SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11251-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GERARD CHRISTOPHER MANN First Respondent

and

KATHERINE JANE BRADFORD Second Respondent

Before:

Mr. S. Tinkler (in the chair)
Mr K. W. Duncan
Mr M. C. Baughan

Date of Hearing: 3 and 4 February 2015

Appearances

Jonathan Goodwin, solicitor of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT attended on behalf of the Applicant.

The First and Second Respondents appeared and were both represented by Ian Ryan of Howard Kennedy LLP, No 1 London Bridge, London, SE1 9BG.

JUDGMENT

Allegations

1. The allegations against the Respondents were that:

1.1 The Respondents made and/or permitted unallocated transfers from client account to office account contrary to Rule 19(2) of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 17.2 of the SRA Accounts Rules 2011 in that they failed to send a bill of costs or other written notification of costs to their clients before taking money from the client account.

1.2 The Respondents withdrew monies from client account in circumstances other than those permitted by Rule 22(1) of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 20 of the SRA Accounts Rules 2011 and thereby created cash shortages.

1.3 The Respondents failed to remedy breaches promptly upon discovery contrary to Rule 7 of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 7 of the SRA Accounts Rules 2011.

1.4 The Respondents improperly used monies for their and/or the firm's own purposes and in so doing failed to act with integrity, failed to act in the best interests of clients, failed to act in a way that would maintain the trust the public placed in them and in the provision of legal services and failed to protect client assets contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 and/or, where such conduct related to a period after 6 October 2011, Principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011.

1.5 It was alleged the Respondents had acted dishonestly.

The Respondents both admitted allegations 1.1, 1.2, 1.3 and 1.4 but denied acting dishonestly.

Documents

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

Applicant:

- Application dated 30 May 2014 together with attached Rule 5 Statement and exhibits
- Applicant’s Statement of Costs

Respondent:

- Answer to Rule 5 Statement dated 2 July 2014
- Supplemental Answer to Rule 5 Statement dated 12 September 2014
- Statement of Gerard Christopher Mann (the First Respondent) dated 17 October 2014 and exhibits

- Statement of Katherine Jane Bradford (the Second Respondent) dated 20 October 2014 and exhibits
- Respondents' Mitigation Bundle
- Handwritten Schedule of Payments made by Gerard Christopher Mann (the First Respondent)

Factual Background

3. The First Respondent was born in July 1945 and was admitted to the Roll on 15 June 1972.

4. The Second Respondent was born in August 1953 and was admitted to the Roll on 1 August 1978.

5. The Respondents practised in partnership at Stoffel & Co, 48 High Street, Beckenham, Kent, BR3 1AY ("the firm").

6. On 15 March 2012, a SRA Investigation Officer commenced an investigation into the firm and produced a Forensic Investigation Report dated 10 August 2012. On 28 May 2013, a second SRA Investigation Officer commenced a further investigation into the firm and produced a second Forensic Investigation Report dated 11 July 2013.

<u>The First Forensic Investigation Report – 10 August 2012</u>

7. The Forensic Investigation Report dated 10 August 2012 identified a client account shortage of £139,540.49, of which £63,705.79 remained as at the date of the report. The client account shortage arose due to overpayments from client account, unallocated transfers from client to office account and withheld cheques for transfers from office to client account, which were to correct previous unallocated transfers from client to office account.

8. The Second Respondent agreed the cash shortage of £139,540.49. The shortage had been partially replaced by £75,834.70 between March and June 2012.

9. The overpayments from client account, totalling £88,139.70, ranged from £0.01 to £23,527.08 and occurred between 31 October 2002 and 23 February 2012. The First and Second Respondents confirmed that all the debit balances were a result of overpayments due to error.

10. The largest overpayment was £23,527.08 between 7 May and 12 May 2009 in relation to a penalty for late payment of Stamp Duty due to an error on the completion statement on a file relating to client B. The earliest overpayment was £12,590.70 made on 25 April 2012 and was due to a fraud by client M which was subject to litigation.

