SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11435-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL LYONS, First Respondent
KELLY LYONS Second Respondent

Before:

Mr R. Hegarty (in the chair)
Miss N. Lucking
Mr M. R. Hallam

Date of Hearing: 2 & 3 August 2016

Appearances

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

The First and Second Respondents did not appear and were not represented.

JUDGMENT

Allegations

1. The allegations made on behalf of the Solicitors Regulation Authority ("the SRA") against the First Respondent were as follows:

1.1 he misappropriated client funds in the sum of £10,000, in breach of Rule 20.1 of the Solicitors Accounts Rules 2011 ("the AR 2011");

1.2 he withdrew money from client bank account in breach of Rule 22 of the Solicitors Accounts Rules 1998 ("the AR 1998") in the period up to 5 October 2011, and from 6 October 2011 Rule 20.1 of the AR 2011;

1.3 he completed and/or submitted false documents to Her Majesty's Land Registry ("HMLR") in breach of Principles 2 and 6 of the SRA Principles 2011 ("the Principles");

1.4 he failed to comply with requests from a Forensic Investigation Officer for the production of documentation in breach of Principle 7 of the Principles and Rule 51 of the AR 2011, and thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the SRA Code of Conduct 2011 ("the Code");

1.5 he failed to comply with Section 44B Notices dated 6 January 2015 and/or 28 January 2015, in breach of Principle 7 of the Principles, and thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the Code;

1.6 he failed to disclose material information to his client(s) in breach of Principles 2, 4 and 10 of the Principles and thereby failed to achieve Outcome O(4.2) of the code;

1.7 he failed to remedy the shortage on client bank account promptly upon discovery, in breach of Rule 7.1 of the AR 2011.

2. The allegations made against the Second Respondent, who was not a solicitor, and was employed by the First Respondent's practice was that she had been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be employed by a solicitor in connection with his or her practice as a solicitor, in that she, whilst an employee of Lyons Solicitors ("the Firm"):

2.1 falsely attested on a TR1 Form that the person purporting to sign the document had signed in her presence when he had not, in breach of Principles 2, 4 and 10 of the Principles:

2.2 misappropriated client funds in the sum of £10,000 in breach of Rule 20.1 of the AR 2011.

3. It was submitted that by reason of the matters set out at paragraphs 2.1 and 2.2 above, the Second Respondent should be subject to an order by the Tribunal directing the payment of a penalty to be forfeit to Her Majesty, pursuant to the Tribunal's powers under paragraph 18A of Schedule 2 to the Administration of Justice Act 1985.

4. Dishonesty was alleged against the First Respondent in relation to allegations 1.1, 1.3 and 1.6. Dishonesty was alleged against the Second Respondent in relation to allegations 2.1 and 2.2. Whilst dishonesty was alleged, it was not an essential ingredient for proof of the allegations.

Documents

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

- Notice of Application dated 15 October 2015
- Rule 5 Statement and Exhibit "JRG1" dated 15 October 2015
- Applicant's Schedule of Costs dated 26 July 2016
- First Respondent's Answer dated 22 March 2016
- Second Respondent's Answer dated 22 March 2016
- First Respondent's witness statement dated 21 March 2016
- Second Respondent's witness statement dated 21 March 2016
- Correspondence between the parties

Preliminary Matter

6. The Respondents did not attend the hearing and were not represented. The First Respondent emailed the Tribunal and the Applicant on 18 July 2016. He stated that:

> "I believe there is an SDT hearing listed for the first 3 days of August. Just to keep…the SRA and the Tribunal updated since my answer document and statement I have still not had any joy getting a definitive answer from the police albeit having tried…
>
> The matter is therefore in the criminal sphere and for the reasons already given I cannot engage in the disciplinary proceedings."

7. In his witness statement, the First Respondent stated that:

> "There is an ongoing investigation into the allegation of misappropriation of £10,000 and I am advised that I could be estopped or prejudice myself from adducing matters in any criminal proceedings as a result of what evidence I give in these proceedings. I asked the SRA to halt the proceedings for that reason by they simply relied on the words "public interest" to press on. There is no mechanism in place to prevent or halt proceedings in such circumstances without gambling at least thousand (sic) pounds which I do not have were I the gambling type. I have therefore had to limit myself to dealing with the specifics of the alleged case as presented against me…..I am at a serious disadvantage in not having experienced legal representation."

