SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11272-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARK PEARSON FORD Respondent

Before:
Mr D. Green (in the chair)
Mr P.S.L Housego
Dr S. Bown

Date of Hearing: 11-13 October 2016

Appearances

Chloe Carpenter, barrister at Fountain Court Chambers, instructed by Robin Havard, solicitor of Blake Morgan LLP, Bradley Court, Park Place, Cardiff, CF0 3DR, for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 The Respondent caused or permitted monies to be withdrawn from client account, such withdrawals being contrary to Rule 20 of the SRA Accounts Rules 2011 ("SAR");

1.2 On discovering cash shortages and other breaches of the SAR, the Respondent failed to remedy promptly such breaches contrary to Rule 7 of the SAR;

1.3 The Respondent failed to maintain properly written up and accurate accounting records in breach of Rule 29 of the SAR;

1.4 The Respondent retained, without proper reason, client monies contrary to Rule 14 of the SAR;

1.5 The Respondent had: failed to act with integrity and/or acted in a way which allowed his independence to be compromised and/or failed to provide a proper service to his firm's clients and/or behaved in a way that put at risk the trust the public placed in him and in the provision of legal services contrary to Principles 2, 3, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and Outcome 9.2 of the SRA Code of Conduct 2011 ("the SCC 2011");

1.6 The Respondent failed to run his business in accordance with proper governance and sound financial and risk management principles contrary to Principle 8 of the Principles and/or Outcome 7.4 of the SCC 2011;

1.7 The Respondent deliberately misled the SRA and a professional indemnity insurer by deliberately withholding information from the professional indemnity insurer which he knew would be material and made statements to the SRA which he knew to be untrue contrary to Principles 2 and 6 of the Principles and Outcome 10.6 of the SCC 2011;

1.8 The Respondent failed to co-operate with the SRA in that:

(i) the Respondent made statements to the SRA which he knew to be untrue;

(ii) he withheld information from the SRA which he knew to be material to the SRA's investigation;

contrary to Principles 2 and 6 of the Principles, and Outcomes 10.6 and 10.13 of the SCC 2011;

2. Dishonesty was alleged in respect of allegations 1.7 and 1.8, however proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

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

- Notice of Application dated 12 August 2014
- Rule 5 Statement and supporting documents dated 12 August 2014
- Rule 7 Statement and supporting documents dated 27 May 2016
- Respondent's Statement in response to the Rule 5 Statement dated 25 September 2014
- Respondents Supplementary Statement with supporting documents dated 14 November 2014
- Chronology prepared by the Applicant
- Applicant's skeleton argument dated 4 October 2016
- Applicant's Schedule of Costs
- Respondent's letter to the Tribunal dated 10 October 2016

Preliminary Matter

4. The Respondent did not attend the hearing, and was not represented. On 3 October 2016, an email was sent by Complex Legal to Mr Havard, which stated:

> "[The Respondent] has spoken with us informally about this matter and has confirmed to us that he does not intend to appear at the Tribunal. We are advised that this is his final and unequivocal decision…"

That email was also copied to the Tribunal.

5. Miss Carpenter applied for the case to proceed in the Respondents' absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary proceedings) Rules 2007 ("SDPR"), which provided that:

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

6. It was submitted that given the email from Complex Legal, it was clear that the Respondent had properly been served with notice of the hearing, and that he was aware of the hearing date. Further, he had voluntarily absented himself from the proceedings such that he had waived his right to appear.

7. The Tribunal also considered the cases of R v Jones [2001] EWCA Crim 168 (Jones), Adeogba v GMC [2016] EWCA Civ 162 (Adeogba), and Rehman v The Bar Standards Board [2016] EWHC 2023 (Admin) (Rehman). In Rehman, Hickinbottom J found that a Tribunal could hear matters in the absence of the Respondent if it considered it just to do so. The discretion to proceed in the absence of the Respondent should be exercised with the utmost care and caution. The starting point for considering whether matters should proceed in the absence of the Respondent was the criteria set down in Jones which included:

- the nature and circumstances of the Respondent's behaviour in absenting himself from the trial and whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

- whether an adjournment might result in the Respondent attending;

- the likely length of any adjournment;

- the seriousness of the offence;

- the general public interest and the particular interest of victims and witnesses that the proceedings should take place within a reasonable time of the events to which they relate;

8. Whilst fairness to the affected professional was of prime importance, other relevant factors included:

- Fairness to the prosecuting body (including their witnesses);

- The absence of any power to require the attendance of the professional who was subject to disciplinary proceedings;

- The burden on professionals who are subject to a regulatory regime to engage with the regulator, in respect of both the investigation and the ultimate resolution of any charges;

- The cost and delay involved in an adjournment;

- The public interest in ensuring that professional standards are maintained and enforced.

9. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondent. It was clear that he was fully aware of the hearing date and had chosen not to attend the hearing, such that he had plainly waived his right to appear. The Tribunal had regard to the principles in Jones and Rehman. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing, and was unlikely to attend if the matter were to be adjourned. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible, particularly given that the allegations included an allegation of dishonesty against the Respondent. It would be unjust and contrary to the interests of the public to adjourn the matter. Accordingly, the Tribunal determined that in the particular circumstances, the hearing should proceed notwithstanding the Respondent's non-attendance.

Factual Background

10. The Respondent was born in 1963 and admitted to the Roll in October 1988. His name remained on the Roll, but he did not hold a current Practising Certificate.

11. At all material times, the Respondent practised as a registered sole practitioner at Ford Legal Solicitors ("the Firm").

12. The Firm's accountants submitted a Qualified Accountants Report on 29 June 2012, for the period 1 January 2011 to 31 December 2011, such Report being qualified as it stipulated that there was a client account shortage as at 31 December 2011, and there were reported breaches of the SAR.

13. On 4 June 2013, an Investigation Officer of the Applicant ("the First IO") commenced an investigation. A Forensic Investigation Report was produced dated 4 September 2013 ("the First FI Report"). As a result of the breaches identified in the First FI Report, the Respondent's conduct was referred to the Tribunal by way of a Rule 5 Statement dated 12 August 2014. Thereafter further matters of concern came to light leading to a Second Investigation Officer ("the Second IO") preparing an Interim Investigation Report dated 14 October 2015 ("the Interim Report") and a Final Forensic Investigation Report dated 18 February 2016 ("the Second FI Report"). The breaches identified in the Second FI Report led to a Rule 7 Statement dated 27 May 2016.

14. On 9 November 2015, the SRA intervened into the Respondent's Firm.

Allegations 1.1 and 1.2

15. In the Accountants Report for the period 1 January 2011 to 31 December 2011, it was noted that, after adjustments taking into account of some surplus funds in client account, there was a cash shortage of £6,220.16, the cause of which was primarily the theft of client funds by a member of staff achieved by writing two client account cheques for £2,705.00 and £3,975.00 respectively.

16. The Respondent was the sole signatory on the client bank account, and the client account cheque books were kept in his office. He could not explain how anyone had gained access to them, but reported the matter to the Police. The bank refunded the full amount on 2 April 2012.

17. The Respondent stated that the issue had come to light when undertaking a client account reconciliation, and that he had not considered it appropriate to report the matter to the SRA on the basis that he was not certain of the identity of the person who had acted dishonestly. He accepted that, as at 30 April 2013, there was a net cash shortage and that he was aware of the debit balance.

18. When the First IO commenced her inspection, she examined the Respondent's accounts as at 30 April 2013. As at that date she determined that there was a cash shortage of £14,165.14, with the actual overpayments on client ledgers resulting in debit balances amounting to £14,574.50. The First IO established that there were seven client ledgers showing debit balances. On three cases, the debit balances had occurred due to payments being made to clients before cheques in respect of damages had cleared at the bank. In three other cases, the overpayment related to payments made to introducers in respect of fees owed by the client.

19. Two matters were exemplified in the First FI Report:

20. (i) AOL

20.1 When acting on behalf of AOL in a claim arising out of a road traffic accident, the Firm received a cheque made payable to AOL from the third party insurer, for £5,340.00 to settle her claim.

20.2 On 1 March 2013, disbursements of £2,450.00 were paid out of the client account and a cheque for £2,450.00 was sent to AOL in respect of damages, the cheques clearing through the client bank account on 15 and 19 March 2013 respectively.

20.3 On 22 March 2013, the payer stopped the cheque and it was returned unpaid which meant that there were no available funds to meet the two cheques which had been paid out by the Respondent for £4,900.00, leaving a debit balance in that amount. That debit balance existed for 97 days.

21. (ii) CI

21.1 The Firm represented CI in respect of personal injury, vehicle damage, recovery and storage and credit hire claims. On 23 November 2012, the Firm paid the recovery company £1,425.00. However, the client ledger indicated that the cheque from the third party insurer of £1,125.00 was not credited to the client bank account until 20 November 2012. Consequently there was a debit balance on the client ledger of £300.

21.2 Thereafter, on 11 April 2013 £1,700.00 was received into the client account to settle the car hire charges. This was paid out by bank transfer on 18 April 2013, leaving a cash shortage in the same sum of £300.

21.3 The cash shortage on client account also arose due to £80 of bank charges being incorrectly debited from client account, and further liabilities of £129.25 to clients not being shown by the books. Also held within client account were surplus funds of £619.11. Whilst at 30 April 2013, the net client account shortage was £14,165.14, the Respondent had replaced £6,250.00 on 15 May 2013. On 5 June 2013, the Respondent corrected the remainder of the net shortage by transferring £7,915.14 from office account into client account.

