The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 28 December 2015 in respect of findings, sanction and costs. The appeal was heard by The Honourable Mr Justice Green on 7 June 2016. The appeal was dismissed with costs summarily assessed at £5,500 payable by the Respondent to the Applicant (case unreported).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11293-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

YUNUS AGBOOLA ALATISE — Respondent

Before:

Mr J. A. Astle (in the chair)
Mr A. N. Spooner
Mr S. Howe

Date of Hearing: 8th July 2015 and 5th November 2015

Appearances

Mr Andrew Bullock, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Mr Nigel Leskin, Solicitor of Birnberg Pierce & Partners, 14 Inverness Street, London NW1 7HJ for the Respondent who was present

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JUDGMENT

Allegations

1. The allegations against the Respondent Yunus Agboola Alatise made upon behalf of the Applicant the Solicitors Regulation Authority were as follows:

1.1 He failed to remedy promptly on discovery breaches of the SRA Accounts Rules 2011 ("SRA AR 2011") in breach of Rule 7 of those rules.

1.2 He breached Rule 14.1 of the SRA AR 2011 in that he failed to pay client money into client account.

1.3 He breached Rule 17.4 of the SRA AR 2011 in that he failed to pay into client account a sum of £5,000 paid by a client on account of costs.

Dishonesty was alleged in relation to allegation 1.2. Dishonesty was not an essential ingredient of the allegation raised against the Respondent and therefore it was open to the Tribunal to find the allegations proved absent a finding of dishonesty.

Documents

2. The Tribunal reviewed all the documents including;

Applicant

- Rule 5 Statement dated 16 October 2014 with exhibit MJVC1
- Witness statement of Mr Gary Page dated 10 March 2015 with exhibit GP1
- Witness statement of Mr Roger Miller dated 5 June 2015 with exhibit RM1
- Correspondence between the Applicant and the Respondent
- Notice to admit documents dated 25 March 2015
- Notice to admit witness statements dated 1 April 2015
- Applicant's statement of costs dated 30 October 2015

Respondent

- Answer dated 14 January 2015
- Notice to admit statements dated 3 June 2015
- Statement of Mr PO
- Statement of Mr AO dated 7 July 2015 with attachment
- Statement of Ms DA dated 27 March 2015
- Testimonial of Ms CG dated 24 April 2015
- Personal Financial Statement of the Respondent

Preliminary Issues

3. Mr Spooner, a solicitor member of the division of the Tribunal scheduled to hear this application had noted that the Rule 5 Statement in this matter was signed Mr Michael Craik a solicitor then employed by the Applicant. Mr Spooner asked that the parties be told that he and Mr Craik were both partners in the same practice in the early 2000s but that Mr Spooner had left that firm in April 2005 and he had not had contact

either personal or professional with Mr Craik since that date. Mr Craik subsequently advised the Tribunal that he was leaving the Applicant's employment and that Mr Bullock was taking over the case. Neither party raised any objections to Mr Spooner hearing the application as scheduled.

4. For the Applicant, Mr Bullock applied to admit into evidence the witness statement of Mr RM dated 5 June 2015. Mr Craik had notified Mr Leskin for the Respondent of the Applicant's intentions in this regard. The rationale for admitting the statement was that it dealt with an issue raised in the Respondent's Answer on the question of dishonesty about whether a reply had been received from the Respondent to a letter dated 23 July 2012 sent by T Solicitors when T Solicitors acted for Mr JL in a transaction the subject of this application. (T Solicitors was later purchased by Mr RM's firm.) For the Respondent, Mr Leskin indicated that he had no objection to the admission of the statement. Mr Leskin informed the Tribunal that he too wished to introduce another document; an extract from the creditors' loan account of the Respondent's firm referred to in a letter sent by the Respondent dated 29 April 2013 to the Applicant. Mr Leskin had helped the Respondent to prepare the letter but could not say if the extract had been sent. Mr Bullock indicated that he had no objection but was not sure where the document would take the Tribunal. Mr Leskin also applied to admit a late testimonial by way of witness statement dated 7 July 2015 from Mr AO. Mr Bullock again did not object. The Tribunal determined that all three additional documents would be admitted.

Factual Background

5. The Respondent was born in 1962 and admitted to the Roll in December 2006. He did not hold a Practising Certificate, his last one having covered the 12 month period ending on 31 October 2013.

6. At all material times the Respondent practised as a recognised sole practitioner under the name Abby & Nat Solicitors ("the firm") in London.

7. An investigation into the books of account and other documents of the firm was commenced by Mr Gary Page a Forensic Investigation Officer ("IO") employed by the Applicant on 10 December 2012 and on 16 April 2013 in the course of his investigation, the IO sent the Respondent a series of questions which the Respondent answered by letter dated 29 April 2013. The investigation culminated in a Forensic Investigation ("FI") Report dated 10 October 2013.

8. On 17 June 2014, a duly authorised officer of the Applicant considered the FI Report and the subsequent correspondence and decided to refer the conduct of the Respondent to the Tribunal.

Allegation 1.1

9. The FI Report recorded that a cash shortage had existed on the client account of the firm since 2 May 2012 which amounted to the figure of £20,103 as at the date of the Report.

10. The Respondent admitted a cash shortage but disputed the amount.

Allegation 1.2

11. The FI Report identified two occasions on which the Respondent had failed to pay client money into client account (at all) in circumstances where none of the exceptions provided for within the rules applied.

Mr TS purchase of 120/120A H Road

12. On 2 May 2012, the Respondent received instructions from Mr TS in connection with his intended purchase of a property known as 120/120A H Road. The property's sellers included a Mr JL and the seller's solicitors were T Solicitors.

13. Mr TS and Mr JL had agreed a purchase price of £450,000 and a security deposit of £30,000.

14. Also on 2 May 2012, Mr TS went to the firm's offices and met with the Respondent whom he knew as a local solicitor and for whom he had made some business cards. In the course of their meeting, Mr TS gave the Respondent a cheque dated the same date in respect of the deposit of £30,000. [The extent to which this sum represented the deposit was disputed by the Respondent. There was also a dispute about other aspects of Mr TS's visit(s) to the office.] The cheque stub showed an entry of £30,000 dated "2-5-12". The payee was the firm.

15. The Respondent paid the cheque into the firm's office account as shown on the HSBC bank statement for 10 May 2012.

16. On 21 May 2012, Ms YA a caseworker employed by the firm emailed Mr TS informing him that the security deposit would be transferred to the "executors/sellers" of the property.

17. On 5 and 9 July 2012, the Respondent made two transfers of £10,000 to T Solicitors and retained the balance of the £30,000 upon the firm's office account.

18. By way of its letter to the firm dated 23 July 2012, T Solicitors confirmed receipt of the £20,000 as follows:

> "We also note the contract provides for a deposit of £30,000.00 but we have only to date received £20,000.00. Could you please let us know when the balance will follow."

19. Subsequently, Mr TS was informed by Mr JL that only £20,000 had been received by his solicitors. In light of this Mr TS went to the firm's offices and met with the Respondent.

20. In his letter of 9 May 2014 to the Applicant, the Respondent stated:

> "So far as the £10,000 (sic) Mr [TS] is concerned, I spent that money in expenses to run the business..."

The Respondent then proceeded to explain his understanding that Mr TS agreed in April 2012 to make him a loan of £10,000. The Respondent set out why he could not ask Mr TS for two cheques, namely one in respect of the security deposit and the other in respect of the loan.

Mr TK dilapidations claim

21. The Respondent's firm acted as solicitors to Mr TK in relation to his claim (ultimately successful) for compensation for damage caused to his property by a water leak. The sum recovered from the building owner's insurers was £7,953.

