

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11367-2015

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ADRIAN ANDREW PARKER

Respondent

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Before:

Mr P.S.L. Housego (in the chair)

Mr E. Nally

Mrs L. Barnett

Date of Hearing: 17 & 18 September 2015

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**Appearances**

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

The Respondent appeared in person.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that:
  - 1.1 The Respondent failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 (“SAR 1998”) in the period up to 5 October 2011 and/or from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 (“AR 2011”).
  - 1.2 The Respondent failed to remedy breaches to the Accounts Rules promptly upon discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 7.1 of the AR 2011.
  - 1.3 The Respondent withdrew and/or transferred money from client bank account, contrary to Rule 19(2) of the SAR 1998 in the period up to 5 October 2011, and/or from 6 October 2011, Rule 17.2 and 17.7 of the AR 2011.
  - 1.4 The Respondent withdrew monies from client bank account other than as permitted by Rule 22(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 20.1 of the AR 2011.
  - 1.5 The Respondent failed to carry out the required reconciliations, contrary to Rule 29.12 of the AR 2011.
  - 1.6 The Respondent improperly transferred money from client bank account to the firm’s office bank account to cover payments made to his personal bank account, and in so doing, misappropriated and/or utilised clients funds for his own benefit, contrary to Rules 1.02, 1.06 and 5.01(j) and/or (l) of the Solicitors Code of Conduct 2007 (“SCC 2007”), and/or Rule 22 of the SAR 1998 in the period up to 5 October 2011, and/or from 6 October 2011 he acted contrary to all, alternatively, any of Principles 2 and 8 of the SRA Principles 2011 (“SRA Principles”) and thereby failed to achieve outcome O(7.4) of the SRA Code of Conduct 2011 (“2011 Code”) and/or Rule 20.01 of the AR 2011.
  - 1.7 The Respondent had acted dishonestly in relation to Allegations 1.3, 1.4 and 1.6.

The Respondent admitted Allegations 1.1, 1.3, 1.4, 1.5 and 1.6. He denied dishonesty.

## **Documents**

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 17 March 2015 together with attached Rule 5 Statement and all exhibits (document A1)
- Applicant’s Statement of Costs dated 11 September 2015 (document A2)

## Respondent:

- Email dated 21 August 2015 from the Respondent to the Applicant and the Tribunal (document R1)
- The Respondent's Reply to the Rule 5 Statement dated 16 July 2015 together with attached exhibits (document R2)
- Statement of Adrian Andrew Parker (the Respondent) dated 20 August 2015 (document R3)
- Statement of Raymond McKimm dated 19 August 2015 (document R4)
- Exhibits attached to the Respondent's Statement dated 20 August 2015 (document R5)
- Certificate of Fitness for Work dated 2 June 2015 and letter dated 1 June 2015 from Job Centre Plus to the Respondent (document R6)
- The Respondent's Form 6 Notice dated 20 August 2015 (document 7)
- Letters from the Respondent to the Applicant dated 23 March 2014 and 23 March 2015 (document 8)
- Certificate of Fitness for Work dated 8 September 2015 (document 9)

**Factual Background**

3. The Respondent, born in January 1955, was admitted to the Roll of Solicitors on 3 June 1991.
4. At all relevant times the Respondent practised in partnership as D S Boshier & Co at 24/26 Blatchington Road, Hove, East Sussex, BN3 3YN and 226 South Coast Road, Peacehaven, East Sussex, BN10 8JR ("the firm"). The Respondent resigned from the firm in August 2012. The firm was intervened in April 2014.
5. A Forensic Investigation Officer ("IO") of the Solicitors Regulation Authority ("SRA") carried out an inspection, beginning on 21 May 2013, of the books of account and other documents of the firm and produced a Report dated 17 March 2014 which identified the books of account were not in compliance with the Solicitors Accounts Rules 1998 ("SAR 1998") and/or the SRA Accounts Rules 2011 ("AR 2011").
6. The IO found a client account shortage of £305,057.17 as at 30 April 2013. This cash shortage occurred as a result of:

Debit balances	£122,820.40
Unallocated client to office transfers	£193,827.49
Unknown Difference	(£ 11,590.72)
Total Cash Shortage	<u>£305,057.17</u>