22. On 17 June 2015, the Second IO commenced a further FI inspection. She determined that as at 17 June 2015, there was a minimum cash shortage of £111,309.00 which she found to have arisen for the following reasons:

22.1 £102,434.00 that had been recovered on behalf of clients in respect of professional disbursements, had been retained in office account, the disbursements not having been paid. The Respondent's books of account did not show that these disbursements were unpaid.

22.2 A payment of £5,000.00 was made from client account in respect of an adverse costs order. The Respondent accepted that this should have been paid from office account, and that a cash shortage in that amount had existed on client account for 138 days.

22.3 The Respondent paid Counsel's fees of £3,000.00 when no funds were held in client account for the client. The Respondent stated that the payment should have been made from office account, and agreed that a shortage in that amount had existed on client account for 71 days.

22.4 The Firm transferred £875.00 from client to office account in respect of a 25% success fee, having received £3,500.00 from a third party insurer. £300.00 was paid to a claims management company in respect of an agreed management fee. The client queried the deduction, and the Respondent waived the fee. The Respondent sent a cheque to the client in the sum of £3,200.00, which led to a cash shortage of £875.00. The Respondent agreed that a shortage in that amount had existed on client account for 71 days.

23. The Respondent agreed the minimum cash shortage of £111,309.00 and replaced it during the Second investigation by making payments from office account in respect of the unpaid disbursements at (22.1) above, and transferring funds from office account to client account to rectify the shortages at (22.2) – (22.4) above.

24. A further cash shortage of £2,405.13 existed as at 29 September 2015. This was due to debit balances on three client matters. The Respondent explained that one of the debit balances was due to a client being paid damages twice; he did not know the reason for the other two debit balances and so would review those matters.

Allegation 1.3

25. The First IO, in the course of her investigation, reviewed the books of account and noted that:

- Ledger cards did not always reflect the actual position of the liabilities to clients; and

- A record of cheques that had not been cleared though the bank was not kept by the Firm.

26. The Firm's Accountant's Report for the period 1 January – 31 December 2014 was qualified due to the failure by the Firm to maintain proper accounting records. The report stated that:

> "In carrying out the work for the preparation of [the report] it was made evident that the accounting records are not adequately maintained for the practice which is not in line with the SRA's guidelines for systems and procedures.
>
> There is insufficient knowledge and understanding of the accounts rules 2011 by those who have charge of the accounting process."

27. The Second IO, in the course of her investigation, reviewed the books of account and noted that:

- Whilst reconciliations were being prepared, they had not been produced every 5 weeks;

- A listing of all the balances shown by the clients' ledger accounts of the Firm's liabilities to clients had not been prepared;

- There were in excess of 300 payments being posted to the office side of client account ledgers when the payments had not been made;

- The reconciliations produced were incorrect as there was no comparison of the sums held in client account against the sums shown on client ledgers. The only comparison was between the sums held in the account and the cash book.

28. The Second IO reviewed 94 of the 158 client ledgers. 31 client ledgers showed different balances to the balances detailed on the list of balances upon which the Firm had relied when producing its client account reconciliation. As the Firm had not calculated its liabilities to clients from the client ledger accounts, and a significant proportion of the balances held on the client ledger accounts did not agree with those that the Firm had used to complete its reconciliation, the Second IO could not calculate the Firm's liabilities to clients as at 30 April 2015.

Allegation 1.4

29. During the course of the investigation, the Respondent informed the First IO that money was still being held in client bank account in relation to concluded matters. He planned to undertake a full review of those matters, which, it was estimated, could include sums of up to £100,000.00.

30. During the second investigation, the failure to pay professional disbursements in the sum of £102,434.00 (as detailed in paragraph 22.1 above) was identified.

Allegation 1.5

31. This allegation related to the Respondent's dealings with clients who came to his Firm via referrers. On reviewing the bank statements, the First IO noted that cheques had been written out to cash on the client bank account. On inspection of two occasions where such cheques had been drawn, the First IO noted that the cash payments had been made to referrers and not to clients. On one matter where the cash payment had been made out to a third party, there was no authority on the file from the client providing for funds to be paid out to anyone other than the client.

OR

32. The Respondent's Firm acted for OR. On 14 January 2013, the Firm received a cheque made payable to OR from the third party insurer in the sum of £2,200.00 to settle the claim. On 25 January 2013, £2,100.00 was paid to Mr B; £1,800.00 of that represented damages to be paid to OR. A further £400 cash payment was made to Mr B on 15 February 2013. The payments were recorded on the client ledger. Mr B also provided permission to disclose the medico-legal report to the third party insurer.

There was no evidence on the file of any direct contact with OR throughout the case, be that in person or on the telephone.

33. There was no client authority on the file allowing the Firm to make payments directly to Mr B, nor was there any authority for Mr B to provide instructions to the Firm.

34. On reviewing a number of files, the First IO noted that a number of clients had entered into agreements with referrers for the deduction of funds from damages in relation to successful cases.

MJ

35. The Firm represented MJ, whose case was referred to the Firm by CAB. On 24 July 2012, MJ signed an authority in which he agreed to pay CAB £300.00 for services they provided to him, although the nature of that service was not specified.

36. An offer of settlement was made in the sum of £2,700.00. The details of the offer were sent to MJ by the Firm. The Firm then received an email from CAB, which stated:

> "The above client is happy to accept the offer of £2,700.00 subject to CAB deduction of £300.00."

37. Having received a cheque in the sum of £2,700.00, the Firm sent a cheque to MJ for £2,400.00, and paid £300 to CAB.

WH

38. There no signed agreement with any referrer on this matter. However, on receipt of £2,150.00 in damages, the Firm sent a cheque to WH for £1,850.00 to reflect a £300 reduction payable to CAB. There was no evidence on the file that WH had entered into an agreement with CAB. Further, there was no authority on the file for any amount of damages to be paid to a third party, nor was there any advice as to the reasonableness of the offer which was accepted or the valuation of the claim.

CB

39. CB was referred to the Respondent's Firm by Swan Recovery. There was a signed but undated authority on the Respondent's file. The Respondent wrote to CB enclosing a cheque for £2,200.00. The letter referred to an agreement to pay Swan a fee of £400 for the "…initial administration of your claim…", but there was no indication of what the 'initial administration' undertaken by Swan was. Further, there was no evidence on the file of advice in relation to the reasonableness of the administration fee, what administration was undertaken, or the recoverability of the administration fee. Also, there was no evidence on the file of advice being provided to CB of the reasonableness of the offer made in respect of damages.

Allegation 1.6

40. At the time of the first investigation into the Firm, the Firm undertook exclusively personal injury work arising from road traffic accidents. The Firm was heavily dependent on referrals for that work. The Firm's unaudited accounts for the year ending 31 December 2012, showed that the Firm had paid £196,707.00 in agency fees and commission for the year ending 31 December 2011, and £279,915.00 in agency fees and commission for the year ending 31 December 2012.

41. A ban on the payment of referral fees in personal injury cases was introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"); the ban took effect from 1 April 2013.

42. The SRA contacted firms/practitioners understood to be significantly involved in personal injury work in advance of the ban to highlight key points they should be addressing. A letter dated 25 March 2013, which was also available on the SRA's website, stated that the SRA required firms/practitioners to "have considered the impact the ban on referral fees will have on your business and your future plans", to review the business model and to contact the SRA if there were any concerns regarding the impact the ban would have.

43. In interview on 16 August 2013, the Respondent confirmed that he had not carried out any financial projections and that he would need to sit down with his accountants. He had no plans in response to the ban; his accountants were to make proposals; and he was considering getting involved with clinics.

44. The Second IO, at the outset of her investigation, requested that the Respondent provide her with the Firm's accounts, up to date management accounts and details of the Firm's liabilities. On 17 September 2015 management accounts were provided, but did not include details of the Firm's liabilities. On 27 September draft accounts for the period 1 January – 31 December 2014 were provided by the Firm's accountants, which suggested that the Firm was in a negative assets position of £303,986.00. When the Second IO questioned the Respondent about the solvency of the Firm, she was directed to the Firm's accountants, who in turn stated that there were no concerns in relation to the Firm's solvency given the income it generated.

45. Further investigation by the Second IO revealed that the Respondent, during the period 22 January 2014 and 10 June 2015, had withdrawn over £200,000 in drawings from the Firm's office account. This was during the period when the Firm had retained £102,434.00 due to be paid out in professional disbursements in its office account. The draft accounts showed that the Respondent had drawn £82,981.00 in 2013, and £373,560.00 in 2014. This was a 350% increase in drawings in the space of one year. The Second IO stated that she had considerable difficulty in extracting sufficient information for her to reach any conclusions as to the Firm's financial status, such that she was unable to determine whether the Firm was solvent.

Allegation 1.7

46. When the Second IO commenced her investigation in June 2015, she asked the Respondent to produce the Firm's professional indemnity insurance (PII) application

forms for the years 2013/14 and 2014/15. The Respondent produced the form for 2014/15, but the Second IO had to contact the Firm's insurers to obtain a copy of the Firm's application form for the year 2013/14.

47. Both forms were abbreviated proposal forms. This meant that the Respondent was confirming that both proposals had been based on the information provided to the insurer in the full proposal form submitted by him for the year 2012/13. The forms required confirmation that the information contained within the full proposal form submitted remained true and accurate.

48. The Second IO attended the Respondent's offices to commence the investigation on 4 June 2013. On 25 June 2013, whilst the Second IO was at the Respondent's offices, the Respondent completed and signed the abbreviated PII renewal form for the 2013/14 insurance year.

