

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11216-2014

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LOUIS STANLEY SPRAGG

Respondent

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Before:

Mr L. N. Gilford (in the chair)

Mr A. Ghosh

Mrs V. Murray-Chandra

Date of Hearing: 10 September 2014

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## Appearances

Mr James Dunn, solicitor, of Devonshires Solicitors, 30 Finsbury Circus, London EC2M 7DT for the Applicant.

The Respondent, Mr Louis Stanley Spragg, was not present or represented.

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## JUDGMENT

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## Allegations

1. The allegations made against the Respondent, Mr Louis Stanley Spragg, in a Rule 5 Statement dated 20 December 2013 were that he:
  - 1.1 Failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 (“the SCC 2007”) and, from 6 October 2011, in breach of Principle 2 of the SRA Principles 2011 (“the Principles”). It was further alleged that the actions set out in the paragraphs of the Rule 5 Statement relied on by the Applicant in support of this allegation demonstrated that the Respondent was dishonest within the meaning set out in Twinsectra Ltd v Yardley [2002] UKHL (“Twinsectra”), in particular with regard to:
    - 1.1.1 A minimum cash shortage in the client bank account of £85,295.19 existed and no explanation had been provided by the Respondent for this shortage;
    - 1.1.2 It was not known what happened to £38,187.48 of the above total owing to a lack of supporting documentation provided to the Applicant by the Respondent and there being no explanation provided by the Respondent;
    - 1.1.3 Twenty four unauthorised and unallocated transfers were made from the client bank account to the office bank account, amounting to £34,507.71; and
    - 1.1.4 £12,600 was incorrectly transferred from the client bank account and was not recorded in the Firm’s cash book; no explanation for this transfer had been provided by the Respondent.
  - 1.2 Failed to act in the best interest of each client, in breach of Rule 1.04 of the SCC 2007 and, from 6 October 2011, in breach of Principle 4 of the Principles.
  - 1.3 Failed to provide a proper standard of service to his clients, in breach of Rule 1.05 of the SCC 2007 and, from 6 October 2011, in breach of Principle 5 of the Principles.
  - 1.4 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Rule 1.06 of the SCC 2007 and, from 6 October 2011, in breach of Principle 6 of the Principles.
  - 1.5 Failed to maintain systems and controls for monitoring the financial stability of his firm and risks to money and assets entrusted to him by clients and others, and failed to take steps to address issues identified in breach of Principle 8 of the Principles and Outcome 7.4 of the Solicitors Code of Conduct 2011 (“the SCC 2011”).
  - 1.6 Failed to comply with regulatory obligations and to deal with the SRA in an open, timely and co-operative manner and to co-operate fully with the SRA, in breach of Principle 7 of the Principles and Outcome 10.6 and, in addition, failed to provide all information and explanations requested, all being in breach of Outcome 10.9 of the SCC 2011.

- 1.7 Failed to protect client money and assets, in breach of Principle 10 of the Principles. The Applicant also alleged that failures to protect client money by the Respondent were dishonest (in particular with regard to paragraphs 1.1.1 and 1.1.2 above).
- 1.8 Failed to ensure compliance with the Solicitors Accounts Rules 1998 (“SAR 1998”) as principal of a firm and failed to ensure compliance by everyone employed in the firm, in breach of Rule 6 of the SAR 1998 and, from 6 October 2011, in breach of Rule 6.1 of the SRA Accounts Rules 2011 (“AR 2011”).
- 1.9 Made improper withdrawals from client account, in breach of Rule 22(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 20.1 of the AR 2011. The Applicant further alleged that the actions relied on in support of this allegation were dishonest (in particular with regard to paragraphs 1.1.3 and 1.1.4 above).
- 1.10 Failed to keep accounting records properly written up to show dealings with client money in breach of Rule 32(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 29.1 of the AR 2011.
- 1.11 Failed to prepare, at least once every five weeks, a reconciliation statement showing the cause of the difference, if any, shown between (a) the balance of the client cash account and the balances shown on the statements and passbooks and (b) the balances shown by the client ledger accounts of the liabilities to clients and the balance on the client cash account, in breach of Rule 32(7) of the SAR 1998 and, from 6 October 2011, in breach of Rule 29.12(c) of the AR 2011.
- 1.12 Failed to produce documents and information to an Officer appointed by the SRA necessary to prepare a report on compliance with the SAR 1998, in breach of Rule 34(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 31.1 of the AR 2011.
- 1.13 Failed to use each client’s money for that client’s matters only in breach of Rule 1.2(c) of the AR 2011. The Applicant also alleged that the actions relied on in support of this allegation were dishonest (in particular with regard to paragraphs 1.1.1 and 1.1.2 above).
- 1.14 Failed to establish and maintain proper accounting systems and proper internal controls over those systems, to ensure compliance with the rules, in breach of Rule 1.2(e) of the AR 2011.
- 1.15 Failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust in breach of Rule 1.2(f) of the AR 2011.
- 1.16 Failed to remedy promptly on discovery breaches of the AR 2011 by replacing money improperly withdrawn from the client account in breach of Rule 7.1 of the AR 2011.
- 1.17 Made withdrawals from general client account in excess of the money held on behalf of the relevant client in the general client account in breach of Rule 20.6 of the AR 2011.

- 1.18 Failed to ensure that all shortages were shown in reconciliations, in breach of Rule 29.14 of the AR 2011.

### **Documents**

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

Applicant:-

- Application dated 20 December 2013
- Rule 5 Statement, with exhibit "JHRD1", dated 20 December 2013
- Witness statement of Richard Burch, dated 10 June 2014
- Copy inter partes correspondence, 20 January to 31 July 2014
- Schedule of costs
- Skeleton argument dated 8 September 2014

Respondent:-

- Respondent's Answer and Exhibits dated 3 February 2014
- Respondent's witness statement dated 17 February 2014
- Respondent's Amended Answer and Exhibits dated 1 May 2014
- Letter to Tribunal dated 28 April 2014 with medical information and copy bankruptcy order
- Letter to Tribunal dated 31 August 2014, with medical information
- Financial statement dated 31 August 2014

### **Preliminary Matter – Proceeding in the absence of the Respondent.**

3. The Respondent was not present or represented, so the Tribunal considered as a preliminary issue if it should proceed in his absence.
4. The Tribunal had regard to the Respondent's letter of 31 August 2014, which referred to the hearing dates, enclosed documents for the attention of the Tribunal and stated,

"I regret I am unable to attend due to ill health.

I am willing for the Tribunal to proceed in my absence and forego the right to appear in person and to cross examine, which I would have liked to have done..."

The Respondent then went on to state that he did not require Mr Burch to attend to give evidence, stating that he accepted his statement, but making comments on the matters raised. The letter went on to make representations concerning possible sanctions.

5. The Tribunal considered the skeleton argument of the Applicant which dealt, amongst other matters, with the issue of proceeding in the absence of the Respondent. The Tribunal noted its power to proceed in the absence of a Respondent, under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"). It noted that this power ought to be exercised with some caution, given the general right of a

Respondent to be present at his trial, but noted that that right could be waived by the Respondent who deliberately and voluntarily absented himself.

6. The Tribunal accepted the arguments advanced by the Applicant, in particular at paragraphs 6 to 10 of the skeleton argument. The Tribunal was satisfied that the Respondent had been served with the proceedings, had proper notice of the hearing, had engaged in the proceedings and had confirmed that he was content for the hearing to proceed in his absence. In these circumstances, the Tribunal was satisfied that the Respondent had waived his right to be present and take part in the hearing.

