SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11230-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HECTOR DIAZ SUNER Respondent

Before:

Mr D. Green (in the chair)
Mr I. R. Woolfe
Mr S. Hill

Date of Hearing: 14 November 2014

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 The Respondent failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly in relation to the following matters:

1.1.1 The Respondent continued to practise without having renewed his status as a Registered European Lawyer ("REL") and recognition as a sole practitioner, despite repeated prompting by the SRA;

1.1.2 Payments amounting to £7,837 were made by the Respondent from the client bank account which did not relate to clients;

1.1.3 Up to £216,837.21 held in the office bank account was client money withheld from the client bank account, £66,837.21 of which had not been returned to clients;

1.1.4 Where there was a corresponding invoice in the Respondent's bills folder, there were instances where the invoices were not of sufficient value to account for the receipt into the office bank account;

1.1.5 Round sums were transferred from the client to office bank account which were not clearly linked to specific invoices or fees due; and

1.1.6 The Respondent admitted that there was a shortfall on the client bank account but did not know of the amount of the overall shortfall, even approximately. The affected clients were expecting their monies to be used for the payment of registration and tax formalities in Spain and the affected clients were unaware of the failure to complete these formalities.

1.2 The Respondent failed to act in the best interest of each client, in breach of Principle 4 of the SRA Principles 2011.

1.3 The Respondent failed to provide a proper standard of service to his clients, in breach of Principle 5 of the SRA Principles 2011.

1.4 The Respondent 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 Principle 6 of the SRA Principles 2011.

1.5 The Respondent 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 SRA Principles 2011 and Outcome 10.6 of the Solicitors Code of Conduct 2011 ("SCC 2011"), failed to comply promptly with any written notice from the SRA in breach of Outcome 10.8 of the SCC 2011 and, in addition, failed to provide all information and explanations requested, in breach of Outcome 10.9(b) of the SCC 2011.

1.6 The Respondent failed to protect client money and assets, in breach of Principle 10 of the SRA Principles 2011. It was alleged that these actions by the Respondent were dishonest.

1.7 The Respondent failed to provide the SRA with information to enable the SRA to decide upon any application the Respondent made, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply, in breach of Outcome 10.1 of the SCC 2011.

1.8 The Respondent failed to keep other people's money separate from money belonging to him or his firm, in breach of Rule 1.2(a) of the SRA Accounts Rules 2011 ("AR 2011"). It was alleged that these actions by the Respondent were dishonest.

1.9 The Respondent failed to use each client's money for that client's matters only in breach of Rule 1.2(c) of the AR 2011. It was alleged that these actions by the Respondent were dishonest.

1.10 The Respondent 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, and failed to ensure compliance with the AR 2011 as principal of the firm in breach of Rule 6.1.

1.11 The Respondent failed to remedy promptly upon 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.

1.12 The Respondent failed to pay client money into a client account without delay and hold it in a client account, in breach of Rule 14.1 of the AR 2011. It was alleged that these actions by the Respondent were dishonest.

1.13 The Respondent made improper withdrawals from client account, in breach of Rule 20.1 of the AR 2011. It was alleged that these actions by the Respondent were dishonest.

1.14 The Respondent failed to keep accounting records properly written up to show dealings with client money, in breach of Rule 29.1 of the AR 2011 and failed to record all dealings with client money in a client cash account or in a record of sums transferred from one client ledger account to another and on the client side of a separate client ledger account for each client, in breach of Rule 29.2 of the AR 2011, and in addition, failed to show or have readily ascertainable, the current balance on each client ledger, in breach of Rule 29.9 of the AR 2011.

1.15 The Respondent 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 on 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 29.12(c) of the AR 2011, and failed to ensure that all shortages were shown in reconciliations, in breach of Rule 29.14 of the AR 2011.

1.16 The Respondent, having held or received client money, or operated a client's own account as signatory, during an accounting period, failed to deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period, in breach of Rule 35 of the Solicitors Accounts Rules 1998, and from 6 October 2011, Rule 32.1 of the AR 2011.

Documents

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

Applicant:

- Application dated 10 March 2014 together with attached Rule 5 Statement and all exhibits
- Statement of Agreed Facts, Admissions and Outcome signed by the parties on 19 and 20 October 2014
- Hearing Bundle – Volume 2
- Skeleton Argument on behalf of the SRA dated 7 November 2014
- Emails dated 25 April 2014 and 15 October 2014 from Devonshires Solicitors to the Respondent
- Emails dated 6 May 2014 and 19 October 2014 from Devonshires Solicitors to the Tribunal and the Respondent
- Emails dated 13 April 2014 and 6 May 2014 from the Respondent to the Tribunal and to Mr Dunn
- Emails dated 15, 16 and 17 October 2014 from the Respondent to Devonshires Solicitors
- Claims Management Document Review Cover Sheet together with attachments
- Statement of Costs dated 6 November 2014 together with attachments

