SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11376-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL ANTHONY GIBBON Respondent

Before:

Mrs J. Martineau (in the chair)
Mrs C. Evans
Mr R. Slack

Date of Hearing: 6-7 September 2016

Appearances

Mr Geoffrey Hudson, solicitor, of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, for the Applicant.

The Respondent, Mr Paul Anthony Gibbon, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Paul Anthony Gibbon, in a Rule 5 Statement dated 7 April 2015, as amended on 6 September 2016, were that:

1.1 he held client money in his personal bank account, in breach of all or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Rules 1.2(a), 13.1 and 14.1 of the SRA Accounts Rules 2011 ("the AR 2011");

1.2 he procured that a client transferred funds into his personal bank account when that client believed that she was transferring those monies into a solicitors' client account, in breach of any or all of Principles 2, 4, 6 and 10;

1.3 he signed a letter of authority dated 13 May 2014 in a client's name, or alternatively procured the signature in her name of that letter of authority, when he knew that the client had not given such authority, in breach of any or all of Principles 2, 4 and 6;

1.4 he procured the payment from a third party of £30,000 due to a client into his personal bank account, in breach of any or all of Principles 2, 4, 6 and 10 and Rules 1.2(a), 13.1 and 14.1 of the AR 2011;

1.5 he failed to keep a client informed regarding his attempts on her behalf to procure payment of £30,000 from a third party, and in particular failed to inform the client when that sum had been received from the third party, despite his client having made repeated requests for an update in respect of this matter, in breach of any or all of Principles 2, 4, 5 and 6;

1.6 he failed to pay to a client £30,000 received from a third party, instead retaining and/or using the funds for other purposes when the client had not authorised him to do so, in breach of any or all of Principles 2, 4, 5, and 6;

1.7 he (i) failed to account to a client for funds she had paid to him on account of costs and disbursements and/or (ii) failed to provide that client with a written statement of account when she requested one of him or at any time, in breach of any or all of Principles 2, 4, 5 and 6;

1.8 he gave an undertaking on 16 May 2014 to counsel's clerk to immediately pay counsel's fees once he had received £30,000 in cleared funds, when he had no authority from the client to whom those funds belonged either to give such an undertaking or to use such funds for that purpose, in breach of Principles 2, 4, 5, and 6;

1.9 he failed to honour the terms of an undertaking given on 16 May 2014 to counsel's clerk to immediately pay counsel's fees once he had received cleared funds from a third party, in breach of either or both of Principles 2 and 6. He also thereby failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 ("the Code");

1.10 he failed to settle fees of legal advisers from funds provided to him by a client for such purposes promptly, or at all, in breach of any or all of Principles 2, 4, 5, and 6;

1.11 he invoiced a client for £10,000 in respect of counsel's fees when counsel had not been instructed and those fees had not been incurred, in breach of Principles 2, 4 and 10;

1.12 [withdrawn];

1.13 he failed to respond to the SRA's letters of 8 October 2014 and 9 November 2014, as well as a notice pursuant to S44B of the Solicitors Act 1974 dated 26 February 2015, in breach of Principle 7;

2. In relation to allegations 1.1, 1.2, 1.3, 1.4 and 1.5 above it was alleged that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley & others [2012] UKHL 12 ("Twinsectra") which required that the person had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

Documents

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

Applicant: -

- Application dated 7 April 2015
- Rule 5 Statement, with exhibit "GRFH1", dated 7 April 2015
- Witness statement of Gemma Grey, with exhibits, dated 21 September 2015
- Witness statement of Russell Hobbs, with exhibits, dated 10 September 2015
- Witness statement of Nick Buckley, with exhibits, dated 16 September 2015
- Factual chronology
- Procedural chronology
- Statement of costs as at date of issue
- Statement of costs dated 31 August 2016
- Copy Order of the County Court at Stockport dated 15 July 2016
- Copy email correspondence between Penningtons Manches LLP and the Respondent, 31 August to 3 September 2016

Respondent: -

- Answer to the Rule 5 Statement, dated 24 June 2015
- Application for adjournment of hearing scheduled to take place on 1 March 2016, dated 16 February 2016
- Respondent's statement in relation to application for adjournment, dated 19 February 2016

Other: -

- Standard directions, dated 9 April 2015
- Memorandum of Directions made on 14 July 2015
- Decision on application for adjournment

- Decision on application in relation to notification of which witnesses were required to attend, 19 July 2016

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

4. The Tribunal noted that the Respondent was not present or represented. It also noted an exchange of email correspondence between the Respondent and the Applicant's solicitors, Penningtons Manches LLP, between 31 August and 3 September 2016. As a preliminary matter, the Tribunal had to consider whether to proceed in the absence of the Respondent.

5. Mr Hudson submitted that Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") permitted the Tribunal to proceed in the absence of a Respondent if the Tribunal was satisfied that notice of the hearing had been served on the Respondent.

6. Mr Hudson submitted that there could be no doubt that the Respondent had been served with the proceedings and with notice of the hearing. The substantive hearing had been listed to take place on 1 March 2016. That hearing was adjourned on the Respondent's application, on compassionate grounds. Thereafter, notice of this hearing date was served on the Respondent by the Tribunal. There had been email correspondence between the Applicant's solicitors and the Respondent. In particular, on 31 August 2016 the Applicant's schedule of costs for this hearing was served on the Respondent by email and there was discussion in the emails about which witnesses the Respondent required to attend the hearing. On 3 September 2016, in an email timed at 9.38am, the Respondent wrote:

> "… I will not be attending the hearing and would be grateful if you would notify the Tribunal accordingly."

7. Mr Hudson submitted that the Tribunal had to exercise its discretion to proceed in the absence of a Respondent in the light of the criteria set out in <u>R v Hayward and others</u> [2001] EWCA Crim 168 ("<u>Hayward</u>"), which at paragraph 22 set out 11 particular factors to be considered, and the House of Lords decision in in <u>R v Jones (Anthony</u>) [2002] UKHL 5, [2003] 1 AC 1 ("<u>Jones</u>"), which approved that decision. It was submitted that the most important of the criteria in the present case was that the Respondent had waived his right to be present at the hearing by voluntarily absenting himself. The Tribunal was also aware of the more recent case of <u>GMC v Adeogba</u> [2016] EWCA Civ 162 ("<u>Adeogba</u>"), in which the factors to be considered included fairness to the regulator as well as to the Respondent.

8. The Tribunal considered carefully the facts and submissions in relation to the Respondent's non-attendance. The Tribunal was satisfied that the Respondent had been properly served with notice of the hearing date and had chosen not to attend. He had therefore voluntarily waived his right to attend. The Respondent had not sought an adjournment and there was nothing to suggest that he would attend if this hearing were adjourned. The allegations in this case were serious, including allegations of dishonesty, and it was in the public interest that they should be heard as promptly as possible. In all of the circumstances, it was reasonable, fair and just to proceed in the Respondent's absence.

9. The Tribunal noted that in the absence of the Respondent it should be vigilant to test the Applicant's case, and asked Mr Hudson to draw to the attention of the Tribunal anything which supported the Respondent's case and to any weaknesses in the Applicant's case.

Preliminary Matter (2) – Withdrawal of allegation

10. Mr Hudson made an application to withdraw allegation 1.12 and the part of allegation 2 which related to that matter.

11. The allegation had been made as the Respondent had made two representations, in or about May and September 2014, as to where he was working. In the context of being chased for payment of counsel's fees, the Respondent gave an undertaking to make payment and then suggested to counsel's clerk that a reason for the delay in payment was that he had transferred his practice to a firm called Allerton Kaye. Whilst the Applicant did not accept that the delay in paying counsel's fees was because of any such transfer, information which had now been obtained by the Applicant indicated that the Respondent had, briefly, had a consultancy arrangement with that firm. The allegation had also related to representations in September 2014 that the Respondent had made with regard to having a consultancy with another firm, Draycott Browne. Further investigations by the Applicant had indicated that whilst there had been no formal consultancy arrangement, there had been some discussions about having such an arrangement. Mr Hudson submitted that in the light of the information which had been obtained since the Rule 5 Statement was made, the factual basis of the allegation that the Respondent had held himself out as having various positions with other firms could not be sustained. Mr Hudson applied to withdraw the allegation and the relevant paragraphs of the Rule 5 Statement.

12. The Tribunal noted that in dealing with costs, the Applicant may need to assess how much of the costs related to the allegation which was not being pursued. Whilst there may be costs implications, which would be considered at the conclusion of the hearing, it was undoubtedly reasonable and appropriate for the allegation to be withdrawn and permission was given.

Factual Background

Background

13. The Respondent was born in 1960 and he was admitted to the Roll of Solicitors in 1985. His name remained on the Roll. Until he was made bankrupt in January 2015, he held a practising certificate free from conditions.

14. The Applicant's records showed that the Respondent was a consultant for Keith Dyson Solicitors Limited ("KDS") until 15 May 2014. The Respondent invoiced his client, Ms GG, for his services via a company called SCC Consultants, which was not a recognised body.

Background - the cases & external legal advisers

15. In or around November 2012, Ms Gemma Grey (formerly Mrs N) ("Ms GG") instructed the Respondent to advise her in relation to a number of ongoing legal matters, namely:

- ancillary relief proceedings in Gibraltar ("the Gibraltar case"). These proceedings were ongoing at the time that GG instructed the Respondent;
- litigation in the British Virgin Islands ("the BVI case"). This litigation was also ongoing when the Respondent was instructed by GG;
- proceedings between Ms GG and her ex-husband, Mr AN, regarding their children ("the children case"). These proceedings commenced after the Respondent was first instructed; and
- the recovery of sums due to Ms GG from GB Ltd comprising backdated rent payments on a premises part-owned by Ms GG and the repayment of a loan ("the recovery case").

16. The following external legal advisers were also instructed in the cases:

- in Gibraltar, Phillips Solicitors & Barristers (who were instructed after another firm of Gibraltar solicitors came off the record in December 2012). Martin Pointer QC, an English barrister of 1 Hare Court chambers in London was also instructed in this matter;
- in the BVI case, Harneys, who were advising Ms GG prior to the Respondent being instructed by her. A barrister, Steven Thompson, of XXIV Old Buildings Chambers in London, was instructed by Harneys.
- in the children case, the Respondent himself instructed two barristers, namely:
    - Jayne Acton of Exchange Chambers; and
    - Lorna Meyer QC of No.5 Chambers.

The Respondent's retainer with Ms GG

17. Between the date of his instruction and 13 May 2014, Ms GG understood from the Respondent that he was during that period working as a consultant for KDS. However, at no time was GG sent a formal client care letter, terms of business, or details of the Respondent's likely costs.

18. KDS only undertakes (and undertook) criminal work, and at all material times was not insured to undertake civil litigation.