### **Factual Background**

7. The Respondent was born in 1938 and was admitted as a solicitor in 1968. His name remained on the Roll of Solicitors at the date of hearing; he did not hold a current Practising Certificate.
8. At all material times, the Respondent was the recognised sole principal of Louis Spragg & Co (“the Firm”) which operated from offices at Holloway Chambers, Priory Street, Dudley, West Midlands DY1 1EJ and, from around February 2013, offices at Elizabeth House, 26 Priory Street, Dudley DY1 1EJ.
9. There was a qualified accountant’s report for the Firm for the period 1 June 2010 to 31 May 2011, which raised concerns in respect of the Firm’s compliance with the SAR 1998. An inspection of the Firm’s books of account and other records began on 12 November 2012. As a result of the inspection, the Applicant’s Forensic Investigation Officer (“FI Officer”) produced a forensic investigation report (“the FI Report”) dated 31 January 2013, on which the Applicant relied.
10. Concerns were raised by the FI Officer with the Respondent on 11, 12, 18 and 19 December 2012, and on 7 and 14 January 2013, as recorded in the FI Report; the Report recorded that the queries were not answered by the Respondent. On 14 January 2013 the FI Officer informed the Respondent that she wished to discuss certain payments out of the office account; the Respondent was recorded as replying,

“Well, I can’t until the office account is up to date because you are taking the books I am responsible for and saying two and two makes four, all of that information has come from other sources.”
11. A Supervisor of the Supervision, Risk and Standards Department of the Applicant wrote to the Firm on 21 February 2013, putting allegations to the Respondent in relation to failure to safeguard client money and failure to co-operate with the Applicant. As telephone calls to the Firm were not answered the Supervisor instructed the FI Officer to undertake a “walk by” inspection at the address. This revealed that the Firm had moved from their original offices to a different address close by. The FI Officer obtained the telephone number of the new office and on 25 February 2013 spoke to an employee of the Firm, as the Respondent was not in the office, and obtained the address from him.

12. On 1 March 2013 the Supervisor sent the Respondent a further copy of the letter of 21 February 2013. The Respondent replied on 7 March 2013 and stating that as the letter had only been received by the Firm on the previous day, he would require an extension in order to respond. The Supervisor telephoned the Firm on a number of occasions to discuss the extension but was advised each time that the Respondent was not in the office as he was suffering from poor health. The Supervisor wrote to the Respondent on 15 March 2013 to inform him that the Applicant would extend the date for his response to 21 March 2013.
13. The Respondent wrote to the Supervisor on 20 March 2013 indicating that he would not be able to respond on account of his ill health but would respond within the next two weeks, when he had taken advice. The Respondent wrote to the Supervisor again on 9 April 2013 stating that he had been unable in the time available to obtain all the advice that he required. The letter contained comments on a number of matters and the allegations made, but did not address the reason for the client account shortage. The letter, written as from the Firm and referring to the Respondent as principal, stated that,

“He cannot give an explanation for any shortages but can only refer to his record that up until this year [he] has had a good complaints and accounts record and that things seem to have gone badly wrong in the last year or two. There appears to be no evidence of dishonesty but there clearly has been a systems failure of some kind. A more cynical view would be that he has been the victim of serious mistakes or teeming and lading, but there is no proof of that.”
14. On 23 April 2013 the Panel of Adjudicators Sub-Committee of the Applicant resolved to intervene into the Firm on the grounds that: there was reason to suspect dishonesty on the part of the Respondent in connection with his practice as a solicitor; the Respondent had failed to provide explanations requested on numerous occasions, in the process of an investigation by the Applicant, in breach of the SCC 2011; and the Respondent failed to maintain a proper book of accounts and as such breached a number of rules contained within the SAR 1998/AR 2011, including but not limited to Rules 6, 7 and 22 of the SAR 1998 and Rules 6, 7 and 20 of the AR 2011. The intervention was effected on or about 25 April 2013.

#### The investigation

15. On 12 November 2012 the Respondent provided the FI Officer with a client bank reconciliation statement dated 30 October 2012. Attached to this was a copy of the client liabilities dated 31 October 2012, which showed a balance of £92,837.75. The Firm's client bank account statement showed a balance at 31 October 2012 of £555.48, which after the FI Officer allowed for adjustments was reduced to £149.68. As at the date of inspection, there was a shortfall on client account of £92,688.07. The Firm's reconciliation statement for 30 October 2012 referred to the sum of £75,712.06 as being a “deposit in transit”; it was unclear on the face of the reconciliation statement to what this sum related. Further, the reconciliation statement did not reconcile or give reasons for the difference between the client monies held and the monies which were due to clients.

16. The FI Officer reviewed various client files and established the monies that should have been held for those matters in the client bank account; two such matters are exemplified below. The FI Officer also analysed the relevant bank statements for instances where monies were paid out of the client bank account for no clearly proper purpose. For example, there were transfers from the client bank account to the office bank account that were not allocated anywhere, as they were not backed up by entries in the cashbooks or ledgers; instances of this are set out below.
17. The FI Officer considered the two client matter files which represented the largest client balances, namely "CS, sale of 2 R Road, Dudley" which had a client balance of £76,970.98 and "[Respondent], probate of Mr RC" which had a client balance of £8,473.89. The Firm should have been holding at least £85,444.87 in respect of these two matters; as the funds held were £149.68, there existed a minimum cash shortage of £85,295.19.

#### CS, sale of 2 R Road Dudley

18. The Firm acted for Ms CS in relation to the sale of a property. On 27 June 2012, sale proceeds of £79,500 were received into the Firm's client bank account.
19. A bill was raised in relation to this matter of £609.02. The bill was undated but the client ledger recorded the transfer of £609.02 from the Firm's client bank account to the Firm's office bank account on 26 June 2012; this was shown on the relevant bank statement. On the same date, 26 June 2012, the ledger also recorded a payment of £1,920 from the Firm's client bank account to estate agents. A bank statement showed that this amount was withdrawn from the Firm's client bank account on 25 July 2012.
20. The FI Officer did not note any other references to any payments out of the Firm's client bank account in relation to this matter. On 11 December 2012, Ms RB, a fee earner at the Firm, confirmed to the FI Officer that there were no other payments or receipts into or out of the Firm's client bank account in relation to this matter, other than those stated above. Therefore, on 31 October 2012 the Firm should have been holding the sum of £76,970.98 for Ms CS, being the sale proceeds less the bill and the payment to the estate agents.

#### Respondent, probate of Mr RC

21. The Respondent was the sole executor in relation to the probate of the estate of the late Mr RC. On 22 June 2012 the client ledger recorded the receipt of "cash from home" in the sum of £1,000. The relevant bank statement showed a credit of £1,000 into the Firm's client bank account on 25 June 2012.
22. On 27 June 2012 the client ledger recorded receipt of £24.50 as "cash from Mr C's wallet". The relevant bank statement showed a credit of £24.50 into the Firm's client bank account on 29 June 2012.

23. On 2 July 2012 the client ledger recorded a transfer of £1,000 from the Firm's client bank account to the office bank account and stated that the transfer was made "on a/c funeral and burial expenses". The bank statement showed the transfer of £1,000 on 2 July 2012 from the Firm's client to office bank accounts.
24. The FI Officer noted that there was a pre-paid funeral plan in relation to this matter and so on 12 December 2012 the FI Officer asked the Respondent why the sum of £1,000 had been withdrawn from the Firm's client bank account and transferred to the office account. The Respondent replied, "We thought that there might be expenses to pay out at the funeral when we were there but there were not."
25. Further funds were received, were recorded on the client ledger and were shown as received into the Firm's client bank account on the relevant bank statement (on the same date unless otherwise stated):
  - 25.1 £167.39 from the Co-op on 20 July 2012;
  - 25.2 £2,164.88 from HSBC on 15 August 2012;
  - 25.3 £5,871.82 from Lloyds TSB on 23 August 2012; and
  - 25.4 £245 from Jennings Funeral Directors on 22 October 2012, received into the Firm's client bank account on 23 October 2012.
26. The FI Officer did not note any other references to payments in or out of the Firm's client bank account in relation to this matter. On 11 December 2012, Ms RB confirmed that there had been no other payments or receipts, other than as set out above. There was no record of the £1,000 withdrawn on 2 July 2012 from client account being returned to client account. As at 31 October 2012 the Firm should have been holding £8,473.89 on behalf of their client in the Firm's client bank account.

