SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11388-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MATTHEW GARNETT JOHN RODDAN Respondent

Before:

Mrs J. Martineau (in the chair)
Mr M Millin
Mrs V. Murray-Chandra

Date of Hearing: 10 May 2016

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent by the Applicant were that;

1.1 He failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("the Principles");

1.2 He allowed his independence to be compromised in breach of Principle 3 of the Principles;

1.3 He failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

1.4 He failed to comply with his legal and regulatory obligations and to deal with the Applicant in an open timely and co-operative manner breach of Principle 7 of the Principles;

1.5 He failed to cooperate fully with the Applicant and to comply with written notices from the Applicant to produce documents in breach of Outcomes 10.6, 10.8 and 10.9 of the SRA Code of Conduct 2011 ("SCC 2011") and Rule 31 of the SRA Accounts Rules 2011 ("SAR 2011");

1.6 He took unfair advantage of third parties in breach of Outcome 11.1 of SCC 2011;

1.7 He provided banking facilities through the firm's client account in breach of Rule 14.5 of the SAR 2011;

1.8 He failed to carry out bank reconciliations in breach of Rule 29.12 of the SAR 2011.

2. While dishonesty was alleged respect of Allegations 1.1, 1.2, 1.3, 1.4 and 1.6, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

3. The Tribunal considered all the documents submitted including;

Applicant

- Application and Rule 5 Statement with exhibit JHRD/1 dated 15 May 2015
- Statement of Sarah Taylor 29 March 2016
- Statement of Costs dated 3 May 2016

Respondent

- Answer (undated)

Preliminary Matters
Previous case involving PWA

4. At the commencement of the hearing the Chair informed the Applicant that she had sat on a hearing involving PWA before the Tribunal in 2015. The Chair had considered the Guidance Note on Recusal (October 2012) and had satisfied herself that there was nothing which precluded her from dealing with this case fairly and impartially. The Applicant raised no objection.

Application to proceed in the Respondent's absence

5. The Respondent did not attend the hearing. He had previously been represented by Richard Nelson LLP. They had written to the Tribunal on 4 December 2015 confirming that the Respondent was aware of the hearing date. The Tribunal had also been informed that they were not instructed to represent the Respondent at the substantive hearing.

6. The Applicant told the Tribunal that a few minutes before the hearing commenced he had spoken to the Respondent by telephone. He had asked the Respondent if he was attending the hearing and the Respondent had told him that he was not. The Respondent had not given a reason for his non-attendance and had not indicated that he was seeking an adjournment. He had not suggested that he would attend on another date.

7. The Applicant applied for the matter to proceed in the Respondent's absence pursuant to Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). This states that:

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

8. The Applicant told the Tribunal that the Respondent had been served with the Rule 5 Statement and had provided his response on 29 September 2015. He had knowledge of the hearing date as confirmed by his previous solicitor and by the telephone call referred to above. If the Tribunal was satisfied that notice of the hearing had been served on the Respondent then it should apply the test in Hayward, Jones and Purvis set out by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The Judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
(v) …;
(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
(vii) …;
(viii) …;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) …"

9. The Applicant told the Tribunal that the Respondent had not served any evidence or complied with any of the Tribunal's direction in that regard. He had de-instructed his representatives and the Applicant submitted a reasonable inference could be drawn that he had chosen to take no further part in proceedings and did not wish to be represented. The Applicant's witness was present and it was in her interests that the hearing take place within a reasonable time of the events.

The Tribunal's Decision

10. The Tribunal was satisfied that Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. Although the Tribunal had not been invited to consider an application to adjourn it had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) together with the criteria for exercising the discretion to proceed in absence as set out in Jones.

11. The Tribunal had regard to the fact that the Respondent had confirmed directly that morning that he was not attending together with the fact that he had de-instructed his solicitor. The Tribunal was satisfied that the Respondent had chosen to waive his right to be present or to be represented. The public interest required that these matters be dealt with within a reasonable timescale. An adjournment would not result in the Respondent appearing.

12. The Tribunal therefore decided that it was in the interests of justice that the hearing proceed in the Respondent's absence. The Tribunal reminded the Applicant that, in the presentation of the evidence, he should draw the Tribunal's attention to any evidence or submission which would be favourable to the Respondent to ensure complete fairness.

13. The Respondent had provided an Answer in which some Allegations were admitted in full, some in part and others denied. Notwithstanding the admissions, the Applicant was required to prove all aspects of all Allegations beyond reasonable doubt.

Factual Background

14. The Respondent was born on 29 January 1970 and admitted to the Roll of solicitors on 1 November 1995. He previously practised at Eastleys solicitors, Manor Office, Victoria Street, Paignton, Devon TQ4 5DW. At the date of the hearing the Respondent remained on the Roll of solicitors but did not hold a practising certificate.

15. The Allegations related to a time when the Respondent was acting as a partner within Eastleys solicitors and/or whilst a director of Recompense Limited trading as Eastleys solicitors. For the purposes of this judgement, the partnership of Eastleys solicitors up to 3 August 2012 and Recompense Limited trading as Eastleys solicitors from 4 August 2012 will be referred to as "the Firm".

16. On 19 August 2013 Sarah Taylor, a duly authorised officer of the Applicant ("the FIO") commenced an inspection of the books of account and other documents of the Firm. That inspection culminated in a report dated 21 November 2013 ("the FIR").

Material Parties

17. At different times two contacts of the Respondent, PU and MB allegedly represented to the Respondent that they owned or controlled different organisations and were able to provide instructions on behalf of those organisations. They were:

- PAG, a company through which it was intended that a loan would be advanced to the Firm;
- PCL, a company whose shares were owned entirely by Ms PWA;
- H Limited;
- LR Limited;
- CR.

