SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11328-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PREMJI NARAN PATEL Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr R. Hegarty
Mr M. R. Hallam

Date of Hearing: 26 January 2016

Appearances

James Dunn, Solicitor at Devonshires Solicitors, 30 Finsbury Circus, London, EC2M 7DT, for the Applicant

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Premji Naran Patel made by the Solicitors Regulation Authority ("the SRA") were that, whilst a Recognised Sole Practitioner in Alliance Solicitors ("the Firm"), he:

1.1 failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC 2007"):

1.2 failed to act in the best interest of each client, in breach of Rule 1.04 of the SCC 2007;

1.3 failed to provide a good standard of service to his clients, in breach of Rule 1.05 of the SCC 2007;

1.4 behaved in a way that was likely to diminish the trust the public places in the legal profession, in breach of Rule 1.06 of the SCC 2007;

1.5 failed to use each client's money for that client's matters only, in breach of Rule 1(c) of the Solicitors Accounts Rules 1998 ("the SAR 1998");

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

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

1.8 withdrew client money in relation to a particular client or from a general client account exceeding the money held on behalf of that client in all the Firm's general client accounts, in breach of Rule 22(5) of the SAR 1998;

1.9 charged clients for costs that were not fair and reasonable having regard to all the circumstances of the case, contrary to paragraph 3 of the Solicitors' (Non-Contentious Business) Remuneration Order 2009 ("the SRO 2009").

2. Dishonesty was alleged against the Respondent in respect of allegations 1.1, 1.4, 1.5, 1.8, and 1.9. However proof of dishonesty was not essential to sustain the respective allegations.

Documents

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

Applicant

- Application dated 6 January 2015
- Rule 5 Statement and Exhibit JHRD1 dated 6 January 2015
- Applicant's Schedule of Costs dated 18 January 2016
- Reply to Respondent's Answer dated 24 June 2015
- Skeleton Argument on behalf of the SRA dated 18 January 2016

Respondent

- Respondent's answer to the Rule 5 Statement dated 2 March 2015

Preliminary Matter

4. The Respondent did not attend the hearing and was not represented. The Applicant had previously corresponded with the Respondent by email and letter. The Respondent had been in correspondence with the Tribunal from February to April 2015, via email, and had submitted an answer to the Rule 5 Statement on 3 March 2015.

5. Mr Dunn applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided that:

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

6. Mr Dunn submitted that, in accordance with the decision of the Tribunal of 13 January 2016, the Respondent was deemed to have been served with notice of the substantive hearing on 11 June 2015 at his last known address.

7. The process server (MK) attended the Respondent's home address on Saturday 5 and Sunday 6 December 2015. On receiving no reply, he left a note asking the Respondent to call him urgently. On Monday 7 December 2015 the Respondent called MK, who explained the situation to him. The Respondent advised that he had received a letter from the Applicant's solicitors, and agreed to meet with MK the following day. He called MK on Tuesday 8 December 2015 and advised that he was unable to meet with him that day. On Wednesday 9 December the Respondent again called MK and stated he would meet him that evening and would call back later with a time. The Respondent did not call back to arrange a meeting time.

8. The contact between the Respondent and MK clearly showed, in Mr Dunn's submission, that the Respondent was aware of these proceedings.

9. Mr Dunn referred the Tribunal to the case of R v Jones [2001] EWCA Crim 168 ("Jones"). Mr Dunn stated that the relevant provisions of the checklist devised in that case were provisions (i), (ix) and (x), which stated as follows:

> "(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses"

10. In relation to provision (i) Mr Dunn submitted that the Respondent had:

- Failed to serve any evidence;
- Failed to comply with the Tribunal's directions;
- Failed to serve any expert evidence;
- Failed to respond to the hearing notice;
- Failed to attend the hearing; and
- Failed to offer any explanation for his non-attendance.

11. In the circumstances, it could be inferred that the Respondent wished to take no further part in the proceedings and had waived his right to be present.

12. In relation to provisions (ix) and (x) four witnesses were in attendance, two of whom were members of the public. It was in the particular interest of those two witnesses that the hearing should take place, having regard to the effect of delay on the memories of those witnesses. Further, it was also in the interest of the general public that matters should proceed notwithstanding the Respondent's absence, given that the allegations arose from matters occurring between 2010 and 2012.

The Tribunal's Decision

13. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondent. The Tribunal saw a letter from the Tribunal to the Respondent, dated 11 June 2015, which notified him of the hearing date; that letter had not been returned. The Respondent had been written to at his last known address, and was clearly still at the address in December 2015, when he responded to the communication left there for him by MK. He had not communicated with the Applicant or the Tribunal since April 2015, and had not notified any change of address. In the circumstances, the Tribunal agreed with the former division, that the Respondent had been properly served with the proceedings and notice of this hearing by letter dated 11th June 2015.

