferred to the office account ledger.

80. On 17 January 2012 a further invoice for £780 plus £3 for disbursements was raised.

81. On 22 January 2013 the sum of £5643 was received from Mr MH. These funds were to pay the premium of £5,000 plus the landlord's legal costs.

82. On the same date, 22 January 2013, the Respondent amended the invoice so that the sum purportedly due was £5,643 (i.e. the sum received from the client that day). The Respondent then offset that invoice against the credit note for £12,164.87 referred to at paragraph 76 above.

83. The FIO was unable to find any evidence to justify the amount of the amended bill or which suggested that the amended bill had been sent to the client.

Respondent's representations in respect of inter-ledger transfers using credit notes

84. In his letter to the Applicant dated 2 August 2013, the Respondent:

84.1 said that "these transfers were made in error and self evidently cannot be justified";

84.2 as a sole practitioner carrying the entire administrative and regulatory burden as well as providing a legal service, he was under great pressure and "mistakes were made" which he very much regretted;

84.3 although the breaches were inadvertent, he recognised that they constituted breaches of the Accounts Rules and Code of Conduct, which he regretted;

84.4 no client was disadvantaged; and

84.5 bills were "mistakenly raised" but this was not deliberate and it had never been his purpose to charge any client more than what was agreed or what the file justified.

Failure to register new leases

85. The Applicant's post enforcement team received complaints from residents of Marks Court that the Respondent had failed to register at the Land Registry 33 new (i.e. extended leases). All of these properties were in Phase 1 of the Marks Court project, and the new leases completed either on 26 November or 19 December 2012.

86. The intervention into the Respondent's practice took place on 7 May 2013; the Respondent had failed to register his clients' new leases for the period of (i) over 5 months in the case of completions on 26 November 2012 and (ii) over 4 months in the case of completions on 19 December 2012.

87. In an email to the Applicant on 23 October 2013, the Respondent stated;

87.1 all the AP1 forms (i.e. applications for registration) had been completed and supporting documents had been collated;

87.2 all the clients already had registered titles "so were secure", thus he had given this matter a lower priority than he would in the case of a purchase; and

87.3 "time flew by" and the applications took longer than anticipated, however 4 or possibly 5 applications had been lodged prior to the intervention for the purposes of "debugging", which was explained as the process of identifying if the Land Registry would raise any requisitions so that those issues could be corrected on later applications.

Minimum client account shortage

88. The Respondent produced a list of liabilities to clients as at 28 February 2013 which, after adjustment, showed liabilities of £266,852.73, which was also the sum available in the client bank account.

89. However, the FIO identified additional liabilities to clients which were not shown on that list totalling £85,270.97, meaning that there was a corresponding shortfall in that sum. The shortfall comprised liabilities arising out of the matters set out above, as follows:

Cause of liability	Sum
Misallocation of client funds to Marks Court Phase 1 (paras 36 to 56)	£58,932.78
Improper transfers of funds to Marks Court ledger using credit note system (paras 58 to 82)	£19,453.22
Excessive transfer in respect of Marks Court invoice (para 21)	£2,000
Unauthorised inter-ledger transfer on Mr and Mrs M's matter (paras 32 to 34)	£8,085.73
Less: Credit balance remaining on Marks Court ledger	(£3,200.76)
Total	**£85,270.97**

90. The Respondent told the FIO that he anticipated receiving around £52,000 from the residents of Marks Court Phase 1, which he would use to remedy the misallocation of funds. The Respondent further said that when he had quantified the exact shortage, he would obtain a loan to remedy the shortage.

91. A client ledger for Marks Court Phase 1, printed on 6 September 2013, showed that £52,043.08 was received from the Marks Court leaseholders' representative on 15 April 2013 and that corrective transfers were then made to various client ledgers, as set out above.

Witnesses

Mr Bailey

92. Mr Bailey, a FIO of the Applicant, gave evidence for the Applicant. He confirmed that his FIR was true and accurate. As the Respondent had admitted all of the allegations, save for the allegation of dishonesty, Mr Bailey was mostly questioned about the system of billing then issuing credit notes, which had been used on several occasions by the Respondent, with particular emphasis on the matter of Mr RW (set out at paragraphs 60 to 68 above).

93. Mr Bailey referred to the client ledger for Mr RW. Mr Bailey told the Tribunal that the agreed fee for the work appeared to be about £650 and a bill for that sum was raised on 5 September 2012; that bill appeared to have been paid in full that same day. On 9 January 2013 the sum of £10,000 was received from Mr RW and was credited to his client account ledger. On 1 February 2013 £5,617.79 was transferred from the client to office account on the client's ledger, with the narrative "costs". Mr Bailey told the Tribunal that he did not see the bill for £5,617.79 which had been raised on the ledger and he did not believe such a bill had been sent to the client, Mr RW. The bill was set off against a credit note of the same date generated on the Marks Court Phase 1 matter for an identical sum. Mr Bailey told the Tribunal that no money had physically moved in or out of the accounts and the effect of the paper transfers was to credit £5,617.79 to the Marks Court ledger.

94. Mr Bailey told the Tribunal that he had asked the Respondent about these transfers in the course of the investigation. It was noted in the FIR that the Respondent told him the funds had been transferred from Mr RW to Marks Court to help refund the loan. On the same date (1 February 2013) £10,000 was transferred from the Firm's client bank account to the office bank account and then £10,000 was transferred from office account to the Respondent's personal bank account. On 11 February 2013 £5,269.01 was transferred from the client bank account into the office bank account, debiting the client ledger of Mr RW, ostensibly in payment of the bill raised on 1 February 2013. Mr Bailey told the tribunal that when he asked the Respondent why he had transferred the funds into office account, the Respondent had stated that this was due to his incompetence.

95. Mr Bailey told the Tribunal that this was just one instance of several; it was not a one-off occurrence. In each case the Respondent had indicated that the transfers had occurred as a result of his incompetence.

96. Mr Bailey referred the Tribunal to an extract from the FIR in which he set out a reconstructed ledger for the period 31 December 2012 to 26 February 2013, showing relevant entries. Mr Bailey told the Tribunal that the Marks Court ledger showed a balance of £385.03 as at 31 December 2012. The payment made to Tolhurst Fisher, the landlord's solicitors, of £91,285.34 (made on 19 December and appearing on the ledger on 1 January 2013) led to a debit balance of £90,900.31. Thereafter, the transactions during January and February 2013 were set out including the payments from funds belonging to other clients and the credit notes.

97. Mr Bailey told the Tribunal that he had calculated that the Respondent's costs in respect of the Marks Court matter should have been in the region of £59,000 (on the basis of the figures in the client care letter) but the Respondent had actually taken over £108,000 in costs. Before the credit notes were taken into account, the amount of costs was in the region of £132,000. Mr Bailey told the Tribunal that overall it appeared that the Respondent had taken over £59,000 more in costs than would be expected on the basis of the client care letter.

98. Mr Bailey was then cross examined by Mr Attridge for the Respondent. Mr Bailey was referred to the Respondent's explanation for incorrectly transferring money from Mr and Mrs R's account to complete the Marks Court matters on 19 December 2012, due to a problem with the Lloyds Link internet banking system. Mr Bailey acknowledged that that was the explanation the Respondent had given to him. Mr Bailey told the Tribunal that he had not discussed any problems with the system with the Respondent, and that he was not familiar with the Lloyds Link system.

99. There were no questions from the Tribunal.

The Respondent

100. The Respondent gave evidence on his own behalf, dealing in particular with the allegation of dishonesty which was the one allegation which he denied.

101. The Respondent was referred to a schedule, dated 27 February 2015, which he confirmed set out his position with regard to the allegations. The Respondent told the Tribunal that he accepted that there was a series of transactions which fell foul of the Accounts Rules. The Respondent accepted that: he had improperly applied clients' funds towards unconnected matters; had improperly credited clients' funds to unrelated matters; the ledger on the Marks Court Phase 1 project had become overdrawn by over £93,000; he had failed to redeem mortgages, as alleged; he had failed to provide the best possible costs information; he had failed to comply with undertakings within a reasonable time and that his conduct amounted to breaches of Principles 2, 6 and 10, as alleged.

102. The Respondent confirmed that he made two statements in this matter, on 12 February and 1 October 2014, but he now accepted the allegations. The Respondent told the Tribunal the statements were factually correct, but he now admitted the allegations (save for 1.10). He had come to realise that clients would conclude, with regard to the specific allegations, that he had acted below the standard to be expected of a solicitor. The Respondent told the Tribunal that he reflected with shame on what had happened in 2012/13; those events should not have happened.