#### Replacement of cash shortage

27. As at the date of the FI Officer's final meeting with the Respondent, on 14 January 2013, the cash shortage had not been replaced by the Respondent and it was not replaced by the date of the Rule 5 Statement. The Respondent had confirmed in his Amended Answer dated 1 May 2014 that he had been unable to replace the shortage prior to the intervention into the Firm in April 2013.
28. On 14 January 2013 the FI Officer asked the Respondent if he agreed that he should be holding a minimum of £85,444.87 in his client bank account as at 31 October 2012 in relation to the matters of Ms CS and the Probate of Mr RC; the Respondent stated, "Yes, I should." The FI Officer also asked the Respondent if he could replace the minimum cash shortage and he replied, "Not immediately, no. I need to apply to the Compensation Fund because I do not want any client to suffer."

#### Cause of cash shortage

29. The FI Report recorded that the full cause of the cash shortage was not known, due to the inaccurate records maintained by the Firm and the failures to prepare client



account reconciliations showing the cause of any differences. The FI Officer identified the following causes:

- 29.1 £34,507.71 in transfers from the Firm's client bank account to the office bank account which were unallocated and which were not identified as relating to particular clients;
- 29.2 £12,600 incorrectly transferred in relation to the matter of Mr and Mrs D;
- 29.3 £38,187.48, the cause of which was unidentified.

Unallocated transfers

- 30. The FI Officer reviewed the Firm's client bank account statements and cashbook dating back to May 2011 and noted that there were 24 transfers from the Firm's client bank account to the office bank account that were unallocated to any client matter and not recorded in the Firm's client cashbook. The total of these transfers was £34,507.71. These were set out in the FI Report as:

- £6,877.41 on 1 July 2011;
- £6,999.01 on 20 September 2011;
- £6,000 on 14 February 2012;
- £1,368.15 on 30 April 2012;
- £1,368.14 on 30 April 2012;
- £300 on 10 May 2012;
- £300 on 11 May 2012;
- £600 on 14 May 2012;
- £1,000 on 21 May 2012;
- £600 on 24 May 2012;
- £300 on 25 May 2012;
- £1,500 on 28 May 2012;
- £300 on 11 June 2012;
- £1,920 on 28 June 2012;
- £200 on 3 July 2012;
- £600 on 24 July 2012
- £275 on 30 July 2012;
- £2,200 on 30 July 2012;
- £10 on 31 July 2012;
- £40 on 31 July 2012;
- £600 on 1 August 2012;
- £1,000 on 10 October 2012;
- £100 on 19 October 2012; and
- £50 on 24 October 2012.

- 31. The FI Officer asked the Respondent on numerous occasions in December 2012 and January 2013 to clarify to which matters the transfers related and to provide a copy of the ledgers, but the Respondent could not provide an explanation. On 18 December 2012 the FI Officer held a meeting with the Respondent in which he said, "I've looked at them but I haven't got the answers, not yet anyway." On 7 January 2013 the FI Officer asked the Respondent if he was able to provide the information; he said

he was not. On 14 January 2013, the FI Officer asked the Respondent again if he could provide the information and he replied, "No, because the whole amount of the office account has not been written up to date."

32. The FI Officer reviewed the Firm's client and office account bank statements and noted that once some of the unallocated sums had been transferred to the Firm's office bank account, similar payments were then made out of the office bank account.
33. On 3 January 2013, the FI Officer requested clarification in relation to five payments out of the office bank account that had been made following unallocated client to office bank account transfers. The details the FI Officer established in respect of three of these payments are set out below. The Respondent submitted a handwritten response to the FI Officer on 7 January 2013 and gave explanations in respect of five of the matters identified.
34. £6,877.41 was transferred from the Firm's client bank account to the office bank account on 1 July 2011 and was shown on the Firm's client account bank statement but not recorded in the Firm's cashbook. On that date, the cashbook only recorded client to office bank account transfers of £200 and £600 in relation to the matters of KM and B respectively. There was therefore a balance of £6,077.41 which was not recorded in the Firm's cashbook. The office account bank statement showed that on the same date (1 July 2011), a payment was made out of office account in the sum of £6,077.41. On 7 January 2013 the Respondent's handwritten note indicated that the payment of £6,077.41 was made to HMRC for PAYE and NI contributions.
35. £6,999.01 was received into the Firm's client bank account on 20 September 2011 from Legal and General. At the time these funds were received, the Firm was unable to identify to which matter it related but it was later discovered that it related to the matter of DD. The receipt was posted to the Firm's cashbook and ledger one year later, in September 2012. The relevant cashbook page showed an entry in September 2012 as "20/09/2011 Direct CLR 6999.01 rec Legal and General. Unident.bk.st.591 (2011) – DD". On 13 October 2011 the client bank statement showed that the same amount was transferred to the Firm's office bank account and on the same date a payment was made out of the office bank account of £10,498.50. On 7 January 2013 the Respondent confirmed to the FI Officer that this payment of £10,498.50 was made to HMRC, as referenced on a handwritten note prepared by the Respondent. Immediately prior to the transfer of £6,999.01 from client to office account, the office account was overdrawn in the sum of £46,091.31.
36. £2,200 was transferred from the Firm's client bank account to the office bank account on 30 July 2012 and was shown on the relevant office bank statement. This transfer was not recorded in the Firm's cashbook. The bank statement showed that on the same date a cheque payment of £2,220 was made out of the office bank account. On 7 January 2013 the Respondent confirmed to the FI Officer that this payment was made to "Premier Video Scarlett", as referenced on the Respondent's handwritten note.

### Incorrect transfer re Mr and Mrs D

37. Ms RB of the Firm acted for Mr and Mrs D in relation to their purchase of a property in Wolverhampton. The client ledger recorded a transfer of £13,602.88 from the Firm's client bank account to the office bank account on 22 December 2011. The office account bank statement showed receipt of this sum on the same date.
38. The bill in relation to this matter dated 26 November 2011 showed a total sum due of £13,602.88 including a stamp duty fee of £12,600. The client ledger recorded that following the £13,602.88 transfer on 22 December 2011, stamp duty was paid from the Firm's office bank account of £12,600 on 23 January 2012.
39. A copy of the client bank account statement on 1 February 2012 showed that £12,600 was paid out of the Firm's client bank account for the payment of stamp duty. This payment was not recorded in the Firm's client cashbook.
40. The FI Officer noted that the office bank account statements showed that no payments had been made from the Firm's office bank account in the sum of £12,600 in relation to stamp duty. Therefore, the client account in relation to the matter of Mr and Mrs D was overdrawn by £12,600 from 1 February 2012.
41. On 12 December 2012 the FI Officer discussed this with the Respondent and asked if he agreed that a client account shortage of £12,600 existed in relation to the matter of Mr and Mrs D. The Respondent agreed there was a shortage and agreed to look into this further. On a number of later occasions in December 2012, January and February 2012 the FI Officer requested that the Respondent consider the file and ledger and agreed that the client bank account was overdrawn in the sum of £12,600. The Respondent did not provide any explanation or further information.
42. On 14 February 2013 the FI Officer spoke to the Respondent again about this matter. The Respondent was recorded as saying, "We don't have anything on [Mr and Mrs D]. This wasn't the original ledger." The FI Officer asked the Respondent if he agreed that the stamp duty of £12,600 should have been paid from the Firm's office bank account and he replied, "From the ledger, that appears to be the case."

### Overpayments from client account

43. The FI Officer noted in the course of the investigation that a number of client ledgers were inaccurate and that overpayments had been made from the Firm's client bank account. The overpayments formed part of the client account shortage and part of the unknown cause amounting to £38,187.48 (referred to at paragraph 29.3 above).
44. The client ledger in relation to the matter of DD recorded that on 13 September 2012 £174,241.29 was paid out of the Firm's client bank account to Ms PD. However, the relevant client account bank statement stated that the amount paid to Ms PD was £178,193.89, not £174,241.29. Accordingly, an overpayment of £3,952.60 was made in relation to this matter. The FI Officer reported that she believed the lower figure was posted as this was the balance on the ledger as at 21 September 2012 and the Firm's computer system did not allow postings that created an overdrawn balance.