14. Having affirmed that the Respondent had been correctly served in accordance with the SDPR, the Tribunal considered whether it would be fair to proceed in his absence. The Tribunal had regard to the principles in Jones. The Respondent had not served any evidence or complied with the Tribunal's directions, save but to supply an answer and agree directions with which he did then not comply. The Respondent was alleged to have acted dishonestly; the serious nature of that allegation meant that it was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. Further, it was in the interest of the witnesses in attendance that the matter proceed to avoid any effect of delay on their memories.

15. The Tribunal determined that the nature and circumstances of the Respondent's lack of communication showed that he had deliberately absented himself from the proceedings and waived his right to appear. Accordingly, the Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. There was nothing to indicate that the Respondent would attend or engage

with the proceedings if the case were adjourned. In light of these circumstances, it was just to proceed with the case, in the Respondent's absence.

Factual Background

16. The Respondent was born in 1965, and admitted to the Roll of Solicitors in 1994. The Respondent remained on the Roll of Solicitors; he did not have a current practising certificate.

17. At all material times the Respondent was a recognised sole practitioner practising under the name of the Firm and was subject to the regulation of the Applicant. On 11 March 2013 the Applicant commenced an inspection of the books of account and other documents of the Firm that inspection culminated in a report dated September 2013 ("the FI Report").

18. The Respondent was interviewed by the Applicant on 4 July 2013. During that interview the Respondent confirmed that:

    - He was the only person with access to the Firm's client bank accounts;
    - He was the only person who could make telegraphic transfers/cheque payments from those accounts;
    - Both he and the Firm's bookkeeper could make postings to the client ledger accounts, albeit the bookkeeper would only make such postings on his instructions, and he would sometimes make them himself.

<u>Allegations 1.1, 1.4, 1.5, 1.8 and 1.9</u>

The Estate of the Late RG

19. In his interview, the Respondent confirmed that he was the main fee earner, assisted by trainees, for the following matters:

    - RG and DG – Sale of Greenwood.
    - The Estate of RG ("the RG Estate").

20. On 12 March 2013, the Applicant, pursuant to S44B of the Solicitors Act 1974, required the Respondent to produce any client matter files in relation to those matters. The Respondent did not do so, explaining in his interview that he could not find them. The details of the financial transactions were therefore reconstructed from the ledgers and the bank statements. The Applicant argued that the Firm had made substantial payments from the client bank account which were posted to the RG Estate Ledger despite being unrelated to RG.

21. The beneficiaries under intestacy of the RG Estate were PG and KG; son and daughter of RG. At the time of the Respondent's interview the RG Estate had not been finalised as the Firm had failed to obtain a grant of Letters of Administration. The only receipts into the RG Estate were cash monies of RG totalling £2,180 and

£139,044.68 (being the remaining proceeds from the sale of Glenwood after what appeared to be an appropriate distribution).

22. The Firm made substantial payments from the client bank account which were posted to the RG Estate Ledger:

- £94,012.49 of those payments related to other matters;

- £4,000 was paid on 6 October 2010 to "Brunel Professional" to pay for the Firm's Professional Indemnity Insurance ("PII"). The Respondent, in his interview, explained "that was a mistake and me typing out the CHAPS from the wrong account";

- £65,747.00 of the costs transferred from client to office account related to invoices addressed to NR, a personal representative in the Estate of MR, an unrelated matter. There were numerous instances of costs being transferred over a sustained period. Mr Dunn highlighted an example on 1 September 2010 of an invoice for £3,525.00 addressed to NR then being deducted from the RG Estate Ledger. The Respondent explained that this had probably happened because he was working from a template and getting the wrong bill and client ledger number on the bill of costs;

- £11,560.49 was paid on various dates in respect of the MR Estate. In a letter of 24 November 2010 to the Personal Representative of the MR Estate, the Respondent stated:

> "I must point out that it is very unusual for me to make payments in the way suggested by [SR] and I am afraid I will not be able to do this again. All payments in future should be by cheque or CHAPS for the obvious reasons".

In a letter provided to the FI Officer by the Respondent, purportedly from SR, SR stated:

> "I confirm that I asked [the Respondent] for these payments in cash to pay various builders for works…."

The Respondent explained that these were errors that had occurred by him "picking up the chequebook and writing the wrong account number on it". It was therefore unclear whether these payments were made by cheque or by cash. Mr Dunn submitted that, given the letter from SR, it could be inferred that the payments had been made in cash, thus making the Respondent's explanation implausible;

- £3,055.00 was transferred on 31 January 2011 to an unrelated client ledger which was previously £2,697.28 in debit, resulting in that client ledger going into credit. At that time, the office account balance was £329.40, which, in the Applicant's submission, showed that the Respondent was unable to repay the debit balance, and was the reason for the transfer of funds from the RG Estate Ledger. In his interview the Respondent accepted that the transfer was

"wrong" and "on the face of it, it does look as if that's an improper transfer of funds from one ledger to another" to clear the debit balance;

- £900 was paid on 2 March 2011 to HA, a firm of surveyors. The Respondent was unable to identify which matter this related to save that it was not RG; and

- £16,810.14 of the costs transferred from client to office account related to invoices addressed to Mr RG/ Mr G/RG at Glenwood, a property that had, by that time, been sold. The Respondent explained that this address was automatically generated by the Firm's computer system.