Respondent:

- Amended Answer (undated)
- Letter from the Respondent to VM and SC dated 5 July 2007
- Loan Contract dated 1 June 2012
- Letter from the Respondent to MTS dated 4 February 2013 together with English translation

- Notes and Mitigation (undated)

Service

3. The Tribunal noted that a letter had been sent by the Tribunal office to the Respondent by email on 22 May 2014 notifying him with details of today's substantive hearing. The Respondent acknowledged receipt of that letter in his email to the Tribunal office also dated 22 May 2014. The Tribunal was therefore satisfied the Respondent had been properly served with details of today's hearing and was aware of it.

Proceeding in Absence

4. Mr Dunn referred the Tribunal to an email from the Respondent to Mr Dunn dated 15 October 2014 in which the Respondent confirmed he did not intend to appear at the hearing before the Tribunal. This email had been sent in response to an email from Mr Dunn to the Respondent dated 15 October 2014 which requested the Respondent to confirm whether he was intending to attend any Tribunal hearing. Mr Dunn confirmed today was the only listed substantive hearing on this case. On 20 October 2014 the Tribunal had been provided with a Schedule of Agreed Facts and Outcome with a number of other documents. The Tribunal had been invited by the parties to review these and indicate whether the Tribunal could make an Order based on the documents alone, or whether the Tribunal would require the Applicant to attend the substantive hearing.

5. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. In this case the Respondent was clearly aware of today's hearing and had engaged with the proceedings in full. He had provided a response to the allegations made against him. He had also engaged with the Regulator and had signed an agreed Statement of Facts, Admissions and Outcome. Both parties had made a joint application to the Tribunal to approve that agreed Statement. The Tribunal was satisfied that the Respondent had voluntarily absented himself from today's hearing, and that it was appropriate, and in the public interest, for the hearing to proceed in the Respondent's absence.

Joint Application for Tribunal to Approve a Statement of Agreed Facts, Admissions and Outcome

6. Mr Dunn, on behalf of the Applicant, referred the Tribunal to his Skeleton Argument dated 7 November 2014. He confirmed the parties had filed a Statement of Agreed Facts, Admissions and Outcome. The parties therefore invited the Tribunal to adopt a procedure used in the case of Re Carecraft Construction Co Ltd [1994] 1 WLR 172. This procedure had been approved by The Court of Appeal in The Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569. The procedure had also been adopted by a division of the Tribunal in the case of Michael Wilson-Smith (Case No 8772-2003).

7. Mr Dunn submitted that adopting the "Carecraft" procedure would save costs and the need for a lengthy hearing at which there would be argument over a number of issues. It also provided certainty for both parties. The Respondent disputed two allegations

but had made various admissions to other allegations, some of which related to dishonesty, as part of the Statement of Agreed Facts, Admissions and Outcome. In such circumstances, the SRA was satisfied that the outstanding two allegations would not add anything further to the proposed sanction. However, the Applicant did not wish to withdraw the two outstanding allegations as it considered they had been properly brought. The Applicant requested that those two allegations be left to lie on the file.

8. On further questioning from the Tribunal, Mr Dunn accepted the Tribunal could dismiss the two outstanding allegations if it so wished, rather than leave them to lie on the file indefinitely. There was no practical reason why the two outstanding allegations could not be dismissed, although this had not been agreed between the parties. Although the Respondent was not present to make any representations in relation to this, dismissing these two allegations would not cause any prejudice to him.

9. Concerning the position relating to costs, these had also been agreed as part of the Statement of Agreed Facts, Admissions and Outcome. On questioning from the Tribunal, Mr Dunn confirmed the agreed costs were indeed substantially less than the amount contained in the Applicant's Statement of Costs. However, the SRA did not have evidence of the Respondent's means and had decided on a practical basis not to pursue the full amount of the costs contained in the Statement of Costs.

10. The Statement of Agreed Facts, Admissions and Outcome signed by both parties, was provided to the Tribunal. It stated as follows:

> "Note: Attached to the Rule 5 statement submitted in these proceedings is a paginated bundle of documentation marked JHRD1. References to page numbers in [sic] shown in bold in square brackets in this statement are references to pages in that exhibit. References to "FI Report para" numbers in this statement are references to paragraph numbers of the Forensic Investigation Report and references to "paragraph" numbers in this statement are references to paragraphs within this statement itself.
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> All facts contained within this statement are agreed by the Respondent. That agreement is confirmed by his signature at the bottom of this document.
>
> 1. The Respondent, Hector Diaz Suner, admits that he:
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> 1.1. Failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011, as set out in paragraphs 10, 12, 17, 20-28, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7, and 35 below. The Tribunal's attention is drawn to the following matters which the Respondent admits:
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> > 1.1.1. Payments amounting to £7,837.00 were made by the Respondent from the client bank account which did not relate to clients;

