SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11325-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JEREMY HUMPHREY ASHTON ROBERTS Respondent

Before:

Miss T. Cullen (in the chair)
Mr A. G. Gibson
Mr D. E. Marlow

Date of Hearing: 10 November 2015

Appearances

Mr James Dunn, solicitor, of Devonshires Solicitors, 30 Finsbury Circus, London EC2M 7DT for the Applicant.

The Respondent was not present nor represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Jeremy Humphrey Ashton Roberts, made in a Rule 5 Statement dated 29 December 2014, were that whilst a partner in Bendall Roberts ("the Firm"), formerly a recognised body, he:

1.1 Failed to keep other people's money separate from money belonging to him or the Firm in breach of Rule 1(a) of the Solicitors Accounts Rules 1998 ("SAR 1998");

1.2 Failed to give or send a bill of costs, or other written notification of the costs incurred, to his clients prior to requiring payment of his fees from money held for those clients in breach of Rule 19(2) of the SAR 1998;

1.3 Withdrew client money from the client account in circumstances not covered by Rule 22 of the SAR 1998;

1.4 Failed to act in the best interest of each client, in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 ("SCC 2007"); and

1.5 Failed to act with integrity, in breach of Rule 1.02 of the SCC 2007.

2. Dishonesty was alleged with respect to all of the allegations, but it was submitted that proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

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

Applicant:-

- Application dated 29 December 2014
- Rule 5 Statement, with exhibit "JHRD 1", dated 29 December 2014
- Hearing bundle volume 2, including correspondence and other miscellaneous documents
- Schedule of costs dated 26 October 2015
- Skeleton argument dated 5 November 2015

Respondent:-

- Respondent's Answer (undated) (but submitted on or about 22 May 2015)
- Respondent's statement dated 1 November 2015
- Emails from Mr Andrew Blatt, solicitor, on behalf of the Respondent dated 18 October 2015 and 5 November 2015.

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

4. The Tribunal was notified by Mr Blatt of Murdochs Solicitors (of 45 High Street, Wanstead, London E11 2AA), who represented the Respondent in the proceedings that the Respondent would not attend the hearing and would not be represented. In an email of 18 October 2015, Mr Blatt wrote:

"I refer to Mr Dunn's email sent to the SDT regarding the CMH on Tuesday. I have on Friday evening seen Mr Roberts with his daughter. I note that this side has not been able to provide the Tribunal or you with the medical reports that would assist the Tribunal in determining this matter fairly and justly. This is not, however, through the lack of trying. Medical information has been obtained but not in a form, or of substance that would allow the Tribunal to consider whether Mr Roberts is fit to stand trial or for the SRA to reconsider its approach in this matter.

Mr Roberts and his family feel that notwithstanding (that), he is too frail to undertake the rigours of trial with regard to the one defended allegation namely that of dishonesty.

There are several reasons for this which sadly are presently are not supported by medical opinion but nevertheless are real and determinate as to how Mr Roberts has to approach the SDT hearing. In essence he can't recall detail, he has a very short attention span and mentally crumbles when having to address any form of verbal examination. He simply is too old and ill to stand trial having admitted all allegations other than dishonesty.

Mr Roberts has therefore instructed me to notify the Tribunal that he will offer a written statement in mitigation in respect of all admitted allegations and let the Tribunal decide whether dishonesty is proved. Mr Roberts will not be attending in person. He will not suffer the stress of trial. I am also instructed not to attend the Tribunal hearing so that the process can be shortened to save costs. Mr Roberts is fully aware that in his absence the allegation of dishonesty is likely to be proved.

It is with sadness that Mr Roberts has had to deal with matters this way but he wants this matter disposed of without further delay. He cannot await further medical opinion. The process of attempting to obtain medical reports to date again has been far too stressful for him. The longer this goes on the more stress and worry he feels and in consequence there are effects on his health and day to day living. The obtaining of further reports would simply not allow the process to be concluded on the current trial date. The Tribunal might wish in the context of the above to reconsider the time estimate.

Finally, a statement of means will be sent to the Tribunal shortly. It seems to me that the CMH can be vacated as it will serve no useful purpose having this matter ready for trial.

I am instructed to continue to liaise with both Mr Dunn and the Tribunal to assist with any matters that might be necessary based on the above position".

5. Subsequently, Mr Blatt filed and served the Respondent's witness statement dated 1 November 2015. The Tribunal noted that that statement contained a number of passages which referred to the Respondent's reasons for not attending the hearing. In addition, on 5 November 2015, Mr Blatt sent an email to the Tribunal which read:

> "Please advise the Tribunal that [the Respondent] will not raise any objection to the hearing taking place in his absence".

6. Mr Dunn for the Applicant submitted that under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"), the Tribunal could proceed to hear a case in the absence of a Respondent if satisfied that notice of the hearing had been served on the Respondent. However, the decision to proceed in the absence of a Respondent should be exercised with caution, and after taking into account the factors set out in R v Jones [2002] UKHL 5 ("Jones").

7. Mr Dunn submitted that in this instance, there was no doubt that the Respondent had been served with the proceedings and with notice of the hearing date. Mr Dunn referred to an email from Mr Blatt dated 26 October 2015, which confirmed that there was no contest on the issue of whether the notice of hearing had been served in accordance with the Rules.

8. Mr Dunn submitted that in accordance with the "checklist" in the Jones case, the Tribunal should take into account all of the circumstances of the case, including the nature and circumstances of the [Respondent's] behaviour in absenting himself from the hearing and in particular whether that behaviour was deliberate, voluntary and such as waived the Respondent's right to appear. Mr Dunn submitted that the Respondent's absence was deliberate and voluntary and he chosen to waive his right to appear. Mr Dunn submitted that there was a public interest in dealing with the case as promptly as possible. Further, there was nothing to suggest that the Respondent's position would change, such that he would attend if the hearing were adjourned.