- The Firm then distributed a cheque to PG on 1 November 2011 for £67,311.48, and a telegraphic transfer to KG on 10 November 2011 for £67,595.97.

Mr Dunn argued that following each of the distributions, the RG Estate Ledger would have gone into a debit balance but for a transfer of the Firm's own costs from unrelated client matters. No monies were transferred from the MR Estate, to which £65,747.00 of the client to office account transfers related.

23. A schedule of the RG Estate was provided to KG. It was submitted that the schedule bore little relationship to the RG Estate Ledger. In particular, assets were listed on the schedule of account that were not recorded on the RG Estate Ledger:

    - NatWest Gold Account £684.57;

    - HSBC Business Account £42.12; and

    - Bensons for Beds £100.00

24. Despite these being contained on the schedule of account, the Respondent never gathered in these monies. The schedule was, it was submitted, therefore drafted in such a way as to give a false impression to KG that he had done so.

25. Further, there were liabilities listed that were similarly not recorded on the RG Estate Ledger:

    - Council Tax Adjustments £3.44;

    - BT Phone Bill £85.38; and

    - House Clearance £580.00

26. Despite these being contained in the schedule, the Respondent never paid these monies out. Again, it was submitted that the schedule had been drafted in such a way as to give a false impression to KG that he had done so.

27. The Firm's total costs for the RG Estate were listed as £6,055.21. This was £10,754.93 less than the £16,810.14 deducted (correctly) according to the Respondent from the RG Estate Ledger in relation to the RG Estate costs.

28. During his interview, the Respondent acknowledged that the schedule did not reflect the RG Estate Ledger. He explained that it may have been prepared from the file documents rather than the Ledger, and was therefore not misleading. He admitted that he made a conscious decision not to tell the clients "the whole truth" but he had accounted to them for what they were chasing. He did not consider his actions to be dishonest.

The Estate of the late MR

29. The Firm acted in relation to the MR Estate for MR's widow, NR and son, SR. On 12 March 2013, the Applicant, pursuant to S44B of the Solicitors Act 1974, required the Respondent to produce all files and documents relating to the administration of the Estate, together with the files and documents relating to any property sales and/or purchases carried out on behalf of the client [MR] or in connection with the Estate. The Respondent produced the requested items.

30. The Applicant commissioned a forensic investigation of the costs on the MR Estate to establish whether the costs charged, on the basis of the documents provided, were reasonable and appropriate. All of the entries on the RG Estate Ledger, which related to MR, were transferred onto the MR Estate Ledger. The investigator SC reached a number of conclusions as follows:

- A total of £70,489.81 + VAT was charged to the MR Estate. This included the charges incorrectly allocated to the RG Estate Ledger;
- The Firm overcharged the MR Estate by at least £58,739.81 + VAT, 500% more that the true costs of the work done, which was up to £11,750 + VAT;
- The Firm's time recording was inadequate for calculating time based charges.
- Many of the invoices were not supported by the information contained on the files.
- In some instances batches of invoices covered a very short amount of time in which little work was observed to have been undertaken – SC found 19 invoices to which she gave a nil costing, as there was no evidence on the file to support any work having been undertaken in the period covered; and
- Apart from the initial invoice, the invoices had very little narrative to enable clients to understand the charges.

31. On 27 March 2013 the Respondent provided a letter purportedly signed by SR, effectively agreeing to the costs that had been charged. SR further confirmed that they were happy for the costs not yet paid (but charged to, and taken from the RG Estate), to be deducted from the sale proceeds of a property in the MR Estate that was yet to be sold.

32. The FI Officer received a call, purportedly from SR to (a) confirm the contents of his letter, (b) explain that he did not want to get involved as he ran a busy shop (c) explain that he may not contact the FI Officer again and (d) explain that he was "quite

relaxed" as the bill of costs had not actually been paid from the funds held in the MR Estate. SR was at the Respondent's office at the time this call was made.

33. Further analysis showed that had the transactions posted to the RG Estate Ledger been properly posted to the MR Estate covering the period 25 August 2010 to 14 January 2011, the following would have been shown:

- 26 November to 10 December 2010 – there would have been a debit balance of £3,024.57;
- 10 to 13 December 2010 – there would have been a debit balance of £3,021.50;
- 13 to 20 December 2010 – there would have been a debit balance of £10,121.50; and
- 20 to 23 December 2010 – there would have been a debit balance of £11,059.00.

34. The Applicant submitted that in the circumstances, by using money from the RG Estate Ledger for the MR Estate, the Respondent was concealing the fact that there was a debit balance on the MR Estate Ledger.