22. By way of a client care letter dated 14 September 2011, the firm set out Mr TK's instructions and the terms of the retainer. Amongst other things, the letter recorded as follows:

> "I, [YP], a solicitor will be handling your case and you should contact me if you wish to discuss anything about it."

And

> "Fees
> ...
> Please note that should a court action become necessary, there will be further fees to be paid for both the court fees and our fee estimated at no more than £10,000..."

23. Mr TK confirmed his agreement to the terms of the client care letter.

24. The Respondent confirmed that Mr YP had conduct of the matter and that he supervised YP's work in a letter to the IO dated 17 October 2013:

25. The Applicant had not seen any evidence that court proceedings proved necessary. Instead by a letter dated 7 August 2012, the firm wrote to SH Ltd Mr TK's landlord confirming that SH Ltd's insurers were to pay £7,953 in settlement of Mr TK's claim. It would appear that SH Ltd took some time to pay over that sum.

26. The firm's letter of 7 August 2012 said amongst other things:

> "We therefore request that you transfer £7,953.00 to our solicitor's client account within 7 days of this letter. Please note our bank account details..."

However the details provided were not those of the firm's client account but of its office account.

Allegation 1.3

27. In addition to the cheque for £30,000 which he gave Ms YA on 2 May 2012, Mr TS hand delivered to the firm a further cheque in the sum of £5,000 for legal costs and fees on 30 May 2012. The cheque book stub showed an entry of £5,000 dated "30-5-12". The payee was the firm.

28. An invoice was raised dated 10 May 2012 in the sum of £1,500 plus VAT of £300 addressed to Mr TS. An entry dated 10 May 2012 was made in the client ledger for the conveyance recording “Money on Account” and “Full Payment”. Accordingly a balance of £3,200 remained.

Witnesses

29. **Mr Gary Page** gave evidence. He worked for the Applicant as an IO. He confirmed the truth of his witness statement dated 10 March 2015 which in turn confirmed the accuracy of the FI Report. In cross examination, the witness confirmed in respect of Mr TS’s cheque for £5,000 that there was no evidence that it was paid into the office or client account of the firm. The witness had not made other enquiries about where it had been paid.

30. **Mr Tejpal Sahota** gave evidence. He confirmed the truth of his witness statement dated 27 June 2015 and the circumstances of the purchase of 120/120A H Road. He and his wife were purchasing in joint names for £450,000 and were providing £120,000; mostly from savings, with the remainder from family members. The balance was to come from a loan. The seller Mr JL was their next door neighbour; the grandson of the property owner. He rented out the downstairs part of the property and the tenant had moved on. The seller lived in a flat above. He informed Mr TS that a prospective buyer had looked at the property and offered £450,000 but he was unsure if the interested party would provide a deposit. The witness had many meetings and discussions with the seller who said that if the witness was interested and paid a deposit of £30,000 he would take the property off the market. The seller wanted to buy a house at the time and needed £30,000 for that purpose. The witness and his wife were very interested in the property; it was in an ideal situation for them and quite sought after.

31. The witness was concerned that there would be no record of payment if he gave the seller a cheque and thought he would go to a solicitor. He had dealt with the firm previously in the course of his business. (In cross examination, the witness explained that he knew the Respondent as a customer; his business premises were close to the Respondent’s office. After an earlier discussion between them, the witness devised a logo and made a sign so the Respondent’s office looked “branded”.) The witness confirmed that he had not told the firm that the £30,000 was anything other than a deposit and the Respondent had never asked him for a loan. The witness was not in the business of lending and did not have money to do so. His own loan to buy the property was not set up at the time the deposit was paid. Even though their bank held their business account it did not look at them favourably and they sought the help of (a) mortgage broker(s).

32. In November 2012, the witness told Mr JL that he, the witness, had placed the deposit money with a solicitor and it should have been received. Mr JL said he had contacted his solicitor and they had only received £20,000. The witness immediately contacted the firm to ask what was going on; the whole idea was to help the seller by giving him money up front so that he would look at Mr and Mrs TS favourably and not look to sell anywhere else. The Respondent said he had made a cheque out to MP (a street in Plymouth where T Solicitors had an office) and showed the witness the cheque stub. The witness went back to JL and asked him to obtain a letter from his solicitor. The

witness had not seen the letter dated 23 July 2012 from T Solicitors to the firm at the time of his conversation with the seller and the Respondent had not told him he had received a letter like this. The Respondent said it looked like a confusing situation. Once the witness had clarity from the seller he instructed the firm to send the £10,000 over as soon as possible; failure to do so had made him look like a liar. The seller was having doubts about the witness and asking all sorts of questions.

33. The witness stated that the Respondent came to the witness's premises with a woman and said he could not pay the money back yet and asked to do so in a couple of months – the witness thought in February 2013. The witness said that was not acceptable; the Respondent should not be using the money for another purpose. The witness was not at all happy but agreed because he thought he would get the money back and be able to pay JL.

34. The witness was referred to a document dated 21 December 2012 which recited that the Respondent promised to refund £10,000 to the witness by 15 February 2013. The witness confirmed that he had sent an email to the Respondent entitled Notice of Proceedings from an email address incorporating the witness's business name to the firm on 11 February 2013 threatening to complain to the Applicant and demanding repayment of the £10,000 by 15 February 2013. The Respondent did not repay as asked. The witness had carried on using the firm because there seemed to be some misunderstanding regarding the £10,000. However they had to change solicitors soon after this email because the Respondent had given (and broken) a written promise to the witness, at which point the witness totally stopped believing anything the Respondent was saying. The witness stated that he was in some difficulty in buying the property; he had to take an extra loan for the £10,000 which he was still paying back. He borrowed the shortfall from family. It had been a terrible experience. He was repaid the £10,000 by the Applicant and was also reimbursed costs paid on account; around £3,000. He had received no money from the Respondent.

35. The witness was asked about a visit to his premises by Ms DA. He stated that she came sometime in November 2012 and he agreed that this was around the time that the issue about the deposit came up. He had been trying to get hold of the Respondent who was not answering telephone calls. The witness did not know the reason for the visit and was not expecting it. Ms DA told the witness that the Respondent was not around at that moment. She said the Respondent would sort the matter out; she did not say anything of any substance. The witness had told Ms DA that the Respondent needed to sort it out as soon as possible and asked why the money had not been sent. The visit was very brief and the witness was getting frustrated and annoyed. The witness was asked if he remembered Ms DA asking him to confirm that he had lent the Respondent money. He replied "No". If she had asked he would probably have been extremely annoyed. The earlier letter confirmed that the £30,000 was a deposit; how had it now changed without the witness's knowledge or authority? In cross examination, the Respondent said he had been telephoning the firm's offices and Ms DA was picking up the phone. She did not say that the Applicant might visit the firm's office. It was five minutes away. It was put to the witness that Ms DA was not working at the firm at that time. He responded "Who was I speaking to?"

36. In cross examination, the witness agreed that the Respondent clearly regretted that he could not pay the witness back. The witness did not know that the Respondent had financial difficulties. If he had talked to the witness about that the witness would have used a different solicitor.

37. The witness agreed he had discussed with the Respondent his desire to purchase the property. The Respondent did not tell the witness that he did not do much conveyancing. The witness's wife was present when he wrote the £30,000 cheque. She went with him on his initial visit to the firm and they had the cheque with them. It was put to the witness that on his first visit he had been on his own and he was referred to his statement dated 27 June 2015 in this connection. This was the first time i.e. at the hearing that he said his wife had accompanied him. The witness could not recall if he had said this before. It was put to him that he had seen the Respondent on two occasions; the first to discuss the detail and then he went back to give the Respondent the £30,000 cheque. The witness maintained that on the first visit he and his wife both went to the firm's offices; he was excited and happy to move forward. A solicitor Ms YA was present and she took the cheque. On the second visit the witness handed over a cheque for £5,000 which in his statement he said was on 30 May 2012 and the money was on account of costs. It was put to him that neither his wife nor YA had been present on the first visit when the matter was initially arranged and that the discussion included that although the witness's wife was involved she was not to know about a loan to the Respondent of £10,000 of the £30,000. The witness stated that this was absolutely not correct; there were four people present in the room: the witness, the Respondent, the witness's wife and YA.

