SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11303-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DUNCAN JOHN DOLLIMORE Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr J. A. Astle
Lady Bonham Carter

Date of Hearing: 16 April 2015

Appearances

Mr Jonathan Goodwin, of Jonathan Goodwin, Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

Mr Francis Fitzgibbon QC of Doughty Street Chambers, 53-54 Doughty Street, London WC1N 2LS for the Respondent who was present.

JUDGMENT

Allegations

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

1.1 He made representations to his client Mrs TE which were inaccurate, misleading and untrue in breach of Rule 1.02 and/or Rule 1.04 and/or 1.05 and/or 1.06 of the Solicitors Code of Conduct 2007 ("the Code") and in breach of Principles 2 and/or 4 and/or 5 and/or 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome ("O") (1.2) and O(1.5) of the SRA Code of Conduct 2011.

1.2 He failed to provide adequate cost information to his client TAP Ltd in breach of Principles 3 and 5 of the Principles and O(1.13) of the SRA Code of Conduct 2011.

1.3 He made representations to his client Mr KM which were inaccurate, misleading and untrue in breach of Principles 2 and/or 4 and/or 5 and/or 6 of the Principles and failed to achieve O (1.2) and O (1.5) of the SRA Code of Conduct 2011.

In relation to allegations 1.1 and 1.3, it was further alleged that the Respondent acted dishonestly although it was not a necessary ingredient of either of those allegations. It was asserted that the Respondent's conduct was dishonest by the ordinary standards of honest behaviour and that he knew he was transgressing the ordinary standards of honest behaviour by:

- Being dishonest in that he made representations to Mrs TE which were inaccurate, misleading and untrue over a long period of time throughout the progress of her case and also by giving her a false court case number twice;

- Being dishonest to Mr KM in that he made representations which were inaccurate, misleading and untrue about the progress of his case and that proceedings had been issued when they had not.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 5 November 2014 with exhibit SD1
- Judgment in the case of SRA v Spence [2012] EWHC 2977 (Admin)
- Applicant's schedule of costs dated 10 April 2015

Respondent

- Respondent's answer to Applicant's Rule 5 Statement, dated 8 January 2015
- Respondent's statement dated 16 March 2015 with exhibit DD
- Psychiatric report of Dr C.M. Tyrie, consultant psychiatrist dated 19 February 2015
- Respondent's statement of means dated 6 March 2015

Preliminary Issues

3. For the Applicant, Mr Goodwin informed the Tribunal that the Applicant admitted all three allegations. Originally he had also admitted dishonesty based only on the objective limb of the test for dishonesty used by the Tribunal as set out in the case of Twinsectra v Yardley and Others [2002] 2 AC 164. The report of the consultant psychiatrist, Dr Tyrie dated 19 February 2015, in that connection, was not agreed. The Respondent now admitted dishonesty based on both the objective and subjective limbs of Twinsectra and would refer to the report of Dr Tyrie as mitigation.

4. For the Respondent, Mr Fitzgibbon submitted that the Respondent had from the beginning not denied that he had lied to two clients in respect of allegations 1.1 and 1.3. The Respondent understood that lying was in itself a serious matter but he needed to understand if dishonesty was alleged in respect of other conduct. Mr Goodwin confirmed that the allegation of dishonesty was limited to lies to the two clients. The Tribunal sought clarification that an application which the Respondent had previously made to vacate the substantive hearing was being withdrawn. Mr Fitzgibbon confirmed that this was the case.

Factual Background

5. The Respondent was born in 1967 and admitted to the Roll in 1995. He held a current practising certificate with the following conditions:

    - He is not to be a recognised sole practitioner, sole director, manager or owner of a recognised licensed or legal services body;

    - He shall immediately inform any actual or prospective employer of these conditions and the reason for the imposition.

6. The Respondent worked at Paul Dodds Solicitors ("the firm") in Tyne & Wear from 3 February 2003 and was a partner from 1 September 2003 until 10 October 2008 when he stood down. He was re-appointed as a partner in late 2010. The Respondent tendered his resignation by e-mail dated 14 August 2013 and left the firm on 13 September 2013.

7. The Respondent presently worked as an assistant solicitor for Pearson Caulfield Solicitors and Barristers of Newcastle upon Tyne.

Allegation1.1

8. The Applicant received a letter dated 28 June 2013 from Mr PD, senior partner at the firm who wished to bring to the Applicant's attention the misconduct of the Respondent. Mr PD stated that on 14 June 2013, he received a telephone call from a client Mrs TE who advised him that:

    - She had instructed the Respondent to act for her in a proposed claim for professional negligence
    - She understood that legal proceedings had been commenced
    - She believed that there had been a preliminary hearing

- She believed that the case was likely to settle
- She was concerned about the lack of progress in her case.

Upon investigating matters, Mr PD spoke with the Respondent who admitted that he had misled Mrs TE regarding the status of her case.