8. Mr Goodwin applied for the case to proceed in the Respondents' absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary proceedings) Rules 2007 ("SDPR"), which provided that:

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

9. Mr Goodwin referred the Tribunal to correspondence which, in his submission, showed both that notice of the hearing had been served on the Respondents in accordance with the SDPR, and that the Respondents were aware of the hearing dates. On 15 January 2016, the Tribunal wrote to both Respondents informing them of the hearing date. Those letters were sent by recorded delivery and were not returned. On 22 January 2016, Mr Goodwin emailed the Respondents; that email made reference to the hearing date. On 25 January 2016, the First Respondent acknowledged receipt of Mr Goodwin's email, and referred, amongst other things, to the substantive hearing. On 9 February 2016, the Tribunal emailed all parties to confirm that the preliminary hearing listed for 23 February 2016 had been vacated, and that the substantive hearing remained listed for 2 – 4 August 2016. On 22 March 2016, the First Respondent sent statements and answers from both him and the Second Respondent in accordance with the Tribunal's directions. On 8 June 2016, Mr Goodwin emailed the Respondents referring them to the Tribunal's email dated 9 February 2016, and further confirming that the substantive hearing remained listed to proceed on 2, 3 and 4 August 2016.

10. It was submitted that in light of the correspondence referred to, it was clear that the Respondents had both been properly served with the notice of the hearing, and that they were aware of the hearing date. It was also clear from the First Respondent's email to the Tribunal of 18 July 2016 that he did not intend to attend the hearing. There had been no communication from the Second Respondent in relation to attendance at the hearing, but it was submitted that the reasons advanced by the First Respondent for his nonattendance were likely to be similar for the Second Respondent. Mr Goodwin had emailed the Second Respondent asking for confirmation of her position in relation to attending the substantive hearing on 26 July 2016. He did not receive a response to that email.

11. Mr Goodwin referred the Tribunal to the cases of Adeogba v The General Medical Council [2016] EWCA Civ. 162("Adeogba") and Rehman v The Bar Standards Board [2016] EWHC 2023 (Admin) ("Rehman"). In Adeogba, Sir Brian Leveson stated that there was a difference between continuing a criminal trial in the absence of the defendant and continuing a disciplinary hearing. When considering whether to proceed in the absence of a Respondent, that decision should be guided by the context provided by the main statutory objective of the Tribunal, namely, the protection promotion and maintenance of the health and safety of the public. In that regard the fair, economical, expeditious and efficient disposal of allegations made was of very real importance. That fairness fully encompassed fairness to the practitioner but also involved fairness to the (in that case) GMC. When talking of the differences between a criminal prosecution and regulatory proceedings Sir Brian Leveson stated:

> "…the GMC represents the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The

> consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.
>
> ……
>
> …The first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice……Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware fairness to the practitioner being a prime consideration fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of the GMC and the practitioner."

12. Mr Goodwin submitted that the reasoning and principles espoused in Adeogba were equally applicable to proceedings before the Tribunal.

13. In the case of Rehman, Hickinbottom J found that a Tribunal could hear matters in the absence of the Respondent if it considered it just to do so. The discretion to proceed in the absence of the Respondent should be exercised with the utmost care and caution. The starting point for considering whether matters should proceed in the absence of the Respondent was the criteria set down in R v Jones [2001] EWCA Crim 168 ("Jones"), namely:

- 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;
- whether an adjournment might result in the defendant attending;
- the likely length of any adjournment;
- 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;
- whether the absent defendant's legal representative is able to receive instructions, and present his case;
- the extent of the disadvantage to the defendant in not being able to give his account of events;
- the risk of drawing an improper conclusion about the absence of the defendant;
- the seriousness of the offence;

- the general public interest and the particular interest of victims and witnesses that the proceedings should take place within a reasonable time of the events to which they relate;

- the effect of delay on the memories of witnesses.

14. Whilst fairness to the affected professional was of prime importance, other relevant factors included:

- Fairness to the prosecuting body (including their witnesses);

- The absence of any power to require the attendance of the professional who was subject to disciplinary proceedings;

- The burden on professionals who are subject to a regulatory regime to engage with the regulator, in respect of both the investigation and the ultimate resolution of any charges;

- The cost and delay involved in an adjournment;

- The public interest in ensuring that professional standards are maintained and enforced.

