SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11244-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JONATHAN CHARLES LEWIS Respondent

Before:

Ms A. E. Banks (in the chair)
Mr L. N. Gilford
Mr G. Fisher

Date of Hearing: 13 January 2015

Appearances

Mr Geoffrey Hudson, solicitor, of Penningtons LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, instructed by Mr Alastair Willcox, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Jonathan Charles Lewis, was not present or represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Jonathan Charles Lewis, in a Rule 5 Statement dated 15 May 2014, were that:

1.1 In breach of Rule 14.1 of the SRA Accounts Rules 2011 ("AR 2011") he:

1.1.1 failed to pay client money into client account;

1.1.2 delayed paying client money into client account.

1.2 In breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles") he failed without delay or at all to pay client money into client account and instead used such client money for his own purposes.

1.3 In breach of Principles 4, 5 and 6 of the Principles, he:

1.3.1 delayed in opening client files and/or sending out client care letters. Further, or in the alternative, it was alleged that he thereby failed to achieve Outcomes O(1.2), O(1.7), O(1.9), O(1.10), O(1.13) and O(1.14);

1.3.2 failed to provide his clients with a proper receipt for monies they had paid to him in respect of costs;

1.3.3 failed to inform the accounts department of Keith Evans & Co, his employer, that monies had been received from clients.

1.4 He failed to co-operate with his Regulator, the SRA, in respect of this matter, in an open and timely manner, contrary to Principle 7 of the Principles.

1.5 He acted dishonestly in respect of each of the allegations at 1.1, 1.2 and 1.3 above, although it was not necessary to prove dishonesty to prove each allegation itself.

Documents

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

Applicant:-

- Application dated 15 May 2014
- Rule 5 Statement, with exhibit "AHJW1", dated 15 May 2014
- Witness statement of Scott Bowen, with exhibit "SB1", dated 18 June 2014
- Schedule of costs as at 29 December 2014
- Witness statement of Carl Linton, with exhibit "CL1", 25 September 2014
- Witness statement of Lisa Rowlands, with exhibit "LR1", 2 October 2014
- Witness statement of process server, Gerald Anderson, 22 November 2014
- Draft amended Rule 5 Statement, 9 January 2015

Respondent:-

- Email to the Tribunal, 4 January 2015

Preliminary Matter (1) – Proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was not present or represented and had to consider as a preliminary issue whether the hearing should proceed in the Respondent's absence.

4. Mr Hudson for the Applicant submitted that Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 allowed the Tribunal to proceed in the absence of Respondent if it was satisfied that he had had notice of the hearing. The discretion to proceed should be exercised with care.

5. Mr Hudson referred to the statement of the process server dated 22 November 2014, which stated that the application and all supporting papers and witness statements, together with notice of the hearing date, were personally served on the Respondent on 12 November 2014.

6. Mr Hudson referred to the Respondent's email to the Tribunal of 4 January 2015, which had been copied to the Applicant, and which read:

> "… I have received the s9 statements from the SRA. I do not have the money to attend the hearing on the 13th January, nor could I say or bring anything that would make any difference to the outcome. My removal from the Roll is inevitable and I could not seriously contest it…"

The Respondent went on to make a number of points in mitigation, which are noted below.

7. Mr Hudson submitted that it was clear that the Respondent had been served with notice of the hearing and full details of the case against him. It was clear from the Respondent's email of 4 January 2015 that he did not intend to attend the hearing and there was nothing to suggest that he would attend at a later date if the hearing were postponed. Mr Hudson submitted that the allegations against the Respondent were serious and it was in the public interest that this case should be heard and concluded.

8. The Tribunal considered the documents presented. The Tribunal was satisfied that the Respondent had been served with notice of the hearing and with the proceedings. It further noted that he did not intend to dispute what was alleged or the evidence to be presented; his email of 4 January 2015, when read in full made it clear that he made admissions. It was also clear that the Respondent had shown no intention to attend. The Tribunal was satisfied that the Respondent had chosen to absent himself from the hearing. It was just, and in the public interest, to proceed; the Respondent would not be prejudiced by this decision and he had accepted that there was no evidence he could present which would assist him.

Preliminary Matter (2) – Amendment to the Rule 5 Statement

9. Mr Hudson told the Tribunal that he sought permission to amend the Rule 5 Statement, but not any allegation. Mr Hudson informed the Tribunal that it had now been realised that the client matter of Mrs W had been incorrectly described at paragraphs 19 to 24 of the Rule 5 Statement. The Respondent had admitted misappropriating £500 of Mrs W's money, but it now transpired that the matter on which the Respondent had been instructed related to an application to the Court of Protection, not the purchase of a property. The incorrect statement in the Rule 5 Statement was based on information from the Firm. It appeared that the Respondent had been instructed by Mrs W in relation to both a property purchase and an application to the Court of Protection; the misappropriation related to the latter, not the former.