Allegation 1.2

9. Mr PD carried out a file audit on the Respondent's files and discovered an issue relating to TAP Ltd. The client had followed the Respondent when he joined the firm in 2003. The Respondent was the only solicitor who worked with this client. Mr PD found that the Respondent had failed to invoice this client either properly or at all. In his letter dated 19 November 2013, Mr PD stated:

> "...The client had literally tens of thousands of pounds worth of legal work done for them of a very high standard without any terms of business having been delivered with regard to charging and without any effort or attempt having been made to ensure that the work done was properly invoiced."

Allegation 1.3

10. Mr PD became aware of another client of the Respondent who had been dealt with in a similar manner to Mrs TE which he reported in his letter to the Applicant dated 19 November 2013. The matter came to his attention via his partner in the firm Mr DC who had met with Mr KM on 17 September 2013 to go through a file of papers opened by the Respondent relating to a dispute between Mr KM and A Finance Limited. This meeting occurred some three days after the Respondent had left the firm.

11. Mr DC was frank with Mr KM without revealing any client's identity when queried about the Respondent's resignation. Mr KM informed Mr DC that he too had been most unhappy about the progress of his dispute with A Finance Limited and he and his fellow director had met with the Respondent on 25 July 2013 with the intention of making a formal complaint about his conduct.

12. Mr KM stated that at the meeting on 25 July 2013, the Respondent became very emotional and put forward a variety of reasons for his conduct. Mr KM's intention had been to see Mr PD but the Respondent persuaded him not to do so. The Respondent informed Mr KM that firstly he was facing disciplinary action by Mr PD because he had accepted cash payments from Mr KM's business instead of delivering invoices and secondly, that Mr PD was investigating the Respondent for money-laundering due to the fact that Mr KM had completed the purchase of a property using money supplied by his company.

13. Mr KM informed Mr DC that while he had come to the meeting with the intention of complaining about the Respondent, he ended up having to defend himself against these two allegations.

14. Mr DC reassured Mr KM that neither of the issues raised by the Respondent had any truth in them whatsoever. Mr DC then went through the file of papers relating to Mr KM's dispute with A Finance Limited. The file showed that Mr KM had instructed the Respondent at the end of July 2013. A file copy of the client retainer letter suggested that Mr KM might have raised the matter some months earlier but had decided against pursuing matters but then changed his mind and wished to progress matters again.

15. Mr KM stated that he had never received the client retainer letter; that the matter had been ongoing for some two years and he had been reassured by the Respondent on numerous occasions that matters were progressing. Mr DC informed Mr KM that he would investigate matters further and would speak to the Respondent as well.

16. On 3 July 2014, an authorised officer at the Applicant made a referral decision to the Tribunal.

Witnesses

17. There were no witnesses.

Findings of Fact and Law

18. 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.

19. **Allegation 1.1 - He [the Respondent] made representations to his client Mrs TE which were inaccurate, misleading and untrue in breach of Rule 1.02 and/or Rule 1.04 and/or 1.05 and/or 1.06 of the Solicitors Code of Conduct 2007 ("the Code") and in breach of Principles 2 and/or 4 and/or 5 and/or 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome ("O") (1.2) and O(1.5) of the SRA Code of Conduct 2011.**

19.1 For the Applicant, Mr Goodwin relied on the facts as set out in the Rule 5 Statement where the relevant Rules, Principles and Outcomes were set out. Rule 1.02 of the Code and Principle 2 required solicitors to act with integrity. Rules 1.04 and Principle 4 required solicitors to act in a client's best interests. Rule 1.05 and Principle 5 required solicitors to provide a proper standard of service to their clients. Rule 1.06 required solicitors not to behave in a way that was likely to diminish the trust the public placed in them or the legal profession while Principle 6 required solicitors to behave in a way that maintained the trust the public placed in them and the provision of legal services. Outcome (1.2) required the solicitor to provide services to their clients in a manner which protected their interests in their matter, subject to the proper administration of justice. Outcome (1.5) required solicitors to provide a service that was competent, delivered in a timely manner and took account of their clients' needs and circumstances.

19.2 Following receipt of the telephone call from Mrs TE, Mr PD investigated her matter. From the case file, Mr PD found that no legal proceedings had been commenced; there had been no preliminary hearing; there had been no intimation of a claim and accordingly no suggestion from the proposed defendant that the claim was likely to settle. The Applicant received a further letter from Mr PD dated 19 November 2013 confirming that between July 2010 and June 2013, the Respondent repeatedly and deliberately misled his client Mrs TE. According to Mr PD, the Respondent made a full and frank admission of his gross misconduct in that he had told Mrs TE that he had sent a letter of claim; had commenced court proceedings; a Directions hearing had taken place; there had been an indication from the defendant that they wished to settle on favourable terms; and that the case was to be listed for trial in April 2013 all of which was untrue. He also admitted that he had provided Mrs TE with a false case number when she asked him for the court case number so she could make enquiries and when she contacted the Respondent and informed him that the court had no record of that case number, he provided her with a further false case number.