49. The form contained the following paragraph:

> "1. Disclosure
>
> This is a short renewal form and assumes that detail in the proposed form completed for the 2012 renewal is correct. If anything material has changed between 1 October 2012 and the date of signature please advise us. Material is defined as something which may influence the underwriter into deciding whether they would want to insure your practice or whether it would be reasonable for them to alter terms provided to you. If you are not sure what constitutes 'Material' then please contact you're us (sic) for clarification. Non-disclosure or Misrepresentation could result in the premium being retrospectively increased."

50. In the full proposal form dated on 30 August 2012, the Respondent stated that neither he nor anyone else in the Firm had been, or was the subject of an investigation that had been upheld, any investigation or intervention by any regulatory Department of the SRA, the Legal Ombudsman Service or any other recognised body.

51. In the subsequent indemnity year, namely 2014/15, the Respondent completed another abbreviated renewal form, which he signed on 19 June 2014. That form asked the following:

> "5. Significant Change
>
> Have there been any significant changes to your practice in the last 12 months? Significant change can mean, but is not limited to following (sic):
>
> A change in your work split by more than 10%
> Any changes of claims reserves/payments since your previous application
> Any new SRA/SCT investigations or monitoring visits
> Conveyancing values of volume increasing by more than 10%
> Change in Partners/Directors/Staff
>
> If Yes, please provide details on a separate sheet."

The Respondent replied "NO".

52. The form also required the Respondent to report whether there was "any other material information that may be relevant to this form". The Respondent again replied that there was not.

53. When discussing the matter of the insurance renewals in a telephone conversation with the Second IO on 23 September 2015, the Respondent explained that he had notified his broker of his failure to inform them of the SRA investigation and his referral to the SDT. He indicated that he had spoken to Tanveer (the Respondent did not accept that he had said this).

54. On the same day the Second IO telephoned Tanveer who confirmed that he had not spoken to the Respondent, and that the Respondent had not informed him or the insurers about the SRA investigation and his (the Respondent's) referral to the SDT. This was later confirmed by Tanveer in email correspondence with the Second IO.

Allegation 1.8

55. In a telephone conversation with the Second IO on 23 September 2015, the Respondent stated that he had no plans to merge or close the Firm. The Second IO reminded the Respondent of his obligation to notify her immediately should his plans change.

56. On 29 September 2015, whilst the IO was at the Respondent's offices, the Respondent stated that:

    (a) no client matter files had been transferred to other firms (the Respondent did not accept that he had said this);

    (b) he was going to submit the Firm's proposal for PII to the Firm's broker the following day; and

    (c) he would update the Second IO once the proposal form had been submitted.

57. The Second IO, between 30 September and 2 October 2015, attempted on ten occasions to speak with the Respondent; the Respondent failed to return any of her calls. On 2 October 2015, at 2.15pm, the Second IO was able to speak with the Respondent. He informed her that:

    - The Firm had ceased trading on 30 September 2015

    - In July 2015 he had transferred 450 matters to another firm ("EE Law")

58. On 30 June 2015, the Respondent received a payment of £50,000 from EE Law into his personal bank account, said to be in consideration for the transfer of the files. On 5 October 2015, the Respondent forwarded to the Second IO a letter dated 31 July 2015 which was sent to clients in respect of the transfer of their file to EE Law. At the time of the payment, transfer of files and notification to clients, the

Second IO was still investigating matters at the Firm, but was not made aware of the Respondent's actions until 2 October 2015.

Witnesses

59. The following witnesses provided statements and gave oral evidence:

- Lesley Horton – Forensic Investigation Officer in the Forensic Investigation Department of the SRA
- Amie Woods - Forensic Investigation Officer in the Forensic Investigation Department of the SRA
- Tanveer Hussain – Total Insurance Account Holder

60. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

61. 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.

62. **Allegation 1.1 - The Respondent caused or permitted monies to be withdrawn from client account, such withdrawals being contrary to Rule 20 of the SAR.**

62.1 The Applicant submitted that the funds for payment of the disbursements should have remained in client account until the disbursements were paid (see paragraph 22.1 above). The Respondent stated, in his interview, that he had agreements in place with a number of service providers which suggested that the Firm was allowed to defer the payment of disbursements, despite having recovered payment of those disbursements from third party insurers in respect of claims made. The Applicant further submitted that such sums were effectively client monies, and should have been held in client account whereas they had been incorrectly held in office account in breach of Rule 14 of the SAR. Further, the Respondent had made payments out of client account when there were insufficient funds on the client ledgers to do so.

62.2 The Respondent admitted allegation 1.1 in full. In his statement in response to the Rule 5 Statement, the Respondent explained that:

> "It is accepted that I caused or permitted monies to be withdrawn form client account, such withdrawals being contrary to Rule 20 of the [SAR]"

62.3 In relation to the theft from client account that caused a shortage, the Respondent explained that although he could have "reported the incident to the SRA when the cash shortage was identified…[he] preferred to wait until the outcome of the police investigation" and that he "could have made the transfer from office to client at that point [that being when the shortage was identified]." In relation to the other causes of the net shortage, the Respondent noted that the shortage was caused by payment being made to clients before corresponding cheques form the insurers had cleared, and overpayments related to much smaller amounts paid to referrers in accordance with agreements between referrers and clients. He agreed that he was aware of the debit balances.

62.4 Rule 20 provided that (amongst other things):

> "Client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client".

62.5 The Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts, evidence and submissions; indeed it was admitted.

63. **Allegation 1.2 - On discovering cash shortages and other breaches of the SAR, the Respondent failed to remedy promptly such breaches contrary to Rule 7 of the SAR.**

63.1 In relation to the cash shortages identified in the First FI Report, it was submitted that the Respondent was aware of the shortage caused by the theft from client account, which lasted from October 2011 to April 2012. He did not replace the shortage, but instead waited for it to be reimbursed by the bank. As regards the shortage created on the client ledgers, they existed for periods of between 7 and 451 days. The Respondent had accepted, when speaking to the First IO, that he was aware of the shortages, had not replaced them, but had instead concentrated on getting the overpayments back.

63.2 As regards the shortages discovered by the Second IO, some had existed for a substantial amount of time; indeed some of the unpaid professional disbursements had been held in office account for 707 days without being remedied.

63.3 In his statement in response to the Rule 5 Statement, the Respondent agreed that he was aware of the debit balances, and that he "recognised the need to [promptly remedy the resultant cash shortages] but I simply admitted that it had not occurred." Further he stated that:

> "It is accepted that upon discovering a cash shortage, some of that shortage was not remedied promptly and a breach therefore occurred in relation to … Rule 7 of the [SAR]"

63.4 In a letter to the Applicant of 24 March 2016, Complex Legal Limited, writing on behalf of the Respondent stated:

> "In relation to your allegation that [the Respondent] failed to remedy breaches promptly upon their discovery…I would be grateful if you would explain the basis of this allegation. You appear to state that [the Respondent] did, in fact, remedy the breaches….At present this allegation is denied. Please state the particular breach, which you contend ought to have been remedied, and specify the date by which you believe that breach ought to have been remedied."

63.5 In the circumstances, the Tribunal treated allegation 1.2 as being denied by the Respondent.

63.6 Rule 7 of the SAR provided that:

> "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account."

63.7 The Tribunal noted from his response that Respondent accepted that in relation to the theft from the client account he "did not immediately reconcile those transactions by transferring money from the office account."

63.8 When asked by the First IO what his procedures were when debit balances occurred on client ledgers, the Respondent stated that it "mainly would be to transfer from office to client…" When asked why the debit balances were in existence for so long, the Respondent stated:

> "They were on the adjustments and I accept I should really have made the transfers over. It was just a matter of me trying to rectify it with the referrers. It's difficult at times when you're on your own and you're trying to sort of juggle everything and you think £300 here and there might not be the biggest thing on your mind, but I do accept that I should have really transferred the money over promptly."

63.9 The Tribunal also noted that the Respondent, in his interview with the SRA on 16 August 2013, confirmed that he was aware of the debit balances before the SRA inspection and that he accepted that notwithstanding the enquiries being undertaken, he "should have paid the money in from office account whilst that was going on in the background".

63.10 The Tribunal determined that it was clear on the evidence that the Respondent had failed to remedy breaches promptly on discovery in breach of Rule 7 of the SAR. The Respondent was aware of the debit balances and did not adhere to his own procedure of transferring money from office to client account to rectify the shortage. Further, a large number of the shortages had existed for substantial periods of time. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts, evidence and submissions.

64. **Allegation 1.3 - The Respondent failed to maintain properly written up and accurate accounting records in breach of Rule 29 of the SAR.**

64.1 It was submitted that, as identified by the First IO, in failing to ensure that ledger cards reflected the actual position in respect of liabilities to clients, and failing to keep a record of cheques that had not cleared through the bank, the Respondent had failed to maintain properly written up accurate accounting records in breach of Rule 29 of the SAR. Further, when the Second IO commenced her investigation in June 2015, it became apparent that the Respondent's accounting records were still not being properly written up in that:

- Reconciliations were prepared late, contrary to Rule 29.12 of the SAR;
- The reconciliations were substantially incorrect contrary to Rule 29.12, in that the Respondent was not comparing the sums held in client account against the sums shown on client ledgers;
- On an examination of 300 client ledgers, it was noted that disbursements totalling £102,434.00 were recorded on those ledgers as being paid, whereas in fact the Respondent had simply transferred those monies to office account but had not paid the disbursements; and
- The Respondent's Accountant's Report for the period 1 January to 31 December 2014 was qualified because accounting records were not being properly maintained.