7. The remaining partner at the firm, Mr B, replaced £120,000 of the cash shortage on 13 and 31 May 2013. At the final meeting with the IO on 30 October 2013, Mr B indicated he was not in a position to replace the remaining cash shortage totalling £185,057.17.
8. Mr B informed the IO that the Respondent had been involved in a serious car accident in July 2010 and that the Respondent's attendance at the office had been minimal up until he resigned in August 2012. Mr B also advised the IO that the Respondent practiced from the Peacehaven office, and Mr B practised at the Hove office. Both offices were reconciled separately as the Peacehaven office banked with Barclays Bank and the Hove office banked with NatWest Bank.

#### Debit Balances

9. The IO identified from a review of the client matter listing dated 30 April 2013 that there were 17 debit balances ranging between £12.00 and £104,792.66, totalling £122,820.40. The largest debit balance was in respect of a suspense ledger which showed that between 10 April 2012 and 30 July 2012, there were 29 unallocated client to office transfers, totalling £91,379.21.

#### Unallocated Client to Office Transfers

10. The IO ascertained that round sum transfers were made from client to office bank account. Sums were identified and allocated to individual client matters during each month but the amounts transferred exceeded the amounts allocated and represented a breach of the Rules and a shortage on client bank account.
11. The transfer journals for the Peacehaven office and the Hove office for the period April 2011 to April 2012 had the following unallocated transfers of £193,827.49:
  - Peacehaven - £96,769.79
  - Hove - £97,057.70
12. The list of liabilities as at 8 April 2012 in relation to the Peacehaven office included two significant balances relating to the matters of Mr ATB (deceased) (£52,268.58) and Mrs BSC (£24,740.30). The IO identified that due to significant unallocated round sum transfers that had been made, there was virtually no money held in client bank account to meet these liabilities.

#### Mr ATB (deceased)

13. The Respondent was instructed to act on behalf of the Executors of the estate of Mr ATB (deceased). A client care letter dated 23 April 2010 indicated costs would not exceed £7,750-£8,750. Probate was granted on 18 April 2011, the gross value of the estate not exceeding £562,481, and the net value of the estate not exceeding £506,420.
14. The IO reviewed the client matter file and noted that the interim estate accounts detailed the firm's costs as £10,563. The estate accounts recorded that the firm was to retain £40,000 to cover outstanding inheritance tax and other liabilities.

15. The IO noted that costs totalling £10,538 were shown as having been transferred to the office side of the client ledger on 6 October 2011. A review of the Peacehaven client and office bank account statements showed that there was no single transfer of costs in the sum of £10,538, but between 6 October 2011 and 31 October 2011 there were 16 client to office unallocated transfers totalling £17,802.60.
16. The computerised client ledger showed that as at 4 April 2012, the Peacehaven client bank account should have been holding at least the sum of £52,268.58 in respect of Mr ATB's file. However, as at 4 April 2012, the Peacehaven client bank statement showed a balance of only £948.09.
17. The bank statements identified that money was transferred from the firm's client bank account to the firm's office bank account, and that payments were made from the firm's office bank account to the Respondent's personal bank account as follows:
  - 13 October 2011 - £1,000
  - 14 October 2011 - £450
  - 17 October 2011 - £400
  - 17 October 2011 - £450
  - 19 October 2011 - £450
  - 20 October 2011 - £300
  - 21 October 2011 - £400
  - 31 October 2011 - £750
  - 31 October 2011 - £4,750

#### Mrs BSC

18. The IO noted on the client matter file, there was a Memorandum from another fee earner at the firm to the Respondent dated 24 July 2009 requesting the Respondent assist in sorting out the financial matters relating to Mrs BSC. In an email dated 31 July 2009 the Respondent agreed to take over the matter.
19. The client matter ledger showed that costs were posted to the office side of the ledger in the period 8 April 2010 to 4 January 2012 totalling £12,065.90. The IO noted a bill on the client matter file for £4,800 dated 18 March 2011, but there was no covering letter to the client and the bill was not addressed to Mrs BSC.
20. A bill in respect of the transfer of £5,400 on 4 January 2012 could not be located on the client matter file.
21. The IO noted that on 4 January 2012, the sum of £33,000 was transferred from the Hove NatWest client account to the Barclays client account at Peacehaven. The client matter ledger recorded that £30,000 was lodged on the client side of the ledger, and on the same date, 4 January 2012, £5,400 was transferred to the office side of the client ledger in respect of costs.
22. As at 8 April 2012, there should have been held in the firm's Barclays client bank account the sum of £24,740.30 in respect of Mrs BSC. However, the balance of the Barclays client account on that date was only £948.09.

