SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11347-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SIMON MICHAEL ARMITAGE Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr A. G. Gibson
Mr S. Howe

Date of Hearing: 20 October 2015

Appearances

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

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, Simon Michael Armitage, made by the Solicitors Regulation Authority were that:

1.1 He failed to keep other people's money safely in a bank or building society account identifiable as a client account in breach of Rule 1.2(b) of the SRA Accounts Rules 2011 ("SRA AR 2011").

1.2 He failed to use client's money for that client's matters only in breach of Rule 1.2(c) of the SRA AR 2011.

1.3 He failed to remedy breaches of the SRA AR 2011 promptly on discovery in breach of Rule 7.1 of those Rules.

1.4 He failed to pay client money without delay into a client account and hold such money in a client account in breach of Rule 14.1 of the SRA AR 2011.

1.5 He withdrew client money from client account otherwise than in the circumstances permitted by Rule 20.1 of the SRA AR 2011 in breach of that Rule.

1.6 He withdrew money in respect of particular clients from a general client account in excess of the amount held on behalf of those clients in that account in breach of Rule 20.6 of the SRA AR 2011.

1.7 By making or causing to be made false entries on cheque-book stubs and within client account ledgers in relation to the withdrawals from client account, he:

1.7.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and

1.7.2 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.8 By writing to a residuary beneficiary knowingly giving false and/or misleading information regarding how monies from the estate had been invested, he:

1.8.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and

1.8.2 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.9 By signing a Statutory Declaration form in the name of the clients without their knowledge or authority to do so, he:

1.9.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011.

1.9.2 Failed to act in the best interests of his clients in breach of Principle 4 of the SRA Principles 2011; and

1.9.3 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.10 By borrowing in a personal capacity from his client who had not taken legal advice upon the loan transaction, he:

1.10.1 Allowed his independence to be compromised in breach of Principle 3 of the SRA Principles 2011.

1.10.2 Failed to act in the best interests of his clients;

1.10.3 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011; and

1.10.4 Failed to achieve Outcome 3.4 prescribed by the SRA Code of Conduct 2011.

Whilst dishonesty was alleged with respect to the allegations at paragraph 1.1, 1.2, 1.4, 1.5, 1.7, 1.8 and 1.9, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 6 February 2015 with exhibit PL1
- Letter from the Applicant to Nunn Rickard Solicitor Advocates dated 18 February 2015
- Letter from Nunn Rickard to the Applicant dated 12 March 2015 with enclosure
- Letter from the Applicant to the Respondent dated 7 May 2015
- Letter from the Applicant to the Respondent dated 21 September 2015
- Official copy of register of title
- Applicant's statement of costs as at 12 October 2015

Respondent

- Letter from the Respondent to the Applicant dated 17 February 2015
- Letter from the Respondent to the Applicant dated 27 February 2015
- Letter from the Respondent to the Applicant dated 12 May 2015
- Letter from the Respondent to the Applicant dated 21 August 2015

Preliminary and Other Issues
Absence of the Respondent

3. The Respondent was not present. For the Applicant, Mr Bullock submitted that the Rule 5 Statement was dated 6 February 2015 and the Respondent faced 10 allegations. He had been served with notice of the hearing date on four occasions; by the Tribunal on 1 April 2015 and by the Applicant on 7 May 2015, 12 September 2015 and 21 September 2015. In her letter of 7 May 2015, Mrs Lavender of the Applicant began by stating:

> "I refer to my letter of 8 April 2014 (copy enclosed). The Solicitors Disciplinary Tribunal has listed this matter for a substantive hearing at 10.00 am on Tuesday, 20 October 2015 (with a time estimate of one day). I enclose a copy of the notification of the hearing letter from the Tribunal together with the Memorandum of Directions produced by the Tribunal dated 1 April 2015…"

The Respondent had specifically acknowledged the Applicant's letter of 7 May 2015 on 12 May 2015:

> "I acknowledge receipt of your letter of 7th May.
> I really cannot add anything to what I have said before as to my circumstances. Since you intend to proceed incurring further costs, knowing of my financial position – which will not improve by October – I am at a loss as to know what else I can tell you."

In the Applicant's letter of 21 September 2015, Mrs Lavender included:

> "I note that you still live at… and as requested will continue to use this address until you inform me of any change of address.
>
> The hearing of this case will be heard by the Solicitors Disciplinary Tribunal ("the Tribunal") on Tuesday, 20 October 2015 at 10 am. I attach a further copy of the hearing notification letter sent to you by the Tribunal. I further confirm that the [Applicant] will continue with these proceedings given the serious nature of the allegations against you..."

Mr Bullock informed the Tribunal that the letters had been written to an address at which the Applicant knew the Respondent to be residing and of which he was shown to be the registered proprietor at HM Land Registry and to which in his letter of 21 August 2015 he had specifically requested the Applicant to write until further notice. Mr Bullock submitted that the Respondent had voluntarily absented himself from the proceedings after having been properly served with notice. The Tribunal had discretion to proceed in the absence of a Respondent under Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007:

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

The Tribunal noted that in his letter of 17 February 2015, the Respondent said:

> "I could not possibly afford to get to London for any hearings at all…"

The Tribunal was aware of the importance of exercising its discretion with caution but concluded that in this particular case the Respondent had voluntarily decided not to attend the hearing in spite of having been served with proper notice. The Tribunal would proceed to hear the application.

Admissions

4. Mr Bullock informed the Tribunal that all the allegations against the Respondent including those of dishonesty were admitted by him in his letter of 27 February 2015 by way of Answer to the Rule 5 Statement:

> "I have seen your letter of 18 February to Nunn Rickard.
>
> I see no point in a directions hearing, in that I am not contesting your application. I specifically confirm/admit each of the points referred to in your 4th paragraph. I again repeat that I am not contesting any of your allegations as I am not in a position to do so."

This had followed on from an exchange of correspondence with Nunn Rickard Solicitor Advocates who were representing the Respondent in criminal proceedings. In the fourth paragraph of her letter of 18 February 2015 to Nunn Rickard, Mrs Lavender of the Applicant had stated:

> "I would normally at this stage write to [the Respondent] to suggest that the Case Management Hearing listed on 24 March 2015 be heard by means of a telephone hearing (so that he does not have to make his way to the hearing in London). Further, notwithstanding the admissions the Respondent has made to date, given the direction made by the Tribunal relating to him filing and serving a formal Answer to the [Applicant's] Rule 5 Statement dated 6 February 2015, I would ask him to confirm in writing that he admits all the allegations contained in the Rule 5 Statement at paragraphs 1.1 – 1.10, and the allegation of dishonesty at paragraph 2. Before writing to [the Respondent] along these lines can you please confirm whether you are instructed by [the Respondent] to act on his behalf in the disciplinary proceedings at the Tribunal."