10. Mr Hudson presented to the Tribunal an amended Rule 5 Statement, showing the tracked changes. He also presented documents to be inserted at pages 7 to 12 of the Rule 5 bundle, in place of the original pages 7 to 12, so that the documents relating to the Court of Protection matter were exhibited.

11. Mr Hudson told the Tribunal that his office had contacted the Respondent about the proposed amendment, having explained the error, and informed him that an application would be made to amend the Rule 5 Statement and substitute documents in the bundle. The Respondent had replied in an email of 9 January 2015,

> "I confirm that I have no objection to what you propose".

Mr Hudson submitted that in the circumstances, the proposed amendment would not prejudice the Respondent.

12. Mr Hudson also sought the Tribunal's permission to make amendments to correct two other minor errors in the Rule 5 Statement. At paragraph 47, the figure stated should have been £500 rather than £60. At paragraph 79, the figure stated should have been £260 rather than £240. The Respondent had admitted misappropriating £240 in relation to that matter, but the figure actually misappropriated (on the Applicant's case) and replaced by the Firm, was £260. The Respondent was not aware of the application to make those amendments.

13. The Tribunal was satisfied that it was just and proportionate to permit the amendment to the Rule 5 Statement in relation to the Mrs W matter. The Respondent had specifically accepted this amendment. With regard to the other amendments, the Tribunal noted that the Respondent was not aware of the proposed changes. However, it was clear from the context of paragraph 47 that an incorrect figure had been stated; the references throughout that section were to £500. By slightly re-wording paragraph 79 so that it remained clear that the Respondent had admitted misappropriating £240, but the Firm had replaced £260, the amendment could be made without causing any prejudice to the Respondent.

14. The Tribunal directed that the Rule 5 Statement could be amended as requested. The Tribunal directed that Mr Willcox, for the Applicant, should file an amended and signed Rule 5 Statement for the Tribunal's records.

Factual Background

15. The Respondent was born in 1956 and was admitted as a solicitor in 1980.

16. At all material times from 1 February 2011 to 13 February 2013 the Respondent practised as a solicitor at Keith Evans & Co Solicitors of 14 Clytha Park Road, Newport, Wales NP20 4PB ("the Firm").

17. In early December 2012 the Firm's Accounts Department and administrative staff raised concerns with the partners of the Firm regarding the Respondent's conduct in relation to following the proper procedures when dealing with client money. The main concern raised was that, once received, client monies were not being recorded properly and thereafter were not being posted to the correct client account in accordance with the Firm's procedures.

18. Mr Scott Bowen, partner and Compliance Officer for Legal Practice ("COLP") at the Firm, was subsequently informed by the Accounts Department that discrepancies had been discovered on a number of files, on all of which the Respondent had worked. The nature of the reported discrepancies was that receipts for monies received had not appeared on the files and there had been delays in client monies reaching the files.

19. To enable matters to be fully investigated, the Respondent was suspended with immediate effect, on 31 January 2013; those investigations revealed the matters set out below from paragraph 21 to 58.

20. At a meeting to discuss these matters, held on 12 February 2013, between Mr Bowen, Mr Elliott Evans (partner and Compliance Officer for Finance and Administration ("COFA")) and the Respondent, the Respondent made a number of admissions, as noted below.

Misappropriation of client monies
Mr and Mrs D – Will matter

21. In or about November 2012, Mr and Mrs D instructed the Respondent in respect of the preparation of wills, as set out in a client care letter sent to Mr and Mrs D on 26 November 2012. In that letter, the Respondent gave Mr and Mrs D a costs estimate in the region of £150 plus VAT. On the same date the Respondent raised an invoice in the VAT inclusive sum of £180.

22. On an unknown date, the Respondent received funds from Mr and Mrs D, either on account of or in settlement of costs on the matter, but failed to pay such funds into the Firm's bank or to credit the ledger with receipt of such funds.

23. At the meeting on 12 February 2013, the Respondent admitted to having misappropriated client monies on this matter in the sum of £180. On 13 February 2013, the Firm replaced the sum of £180 misappropriated by the Respondent, and discharged Mr and Mrs D's indebtedness to the Firm.

Mr MM – Contentious probate matter

24. From about April 2010 the Respondent was instructed by Mr MM in connection with a contentious probate matter relating to Mr MM's late father.

25. On an unknown date or dates, the Respondent received funds in the sum of £50 from Mr MM either on account or in part settlement of costs on the matter, which he failed to pay into the Firm's bank account or to credit the ledger with receipt of such funds.

26. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £50 on this matter. On 13 February 2013 the Firm replaced the sum of £50 misappropriated by the Respondent.

Mrs W – Court of Protection matter

27. In or about February 2013, Mrs W instructed the Firm in respect of an application to the Court of Protection, as set out in a client care letter dated 6 February 2013. In that letter the Firm gave Mrs W a costs estimate of £800 plus VAT and requested payment of £400 on account of costs.

28. On an unknown date or dates, the Respondent received funds in the sum of £500 on account of costs in this matter. The Respondent failed to pay the £500 received from Mrs W into the Firm's bank account or to credit the ledger with receipt of such funds.

29. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated client monies on this matter in the sum of £500. On 13 February 2013 the Firm replaced the sum of £500 misappropriated by the Respondent.

Mrs G – Divorce matter

30. In or about December 2012, Mrs G instructed the Respondent in respect of her divorce, as set out in a client care letter dated 13 December 2012. In the client care letter, the Respondent gave Mrs G a costs estimate in the sum of £50-£100 plus VAT and requested payment of £100 on account of costs.

31. On an unknown date or dates, the Respondent received funds in the sum of £120 from Mrs G, either on account of or in part settlement of costs on the matter, which the Respondent failed to pay into the Firm's bank or to credit to the ledger with receipt of such funds.

32. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated client monies on this matter in the sum of £120. On 13 February 2013 the Firm replaced the sum of £120 misappropriated by the Respondent.

Ms LS – Slander/harassment matter

33. In or about December 2012, Ms LS instructed the Respondent in respect of a neighbour dispute, as set out in a client care letter dated 17 December 2012. In that letter the Respondent gave Ms LS a costs estimate in the sum of £100-£200 plus VAT and requested payment of £100 on account of costs. An invoice was raised on 8 February 2013 for £120 inclusive of VAT.

34. On an unknown date or dates, the Respondent received funds in the sum of £120 from Ms LS either on account of or in part settlement of costs on the matter which he failed to pay into the Firm's bank or to credit the ledger with receipt of funds.

35. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated client monies on this matter in the sum of £120. On 13 February 2013, the Firm replaced the sum of £120 misappropriated by the Respondent.

Mr B – Employment matter

36. On 27 November 2012 Mr B enquired of the Respondent the costs for reading through documentation and drafting a letter for Mr B to send to his employers. On 28 November 2012 the Respondent informed Mr B that the cost would be £90 inclusive of VAT and asked Mr B to bring £90 cash with him if he wished to meet with the Respondent. The Respondent met with Mr B on 30 November 2012, but no file was created for Mr B.

37. On an unknown date or dates the Respondent received funds in the sum of £60 from Mr B, either on account of or in part settlement of costs on the matter, which the Respondent failed to pay into the Firm's bank or to credit the ledger with receipt of such funds.

38. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £60 of the client's money. On 13 February 2013 the Firm replaced the sum of £60 misappropriated by the Respondent.

Miss M – Civil litigation matter

39. In or about January 2013 Miss M instructed the Respondent to act for her in a civil litigation matter. On 4 January 2013 Miss M's partner attended the Firm and paid the Respondent £500 cash on account of costs. The Respondent produced a hand written attendance note dated 4 January 2013 concerning the meeting and gave to Miss M's partner a receipt, handwritten on a compliments slip, stating, "Received from [Miss M] £500 for costs"; the compliments slip was signed in the name of the Firm. The Respondent did not record the money as having being received either on the client file or on the client ledger.

40. The Respondent subsequently sent out a client care letter to Miss M dated 23 January 2013, requesting a payment of £500 on account of costs. On 31 January 2013, having received the client care letter, Mss M telephoned the Firm to ask whether the £500 that was being requested was in addition to the sum she had already paid.

41. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated monies on this matter in the sum of £500. On 13 February 2013 the Firm replaced the sum of £500 misappropriated by the Respondent.

Mrs P (deceased) – Estate administration

42. In or about November 2012 the Respondent was instructed by Mrs R and her co-administrators to act in connection with the administration of the estate of Mrs P deceased.

43. On 6 December 2012 the Respondent met with one of the administrators, Ms LC, at which meeting he received £125 case from each of the four administrators (i.e. £500); a handwritten compliments slip was handed over as a receipt. The Respondent did not make an attendance note of the appointment. A file was opened on 11 January 2013. Of the £500 cash received on 6 December 2012, only £100 was posted to the ledger on 11 January 2013.

44. On 14 January 2013 a client care letter was sent to Mrs R. This gave a costs estimate of £1,500-2,500 and failed to record the fact that £500 had already been paid on account.

