SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11240-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NEIL LAWRENCE JACOBSEN Respondent

Before:

Mr R. Hegarty (in the chair)
Mrs E. Stanley
Mr M. C. Baughan

Date of Hearing: 7 October 2014

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

The allegations against the Respondent, Mr Neil Lawrence Jacobsen, made behalf of the Applicant, the Solicitors Regulation Authority were:

1. He acted in breach of the SRA Accounts Rules 2011 ("AR 2011") in that:

1.1 on three occasions between 7 December 2011 and 7 December 2012 he transferred monies held on client accounts to office accounts in circumstances other than those permitted by Rule 20(1);

1.2 he failed to remedy breaches promptly upon discovery contrary to Rule 7;

1.3 he failed to keep his accounting records properly written up to show his dealings with client monies in breach of Rules 29.1, 29.12 and 29.16;

1.4 he failed to produce to the SRA accounting records in breach of Rule 31.1;

1.5 he failed to deliver Accountant's Reports for Jacobsens for the accounting periods 2011/2012 and 2012/2013 in breach of section 34 of the Solicitors Act 1974 and of Rule 32.1 AR 2011.

2. He acted contrary to the SRA Code of Conduct 2011 ("the Code") in that:

2.1 he failed to act with integrity contrary to Principle 2;

2.2 he failed to behave in such a way as to maintain the trust the public placed in him and in the provision of legal services, contrary to Principle 6; and

2.3 he failed to protect client money and assets contrary to Principle 10

in that he made transfers between client and office accounts in breach of AR 2011 and failed to remedy such breaches.

3. Further in relation to allegation 1.1, the Respondent's conduct in transferring monies from client accounts otherwise than in accordance with Rule 20(1) of the SARs was dishonest by the ordinary standards of reasonable and honest people, and he was aware that his conduct was dishonest by those standards. Whilst dishonesty was not an essential ingredient of allegation 1.1, absent a satisfactory explanation from the Respondent such conduct amounted to dishonesty.

Documents

4. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 1 May 2014 with exhibit KS 1
- Letter from the Applicant to the Tribunal dated 21 August 2014 with enclosed:

  - Statement of Robert Keith Stowell dated 20 August 2014 with exhibit RKS 1
- Certificate of readiness of the Applicant dated 10 September 2014
- Letter from Miss Wingfield to the Tribunal dated 30 September 2014 with enclosed:
  - Individual Report – Service dated 18 July 2014
- Applicant's Statement of costs as at 30 September 2014

Respondent:

- None.

Preliminary Issues

5. For the Applicant, Miss Wingfield advised the Tribunal that the Respondent was not present. She referred to the statement of an enquiry agent Mr Stowell dated 20 August 2014 regarding service of the Rule 5 Statement on 17 July 2014 and a fuller document "Individual Report-Service" which had been provided at the suggestion of the Tribunal at a Case Management Hearing ("CMH") on 10 September 2014, which it was suggested it might be appropriate for the Tribunal to see in the event that the Respondent did not attend the hearing and it was necessary to deal with the issue of proceeding in his absence. The CMH had been requested by the Applicant because the Respondent had not filed an answer. The Tribunal found that the Respondent had been properly served with the Rule 5 Statement and the other documents referred to in Mr Stowell's statement. The statement indicated that Mr Stowell had found the Respondent "not in a very coherent state". The Investigation Officer ("IO"), Mr Gary Page had visited the Respondent at his home address in February 2013 in order to carry out an inspection. On some days he had found the Respondent to be a little disorganised but there was no indication of a major issue with alcohol. In the appendices to the Forensic Investigation ("FI") Report there was a reference by the Respondent to becoming ill with a depressive/alcoholic condition (the Respondent's email dated 5 March 2013 to the IO). There were no medical reports or medical evidence. Miss Wingfield asked the Tribunal to proceed in the absence of the Respondent on the basis that it would be appropriate to do so. She referred the Tribunal to the relevant authorities; R v Hayward, Jones and Purvis [2001] QB 862, CA and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34. Miss Wingfield submitted that the Tribunal would have to consider the general right of an individual to be present and if he so wished to be legally represented and that these rights could be waived by the Respondent in circumstances where he deliberately voluntarily absented himself. The discretion of the Tribunal to proceed must be exercised with care and fairness to the Respondent and to the Applicant having regard to the nature and circumstances of the Respondent's failure to attend and the possibility of his attending if the proceedings were adjourned as well as the seriousness of the case. Miss Wingfield submitted that it was in the public interest that the matter should be dealt with speedily and efficiently.