1.1.2. Up to £216,837.21 held in the office bank account was client money withheld from the client bank account, £66,837.21 of which has not been returned to the clients;

1.1.3. Where there was a corresponding invoice in the Respondent's bills folder, there were instances where the invoices were not of sufficient value to account for the receipt into the office bank account;

1.1.4. Round sums were transferred from the client to office bank account which were not clearly linked to specific invoices or fees due; and

1.1.5. The Respondent has admitted that there was a shortfall on the client bank account but does not know of the amount of the overall shortfall, even approximately. The affected clients were expecting their monies to be used for the payment of registration and tax formalities in Spain and the affected clients were unaware of the failure to complete these formalities.

1.2. Failed to act in the best interest of each client, in breach of Principle 4 of the SRA Principles 2011, as set out in paragraphs 15, 17, 19, 20-28, 32, 33, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7 and 35 below;

1.3. Failed to provide a proper standard of service to his clients, in breach of Principle 5 of the SRA Principles 2011, as set out in paragraphs 15, 17, 19, 20-28, 32, 33, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7 and 35 below;

1.4. Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011, as set out in paragraphs 10, 11, 12, 15, 17, 19, 20-28, 32, 33, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7 and 35 below;

1.5. 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 SRA Principles 2011 and Outcome 10.6 of the Solicitors Code of Conduct 2011 (the "SCC 2011"), failed to comply promptly with written notices from the SRA in breach of Outcome 10.8 of the SCC 2011 and, in addition, failed to provide all information and explanations requested, in breach of Outcome 10.9(b) of the SCC 2011, as set out in paragraphs 12.2, 12.6, 12.7, 14 and 21.2 below;

1.6. Failed to protect client money and assets, in breach of Principle 10 of the SRA Principles 2011, as set out in paragraphs 10, 11, 17, 20-28 and 34.2-36 below. The Tribunal's attention is drawn to paragraphs 1.1.1-1.1.5 above which are repeated here;

1.7. Failed to keep other people's money separate from money belonging to him or his firm, in breach of Rule 1.2 (a) of the SRA Accounts Rules 2011, (the "AR 2011"), as set out in paragraphs 21, 22, 24, 27 and 28 below. The Tribunal's attention is drawn to paragraph 1.1.2 which is repeated here;

1.8. Failed to use each client's money for that client's matters only in breach of Rule 1.2(c) of the AR 2011, as set out in paragraphs 20-28 below. The Tribunal's attention is drawn to paragraphs 1.1.1–1.1.5 which are repeated here;

1.9. 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, and failed to ensure compliance with the AR 2011 as principal of a firm in breach of Rule 6.1 as set out in paragraphs 10, 11, 15, 19, 21.1, 21.2, 21.3, 23, 24, 25, 27, 28, 29, 32, 34.4 and 34.5 below;

1.10. Failed to remedy promptly upon 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, as set out in paragraphs 20-20.3 and 24 below;

1.11. Failed to pay client money into a client account without delay and hold it in a client account, in breach of Rule 14.1 of the AR 2011, as set out in paragraphs 21, 27 and 28 below. The Tribunal's attention is drawn to paragraph 1.1.2 which is repeated here;

1.12. Made improper withdrawals from client account, in breach of Rule 20.1 of the AR 2011, as set out in paragraphs 20-20.3. The Tribunal's attention is drawn to paragraph 1.1.1 which is repeated here;

1.13. Failed to keep accounting records properly written up to show dealings with client money, in breach of Rule 29.1 of the AR 2011 and failed to record all dealings with client money in a client cash account or in a record of sums transferred from one client ledger account to another and on the client side of a separate client ledger account for each client, in breach of Rule 29.2 of the AR 2011, and in addition, failed to show or have readily ascertainable, the current balance on each client ledger, in breach of Rule 29.9 of the AR 2011, as set out in paragraphs 10 and 11 below;

1.14. 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 on 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 29.12(c) of the AR 2011, and failed to ensure that all shortages were shown in reconciliations, in breach of Rule 29.14 of the AR 2011, as set out in paragraphs 10 and 11 below; and

1.15. Having held or received client money, or operated a client's own account as signatory, during an accounting period, failed to deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period, in breach of Rule 35 of the Solicitors Accounts Rules 1998, and from 6 October 2011, Rule 32.1 of the AR 2011, as set out in paragraph 11 below.

2. Allegations 1.1, 1.6, 1.7, 1.8, 1.11 and 1.12 were made on the basis that the Respondent acted dishonestly and the Respondent admits these allegations and admits dishonesty in accordance with the combined test set out in Twinsectra Ltd v Yardley [2002] UKHL.