45. At the meeting on 12 February 2103 the Respondent admitted to having misappropriated £400 of client money on this matter. On 12 February 2013 the Firm replaced the sum of £400 misappropriated by the Respondent.

General

46. The total monies misappropriated by the Respondent, as set out at paragraphs 21 to 45 above, totalled £2,170. On 19 February 2013, Mr Bowen wrote to the Respondent to advise him that those outstanding sums would be reimbursed to the Firm by means of retention of monies otherwise due to the Respondent as final net salary.

Delays in paying in client monies
Mr LM – Civil litigation matter

47. In or about January 2013 Mr LM instructed the Respondent to act for him in a civil litigation matter, as recorded in a handwritten attendance note prepared by the Respondent and dated 9 January 2013. On or around that date the Respondent received funds in the sum of £300 from Mr LM. On 23 January 2013 a client care letter was sent to Mr LM. This gave a costs estimate of £400 plus VAT, plus court fee of £80, and requested payment of £480 on account of costs to be incurred, but failed to record the fact that £300 had already been paid on account.

48. On 24 January 2013 an invoice was sent to Mr LM for £320 inclusive of VAT and disbursements, less £300 paid on account, leaving an outstanding balance of £20. Of the £300 shown on the invoice as having been paid on account, £60 was not credited to Mr LM's ledger until 17 January 2013, a further £100 was not credited to Mr LM's ledger until 23 January 2013 and the final £140 was not credited to Mr LM's ledger until 24 January 2013.

49. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £140.

Mr and Mrs SB – Tenancy matter

50. In or about November 2012, Mr and Mrs SB instructed the Respondent to act for them in a landlord and tenant matter concerning their property in Newport. The Respondent asked Mrs SB to let the Firm have £100 on account of costs. The Respondent recorded a meeting with Mrs SB in a handwritten note dated 1 November 2012. On 8 November 2012 a client care letter was sent to Mr and Mrs SB. The client care letter gave a costs estimate of £200-300 and repeated the request for £100 on account of costs.

51. On an unknown date following the initial meeting and before the end of November 2012, Mr SB paid £100 on account of costs as requested. On 25 January 2013 the Respondent delivered an invoice to Mr SB for £300 plus VAT, less £200 said to have been paid on account.

52. On 23 January 2013 Mr and Mrs SB's ledger was credited with the sum of £100. There was no record on the ledger at that stage of £200 having been received from Mr and Mrs SB. On 25 January 2013, Mr and Mrs SB's ledger was credited with a further sum of £100.

53. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £100.

Mr CL – Unfair dismissal matter

54. In or about January 2013, Mr CL instructed the Respondent to act for him in connection with an unfair dismissal claim, as noted in a handwritten attendance note prepared by the Respondent and dated 4 January 2013. On 11 January 2013 Mr CL again attended on the Respondent and paid him £70 on account of costs, for which he was given a handwritten receipt on a compliments slip. On 14 January 2013 a client care letter was sent to Mr CL. This gave a costs estimate of £200-500 and requested payment of £100 on account of costs. The client care letter failed to record that £70 had already been paid on account.

55. The £70 received by the Respondent on 11 January 2013 was not credited to Mr CL's ledger until 23 January 2013. On 28 January 2013 an invoice was raised for £150 plus VAT, which recorded receipt of the £70 paid on account.

56. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £70 of the client's money.

Mrs LR – Matrimonial affairs

57. In November 2012, Mrs LR instructed the Respondent in connection with certain matrimonial matters. On 7 November 2012 Mrs LR met the Respondent, as noted in an attendance note of that date. On 19 November 2012, £340 was credited to Mrs LR's ledger in respect of funds received on account of costs. On 20 November 2012 a client care letter was sent to Mrs LR.

58. At the meeting on 12 February 2013 the Respondent admitted to having misappropriated £240 of the client's money. On 13 February 2013, the Firm replaced the sum of £260 actually misappropriated by the Respondent.

Respondent's admissions and the investigation

59. In the course of the meeting on 12 February 2013, the Respondent produced a handwritten note purporting to show the matters from which he had taken money. At the meeting on 12 February 2013 the Respondent told Mr Bowen and Mr Elliott that he accepted that he was guilty of gross misconduct. The Respondent tendered his resignation with immediate effect, and this was accepted by Mr Bowen and Mr Elliott.

60. Mr Bowen wrote to the Respondent on 19 February 2013 setting out matters following the meeting on 12 February 2013 and indicating that his employment at the Firm had terminated as of 12 February 2013. On the same date the SRA's Supervision Department received a report from Mr Bowen in respect of the professional conduct of the Respondent, and later received a copy of Mr Bowen's attendance note concerning this matter.