The Tribunal's Decision

9. There was no doubt that the Respondent had been served with the proceedings and with notice of the hearing. The Respondent had been represented during the proceedings, and had engaged with the proceedings to the extent that he had filed and served an Answer to the allegations and a witness statement. The Respondent had indicated, both in his witness statement and through his solicitor, that he would not attend the hearing and would not be represented. Further, he had confirmed through his solicitor that he would not object to the hearing proceeding in his absence.

10. The Tribunal was satisfied that the Respondent had voluntarily and deliberately chosen not to attend and he had therefore waived his right to be present at the trial. It was clear that he had no objection to the hearing proceeding in his absence. Further, it was in the general public interest that this case should be heard and determined as promptly as possible.

11. The Tribunal noted that the Respondent had described a number of health difficulties which he considered prevented him from taking part in the hearing. These representations were set out both in his witness statement and in communications from his solicitor. The Tribunal noted that the medical evidence ordered to support what the Respondent said about his medical conditions and/or his memory or ability to withstand the rigours of a hearing had not been provided. The issue of the Respondent's health had first been mentioned in January 2015 at a Case Management Hearing ("CMH"), but no satisfactory medical report had been obtained. Whilst the

Tribunal accepted that the Respondent felt unable to take part, there was no evidence to suggest his absence was involuntary. In all of the circumstances, it was just and proportionate to proceed with the hearing in the Respondent's absence.

Factual Background

12. The Respondent was born in 1943 and was admitted to the Roll of Solicitors in 1967. At the date of the Rule 5 Statement and the hearing the Respondent remained on the Roll of Solicitors but did not hold a Practising Certificate.

13. At all material times prior to 30 April 2010 (or 5 May 2010*)* the Respondent was a recognised sole practitioner. On 1 May 2010 (or 6 May 2010*)* the Respondent went into partnership with his daughter, Ms Roberts. The Respondent submitted that he was not "a partner" in the Firm until 6 May 2010, but there was no dispute about his role as a principal of the Firm at all material times. Later, the business was transferred to Bendall Roberts Ltd. At all material times to 30 September 2011, the Respondent practised under the name of the Firm and was subject to the regulation of the Applicant. On 1 October 2011 the Firm changed regulators to the Council of Licensed Conveyancers ("CLC"). Unless otherwise specified, references to the Firm refer to the Firm as it existed whilst regulated by the Applicant, whether as a partnership or limited company.

14. On 7 March 2012, a duly authorised Forensic Investigation Officer of the Applicant ("the FI Officer") commenced an inspection of the books of account and other documents of the Firm. That inspection culminated in a forensic investigation report dated 11 December 2012 ("the FI Report").

15. The FI Report identified that as at 30 September 2011, a minimum cash shortage existed in the client bank account of the Firm in the sum of £202,718.10.

BTB

16. The Firm was instructed by Mr and Mrs B, the executors of BTB (Deceased). Probate was granted on 2 August 2010.

17. Interim bills were raised in the following amounts, and client to office transfers took place on the following dates:

17.1 27 August 2010 £1,762.50;

17.2 8 September 2010 £2,350;

17.3 24 September 2010 £3,525;

17.4 1 November 2010 £2,350;

17.5 4 November 2011 £2,350

17.6 1 March 2011 £4,080.

18. None of these bills, which totalled £16,417.50 were sent to the clients at any time.

19. On 28 January 2011, Ms M (a fee earner in the Firm), sent an inter-office communication to the Respondent which stated:

> "I have calculated as follows:-
>
> | | |
> |---|---|
> | Work in progress | £1,076.50 |
> | Time to finish – 3 hours | £ 525.00 |
> | 1% of assets | £ 527.61 |
> | Total invoice | £2,128.86 plus VAT |
>
> Please confirm you agreement to the costs.
>
> Many thanks"

This memorandum was signed by Ms M and then countersigned by the Respondent.

20. Subsequently, estate accounts were sent to the clients which detailed the Firm's fees as being £2,128.86 plus VAT (total £2,501.41). These accounts were signed by Mr and Mrs B on 10 March 2011.

21. On 11 April 2011, Mrs B emailed Ms M and enquired as to when the funds were to be released. On the bottom of the email, Ms M wrote:

> "[Ms M] spoke to [the Respondent] seeking confirmation that this money go out today. [The Respondent] will not authorise this saying he would try to get it sorted out by the end of the week".

22. On the same day, Ms M emailed Mrs B and confirmed that the Firm had received the signed estate accounts on 11 March 2011 and hoped to distribute the funds by the end of the week.

23. On 15 April 2011, an office to client transfer took place totalling £13,916.09 in response to two credit notes for that amount, issued on the same day. These credit notes were equivalent to:

23.1 The £16,417.50 of interim bills set out at paragraph 15 above; minus

23.2 The £2,501.41 costs detailed in paragraph 18 above.

24. Thereafter, on 15 April 2011, the remaining client monies on the client matter ledger were distributed to Mrs B, leaving a zero balance.

RPC

25. The Firm was instructed by the Reverend AC and Mrs PC, the executors of Mr RPC (deceased). Probate was granted on 10 January 2011.

26. On 21 March 2011, a receipt totalling £63,057.60 was received into the Firm's client bank account and was lodged on the relevant client matter ledger.

27. Interim bills were raised in the following amounts and client to office transfers took place on the following dates:

27.1 14 March 2011 £2,400

27.2 30 March 2011 £2,400

27.3 1 April 2011 £2,400; and

27.4 6 May 2011 £2,400.

None of these interim bills, which totalled £9,600, were sent to the clients at any time.

28. On 17 June 2011, Ms M sent an inter-office communication to the Respondent which stated:

> "I have calculated costs on this file as follows:-
>
> | | |
> |---|---|
> | Work in progress | |
> | (less duplicate work re R27 carried out in error by [Ms M] | £1,140.75 |
> | Time to finish – 3 hours | £ 525.00 |
> | 1% of assets | £ 636.28 |
> | Total invoice | £2,303.03 plus VAT |
>
> I would be grateful if you could please confirm your agreement to the above".

This memorandum was signed by Ms M and then countersigned by the Respondent with his signature dated 17 June 2011.