103. The Respondent told the Tribunal that in 2012 he had been under considerable pressure, as explained in his second statement. The Respondent was the sole executive in his Firm. The Marks Court work was a large job, which was carried on alongside his other work. At the same time, he was trying to negotiate a merger as well as deal with the routine running of his business such as renewing his Practising Certificate. The Respondent told the Tribunal that with hindsight he realised that he just had not been coping; he had been under considerable stress in the months leading up to the intervention.

104. The Respondent told the Tribunal that, as set out in his first statement, he had carried out all of the accounts functions of the Firm, with a book keeper who worked one day per week to input onto the system the accounts paperwork the Respondent had prepared. The Respondent told the Tribunal that he banked with Lloyds Bank and used a system called Lloyds Link which allowed him to access the bank account, download statements, make TT and BACs transfers and make inter-ledger transfers. The system had three levels of security, involving a user name, password and a second authorisation. The Respondent told the Tribunal that he dealt with all stages himself, as there was no-one else involved. The Respondent told the Tribunal that a list of the planned transfers would appear on the computer screen but the detail was not shown; the Respondent told the Tribunal that he thought the figures might have been shown. Once in the system, he would "push the button" and the money would be sent.

105. The Respondent referred to paragraph 18 of his first statement, which read:

> "… The sum of £91,285.34 was paid on 19th December 2012, shortly before Christmas when the office was due to close for the Christmas break. It was a very busy week that week and I was anticipating 2 matters would complete; the MC matter and Mr and Mrs R… In anticipation of completion I had set up the telegraphic transfers for both matters on Lloyds Link. The system enabled me to do that and I would then authorise the money's release when I was in a

position to do so. However, once the information had been inputted into the system all you would see would be the Lloyds Bank reference, date and the amount. I could therefore only identify the matter by reference to the amount. Mr and Mrs R's matter completed but I was not put in funds to complete MC. I tried to authorise the release of Mr and Mrs R's funds to Nat West from the office on 20th December. Lloyds Link was having problems that day so the request failed. I left the office and went home and tried again. It failed a further two times before going through on the third occasion. I was then on holiday for the Christmas break".

106. The Respondent told the Tribunal that on the Lloyds Link screen there would have been a list of matters and the date. On the list, transfers may appear as "sent", "pending" or "not authorised". The Respondent told the Tribunal that the problems on 19 December were global and not confined to his Firm; there had been a report on the problem in the Law Society Gazette. The Respondent told the Tribunal that he had entered the Lloyds Link system, gave an authorisation with the code number but was "timed out". The transaction went through on the third occasion.

107. The Respondent told the Tribunal that the Firm re-opened on or around 2 January 2013. Mr R telephoned him to say that Nat West had taken a further mortgage payment. The Respondent told the Tribunal that he had investigated and had identified that he had authorised the wrong telegraphic transfer on 19 December 2012, such that he had sent the funds on the Marks Court matter and not Mr and Mrs R's matter. The Respondent told the Tribunal that this was the true explanation for what had happened.

108. In response to a question from the Tribunal, the Respondent stated that the Lloyds Link system was designed for businesses and had a higher level of security than personal internet banking. The system required a box into which a card was inserted. A random code would be generated, which then had to be typed in on entering the system.

109. The Respondent told the Tribunal that his objective throughout January to March 2013 was to correct the error that had occurred and to make good the hole that had appeared on the Marks Court ledger so that the transactions could be completed as they should have been. The Respondent told the Tribunal that Mr and Mrs R would expect their mortgage to be redeemed and on Marks Court it would be expected the accounts would be in balance. These expectations were fulfilled to the extent that eventually Mr and Mrs R's mortgage was redeemed; indeed, this was within a day of Mr R's complaint to the LeO. The Respondent told the Tribunal that he had refunded his fees and the extra mortgage payment.

110. The Respondent told the Tribunal that mistakes had been made by rushing through things, particularly with regard to Mr and Mrs R; his time had been very short and he had acted hastily rather than checking. The Respondent told the Tribunal that he acknowledged that he had been incompetent in failing to check the transfer.

111. The Respondent told the tribunal that he would now deal with matters in a totally different way. He looked back with horror, regret and shame at what had happened. The Respondent told the Tribunal that in his 33 years in practice he had prided himself on having happy clients; that was not what had happened here.

112. With regard to the allegation of dishonesty, the Respondent told the Tribunal that he refuted it absolutely. The Respondent told the Tribunal that he had never intended any client to be short-changed. He had focussed on sorting out the problem which had arisen and bringing matters back to the position in which they should have been.

113. After a break of approximately half an hour, the Respondent resumed his evidence and was cross examined by Ms Wingfield.

114. The Respondent was asked about the pressures he had mentioned in 2012. The Respondent told the Tribunal that there had been a number of factors. The Marks Court matter had grown and had taken up a disproportionate amount of time; he had expected that the landlord would deal with the applications as a single unit but it did not. The Respondent told the Tribunal that his lease extension practice had expanded and he needed to merge with another firm. The Respondent told the Tribunal that he had negotiated with three different firms, sequentially, and this had taken up a lot of time. The routine running of the business, for example, dealing with professional indemnity insurance renewal and applying for his own Practising Certificate had taken time.

115. The Respondent confirmed that he had expected to complete the Marks Court Phase 1 and Mr and Mrs R matter on the same date. The Respondent confirmed that on 8 June 2012 he had written to Mr Exell requesting £244,316.50 which was the sum required to complete the matter, including costs. That money had arrived in two tranches, by 26 June 2012; at that point the Firm held enough to complete the 37 lease extensions in Phase 1. The Respondent confirmed that some of the lease extensions were completed in November 2012 and that he anticipated completing the rest on 19 December 2012.

116. It was put to the Respondent that by 19 December 2012 the funds required to complete were not there, as they had been taken in costs. The Respondent told the Tribunal that by June 2012 the LVT process had been completed, but the landlord was still not ready to complete; this landlord had a habit of not signing the documentation in time.

117. It was put to the Respondent that the letter of 9 August 2012, which Mr Exell said he had not received, set out the possibility of extra fees but that the Respondent did not anticipate extra funds would be needed. The Respondent told the Tribunal that this was correct at that time. It now appeared that he had not asked Mr Exell for more; the Respondent told the Tribunal that he had had it in his mind that he had asked for more to cover the fees.

118. Ms Wingfield asked if the Respondent was saying that he had asked Mr Exell for an extra £91,000 or thereabouts in costs. The Respondent told the Tribunal that that was what he had thought he had done. He agreed that he might have received an explosive response to such a request. The Respondent told the Tribunal that due to the pressure

he was under he was not thinking straight; he had been expecting to receive more money. The Respondent told the Tribunal that the costs on the Marks Court matter were substantial and he had told Mr Exell that there would be extra costs because of the LVT proceedings; some of those extra funds had been provided. The Respondent told the Tribunal that he had had it in his mind that he had asked for the money but he accepted he had not given clear costs information to the client.

119. With regard to "pressing the button" on the Lloyds Link transaction, the Respondent told the Tribunal that he had not checked the balance on the account before doing so, as he was rushing and was under a lot of pressure. The Respondent told the Tribunal that there were just the two matters to complete on 19 December 2012, so far as he could recall. He had it in mind to complete both on the same day. The Respondent told the Tribunal that his objective was to serve the interests of his clients.

120. It was put to the Respondent that he was in the position he was in on 19 December 2012 because he had taken the Marks Court money in costs prior to completion. The Respondent told the Tribunal that this was in part due to the LVT proceedings and then the Court proceedings; the matter had been more complicated than he had expected. The Respondent accepted that the money had been sent to him to complete the transactions, that some had been taken in costs and he had to accept that the bills had not been sent to the client.

121. It was put to the Respondent that he had tried to fix the hole on the Marks Court ledger by moving funds around when they came into the Firm's bank account. The Respondent told the Tribunal that he had no deliberate intention to use the money. He accepted that he had used Mr and Mrs R's money wrongly, but inadvertently. The Respondent told the Tribunal that he had had to do something about the accounts. He had moved Mr and Mrs R's money to the Marks Court ledger to reflect what had happened. There was a shortfall of over £90,000. The Respondent told the Tribunal that he had taken out a personal loan of £55,000 (to partly cover the shortfall) and he still had it in mind that the money would come in from Mr Exell.