Client account reconciliation statements

45. The client account reconciliation statement dated 30 October 2012 produced to the FI Officer, and previous reconciliation statements prepared by the Respondent did not show the cause of the difference between the client liabilities balance and the adjusted bank statement balance. On 14 January 2013 the FI Officer referred the Respondent to the client bank reconciliation statement and asked if he agreed that the reconciliation statements that he had prepared since January 2011 had now shown the cause of any difference between the client liabilities balance and the client bank statement balance. The Respondent was recorded as replying, "No, it's not on that statement, obviously it's not."

**Witnesses***Ms Baljinder Dhaliwal*

46. Ms Baljinder Dhaliwal, a FI Officer of the Applicant, gave evidence in which she confirmed that her FI Report dated 31 January 2013 was true, accurate and correct.
47. In response to a question from the Tribunal, Ms Dhaliwal told the Tribunal that she had inspected the Firm's ledgers and cashbook. The Respondent had referred in his Answer to a computer crash causing or contributing to the discrepancies which had occurred in his Firm's accounts. Ms Dhaliwal told the Tribunal that she had no knowledge of the Firm's previous accounts or the computer crash referred to, including when such a crash may have occurred.

*Mr Richard Burch*

48. Mr Richard Burch, a solicitor formerly employed as a part-time assistant solicitor at the Firm, gave evidence in which he confirmed that his statement dated 10 June 2014 was true to the best of his knowledge and belief.
49. In response to a question from the Tribunal about whether he could throw any light on the computer crash referred to by the Respondent, Mr Burch stated that he did not use computers and was not computer literate. He recalled that the Respondent had spoken to him and to others in the Firm to say that he was having problems with his computer at home and on occasion would stay at home to deal with those problems. Mr Burch told the Tribunal that the discussions about the computer were possibly 2-4 years ago (i.e. 2010-2012) but he had just interpreted those discussions as general conversation; the Respondent knew that Mr Burch knew nothing about computers.
50. Mr Burch told the Tribunal that the Respondent generally only attended the office on Tuesdays, Wednesdays and Friday afternoons, but would attend more often if there was an urgent matter. In the period just before the Firm closed, the Respondent would sometimes be out of the office at court.
51. In response to a question from the Tribunal, Mr Burch told the Tribunal that he had known the Respondent for about 14 years, having started working for him in mid-May 2000. Mr Burch described the Respondent as a nice, old-fashioned gentleman, whom he had believed to be decent. Mr Burch told the Tribunal that the Respondent was

scrupulous about petty cash, ensuring that receipts were obtained, and about making sure files were in order. Mr Burch told the Tribunal that he had found the Respondent to be very scrupulous and that he paid attention to detail. Mr Burch referred to his statement, at paragraph 12, which read:

“I would conclude by saying that I always felt that [the Respondent] was meticulous in respect of anything financial, from dealing with petty cash right through to large sums. In general, he was meticulous about financial details.”

In the light of that, Mr Burch had been very surprised by the Applicant’s investigation; at first, he believed it to be a spot-check, or something arising from a small error. Mr Burch described the Respondent as a pleasant man to deal with and he retained good feelings towards him.

### **Findings of Fact and Law**

52. 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.
53. Although the Respondent stated in his Amended Answer document that he “accepted” a number of the allegations, the Tribunal decided to proceed on the basis that by “accepted” the Respondent meant he did not dispute the facts underlying the allegation, but might still deny the allegation itself. The Tribunal therefore required the Applicant to prove all of the allegations, whilst noting that a number of factual matters were not disputed. The Tribunal noted in particular that the Respondent denied any dishonesty. The test for dishonesty to be applied was that set out in the Twinsectra case.
54. The Respondent had indicated to the Applicant that he did not require either the FI Officer or Mr Burch to be called to give evidence and he had specifically stated that he accepted the evidence of Mr Burch. However, given the requirement to prove the allegations beyond reasonable doubt it was decided that it would be appropriate to call the witnesses to confirm their written evidence, and to deal with any supplementary issues.
55. All of the allegations arose from the factual matters set out above and fell into four main areas: lack of integrity and conduct which would fail to maintain the trust the public placed in the Respondent/the provision of legal services (allegations 1.1 and 1.4); failure to provide a proper standard of service and act in the best interests of each client (allegations 1.2 and 1.3); failure to co-operate with the Applicant/the investigation (allegations 1.6 and 1.12); and lack of controls to protect client money/breaches of the Accounts Rules (all other allegations).
56. The Tribunal noted that the Respondent had not challenged the factual matters set out in the FI Report, although he had offered comments and explanations on a number of points set out in the FI Report and the Rule 5 Statement. The Tribunal was satisfied that the contents of the FI Report were true and accurate, having had this confirmed

by the FI Officer. The Tribunal was also satisfied that the evidence of Mr Burch, which was accepted by the Respondent, was true.

57. The Tribunal noted that the Respondent had not attended the hearing, and so was not available for cross-examination. The Respondent had stated in his letter of 31 August 2014 that he regretted he was unable to attend, due to ill health. He had provided to the Tribunal some information from his GP concerning his health. The Applicant submitted that the medical evidence submitted by the Respondent in April 2014 did not explain whether or not he could attend the hearing, but gave a brief medical history. The further GP letter, Dated 27 August 2014, stated that the Respondent was unable to attend and that he had very limited mobility. The Tribunal was invited to consider the reasons the Respondent had given for not attending; this could be relevant in the light of the Tribunal's Practice Direction Number 5 which dealt with adverse inferences which could be drawn where a Respondent did not give evidence. The Tribunal decided that it did not need to draw adverse inferences from the Respondent's failure to attend the hearing to give evidence. However, it would take into account the explanations he had given to the FI Officer and in his documents submitted to the Tribunal and would determine what weight, if any, could be attached to those and, indeed, whether the explanations were credible and reasonable.
58. **Allegation 1.1 - Failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the SCC 2007") and, from 6 October 2011, in breach of Principle 2 of the SRA Principles 2011 ("the Principles"). It was further alleged that the actions set out in the paragraphs of the Rule 5 Statement relied on by the Applicant in support of this allegation demonstrated that the Respondent was dishonest within the meaning set out in Twinsectra Ltd v Yardley [2002] UKHL ("Twinsectra"), in particular with regard to:**
- 1.1.1 A minimum cash shortage in the client bank account of £85,295.19 existed and no explanation had been provided by the Respondent for this shortage;**
- 1.1.2 It was not known what happened to £38,187.48 of the above total owing to a lack of supporting documentation provided to the Applicant by the Respondent and there being no explanation provided by the Respondent;**
- 1.1.3 Twenty four unauthorised and unallocated transfers were made from the client bank account to the office bank account, amounting to £34,507.71; and**
- 1.1.4 £12,600 was incorrectly transferred from the client bank account and was not recorded in the Firm's cash book; no explanation for this transfer had been provided by the Respondent.**
- 58.1 This allegation was denied by the Respondent.
- 58.2 The factual matters underlying this allegation are set out at paragraphs 18 to 20, 21 to 26, 29, 30 to 36, 37 to 42 and 43 to 44 above.