6. The Tribunal enquired whether there had been any communication from the Respondent. Miss Wingfield stated that the Applicant had not heard anything from him since the responses which were included in the trial bundle that is since the Rule 5 Statement was lodged with the Tribunal on 1 May 2014. The Respondent had not

been served until July 2014 because documents sent to him had not been collected from the post office. His last communications with the Applicant had been with its Supervision department. The Respondent was aware of the substantive hearing; the documents served on him on 17 July 2014 included a letter (dated 10 July 2014) enclosing the Tribunal's standard directions which included the date of the hearing. The Tribunal had regard to the guidance in the Jones case to the effect that its discretion to proceed must be exercised with great care and that it was only in exceptional cases that it should be exercised in favour of a trial taking place or continuing particularly if the Respondent was unrepresented. The Tribunal also had regard to the Solicitors (Disciplinary Proceedings) Rule 2007, Rule 16(2) of which provided:

> "If the Tribunal is satisfied that notice of hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

7. The Tribunal had careful regard to the criteria set out in the Jones case. It found that the Respondent had been properly served with notice of the proceedings; he had not applied for an adjournment and the Tribunal did not consider, having regard to the information available to it that the Respondent was more likely to attend an adjourned hearing in the future. The Tribunal considered that it would be in the interests of justice for the matter to be dealt with and decided to proceed with the substantive hearing.

Factual Background

8. The Respondent was born in 1946 and admitted in 1971. His name remained on the Roll of Solicitors. The Respondent was not currently practising; his last Practising Certificate for the practising year 2011/2013 was suspended on 13 December 2013 when the Respondent's firm was intervened into.

9. The Respondent began practising on his own account under the style of Jacobsens ("the firm") on 22 June 2010 from London EC2.

10. The Applicant received concerns from a solicitor working with the Respondent when post was no longer accepted at the firm's offices.

11. The Applicant's Supervision department commissioned the IO to meet with the Respondent to discuss the concerns and the general operation of the firm.

12. The IO attended the registered office for the firm in London EC4 on 22 January 2013 and found them to be empty.

13. The IO obtained a contact telephone number for the Respondent from the Internet and upon contacting him learned that the firm had vacated the office and that the Respondent was practising from his home address.

14. The IO arranged to commence an inspection of the firm of 13 February 2013. He attended the Respondent's home and asked for the firm's books of account for

inspection. The Respondent was unable to produce any accounting records for the firm.

15. The IO reviewed the firm's bank statements relating to client accounts 23995260 (client account 1) and 01391618 (Client Account 2) and office accounts 21009468 (Office Account 1) and 01391596 (Office Account 2).

16. The Respondent explained that the Client and Office Account 2 related to his former practice which operated under the name of Jacobsens as a partnership from 2003 until 2010. In 2010 the Respondent took conduct of the partnership and acquired Sole Practitioner status, at which stage Client and Office Accounts 1 were set up.

17. The FI Report produced as a result of the inspection was dated 14 March 2013. It identified four apparently improper transactions from client to office account amounting to £27,302. The Respondent however produced to the Supervision department a copy of an invoice apparently delivered to a client HH dated 2 December 2011 in the sum of £7,500. The three remaining transfers totalled £19,892.

18. A copy of the FI Report was sent to the Respondent with a letter dated 18 July 2013. The Respondent was asked to confirm whether he agreed with the comments attributed to him in the FI Report.

19. The Respondent provided his response by way of e-mails dated 11, 27 and 28 August 2013 but did not address the allegations raised.

20. The Applicant wrote to the Respondent again on 16 September 2013 requesting a response to the letter dated 18 July 2013. The Respondent replied by way of e-mails dated 30 September 2013 and 2 October 2013. He sent an annotated copy of the FI Report to the Applicant which was received on 3 October 2013.

21. On 13 December 2013, an Adjudication Panel considered the FI Report and resolved to intervene into the Respondent's practice and the intervention took place on 17 December 2013.