122. The Respondent was asked if he had contacted Mr Exell. He told the Tribunal that he wrote to Mr Exell. It was put to the Respondent that there was no such letter on the file; the Respondent told the Tribunal that he could not explain this. The Respondent told the Tribunal that he had not deliberately moved the money across. The Respondent told the Tribunal that he thought the money which came in (re Mr and Mrs R) was the money he was expecting on Marks Court. The Respondent told the Tribunal that he was not thinking straight and his judgment had been impaired.

123. The Respondent was referred to sums received into client bank account: £15,950.65 from AS & Co solicitors on 11 January 2013 on the matter of Mr NK and Ms LP was credited to the Marks Court matter; £10,952.20 received on the Mrs JM matter was transferred to the Marks Court ledger on 28 January 2013; £16,837 received on 30 January 2013 on the Ms LH matter was credited to the Marks Court ledger on that same date; £6,430.80 received on the Mr SS matter on 1 February 2013 was also credited to the Marks Court ledger and on 7 February 2013 received in relation to Ms ES was also credited to the Marks Court ledger. The Respondent was asked how he could say these postings were not deliberate. The Respondent told the Tribunal

that he had been focussing on the Marks Court matter. All of the postings and transactions had been corrected after the FIO visit.

124. It was put to the Respondent that he had used money which was meant for Marks Court Phase 2 for that purpose; this had led to claims on the Compensation Fund. The Respondent accepted this, but told the Tribunal that it had not been in his mind to use the money of clients for the benefit of other clients. It was put to the Respondent that he could not just say there had been an error. The Respondent told the Tribunal that there had been a series of errors, arising from the same facts; he did not accept his conduct was deliberate. The Respondent was asked what was not deliberate about crediting money onto the wrong ledger. The Respondent told the Tribunal that he thought the monies were in respect of Marks Court; for example, Mrs JM's matter also concerned a lease extension, with the same landlord, and he had "lumped" the matters together. The Respondent told the Tribunal that the wrong reference had been put onto the accounts forms when the money came in; he was not thinking straight at the time.

125. It was put to the Respondent that there was a devious system, involving posting monies to the wrong ledger then issuing credit notes. The Respondent denied that it was devious. He had been taking costs which he thought were due to him and moving money to the accounts to which he thought the monies belonged.

126. It was put to the Respondent that in the matter of Mr RW, the actual costs were in the region of £600 but the Respondent had raised a bill for £5,617.79, on 1 February 2013 and then had transferred that sum from client to office account on 1 February and a further £5,269.01 on 11 February 2013, ostensibly in settlement of the same bill. The Respondent told the Tribunal that he had been rushing and had made an error. The Respondent denied that the transactions were not too complex to be explained as an error, and told the Tribunal that he had been rushed and stressed. The Respondent told the Tribunal that at that time he had prepared bills and credit notes when he was distressed.

127. The Respondent told the Tribunal that with regard to Mr SHS, he had thought he had had a conversation about further instructions but he could not recall how it came to be in his head that Mr SHS had said that the Respondent could keep money on account of future costs. The Respondent told the Tribunal that he had written to Mr SHS to ask for £11,850 in respect of SDLT and had been waiting for that transaction to complete. The Respondent told the Tribunal that he recalled a conversation in which Mr SHS had said he would let the Respondent know when he wanted to pay SDLT. The Respondent told the Tribunal that this had been a family transaction, from a company controlled by Mr SHS to Mr SHS and his wife. Initially, there was a nil value on SDLT. The Respondent told the Tribunal that his memory of this was hazy, but it may have been that the company was being wound up. The Respondent told the Tribunal that he had pointed out that there would be SDLT and money to pay this was needed in order to complete. The Respondent was referred to his letter to Mr SHS dated 8 October 2012 in which he had stated that SDLT of £11,850 would be payable and had requested that this sum be sent to his Firm. The Respondent told the Tribunal that he had seen the statement of Mr SHS and accepted that Mr SHS' recollection was more accurate than his own.

128. It was put to the Respondent that Mr SHS had said there was no conversation about future costs, and the Respondent should have proceeded to completion. The Respondent told the Tribunal that he had misunderstood the position. It was put to the Respondent that he had used Mr SHS' money for costs, and doing so was dishonest in these circumstances. The Respondent told the Tribunal that he had no dishonest intention. He had had previous instructions from Mr SHS; Mr SHS did not say there were not going to be other matters.

129. The Respondent was referred to the ledger of Mr SHS, which showed £11,850 was received on 31 October 2012 and the various transfers made on that ledger; he was asked what those transfers were for. The Respondent told the Tribunal that it would have been for costs or something like that; he was dealing with a number of matters at the time. It was put to the Respondent that Mr SHS had stated that there were no other ongoing matters at that time and that the balance on the SHS account had been transferred in January 2013 and set off against a credit note on the Marks Court matter. The Respondent told the Tribunal that he could not explain this; his mind had been in a whirl. It was put to the Respondent that this conduct was dishonest; the Respondent denied this.

130. With regard to the Marks Court matter and the need for extra funds to complete the transactions, it was put to the Respondent that Mr Exell had stated that he had not received the invoices. The Respondent told the Tribunal that he accepted that Mr Exell had said that. It was put to the Respondent that when questioned by Mr Bailey about the bills, he had seemed unsure whether he had sent them. The Respondent told the Tribunal that he thought he had sent them as he would normally send bills to clients.

131. The Respondent was asked if he had found it surprising when the FIO had calculated that he had billed around £108,000 on the Marks Court matter, after deducting the credit notes. The Respondent told the Tribunal that because of the amount of work he had done, and given that the £108,000 included VAT, he was not entirely surprised; there had initially been 44 claims registered and counter-notices served. Some of the clients had pulled out. The Respondent told the Tribunal that there had been an incredible amount of work, as the landlord wanted to deal with each matter individually, not as a group. It was put to the Respondent that the level of costs billed was surprising given the fees which had been agreed. The Respondent told the Tribunal that there had been three parts to the charges including fixed costs in relation to serving the statutory notices and conveyancing, together with work on LVT proceedings which would be charged on a time basis. It was put to the Respondent that these were the amounts the Respondent had requested, and which had been paid for the clients through Mr Exell. The Respondent told the Tribunal that he had intended to do a costs statement when he had time, but there was never enough time.

132. The Respondent was asked whether, given the fixed fees which had been agreed and paid, the level of costs billed was surprising. The Respondent told the Tribunal that the costs had both a fixed fee and a time element. He had taken part of the costs and was reassessing the overall costs. The money he had received was after the LVT proceedings, but before the County Court proceedings. It was put to the Respondent that he had not asked Mr Exell for more in costs. The Respondent told the Tribunal that he had it in mind that he had discussed this with Mr Exell.

133. The Respondent told the Tribunal that he thought the Firm had been doing well and its projected fee income was quite healthy. The Respondent had been looking to merge with another firm, not because of financial difficulties but because his workload had grown and was more pressurised so he wanted to share the burden of running the business.

134. The Respondent was asked about the transfer of Mr and Mrs R's money and what he would have done if Mr R had not made a complaint. The Respondent told the Tribunal that he had negotiated a personal loan before the complaint was made and had started doing this in the first week of January 2013. It was put to the Respondent that the loan was insufficient to meet the shortfall. The Respondent told the Tribunal that he was under the impression that there was more money on the Marks Court matter and that £55,000 would be enough.

135. The Respondent was asked how he could think he could use the money of one client to fill the hole in the client account of another client. The Respondent told the Tribunal that this was not a thought he had had. The Respondent was asked why money from other clients was credited to Marks Court. The Respondent told the Tribunal that he had made a rash assumption that the money which came in was for Marks Court, as he was not thinking properly. It was put to the Respondent that the money which arrived from AS & Co (on the Mr NK and Ms LP matter) was annotated on the ledger as being from that Firm. The Respondent told the Tribunal that he had made a wrong assumption that it was in relation to Marks Court. It was put to the Respondent that on the Marks Court matter he had been dealing with Mr Exell and he was asked why he would think that money from AS & Co would be on that matter. The Respondent told the Tribunal there was no reason the money would not come in from another firm, which might have been acting for one of the leaseholders. It was put to the Respondent that the money from AS & Co was to be held to that firm's order; the Respondent was asked why he would think it was anything to do with Marks Court. The Respondent told the Tribunal that he may have put the wrong number on the credit slip. He was not in a position to complete the matter for Mr NK and Ms LP as he did not have all of the papers signed. The Respondent told the Tribunal that he had given AS & Co the lease extension documents and passed on the money to the clients, probably in February or March 2013 but he could not recall exactly. In response to a further question, the Respondent accepted the payment may have been made in April 2013.