3. The Respondent does NOT admit the following allegations:

> 3.1. The Respondent continued to practise without having renewed his status as a Registered European Lawyer ("REL") and recognition as a sole practitioner, despite repeated prompting by the SRA;
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> 3.2. The Respondent failed to provide the SRA with information to enable the SRA to decide upon any application the Respondent made, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply, in breach of Outcome 10.1 of the SCC 2011, as set out in paragraphs 11 and 12 below.

4. The SRA Principles, the SCC 2011, the AR 2011 and the Solicitors Accounts Rules 1998, apply to the Respondent as a REL pursuant to Schedule 4, paragraph 3 of the European Communities (Lawyer's Practice) Regulations 2000.

INTRODUCTION

5. The Respondent was born on 3 March 1962 and qualified as a member of the College of Lawyers of Barcelona in 1987 and registered for the first time as a REL on 25 August 2006. The Respondent's registration as a REL is currently suspended and his recognition as a sole practitioner has been terminated. The last information the SRA has received from the Respondent is that he is living with his elderly mother in his native Spain.

6. The Respondent was the sole principal of Hector Diaz & Co (the "Firm"), which operated from premises at Charles House, 108-110 Finchley Road, London NW3 5JJ. Records held by the SRA indicate that the Firm was in operation from 25 August 2006 (i.e. the same date as when the Respondent registered as a REL), until the SRA resolved to intervene into the practice on 5 August 2013.

7. However, the Respondent has confirmed that the Firm had in fact been in operation since October 1994 when the Respondent set up the Firm alongside McGrigors, solicitors. The Respondent has confirmed that he did not register as a REL until 2006, (in breach of the requirement to do so under the Establishment of Lawyers Directive 98/5/EC) and has further confirmed that he had no acceptable explanation or excuse for not doing so (see File Note prepared by the SRA at [6-12])

8. At various times since 1994 the Respondent worked in collaboration with other law firms and records held by the SRA indicate that from the period between 1 January 2011 to 5 July 2012 the Respondent practised under the name of Dellapina Diaz, which was a joint venture between the Respondent

and an individual named [MD] (and from the period January 2012 and 5 April 2013, he was one of two Directors of a company named Diaz Dellapina Ltd). Since July 2012, the Respondent has practised on his own account.

FACTUAL BACKGROUND

9. The above allegations arose from an investigation undertaken by the SRA on 22 July 2013 because of concerns raised by the firm [DP] Solicitors (as set out in their letter of 20 September 2012) [13-15] and in turn, concerns raised by the SRA's Supervision Department ("Supervision") further to a visit that was made to the Firm on 12 July 2013. This visit revealed a number of potential issues in respect of the Respondent and the Firm's registration and recognition and the Firm's compliance with the AR 2011. Following the investigation on 22 July 2013, the Forensic Investigation Officer for the SRA, Mr Adam Howells, (the "Officer") produced a Forensic Investigation Report (the "FI Report") dated 25 July 2013 which is at [16-123]**.**

10. The Respondent explained to the Officer that he held client monies but did not maintain any records and he had not submitted any accountant's reports. The Respondent admitted that there was a shortfall on the client bank account but was unable to confirm its extent, or which clients it related to.

11. The books of account were not in compliance with the AR 2011. The Respondent confirmed that he held client money (and it appeared from the SRA's letter at [123A-D] in June 2010 to a complainant of the Firm, that he had done so for some time) and this was largely on account of unpaid professional disbursements but he did not maintain any accounting records other than a note on the client matter file and that he had never submitted an accountant's report (see FI Report paragraph 3). The Respondent stated to the Officer that he had never told the SRA of the fact he was holding client money as he had not realised that this was a requirement.

12. In addition to his failure to register as an REL prior to 2006 as set out at paragraph 7 above, the Respondent continued to practise without having renewed his status as a REL and recognition as a sole practitioner for the years 2011/12 and 2012/13, despite repeated prompting by the SRA. The sequence of events in relation to this issue is as follows:

> 12.1. The SRA did not receive a completed application from the Respondent for the practising year 2011/12 [126]**.**
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> 12.2. On 10 January 2013 and 25 January 2013, emails were sent to the Respondent [127-132] reminding him and encouraging him to submit the relevant applications as the SRA had not received applications from the Respondent to renew his registration as a REL and recognition as a sole practitioner for the practising year 2012/13.

12.3. On 11 March 2013 an SRA Supervisor telephoned the Respondent and left a message with the Respondent to call back. On 28 March 2013, the Supervisor again telephoned the Respondent to discuss the submission of his application. The Respondent said that he thought the applications had been submitted. The Supervisor confirmed that the SRA had not received any applications. The Respondent therefore agreed to commence the application that week [133-134].

12.4. In April 2013, in another telephone conversation with the Supervisor, the Respondent explained that he was not aware that he needed to do anything but he was willing to follow the instructions of the Supervisor in order to complete his registration [135-136].