Mr Bullock clarified for the Tribunal that on 20 February 2015 Nunn Rickard had replied that they were representing the Respondent in criminal proceedings against him (regarding matters which were the subject of the allegations before the Tribunal) but they were not representing him in the disciplinary proceedings because he was not in a position to pay their fees. Mr Bullock submitted that the Respondent's letter of 27 February 2015 complied with what he or his criminal solicitors had been invited to do in the Applicant's letter of 18 February 2015 in that he admitted to everything including dishonesty. Mr Bullock submitted that it was to the Respondent's credit that he had made his admissions at a very early stage. In these circumstances the Tribunal accepted the admissions.

Criminal Conviction

5. During the course of presenting his case, Mr Bullock informed the Tribunal that the Respondent was now subject to a criminal conviction. The Tribunal had become aware in March 2015 that the Respondent had been charged but neither then nor at this hearing were details of the charges made known. Mr Bullock explained that the Applicant had not filed a Rule 7 Supplementary Statement citing the conviction but he informed Tribunal that the Respondent had entered guilty pleas and was due to be sentenced later in the week of the Tribunal hearing. The Chairman commented that the Tribunal did not know if the criminal charges were completely on all fours with the allegation against the Respondent which were before the Tribunal and it did not wish to drift into a position of being concerned about what was going on elsewhere. The Tribunal would concentrate exclusively upon the allegations made and the evidence in the documents which were before the Tribunal. Mr Bullock submitted that he had raised the fact of the conviction out of fairness to the Respondent in case it had some bearing on the Tribunal's deliberations about costs and he submitted that the fact of the conviction was relevant to the general background but the allegations were freestanding and Mr Bullock would not address the Tribunal upon the contents of the indictment.

Factual Background

6. The Respondent was born in 1949 and admitted to the Roll of Solicitors in 1974. His name remained upon the Roll but he did not hold a current practising certificate.

7. The Applicant's records showed that from 1 January 1970 up until 31 May 2013, the Respondent practised on his own account under the style "Armitage & Co" ("the firm") from offices in Exeter. K LLP acquired the Respondent's sole practice on 1 June 2013.

8. From 1 June 2013, the Respondent practised as a solicitor and was a Member at the firm of K LLP. The Respondent was dismissed by K LLP on 18 February 2014.

9. At all times material to the allegations, the Respondent could operate the client account and office account and was a signatory to those accounts as the Sole Principal of the firm and as a Member of K LLP.

10. On 17 February 2014, Mr C, the Managing Partner of K LLP wrote to the Respondent terminating his employment with K LLP with immediate effect.

11. On 24 February 2014, a duly authorised officer of the Applicant, Investigation Officer ("IO") Mr Cary Whitmarsh commenced an inspection of the books of account and other documents of K LLP. The IO interviewed the Respondent on 1 July 2014 and a transcript of the interview was attached to the Forensic Investigation ("FI") Report dated 6 August 2014 which followed on from the inspection. The FI Report related to the Respondent's conduct and spanned a period that included his time both as a Sole Practitioner of the firm and a Member of K LLP. The allegations against him arose from the contents of the FI Report.

12. A cash shortage of £512,559.69 existed on the client account of K LLP as at 31 January 2014 of which £438,044.34 had been replaced by K LLP as at 29 August 2014, leaving an un-rectified shortfall at that same date of £74,515.35 as set out in the FI Report and a schedule dated 29 August 2014 produced by K LLP.

13. The matters exemplified in the Rule 5 Statement included those of Mrs H, Mrs A and Mrs B.

Allegation 1.1 and 1.4

14. The IO noted in the FI Report three clients matter files Mrs H, Mrs A and Mrs B all deceased, where the Respondent had received client money totalling £233,752.65 and not paid in to client bank account.

Mrs H (deceased)

15. The Respondent acted for Mrs H in the sale of her home whilst she was in a nursing home and following her death on 16 December 2011. He acted as the sole executor in the administration of her estate.

16. Mrs H's Will dated 9 October 2009 showed that after a number of fixed legacies, the residue of the estate would pass to her god-daughter Mrs SR.

17. The client matter file contained a copy of estate accounts that showed that the value of the estate, before distribution, was £285,188.33.

18. The estate accounts showed that the value of the estate included a NatWest account closure in the amount of £50,147.20, a Santander account in the sum of £50,077.15 and Premium Bonds to the value of £25,000.

19. The IO examined the client account bank statements and could not find any evidence that the sums of £50,147.20 (NatWest), £50,077.15 (Santander) and £25,000 (Premium Bonds) that together totalled £125,224.35 had been credited to the account.

Mrs A (deceased)

20. The Respondent acted as the sole executor of the estate of his late sister-in-law Mrs A. Under the terms of her will, Mrs A gifted the entire net estate to her sister HK.

21. The client matter file contained a copy of a letter dated 4 April 2013 from Barclays Bank plc which stated that the balances of two accounts held by Mrs A at the date of her death totalled £96,309.97.

22. K LLP obtained a copy of the bank statement of Mrs A's estate as at 30 May 2013 being the date of closure of the account. This showed that the balance at the date of closure was £96,347.63. The narrative accompanying the closing payment read "simonmich".

23. K LLP also obtained the completed authority to close the accounts which stated that Barclays Bank was authorised to close the accounts and transfer the funds to an account held in the name of the Respondent at NatWest. The form was signed by the Respondent in his capacity as "Solicitor" and "Executor".

Mrs B (deceased)

24. The Respondent acted for the executors of the estate Mrs B deceased. The executors were her husband, Mr EB and her son Mr TB. Following a bequest to her son Mr TB, Mrs B gave her residuary estate to her husband Mr EB.

25. The client matter file contained a copy of a letter, dated 15 October 2013 from Sainsbury's bank plc in which the balance of her account was confirmed as £12,180.67. The letter enclosed a Statutory Declaration and Indemnity for Deceased Investors form to enable the executors to close the account. The Statutory Declaration gave authority to Sainsbury's Bank to close the account and transfer the funds to a nominated account in accordance with the instructions given in the form.

26. The client matter file contained a copy of the completed Statutory Declaration form. The account to which the funds would be transferred was evidenced by a page from the Respondent's paying in book found in documents relating to the firm; this was an account held by the Respondent at NatWest.

27. The IO obtained statements from Mrs B's son and executor Mr TB dated 5 June 2014. In that statement, Mr TB stated that the account details (to which the funds were to be remitted) given in the Statutory Declaration form were not accounts held by him.

28. The IO also obtained a statement from Mrs B's husband and the other executor, Mr EB dated 9 June 2014. In that statement Mr EB stated that the account details given in the Statutory Declaration form were not accounts held by him.

29. The matters exemplified in the Rule 5 Statement also included those of Miss G (deceased), Mrs K (deceased) and Mrs C.

Miss G (deceased)

30. The Respondent acted for the executors of the estate of Miss G (deceased). Her Will provided for a number of fixed legacies with the residue of her estate being given to her nephews Mr NG and Mr AG in equal shares.

31. The balance of the estate after accounting for the fixed legacies was £129,370.53.

32. The firm's client ledger account for this matter and cheque-book stubs recorded that the firm paid from client account to the residuary beneficiaries of the estate £10,000 on 21 September 2012, £50,000 on 26 February 2013, £30,000 on 19 March 2013 and £44,000 on 25 April 2013. The debit payments were evidenced by entries on the firm's Lloyds TSB client bank statements.