Mr M – Sale of Bentham Road

35. The Firm acted for Mr M in a litigation claim relating to a dispute over the occupation of a property on Bentham Road. The client account ledger indicated that between 2 and 14 April 2012, there were client to office transfers of £4,290 and a payment to Counsel of £9,600 whilst there were no monies held in the client bank account for this matter. This caused a debit balance of £13,890 at 14 April 2012. On 18 April 2012, the Firm received £30,060.19 into the client bank account for this matter, clearing the debit balance.

36. The Applicant submitted that by causing a debit balance following the payments as outlined above, the Respondent had used other clients' monies to make those payments.

37. The Applicant further alleged that in acting in the manner described in paragraphs 19 – 36 above, the Respondent was dishonest.

Allegations 1.2 and 1.3

38. KG, a beneficiary of the RG Estate, did not receive any distribution from the Estate until 17 months after RG died, despite her persistently chasing the Respondent. In her statement dated 30 April 2013, she confirmed that the delay left her having to borrow money to pay for building works that she had arranged on the understanding that the monies would be released to her more quickly.

39. She was informed by the Respondent that the delay had been caused because HMRC had queried the sale price of Glenwood. KG wrote a letter of complaint to the Respondent dated 22 September 2011. The Respondent, during his interview on 4 July 2013, stated that he did not recall receiving a letter of complaint.

40. A completion statement dated 26 July 2010, which was provided to KG indicated that £140,654.80 was due to the RG Estate. The RG Estate Ledger indicated that only £139,044.68 was received, leaving a shortfall of £1,610.12.

41. PG was also a beneficiary of the RG Estate and, as with KG, did not receive any distribution from the Estate until 17 months after RG died. He also persistently chased the Respondent having been told by the Respondent that it was a straight forward matter, and he would receive payment by October 2010, but definitely by December 2010. PG explained, in his statement dated 27 March 2013, that he was relying on the Estate proceeds to assist in his deposit for the purchase of a property, so as to ensure that he obtained a low interest fixed rate mortgage. The delay in payment meant that he had to take out an interest only mortgage which cost him around £300 per month over 2 years.

42. Again, as with KG, the Respondent informed PG that the delay was caused by HMRC querying the sale price of Glenwood.

<u>Allegations 1.6 and 1.7</u>

43. RG died intestate on 30 June 2010, during the progress of the sale of Glenwood. No grant of Letters of Administration was obtained. The Respondent was appointed as a co-trustee (together with DG) of the Legal Estate for Glenwood. The sale of Glenwood completed on 29 July 2010. The money received into client account following the sale was £345,000. Following completion, various distributions were made of the sale proceeds, including, amongst other things, the following:-

- 29 July 2010 – Transfer of £9.34 to the client ledger account "Mr RG and Mrs DG…Glenwood". The Applicant accepted that this may have been a legitimate transfer as it was for a disbursement.

- 29 July 2010 – Transfer of £1,762.50 to the client ledger account "Mr RG – Purchase…" This money was then transferred to the client ledger account "Mr RG – Litigation matter." This invoice was for fees only.

- 30 July 2010 – Transfer of £643.26 to the client ledger account "Mr RG – Purchase…" This invoice was for fees and disbursements.

- 30 July 2010 – Transfer of £87.62 to the client ledger account "Mr RG Purchase…" There was no corresponding invoice for this amount.

44. Those invoices were used to pay the Firm's costs on other matters where the Firm acted for RG before he died, but were posted to the Ledger after he died, implying that the invoices were not delivered to RG. The Applicant submitted that, as there was no grant of Letters of Administration, the invoices could not be delivered to RG's Personal Representatives.

45. On 30 July 2010, the Firm transferred costs of £1,224.31 from client account to office account in relation to the sale of Glenwood.

46. On 10 August 2010, the Firm transferred costs of £950 from client account to office account on the client ledger account for the sale of Glenwood, but in respect of monies "On Account Probate" and VAT. There was no invoice attached to this transfer.

47. On 24 August 2010, the Firm transferred costs of £587.50 from client account to office account on the client ledger account for the sale of Glenwood. There was no invoice attached to this transfer. When asked about this bill in an email dated 5 July 2013 from the Applicant, the Respondent stated that "This appears to a bill for an aborted sale of…Glenwood (sic)".

48. On 1 September 2010, the Firm transferred the remaining balance of £139,044.68 to the RG Estate Ledger.

49. The Respondent explained, in interview, that he had provided all of the invoices to PG and KG. Both PG and KG confirmed that they did not receive those invoices.

Witnesses

Mr PG

50. Mr PG, a beneficiary of the RG Estate, told the Tribunal that the contents of his statements dated 27 March 2013, and 3 September 2015 were true to the best of his knowledge and belief.

51. He confirmed that as at August 2011 (13 months after the invoices had been issued and paid) he had not been provided with a completion statement, or a number of invoices which were paid from the RG Estate.