12.5. On 25 April 2013, the Supervisor sent an email to the Respondent [137-138] setting out the application process for the practising years 2011/12 and 2012/13 but nothing further was heard from the Respondent.

12.6. On 3 May 2013, a formal request letter was sent to the Respondent by the SRA [139-141] raising allegations relating to his failure to complete his applications for 2011/12 and 2012/13 and requesting a response by 20 May 2013.

12.7. On 12 July, the Supervisor visited the Respondent at the Firm as nothing had been received from him. The Supervisor discussed the Respondent's obligations to submit the appropriate forms. The Respondent admitted that he had received a number of emails from the SRA and that he had *"shied"* away from looking at them [146].

13. Following the investigation by the Officer, the Supervisor took the decision to recommend to the Adjudication Committee that the SRA intervene into the Respondent's practice. The Committee was satisfied that grounds for intervention existed as it was agreed that there was reason to suspect dishonesty on the part of the Respondent (see [157-159] for the Committee's Resolution in full set out within the Report of Ms Avni Finnegan of 2 August 2013). The intervention into the Firm took place on 7 August 2013.

14. Further to the intervention, on 19 September 2013, the Respondent was sent a copy of the Officer's FI Report together with another formal letter from the SRA, this time requesting explanations in respect of the findings of the Officer [161-170]. No response was received from the Respondent and as such he has not added to the explanations he gave to the Officer that are set out within the FI Report, save for what is set out in the Respondent's Amended Answer of 6 May 2014. (Please note that that there are 2 errors in the Report at [25]. The 18 December 2012 transaction references footnote 6 when this should be footnote 8, and the 10 January transaction references footnote 9 when this should be footnote 11).

THE OFFICER'S FINDINGS (FI REPORT PARAGRAPHS 12–18 & 22–25)

15. The Officer asked the Respondent to provide all cheque book stubs and paying in books. The Respondent was only able to provide the latter. None of the credit slips provided a breakdown of the funds making up the deposits, nor did they contain any reference or client name. The Respondent said that the reason for this was because he dealt with so little client money.

16. The Respondent had previously provided the SRA with a number of bank statements in connection with his practice (see list at FI Report paragraph 12) and at the Officer's request, he provided a further bundle of bank statements (that were mostly in unopened envelopes). During the investigation, the Officer requested various client matter files. The Respondent explained that some client matter files were at his home as part of the planned closure of his practice.

17. In the absence of any accounting records, the Officer was unable to express an opinion as to whether there were sufficient funds in the client bank account to meet the Respondent's liabilities to clients. Previously, the Respondent had told Supervision that he would "*make good*" the client account upon closure of the practice (see FI Report paragraph 17). The Respondent explained to the Officer that he owed the client account money. He was unable to confirm the amount, even approximately, therefore the shortfall on the client account at the time of the investigation was unknown.

18. The Officer attempted to ascertain the position by conducting a bank statement analysis which involved the review of the bank statements and the selection of a number of receipts into both the client and office bank accounts and asked the Respondent to explain the nature of the funds. The Officer also asked for the Respondent's central bills folder in order to attempt to verify the Respondent's explanations (where given by the Respondent**)** that receipts related to fees due or unpaid disbursements.

19. The Officer found that the invoices did not differentiate between paid and unpaid disbursements (which is admitted by the Respondent as at the date of this statement), this, in combination with the non-availability of accounting records or client matter files, made "*any attempt at quantifying the extent of a shortfall meaningless*" (see FI Report paragraph 24). Nonetheless, the Officer made a number of findings from his analysis and these are set out below.

Non client related payments from client bank account

20. The Officer analysed the client bank account statements and ascertained that numerous payments had been made from client bank account which did not relate to clients. These are listed below paragraph 20 of the FI Report and total £7,837.00. Payments of a personal nature were made such as:

> 20.1. £1,900.00 on the 30 July 2012 in respect of payment of employees' salaries;

20.2. £887.00 on the 30 July 2012 in personal rent to his landlady; and

20.3. £1,650.00 on the 17 January 2013 in respect of his daughter's student accommodation.

Withholding client money from client account

21. A number of payments into the office bank account were identified by the Officer that were cause for concern and for the purposes of this statement, the table of transactions produced by the Officer at paragraph 25 of the FI Report has been reproduced into a numbered table [171-180] (the "Schedule").

21.1. Transactions 5, 6, 7, 8 [171-172] and 19 [175] on the Schedule occurred between 14 September 2012 and 24 January 2013 and amounted to £12,298.00. There were no corresponding invoices in the central bills folder or any other evidence that these were agreed fees. The Respondent has admitted that these transactions did not relate to fees or unpaid disbursements due.