- 58.3 The Tribunal was satisfied that as at 30 October 2012 the Respondent should have been holding £85,444.87 in his client bank account in respect of the two matters of Ms CS and Mr RC but, at that date, only £149.68 (after adjustments) was in fact held on the client account. There was, therefore, a minimum cash shortage of £85,295.19. Indeed, it appeared from the reconciliation statement dated 30 October 2012 that the shortage may have been over £92,000; the true figure was impossible to ascertain, given that the Respondent's books of account were inaccurate.
- 58.4 In his Amended Answer, the Respondent admitted the shortage of £85,295.19. He stated that this followed a rewriting of the accounts after a computer crash and on information he had "at that later time."
- 58.5 Of the admitted minimum shortage, the Tribunal was satisfied on the evidence presented that there was no proper explanation or information for £38,187.48 of the shortage. The Respondent confirmed in his Amended Answer that he could not give an explanation and that the documentation "was missing on rewrite."
- 58.6 The Tribunal accepted the evidence in the FI Report that there were twenty-four unallocated transfers, as set out at paragraph 30 above. The Respondent stated in his Amended Answer that he accepted the transfers were made over a period of time and that "no supporting documentation was found after the rewriting."
- 58.7 The Tribunal was also satisfied that there was an incorrect transfer in the matter of Mr and Mrs D, as set out at paragraphs 37 to 42 above. The Respondent accepted in his Amended Answer that it appeared to be correct that there had been an incorrect transfer in this matter.
- 58.8 The factual matters relied on by the Applicant were all found proved by the Tribunal.
- 58.9 The Tribunal considered whether the factual matters proved, and the Respondent's conduct, demonstrated a lack of integrity. The Tribunal noted that the conduct in issue occurred both whilst the SCC was in force and after 6 October 2011, when the Principles applied such that both Rule 1.02 of the SCC and Principle 2 could apply.
- 58.10 The Tribunal noted that the Applicant's investigation followed the filing of a qualified accountant's report for the year 1 June 2010 to 31 May 2011. By the autumn of 2011 or early 2012 the Respondent was aware of the qualified accountant's report, which put him on notice of problems (or possible problems) with his Firm's accounts. By the time of the investigation, which began in mid-November 2012, the Respondent was not able to account for the minimum shortage on client account which was found or explain how it had occurred. In the course of the investigation, the Respondent could offer no explanations for the unallocated transfers. His explanation for the transfer on the matter of Mr and Mrs D was that he had used the wrong cheque book.
- 58.11 The Tribunal noted that the Respondent was the sole principal of the Firm and thus was responsible for ensuring compliance with the relevant accounts rules, and for safeguarding client money. The Tribunal also noted, and accepted, the unchallenged evidence of Mr Burch in his witness statement that the Respondent had been kept fully informed about payments and transfers, and would authorise all client account cheques and that only the Respondent knew the client and office account balances at

any time. Mr Burch's further evidence was that the Respondent kept the client ledgers at his home and the accounts computer was also at the Respondent's home.

The Tribunal noted that the Respondent had suggested in his Amended Answer that in the course of his investigation into the client account shortage he had tried to check incoming money with the bank paying-in books, but found that the latter were, for the most part, blank. The Tribunal noted, however, that Mr Burch confirmed what the Respondent stated, which was that all incoming money, including cash and cheques, was recorded on a duplicate "scribe", which was a hard copy note pad on which the client, the amount and the date would be noted; a top copy of this was always sent to the Respondent. The Respondent therefore had information about all incoming monies. It was the Respondent who wrote and signed most client account cheques; Mr Burch only did so occasionally, where the Respondent had already authorised the raising of the cheque. The Tribunal was satisfied that the Respondent was not only responsible as principal for the operation of the Firm's accounts but he was also responsible for authorising and monitoring payments and transfers.

- 58.12 The Tribunal also noted and accepted the evidence of Mr Burch that the Respondent was meticulous in his dealings with accounts matters.
- 58.13 The Tribunal accepted that the Firm had had a minimum cash shortage of £85,295.19, in respect of the matters of Ms CS and Mr RC alone; there was further evidence which suggested the minimum shortage was over £92,000. This was a large sum on any measure, and particularly so in the context of a small firm. The Tribunal was concerned that the Respondent had not provided supporting documents or an explanation for the identified transfers which had led to the shortage and could offer no explanation at all for £38,187.48 of the shortage. It noted the Respondent's reliance on computer problems as an explanation for the Firm's accounts problems. The Tribunal was not satisfied that this could explain, let alone excuse, the existence of a shortage on client account, the incorrect transfer in the matter of Mr and Mrs D or the 24 unallocated transfers. The Firm had clearly also used paper records, and the Firm received bank statements which showed sums transferred from client to office account. The Respondent's reference to blank paying-in books was not accepted as an explanation for any confusion as he had received "scribe" notes setting out transactions and amounts.
- 58.14 The Tribunal noted with concern the transfer from client to office bank account on 1 July 2011 of £6,877.41 (as set out at paragraph 34 above) of which only £800 was recorded in the Firm's cashbook. On the same date a payment of £6,077.41 was made, which in January 2013 the Respondent had indicated was to HMRC for payment of PAYE and NI contributions. It appeared that there had been a transfer from client to office account, for which no explanation had been given, which was then used to pay the Firm's tax liabilities, which was accordingly for the benefit of the Respondent. The Tribunal noted that Respondent's contention that there was no link between the transfer and the payment to HMRC as a transfer on the matter of DD of £478.80 on 4 July 2011 should have been "added" to the £800 which was noted in the cashbook. However, that transfer along with entries in the cashbook of £1108.80 and £252 on 4 July 2011 made up the transfer of £1,839.60 which was shown on the Firm's client account bank statement. The Tribunal was satisfied to the required standard that the transfer of the "unallocated" £6,077.41 from client to office account facilitated the payment of a liability of the Respondent and/or the Firm.



- 58.15 With regard to the matters set out at paragraph 35 above, the Tribunal was concerned that monies received on the matter of DD were not allocated to that client for about a year. About three weeks after the sum of £6,999.01 received (on 13 October 2011) and whilst it was not noted on the ledger of DD, that amount was transferred to the office bank account. On the same date, there was an office account cheque drawn for £10,498.50 which the Respondent had acknowledged was a payment to HMRC. In his Amended Answer, the Respondent stated that the payment was in respect of SDLT for clients JGS and NCS and denied that there was any link between the transfer from client to office account and the payment out of office account. The Tribunal acknowledged that the amounts were not the same, but accepted the Applicant's contention that the transfer from client account formed part of the monies paid to HMRC. The Tribunal noted that immediately prior to the transfer, the Firm's office account was overdrawn in the sum of over £46,000; making the transfer before paying the monies to HMRC enabled the Firm to keep its overdraft below £50,000. In any event, there had been no explanation by the Respondent about why client money had been transferred to office account.
- 58.16 The Tribunal noted that, as set out at paragraph 36 above, there had been a transfer from client to office account of £2,200 on 30 July 2012 which was not recorded in the Firm's cashbook. An identical amount was paid out the same date to "Premier Video Scarlett". The Respondent stated in his Amended Answer that this payment was a legitimate disbursement, but did not explain why there had been an unallocated transfer from client account in the same amount on the same day.
- 58.17 In considering this allegation, the Tribunal also had regard to the transfer of £1,000 from the client to office account on the estate of Mr RC, of which the Respondent was sole executor, on 2 July 2012 as set out at paragraphs 23 and 24 above. The Respondent had explained to the FI Officer that he had thought there might be funeral expenses to pay, but there were not. The Tribunal was satisfied that the Respondent knew he had transferred £1,000 from client to office account, which he had then failed to replace as soon as it was apparent there were no funeral expenses to pay.
- 58.18 With regard to the matter of Mr and Mrs D, it was clear that Stamp Duty should have been paid from office account, the relevant sum having been transferred from client to office account, ostensibly for that purpose. However, Stamp Duty was paid from client account, and the monies were not transferred back from office account. The Respondent's explanation was that he had paid the Stamp Duty on the wrong cheque book.
- 58.19 The Tribunal was satisfied that on the matter of DD the Respondent had caused £178,193.89 to be paid out in September 2012 when only £174,241.29 was held on the client ledger for that client.
- 58.20 The Tribunal noted a further point of concern, which was not specifically pleaded and so did not form part of its overall decision but which it wanted to record. This point arose from a copy bank statement submitted by the Respondent with his Answer. This statement showed that on 24 August 2010 Aviva paid the sum of £75,712.06 into the Firm's account and withdrew the same sum on the same date; the entry was noted as "error reverse". On the same day Aviva paid the sum of £12,131.97 into the Firm's account in respect of a client, E. The Respondent described the reversed entry as

“curious”. The Tribunal noted that £75,712.06 was the same amount as appeared on the reconciliation statement for October 2012. The Tribunal’s understanding of the position was that Aviva made an incorrect payment on 24 August 2010 which it immediately recalled and then made the correct payment. However, over two years later the Respondent had the incorrect payment noted on a reconciliation statement as a “deposit in transit”, which would have substantially reduced the apparent shortage on client account. The Tribunal determined that the Respondent understood that the payment had been made in error; indeed, it had not been recorded in the cashbook. The Respondent had used that figure to reduce the shortage shown on the reconciliation statement, even though the relevant transaction had occurred over two years before the reconciliation statement. As noted, this determination did not form part of the findings on this or any other allegation, as it had not specifically been pleaded by the Applicant; however, it illustrated the Respondent’s approach to matters and could be taken into account in considering the background to the case. This was particularly so as it was a point raised by the Respondent in his Answer and Amended Answer, as well as in his Statement.