19. Apart from a brief period in May 2014, when £30,000 was paid into the KDS' client account, and subsequently returned, KDS did not hold any client money for Ms GG. It also did not have a client account ledger or file for any of Ms GG's matters.

Allegations 1.1 and 1.2 – funds on account of costs and disbursements paid into Respondent's personal account

20. Between 7 December 2012 and 22 November 2013, Ms GG sent the Respondent a total of £235,000 in instalments, as detailed in the table below. The payments were

made to a Co-Op bank account in the name of the Respondent, i.e. his personal bank account, namely account no. *****699, sort code 08-**-**, as follows:

Date	Narrative on GG's bank statement		Sum transferred
07.12.12	"Solicitor" (ref: Gemma [N])		£5,000.00
14.12.12	Transfer to Paul Gibbon (ref Gemma [N])		£25,000.00
21.01.13	Transfer to Paul Gibbon (ref Paul Gibbon)		£15,000.00
25.02.13	Transfer to Paul Gibbon (ref [N vN])		£50,000.00
01.05.13	Transfer to Paul Gibbon (ref Kids Application)		£20,000.00
31.05.13	Transfer to Paul Gibbon (ref Kids Application)		£30,000.00
21.06.13	Transfer to Paul Gibbon (ref Grey v [N])		£50,000.00
26.06.13	Transfer to Paul Gibbon (ref Childrens app)		£10,000.00
22.11.13	Transfer to Paul Gibbon (ref Grey v [N])		£30,000.00
Total			**£235,000.00**

21. The Respondent informed Ms GG that there was a problem with KDS's client account, so she was led by the Respondent to believe that she was making the payments to his consultancy client account. The Respondent, in his Answer, disputed Ms GG's account of matters. The funds were provided by Ms GG on account of her legal advisers' costs in the Gibraltar, BVI and children cases.

Allegations 1.3, 1.4, 1.5, and 1.6 - signing letter of authority in GG's name without her knowledge or consent, procuring payment of £30,000 of GG's money into his personal account, failing to keep GG informed, and failing to pay the £30,000 to GG

22. The Respondent was instructed by Ms GG to recover backdated rent and a loan from GB L.td. On 19 February 2014 the Respondent wrote to GB Ltd on KDS letterhead paper requesting the payment of £249,712 in respect of the loan, and £30,000 in respect of Ms GG's share of the rent of a property at 47 M Street.

23. On 6 May 2014 the Respondent sent Mr AC, a director of GB Ltd, a signed letter of authority from Ms GG dated 1 May 2014. The authority was addressed to the directors of GB Ltd and confirmed that Ms GG had engaged the services of the Respondent as a "Solicitor and Consultant to Keith Dyson Solicitors Limited" to represent her in all legal matters and specifically in relation to her claims for payment against GB Ltd.

24. Following further correspondence between the Respondent and Mr AC, on 8 May 2014 the Respondent asked Mr AC in an email to remit the £30,000 rent payment to the Keith Dyson Limited Client Account with Royal Bank of Scotland, and provided account details.

25. Mr AC replied the following day, 9 May 2014, to say that he had instructed GB Ltd's accounts department to pay the rent that day (i.e. 9 May 2014).

26. On 12 May 2014 the Respondent emailed Mr AC to say that:

- following the death of Mr Keith Dyson (the principal of the firm), KDS would no longer act for Ms GG;
- KDS would return the £30,000 rent payment to GB Ltd [which GB Ltd had sent to KDS on or around 9 May 2014];
- the money should be re-sent to what the Respondent stated was his "consultancy account - PA Gibbon (SCC Consultants) – [account details redacted]". This was the same account to which Ms GG had made the payments on account set out above.

27. On 13 May 2014 the Respondent sent an email to Ms GG asking that she sign a revised authority addressed to the directors of GB Ltd confirming that "Paul Gibbon Solicitor of SCC Consultants" had been engaged to represent her.

28. Ms GG replied on the same day as follows:

> "I'm out all day but will look at it later, can you send me an engagement letter over for SCC consultants please".

The Respondent replied later that day saying:

> "Of course will do so this evening".

29. No engagement letter was sent and it was the Applicant's case that Ms GG did not sign the authority at that time or at any time subsequently.

30. On 14 May 2014 Elizabeth Dyson of KDS contacted GB Ltd to say that the Respondent had no authority to act for Ms GG via KDS. She requested that GB Ltd cease corresponding with the Respondent at KDS.

31. On 15 May 2014 the Respondent sent an email to Mr AC reporting that KDS had returned the £30,000 to GB Ltd. Attached to the Respondent's email was what purported to be an authority signed by Ms GG in favour of the Respondent acting on behalf of SCC consultants (i.e. in the form sent to Ms GG two days earlier and which she had declined to sign). This authority was dated 13 May 2014. The Respondent said that he looked forward to receiving Mr AC's remittance. The Respondent asserted in his Answer that Ms GG had signed the form of authority.

32. On 21 May 2014, Ms GG asked the Respondent in an email to send her all correspondence between him (the Respondent) and GB Ltd. On the same day, the Respondent emailed Mr AC to chase confirmation that the £30,000 had been paid. Mr AC replied later that day, noting that in view of his conversation with Elizabeth Dyson on 14 May 2014, he had made enquiries of the SRA, who had said that they had no record of SCC Consultants. Accordingly, confirmation would be required from the SRA before funds could be remitted to the Respondent. In response, the Respondent stated that SCC was his legal consultancy and not a firm of solicitors, and accordingly it was not regulated by the SRA.

33. On 22 May 2014 Mr AC sent an email to the Respondent, saying he would make payment in respect of the rent by the middle of the following week. He asked the Respondent to reconfirm his bank account details. The Respondent sent an email in reply on the same day, providing his personal bank account details.

34. On 22 May 2014 Ms GG asked the Respondent again for copies of all his correspondence with GB Ltd.

35. On 23 May 2014 Ms GG emailed the Respondent again, saying she did not understand why she was still waiting for the GB Ltd correspondence.

36. On 26 May 2014 Ms GG emailed the Respondent to complain about the fact that he kept "fobbing her off" in relation to the GB Ltd correspondence, and she asked to be provided with it by first thing the following day.

37. In an email sent to Ms GG on 27 May 2014 the Respondent said that the GB Ltd correspondence would be sent, probably late the following day. On 27 May 2014 the Respondent also emailed Mr AC to say that it would be helpful if the £30,000 could be paid that day. Mr AC replied the same day to say that he would try to arrange payment that same afternoon.

38. On 28 May 2014, the Respondent emailed Mr AC to confirm receipt of the £30,000 payment. However, the Respondent had not kept Ms GG informed of the situation with GB Ltd, and did not inform Ms GG that GB Ltd had paid the £30,000 (either on 27/28 May or on 8/9 May, when the payment was first made). The Respondent disputed this account.

39. On 29 May 2014 Ms GG wrote to GB Ltd to say that the Respondent was no longer instructed in relation to the matter.

40. On 30 May 2014 Ms GG emailed the Respondent. She stated that she had still not received the correspondence from GB Ltd, and on 2 June 2014 Ms GG emailed the Respondent again, noting that she was "still waiting".

41. On 3 June 2014 the Respondent emailed Ms GG in relation to various matters. He said that he had sent her the GB Ltd correspondence and that she would "see that the rent [i.e. the £30,000] is paid". In her reply on the same day, Ms GG stated that she still had not received the GB Ltd correspondence, and she did not understand what the Respondent meant when he said that the "rent is paid", as she had not received any money from GB Ltd since 2012.

42. On 4 June 2014, having received an email from the Respondent saying he would "come back to her on all the other matters today", Ms GG emailed the Respondent to say that she was not prepared to offer to pay "SCA" out of GB Ltd's money and that the Respondent needed to pay them out of the £235,000 pot. It was understood that SCA was a firm of solicitors to whom Ms GG owed legal fees in relation to proceedings against a client of SCA.

43. The Respondent replied the same day to reassure Ms GG that nothing had been agreed and that "obviously [he] would not agree anything without [her] instruction".

44. On 5 June 2014 Ms GG emailed the Respondent to say:

> "Just wondering when I will receive this money? Should I contact Keith Dyson's accounting department to get it transferred?".

45. The Respondent replied later that same day saying: "I'll sort it out for you". Ms GG in turn replied:

> "... just incase [sic] you get bogged down with all your other cases and forget, can I please have the name of who I need to deal with at Dyson's and then I can chase them up if I've not received it by tomorrow afternoon".

46. The Respondent replied the following day (6 June 2014) saying:

> "No need as I have responsibility to remit your funds – let me have the account details".

47. Ms GG did not, and did not subsequently, receive the £30,000 GB Ltd rental payment from the Respondent.

Allegation 1.7 – failure to account to Ms GG for her funds

48. On 12 January 2014 the Respondent emailed a schedule to Phillips for use in the Gibraltar case which detailed the Respondent's costs in dealing with the Gibraltar, BVI and children cases ("the Gibraltar schedule").

49. On 28 January 2014 the Respondent emailed Ms GG to request that she settle his outstanding invoice No. 0125 as soon as possible, stating that the balance due on the last invoice was £33,947.

50. The following day, 29 January 2014, Ms GG emailed the Respondent to say that she was not happy to authorise the payment "*at present*" and asked the Respondent to provide her with a copy of her client account and a breakdown of the Respondent's invoices paid. She also noted: "I have been trying to get on top of this for some time now, as you know".

51. On 6 February 2014 Ms GG emailed the Respondent saying:

> "I have done the maths again from your costings schedule supplied to the Gibraltar Court [i.e. the Gibraltar schedule] as discussed".

Ms GG then listed the payments of which she was aware, as follows:

Paul Gibbon / Noel	£75,000.00
Lorna Meyer QC	£21,960.00
Jayne Acton	£31,200.00
Photocopying	£1,755.00
Courier	£649.20
Comp expert	£3,672.00
Total	**£134,236.75**

There was a slight arithmetical error in the list, in that it totalled £134,236.20. It was understood that "Noel" was a solicitor who assisted the Respondent from time to time.

52. Ms GG concluded that there should have been £110,763.26 remaining from the funds she had provided to the Respondent to that date. (In fact, neither Ms Meyer's nor Ms Acton's fees had been paid – see below.)

53. Ms GG went on to state in the email:

> "We obviously need to discuss your invoices to date and reconcile them to your time actually spent on my case"; and
> "Can you please forward all invoices again including yours just so I can file it all together and get this all sorted with my client account from Keith Dyson".

54. On 11 February 2014 Ms GG emailed the Respondent to ask him to action the various jobs they had discussed over the past few weeks, including sending over client account information, that is "basically all the reconciliation to [sic] the monies spent and pending in my pot".