61. The SRA wrote to the Respondent on 1 August 2013, at an address in EM, Newport, asking him to provide an explanation for a number of allegations. At the date of the application there was no response from the Respondent. The same letter was sent to the Respondent at an alternative address in Newport on 21 August 2013; again, no response was received before the application was made.

62. The SRA Supervisor sent a further letter to each of the addresses referred to on 22 November 2013 by recorded delivery, requesting a response and reminding the Respondent of his obligations to his regulator under Principle 7 of the Principles. Both letters were returned to the SRA by the Royal Mail, with the reason for non-delivery being "address gone away". Further enquires suggested that the Respondent may be spending time, if not residing, at an address in Abercarn, Newport. A copy of the letter of 1 August 2013 was personally served on the Respondent at that address on 24 February 2014, but no response was received as at the date of the application.

63. A decision to refer the Respondent's conduct to the Tribunal was made on 8 January 2014.

Witnesses

64. Mr Scott Bowen, a partner at the Firm, gave evidence on behalf of the Applicant.

65. Mr Bowen confirmed that his statement dated 18 June 2014 was true to the best of his knowledge, information and belief. Mr Bowen's statement in particular confirmed the events of the meeting of 12 February 2013 and the admissions made by the Respondent in the course of that meeting, and that a handwritten note recording the Respondent's admissions to various matters was prepared by the Respondent. This note contained a list of client matters on which the Respondent admitted he had taken money, and indicated on which he had paid back money.

66. Mr Bowen told the Tribunal that nothing had been received from the Respondent to reimburse the Firm, save that there had been deductions from his final salary when his employment was terminated. Mr Bowen told the Tribunal that the matter had been reported to the Firm's insurers; he did not think the Firm's premium had been affected as the matter had been dealt with and clients repaid swiftly. In response to a question from the Tribunal about whether the reputation of the Firm had been affected, Mr Bowen told the Tribunal that it had not been pleasant to have to contact clients about this matter. It was upsetting for him as a partner in the Firm and as a colleague of the Respondent. However, as matters were remedied quickly with clients he did not think there had been any negative impact on the clients or on the Firm's reputation.

67. In response to a question from the Tribunal about the circumstances in which the misappropriations had occurred, Mr Bowen told the Tribunal that he was aware that the Respondent had financial difficulties but he did not know anything more than that. Mr Bowen commented that the circumstances for the Respondent appeared to be sad; he could not fathom why the Respondent would have behaved like this, and risked his whole career, for what were relatively small amounts of money. Mr Bowen stated that the Respondent should not have taken client money; he may have acted out of desperation. The Respondent had volunteered in the course of the meeting on 12 February 2013 that he was in dire financial circumstances but had not gone into any detail.

Findings of Fact and Law

68. 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.

69. The Tribunal noted that in his email of 4 January 2015 the Respondent had made some general admissions and representations but had not specified to which allegations he was making admissions. The Tribunal therefore required each allegation to be proved as if it were not admitted by the Respondent.

70. The Tribunal noted that the test to be applied with regard to the allegations of dishonesty was that set out in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra"). The Tribunal would need to consider whether the Respondent's conduct was dishonest by the standards of reasonable and honest people and whether the Respondent knew that his conduct was dishonest by those same standards.

71. The Tribunal noted the representations of the Respondent in his email of 4 January 2015 and as recorded in the notes of the meeting of 12 February 2013, prepared by Mr Bowen. The Tribunal had had the benefit of hearing from Mr Bowen and accepted that his account of the meeting, and the admissions made in the course of that meeting, were correct and accurate.

72. The Tribunal noted that the only explanation offered by the Respondent for his conduct was that he was short of money; he had expressed an intention to pay back monies to the client's whose money he had used and had suggested that he had

"borrowed" rather than taken the money permanently. The evidence was clear that the Respondent had admitted in the meeting of 12 February that he had used the following monies for his own benefit:

Mr and Mrs D	£180
Mr MM	£50
Mr and Mrs W	£500
Mrs G	£120
Ms LS	£120
Miss M	£500
Mrs P	£400
Total	£1,870

These sums, together with £60 in respect of Mr B and £240 in respect of Mrs LR, which were not on the list discussed at the meeting, but were part of the Applicant's case, had not been repaid by the Respondent prior to the investigation. The Applicant's case was that the Respondent had received and kept £2,170 of client money for his own purposes.

73. The Applicant's case in respect of delays in accounting for client monies was that the Respondent had used monies belonging to Mr LM, Mr and Mrs SB, Mr CL and Mrs LR in the total sum of £650 but had replaced that amount by the time of the Firm's investigation.