<u>Allegations 1.1 – 1.4 and 2.1 – 2.3</u>

22. The IO asked the Respondent to provide any books of account for inspection. The Respondent did not do so. The IO examined the firm's client and office bank statements which showed the following irregular payments:

- Round sum transfer: on 7 December 2011, the Respondent transferred the sum of £3,000 from client account 2 to office account 2. The Respondent failed to identify what this payment related to and/or the reason for the transfer.

- Improper transfers from client account to office account: a statement for client account 2 showed an opening balance of £16,292.17 on 15 December 2011. On 20 March 2012, the sum of £16,292 was transferred to office account 2 without any explanation or justification for the transfer.

- The sum of £16,292 cleared an overdraft of £4,957.46 on office account 2. The remaining sum of £11,334.54 was transferred to office account 1 and reduced an overdraft of £13,710.77 to £2,376.23.

- A statement for client account 1 showed an opening balance of £600.03 on 30 November 2012. On 7 December 2012, the round sum of £600 was transferred to office account 1, without any explanation or justification for the transfer. The sum of £600 acted to reduce an overdraft of £12,800.25 on office account 1 to £12,200.25.

23. The IO requested an explanation for these transfers. In an e-mail dated 28 February 2013 to the IO, the Respondent stated:

> "... At least the bulk of the items was repayment of excessive monies paid by me into client account at a time when long-term fraud by our bookkeeper came to light approximately 7 years ago. These matters were reported to the Law Society who sent a representative to our offices for a comprehensive and lengthy investigation at the conclusion of which he produced a report to the Law Society. If this can be traced it could prove very helpful. I have no recollection of the round sum transfers at this stage but I would hardly have made the relevant statements available for inspection had there been anything sinister about them. I had only asked to produce statements for the previous 6 months. I am sure that the explanation will be innocent but I agree that the figures look odd."

24. In a further e-mail addressed to the IO dated 5 March 2013, the Respondent explained further.

Allegation 1.5

25. The Respondent failed to deliver accountant's reports to the Applicant from when he commenced practising as a sole practitioner on 22 June 2010. Reports were due for the period from 22 June 2010 until 27 May 2011, which report became due on 27 November 2011; and for the period 28 May 2011 until 27 May 2012 which report became due on 27 November 2012. In his e-mail dated 2 October 2013, the Respondent stated: "I assumed, incorrectly that this had been done".

Witnesses

26. **Mr Gary Page** the IO gave evidence. He confirmed that he had carried out the investigation into the firm and the FI Report dated 14 March 2013 was his. He confirmed that the contents of the FI Report were true including references to various comments made by the Respondent in the course of interview. So far as the witness was aware, the Respondent had not replaced any of the money removed from client account improperly; so far as the Respondent was concerned he regarded it as his money.

Findings of Fact and Law

27. 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.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

28. **Allegation 1 - He [the Respondent] acted in breach of the SRA Accounts Rules 2011 ("AR 2011") in that:**

1.1 on three occasions between 7 December 2011 and 7 December 2012 he transferred monies held on client accounts to office accounts in circumstances other than those submitted by Rule 20(1);

1.2 he failed to remedy breaches promptly upon discovery contrary to Rule 7;

1.3 he failed to keep his accounting records properly written up to show his dealings with client monies in breach of Rules 29.1, 29.12 and 29.16;

Submissions for the Applicant

28.1 For the Applicant, Miss Wingfield submitted that at the time of the investigation the Respondent was holding over under a practising certificate for the practising year 2011/2012 which was suspended when his firm was intervened into in December 2013. He had been in partnership since around 1979 and became a sole practitioner in 2010. Concerns had arisen because the Respondent did not renew his practising certificate or apply to become a sole practitioner. The IO found that the Respondent was operating what was left of his practice from his home address. The IO identified four transfers from client to office account which appeared to be improper as he reported in the FI Report. The Respondent subsequently produced an invoice for client HH for the transfer of the sum of £7,500 on 2 December 2011. The figures on the invoice did not add to the total and the rate of VAT was incorrect but it appeared that the firm did have a client HH. Further investigations were carried out and there had been other transfers in respect of that client. The Applicant did not rely on that transfer in these proceedings. Miss Wingfield relied on the transfer of £3,000 on 7 December 2011 from the partnership client account to office account and the transfer on 7 December 2012 of £600 from the sole practitioner client account to the matching office account leaving a balance of £0.03 on client account. The transfer of £600 from the sole practitioner client account on 7 December 2012 to the matching office account reduced the overdraft from £12,800.25 to £12,200.25. The overdraft limit was £15,000 as shown on the bank statement. Then following the transfer there was a payment to Vodafone Ltd for £33.94, which Miss Wingfield submitted was for personal expenditure. Miss Wingfield relied on the round sum transfers.