15. Mr Goodwin informed the Tribunal that the SRA had been contacted by the police, who instructed that the Respondents were to be served with a summons requiring their attendance at Maidstone Magistrates' Court on 16 September 2016. He was not aware of the charges they faced, or whether the summons had been received by either Respondent. Given the email exchanges between the parties, and the letter received by the First Respondent (which he sent to the Tribunal and the Applicant), it was reasonable to assume that those proceedings related to matters that were before the Tribunal.

16. Notwithstanding the issue of criminal proceedings, Mr Goodwin submitted that the Tribunal ought to hear the matter in the absence of the Respondents. They had deliberately absented themselves from the proceedings; that was the stated position of the First Respondent before the criminal matter had crystallised; the Second Respondent had not made any representations in that regard. Fairness dictated that matters should proceed. There were allegations of dishonesty against both Respondents, the Applicant's witnesses were all in attendance and it was in the public interest, given the nature of the allegations, that matters should proceed and be determined.

17. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondents; it was clear from the correspondence that they were fully aware of the hearing date. The Tribunal had regard to the principles in Adeogba, Jones and Rehman. The Tribunal was satisfied that in this instance the Respondents had chosen voluntarily to absent themselves from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible.

18. The Tribunal noted that there was no renewed application by the Respondents to adjourn matters in light of the criminal proceedings. The Tribunal, notwithstanding the absence of any application, considered its Practice Note on Adjournments, and paid particular regard to the following:

> "4. The following reasons will NOT generally be regarded as providing justification for an adjournment;
>
> **a) The Existence of Other Proceedings**
>
> The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may 'muddy the waters of justice' so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so.
>
> 8. …..The efficient and timely determination of cases before the Tribunal will usually be in the best interest of all concerned and the Tribunal will always need to be convinced that the interests of justice in any particular case will be best served by agreeing to an adjournment. …."

19. The Tribunal determined that it was likely that the criminal proceedings would relate to some of the same matters that the Tribunal would need to determine. However, the Tribunal did not find that any determination in relation to the Respondents' regulatory conduct would "muddy the waters of justice" so far as the criminal proceedings were concerned. The Tribunal did not consider that the interests of justice would be best served by adjourning the matter. In light of these circumstances, the Tribunal determined that it was just to proceed with the case, notwithstanding the Respondents' absence.

Factual Background

20. The First Respondent was born in 1969 and admitted to the Roll of solicitors in 2002. At the date of the hearing, his name remained upon the Roll; he did not hold a current practising certificate. At all relevant times, he carried on practice as Lyons Solicitors ("the Firm"), from offices at 57 William Street, Herne Bay, Kent. On 23 February 2015, and Adjudication Panel resolved to intervene into the First Respondent's practice.

21. The Second Respondent, who was not a Solicitor, was employed as a Clerk by the Firm.

22. The Applicant's Forensic Investigation Department carried out an inspection of the books of account and other documents of the Firm commencing on 8 December 2014, which resulted in a Report dated 10 February 2015.

23. The Investigation Officer ("IO") was unable to interview the First Respondent. By email dated 15 December 2014, the First Respondent stated:

> "I am not up to interviews hence our previous discussion about any enquiries being by email. I have a variety of medical problems which I do not wish to aggravate hence my electing a preference for emails."

Sale and Purchase of Flat 12

24. Mr Hooker ("WH") instructed the First Respondent's Firm in or about May 2012 to act on his behalf in relation to the purchase of Flat 12. WH had made an offer of £125,000 to purchase that property. His offer was accepted by the Second Respondent operating as Orchard Property Services ("Orchard"), the Second Respondent's Estate Agency which operated from the same offices as the Firm. The Second Respondent was also a clerk at the Firm.

25. The purchase by WH completed on 16 July 2012. It subsequently came to WH's attention that a website showing property prices indicated that the flat had been sold for £115,000 and not £125,000, the price which he had paid.

26. WH contacted the seller, David Farrall ("DF"), who indicated that he had sold the property as the Executor of his late brother's estate. DF confirmed that he had accepted an offer of £115,000 from a Mr Robert Saunders. (Mr Saunders is the Second Respondent's father and the First Respondent's father-in-law).

27. DF had instructed the First Respondent on the sale of Flat 12. The First Respondent had not informed either WH or DF of any purported sub sale, nor that he acted for them both.

28. DF emailed the First Respondent on 16 August 2013, where he stated:

> "I recently received communication from a William Hooker, the current owner of [Flat 12], who was surprised to discover in the Land Registry for England and Wales that the current value of [Flat 12] is £115,000. This value is based on completed sales. He checked this on the net … which confirmed that (sic) sale price on 16/7/2012 was £115,000. His surprise was caused by the fact that he paid £125,000 for the property. As you are aware, I was informed by yourselves that the property was sold for £115,000."