38. The witness stated that it was a lie to say that it was agreed the witness would be doing the Respondent a favour and the Respondent could use £10,000 for the next couple of months. T Solicitors' letter stated that £30,000 was needed; why would the witness lend £10,000 when he needed £30,000? He rejected the suggestion that the £30,000 was not needed immediately; JL wanted to buy a house. As to whether the witness asked when the Respondent transferred the money, the Respondent said he had done it a couple of weeks later. The witness thought it was all "done and dusted. It was put to the witness that it took him six months to find out what had happened. He responded that they (he and his wife) had given the firm £30,000 and they assumed it was paid over; based on the Respondent's word that it had been done. He did not have much communication with JL after that. They did not hear anything from JL until the witness had conversations with JL later on. The witness was shocked and demanded to be paid back. He rejected absolutely that he knew beforehand that only £20,000 had been paid because the Respondent told him. It was put to him that the £20,000 was not paid for two months. He said that was not right; it was supposed to be done quickly. In re-examination, the witness stated that he had no reason to think the money had not been paid in full until November 2012. He trusted the Respondent; once he saw the client care letter regarding the £30,000 paid on account saying the money was to be transferred, he was happy. The witness had to obtain a letter to clarify the position because he could not get a straight answer from the Respondent and then it became clear there was a shortfall on the money paid over. As to the significance of the gap between May and November 2012, the witness stated that he was in the process of obtaining a loan; it was not a quick process. The most important thing had been to make sure the seller was secure with their deposit and knew they were serious and committed. They were quite happy to let the transaction move along

as they did not have finance in place. They were only in a position to proceed in November 2012. The witness was asked why if he needed the money in a hurry, JL did come back in two months to say it had not been paid. The witness agreed but stated that JL told him he needed the money.

39. As to what would have happened if the deal had not gone through, the witness stated that JL would have refunded the money. The H Road property was a family property and JL was to receive his share when the property was sold; the money would have come from his family, his mother and her brother. As to any evidence that JL was entitled to a share of the H Road property, he had told the witness that and he had given the witness his solicitor' details. They had a verbal agreement and the witness referred to T Solicitors' letter saying the deposit was to be paid – it evidenced the agreement with JL.

40. It was put to the witness that at no point did the Respondent confirm that further money had been paid over. The witness referred to the client care letter dated 10 May 2012 from the firm which said the firm was now in the process of transferring the sum of £30,000 to the solicitors for the seller as a security deposit against the purchase price. The witness took it as meaning what it said. The witness was referred to the next line of the client care letter;

> "Before we do that, we aim to make it clear the conditions attached to the security deposit..."

The conditions were not set out in the letter but the witness stated that YA said in May or June 2012 that they wanted the seller to indicate that if the sale fell through the deposit would be refunded and she told the witness verbally that she needed to communicate that to the seller's solicitors. The witness presumed that was what probably was happening between the two solicitors during that week or so.

41. The witness was asked how he had been told how much the firm would charge him. The firm said he could give them £5,000 on account for "legal enquiries". He and his wife said they would return and provide a cheque in that amount. The witness was asked was this on the first occasion and he said he could not remember the exact conversation. They delivered the deposit and gave the solicitors the details. The witness asked to be advised of the amount needed for costs and the firm said they would be in touch in due course. They said there might be surveyor's costs and asked for money on account and the witness and his wife said they would see what they could do. The solicitors said they would be in contact and send a letter and they did so (the client care letter of 10 May 2015 from YA). The witness's recollection was that the second visit was about a month or so after the first. Later YA emailed that the £30,000 was to be transferred over and the firm needed £5,000 on account. They said costs would be £1,500 to £2,000. They did not make overall costs clear at the first meeting; they said there would be ongoing costs but it would not be a lot of money; the witness could not remember. It was suggested to the witness in cross examination that in his business he would give a customer a price for a job whereas he had paid £30,000 to the Respondent without knowing what the charges would be. He agreed his business did not work like that but he knew there was a price of £450,000 and they were under the impression they would be charged the going rate that is £1,500 to £2,500. The Respondent gave the charges in the 10 May 2012 letter. The witness also

knew what fees he had paid four or five years before for the property in which he was living. In their conversation the Respondent said he would give them the going rate and the witness said to let them know and the Respondent did so in the letter. The witness's attention was drawn to an email from YA of 4 May 2012, in which she said:

> "Further to our recent telephone conversation, our fee is usually within the range of £2,000 - £3,000 plus vat. Our fee does not include disbursements such as stamp duty, searches etc. However, given your relationship with the firm, we are happy to offer a reduced fee in this matter. We have invited you to make a proposal to us in respect of the fees and we will give it full consideration."

The witness explained that as a gesture of good will, the witness had undertaken the branding exercise for the firm for which he did not charge the Respondent the design costs. In return the Respondent made the witness an offer on his conveyancing costs. The reference to the telephone conversation was about getting the ball rolling. The witness rejected the suggestion that the email was sent because YA and his wife were not at the first meeting. As to the client care letter being addressed to him only, it was incorrect; he was purchasing with his wife. In re-examination, the witness confirmed that the email from YA of 4 May 2012 about the costs came just a couple of days after he had seen the Respondent. In re-examination the witness stated that when the work was to be carried out almost immediately one got a feeling if one felt comfortable "to go" with a person. The Respondent's office was down the road and they had had the dealings about business cards.

42. Eventually the witness went to the firm's office. The first time he visited the witness referred to the fact that JL's solicitors said they had not received all the money and he asked what was going on. The Respondent said to let him look into it and shuffled through all his papers and looked at his computer.

43. The witness rejected a suggestion that the Respondent told him that there had been a mix-up regarding the £10,000. He stated that the Respondent said he wrote a cheque to MP and showed him a cheque stub for £10,000 and said that was where the balance was sent so the whole £30,000 had been paid. This was shortly after T Solicitors sent a letter dated 30 November 2012 saying only £20,000 had been paid addressed to JL. The witness confirmed that he suggested that the Respondent lied to him by saying he paid £30,000 not £20,000 until the witness showed him that letter. The witness agreed he had not said that in his statement; he probably missed it but once the letter was given to him he approached the Respondent who "came clean" and said he had some problems and would have to give the witness the (outstanding) money.

44. The witness rejected the suggestion that he complained to the Applicant when the Respondent told him he could not keep to their loan agreement. The witness found out about going to the Applicant because opposite to his business premises there used to be a person who gave him financial services advice. The witness stated that he did not know that the Applicant would reimburse him. The Applicant told him to contact the Legal Ombudsman who carried out a lengthy investigation. He was told he could claim from the Respondent's professional indemnity insurers or the Applicant's Compensation Fund. The former said he was out of time as the policy had expired. The witness agreed that the Applicant told him that if it was shown that the

Respondent had applied his money unlawfully he would be able to get it back from the Applicant. He had confidence in a solicitor that he was governed by the Applicant and was accountable to someone. He stated that he did not know that if he said the money was an unrepaid loan he could not recover it from anyone other than the Respondent.