55. In the 11 February 2014 email Ms GG also:

- asked the Respondent whether it would be easier for her to contact the accounts department at KDS in respect of the client account reconciliation she had requested;
- requested fee estimates from Lorna Meyer QC and Jayne Action in relation to a forthcoming hearing in the children case (which took place on 21 May 2014-"the May hearing");
- stated that she was aware that she needed to pay Harneys;
- stated that she had authorised the Respondent to pay Steven Thompson QC's fees out of her client account "months ago";
- noted that she was feeling "fed up" as she had been having meetings with the Respondent for over a year and that an "awful lot" of matters which they had discussed did not seem to_have been actioned, notwithstanding that "[the Respondent's] invoices and the hours [he claimed] say otherwise".
- stated: "As your client I lodged with you nearly a quarter of a million pounds, to enable you to pay as my UK solicitor the Gibraltar and other proceedings. I need to know how much is in the pot to cover some of these pending fees".

56. The Respondent replied the same day (11 February 2014) to say that he noted her frustrations and "would sort everything out to [her] complete satisfaction over the next 7 days".

57. On 18 February 2014, Jocelyn Leonard of Harneys emailed Ms GG (copied to the Respondent) chasing payment of three fee notes totalling $62,680.20. On 19 March 2014 Ms Leonard sent a further chaser regarding her earlier email of 18 February 2014. This prompted Ms GG to email the Respondent on 20 March 2014. In that email Ms GG:

- stated she was fed up because she had asked the Respondent to contact Harneys months earlier to discuss their payments and costings;

- noted that the same situation (i.e. as with Harneys) had arisen with Phillips, who would not place a tax letter before the Judge in the Gibraltar case without being in clear funds; she noted that the Respondent had promised "probably six months ago now" to discuss Phillips' time sheets and costings;
- stated: "I have been asking you for my client account and invoices for a long time now and it feels like you are just making excuses and fobbing me off!"
- stated: "I placed nearly a quarter of a million pounds with you as my agent to pay for my legal cases and I have no idea where I'm up to!"
- noted that the Respondent had "yet again" not been able to attend an appointment to bring all these long-awaited documents to her that week;
- asked the Respondent to scan "all invoices etc… everything" over to her that afternoon so that she could work out what was going on;
- asked the Respondent to email her details of his discussions with Harneys and Phillips once he had dealt with the above issues.

58. On 2 April 2014 Ms GG emailed the Respondent to thank him for sending her copies of his invoices. She then said: "Please send a statement of my account and the list of paid and not paid as we discussed so I can try to work out where I'm upto [sic]").

59. On 21 May 2014 Ms GG sent an email to the Respondent in which she asked him to:

- forward to her all correspondence between him and "Phillips, Harneys etc";
- send a new engagement letter;
- confirm that he had paid £7,500 to Phillips and that the tax letter (required to be placed before the Gibraltar Judge) had been sent;
- pay Martin Pointer QC as discussed and copy her into all correspondence.

60. Following the exchange of emails between Ms GG and the Respondent in relation to the GB Ltd rental payment between 21 May and 6 June 2014, on 6 June 2014 Ms GG sent an email to the Respondent in which she stated that due to his

> "continued failure to provide [her] with a record of the use of [her] funds, together with [her] knowledge of his misrepresentation on the subject to [her] and others"

she was withdrawing all her instructions from him. She stated that she required the return of all funds advanced to him as well as the £30,000 he had received from GB Ltd, although she said she was prepared to allow him to keep £70,000 being the balance of his invoices, notwithstanding her outstanding queries regarding the level of his charges.

61. Ms GG stated that if the Respondent did not return the balance of £205,000 to her by 12 pm on Tuesday 10 June 2014, she would immediately inform the police and SRA about his conduct of her affairs.

62. The Respondent sent an email to Ms GG on the morning of 10 June 2014 in which he stated:

> "Yes you have placed me in funds and yes I have strung counsels clerk out in terms of payment but the figures you now supply fail to take into account a whole host of factors".

He went on to state:

- he was "on undertaking" to pay her counsel's fees in the Gibraltar and children cases;
- in the case of the Gibraltar case "more fee notes arrive for historic advice to the extent that I am not clear how much is due";
- in the children case counsel's fees alone were in the region of £84,000;
- Ms GG also failed to take into account payments made or to be made to experts, Gibraltar agents, couriers etc; and
- he was chasing all final fee notes and would give her a clear final figure once they were to hand.

63. Ms GG sent an email in reply on 13 June 2014 in which she stated:

- the Respondent had been promising her a reconciled client account for the last 8 months, as well as receipts to show payments to her legal advisers he had been instructed to pay on her behalf, but to no avail;
- although the Respondent had promised her "*on countless occasions*" that all counsel's fees on the children case were paid up to the final hearing, she had been told that neither Lorna Meyer QC nor Jayne Acton had been paid;
- it appeared that the Respondent had been giving both barristers' clerks excuses which he and she both knew to be complete misrepresentations, and that he had promised to pay them out of funds received from GB Ltd, which the Respondent knew he had no right to do;
- she had refused to sign the authority for SCC in relation to GB Ltd but he had sent one to GB Ltd in any event;
- he had procured her rent money [from GB Ltd, i.e. the £30,000] without any authority to do so and then fobbed her off when she asked for copies of correspondence between him and GB Ltd;
- she was mortified to have put so much faith and trust in him;
- it was quite clear that he could not be trusted to pay the various professionals on her behalf and she saw no alternative but to demand the monies back so that she could pay them herself;
- in relation to his claim that she had not taken into account all expenses he had paid on her behalf, she had certainly taken into account all the fees he claimed to have paid or to be in the process of paying;
- she would give him until close of business that day to return the balance of her funds, failing which she would have no option but to contact the police and SRA.

Allegations 1.8, 1.9 and 1.10 – undertaking given without authority, failure to comply with that undertaking, and failure to pay counsel's fees

64. The Respondent instructed Lorna Meyer QC in relation to the children case on 31 May 2013. On the same day, confirmation of instructions was sent by No. 5 Chambers to the Respondent at KDS.

65. A fee note for Ms Meyer's fees was first provided to the Respondent on 29 July 2013. The Respondent confirmed receipt on the same day and said he would pay the invoice the following week. On 6 August 2013 he asked for account details so that he might transfer payment.

66. Letters chasing payment of Ms Meyer's fees were sent to the Respondent on:

- 30 August 2013 (£12,960 payable). The Respondent replied on 11 September 2013, apologising for the delay, which he attributed to "simply" being away. He said he would "sort this out ASAP";
- 1 October 2013 (£12,960 payable). The Respondent replied on 4 October 2013 stating: "No problem, I just have to get authority from the Gibraltar Courts and frankly have been awaiting a few more bills before I make a formal application";
- 27 February 2014 (£24,960 payable). The Respondent stated in an email sent the same date: "This will be sorted ASAP. Please bear with me as we have had a bereavement at the practice this week and everything is on go slow";
- 13 May 2014 (£24,960 payable). Ms Meyer's clerk had a conversation with the Respondent on that day, and recorded that the Respondent had told him that the money should reach chambers' account the following day;
- 15 May 2014 (£24,960 payable).

67. On 16 May 2014, Respondent replied to the chaser email sent the day before by Ms Meyer's clerk saying that:

- he had relocated his practice to Allerton Kaye Solicitors;
- as a result, rental monies [i.e. the £30,000 paid by GB Ltd] which had been paid into KDS's client account had been returned;
- out of an abundance of caution he was directing that the funds be paid into his consultancy account "today";
- he would "at that stage", i.e. following receipt of the rental monies, "remit the monies necessary to meet Miss Meyers [sic] current outstanding fees directly to your chambers account by bank transfer";
- if the rental monies did not reach his [the Respondent's] account that day (i.e. 16 May 2014), "you may accept this email as my personal undertaking to immediately transfer funds in respect of Miss Meyers fees to your chambers account once I have the cleared rental monies in my consultancy account".

68. On 22 May 2014, Ms Meyer's clerk emailed the Respondent to ask him to call him (the clerk) "as a matter of urgency regarding the outstanding fees". The Respondent replied the following day stating: "I am not yet in funds but am told and am confident that the funds will be transferred next week. In accordance with my undertaking I will remit immediately when they arrive".

69. As described above, the Respondent received £30,000 from GB Ltd on 27 or 28 May 2014. However, following receipt of those funds, he did not settle Lorna Meyer QC's fees, either immediately, as he had undertaken to do, or subsequently.

70. At the time of drafting the Rule 5 statement, and at the date of hearing, Ms Meyer's fees of £42,960.00 (inclusive of VAT) remained unpaid. Additionally, Ms Acton's fees of £41,339.96 (inclusive of VAT) remain unpaid.

Allegation 1.11 – invoicing for disbursement (counsel's fees) which had not been incurred

71. The Respondent's invoice no. 107, dated 31 January 2013, included disbursements totalling £21,350.00, including £10,000 for fees of a barrister, Judith Fordham, of Exchange Chambers. However, Exchange Chambers confirmed to the SRA that Ms Fordham was not instructed in relation to any of Ms GG's matters and no fees were due to her.

The SRA's Investigation (incl. Allegation 1.13 – failure to co-operate with the SRA)

72. On 8 October 2014 Stephanie Barry, a Supervisor of the SRA, sent a letter to the Respondent at an address in Macclesfield, seeking his comments on the matters raised by Ms GG regarding his conduct. Ms Barry asked the Respondent to reply by 23 October 2014.

73. On 3 November 2014 Ms Barry wrote to the Respondent at an address in Wilmslow, to say that her earlier letter had been returned with a note saying that the Respondent no longer lived at the Macclesfield address. She noted that she had also sent a copy of her earlier letter to the Respondent's email address, but had received no response.

74. In the letter of 3 November 2014, which Ms Barry also sent to the Respondent's email address, was enclosed a copy of Ms Barry's earlier letter. Ms Barry asked for a reply by 10 November 2014, but none was received.

75. On 26 February 2015, the SRA's solicitors, Penningtons Manches LLP sent a letter to the Respondent enclosing a notice pursuant to S44B of the Solicitors Act 1974 requiring the delivery up by 9 March 2015 of documentation relating to his conduct of Ms GG's matters. The letter was sent by Special Delivery to the Wilmslow address and by email to two email addresses known to have been used by the Respondent. A Proof of Delivery obtained from the Royal Mail website shows that the letter was delivered to the Respondent's address on 28 February 2015, and was signed for by "Gibbon". No response was received to the letter or S44B notice.

76. On 5 January 2015 an authorised officer of the SRA decided to refer the Respondent to the Tribunal.

Witnesses

Ms Gemma Grey

77. Ms Grey confirmed that the contents of her witness statement dated 21 September 2015 were true to the best of her knowledge, information and belief and that the exhibits were the documents to which she referred.