29. The First Respondent replied on 19 August 2013, and stated:

> "The deal you mention below sounds like a sub sale. I acted for you in your sale and I did not know a sub sale was being proposed by your buyer. I have only once before come across this where a buyer from me sold to someone either on the same day or very soon after and naturally this leaves people asking me what is going on when it comes to light as (sic) looks like someone is involved in some sharp practice and not something any solicitor to have happen to their seller client …".

30. On 22 August 2013 the First Respondent again emailed DF and stated:

> "As suspected there was a sub sale but the detail is not yet all clear to me but I should know everything after the bank holiday weekend".

31. DF provided a statement to the IO and produced a draft contract which identified the purchaser as Mr Robert Saunders. The IO found no evidence on the WH client matter file to suggest that a sub sale had taken place, and no evidence of a sub sale from Mr Saunders to WH was provided by the First Respondent to the Applicant.

32. WH believed he was purchasing Flat 12 from DF for £125,000. DF confirmed that he accepted an offer of £115,000 from Mr Robert Saunders. The First Respondent confirmed to the IO that Mr Saunders was not legally represented in the transactions as Mr Saunders did not think that he needed representation.

33. The First Respondent acted for both WH and DF in the transaction. HMLR provided documents to show that the property was transferred from DF to WH with no apparent sub sale.

34. WH explained that he was shown around the property by the Second Respondent. At that stage he had not instructed a solicitor to assist him in his purchase, and the Second Respondent offered her conveyancing services. He was provided with a client care letter from the Firm dated 2 May 2012, which stated that the First Respondent would have conduct of the matter, and described the Second Respondent as "Conveyancing Executive and Completions Clerk".

35. In his statement of 3 November 2013, WH explained that he "had not until 16 July 2012 bought or sold land or property and had no experience of it. I relied on the solicitor ….. At no time did [the Respondents] state that they represented the seller in the transaction and at no point were any of the procedures or documents explained to me".

36. On 29 June 2012 the First Respondent wrote to WH and provided a report on the property together with a draft completion statement which showed the purchase price as £125,000.

37. On 4 October 2012, the Second Respondent wrote to WH confirming completion of the transaction and enclosing the official copy register entry for his records.

38. In October 2013, the First Respondent was contacted by Ms English, a retired barrister, on behalf of WH. Ms English asked the First Respondent a number of questions in relation to the transaction, and asked him to take a number of actions so as to state the correct position. The First Respondent initially asked for proof that he had acted for WH. Once that was provided he then stated that he would need the written consent of DF before he could substantively answer any of the questions asked.

39. WH complained to the Applicant about the First Respondent's conduct by way of a letter dated 4 November 2013.

40. On 8 December 2014, the IO requested production of the client matter files and ledgers relating to the sale by DF and the purchase by WH of Flat 12. The First Respondent was unable to produce the files and ledgers, indicating that they were in storage.

41. On 10 December 2014, the IO returned to the Firm and took copies of documentation held on two matter files provided by the First Respondent, namely WH's "purchase" file, and DF's "probate" file. The First Respondent was asked to confirm that the files were complete and contained all correspondence, to include emails to and from clients, both during the duration of the transaction and subsequently, together with submissions made to HMLR in relation to the transaction. In the event that the files were not complete, the First Respondent was asked to supply any further material. In an email to the IO of 15 December 2014 the First Respondent confirmed that he had provided "all I can find on the files you have requested." However, none of the email correspondence between the First Respondent DF and Ms English was found on the files provided by the First Respondent.

42. A copy of the signed sale contract naming the seller as "David Farrell as Executor of Christopher Ian Farrell" and the buyer as "Robert Saunders" dated 16 July 2012, showed the sellers solicitors as the Firm, with no details being provided for the buyer's conveyancer. This was inconsistent with the copy contract provided by DF to the IO, which showed the buyer's conveyancer as "J Verrico and associates".

43. Mrs Verrico provided a statement to the IO confirming that:

- Her firm had not acted in either the sale or purchase of Flat 12 at any time
- Her firm had never acted for a Mr Robert Saunders or a Mr David Farrell
- She had never seen the contract showing the buyer's conveyancers as J Verrico associates.