Miss Wingfield also relied on the transfer of £16,292 on 20 March 2012 from the partnership client account to the matching office account which left a balance of £0.17 on the partnership client account and a transfer on the same date of £11,334.54 to the

sole practitioner office account reducing its overdraft from £13,710.77 to £2,376.23. This was followed by debits to the sole practitioner office account by way of personal expenditure including to Tesco, the Co-op and at ATMs which Miss Wingfield submitted were for living expenses.

28.2 Miss Wingfield also submitted that in interview with the IO, the Respondent indicated that he was seeking new office space which did not seem appropriate because he had talked of running down the firm. It was suggested at the time that the Respondent had six remaining clients who had all been made aware of his change of address. His explanation for taking the money which was set out in the Report and in subsequent correspondence with the Applicant was that the money never belonged to clients but belonged to him and that it was in client account because of the arrangements he had made to deal with a shortfall arising out of a fraud on the firm by a former employee. He stated that money had been removed by the bookkeeper by way of a teeming and lading exercise in 2005; that there had been an inspection by the Applicant in respect of that matter which had been dealt with at the time but the Respondent could produce no documentation and it appeared that the shortfall had been recovered from his insurers. Miss Wingfield accepted that there could be more money not recovered but submitted that the bulk of it came from the insurers.

28.3 Miss Wingfield submitted that the Respondent indicated to the IO that he had become ill with a depressive/alcoholic condition following which his partners left and that he had been left with very little work or client account activity. The Respondent said that he transferred money so that debit balances were cleared before he closed down the old partnership accounts. In his email to the IO dated 5 March 2013, the Respondent stated:

> "For the period I was in [London] I was the sole operator of what had been joint accounts. When the sole trader accounts were established, it was the time to rectify the balances, particularly as I could now be certain of those balances and my office account had inevitably been weekend (sic) by my illness and staff departures. So turning to the questions identified in your e-mail of 26 Feb in order:
>
> 20/3/12, 16,292.00 transferred from client account to 01391596. The transferee account was the old partnership office account which had to be closed now and replaced with the newly established sole trader office account. But first, the bank indicated, debit balances had to be extinguished.
>
> 20/3/12, £11,334.54 transferred from 01391596 to 210009468. This was to transfer the credit balance on the partnership office account to the newly established sole trader account, thus enabling the partnership account to be closed down.
>
> ... 12/11 £3,000 [This] transfer took place towards the end of my treatment. Although [it] would have required my authorisation, I have no personal recollection. I have so far been unable to contact my colleague who was holding the fort at that time and may recall the circumstances… I know that there were no bills delivered at about this time."

28.4 After the investigation, Ms D of the Supervision department wrote to the Respondent on 18 July 2013 enclosing the IO's report, setting out allegations and inviting the Respondent to reply by 2 August 2013. There was then an exchange of e-mails between the Respondent and Ms D in which the Respondent referred to having been seriously ill. Ms M of the Supervision department then wrote to him on 16 September 2013 headed "Failure to Reply" and reminding him of his obligations to cooperate with the Applicant. The Respondent replied on 30 September 2013 by annotating the 18 July 2013 letter and extracts from the FI Report with his comments. Miss Wingfield referred the Tribunal to those responses. The Respondent's explanations included that it was only after he had been able to access the attic at his property that he recovered a copy of the invoice relating to the £7,500 transfer having been reminded of its existence by a former colleague. The Respondent failed to identify to what the £3,000 transfer related. He gave a general explanation that the bulk of the items transferred were repayments of excessive payments from him in respect of shortages occasioned by a fraudulent employee and by way of closing down the partnership accounts. Miss Wingfield submitted that the partnership had ended in June 2010 and the transfers took place between December 2011 and December 2012; a considerable time afterwards.

Responses to the Applicant's investigation by the Respondent

28.5 In the Applicant's letter of 18 July 2013, the Respondent was asked why he had transferred £10,292 from client to office account on 20 March 2012 and also about the £7,500 transfer for which he later produced the invoice. The Respondent stated:

> "I explained that a surplus in my client account was owing to a protracted and sophisticated fraud perpetrated by my sometime bookkeeper."