21.2. There were four further payments into the office bank account identified by the Officer that amounted to £6,165.00 and these are transactions 10 [172], 27 [176], 33 [178] and 42 [180] on the Schedule. Once again, there were no corresponding invoices. In one instance (transaction 10) the Respondent was unsure as to how the funds should be applied but the payer was a client of the Firm, and in the further three instances, the Officer reviewed the statements subsequent to meeting with the Respondent and noted that they appeared to relate to clients. This has been admitted by the Respondent. An explanation in respect of these transactions was requested in the SRA's letter of 19 September 2013 [150-159] but no response has been received from the Respondent in this regard.

21.3. £198,374.21 was paid into the Firm's office bank account on 18 October 2012 (transaction 9 on the Schedule [172]). The Respondent's explanation was that these monies were in respect of a property purchase that were paid in error to his firm and should have been paid directly to the vendor. A payment was made out of the office bank account on 28 November 2012 of £150,000.00, i.e. £48,374.21 less than what was originally received. The Respondent explained that the difference between receipt and payment was his 0.75% commission on what he said was a £5,000,000.00 transaction; however, this would amount to £37,500.00 and so £160,874.21 should have been returned (or £144,491.21 taking into account two invoices located by the Officer amounting to £16,383.00 which the Respondent could possibly have been entitled to deduct from the monies he was holding in payment of the fees owing under the invoices).

22. Therefore up to £216,837.21 held in the Firm's office bank account was client money withheld from the client account (i.e. £12,298.00 + £6,165.00 +

£198,374.21) and £66,837.21 was not returned to the clients (i.e. £216,837.21 less the £150,000.00 in paragraph 21.3 above).

Invoices not of sufficient value to account for the receipt

23. Where there was a corresponding invoice in the Respondent's bills folder, there were two instances where the invoices were not of sufficient value to account for the receipt:

> 23.1. Transaction 12 on the Schedule [173], only £2,210.00 of the £13,110.75 receipt into client bank account on 29 November 2012 was explicable by reference to the corresponding invoice; and
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> 23.2. Transaction 15 on the Schedule [174] where only £377.00 of the £17,321.00 received into the client bank account on 9 January 2013 was explicable by reference to the corresponding invoice (the Respondent identified a client to office transfer of £10,000 on 10 January 2013 which he said was his fees but there is still a £6,944.00 discrepancy).

Round sum client to office bank account transfers

24. The Officer identified three instances where round sums were transferred from the client to office bank account which were not clearly linked to specific invoices or fees due:

> 24.1. Transaction 14 on the Schedule [173] where £4,000.00 was transferred on 18 December 2012;
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> 24.2. Transaction 16 on the Schedule [174] where £10,000.00 was transferred on 10 January 2013; and
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> 24.3. Transaction 36 on the Schedule [178] where £1,250.00 was transferred on 28 June 2013.

Timing of client bank account receipts

25. There were concerns with the timing of some of the receipts:

> 25.1. The client bank account balance stood at £376.97 when a deposit of £5,000.00 was paid in on 14 September 2012 (see transaction 5 on the Schedule [171]). The Respondent explained this as monies on account for disbursements in the [LK] litigation but the Officer could not locate a corresponding invoice.
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> 25.2. The balance stood at £629.91 on 16 November 2012 when the £13,110.75 referred to at paragraph 23.1 above was received.
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> 25.3. The balance stood at £780.66 when £17,321.00 was received on 9 January 2013 (see transaction 15 on the Table [174]). The

Respondent's explanation that this money and the subsequent client to office transfer of £10,000 (See transaction 16 on the Table [174]) related to his fees was not supported by invoices. In terms of the balance of £7,321.00 which by extension would relate to unpaid disbursements, were it not for that £7,321.00 there would not have been sufficient funds in the bank account to make the non-client related payment of £1,650.00 in respect of his daughter's living expenses on 17 January 2013 (referred to at paragraph 20.3 above).

25.4. The client bank account balance stood at £3.19 when the sums of £1,164.00 and £34,701.36 were received on 23 and 24 May 2013 (see transactions 29 and 30 on the Table [177]) from [PACS] who the Respondent said to the Officer was a friend and that the latter larger payment was a non-client related loan. This payment appears to have funded payments to "Gestorias" (the role of a "Gestore" is to handle Spanish tax formalities), "*which if made on behalf of clients, could not have been made were it not for that loan*" (see FI Report paragraph 32).

26. In respect of the sums received from [PACS] it has since come to light that [PACS] is not a friend of the Respondent's and these sums were payments from "[PACS] solicitors" on behalf of the [G] Family Trust:

26.1. The Report of one of the Claims Handlers within the SRA's Compensation Fund (which is attached to this statement at JHRD2) notes that the Respondent failed to account to the [G] Family Trust for the sum of £35,865.36 (i.e. £1,164.00 + £34,701.36) and that the sum of £34,701.36 was transferred to pay the Spanish Inheritance Tax that was due on the deceased's Spanish Estate and the £1,164.00 was in respect of legal fees.