11. The unallocated transfers from client to office account of £37,217.51 ranged from £110.41 to £6,400 and occurred between 12 January 2010 and 22 February 2012. On 25 May 2012, the Second Respondent agreed that the transfers were improper and stated that the unallocated transfers from client to office account were:

> "estimates of the costs available for transfer at those times because the actual information was not available, and should have been corrected later when that information was available…"

12. Withheld cheques for transfers from office to client account amounted to £14,183.28. These ranged from £2.94 to £1,681.28 and were dated between 3 April 2008 and 6 March 2012. The cheques were intended as replacements of previous improper costs transfers from client to office account, but were not presented for payment.

13. In an email to the first Forensic Investigation Officer dated 1 August 2012, the Second Respondent stated:

> "I confirm that we have not yet been able to make any further payments in as neither of us has any other source of funds other than from the sale of our homes."

14. In a letter to the SRA dated 4 January 2013, the Second Respondent stated:

> "….the comments reported as being made by myself and Mr Mann are correct, however, I would qualify that in respect of the comment that I agreed the cash shortfall figure. I was not aware of this prior to the investigation and my agreement was given following presentation of the list of balances by Dr Rowson and after slight adjustments agreed with him."

15. The Second Respondent also advised that neither she nor the First Respondent had the means to pay the outstanding balance. She advised that they had tried to obtain a loan from the bank but this had been refused. She advised it was her intention to put her house on the market for sale.

16. The Second Respondent also advised that the unallocated transfers were made on the basis of estimated costs due from various clients. She accepted that the issue of the unallocated transfers should have been addressed.

17. In a letter dated 1 February 2013 from the First Respondent to the SRA, he confirmed:

> "£30,000 will be banked on Monday morning and I will confirm further then."

18. In an email dated 7 February 2013 from the Second Respondent to the SRA, she confirmed that £30,000 had been paid into the office account and that this sum would be transferred to client account when the cheque had cleared. She advised that she and the First Respondent were continuing to find further interim funds.

19. In an email dated 12 February 2013 from the Second Respondent to the SRA, she confirmed a further £20,000 had been paid and that she had obtained a personal loan for the balance of the shortfall. On 25 February 2013, the Second Respondent confirmed that the shortage had been repaid and provided documents to confirm the position.

The Second Forensic Investigation Report – 11 July 2013

20. The Forensic Investigation Report dated 11 July 2013 identified a shortage on client account of £28,942.46 from the client account reconciliation dated 30 April 2013. This had arisen due to unallocated transfers from client to office bank account during March and April 2013. At a meeting with the First and Second Respondents on 26 June 2013, they agreed the shortage of £28,942.46.

21. The shortage had partly been replaced by the firm raising bills in respect of March 2013 unallocated transfers from client to office account, which totalled £13,097.24.

22. At the meeting on 26 June 2013, the First and Second Respondents agreed that the unallocated transfers were made in order to keep the office overdraft under its £25,000 limit. The First and Second Respondents also agreed that the unallocated transfers were being used to pay the First Respondent's mortgage, wages and the firm's indemnity insurance premium. The First Respondent agreed that the unallocated transfers were being used to prop up the office account.

23. The Second Respondent accepted that she authorised the unallocated transfers and the First Respondent accepted that he knew about the unallocated transfers being made. During the meeting on 26 June 2013, both Respondents accepted they had breached the Solicitors Accounts Rules in that they had not sent out bills to clients in relation to costs and had withdrawn monies from client account when the monies were not properly required for payment.

24. The second Forensic Investigation Report also identified a further shortfall on client account of £9,900 from a review of the client bank account reconciliation dated 31 May 2013. The shortfall had arisen due to unallocated transfers from client to office bank account which ranged between £480 and £4,080.

25. During an interview with the SRA Officer on 26 June 2013 the Second Respondent accepted there was a further shortage of £9,900 following the May 2013 bank reconciliation. She also accepted she had made unallocated transfers. The Second Respondent stated all available resources had been exhausted replacing the previous shortage and that she was in the process of selling her house.