As to the fact that he had not been able to produce records to substantiate this claim he replied:

> "Correct. Since [V, the firm's accountants] and a full-time consultant had been unable to do so at great expense, how could I do so?"

The Respondent stated that he was not asked to replace the monies and confirmed that he would not do so because he believed that they were owed to him. In the Applicant's letter, the allegation of a breach of Rule 20.1 (allegation 1.1) was put to the Respondent and he replied:

> "Rule 20.1 refers to "client money". To the extent that withdrawals were not reflected by invoices, they were not client money. They were mine.

28.6 In his annotations on the FI report dated 3 October 2013, the Respondent stated:

> "The sum of £7,500 was represented by the last bill I believe I delivered while operating with client money. My search of the attic is not yet complete. It will continue this weekend. Unless I find anything to the contrary this weekend, the operational assumption must be that I could identify the client account monies overpaid by me as no other monies remained in client account following accounting to [HH]."

28.7 In respect of the alleged breach of Rule 7, (allegation 1.2), the Respondent replied:

> "There was no breach."

28.8 In respect of the alleged breach of Rules 29.1 and 29.12 and failing to keep accounting records properly written up to show his dealings with client money (allegation 1.3) the Respondent stated, referring to accounting records (the Applicant's letter also referred to not preparing reconciliation statements):

> "Insofar as this relates to matters prior to the discovery of [A's] fraud, this was the subject of an exhaustive report by an employee of the Law Society. Surely you have a copy of that report? As a consequence of that report, my partner and I were reprimanded. We were advised to appeal on the grounds of "Quis custodiet ipsos custodiensis". [A's] long-standing fraud had been undetected by successive auditors. What chance do we have? The appeal was unsuccessful for reasons unclear to Mr [S, his then partner] and myself, as well as our independent legal advisers. I have been punished for whatever transgressions of which I was guilty. It cannot be right to add to the determination of The Law Society."

Specifically in respect of the Rule breaches, he said:

> "The fundamental misunderstanding behind the Report is the assumption that because money was in client account, that money was "client money". Normally it would be. But not in the exceptional circumstances created by [A's] fraud, which I tried to explain."

28.9 In the Applicant's 18 July 2013 letter, it was put to the Respondent that in order for him to ascertain accurately the amount by which he stated that he had overpaid, he would need to establish that monies on behalf of former clients had been properly dealt with. He was asked could he explain how he established this in the absence of reliable ledgers and replied;

> "By arrangement with [Vs] and the Law Society's representative, all ledgers were examined and any apparent deficit corrected by introduction of my moneys. At the time of accounting to clients, all files were checked manually from start to finish, which overrode any discrepancy in the ledgers."

28.10 In his 5 March 2013 e-mail the Respondent said that having discovered the fraud he commissioned his accountants V and a full-time consultant, an ex-bank manager to see if the overall client account deficit could be identified and at the cost of a six-figure sum it could not. He also stated that a forensic accountant retained by his insurers could not identify it; that the ledgers were works of "fantasy and imagination" and could not be relied upon. The Respondent continued that accounting to the client had to be done manually from an examination of the file and:

> "I was advised that any surplus would be mine but that I should wait for a substantial period after apparent overall rectification to ensure that no client made a claim..."

The Respondent was asked for documentary evidence to support the explanation set out in his 5 March 2013 e-mail, for example copies of the advice stating that he would be entitled to keep any surplus monies, or if the advice was received orally, copies of any meeting minutes or attendance notes recording such advice. The Respondent replied, in his annotation on the Applicant's letter:

> "From recollection, everything was dealt with by telephone calls and meetings. Only action notes were taken in manuscript. The advice, which was more in the nature of a self evident comment, was provided in the context of the revelation that apparent deficiencies on some clients ledgers, on final accounting by reference to the files, were in fact in surplus."

28.11 The Respondent was asked for copies of his letters of instructions to his accountant and to the consultant and he replied: "from recollection, nothing was reduced to writing."