26.2. The [G] Family Trust then instructed new solicitors who established that the Inheritance Tax had never been paid by the Respondent. The SRA Adjudicator has since approved a pay out from the Compensation Fund to the [G] Family Trust of £35,945.05 (i.e. £34,701.36 + £1,164.00 + interest of £79.69).

<u>Timing of office bank account receipts</u>

27. There were the following issues with the timing of some of the receipts into the office bank account:

27.1. The office bank account balance stood at £9,220.16 overdrawn (on a £10,000.00 overdraft facility) and a cheque had recently been returned when the receipts at transactions 7 and 8 on the Schedule of £1,250.00 and £1,885.00 were received [172]. There were no invoices identifiable to support the Respondent's explanations of these receipts;

27.2. The office bank account stood at £9,045.85 overdrawn on 12 October 2012 when the sum of £198,374.21 (transaction 9 on the

Schedule [172]) was according to the Respondent, paid in error into his office account, although £150,000.00 was paid out apparently in relation to the same matter (though nearly seven weeks later), the balance is not accounted for by the invoices or by the Respondent's explanation (see paragraph 21.3 above);

27.3. The office bank account balance stood at £11,298.78 overdrawn when, on 10 January 2013 the round sum transfer of £10,000 was made. As noted at paragraph 24.2 above, the Respondent's explanation that this transfer related to his fees is not supported by the invoices.

28. Owing to the lack of adequate records from the invoices or otherwise, some of the receipts into the office bank account may have comprised client monies.

Replacement of Cash Shortage

29. The Respondent said that he had made two payments into the client bank account to rectify the shortfall as follows:

29.1. Approximately £35,000.00 in March 2012 comprising of funds loaned to him by his family. The Respondent was unable to provide any evidence of this but has since appended a letter to his initial Answer of 13 April 2014, that he wrote to his mother in February 2013, confirming that he received a loan of €35,000 from her on 3 March 2012; and

29.2. £34,701.36 on 24 May 2013 (transaction 30 on the Schedule [177]) according to the statement, from an individual named [PACS] which he said was a loan from a friend. Once again, the Respondent was unable to provide evidence of this to the Officer (and as set out at paragraph 25 above it has since transpired that these were client monies received from [PACS] solicitors).

30. The Respondent explained that he had no money to make further payments to rectify the shortfall and had been relying up until recently, on the promise of a loan in the sum of £50,000.00 from a client and a friend, [T], as set out in a letter to him [122-123]. The Respondent said that this loan never materialised.

Cause of Cash Shortage

31. Prior to meeting with the Officer, in respect of the DP letter [13-15], the Respondent had previously explained to Supervision [145] that he had made a payment of £23,993.00 in monies from executors and trustees in the matter of [CBM] deceased to a Gestore in Spain.

32. The Respondent explained that the Gestore had subsequently become insolvent without accounting to the Respondent for the funds but the Respondent could not provide any documentation relating to:

32.1. The initial payment to the Gestore;

32.2. Evidence of the Gestore's insolvency; and

32.3. Evidence of the Respondent's attempts at recovering the payment (see FI Report paragraph 42).

33. The Respondent said that he thought the name of the Gestore was [F] and among the bank statements there was a payment advice statement from the bank [64] confirming that a payment of €1,400.00 was made to a [MVF] at an account held in Madrid on 4 June 2013, which was subsequent to the claimed insolvency and loss of monies referred to above. It is unclear whether this was the same Gestore as in the [CBM] deceased matter.

34. The Officer asked a number of subsequent questions of the Respondent and from his answers it was established that:

34.1. There were no other client matters affected by the insolvency of the Gestore;

34.2. There were about six or seven clients affected by the shortfall on the client account;

34.3. The Respondent was unable to provide the names of any of the clients affected;

34.4. The Respondent did not know of the amount of the overall shortfall, even approximately, i.e. he said it was "*some thousands*" but could not say if it was as much as £50,000.00, (see FI Report paragraph 44);

34.5. The Respondent could not provide even a list of clients affected and approximate amounts at short notice as it would be a substantial job to resolve the "*mess*", (see FI Report paragraph 47);

34.6. The Respondent said that the cause of the shortfall was evident from the explanations he had provided to the Officer about payments from the client account (it is thought that the Respondent meant the payments highlighted at paragraph 20 to 20.3 above).

34.7. The affected clients were expecting their monies to be used for the payment of registration and tax formalities in Spain and the affected clients were unaware of the failure to complete these formalities (which were outstanding by "*months*" in some cases – see FI Report paragraph 46).