44. The IO obtained copies of the records submitted to HMLR by the First Respondent. The TR1 showed the transferor as Mr David Lawson Farrell, and the transferee as Mr William Richard Hooker who paid £115,000 for the property. Form TR1 was purportedly signed by DF, whose signature was shown on the face of the document as having been witnessed by the Second Respondent. However DF, in an email dated 6 January 2015 to the IO stated:

> "I've never met Kelly and therefore it was impossible for her to have witnessed my signature."

45. The First Respondent also submitted Form AP1 to HMLR, which showed the Firm as acting for WH and that Orchards, 37 William Street, Herne Bay, acted for DF. The IO ascertained that the address of 37 Williams Street was an Ex-Serviceman's club, with no solicitors or licensed conveyancers operating from that address. Orchards Property Services was the name of the Estate Agents operated by the Second Respondent.

46. Both the TR1 and the AP1 contained the following warning:

> "If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause a loss or the risk of loss to another person, you may commit the offence of fraud under Section 1 of the Fraud Act

> 2006, the maximum penalty for which is 10 years imprisonment or an unlimited fine, or both. Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register".

47. In response to enquiries raised by the IO as to whether he had informed the Nationwide Building Society of the purported sub sale from DF to Mr Saunders, and subsequent sale to WH, the First Respondent replied by email dated 5 January 2015 stating "the Hooker file does not show any such communication with Nationwide BS so I would guess they were not informed of any sub sale. I acted for [DF]. Not the seller to [WH] to my knowledge".

48. The First Respondent produced copies of his client bank account statements for July 2012 to the IO. The statement showed the sum of £115,000 being received into the First Respondent's client bank account from account KT/ASO LY-ONS, and a payment out of £125,000 to account B1-B *ORCHARDS*. In response to a request from the IO for an explanation for the transaction shown on the bank statements, the First Respondent stated, in an email dated 31 December 2014 that "I sold to Saunders as I was acting for [DF]. Kelly conducted a matter where [WH] bought from her father. There is not much to say other than that. You have bank statements from me which shows (sic) the transfer of monies. Money was sent electronically in those days as it is now and Kelly had the job of money transfers as cashier in those days".

49. On 2 January 2015 the IO sent an email to the First Respondent together with copies of forms AP 1 and TR1 and raised further enquiries. Examination by the IO of the client matter files in respect of WH and DF identified 3 contracts:

- Contract signed by Mr Saunders in his sale to WH (there was no contract for the purchase of the property by WH from either Mr Saunders or Mr Farrell found on the file); and

- Two contracts found on the DF file relating to the sale by DF to Mr Saunders and the purchase of the property by Mr Saunders from DF. All contracts were dated 16 July 2012.

50. Prior to being investigated by the Applicant, the matter was investigated by the Legal Ombudsman ("LeO"). LeO supplied the IO with copies of correspondence and documentation previously received from the First Respondent. Whilst providing copy contract signed by Mr Saunders and an unsigned purchase contract between WH and Mr Saunders, the First Respondent failed to produce the purchase contract between WH and Mr Saunders signed by WH to LeO; no such signed contract had been found on the WH client matter file.

51. Following exchange of emails, LeO wrote to the First Respondent on 17 February 2014 and said:

> "I note you have now provided a signed contract for the sale between [WH] and Mr Saunders, however, it is not signed by both parties and most notably, it is not signed by [WH]. Please therefore provide a copy of the contract signed by both parties. You have also again not provided a copy of the signed and

dated contract for the sale between [DF] and Mr Saunders, despite this being requested several times. At present the evidence I have is that both [WH] and [DF] believed there was only the sale of the property, between themselves, and you have provided no evidence to support anything to the contrary."

52. Included within the documentation supplied by the First Respondent to LeO was a copy of an HMLR office copy entries relating to Flat 12 dated 20 July 2012, which showed the price stated to have been paid on 16 July 2012 as £115,000.

53. In his statement, WH indicated that he had received a letter from the Firm dated 4 October 2012, signed by the Second Respondent, which enclosed Office Copy Entries bearing the date 17 July 2012, but which showed the purchase price paid by him to be £125,000. WH believed that document to have been falsified.

54. The IO indicated in his report that he noted the typeface on the Office Copy Entries supplied to WH appeared to be different from the rest of the document, and did not have the same paragraph format as the Copy Entries obtained from HMLR.

55. LeO emailed the First Respondent on 12 February 2014 seeking an explanation as to the office copy entries showing the price of £115,000, and the one provided to WH by the First Respondent showing a price of £125,000. The First Respondent replied on the same date and said "The Land Registry document you have sent to me I have not seen before and cannot advise on what [WH] states".