64.2 In relation to the alleged breaches identified by the First IO, the Respondent, in his Statements, accepted that client ledgers "were not reviewed often enough to determine that the cheques had been cashed or not cashed (sic)". Further, the accountants and the First IO were "able to establish the extent of the liabilities to the clients by comparing the payments made against the cheques cashed by reference to the bank statements. However, it is accepted that the exercise was retrospective and I have to accept that this amounts to a failure to maintain proper books of account in this respect." Further, "…save for one process whereby the encashment of damages cheques could not be easily identified, failures arose out of the monitoring of the records rather than a failure to produce the records. The accountant was able to produce the records of account so as to identify the relevant issues and the accounts were not "qualified" on the basis that records were missing."

64.3 In the letter dated 24 March 2016 from Complex Legal, it was stated that the Respondent admitted failing to "establish and maintain proper accounting systems, and proper internal control over those systems, or to keep proper accounting records to show accurately the position with regard to the money held for each client", and further, provided that the breach of Rule 29 was limited to Rule 29.12 - 29.14, the allegation was admitted.

64.4 In his letter to the Tribunal of 10 October 2016, the Respondent stated:

> "Allegations 1.1 to 1.4 concerned breaches of the accounts rules. Essentially these four allegations all relate to the same wrongdoing committed concurrently, namely my failure to keep control of my practice accounts.
>
> …….

> In very general terms, I admit that I lost control of my practice accounts…..
>
> I wish to say, at the outset, that I am sorry that I lost control of my practice accounts. I understand the importance of the accounts rules and the devastating experiences of the last 2 years have given me a genuine insight into why they are of the utmost importance. I apologise to the tribunal, to the SRA, and to all the parties who have been inconvenienced or have suffered as a result of my mistakes, not least the employees, clients and insurers of Ford Legal Ltd. Nothing I say in the remainder of this letter should be taken to mean that I do not understand the serious nature of my failings.
>
> …….
>
> The tribunal has sufficient information before it to enable the tribunal to reach conclusions as to whether and to what extent I have breached the rules. The breaches alleged in allegations 1.1 to 1.4 will be decided upon the facts, as they are essentially technical in nature…."

64.5 The Tribunal noted that the Respondent accepted that he had no system in place to record when cheques had been cashed. Further he accepted that the reconciliation exercise had been conducted retrospectively in breach of the SAR. The Respondent seemingly did not accept that the reconciliations produced were not properly written up as the First IO and the accountants were able to calculate the clients' liabilities. The Tribunal did not accept, that as the amount was calculable, the books were properly written up as was required. Had the Respondent complied with the SAR, no additional calculation would have been necessary. Further, the Tribunal noted that despite negative balances contained within the reconciliations, the final amount tallied. Had the exercise been undertaken properly, that would not have been the case. The Respondent had accepted, at the time they were pointed out to him, the breaches identified by the Second IO.

64.6 The Tribunal accepted the position in relation to the Respondent's books of account as outlined by both the Investigation Officers in their reports, and their evidence; the Tribunal noted that the Respondent did not dispute any of the underlying facts on which the alleged breaches were based. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt on the facts, evidence and submissions. Indeed, allegation 1.3 was, in the main, admitted by the Respondent.

65. **Allegation 1.4 - The Respondent retained, without proper reason, client monies contrary to Rule 14 of the SAR.**

65.1 It was submitted that by holding money in client account on matters that were concluded, the Respondent had retained client monies without good reason, and thus had breached Rule 14 of the SAR.

65.2 The Respondent, in his Statements stated that he "accepted … that the Firm held a substantial amount of money in the client bank account in relation to concluded matters." There was "no reason why I would want the unresolved balance to be in the sum of £100,000. I would like the balance to be zero and there is no suggestion that I

have diverted funds from the client account for a purpose otherwise that in accordance with the agreement between the client and the referrer."

65.3 Further he stated that:

> "In many cases, we retained monies in client account where those monies should have been transferred to office. In other cases, the cheques were not cashed by clients for reasons which we cannot presently establish, despite reasonable enquiries. In no cases have we refused to forward a settlement to a client upon presentation of proper identification. However, it must be accepted that in a proportion of the cases, more efforts could have been made to trace the clients at a much earlier stage. A breach of Rule 14 [of the SAR] is therefore accepted in relation to those cases."

65.4 It was further submitted that by failing to pay professional disbursements, thereby causing a cash shortage of £102,343.00, the Respondent had retained money in office account that should properly have been held in client account, in breach of Rule 14 of the SAR. The Respondent agreed that the amount contributed to the minimum cash shortage identified by the Second IO.

65.5 Rule 14 of the SAR provided (amongst other things) that:

> "14.1 Client money must without delay be paid into a client account, and must be held in a client account except when the rules provide to the contrary;
>
> 14.3 Client money must be returned to the client….promptly, as soon as there is no longer any proper reason to retain those funds;
>
> 14.4 You must promptly inform a client … in writing of the amount of any client money retained at the end of a matter, and the reason for that retention."

65.6 The Tribunal noted the Respondent's admissions in his Statements. The Tribunal further observed that the Respondent had accepted the cash shortage created by the retention in office account of monies that ought to either have been paid out to the professionals to whom they were due, or remained in the Firm's client account. The Tribunal determined that by retaining monies that should have been returned to clients, and by retaining monies provided to pay disbursements in his office account, the Respondent was in breach of Rule 14 as pleaded and alleged. Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt on the facts, evidence and submissions; indeed it was admitted.

66. **Allegation 1.5 - The Respondent had: failed to act with integrity and/or acted in a way which allowed his independence to be compromised and/or failed to provide a proper service to his firm's clients and/or behaved in a way that put at risk the trust the public placed in him and in the provision of legal services contrary to Principles 2, 3, 4, 5 and 6 of the Principles and Outcome 9.2 of the SCC 2011.**

66.1 The Applicant submitted that this allegation arose out of the Respondent's dealings with clients who had come to his Firm via referrers, upon whom the Respondent was dependant for work. The Respondent's dependence on referral work was, it was submitted, evidenced by the amount he was paying out in referral and agency fees; £196,707.00 in the year ending 31 December 2011 and £279,915.00 in the year ending 31 December 2012.

66.2 The Applicant submitted that this allegation was substantiated in three ways:

66.3 Firstly, in the OR matter as detailed in paragraphs 32 - 34 above, the Respondent paid his client's damages directly to Mr B, rather than paying the client himself; there was no authority on the file advising the Respondent to make payment to Mr B or anyone else.

66.4 Secondly, the Respondent made payments to referrers from client ledgers to pay what was said to be administration/other fees owed to referrers. The Respondent provided the First IO with a schedule of deductions showing that in the period 31 March 2012 to 31 March 2013, deductions were made in 75 cases amounting to £22,500.00. The schedule provided did not include the payments made to Mr B. It was submitted that the payments substantiated the breaches alleged as:

66.4.1 In some cases the payments were made in cash to referrers from clients' ledgers. There was no evidence on any of the files as to why the payment was made in cash, and seemingly the only reason for the cash payment was that the referrer had asked the Respondent to be paid in cash. The Respondent provided the First IO with a list of payments which have been made in cash to referrers in the 12 months prior to the investigation. The amount totalled £9,850.00, including £5,850.00 which was paid to Mr B/Mr B's firm.

66.4.2 In some of the cases where the Respondent made payments to referrers, there was no authority on the file from the client to make the payment at all.

66.4.3 In those cases where the client had entered into an agreement with the referrer for the deduction of funds from damages in respect of successful cases, the Respondent did not advise the client as to the agreement or the deductions, and took no steps to ascertain why the deductions were being made. It was submitted that a solicitor should not simply make deductions from client's damages in light of an agreement the client had signed without first advising the client as to whether the deductions were in the client's best interests. Ms Carpenter referred the Tribunal to the case of SRA v Beresford and Smith [2009] EWHC (Admin). In that matter, the solicitors did not advise their clients about a success fee payable. The agreement, as with the instant case, was signed by the clients prior to their referral to the firm. The Court found in Beresford that there was a conflict between the referrer and the clients in relation to the fee charged. The firm ought to have advised its clients about the fee, which should have been seen as well within the scope of the firm's retainer, notwithstanding that the agreement between the client and the referrer was signed before the matter was referred to the firm. It was submitted that this was an analogous case, and the Respondent ought to have advised his clients about the fee charged by the referrer, which he failed to do.

66.5 Thirdly, the Respondent had taken instructions from the referrer on a number of cases despite there being no evidence on the file of any consent by the client. In some cases there was only evidence of telephone contact with the referrer and none with the client.

66.6 The Respondent in his Statements stated:

> "…that in the absence of any complaints from clients or evidence that settlements were somehow compromised to the clients' ultimate prejudice (save for the [SAR] breaches), I deny that I failed to act with integrity or that I failed to provide a proper standard of service to the firm's clients in the way described by the Applicant. I accept that the way in which the work was referred reduced the firm's level of independence and clients could have been advised in better terms regarding their options and entitlements. To that extent, it is not clear whether clients would have acted differently had they been more fully advised as part of a client care procedure…. I wish to demonstrate that there was minimal risk to the trust placed in me by the public and in the provision of legal services, contrary to the stated principles."

66.7 And further that:

> "I still believe that those referrers provided a service for the money they received by agreement from the client's damages. By the time we became aware of a new matter, the client had already entered into the agreement with the agent for the deduction of those fees from damages. There are no instances or examples of complaints from clients arising out of the deduction of the fee in favour of the referrer. …. There are many cases in which the client preferred to deal through the referrer even though they were never encouraged or instructed to do so. …. It is accepted that the client care procedure did not advise clients of their ability to instruct the firm directly, rather than agree to the payment of a fee from damages in favour of the referrer."