19.3 The Applicant wrote to the Respondent on 20 March 2014 (dated 2013) asking for an explanation. A response was received from the Respondent dated 10 May 2014. Under the title Allegation 1, he admitted lying to Mrs T:

> "I lied to [Mrs TE] about the progress of her case, always planning to do that which I had told her I had done in the following days. That never happened. When all of this came to light last June Mr [PD] asked me why I had not realised that this was bound to come out at some point. Of course he was right. By that time I was simply burying my head in the sand in relation to various problems, telling myself I would be able to sort out the problem the following week, which I was never able to.
>
> ...I had not actually received a case number when I e-mailed Mrs [TE] on the 14th June. The case number I sent to her was an incorrect number. I was desperate by that point and not thinking clearly..."

The Respondent also expressed his apologies to Mrs TE and Mr KM:

> "...both of whom I let down badly whilst acting as their solicitor."

19.4 Mrs TE made a statement regarding Mr PD's report to the Applicant. She gave dates when she instructed the Respondent and information regarding her claim for professional negligence against her previous solicitors. The Respondent agreed a no-win/no fee agreement but did not then produce a written agreement for Mrs TE's signature. Despite raising this with the Respondent several times, Mrs TE did not receive any form of client care letter. The Respondent received her file of papers from the previous solicitors towards the end of July 2010. Mrs TE did not hear from the Respondent so she telephoned him periodically for updates. The Respondent assured her that he was dealing with her matter and around November 2012, that he believed the case would settle and be resolved.

19.5 On another occasion when Mrs TE contacted the Respondent for a progress report, she was informed that the case would come to trial in April 2013. Despite many requests from Mrs TE for the Respondent to send her copies of the court pleadings,

this was not forthcoming and finally she telephoned the Respondent and asked him to provide her with a court case number so she could contact the court. The Respondent provided her with a number and she contacted Newcastle-upon-Tyne County Court to ask for a copy of her case papers. Mrs TE was informed by a member of staff at the County Court that the case number did not exist. Mrs TE telephoned the Respondent who explained that he must have given her an incorrect case number and apologised. On request, he gave her a further case number. When Mrs TE telephoned the court with that case number, she was informed that no such case number existed.

19.6 In her statement, Mrs TE stated that on 14 June 2013, she telephoned Mr PD who assured her that he would investigate matters immediately and revert back to her. "Mr PD called to see me at my home... He reported to me that he had established that [the Respondent] had misled me and had lied to me throughout my instruction of him." In particular, Mr PD informed Mrs TE that the Respondent had never intimated a claim to her previous solicitors; he had not commenced court proceedings; he had not attended a preliminary court hearing; he had not received any indication that the claim would settle on favourable terms; the case was not listed for hearing in April 2013; the Respondent had provided Mrs TE with false claim numbers; and that he had not entered into a no-win/no fee agreement with Mrs TE.

19.7 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.1 proved on the evidence to the required standard; indeed it was admitted.

20. **Allegation 1.2 - He [the Respondent] failed to provide adequate cost information to his client TAP Ltd in breach of Principles 3 and 5 of the Principles and O (1.13) of the SRA Code of Conduct 2011.**

20.1 For the Applicant, Mr Goodwin submitted that no dishonesty was alleged in respect of allegation 1.2. He relied on the facts as set out in the Rule 5 Statement. Principle 3 required solicitors not to allow their independence to be compromised and Principle 5 related to a proper standard of service as set out under allegation 1.1 above. Outcome 1.13 required solicitors to provide the best possible information, both at the time of engagement and when appropriate as their matter progressed, about the likely overall cost of their matter.

20.2 Mr Goodwin referred the Tribunal to the minutes of Mr PD's investigatory interview with the Respondent on 13 August 2013 when the Respondent accepted the issues put to him regarding the subject matter of this allegation. Minutes of this meeting were before the Tribunal. At the meeting the Respondent agreed that there was no terms of business letter to the client setting out the basis upon which they would be charged in the TAP Ltd file; the Respondent did not provide costs information; no time recording was carried out for this client; the client file went missing in February 2013; he intended to open a temporary file but did not do so. The Respondent also agreed that there was another matter of TAP and PY which related to a 25 year lease being granted which had nothing to do with the litigation matter for the client and the Respondent agreed he should have set up a separate file but did not do so. The Respondent also agreed that he had done additional work on directors' service agreements for TAP's directors Mr GD and Mr PC and not charged for it. He had drafted notes on an AGM, drafted a letter regarding PY where it set out heads of

terms, drafted directors' service agreements for TAB Ltd (a related company whose first two names were identical to TAP Ltd); and that he did not set up a separate file with the charging agreement and charge to the client.