78. Ms Grey was asked some questions by the Tribunal for clarification, in particular with regard to the circumstances in which she came to instruct the Respondent, what she knew or understood about the account to which her money was being paid and the purposes for which it was to be used. Ms Grey also confirmed that whilst she signed the letter of authority dated 1 May 2014, asking GB Ltd to deal with the Respondent at KDS she did not sign the document dated 13 May 2014 which purported to ask GB Ltd to deal with the Respondent at SCC Consultants. Ms Grey also told the Tribunal about the advice the Respondent had given her with regard to a freezing order over certain assets. Her evidence, where relevant, will be set out below with regard to the specific allegations.

Other

79. The Tribunal also took into account the written witness statements of Mr Russell Hobbs, a clerk at No. 5 Chambers in Birmingham, dated 10 September 2015, and Mr Nick Buckley, a clerk at Exchange Chambers in Manchester, dated 16 September 2015. The Respondent had been asked if he required these witnesses to attend for cross examination. In late July 2016 he indicated that he required them to attend, but in the email exchange from 31 August 2016 the Respondent stated that he did not require them to attend. The Tribunal noted that Civil Evidence Act Notices had been served with regard to these statements.

Findings of Fact and Law

80. 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.

81. The Tribunal was assisted in its consideration of the allegations by the clear presentation of matters, in the papers and orally, by Mr Hudson.

82. The Tribunal was greatly assisted by hearing from Ms Grey. The Tribunal found her to be a very genuine witness, who had been duped and let down by the Respondent, whom she had trusted; Ms Grey was understandably distressed by the Respondent’s conduct. The Tribunal found Ms Grey to be a credible witness. It noted, for example, that when asked how she could be sure she had not seen the Respondent in the period 13 to 15 May 2014 Ms Grey told the Tribunal that she had checked her diary for the relevant period when preparing her witness statement; she would have written into the diary any meeting with the Respondent. The Tribunal was satisfied that Ms Grey was a careful and reliable witness. She had answered the Tribunal’s questions promptly and in a straightforward way. For example, when asked about the Respondent’s invoices to her, which appeared to be on SCC Consultants headed paper, Ms Grey told the Tribunal that she did not notice this heading. The Tribunal was satisfied that Ms Grey had given an honest answer to this question; both the wording of her answer and its manner supported this view. On this particular point, the Tribunal noted that this answer was consistent with Ms Grey’s evidence that she had not been suspicious about the Respondent’s conduct of her account until alerted to possible concerns by another solicitor, with whom she dealt in another matter. Ms Grey had told the

Tribunal that she understood that the Respondent's account was, in effect, part of the KDS client account and that it would be protected, as a solicitors' account, with appropriate professional indemnity insurance. The Tribunal found this answer to be an honest reflection of Ms Grey's understanding of what a solicitor's client account was, rather than an answer constructed after carrying out research into how client accounts were supposed to operate.

83. Whilst the Tribunal took into account in its deliberations the Respondent's Answer to the allegations, where there was any conflict in the accounts of the Respondent and Ms Grey, the Tribunal had no hesitation in preferring the evidence of Ms Grey. Ms Grey's statement had been prepared after the Respondent's Answer was filed, and addressed the points raised in that Answer. Although the Respondent had been served with the witness statements in October 2015, he had not filed and served any further evidence in an attempt to rebut what Ms Grey said. The Tribunal noted – as found below with regard to allegation 1.13 – that the Respondent had failed to respond to a s44B Notice which required him to produce documents relating to Ms Grey's retainer. Had he had any attendance notes or other documents which supported his defence, he could and should have produced them in response to the s44B Notice and in any event had the opportunity to do so in the course of these proceedings. Whilst it was for the Applicant to prove the case, the Tribunal did not consider that the Respondent should be able to benefit from any lack of clarity, where he had had the opportunity to put forward evidence and clarify certain points.

84. The Respondent had made some admissions, in his Answer, to certain factual matters and some of the allegations. Unless specifically admitted, the Tribunal treated each allegation as denied.

Findings of Fact – General

85. The Tribunal found the factual background to the allegations, as asserted by the Applicant, to be proved to the required standard.

86. Ms Grey had first become acquainted with the Respondent and his family as their children attended the same school, in or about 2008/9, and they mixed in the same social circles. Their relationship had been friendly; for example, the Respondent sometimes addressed Ms Grey as "sweetheart" in his texts, which she regarded as normal in the context of their relationship.

87. In or about 2012, Ms Grey's husband, Mr N, commenced divorce proceedings with complex ancillary relief proceedings, in Gibraltar. In October 2012 there was a hearing in Gibraltar, which was adjourned part-heard, at which a freezing order was made in respect of approximately £2.5 million of assets owned or controlled by Ms Grey and her family. Ms Grey had been unhappy with her representation in Gibraltar and "sacked" her lawyers there. She spoke to the Respondent's wife, who suggested that the Respondent might be able to put Ms Grey in touch with the right people to assist her. The Respondent then visited Ms Grey at her home and discussed the problems in the various court cases in which she was involved. Rather than directing Ms Grey to other solicitors with relevant experience, the Respondent himself offered to help Ms Grey. The Tribunal was satisfied that Ms Grey trusted and relied

on the Respondent in the period she instructed him, which was from about November 2012 to May 2014.

88. In the period December 2012 to November 2013, Ms Grey paid to the Respondent £235,000 which she understood would be used to pay certain legal fees in connection with her various court cases, and which would form a "pot" from which future legal fees would be paid. That sum was paid in a total of 9 tranches, varying in amount between £5,000 and £50,000.

89. The Tribunal found that the Respondent had not provided to Ms Grey any engagement letter, terms of business or estimate of his costs, although he had stated that his hourly rate was £185 per hour. The Tribunal was satisfied on the evidence presented by Ms Grey that she understood that her money was going to the Respondent's account, which she understood to be part of the client account at KDS. In fact, the Respondent's account was a personal account and not part of any solicitor's client account. The Tribunal noted that the Respondent operated a business, SCC Consultants, in whose name his invoices to Ms Grey were issued. The Tribunal accepted Ms Grey's evidence that she did not notice that the invoices were from SCC rather than KDS.

90. The Tribunal did not have to determine the work the Respondent did for Ms Grey, but it was clear that he was acting in relation to her various pieces of litigation and in particular had a role in instructing counsel in the children case. There was no doubt that there was a solicitor/client relationship. The Respondent was, at all relevant times, a solicitor and must have been acting for Ms Grey in that capacity unless it were spelt out with absolute clarity that he was not acting as a solicitor and did not have professional indemnity insurance for civil work. It was clear on the evidence that the KDS professional indemnity insurance policy would not have covered the Respondent's work for Ms Grey, as that policy was solely in relation to criminal work.

91. The Tribunal noted, and found, that Ms Grey only became suspicious about the Respondent and how her money was being used when she mentioned it to another solicitor. Ms Grey sought information from the Respondent about how much of her "pot" had been used; the Respondent prevaricated and avoided answering her questions. Ms Grey also sought information from the Respondent about his correspondence with GB Ltd. Again, he failed to provide that and failed to inform Ms Grey that the rent money had been received until he had no option but to mention it.

92. The Tribunal also noted and found that the Respondent had instructed counsel but had failed to discharge counsels' fees, when he had been put in funds by Ms Grey to pay those fees and she believed counsel had been paid. It was not until May 2014 that Ms Grey realised that counsel had not been paid.

93. The individual allegations are addressed below, but it was clear from the facts of the case that the Respondent had dealt in a most irregular way with Ms Grey's money. A number of the allegations related to the Respondent's conduct when his conduct started to catch up with him, for example failing to keep Ms Grey informed about the

GB Ltd matter, and procuring what appeared to be her signature on a form of authority sent to GB Ltd.

94. **Allegation 1.1 - He held client money in his personal bank account, in breach of all or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Rules 1.2(a), 13.1 and 14.1 of the SRA Accounts Rules 2011 ("the AR 2011")**

94.1 The factual background to this allegation is set out in particular at paragraphs 20 to 21. The Respondent denied this allegation. In his response he stated,

> "… first, the monies paid did not constitute client monies, and secondly, the client at all times was aware of the identity of the account into which she had paid the monies."

94.2 There was no doubt, on the evidence presented, that the Respondent had received £235,000 into his personal bank account from Ms GG. The Tribunal found that the monies had been paid to the Respondent on account of legal fees to be paid to the Respondent, counsel and others (in particular, the solicitors in Gibraltar). Client money was defined in Rule 12 of the AR 2011 as "money held or received <u>for a client</u> or as a trustee, and all other money which is <u>not</u> office money." (emphasis added)

94.3 There could be no doubt, therefore, that the monies were client monies which were entrusted to the Respondent for the payment of legal fees and expenses. The Respondent's argument that the funds were not client monies was unsustainable. Whilst it was clear from the evidence that Ms GG knew the account details, which were essential in order to make the various transfers, it was clear from Ms GG's evidence that she had believed the account was in some way under the umbrella of the KDS client account. The Respondent was a solicitor who knew that client money should be paid into and held in a client account, not a personal account in which the client money would be mixed with the Respondent's own funds.

94.4 The Tribunal noted that the Respondent had not provided Ms GG with an engagement letter at any time. Had he done so, he would have been obliged to explain where and how Ms GG's money would be held. He should not be given the benefit of any confusion or misunderstanding which had arisen because of his failure to explain at the outset what he now asserted was the correct position. Ms GG knew that the Respondent was a solicitor. Unless and until he explained that he proposed to act for her in some other capacity, for example through an unregulated entity, Ms GG was fully entitled to believe that her money was being held in a solicitor's client account. Her evidence as to her belief that that was the case was clear and convincing.

94.5 For Mr Gibbon to procure a client to transfer funds into his personal bank account and to hold these substantial amounts of client money in his personal bank account where they were mixed with his own money, put him in flagrant breach of the AR 2011; in particular:

> "Rule 1.2(a): You must comply with the Principles…and in particular must…<u>keep other people's money separate from money belonging to you or your firm</u>.

Rule 13.1: If you hold or receive client money, you must keep one or more client accounts (unless all the client money is always dealt with outside any client account in accordance with rule 8 (liquidators, trustees in bankruptcy etc.), 9 (joint accounts), 15 (client money withheld on client's instructions) or 16 (other client money withheld from a client account e.g. cash, endorsed cheque etc.))

Rule 14.1: Client money must without delay be paid into a client account and must be held in a client account except where the Rules provide to the contrary" (Emphasis added).

94.6 The Tribunal found that in persuading a client to transfer funds into his personal bank account, having led the client to believe that she was transferring money into a solicitors' client account and then holding that money in a personal account could not be in the client's best interests. The client, Ms GG, was not given the protection which would have existed if the money had been held in a client account. Moreover, for a member of the public to discover that funds she believed would be held in a client account were in fact being held in a solicitor's personal bank account did nothing to maintain the trust the public were rightly entitled to place in a solicitor and the provision of legal services. There could be no doubt that the Respondent had failed to protect client money, either in accordance with the AR 2011 or at all. The Tribunal noted that money Ms GG's money had been held in the Respondent's personal account from December 2012 and had not been used for Ms GG's proper purposes, or returned to her, by the time of the hearing. The money had therefore been held for a substantial period, not simply for a short period before being used or transferred to a client account.