### Withdrawals from the Peacehaven Office Bank Account

23. In or around July 2010, the Respondent was involved in a car accident which made his attendance at the office minimal until he resigned in August 2012.
24. The IO ascertained from a review of the Barclays office bank account statements that, during the period April 2011 to March 2012, the Respondent had transferred from the Peacehaven office bank account to his personal bank account sums totalling £107,048.10.
25. Mr B informed the IO that the Barclays office bank account had an overdraft facility of £5,000. On 14 June 2012, Mr B repaid £4,992.69 to clear the overdraft and the account was closed in October 2012.
26. Mr B informed the IO that the Respondent had a cheque book for the Hove NatWest office account and Mr B provided the cheque stubs for the period 4 May 2012 to 30 July 2012, which showed personal payments to the Respondent totalling £23,828.59.
27. The IO wrote to the Respondent on 13 August 2013 requesting a meeting to discuss the matters contained within her Report. On 29 August 2013 the Respondent replied indicating he had been unwell, since suffering a serious car accident in July 2010, that he had been signed off work for the last two years and had not worked for more than a number of part-time days in the previous year. In a further letter dated 5 November 2013, the Respondent informed the IO that, amongst other things, due to his medical condition he would not be able to see the IO until April 2014.

### **Witnesses**

28. The following witnesses gave evidence:
  - Sarah Jane Taylor (Forensic Investigation Officer of the SRA)
  - Adrian Andrew Parker (the Respondent)

### **Findings of Fact and Law**

29. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. 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.
30. **Allegation 1.1: The Respondent failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998") in the period up to 5 October 2011 and/or from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 ("AR 2011").**

- 30.1 The Respondent admitted Allegation 1.1. It was clear to the Tribunal from the evidence it had heard and the documents before it that the Respondent had failed to ensure compliance with the Accounts Rules. A client account shortage of £305,057.17 had been identified by the IO as at 30 April 2013 and there had been unallocated round sum client to office transfers.
- 30.2 The Respondent in his evidence had admitted he had made the unallocated round sum transfers, and had accepted that this was wrong and inappropriate. In view of the Respondent's admissions and the evidence before it, the Tribunal found Allegation 1.1 proved.
31. **Allegation 1.2: The Respondent failed to remedy breaches to the Accounts Rules promptly upon discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 7.1 of the AR 2011.**
- 31.1 The Respondent denied this allegation. His position was that he did not discover the breaches and had no opportunity to remedy them. He had stated in his email of 21 August 2015 to the Applicant that he had only withdrawn salary and money to cover the expenses of the practice.
- 31.2 The Applicant's case was that the Respondent had a duty to remedy any breach of the Accounts Rules promptly upon discovery and this included the replacement of any money improperly withdrawn from the client bank account. The Applicant's case was that the Respondent had failed to do so.
- 31.3 The Tribunal heard evidence from Ms Taylor, the IO. She confirmed that she had identified a shortage as at 30 April 2013 but had allowed Mr B to bring the firm's books up to date as he had indicated at a meeting on 21 May 2013 that the client account had not been reconciled since April 2012 due to the firm's Practice Manager/Cashier passing away in August 2012. Mr B stated that external accountants had been instructed to reconcile the firm's books of account and that those books were still being updated in May 2013.
- 31.4 Ms Taylor stated she had allowed time for the books to be updated however at the final meeting with Mr B on 30 October 2013, after Mr B had replaced £120,000 of the shortfall, there was still a shortage of £185,057.17 as at 30 April 2013. On 13 August 2013 Ms Taylor had written to the Respondent to request a meeting. She had been unable to meet the Respondent due to his ill health over a number of months. Ms Taylor confirmed she could not wait beyond March 2014 to complete her report as she was of the view that client funds were at risk.
- 31.5 The Respondent stated in his evidence that the first indication he had received of the problems with the firm's accounts was when he received the first letter from Ms Taylor in August 2013 asking him to meet her, although at that time he had been ill. The Respondent had left the firm in August 2012 and had had no contact with either Mr B or the firm's accountants since that date, apart from receiving a copy of the firm's year end accounts.