20.3 The Respondent also agreed in respect of the litigation matter that he had drafted, in respect of a claim settled by M Solicitors, a preliminary defence of some six pages and then further work expanding it to 13 pages with detailed schedules of motorcars on which he had spent a lot of time. He dealt with correspondence concerning the trial window and prepared a disclosure list. There was a telephone court hearing on 8 July 2011 and he started to prepare statements. On 11 October 2011, he wrote to the court with an estimate of costs and when asked how he came to that amount said: "... To be honest it was a stab in the dark. I had seen the claimant's estimate". The Respondent drafted all the witness statements and he undertook the trial when Mr GD gave his evidence and changed his account of the matters in the witness box and said that his witness statement was not true. The client did not criticise the Respondent who then made an application for disclosure of documents, attended a court hearing on 30 January 2012 and another hearing on 18 April 2012 when the case was dismissed with costs summarily assessed at £5,277. The Respondent then prepared an amended agreement on the directors' service agreements for TAB Ltd and the firm paid for a company search. The Respondent undertook the quantum trial in July 2012 with the end result of judgment of £41,000. The cost settlement was for £92,000 but the costs of the assessment proceedings were still outstanding with the claimant wanting £13,000 and the offer was £7,500. The Respondent typed a letter dated 7 August 2013 but did not save it. A hearing date was listed for 30 August 2013 if it was not settled before then. The Respondent sent a bill in March 2013 for £3,000 plus VAT. Mr PD asked the Respondent:

> "In your cost estimate you told the court that your costs to date were £8,500 and your estimated costs following a trial at £15,000. At the time you did not know there would be a split trial. You did not know there would be disclosure applications and applications to amend both of which were opposed".

The Respondent replied "I have told you I gave no thought to the cost estimate." The following conversation then took place where R is the Respondent:

> "PD: You provided no costs information, you supplied no charging agreement, you tell me that your estimate to the Court was a guess, can you tell me how many hours you spent on this job?
>
> R: I couldn't guess. I would agree more than £3,000. It would be a guess anything I said.
>
> ...
>
> PD: My estimate is that a case like this and the work you have clearly done should've generated a fee in the region of £30,000. How did you arrive at a bill of £3,000?
>
> R: As you well know without a fee agreement I have no manner of enforcing an entitlement to be paid fees. It was a bad outcome to the case I believed we would win. The case went badly wrong. It created

issues within the company. The two directors were at loggerheads. I have no charging agreement. I couldn't enforce payment. If I had sent a bill for £30,000 it would not have been paid.

...

PD: There is no time record. It is difficult to judge the worth of the case but you did estimate £15,000 and the claimant's base costs appear to be £27,000. What was the discussion that you had with Mr [PC] concerning fees that you refer to in the letter that you sent to him with the invoice?

R: I said I would have to bill him. I did not discuss an amount. I did not tell (sic) the amount. I didn't think the way the case had gone there was any chance of recovering a full fee. I thought it was a damage limitation exercise.

PD: Why should we have reduced our fees when the outcome was no fault of ours?

R: You are correct we shouldn't have had to but if I had billed £25,000 and they had disputed the invoices I would've got nothing.

PD: You created the situation?

R: Yes I did

PD: Where is the file of papers?

R: I don't know

PD: Do you agree that you had no consent from me to discount the invoice to a fifth of its value? Do you accept you never discussed the issue with me?

R: I've not dealt with costs properly for this client.

...

PD: These people have been clients of yours for 10 years, this was a plum job that they were giving you wasn't it?

R: Yes.

...

PD: Why didn't you go and discuss the matter with them? Why didn't you tell them what the full fee should have been and try to negotiate a better figure with them. The outcome was no fault of yours. You had the claimant's costs as a comparison.

R: I didn't think they would pay anything. I believed I would get nothing.

PD: My concern is that anyone can lose a file it happens. It is possible to miss sending costs information at the outset. It is however remarkable that when you knew costs were increasing that it never occurred to you that the charging agreement should be sorted.

When the file was lost why didn't you reconstruct it?

R: Because the case was finished

PD: Surely it would have assisted you to invoice the file and deal with costs. It is puzzling that there is absolutely no time recorded at all. Your explanation that you intended to secure a lump sum doesn't ring true.

R: I have not time recorded their work for 10 years..."

20.4 During the interview on 13 August 2013, Mr PD asked the Respondent whether the two directors had some hold over him or whether the Respondent owed them in some way so he felt he had to discount the job but on both occasions the Respondent said "No". Mr PD went on to ask whether the Respondent was retained privately by this client or was paid outside the firm. The Respondent replied "No" and "I was not paid privately. I got this wrong with no billing information being provided". In the Respondent's letter dated 10 May 2014, he admitted he "failed to provide the best possible information to my client on the likelihood of the overall costs in their matter." He reasoned:

> "... I had not provided adequate costs information regarding costs, charging rates etc. That was because I did not envisage any difficulty with fees given these were long-standing clients... This was a case where I did not expect the client to lose their case on liability. They did lose after the client's director changed his evidence in the witness box at the final hearing, which was completely unexpected."