- 58.21 In determining the question of integrity, the Tribunal noted that as a result of the unallocated transfers and in particular all of the matters set out at paragraphs 58.14 to 58.19 above, the Firm (and hence the Respondent) had had the use of client money for office purposes in significant sums and for significant periods. He had managed his Firm’s accounts in such a way that a significant shortage occurred on client account. To use client money for office purposes when there was no justification for doing so was clearly conduct which lacked integrity. The Respondent’s attempt to explain the difficulty as being caused by computer problems was not a reasonable explanation; the Respondent was required to exercise caution and proper principles of stewardship in any dealings with client monies and should have satisfied himself, properly, as to the position before making any transfers. The Respondent had not offered any explanation about why any computer problems he experienced had led him to make the transfers in question. In all of the circumstances, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted without integrity.
- 58.22 In considering the allegation of dishonesty, the Tribunal applied the “combined test” set out in Twinsectra.
- 58.23 The Tribunal was satisfied to the required standard that in:
- 58.23.1 using client money to pay tax liabilities;
  - 58.23.2 in making transfers from client to office account when there was no justification for doing so;
  - 58.23.3 in making such transfers immediately or shortly before payments out of office account were made, where such transfers assisted in keeping the Firm’s overdraft lower than it would otherwise have been;
  - 58.23.4 in failing to repay the £1,000 transferred in the matter of Mr RC promptly;
  - 58.23.5 in making transfers which were not recorded in the client cashbook and which were not allocated to specific clients;

58.23.6 in using client money to pay a disbursement from office account (re Premier Video Scarlett) with no explanation of the nature of that disbursement or to which client it related;

58.23.7 in allowing a significant cash shortage to exist, (of over £84,000 at the time of the inspection) with the effect that client money was at risk and (indeed) was not repaid by the Respondent

the Respondent was dishonest by the standards of reasonable and honest people. The Tribunal was further satisfied so that it was sure that the Respondent, who was meticulous in his management of the Firm's finances, not only knew of the transfers in question and the existence of a shortage but also knew that his conduct, as set out above, was dishonest by the standards of reasonable and honest people.

58.24 The Tribunal was satisfied to the highest standard that all aspects of this allegation had been proved, including the allegation of dishonesty.

**59. Allegation 1.2 - Failed to act in the best interest of each client, in breach of Rule 1.04 of the SCC 2007 and, from 6 October 2011, in breach of Principle 4 of the Principles.**

59.1 The Respondent stated in his amended Answer that he accepted this allegation.

59.2 The factual matters underlying this allegation are set out at paragraphs 18 to 20, 21 to 26, 29, 30 to 36, 37 to 42 and 43 to 44 above.

59.3 The Tribunal was satisfied that the factual matters relied on had been proved to the highest standard and, indeed, they were admitted by the Respondent. The Tribunal was satisfied that in allowing a significant shortage on client account to exist for a significant period and in transferring client money to office account when there was no proper reason to do so the Respondent had clearly failed to act in the best interests of each client. The conduct in question spanned the periods in which the SCC and the Principles applied and the Tribunal was satisfied to the highest standard that this allegation had been proved in its entirety.

**60. Allegation 1.3 - Failed to provide a proper standard of service to his clients, in breach of Rule 1.05 of the SCC 2007 and, from 6 October 2011, in breach of Principle 5 of the Principles.**

60.1 The Respondent stated in his amended Answer that he accepted this allegation.

60.2 The factual matters underlying this allegation are set out at paragraphs 18 to 20, 21 to 26, 29, 20 to 36, 37 to 42 and 43 to 44 above.

60.3 The Tribunal was satisfied, as can be seen from paragraph 58 in particular, that the Respondent's management of his Firm's accounts was improper. He had allowed a significant shortage to exist on client account and had transferred client money to office account for the purposes of the Firm and not for the purposes of his clients. He had clearly failed to provide a proper standard of service to his clients and, as the conduct in question spanned the periods in which the SCC and the Principles applied,

the Tribunal was satisfied to the highest standard that this allegation had been proved in its entirety.

**61. Allegation 1.4 - Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Rule 1.06 of the SCC 2007 and, from 6 October 2011, in breach of Principle 6 of the Principles.**

61.1 The Respondent stated in his amended Answer that he accepted this allegation.

61.2 The factual matters underlying this allegation are set out at paragraphs 18 to 20, 21 to 26, 29, 20 to 36, 37 to 42 and 43 to 44 above.

61.3 The Respondent's misconduct in relation to his Firm's account, which is commented on in detail at paragraph 58 above, was clearly such as would reduce the confidence of the public in the Respondent and in the provision of legal services. The Tribunal was satisfied that this allegation had been proved to the highest standard, in its entirety.

**62. Allegation 1.5 - Failed to maintain systems and controls for monitoring the financial stability of his firm and risks to money and assets entrusted to him by clients and others, and failed to take steps to address issues identified in breach of Principle 8 of the Principles and Outcome 7.4 of the Solicitors Code of Conduct 2011 ("the SCC 2011").**

62.1 The Respondent appeared in his amended Answer to accept this allegation, but had offered a number of comments in mitigation and explanation.

62.2 The factual matters underlying this allegation are set out at paragraphs 27 to 28, 29, 31, 36, 42, 44 and 45 above.

62.3 The Tribunal noted that in his Amended Answer, the Respondent had commented that he should have supervised accounts more closely and commented on the roles of staff of the Firm, including Mr Burch. The Tribunal was satisfied that no fault could be attributed to Mr Burch in the operation of the Firm's financial systems and there was no evidence that any other staff had been at fault. The Respondent had referred to difficulties with the Firm's computerised accounts system, particularly from 2011 when, it appeared from his statement the computer system had changed. It was his responsibility to ensure that the Firm's systems were fit for purpose; clearly they were not as he had made improper transfers from client to office account and allowed a shortage on client account to develop. At best, the Respondent had failed to take proper steps to protect client money; as noted above, however, the Tribunal was satisfied that he had actively taken steps which had involved using client money for office purposes. The evidence that the Respondent alone was responsible for management of the Firm's accounts was overwhelming.

62.4 The Tribunal was satisfied to the highest standard that this allegation had been proved to the highest standard.

63. **Allegation 1.6 - Failed to comply with regulatory obligations and to deal with the SRA in an open, timely and co-operative manner and to co-operate fully with the SRA, in breach of Principle 7 of the Principles and Outcome 10.6 and, in addition, failed to provide all information and explanations requested, all being in breach of Outcome 10.9 of the SCC 2011.**

63.1 This allegation was denied by the Respondent.

63.2 The factual matters underlying this allegation are set out at paragraph 31 above.

63.3 The Respondent's position in relation to this allegation, and allegation 1.12 was, in short, that he had co-operated with the investigation and provided such information and explanations as he had; where information had not been given, it was because the Respondent did not know the answer or have the required information. He further stated that he had allowed the FI Officer full access to his files and staff. The Applicant's position was that the Respondent did know the answers to the questions he was asked but did not want to answer them as to do so properly would have involved an admission of dishonest conduct.

63.4 The Tribunal considered the evidence of the FI Officer. It accepted the evidence that the Respondent had been asked on a number of occasions for information and explanations and he had failed to provide what was required. The information and matters discussed with the FI Officer were of a kind which a principal of a Firm should have had available or been able to obtain within a short period. The Tribunal was satisfied to the required standard that, whilst the Respondent had no doubt been polite to the FI Officer, he had failed to co-operate in that he had failed to provide the information and explanations reasonably requested by the FI Officer. The Tribunal was satisfied that this allegation was proved to the required standard.

64. **Allegation 1.7 - Failed to protect client money and assets, in breach of Principle 10 of the Principles. The Applicant also alleged that failures to protect client money by the Respondent were dishonest (in particular with regard to paragraphs 1.1.1 and 1.1.2 above).**

64.1 The Respondent stated in his amended Answer that he accepted this allegation, but he denied the linked allegation of dishonesty.