- 31.6 The Tribunal noted the Respondent had written to Ms Taylor on 29 August 2013 and stated in that letter that he was “very shocked by the contents of the discussions” he had had with her. It was not clear precisely what those discussions were. In any event, the Tribunal was satisfied that the Respondent had been notified of the shortfall by Ms Taylor in her letter to him dated 7 July 2014, which attached a copy of her report dated 17 March 2014. The Respondent had failed to rectify the shortfall, which had arisen at a time when he had been a partner of the firm. Although there had been no breach of the Solicitors Accounts Rules 1998, there had been a breach of the SRA Accounts Rules 2011. The Tribunal found Allegation 1.2 proved on this basis.
32. **Allegation 1.3: The Respondent withdrew and/or transferred money from client bank account, contrary to Rule 19(2) of the SAR 1998 in the period up to 5 October 2011, and/or from 6 October 2011, Rule 17.2 and 17.7 of the AR 2011.**
- 32.1 The Respondent admitted Allegation 1.3. The Tribunal was further satisfied on the documents before it and the evidence it had heard that the Respondent had transferred costs from client to office account without delivering a bill of costs or written notice of those costs to clients. He accepted this during his evidence. The Tribunal therefore found Allegation 1.3 proved.
33. **Allegation 1.4: The Respondent withdrew monies from client bank account other than as permitted by Rule 22(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 20.1 of the AR 2011.**
- 33.1 The Respondent admitted Allegation 1.4. During his evidence he accepted he had made round sum transfers from client to office account without delivering a bill or notification of costs. This was not permitted by the rules, as these were not funds properly required for a payment to or on behalf of a client.
- 33.2 The Tribunal was satisfied that the Respondent had improperly withdrawn funds from client account. During the period 10 April 2012 to 30 July 2012, there had been 29 unallocated client to office transfers totalling £91,379.21 as shown on the firm’s suspense ledger. The list of client liabilities as at 8 April 2012 at the Peacehaven office included two large balances of £52,268.58 for Mr ATB (deceased) and £24,740.30 for Mrs BSC. There was only £948.09 available in client account to meet those liabilities due to the unallocated round sum transfers from client to office account. The Tribunal accordingly found Allegation 1.4 proved.
34. **Allegation 1.5: The Respondent failed to carry out the required reconciliations, contrary to Rule 29.12 of the AR 2011.**
- 34.1 The Respondent admitted Allegation 1.5. Ms Taylor had confirmed in her evidence to the Tribunal that there had been no client account reconciliations done at the firm from April 2012 to August 2012 at a time when the Respondent had been a partner at the firm. The Respondent, although a salaried partner, still had responsibility for ensuring reconciliations were carried out and had failed to do so. Accordingly, the Tribunal found Allegation 1.5 proved.



35. **Allegation 1.6: The Respondent improperly transferred money from client bank account to the firm’s office bank account to cover payments made to his personal bank account, and in so doing, misappropriated and/or utilised clients funds for his own benefit, contrary to Rules 1.02, 1.06 and 5.01(j) and/or (l) of the Solicitors Code of Conduct 2007 (“SCC 2007”), and/or Rule 22 of the SAR 1998 in the period up to 5 October 2011, and/or from 6 October 2011 he acted contrary to all, alternatively, any of Principles 2 and 8 of the SRA Principles 2011 (“SRA Principles”) and thereby failed to achieve outcome O(7.4) of the SRA Code of Conduct 2011 (“2011 Code”) and/or Rule 20.01 of the AR 2011.**

35.1 In giving his evidence the Respondent admitted Allegation 1.6. Ms Taylor confirmed in her evidence that during the period April 2011 to March 2012, the Respondent had transferred a total of £107,048.10 from the Peacehaven office bank account to his personal bank account. This was over the same period that the unallocated transfers totalling £193,827.49 were made.