136. The Respondent asked how he was expecting to complete matters for other clients when their money was credited to the Marks Court matter. The Respondent told the Tribunal that he thought it was money due for Marks Court and was not focussing on other clients. The Respondent told the Tribunal that this was the only time there had been a problem arising from the erroneous postings, which had gone on for about 3 or 4 months. The mistakes had arisen from the same source and at the same time, when he had not been thinking correctly.

137. It was put to the Respondent that he had used transfers from client to office account to repay his personal loan. The Respondent told the Tribunal that it was used to plug the hole, by paying back the loan which had been used to plug the hole. It was put to the Respondent that the money credited to Marks Court was from other clients. The

Respondent told the Tribunal that he knew that now, but at the time he thought it was from Marks Court clients.

138. The Respondent was referred to the matter of Mr RW and the invoices and credit notes which were issued in relation to Mr RW's funds. The Respondent was also referred to an attendance note prepared and signed by Mr Bailey which read,

> "On 21 March 2013 whilst examining the records of [the Respondent] I asked him why he had transferred funds from [Mr RW] to Marks Court and he stated that he had done this to help refund the loan. A contemporaneous note was made of this and is attached hereto".

The Respondent told the Tribunal that it would be ridiculous to say what he was reported to have said and he had no recollection of this discussion. It was put to the Respondent that what he had said to Mr Bailey was true. The Respondent told the Tribunal that he could not recall what he had said, but he would not have said that he had used the money to repay the loan. The Respondent told the Tribunal that he thought the money in was in relation to Marks Court; when money came in on Marks Court, that could be used to refund the loan and this would be logical. The Respondent told the Tribunal that he had paid off the loan. He told the Tribunal that he was not better off as a result of the various transactions and in particular had had to pay monies to Mr and Mrs R and refund fees.

139. The Respondent accepted that the Compensation Fund had paid the shortfall on the Marks Court Phase 2 matter. The Respondent told the Tribunal that he had not been thinking straight at the time; he had no intention to cause losses. The Respondent accepted that Mr SHS had recovered his losses from the Compensation Fund. The Respondent told the Tribunal that it was not his intention to "rob Peter to pay Paul".

140. It was put to the Respondent that (as set out in the FIR) the Respondent had used monies on the matter of Mr and Mrs M (re CP deceased) to meet the personal loan. The Respondent told the Tribunal that this was not his intention.

141. It was put to the Respondent that he had raised a number of bills for thousands of pounds when he had estimated his fees at several hundred pounds. The Respondent told the Tribunal that he did not justify this as it should not have happened. All of these events were in the same period, when things were going wrong and he was stressed.

142. It was put to the Respondent that the FIO had drawn to his attention the incorrect credits to Marks Court but on 15 April 2013 he had credited monies intended for Marks Court Phase 2 to the Marks Court Phase 1 ledger. The Respondent told the Tribunal that he thought the money related to Marks Court Phase 1. He did not see his actions as dishonest.

143. There was no re-examination.

144. The Tribunal asked some questions for clarification.

145. The Respondent told the Tribunal that he had loaded the information relating to the proposed completions on 19 December 2012 (re Mr and Mrs R and Marks Court) a few days beforehand. The Firm was due to close for the Christmas break and he wanted to be prepared so he had loaded the information for both matters. The Respondent told the Tribunal that he did not check that the money was in the account. The Respondent was asked if he was sure that the system did not show the payee. The Respondent told the Tribunal that this was not shown when he was looking at the list of transactions and he told the Tribunal that there was a problem with the computer. The Respondent told the Tribunal that he was not sure if the payee's name came up on the screen when he was able to process the transfer. The Respondent told the Tribunal that he was going out to lunch and just clicked the button; he could not recall if the payee's name was shown at that point.

146. The Respondent was asked how the payment would be recorded in the bank statement. The Respondent told the Tribunal that there would be a page where all of the details were shown; this would go to the bank and would be shown on the statement. The Respondent told the Tribunal that the information was on the system but when it finally went through, on the third attempt, he did not look at it. There was a list of payments and one could go into the details of individual payments but to the best of his recollection the payees were not shown on the initial page.

147. The Respondent told the Tribunal that he would normally deliver bills before making a transfer from client to office account for his costs. The Respondent told the Tribunal that he accepted there was no evidence he had done so with regard to the transactions in issue and told the Tribunal that he had been taking short-cuts. The Respondent told the Tribunal that he accepted that his practice concerning delivering bills may have changed in this period; he was aware that bills should be delivered before costs were transferred.

Other evidence

148. The Tribunal took into account the statement of Mr Exell dated 20 May 2014 and Mr SHS dated 26 August 2014. It noted that on 27 February 2015 Cooper Lingard wrote to the Applicant's solicitors stating:

> "We… confirm that we do not require them to give evidence. To the extent that there is any dispute between their statements and [the Respondent's] evidence, we are content that such matters (i) could be the subject of admissions; and/or (ii) would in any event be unlikely to have a significant bearing on the proceedings.
> As regards paragraph 8 of [Mr SHS'] witness statement [the Respondent] is prepared to accept that [Mr SHS'] recollection is likely to be better than his own".

The Tribunal noted that paragraph 8 of Mr SHS' statement read:

> "The SRA's solicitors have informed me that [the Respondent] claimed we agreed that he could use the funds to pay for my costs on other matters. This is untrue. In fact, the amount we spend with him in fees over the years amounts to probably a quarter of the sum we sent to him for stamp duty.

Accordingly, it would take some years before those funds would be used up in respect of legal costs".

149. The Tribunal was content that it could rely on the statements of Mr Exell and Mr SHS, which were unchallenged by the Respondent.

150. The Tribunal also took into account a letter from the managing partner of Cooper Lingard, the Respondent's employers, dated 2 March 2015. This set out the Respondent's employment at the firm, under supervision, as approved by the Applicant. It stated that the Respondent was very organised and efficient in the management of his caseload and his files and that he was polite, helpful, knowledgeable and friendly. The writer (Mrs Lanaway) stated that she had no reason to doubt the Respondent's honesty and integrity. However, his figure work, including calculations and number transpositions were seriously defective and required additional supervision and checks e.g. concerning bank account numbers and completion statements. The Respondent had on one occasion sent completion money to the wrong bank account, having transposed two numbers; additional procedures were now in place to avoid a repetition. Mrs Lanaway stated that she could understand why, particularly if under stress, the Respondent may have found himself in financial problems on conveyancing matters. She was in no doubt that he would never be deliberately dishonest in his dealings with clients and client money; he may have been careless under stress and maybe even negligent. The letter concluded that Mrs Lanaway considered that the reputation of her firm and the legal profession in general was enriched by members such as the Respondent.

Findings of Fact and Law

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

152. The Respondent admitted each of the allegations, save for allegation 1.10 which was the allegation of dishonesty. The Tribunal was satisfied to the highest standard on the facts and on the admissions that each of the admitted allegations were proved. The only issue for specific determination was the allegation of dishonesty.

153. **Allegation 1.1 - He improperly applied clients' funds towards:**

1.1.1 the repayment of a loan taken out in respect of an unconnected client matter;

1.1.2 the settlement of his costs on an unconnected client matter.

in breach of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("AR 2011").

153.1 The factual background to this allegation is set out at paragraphs 32 to 34, 39 to 46 and 60 to 64 in respect of the matters at 1.1.1 and paragraphs 47 to 50 in respect of the matters at 1.1.2. This allegation was admitted by the Respondent.

153.2 The Tribunal was satisfied on the evidence presented that the Respondent had used funds belonging to Mr and Mrs M (in the matter of the estate of CP) to repay part of the loan the Respondent had taken out to cover the shortfall on the Marks Court matter. The Tribunal noted that in his oral evidence the Respondent had stated that it was not his intention to use money belonging to these clients to meet the loan, but found that this was the effect. The Respondent had carried out similar transactions with regard to his clients Mrs JM and Mr RW. Their money, intended for their own purposes, had been credited to the Marks Court matter and then used to partly repay the Respondent's own liability for the loan. Further, money belonging to Mr SHS was used to pay £1,848 of costs on the Marks Court matter.