74. The Tribunal was satisfied on the evidence presented, including that of Mr Bowen, that the facts underlying the allegations had been proved to the required standard. Indeed, those facts were not challenged by the Respondent.

75. **Allegation 1.1: -In breach of Rule 14.1 of the SRA Accounts Rules 2011 ("AR 2011") he:**

1.1.1 failed to pay client money into client account;
1.1.2 delayed paying client money into client account.

75.1 The factual background to this allegation is set out at paragraphs 21 to 58 above.

75.2 The Tribunal found that the Respondent had failed to pay at least £2,170 of client money, in respect of nine clients, into client account and had delayed paying in £650, in respect of four clients.

75.3 Rule 14.1 of AR 2011 set out the requirement (which had also existed under the Solicitors Accounts Rules 1998) that client money should be paid into client account promptly. That requirement existed to ensure that client money was properly accounted for and protected in a client account. Instead of paying money in promptly, the Respondent kept and used clients' cash for his own purposes on at least 12 occasions in the period from about April 2010, but primarily in the period November 2012 to January 2013.

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

76. **Allegation 1.2: -In breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles") he failed without delay or at all to pay client money into client account and instead used such client money for his own purposes.**

76.1 The factual background to this allegation is set out at paragraphs 21 to 58 above.

76.2 As noted above, the Tribunal was satisfied that the Respondent had failed to and/or had delayed in paying client money into client account and instead had used such money for his own purposes.

76.3 The Tribunal was satisfied that in doing so, the Respondent had demonstrated a lack of integrity; it was clearly wrong to use a client's money for anything other than that client's purposes and the Respondent knew this was wrong. Further, he had failed to act in the best interests of each client affected by this, as their money was not protected within client account and was not available to the Firm for the discharge of any costs liability incurred by the client. This conduct was such as would tend to diminish rather than maintain the trust that the public would place in the Respondent and/or the profession. The Respondent had failed to protect client money. The Tribunal was satisfied to the required standard that this allegation had been proved.

77. **Allegation 1.3:-In breach of Principles 4, 5 and 6 of the Principles, he:**

1.3.1 delayed in opening client files and/or sending out client care letters. Further, or in the alternative, it was alleged that he thereby failed to achieve Outcomes O(1.2), O(1.7), O(1.9), O(1.10), O(1.13) and O(1.14);

1.3.2 failed to provide his clients with a proper receipt for monies they had paid to him in respect of costs;

1.3.3 failed to inform the accounts department of Keith Evans & Co, his employer, that monies had been received from clients.

77.1 The factual background to the particulars at 1.3.1 are set out at paragraphs 36 to 57 above; the factual background to the particulars at 1.3.2 are set out at paragraphs 39, 43 and 54 above and the factual background to the particulars at 1.3.3 are set out at paragraphs 21 to 58 above.

77.2 The Tribunal found that in the matter of Mr B no file had been created and there had been no client care letter. In the matter of Mr M, the client care letter was sent out some 19 days after the initial instructions whilst in the matter of Mr LM the delay was 14 days. The client care letter to Mr and Mrs SB was sent 7 days after instruction, that to Mr CL after 10 days and the letter to Mrs LR some 13 days after instruction. The most significant delay was in the matter of Mrs P, where the file was opened 36 days after instructions were given and the client care letter was sent out 3 days after that.

77.3 The Tribunal found that whilst receipts were given to clients in the matters of Miss M, Mr CL and Mrs P, those receipts were not in the correct form; they were handwritten on compliments slips. Issuing an informal receipt may not in itself have been serious, but it enabled the Respondent to avoid informing the Accounts Department of the

Firm that money had been received from clients. The Tribunal also found that the Respondent had failed to inform the Accounts Department of the receipt of monies from clients in all of the matters set out in the Rule 5 statement. In some cases, the Accounts Department had been informed when money was paid in by the Respondent but this was after a delay in which the Respondent had used the clients' money for his own purposes.

77.4 The Tribunal was satisfied that all of this behaviour demonstrated that the Respondent had failed to act in the best interests of clients and had failed to provide them with a proper standard of service. The Respondent's misconduct was such as would tend to diminish rather than maintain the trust the public would place in him or the profession. The Tribunal was also satisfied that the Respondent had failed to achieve the Outcomes referred to in this allegation. The Tribunal was satisfied to the required standard that this allegation had been proved.

78. **Allegation 1.4:-He failed to co-operate with his Regulator, the SRA, in respect of this matter, in an open and timely manner, contrary to Principle 7 of the Principles.**

78.1 The factual background to this allegation is set out at paragraphs 61 to 62 above.

78.2 The SRA first wrote to the Respondent about this matter in August 2013. The letter had been sent to three different addresses in Newport. At the time of the hearing, the Respondent lived at an address in Cardiff.