18. The names of individuals and organisations not party to these proceedings have been anonymised for the purposes of this Judgment. This includes instances where extracts from letters or emails have been referred to.

Client care letter for PCL

19. On 7 February 2013 the Respondent wrote to PU at PCL stating:

> "Dear P
> RE PC/H/A
>
> Thank you for instructing this firm to deal with the case I am a Solicitor and Director based at our Paignton office. I confirm that I'm dealing with your case and have overall responsibility…
>
> You have instructed me to represent PCL in connection with a debenture issue and receipt of funds to be deposited in the PCL account in Hong Kong…"

20. The Applicant's case was that despite this statement in the PCL client care letter, the Respondent never actually represented PCL. In his interview on 4 October 2013 he claimed that any statement that he did so was a misunderstanding at the time and he could not have acted for PCL. The Respondent stated that he was acting for LR at the time but no documentary evidence to that effect was provided. At the time of the PCL client care letter the Applicant alleged that the Respondent had failed to undertake adequate due diligence in relation to PCL to ascertain the identity of the owner and/or directors of PCL and therefore the identity of his client.

Further steps to identify client

21. On 13 February 2013 Respondent specifically wrote to Ms PWA as follows:

> "Dear P
> I'm currently seeking to refer some clients to PCL and have been speaking with PU.
>
> I need to compile a pack for due diligence purposes and would welcome an opportunity to discuss that with you.
>
> In particular I am looking for evidence of the shareholding. Do you have any documentary evidence of the allotment of shares?
>
> I also need to agree with you the wording of the undertaking you're able to provide".

22. Subsequently on 15 February 2013 the Respondent sent a further email to PWA stating:

> "Before you go (or if you could arrange your absence) the following documents are needed and not held by P;
>
> 1. The allotment of shares
> 2. Your current practising certificate
>
> I would be very grateful if you could please call me"

23. Evidence of the shareholding of PCL would have demonstrated that PWA was the owner of 100% of the shares in PCL. The Applicant alleged that this should have caused the Respondent to further investigate with PWA the instructions that he was receiving from PU. He should also have questioned whether PU was able to provide those instructions on behalf of PCL.

Dealings with the R family

24. On 28 February 2013 the Firm wrote to 6 members of the R family stating:

> "Sir Madam,
>
> Re: issue of debentures by PCL

> 1. Our firm are the Solicitors for and on behalf of PCL representing PCL in its issue of debentures to which you have expressed an interest to subscribe to.
>
> 2. We confirm that you may pay the subscription amount in respect of the said debentures into our client account being…
>
> The above account is governed by the rules of the Solicitors Regulation Authority. We further confirm that upon such payments being received into our client's deposit account you will be deemed to have completed the payment of the subscription amount to PCL
>
> 3. We further confirm as follows:
> a) That upon receipt of the said subscription amounts from you we will arrange for the immediate transfer (or in any event within three banking days) of the said amounts to PCL's bank account; the above… bank account is under the direct control of WACL solicitors. We are instructed that they are the only signatory with the ability to withdraw funds of more than HK$1000 from the said account
>
> b) You will be kept informed at all times of the transfer between our client account and the… bank account. We will provide you immediately upon receipt with a copy of a bank statement to evidence the safe arrival of the subscription amounts into the… bank account. We will also provide to you on written request and immediately upon receipt, a copy of the… bank account to show that the said subscription amounts have not be withdrawn or transferred."

25. The Applicant alleged that the Firm had never acted for PCL and had no authority to make the statements or undertakings contained in the letter to the R family.

26. The Firm held a copy of a Debentures Subscription Agreement between PCL and the R family. The following sums were received into the Firm's client account from members of the R family:

SGR 4.3.13	£130,622.99
ASR 4.3.13	£130,614.55
PAR 4.3.13	£130.614.55
PR 4.3.15	£130.614.55
KAR 5.3.15	£129,691.17
Total	**£796,157.81**

27. On 8 March 2013 the Firm paid £652,157.81 to the PCL bank account.

28. The Applicant's case was that at the time of the letter to the R family the Respondent had failed to undertake or pursue adequate due diligence in relation to PCL to ascertain the identity of the owner and/or directors of PCL and therefore the identity of his client. Further, the Debentures Subscription Agreement stated that Ms PWA was the partner of WACA. The Applicant's case was that this should have caused the Respondent to further investigate with PWA the instructions that he was receiving

from PU and to question whether PU was able to provide those instructions on behalf of PCL.

29. The Applicant alleged that the Respondent failed to conduct proper or adequate identification checks on the parties sending him the monies, despite being reminded to do so by the finance director of Recompense. He relied on documents for the R family which were copies provided to him by PU and relied on the fact that the bank allowed the transactions as a payment from one branch of the bank in India to a branch of the United Kingdom as evidence that there were no money laundering issues. No identification documents were received regarding PAR despite her sending monies to the Firm.

30. The Applicant's case was that these transactions did not relate to an underlying legal transaction (and the funds arising therefrom) or to a service forming part of the Firm's normal regulated activities.

Dealings with CM (investor)

31. On 5 March 2013 the Respondent emailed PU with a letter attached described as a "Letter of comfort" which stated as follows:

> "Dear Sirs
> PCL
> Letter of comfort
>
> We act for the above named.
>
> We are instructed to write to you to provide an update regarding your investment with our clients under reference number…
> We can confirm our client has received from you an investment of US$2 million. That investment was made by the VWAP Ltd as trustee for VT, a company incorporated in Western Australia… represented by CM.
>
> We are also instructed that payment of US$800,000 is scheduled to be made by you by 8 April 2013.
>
> The payments referred to above are in connection with our client's interests in an investment vehicle in Hong Kong. We have been involved with his investment since its inception and are pleased to confirm that the investment vehicle referred to has begun to receive returns and will be able to make the payments referred to above"

32. That letter was emailed by PU to CM on 6 March 2013. The Applicant's case was that at the time of the letter of comfort the Respondent had failed to undertake or pursue adequate due diligence in relation to PCL to ascertain the identity of the owner and/or directors of PCL and therefore the identity was client. The investment vehicle was not able to make the payments referred to by 8 April 2013 as demonstrated by subsequent letters. The firm had no ability to meet that payment themselves and therefore had no grounds to undertake the payment would be made.