94.7 The Tribunal was also satisfied that the Respondent's conduct lacked integrity. He had procured the transfer of monies to his personal account and held those monies when he was fully aware they were client funds and should be held in a client account. He was aware that his conduct was improper and was not in accordance with the standards expected of solicitors.

94.8 The Tribunal was satisfied to the required standard that this allegation had been proved in all its aspects.

95. **Allegation 1.2 - He procured that a client transferred funds into his personal bank account when that client believed that she was transferring those monies into a solicitors' client account, in breach of any or all of Principles 2, 4, 6 and 10**

95.1 The factual background to this allegation is also set out in particular at paragraphs 20 and 21 above.

95.2 The Tribunal noted that this allegation was denied by the Respondent and that in his Answer he asserted that a) Ms GG was aware of the identity of the account into which she paid the monies; b) that the monies were sent to that account so that she could utilise the funds which were restrained by an Order made by the Court in Gibraltar; and c) invoices were issued in the name of SCC Consultants, which was the entity through which the Respondent traded.

95.3 As noted above, it was correct that Ms GG had the bank details of the account to which she paid the money; she could not have made the transfers without that information. However, both text messages sent by Ms GG contemporaneously made clear that she believed, at the relevant time, that the money was going into a solicitors' client account. For example, on 21 June 2013 Ms GG sent a text to the Respondent which read:

> "Hi, Paul. Hope you got my voicemail confirming payment of £50k to Dysons, it should be showing in the account by now so please confirm when possible…"

and on 25 June 2013 she sent a further text which read:

> "Hi, mate. Just to let you know I've sent £10k to you (Dysons) and £20k to Phillips this evening…"

95.4 These text messages reinforced the clear and convincing oral evidence given by Ms GG to the effect that she had believed the money was going into an account with or under the umbrella of KDS. The Respondent took no steps to correct her incorrect understanding. Indeed, with regard to the GB Ltd money (see allegations 1.3 to 1.6 below), the Respondent tried to dissuade Ms GG from contacting KDS; had she done so, the true position may have been revealed earlier.

95.5 With regard to the Respondent's assertion that Ms GG was aware that the money was going into his personal account because the invoices he issued were in the name of SCC Consultants, the Tribunal accepted Ms GG's evidence that she simply did not notice that name on the invoices. The existence of SCC Consultants had not been drawn to her attention by the Respondent. Again, he should receive no benefit from his failure to provide a proper client care letter if there had indeed been any confusion about the accounts. The Tribunal accepted Ms GG's evidence that she did not notice the involvement of SCC Consultants until this was pointed out to her by another solicitor, after all three invoices had been issued by the Respondent. The issue concerning the "evasion" of the Gibraltar Court's freezing Order will be discussed below, in relation to allegation 1.8. However, the Tribunal noted that the terms of the Order may have been breached when the money was sent by Ms GG from the "frozen" accounts, whatever the nature of the account to which her funds were transferred.

95.6 The Tribunal was satisfied to the required standard that the Respondent had persuaded Ms GG to transfer funds to him when he knew the money was going into his personal account, not a solicitors' client account, and where the client believed the money was being protected as client money, in a solicitors' client account. Such conduct lacked integrity, was not in Ms GG's best interests, would tend to diminish the trust the public would place in the Respondent and in the provision of legal services and failed to protect client money. In all of these circumstances, this allegation had been proved to the required standard, in all its aspects.

96. **Allegation 1.3 - He signed a letter of authority dated 13 May 2014 in a client's name, or alternatively procured the signature in her name of that letter of authority, when he knew that the client had not given such authority, in breach of any or all of Principles 2, 4 and 6;**

96.1 The factual background to this allegation is set out at paragraphs 22 to 47 above.

96.2 The Tribunal noted that in his Answer, the Respondent stated that the relevant form of authority was signed by Ms GG, "… in one of a large number of attendances at her home, furthermore her signature was not procured it was obtained following detailed discussion on the subject matter of retrieval of outstanding rent on her behalf and the repayment of additional monies due to her from [GB Ltd]."

96.3 On the evidence presented, the Tribunal found that Ms GG had signed a letter of authority dated 1 May 2014 which stated that she had engaged the services of the Respondent "Solicitor and Consultant to [KDS]… to represent me in all legal matters and specifically my claim for payment due from yourselves in relation to monies advanced by way of loan and in relation to outstanding rental monies. You may accept this letter as my authority to deal directly with [the Respondent] in relation to these matters."

96.4 The Tribunal found that on 8 May 2014 the Respondent asked GB Ltd to send £30,000 (being the outstanding rent payment) to the KDS client account, the details of which he provided. The Tribunal noted that GB Ltd sent the payment on or about 9 May 2014. It appeared from the evidence that the new principal of KDS queried this payment, which had not been expected and terminated the firm's arrangement with the Respondent. In any event, on 12 May 2014 the Respondent emailed GB Ltd to say that KDS would no longer act for Ms GG but would return the £30,000 payment to GB Ltd. The email further stated that the money should be re-sent, to his "consultancy account", the details of which he gave. On 13 May 2014 the Respondent sent Ms GG an email asking her to sign a revised letter of authority. This was in similar terms to that set out at paragraph 96.3 above, save that it referred to the Respondent, "Solicitor of SCC Consultants…" and gave the address of his business. Ms GG replied, stating she would look at it later, and requesting an engagement letter for SCC Consultants. The Respondent sent an email in response, stating he would do so that evening. The Respondent did not send an engagement letter then, or later.

96.5 As Ms GG attended the Tribunal to give evidence, the Tribunal was able to hear her direct evidence on this point. Ms GG told the Tribunal that the signature which appeared on the letter of authority dated 13 May 2014 was not hers; she had not signed that document. In response to the Respondent's assertion that the document was signed at her home, Ms GG told the Tribunal that she did not see the Respondent in the relevant period (13 to 15 May 2014); she knew this as she had checked her diary before preparing her witness statement, and would have noted in her diary any meetings with the Respondent. Ms GG told the Tribunal that she saw the Respondent at a Court hearing about a week later.

96.6 The Tribunal accepted Ms GG's evidence, given on oath, which was clear and direct; the signature was not hers and she had not signed the document. The Respondent had either forged the signature or somehow procured the appearance on the document of

something which looked similar to Ms GG's signature. The document, purportedly bearing Ms GG's signature, was created and sent to GB Ltd at a time when the Respondent was under pressure to obtain money from GB Ltd in order to pay counsel's fees – see allegations 1.8 and 1.9 below. In relation to this allegation, the Tribunal preferred the evidence of Ms GG to the assertion made by the Respondent in his Answer. The Respondent had signed or procured what appeared to be Ms GG's signature on the letter of authority without the knowledge or authority of Ms GG.

96.7 There could be no doubt that in acting in this way the Respondent had acted without integrity. He had failed to act in the best interests of his client and had acted in a way which would fail to maintain the trust the public would place in the Respondent and in the provision of legal services. This allegation had been proved to the required standard.

97. **Allegation 1.4 - He procured the payment from a third party of £30,000 due to a client into his personal bank account, in breach of any or all of Principles 2, 4, 6 and 10 and Rules 1.2(a), 13.1 and 14.1 of the AR 2011**

97.1 The factual background to this allegation is set out at paragraphs 22 to 47 above.

97.2 In his Answer, the Respondent denied this allegation. He indicated that the £30,000 had been paid into the KDS account in the first instance and these monies were not restrained by the Order made in Gibraltar; both of those statements were correct. The new principal of KDS (who had become the principal after the death of her father) had taken exception to this money arriving in the firm's account. The Respondent stated, "… given that the client had been made aware of the situation and had signed an authority the monies were transferred to an account of which she was absolutely aware."

97.3 As noted above, in relation to allegation 1.3, the Tribunal found that Ms GG had not signed the form of authority allowing the money to be transferred to the Respondent's account. Further, the Tribunal noted and found that Ms GG had certainly not been fully aware of the situation; on 5 June 2014 she sent an email to the Respondent, referring to the GB Ltd money asking,

> "… Just wondering when I will receive this money? Should I contact [KDS'] accounting department to get it transferred?"

The Respondent replied,

> "… I'll sort it out for you."

Ms GG sent a further email on the same date, which included,

> "… just in case you get bogged down with all your other cases and forget, can I please have the name of who I need to deal with at [KDS] and then I can chase them up if I've not received it by tomorrow afternoon."

On the morning of 6 June 2014 the Respondent replied,

> "No need as I have responsibility to remit your funds – let me have your account details…"

It was clear from this email exchange that Ms GG believed, at all times up to and including 5 June that any rent monies paid by GB Ltd were to be paid to the KDS account. This supported the finding that Ms GG had not signed the alternative letter of authority, directing the rent money to be paid to the Respondent's consultancy business.

97.4 The Tribunal also found that on several occasions Ms GG had asked the Respondent to provide all of the correspondence between himself and GB Ltd. The Tribunal noted in particular two emails dated 21 May and an email on 22 May 2014. The Respondent did not supply copies of the correspondence promptly or at all.

97.5 The Tribunal was satisfied to the required standard that the Respondent was in breach of Rules 1.2(a), 13.1 and 14.1 of the AR 2011, in that client money was paid into the Respondent's personal bank account rather than a client account. Further, procuring such payment when it was clear to the Respondent that client money should be paid into a client account lacked integrity, was not in the best interests of the client and was conduct which would tend to diminish rather than maintain the trust that the public would place in the Respondent and in the provision of legal services. Placing money into a personal account rather than a client account clearly failed to protect client money. The Tribunal was satisfied that the allegation had been proved, in all its aspects, to the higher standard.

98. **Allegation 1.5 - He failed to keep a client informed regarding his attempts on her behalf to procure payment of £30,000 from a third party, and in particular failed to inform the client when that sum had been received from the third party, despite his client having made repeated requests for an update in respect of this matter, in breach of any or all of Principles 2, 4, 5 and 6**

98.1 The factual background to this allegation is again set out at paragraphs 22 to 47 above.

98.2 In his Answer, the Respondent accepted that he "failed to keep Ms GG fully informed in relation to progress made or otherwise in relation to the monies due from [GB Ltd]". He did not specifically admit the breaches of Principle which were alleged to arise from the facts.