153.3 In all of these circumstances, there could be no doubt that the allegation was proved to the required standard.

154. **Allegation 1.2 - He improperly credited clients' funds to the ledger of an unrelated client matter, in breach of AR 2011 Rules 1.2(f), 29.1 and 29.2.**

154.1 The factual background to this allegation is set out at paragraphs 35 to 57 above. The allegation was admitted by the Respondent.

154.2 In respect of each of the Respondent's clients Mr NK.Ms LP, Mrs JM, Ms LH, Mr SHS and Ms ES the Respondent improperly credited their money to the Marks Court matter. None of these clients had any link to the Marks Court matter.

154.3 In all of these circumstances, the Tribunal was satisfied that the allegation was proved to the required standard.

155. **Allegation 1.3 - He caused:**

1.3.1 The client ledger on the Marks Court Phase 1 matter to become overdrawn by up to £93,110.91; and

1.3.2 A minimum client account shortage of £85,270.97 as at 28 February 2013

in breach of AR 2011 Rule 20.6.

155.1 The factual background to this allegation is set out at paragraphs 11 to 18 in respect of the matters at 1.3.1 and paragraphs 87 to 90 in respect of the matters at 1.3.2.

155.2 On 19 December 2012 the Respondent transferred £91,285.34 from client account in order to complete a number of lease extensions in the Marks Court matter. The transfer was in fact made from funds belonging to Mr and Mrs R, whose sale had completed on 18 December 2012 and £113,784.16 were received into the Respondent's client account. The shortage on client account arose because as at 19 December 2012 there was only £2,203.83 on the Marks Court ledger. After various deductions for costs, by the time the transfer of £91,285.34 was posted to the ledger, only £385.03 was credited to the Marks Court ledger. The transfer undoubtedly made using Mr and Mrs R's money, which was intended to discharge their mortgage. There was no doubt that a shortage of over £90,000 had been created as there were insufficient funds available to both complete the Marks Court matter and discharge Mr and Mrs R's mortgage.

155.3 The Tribunal further found that as at 28 February 2013 there was a minimum client account shortage of £85,270.97.

155.4 The Tribunal was satisfied that this allegation had been proved to the required standard on the facts and on the admission.

156. **Allegation 1.4 - He brought about improper inter-ledger transfers of client funds in breach of AR 2011 Rule 27.1.**

156.1 The factual background to this allegation is set out at paragraphs 25 to 34 and 58 to 83 above. The allegation was admitted by the Respondent.

156.2 The Respondent had carried out improper transfers of client funds in relation to Mr and Mrs R and Mr and Mrs M (re CP deceased). Further, in relation to Mr RW, Mr PC, Mr SHS and Mr MH the Respondent had raised invoices for sums greater than the expected costs which were offset against credit notes on the Marks Court matter, with the effect that funds belonging to these clients were transferred to Marks Court.

156.3 The Tribunal was satisfied to the required standard that this allegation had been proved.

157. **Allegation 1.5 - He failed without good reasons to:**

1.5.1 redeem a client's mortgage for a month after receiving the necessary funds;
1.5.2 complete the lease extensions of clients within a reasonable period; and

1.5.3 register the new leases of 33 clients within a reasonable period

in breach of Principles 5 and 6 of the SRA Principles 2011 ("the Principles") and thereby failed to achieve Outcome O(1.5) of the SRA Code of Conduct 2011 ("the Code").

157.1 The factual background to this allegation is set out at paragraphs 26 to 31 in respect of the matters at 1.5.1, at paragraphs 36 to 42, 47 to 54 and 60 to 68 in respect of the matters at 1.5.2 and paragraphs 84 to 86 in respect of the matters at 1.5.3. The allegation was admitted by the Respondent.

157.2 The Respondent failed to redeem Mr and Mrs R's mortgage promptly. Completion took place on 18 December 2012 and on 21 December 2012 the Respondent gave an undertaking in writing to the purchasers' solicitors to discharge the mortgage. The mortgage was not redeemed until 22 January 2013, over a month after completion, by which time Mr R had made a complaint to the LeO and had had to pay an extra mortgage payment.

157.3 In the matter of Mr NK and Ms LP the Respondent received the funds required to complete, to be held to the order of AS & Co solicitors, on 11 January 2013. The matter was not completed until on or after 15 April 2013, when funds were received from Mr Exell on the Marks Court matter and corrective entries were made on the

ledgers. In the meantime, the funds had not been credited to the ledger of Mr NK and Ms LP but had been credited to the Marks Court matter.

157.4 In the matter of Mr SS, completion monies of £6,340 were received on 1 February 2013 but wrongly credited to the Marks Court matter. The transaction did not complete until after 15 April 2013. In Mr RW's matter, £10,888.80 was held for the client following the transfer in of the monies needed for completion on 9 January 2013. On 1 February 2013 £5,617.79 was transferred to office account, ostensibly for costs and on 11 February 2013 a further £5,269.01 (which was then the balance remaining on the client ledger for Mr RW). As a result, there were insufficient funds on the ledger to complete Mr RW's lease extension until the corrective transfers on or after 15 April 2013.

157.5 The Respondent completed the lease extensions in relation to Marks Court Phase 1 on or by 19 December 2012 (albeit using Mr and Mrs R's money to do so). Those lease extensions had not been registered at the Land Registry by the time of the intervention in May 2013 i.e. over four months after completion.

157.6 It was clear that in failing to complete and/or register these transactions within a reasonable time the Respondent had failed to provide a proper standard of service to his clients and had acted in a way which would diminish, rather than maintain, the trust the public would place in him and the provision of legal services. The service he provided was not competent or delivered in a timely manner and he failed to provide the service required by his clients. The allegation had been proved to the required standard.

158. **Allegation 1.6 - He failed to provide the best possible information to clients about his costs, in breach of Principles 5 and 6, and thereby failed to achieve Outcome O(1.13) of the Code.**

158.1 The factual background to this allegation is set out at paragraphs 19 to 24 above. The allegation was admitted by the Respondent.

158.2 The Respondent provided costs information to Mr Exell, on behalf of all the relevant Marks Court residents, in a letter of 9 February 2011. This provided for a "fixed fee" element for certain tasks which would be required, together with a statement of the disbursements to be incurred in relation to those tasks. The letter further provided for additional costs in the event that either or both of LVT or County Court proceedings were required. The FIO had calculated that as both LVT and County Court proceedings had been needed, the maximum charge to the residents in the Phase 1 matter would be £59,280.16 after taking into account the agreed discounts and contingencies. In fact, the Respondent charged £108,388.70 (after taking into account the credit notes). There was a difference of over £49,000 between the expected costs and the costs actually taken by the Respondent.

158.3 The Tribunal noted that whilst the Respondent had suggested that he had had a discussion with Mr Exell about additional costs, Mr Exell's evidence made clear that he had not been approached for any additional funds to complete Phase 1 after he had forwarded the requested sums in June 2012. He also stated that he had seen only one of approximately 65 invoices raised on the Marks Court Phase 1 matter. The

Respondent had in any event admitted this allegation and it was clear in the light of Mr Exell's evidence that the Respondent had failed to provide updated costs information to Mr Exell and/or the relevant residents.

158.4 A failure to inform a client that costs may be up to £50,000 more than indicated was clearly a failure to provide a proper standard of service and would diminish, rather than maintain, the trust the public would place in the Respondent and the provision of legal services. The client had not received the best possible information both at the outset and as the matter progressed about the likely overall costs of the matter. This allegation was proved to the required standard.

159. **Allegation 1.7 - He failed to comply with/perform undertakings within a reasonable time, in breach of Principle 6, and thereby failed to achieve Outcome O(11.2) of the Code.**

159.1 The factual background to this allegation is set out at paragraphs 26 to 31 and 36 to 38 above. The allegation was admitted by the Respondent.

159.2 With regard to the matter of Mr and Mrs R, the Respondent gave an undertaking on 21 December 2012 to discharge the mortgage over the property at 1 SW and to forward the DS1 form (confirming the discharge of the mortgage) to the purchasers' solicitors on receipt. As noted above the mortgage was not discharged until 22 January 2013. In the matter of Mr NK and Ms LP, AS & Co wrote to the Respondent on 18 January 2013 with a signed Deed of Surrender and Re-Grant, together with a client account cheque for £15,960.65; the letter included a request to hold the funds to the order of AS & Co pending completion. In fact, the Respondent credited those funds to the Marks Court matter and so had used them for purposes other than completion of the transaction.