33. On 7 April 2013 the Respondent emailed PU with a letter addressed to PCL. This letter confirmed the following:

> "1. Funds are available for distribution to CM following the maturity of investment.
> 2. The distribution of funds is dependent upon completion of the internal audit by… Bank which has delayed the distribution for seven days.
> 3. The audit will be completed on Monday 7 April 2013.
> 4. Pay orders will commence on Thursday. These will be issued by another law firm and will confirm that they are in receipt of funds for distribution.
> 5. The funds are not otherwise contingent save for the continuing investment programmes previously available to PCL continuing to be in place and there is no reason to expect this is not the case."

34. That letter was emailed by PU to CM on 8 April 2013. The Applicant's case was that there were no documents on the file subsequently provided by the Firm that would justify the representations made in that letter.

35. On 8 April 2013 the Respondent emailed PU with a letter confirming the following:

> "1. Funds are available for distribution to CM following the maturity of an investment.
> 2. The distribution of funds is dependent upon completion of an internal audit by… Bank which has delayed distribution for seven days.
> 3. The audit will be completed on Thursday 11 April 2013.
> 4. Pay orders will commence on Thursday. These will be issued by another law firm will confirm that they are in receipt of funds distribution
> 5.The funds are not otherwise contingent save for the continuing investment programmes previously available to PCL continuing to be in place there is no reason to expect this is not the case."

36. That letter was emailed by PU to CM on 9 April 2013. Again, the Applicant's case was that there were no documents on the file subsequently provided by the Firm that would justify the representations made that letter.

37. On 8 April 2013 the Respondent emailed PU with a letter in which he confirmed the following:

> "1. An audit of the account was completed on Thursday 11 April 2013.
> 2. Pay orders are in the process of being issued. What this means is that all of the relevant clients details (including banking coordinates) are collated and the correct sums payable calculated. The pay orders are the instructions to bankers.
> 3. Prior to payments being made there will be a call to each client to advise of the forthcoming payment."

38. That letter was emailed by PU to CM on 14 April 2013. The Applicant's case was that there were no documents on the file subsequently provided by the Firm that would justify the representations made that letter on 22 May 2013 the Firm went into administration.

39. On or around 4 June 2013 the Respondent provided a letter to PU which was addressed to CM. It set out the reasons for delays to the transactions, namely compliance issues with the bank. The letter stated that as a gesture of goodwill PCL would make an additional payment of one months' dividends, which would be executed in month three after novation to a new bank.

40. That letter was emailed by PU to CM on 5 June 2013 and the email was copied to the Respondent. The Applicant's case was that there were no documents on the file subsequently provided by the Firm that would justify the representations made in this letter. There was no reference to the Firm being in administration, contrary to Section 12 of the Insolvency Act 1986.

LR

41. The Applicant's case was that the Respondent failed to comply with his obligations to provide a copy of the file for this matter to the FIO. In the circumstances, the underlying documentation obtained by the FIO was limited. The Respondent understood that PU and MB also owned a company called LR. LR issued financial guarantees to customers who pay for those guarantees. LR held a GS bond for £250 million with the idea that, if LR did not pay on their guarantee, they could pursue GS. On 11 February 2013 the Respondent wrote to PU at LR Ltd stating:

> "On your instructions I have previously conducted an audit trail and can confirm that the above listed CMO under the above referenced CUSIP number was purchased for and on behalf of F Limited and is held at …Bank.
>
> I have seen the assignment of the asset to LR Ltd and can confirm that the asset is held by LR Ltd"

42. Stored by the firm with a copy of this letter were four screen-prints, none of which provided adequate documentary evidence for the Respondent to make the representations in this letter.

LR and CR

43. On 7 June 2013 PD provided a signed letter on CR letterhead stating:

> "I PD (client) confirm that I have been asked behalf of CR Ltd to remit my marketing fee in the amount of £16,000 to Eastleys solicitors who act on behalf of LR Ltd (underwriter of guarantee).
>
> I acknowledge and agree that LR Ltd will instruct Eastleys to issue a financial guarantee to me for my marketing fee.
>
> I am not a client of Eastleys and make payment to them solely to enable the guarantee document to be issued. My contract is with CR Ltd for whom Eastleys is not acting in this transaction."

44. The only identification documentation received by the Firm in relation to this transaction was a photocopy of PD's passport. That was not a certified copy and was provided by CR. In fact £16,000 was received by the firm from the PD's wife for which the Firm had no identification documentation.

45. In total between 28 May 2013 and 11 July 2013 £1,372,479.00 was received by the Firm from investors on behalf of LR and was subsequently disbursed allegedly in accordance with instructions from LR. Some of this money was sent to LR, while other sums were paid to third parties, including £114,994.62 which was paid to OTS. The Respondent understood that one of the individuals who owned CR also owned OTS and the payments were for their commissions.

46. On 18 June 2013 US$436,738 was received into the firm's dollar client account from RBP. This was subsequently disbursed allegedly in accordance with instructions from LR. The Applicant's case was that the Respondent had not provided documentation in relation to these receipts save for copies of the Firm's dollar client account statement and no accounting material was kept in relation to the Firm's dollar client account on their computerised accounting system. The Firm's client account reconciliations did not include the reconciliation of the dollar account. Neither LR nor CR were ever charged for this work.