26. In a letter dated 1 August 2013 to the SRA, the First and Second Respondents advised that there had been no increase in the cash shortage during June and July and that they were reducing the shortage by £5,000 from funds available from recently paid bills. They stated they had made every effort to repay the shortfall and would continue to do so. However, they also advised that they had exhausted all their cash resources and borrowed what they could from financial institutions, friends and relatives. The Respondents stated they were reliant on funds from the sale of the Second Respondent's house. In an email to the SRA dated 6 August 2013, the Second Respondent confirmed the shortage would be replaced in full from the proceeds of the sale of her house.

27. In an email to the SRA dated 23 August 2013, the Second Respondent attached a letter dated in error 31 March 2014, which confirmed the sale of her house had completed and the outstanding shortage had been repaid. The email also attached a

bank statement which confirmed £18,601.21 had been deposited in the firm's client account.

Witnesses

28. The following witnesses gave evidence:

- Dr David Rowson (SRA Forensic Investigation Officer)
- Sarah Taylor (SRA Forensic Investigation Officer)
- Katherine Jane Bradford (the Second Respondent)
- Gerard Christopher Mann (the First Respondent)
- Nigel Mark Ashton

Findings of Fact and Law

29. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

30. **Allegation 1.1: The Respondents made and/or permitted unallocated transfers from client account to office account contrary to Rule 19(2) of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 17.2 of the SRA Accounts Rules 2011 in that they failed to send a bill of costs or other written notification of costs to their clients before taking money from the client account.**

Allegation 1.2: The Respondents withdrew monies from client account in circumstances other than those permitted by Rule 22(1) of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 20 of the SRA Accounts Rules 2011 and thereby created cash shortages.

Allegation 1.3: The Respondents failed to remedy breaches promptly upon discovery contrary to Rule 7 of the Solicitors Accounts Rules 1998 and/or, where such conduct related to a period after 6 October 2011, Rule 7 of the SRA Accounts Rules 2011.

Allegation 1.4: The Respondents improperly used monies for their and/or the firm's own purposes and in so doing failed to act with integrity, failed to act in the best interests of clients, failed to act in a way that would maintain the trust the public placed in them and in the provision of legal services and failed to protect client assets contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 and/or, where such conduct related to a period after 6 October 2011, Principles 2, 4, 6 and 10 of the SRA Code of Conduct 2011.

Allegation 1.5: It was alleged the Respondents had acted dishonestly.

30.1 The Respondents both admitted Allegations 1.1, 1.2, 1.3 and 1.4. Taking into account all the documentary evidence, and the admissions the Tribunal found these Allegations all proved.

30.2 The Respondents did not admit Allegation 1.5 which alleged that they had acted dishonestly.

30.3 The Tribunal had been referred to a number of character references and heard evidence from one character witness, Mr Ashton. Pursuant to the case of Donkin v The Law Society [2007] EWHC 414 (Admin) the Tribunal took all these into account, in view of the fact that dishonesty had been alleged.

30.4 The Applicant's case was that dishonesty was alleged against both Respondents in relation to the second Forensic Investigation Report. Mr Goodwin, on behalf of the Applicant, submitted the sums withdrawn from client account, particularly during the period March to May 2013 after matters had been drawn to the Respondents' attention as a result of the first forensic investigation, amounted to dishonest conduct. By this time, the Respondents were aware that they had breached the Solicitors Accounts Rules by virtue of the first Forensic Investigation Report dated 10 August 2012, and, Mr Goodwin submitted, it had been improper and dishonest to continue to carry out withdrawing funds from client account in the same manner.

30.5 Mr Goodwin submitted that, during an interview with the Investigation Officer at the time of the second investigation on 26 June 2013, the First Respondent had accepted he was aware the Second Respondent had been making unallocated transfers from client account. He stated that he had always regarded any client money the firm used to be safe, in that it was recoverable within a short time.