159.3 In both of these matters the Respondent failed to comply with or perform his obligations given in undertakings or equivalent within a reasonable time. This was conduct which would tend to diminish, rather than maintain, the trust the public would place in the Respondent and in the provision of legal services. The Tribunal was satisfied to the required standard that this allegation had been proved.

160. **Allegation 1.8 - It was alleged that each instance of the Respondent's conduct described at allegations 1.1, 1.2 and 1.4 above comprised a breach of Principles 2, 6 and 10.**

160.1 This allegation, which arose from the facts and matters set out above in relation to allegations 1.1, 1.2 and 1.4, was admitted by the Respondent.

160.2 The Respondent had improperly used client funds to repay a loan he had taken out in an unrelated matter and to settle costs in an unrelated matter. He had improperly credited the funds to the Marks Court matter and had brought about improper inter-ledger transfers of client funds. This misuse of clients' funds had taken place primarily in the period January and February 2013 but could not be described as isolated; the misconduct was repeated, related to several different clients and was deliberate. Using client money only for the purposes of clients was an essential obligation on solicitors and in this instance the Respondent had misused client money

to a significant degree. In these circumstances, the Respondent had failed to act with integrity, had acted in a way which would be likely to diminish rather than maintain the trust placed in him and the provision of legal services and he had failed to protect client money.

160.3 The Tribunal was satisfied to the required standard that this allegation had been proved on the facts and on the admission.

161. **Allegation 1.9 - It was alleged that the Respondent's conduct described at allegation 1.3 above comprised a breach of Principles 6 and 10.**

161.1 This allegation, which arose from the facts and matters set out above in relation to allegation 1.3, was admitted by the Respondent.

161.2 The Respondent had caused a cash shortage of £93,110.91 on the Marks Court matter. Further, as at 28 February 2013 there was a shortage on client account of at least £85, 207.97 made up of funds misallocated to Marks Court (£58,932.78), improper transfer of funds to the Marks Court ledger using the credit note system (£19,453.22), an excessive transfer of £2,000 in respect of the Marks Court matter and an unauthorised inter-ledger transfer on Mr and Mrs M's matter (£8,085.73), less the credit of £3,200.76 remaining on the Marks Court ledger.

161.3 The Tribunal found that the shortage had arisen as the Respondent had taken costs from the Marks Court ledger, such that there were insufficient funds on that ledger to complete the lease extensions in Phase 1. The sum which arrived in client account on 18 December 2012 was in respect of the sale proceeds due to Mr and Mrs R and to discharge their mortgage. The client bank account did not hold sufficient funds to both complete the Marks Court matter and to redeem Mr and Mrs R's mortgage.

161.4 The Tribunal found that permitting a shortage to occur in these circumstances was clearly conduct which would diminish rather than maintain the trust placed in the Respondent and in the provision of legal services. The Respondent had failed to protect client money. This allegation was proved to the required standard on the facts and on the admission.

162. **Allegation 1.10 - It was alleged that the Respondent's conduct in respect of allegations 1.1, 1.2, 1.3 and 1.4 (as more specifically set out below) was dishonest.**

162.1 This allegation was denied.

162.2 The Applicant alleged that the Respondent's conduct in respect of the matters described above was dishonest in the following respects and for the following reasons:

- The shortfall which arose on client account as a result of the payment on the Marks Court matter on 19 December 2012 was the result of the Respondent's own default. Nonetheless, the Respondent improperly used funds belonging to unconnected clients to compensate for that shortfall by systematically and improperly:

- Crediting funds received from clients to the wrong client ledgers;
- Transferring funds between client ledgers, in some cases using a scheme involving false invoices;
- Withdrawing client funds (i) to repay a personal loan he had obtained to compensate, in part, for the shortage on client account and (ii) in respect of his costs; and
- Using clients' funds in respect of other clients' matters.

162.3 It was further alleged that the complex and systematic nature of the steps the Respondent took following the payment out of £91,285.34 on 19 December 2013 indicated that those steps were taken consciously and deliberately, and were not accidental or the result of incompetence, as the Respondent claimed. Accordingly, it was submitted, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people, and that he was aware that his conduct was dishonest by those standards.

Respondent's Submissions

162.4 Mr Attridge accepted that the test to be applied in determining whether the Respondent was dishonest was that set out in Twinsectra v Yardley [2002] UKHL 12 ("Twinsectra"), which was a two stage test: whether the facts demonstrated that the Respondent was dishonest by the standards of reasonable and honest people and whether the Respondent knew that those actions were dishonest by those same standards. The Respondent had acknowledged that his actions in the period December 2012 to March 2013 were wrong, but this did not mean that those actions were dishonest.

162.5 Mr Attridge submitted that the Applicant had not proved the allegation of dishonesty to the highest standard, as required. He submitted that there were a number of factors which supported the Respondent's position that he was not dishonest.

162.6 The fact that the Respondent had instinctively defended his actions, which he now accepted had been wrong, showed his humanity, not that he was dishonest. It was a human failing to see one's own actions in a favourable light and to fill in gaps in one's knowledge or understanding in a favourable way. That the Respondent was defensive at the outset did not indicate he was dishonest. It was to the Respondent's credit that he had now reflected on matters objectively and had acknowledged his failings. He had answered the questions put to him and had co-operated with the investigation and these proceedings.

162.7 The Respondent acknowledged that he could not hide from the fact that there had been a series of complicated transactions. Mr Attridge submitted that the fact that there were a number of transactions did not support a finding of dishonesty; in this case, to do so would equate wrongful actions with dishonest actions. The Respondent had done what he believed was expected by the Marks Court Phase 1 clients. He now accepted that he was wrong, but his motive had been to do what was required for his Marks Court Phase 1 clients. Wrongfulness did not become dishonesty because of the

frequency of the actions. All of the wrongful acts had arisen from one nexus (the transfer on 19 December 2012), not a series of unrelated transactions. The Respondent's single motive had been to fulfil the objectives of the Marks Court clients.

162.8 Mr Attridge submitted that the Tribunal could be satisfied on the evidence that the origins of the Respondent's wrongful actions was an honest mistake when funds were transferred on 19 December 2012. All that followed was an attempt to remedy that mistake. The Respondent had been unwise and negligent. He should have acted differently, but it did not follow that he was dishonest. The Respondent was mistaken, acting with honest motivation; a finding of dishonesty did not follow from this.

162.9 Mr Attridge submitted that the Respondent was not motivated by personal gain. Whilst dishonesty did not always occur where there was personal gain, it was submitted that there was a high degree of correlation. The Respondent had not been motivated by trying to improve his circumstances or line his own pockets.

162.10 Mr Attridge submitted that the Tribunal should take into account that the wrongful actions occurred in a short period in professional career of over 30 years. Apart from these matters, the Respondent had a good professional record. It was submitted that it was unlikely that the Respondent would abandon his sense of honesty during this short period in a long career.

162.11 Mr Attridge submitted that the Tribunal should also take into account the personal stress to which the Respondent had referred in his evidence. He had been trying to manage his practice and negotiations for a possible merger. The Respondent had acknowledged that he sometimes struggled with figure work, as indicated in the letter from Cooper Lingard (see paragraph 149 above). The stress and difficulties with numbers increased the likelihood that the Respondent would make errors and bad decisions. Mr Attridge submitted that this supported the view that the Respondent had made a series of errors and committed breaches of the Accounts Rules but did not believe his actions were dishonest. The Respondent's core values of honesty and integrity had been preserved throughout.

162.12 Mr Attridge invited the Tribunal to consider the elements of the case and ask if it had been shown that the Respondent knowingly engage in behaviour which he believed to be dishonest by the objective standards of reasonable and honest people. The Tribunal was invited to conclude that the heavy burden of proving the allegation had not been discharged. The Respondent did not excuse his breaches of the Accounts Rules and Principles, and this was to his credit. Mr Attridge submitted that the Respondent had spoken with fervour in his evidence in denying that he had acted dishonestly.