29. Subsequently, estate accounts were sent to the executors which detailed the Firm's fees in respect of work carried out:

29.1 Prior to 4 January 2011 - £604.59 plus VAT, totalling £710.39. In this regard, there had been a client to office transfer of £722.39 on 22 June 2011 which included the £710.39; and

29.2 After 4 January 2011 - £1,697.44 plus VAT, totalling £2,036.93.

These accounts were signed by the Reverend AC and dated 28 June 2011.

30. On 15 July 2011, an office to client transfer took place totalling £7,563.07, in response to a credit note for the same amount and issued on the same day. This credit note was equivalent to:

30.1 The £9,600 of interim bills detailed at paragraph 27 above; minus

30.2 The £2,036.93 costs (set out at paragraph 29.2 above) which had not already been the subject of a client to office transfer in its own right.

31. Following the postings on 15 July 2011, the client matter ledger totalled £57,740.73. The accounts signed by the Reverend AC on 28 June 2011 totalled £57,746.73. The difference appeared to be a £6 Local Charges search disbursement dated 3 February 2011 which was the subject of a client to office transfer on 23 March 2011.

32. Thereafter, further interim bills were raised in the following amounts and client to office transfers took place on the following dates:

32.1 5 August 2011 £4,200

32.2 26 August 2011 £ 840

32.3 3 January 2012 £2,400

This last transfer was after the Firm became regulated by the CLC.

33. None of the bills set out at paragraph 32, which totalled £7,440, were sent to the clients at any time. £5,040 of this formed part of the minimum cash shortage as at 30 September 2011 as set out at paragraphs 46 to 48 below.

34. On 22 March 2012, an office to client transfer took place totalling £7,446 in response to a credit note for the same amount and issued on the same day. This credit note was equivalent to:

34.1 The £7,440 of interim bills detailed at paragraph 32 above; plus

34.2 The £6 Local Land Charges search disbursement mentioned at paragraph 31 above.

35. Following the postings on 22 March 2012, the client matter ledger totalled £57,746.73, which equated to the accounts signed by the Reverend AC on 28 June 2011.

36. On 26 March 2012, a payment was made to the executors totalling £57,712.73, leaving £34 which was the subject of a client to office transfer on the same day for telegraphic transfer charges, leaving a zero balance on the client matter ledger.

H and T

37. The Respondent was the executor, and therefore the client, in relation to the estate of H and T.

38. Interim bills were raised in the following amounts and client to office transfers took place on the following dates in respect of:

38.1 H

38.1.1	2 December 2010	£1,762.50
38.1.2	23 December 2010	£2,350.00
38.1.3	4 January 2011	£2,937.50
38.1.4	21 January 2011	£2,400.00
38.1.5	2 June 2011	£ 600.00
38.1.6	15 July 2011	£1,200.00.

38.2 T

38.2.1	25 May 2011	£4,200.00
38.2.2	31 May 2011	£2,400.00
38.2.3	3 June 2011	£1,200.00

39. On the following dates, the following credit notes were issued for the following amounts, which were, on the same day, the subject of office to client transfers:

39.1 H – 20 April 2011 - £4,200

39.2 T – 16 February 2012 - £3,356.23

No bills were raised on these matters between 30 September 2011 and these dates. These figures therefore formed part of the minimum cash shortage as at 30 September 2011.

K, C and HA

40. The Respondent was the executor, and therefore the client, in relation to the estates of K, C and HA. Interim bills were raised in the following amounts and client to office transfers took place on the following dates in respect of:

40.1 K

40.1.1	26 August 2011	£6,000
40.1.2	6 October 2011	£2,400
40.1.3	18 November 2011	£1,200
40.1.4	16 January 2012	£2,400

The last three of these transactions took place after the Firm ceased to be regulated by the Applicant.

40.2 C

40.2.1	12 March 2009	£6,158.62
40.2.2	8 April 2009	£2,300
40.2.3	7 May 2009	£1,725
40.2.4	2 July 2009	£2,875
40.2.5	1 September 2009	£1,150
40.2.6	18 June 2010	£3,525
40.2.7	8 September 2010	£2,350
40.2.8	29 September 2010	£ 775.50

40.2.9	1 October 2010	£2,350
40.2.10	2 November 2010	£5,875
40.2.11	4 January 2010	£1,762.50
40.2.12	7 January 2011	£3,525
40.2.13	11 February 2011	£2,400
40.2.14	15 April 2011	£2,100
40.2.15	6 May 2011	£2,400
40.2.16	29 July 2011	£1,200
40.2.17	3 January 2012	£1,800.

This last transaction was after the Firm ceased to be regulated by the Applicant.

40.3 HA

40.3.1	4 March 2011	£2,520
40.3.2	18 March 2011	£4,200
40.3.3	24 March 2011	£2,400
40.3.4	13 April 2011	£ 900
40.3.5	5 May 2011	£1,200
40.3.6	1 September 2011 -	£4,500.

41. On the following dates, the following credit notes were issued for the following amounts which were, on the same day, the subject of office to client transfers:

41.1 K – 12 March 2011 - £8,171.24; and

41.2 C – 29 March 2012 - £7,500.

42. In relation to HA, an interim bills was raised for £1,774.14 on 14 December 2011, but no client to office transfer took place. On 15 December 2011 a credit note was issued for £9,377.89 and on the same day the difference (being £7,603.75) was the subject of an office to client transfer.

43. In relation to these three matters, bills were raised after 30 September 2011. Interim bills had been raised in the amounts of the credit notes on these matters, but it was not possible to specify how much of each credit note represented costs which had been withdrawn from the client bank account prior to 30 September 2011. These figures did not form part of the minimum cash shortage as at 30 September 2011 set out below.

Pre-30 September 2011 Shortage

44. During the investigation, the Respondent provided the FI Officer with a schedule showing 21 office to client transfers covering the period from 1 January 2011 to 30 September 2011 totalling £85,338.81. The Respondent confirmed to the FI Officer that;

44.1 He would have raised interim bills on these matters but would not have sent them to clients;

44.2 When each matter was to be concluded, he would have raised a credit note where he thought he had overcharged on a matter and authorised an office to client transfer.