30.6 Mr Goodwin further submitted that the Second Respondent, during the interview with the Investigation Officer on 26 June 2013, stated she knew that the unallocated transfers were in breach of the Solicitors Accounts Rules when she made them and this was not the right thing to do. She admitted the unallocated client to office transfers had been made in order to meet the firm's overdraft. The Second Respondent had admitted that it was not acceptable to take clients' money to prop up the office overdraft. Mr Goodwin reminded the Tribunal that the unallocated transfers were being made at a time when the firm was close to or over its overdraft limit.

30.7 The Tribunal heard evidence from a SRA Forensic Investigation Officer, Dr David Rowson who prepared the first report dated 10 August 2012. He confirmed that during his investigation, the First Respondent had been surprised at the amount of the cash shortage. Dr Rowson confirmed that over half of the cash shortage, £88,139.70 had been due to overpayments, which were due to errors. He confirmed the overpayments had not been deliberate. Dr Rowson also confirmed that when he carried out his investigation, he had been provided with a copy of a qualified Accountants' Report for the firm for the period 1 January 2010 to 31 December 2010. At that time, the shortage was £10,752.20.

30.8 The Tribunal also heard evidence from Ms Sarah Taylor, another SRA Forensic Investigation Officer who carried out the second investigation and prepared a report dated 11 July 2013. She confirmed that both Respondents had been completely open, transparent and cooperated fully throughout the investigation, providing everything she had requested. She confirmed the Respondents had intended to prepare bills for the transfers but had not done so. It appeared to Ms Taylor that the Second Respondent would check the office overdraft every morning, and then she would prepare bills on files which had not been billed for a while. Ms Taylor confirmed that there were some files where bills had not been sent to clients by the Respondents but the intention had been to send bills.

30.9 Mr Goodwin referred the Tribunal to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether each of the Respondents' conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether each of the Respondents realised that by those standards his/her conduct was dishonest.

30.10 Mr Goodwin also referred the Tribunal to the case of Bultitude v The Law Society [2004] EWHC 1370 (Admin). In that case it was held that there was no need to prove an intention to permanently deprive clients of funds. Mr Goodwin submitted that where a solicitor knew he/she was not entitled to the client's money and used it, this was dishonest conduct.

30.11 Mr Goodwin also referred the Tribunal to the case of Weston v The Law Society [1998] 1 LS Gaz R 35. In that case it was made clear that a partner who had not complied with the accounts rules, but who had not been dishonest, ought to be judged in the light of all the circumstances of the case. It was the duty of anyone holding anyone else's money to exercise proper stewardship in relation to it. A solicitor who failed to see that the accounts rules were violated would be in breach of that duty.

30.12 The Tribunal heard evidence from the Second Respondent. She stated that although the transfers were not done in the right manner, she believed they were correct in substance and that the firm was entitled to that money. The Second Respondent accepted she had not done the paperwork and that she had not sent bills to clients at the time the transfers were made. The Second Respondent stated that she had been under pressure at work. As a result of this, she had looked daily at the level of the firm's bank account and then she did a quick assessment of what the firm was entitled to take from client account with the intention that the paperwork would follow. The Second Respondent stated she would consider the client files the firm had been dealing with, look at when those files had last been billed and consider what the firm was entitled to in costs for work carried out since that time. She stated the transfers were "an estimated figure based on what I knew". The Second Respondent stated she had always intended to "do the bills but didn't get round to it". She stated the transfers had been done in a cursory fashion, not itemised, and that there was an element of estimate. She stated the firm had not taken any money it was not entitled to.

30.13 The Second Respondent stated she dealt with the financial matters at the firm and that the First Respondent did not have a great deal to do with them. However, if the Second Respondent was absent from the office and something required attention, the First Respondent would deal with it. The Second Respondent stated she was not taking any drawings from the firm at the moment and she provided the Tribunal with details of her previous drawings, which were low, and which she had taken for about 2/3 years up to August 2013. The Second Respondent confirmed she had taken her private pension in August 2013 and lived on that since then. She confirmed she had sold her previous property where she had lived for 30 years and had used some of the proceeds of sale to repay the shortage, and repay loans made by family and friends to the firm. She had tried to sell the property earlier but had been unable to do so due to other issues. The Second Respondent considered she was better at dealing with client matters, rather than the financial management of the firm. She stated she had given preference to urgent client work and as a result her financial responsibilities had suffered. The Second Respondent also provided the Tribunal with details of her health problems in 2011. The Second Respondent stated "I would not have had breaches happen for anything" and that she had taken her "eye off the ball with financial compliance".