Other Conveyancing Transactions

56. From an examination of the Firm's bank statement for July 2012, the IO identified further suspicious transactions:

- On the sale/purchase of 15 MP, the IO obtained a copy of Form AP1 which showed the conveyancer acting for the transferor as "Orchards 37 William Street, Herne Bay, CT6 5NR". The price paid is shown on the form as £205,000 on 6 July 2012. The bank statements showed that a payment of £205,000 was made by the Firm to Orchards on 5 July 2012.

- On the sale/purchase of 40 BC, the AP1 form submitted by the Firm to HMLR again showed the conveyancer acting as "Orchards 37 William Street, Herne Bay, CT6 5NR". The price paid was £182,500 on 6 July 2012. The bank statements showed that two payments of £182,500 were made by the Firm to Orchards on 2 July 2012, with a subsequent receipt of £182,500 from KT/ASO at LY-ONS on 3 July 2012.

- On seven other conveyancing transactions the IO noted (from a consideration of the forms submitted to HMLR and an examination of the bank statements) payments made to Orchards or received from KT/AS at LY-ONS. Further, the stated conveyancer acting for the majority of the transferor in the majority of the transactions was 'Orchards' on the AP1 forms.

Other Client Account Transfers

57. The IO identified various payments from and receipts into client bank account with the reference MICHAEL LY TR, which, it was submitted, was reasonably inferred to be the First Respondent. The earliest payment identified was in 2005 with the largest transfer being for £37,409.19 in February 2011. Further, there were a number of payments to Orchards which the IO was unable to attribute to any conveyancing transactions. The largest of those amounts were:

- 22 March 2012 £298,750.00
- 3 April 2012 £156,000.00
- 7 June 2012 £155,000.00

Communication with the First Respondent

58. By email dated 29 December 2014 the IO asked the First Respondent to provide him with copies of client bank account statements for the previous 6 years from January 2009 to December 2014, together with copies of the Firm's client account cash book of the same period. The First Respondent in an email dated 31 December 2014 stated:

> "The bank statements are sporadic and in varying conditions. Anyway a fishing exercise will only enter into more work no doubt and I am retiring anyway so I can save us all a lot more time and talk on this so I am doing no more bank statements."

59. In a further email of 31 December 2014, the First Respondent stated:

> "I am not sure what is a cashbook (sic). Whatever it is I am not getting into such broad requests given my very soon retirement as a solicitor."

60. On 2 January 2015, the IO emailed the First Respondent and asked him to provide an explanation as to what transactions the payments and receipts detailed in paragraphs 56 – 57 above related to, and to provide the relevant files and client account ledgers for inspection in relation to those transactions. The IO also again requested production of the Firm's client and office bank account statements for the previous six years. If he was unable to do so, he was asked to provide the IO with a signed bank authority in order that the bank could be contacted directly by the Applicant for production of the statements. The First Respondent replied by way of an email dated 5 January 2015, but did not provide the required documentation and/or any explanation.

61. On 6 January 2015, the IO emailed the First Respondent a copy of a Notice pursuant to Section 44B of the Solicitors Act 1974, requesting a full explanation of the transfers considered by the investigating officer, together with the production of the Firm's bank statements and client account cash books by 13 January 2015. The Section 44B Notice was sent to the First Respondent's office by Recorded Delivery and first-class mail.

62. The First Respondent did not comply with the terms of the Notice by the deadline of 13 January 2015, or at all.

63. Consequently, on 15 January 2015 solicitors were instructed by the Applicant to seek a production order in relation to the bank statements and account information. This was obtained from the High Court and served on Barclays Bank on 23 January 2015. On 26 January 2015, statements of all bank accounts held or operated by the Firm were provided by the bank.

64. An analysis of the bank statements by the IO identified that the transactions referred to above, and further identified 104 payments made from the Firm's client account to HMRC totalling £432,971.85 in the period 7 April 2010 - 10 December 2014.

65. The IO sent a letter dated 28 January 2015 to the First Respondent both by Recorded Delivery and first-class post, attaching a second Section 44B Notice requiring production of the following:

- All of the Firm's client matter files and letters in relation to the transactions identified in the analysis of the client bank account attached to the Notice;
- Details of the transactions that the client matters identified related to;
- All the Firm's client matter files and ledgers in relation to the 106 (subsequently revised to 104) payments made to HMRC as noted by the IO; and
- Details of the transactions that the client matters identified related to.