33. The paid cheques for all four payments were obtained from the bank. The presented cheques showed that payment was not made to Mr AG and Mr NG but in fact the actual payees were the Respondent in the sum of £10,000 and in relation to the remaining payments totalling £124,000 to NA C and LM P and Mrs SR. Mrs C had instructed the Respondent to act in the sale of her home and her son Mr NC acted on her behalf (see below) and Ms P was Mrs C's daughter. Mrs SR was the residuary beneficiary of the estate of Mrs H (see above). All four paid cheques were signed by the Respondent as the authorised signatory.

Mrs K (deceased)

34. The Respondent acted for the executors of the estate of Mrs K (deceased). Her Will provided that the net estate should be divided between her daughter, Mrs B (50%), her granddaughter Miss HK (25%) and her granddaughter Miss SK (25%).

35. An analysis of K LLP's client ledger account for Mrs K's estate showed payments from client account of £65,103.22 to Mr AG on 28 October 2013, £12,083.33 to Mr SH on 25 November 2013 and £6,820.49 to Mr G and Mrs EM G on 4 December 2013. These payments totalled £84,007.04.

36. Mr AG was one of the executors and beneficiaries of the estate of Miss G (deceased) (see above). Mr SH was a client of the Respondent and Mr and Mrs G were the beneficiaries of the estate of Mrs J (deceased) where the Respondent acted for the executors of the estate.

Mrs C

37. The Respondent acted for Mrs C in the sale of her home. The matter was dealt with on behalf of Mrs C by her son, Mr NC.

38. The firm's client ledger account for Mrs C and the cheque-book stubs showed three cheque payments made payable to Mrs C or her son Mr NC totalling £60,800. The debit payments were evidenced by entries on the firm's Lloyds TSB client bank statements.

39. Copies of the presented cheques were obtained from the bank. They showed that three cheques totalling £60,800 had in fact been paid to the Respondent and Mrs SR. Two cheques were paid to the Respondent dated 18 January 2013 and 4 February 2013 totalling £20,800 and one cheque showed the payee as Mrs SR dated 4 February 2013 in the sum of £40,000. Mrs SR was the residuary beneficiary of the estate of Mrs H (see above). All three paid cheques were signed by the Respondent as the authorised signatory.

Loan from a client

40. The FI Report recorded that in or around July 2013, the Respondent took a loan to the total value of £100,000 from a client, Mr SH without insisting that the client take independent advice.

41. The Respondent acted for Mr SH in the sale of property. The sale completed on 10 May 2013 and the net proceeds of sale were £280,243.87.

42. The loan had not been fully repaid.

The Applicant's Investigation

43. On 20 August 2014, a Supervisor of the Applicant wrote to the Respondent enclosing a copy of the FI Report and requested an explanation of his conduct. On 29 August 2014, the Respondent replied including:

> "I have admitted to the faults put to me at interview, although this "verbatim" report has an awful lot of mis-statements in it. The gist of what has happened is however quite clear".

The Respondent stated that "monies wrongfully withheld" from client account and "in many cases placed in my RBS account were used to rectify my earlier errors". He said that clients received funds that they were entitled to, albeit from his personal account, but he did not produce any documentary evidence to support this.

44. The Respondent explained:

> "I always intended to correct matters on the sale of our house but clearly the bankruptcy took that out of my hands"

The Respondent concluded in his letter:

> "I do question the point in pursuing the faults – I will not defend any proceedings obviously"

45. On 2 October 2014, a duly authorised officer of the Applicant considered the matter and decided to refer the Respondent to the Tribunal.

Witnesses

46. There were no witnesses.

Findings of Fact and Law

47. 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.

(Paragraph numbers and cross references in quotations are not included unless they aid comprehension.)

48. In considering the allegations of dishonesty the Tribunal employed the test in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton said:

> "… there is a standard which combines an objective and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

49. **Allegation 1.1 - He [the Respondent] failed to keep other people's money safely in a bank or building society account identifiable as a client account in breach of Rule 1.2(b) of the SRA Accounts Rules 2011 ("SRA AR 2011").**

Allegation 1.4 - He [the Respondent] failed to pay client money without delay into a client account and hold such money in a client account in breach of Rule 14.1 of the SRA AR 2011.

49.1 For the Applicant, Mr Bullock relied on the Rule 5 Statement and supporting evidence. It was set out in the Rule 5 Statement that the IO examined the client matter files for six clients. In the case of three of them, Mrs H, Mrs A and Mrs B all deceased, the IO noted that the Respondent had received client money and not paid it into client bank account. The facts of these cases are set out in the background to this judgment. In the course of the interview with the IO on 1 July 2014, the Respondent was asked if he had complied with Rule 1.2(b) of the SRA AR 2011 that required solicitors to keep other people's money safely in a bank or building society identifiable as a client account. The Respondent stated: "If the question is have I complied the answer is no". The IO also asked the Respondent if he had complied with Rule 14.1 that required that client money must without delay be paid into a client account and must be held in a client account. The Respondent replied "No".

49.2 Funds in relation to Mrs H's estate totalling £125,224.35 had been improperly withheld from client account and resulted in a shortfall on client account for this matter. In the course of interview, the IO asked the Respondent to explain why these sums were not credited to client bank account. The Respondent stated:

> "The answer has to be if they weren't there they came to me and I then accounted back when doing that's wrong and I then tried to account back when I was winding the estate up."

The Respondent said in relation to investing money in the NatWest and Santander accounts:

> "I'm not sure whether all that went through. Because I certainly invested some of it and some of it they put it was stopped before I did it."

And

> "I knew that was one of the estates that I had to sort out. I can't remember what I've done wrong and what I hadn't done wrong but I knew that I had… You'll tell me but I can't tell you what the situation was with that money on

> that day but it I, three days before I closed the practice I just didn't know quite what to do."

49.3 Client funds in relation to Mrs A's estate totalling £96,347.63 had been improperly withheld from client account and resulted in a shortfall for this matter. In the course of the interview with the IO, the Respondent admitted that the funds held in Barclays Bank on behalf of Mrs A's estate had been paid to him. The Respondent explained:

> "Wrongly desperation (sic) you'll find that payments were then made to other people and they were pressing for receipt I can't tell you exactly which but".

And:

> "...that money went into that account and would have come out of that account too. Not to me but to, and I'm afraid that is the story all the way through, of all these examples you've got they're all true and I admit all of them"

49.4 Client funds in relation to Mrs B's estate totalling £12,180.67 were not paid into an account held by either or both executors to her estate but instead were paid into an account held by the Respondent. The sum of £12,180.67 was therefore improperly withheld from client account and resulted in a shortfall on client account for this matter.

49.5 The Applicant's case in respect of the allegation of dishonesty relating to allegations 1.1 and 1.4 is set out under allegations 1.2 and 1.5 -1.7 below.

49.6 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. It found allegations 1.1 and 1.4 proved on the evidence to the required standard; indeed they were admitted.