98.3 The Tribunal was satisfied that Ms GG made repeated requests for information about the GB Ltd, matter, in particular from 21 May 2014 onwards. The Tribunal noted other emails on this issue on 23 May, 26 May, 30 May and 2 June 2014. The Tribunal noted that GB Ltd sent £30,000 due to Ms GG to KDS on or about 9 May 2014. Ms GG was not told about this, nor that the money was returned by KDS as the firm did not know about Ms GG's matter. The £30,000 was subsequently sent to the Respondent's personal account on or about 28 May 2014. On 3 June 2014, GB Ltd informed Ms GG that they had sent £30,000 to the Respondent on the basis of the (purported) letter of authority dated 15 May 2014. On 5 June 2014 Ms GG sent an email to the Respondent asking when she would receive the money – see the email exchange set out at paragraph 97.3 above. At that stage, as already noted, Ms GG still

believed the money had been sent to or was held by KDS; the Respondent did not correct that misunderstanding and attempted to put Ms GG off from contacting KDS.

98.4 There could be no doubt, on the evidence of Ms GG and on the Respondent's admissions, that he had failed to keep her informed about the GB Ltd matter. Despite repeated requests for information, the Respondent failed to provide any information about the payment of rent by GB Ltd. In all the circumstances of this case, the Tribunal was satisfied that this failure displayed a lack of integrity; a solicitor, knowing his client wanted information, should provide that information reasonably promptly, particularly where such information was readily to hand. The only reason for failing to inform Ms GG about the payment of rent was to delay her discovery that the money had been paid to the Respondent's personal account. It was clearly not in the interests of the client to fail to provide her with information she reasonably required and the Respondent failed to provide her with a proper standard of service. The public would expect a solicitor to keep a client informed in circumstances such as this, rather than to conceal information or delay providing that information. The Respondent's conduct would tend to diminish the trust the public would place in the Respondent and in the provision of legal services. The Tribunal was satisfied to the required standard that this allegation had been proved in all its aspects.

99. **Allegation 1.6 - He failed to pay to a client £30,000 received from a third party, instead retaining and/or using the funds for other purposes when the client had not authorised him to do so, in breach of any or all of Principles 2, 4, 5, and 6**

99.1 The factual background to this allegation is set out at paragraphs 22 to 47 above.

99.2 The Respondent denied this allegation in his Answer, stating:

> "The client was aware and had agreed that monies recovered from [GB Ltd] would be utilised in payment of agent's and/or counsel's fees as technically the monies previously received were subject to a High Court Order."

99.3 The Tribunal found that the Respondent had received the £30,000 and had failed to send it to the client. He had also failed to use it to pay for anything on her behalf e.g. counsel's fees. Even if Ms GG had agreed the money could be used for that purpose – and the Tribunal was satisfied on her evidence that she had not been consulted about this, let alone agreed – the Respondent failed to use it in any way for Ms GG's benefit. It was not clear what had become of Ms GG's £30,000. Ms GG had confirmed in her evidence that the Respondent had not paid the money to her or on her behalf.

99.4 The Tribunal found, so that it was sure, that the Respondent's conduct, in failing to use his client's money for her benefit or to send it to her, lacked integrity. The Respondent was well aware that the money was due to Ms GG and should only be used for her proper purposes. His conduct was not in Ms GG's interest, failed to provide her with a proper standard of service and was clearly such as would tend to diminish rather than maintain the trust the public would place in the Respondent or in the provision of legal services. The Tribunal found this allegation proved, to the higher standard, in all its aspects.

100. **Allegation 1.7 - He (i) failed to account to a client for funds she had paid to him on account of costs and disbursements and/or (ii) failed to provide that client with a written statement of account when she requested one of him or at any time, in breach of any or all of Principles 2, 4, 5 and 6**

100.1 The factual background to this allegation is set out at paragraphs 48 to 63 above.

100.2 The Respondent denied this allegation in his Answer, stating,

> "Notwithstanding that the monies paid were not client funds, the client was kept fully informed of expenditure at all times."

100.3 As noted above, with regard to allegation 1.1, there was no doubt that the monies paid to the Respondent by Ms GG were client funds, paid to him on account of costs and disbursements. Ms GG's evidence made clear that she believed she was instructing the Respondent as her solicitor to deal with certain aspects of the cases in which she was involved, and to co-ordinate work done by other lawyers. The Respondent, as Ms GG's solicitor, instructed counsel in relation to Court proceedings heard in Manchester. Ms GG had provided sum £235,000 to the Respondent over a period of time which she expected to be used to pay the Respondent's costs and those of lawyers in Gibraltar and elsewhere as well as counsel's fees and other expenses in connection with legal proceedings.

100.4 The Tribunal found that from at least November 2013 Ms GG repeatedly asked the Respondent for information about how the money she had provided had been used and how much was left in the "pot" for future use. By January 2014 Ms GG was concerned and asked the Respondent to provide a copy of her "client account and a break down of your reference to your invoices paid and pending." Ms GG's email of 29 January 2014 referred to her trying to get on top of payments for some time. The Tribunal found that the Respondent did not provide the information requested. Then, on 6 February 2014, Ms GG sent the Respondent an email in which she set out her understanding of the payments which had been made from the £235,000 "pot". The payments of which she was aware included: £75,000 to the Respondent; £21,960 to Laura Meyer QC; £32,200 to Jayne Acton (counsel); and various sums for couriers, photocopying and a computer expert which Ms GG calculated to be a total of £134,236.75. Ms GG had therefore understood that about £111,000 was still available. In fact, as the Tribunal found, counsel's fees had not been paid at all, either by February 2014 or subsequently. On 11 February 2014 Ms GG emailed the Respondent again, expressing dissatisfaction about various matters and stating that she needed to know how much was left in the "pot" to cover various pending fees. The Respondent replied that he would sort everything out in the next 7 days. In fact, the Respondent did not provide to Ms GG at any time a proper break down of the money spent or expected future costs.

100.5 There was no doubt that the Respondent had failed to provide proper information to his client about how her money had been used. The emails shown to the Tribunal showed that he had repeatedly put off giving Ms GG an account of how her money had been used, and failed to return to her any "unused" money.

100.6 The Tribunal noted that one of the themes of the Respondent's defence was that the money Ms GG had paid to him had been restrained by the High Court in Gibraltar. This point was also relevant to allegation 1.8 below. The Respondent had stated in his Answer that Ms GG had been anxious "to send the monies from her account to an account which could utilise said funds and adopted this approach to frustrate any possibility that her ex-husband could get these funds…" The Tribunal noted that, indeed, the funds may have come from accounts which were subject to an Order made by the High Court in Gibraltar. It was unclear why the Respondent had not arranged for an application to be made to vary the Order, so that Ms GG could pay her proper legal fees. In any event, any breach of the Order occurred when the money was sent to the Respondent, not when money was then used on Ms GG's behalf.

100.7 The Tribunal was satisfied that the Respondent had advised Ms GG that she could send funds for her legal fees to him; any breach of the Court order, therefore, was on the basis of the Respondent's advice to Ms GG. The Tribunal was satisfied that the Respondent received Ms GG's money on the understanding that he would use it to pay various legal fees, including his own costs, from those funds. It was clear that the Respondent had had no compunction about taking his own fees from Ms GG's funds; for him to fail to account to her for the remaining money or use it was she expected, to pay other legal fees, could not be excused by reference to the restraining Order in Gibraltar.

100.8 The Respondent's failure to provide information and to account to Ms GG was compounded by his failure to provide the documents requested by the Applicant under a s44B Notice (see allegation 1.13), which might have explained the situation (albeit belatedly).

100.9 There could be no doubt that deliberately failing to account to Ms GG, where Ms GG had repeatedly asked for an account, lacked integrity, was not in the best interests of the client, amounted to a failure to provide a proper standard of service and would diminish, rather than maintain, the trust the public would place in the Respondent and in the provision of legal services. On the facts and evidence of this case, there was no doubt that this allegation had been proved in all its aspects, to the higher standard.

101. **Allegation 1.8 - He gave an undertaking on 16 May 2014 to counsel's clerk to immediately pay counsel's fees once he had received £30,000 in cleared funds, when he had no authority from the client to whom those funds belonged either to give such an undertaking or to use such funds for that purpose, in breach of Principles 2, 4, 5, and 6**

101.1 The factual background to this allegation is set out at paragraphs 64 to 70 above.

101.2 The Respondent denied this allegation, stating in his Answer,

> "The client was at all times aware of the position and that an undertaking was to be given."

101.3 The Tribunal noted that the background to this allegation was that the Respondent had been taking steps to recover £30,000 from GB Ltd but had failed to inform Ms GG that GB Ltd had agreed to pay, and actually did pay, the required sum. It was also the

case that counsel's clerks were pressing for payment. Counsel in the proceedings involving the children had been instructed during 2013 but neither had been paid any fees for work done and for which fee-notes had been rendered.

101.4 The Tribunal found Ms GG's evidence on this point compelling. She had been upset when, on 21 May 2014, she had spoken to her barristers without the Respondent present and had learned that they had not been paid. The Tribunal also accepted Ms GG's evidence that Ms Acton of counsel had informed her that the Respondent had said that fees would be paid from the GB Ltd money, and her evidence that she did not authorise the Respondent to give an undertaking to pay counsel from the GB Ltd money. Further, Ms GG did not know that such an undertaking had been given and had not authorised the use of this £30,000 to pay counsel; her understanding had been that counsel would be paid from the £235,000 "pot".

101.5 The Respondent knew that he did not have authority to give this undertaking or to use the £30,000 to give the undertaking or use those funds for that purpose. Acting in such a way lacked integrity, was not in the best interests of the client, failed to provide a proper standard of service and his conduct was such as would diminish, rather than maintain, the trust the public would place in the Respondent or the provision of legal services. There was no doubt that his allegation had been proved, in all its aspects, to the required standard.

102 **Allegation 1.9 - He failed to honour the terms of an undertaking given on 16 May to counsel's clerk to immediately pay counsel's fees once he had received cleared funds from a third party, in breach of either or both of Principles 2 and 6. He also thereby failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 ("the Code")**

102.1 The factual background to this allegation is set out at paragraphs 64 to 70 above.

102.2 The Respondent accepted, in his Answer, that there was a breach of undertaking in relation to counsel's fees.

102.3 The evidence from the clerks to Ms Meyer QC and Ms Acton made it clear that counsel had not been paid, either from the £30,000 of money received from GB Ltd or otherwise. There was no doubt on the facts and the evidence that the Respondent had not honoured the (unauthorised) undertaking he had given either promptly or at all. Failing to honour an undertaking was a serious matter, particularly where one was in a position to comply; in this instance, the Respondent was in funds and yet still failed to pay anything towards counsels' fees. Such conduct lacked integrity. It was conduct which the public would not expect from a solicitor and would tend to diminish rather than maintain the trust the public would place in the Respondent and in the provision of legal services. The Tribunal was satisfied on the admission and on the evidence that this allegation had been proved to the higher standard, in all its aspects.