45. As the monies were credited prior to 30 September 2011, these transactions have not formed part of the minimum cash shortage as at 30 September 2011 set out below.

Minimum Cash Shortage as at 30 September 2011

46. The Respondent operated a system ("the Respondent's System") whereby undelivered interim bills were processed through the Firm's accounting records, with consequent client to office account transfers and, later, undelivered credit notes were processed through the Firm's accounting records, with consequent office to client transfers. This left a difference of what, the Respondent contended, were the correct costs to be charged to the client.

47. A detailed analysis conducted by the FI Officer indicated that, in respect of incomplete probate matters, interim bills totalling £195,161.87 had been issued. It was understood that, given the use of the Respondent's System, these bills had not been delivered to clients as at 30 September 2011; there had been client to office account transfers in relation to those bills. The FI Officer's analysis indicated that all of the matters in question were probate matters.

48. Taken with the minimum cash shortage identified in relation to the H and T matters, the total minimum cash shortage was therefore £202,718.10.

The Respondent's Role and Explanation

49. During an interview on 7 March 2012, between the FI Officer and the Respondent, the Respondent admitted that he did interim bills on his probate matters but did not send bills out until the end of the matter. If he thought that during the course of the matter he may have charged too much, he would do an office to client transfer. The Respondent told the FI Officer that this had not been picked up by his accountants before, and he thought he was doing nothing wrong.

50. During an interview on 28 June 2012 between the FI Officer and the Respondent, he admitted that:

50.1 It was fair to say that, if he went back years and years, it had probably been his practice that interim bills were not sent to the clients;

50.2 For many years, he took it upon himself to be the arbiter of billing in respect of probate, as he was the only person who could weigh up what a probate file should be charged at; there was no involvement by any other person;

50.3 He would authorise the client to office transfers;

50.4 He would write out the instruction to prepare the interim bill;

50.5 The Firm had an office account overdraft of £40,000 and the motivation for operating the Respondent's System was to keep the overdraft below £40,000; and

50.6 He acted as a sole practitioner from 1984 until 2010. However, operation of the Respondent's System might go back to the mid part of the 2000s, but certainly not back to the 1990s.

51. On a date in October 2010, Ms M emailed a Ms JW and the Respondent stating:

> "The following files are all now ready for final distribution. All of the files have outstanding credit notes for overcharged costs that need to be dealt with…"

After listing the files and details in that regard, the memorandum went on,

> "I am becoming increasingly concerned about one of the beneficiaries deciding that they have had enough of waiting (for) their money and potentially calling the SRA, who may wish to look into the overbilling of the files in more details and (the) impact this has on interest accrued etc.
>
> Are you aware of an anticipated date on which these files can be distributed?"

The Applicant's Investigation

52. On 11 December 2012, the FI Officer wrote to the Respondent enclosing a copy of the FI Report and requesting an explanation for the breaches of the SCC 2007 and SAR 1998 which the FI Report identified. No response was received.

53. On 29 January 2014, a Supervisor in the employment of the Applicant again wrote to the Respondent, requesting an explanation concerning the matters raised in the FI Report and warning that the reply might be used by the Applicant for regulatory purposes.

54. Following various extensions of time, requested by the Respondent's solicitors, Murdochs, and agreed by the Applicant, the Respondent replied via Murdochs on 1 August 2014. In summary, the Respondent's position was:

54.1 He always accepted responsibility and culpability for the alleged breaches, where he was able to do so;

54.2 He accepted that he fell below the standard required of a solicitor, but denied any dishonesty actions;

54.3 Interim billing was based upon a quick assessment and quite a lot of guesswork;

54.4 He believed that his was a perfectly proper practice and that he was able to do this in times of financial requirement, namely when he was nearing his overdraft limit; and

54.5 He was solely responsible for billing on probate matters.

55. On 20 August 2014 a duly authorised officer of the Applicant decided to refer the Respondent's conduct to the Tribunal.

Witnesses
Ms Sarah Taylor

56. Ms Taylor, a FI Officer of the Applicant, told the Tribunal that the contents of her FI Report, dated 11 December 2012 were true to the best of her knowledge and belief.

57. In response to questions from the Tribunal, Ms Taylor referred to a handwritten list of matters, prepared by the Respondent, which set out credit notes in the sum of £85,338.81 in the period 1 January to 30 September 2011. Of the 28 estate matters listed, it appeared the Respondent was the executor on 8 matters. Further, with regard to a schedule setting out the matters in respect of which the minimum cash shortage had been calculated, Ms Taylor told the Respondent that it appeared the Respondent was an executor in 7 of the 19 matters listed.

58. In response to a further question from the Tribunal, Ms Taylor stated that she found the email referred to at paragraph 51 above on one of the matter files she had examined; she was not sure on which file it had appeared.

Findings of Fact and Law

59. 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.

60. The Respondent had admitted allegations 1.1 to 1.5 but denied dishonesty. As the Respondent was not present or represented, the Tribunal took particular care to note and to test any weaknesses in the prosecution case.

61. Mr Dunn submitted that he could prove the facts of the case by several means. First of all, the Respondent had admitted the allegations and had not taken issue with many of the facts. Further, a Notice to Admit had been served on the Respondent's solicitor on 26 February 2015, with regard to the documents in the Rule 5 bundle. There had been no response to that, and in particular no counter-notice. Mr Dunn submitted that under Rule 13(8) of the Rules, the Respondent should be deemed to have admitted the documents unless otherwise ordered by the Tribunal; there was no application by the Respondent to dispense with that usual provision. Mr Dunn also relied on the evidence of the FI Officer, who was called and gave evidence to the Tribunal to confirm the truth of her FI Report.