49.7 Dishonesty was alleged in relation to both allegations. The Tribunal was satisfied to the required standard that by the ordinary standards of reasonable and honest people the Respondent's actions in failing to keep the money of Mrs H, Mrs A and Mrs B all deceased safely in client account and failing to pay the estates' client money into client account would be considered dishonest and that the objective test in Twinsectra was satisfied. The Tribunal was also satisfied that the Respondent knew that what he did was dishonest by those standards as evidenced by his conduct in all three cases and by his comments in the interview with the IO regarding the estates monies of Mrs H and Mrs A. The Tribunal therefore found dishonesty proved to the required standard in relation to allegations 1.1 and 1.4; indeed it was admitted.

50. **Allegation 1.3 - He [the Respondent] failed to remedy breaches of the SRA AR 2011 promptly on discovery in breach of Rule 7.1 of those Rules.**

50.1 For the Applicant, Mr Bullock relied on the Rule 5 Statement and supporting evidence. The FI Report stated that a cash shortage of £512,559.69 existed on the client account of K LLP as at 31 January 2014. The Respondent was asked in interview about his knowledge of the shortage. The IO explained the shortage he had identified as at 31 January 2014 and that he was able to show that the Respondent had benefited personally in the sum of £139,328.30. The Respondent replied:

"That's in my mind the sort of figure that I thought I had to pay back."

The Respondent confirmed that he had utilised the money to pay personal debts. The Respondent stated in his letter of 29 August 2014 to the Applicant that he believed that the current shortage on client account was a balance of £140,000 owing to clients and that the net proceeds of his house sale would easily have covered this. He stated that the only payments owing were to the clients Mrs K (deceased), Miss G (deceased) and Mrs A (deceased). The Respondent did not state the payments owing to these clients or produce records to evidence this position.

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

51. **Allegation 1.2 - He failed to use client's money for that client's matters only in breach of Rule 1.2(c) of the SRA AR 2011.**

Allegation 1.5 - [the Respondent] He withdrew client money from client account otherwise than in the circumstances permitted by Rule 20.1 of the SRA AR 2011 in breach of that Rule.

Allegation 1.6 - He [the Respondent] withdrew money in respect of particular clients from a general client account in excess of the amount held on behalf of those clients in that account in breach of Rule 20.6 of the SRA AR 2011.

Allegation 1.7 - By making or causing to be made false entries on cheque-book stubs and within client account ledgers in relation to the withdrawals from client account, he [the Respondent]:

1.7.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and

1.7.2 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

51.1 For the Applicant, Mr Bullock relied on the Rule 5 Statement and supporting evidence. He submitted that the Respondent had caused a cash shortage at K LLP by the misappropriation of client money and that he admitted to having personally benefitted. The IO examined the six client matter files and noted the following improper withdrawals from client bank account in respect of these matters:

Client	Payee	Amount
Mrs K (deceased)	Mr AG	£65,103.22
Miss G (deceased)	Mrs SR	£50,000.00
Miss G (deceased)	Mrs SR	£44,000.00
Mrs C	Mrs SR	£40,000.00
Miss G (deceased)	NC and LP	£30,000.00
Mrs K (deceased)	Mr SH	£12,083.33
Mrs C	The Respondent	£11,600.00

Client	Payee	Amount
Miss G (deceased)	The Respondent	£10,000.00
Mrs C	The Respondent	£9,200.00
Mrs K	Mr and Mrs GB	£6,820.49
Total		£278,807.04

The Respondent as he admitted was "robbing Peter to pay Paul" and using cheques to replace funds that he had misappropriated from other clients. The ledger was completed showing that the payment had been made to the client or beneficiary to whom the cheque was properly payable. In each case the Respondent accepted in interview that the payments had been made in breach of Rule 20.1(a) of the SRA AR 2011. The means by which the Respondent carried out the misappropriation was two-fold:

51.2 On 10 occasions between 21 September 2012 and 4 December 2013, the Respondent made cheque payments ranging in amount between £6,820.49 (the least) and £65,103.22 (the largest) and to a total value of £278,870.04 that was shown on the face of the relevant ledger account, and on cheque-book stubs as having been made to the client or beneficiary of the estate to whom that ledger related, when in fact they were made to a different person. These payments including sums made payable to the Respondent personally in the total sum of £30,800. The FI Report dealt with three client matters – Miss G (deceased), Mrs K (deceased) and Mrs C and set out with supporting evidence for particulars of the dates and amounts of the individual withdrawals and details of the falsification of the accounting records.

51.3 In respect of the estate of Miss G, the cheque-book stubs and client account ledger showing payments of £134,000 to Mr AG and Mr NG were incorrect as those payments were not made to them as the intended payees. There were therefore improper withdrawals from client account of £134,000 in respect of the Miss G estate giving rise to a shortfall of £134,000 in this matter. By withdrawing £134,000 from client account in relation to Miss G's estate when there was available for distribution a net estate of £129,370.53, the Respondent had withdrawn sums in excess of the amount held in client account for this particular client in breach of Rule 20.06 of the SRA AR 2011 (allegation 1.6). An explanation by the Respondent of how these withdrawals from client monies came about was given in interview with the IO. The Respondent said that he wrote out the cheques and recorded a different name on the cheque stub that was then given to the bookkeeper to record in the books of accounts. The Respondent explained that the purpose of doing this was to hide his true actions from his bookkeeper and his accountants. In the course of the interview with the IO, the Respondent admitted that the cheque dated 21 September 2012 in the sum of £10,000 where the purported payee was Mr AG on the cheque stub and client ledger, was in fact paid to him. The Respondent explained:

> "Yes the whole issue about this is where I've done something like this you'll find it [that] all the cheques in question are hand written by me and I'm afraid what I did, is fairly obvious I suspect is I would have written a stub saying whatever it should have said and then written a cheque to myself but it's all in my handwriting and it's all done by me personally"

51.4 In respect of the estate of Mrs K (deceased), Mrs K's Will did not include legacies to Mr AG, Mr SH and Mr and Mrs G. The payments totalling £84,007.04 were therefore improperly made. During the course of the interview with the IO, the Respondent said that the explanation for these payments was the same as before in that it was robbing Peter to pay Paul. He stated:

> "Yes I did think it was dishonest".

51.5 In respect of Mrs C, The cheque-book stubs and client account ledger showing payments of £60,800 to Mrs C and her son Mr NC were incorrect as those payments were not made to them as the intended payees. There were therefore improper withdrawals from client account of £60,800 in the Mrs C matter giving rise to a shortfall of that amount on the matter. In interview with the IO the Respondent confirmed that the three cheques from the sale proceeds purportedly paid to Mrs C and her son Mr NC as shown on the client ledger account and the cheque stubs were not in fact paid to them. The IO asked the Respondent if, in respect of these three cheques, he had acted dishonestly, to which the Respondent replied "Yes"

51.6 Mr Bullock submitted that the second means by which the Respondent misappropriated client money was to get the money in as an executor and keep it rather than paying it into client account. The total value of monies which he received in this way was £233,752.65. Three estates, those of Mrs H, Mrs A and Mrs B were affected in this way (see allegation 1.1 and 1.4 above).