Financial position of the Firm

47. The partnership of Eastleys solicitors was placed into administration on 3 August 2012 Recompense Ltd was a pre-existing company and firm of solicitors which purchased the business of Eastleys solicitors for the administrators in a pre-pack administration. The firm then operated as Recompense Ltd trading as Eastleys solicitors. Following the purchase of Eastleys solicitors by Recompense Ltd, Recompense itself suffered financial difficulties.

48. On 1 March 2013 PU emailed the Respondent stating:

> "Dear Matthew
> Please accept this mail as confirmation that, in principle, we are willing to lend Eastleys £500,000 on a drawdown basis of:-
>
> £100k March
> £200k April
> £200k May
>
> The interest and repayment can be discussed at our meeting, please advise a good time we can meet up next week."

49. At the same time as these discussions were ongoing, the Firm was in arrears with its payment of VAT, PAYE and NIC. HMRC were threatening to petition to wind up the Firm. The finance director of the Firm used evidence of these discussions to persuade HMRC to postpone their taking such action between 27 February 2013 and 9 May 2013. On 13 May 2013 HMRC issued a winding-up petition and on 22 May 2013 the Firm was placed into administration. Thereafter the Firm continued to trade in administration. The transactions involving LR and CR referred to above

were conducted in a short period of time after the Firm went into administration. The Respondent explained that this was "because we believed we are continuing to, that we would find a solution to the trading of the business and therefore that to continue to act LR during that period wasn't something that we couldn't or shouldn't have done."

50. In the client care letter referred to above, the Respondent indicated that "based on the information that you have provided to date I estimate that my charges will not exceed £5000". Despite this the Firm never invoiced any organisation for any of the work that was undertaken.

Co-operation with the Applicant

51. On 13 August 2013 the Respondent was sent a notice pursuant to SAR Rule 31, Principle 7 and Outcomes 10.8 and 10.9 of the SCC 2011 requiring him to supply any other relevant information needed for the investigation. The notice stated that "should the investigation officer require accounting records related to earlier periods, client matter files or other documents these will be requested, as required, once the investigation has commenced".

52. The Applicant alleged that the Respondent failed to provide the following items;

52.1 The file relating to the monies received from RBP;

52.2 A copy of the Firm's file in relation to the LR matter which the Respondent confirmed that he held;

52.3 A copy of the client account bank statement showing the receipts from 18 individual investors wishing to invest in CR;

52.4 A copy of the Firm's money laundering policy to the FIO.

The Applicant's Investigation

53. On 20 October 2014 an SRA Regulatory Supervisor wrote to the Respondent enclosing a copy of the FIR and requesting an explanation for various breaches. A follow-up letter was sent on 12 November 2014, a response not having been received.

54. An exchange of emails took place on 14 November 2014 regarding documents that the Respondent had not produced to the FIO. This culminated in the regulatory supervisor agreeing to check the FIO's files. These were checked and a list of what was held was provided to the Respondent on 25 November 2014. None of these were the missing documents. The Respondent replied on 12 December 2014 and following further clarification from the Regulatory Supervisor, provided additional responses on 12 January 2015. He contended that further documents were sent to the FIO after 4 October 2013. The FIO maintained that anything that had been received was in her files. The Respondent further contended that the missing documents provided answers to many of the allegations that were put to him on 20 October 2014 and, having been lost at some point after being posted to the FIO, he was now unable to provide evidence in this regard.

55. On 18 October 2013 the Respondent had emailed the FIO stating as follows:

> "Dear Sarah
>
> I understand from Carolyn that you have not received the paperwork requested.
>
> I sent these on Wednesday following our meeting in a PDF file.
>
> It appears you have not received it which I suspect is due to the file size. I will rescan the documents and send them to you."

56. The FIO responded on the same day stating:

> "Can you send hard copies in the post please"

The Warning Notice on Fraudulent Financial Arrangements (April 2009)

57. The Applicant's warning notice states:

> "The Solicitors Regulation Authority take strong action against those it regulates who appear to facilitate fraud.
>
> Your obligations are set out in rule one the Solicitors Code of Conduct 2007.
> Avoid dubious financial arrangements.
> You must ensure that you do not become involved in dubious financial arrangements or investment schemes. Failure to observe our warnings could lead to disciplinary action, criminal prosecution or both.
>
> Schemes are formulated by fraudsters to prey upon the wealthy, greedy or vulnerable. They often sound "too good to be true" and almost always are
>
> Warning signs
>
> - The promise of unrealistically high returns
> - deals forming part of larger deals involving millions, or billions of pounds, dollars or other currencies
> - any advance fee payable to secure future lending or to buy into the investment process
> - trading in apparent banking instruments such as promissory notes or standby letters of credit to provide returns for nonbanking investors
> - confusing and complex transactions involving misleading descriptions or ill-defined terminology, such as "Grand Master collateral commitments"
> - vague references to humanitarian or charitable aims
> - the need for secrecy to protect the scheme particularly to prevent proper checks
> - use of faxed or easily forged documents often from offshore companies or from financial institutions abroad

Why involve you?

The fraudster wants to be associated with legitimacy and respectability which, as a person or firm regulated by the SRA, you provide by

- endorsing the arrangements by acting as the fraudsters legal adviser or banker
- providing correspondence to the fraudsters company or third parties
- opening bank accounts, awaiting receipt of funds for using your client account
- referring to your insurance the compensation fund

If you do not understand documents or transaction in which you were involved, you must ask questions to satisfy yourself that it is proper for you to act. Why have you been approached? Do you have any expertise in this area of law? If you are not wholly satisfied as to the propriety of the transaction you must refuse to act".

Witnesses

Sarah Taylor (FIO)

58. The FIO confirmed that the contents of her Witness Statement and the FIR were true to the best of her knowledge and belief.