62. The Tribunal was satisfied on the documents and evidence presented by Mr Dunn that the factual matters relied on by the Applicant had been proved to the required standard. In particular, the Tribunal found that all of the facts and matters set out in the FI Report which dealt with the substance of the allegations were true and accurate. Indeed, very little of the FI Report or Rule 5 Statement had been challenged by the Respondent in his Answer to the allegations.

63. The Tribunal noted that Mr Dunn had invited it, if necessary, to draw adverse inferences from the Respondent's failure to attend the hearing and give an account of his actions. Such adverse inferences could be drawn in the circumstances outlined in

the Tribunal's Practice Direction Number 5. Mr Dunn submitted that the Respondent had had the opportunity to present medical evidence to explain his non-attendance. Indeed, at a Case Management Hearing on 15 September 2015 he had been ordered to produce such a report by 14 October 2015, dealing with: his capacity to give meaningful instructions to his solicitor; his memory of the relevant events giving rise to the allegations; and his ability to take part in the hearing, bearing in mind the rigours of court proceedings and what adjustments (for example, taking frequent breaks) would assist the Respondent's participation in the hearing. The Respondent had asserted, through his solicitor, that obtaining medical evidence was too stressful. Mr Dunn referred to the Respondent's solicitor's email of 18 October 2015, set out at paragraph 4 above. Mr Dunn submitted that it was to be expected that in court proceedings proper, independent medical evidence would be obtained where a Respondent stated they were not able to give evidence.

64. In making its findings of fact and in relation to the allegations, the Tribunal was satisfied to the required standard on the documents, the FI Officer's evidence and the Respondent's admissions. Whilst there was no proper medical evidence to support the Respondent's reasons for non-attendance, the Tribunal was aware from letters from his GP and a consultant earlier in 2015 that the Respondent had a number of health problems. In these circumstances, and where the evidence in the case was so overwhelming, there was no need for the Tribunal to draw any adverse inferences.

65. The Tribunal noted those parts of the Applicant's case which were challenged by the Respondent either in his Answer or in his witness statement and tested the Applicant's case in the light of those points. The Tribunal noted that although the Respondent's witness statement was headed as a statement in mitigation, it contained some points relevant to the allegations. In particular, the Tribunal noted that the Respondent contended that he had not been aware that the Respondent's System was wrong; he had stated that he assumed that so long as the monies were properly billed at the end of the case were correct then interim billing using his method was acceptable. The Tribunal noted that the Respondent denied dishonesty, but accepted in his witness statement that he would have no choice but to accept such a finding, if made by the Tribunal.

66. The Respondent had not submitted any testimonials or character evidence. The Tribunal would have been obliged to take such evidence into account before determining the allegation of dishonesty, but no such material was submitted.

General Findings of Fact

67. The Tribunal was satisfied so that it was sure that the factual matters set out at paragraphs 16 to 18 above had been proved. The Tribunal determined that the precise date on which the Respondent went into partnership with his daughter was not material to the allegations. At most, there was a period of 5 days difference between the dates the parties suggested he had "practised as a partner" in the Firm. Whilst there may have been some transactions in that five day period which were improper, the facts relied on by the Applicant mostly arose after 6 May 2010.

68. The Tribunal was referred to the client ledgers, invoices and (where available) the credit notes in the exemplified matters and examined those documents in detail in order properly to understand that various transactions which had occurred. The Tribunal was particularly careful to examine the documents relied on by the Applicant with regard to the minimum cash shortage. The Tribunal noted that the Respondent had not accepted the amount of the minimum cash shortage as pleaded by the Applicant and so had to be satisfied if it had been correctly calculated.

69. With regard to the matter of BTB deceased, the Tribunal was satisfied on the evidence presented that bills totalling £16,417.50 were processed through the Firm's accounting records, with consequent client to office transfers, but were not delivered to clients. Credit notes totalling £13,916.09 were then processed through the Firm's accounting records, with consequent office to client transfers, but were not delivered to the clients. This left costs paid by the clients of £2,501.41. The Applicant submitted, and the Tribunal found, that the original, undelivered, bills were over 6 times the amount the Firm finally invoiced to the clients. The Tribunal noted that the Respondent had not challenged the Applicant's assertion that the interim bills were not delivered and it was satisfied that these bills were not delivered.

70. The Tribunal found that the "Respondent's System" was operated as described by the Applicant. Under this System, the Respondent would prepare interim bills on estate matters and immediately transfer the costs from client to office account. The Respondent did not send the interim bills to clients. Thereafter, the Respondent would issue credit notes on the ledger such that the estate was billed with the correct sum. In the instances considered by the Tribunal, the interim bills were significantly higher than the correct and proper costs on the files. This System meant that the Respondent had the use of clients' money for a period of time. The Tribunal further found that the Respondent's System involved a "teeming and lading" process. It was not part of the Applicant's case that the Respondent had permanently deprived his clients of money due to them, rather that he had had use of the money improperly. The Applicant did not accept the Respondent's assertion, in his witness statement, that all monies had been repaid. The Tribunal noted that there was no evidence on this point from the Applicant or Respondent and it could not determine whether any clients had been kept out of the basic sums to which they were entitled. However, the Tribunal was sure that clients and beneficiaries had been deprived of interest on the capital sums; whilst their money was being used by the Respondent in his office account, it was not accruing interest.

71. The Tribunal found that during the currency of the RPC matter bills totalling £17,750.39 were processed through the Firm's accounting records, with consequent client to office transfers, but were not delivered to the clients. A £6 Local Land Charges search disbursement was paid from office account with a consequent client to office transfer. Further, credit notes totalling £15,009.07 were processed through the Firm's accounting records, with consequent office to client transfers, but were not delivered to the clients. The costs paid by the clients were £2,747.32. The original, undelivered, invoices were over 6 times the amount which the Firm finally invoiced to the clients.

72. The Tribunal further found that between 5 August 2011 and 3 January 2012, after the estate accounts had been finalised, bills totalling £7,440 were processed through the Firm's accounting records, with consequent client to office transfers. On 22 March 2012, that entire amount was the subject of an office to client account transfer. The Tribunal was satisfied that in this case there could have been no possible justification for the bills prepared after the estate accounts were signed, as no further work was being done. The Tribunal further found that there was a significant delay in the distribution of the estate. The final distribution should have taken place promptly after the estate accounts were signed in June 2011. Instead, the Respondent used the estate money for a further 9 months before distributing it.