66.8 The Respondent then dealt with the exemplified matters. In the case of MJ he explained that the client was informed of the offer, and that the email from CAB stating that the client was happy to accept the offer would "have been sent as a result of a letter from Ford Legal directly to the client, advising on the merits of the case and asking for instructions."

66.9 Further the Respondent stated that he believed that:

> "…the offer of settlement was reasonable and the insurer paid the appropriate amount of damages. I also maintain that the client received a proper standard of service and chose to liaise with the referrer. I believe that I acted with integrity in that we obtained the best possible result for the client, acknowledging that he had already entered into an agreement with CAB before the firm became aware of his claim. It is accepted that the firm acted upon communication from the original referrer of the case and as such, independence was compromised to a degree. Client care procedures could have introduced an additional requirement that we receive direct instructions

> before taking particular steps in the case. In this way, it is accepted that the trust placed in the firm by the public was put at risk in relation to the provision of legal services."

66.10 In the WH matter the Respondent, in his Statements explained:

> "I acted in good faith and on the basis that the offer was reasonable. I maintain that I provided a proper standard of service to the client, although some independents will have been compromised by the fact that I did not advise the client regarding the fee as part of the client care procedure. I accept that due to the deficiencies in the client care procedure, the trust placed in the firm will have been put at risk in relation to the provision of legal services."

66.11 In the CB matter the Respondent, in his Statements, explained:

> "In hindsight, the client could have been given better information regarding the nature and reasonableness of the fee charged by Recovery. However, instructions were accepted from Recovery on the basis that the authority had already been signed before For Legal solicitors were engaged. …. Although it is accepted that the correspondence does not contain detailed advice on the reasons why we regarded the offer as reasonable, we would only go to the client with the offer after (i) forming the opinion that the initial offer was reasonable or (ii) after having negotiated with the insurer to a point where a second/third offer was reasonable."

66.12 In the OR matter the Respondent, in his statements, explained:

> "I accept that there is no record of any contact between OR and the firm regarding the receipt of damages following the electronic transfer to [Mr B's] account. However, OR will have been aware of the award of damages and made no complaint following the conclusion of the case. … I believe that I provided a proper standard of service to this client in accordance with instructions that the transactions should be handled in this way. However, I agree that my independence will have been compromised to an extent because I relied upon a referrer to assist with important aspects of the case, even though this assistance did not affect the merits of outcome of the case. I also appreciate that whilst no complaint arose … the appearance of the file upon audit could undermine the trust placed in the firm regarding the provision of legal services."

66.13 The Respondent further explained that the work undertaken by the referrer in itself saved a considerable amount of time, with many clients choosing to deal on a face-to-face basis with the referrer. This meant that the fee charged by the referrer in the context of "initial administration" when compared with what would have been claimed on a detailed assessment, was reasonable.

66.14 In the letter of 24 March 2016, sent by Complex Legal, the issues in relation to allegation 1.5 were not addressed, (that letter dealt in the main with the issues raised by the Second IO).

66.15 In his letter to the Tribunal of 10 October 2016, the Respondent stated:

> "I have never properly understood why [a breach of Principle 3] is made against me. I have never ceded one ounce of control over my firm to anybody else. I have studied the SRA's papers carefully to try to understand what it is the Applicant means and I am still at a complete loss as to to (sic) whom I am supposed to have ceded my independence."

66.16 The Respondent further explained that there was no substance to any suggestion that he had ceded control of the Firm to his Business Development Manager, claims management companies or Ms Y of EE Law.

66.17 The Respondent asked that when considering whether he had offended any Principles and other code of conduct provisions that the Tribunal take the following into account:

> "I was never motivated by greed or personal gain and as I understand it that is not the SRA's case. Most of the client account breaches were caused by me making overpayments to clients not by me misappropriating client money for my own use of preferring my own interests to those of my clients.
>
> I did not lose control of my accounts on purpose; it was not calculated or planned or in any way deliberate, I was simply unable to deal with the rapid expansion of the firm's workload. The firm outgrew my ability to manage it and I failed to recognise this and address it.
>
> When I realised that my accounts were disorderly I believe that I did my best to ensure that all clients were well protected from any harm or loss, even where this meant repaying monies that I have never actually taken. I appreciate that this is no more than my duty, but I asked the tribunal to find that complied with this duty and that I did so at great personal expense.
>
> I made open and frank admissions to the SRA at an early stage and I never attempted to conceal or deny my failings.
>
> The accounts rules breaches all occurred over a relatively short duration and I have previously (sic) unblemished record going back to 1988 when I was first admitted.
>
> I note that dishonesty is not alleged in relation to the accounts rules breaches. I do not believe that I ever acted without integrity where client money was concerned."

66.18 Whilst the Respondent disputed some of the conclusions drawn by the First IO, the Tribunal noted that in his Statements, the Respondent accepted the underlying facts in relation to each of the exemplified matters. The Respondent, in his Statements, had seemingly admitted breaching Principles 3 and 6 of the Principles, in that he admitted that his independence was compromised to an extent, and the deficiencies in his client care procedure could undermine the trust placed in the Firm and the provision of legal services. In his letter of 10 October 2016, the Respondent stated that:

> "I have already commented upon allegations 1.1 to 1.6 in my response to the rule 5 statement. This response is already contained within the hearing bundle. I do not wish to unnecessarily occupy the tribunal's time by repeating my comments in this letter; rather, I am content to let my previous comments speak for themselves."

66.19 However, the Respondent, having admitted that his independence was compromised in his Statements, stated in the letter of 10 October 2016 that he had "never properly understood why the allegation [of allowing his independence to be compromised] was made against [him]." In the circumstances, the Tribunal treated those matters as denied by the Respondent.

66.20 Despite the Respondent's later denial, the Tribunal agreed with his initial admission, and found beyond reasonable doubt, that in accepting instructions in the way that he did, without advising the clients as to their rights and entitlements, the Respondent's independence was compromised. The Tribunal noted that the Respondent had, in his Statements, explained his position in relation to the exemplified matters, and had accepted that his independence had been compromised; his later retraction was simply not sustainable on the facts and the evidence. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 3 as pleaded and alleged.

66.21 The Respondent "accepted that the client care procedure did not advise clients of their ability to instruct the firm directly, rather than agree to the payment of a fee from damages in favour of the referrer" and that "clients could have been advised in better terms regarding their options and entitlements". The Tribunal did not accept that the signing of the agreements with the referrer' pre-retainer extinguished the Respondent's duty to advise his clients in that regard. Despite his clients' apparent refusal of independent legal advice (as evidenced in the signed agreements), it was incumbent upon the Respondent to advise his clients to seek independent legal advice on the issue of the administration fee, particularly as that fee may not have been in clients' best interests. The Respondent's duties were even more heightened in the circumstances, as the payment was being made directly by the Respondent from clients' damages.

66.22 In failing to advise the clients in this regard, the Tribunal found that the Respondent was not acting in his clients' best interests in breach of Principle 4, and it followed as a matter of course, that in not acting in their best interests, he also failed to provide a proper standard of service in breach of Principle 5. The Respondent had abrogated some of his duties as a solicitor to third parties; the Respondent explained that the work undertaken by third parties was in his clients' interests. The Tribunal rejected that explanation. A solicitor could not rely on a third party to discharge that solicitor's professional duties and responsibilities; the Respondent was not merely a technician conducting only those parts of the case that the referrer was unable to conduct. In abdicating his professional responsibilities, it was clear that the Respondent had breached the Principles as pleaded and alleged; it was inconceivable that the Respondent was acting in his clients' best interests or providing a proper standard of service when his independence had been compromised in the way that it had been.

66.23 Members of the public would expect solicitors to always act in their best interests, and to advise them where their own actions were not or may not be in their own interests. They would also expect their solicitor to be completely independent and objective. Naturally, a proper standard of service would be an automatic expectation. In breaching Principles 3, 4 and 5, as found by the Tribunal above, it was abundantly clear that the Respondent had not behaved in a way so as to maintain the trust the public placed in him as a solicitor and in the provision of legal services. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 as pleaded and alleged.

66.24 Outcome 9.2 required that the Respondent protect his clients' interests regardless of the interests of an introducer or fee sharer, or his interest in receiving referrals. The Tribunal noted, as was accepted, that the Respondent failed to provide any advice to his clients about the validity, reasonableness or enforceability of the administration fee paid to the referrers from damages awarded. As the Tribunal found above, the Respondent was under a duty to either provide that advice, or to advise his clients to take advice in relation to the fee payable. Not only did the Respondent pay the fees to the referrers, he often did so when no authority existed on the file for that payment to be made. The Tribunal found that no solicitor acting with integrity would pay away client monies without the written authority of a client. The Respondent had taken instructions directly from a referrer (in whose interest it was for a settlement to be accepted) and had made no effort to confirm with the client whether the instructions from the referrer were correct. The Tribunal found that no solicitor, acting with integrity, would take instructions from a referrer instead of from his client. This was even more so the case when there was a clear potential for conflict; it may well be in the referrers interests to settle the claim; that did not mean that it was necessarily in the client's best interests.