162.13 The Tribunal carefully considered and weighed the evidence in the case and the submissions made on behalf of the parties. The Tribunal took particular note of the submissions made on behalf of the Respondent and took into account the letter from Cooper Lingard dated 2 March 2015. The Tribunal noted the denials by the Respondent that he had had any dishonest intent and that he had given evidence that he had been under stress at the relevant time (late 2012/early 2013) and his contention

that all of the misconduct had arisen because of the mistaken transfer of Mr and Mrs R's money to complete the Marks Court lease extensions on 19 December 2012. The Tribunal was also conscious that the Applicant was required to prove the allegation to the highest standard.

162.14 The Tribunal reviewed and considered the key facts and issues in the case.

162.15 It was clear that as at 19 December 2012 the Respondent did not have sufficient funds on the Marks Court matter to complete the lease extensions. This position had come about because the Respondent had taken over £49,000 more in costs than had been budgeted for and received from the clients. The Tribunal found that Mr Exell had not been informed that the costs had increased significantly and in particular he had not been asked to provide extra funds from the Marks Court Phase 1 leaseholders, with the result that no extra funds were provided on the Marks Court matter.

162.16 The Respondent had suggested that the costs had increased because of extra work which was required, for example in relation to an application to the County Court. However, the letter to Mr Exell about this, dated 9 August 2012, only indicated a possibility of extra costs and in the event the landlord was ordered to pay the costs of those proceedings in the sum of £10,915. In any event, the Tribunal was not satisfied that Mr Exell had received this letter. It found that there had been no subsequent discussion concerning the provision of extra funds. The Respondent had asserted that he believed extra funds would be provided on the Marks Court matter. However, the Tribunal could see no ground for such a belief as there had been no discussion and no letter of request for funds, with a revised costs estimate.

162.17 The Tribunal found that as at 19 December 2012 the Respondent should have been in a position to complete both the Marks Court matter and redeem Mr and Mrs R's mortgage. He did not, as the Marks Court funds which had been supplied in accordance with his request in June 2012 had been disbursed, at least in part for the Respondent's costs. Those costs were considerably higher than the figures quoted and had been taken without providing bills to the clients, so the clients were unaware how their money was being used.

162.18 The Respondent had attempted to explain that the first mistake was in accidentally transferring the wrong funds on 19 December 2012. The Tribunal had listened to this explanation but found it incredible. The Respondent's description of making the payment, without checking if the funds were there or checking to whom the funds were being transmitted, was unsatisfactory. If there had simply been a mistake, and funds had been incorrectly transferred to the wrong payee, this could have been rectified as soon as the office reopened in the New Year by transferring the correct amounts to the correct payees and making the appropriate corrections to the ledger. The problem was that the Marks Court money was no longer in the client bank account.

162.19 If there had simply been an error, the Respondent could and should have asked the Marks Court leaseholders for the necessary funds as a matter of urgency; he did not do this. Given that he needed something over £90,000 to complete the Marks Court lease extensions, a request for extra funds (of over £2,400 for each of the 37 remaining leaseholders in Phase 1) would undoubtedly have caused consternation to

his clients, whether before or after the expected completion date. Indeed, it was incredible of the Respondent to suggest that he had asked Mr Exell for this extra amount and believed the money to have been provided or on its way; such a request would have led, at best, to some difficult conversations with Mr Exell and others. There was no reasonable ground for the Respondent to believe that he had asked for the money and/or that it was in the account. Indeed, given that the Respondent used internet banking, it would be straightforward to check the client account balance at any time.

162.20 Thereafter, the Respondent had made lots of attempts to cover up the shortfall. He had credited funds to the Marks Court ledger when there was no possible justification for doing so. The Respondent's explanation that he believed the funds which came in related to Marks Court was not credible. As already noted, there was no reason for the Respondent to believe that funds were coming in on the Marks Court matter as he had not asked the client for such funds. The Tribunal found that the receipt of money from Mrs JM, which was credited to the Marks Court matter, noted Mrs JM's name in the narrative. As the Respondent had confirmed that he carried out all of the Firm's accounts functions (with the book keeper updating the records from documents he produced), the Respondent knew when this money arrived that it was for Mrs JM's matter and not Marks Court. The Respondent was aware of the source of the funds and therefore the rightful owner of those funds.

162.21 The Tribunal was satisfied that there was no legitimate reasons to transfer funds from Mr and Mrs R's ledger to the Marks Court ledger on 14 January 2013 or make the transfer from Mr and Mrs M to Marks Court on 1 February 2013. The Respondent was to hold the completion monies on the Mr NK/Ms LP matter to the order of AS & Co and yet credited those funds to the unrelated Marks Court ledger. Those funds were not credited to the correct ledger and the transaction did not complete until after the FIR was completed. With regard to Mr SHS, it was clear beyond any doubt that this client had provided money to pay a SDLT liability, not "on account" of possible future costs. The Respondent had accepted that Mr SHS' recollection of events was likely to be better than his, and had not challenged Mr SHS' witness evidence. The Respondent had used Mr SHS's money to reduce the shortfall on the Marks Court matter.

162.22 The Tribunal noted and found that the Respondent had used a complicated system of raising invoices, far in excess of the actual costs, on the matters of certain clients (Mr RW, Mr PC, Mr SHS and Mr MH), transferring funds from client to office account and then offsetting those sums against credit notes raised on the Marks Court matter. The invoices in question were undoubtedly false invoices as they bore no relation to the work done on the files or to the proper costs on those matters. This system created a "paper" transfer of funds to the Marks Court ledger from clients unconnected to that matter and thus helped to cover up the shortfall on the Marks Court matter. Such a system could not be created in error; it required a series of deliberate acts.

162.23 Against the background of the clear facts of the case, the Tribunal could not accept the Respondent's repeated assertion that he had no intention to do what he had done. The Respondent had referred to undergoing a period of stress. No medical evidence had been produced to substantiate any particular stress and, indeed, the Respondent

had not indicated that there were any unusual or particularly difficult circumstances in the relevant period. Running a practice was often difficult; the Respondent had not described anything unusual. The Tribunal noted that he had referred to negotiating for a merger of his Firm, but that the Respondent's evidence was that this was in the context of an increased workload and good projected fee income, rather than due to acute financial pressures. The Tribunal accepted that most of the improper transactions had occurred in January/February 2013; however, the background to the shortage on the Marks Court matter was the substantial billing on that matter which had occurred from June to December 2012. The Tribunal was not satisfied that the Respondent was impaired in any part of the relevant period to the extent that he did not know what ordinarily honest and reasonable people would consider to be dishonest.

162.24 The Tribunal could not ignore the fact that the Respondent's misconduct was discussed with him in March 2013, in the course of Mr Bailey's investigation. Despite this, he had used funds which were provided in respect of the Marks Court Phase 2 matter to repay the clients affected by the improper use of their money for the benefit of Marks Court Phase 1. Even if the Tribunal had found the Respondent in any way credible when he said he was not in his right mind at the time of his misconduct, there could be no possible excuse for continuing the misconduct when it was pointed out to him by the FIO.

162.25 The Respondent had shown a pattern of systematic behaviour over a period of months which had the effect of concealing the fact that he had billed more on the Marks Court matter than a) was justified in the light of the costs estimate and b) than was available for costs on the ledger. The Respondent had told the Tribunal that he had not checked if there was money on the Marks Court account; to send out money from client account without a proper basis to believe the money was there was not the act of an honest solicitor. The Respondent had on numerous occasions used money belonging to other clients to reduce the shortfall on the Marks Court matter or repay part of his personal loan. As at 19 December 2012, the Respondent could not have had an honest belief that he had sufficient funds on the Marks Court matter when he had billed and had the benefit of substantial costs on that matter. Whilst it had been asserted that the Respondent had had no personal gain from his actions, they had allowed his Firm to receive money in costs which substantially exceeded the amount which the clients expected to pay.

162.26 The Tribunal was satisfied to the required standard that in: systematically and improperly crediting funds received from clients to the wrong client ledger; transferring funds between client ledgers, in some cases using the false invoices scheme; withdrawing client funds to (i) repay a personal loan he had obtained to compensate (in part) for the shortage on client account and (ii) in respect of his costs; and using clients' funds in respect of other clients' matters, the Respondent was dishonest by the ordinary standards of reasonable and honest people. The systematic and deliberate nature of the steps the Respondent took after 19 December 2012 showed beyond any doubt that the Respondent knew his conduct was dishonest by the standards of reasonable and honest people; his actions were not accidental and did not arise as a result of incompetence.