35.2 The documents before the Tribunal showed that on the same day transfers were made from the office bank account to the Respondent’s bank account, identical amounts were transferred from the client bank account to the office bank account. Examples of this were 11 April 2011 (sums of £300 and £1,300), 6 May 2011 (£2,500), 7 June 2011 (the sums of £450, £450 and £500), 7 July 2011 (£850) and 1 August 2011 (the sums of £200, £450 and £4,000). No bills had been delivered to clients for these amounts and Ms Taylor found no reference to any specific client file from which the transfers were made. Accordingly, the Tribunal found Allegation 1.6 proved.

36. **Allegation 1.7: The Respondent had acted dishonestly in relation to Allegations 1.3, 1.4 and 1.6.**

36.1 The Respondent denied he had acted dishonestly.

36.2 The Tribunal had been referred by the Applicant to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent’s conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

36.3 The Tribunal was also referred to the case of Weston v The Law Society [1998] in which Lord Bingham stated:

“...the Accounts Rules exist to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed.”

36.4 The Applicant’s case was that the Respondent had taken funds from the firm’s office account on several occasions at a time when that account was close to the overdraft limit. The only way the Respondent could effect those transfers was to transfer money from client account to the office account to cover the withdrawals he was

making. Mr Goodwin, on behalf of the Applicant submitted that solicitors could not simply take money to which they were not entitled. They were required to issue costs invoices. Mr Goodwin submitted the Respondent, who was a Deputy District Judge, and so used to taxing solicitors bills, had taken money from client account for his personal use when he was not entitled to it. It was not sufficient for him to have said he had earned the costs and had had the intention of preparing a bill later, as there was a risk that the amount taken could have exceeded the amount subsequently billed. Mr Goodwin submitted dishonesty was established according to both tests in Twinsectra Ltd v Yardley & Others.

- 36.5 The Respondent gave evidence before the Tribunal. He was a solicitor of many years standing and had been a Deputy District Judge for some 15 years. He had been a salaried partner at the firm based at the Peacehaven office. It had been agreed that the Respondent would not be responsible for any of the firm's liabilities. All outgoings were initially paid by cheque including salaries. The Respondent stated that in 2009 the firm became more "automated in terms of banking arrangements" although the Respondent was not involved with this. The Respondent stated that his practice was to bill files and send schedules to the firm's cashier/Practice Manager, who was also Mr B's daughter, as she dealt with the accounts. The Respondent also stated that although the bank statements for the Peacehaven office came to that office, they were immediately forwarded to the Hove office unopened. The Respondent stated he had never met the firm's accountant. The Respondent simply signed the accounts that were sent to him without asking any questions.
- 36.6 In around 2010 the Respondent stated Mr B had been receiving constant phone calls from the firm's bank in Hove as the firm was exceeding its overdraft limit. The firm had a small overdraft of £5,000. In early 2011 Mr B's wife passed away causing Mr B and the firm's cashier to take time off work. The Respondent stated he told Mr B he would try "to keep things moving". He spoke to the bank who agreed to increase the overdraft limit for a month or so until Mr B and the cashier returned to work. The Respondent was a signatory and able to sign cheques.
- 36.7 The Respondent had a nasty road traffic accident in 2010 which caused him to suffer psychological problems from which he said he had still not recovered. The Respondent accepted he had not provided a medical report in relation to his health. He also provided the Tribunal with details of other personal difficulties he had endured around that time. He stated he had continued to work when he should have left the practice. He stated he had been concerned about other staff members and clients. He worked from home quite a lot. The Respondent said he had no dealings with paying staff salaries. They were paid by cheque.
- 36.8 In around January 2011, after Mr B returned to work, he had decided to change banks to the NatWest bank, as it was willing to provide a higher overdraft limit. The Respondent stated he had no access to telephone or internet banking at the NatWest bank at that time nor did he see any bank statements. However, some of the staff asked to be paid by BACS transfers so each month, the Respondent would receive an email from the cashier asking him to make the transfers from the Barclays account at the Peacehaven office. He would transfer funds from client to office account and pay the salaries. The Respondent stated he "relied on the Hove office and followed their

direction". The Respondent stated his health deteriorated and he took some time off work in 2011.