103. **Allegation 1.10 - He failed to settle fees of legal advisers from funds provided to him by a client for such purposes promptly, or at all, in breach of any or all of Principles 2, 4, 5, and 6**

103.1 The factual background to this allegation is set out at paragraphs 64 to 70 above.

103.2 The allegation was denied by the Respondent, who stated in his Answer:

> "Counsel and/or counsel's clerks was (sic) aware of the fact that monies received were subject to a High Court order and that as such fees would be paid out of the "clear" [GB Ltd] monies when received, indeed [Ms Acton] of counsel was advised of this on numerous occasions and at least twice in the presence of the client."

103.3 The Tribunal considered the written witness statement of Mr Russell Hobbs, the senior family practice manager at No. 5 Chambers in Birmingham, dated 10 September 2015. In this capacity, Mr Hobbs was the Clerk to Ms Meyer QC. Mr Hobbs' evidence, in summary, was that Ms Meyer QC was instructed in late May 2013 in relation to the Children proceedings, provided advice and on 29 July 2013 a first fee note was issued. The Respondent promised payment, for example on 11 September 2013 he sent an email apologised for the delay in payment and said he would sort it out as soon as possible. Mr Hobbs' evidence was that he had not been told at the relevant time that Ms GG's funds had been "frozen" by the Court in Gibraltar, and there was nothing to suggest this had been discussed with any of his colleagues. Further work was undertaken by Ms Meyer QC and fee notes issued. On 27 February 2014 Mr Hobbs sent an email to the Respondent concerning the outstanding fees, which by that stage totalled £24,960 including VAT. The Respondent sent an email the same day stating, "This will be sorted ASAP. Please bear with me, we have had a bereavement at the practice this week and everything is on go slow." Mr Hobbs' statement described subsequent contact with the Respondent and promises to pay which were made. These included an email from the Respondent on 23 May 2014 in which he apologised for the delay and stated, "… I am not yet in funds but am told and am confident that the funds will be transferred next week. In accordance with my undertaking I will remit immediately they arrive…" The statement recorded that by the date of the statement, Ms Meyer's fee notes, totalling £42,960 (including VAT) had not been paid.

103.4 The Tribunal also considered the written witness statement of Mr Nick Buckley, the Senior Clerk at Exchange Chambers in Manchester, in which capacity he was the Clerk to Ms Acton, dated 16 September 2015. Mr Buckley had known the Respondent professionally for many years, and had a friendly relationship with him, as a result of which he had found it difficult, on a personal level, to provide a statement about events. The witness statement set out the circumstances in which Ms Acton was instructed, from late April 2013, and the terms of business which applied. Mr Buckley stated that in general terms he would not have accepted the instructions unless he thought the Respondent was in funds to pay the fees, and that if he had been told in April 2013 that Ms GG's money was subject to a restraining order he would have wanted to discuss in detail how Ms Acton was to be paid. Mr Buckley's evidence was that the first time that the Respondent raised as an issue that the money for fees may be frozen was on 12 June 2014, over a year after Ms Acton was first instructed. At the date of Mr Buckley's statement Ms Acton's fees, totalling £41,339.96 (including VAT) remained outstanding.

103.5 The Tribunal noted that Civil Evidence Act Notices had been served with regard to these statements. Although at one stage the Respondent had indicated that he wanted these witnesses to attend to give evidence and be cross examined, he had subsequently

confirmed that he did not require their attendance. The Tribunal could therefore accept this evidence as being unchallenged.

103.6 There was evidence within the documents that other fees due to counsel and/or other solicitors remained outstanding. What was clear beyond any doubt was that Ms GG had provided money to the Respondent to meet counsels' fees and other litigation expenses. She had provided £235,000, which appeared to be more than enough to discharge the expenses incurred in the period to mid-2014. Despite this, Ms Meyer and Ms Acton had not been paid their fees, which together totalled £84,299.96.

103.7 The Tribunal was satisfied that the Respondent knew he held Ms GG's money to pay counsels' fees and other expenses and he did not use her money for that purpose. Instead, he delayed paying fees even when chased by counsels' clerks. The Respondent's failure to pay counsel from the monies he received from Ms GG displayed a lack of integrity; he knew what the money was for and did not use it for that purpose. Leaving counsels' fees unpaid was clearly not in the interests of the client, amounted to a failure to provide a proper standard of service to his client and would tend to diminish, rather than maintain, the trust the public placed in the Respondent and the provision of legal services. The Tribunal was satisfied to the higher standard that this allegation had been proved in all its aspects.

104. **Allegation 1.11 - He invoiced a client for £10,000 in respect of counsel's fees when counsel had not been instructed and those fees had not been incurred, in breach of Principles 2, 4 and 10**

104.1 The factual background to this allegation is set out at paragraph 71 above.

104.2 The Respondent admitted that an invoice included a fee for counsel which had not been incurred, but he stated this was an error. The Respondent stated that Ms Fordham of counsel was "at all times expected to be involved in this case and in fact in excess of 40 lever arch files were sent to her… Her initial fee was agreed at £10,000 and this was erroneously shown as a disbursement on one of the initial SCC invoices to the client."

104.3 The Tribunal had to be satisfied that the Respondent's conduct in this regard had been deliberate; had there been a genuine error, there may well have been no breach of Principles, in particular there may be no lack of integrity.

104.4 Although Ms Fordham was at Exchange Chambers, the witness statement of Mr Buckley did not deal with this allegation. Instead, the Tribunal was referred to an email which recorded a telephone conversation between Mr Buckley and an officer at the Applicant, which recorded that Mr Buckley confirmed that Ms Fordham did not carry out any work for Ms GG and therefore could not be owed any fees. Other documents within the case papers indicated that the papers may have been sent to Ms Fordham, as the Respondent, suggested. Mr Hudson, on behalf of the Applicant, accepted that Ms Fordham may well have considered the papers on a preliminary basis. What was entirely clear was that no fee note had ever been rendered for any such preliminary work done by Ms Fordham, and no fee note was going to be rendered. Despite this, on an invoice dated 31 January 2013, amongst a number of items listed as "disbursements" was the item:

"Judith Fordham (counsel) £10,000."

The Tribunal noted in passing that the invoice also referred to fees of Ms Acton in the sum of £5,000; this was approximately two/three months before Ms Acton was instructed, according to her clerk. The Tribunal also noted that this was the first invoice that the Respondent rendered to Ms GG and that it was in the early stages of his involvement in Ms GG's matters.

104.5 In circumstances where the Respondent did not have a fee note from counsel for £10,000, or any other sum, his inclusion of this amount as a disbursement on the invoice was either deliberate or done with such disregard for the true position that it amounted to a lack of integrity. It was clearly not in the best interests of a client to render an inaccurate bill, which included disbursements which had not actually been incurred (let alone paid) and failed to protect the client's money. The Tribunal was satisfied to the required standard that this allegation had been proved, in all its aspects.

105. **Allegation 1.12 – [withdrawn]**

105.1 This allegation was withdrawn.

106. **Allegation 1.13 - He failed to respond to the SRA's letters of 8 October 2014 and 9 November 2014, as well as a notice pursuant to S44B of the Solicitors Act 1974 dated 26 February 2015, in breach of Principle 7**

106.1 The factual background to this allegation is set out at paragraphs 72 to 76 above.

106.2 The Respondent admitted this allegation, stating that the relevant events were at a time when he "was unwell and distracted by a number of personal issues."

106.3 There was no doubt, on the evidence presented, that the Respondent had failed to respond to the Applicant's letters of 8 October and 9 November 2014, as well as the s44B Notice dated 26 February 2015. The Tribunal noted that the Respondent had not contacted the Applicant to assert that he was unable to deal with matters in detail due to ill health and/or personal issues. He had not subsequently produced any medical evidence or an account of the particular difficulties he may have had in the autumn of 2014/early part of 2015. In any event, his failure to respond adequately, or at all, to important communications from the Applicant – about serious disciplinary matters – amounted to a failure to comply with his regulatory obligations. This allegation had been proved to the required standard.

107. **Allegation 2 - In relation to allegations 1.1, 1.2, 1.3, 1.4 and 1.5 above it was alleged that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley & others [2012] UKHL 12 ("Twinsectra") which required that the person had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.**

107.1 As noted above, the Tribunal found all of allegations 1.1 to 1.5 proved. The Tribunal also had to consider whether the Respondent's actions in those matters were dishonest.

107.2 The Respondent denied that he had been dishonest. In his Answer, the Respondent stated,

> "The whole reason for the matter being dealt with in this way was with the knowledge and agreement of the client. As such, the Respondent as SCC Consultants was engaged to supervise the case in Gibraltar which was long running and was to instruct agents and counsel as appropriate. Agreement was reached with [KDS] for that practice to be involved as agents for a fee split of 25%, the monies were paid by the client specifically to the Respondent so that her ex-husband in the Gibraltar case could not get them and there was an understanding that the Respondent would use those monies to pay fees and disbursements as necessary with the [GB Ltd] monies being used in due course to settle the larger fees as those funds were not restrained."

107.3 Before dealing with the Applicant's submissions on the question of dishonesty, the Tribunal noted that it had already found that Ms GG did not engage SCC Consultants; she had understood she was instructing the Respondent, who was a consultant at KDS. The Tribunal also noted that there was nothing within the documents to suggest that any fee splitting arrangement had been made with KDS. Such an arrangement was inherently unlikely, given that the firm dealt exclusively with criminal matters and did not have professional indemnity insurance covering civil or family litigation. There was nothing within the case papers to suggest that KDS had acted improperly; rather, the Respondent had used that firm as an "umbrella" for the work he did for Ms GG. The Tribunal had also found that Ms GG did not know or expect that the Respondent proposed to use the GB Ltd money to pay counsels' fees or other disbursements. The Tribunal was satisfied on the basis of her evidence that she had understood that the money she had provided to the Respondent would be more than enough to pay the fees incurred. The Tribunal also noted that, to the extent that Ms GG had acted in breach of the Gibraltar court order, the evidence was that she had done so on the basis of advice from the Respondent, in his capacity as her solicitor. The Tribunal noted that Ms GG's evidence was that the Respondent had advised her that it would be a breach of her human rights to deprive her of the ability to obtain legal representation; this had reassured her that she could move money to the Respondent/KDS to meet her legal fees.

107.4 The Tribunal considered the Applicant's submission on dishonesty in relation to each of the relevant allegations.

Applicant's Submissions in relation to allegations 1.1 and 1.2

107.5 The Applicant submitted that, in procuring that Ms GG paid funds on account into his personal bank account, and retaining those funds in his personal account, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. It was also submitted that not only was his conduct dishonest by the ordinary standards of reasonable and honest people, but he must also have been aware that it was dishonest by those standards because:

107.5.1 the Respondent was aware that the funds provided to him by Ms GG were client funds;

107.5.2 as an experienced solicitor, the Respondent knew that client funds must be held in a client account, and that it was a breach of the Accounts Rules to receive client funds into his personal bank account and retain those funds there;

107.5.3 accordingly, at the time of procuring payment of client funds into his personal account, and at all times while retaining those funds in that account, the Respondent was aware that his conduct was improper, and proceeding with that conduct in the circumstances was dishonest.