66. This information was to be provided by close of business on 4 February 2015. As at the date of the Report (10 February 2015) no response had been received from the First Respondent.

Witnesses

67. The following witnesses provided statements and gave oral evidence:

- Gary Page – Forensic Investigation Officer of the Applicant
- William Hooker
- David Farrall
- Joanna Verracco

68. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

70. **Allegation 1.1 - he misappropriated client funds in the sum of £10,000, in breach of Rule 20.1 the AR 2011**

70.1 Mr Goodwin submitted that in relation to the Flat 12 transaction, there was no evidence of a genuine sub sale. The only transaction was that between DF as the seller and WH as the buyer. DF sold the property for £115,000.00 and WH bought the property for £125,000.00; the Firm acted for both clients. The receipt of £115,000.00 into client account from KT/AS O at LY-ON S on 16 July 2012, and the payment out of client account of £125,000.00 to Orchards, had the effect of disguising the £10,000 difference between the sale price received and the purchase price paid.

70.2 The First Respondent denied the allegation. In an undated letter from Murdochs Solicitors sent to the Applicant on behalf of the First Respondent, the explanation provided by the First Respondent in his email of 31 December 2014 was relied upon (see paragraph 48 above). Further, it was noted that WH had not denied signing a contract to purchase Flat 12 from Mr Saunders for £125,000.00, and DF had not denied signing a contract for the sale of Flat 12 to Mr Saunders for £115,000.00. The documents attached to the IO's report showed a contract from DF to Mr Saunders at a price of £115,000.00 and was signed by DF.

70.3 In his answer of 22 March 2016, the First Respondent noted that "No definition of what misappropriated means is given in the Rule 5 and 8 Statement and Bundle. Perhaps misappropriation is defined in terms of what Rule 20.1 states regarding permissible withdrawals of client money but no specific rule breach is identified in relation to the alleged facts."

70.4 Further that "there is no definition of what is a "genuine sub sale" from the SRA (sic)". The First Respondent did not accept that he had acted for both DF and WH, but that "The First Respondent's **firm** acted for both it appears".

70.5 WH's belief that he was purchasing the property from DF was not, it was submitted in the First Respondent's answer, supported by the documentation. The only evidence of this was in the statements of DF and WH. The First Respondent stated that "the name [DF] appears nowhere from what I can see in any of the documents sent to [WH]"

70.6 In relation to the Applicant's submission that the payments were routed through Orchards so as to disguise the difference between the sale and purchase price, the First Respondent stated:

> "if you disguise something you intend that this will prevent it from being recognised. Who was the disguise intended to operate on and who would fall for that disguise? I do not know and I am not sure the SRA are as they do not

say. Another interpretation could be that the money transfer was simply a recording of a transfer of money which transfer would only exist for the purpose of recording another transaction (the sub sale)."

70.7 The Tribunal noted that Rule 20.1 provided that:

"Client money may only be withdrawn from a client account when it is:

(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);

(b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;

(c) properly required for payment of a disbursement on behalf of the client or trust;

(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;

(e) transferred to another client account;

(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;

(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;

(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));

(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;

(j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

70.8 The Tribunal found that allegation 1.1 had been properly pleaded. The Applicant's case was clearly set out in the Rule 5 Statement, and the evidence upon which it relied was contained within Exhibit JRG1. The Tribunal did not accept that the First Respondent was unable to answer the case against him as there was "no definition of misappropriation" in the statement and likewise no definition of a "genuine sub sale". Nor did the Tribunal accept, as asserted by the First Respondent that the allegation

"was all rather unspecific", the alleged misconduct, and the circumstances in which the misconduct was said to have been committed, were clearly defined in the Rule 5 Statement.

70.9 The Tribunal found that there was no tangible evidence of a sub sale having taken place. Mr Saunders had been named in some of the documents but nothing naming him had been sent to HMLR. The Tribunal accepted the evidence of Mr Page; that there was no evidence on the files he examined of a sub sale having taken place. In particular, the Tribunal noted that there was no evidence on the WH file of the sale to him by Mr Saunders, and, despite repeated requests to do so, the First Respondent had failed to provide any evidence to the Applicant of the sale from Mr Saunders to WH.