30.14 Whilst the Second Respondent confirmed she had looked at the qualified Accountants' Report in 2010, she stated it had not rung alarm bells with her although she was aware that she needed to deal with the shortage and should have done so. The Second Respondent stated she was horrified when Dr Rowson informed her of the amount of the shortage at the time of his investigation, and that she had never realised it was so large. The Second Respondent stated that by February 2013 the cash shortage identified by Dr Rowson had been cleared in full.

30.15 In relation to the unallocated transfers identified in the second Forensic Investigation Report, the Second Respondent confirmed she had authorised all those transfers, save for the transfers which occurred on 9 and 10 May 2013, as she had been on holiday on those dates. Accordingly, she concluded those transfers would have been authorised by the First Respondent. The Second Respondent maintained she was not a dishonest solicitor and had never intentionally taken any money that did not belong to her.

30.16 On cross-examination, the Second Respondent accepted the unallocated transfers had been made in order to meet the firm's overdraft. She also accepted that on some client files between March to May 2013 where unallocated transfers had been made, bills had not been done, and on other files where no bills had been done, clients had not received written notice of the amounts due. She accepted the paperwork had not been in place at that time. The Second Respondent stated that the firm's bank had refused to increase the overdraft limit in June 2012 and had also later refused to provide a loan to repay the shortage.

30.17 The Second Respondent was asked about the accounts system used by the firm. She stated that work in progress was not calculated on the accounts system and that she used her own knowledge of client files to estimate the amounts due. She stated she did not do a detailed estimate but a "rough estimate". The Second Respondent accepted it was possible she had taken client money that was not due to the firm and that she did not know 100% that the firm was entitled to all the funds transferred. The Second Respondent stated she had reviewed client files on which she knew, to the

best of her knowledge, that work had been done. Whilst she accepted that the transfers had not been done with the proper paperwork, she maintained she thought the firm was entitled to the funds transferred.

30.18 The Second Respondent did not deny the unallocated transfers were inappropriate and accepted she knew that she was making unallocated transfers which were based on her review of the files, but without proper calculation and without the paperwork. She stated this had been a lack of attention at the time and had not been done in the right way. She also accepted that she had known this was in breach of the rules as this had been drawn to her attention after the first SRA investigation.

30.19 In response to questions from the Tribunal panel, the Second Respondent confirmed that she had done "rough calculations" when she made the unallocated transfers in March to May 2013. She accepted that when she had actually done the bills later to cover the unallocated transfers, the bills only amounted to approximately half of the amounts transferred. The Second Respondent was unable to explain why her estimates had been so far out.

30.20 The Tribunal then heard evidence from the First Respondent. The Tribunal found his evidence to be contradictory and was of the view that he was rather casual in his responses. He confirmed his mortgage and bills were paid from the office account and that he was currently not taking any other funds from the firm as he had pensions which provided him with an income. He provided the Tribunal with a schedule of the payments he had made into the firm since 2010, which amounted to about £180,000 and included a loan from a relative. He confirmed the Second Respondent was responsible for the finances of the firm. He accepted the transfers made had not been in accordance with the rules.

30.21 The First Respondent stated that at the time of the first investigation, he had been surprised at the amount of the shortfall. He stated he had been lax in keeping himself appraised in relation to the finances of the firm and, in retrospect he should have taken more interest. He stated he thought there might be a cash shortage of about £20,000 and thought that it was small and remediable. The First Respondent stated that by the time of the second investigation, he had been horrified to find out there was another shortage as he had not been conscious of the amount concerned.