45. **Ms Damilola Adekumbi** confirmed the truth of her statement dated 27 March 2015 in which she said she had worked as a receptionist for the firm from April 2010 to 2012 and then again in the latter part of 2013. Her visit to Mr TS was a long time ago and she could not recall the exact date; it was between September and November 2012. The Respondent had gone to Nigeria around then and telephoned her. She agreed the reason she gave in her statement was that the Respondent wanted her to speak to TS to ask him that if the Applicant went to see TS he would confirm that he had lent the Respondent money. It was put to the witness that as the Applicant's inspection started on 10 December 2012, the conversation must have been later than she thought. She agreed that she understood that the news the Applicant was about to carry out a formal visit would be a matter of some significance to the Respondent. He told her he was concerned about the Applicant. She knew the Applicant regulated solicitors. The Respondent just told her to confirm that TS had lent the Respondent money. The Respondent must have had his reasons for sending her. She remembered TS very well; he had helped the firm with its sign and business cards. She was not concerned about going to ask TS to confirm. As to why the Respondent had not asked her to write to TS, the Respondent was in Nigeria and there was no one to sign on his behalf. Maybe the Applicant could have come the next day or the day after. She was just doing her job as the Respondent instructed her. The witness confirmed her statement where she said that at first TS did not understand what she was saying but later he was "OK". She had mentioned the Applicant and TS confirmed the loan. It was put to her that she said the Respondent would sort out with TS regarding the £10,000 and the witness replied that if TS did not understand he would not confirm it was a loan. The witness confirmed that at the time of the visit as she said in her statement she was no longer working for the Respondent but she had no idea when she left; it was a long time ago.

Findings of Fact and Law

46. 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.

47. **Allegation 1.1 - He [the Respondent] failed to remedy promptly on discovery breaches of the SRA Accounts Rules 2011 ("SRA AR 2011") in breach of Rule 7 of those rules.**

47.1 Rule 7.1 of the SRA AR 2011 provided;

> "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"

Rule 7.2 of the Rules provided:

> "In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals of the firm..."

For the Applicant, it was submitted that a cash shortage existed on the client account of the firm from 2 May 2012 and at the date of the Rule 5 Statement the Respondent had not rectified the cash shortage in part or at all. The Applicant understood that this was due to the Respondent having no money with which to do it. The causes of the cash shortage were the various acts and omissions of the Respondent which formed the subject of the allegation 1.2 and 1.3. The Respondent admitted there was a shortage but disputed the amount and the period for which it existed. In his letter of 29 April 2013 to the IO, he said regarding the £10,000 of Mr TS's money which he asserted was a loan:

> "It was not clear from the outset if it was client's money or office money because £10,000 of the £30,000 was a personal loan to the principal and it was all then improperly treated as a loan.... at the time I thought that I could not pay it into my client account because then I would be transferring £10,000 out of my client account to the office account with no evidence as to why this was being done and I knew that would be a breach of the solicitors' accounts rules...
>
> Not knowing what to do, I telephoned a book keeper Mr [PO] whom we contract to do company's accounts on a monthly basis. He said because some of the money was treated as my personal money (the loan) I should put it all into office account and he would open a nominal loan ledger account, as if it was all a loan to me and when I was ready I should transfer the £20,000 to the seller for the deposit. I let the £20,000 remain there until I had to use it to pay the deposit and the further £10,000 I used as my own money because it was a loan. I now know that dealing with the £20,000 in this way was contrary to the solicitors' accounts rules and that it should have been paid into clients (sic) account..."

In his letter of 9 May 2013 to the IO, the Respondent said amongst other things

> "I do accept that there is a cash shortage. I do not accept that there is a cash shortage of £20,103. The cash shortage is somewhere under £10,103.
>
> The alleged cash shortage of £20,103 is calculated by the [IO] as:
>
> £10,000 owed to [TS].
> £3,200 owed to TS from the £5,000 he paid me for our fees and disbursements.
>
> £6,903 is a shortfall owed to Mr [TK]."

47.2 For the Respondent, Mr Leskin submitted that the Respondent admitted all the accounts rules breaches. He disputed £10,000 of the cash shortage because his case was that it was a loan from Mr TS and so it was not "missing" from client account. In

his Answer, the Respondent made a similar (qualified) admission of breach of Rule 7, including that he had by then repaid £2,735 to Mr TK "being the only money that he could raise..." The Answer also stated that the Respondent accepted the shortage in respect of Mr TS in the amount of £3,200 "...The Applicant accepts that £3200 less an amount that was paid in disbursements (for searches etc) is a shortage in the client account."

47.3 The Tribunal had regard to the evidence including the oral evidence, and the submissions for the Applicant and the Respondent and the admissions of the Respondent. The Tribunal found as a fact that there was a cash shortage in the full amount alleged by the Applicant of £20,103. The Tribunal found that the cash shortage included the £10,000 owed to Mr TS which the Respondent asserted was a personal loan. The Tribunal rejected the assertion of a loan and found the £10,000 formed part of the security deposit that Mr TS was paying for 120/120A H Road for the reasons set out in respect of the allegation of dishonesty under allegation 1.2 below. In respect of the amount paid on account of costs by Mr TS, there was no evidence of money paid out in disbursements from the sum of £5,000 which the Respondent acknowledged he had received but the allegation related only to £3,200 of that sum and the Tribunal found the allegation proved on the evidence in respect of it. Regarding Mr TK's damages, it was unclear when the money was received by the firm but the Respondent was at least aware that he had been directed by the Legal Ombudsman on 19 June 2013 to pay Mr TK the sum of £6,903 and he did not do so. On his own evidence in his Answer, the Respondent did not commence repayment until six months later on 4 January 2014 and his three repayments in that month amounted to only £2,735. This did not constitute a prompt remedy. The Tribunal found allegation 1.1 proved to the required standard on the evidence in respect of the full sum alleged £20,103; indeed breach of Rule 7 for part of that sum was admitted.

48. **Allegation 1.2 - He [the Respondent] breached Rules 14.1 of the SRA AR 2011 in that he failed to pay client money into client account.**

48.1 Rule 14.1 of the SRA AR 2011 provided:

> "Client money must without delay be paid into client account, except when the rules provide to the contrary..."

Mr Bullock submitted that allegation 1.2 was admitted but there was a dispute about the amount of money withheld from client account. The Applicant relied on the transactions for Mr TS and Mr TK. In respect of Mr TS, it was not controversial that on 2 May 2012, Mr TS wrote a cheque to the firm for £30,000. It should have gone into client account but it did not. Instead it went into office account. Dealing with the cheque in that way was a breach of Rule 14.1. The Respondent accepted that of the sum of £30,000 only £20,000 was paid as a security deposit to the seller's solicitors and that he retained £10,000 for himself. (For Mr Bullock's submissions about the allegation of dishonesty in respect of allegation 1.2 see below.)

48.2 In respect of Mr TK, Mr Bullock submitted that the facts were largely agreed as set out in the background to this judgment. Mr TK instructed the firm which settled his claim on the basis of payment of £7,953. The letter requesting payment was written by Mr YP a fee earner at the firm with day to day conduct of the matter, rather than

the Respondent. The compensation payable to Mr TK was client money and should as stated correctly in the firm's letter of 7 August 2012 have been paid into the firm's client account. This did not happen because the firm gave SH Ltd the wrong bank account details. As to why payment was made to office account, the explanation put forward was that a bill had been raised for £10,000 to confirm a costs estimate provided by YP and he wrongly believed he was entitled to bank the full amount paid into office account. There was no suggestion that the Respondent had a hand in the error or was culpable for it but the error should have been spotted sooner and funds transferred back to client account as soon as it was identified. The matter was considered by the Legal Ombudsman who found that the firm's fees should amount to £1,140 inclusive of VAT. TK had already paid £340 towards the fees, leaving £800 due. He was therefore still entitled to a net payment of £7,153. After a test transfer of £250 he was still owed £6,903.