- 36.9 From around January 2012, Mr B decided that the NatWest bank would take over all client accounts, including those at the Peacehaven office. The Respondent stated he worked less from January 2012 and ceased to work in August 2012. The cashier became ill in March 2012 and passed away in August 2012. During this time the Respondent stated that "bills got left and the situation got worse". He stated he just concentrated on client work.
- 36.10 The Respondent stated that the NatWest bank would call him when Mr B was on holiday and the cashier was away. He said he had been told by Mr B to "make transfers". The Respondent said he had no access to any facility for the NatWest accounts except cheque books and he needed to pay the firm's creditors. He was never asked for the cheque books and when these were provided for audit purposes, there was no indication that he had not used them correctly. The Respondent stated that he accepted he had acted "wrongly" but at the time he had no concept that money was not coming in to meet the cheques. The accounts were prepared a year later, just as he was leaving. He stated that the first indication he had of "the mess" was when he received the letter from the IO in August 2013.
- 36.11 The Respondent stated he had access to the firm's internet banking at the office at which he worked. His evidence was that he adopted the practice of taking the amount of bills from client to office account as soon as he had prepared the bills, but before such bills were processed at the other office. He accepted he knew this was a breach of the Rules.
- 36.12 The Respondent stated he had no support, nobody he could turn to. He had been worried about the staff and the closure of the office if he left. He said that he felt appalled when he saw how much was owed. He accepted it was a substantial deficit and could offer no explanation for it. However, he submitted that shortfall was significantly beyond what the Respondent had received for his salary. He said that his drawings could therefore not account for the whole shortfall.
- 36.13 In relation to Mrs BSC, the Respondent stated he did not know anything about the transfer of £30,000 and that he had not authorised it. He recalled a discussion about a lump sum being paid to her, but said that this went no further. He also recollected her need for a made to measure wheelchair.
- 36.14 On the matter of Mr ATB (deceased) the Respondent stated the costs estimate given in the client care letter did not include VAT or disbursements. He stated he had spent a great deal of time sorting out the papers in relation to Mr ATB's affairs as they were in a terrible order.
- 36.15 On cross-examination the Respondent stated he had it in mind that bills needed to be done when he transferred the funds and he accepted he should not have made the transfers. He stated he had done the work and believed he was "transferring money that would tie up with the bills". He stated that although he did not know the figures for the bills, he had done the work, gone through the files and assessed the amount he transferred. He knew the amount he was likely to bill in the course of a year and the

“costs were in the file”. The Respondent stated he “had an assumption costs were earned on files he had worked on”. He had not prepared the bills as he had been under pressure and had limited time available.

- 36.16 The Respondent stated that he knew bills had to be done and the client notified and although he “gave little regard to preparing/delivering bills”, he did not consider himself to be dishonest as he believed that he had earned the money.
- 36.17 The Respondent accepted that after his accident, for about a year from July 2011 he had continued to sit as a Deputy District Judge, but his work had been reduced and there were periods when he did not work at all. He stated he had carried on working even though his GP had advised him not to.
- 36.18 The Respondent was unable to explain why, on the file of Mr ATB (deceased), there had been no single transfer of the costs of £10,538 on 6 October 2011 as shown on the matter ledger, but 16 unallocated transfers from client to office account totalling £17,802.60 between 6 October and 31 October 2011. He accepted he had made those transfers without allocating them to a specific file. The Respondent was asked about the transfer of £52,268.58 from the firm’s office account to his personal account. He accepted he had received this. He recalled that there was a liability of about £40,000 for an Inheritance Tax payment on the file relating to Mr ATB (deceased), for which part of that money would have been required.
- 36.19 The Respondent accepted he had received the sum of £107,048.10 from the firm during the period from April 2011 to March 2012. He stated this was not just for his salary but also because he had paid some of the firm’s debts on his credit card on a few occasions. He accepted he should have prepared bills but had not done so before the transfers were made. He stated he thought the bills would be done and would regularise the position.
- 36.20 The Respondent accepted the amounts transferred from client account to office account correlated with the amount of the transfers made from office account to his personal account. He stated he had prepared a summary schedule for the cashier listing the clients and the costs as he knew what was due on each file. He had tried to maximise the costs as he knew how much he needed to bill to cover the salaries and expenses. At some point, the Respondent accepted that he started to transfer funds without preparing notes of bills for the cashier, on the basis that he had done the work on the file and he would prepare a bill later. He had in mind the amount needed to meet the firm’s liabilities each month and although he fully intended to prepare bills, he never did. The Respondent was of the view that substantial bills had been prepared by the firm which covered the totality of the amount he had transferred. He provided the Tribunal with details of work he had carried out on certain matters.
- 36.21 During the period in respect of which the Tribunal heard evidence, the Respondent took money from client to office account on the basis that he had done work on particular files. This was a serious breach of the rules because it was not against bills that had been prepared but not delivered, which had been the Respondent’s earlier practice.