Findings of Fact and Law

59. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

60. The Applicant submitted that the Respondent's actions in respect of Allegations 1.1, 1.2, 1.3, 1.4 and 1.6 were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly.

61. The Applicant submitted that the Respondent's conduct was not only dishonest by the ordinary standards of reasonable and honest people but he must also have been aware that he was being dishonest by those standards in the following ways:

61.1 Despite making investigations into the position of PU with regards to PWA, and making numerous representations that he was acting for PCL in an extended period of time, the Respondent failed to pursue his requests to PWA, or to investigate the position further. By doing so he avoided damaging the intended solution to the dire financial position of the Firm at the time, which was going to be saved by a loan from PAG;

61.2 The Respondent made representations in correspondence that were not backed up by the evidence available to him;

61.3 The Respondent ignored the Applicant's warning notice on fraudulent financial arrangements;

61.4 The Respondent sought to mislead the Applicant in his response to the Allegations by claiming that documents had gone missing in the post or at the hands of the Applicant and therefore was unable to provide evidence in circumstances when he had copies of those documents in soft copy:

62. The Applicant accepted that the Respondent had not been dishonest from the outset but submitted that he had become dishonest during the period in question. In response to questions from the Tribunal, the Applicant stated that the dishonesty was evident from the time when his pursuit of the requests to PWA ceased. In response to questions from the Tribunal, the Applicant submitted that the Respondent's conduct went beyond recklessness and negligence because of the blatant untruths in the letters sent to the R family and CM.

63. The Respondent strongly denied that he acted dishonestly. In his Answer he stated "At no time did the Respondent act dishonestly and at all relevant times he acted in the belief that he was providing accurate information". He concluded his Answer by stating "The Respondent accepts that his failure to submit clear client care correspondence and documentation has compounded the confusion. However at all material times the Respondent believed he was acting on behalf of honest clients who were conducting an honest transaction and he believed personally that he was acting honestly".

64. The Tribunal considered the issue of dishonesty in relation to each individual Allegation where the Applicant had alleged dishonesty, as set out below.

65. **Allegation 1.1 - he failed to act with integrity in breach of Principle 2 of the Principles. The Applicant alleged that Respondent had acted dishonestly in relation to this Allegation in accordance with the test in <u>Twinsectra</u>, however dishonesty was not an essential ingredient of the Allegation.**

65.1 The Applicant submitted that the Respondent had made false statements in the letter to PU stating that he represented PCL when in fact he did not, had made false statements to the R family and made false statements in the letters to CM. He had failed to undertake adequate due diligence checks to identify his client(s) and third parties. He had started to make due diligence checks by making enquires of PWA, however he ceased doing so without having received the answer to his questions. The Respondent, in his Answer, accepted that he failed to act with integrity in so far as he failed to undertake adequate checks and accepted too readily information that was provided to him. He believed, at the time, that the information provided to him was accurate and was confirmed from another solicitor with an unblemished record. The Tribunal concluded this appeared to be a reference to PWA. The Respondent did not accept that the nature of the transactions was "too good to be true" and he submitted that they had since been established to be "both genuine and extremely profitable". The Respondent accepted he was naïve in failing to corroborate the information he was receiving in more detail and in his reliance up on the veracity of the information provided to him.

Failure to carry out due diligence checks

65.2 The Tribunal was satisfied that the Respondent had told PU that he represented PCL when in fact he did not. This was clearly an inaccurate statement of the position. He had started making due diligence checks to identify his clients and third parties. He had made two approaches to PWA in this regard. He had then ceased those enquiries despite the fact that they were not complete. The Tribunal was completely satisfied that he had therefore failed to undertake adequate due diligence to identify his clients. His actions were reckless and negligent and the Tribunal was satisfied beyond reasonable doubt that by acting in this way he had lacked integrity.

65.3 The Tribunal considered whether the Respondent had acted dishonestly in failing to pursue the checks. The Applicant submitted that the reason he had done so was that he avoided receiving information which would damage the intended solution to the dire financial position of the Firm, namely the loan from PAG. The Respondent had stated in his Answer that at no time did he act dishonestly and at all relevant times he acted in the belief that he was providing accurate information.

65.4 The Tribunal considered the objective test in Twinsectra. The sudden discontinuance of enquiries, which were a fundamental part of his duties, in circumstances where a loan was being arranged which would possibly save the Firm from insolvency, was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Respondent had not failed to carry out any checks at all. He had made an enquiry of PWA by email and had followed that up, again by email. There had clearly been a telephone call between them at some point, the contents of which were not in evidence. The Tribunal could not speculate on its contents. In order to find that the Respondent had been dishonest in accordance with the subjective test in Twinsectra, it would have to infer that the Respondent knew that that by the ordinary standards of reasonable and honest people he was acting dishonestly by those standards. The Tribunal was sure that the Respondent had been reckless and negligent but it could not be satisfied beyond reasonable doubt that he knew he was acting dishonestly. The Tribunal therefore did not find dishonesty proved in respect of this part of the Allegation.

Letter to R family

65.5 The Tribunal considered the representations made in the letter to the R family. The Respondent had stated in his letter of 28 February 2013 that "Our firm are the Solicitors for an on behalf of PCL representing PCL". This was quite clearly untrue. The Respondent was therefore in no position to have made the statement "upon such payment being received into our Client's Deposit a/c you will be deemed to have completed the payment of the subscription amount to PCL". He had proceeded to give undertakings which he was in no position to give. The Tribunal was satisfied beyond reasonable doubt that by acting in this way he had lacked integrity.