48.3 In the Respondent's Answer, he accepted that he breached Rule 14.1 of the SRA AR 2011 in that he failed to pay £7,953 for Mr TK into his client account; it was said that the Respondent mistakenly believed that the payment of £7,953 received from SH Ltd was a payment of costs. The reason it was not paid in once he realised the mistake was because by then the Respondent had no money to transfer to his client account. In the Answer regarding £20,000, rather than £30,000 received from Mr TS, it was stated that the Respondent relied on the advice of Mr PO, the firm's bookkeeper. He further accepted that having mistakenly paid the cheque into office account he should then have ensured that the balance of £20,000 was immediately transferred to his client account for so long as he held it until it was paid as a security deposit.

48.4 The Tribunal had regard to the evidence including the oral evidence, and the submissions for the Applicant and the Respondent and the admissions of the Respondent. The allegation related to two amounts of money: damages due to Mr TK and a cheque for £30,000 received from Mr TS. The allegation was admitted in respect of Mr TK's money. In respect of Mr TS, the Tribunal found as a fact that the entire amount of £30,000 formed part of the security deposit that Mr TS was paying for 120/120A H Road and all of that amount should have been paid into client account. The Tribunal found allegation 1.2 proved on the evidence to the required standard in respect of both Mr TK and Mr TS's money.

Allegation of dishonesty in respect of allegation 1.2

48.5 For the Applicant, Mr Bullock referred the Tribunal to the test for dishonesty set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12

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

Mr Bullock submitted that the loan was a fiction designed to conceal the fact that the Respondent had misappropriated £10,000 of client money. Three factors tended to show that the loan story was untrue. It was denied by Mr TS, whom Mr Bullock invited the Tribunal to accept as a witness of truth; it was inconsistent with the correspondence, the contents of emails sent by Ms YA of the firm to Mr TS on 4 May

2012 by way of confirmation of her instructions and with Mr TS's own account of matters as set out in his witness statement dated 27 June 2013. The client care letter dated 10 May 2012 also supported Mr TS's version of events. The loan was not in any way documented by Mr TS or the Respondent. The absence of documentation was a matter of particular significance here because if it was a loan the transaction into which the Respondent entered was a deeply problematic one from his point of view on a number of fronts. It meant that Mr TS was only able to proceed with his purchase if the seller was prepared to accept less than the deposit agreed. Even if the seller was willing and there was no suggestion in the documents that he was, it depended on the Respondent being able to repay the loan in full by completion. The transaction created a very clear conflict of interest between the Respondent as borrower and the client as lender. A detail not previously mentioned was that the purchase was not in the sole name of Mr TS, but of Mr TS and Mrs TS. The loan was asserted to be by TS alone and on the Respondent's account, TS told him to keep it secret from his wife so there was a conflict between the Respondent and TS and a potential conflict between the clients about the loan. These were circumstances in which a solicitor would have trodden very carefully which made the absence of documentation confirming TS's instructions all the more surprising and it was also surprising that the Respondent did not seek comfort from the Applicant's Ethics helpline that what he was doing was proper; there was no suggestion he took that step. Mr Bullock also referred to the letter of 23 July 2012 from T Solicitors to the firm seeking the balance, the £10,000. An honest solicitor receiving this letter would have telephoned the client immediately to see how the problem was being addressed. There was no evidence the Respondent did so. There was the evidence of Mr RM's statement that he could find no trace of a letter from the firm or a response to T Solicitors' letter. Mr Bullock submitted that if there was a problem about paying the £10,000, the Respondent should have "come clean" at that time. If the Tribunal found as a fact that the Respondent had misappropriated £10,000 in the TS transaction because it was not a personal loan from TS to the Respondent then the position was left that the Respondent withheld the money from client account without justification and used it for his own purposes. His conduct cried out for an explanation and based on such a finding there was an irresistible inference of dishonesty and the objective and subjective tests in Twinsectra were satisfied.

48.6 For the Respondent, Mr Leskin agreed that the issue was whether the £10,000 was a loan or not and if it was not then the Respondent had been dishonest. The Respondent vehemently denied that he had been dishonest in the Answer. He disputed the witness statement of Mr TS in every point in so far as the latter denied that he agreed that £10,000 of the £30,000 was a personal short-term loan to the Respondent. It was asserted that the Respondent's account was only untrue if Mr TS's account was believed and the Respondent's account was not. A prudent solicitor might well have found a way, even in the circumstances of the secrecy that Mr TS had insisted on, of obtaining confirmation in writing; however the Respondent's failure to do so did not make him a dishonest solicitor. The same applied to the Respondent not bringing the letter of 23 July 2012 to the attention of Mr TS at any time prior to the client visiting the firm's offices to find out what was going on. Further the Respondent had no access to the file or any documents and so could not say whether or not there was a reply to the letter from T Solicitors of 23 July 2012. However he could say that his arrangement with Mr TS was to use the £10,000 as a personal loan and to repay it for the deposit prior to completion and that Mr TS's wife should not know about this.

48.7 Mr Leskin submitted that the Respondent accepted that he did not account for the loan properly and was financially inept in many ways. He was unable to ensure his business's survival. He was possibly not the brightest solicitor and not entirely competent at matters beyond his remit. Being honest did not depend on being competent; the more incompetent he was the more likely he was to be honest. A competent solicitor would not have entered into the agreement with TS but would have sought advice from the Ethics helpline. Failure to do so was not proof that he was dishonest. If it was not a loan and the Respondent acted to hide what he had done that was dishonest but if he was incompetent and did not think things through it did not mean that he was dishonest. The fact he did not tell Mrs TS was the same as if he told her he only paid over £20,000 and was taking £10,000 for his expenses; telling her that would not have put her in a better position. If it was a loan he could not tell her because TS said he did not want his wife to know. The conditions had to be set out. Mr TS told them to move swiftly but this was not correct because no one followed up on it; there was no evidence T Solicitors chased or that the seller said he would put the property back on the market. The bank account showed the money went out on 5 and 9 July to MP, the address of T Solicitors. It was put to the Respondent that he did not correct the client care letter of 10 May 2012 about the money being paid out but he said there was another version of the letter. Mr Leskin referred to a document dated 16 April 2013 Questions put to the Respondent by the IO in respect of the TS transaction. At question no. 24 it was stated:

> "From my examination of your client matter file I found a copy of a client care letter dated 14 May 2012 addressed to Mr [TS] by first class post. A comparison of the two client care letters showed a marked difference between the content of the two letters. In the letter dated 10 May 2012, the first paragraph of page 2 makes reference to the firm being in the process of transferring the sum of £30,000 to the solicitors for the sellers as a security deposit against the purchase price of the property. A copy of the client care letter dated 14 May 2012 is attached for your reference. Please explain the difference between the two letters."

The Respondent's reply stated:

> "The care (sic) letter of 10 May 2012 was prepared by the case worker and was sent before I had the opportunity to check it. When I did check it, I realised that it did not comply entirely with our client care letter template, as certain things were omitted or changed. Furthermore, the information was not sufficiently detailed or entirely accurate. I therefore amended it and the one (14 May) was sent to the client."

48.8 Mr Leskin submitted that Mr TS was a convincing witness and but it was clear that he would not budge. It was easy for him to give an account that he would never give a loan but his answers made that position illogical if he was concerned that the full £30,000 was not paid. He waited six months to check with either the seller or the Respondent whether the money had been transferred while he was trying to get loans to purchase the property. He also said that the seller obtained the 30 November letter from T Solicitors and then said the seller had his solicitors send the letter to TS directly but it was not sent to TS but to the seller and then he said the seller showed it to him.