Ms KG

52. Ms KG, a beneficiary of the RG Estate, told the Tribunal that the contents of her statements dated 3 April 2013 and 23 September 2015 were true to the best of her knowledge and belief.

53. She also confirmed that as at August 2011 (13 months after the invoices had been issued and paid) she had not been provided with a completion statement, or a number of invoices which were paid from the RG Estate.

Mr Sean Grehan

54. Mr Grehan, a FI Officer of the Applicant, told the Tribunal that the content of his FI Report dated 2 September 2013 was true to best of his knowledge and belief.

55. In response to questions from the Tribunal, Mr Grehan confirmed that the Respondent, during his interview, had explained that he was the main fee earner on the transactions, as well as being the only person with access to the office and client

bank accounts and was also the only person who was able to make telegraphic transfers and write cheques for those accounts. The Respondent also confirmed that both he and the Firm's book-keeper made postings to the client ledger accounts, but that the book-keeper would only do so on his (the Respondent's) instructions.

56. Mr Grehan confirmed that ordinarily, in his experience, a fee earner would fill out some sort of form for accounts for payments. He explained that he did not recall seeing any documentary evidence of a system of request or instructions slips, for accounting matters, on the RG or any other files.

57. In response to a further question from the Tribunal, Mr Grehan confirmed that the Respondent did not give any explanation as to why there were so many mistakes on the RG Estate Ledger, why it continued for such a long period of time, or why the mistakes were not picked up earlier.

58. Mr Grehan confirmed that he did not recall there being any issues in relation to the Firm's accountants reports. He explained that when undertaking a reconciliation of client account, the account balanced and there was no particular shortage; it was only when the information was further interrogated that the issues in relation to the ledgers came to light.

Ms Susan Corbin ("SC")

59. Ms Corbin, a costs lawyer and fully trained costs draftsman, told the Tribunal that the contents of her report dated 14 June 2013 were true to the best of her knowledge and belief.

Findings of Fact and Law

60. 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. As the Respondent had denied all allegations in his answer dated 2 March 2015, the Tribunal required the Applicant to prove all allegations beyond reasonable doubt.

61. **Allegation 1.1- failed to act with integrity, in breach of Rule 1.02 of the SCC 2007**

Allegation 1.4 - behaved in a way that was likely to diminish the trust the public places in the legal profession, in breach of Rule 1.06 of the SCC 2007;

Allegation 1.5 - failed to use each client's money for that client's matters only, in breach of Rule 1(c) of the SAR 1998;

Allegation 1.8 - withdrew client money in relation to a particular client or from a general client account exceeding the money held on behalf of that client in all the Firm's general client accounts, in breach of Rule 22(5) of the SAR 1998;

Allegation 1.9 - charged clients for costs that were not fair and reasonable having regard to all the circumstances of the case, contrary to paragraph 3 of the SRO 2009.

61.1 Mr Dunn submitted that the Respondent knowingly used client monies for transactions not relating to those clients. This was to be seen in the numerous transactions where he had used RG Estate monies for the MR Estate. The Respondent explained these transactions as numerous errors, and denied that he had acted in the way he did in order to keep the MR Estate ledger in credit. In the matter of Mr M, the Respondent had withdrawn money to pay his own fees and those of counsel between 2 and 14 April 2010, where he did not have sufficient monies on account for those payments, thus exceeding the amount held on behalf of Mr M in client account. The Respondent explained that monies were due in from the Court funds office in relation to this matter, and he had received assurances that the money had been sent at the beginning of April. On 18 April 2010, the Firm received sufficient funds on that matter to clear the debit balance. The Respondent had overcharged the MR Estate by 500%, in circumstances where he knew that the charges were unjustified. Further, the Respondent had knowingly and admittedly given KG a false impression in the schedule of account he provided to her.

61.2 The Tribunal was satisfied on the documents and evidence presented by Mr Dunn that the factual matters relied upon by the Applicant had been proved beyond reasonable doubt. 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. The Tribunal was referred to the client ledgers, bank statements and, where available, invoices in the exemplified matters. The Tribunal examined those documents in detail in order to fully scrutinize and test the Applicant's case. With regard to transactions on the RG Estate Ledger which related to the MR Estate, the Tribunal was satisfied on the evidence presented that the details of the transactions were true and accurate as pleaded by Mr Dunn; that those matters did not relate to the RG Estate. The Tribunal determined that other than for payment of disbursements, the transfers were improper, and that the Respondent had knowingly used clients' monies for transactions not related to those clients. The Tribunal accepted as accurate the Applicant's submissions on the debit balances that would have shown on the MR Estate, but for the Respondent using RG Estate monies as he did. Another clear example of the improper use of client monies was the transfer from the RG Estate to another client ledger in circumstances where there was a debit balance on that other ledger and insufficient monies in the office account to repay the debit balance. The Respondent, in his interview, had accepted that "…on the face of it…it does look as if that's an improper transfer of funds from one ledger to another…" The Tribunal determined that the Respondent was clearly operating a teeming and lading system – robbing Peter to pay Paul.