28.12 In his annotations on the FI Report dated 3 October 2013, the Respondent inserted "Correct" against a quotation attributed to him in the FI report as follows:

> "[A] had always managed to account to the client accurately at the moment of accounting. I have been told that this was as a consequence of "teaming (sic) and lading". He depleted my office account and client account as necessary to make this possible. This only came to light when it appeared that on accounting to clients subsequent to his departure, there was a deficiency on client account. I realised all of my assets to fund liquidity to balance this unidentifiable liability. It was at this point that I placed sums into client account which, overall, turned out to exceed my liability and which represents the transfers you have identified."

Determination of the Tribunal in respect of allegations 1.1, 1.2 and 1.3

28.13 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Tribunal also had regard to the responses which the Respondent had given to the Applicant in the course of the investigation and thereafter. The Respondent had not engaged with the Tribunal process. The Tribunal found that it was plain from the documentation that the Respondent had cleared his client account into office account and thereby reduced his overdraft. He stated that he was entitled to the money that he had removed because it was owed to him but he had produced no evidence either to the Applicant or to the Tribunal to show that that was the case. The Tribunal had been asked to draw an inference because he had not come to the Tribunal to produce evidence or give an account of his actions. The Tribunal's practice direction number 5 referred to the comments of Sir John Thomas in the case of Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin): "ordinarily the public would expect a professional man to give an account of his actions". The Tribunal directed that in appropriate cases where a Respondent denied some or all of the allegations against him (regardless of whether it was alleged he had been dishonest), and/or disputed material facts and did not give evidence or submit himself to cross-examination, the Tribunal should be entitled to take into account the position that the Respondent had chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. The Tribunal noted that in

respect of the transfer of £7,500 the Respondent had been able to produce an invoice. He had had over a year after the FI Report dated 14 March 2013, to produce documentation to support his explanation of the other transfers, but he had failed to do so. If he had put money into the practice to rectify a shortage occasioned by the actions of a fraudulent employee he should have been able to produce evidence for example by way of bank statements but he had not done so. In the absence of any form of evidence to support the Respondent's explanation, the Tribunal considered that the only conceivable explanation of the Respondent's conduct based on the evidence before it was as set out in the allegations. The Tribunal found as follows:

Allegation 1.1 was found proved to the required standard.
Allegation 1.2 was found proved to the required standard.
Allegation 1.3 was found proved to the required standard.

29. **Allegation of dishonesty in respect of allegation 1.1**

29.1 For the Applicant, Miss Wingfield submitted that save for a few pence, the client accounts had been cleared into office account and the monies used for the Respondent's personal expenditure. Miss Wingfield reminded the Tribunal of the two limbed test for dishonesty in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton had said:

> "... before there can be a finding of dishonesty it must be established that the conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

She submitted that the Tribunal could draw an adverse inference in respect of the Respondent because he had absented himself from the Tribunal and not given evidence. The FI Report stated that the Applicant's records appeared not to have any record of the alleged fraud taking place. In response to an enquiry from the Tribunal about the fraud by a former employee upon which the Respondent based much of his defence, Miss Wingfield explained that at the time the FI Report was produced information about an earlier investigation into the firm had not been found but she was able to inform the Tribunal that there had been an investigation and the Applicant had dealt with the matter internally. Miss Wingfield submitted that the fact that there had been fraud which had been covered by insurers did not affect the transfers which were the subject of the current allegations. The Respondent had been correctly brought before the Tribunal.

29.2 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and the responses which the Respondent had given to the Applicant in the course of the investigation and thereafter. The Tribunal had found allegation 1.1 proved to the required standard on the evidence and it now applied the two limbed test in the case of Twinsectra to determine the allegation of dishonesty. The Tribunal noted that some of the amounts transferred were round sums and that the Respondent had not come to the Tribunal to give an explanation of any of the transfers. He had had ample opportunity to file a defence but had failed to do so and in the absence of an honest explanation, the Tribunal considered that the inescapable conclusion was that monies round sums and otherwise had been improperly transferred from client to office account and then improperly used by the Respondent which the honest and

reasonable person would consider to be dishonest. The objective test in the case of Twinsectra was therefore satisfied on the evidence to the required standard.

29.3 As to the subjective test, the Tribunal noted that in the Rule 5 Statement there was a reference to an e-mail dated 28 February 2013 to the IO in which the Respondent stated:

> "What I can say at this stage is that at least the bulk of the items was repayment of excessive monies paid by me into client account at a time when long-term fraud by our bookkeeper came to light approximately 7 years ago."