30.22 The First Respondent accepted that, as the Second Respondent had been away on holiday on 9 and 10 May 2013 and could not have made the transfers on those dates, it may well be that he had made those transfers although he could not now recollect them. He stated that although he didn't remember making those transfers, he would have thought they were "covered" in that they represented costs due to the firm but not billed. He accepted he had not taken sufficient care when he signed the authority for those transfers. The First Respondent stated he was not a dishonest person and, although he accepted there had been breaches of the rules, he did not believe the transfers made were dishonest.

30.23 The First Respondent stated he considered the Second Respondent to be totally reliable and a trustworthy person. He also confirmed he was aware the Second Respondent would consider the firm's bank statements every morning and would

transfer funds from client to office account if the overdraft limit required it. He stated they had done their best to remedy the shortfall and no client had suffered.

30.24 On cross-examination, the First Respondent confirmed he had read the first Forensic Investigation Report although he stated he did not specifically recall discussing the unallocated transfers with the Second Respondent. The First Respondent accepted the firm did not have any system for recording work in progress and that therefore there was no way of knowing exactly what costs were due. The First Respondent maintained that, whilst he was aware that the practise of unallocated transfers continued in March 2013 even though this was not allowed, he thought these were on the basis of costs incurred and due to the firm. He stated he had trusted the estimates made by the Second Respondent were justified at the time.

30.25 The First Respondent accepted that payment of his mortgage on 10 May 2013 took the firm's overdraft beyond its limit and that a transfer from client account to the office account on the same day in the sum of £1,740 reduced the overdraft. He stated that this transfer had been authorised on the basis that sufficient money was due from clients. However, he was unable to confirm which client files the costs related to, and stated that the Second Respondent had left a note for him indicating that sufficient costs were due to be transferred. The First Respondent stated he did not have the note and that he would probably have thrown it in the bin as he would not have kept it. He then stated that he could not recall if there had been note from the Second Respondent on that occasion, and if there had not, the transfer was made on the cashier's assurances. However he was unable to recall what the cashier had said to him. The First Respondent did not accept that the transfer had been made in order to reduce the firm's overdraft.

30.26 Finally the Tribunal heard character evidence from Mr Nigel Ashton in relation to the Second Respondent. He confirmed the Second Respondent had acted on his behalf a number of times and that he had always found her to be honest, trustworthy, efficient, helpful and a person of the utmost integrity.

30.27 Mr Ryan, on behalf of the Respondents, submitted that if the Respondents thought they were entitled to the client funds they transferred, then they could not be dishonest. Mr Ryan submitted that although it had been immensely stupid of the Respondents to make unallocated transfers again after the first investigation, this did not mean they were dishonest. Indeed, Ms Taylor, who conducted the second investigation, accepted that they had intended to send bills to clients although they had not actually done so. Mr Ryan further submitted both Respondents operated in a community firm with a long standing client base and that they were old-fashioned solicitors who had got themselves into a mess. However, they had not walked away but had sorted matters out at considerable cost to themselves. He submitted these were the actions of honest solicitors.

30.28 The Tribunal was of the view that the Respondents had behaved in an utterly cavalier and shambolic fashion in making the unallocated transfers from the client to the office account, particularly after the first investigation which had made it clear to them both that such conduct was in breach of the Solicitors Accounts Rules. Although the Respondents both maintained they were entitled to the funds transferred, they had been informed as a result of the first SRA investigation that they were not permitted

to transfer client funds in the way that they had been doing. Although the Tribunal accepted the Respondents intended to repay the shortfall at some point in the future, this did not excuse the fact that they had deliberately made the transfers at a time when those funds were not due to the firm, as bills/proper written notification of costs had not been sent to clients.

30.29 The Tribunal was satisfied that transferring client funds from client to office account in breach of the rules, to ensure the firm's office account remained within the overdraft limit, without first sending written notification of the costs to the clients, with the knowledge that doing this was in breach of the rules and that therefore they were improperly utilising their clients' money to prop up their own business, was conduct which would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was satisfied that the first objective part of the test set out in the case of Twinsectra Ltd v Yardley & Others was satisfied.