48.9 As to the issue of Mrs TS's attendance at the firm, Mr Leskin submitted that TS had never previously said she was present; this had not been asserted to the Applicant or the Legal Ombudsman. Now he said she was there when the cheque was handed over. She could have been called as a witness.

48.10 Mr Leskin also relied on the approach to fees. He submitted that there was no discussion about fees initially and money on account was not paid until a month later on 30 May 2012. The Respondent's business was struggling and he was in financial difficulty but he did not say to TS "These are our fees and we want money up front." There was evidence throughout that he did this elsewhere. The Respondent explained the fee situation arising because of the loan; he could not pursue TS for fees and agreed a small fee. If it was not a loan he would have pushed for the fixed fee of £1,500.

48.11 Mr Leskin also pointed out that according to the statement of Mr RM, Mr TS did not instruct a new solicitor until March 2013. If the Respondent had stolen Mr TS's money it seemed unlikely TS would have kept him on as a solicitor for three months after discovering it. If there was no loan why did the Respondent not take more money from the deposit if he was in financial difficulties?

48.12 Mr Leskin submitted the Tribunal had bank statements before it. The Respondent said he did not use a client account; he did not undertake conveyancing and so money must be paid into office account. The evidence of Mr PO the book keeper was not challenged. He said:

> "There was an occasion, probably about three years ago, when he [the Respondent] telephoned me with a question. I remember this occasion because he subsequently discussed it with me on number of occasions. [The Respondent] told me that he had received a cheque for £30,000 of which £10,000 was to be a loan and the other £20,000 was to be used as a deposit for a conveyance. He asked me how he should pay the cheque in to his account. I said he should pay it into his client account initially. He said however that would look odd because he would then be taking £10,000 out of the client account and it would raise questions as to what he was doing with the £10,000. I told him that he could pay it into his office account if he immediately sent off a cheque to the seller's solicitors for the deposit for £20,000 so it did not stay in his office account. We also discussed opening a nominal ledger account for the £10,000."

Mr Leskin submitted that he did not rely much on the loan account; it was produced in 2013 and ran from 6 April 2012 to 31 December 2012. It was not known when the individual entries were made in the account. The Respondent said that Mr PO created it in 2012 but there was no evidence for that. It was described as a creditor's account with £30,000 coming in and £20,000 going out leaving £10,000. The most essential thing about Mr PO's statement was that it showed the loan was not a recent fabrication. The Respondent was dealing with the £10,000 as a loan at the time he received the £30,000 cheque. It did not make sense that he said "I'll say it's a loan and set up a system to look as if it's loan in case it ever comes up." The Respondent would have to be incredibly clever. He would not have had the foresight and cleverness to have got up something false. If there was the possibility that the £10,000

was a loan because otherwise how had it come about, the Respondent should not be found dishonest.

48.13 In cross examination, the Respondent stated that he was a competent, honest solicitor. Mr TS was offering the £10,000 as a loan and the Respondent took it. As to the fact that if it was not repaid TS might not be able to complete the transaction, the Respondent said that unexpected things happened. He disagreed that taking the loan made the transaction riskier; TS said he knew the seller very well and there would not be any problem if the £10,000 was repaid in two to three months (at completion) and TS knew the Respondent would do so; therefore the Respondent saw no conflict. The Respondent stated that TS said he would speak to JL and he understood the situation. As to the proposition that the Respondent had put himself in a conflict where TS was the creditor and he was the debtor, the Respondent said from what he understood from TS that he was funding the purchase of the property for his wife to use as a hairdressing salon. The Respondent did not know that they were both buying; he thought the wife was the purchaser. The Respondent disagreed that his interests and those of TS were different regarding what was on his evidence a loan. The firm had a special relationship with TS as set out in YA's 4 May 2012 email and the Respondent did not see him as a client.

48.14 The Respondent was referred to the letter dated 10 May 2012 to TS. He agreed it was a client care letter although drafted by a colleague and it appeared from the letter that TS was a client. He agreed the first line thanked TS for instructing the firm and the Respondent stated that he was given instructions at that time. The Respondent did not know if the purchase was for TS and his wife in joint names because he did not complete the transaction. The Respondent stated that he remembered very well what happened at the beginning of the matter. TS asked him if he did conveyancing and said he wanted to buy a commercial property. The Respondent said that he could get someone to assist TS as a friend of the firm. The Respondent took responsibility as principal. He did not take proper (that is full) instructions and asked YA to deal hence his not knowing to whom the property was to be transferred. The Respondent agreed it was his version of events that the first meeting was attended by him and TS alone. The Respondent stated that TS brought the cheque for £30,000 two days after he first came. In re-examination he said that TS would not have brought the cheque the first time he visited as he TS did not know if the Respondent undertook conveyancing.

48.15 The Respondent asserted that TS came alone to see him without his wife and with YA not present and the loan was discussed but fees were not. The email dated 4 May 2012 with its reference to a reduced fee came about because TS called the Respondent about being charged between £2,000 and £3,000 and the Respondent asked why TS had not talked to him about fees. As TS had done the Respondent a favour regarding the loan he could have had the conveyancing without charge and the Respondent told YA to reduce the fee. The Respondent clarified for the Tribunal that he had known TS since around 2010 before he set up his practice.

48.16 As to why the loan agreement had not been recorded in writing, the Respondent stated that TS did not want his wife to know about the loan. He regretted that he had not documented the loan; having regard to what he had gone through in the last 20 months or more and his struggle to qualify he would not have placed his life,

future and family at risk. If he had thought there was a problem in an honest and competent solicitor accepting a loan he would have asked for a written agreement.

48.17 The Respondent explained regarding the 4 May 2012 email from YA in which she said she would transfer the £30,000 as soon as she knew where to send it (i.e. had the bank details), that they were just getting ready. They would make the transfer as soon as the conditions were satisfied. It was put to the Respondent that if his account was correct then YA as the fee earner must have known about the loan agreement as it came out of the deposit. The Respondent rejected that; if YA knew then Mrs TS would probably know. It was possible for YA not to know because the Respondent did the accounts and YA would probably refer to him if she had to deal regarding the security deposit. The Respondent stated that as YA was not privy to his verbal agreement with TS the client care letter sent by YA letter was written to TS and not to TS and Mrs TS. The Respondent could not breach TS's confidence and trust. The Respondent was in control of the accounts and he would get the money back in two months and neither YA nor anyone else would know about the loan.

48.18 The Respondent disputed the meaning of the words in the client care letter: "We are now in the process of transferring the sum of £30,000 to the solicitors for the seller..." The sum of £20,000 was to be paid then and £10,000 later although this was not what the letter said because TS did not want his wife to know. The Respondent also stated that TS would not tell the solicitors for JL that the £10,000 was a loan because of the need for secrecy. As to this illustrating perfectly the conflict he placed himself in, the Respondent said that he did not contemplate not being able to repay. The Respondent disagreed that there was a conflict because the deposit was not paid back; the date of payment could not be put back and the property was to be transferred to the wife but it was to be secret from her. The Respondent stated that he would not lie about something like the £10,000.

48.19 As to his arrangements for supervision, the Respondent stated that he was sometimes at court (and so could not check letters before they went out.) When he saw the client care letter he did not like it and caused another to be sent. He thought it was produced to the Applicant. Sometimes YA did not do things correctly; he was not talking about the £10,000. It was put to him that he corrected other things but not the reference to the transfer of £30,000 being made to the seller's solicitors. The Respondent replied that the business was being done in May 2012 and the money was transferred in July 2012. In re-examination the Respondent stated that he assumed that Mrs TS would see the client care letter and he agreed that was the reason it referred to £30,000.