On the evidence before the Tribunal, the Respondent therefore accepted when he was engaging with the investigation that some of the money that had been transferred to client office account was not owed to him. He was aware that evidence to support his explanation was required but he did not provide it, saying in an e-mail of 5 March 2013 to the Applicant that "the most thorough search has produced nothing in the way of relevant documents". He then reasserted his explanation that the monies "were all mine". The Respondent by virtue of his assertion in the e-mail of 5 March 2013 to the Applicant regarding "the bulk" of the money transferred showed that he accepted that some of the money at least should not have been transferred. There was also the evidence of the application of the money, for example payments to Tesco and Vodafone which the Tribunal was satisfied were for the Respondent's personal expenditure. The Tribunal therefore found proved to the required standard on the evidence that the Respondent knew that his conduct was dishonest by the standards of reasonable and honest people. The Tribunal found the allegation of dishonesty in respect of allegation 1.1 proved to the required standard.

30. **Allegation 1.4 - He [the Respondent] failed to produce to the SRA accounting records in breach of Rule 31.1;**

30.1 For the Applicant, Miss Wingfield relied on the Rule 5 Statement, the FI Report and the evidence of the IO. At the commencement of the investigation, the Respondent was unable to produce any accounting records for the firm.

30.2 In his annotations dated 3 October 2013 on the FI Report, the Respondent stated:

> "I was aware that bank statements for the previous six months were required. They were produced, along with previous statements which appear to have raised the present difficulties which resurrect problems previously exhaustively examined by the Law Society. I explained that accounts were prepared by a bookkeeper. There has been no recent client account activity."

30.3 The Tribunal considered the submissions for the Applicant and the evidence including the oral evidence and the responses that the Respondent had made to the Applicant in the course of the investigation and thereafter. The Tribunal found allegation 1.4 proved to the required standard on the evidence.

31. **Allegation 1.5 - He [the Respondent] failed to deliver Accountant's Reports for Jacobsens for the accounting periods 2011/2012 and 2012/2013 in breach of section 34 of the Solicitors Act 1974 and of Rule 32.1 AR 2011.**

31.1 For the Applicant, Miss Wingfield relied on the Rule 5 Statement and the FI Report and the evidence of the IO. The Respondent seemed to accept the failures of record-keeping and regarding the accountant's reports and it was for the Tribunal to decide whether the alleged breaches were made out.

31.2 In his annotations on the Applicant's 18 July 2013 letter, the Respondent stated in respect of the failure to deliver an accountant's report to the Applicant within six months of the end of the accounting period by 27 November 2011:

> "I assumed, incorrectly, that this had been done. I did not blame [Vs]. I said that it was normal for them to remind my practice of the requirement and that I had no record of anything outstanding from them. Although client account activity would have been minimal, a report was required. It should be easy to obtain. I apologise for my failure to monitor this. I understood that I would be hearing from Ms [G of the Applicant] as to how to rectify this but did not hear from her in this regard."

Specifically in respect of the alleged breach of Rule 32(1), the Respondent commented: "I recognise this and apologise." In his annotations dated 3 October 2013 on the FI Report, the Respondent stated in respect of the assertion that he had not delivered any accountant's reports since practising as a sole practitioner in 2010:

> "I apologise for the oversight. My depressive and debilitating gastric difficulties would have much to do with this."

The FI Report stated that the Accountants had not been able to complete a report for the period ending April 2012 as no accounts data had been supplied to them. The Respondent commented:

> "I accept this, but maintain that I was not provided with the usual reminder. Since I commenced practice on my own in 1979, I have always provided whatever material the auditors have required of me."

31.3 The Tribunal considered the submissions for the Applicant and the evidence including the oral evidence and the responses that the Respondent had made to the Applicant in the course of the investigation and thereafter. The Tribunal found allegation 1.5 proved to the required standard on the evidence.

32. **Allegation 2 - He [the Respondent] acted contrary to the SRA Code of Conduct 2011 ("the Code") in that:**

2.1 he failed to act with integrity contrary to Principle 2;

2.2 he failed to behave in such a way as to maintain the trust the public placed in him and in the provision of legal services, contrary to Principle 6; and

2.3 he failed to protect client money and assets contrary to Principle 10

in that he made transfers between client and office accounts in breach of AR 2011 and failed to remedy such breaches.