The Respondent agreed that he had failed to provide a proper standard of service to his client but not that he allowed his independence to be compromised. (He now fully admitted the allegation.) Mr Goodwin submitted that allegation 1.2 came further down the order of seriousness of the allegations than 1.1 and 1.3.

20.5 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.2 proved on the evidence to the required standard; indeed it was admitted.

21. **Allegation 1.3 - He [the Respondent] made representations to his client Mr KM which were inaccurate, misleading and untrue in breach of Principles 2 and/or 4 and/or 5 and/or 6 of the Principles and failed to achieve O(1.2) and O(1.5) of the SRA Code of Conduct 2011.**

21.1 For the Applicant, Mr Goodwin relied on the facts set out in the Rule 5 Statement. The Principles and Outcomes in respect of which breach was alleged are set out in the earlier allegations.

21.2 Both Mr PD and Mr DC met with the Respondent at a hotel on 23 September 2013. The meeting was to discuss all three of the Respondent's clients, Mrs TE, Mr KM and TAP Ltd. The minutes of the meeting were before the Tribunal. Mr DC raised the issues referred to by Mr KM and set out in the background to this judgment with the Respondent who responded that he wanted to know where Mr DC was going with this. Mr DC said that the Respondent had led them to believe that the situation with Mrs TE was a one-off and yet Mr KM was raising issues similar to hers. Mr DC asked the Respondent whether what was alleged was true. The minutes recorded that the Respondent replied "absolutely not" and said he had no idea what their motives were but clearly they would be looking to take advantage of the situation in some way.

21.3 The Respondent was asked to clarify what the A Finance Ltd dispute was about. He stated that Mr KM had first raised the issue with him some 12 months or so ago; that he had written a couple of letters to A Finance Ltd relating to a director's service agreement and that he did not think it was a good claim. Mr KM never mentioned the matter again so the Respondent assumed he was not interested in pursuing it. He and Mr KM met again at the end of July when Mr KM said he did wish to pursue the issues. Accordingly the Respondent opened the file at that time.

21.4 Mr DC discussed with Mr KM what the Respondent had said at the meeting. Mr KM said he would go through all the e-mails to disprove what the Respondent said. Mr KM sent to Mr PD, copies of the following correspondence:

- On 22 May 2012, the Respondent advised Mr KM that he was preparing court proceedings.

- On 19 October 2012, the Respondent advised Mr KM that he needed to prepare a witness statement as part of the court action. He blamed his inactivity on the doubling of his workload following the dismissal of a solicitor from the firm.

- On 12 November 2012, the Respondent again excused himself for inactivity as a result of the dismissal of the solicitor referred to above.

- E-mail correspondence dated 16 October 2012 to the Respondent mentioned "[A Finance Ltd] court date was set for September". Further e-mail correspondence dated 12 November 2012 related to a meeting between the Respondent and Mr KM in which Mr KM was informed that the action would come to trial in September 2012

- On 14 January 2013, the Respondent wrote to Mr KM and informed him that A Finance Ltd had lodged a defence so they were defending the claim; that the court had provided Directions and that it would be necessary to file witness statements with any documents relied upon and that the matter would be listed for trial thereafter. Mr DC wrote to Mr KM regarding their discussions and confirming his receipt of the copy e-mail sent by Mr KM.

21.5 Mr PD confirmed that none of the above documentation was retained on the file by the Respondent and none of the file correspondence was true as he had not started court proceedings; there had been no defence filed; there had not been a Directions hearing and the matter had not been listed for trial. Furthermore, the Respondent had misled Mr KM when he excused his inactivity by reason of his workload doubling following the dismissal of a solicitor from the firm since it was in Mr PD's words in his letter of 19 November 2013 to the Applicant "complete fiction". Mr PD also stated that in his opinion the Respondent's conduct was further exacerbated by his statements to Mr KM on 27 July 2013 which prevented a complaint being made at that time and the Respondent's activities coming to the notice of Mr PD.

21.6 In his letter dated 10 May 2014, the Respondent stated the following. Mr KM was an existing client of his for whom he had acted several times previously. Mr KM sent him an e-mail on 27 February 2012 asking the Respondent for advice/assistance regarding a vehicle that he had leased. The Respondent had provided that advice and spoke to the supplier in connection with the matter. He sent Mr KM an e-mail indicating that he was drafting proceedings to issue later that week. There was an exchange of e-mails regarding other pieces of work the Respondent was undertaking for Mr KM and his company at that time. The Respondent did not issue proceedings in June as he had suggested to Mr KM. An e-mail was sent by Mr KM dated 12 November 2012 expressing concern about delay and that the Respondent had advised him that a court date has been set for September. The Respondent could not recall what he said to Mr KM. It was only following Mr KM's e-mail dated 12 November 2012 that the Respondent looked at the matter again. By January 2013 the Respondent was struggling to manage his work, and in effect fighting fires. The Respondent lied to Mr KM in an e-mail dated 14 January 2013 referring to court directions regarding statements when the claim had not been issued. The Respondent misled Mr KM into believing that proceedings had already been issued. The meeting on 23 September was extremely difficult and the Respondent was not sure that the minutes accurately reflected everything that was said at the meeting. The Respondent expressed his apologies to Mrs TE and Mr KM "... Both of whom I let down badly whilst acting as their solicitor"

21.7 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.3 proved on the evidence to the required standard; indeed it was admitted.