- 36.22 The Tribunal found the Respondent's answers to questions put to him as somewhat opaque. He was clearly an intelligent man but he did not answer questions asked of him in a direct manner, often deflecting his answers. The Tribunal ensured that the Respondent understood the questions being asked and found that the lack of direct answer was deliberate.
- 36.23 The Tribunal noted the Respondent was a salaried partner earning £90,000 a year. He had made transfers from client to office account and then transferred money from the office account to his personal account as his salary. Until the last few months of his partnership with the firm the Respondent was paid from the Hove office bank account. It was clear to the Tribunal that as time went on and files were closed, the Peacehaven client account was reduced to £948 (though it should have held at least over £75,000 between two particular files).
- 36.24 It was apparent from the documents and the evidence given by the Respondent that he was then for a time solely responsible for running the firm's internet bank accounts at the Peacehaven office with Barclays. When the Barclays client account had diminished to a minimal sum, the Respondent, who held cheque books for the Hove NatWest bank accounts, issued cheques to pay himself his salary. He did this solely on the basis that he thought he would be, and had been, billing £120,000 to £150,000 a year. He did not have records of what he had billed. He drew about £107,048.10 in the year April 2011 to March 2012, when his salary was £90,000 attributing the rest to expenses he had incurred and paid for the firm. He made transfers to office account when the firm needed the money, in large part to pay his own salary.
- 36.25 The Respondent had accepted that to take £90,000 a year by transfers from the firm's office account if he had not been working would have been dishonest. He accepted he had worked less than full time from the start of 2012. In the 3 month period from May to July 2012 he drew £23,828.59, while working less than full time. These transfers were made without reference to any particular file. The amount paid was at a rate, pro rata, approximating to his annual salary, but while he was not working full time.
- 36.26 The Tribunal was satisfied that transferring identical amounts from client account to office account and from office account to his personal account without rendering bills or notification of the costs to the clients concerned, was behaviour that would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 36.27 The Tribunal noted from the Respondent's own admissions and from its own conclusions that the Respondent's conduct at the beginning of his breaching the rules may have been intentional wrongdoing, but it was not dishonest at that time. However, that position changed in that from the Respondent drawing money from client account against bills drawn but not rendered, he began to draw money on an unallocated basis from client account to office account in round sums to meet payments from the office account for his salary, which he attempted to justify on the basis that work had been done somewhere in the firm to that value. The Tribunal was satisfied that the Respondent knew full well that he was breaching the rules and continued with a pattern of conduct when he knew he should not have. He had exclusive control of the internet banking at the Peacehaven office for a time and then of the firm's Hove branch office account cheque book. He was gaining a direct

personal benefit from the transfers he was making which paid his salary. This was all occurring at a time when the firm's office account was close to its overdraft limit and the transfers from client account to office account were necessary to ensure the transfers from the office account could be made to the Respondent's own personal account. Additionally the firm's cashier was not there to oversee matters.