32.1 For the Applicant, Miss Wingfield relied on the Rule 5 statement and FI Report and the oral evidence.

32.2 In his annotations upon the Applicant's letter or 18 July 2013, the Respondent rejected the allegation of failing to act with integrity (allegation 2.1) by saying:

> "In a long career in this profession, I have never before been accused of lack of integrity. There is no basis for this suggestion. No client has complained of a failure to account properly."

The Respondent rejected the allegation that he had failed to behave in a way that maintained the trust the public placed in him by saying: "No member of the public has complained of any breach of trust." In respect of maintaining the trust of the public in the provision of legal services he said "What relevance has this?" When breaches of the Principles including Principles 6 and 10 were put to the Respondent in the 18 July 2013 letter, he replied: "No client has been prejudiced."

32.3 The Tribunal considered the submissions for the Applicant, the evidence including the oral evidence and the responses that the Respondent had made to the Applicant in the course of the investigation and thereafter. Following on from the Tribunal's findings in respect of allegation 1, the Tribunal also found proved to the required standard that the Respondent's conduct in making a round sum transfer of £3,000 on 7 December 2011 from client account to office account and in making improper transfers from client account to office account of £16,292 on 20 March 2012, and then clearing an overdraft of £4,957.46 on office account using part of that money and then transferring the remaining sum to office account and thereby reducing an overdraft; and then on 7 December 2012 making a round sum transfer of £600 to office account and thereby reducing an overdraft, to be conduct in respect of client money that demonstrated that he had acted with a lack of integrity and was in breach of Principle 2. The Tribunal also found that this conduct constituted a failure to behave in such a way as to maintain the trust the public placed in him and in the provision of legal services, breaching Principle 6 and constituted, along with his failure to deliver Accountant's Reports a failure to protect client money and assets, breaching Principle 10. The Tribunal therefore found allegation 2.1, 2.2 and 2.3 proved to the required standard.

Previous Disciplinary Matters

33. None.

Mitigation

34. None submitted.

Sanction

35. The Tribunal had regard to its Guidance notes on Sanctions. The most serious misconduct involving dishonesty, whether or not leading to criminal proceedings and criminal penalties if proved would almost invariably lead to striking off save in exceptional circumstances. The Tribunal noted that there were references in the Respondent's exchanges with the Applicant around the investigation process to issues with alcohol and having medical problems. The Tribunal also had the statement of the enquiry agent about the condition of the Respondent when he was served with the proceedings and associated documents. However the Tribunal had not had any medical evidence about the Respondent's condition either currently or at the time the misconduct occurred. The Tribunal had not been provided with evidence of any exceptional circumstances and accordingly determined that the Respondent should be struck off.

Costs

36. For the Applicant, Miss Wingfield applied for costs in the sum of £15,612.32. She confirmed that the costs schedule had been served on the Respondent at his home address but there had been no response. Miss Wingfield assured the Tribunal that Ms Sidhu, the solicitor with conduct of the matter at the Applicant had ensured that there was no duplication of costs between the intervention costs and the costs attributed in the schedule of costs to its Supervision department. Miss Wingfield submitted that the hearing had taken considerably less time than estimated but the waiting time had been longer. The Tribunal summarily assessed costs; it took into account the length of the hearing. The Tribunal considered that the amount of time spent by the Applicant preparing the Rule 5 Statement was somewhat excessive as was the time claimed by Miss Wingfield for communications with the Applicant and for reviewing documents. The Tribunal assessed costs to be awarded to the Applicant in the sum of £12,250. It noted that the amount of costs attributable to the Applicant's forensic investigation costs and supervision costs had been allowed as claimed at £3,870 and the balance of costs assessed attributable to the Tribunal proceedings was £8,380. The Tribunal considered the Respondent's ability to pay the costs order made against him as it was depriving him of his ability to practise in the future. He was 68 years old and according to the information obtained by the enquiry agent apparently was not working but the Respondent had not provided the Tribunal with any indication of his means although the standard directions issued by the Tribunal alerted him to his option of doing so. The Tribunal decided therefore to make an immediately enforceable order for costs.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, Neil Lawrence Jacobsen, 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 £12,250.00.

Dated this 4th day of November 2014
On behalf of the Tribunal

R. Hegarty
Chairman