51.7 It was set out in the Rule 5 Statement by reference to the alleged failure to act with integrity in allegation 1.7 and the estates of Miss G, Mrs K, and the affairs of Mrs C that the Respondent paid client account cheque payments to persons other than that recorded on the cheque-book stubs and within the client ledger accounts. He therefore concealed the proper withdrawals from client account by falsifying or causing to be falsified accounting records showing the purported payees rather than the actual payees. Furthermore, the cheque payments included payments to the Respondent personally on the client matters of Miss G, £10,000 on 21 September 2012 with a purported payee Mr AG, £9,200 on 18 January 2013 with a purported payee Mrs C and £11,600 on 4 February 2013 with a purported payee Mrs C, the latter two being on the matter of Mrs C. In the course of the interview with the IO the Respondent was asked if he had complied with Principle 2 of the SRA Principles 2011 that required solicitors to act with integrity. He was also asked if he had complied with Principle 6 that required that solicitors must not behave in a way that undermines the trust the public placed in them and providers of legal services. To both questions the Respondent replied "No".

51.8 Mr Bullock submitted that these were dishonest appropriations and the Respondent, by his admissions in the course of the investigation and in these proceedings, accepted that they were dishonest misappropriations. It was asserted in the Rule 5 Statement that none of the various withdrawals identified within the FI Report in respect of Miss G, £134,000, Mrs H £125,224.35, Mrs A £96,347.63, Mrs K £84,007.04, Mrs C £60,800 and Mrs B £12,180.67 was permitted by Rule 20.1(a) -(k). In the interview with the IO the Respondent was asked if he had complied with Rule 1.2(c) of the SRA AR 2011 that required solicitors to use client money for that client's matter only (allegation 1.2). The Respondent replied "No". He was also asked if he had complied

with Rule 20.1(a) that required that client money might only be withdrawn from a client account when it was properly required for a payment to or on behalf of the client (allegation 1.5). The Respondent replied "No".

51.9 With particular reference to allegation 1.5 it was set out in the Rule 5 Statement that the Respondent had £233,752.65 paid into his personal bank account rather than the firm's client bank account. He had closed the accounts of two deceased clients, Mrs A and Mrs B and transferred the balances in those accounts to his personal bank account rather than the firm's client account. In addition there was a further matter Mrs H where client funds were withheld from the client bank account. The Respondent behaved in a manner which was dishonest by the standards of reasonable people. (For the Applicant's full case on dishonesty, see below.)

51.10 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. It found allegations 1.2, 1.5, 1.6 and 1.7 in all its aspects proved to the required standard on the evidence indeed they were admitted.

52. **Allegation of dishonesty in respect of withholding client money from client account and improperly withdrawing money from client account for his own purposes (allegations 1.2, 1.5, and 1.7)**

52.1 It was submitted in the Rule 5 Statement that the Respondent's actions in withholding client money from client account and improperly withdrawing money from client account for his own purposes, including paying off personal debts, together with concealing the improper withdrawals by falsifying or causing to be falsified accounting records were dishonest according to the combined test laid down in Twinsectra. In so doing, the Respondent acted dishonestly by those ordinary standards. Reasonable and honest people would not regard it as honest for a solicitor to use their clients' money for his own purposes. Not only was his conduct in withholding client money from client account and making improper withdrawals dishonest by those standards but he must also have been aware that it was dishonest by those standards for the following reasons:

- The Respondent took deliberate steps to conceal the improper withdrawals from anyone reviewing the relevant client matters in that he made false entries on cheque-book stubs and caused to be made false entries within client ledgers in relation to withdrawals from client account

- In the course of interview with the IO the Respondent was asked if he had acted dishonestly in respect of those monies improperly paid into his personal bank account rather than the firm's client bank account. The Respondent said "Yes".

- Further, admissions had been made to the IO in interview as referred to above.

- Additionally the withholding of money from client account and the improper withdrawals were not isolated acts but constituted a course of conduct extending over a period of at least 14 months from 21 September 2012 to 4 December 2013 and amounted to a substantial sum of money. The Respondent had therefore ample opportunity to reflect upon the propriety of his actions.

- Moreover, the Respondent could not have had any real expectation of being able to replace in full the funds which he was misappropriating. His inability to pay creditors without recourse to client money demonstrated that he was experiencing financial difficulty at the times at which monies were withheld from client account and monies were improperly withdrawn from client account. The Respondent stated to the IO:

  > "... I've no money, I've no assets, all I've been doing is building up borrowings"

  And

  > "Obviously, I got to a point where it's a bit like [unclear] some of the issues with people who were due money came to a head in February and I just didn't know where to turn, to be honest with you".

  Further, in the Respondent's letter to a Supervisor employed by the Applicant dated 29 August 2014, he stated that he was bankrupt. This was confirmed by a copy of the Bankruptcy Order. The Respondent was made bankrupt on 21 February 2014.

- The Respondent stated in his letter to the Supervisor dated 29 August 2014;

  > "I always intended to correct matters on the sale of our house".

  This showed a conscious decision to withdraw and use client funds for his own purposes.

- However, if not withstanding the Respondent's parlous financial position, he was nevertheless in a position to make payments into his client account in full remediation of his misappropriation of client monies then he had ample opportunity to do so and he did not.

- Lastly in relation to the improper withdrawals from client account, £30,800 was paid personally to the Respondent and he closed the accounts of two deceased clients and transferred the total balance of £108,528.30 to his own personal bank account. No reasonable solicitor would have considered this conduct to be honest. The Tribunal was therefore invited to draw the irresistible inference that the Respondent knew that his actions would be viewed as dishonest by the standards of reasonable and honest people.

52.2 The Tribunal considered the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal was satisfied to the requisite standard that by the ordinary standards of reasonable and honest people the Respondent's actions specified under allegation 1.2. 1.5 and 1.7 would be considered dishonest and the objective test in Twinsectra was satisfied. The Tribunal was also sure to the required standard as evidenced by his actions and his admissions in interview that the Respondent knew that what he did was dishonest by those standards and the subjective test in Twinsectra was also satisfied. The Tribunal therefore found dishonesty proved to the requisite standard in respect of allegations 1.2, 1.5 and 1.7.

53. **Allegation 1.8 - By writing to a residuary beneficiary knowingly giving false and/or misleading information regarding how monies from the estate had been invested, he [the Respondent]:**

1.8.1 - Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and

1.8.2 - Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

53.1 For the Applicant, it was alleged that the Respondent acted as the sole executor in the administration of Mrs H's estate. In a letter dated 28 May 2013 to the residuary beneficiary, Mrs SR, the Respondent said that he had placed the sums of £100,000 and £80,000 with Mrs H's bank (NatWest) and that he had invested the sum of £50,000 with Santander making a total of £230,000:

> "Turning then to other situations, up and until the house sale [Mrs H's] bank account was running on virtually nothing. Once the house sale had taken place obviously her situation altered. I attach now a copy of the completion statement and accounts. From the balance, which I transferred into her general client account here, I placed £100,000 and then £80,000 with her bank (I will refer to this later as that is where our problem has arisen) I paid £954 for house clearance, a payment of just over £1,000 to The Lilacs and £50,000 investment to Santander and settled the account number… referred to above. This left the figure which I have shown in the Estate Accounts as coming into the Probate file of £84,162 .05."