64.2 The factual matters underlying this allegation are set out at paragraphs 20, 26 to 28, 30 to 36 and 42 to 44 above.

64.3 The Tribunal was satisfied that the factual matters on which the Applicant relied were proved to the required standard. The Respondent had clearly failed to protect client money and assets in that his management of the Firm's account was inadequate and improper.

64.4 The Tribunal also noted the matters set out at paragraph 58.20 above, which had been relied on by the Respondent as showing that the shortage was not as great as it appeared. As noted above, the Tribunal dismissed the Respondent's contentions on this, and considered that he was well aware that the reversal of the payment by Aviva

was because the payment had been made in error and was not “unauthorised” as he suggested in his Statement.

- 64.5 In making transfers and otherwise managing his Firm’s accounts such that there was a minimum cash shortage of over £85,000 as at 30 October 2012 and in being unable to explain £38,187.48 of that shortage, the Tribunal was satisfied that the Respondent’s conduct was dishonest by the standards of reasonable and honest people. Further, the Tribunal was satisfied that the Respondent knew that his failures to protect client money (and, indeed, his use of client money for his Firm’s purposes), as outlined above, was dishonest by those same standards.
65. **Allegation 1.8 - Failed to ensure compliance with the Solicitors Accounts Rules 1998 (“SAR 1998”) as principal of a firm and failed to ensure compliance by everyone employed in the firm, in breach of Rule 6 of the SAR 1998 and, from 6 October 2011, in breach of Rule 6.1 of the SRA Accounts Rules 2011 (“AR 2011”).**
- 65.1 The Respondent stated in his amended Answer that he accepted this allegation.
- 65.2 The factual matters underlying this allegation are set out at paragraphs 29, 31, 36, 42, 44 and 45 above.
- 65.3 The Tribunal was satisfied that the factual matters relied on by the Applicant had been proved; indeed, they were admitted. It was beyond any doubt that the Respondent had failed to ensure compliance with the accounts rules, both in the period when the SAR 1998 applied and after the AR 2011 came into effect. The allegation had been proved to the highest standard.
66. **Allegation 1.9 - Made improper withdrawals from client account, in breach of Rule 22(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 20.1 of the AR 2011. The Applicant further alleged that the actions relied on in support of this allegation were dishonest (in particular with regard to paragraphs 1.1.3 and 1.1.4 above).**
- 66.1 The Respondent stated in his amended Answer that he accepted this allegation, but he denied the linked allegation of dishonesty.
- 66.2 The factual matters underlying this allegation are set out at paragraphs 30 to 42 above. The Tribunal was satisfied to the required standard that the factual matters relied on by the Applicant had been proved to the required standard.
- 66.3 On twenty-four occasions the Respondent had caused or allowed transfers from the client to office bank accounts which were unallocated to any client matter and were not recorded in the client cashbook. These improper withdrawals totalled £34,507.71 and occurred in the period July 2011 to October 2012. The Tribunal was satisfied to the highest standard that the alleged breaches of the SAR 1998 and AR 2011 had been proved.
- 66.4 The Tribunal considered the allegation of dishonesty made in relation to this matter and applied the combined test set out in Twinsectra. The Tribunal noted in particular that with regard to the transfers of £6,877.41 on 1 July 2011, £6,999.01 on

20 September 2011 and £2,200 on 30 July 2012 there had been payments from office account shortly after these transfers which either matched or included the transferred sums. There was in each case no proper explanation given by the Respondent for the transfers or why those sums had been used to pay office liabilities or (on the Respondent's case) liabilities for other clients. Further, the Tribunal noted that there had been no explanation given for the Respondent's use of £12,600 due to Mr and Mrs D within his office account.

66.5 The Tribunal was satisfied to the required standard that in making the improper transfers, when there was no proper reason for the withdrawals the Respondent had acted dishonestly by the standards of reasonable and honest people. Further, the Tribunal was satisfied that in using client money for his own purposes, in particular in paying PAYE and NI contributions, and in holding client money in the office account for the use of his Firm the Respondent knew that he was dishonest by the standards of reasonable and honest people.

67. **Allegation 1.10 - Failed to keep accounting records properly written up to show dealings with client money in breach of Rule 32(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 29.1 of the AR 2011.**

67.1 The Respondent stated in his amended Answer that he accepted this allegation.

67.2 The factual matters underlying this allegation are set out at paragraphs 29, 31, 36, 42, 44 and 45 above. The Tribunal found the facts relied on by the Applicant in support of this allegation to be proved; indeed, they were not contested by the Respondent.

67.3 There could be no doubt that the Respondent had failed to keep his accounting records properly written up. He had blamed his new computerised accounts system, on which he stated it was easy to make mis-postings. The Tribunal was satisfied that the Respondent was responsible for his Firm's accounts and he had failed to comply with the obligation to keep accounts records properly written up. The allegation had been proved to the highest standard.

68. **Allegation 1.11 - Failed to prepare, at least once every five weeks, a reconciliation statement showing the cause of the difference, if any, shown between (a) the balance of the client cash account and the balances shown on the statements and passbooks and (b) the balances shown by the client ledger accounts of the liabilities to clients and the balance on the client cash account, in breach of Rule 32(7) of the SAR 1998 and, from 6 October 2011, in breach of Rule 29.12(c) of the AR 2011.**

68.1 This allegation was denied by the Respondent.

68.2 The factual matters underlying this allegation are set out at paragraph 45 above.

68.3 The Respondent stated in his Amended Answer that reconciliations were made on the computer, but he had not understood that the computer deleted them after one month. The Respondent had not printed off copies, and so no record had been retained.

- 68.4 The Applicant's position was that even the document which was seen, which purported to be a client account reconciliation statement, was not a proper reconciliation statement as it did not reconcile and did not explain the shortage. The Applicant submitted that there was no positive evidence that reconciliation statements had been prepared in accordance with the relevant accounts rules.
- 68.5 The Tribunal found the Respondent's explanation inherently unlikely. It was unlikely that the principal of a Firm would fail to print off and, probably, sign any reconciliation statements which were produced as a record of the Firm's compliance with the accounts rules or "back-up" the information in some form. The Tribunal had heard from Mr Burch, and accepted, that the Respondent was knowledgeable about the use of computers. It also heard, and accepted, that the Respondent was meticulous in his operation of the Firm's financial matters. In those circumstances it was highly unlikely that the Respondent would have failed to keep records if reconciliation statements had been produced. Even if that were wrong, the Tribunal was satisfied that the one reconciliation statement it was shown did not meet the requirements of a proper reconciliation statement.
- 68.6 The Tribunal was satisfied to the highest standard that this allegation had been proved.
69. **Allegation 1.12 - Failed to produce documents and information to an Officer appointed by the SRA necessary to prepare a report on compliance with the SAR 1998, in breach of Rule 34(1) of the SAR 1998 and, from 6 October 2011, in breach of Rule 31.1 of the AR 2011.**
- 69.1 This allegation was denied by the Respondent.
- 69.2 The factual matters underlying this allegation are set out at paragraph 31 above. It was closely linked to allegation 1.6. For the reasons set out at paragraph 63 above, the Tribunal was satisfied that this allegation was proved to the highest standard.
70. **Allegation 1.13 - Failed to use each client's money for that client's matters only in breach of Rule 1.2(c) of the AR 2011. The Applicant also alleged that the actions relied on in support of this allegation were dishonest (in particular with regard to paragraphs 1.1.1 and 1.1.2 above).**
- 70.1 The Respondent stated in his amended Answer that he accepted this allegation, but he denied the linked allegation of dishonesty.
- 70.2 The factual matters underlying this allegation are set out at paragraphs 18 to 20, 21 to 26, 30 to 36 and 37 to 42 above.
- 70.3 The Tribunal found the factual matters relied on by the Applicant to be proved; indeed, they were not disputed. The Respondent had stated in his Amended Answer that not all items on the bank statements could be identified on the rewrite of the accounts, which he stated was done on the information available.