48.20 The Respondent stated that he did not realise there would be financial difficulties. He was asked why if he was not (already) in financial difficulties he needed a loan. He stated that he had "financial expenses" of £4,000 to £7,000 and if these were not met there could have been problems for the firm. The Respondent's bank manager would not give him a loan. He had been with the bank for five to 10 years and just moved in February or March 2012 to another bank. He approached it when the situation was getting out of hand. He later said he thought he approached the banks in March or April before TS came to his office. The Respondent said in December 2012, he approached a financial adviser for £15,000 and was turned down because he could not be found on the electoral register although he been in the UK since 1989. He did all he could so that TS would not suffer. TS was very good to him; their companies

shared a Christmas party. The Respondent talked to TS about his business when in difficulty. It was put to the Respondent that he was borrowing from TS because no one else would lend to him. The Respondent said he would not steal and would never have taken money out of the deposit without permission. He agreed he was in a tight place financially.

48.21 The Respondent was asked about his first letter to the IO dated 29 April 2013. It included:

> "I have not transferred the remaining £10,000 to the seller's solicitors. I am in the process of repaying the loan to Mr [TS]."

As to what steps was he taking to repay when he sent the letter, the Respondent said that in December 2012 he had approached the financial adviser and when TS realised the Respondent had not transferred the £10,000 loan to the seller's solicitors the Respondent went to see a friend who transferred £6,000 to the Respondent's account, bringing it to £11,000. The Respondent was quite happy that the problem was over. He was about to issue a cheque to the seller's solicitors when he found that £4,000 had been taken from the £11,000 about which he could not have known. He took every step to repay the loan. He spoke to family members. He did not have property, a car or lead an ostentatious lifestyle. He had even given TS a written agreement he was so sure that he would repay him. The Respondent knew his career was at stake because of TS persisting in December 2012 in particular, if not before then. In re-examination, the Respondent was asked what the words: "I am in the process of repaying the loan to Mr [TS]." meant. He stated they meant everything in his power to pay TS whether then or later; that he was doing his best to repay as TS had done him a favour. He agreed it did not mean he was physically repaying the loan.

48.22 The Respondent denied that the loan was a fiction to conceal misappropriation. The Applicant was about to visit the firm in November 2012 and the Respondent was away in Nigeria on another matter. The Respondent was told that the IO would look at the bank statements. He told Ms DA to go to Mr TS and have him confirm the loan. The Respondent did not know if the Applicant would "twist" the situation. Ms DA called him and reported that TS said it was a loan and there was no problem so long as the Respondent paid it back.

48.23 The Tribunal had regard to the evidence including the oral evidence, and the submissions for the Applicant and the Respondent. It found in respect of dishonesty and allegation 1.2 as follows. The allegation of dishonesty focused on the sum of £10,000 of the total of £30,000 which no one disputed was intended as a security deposit for the purchase of 120/120A H Road. Mr TS who made the payment denied that he had agreed that £10,000 of the total sum could be taken as a loan by the Respondent pending completion of the transaction. The Respondent asserted an oral agreement for a loan in that amount. Thus the Tribunal was presented with two versions of events. The Tribunal had heard oral evidence from both Mr TS and the Respondent. Mr TS had given cogent evidence during a lengthy cross-examination. The Tribunal had found Mr TS to be a reliable witness who gave a credible account of events. His evidence was consistent and he adhered to it. Furthermore it was in accordance with the documentary evidence or absence of it before the Tribunal. There was no documentation of any kind to support the Respondent's assertion of a loan.

Indeed the documentation indicated that the full amount of £30,000 was always intended to be paid over to the seller's solicitors by way of security deposit. The documentary evidence was worth setting out because it was so clear. The e-mail sent on 4 May 2012 by Ms YA the person with conduct of the transaction stated:

> "In accordance with your instructions, we have sent correspondence to the seller's solicitors requesting bank details in which to transfer, £30,000, being security deposit for the sale of the property…"

The client care letter sent by Ms YA dated 10 May 2012 categorically stated:

> "We are now in the process of transferring the sum of £30,000 to the solicitors for the sellers as security deposit against the purchase price of the property…"

The Respondent testified that there were two versions of the client care letter and the FI Report appeared to support that but whatever changes the Respondent made in the second version it was not disputed that the key reference to payment of £30,000 was not changed and no qualification was inserted about the money being paid in two tranches.

48.24 The Tribunal accepted Mr TS's evidence that he was not prepared to pass £30,000 to his next door neighbour/seller direct; he wanted the matter to be dealt with formally. He would not have handed over £10,000 to the Respondent who was an acquaintance rather than a friend without requiring documentation. The Tribunal also accepted his evidence that he was most anxious to have the deposit paid over and for the property, which was uniquely situated to be convenient to Mr TS and his wife for business purposes, to be taken off the market as another potential purchaser had shown an interest in it. He was anxious not to do anything which would undermine the seller's confidence in him and his wife as purchasers. He would not jeopardise the transaction by holding back some of the security deposit particularly not by making an undocumented loan which could jeopardise completion if it was not repaid as proved to be the case. The reason he had not chased the matter vigorously was because he could not raise the funds and so he let matters lie and did not pursue the issue of the deposit with the Respondent until his neighbour told him that only £20,000 had been paid. In these circumstances, the Tribunal was sure that if there had been some kind of arrangement affecting part of that security deposit then Mr TS would have insisted that it was in writing. Furthermore even the witness Ms DA, who testified that she had been sent by the Respondent to see Mr TS just before the commencement of the Applicant's investigation, stated that when she mentioned the loan to Mr TS he denied knowing about it at first. Mr TS had testified that he had no idea why Ms DA visited him and that evidence was completely credible. By contrast the answers given by the Respondent were unreliable. The Respondent had attributed the absence of documentation and the absence of knowledge by anyone else of the purported loan arrangement to a desire by Mr TS that his wife should not be aware of it. His story about concealment from Mrs TS was implausible. The Respondent's assertion that Mr TS only was funding the purchase rather than purchasing with his wife was unconvincing; the client care letter from YA mentioned both Mr TS and his wife as purchasers in that it said "you have also indicated that in the title deed, your wife's name is to appear first". The Tribunal noted from the client care letter and the e-mail exchanges run by Ms YA that the firm was quite careful about documenting

transactions. Mr Bullock had also relied on the conflicts of interest which making a loan would have created for the Respondent between himself and Mr TS and between Mr and Mrs TS and asserted that it was unbelievable that any solicitor have taken a loan from a client without documenting very clearly the terms of the loan and that a solicitor would not fail to recognise the conflict of interest it would put him in. The Tribunal noted the submissions but did not consider them to be determinative. However all the reliable evidence pointed to the £10,000 not being a personal loan to the Respondent.

48.25 The Tribunal then went on to consider the two limbed test for dishonesty in the case of Twinsectra. The Respondent had received money from a client Mr TS for a specific purpose. He ignored that purpose and on his own evidence used the money for his own ends; he admitted in a letter of 9 May 2014 to the Applicant "so far as the £10,000 Mr [TS] is concerned, I spent that money in expenses to run the business ..." The Tribunal found that by the ordinary standards of reasonable and honest people this conduct would be considered dishonest. As to the subjective test, the Respondent was in financial difficulties and on his evidence needed £4,000 to £7,000 for expenses or the firm would be in trouble. The Tribunal found the Respondent concealed what he had done from Mr TS and did not take the opportunity to tell him when Mr TS came to the office to find out what was happening having been informed by the seller that his solicitors had not been paid the security deposit in full and that the Respondent knew that by those standards what he was doing was dishonest. There was no other conceivable conclusion which could be consistent with these facts. The Tribunal was therefore satisfied on the evidence to the required standard that the Respondent had been dishonest in respect of the £10,000 the subject of allegation 1.2.