65.6 The Tribunal considered the objective test in Twinsectra. Making statements which were completely untrue and giving undertakings which were not in the Respondent's gift to make was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Tribunal was satisfied that the Respondent knew that he was not acting for PCL and therefore knew that

what he was stating and promising in the letter to the R family was false. The Tribunal was therefore satisfied that this went beyond recklessness and that the Respondent was aware that by the ordinary standards of reasonable and honest people he was acting dishonestly.

Letters to CM

65.7 The Tribunal considered the letters sent to CM at the Respondent's instigation. The Tribunal was satisfied beyond reasonable doubt that these letter contained statements that were false. CM was told that the Respondent represented PCL, which he did not. He was told that the Firm would be able to make payments which it could not. There were no documents that supported the representations made in these letters. The Tribunal noted the concluding paragraph of the letter issued on 7 April 2013 which stated "Eastleys cannot be held liable to third parties on the basis of these confirmations". The Tribunal found that this reflected a recognition on the part of the Respondent that there were no grounds to make those representations. The Tribunal was satisfied beyond reasonable doubt that by acting in this way he had lacked integrity.

65.8 The Tribunal considered the objective test in Twinsectra. Making statements which were completely untrue and giving undertakings which were not in the Respondent's gift to make was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Tribunal was satisfied that the Respondent knew the representations in the letter were untrue and therefore knew that what he was stating and promising in the letter to CM was false. The Tribunal was therefore satisfied that this went beyond recklessness and that the Respondent was aware that by the ordinary standards of reasonable and honest people he was acting dishonestly.

The SRA Warning Notice

65.9 The Tribunal was satisfied that the Respondent had failed to have proper regard to the Warning Notice. Alarm bells should have been ringing and the Respondent's failure to apply his mind to the warning signs was a further example of the recklessness and negligence he had demonstrated over the due diligence checks. The Tribunal was satisfied beyond reasonable doubt that by acting in this way he had lacked integrity.

65.10 The Tribunal considered whether the Respondent had acted dishonestly in ignoring the Warning Notice. The Applicant submitted that, again, the reason he had done so was that he avoided receiving information which jeopardise the loan from PAG. The Respondent stated in his Answer that at no time had he acted dishonestly and at all relevant times he acted in the belief that he was providing accurate information.

65.11 The Tribunal considered the objective test in Twinsectra. The complete failure to comply with a basic regulatory obligation in circumstances where a loan was being arranged which would possibly save the Firm from insolvency, was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. In order to find that the Respondent had been dishonest in accordance with the subjective test in Twinsectra, it would have to infer that the Respondent knew that by the ordinary standards of reasonable and honest people he

was acting dishonestly by those standards. The Tribunal was sure that the Respondent was reckless and negligent but it could not be satisfied beyond reasonable doubt that he knew he was acting dishonestly. The Tribunal therefore did not find dishonesty proved in respect of this part of the Allegation.

Conclusion

65.12 The Tribunal found this Allegation proved to a limited extent. The Tribunal was satisfied beyond reasonable doubt that the Respondent lacked integrity and was in breach of Principle 2. The Tribunal was satisfied beyond reasonable doubt that in respect of the representations made in letters to the R family and to CM the Respondent had acted dishonestly. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had acted dishonestly in respect of the failure to complete the due diligence checks or in relation to the failure to consider the Warning Notice.

66. **Allegation 1.2 - He allowed his independence to be compromised in breach of Principle 3 of the Principles.**

66.1 The Applicant alleged that Respondent had acted dishonestly in relation to this Allegation in accordance with the test in Twinsectra, however dishonesty was not an essential ingredient of the Allegation. The Applicant submitted that the Respondent took improper actions, as detailed in Allegation 1.1, 1.3, 1.4, 1.6 and 1.7 and in doing so compromised his independence. He hoped that PU would provide funding to the Firm to allow it to continue to trade. The Firm did not send any invoices to any organisation for any of the "work" that was undertaken. The Respondent, in his Answer, did not challenge this Allegation. He maintained that his belief in the viability of the transactions was well-placed. However he accepted that he lost his objectivity by failing to challenge the assertions being made to him and by failing to obtain corroborative evidence.

66.2 The Tribunal found that the failure to carry out the proper checks, as described above, resulted in him not being clear as to who he was acting for. This clearly compromised his independence on the basis that he did not know who his client was. He had not carried out money laundering checks on the money from the R family and this meant that he could not properly discharge his duty to be independent. This was compounded by his failure to be alert to the SRA Warning Notice.

66.3 The Tribunal again considered the statements made in the letters referred to in Allegation 1.1. The Tribunal considered the objective test in Twinsectra. Making statements which were completely untrue and giving undertakings which were not in the Respondent's gift to make was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Tribunal was satisfied that the Respondent knew that he was not acting for PCL and therefore knew that what he was stating and promising in the letter to the R family was false. The Tribunal was therefore satisfied that this went beyond recklessness and that the Respondent knew that by the ordinary standards of reasonable and honest people he was acting dishonestly. By sending letters containing false statements and doing so dishonestly the Respondent compromised his independence as he was seeking to achieve an end that was incompatible with his regulatory obligations.

66.4 The Tribunal found this Allegation proved. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 3 and satisfied beyond reasonable doubt that he was acting dishonestly in relation to the contents of the letters described above.

67. **Allegation 1.3 - He failed to behave in a way that maintains the trust the public places in him in the provision of legal services in breach of Principle 6 of the Principles**.

67.1 The Applicant alleged that Respondent had acted dishonestly in relation to this Allegation in accordance with the test in Twinsectra, however dishonesty was not an essential ingredient of the Allegation. The Respondent admitted breaching Principle 6 but denied acting dishonestly. In his Answer he stated "The Respondent accepts that this principle is breached by his failure to obtain corroborative evidence and by the lack of clarity surrounding his involvement in the transactions highlighted. The Respondent denies that he acted dishonestly in this regard".