35. In respect of the above, no further information or explanation has been provided by the Respondent in respect of the shortfall, (once again, save for what it set out in his Amended Answer) despite him being sent a copy of the Officer's FI Report for comment and a further formal letter from the SRA on 19 September 2013 [161-170].

36. As at today's date, the Respondent has made no further payments in rectification of the shortfall further to those alleged in paragraph 28 above.

AGREED OUTCOME

In view of what is set out in the statement above and subject to the Tribunal's permission and discretion, the Applicant and the Respondent agree that:

37. The Respondent be struck off from the Register of European Lawyers from the date of this statement of facts and outcome;

38. The Respondent gives the following undertakings as to his future conduct:

38.1. He will not seek readmission to the Register of European Lawyers;

38.2. He will not seek employment or remuneration from a recognised sole practitioner;

38.3. He will not seek employment or remuneration in any capacity from any authorised body that is regulated by the SRA; and

38.4. He will not become the owner of or maintain any interest in any authorised body that is regulated by the SRA.

39. The Respondent will pay the SRA's costs of this action in the agreed sum of £19,998.50 consisting of Forensic Investigation costs of £3,173.50 and solicitors costs of £16,825.00.

40. With respect to the two allegations that are not admitted, detailed at paragraph 3 of the statement, the allegations are to remain on the file.

I believe the facts stated in this statement are true and I agree that the outcomes set out at paragraphs 37-40 should be adopted.

[Signature of Hector Diaz Suner]
Hector Diaz Suner, the Respondent

On behalf of the Applicant, the Solicitors Regulation Authority, I agree that the outcomes set out at paragraphs 37-40 should be adopted.

[Signature of James Dunn 20/10/2014]
James Henry Roberts Dunn, Devonshires Solicitors, 30 Finsbury Circus, London, EC2M 7DT

Dated this 19th day of October 2014 [Respondent dated]
20th October 2014 [Applicant dated]"

The Tribunal's Decision

11. The Tribunal had carefully considered all the documents provided, particularly the Statement of Agreed Facts, Admissions and Outcome, and the submissions made by Mr Dunn. 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.

12. The Outcomes agreed between the parties were that the Respondent be struck off the Register of European Lawyers from the date of the Statement of Agreed Facts, Admissions and Outcome, he gave a number of undertakings as to his future conduct and he agreed to pay the Applicant's costs in the sum of £19,998.50. The parties had agreed the two allegations not admitted were to remain on file.

13. The Tribunal was mindful that every case should be assessed on its individual facts. The Tribunal reminded the parties that it was not generally acceptable for applications seeking the Tribunal's approval to an agreed position between the parties, to be dealt with on the papers alone. It was necessary for a hearing to take place in order to enable the Tribunal to consider all the documents, clarify any issues with the parties, give careful consideration to any admissions made and any outstanding allegations, decide whether the agreed sanction was appropriate, proportionate and in the public interest, and consider any agreement reached in relation to the regulator's costs. The Tribunal was also required to determine whether any outstanding contested allegations should be dealt with at a substantive hearing.

14. This case was unusual, as the Respondent had made a large number of admissions to very serious allegations, including several admissions of dishonesty. The parties had also agreed that the Respondent should be struck off the Register of European Lawyers, which was the ultimate sanction that the Tribunal itself could impose. The Tribunal noted the Respondent had agreed to pay the Applicant's agreed costs.

15. Paragraph 40 of the Agreed Statement of Facts, Admissions and Outcome related to the two outstanding allegations which were not admitted. The Tribunal was not prepared to allow these two allegations to remain on the file indefinitely. This was a case where the Respondent had made admissions to dishonesty and had agreed to be struck off the Register of European Lawyers. It was unsatisfactory and undesirable for these two allegations to remain unresolved, indeed, there should be certainty for all the parties involved. Accordingly, the Tribunal, having considered all the documents before it, decided that Allegations 1.1.1 and 1.7, which were not admitted, were not proved and were therefore dismissed.

16. Taking into account the particular circumstances of this case and the agreement reached between the parties, the Tribunal was satisfied that the Statement of Agreed Facts, Admissions and Outcome was fair and proportionate in that it protected the public from harm, maintained public confidence in the providers of legal services, and it was reasonable and in the public interest for the Statement to be approved, save for paragraph 40. The Tribunal exercised its discretion and approved the Statement of

Agreed Facts, Admissions and Outcome, save for paragraph 40 for the reasons stated above. Accordingly, the Tribunal Ordered the Respondent be struck off the Register of European Lawyers and that he pay the Applicant's costs in the sum of £19,998.50.

Statement of Full Order

17. The Tribunal Ordered that the Respondent, HECTOR DIAZ SUNER, Registered European Lawyer, be STRUCK OFF the Register of European Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,998.50.

Dated this 8th day of January 2015
On behalf of the Tribunal

I. R. Woolfe
Solicitor Member

On behalf of D. Green, Chairman