73. The Tribunal reviewed the facts of the transactions in the matters of K, C and HA and found them proved as pleaded by the Applicant.

74. In respect of the matters of H and T, the Tribunal found that improper interim bills had been raised prior to 30 September 2011. The credit notes had been issued after 30 September 2011, the date at which the minimum cash shortage was calculated. As the bills prepared before 30 September 2011 were reversed when the credit notes were processed the Tribunal could infer, with certainty, that the bills were not justified and therefore formed part of the minimum cash shortage as at 30 September 2011.

75. In considering the minimum cash shortage, the Tribunal was satisfied that in each instance where a bill had not been delivered (or there was no written notification of costs to the client), the Respondent should not have transferred money from client to office account; each such transfer contributed to the shortage on client account. The Tribunal noted that the Respondent's own explanation to the FI Officer about the Respondent's System was that it had started in the 2000s. Whilst no precise start date for the practice was established, the Tribunal was satisfied that it had been in operation for several years prior to 2011. The FI Officer had prepared a "snapshot" of the position as at 30 September 2011 and the Tribunal was satisfied that this approach was reasonable and proportionate. The Tribunal was satisfied that over the years the Respondent had used more client money than was recorded in this "snapshot", but the full amount could not be calculated without a disproportionate investigation into all of the files of the Firm.

76. The Applicant submitted, and the Tribunal found, that the minimum cash shortage of £202,718.10 arose because of the use of the Respondent's System. The Tribunal was referred to and considered carefully the analysis prepared by the FI Officer which listed 13 client matters on which bills had been raised and transfers made where the bills had not been delivered to clients. This gave a shortage on client account of a minimum of £195,161.87. In addition, the H and T matters gave rise to a shortage of £7,556.23 as at 30 September 2011. The total amount of the minimum shortage was therefore £202,718.10 at that date.

77. The Tribunal also noted, and found, that in the period from 1 January to 30 September 2011 the Respondent had issued credit notes totalling £85,338.81. This sum therefore did not form part of the shortage on client account as at 30 September 2011, but represented part of the shortage which had existed prior to 30 September 2011.

78. **Allegation 1.1 - Failed to keep other people's money separate from money belonging to him or the Firm in breach of Rule 1(a) of the Solicitors Accounts Rules 1998 ("SAR 1998")**

78.1 This allegation was admitted by the Respondent.

78.2 Rule 1 of the SAR 1998 stated:

> "A solicitor must comply with the requirements of Rule 1 of the Solicitors Code of Conduct 2007, and in particular must:
> (a) Keep other people's money separate from money belonging to the solicitor or the practice".

78.3 The Applicant submitted that on the occasions exemplified above (i.e. in the matters of BTB, RPC, K, C and H and H and T) the Respondent was treating client monies as his own and using them to pay off the Firm's overdraft (or keep within the overdraft limit). Having reviewed all the papers in this matter, and noted that the Respondent had explained to the FI Officer in interview that his motivation was to keep the Firm's overdraft within the limit, the Tribunal found this allegation proved on the facts, and on the admission.

79. **Allegation 1.2 - Failed to give or send a bill of costs, or other written notification of the costs incurred, to his clients prior to requiring payment of his fees from money held for those clients in breach of Rule 19(2) of the SAR 1998**

79.1 This allegation was admitted by the Respondent.

79.2 Rule 19(2) of SAR 1998 stated:

> "A solicitor who properly requires payment of his or her fees from money held for a client or trust in a client account must first give or send a bill of costs or other written notification of the costs incurred, to the client or the paying party".

79.3 The Applicant submitted that on the occasions set out above, the Respondent prepared bills of costs and processed them through the Firm's accounting system such that his fees were paid from monies held on client account, without sending the bills to his clients. There was a breach of Rule 19(2) SAR 1998 and the monies therefore remained client monies. The Applicant further submitted that if the Respondent had sent the bills to his clients, those bills would have been questioned.

79.4 The Tribunal noted that the Respondent had confirmed to the FI Officer that he did not send out bills or notification of costs prior to transferring the money. Having reviewed the evidence, as set out above, the Tribunal was satisfied to the required standard that this allegation had been proved as well as admitted.

80. **Allegation 1.3 - Withdrew client money from the client account in circumstances not covered by Rule 22 of the SAR 1998**

80.1 This allegation was admitted by the Respondent.

80.2 Rule 22 of SAR 1998 set out the circumstances in which withdrawals could properly be made from client account. The Applicant submitted that on the occasions set out above, the Respondent made withdrawals from client account which were not permitted by that Rule. In particular, it was submitted, the Respondent was not entitled to make the withdrawals from client account to pay bills which he had not delivered and where he had given no notification of the costs.

80.3 As set out above at paragraphs 67 to 77, the Tribunal was satisfied on the evidence that the Respondent had withdrawn money from client account when he was not permitted to do so; this allegation was proved on the facts and on the admission.

81. **Allegation 1.4 - Failed to act in the best interest of each client, in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 ("SCC 2007")**

81.1 The Respondent admitted this allegation.

81.2 Rule 1.04 of the SCC 2007 stated:

> "You must act in the best interests of each client".

81.3 The Applicant submitted that as at 30 September 2011 there was a minimum cash shortage of £202,718.10. By operating the Respondent's System, the Respondent was putting his clients' money at risk as, at any time, he could have been required to pay monies out of the client account in excess of the monies that he was holding in his client account. It was submitted that in so doing, the Respondent placed his own interests above those of his clients, as he used their money to reduce or manage the overdraft on the Firm's office account; this would reduce the interest the Respondent would have to pay (if indeed additional overdraft facilities were available) whilst at the same time it reduced the interest payable to clients.81.4 The email set out at paragraph 51 above drew to the Respondent's attention, in October 2010, that there was an issue with the Respondent's System that the SRA may wish to look into, particularly as regard the impact on interest accrued. No interest was being accrued on the probate balances as they were effectively held, improperly, on the office account. The Applicant further submitted that it was clear from this email that the Respondent was aware that clients were being prejudiced by delays in the distribution of estates. Even with knowledge of the matters set out in the email, the Respondent continued to operate the Respondent's System.