61.3 The Tribunal found that the Respondent had withdrawn money for both his and counsel's costs on the Mr M matter, before receiving sufficient funds in relation to Mr M to make those transactions. This caused a debit balance on the Mr M Ledger until sufficient funds were received to clear the debit.

61.4 The Tribunal determined that the Respondent, in dealing with client money in the way that he had, had breached Rules 1(c) and 22 of the SAR 1998. Accordingly, the Tribunal found allegations 1.5 and 1.8 proved beyond reasonable doubt on the evidence and submissions.

61.5 The Tribunal accepted, in its entirety, the evidence of SC and her report in relation to the costs on the MR Estate. The Tribunal found that the Respondent had overcharged the Estate by 500% or more; his charges not being fair or reasonable having regard to the circumstances of the case. Accordingly, the Tribunal found allegation 1.9 proved beyond reasonable doubt on the evidence and the submissions.

61.6 The Tribunal found that the Respondent knowingly provided a false impression to KG, when he provided her with a Schedule of Account that contained incorrect information as to the assets and liabilities. During his interview, the Respondent admitted that he "…didn't tell the client the whole truth obviously…"

61.7 Mr Dunn submitted that, in using client monies in the way that he did, in overcharging the MR Estate to the extent that he did, and in misleading KG, the Respondent had not acted with integrity (allegation 1.1), and had behaved in a way likely to diminish the trust the public places in the legal profession (allegation 1.4).

61.8 The Tribunal had no doubt that these allegations had been proved on the evidence. It was clear that the Respondent had used monies from the RG Estate for both his own benefit and the benefit of other clients to the detriment of PG and KG; he had subordinated the interests of his client to his own. There were numerous examples of this on the RG Estate Ledger. The Tribunal considered it noteworthy that on at least two occasions when improper transfers were made (particularly so the payment for his PII), they occurred in circumstances where the Respondent would not have been able to make the payment from his office account as it held insufficient funds. In using client account funds on the Mr M matter, when there was insufficient monies in the Mr M account, the Respondent had put other clients' monies at risk. He made a clear decision not to tell PG and KG the whole truth. His records were neither accurate nor complete; he either did not possess a proper accounting system, or had a system which he failed to use properly. The Tribunal had no hesitation in finding that the Respondent in acting in the way that he did, had acted without integrity and in a way that was likely to diminish the trust the public places in the legal profession. Accordingly, the Tribunal found allegations 1.1 and 1.4 proved beyond reasonable doubt on the evidence and submissions.

62. **Dishonesty**

62.1 The Applicant submitted that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra") which requires that the person has acted dishonestly by the ordinary standards of reasonable and honest people and knew that by those standards he was acting dishonestly.

62.2 Mr Dunn argued that in his conduct as set out above, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and further, knew that it was dishonest for the following reasons:-

- £4,000 was paid on 6 October 2010 to pay for the Firm's PII. The requirement for Solicitors to keep client and office money separate is probably the most fundamental obligation understood by all Solicitors. PII is a fundamental payment for any solicitors firm and to pay it from client account, and to record it against a client ledger account was known by all solicitors to be dishonest. Further, at the time that the Respondent made the payment, the balance in his office account was £572.97. There was no overdraft facility on the account, so it could be inferred that the Respondent knew he did not have sufficient funds to pay his insurance;

- Numerous invoices for the MR Estate were posted against the RG Estate Ledger, including in circumstances when the MR Estate Ledger would have been in debit, if correctly kept. The Respondent knew that he was not holding enough money for the MR Estate to make these payments;

- He transferred £3,055 to an unrelated client ledger account to pay off a debit balance on that other client ledger account without any justification;

- He produced a schedule for the RG Estate showing a number of assets that he had failed to call in and liabilities that he had failed to pay out. He provided this to the beneficiaries to the RG Estate, giving them the false impression that he had indeed called the assets in and paid the liabilities out;

- He drew down £10,754.93 in costs against the RG Estate Ledger (that did not relate to the MR Estate) and which he subsequently credited to the RG Estate Ledger before distributing the RG Estate. He had provided copy invoices for the majority of those monies but had failed to provide those invoices to RG, and failed to take them into account in the RG Account;

- He drew down £13,890 in costs and disbursements against the client ledger account of Mr M before receiving this money into the client bank account; and

- He overcharged the MR Estate by 500%.

62.3 The Tribunal found that reasonable and honest people, applying ordinary standards, would consider that a solicitor who used client money for his own purposes, or the purposes of other clients had acted dishonestly, and therefore the objective test was satisfied. Similarly, reasonable and honest people, applying ordinary standards would find that a solicitor, who had charged 500% more than the value of the work undertaken, and had deliberately misled clients, had acted dishonestly. The Tribunal found that the Respondent's actions were objectively dishonest as pleaded by Mr Dunn.