- 70.4 Shortages existed in the matters of Ms CS and Mr RC; accordingly, monies due to the clients on those matters must have been used for the benefit of other clients. Further, the unallocated transfers and the incorrect payment with regard to Mr and Mrs D meant that money which belonged to particular clients was used in office account or for the benefit of other clients. There was a minimum cash shortage of £85,295.19; it was inevitable where there was a shortage that money belonging to one client was not available for the use of that client and could be used for others. The Respondent was unable to explain how a substantial part of the minimum cash shortage had arisen.
- 70.5 The Tribunal was satisfied to the highest standard that in causing and allowing the existence of a substantial client account deficit, for a significant period, and in using the monies transferred from client account for his benefit/that of the Firm, the Respondent was dishonest by the standards of reasonable and honest people. Further, the Tribunal was satisfied to the highest standard that the Respondent knew that his actions and management of the Firm's client account was dishonest by the standards of reasonable and honest people.
71. **Allegation 1.14 - Failed to establish and maintain proper accounting systems and proper internal controls over those systems, to ensure compliance with the rules, in breach of Rule 1.2(e) of the AR 2011.**
- 71.1 The Respondent stated in his Amended Answer that he accepted this allegation.
- 71.2 The factual matters underlying this allegation are set out at paragraphs 29, 31, 36, 42, 44 and 45 above. The Tribunal found the factual matters relied on proved; indeed, they were accepted by the Respondent. It was beyond any doubt that the Firm did not have proper accounting systems and controls, at least in the period 2011/2012 which was the main period covered by the FI Report. The Tribunal was satisfied to the required standard that this allegation had been proved.
72. **Allegation 1.15 - Failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust in breach of Rule 1.2(f) of the AR 2011.**
- 72.1 The Respondent stated in his amended Answer that he accepted this allegation.
- 72.2 The factual matters underlying this allegation are set out at paragraphs 29, 31, 36, 42, 44 and 45 above. The Tribunal was satisfied that the factual matters underlying this allegation had been proved to the required standard. It was beyond any doubt that the Respondent had failed to keep proper accounting records, such that the accurate position with regard to money held for each client could not be ascertained. This allegation was proved to the highest standard.
73. **Allegation 1.16 - Failed to remedy promptly on discovery breaches of the AR 2011 by replacing money improperly withdrawn from the client account in breach of Rule 7.1 of the AR 2011.**
- 73.1 The Respondent stated in his amended Answer that he accepted this allegation.

- 73.2 The factual matters underlying this allegation are set out at paragraphs 27 to 28 above and the Tribunal found them proved. The Respondent had accepted in January 2013 that there was a minimum cash shortage of £85,295.19 as at 31 October 2012. He had not replaced that shortage by the date of the FI Report (31 January 2013) or subsequently.
- 73.3 The Tribunal noted in particular that in the matter of Mr RC, the Respondent was the sole executor of the estate of Mr RC. He had transferred £1,000 from client to office account and had then failed to replace it. The Respondent was aware from the date of the transfer, 22 June 2012, that he had £1,000 in office account which did not belong there and had failed to remedy that shortage throughout the period of 5 months before the investigation started.
- 73.4 The Tribunal was satisfied to the required standard that this allegation had been proved.
74. **Allegation 1.17 - Made withdrawals from general client account in excess of the money held on behalf of the relevant client in the general client account in breach of Rule 20.6 of the AR 2011.**
- 74.1 The Respondent stated in his amended Answer that he accepted this allegation.
- 74.2 The factual matters underlying this allegation are set out at paragraphs 43 to 44 above, and the Tribunal found them proved. The Respondent had paid £178,103.89 to Ms PD on the matter of DD when only £174,241.29 was held on the DD client matter. There was no doubt that this allegation was proved to the required standard.
75. **Allegation 1.18 - Failed to ensure that all shortages were shown in reconciliations, in breach of Rule 29.14 of the AR 2011.**
- 75.1 The Respondent stated in his amended Answer that he accepted this allegation.
- 75.2 The factual matters underlying this allegation are set out at paragraph 45 above and the Tribunal found them proved. The reconciliation statement provided by the Respondent, dated 30 October 2012 did not show all shortages and in particular did not explain the shortages which existed. The reference on that reconciliation to a “deposit in transit” of £75,712.06 was misleading as there was no such deposit due to the Firm; that sum related to a payment which had been reversed as it had been made in error over two years before the date of the reconciliation statement. The Tribunal was satisfied to the required standard that this allegation had been proved.

### **Previous Disciplinary Matters**

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

## Mitigation

77. The Respondent had not submitted specific mitigation, but the Tribunal took into account the submissions he had made concerning the various allegations. In particular, it noted that the Respondent had attributed at least some of the accounts problems to a computer problem, which he stated had necessitated the rewriting of the accounts. It also noted his apology for failing his clients, his expression of shame at what had happened and his reference to a previously good complaints, claims and accounting record.
78. The Tribunal also took into account the positive comments made about the Respondent by Mr Burch. It noted in particular in the context of mitigation his evidence that the Respondent had been a decent gentleman.

## Sanction

79. The Tribunal had regard to its Guidance Note on Sanction (September 2013).
80. The Tribunal had found all allegations against the Respondent to have been proved to the required standard. Those allegations included four matters in which dishonesty had been proved. It was clear that the normal and necessary sanction where dishonesty had been proved was an order striking a solicitor from the Roll; this was required to maintain the reputation of the profession as one whose members could be trusted to act with the utmost integrity and probity.
81. It was clear that the Respondent's financial management of his Firm was improper and had led to losses to clients, which the Respondent had not repaid. The reputation of the profession had been damaged. The burden of making good the losses to clients would fall on the profession generally. The Respondent's conduct was such that a severe sanction would have been justified, even without the findings of dishonesty.
82. There were no exceptional circumstances which suggested that the Tribunal should depart from the usual sanction in a case of this nature. The appropriate and proportionate sanction in this case was an order to strike the Respondent off the Roll.

## Costs

83. On behalf of the Applicant, Mr Dunn applied for an order that the Respondent should pay the Applicant's costs of the proceedings.
84. Mr Dunn told the Tribunal that a copy of a statement of costs, which set out costs totalling £18,132, had been served on the Respondent. Mr Dunn told the Tribunal that the schedule had included an estimate of attendance at the hearing of over 14 hours whereas the actual time spent in the hearing was around 3 hours; travel and waiting time at the hearing was also less than had been estimated. The original schedule was based on the two day time estimate for the hearing, which had later been reduced to one day. Mr Dunn recalculated the costs claimed, setting out a total claim of £15,297 (including VAT and disbursements) and asked the Tribunal to make a summary assessment of the costs.

85. Mr Dunn referred to the financial information provided by the Respondent with his letter dated 31 August 2014. Mr Dunn referred to the Respondent's bankruptcy, the order for which was made on 24 March 2014. Mr Dunn submitted that the Tribunal was not required to take into account the Respondent's means as the Supreme Court decision of Bloom & Others v The Pensions Regulator & Others [2013] UKSC 52 ("Bloom") determined that where an order for bankruptcy was made after the commencement of proceedings in which a costs order was sought, the costs of the proceedings would fall into the bankrupt's estate. Accordingly, there was no need for the Tribunal to reduce the costs which would otherwise be payable because of the bankruptcy.
86. The Tribunal considered carefully the adjusted schedule of costs. It determined that the rate claimed and time spent was reasonable and proportionate to the issues in the case. The Applicant's reasonable costs of the proceedings were summarily assessed in the sum of £15,297.
87. The Tribunal considered the issue of whether it should make any reduction in the costs, or order the costs not to be enforced without the Tribunal's permission. On the basis of the Applicant's submissions on the Bloom case, the Tribunal decided that it should make a normal costs order and that there was no need to reduce the costs because of the Respondent's stated means. Accordingly, the Tribunal ordered the Respondent to pay the Applicant's costs, summarily assessed at £15,297.

#### **Statement of Full Order**

88. The Tribunal Ordered that the Respondent, LOUIS STANLEY SPRAGG, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,297.00.

DATED this 16<sup>th</sup> day of October 2014  
On behalf of the Tribunal

A. Ghosh  
Solicitor Member

On behalf of L. N. Gilford, Chairman