78.3 The Tribunal accepted that the correspondence from the SRA had been delayed and/or returned without being received by the Respondent. The Tribunal could not be satisfied to the required standard that he had received the initial correspondence during 2013. However, the letter of 1 August 2013 had been personally served on the Respondent on 24 February 2014. The Respondent did not respond to that letter by the time these proceedings were issued. Indeed, the Respondent had not engaged with these proceedings until he had sent his email of 4 January 2014 and had then responded to the Applicant's email about the proposed amendments to the Rule 5 Statement.

78.4 The Tribunal was satisfied to the required standard that in the period from 24 February until May 2014 the Respondent had failed to co-operate with the SRA in that he had not provided any explanation for his conduct, as requested in the letter of 1 August 2013. Principle 7 of the Principles required a solicitor to comply with his/her legal and regulatory obligations and deal with the regulators and ombudsmen in an open, timely and co-operative manner. The Tribunal was satisfied the Respondent had failed to comply with this obligation to co-operate with the SRA in the period from 24 February to mid-May 2014.

79. **Allegation 1.5:-He acted dishonestly in respect of each of the allegations at 1.1, 1.2 and 1.3 above, although it was not necessary to prove dishonesty to prove each allegation itself.**

79.1 The Applicant relied on the facts relating to allegations 1.1, 1.2 and 1.3 in support of the allegation of dishonesty.

79.2 The Tribunal was satisfied that all solicitors are aware that client money is sacrosanct and must be protected; that is the principle purpose of the accounts rules. The Tribunal noted that the case of Weston v Law Society CO/0225/98 ("Weston") made it clear that the accounts rules are in place to offer the public maximum protection and impose an obligation on solicitors to ensure compliance with the accounts rules. The Respondent in this case had improperly and without authorisation used client money; he had thereby put client money at risk.

79.3 The Tribunal was satisfied that the Respondent knew, when he received monies from clients on each of the occasions set out in this Judgment, that:

79.3.1 such monies were being given to him either on account of or in settlement, or part settlement, of costs on the relevant matter;

79.3.2 accordingly they should be paid into the Firm's bank account without delay;

79.3.3 they were to be used solely for the benefit of those clients.

79.4 The Tribunal was also satisfied that, despite such knowledge, the Respondent:

79.4.1 did not pay the monies into the Firm's client bank account or make arrangements for them to be paid into the Firm's client bank account; and

79.4.2 instead, used those monies for his own purposes and without the instruction or authority of his clients.

79.5 The Tribunal also found that in order to conceal his actions, as described above, the Respondent:

79.5.1 delayed opening files and/or sending out client care letters;

79.5.2 failed to provide clients with proper receipts for monies received; and

79.5.3 failed to inform the Firm's Accounts Department that monies had been received from clients.

In particular, as the receipts did not state the date of receipt of client money, this assisted the Respondent to cover up the fact he had received money. Delaying in opening files and sending out client care letters enabled him to conceal the receipt of money for longer.

79.6 The Tribunal was satisfied to the required standard that in: a) failing to pay client monies into client account promptly (or arranging for those monies to be paid into client account); b) retaining these funds for his own purposes; and c) taking the steps described above to conceal his actions the Respondent had acted dishonestly by the standards of reasonable and honest people. Further, the Tribunal was satisfied that the Respondent knew at the relevant time that his actions in these matters was dishonest by the standards of reasonable and honest people.

79.7 The Tribunal found that the Respondent had been dishonest, to a serious degree, notwithstanding his professed intention to repay clients. The Respondent had committed deliberate and knowing breaches of the rules involving the repeated misuse of client money. The Tribunal was satisfied to the highest standard that this allegation was proved in all its respects.

Previous Disciplinary Matters

80. There was one previous matter in which findings had been made against the Respondent, in matter number 10910/2012, which was heard by the Tribunal on 19 September 2012.

81. The Respondent had admitted eight allegations of breaches of the Solicitors Accounts Rules 1998 and four allegations of breaches of the Solicitors Code of Conduct 2007. The breaches related to the Respondent's operation of the accounts of a firm of which he had been the sole principal, in the period September 2010 to January 2011 and in particular numerous transfers of client funds to office account. The Tribunal determined that the appropriate sanction was to suspend the Respondent from practice for a period of five years, but that suspension would itself be suspended provided the Respondent abided by the terms of a restriction order. The Tribunal determined that, in the light of the supportive approach of the Firm (of which the Respondent was an employee by the time of the hearing), the Respondent may only work as a solicitor in employment approved by the SRA. The Respondent was also ordered to pay costs, fixed in the agreed sum of £13,000.