62.4 The Tribunal then considered whether the Respondent was subjectively dishonest. In relation to the payment of his PII from the client account, the Tribunal found that the Respondent knew that this was dishonest. The Tribunal did not accept the Respondent's explanation that this was simply an accounting error; the Respondent, at the time of payment of his PII, did not hold sufficient funds in his office account to make that payment, nor did he have any overdraft facility. The Tribunal was satisfied

that the Respondent was aware of the balance in his office account, and knowingly used client money for his own benefit, which he knew to be dishonest.

62.5 The Tribunal found that numerous invoices had been posted against the RG Estate Ledger that related to the MR Estate, including in circumstances where, if the invoices had been correctly posted, the MR Estate ledger would have shown a debit. The Tribunal rejected, as utterly implausible, the Respondent's assertion that these postings were all made in error. The Tribunal determined that the transfers were made as a conscious choice on the Respondent's part, and some were particularly made by him to deliberately conceal what would have been a debit balance on the MR Estate. The Respondent knew his actions were dishonest.

62.6 The Tribunal found that there was no legitimate reason for the inter-client transfer to pay off the debit balance. The Respondent, himself, accepted that "on the face of it, it does look as if that's an improper transfer of funds from one ledger to another". The Tribunal noted that at the time of this transfer, there were insufficient funds in the office account for the Respondent to rectify the debit balance. The Tribunal found that the Respondent knew this to be the case, and consciously made the decision to use one client's money for the benefit of another. The Respondent knew that his actions were dishonest.

62.7 The Tribunal, having found that the Respondent knowingly misled KG in the Schedule of Accounts found that this was a deliberate and conscious act of the Respondent who knew that what he was doing was dishonest.

62.8 The Respondent drew down costs of £10,754.93 that were not costs drawn in error due to a mistake on the ledger account. Those costs did not relate to the RG Estate. The Respondent later credited those costs back to the RG Estate. Further, he did not take account of those costs in the RG Account. The Tribunal found that this was clear evidence that the Respondent knew that he was not entitled to take that money, and had knowingly taken those costs for the benefit of his Firm or another client. Accordingly, the Respondent knew that his actions were dishonest.

62.9 The Respondent was aware that money was due to come in on the Mr M matter. The Tribunal found that he deliberately transferred the money to pay his own costs in circumstances where he knew that he was not entitled to take those costs.

62.10 The Tribunal found that the Respondent knew, that in overcharging the MR Estate by the amount that he did, his actions were dishonest. The Tribunal had regard to the findings of SC in this regard and in particular her observations that in some cases a batch of invoices covered a very short period of time with very little work having been conducted. The Tribunal found that the invoices, rather than being generated for work undertaken, were instead generated to reflect deductions that had been made from the account. The Tribunal found that the Respondent clearly knew that these were dishonest actions.

62.11 The Tribunal found that the Respondent had systematically abused the RG Estate monies. He had made payments for his PII, cleared debit balances on un-related matters and transferred costs, to which he was not entitled, to his office account. He had deliberately misled KG as to the Estate Accounts. He had consciously taken costs

on the Mr M matter, which caused that ledger to have a debit balance, and he had overcharged the MR Estate to such a great extent that it was impossible to justify. The Tribunal, having found that his actions were objectively dishonest had no hesitation in finding that the Respondent had consciously, knowingly and deliberately acted in the manner alleged, and knew at the time of doing so, that he was acting dishonestly. The explanations provided by the Respondent of his conduct were incredulous and simply not plausible.

63. **Allegation 1.2 - failed to act in the best interest of each client, in breach of Rule 1.04 of the SCC 2007;**

Allegation 1.3 - failed to provide a good standard of service to his clients, in breach of Rule 1.05 of the SCC 2007;

63.1 The Applicant submitted that by failing to call in the money from two bank accounts, owned by RG, and of which he was aware; by delaying in the administration of the Estate; and by failing to distribute the Estate within a reasonable time, the Respondent had not acted in the best interests of his clients/beneficiaries and had not provided a good service. Both PG and KG gave evidence as to the financial pressures they suffered as a result of the Respondent's failures. They had both sent him emails regularly chasing him as to the progress. On 8 November 2010 the Respondent informed PG via email that he had almost finished the account and hoped to "finalise before the end of this month". However, it was a further 12 months before either of the beneficiaries received their distribution from the Estate. The Respondent explained to the beneficiaries and the FI Officer that the delay had been caused by issues with HMRC, but provided no evidence of this.

63.2 The Tribunal accepted the evidence of PG and KG, and the Applicant's submissions in their entirety. The Tribunal was satisfied that the delay in finalising the RG Estate was of detriment to the clients/beneficiaries. Further, the Tribunal determined that the delay was deliberate on the part of the Respondent as it allowed him to use the Estate monies for the benefit of the Firm and other clients. The Tribunal considered that the Respondent had placed his business needs, and the needs of other clients above those of PG and KG, and thus had failed to act in their best interests and provide them with a good standard of service. Accordingly, the Tribunal found allegations 1.2 and 1.3 proved beyond reasonable doubt on the evidence and the submissions.