Mr Bullock submitted that in the course of the interview with the IO, the Respondent admitted that the statements in the letter were a deliberate lie and that the estate of Mrs H was one of those where he had received client monies and not paid it into client account. In interview the Respondent said: (SW was the Applicant's Investigation Team Manager):

> "SW: But you knew that, that wasn't the case, that money had not been invested is that correct?
>
> R: No
>
> SW: So you deliberately lied to Mrs [SR]
>
> R: I, I that is not true yes, that is not true
>
> SW: What's not true? That the position or
>
> R: Sorry yes, yes you're I'm agreeing with you
>
> SW: That's right, right okay"

The client matter file contained a copy of estate accounts that showed the value of the estate including two NatWest accounts totalling £122,556.20 and a Santander account in the amount of £50,077.15. The amount to be invested in the NatWest accounts was stated by the Respondent in his letter to Mrs SR of 28 May 2013 to be £180,000 in total rather than £122,556.20 as recorded in the estate accounts. Further the IO on examining the client account bank statement could not find any evidence that the sums of £50,147.20 (NatWest) and £50,077.15 (Santander) had been credited to the account.

53.2 It was submitted that a solicitor with integrity would be astute to ensure that the beneficiaries of an estate of which he was the executor were not misled as to where cash comprised within the estate was being held and, consequently, would be at pains to ensure that correspondence emanating from his office on the topic was strictly accurate. The failure by the Respondent so to do had the inevitable effect of undermining the trust and confidence the public placed in him and in the provision of legal services.

53.3 In the course of interview with the IO, the Respondent said in relation to his letter of 28 May 2013 to the residuary beneficiary, Mrs SR that:

> "I'm not sure whether all that went through. Because I certainly invested some of it and some of it they put it was stopped before I did it"

He explained:

> "I, I was in a complete and utter panic by the time it got to that stage. I knew that one of the estates I had to sort out. I can't remember what I'd done wrong and what I hadn't done wrong but I knew that I had. I can't remember why I even wrote that letter to Mrs SR but I, I have to say it was not true but I can't actually tell you"

53.4 The Applicant further alleged that the Respondent's actions in writing knowingly giving false and/or misleading information concerning how monies in the estate had been invested was dishonest within the meaning of Twinsectra. Providing such information as the solicitor and executor to the estate to the residuary beneficiary would self-evidently be considered dishonest by reasonable and honest people. It was inconceivable that the Respondent did not realise this was the case. In particular:

- Writing a letter to the residuary beneficiary would have required a conscious decision by the Respondent.

- On sending the letter to the residuary beneficiary on 28 May 2013 the Respondent remained silent about his actions.

- When writing and sending the letter to the residuary beneficiary, the Respondent was taking deliberate steps to conceal the withholding of client money from client account. The Applicant contended that this demonstrated that he was knowingly seeking to mislead the residuary beneficiary so that she would not raise questions about where the funds from the NatWest and Santander banks had been invested.

- The Respondent admitted that he had deliberately lied to Mrs SR in the record of the interview with the IO.

- In any event, the circumstances of the case were such that an irresistible inference arose that the Respondent must have appreciated that his actions would be viewed as dishonest by reasonable and honest people. It was inconceivable that a 63 year old solicitor with in excess of 38 years post qualification experience practising in the field of probate and the administration of estates would not have understood that it was dishonest knowingly to give false and/or misleading information to beneficiaries: and consequently, also understood that an allegation of misconduct of this nature was a very serious allegation.

53.5 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.8 in all its aspects proved to the required standard on the evidence; indeed it was admitted.

53.6 Dishonesty was alleged in relation to allegation 1.8. The Respondent as executor wrote to the beneficiary of Mrs H's estate giving false and/or misleading information about placing sums of money with NatWest and Santander. The Tribunal found that by the ordinary standards of reasonable and honest people that would be considered dishonest and that the objective test in Twinsectra was satisfied. The Respondent by his actions concealed the withholding of client money from client account and admitted in interview that he had deliberately lied. The Tribunal found that the Respondent knew that what he was doing was dishonest by the ordinary standards of reasonable and honest people and that the subjective test in Twinsectra was satisfied. The Tribunal found the allegation of dishonesty in relation to allegation 1.8 proved to the required standard; indeed it was admitted.

54. **Allegation 1.9 - By signing a Statutory Declaration form in the name of the clients without their knowledge or authority to do so, he [the Respondent]:**

1.9.1 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.9.2 Failed to act in the best interests of his clients in breach of Principle 4 of the SRA Principles 2011; and

1.9.3 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

54.1 For the Applicant, it was set out in the Rule 5 Statement that the Respondent acted for the executors of the estate Mrs B (deceased). In her Will dated 18 June 2004, she appointed her husband Mr EB and her son Mr TB as her executors.

54.2 The client matter file contained a copy of a letter dated 15 October 2013 from Sainsbury's Bank plc in which the balance of Mrs B's account was confirmed as £12,180.67. As mentioned above the letter enclosed a Statutory Declaration and Indemnity for Deceased Investors form to enable the executors to close the account.

The client matter file contained a copy of the completed Statutory Declaration form that showed that the account to which the funds were transferred was held by the Respondent. The Statutory Declaration gave authority to Sainsbury's Bank to close the account and transfer the funds to a nominated account. The form stated:

> "I/We named above declare that I am/We are the Executor(s) named in the last will of the deceased."
>
> and
>
> "I/We request Sainsbury's Bank to pay the money in the above account(s) to me /us or in accordance with my/our instructions"

The form then included a section in which the signatures of the executors were to be inserted. This section was completed with the apparent signatures of Mr EB and Mr TB. The IO obtained a statement from Mr EB dated 9 June 2014 in which he stated that neither of the signatures appearing in the Statutory Declaration form was his. The IO also obtained a statement from the other executor Mr TB dated 5 June 2014 in which he stated that neither signature was his. In interview with the IO, the Respondent was asked if he had forged executors' signatures. He responded:

> "I'm afraid so, I'm afraid so... I just couldn't remember doing it but I clearly did it and I just don't remember I just don't remember doing it".

The Applicant did not accept the Respondent's explanation on the basis that signing a Statutory Declaration in the name of your executor clients without their permission would have been a serious action to the Respondent as a solicitor instructed by the estate and sole principal of his own practice, with potentially grave consequences for his career and practice. It was inconceivable that he would not have been cognisant of his actions in so doing.

54.3 Mr Bullock submitted that the Respondent admitted in interview that he had signed the Statutory Declaration:

> "CW: That's the account details there… You'll see that on page 2 of the statutory declaration form has what purports to be the signatures of [EB] and [TB]. Both of these gentlemen have given me statements to say that the signatures on that form are not theirs. Did you forge their signatures?
>
> R: I'm afraid, I'm afraid so. That's me, this is the case that was the last one the police brought up and I just couldn't remember doing it but I clearly did it and I just don't remember, I just don't remember doing it."