81.4 The Tribunal reviewed the evidence in relation to this allegation. The Tribunal accepted the Applicant's submissions and found that the Respondent had used client money when it was improper to do so and had thereby put client money at risk. He had favoured his own interests over those of his clients. The Tribunal was further satisfied that the delays in finalising a number of estates – as noted in particular in the email of October 2010 – was a detriment to the clients and allowed the Respondent to continue to use estate money to support the Firm. The Tribunal was satisfied to the required standard that this allegation had been proved on the facts and on the admission.

82. **Allegation 1.5 - Failed to act with integrity, in breach of Rule 1.02 of the SCC 2007**

82.1 The Respondent admitted this allegation.

82.2 Rule 1.02 of the SCC 2007 stated:

> "You must act with integrity".

82.3 The Applicant submitted that in operating the Respondent's System as he did, and using client and estate money as his own without the knowledge or agreement of clients and/or beneficiaries, the Respondent was not acting with integrity in his dealings with his clients and the beneficiaries of the estates where he was the executor.

82.4 The Tribunal had no doubt that this allegation had been proved, both on the facts and on the admission. It was clearly the case that the Respondent had used client money improperly, for his own benefit and without informing his clients what he was doing. Whatever definition was used, the Respondent had acted without integrity.

83. **Allegation 5 - Dishonesty was alleged with respect to all of the allegations, but it was submitted that proof of dishonesty was not an essential ingredient for proof of any of the allegations.**

83.1 The Respondent denied that he had acted dishonestly.

83.2 The Tribunal accepted that the test to be applied in considering whether or not the Respondent had acted dishonestly was that set out in in Twinsectra v Yardley [2002] UKHL 12 ("Twinsectra"). The Tribunal had to assess if the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he acted dishonestly. The Tribunal noted that the Respondent had denied dishonesty as he had had no intention permanently to deprive clients of their money. The Tribunal wished to make it clear that dishonesty was not synonymous with theft; even if there was an intention to repay the misused money, and even if it had all been repaid, that was not material to whether or not the action was dishonest.

83.3 The Applicant submitted that by acting as he had in relation to allegations 1.1 to 1.5 inclusive, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was satisfied that this was the case. In repeatedly, over a long period of time, taking client money and using it without the knowledge and consent of his clients/beneficiaries, the Respondent's actions were clearly dishonest by the ordinary standards of reasonable and honest people. The Tribunal noted, and found, that in a number of the estates about which information had been provided the Respondent was an executor. As such he had a particular duty to act in the best interests of the estate. His conduct in relation to the significant number of cases in which he was an executor would be regarded as particularly reprehensible by the public and made even clearer the fact that the Respondent's conduct was objectively dishonest.

83.4 The Applicant further submitted that the Respondent was aware that his conduct was dishonest by the ordinary standards of reasonable and honest people for the following reasons:

- The memorandum referred to at paragraph 51 above clearly drew to the Respondent's attention the fact that there was an issue with the Respondent's System which the SRA may want to look into, particularly with regard to the impact on interest accrued. No interest was being accrued on the probate balances when they were improperly held in the office account. With knowledge of, and despite this memorandum, which was sent to the Respondent prior to many of the instances relied on by the Applicant, the Respondent continued to operate the Respondent's System;

- The Respondent had not used the Respondent's System from the time he first began in practice. On his own account, given to the FI Officer, he had only used it from the mid-2000s and had used it in order to keep his Firm's overdraft below the limit of £40,000. The Respondent knew the correct way to operate and had followed the correct method for many years before he adopted the Respondent's System, motivated by his desire to keep his overdraft within the £40,000 limit;

- The requirement for solicitors to keep client and office money separate is probably one of the most fundamental obligations, understood by all solicitors. The Respondent, as a solicitor who was admitted and in practice for over 40 years, must have been aware that his actions were dishonest. The gravity of the position was evidenced by the matter of RPC, where bills were processed and then reversed in a matter where no subsequent charge was raised. With the Respondent's knowledge and experience, he could not have justified to himself this clearly improper treatment of client money as if it were his own.

- The Respondent contended that he had acted openly. However, he had not delivered the interim bills to clients as had he done so, the bills may well have been questioned.

83.5 The Tribunal was referred by Mr Dunn to a 1935 case (Plunkett and another v Barclays Bank Limited) from which it was clear that the requirement to keep client money and office money separate was well established by then. The Tribunal found that the Respondent's claim that as an "old school" solicitor he had failed to keep up to date with the Accounts Rules was not credible. Whilst the details of the Accounts Rules may have changed over time, the principle of not using client money unless and until it was proper to transfer it to office account was fundamental. Any solicitor must understand that it was wrong to use client money as the Respondent had done.

83.6 The Tribunal also found that the Respondent had not used the System until the 2000s. He had practised in accordance with the Accounts Rules for many years. He had not asserted that he had failed to understand the Accounts Rules from the start of his period as a sole practitioner, in the 1980s. The Tribunal was satisfied that the Respondent had adopted the System in order to maintain the Firm's overdraft within

the agreed limit and that he knew, therefore, that he was using client money for his own benefit.

83.7 The Tribunal was also sure that the Respondent's use of the System had been calculated and careful and was on a large scale. There were many probate matters on which the Respondent had utilised client money. Many individuals as well as charitable beneficiaries had been kept out of the money to which they were entitled for longer than was proper, and they had lost out on some interest whilst their money was used in office account. It could not be said, therefore, that clients had suffered no loss. In any event, it was not necessary for there to be a loss in order to establish dishonesty.