64. **Allegation 1.6 - failed to give or send a bill of costs, or other written notification of the costs incurred, to his clients, prior to his requiring payment of his fees from money held for those clients, in breach of Rule 19(2) of the SAR 1998;**

Allegation 1.7 - withdrew client money from client account in circumstances not covered by Rule 22 of the SAR 1998;

64.1 Mr Dunn submitted that the Respondent prepared bills of costs and processed payments from the RG Estate without sending the bills to his clients/beneficiaries. The Tribunal determined that the Respondent had used monies obtained from the sale of Glenwood to pay his costs on other matters where the Firm acted for RG before he died. The invoices were posted to the ledgers after RG died, which the Tribunal found, were not delivered to RG before he died. The Tribunal accepted in its entirety

the evidence of PG and KG, who both stated that they did not receive the bills that the Respondent asserted he sent. The Tribunal was satisfied that allegation 1.6 was proved beyond reasonable doubt on the evidence and the submissions.

64.2 Mr Dunn further submitted that if the underlying facts in relation to allegation 1.6 were found proved, it would follow that 1.7 would necessarily also be found proved. In particular it was submitted that having failed to deliver the bills to PG and KG, the Respondent was not entitled to make those withdrawals from client account; any withdrawals in connection with the undelivered bills automatically placed the Respondent in breach Rule 22 of the SAR 1998. The Tribunal accepted Mr Dunn's submissions, and having found allegation 1.6 proved, it accordingly found allegation 1.7 proved beyond reasonable doubt on the evidence and the submissions.

Previous Disciplinary Matters

65. The Respondent had appeared before the Tribunal on two previous occasions. In case number 8624/2002 on 14 January 2003, the Respondent faced allegations in relation to breaches of the Solicitors Accounts Rules 1991. He was ordered to pay a fine of £1,500 and costs. In case number 10511/2010 on 12 May 2011, the Respondent faced one allegation of permitting his client account to be utilised as a bank account when there were no underlying legal transactions. The Respondent was fined £7,500 and ordered to pay costs in the sum of £20,000.

Mitigation

66. None.

Sanction

67. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition), the facts of the case and the submissions.

68. The Tribunal considered the seriousness of the Respondent's conduct. The Tribunal found the Respondent to be completely culpable for the breaches; the misconduct having arisen as a direct result of his sole actions. The Respondent was wholly responsible for the accounts, a fact he had accepted in his interview with the FI Officer. The Respondent was an experienced solicitor, who was fully aware of his duties and obligations in relation to his clients' monies. His actions were planned and calculated to assist either himself or his other clients. He had abused the trust placed in him by PG and KG, causing them to suffer financially whilst he deliberately and calculatedly delayed in distributing the RG Estate. The Tribunal found that in acting in the way that he did, the Respondent had caused harm not only to PG and KG, but also to the trust the public places in the profession and the provision of legal services.

69. The Tribunal found the Respondent's conduct to be aggravated by his proven dishonesty which was deliberate, calculated and repeated, and was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

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

70. His conduct was further aggravated by virtue of his previous two appearances before the Tribunal, both of which concerned breaches of the Solicitors Accounts Rules.

71. The Tribunal did not find any factors to mitigate the seriousness of the Respondent's conduct. He had made no admissions, had displayed no insight and had delayed for as long as possible before replacing the misused funds.

72. The Tribunal had regard to the cases of Bolton v Law Society [1994] 1 WLR 512 CA, Bultitude v Law Society [2004] EWHC 2022 and Sharma. It was clear from the case law, in particular Sharma, that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances. The Tribunal found that the Respondent had systematically abused client monies for an extended period of time, causing harm to the beneficiaries of the RG Estate. There had been a clear conflict between interests of PG and KG in the timely distribution of the Estate, and the Respondent's decision to use the Estate monies. Taking all of this into account, the Tribunal did not find that there were any exceptional circumstances; the only appropriate and proportionate sanction was to order the Respondent to be struck off the Roll.

Costs

73. Mr Dunn applied for costs in the sum of £43,208.84. He explained that the hourly rate was the same for all fee earners irrespective of their grade. He informed the Tribunal that his hourly rate had in fact been reduced; the increase in the lower graded fee earners hourly rates were negated by this reduction, so much so that the costs claimed were less than would ordinarily be the case if he had charged his full hourly rate.

74. The Tribunal stated that it was very impressed with the quality of the work, and the advocacy and presentation of the case. However, it determined that the preparation time for this matter was too high given the excellent forensic investigation, and costs reports (the costs of which it allowed in full). The Tribunal Ordered that the Respondent pay costs of £35,000.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, PREMJI NARAN PATEL, 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 £35,000.00.

Dated this 23rd day of February 2016
On behalf of the Tribunal

J. C. Chesterton
Chairman