22. **Allegation of dishonesty in respect of allegation 1.1 and 1.3**

22.1 In respect of allegation 1.1, for the Applicant Mr Goodwin submitted that the Respondent had considerable experience. He referred the Tribunal to the letter from Mr PD dated 28 June 2013 regarding the Respondent's conduct. There was a second letter from Mr PD dated 19 November 2013 which provided the reason for Mr Goodwin suggesting that the Respondent's conduct was not a one off or knee-jerk reaction. As the letter set out, "between July 2010 and June 2013 he had repeatedly and deliberately lied to, deceived and misled" Mrs TE "about the progress of her claim for compensation for professional negligence following her instruction of [the Respondent]". The conduct went so far as providing a case number which was untrue because proceedings had not been issued. The client informed him that the Court said that the number did not exist and he provided an amended case number by an e-mail

dated 14 June 2013 saying he could not read his own handwriting which was false and he knew it to be.

22.2 In respect of allegation 1.3, for the Applicant Mr Goodwin submitted that there were aggravating features in respect of Mr KM and his matter in respect of the meeting which the Respondent had with Mr KM on 25 July 2013 and the lies which the Respondent had told at that meeting. Mr Goodwin also referred the Tribunal to an e-mail dated 22 May 2012 in which the Respondent stated:

> "I am drafting the papers to issue proceedings. They will be ready by Thursday..."

There was also an e-mail dated 19 October 2012 in which the Respondent informed Mr KM that he needed to see him to prepare a witness statement and said:

> "Sorry for the delay in dealing with the above. We had to get rid of one of our solicitors 5 weeks ago and pending his replacement (now done) I have been covering two people's work for the last five weeks."

On 12 November 2012, the Respondent again e-mailed Mr KM stating that he had, for two months, been doing the work of a solicitor who had been dispensed with as well as his own work. Mr Goodwin submitted that all these representations made in respect of his lack of progress were untrue. Proceedings had not been issued and in his letter to the Applicant dated 10 May 2014 the Respondent admitted that he had lied to Mr KM about the matter and about progress:

> "I clearly did not issue the proceedings in June as I had suggested to Mr [KM] that I would...
> I lied to Mr [KM] in my e-mail of 14 January referring to court directions regarding statements when the claim had not been issued...
> Obviously given that I failed to progress this matter for Mr [KM], and misled him into believing that proceedings had already been issued, I must and do accept Allegation 2 [allegation 1.3 in the Tribunal proceedings] is made out."

22.3 Mr Goodwin referred the Tribunal to its Guidance Notes on Sanction at paragraph 43 where it was set out:

> "The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances."

Mr Goodwin also referred the Tribunal to the comments of Mr Justice Coulson in the case of SRA v Sharma [2010] EWHC 2022 (Admin) who had referred to striking off as "the normal and necessary penalty in cases of dishonesty" and went on to say:

> "There will be a small residual category when striking off will be a disproportionate sentence in all the circumstances, see Salisbury. In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was

> momentary, such as in Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others... It seems to me that it is the nature, scope and extent of the dishonesty itself matters. Questions as to financial loss may however be relevant in considering whether a particular case falls within or outside the exceptional category to which the authorities refer."

This was not a case of financial dishonesty or stealing clients' money but there was a systematic approach to misleading two clients. In the judgment in the case of SRA v Spence [2012] EWHC 2977 (Admin) at paragraph 27 it was stated:

> "It seems to me that the Tribunal erred in law in two respects. They appeared to treat repeated lies to the Solicitors Regulation Authority as a less culpable form of dishonesty than dishonesty in relation to clients' money. In my judgement this was a mistaken approach. The purpose and effect of the respondent's dishonesty was to enable him to continue to practise without insurance, or a Practising Certificate. It is difficult to think of a more serious risk to the interest of those clients and the absence of professional indemnity insurance. It would, in addition, be deeply misleading for practitioners to think that lying to their regulator was somehow not as culpable a form of professional misconduct as the misapplication of client's funds. I note that quite apart from personal dishonesty towards the investigating officer in order to avoid the likely consequences of telling the truth, Mr Spence attempted to enlist the help of another solicitor to lie on his behalf to the same regulator."