54.4 The Applicant further alleged that the Respondent's actions in signing the Statutory Declaration form purporting to be the executor clients was dishonest. Signing an important document in this nature in the name of another person without their authority would self-evidently be considered dishonest by reasonable and honest

people and it was inconceivable that the Respondent did not realise this was the case. In particular:

- The Statutory Declaration form from Sainsbury's Bank plc when completed and signed gave the bank authority to close the account and released the monies held in the account to an account as instructed by the executors in the form.

- The Respondent knew that the bank required the signature(s) of the executor(s) to close the account and transfer the funds to a nominated account. The wording of the form made that clear.

- The Respondent knew that he did not have the authority of the executors to sign the form

- The Respondent did not qualify either signature by indicating that it was signed per pro Mr EB or Mr TB

- Given that the funds were transferred to the Respondent's account, the Respondent must have sent the signed Statutory Declaration form to the bank. He must have placed or caused to be placed on the client matter file a copy of the completed Statutory Declaration form. These actions would have required a conscious decision by the Respondent.

- The Respondent did not inform Mr EB and Mr TB that he had signed the Statutory Declaration in their names.

- Once Sainsbury's Bank had processed the Statutory Declaration form, closed the account and transferred the funds, the Respondent remained silent about his actions.

- A comparison between those signatures and the Respondent's usual signature as it appeared in his letter dated 29 August 2014 in response to the letter from the Applicant's Supervisor showed that the signatures were not written in his usual hand. Each of the executors' purported signatures was also different. The Applicant contended that this demonstrated that the Respondent was seeking to conceal his identity as a signatory of the Statutory Declaration Form

- When signing the Statutory Declaration form, the Respondent was taking deliberate steps to conceal the withholding of clients money from client account. The Applicant contended that this demonstrated that the Respondent deliberately signed the Statutory Declaration form purporting to be the executors so that the funds in the account would be transferred to his personal account.

- The Respondent admitted to his wrongdoing in the interview with the IO. The IO asked if, by forging the signatures, the Respondent accepted that he had acted dishonestly. The Respondent replied "Yes"

- In any event, the circumstances of the case were such that an irresistible inference arose that the Respondent must have appreciated that his actions would be viewed as dishonest by reasonable and honest people. It was inconceivable that a solicitor of his age and experience practising in the field of probate and the administration of estates would not have understood that it was dishonest to sign documents in the name of executors without their knowledge and authority; and consequently also understood that an allegation of misconduct of this nature was a very serious allegation.

54.5 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.9 in all its aspects proved to the required standard on the evidence; indeed it was admitted.

54.6 Dishonesty was alleged in relation to allegation 1.9. The Respondent admitted in interview that he had written the purported signatures of the executors of Mrs B's will on the Statutory Declaration. The Tribunal found that by the ordinary standards of reasonable and honest people this would be considered dishonest and that the objective test in Twinsectra was satisfied. The Respondent's actions involved deliberate steps and concealment of what he had done. The Tribunal found that he knew what he was doing was dishonest by the relevant standard and that the subjective test in Twinsectra was satisfied. The Tribunal found dishonesty proved to the required standard in respect of allegation 1.9.

55. **Allegation 1.10 - By borrowing in a personal capacity from his client who had not taken legal advice upon the loan transaction, he [the Respondent]:**

1.10.1 Allowed his independence to be compromised in breach of Principle 3 of the SRA Principles 2011.

1.10.2 Failed to act in the best interests of his clients;

1.10.3 Failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011; and

1.10.4 Failed to achieve Outcome 3.4 prescribed by the SRA Code of Conduct 2011.

55.1 For the Applicant it was set out in the Rule 5 Statement that the Respondent in taking the loan of £100,000 deducted from the proceeds of a property sale which the Respondent had conducted for the client, did not advise his client to take independent legal advice before the loan was made. It was submitted that in entering into this arrangement the Respondent preferred his own interests to those of his client. A statement was obtained by the IO from Mr SH dated 7 June 2014. Copies of the Respondent's letters to Mr SH dated 5, 12, and 25 May 2013 and 8 July 2013 relating to the negotiation of the terms of the loan were exhibited to Mr SH's statement. Mr SH stated that around the time that the transaction completed, the Respondent asked him if he would loan the Respondent £100,000. This was also confirmed in the Respondent's letter dated 5 May 2013. Mr SH said that he reluctantly agreed to make a loan of £100,000 to the Respondent with an interest rate of 15% per annum and a

repayment arrangement that was eventually settled upon as three years. The Respondent confirmed that a loan of that amount was agreed in his letter to Mr SH dated 12 May 2013. Although security for the loan was initially discussed, the Respondent later said in his letter to Mr SH dated 25 May 2013 that the consent of the Britannia Building Society (whom he said held a charge over the Respondent's property) would be required and their "... requirements are frankly excessive". The Respondent said:

> "I can give you my word as a Solicitor that I am meticulous in meeting my obligations, and always have been".

Mr SH stated that the Respondent did not advise him to seek independent legal advice in relation to negotiating or making the loan to the Respondent. This was also confirmed by the Respondent in his interview with the IO. He said:

> "I didn't consider it at the time. No and I obviously should have done".

The Respondent stated in his letter to Mr SH dated 8 July 2013 that:

> "Your loan has enabled me to complete my move to [K LLP], but I will if I may deal with the correspondence through the Armitage & Co address – for privacy reasons"

He then went on to say:

> "Although it is probably not viable, I have the opportunity of becoming one of the main partners here – but I will need to put in considerably more cash to achieve it. I'm looking to see if I can raise up to £150,000 for this – so if you have any other spare funds or indeed know of anyone else who might be attracted by a return rate of around 15%, just let me know"

55.2 The IO noted four cheque payments, totalling £97,400 on the firm's client ledger account relating to the sale of Mr SH's property. The client ledger described these debits from client account as "Part bal due paid to client". The cheque-book stubs relating to these payments showed Mr SH as the payee. The debit payments in the client ledger were evidenced by entries on the firm's Lloyds TSB client bank statements. These cheque payments of £97,400 together with a bill for £2,600 accounted for the loan amount of £100,000. Copies of the presented cheques were obtained from the bank which showed that three cheques totalling £96,000 were paid to the Respondent and a cheque in the sum of £1,400 was payable to Mr SH. Following completion of the sale, Mr SH stated that he received £180,243.87 of the sale proceeds. This was also evidenced by payment out of client account on the firm's Lloyds TSB client bank statement.

55.3 In relation to his loan to the Respondent, Mr SH has stated that he received two repayments on 23 August 2013 and 25 November 2013 each in the sum of £12,083.33 that totalled £24,166.66 leaving a balance on the loan of £75,833.34 exclusive of any interest that might be chargeable. Accordingly £75,833.34 remained outstanding on this loan.