30.30 The Tribunal then considered the second subjective part of the test. By the time of the second SRA investigation, both Respondents knew that the practise of making unallocated transfers from client to office account was in breach of the rules and should not be taking place. Despite this, the Second Respondent had continued to make such unallocated transfers knowing full well this was not permitted. The Second Respondent had no work in progress figures and had accepted that the transfers made were estimates of costs she said she believed were due to the firm. She had looked at the firm's bank statements every morning and had made transfers with no evidence to support the specific amounts attributable to particular clients. She accepted she had made rough calculations and accepted that it subsequently transpired that there was insufficient work in progress to justify her rough estimates. She had been unable to explain why her estimates had been so inaccurate. The Tribunal was satisfied that the Second Respondent had not made any proper assessment of the costs due to the firm when making the unauthorised transfers. This was supported by the fact that when she did prepare bills three months later, those bills were unable to justify over £13,000 of the entire amount that had already been transferred.

30.31 The Tribunal was satisfied the Second Respondent, when she made the unallocated transfers from client to office account knew that she should not have done so until bills had been notified to clients. It was particularly notable that each time a large transfer was made to office account, there was a corresponding large payment being paid out of office account on the same date. The Second Respondent had accepted the purpose of the transfers was to keep the firm's office account within its overdraft limit.

30.32 The Tribunal concluded the Second Respondent knew that transfers of client funds could not be made from client account to office account until the client had received a bill or a written notice of the costs, and she knew that an intention to send a bill to the clients in the future was not a good enough reason to make that transfer at that time. The transfers reduced the overdraft, and the Second Respondent knew that they would do so. Furthermore, when the Second Respondent did prepare bills to support the transfers, it transpired that there was not enough work in progress to justify her "rough calculations". She knew that the client funds being transferred to office account did not yet belong to the firm but instead belonged to the firm's clients, and she acted deliberately in order to ensure the firm's office account remained within the

overdraft limit. Taking all of this into account, the Tribunal was satisfied that the Second Respondent did know that her conduct in so acting would be regarded as dishonest by the ordinary standards of reasonable and honest people.

30.33 In relation to the First Respondent, the Tribunal noted he seemed to have relied entirely on the Second Respondent in relation to the financial management of the firm. The Tribunal found it hard to believe that the First Respondent appeared to have taken so little interest in the unallocated transfers from client to office account after the first SRA investigation when it had clearly been drawn to his attention that this was in breach of the rules. Whilst the First Respondent made repeated references to the unallocated transfers he personally made on 9 and 10 May 2013 being "covered", he also accepted that those unallocated transfers allowed the firm's office account to remain below its overdraft limit and that he knew he was not entitled under the SAR to transfer money belonging to his clients in this way.. The First Respondent knew that the unallocated transfer made on 10 May 2013 had been made on the same day as his mortgage payment was due, and without the unallocated transfer being made, his mortgage payments would have increased the firm's overdraft beyond its limit. The consequence was that the First Respondent had used client funds in order to reduce the firm's overdraft after he had been told, and knew, that he was not entitled to make such a transfer. He had the same knowledge as the Second Respondent in relation to the practise of making unallocated transfers. The Tribunal was satisfied the First Respondent did know that his conduct, acting as he had, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

30.34 The Tribunal found Allegation 1.5 proved against both Respondents.

Previous Disciplinary Matters

31. The Respondents had appeared before the Tribunal previously on 23 April 1991.

Mitigation

32. Mr Ryan apologised to the Tribunal on behalf of both Respondents and reminded the Tribunal that they both had long careers as solicitors. They were both proud of their profession and had provided many years of service to their community. They had already suffered considerably financially as a result of their conduct.

33. In relation to the previous appearance, Mr Ryan pointed out this was an extremely old matter and had resulted from the Respondents falling victim to computer failures when moving from a manual system to a computerised system. Furthermore, the allegations at that time had been completely different.