- 36.28 The Tribunal took into account the Respondent was a solicitor with many years of experience. He had a judicial appointment which meant he would have been regularly arbitrating on issues involving other solicitors' costs including assessment of those costs. In making the transfers from client to office account, the Respondent, being aware of the amount of the firm's office account overdraft limit, would have had to ensure his withdrawals would not exceed that limit so he would have had a careful eye on the balance of that overdraft. The Respondent ensured the overdraft was not exceeded by making unallocated transfers from client account to office account. He did so latterly without reference to specific files, but on the basis that he thought there was work done to that level that could be billed at some point. He was clearly aware of the position. He knew that clients were not informed that their funds were being withdrawn from client account because no bills had been rendered to those clients. Taking all of these matters into account, the Tribunal was satisfied to the required standard that the Respondent knew his conduct was dishonest by the ordinary standards of reasonable and honest people. He had continued to take drawings of about £90,000 per annum without basing the amounts withdrawn from client account on proper bills, over a long period of time after the firm's cashier passed away, notwithstanding the fact that his own duties at the firm were no longer full time.
- 36.29 Furthermore, the Respondent had not been properly assessing the amount due on client files as the Forensic Investigation Officer discovered an extremely large shortfall in client account which the Respondent could not explain. It was clear that the Respondent had been taking client money to which he was not entitled to such an extent that there were eventually insufficient funds available to meet client liabilities. The Tribunal was satisfied that the Respondent's actions as set out in Allegations 1.3, 1.4 and 1.6 constituted dishonest behaviour by the ordinary standards of reasonable and honest people, and were further satisfied that the Respondent knew that by those standards his conduct was dishonest. The Tribunal found Allegation 1.7 proved.

### **Previous Disciplinary Matters**

37. None.

### **Mitigation**

38. The Tribunal had heard much of the Respondent's mitigation during his evidence. He made reference to his ill-health, his personal circumstances and the fact that he felt he should not have continued working as long as he did after the accident in 2010.
39. The Respondent stated he did not intend to practise again and had not done so since 2012. He had resigned as a Deputy District Judge the previous year as he considered it was inappropriate for him to continue with this role in view of these proceedings. He wanted to move on with his health and have some quality of life as it had been an extremely difficult 6 years for him. The Respondent reminded the Tribunal that he

had worked many years as a solicitor helping people. Although the Respondent accepted he would probably be struck off in light of the Tribunal's findings, he requested the Tribunal to consider an indefinite suspension. He submitted this would be sufficient protection for the public as he did not intend to return to practice.

### **Sanction**

40. The Tribunal had considered carefully the Respondent's evidence, submissions and the various statements provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
41. The Tribunal had found the Respondent had acted dishonestly. His conduct had been repeated over a long period of time causing clients to suffer financially as a result. The Respondent had accepted in his evidence that he knew it was wrong to make the transfers in the way that he did yet he continued to do so. This showed his conduct was deliberate. The Tribunal found that the Respondent must have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. These were all aggravating factors.
42. The Tribunal took into account the Respondent's previous unblemished long career as a solicitor, and the admissions he had made, which were mitigating factors.
43. However, the Respondent had acted dishonestly, flagrantly breaching the rules that were in place to protect the public. His conduct had caused clients to suffer financial losses. He had ignored the basic fundamental principles of the Solicitors Accounts Rules. This was a very serious matter. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

44. The Tribunal was satisfied that there were no exceptional circumstances in this case and that the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

### **Costs**

45. Mr Goodwin requested an Order for the Applicant's costs in the total sum of £26,415.15. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He requested there should be no restriction on the enforcement of those costs in view of the Respondent's means, details of which had been provided.
46. The Respondent stated he had a number of debts to pay, no assets, little income, save a pension and that he would shortly be moving into sheltered accommodation. He had provided a statement of means with evidence in support. He stated he had no funds to pay costs.

47. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £26,415.15.
48. In relation to enforcement of those costs, the Tribunal noted that although the Respondent had recently sold a capital asset, he clearly had a number of creditors and substantial debts to pay. The Tribunal took into account the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the Applicant's costs. The Respondent was now 60 years of age and his livelihood had been removed as a result of the Tribunal's Order. It was unlikely the Respondent would be able to find some form of alternative employment in the near future. In the circumstances, the Tribunal was satisfied that the Order for costs should not be enforced without leave of the Tribunal.

### **Statement of Full Order**

49. The Tribunal Ordered that the Respondent, ADRIAN ANDREW PARKER, 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 £26,415.15, such costs not to be enforced without leave of the Tribunal.

Dated this 3<sup>rd</sup> day of November 2015  
On behalf of the Tribunal

P.S.L Housego  
Chairman