Mr Goodwin submitted that this was not a one-off with isolated representations but a systematic campaign of deceit regarding two clients and a very serious matter indeed. He reminded the Tribunal of what had been said by Lord Bingham in the case of Bolton v the Law Society [1994] 1 WLR 512 that a solicitor "who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him" by the Tribunal. Solicitors lying to clients was no less serious in any circumstances than stealing clients' money. It was to the Respondent's credit that he had admitted dishonesty but this was a very serious case.

22.4 Mr Fitzgibbon submitted that the he could see no advantage and no point in attempting to argue that the Respondent was not aware that he was telling a lie when he admitted that he was and so he did not place reliance on the part of the psychiatric report which related to that. However Mr Fitzgibbon would provide background information about how the Respondent came to be in breach.

22.5 The Tribunal had regard to the test for dishonesty set out in the case of Twinsectra v Yardley and Others [2002] 2 AC 164 where Lord Hutton said:

> "...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."

The Tribunal was in no doubt that making representations to clients which were inaccurate, misleading and untrue would be regarded by the standards of reasonable and honest people as dishonest. The Tribunal considered that the Respondent's conduct made it clear that he himself realised that by those standards his conduct was dishonest (he admitted that he had lied) and he now admitted that he knew it to be so. The Tribunal found the allegation of dishonesty in respect of allegations 1.1 and 1.3 proved on the evidence to the required standard; indeed it had been admitted.

Previous Disciplinary Matters

23. None.

Mitigation

24. For the Respondent, Mr Fitzgibbon submitted that the Respondent admitted that his conduct was serious and had breached the high standards rightly expected of a solicitor but there were exceptional circumstances that justified and should require the Tribunal to hold back from strike off. The Respondent had worked thoroughly, conscientiously and compliantly throughout his career. He had not previously been before the Tribunal or been subject to disciplinary sanctions. Mr Fitzgibbon referred the Tribunal to two testimonials exhibited to the Respondent's statement. They were from a Judge and from a District Judge both of whom were family practitioners. The second of them showed that the Respondent worked to a very high standard and in very complex cases. He had impressed the judiciary with his work and his integrity. The allegations represented an enormous fall from grace for him as he attested in his statement. Mr Fitzgibbon submitted that a combination of personal, family, health and work problems had overwhelmed the Respondent and led him in these two cases to slip from the highest standards and to lie to clients. The Respondent's marriage was coming to an end at the material time and he was struggling to care for a close family member who had recently been diagnosed with a particular disorder. As the Respondent set out in his letter to the Applicant of 10 May 2014, it was an extraordinarily demanding situation and he was under an enormous strain. He was also moving out of the family home. Mr Fitzgibbon asked the Tribunal to give weight to the findings of the consultant psychiatrist that the Respondent had developed a "Moderate Depressive Disorder ..." It was regarded as a serious condition requiring appropriate treatment. The Respondent felt that it was best to continue with his professional life when he was running 200 active files which was a very large number. The firm was dealing in property matters and was very commercial which was normal for a business but the Respondent did not feel comfortable to share his out of work and in work difficulties with the other partners and the firm's management. The Respondent felt under considerable pressure to perform. The situation had plainly become too much in the cases of these two particular clients. If the Respondent had not wished to "crack on" matters would have taken a different turn. He wished he had sought help but he didn't. Mr Fitzgibbon hoped this explained how the Respondent had come to be before the Tribunal.

25. Mr Fitzgibbon referred the Tribunal to the statement of Mr PD; he said that he was "satisfied as a result of the audit that no client has lost any money..." The Respondent's dishonesty was fully contained within the allegations that he lied to clients. Mr Fitzgibbon urged the Tribunal not to double count the dishonesty. It could

be devastating for clients if they found out that this had happened to them but others had remedied the situation and their final position was not affected; this was not a complete disaster for the clients although it was deeply unfortunate.

26. Mr Fitzgibbon submitted that Mr Goodwin accepted that the allegation 1.2 was the least serious of the three. The clients in this matter were effectively family as they were members of the Respondent's ex-wife's family for whom he was doing work and not charging properly. They had not been billed as the firm would like. If the Respondent told Mr PD that they were his in-laws and that he wanted to work privately and give a particular number of hours free; Mr PD might have agreed. This was a failure of omission. It was unfortunate and regrettable and put the Respondent in breach of his responsibilities but it did not add much to his misconduct.