162.27 The Tribunal was satisfied to the required standard that this allegation had been proved.

Previous Disciplinary Matters

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

Mitigation

164. Mr Attridge, for the Respondent, submitted that the Respondent was aware that in the light of the finding of dishonesty the Tribunal would consider if it was appropriate to strike him off the Roll of Solicitors. Mr Attridge submitted that the purpose of sanction in the Tribunal was the protection of the public and the reputation of the profession and that these purposes could be met by a lesser sanction than striking the Respondent off the Roll.

165. Mr Attridge submitted that the Respondent had had a long and unblemished career, with no previous disciplinary issues in his career of over thirty years. The issues which had led to this case occurred in a short period within a long career. Those events coincided with a period of significant personal stress, about which the Respondent had given evidence, and the Tribunal was invited to accept that the Respondent had been stressed at the relevant times.

166. Mr Attridge submitted that by the time of the intervention into the Firm the Respondent was trying to correct matters, including the losses to clients; the Tribunal was urged to take this into account.

167. The Tribunal was referred to a letter from the Managing Partner of Respondent's current employer, Cooper Lingard Solicitors in Leigh-on-Sea, Essex dated 2 March 2015. Mr Attridge submitted that this was not an anodyne testimonial but was well-balanced. The letter referred to an error by the Respondent shortly after he began working at that firm (which was soon after the intervention) and so could be seen to be a true and honest account relating to the Respondent.

168. Mr Attridge submitted that the Tribunal should consider a less serious sanction than a strike off, for example a restriction order. It was submitted that imposing conditions on the Respondent's practice (such that he could not be a principal in a firm, hold client money or be a signatory on client account, and must work in approved employment) would adequately protect the public from any transgression by the Respondent. It was submitted that the integrity and reputation of the profession could be maintained by steps such as this and any risk would be managed. The Tribunal was invited to consider making a restriction order, perhaps combined with a suspended suspension order.

169. Mr Attridge submitted that the Tribunal should consider the Respondent's personal circumstances, that these events arose from an isolated transgression and that the Respondent had taken steps to remedy what he had done. It was submitted that the Respondent's otherwise good record should be considered and that the Respondent should be allowed to continue his working life.

Sanction

170. The Tribunal had regard to its Guidance Note on Sanctions (December 2014) and took into account the submissions made on behalf of the Respondent and the testimonial from his current employer.

171. This was a case in which dishonesty had been found proved. In the light of the case law, in particular SRA v Sharma [2010] EWHC 2022 Admin ("Sharma"), it was clear that the usual and proportionate sanction in such a case was a striking off order, save where there were exceptional circumstances. No lesser sanction would adequately meet the requirement to maintain the reputation of the profession as one in which every member could be trusted to the ends of the earth (per Bingham LJ in Bolton v Law Society [1994] 1 WLR 51). The Tribunal had not heard anything from or on behalf of the Respondent which suggested there were any exceptional circumstances in this case. Whilst the Respondent may have been undergoing a period of personal and/or professional stress, there was nothing to suggest that his course of conduct over a number of months had been caused by a medical difficulty or some exceptional occurrence.

172. The Tribunal considered that the conduct which had been admitted by the Respondent was so serious that even without the finding of dishonesty, the Tribunal would have been impelled to strike off the Respondent. Clients' had been disadvantaged as their matters could not complete as he had transferred away the relevant funds. The Respondent had misused client money and had taken deliberate steps to conceal the shortfall which he had created. There had been substantial losses to clients, and the reputation of the profession had been seriously damaged by the Respondent's actions. Clients' money should be regarded as sacrosanct; it should only be used for the purposes of the client to whom the money belongs. In using money belonging to various clients to conceal the shortfall on the Marks Court matter, the Respondent had fallen so far below the standards expected in the profession that striking off would have been fully justified, whether or not dishonesty had been established.

173. In the circumstances of this case, the only proper and proportionate order was to strike the Respondent off the Roll of Solicitors.

Costs

174. Ms Wingfield for the Applicant made an application that the Respondent should pay the Applicant's costs of the proceedings and that the Tribunal should summarily assess the reasonable costs payable.

175. Ms Wingfield referred to the schedule of costs dated 23 February 2015. The total costs claim as set out in that document was £55,596.76, including forensic investigation costs of £11,211.88 and SRA supervision costs of £1,950. Ms Wingfield told the Tribunal that the schedule had been prepared on the basis that the time estimate for the hearing was three days and that certain witness expenses would be incurred. As the hearing would conclude during the first day, and as the Respondent had not required the attendance of two witnesses, the costs had been reduced and Ms Wingfield told the Tribunal that the costs now claimed were £52,790.76. Whilst less time was required for the hearing than had been anticipated,

the allegations had been contested until very recently and so the case had been prepared on the basis that it was defended. Also, the costs of the case had been increased by the substantial requests for disclosure made by the Respondent (particularly as the documents disclosed had not then been relied on or referred to by the Respondent). Ms Wingfield submitted that the hourly rates claimed for the work were very reasonable.

176. Ms Wingfield submitted that these proceedings began before the Respondent became bankrupt (in April 2014), so it would be inappropriate to order that any costs could not be enforced without the further permission of the Tribunal.

177. It was noted that the Respondent had not submitted financial information; on 10 September 2014 the Tribunal had made a direction for such information to be provided 28 days before the hearing if the Respondent wanted his means to be taken into account in relation to possible sanctions and/or costs.

178. Mr Attridge told the Tribunal that a bankruptcy order was made against the Respondent in April 2014; that order would be discharged in April 2015, but the Respondent would remain subject to an income payments agreement until August 2017. Mr Attridge submitted that it was hard to believe that the Respondent would be able to satisfy any costs order in the foreseeable future. Mr Attridge submitted that any costs order should be not enforceable without the Tribunal's permission.

179. Mr Attridge submitted that it was hard to make submissions with regard to the amount of costs, given the level of information set out in the schedule; indeed, Mr Attridge submitted it would be almost impossible summarily to assess costs which were claimed in the sum of over £52,000. Mr Attridge submitted that it was not possible to determine if the costs set out in each section of the schedule were reasonable or not. Mr Attridge accepted that the costs would be higher than they might otherwise have been, due to the disclosure requests, but that was not a reason to assess costs in the amount claimed. Mr Attridge submitted that it was impossible for the Tribunal to assess if the claims for work done were reasonable, given the lack of detail in the schedule. Mr Attridge told the Tribunal that he had no issue with the hourly rates charged; the difficulty was in addressing the work claimed without a detailed breakdown.

180. Mr Attridge submitted that the Tribunal should order a detailed assessment of the costs.

181. The Tribunal considered carefully the claim for costs and the submissions of the parties.

182. The Tribunal did not accept that there was any difficulty in making a summary assessment of costs. The Tribunal was well used to assessing costs based on schedules provided by the Applicant's solicitors. Indeed, in this instance the level of detail provided was greater than in some other cases. The Tribunal was expert in assessing the complexity of cases and hence the reasonable and proportionate costs which should be allowed. The Tribunal also noted that the schedule was supported by a statement by the Applicant's solicitors confirming that the costs claimed did not

excede the costs which the Applicant was liable to pay in respect of the work covered by the schedule.

183. The Tribunal considered that the hourly rate charged (£175 per hour) was reasonable, given the nature of the work involved. The disbursements claimed were reasonable and appropriate (and, of course, witness travel expenses to the hearing had been taken off the total claimed). The Tribunal considered the time spent in dealing with the case. Whilst the time spent did not appear excessive for any particular item of work (including time spent on the forensic investigation), the Tribunal took into account that there was a possibility of some duplication in the course of the proceedings. The Tribunal considered that to make an appropriate allowance for such possible duplication or excess work the reasonable costs should be assessed in the inclusive sum of £48,500.

184. The Tribunal then considered whether there should be any further reduction on account of the Respondent's financial position. It noted that the Respondent was presently subject to a bankruptcy order but had not provided details of his income, assets and liabilities. In any event, in the light of the Nortel/Lehman case aka Bloom v Pensions Regulator [2013] UKSC 52 it appeared that a costs order made by the Tribunal would be a contingent liability in the Respondent's bankruptcy. Accordingly, there was no reason either to reduce the costs awarded or make the order unenforceable without further permission.

Statement of Full Order

185. The Tribunal Ordered that the Respondent, Adrian Patrick Shaun Dann, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £48,500.00.

Dated this 21st day of April 2015
On behalf of the Tribunal

K. W. Duncan
Chairman