66.25 Further, and extraordinarily, the Respondent had paid the full amount of client damages to a referrer and not to the client. As extraordinary as those actions were, this was in circumstances where no authority existed on the client file for payment to be made to anyone other than the client. The payment was made to a third party, who was not regulated; the Respondent put his client's money at substantial risk. The Tribunal determined that no solicitor would pay away client monies without the client's express, demonstrable consent. Whilst a failure to obtain that consent in writing would in itself be concerning, not only had the Respondent failed to obtain written consent, there was no evidence of any instruction from his client to that effect. The Tribunal found that no solicitor, acting with integrity, would have paid away client monies in this way. The Tribunal was dismayed by the Respondent's actions in this regard; the explanation given by the Respondent did not bear scrutiny.

66.26 The Respondent also made cash payments to referrers, for no reason other than that being the request from the referrer. Again, the Tribunal found that no solicitor acting with integrity, would pay monies from client account to a referrer, in cash, without first obtaining the client's written consent, and an invoice/receipt for those monies.

66.27 The Tribunal found that the Respondent's conduct in relation to his dealings with referrers and clients fell woefully below the standards of integrity expected of a solicitor, and were clearly in breach of his responsibilities as required by Outcome 9.2 of the SCC 2011. Accordingly, and for the reasons outlined above, the Tribunal

found beyond reasonable doubt that the Respondent had failed to act with integrity in breach of Principle 2, and had failed to comply with the requirements of Outcome 9.2 as pleaded and alleged.

66.28 Given the Tribunal's findings in relation to the facts relied upon by the Applicant and the Respondent's conduct, the Tribunal found allegation 1.5 proved beyond reasonable doubt on the facts, evidence and submissions.

67. **Allegation 1.6 - The Respondent failed to run his business in accordance with proper governance and sound financial and risk management principles contrary to Principle 8 of the Principles and/or Outcome 7.4 of the SCC 2011**

67.1 The Applicant submitted that given the Respondent's high reliance on referred work, his failure to prepare for the ban on referral fees was a failure to run his business in accordance with proper governance and sound financial and risk management principles.

67.2 It had been extremely difficult for the Second IO to extract sufficient information from the Respondent such as to enable her to reach any conclusions about the financial status of the Firm. In particular, it was submitted that the Second IO was unable to obtain any meaningful information as to the Firm's liabilities. When provided with the draft accounts for 2014, the Firm seemed to be in a negative asset position to the value of £303, 986.00.

67.3 Further, the Respondent had drawn in excess of £200,000.00 in drawings between 22 January 2014 and 10 June 2015; this at a time when the Respondent had improperly retained £102,434.00 of client monies in his office account. It was submitted that in the circumstances, the Respondent had withdrawn substantial amounts of money from the Firm when he had no basis for knowing that the Firm was able to afford such outgoings.

67.4 The Respondent accepted, in his Statements, that the firm was "greatly dependant on work referred to it by introducers and referrers." In order to prepare the Firm for the changes introduced by LASPO, the Respondent stated that he:

> "… decided to buy in an amount of work in advance of the ban so that the potential instability in the market could be cushioned pending the development of an alternative business model. Many other firms made the same decision. I calculated that this extra level of work was sufficient to produce income for the following financial year and I spoke with the accountants, who also acted for other specialist personal injury firms. I recall that the accountants were to obtain Counsel's advice on the potential impact of the change and I spoke with the accountants at length in relation to the medium-term. It was apparent that since they acted for a number of personal injury firms, they wanted to find a solution so they could retain their business."

67.5 Further, the Respondent, during his interview, referred to "arrangements [he] was exploring on a number of fronts", and entry into marketing agreements to obtain work from sources that would be compliant with the terms of LASPO.

67.6 In the letter from Complex Legal of 24 March 2016, it was stated that:

> "The allegation that [the Respondent] breached Outcome 7.4 of the SRA Code of Conduct 2011 is denied. [The SRA] have provided no evidence that the firm was not financially stable, in fact the FI Report refers to an expert opinion by the firm's accountant that it was stable…."

67.7 The Tribunal determined that the Respondent had taken appropriate action in light of the ban to try to ensure the continued financial stability of the Firm, by anticipating the reduced work flow and buying in more work to ease the financial transition to an ultimately reduced income. He was looking at diversifying, and was in conversation with his accountants in relation to the financial health of the Firm. The Respondent, when taking money out of the Firm for drawings did not cause any debt to the Firm; the money was there for him to take. Further, he was immediately able to repay the monies improperly retained in his office account without any difficulty or hesitation. As to the level of negative capital, the accounts did not value the work in progress at all, when it generated considerable fees month after month. Personal injury work has a relatively long lead time to fees being paid, and there was no apparent immediate urgency about the fincancial future of the firm. Whilst the Second IO may have found it difficult to extract financial information, this did not mean that the Respondent did not have sound financial and risk management principles in place. Accordingly, the Tribunal did not find allegation 1.6 proved beyond reasonable doubt, and dismissed the allegation.

68. **Allegation 1.7 - The Respondent deliberately misled the SRA and a professional indemnity insurer by deliberately withholding information from the professional indemnity insurer which he knew would be material and making statements to the SRA which he knew to be untrue contrary to Principles 2 and 6 of the Principles and Outcome 10.6 of the SCC 2011.**

68.1 This allegation arose out of matters discovered during the second investigation, and had two limbs:

68.1.1 Firstly, the Respondent failed to notify his PII insurer in proposal forms for the period 2013 to 2015 that he had been the subject of an SRA investigation, and had been referred to the Tribunal, which it was submitted, was a deliberate failure by the Respondent to notify the insurer of facts which he knew to be material, and accordingly the Respondent had deliberately misled his insurer.

68.1.2 The Applicant relied on the contemporaneous documents to substantiate this allegation. In the full proposal form signed by the Respondent for the year 2012/13, the Respondent correctly stated that the Firm was not subject to an investigation by the Applicant. On 28 May 2013, the Respondent was notified of the first investigation, which commenced on 4 June 2013. On 25 June 2013 the Respondent signed the abbreviated proposal form, which indeed occurred on the day that the First IO was in his offices. The Respondent, it was submitted, misleadingly stated that there was no material change to the information given by him in the previous proposal. This, it was submitted, was a misrepresentation by the Respondent in that he was then subject to an investigation by the SRA.

68.1.3 The Applicant inferred that the Respondent was well aware that there was a standard question on proposal forms as to investigative or disciplinary action; by stating that there had been no material change to his previous answers, it was submitted that the Respondent was representing that he had not been subject to SRA investigation since August 2012 (the date on which he signed the previous full proposal).

68.1.4 In the alternative it was submitted that even if, which was highly unlikely, the Respondent did not recall which questions have been asked the previous proposal form, he would have gone back to his original proposal to see what information and answers he had provided prior to signing the abbreviated form. He would then have been reminded of the question in relation to any SRA investigation.

68.1.5 In the circumstances it was submitted that the Respondent must have known that the SRA investigation was material and should have been disclosed on the proposal form; he deliberately failed to do so in order to mislead the insurer.

68.1.6 On 11 April 2014, the Respondent was referred by the SRA to the Tribunal in relation to the matters which had been discovered during the first investigation. On 19 June 2014, less than 3 months after his referral, the Respondent signed an abbreviated proposal for the 2014/15 insurance year. In response to a question about significant changes to the practice within the last 12 months, which specified 'any new SRA/SDT investigations or monitoring visits', the respondent ticked the "no" box. Further, he also stated that "The disciplinary record of Principals has not changed since completion of the last proposal form and there have been no material changes in the firm since 1/10/13." It was submitted that those answers were misrepresentations, as the Respondent was aware of the previous investigation, which he had not disclosed, and the referral to the Tribunal, again which had not been disclosed. Further the misrepresentation was even more apparent given the specific questions contained in the abbreviated form.

68.1.7 The Applicant inferred that the Respondent was aware that he was answering the questions incorrectly. It was submitted that he must have known that he should disclose the SRA investigation and his referral to the Tribunal to his insurers on the proposal form. The only sensible inference, it was submitted, was that he deliberately failed to do so in order to mislead the insurer.

68.1.8 When asked to explain his failure to notify his insurers of the SRA investigation and his subsequent referral to the Tribunal, the Respondent, in an email dated 18 September 2015 stated:

> "Proposal 2013
> PII Insurers not informed because the investigation was ongoing and no outcome had been reached. I did not consider the investigation to be material at that time and the form did not particularise what was to be considered a material change.

> Proposal 2014
> I was being pressured by the Broker to sign their 'short' proposal form and & (sic) to return it by e-mail and I made a mistake
>
> Investigation 2015
> Brokers informed by telephone. Told PII was not affected but that future renewal terms maybe (sic)"

68.1.9 In his letter of 10 October 2016, the Respondent stated:

> "When I completed the 2013 proposal, I made a mistake. I do not remember, but I expect that I would have read the small print in relation to disclosure. I think I would not have believed the investigation was a material change. My understanding is that indemnity insurers do not cover solicitors against regulatory costs or financial penalties. I probably viewed the SRA investigation as a risk to me, but not to my insurers. I certainly did not intend to conceal the fact of the SRA investigation from my broker.
>
> In relation to the 2014 proposal, it seems to me that I answered the more direct question truthfully. No SRA investigation had commenced within the last 12 months. I think it is unfair that the SRA is making an allegation of dishonesty against me, in circumstances where I have answered a direct question correctly and accurately. At that time the insurance act 2015 had not come into force and there was no obligation upon me to make a fair representation of risk. Insurance law at that time, as I understand it, simply required me to be truthful. I accept that by this time I was well aware of the seriousness of the SRA investigation, but I still did not believe this this (sic) posed a direct or indirect risk to my insurers and I did not feel obligated to go beyond and above the question was put on the short proposal form."