27. Mr Fitzgibbon submitted that it was to the Respondent's credit that he made full and candid admissions at the earliest opportunity as soon as he was confronted by Mr PD with the complaints. He offered to resign promptly and his resignation was accepted. Mr Goodwin relied on the case of Spence to make the point that professional dishonesty might be taken just as seriously as financial dishonesty but Mr Fitzgibbon understood that the dishonesty in the Spence case involved telling lies to the Applicant and trying to persuade other solicitors to join in which might be more akin to perverting the course of justice. Mr Fitzgibbon submitted that he was not trying to minimise what the Respondent had done; but the dishonesty here was considerably less. It arose from the crisis which the Respondent was going through and his inability to deal with the emotional, domestic and work pressure that he was under. There was no gain to him in telling lies other than to procrastinate to avoid getting on with particular cases. This was entirely destructive; once the Respondent started misleading the client he could not tell them what he had been doing. He hoped the problem would go away but it did not and he ended up before the Tribunal. Mr Fitzgibbon submitted that to establish exceptional circumstances it was not necessary to show the Tribunal that something like this had never happened before, was unique and would never be repeated by someone else. He asked the Tribunal to look at the Respondent's previous excellent record. Other people might face similar difficulties and react differently but that did not mean that when it happened to him it was not exceptional. The matter did not have to be rare to be exceptional. The Tribunal might have encountered a number of cases where someone was subject to extreme stress and depressive ill-health but here the combination of circumstances was, Mr Fitzgibbon submitted, both rare and exceptional. The Respondent found himself lacking support. It might be that there were some cases which were a bit grey and others which were similar but when all the circumstances were put together the dishonesty was not of a level that required strike off.

28. As to his present situation, the Respondent was working as a solicitor. There was no complaint whatsoever about him. His employer had known him a long time and knew about these proceedings and was hoping to take him on. If the Respondent was given a chance, he would uphold the high reputation he had earned previously. Mr Fitzgibbon accepted that what the Respondent had done might call for a suspension and restriction on his practice so that the Tribunal could make clear its disapproval but to take the ultimate sanction was disproportionate and not absolutely called for.

Sanction

29. The Tribunal had regard to its Guidance Notes on Sanction, the submissions of Mr Fitzgibbon and the testimonials which had been put before it. It also considered the report of the consultant psychiatrist which said that the Respondent had suffered from stress for six years (from 2006 to May 2012 in the context of a marital breakdown, financial problems, loss of his home, a move to rented accommodation and a close family member's psychological and behavioural difficulties. The Tribunal noted that the dishonesty had continued over a period of time. He did not say that he did not know what he was doing and took a course of action because of his illness. He admitted lying. This knowledge was devastating for his clients. The Tribunal noted that the consultant psychiatrist expressed the view that it was regrettable that the Respondent did not seek more active treatment. Instead he had presented a front. The Tribunal also noted that the medical report was not accepted by the Applicant and that the Respondent did not rely on it to show that he did not know that what he was doing was dishonest but instead in support of a submission of exceptional circumstances. At the highest, he could say that his illness would affect his attention and tiredness. The Tribunal, after careful consideration did not consider that the matrimonial, mental health and other difficulties which the Respondent had been subject to over a number of years were sufficient to constitute an exceptional circumstance which would cause it to impose a lesser sanction than strike off in this case in which dishonesty had been found proved and had been admitted. The Tribunal had regard to the case of Bolton and the purpose of sanction; it was necessary to protect the public and to maintain the reputation of the profession that solicitors found guilty of dishonesty should suffer the ultimate sanction in the absence of exceptional circumstances. However having regard to the Respondent's previous good character and his testimonials the Tribunal hoped that the Applicant would look favourably on any future application that he might make for approval of non-solicitor employment.

Costs

30. Mr Goodwin applied for costs to be awarded to the Applicant in the amount of £14,096.33 however he indicated that a reduction of his time for attendance at the hearing should be made because it had not lasted as long as estimated. Mr Goodwin reminded the Tribunal that its Guidance Notes on Sanction set out that costs were not an additional punishment but designed to compensate the Applicant for the costs incurred by it in bringing the proceedings. The Respondent had contested the subjective aspect of the allegation of dishonesty and the Applicant had therefore had been prepared to prove its case on subjective dishonesty which had only been admitted at this hearing. For the Respondent, Mr Fitzgibbon submitted that the costs were excessive.

31. The Tribunal determined that it would summarily assess the Respondent's costs as this was an appropriate case in which to do so and it would avoid imposing on the Respondent the additional costs that he would have to meet if the matter were adjourned for detailed assessment. The Tribunal considered that the time spent by the Applicant in preparing the case prior to Mr Goodwin's involvement and thereafter the amount of time claimed for perusal of papers in preparation for the substantive hearing were somewhat high and it assessed costs in the total amount of £10,000. In respect of the Respondent's ability to pay, the Tribunal considered his statement. He

lived in rented accommodation and did not own or have any equitable interest in any land or property. He had no savings and had minimal pension provision. By virtue of the decision to strike him off, the Respondent had lost his ability to work as a solicitor in future and it seemed inevitable that his current level of gross salary would be reduced. Presently his excess of income over outgoings was around £100 a month. It all the circumstances the Tribunal considered that the order for costs should not be enforced without leave of the Tribunal.

Statement of Full Order

32. The Tribunal Ordered that the Respondent, DUNCAN JOHN DOLLIMORE, 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 £10,000, such costs not to be enforced without leave of the Tribunal.

Dated this 4th day of June 2015
On behalf of the Tribunal

J.A. Astle, Solicitor Member
On behalf of L.N. Gilford, Chairman