67.2 The Tribunal, in the course of considering Allegations 1.1 and 1.2, had found that the Respondent lacked integrity, had allowed his independence to be compromised and had in certain aspects acted dishonestly. In those circumstances the Tribunal was in no doubt that the trust the public placed in him and in the provision of legal services was diminished as that trust was founded on integrity, honesty and independence. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt on the evidence and on the Respondent's admission.

67.3 The Tribunal considered the objective test in Twinsectra. The facts underpinning this Allegation were those set out in Allegations 1.1 and 1.2. Making statements which were completely untrue and giving undertakings which were not in the Respondent's gift to make was objectively dishonest by the ordinary standards of reasonable and honest people. The sudden discontinuance of enquiries which were a fundamental part of his duties, in circumstances where a loan was being arranged which would possibly save the Firm from insolvency, was also objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test for dishonesty. In respect of the failure to make proper due diligence checks, the Tribunal was sure that the Respondent was reckless and negligent but it could not be satisfied beyond reasonable doubt that he knew he was acting dishonestly for the reasons set out above. The Tribunal therefore did not find dishonesty proved in respect of this part of the Allegation. With regards to the letters to the R family and CM the Tribunal was satisfied that this went beyond recklessness and Respondent knew that by the ordinary standards of reasonable and honest people he was acting dishonestly for the reasons set out above.

67.4 The Tribunal found this Allegation proved to a limited extent. The Tribunal was satisfied beyond reasonable doubt that the Respondent had not behaved in a way that maintained the trust that the public placed in him and in the provision of legal services and was in breach of Principle 6. The Tribunal was satisfied beyond reasonable doubt that in respect of the representations made in letters to the R family and to CM the Respondent had acted dishonestly. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had acted dishonestly in respect of the failure to complete the due diligence checks.

68. **Allegation 1.4 - He failed to comply with his legal and regulatory obligations and to deal with the Applicant in an open timely and co-operative manner breach of Principle 7 of the Principles**.

68.1 The Applicant alleged that the Respondent had acted dishonestly in relation to this Allegation in accordance with the test in Twinsectra, however dishonesty was not an essential ingredient of the Allegation. The Respondent admitted this allegation to a limited extent but denied dishonesty. In his Answer he stated "The Respondent accepts that his failure to obtain corroborative evidence constitutes a failure to comply with his legal and regulatory obligations. He did not accept that his conduct was dishonest. To the extent that the Respondent was unable to provide information to the SRA in a timely manner, he accepts this aspect of the allegation. However much of the information requested was not under his control nor in his possession at the relevant time and in those circumstances he made requests of third parties for the material to be provided to the SRA. He also provided material to the SRA by post which material has either not been delivered or has been misplaced by the SRA. The Respondent denies dishonesty in respect of each aspect of this allegation.".

68.2 The Tribunal considered the items that were requested by the Applicant, to which this Allegation referred. They were:

68.2.1 The file relating to the monies received from RBP; This was the Firm's file and the Respondent could not therefore have been reliant on a third party in order to produce it.

68.2.2 A copy of the Firm's file in relation to the LR matter; The Respondent had confirmed in his interview that he held this file, which was logical as it was the Firm's file that was being sought. The Respondent could not therefore have been reliant on a third party in order to produce it.

68.2.3 A copy of the client bank account statements showing receipts from the 18 individual investors wishing to invest in CR; Again, this was the Firm's client bank account and the Respondent could not therefore have been reliant on a third party in order to produce it.

68.2.4 A copy of the Firm's money laundering policy; the Firm's policy would, by definition, have been in possession of the Firm.

68.3 The Tribunal was completely satisfied that all the documents were in the possession of the Firm and therefore the assertion made by the Respondent that he was reliant on third parties was completely implausible. The Tribunal had regard to the email sent by the Respondent to the FIO dated 18 October 2013 in which he had stated that he would re-scan the documents. It was clear from this that the Respondent had, at the very least, soft copies of the documents or he would not have been in a position to re-scan them. The Tribunal was completely satisfied that the Respondent was in a position to produce the documents and, if they had gone missing in the post, at the very least to produce electronically scanned copies to replace any that may have gone missing. The Tribunal considered the Respondent's submissions in respect of this Allegation and rejected them. The Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to comply with his legal and regulatory obligations to

deal with the Applicant in an open, timely and co-operative manner. He had therefore breached Principle 7.

68.4 The Tribunal considered the objective test in Twinsectra. The Respondent's assertion that documents were not in his possession or under his control when in fact they were was clearly dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Tribunal had particular regard to the nature of the documents being requested, all of which were the property of the Firm and to the email that the Respondent sent to the FIO on 18 October 2013. The Tribunal was completely satisfied that he had lied to the FIO and to the Applicant and that he knew he was lying. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that he was acting dishonestly by the ordinary standards of reasonable and honest people and therefore both tests in Twinsectra had been met.

68.5 This allegation was proved in full beyond reasonable doubt.

69. **Allegation 1.5 - He failed to cooperate fully with the Applicant and to comply with written notices from the Applicant to produce documents in breach of Outcomes 10.6, 10.8 and 10.9 of the SCC 2011 and Rule 31 of the SAR 2011**.

69.1 The Respondent denied this Allegation. His Answer stated "The Respondent has sought to co-operate fully with the Applicant in a timely manner. However some of the documents were not under his control or within his possession and he was reliant upon third parties to comply with his request that these be submitted to the SRA. In respect of other documentation which was in his possession, it was supplied to the SRA. Some material was posted to the SRA which has either failed to arrive or has been misplaced by the SRA". The Tribunal considered the Respondent's submissions together with the documentary evidence presented by the Applicant. On the basis of the Tribunal's reasoning in relation to Allegation 1.4, the Tribunal rejected the Respondent's submissions.