68.2 Secondly, the Respondent told the Second IO that he had called his broker to notify him of his (the Respondent's) previous failure to report both the SRA investigation, and the referral to the Tribunal, when he had not done so. It was submitted that the Respondent had deliberately sought to mislead the SRA in relation to his disclosure to his insurers. The Respondent, it was submitted, specifically told the Second IO, during a telephone conversation on 23 September 2015, that after the start of the Second investigation, he had contacted his broker by telephone, and told him of his failure to disclose the information on the 2013 and 2014 forms.

68.3 In fact, the Respondent had not contacted his broker, which he clearly knew. The Second IO telephoned the Respondent's broker on 23 September 2015, following the information provided by the Respondent. The broker informed the Second IO that the Respondent had not contacted him about any SRA investigation, or a referral to the SDT. This was later confirmed by the broker in writing, and in his witness statement before the Tribunal.

68.4 The Respondent in his letter of 10 October 2016 stated:

> "My recollection of the telephone conversation on 23 September 2015 is that I told the SRA that's (sic) my contact at the insurers was Tanveer, and that if the SRA wanted me to make a disclosure to my insurers is the person the SRA should contact to confirm that I had done so. I disagree with the recollection of the SRA's FI officer. By this time I was very well aware that anything I said to the SRA cross checked. It would have been extremely foolish of me to say anything to the SRA that true. I knew that if I had done so the SRA find out. I am not suggesting that I might have lied if I thought I would get away with it; I would not have done, I am simply asking the tribunal to accept that in the circumstances it is unlikely that anybody would lie. Nobody would claim to have told their insurers something that they had not told them insurers and then provided the person they were talking to with the contact details of the person who verified that. The FI Officer's understanding of things does not make any sense and does not add up."

68.5 The Tribunal found the Respondent's explanations incredible. In relation to the first limb, misleading the PII insurers, the Tribunal had no doubt that the Respondent had deliberately misled the insurers. The Tribunal noted the change in the Respondent's position from the answer he gave attached to his email of 18 September 2015, where in relation to the 2013 renewal he explained that he had not informed the insurers as the investigation was ongoing and he did not consider the investigation to be a material change, to his position in his most recent correspondence where he stated that he had made a mistake.

68.6 As regards the 2014 proposal, the Respondent, in his email attachment of 18 September 2015 stated that he was under pressure to sign and made a mistake, whereas his recent correspondence stated that he had in fact completed the form accurately and correctly.

68.7 The Tribunal determined that the explanations given by the Respondent, as well as being contradictory, were not consistent with the contemporaneous documents, some of which had been created by the Respondent himself. To suggest that he was not under a duty of full disclosure to his insurers was astonishing at best. The Respondent's referral to the SDT would have been at the forefront of his mind when he completed the 2014 renewal application, given the proximity of notification of the referral and the completion of the form. His attempted reliance on the 12 month specification in the 2014 proposal form was a casuistry, and a practice in the art of sophistry. The Respondent denied the insurers the opportunity to decline cover, or increase the premium in circumstances where the insurers would not be able to cancel the policy. Even if, on a literal interpretation, the Respondent (which the Tribunal did not find) had answered the question correctly, as the investigation which led to the referral fell outside of the 12 months specified on the form, the Respondent was aware that such an investigation would be material as it was within the 'significant change' section of the form. The Respondent knew that a significant change would be deemed material; he knew he had not disclosed the SRA investigation or referral to the SDT, however he failed to declare it in the 'material information' section of the form. He also declared that he had not "mis-stated or supressed any material facts", when that was clearly not the case.

68.8 In relation to the misleading the SRA, the Tribunal again found the explanation of the Respondent to be incredible, and it was his explanation of things that in fact did not make sense or add up. In his email to the SRA of 18 September 2015 the Respondent specifically stated:

> "Investigation 2015
>
> Brokers informed by telephone. Told PII was not affected but that future renewal terms maybe (sic)"

68.9 The later explanations offered by the Respondent simply did not hold any water. It was clear, from the email alone, that the Respondent had told the IO that he had informed his broker about the failure to disclose the SRA investigation and subsequent referral to the SDT. The Tribunal accepted, in its entirety, the evidence of Tanveer Hussain and Amie Woods in relation to this limb of allegation 1.7.

68.10 The Tribunal had no hesitation in finding that the Respondent had deliberately misled his insurers and the SRA as pleaded and alleged. A lack of integrity and failure to maintain the trust the public placed in him and in the provision of legal services was self-evident in the circumstances. Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt on the facts, evidence and the submissions.

Dishonesty

68.11 The Applicant submitted that the test for dishonesty was that set out in Bultitude v Law Society [2004] EWCA Civ 1853 and Twinsectra v Yardley and others [2002] UKHL 12, namely that the Respondent's conduct must be dishonest according to the standards of reasonable and honest people (objective test) and the Respondent must have realised that by those standards his conduct was dishonest (subjective test).

68.12 It was submitted that the objective test was plainly satisfied; a deliberate failure to disclose material information to an insurer, and a deliberate false statement to an insurer would be regarded by reasonable and honest people as dishonest. Likewise, a deliberate misrepresentation to the SRA would be regarded as dishonest by reasonable and honest people. Further, the Respondent must have been aware that such conduct would be regarded as dishonest.

68.13 The Respondent denied that his conduct had been dishonest, and stated in his letter of 10 October 2016 that:

> "The only evidence of dishonesty that the SRA relies upon is that I arguably misunderstood an insurance form [and] that I told the SRA whom to contact at my insurers…… I ask the tribunal to find that at the very least there is reasonable doubt that I ever intended to mislead my insurers or the SRA about anything. I have already accepted and admitted serious breaches of the accounts rules and I have done so fully appreciating the possible consequences. I have no reason left to fight for my legal career; my legal career is in the past and will never be resurrected. I do not want a practising certificate and I do not want to practice law. I have already suffered the loss of my firm, my professional credibility, my financial security and my peace of

> mind. Failing to manage my account properly was the worst mistake of my working life, arguably my whole life. I am ready to accept the tribunal's findings in relation to all of the allegations, but I cannot accept that it would be fair of the tribunal to destroy my reputation of honesty on such slender, late, and I have to say somewhat artificially constructed "evidence"."

68.14 The Tribunal determined that reasonable and honest people operating ordinary standards would find that a solicitor, who had deliberately failed to disclose material information/made a false statement to an insurer, and who had then deliberately misrepresented the position to the SRA had acted dishonestly, and accordingly found the objective test proved beyond reasonable doubt.

68.15 The Tribunal had looked at the contemporaneous evidence, including the notes made by the Investigating Officer as well as the email of 18 September 2015 sent by the Respondent. The Tribunal rejected in its entirety the Respondent's assertion that the evidence was slender or "artificially constructed"; the contemporaneous documents spoke for themselves. The Respondent clearly knew that his actions were dishonest, and would so be regarded by reasonable people operating ordinary standards of honesty. The Tribunal thus found the subjective test proved, and accordingly found beyond reasonable doubt that the Respondent had acted dishonestly.

69. **Allegation 1.8 - The Respondent failed to co-operate with the SRA in that:**

(i) the Respondent made statements to the SRA which he knew to be untrue;

(ii) he withheld information from the SRA which he knew to be material to the SRA's investigation;

contrary to Principles 2 and 6 of the Principles, and Outcomes 10.6 and 10.13 of the SCC 2011.

69.1 It was submitted that the Respondent made statements to the SRA which he knew to be untrue, and withheld information from the SRA which he knew to be material to its investigation.

69.2 In a telephone conversation with the Second IO on 23 September 2015, the Respondent stated that he had no plans to close the firm or merge with other firms. The Second IO asked the Respondent to inform her immediately in the event that his business plans changed. On 29 September 2015, the Second IO attended the Firm and met with the Respondent. On that date, the Respondent stated that no client matters had been transferred to any other firms, that he was going to submit the Firm's proposal for PII to the broker the following day, and that he would inform the Second IO once the form had been submitted.

69.3 Despite numerous attempts, the Second IO was unable to contact the Respondent until 2 October 2015, at which point he informed her that the Firm had ceased trading on 30 September 2015 and that over 450 files had been transferred to EE Law in July 2015. When asked by he had not informed the Second IO of his plan to close whilst she was at his offices on 29 September he said that there was "no particular reason" and that he had made a "commercial decision".

69.4 It was submitted that in failing to tell the IO of the closure of the Firm, the Respondent had withheld information that he knew to be material to the SRA's ongoing investigation. Further, the statements made to the Second IO in relation to the non-transfer of any files was plainly false as the Respondent had transferred a large number of files to EE Law in July 2015, during the investigation, and had received payment into his personal account in relation to the file transfers. The Applicant submitted that the transfer of the files, and the non-submission of the PII proposal form were clear evidence that the Respondent was planning to close the practice, and had falsely told the Second IO that he had no plans of that nature.

69.5 In the letter from Complex Legal of 24 March 2016, it was stated that:

> "It is denied that Mr Ford stated in a telephone conversation with the FI office[r] that he had no intention to close the firm. [The Respondent] has no recollection of any such conversation. If the SRA is able to produce the telephone recording, in accordance with the SRA's stated policy of recording calls, [the Respondent] will comment further. It is also denied that [the Respondent] claimed that he had never transferred a file to another firm to the FI officer on 29 September 2015. If the SRA is able to produce any contemporaneous notes taken by the FI officer on the day, then [the Respondent] will comment further."