34. Mr Ryan accepted that where the Tribunal had found dishonesty, the ultimate sanction was probably inevitable. He reminded the Tribunal that there would be practical issues resulting from this and requested the Tribunal defer the effective date of the sanction to allow the Respondents time to make arrangements at the firm. He also reminded the Tribunal that the Respondents had repaid the shortfall. They had been granted COLP and COFA status by the SRA in 2013 subject to conditions. The SRA had allowed the Respondents to continue practising and therefore a short period of grace would allow the Respondents to put matters in order. Mr Ryan submitted a

period of 1 to 2 months would allow the Respondents to wind up the firm in an orderly fashion.

Sanction

35. The Tribunal had considered carefully the Respondents' submissions and the statements provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

36. The aggravating factors in this case were that the Tribunal had found that both Respondents had acted dishonestly, their misconduct had been deliberate and repeated over a few months, and they both knew or ought reasonably to have known that their conduct was in material breach of their obligations to protect the public and the reputation of the legal profession. Although the Respondents had appeared before the Tribunal previously, the Tribunal noted they had not been found to be culpable on the previous occasion.

37. The mitigating factors were that the Respondents had replaced the cash shortage, they had co-operated fully with the regulator and they had made open and frank admissions in relation to some of the allegations at an early stage. They appeared to have shown insight, insofar as they both accepted that they should not have acted as they had done.

38. The Tribunal made it clear that solicitors could not help themselves to client money with the intention of putting it right later, by subsequently submitting a bill or written notification to the client. Nor would a reasonable, honest and prudent solicitor transfer client funds with an intention to replace them. Even absent dishonesty, the Respondents' conduct was a gross dereliction of their duties in relation to the stewardship of client funds. That alone was extremely serious misconduct at the highest level for which the Tribunal may well have ordered the ultimate sanction.

39. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

40. Whilst this was a sad way for the Respondents to end their careers, having served their community for so long, the Tribunal was satisfied that there were no exceptional circumstances in this case, indeed none were pleaded. Accordingly the appropriate sanction was to strike both of the Respondents off the Roll of Solicitors. Any lesser sanction would be inappropriate and insufficient to protect the public and the reputation of the legal profession.

41. The Tribunal did not agree to a deferment of the sanction in view of the serious nature of the misconduct and the finding of dishonesty. However, the Tribunal made a direction that the filing of the order was to be suspended until 5pm that day to allow the Respondents a short time to make arrangements for the continuity of their firm.

Costs

42. Mr Goodwin, on behalf of the Applicant, requested an Order for his costs in the total sum of £27,000, such amount to be payable by both Respondents on a joint and several liability basis. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He confirmed the costs had been reduced to take into account the shorter length of the hearing than had originally been anticipated. Mr Goodwin submitted there should be no restriction on the enforcement of costs as the Respondents both had the means to meet them.

43. Mr Ryan, on behalf of the Respondents, confirmed the costs of £27,000 were not disputed. However, he submitted imposing costs would be a punishment as the Respondents had lost their livelihood and would be in a terrible financial position. He requested the Tribunal make an order that the costs should not be enforced without leave of the Tribunal.

44. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed and agreed was reasonable. Accordingly, the Tribunal made an Order that the Respondents should pay the Applicant's costs in the sum of £27,000 on a joint and several liability basis.

45. In relation to enforcement of those costs, the Tribunal noted it had heard evidence from both Respondents concerning their means and financial position. Both Respondents had provided statements with supporting evidence in relation to this. Although the Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondents' ability to pay the Applicant's costs, it noted both Respondents had some savings/assets and therefore had the means to pay the costs. The Tribunal made it clear that it hoped the Applicant would allow the Respondents to make arrangements to pay the costs by way of instalments if necessary. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

46. The Tribunal Ordered that the Respondent, GERARD CHRISTOPHER MANN, 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 £27,000.00, such costs to be payable on a joint and several liability basis with the Second Respondent, Katherine Jane Bradford.

    The Tribunal Ordered that the Respondent, KATHERINE JANE BRADFORD, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,000.00, such costs to be payable on a joint and several liability basis with the First Respondent, Gerard Christopher Mann.

DATED this 23rd day of March 2015
On behalf of the Tribunal

S. Tinkler
Chairman