49. **Allegation 1.3 - He [the Respondent] breached Rule 17.4 of the SRA AR 2011 in that he failed to pay into client account a sum of £5,000 paid by a client on account of costs.**

49.1 For the Applicant, it was set out in the Rule 5 Statement that Rule 17.4 of the SRA AR 2011 provided that

> "A payment on account of costs generally in respect of those activities for which the practice is regulated by the SRA is client money, and must be held in client account until you have complied with rule 17.2 above."

A solicitor complied with Rule 17.2 by giving or sending:

> "...a bill of costs or other written notification of the costs incurred, to the client or the paying party."

Mr Bullock relied on the facts set out in background to this judgment in respect of the sum of £5,000 paid by Mr TS to the firm on account of fees. By way of his letter of 9 May 2014 to the Applicant, the Respondent said he paid the £5,000 client money into his office account because there was nowhere else to pay it:

> "So far as the £5,000 is concerned I believe that this was all paid into our own office account."

And

> "I do not understand why the [IO] was unable to identify receipt of the £5,000 into the office bank account. The money was paid by a cheque from Mr TS so it must have been paid into the account. There was nowhere else it could have been paid into."

As at the date of the Rule 5 Statement the account into which the £5,000 of client money was paid was unknown. Mr Bullock submitted that allegation 1.3 was denied on the basis that Rule 17.4 did not apply to the sum in question but it was admitted that Rule 14.1 had been further breached in respect of £3,200 of the total.

49.2 In his Answer, the Respondent said that he did not accept in relation to the £5,000 he received that he breached Rule 17.4 but accepted that he breached Rule 14.1 by not paying into his client account the requisite balance of the £5,000 after his fixed costs and disbursements already incurred had been deducted. Mr Leskin submitted that there might be an issue about payment out of disbursements being justified and the exact figure involved in the allegation but that was not relevant; the allegation was admitted. There was a gap in the bank statements to 29 June 2012 which was not helpful in showing the financial picture but the Respondent could not challenge the IO if he said he could not find the £5,000.

49.3 The Tribunal had regard to the evidence including the oral evidence, and the submissions for the Applicant and the Respondent and the admissions for the Respondent. The papers before the Tribunal included a bill of costs stated 10 May 2012 in the sum of £1,500 plus £300 by way of VAT in relation to "Purchase of a commercial property". It was unclear from the documentation whether a separate fee agreement had been attached to the client care letter or whether the letter itself constituted the agreement but in his statement dated 27 June 2013, Mr TS referred to producing the bill of costs dated 10 May 2012 and stated that he had agreed to a fixed fee for the Respondent's work in the sum of £1,800 that is £1,500 plus VAT. The amount of £5,000 was received by the firm on 30 May 2012. The FI Report referred to fixed costs of £1,500 plus VAT resulting in a refund due to Mr TS in the sum of £3,200. In his Answer, the Respondent accepted that he was in breach of Rule 14.1 by failing to pay the cheque into client account following which he could then have transferred to office account the fixed fee and the disbursements already paid. The Respondent did not say what precise disbursements had been incurred and there was no evidence about that. The balance of £3,200 was described in the FI Report as client money and it was set out that as the matter did not complete and once the fixed costs plus VAT had been subtracted this resulted in a refund due to Mr TS in the sum of £3,200. The Tribunal found that no bill had been raised in respect of that sum. The Tribunal found that the sum of £1,800 out of the £5,000 related to fixed fees and therefore its not being paid into client account did not constitute a breach of Rule 17.4. As to the balance in respect of which there was no evidence that it was paid on account of costs, it clearly should have been paid into client account and the failure constituted a breach of Rule 14.1 rather than Rule 17.4. Accordingly the Tribunal asked to be addressed by the parties upon this point. Mr Leskin submitted that the Respondent regarded this as a technical point and he accepted that he had breached the accounts rules. Mr Leskin submitted that this was a fixed fee situation but whatever the rule breach the punishment would be the same. Mr Bullock applied to

amend the allegation and the Respondent was prepared to agree to the amendment so that it referred to Rule 14.1 instead of Rule 17.4. The Applicant had closed its case on 8 July 2015 and the Tribunal did not consider it proper to allow the amendment at such a late stage in the proceedings notwithstanding that the Respondent agreed to it. The Tribunal was not sure beyond reasonable doubt that the failure to pay all or part of the £3,200 available for disbursements into client account was a breach of Rule 17.4 which required the payment of money on account of costs into client account. For that reason and that reason alone the Tribunal did not find allegation 1.3 proved to the required standard on the evidence and dismissed the allegation.

Previous Disciplinary Matters

50. None.

Mitigation

51. None was offered.

Sanction

52. The Tribunal had regard to its Guidance Note on Sanctions. The most serious aspect of the Respondent's misconduct was the Respondent's dishonest misappropriation of £10,000 client money for his own purposes. His motivation was that he was in financial difficulty and the Tribunal had found that he had deliberately come up with a way to withhold the money at least until the transaction in question was due to complete. He had mentioned several times that he hoped to be able to put the money back to that timetable. The harm done by the Respondent's misconduct was significant; Mr TS was left in a position where he could not complete the transaction without borrowing further money. He was a member of the public who had trusted the Respondent and thought that entrusting this security deposit to the Respondent to pass on to the seller's solicitors would safeguard his position. The Respondent had therefore significantly departed from the "complete integrity, probity and trustworthiness" expected of a solicitor as set out in the case of Bolton v The Law Society [1994] 1 WLR. The harm arising out of the misconduct might reasonably have been foreseen because of the clear risk it posed to the client being able to complete his transaction. As to aggravating factors, the Tribunal had found dishonesty proved against the Respondent and that what he had done was deliberate. He had come up with the story of the loan to conceal his actions. He ought reasonably to have known that such conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. The client Mr TS was not the only person to have suffered as a result of the Respondent's misconduct; Mr TK had lost money and had had to go to the Legal Ombudsman who in turn had to resort to the courts to order Mr TK's reimbursement which did not happen in full. As to whether there were any mitigating factors Respondent had not made good the clients' losses and had shown little insight in giving evidence into what he had done. It was set out in the Guidance Note that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. No submissions has been made that there were

exceptional circumstances and the Tribunal found there to be none. The Tribunal considered that it would be appropriate and proportionate to strike off the Respondent.

Costs

53. The Applicant's statement of costs amounted to £16,570.54. Mr Bullock informed the Tribunal that there had been useful discussions between the parties. The Respondent had submitted a Personal Financial Statement in July 2015 which showed that he was impecunious. His average monthly deficit was shown as £255. Further material had been provided updating the position by way of bank statements and credit card statements which showed that his position had not improved. The parties proposed that there should be an award of costs to the Applicant in the agreed sum of £12,000. This took into account specific objections to items in the costs schedule that Mr Bullock was prepared to agree. It was proposed that any costs order should not be enforced without leave of the Tribunal but should be made on the basis that the Respondent undertook to the Applicant to notify the Applicant's costs recovery department within 14 days of obtaining full-time employment because the reason for his impecuniosity was that he was not presently working full time. Mr Bullock indicated that had the Respondent not been prepared to give the undertaking to the Applicant then he Mr Bullock would have been more strenuous in defending the costs schedule. The Tribunal indicated that while it was prepared to reflect the position agreed between the parties in its judgment it did not consider it was appropriate to make it part of the Tribunal's order (as the undertaking was not one to which the Tribunal was a party or in a position to enforce).

Statement of Full Order

54. The Tribunal Ordered that the Respondent Yunus Agboola Alatise, 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 agreed sum of £12,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 22nd day of December 2015
On behalf of the Tribunal

J.A Astle
Chairman