83.8 The Tribunal noted that the Respondent had asserted that his reporting accountants had not picked up any problems concerning the Respondent's System. The Tribunal accepted that there had been no qualifications on the Firm's annual accounts relating to the Respondent's System. However, this could not absolve a principal of a Firm from responsibility for his deliberate and planned actions. The Tribunal was not aware whether or not the Applicant had raised any concerns with the original accountants concerning the failure to notice the large-scale breaches of the Accounts Rules by the Respondent. The Tribunal noted that it was newly appointed accountants who had identified and reported on the breaches arising from the Respondent's System.

83.9 As the Respondent had denied that he knew he was doing anything wrong, at the material times, the Tribunal considered carefully whether it could be established that he realised his actions were dishonest by the ordinary standards of reasonable and honest people. The Tribunal noted that, as all solicitors know, client money is sacrosanct. All solicitors, including the Respondent, also knew that client money could not be used. The Tribunal was satisfied that the Respondent, as an experienced solicitor, was well aware of these principles. The Tribunal also found that the Respondent had chosen to use the System after many years in practice in order to keep within the Firm's overdraft limit. The Tribunal further found that, even if he had been unaware that the System was improper initially, he must have known from October 2010 that it was improper because of the email from his assistant. The Tribunal also found that the amounts billed and later credited were substantially in excess of the costs properly due to the Firm. The matter of RPC was particularly clear, in that the Respondent chose to issue bills for £5,040, transfer the money to office account and use that amount of money for several months when the work on the estate had concluded and it was ready for distribution. Finally, and conclusively, the Tribunal found that the Respondent had not acted openly; he had not sent the interim bills to the clients. Had he done so, his excessive and improper billing and use of client money would have been challenged by clients and beneficiaries.

83.10 Not only was the Respondent's conduct, in relation to each of the allegations at 1.1 to 1.5 inclusive dishonest by the ordinary standards of reasonable and honest people but, by virtue of his experience, his previously proper operation of his accounts, his receipt of the email from his assistant in October 2010 and his failure to send interim bills to clients it was clear that he realised that his conduct was dishonest. The Tribunal was satisfied to the highest standard that the Respondent had acted dishonestly. Indeed, this was one of the most blatant and systematic instances of dishonesty which could

be imagined. It was particularly concerning to note that the Respondent had been the executor of a number of matters in which he had misused client money; this represented a particular breach of trust which was of the utmost seriousness.

Previous Disciplinary Matters

84. There were no previous matters in which findings had been made against the Respondent.

Mitigation

85. The Respondent was not present or represented and so no oral mitigation was offered. However, the Tribunal read and considered his statement dated 1 November 2015.

86. This statement set out a number of health issues and the difficulties the Respondent said he had faced in preparing for the case, including memory problems. The Respondent confirmed that he had retired from any involvement in legal work in March 2015. The Respondent stated that he had failed to understand the Accounts Rules; he asserted that he was an "old school" solicitor who had not engaged with the various changes in the rules. The Respondent stated that no client had lost financially.

Sanction

87. The Tribunal had regard to its Guidance Note on Sanction (December 2014), to the facts of the case and the submissions of the parties.

88. It was clear from the case law, in particular the case of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma"), that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances.

89. The Tribunal had found that the Respondent had operated a systematic and blatant process, over a long period, in order to use clients' money for his own purposes and that of his Firm. As already noted, the cash shortage as at 30 September 2011 was over £200,000 and it was clear that the amount of client money actually misused by the Respondent over the years was considerably higher than that figure. There had been a clear conflict between the interests of the clients and the Respondent's decision to use their money to keep his overdraft within its limit. Taking all of this into account, there were no exceptional circumstances and the only proper and proportionate sanction was to order the Respondent to be struck off the Roll.

90. The Tribunal further observed that even if dishonesty had not been proved to the required standard, the admitted lack of integrity on the part of the Respondent was so serious that striking off was probably the appropriate sanction.

Costs

91. Mr Dunn made an application that the Respondent should pay the Applicant's costs of the proceedings and referred to a schedule of costs dated 26 October 2015 in the total sum of £31,887.80. This figure included forensic investigation costs of £7,310.90 and SRA supervision costs of £832.50.

92. Mr Dunn told the Tribunal that the amount of costs may appear high. However, the Respondent had raised a number of preliminary issues including making an application to anonymise the proceedings; that issue had later been abandoned. As a result of this, and the issues arising from the Respondent's asserted medical conditions, there had been four preliminary hearings listed albeit not all had proceeded. Three hours had been claimed in the schedule for attendance at the preliminary hearings and five hours for attendance at this hearing. Mr Dunn told the Tribunal that as the hearing would be shorter than he had estimated when preparing the schedule, the costs payable should be reduced to take that into account.

93. Mr Dunn submitted that as the Respondent had not submitted any evidence of his means, there was no need to take his financial circumstances into account when considering what costs order to make.

94. The Tribunal considered carefully the Applicant's schedule of costs. The Tribunal accepted that the hourly rate at which the solicitor's work had been charged - £200 per hour – was entirely reasonable for a case of this kind. Further, the Tribunal noted that the costs appeared high in part because of the way the Respondent had conducted the proceedings, in particular with regard to issues concerning anonymity and obtaining medical evidence. The Tribunal found that the way the case had been prepared and presented by Mr Dunn was both thorough and helpful. The Tribunal decided that it was appropriate to allow the Applicant a total of £31,600. This figure included a small reduction in costs as the hearing had not lasted for as long as estimated and a small reduction in the costs allowed for copying documents.

95. As the Respondent had not submitted any evidence of means, the Tribunal had no need either to consider reducing the amount of costs ordered, or deferring payment of the costs order. The Respondent should be ordered to pay costs of £31,600; he should be able to arrange a method of payment through discussion with the Applicant.

Statement of Full Order

96. The Tribunal Ordered that the Respondent, JEREMY HUMPHREY ASHTON ROBERTS, 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 £31,600.00.

Dated this 16th day of December 2015
On behalf of the Tribunal

T. Cullen
Chairman