69.6 In his letter of 10 October 2016 the Respondent stated that:

> "The other lie, which the SRA alleges I told, is that I had not transferred suffered any files out of my firm. … The Applicant refers to a telephone conversation on 23 September 2015, in which I correctly stated that I had no plans to close my firm or to merge it with another. That seems to me to be completely irrelevant to whether or not I had transferred files to another firm. I had not been asked whether I transferred files to another firm."

69.7 The Respondent further stated that he did not tell the Second IO that "no client matter files had been transferred to other firms", as:

> "It would have been a remarkably stupid thing to say, given that the FI officer was in my office and I had no files. It would also have been a lie, and I repeat that I have never lied to the SRA about anything. At that time of the transfer, my intention was to de-risk my firm, unlock some WIP, and relieve myself of pressure. My intention was then to start again and rebuild my practice. My solicitors at that time approved the transfer of the files, and I was advised that there was no need to inform the SRA, advice that I still believe to be correct."

69.8 The Tribunal listened carefully to the evidence of the Second IO (Amie Woods) and also scrutinised the contemporaneous notes made by her. The Tribunal noted that in response to the question of closing or merging the firm, the Respondent replied that he had no plans to merge; nothing was recorded in the notes in answer to the question about closure. However, it whilst it was denied in the letter from Complex Legal that the Respondent stated he had no plans to close/merge the firm, it was clear from his letter of 10 October 2015, that he accepted that he had told the Second IO that he had

no plans to close/merge the firm. The Tribunal also saw from the notes that the Respondent was advised to inform the IO if his business plans changed.

69.9 The Tribunal could not be sure, beyond reasonable doubt, that the Respondent, during the call on 23 September, and the Second IO's visit on 29 September, had decided that he was going to close the Firm. At that stage, he was still, it would seem, intending to submit his PII proposal form to his insurance brokers. However, it was clear that the Respondent had transferred almost the entirety of his WIP to another firm, during the currency of the investigation and had failed to tell the Second IO of this, despite having frequent contact with her. Further, the payment for the files had been made into the Respondent's personal bank account; the payment would not have been revealed to the Second IO on a review of the Firm's accounts. The Tribunal accepted entirely the evidence on the Second IO in this regard, and found that the Respondent had made statements to the SRA which he knew to be untrue, and had withheld information which he knew to be material to the investigation. Accordingly, the Tribunal found allegation 1.8 proved beyond reasonable doubt in so far as it related to the transfer of the files only. The Tribunal further found the Respondent to have breached Outcome 10.6 as pleaded and alleged, but did not find the breach of Outcome 10.13 proved beyond reasonable doubt. It was self-evident on the facts of the Respondent's proven conduct, that he had breached Principles 2 and 6 as pleaded and alleged in relation to the file transfers.

Dishonesty

69.10 The Applicant submitted that the Respondent's misrepresentations to the Second IO and/or his failure to disclose material information was dishonest; a deliberate misrepresentation to a regulator and/or deliberate failure to disclose a material fact would be regarded as dishonest by the ordinary standards of reasonable and honest people, and that the Respondent must have realised that by those standards his conduct was dishonest.

69.11 The Respondent denied that he had acted dishonestly, and denied that he had told the Second IO that he had not transferred any files.

69.12 The Tribunal found that reasonable people operating ordinary standards of honesty, would find that making deliberate misrepresentations and withholding material information from a regulator was dishonest, and accordingly the objective test in Twinsectra was satisfied. The Tribunal did not accept the Respondent's submissions in relation to his conduct in this regard. There was a large number of closed files in the office, and the Second IO could not be expected to know that the files that were present were in fact closed files. Further, the Respondent had transferred the files whilst the investigation was ongoing, yet failed to mention that transfer, and had instead positively asserted that no files had been transferred. The payment into the Respondent's personal account, rather than into the office account was also informative; the Second IO, at that stage, had no reason to look at his personal account, and thus would not have detected the payment made. The Tribunal had no hesitation in finding that the Respondent knew that his conduct was dishonest, and found that the subjective test in Twinsectra was also satisfied. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had been dishonest in relation only to the transfer of the files.

Previous Disciplinary Matters

70. None.

Mitigation

71. The Tribunal read in full all the documentation submitted by the Respondent or on his behalf, and particularly noted those areas where the Respondent advanced mitigation in relation to breaching the SAR.

Sanction

72. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition - December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

73. The Tribunal firstly considered the seriousness of the Respondent's proven conduct. The Tribunal found him to be completely culpable for the breaches; the misconduct having arisen as a direct result of his actions. In relation to the SAR breaches, these had arisen due to the Respondent's admitted failure to run his accounts properly. The Principle breaches in allegation 1.5 had arisen due to the Respondent placing his desire to retain his source of referred work above his duties to his clients, and to that extent, he was motivated by personal financial gain. His actions were not spontaneous, but were his chosen method of running his accounts, and the relationship between himself, his clients and those who referred work to him. The Respondent's conduct in relation to allegations 1.8 and 1.9 was not spontaneous, and in relation to allegation 1.8, subsisted for a substantial period of time. The Respondent was an extremely experienced solicitor, who, by his actions, had caused great harm to the repute of the profession and the public; allegations of dishonesty had been found proved against him. The Tribunal considered the comments of Coulson J in Solicitors Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

74. The Respondent had caused immense harm and damage to the reputation of the profession. Not only had he acted dishonestly, but he had placed his own interests above those of his clients. Whilst the Tribunal accepted that the Respondent's dishonesty was not related to client money, in that he had not improperly used client monies for his own purposes, his dishonest conduct was serious, and his explanation had been both incredible and disingenuous.

75. His conduct was aggravated by his proven dishonesty, which was deliberate and calculated. The Tribunal determined that the Respondent, given his extensive experience, knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. The Tribunal noted that the

Respondent had a previously unblemished career, and had been cooperative in full throughout the first investigation, and in the main throughout the second. The Tribunal also accepted that no clients had complained about the Respondent's conduct, and were seemingly accepting of the settlements he obtained on their behalves.

76. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

77. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

78. Ms Carpenter made an application for costs in the sum of £83,068.70. In his letter of 10 October 2016, the Respondent stated:

> "As regards costs, I have seen the SRA's costs schedule and given the huge sums involved, which are beyond my means, I respectfully request the tribunal order that they are subject to detailed assessment. Only recently, I narrowly avoided bankruptcy as a result of the SRA's intervention costs. I have already sold my home and I have no assets of significance. In the event that the tribunal does not order detailed assessment, I ask that the tribunal orders costs against me should not be enforceable without the leave of the tribunal. I have attached a personal financial statement to this letter which may assist the tribunal."

79. In that statement the Respondent submitted that he had no beneficial interest in his property, no independent income, owed £200,000.00 to HMRC, and was living off his credit cards.

80. The Applicant did not accept that the Respondent was unable to pay the SRA's costs, and made the following submissions:

- Having initially failed to pay the SRA's intervention costs of £18,000.00, the Respondent paid the amount in full once the SRA issued bankruptcy proceedings.

- In August 2011, the Respondent and his wife purchased a property, which they later sold in September 2016. The Respondent failed to refer to the sale in his Statement of Means, and further failed to explain what he did with any profit from the sale of that property.

- In December 2002, the Respondent and his wife purchased their current property. It was not accepted that the Respondent had no beneficial interest in that property. The Official Copy of the Register showed the Respondent and his wife to be co-owners of that property; the Respondent failed to produce any documents, such as a Trust Deed, stating that he held his legal interest on trust for anyone else. Thus, it was submitted, the inference was that he held a 50% interest in the property. Given the stated value was £300,000.00 with charges totalling £115,000.00, there was equity in that property of £185,000.00.

- The Respondent had withdrawn £373,560.00 from his Firm during 2014/15. It was highly improbable that just over 1 year later, he had no assets.

- The Respondent had seemingly incorporated a new company on 30 October 2015 (M Ford Legal Services Limited), with his former accountants listed as the agent for that company. The Respondent did not mention this company in his Statement of Means, nor whether he received an income from that company.

- The Respondent failed to itemise his outgoings in his Statement of Means.

81. The Applicant submitted that it could be inferred that the Respondent, in selling his former property, and stating that he had no beneficial interest in his current property, was simply trying to place assets out of the reach of the SRA, and possibly other creditors. Given the sparsity of the information provided by the Respondent, it was submitted that the Tribunal did not have sufficient evidence before it upon which it could properly assess the Respondent's means; the Respondent had failed to place sufficient evidence before the Tribunal so that it could be satisfied as to his means.

82. The Tribunal noted that one of the Investigation Officers had charged travel at the full hourly rate, and the officers had each charged a different hourly rate. The Tribunal also noted the amounts charged by the investigators for file closing and report issuing procedures, which it found to be excessive. The Tribunal reduced the costs claimed by the Applicant, taking into account those matters. The Tribunal found that the evidence of means provided by the Respondent was inadequate and unsatisfactory. The Respondent had failed to show that his financial position was such that it would be appropriate for the Tribunal to defer the enforcement of any costs order made against him. In the circumstances, it was not appropriate to require the Applicant to seek permission for costs to be enforced. Further, the Tribunal determined that a detailed assessment was not necessary; the Tribunal could properly summarily assess the appropriate amount of costs. Accordingly, the only appropriate order was an immediate order for the costs of the Applicant, those costs being summarily assessed by the Tribunal in the sum of £75,000.00

Statement of Full Order

83. The Tribunal Ordered that the Respondent, MARK PEARSON FORD, 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 £ 75,000.00.

Dated this 1st day of November 2016
On behalf of the Tribunal

D. Green
Chairman