55.4 In the course of the interview with the IO on 1 June 2014, the Respondent was asked if he had complied with Outcome 3.4 of the SRA Code of Conduct 2011 that required that solicitors must not act if there was an open interest conflict or a significant risk of an own interest conflict the Respondent replied "No" during the interview with the IO, the Respondent was asked if he had complied with Principle 4 of the SRA Principles 2011 that required solicitors to act in the best interests of their clients. Again the Respondent replied "No". Mr Bullock submitted that because the Respondent had made only two repayments to Mr SH subsequent to which the Respondent had been made bankrupt Mr SH had suffered loss in consequence. Mr Bullock clarified for the Tribunal that while the bankruptcy had taken place on 21 February 2014 and there had been no order to extend it and it therefore came to an end a year later, the Respondent was subject to a 15 year bankruptcy proscription.

55.5 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The Tribunal found allegation 1.10 in all its aspects proved to the required standard on the evidence; indeed it was admitted.

Previous Disciplinary Matters

56. None

Mitigation

57. The Respondent was not present and had offered no formal mitigation. In his letter of 17 February 2015, the Respondent referred to his age and stated that he was not in particularly good health and "as a result of my stupid and irrational actions over the last few years, am bankrupt". He also stated:

> "I made it clear to your investigators that I fully understood that my actions would be bound to mean that I would forfeit my right to practise, and any entitlement to a practising certificate. I have no intention of seeking to practise again and I indicated to your investigators that if I could voluntarily relinquish my certificate, I would immediately do so…"

The Respondent went on to state that his only asset was his share in the matrimonial home which would be taken by the trustee in bankruptcy as soon as it was sold. In his letter dated 21 August 2015, the Respondent stated that he had said all along that he would if possible surrender his practising certificate voluntarily. He also stated that he had no assets or income other than a small pension.

Sanction

58. The Tribunal had regard to its Guidance Note on Sanctions. The Tribunal arrived at its decision upon sanction purely on the basis of the 10 allegations which had been found proved against the Respondent including dishonesty in respect of seven of the allegations. The allegations were very serious. The Respondent alone was culpable for the misconduct and it was clear that he had been motivated by a desire to keep his financial problems at bay. He had dishonestly misappropriated money from deceased clients' estates in part for his own direct financial benefit. He misled clients and others including by dishonestly completing clients' names on a document. The

Respondent's misconduct was planned and deliberate. He had acted in flagrant breach of trust as executor and solicitor. He had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent was a very experienced solicitor who had been in practice for almost four decades when the misconduct occurred. He had caused serious harm to clients who had to undergo the discovery that their solicitor had betrayed their trust and process of being compensated for what had happened. In the SH matter, the Respondent had induced a client to make him a personal loan without independent legal advice and the client was left unpaid to the extent of approximately £75,000. The Respondent had also caused significant harm to the firm with which he had merged. The firm was left with all the problems of being a successor practice to a dishonest solicitor. The harm to the reputation of the profession was extremely serious and totally foreseeable. There were numerous aggravating factors; there were multiple instances of deliberate and calculated dishonesty, the Respondent had made no attempt to make good the losses, his misconduct continued over a period of around 14 months, his dishonesty by its very nature involved concealment including by completing false information on cheque stubs and by completing false signatures on a statutory declaration. He had taken advantage of a position of the highest trust as an executor. The Respondent had wished to come off the Roll voluntarily but in the public interest his misconduct needed to be aired before the Tribunal. The Respondent had departed entirely from the "complete integrity, probity and trustworthiness" expected of a solicitor as set out in the case of Bolton v The Law Society [1994] 1 WLR 512. As the Guidance Note set out, the most serious conduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. All that could be said by way of mitigation was that the Respondent had no previous appearances before the Tribunal and had made admissions immediately his misconduct had been found out. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off save in exceptional circumstances. No submissions had been made to the Tribunal that there were exceptional circumstances and the Tribunal found there to be none. The Respondent's behaviour had been disgraceful. He must be struck off.

Costs

59. For the Applicant, Mr Bullock applied for costs in the amount of £31,016.36 and asked that the order be immediately enforceable. The Tribunal noted that a considerable proportion of the costs had been incurred in the investigation including that a number of working weeks had been recorded in preparing the FI Report and the amount of time spent preparing the Rule 5 Statement was also considerable. The Tribunal accepted that the case had involved tracking transactions through various files because of the "robbing Peter to pay Paul" aspect of the matter. The claim needed to be reduced because the hearing had taken a shorter than estimated time. As to the Respondent's financial position, he had been served with the schedule of costs and the Standard Directions issued by the Tribunal alerted him to the need to provide financial information with supporting evidence if he wished to make representations about his ability to pay. He had not responded but he had referred to his financial position in his various letters. The Tribunal noted that the Respondent had been made bankrupt (apparently on his own petition) but would by now have been discharged. He had a share in the matrimonial home. Mr Bullock provided office copy entries for the property and the Tribunal noted that the bankruptcy notwithstanding, no charges of any kind were registered against the property which was in the joint names of the

Respondent and his wife. An internet search showed that similar properties in the area had been sold for between £323,000 and £696,000. The Respondent himself had referred to it in interview as being worth in the region of £600,000. The Respondent had stated that his half share of the house was worth "£200,000 plus" after allowing for a mortgage. The Respondent had also referred to the property being subject to a mortgage when he was negotiating with the client Mr SH for a loan but the office copies were dated 8 October 2015 and it was possible that any such mortgage had been discharged. Taking into account all the information which the Tribunal had been able to piece together it appeared that there could be a potential half share of £200,000 from the proceeds of sale of the house available to the Respondent. It appeared from the Respondent's letters that the property was to be sold. The Tribunal retired for a short period and Mr Bullock made telephone enquires of the Official Receiver's office. Mr Bullock informed the Tribunal as a result of his enquiries that he had spoken to the costs recovery staff at the Official Receiver's office and the trustee in bankruptcy's assistant there. It appeared that an administrative error had occurred somewhere in the process and no restriction had been entered on the register in respect of the bankruptcy. It was initially understood that completion of the sale of the property was to take place shortly and Mr Bullock received a subsequent telephone call and was able to update the Tribunal to the effect that completion of the sale of the property had just occurred.

60. The Tribunal considered the costs carefully; it had some concerns about the level of costs in a number of areas including the amount of time spent in preparing the FI Report and in preparing, revising and finalising the Rule 5 Statement. It was also the necessary to reduce the time spent on the hearing. The Tribunal summarily assessed costs in the sum of £25,000. The Respondent had not provided any proper evidence of his financial position although he had been given every opportunity. The Tribunal accepted that he had been made bankrupt but understood that there was potentially considerable equity in the matrimonial home which the Respondent/his trustee in bankruptcy would have a share. The Tribunal determined that it would be appropriate to make an immediately enforceable order.

Statement of Full Order

61. The Tribunal Ordered that the Respondent, Simon Michael Armitage, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of an incidental to this application and enquiry fixed in the sum of £25,000.00.

Dated this 23rd day of November 2015
On behalf of the Tribunal

A.N. Spooner
Chairman