69.2 The Tribunal found this Allegation proved in full beyond reasonable doubt.

70. **Allegation 1.6 - He took unfair advantage of third parties in breach of Outcome 11.1 of SCC 2011.**

70.1 The Applicant alleged that Respondent had acted dishonestly in relation to this Allegation in accordance with the test in Twinsectra, however dishonesty was not an essential ingredient of the Allegation. The Respondent denied acting dishonestly and stated in his Answer that he "did not at any stage intend to take advantage of third parties". He accepted that he was "naïve in failing to corroborate the evidence he was asked to communicate". He further accepted that "there was a lack of clarity in respect of the solicitor/client relationships which existed". He accepted that he provided inaccurate information to third parties but denied having any intention to take unfair advantage of them. He accepted that in respect of the information which was inaccurate, the recipients were potentially disadvantaged. However the correspondence to CM did not cause or compound any losses, nor did it induce him to enter into the transaction.

70.2 The Tribunal again considered the statements made in the letters to the R family and to CM referred to in Allegation 1.1. The letters to CM were described as "Letters of Comfort", in other words they were intended to provide reassurance. One of the features that made the letters reassuring was the fact that they came from a solicitor. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew this and that he took advantage of the trust that CM placed in solicitors. Although the letters to the R family were not described as letters of comfort, they nevertheless gave assurances and undertakings which were designed to reassure them based on the Respondent's status. The Tribunal found beyond reasonable doubt that the Respondent had failed to achieve Outcome 11.1.

70.3 The Tribunal considered the objective test in Twinsectra. Providing misleading reassurance to third parties and thereby taking unfair advantage of their trust in solicitors was objectively dishonest by the ordinary standards of reasonable and honest people. The Tribunal considered the subjective test. The Tribunal was satisfied that the Respondent knew that the third parties would place more reliance in the assurances because they came from a solicitor. That was why he had headed the letters to CM "Letter of Comfort" and why he had not told CM that the Firm was in administration. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent knew that by the ordinary standards of reasonable and honest people he was acting dishonestly.

70.4 The Tribunal found this Allegation proved in full beyond reasonable doubt.

71. **Allegation 1.7 - He provided banking facilities through the firm's client account in breach of Rule 14.5 of the SAR 2011.**

71.1 The Tribunal considered the transfers of money through the Firm's client account from the R family. The R family were not clients of the Firm. The majority of this money was paid out to the PCL bank account. PCL were also not clients of the Firm and PU was not in a position to give instructions on PCL's behalf. There were no documents that demonstrated a link between the R family and H Limited. No advice was given, no letters were sent and the Respondent's answers in his interview did not assist. In his Answer the Respondent admitted this Allegation. The Tribunal was satisfied beyond reasonable doubt that there was no underlying legal transaction. The Tribunal found this Allegation proved in full beyond reasonable doubt.

72. **Allegation 1.8 - He failed to carry out bank reconciliations in breach of Rule 29.12 of the SAR 2011**.

72.1 The Tribunal was taken to the Firm's dollar bank account statements, which were not reconciled. The Respondent, in his Answer, admitted the allegation on the basis that as the principal in the practice he was responsible for breaches of the Accounts Rules. He denied being aware of those breaches at the material time. The Tribunal found this Allegation proved in full beyond reasonable doubt.

Previous Disciplinary Matters

73. None.

Mitigation

74. No mitigation was presented by the Respondent but the Tribunal noted the admissions made and the fact that he had no previous disciplinary matters against him.

Sanction

75. The Tribunal had regard to the Guidance Note on Sanction (December 2015). The Tribunal assessed the seriousness of the misconduct by considering the culpability, the level of harm and any aggravating or mitigating factors.

76. The Respondent's motivation for the misconduct was financial. The Firm was in significant financial difficulties and the possibility of a loan advance from PAG was seen as essential to ensure the Firm stayed afloat. The Tribunal accepted that the Respondent had not set out to become dishonest and it was not therefore carefully planned, rather the Respondent was reactive to the circumstances as they developed. There was an element of a breach of trust as the R family and CM had relied upon the assurances given because of the Respondent's role as a solicitor. They had trusted him. The Respondent was operating at Partner and Director level and had 18 years' post-qualified experience. He had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent had a high level of culpability.

77. The Tribunal heard no evidence of harm being caused to any individual(s). However it was reasonably foreseeable that significant harm could have been caused. The sums of money flowing through the Firm were very significant. The main harm, however, came from the damage to the reputation of the profession. The Respondent had made representations and undertakings in correspondence which were blatantly false and this was intolerable. The public would be deeply concerned that a solicitor would act in this way at the same time as allowing his client account to be used as a banking facility and subsequently not co-operating with his regulator. The level of harm was therefore very significant.

78. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

79. In addition to making false and misleading statements to third parties, the Respondent had lied to his regulator. The matters were further aggravated by the fact that they were repeated. The Respondent, by not being open with his regulator, had sought to conceal his own wrongdoing, knowing that he was in material breach of his obligations.

80. The Respondent had not presented any mitigation. The Tribunal noted that he had no previous disciplinary matters against him and gave him credit for the admissions that he had made. Those admissions reflected a limited degree of insight.

81. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found none. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

82. The Applicant applied for costs in the sum of £27,786.00. The schedule was based on the hearing last one day even though it had been listed for two days. The Respondent had made no submissions on costs and had not supplied a Statement of Means. The Tribunal examined the Applicant's cost schedule and was satisfied that the costs claimed were reasonable. The Tribunal granted the application for costs in the amount claimed.

Statement of Full Order

83. The Tribunal Ordered that the Respondent, MATTHEW GARNETT JOHN RODDAN, 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 £27,786.00.

Dated this 4th day of June 2016
On behalf of the Tribunal

J. Martineau
Chairman