Mitigation

82. The Respondent was not present to offer mitigation in person. The Tribunal took into account the contents of his email of 4 January 2015. In addition to the matters recorded at paragraph 6 above, the Respondent made the following representations:

> "My career as a solicitor was over two years ago, and quite rightly. My huge debts are no excuse whatsoever, only the reason for my conduct. I have lost my career, reputation, marriage and home, and I was made bankrupt in June last year and now rent a room… All of these things are of my own making, and I can have no complaints. I don't think I can quite take in what it has all led to, but I do recognise that I have let the profession down badly and brought it into disrepute and I do regret that very much and wish I had been strong enough to make different decisions when I still had the chance. It is such a waste of a career, but I have paid the price of my own actions. My wife is the one who has suffered most unfairly from my conduct, as I didn't have the courage even to tell her until it was all to later… I have modest employment… If I can continue to work I can try to redeem myself. It's all I have left".

(This extract has been edited from the original out of respect for the Respondent's private and family life and that of others involved).

Sanction

83. The Tribunal had regard to its Guidance Note on Sanction (December 2014 edition) and in particular the fundamental purpose of sanction in the Tribunal, which was the maintenance of the reputation of the profession as one whose members could be trusted to the ends of the earth.

84. The Tribunal also considered all of the circumstances of the case, including the Respondent's acknowledgement of his misconduct and his expressions of regret at bringing the profession into disrepute.

85. Dishonesty had been found in this case. There could be no doubt that taking client money and using it for his own purposes was very serious and clearly dishonest. The amount of money in question may not have been large but the potential impact on a number of individual clients was significant; the Respondent's wrongdoing had been mitigated by the Firm's swift action in reimbursing clients and not by his own actions. The Respondent's actions were so serious that even if there had been no finding of dishonesty a sanction towards the top of the range would have been imposed.

86. The Tribunal was satisfied that the Respondent posed a significant danger to the public and to the profession. This view was reinforced by the findings in the previous matter heard by the Tribunal, which also related to the misuse of client money. The allegations in this matter arose from the Respondent's actions in the months shortly after the previous Tribunal hearing, at which the Tribunal had given him an opportunity to remain in the profession. The Respondent had rejected that opportunity by his own behaviour, for which he alone was responsible. Whilst he could be given some credit for acknowledging that, and the effects of his actions, the Tribunal did not find there were any exceptional circumstances. The normal and proportionate sanction where there was a finding of dishonesty was for a solicitor to be struck off the Roll. In the absence of any exceptional circumstances, and in particular given the repeated nature of the Respondent's misconduct, the only just and proportionate sanction was an order striking the Respondent off the Roll.

Costs

87. Mr Hudson applied for an order that the Respondent should pay the Applicant's costs of the proceedings, as summarily assessed by the Tribunal on the basis of a statement of costs which had been supplied to the Tribunal and served on the Respondent.

88. The Tribunal was not aware of any representations on costs made by the Respondent. It noted that in his email of 4 January 2015 the Respondent had referred to having "modest employment", from which he received £1800 per month (net) and had outgoings of £350 on rent and bills and £200 on food and miscellaneous expenses. The Respondent stated in his email that he gave the rest to his wife to support her. The Tribunal noted that the Respondent had stated that he was made bankrupt in June 2014; this had not been challenged by the Applicant.

89. The Tribunal noted that the total claimed in the schedule was £12,444, including SRA supervision costs of £600. There were no forensic investigation costs in this matter. The Tribunal noted that time at the hearing was claimed for both Mr Hudson and

Mr Willcox, who was present. The Tribunal noted that in many cases it would not be appropriate for the instructing solicitor to attend with the advocate, particularly where a case was quite straightforward. Each case would be considered on its own merits. In this instance the Tribunal would allow Mr Willcox's costs of attendance and noted that it had asked him to carry out a particular task (amendment and filing of the amended Rule 5 Statement), which costs could be subsumed into those for his attendance.

90. The Tribunal noted that if the Respondent was indeed made bankrupt in June 2014, i.e. after these proceedings began, the costs of these proceedings should fall into the bankruptcy in the light of the Nortel/Lehman case, otherwise known as Bloom v Pensions Regulator [2013] UKSC 52.

91. The Tribunal assessed the reasonable costs of the proceedings in the sum claimed, at £12,444 and determined that the costs order should be made in the usual terms.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, Jonathan Charles Lewis, 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 £12,444.00.

Dated this 10th day of February 2015
On behalf of the Tribunal

A.E. Banks
Chairman