Applicant's Submission in relation to allegation 1.3

107.6 The Applicant submitted that, in signing the authority dated 13 May 2014 in Ms GG's name, or procuring that the authority was (apparently) signed in Ms GG's name, without Ms GG's knowledge or consent, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. It was further submitted that not only was his conduct dishonest by the ordinary standards of reasonable and honest people, but he must also have been aware that it was dishonest by those standards because:

107.6.1 he knew that Ms GG had not agreed to sign the authority; and

107.6.2 he knew that reasonable and honest people would regard it as dishonest to sign an authority or procure that an authority was signed in a person's name, when that person had not agreed to sign the authority.

Applicant's Submissions in relation to allegation 1.4

107.7 The Applicant submitted that, in procuring that GB Ltd paid funds due to Ms GG into his personal bank account, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Further, not only was his conduct dishonest by the ordinary standards of reasonable and honest people, but he must also have been aware that it was dishonest by those standards because:

107.7.1 the Respondent was aware that the £30,000 paid by GB Ltd belonged to Ms GG and that she had not authorised him to receive it from GB Ltd or use it for any purpose;

107.7.2 as an experienced solicitor, the Respondent knew that (i) the £30,000 comprised client funds, (ii) client funds must be received into, and held in, a client account, and that it was a breach of the Accounts Rules to receive client funds into his personal bank account;

107.7.3 accordingly, at the time of procuring payment of client funds into his personal account, the Respondent was aware that his conduct was improper, and proceeding with that conduct in the circumstances was dishonest.

Applicant's Submissions in relation to allegation 1.5

107.8 The Applicant submitted that, on withholding from Ms GG until 3 June 2014 the fact that he had procured the payment of £30,000 from GB Ltd, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Not only was his conduct dishonest by the ordinary standards of reasonable and honest people, but he must also have been aware that it was dishonest by those standards because:

107.8.1 he had used an authority signed in Ms GG's name without her knowledge or consent to improperly procure payment of £30,000 from GB Ltd;

107.8.2 at all times from 9 May 2014 he was aware that the £30,000 had been paid by GB Ltd or (having been returned to GB Ltd by KDS on 15 May 2014) would shortly be re-paid by GB Ltd;

107.8.3 he was aware that between 21 and 26 May 2014, Ms GG had repeatedly sought an update from him with regards to his efforts to procure payment of £30,000 from GB Ltd;

107.8.4 however, he failed to inform Ms GG until 3 June 2014 that GB Ltd had paid the £30,000; and

107.8.5 he knew that reasonable and honest people would regard it as dishonest to withhold from Ms GG the fact that he had procured the payment of £30,000 from GB Ltd in the circumstances described.

The Tribunal's Decision

107.9 The Tribunal considered carefully the submissions of the Applicant, its findings on the basic allegations and what the Respondent had stated in his Answer.

107.10 All of the allegations in relation to which dishonesty was pursued related to the Respondent's dealings with Ms GG. The Tribunal had had the considerable benefit of hearing directly from Ms GG, whose evidence it accepted.

107.11 For the reasons submitted by the Applicant, and as summarised above, the Tribunal was satisfied to the required standard that the Respondent had acted dishonestly in respect of each of allegations 1.1 to 1.5. The Tribunal was satisfied that in each instance the Respondent's conduct was dishonest by the standards of reasonable and honest people and he knew that his conduct was dishonest by those same standards. The Respondent's dealings with Ms GG's money and his procurement of what appeared to be Ms GG's signature on a letter of authority were clearly dishonest, in the manner set out above.

Previous Disciplinary Matters

108. There was one previous matter in which findings had been made against the Respondent. A copy of the Findings in that case was handed to the Tribunal after its findings on the allegations were announced.

109. In case number 6496/1993, heard on 24 March 1994 (Findings dated 4 July 1994), the Respondent did not contest allegations (which were substantiated) that:

    (i) he failed to maintain properly written books of account, contrary to Rule 11 of the Solicitors' Accounts Rules 1986 and 1991 ("SAR 1986 and 1991");

    (ii) drew monies out of a client account otherwise than in accordance with Rule 7 of the SAR 1986 and 1991;

    (iii) paid the funds of a client into an account other than the client account contrary to Rules 3 and 9(2)(a) of the SAR 1991.

110. On that occasion, the Respondent was fined £2,500 and ordered to pay costs of £1,299.50.

Mitigation

111. The Respondent did not submit any mitigation, or information about his means, but the Tribunal considered what he stated in his Answer to the allegations.

Sanction

112. The Tribunal had regard to its Guidance Note on Sanction (December 2015) and to all of the facts of the case.

113. In determining sanction, the Tribunal assessed the seriousness of the Respondent's misconduct, including his culpability, the harm caused and any aggravating and mitigating factors.

114. The Respondent was entirely responsible for what he had done and he had had complete control over the circumstances e.g. it was the Respondent himself who provided his bank account details to Ms Grey. Whilst the motivation had not been explained by the Respondent, and the Tribunal could therefore make no specific findings about the reasons for his misconduct, it could be sure that the Respondent's actions were planned. The Respondent had breached the trust that Ms Grey, his client, had placed in him. The Respondent was an experienced solicitor, who had previously operated his own firm and so appreciated the obligations on a solicitor with regard to the proper stewardship of client money.

115. The Respondent's misconduct had caused considerable harm to Ms Grey. Although Ms Grey was not an inherently vulnerable person, her position as a client who was involved in quite complex litigation, some of which involved her children, meant that she was in a vulnerable position. Any client should be able to rely on their solicitor to act in their best interests and advise properly, including with regard to legal costs; as a minimum, a solicitor should be able to give clear information to a client about how much of their money has been spent on costs and how much more might be incurred. Specific harm to Ms Grey included the fact that she had paid £235,000 to the Respondent. Whilst some of that might have been paid to relevant third parties in connection with her legal matters, it was not clear that anyone other than the

Respondent had been paid. In particular, counsel's fees were still outstanding to the extent of over £80,000. Ms Grey had therefore lost a considerable sum of money.

116. Aggravating factors included the findings of dishonesty and the fact that the misconduct was deliberate, calculated and repeated over a period of more than a year. The Respondent had repeatedly tried to conceal his wrongdoing. The Respondent knew that his conduct was in material breach of his obligations to protect the reputation of the legal profession.

117. The Tribunal noted with concern that the Respondent had been found guilty of professional misconduct at a hearing in 1994. Although that matter was a long time ago, the Respondent had on that occasion been found (amongst other matters) to have paid client money into his personal bank account. The Respondent should have learned his lesson, but had not.

118. The Tribunal considered whether there were any mitigating factors present, but could identify none. The Respondent had not made good the loss, had failed to co-operate with the Applicant, had made only the most limited admissions and had demonstrated no insight whatsoever into his conduct.

119. The Tribunal concluded that the Respondent's misconduct was at the highest level of seriousness. It was clearly not suitable to make no order, or to impose a reprimand or fine. Suspension from practice did not meet the seriousness of the Respondent's misconduct. Indeed, the case law was very clear that where there was a finding of dishonesty, the normal and proportionate sanction was that of striking off unless there were exceptional circumstances. The Respondent had not submitted that there were any exceptional circumstances, and nothing in the facts of the case suggested that any such circumstances could be present.

120. The reasonable and proportionate sanction in this case was to strike the Respondent off the Roll of Solicitors, and the Tribunal so ordered.

Costs

121. Mr Hudson on behalf of the Applicant made an application for an order that the Respondent pay the Applicant's costs of the proceedings.

122. Mr Hudson referred the Tribunal to a costs schedule dated 31 August 2016, a copy of which had been served on the Respondent on 31 August 2016. The total costs claimed in that schedule amounted to £36,251.04.

123. Mr Hudson told the Tribunal that the costs on the Rule 5 Statement in relation to the withdrawn allegation, and the follow up enquiries, were in the region of £525, plus VAT. As the hearing would not go into the third day, the hearing costs could be reduced by £1,200 for that day, and by £600 for the second day, as the hearing would last only about one and a half days in total. Taking into account VAT, Mr Hudson submitted that the appropriate amount to be allowed for costs was £34,091.04 and asked the Tribunal to order the Respondent to pay that sum.

124. Mr Hudson submitted that it was appropriate for the Tribunal to make a normal costs order, in the amount it summarily assessed. If the Tribunal were to make an order which could not be enforced without further order, the Applicant may be put at a disadvantage in seeking to secure payment from the Respondent. It was known that the Respondent was an undischarged bankrupt, the duration of his bankruptcy having been extended by the Court on 15 July 2016 as the Respondent had failed to comply with his obligations under the Insolvency Act 1986. Mr Hudson submitted that it appeared that the Respondent had failed to co-operate with the Official Receiver, and this extended the pattern of non-cooperation which had been exhibited with regard to the Applicant.

125. The Tribunal considered carefully the costs schedule. The adjustments suggested by Mr Hudson were reasonable and proper. The Tribunal considered whether the time spent on the matter might be excessive. However, given the detail involved in this case – which had been helpfully distilled in the presentation of the papers and at the hearing – the time spent in preparing the Rule 5 Statement and the witness statements was reasonable. The work had been done to a considerable extent by an experienced solicitor, whose work was charged out at only £145 per hour, with Mr Hudson's time on the case, at the rate of £200 per hour, being more limited and in any extent reasonable in amount. The preparation of a factual chronology and procedural chronology as part of the hearing preparation was reasonable and had assisted the Tribunal.

126. The Tribunal assessed that the reasonable and proper amount of costs in the case was £34,091.04 as claimed on behalf of the Applicant.

127. The Tribunal then considered whether there was any need to make anything other than a normal costs order in that sum. The Respondent had not submitted any information concerning his financial circumstances and, it appeared, had failed to co-operate with his trustee in bankruptcy. In these circumstances, the Applicant should be allowed the opportunity to enforce costs in the usual way, if it were possible to do so. There may be an issue as to whether or not the costs of these proceedings would fall into the bankruptcy, as the Tribunal proceedings had been certified after the bankruptcy order had been made, but the Applicant should be at liberty to try to resolve that with the trustee in bankruptcy, if appropriate. The Respondent should pay the Applicant's costs of £34,091.04.

Statement of Full Order

128. The Tribunal Ordered that the Respondent, PAUL ANTHONY GIBBON, 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 £34,091.04.

Dated this 25th day of October 2016
On behalf of the Tribunal

J. Martineau
Chairman