70.10 The Tribunal noted that the First Respondent, when in email correspondence with DF, implied that he had no knowledge of a sub sale. The Tribunal did not accept that this could be the case, given that his Firm acted for both DF and WH. The Tribunal found, and indeed it was not disputed, that DF sold Flat 12 for £115,000.00, and that WH purchased the same property for £125,000.00. Having found that there was no sub sale, the Tribunal further found that the only transaction was between DF and WH. The Tribunal determined that the payments between the Firm and Orchards were so as to disguise the difference between the sale and purchase price. The Tribunal did not find the explanation advanced by the First Respondent credible. Thus the Tribunal found that the First Respondent misappropriated the sum of £10,000 being the difference paid by WH for the purchase of the property and the amount received by DF in respect of the sale of the property. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt on the evidence and submissions.

Dishonesty

70.11 Mr Goodwin submitted that the test to be applied by the Tribunal was that set out in Twinsectra v Yardley and others [2002] UKHL 12 namely that the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and he realised his conduct was dishonest by those standards.

70.12 It was the Applicant's case that on an objective basis, the misappropriation of the difference in the purchase and sale proceeds would be regarded as dishonest by the ordinary standards of honest people. On a subjective basis, the First Respondent acted dishonestly in that he knew that he was not entitled to take, but in any event did take the difference of £10,000, and knew that such conduct would breach the ordinary standards of honest people.

70.13 The First Respondent denied that he had acted dishonestly.

70.14 Applying the Twinsectra test the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor, who acted for both parties in a transaction and misappropriated the difference between the sale and purchase price of a property, had acted dishonestly. Further, the First Respondent knew, that by those standards, his conduct was dishonest. The First Respondent had tried to conceal the misappropriation by routing payments through the Second Respondent's Estate Agency. Accordingly, the

Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Respondent's conduct was dishonest.

71. **Allegation 1.2 - he withdrew money from client bank account in breach of Rule 22 of the AR 1998 in the period up to 5 October 2011, and from 6 October 2011 Rule 20.1 of the AR 2011.**

71.1 The improper transfers alleged were:

71.1.1. 2 July 2012 two payments of £182,500 to Orchards Estate Agents
5 July 2012 £205,000 payment to Orchards

71.1.2 Unexplained transfers from client account to MICHAEL LY TRF namely:

- 11 Nov 2005 £2,500
- 10 Nov 2006 £5,000
- 2 Feb 2007 £3,000
- 5 Oct 2007 £1,084.58
- 21 Feb 2011 £37,409.19

71.1.3 Payments to HMRC from client account (104 payments totalling £421,982.85 between 7 April 2010 and 10 December 2014)

71.1.4 Payments to Orchards from client account that could not be attributed to a particular transaction

- 22 Mar 2012 £298,750
- 3 Apr 2012 £156,000
- 7 Jun 2013 £155,000

71.2 The First Respondent, in his answer, denied allegation 1.2 as, he asserted, it lacked "the necessary detail….what the specific breach is has not been stated or the particular part of the rule". In relation to the transfers being improper, the First Respondent explained that "it is not stated why these are improper". The payments to Orchards on 2 and 5 July 2012 were explained in the letter sent by the First Respondent's former solicitors which stated:

> "….Kelly Lyons as 'Orchards' would sometimes act for one party to the conveyancing transaction and Mr Lyons would act for the other party….. Orchards said involvement in these transactions would explain why monies were being transferred either to or from Orchards account from Lyons as Orchards was involved in representing one of the parties to these transactions."

71.3 In his answer, the First Respondent stated that the 'unexplained transfers' ranged "from 2005 to 2007. I was audited annually and had 2 law society inspections during this period one of which lasted 4 days and another at least 2 days in total. I am not in a position to answer historic questions from this period."

71.4 The 104 payments to HMRC were "stamp duty I would have thought"

71.5 In relation to the payments to Orchard the First Respondent stated in his answer:

> "If the IO and the forensic investigator could not figure out the position I at this juncture cannot take things any further. Clearly the money did not go missing (this matter is essentially over £10,000 so what would £600,000 have produced) and so was referable to property transactions".

71.6 In response to the Applicant's assertion that in the absence of the most persuasive explanation from the First Respondent, the irresistible inference was that the payments represented improper withdrawals, the First Respondent stated that he could "not assist the tribunal given my lack of expertise in such matters if they have the paperwork and cannot deduce matters".

71.7 The Tribunal found that allegation 1.2 was clearly pleaded. Rule 22 and 20.1 of the AR 1998 and 2011 respectively set out the circumstances where the withdrawal of funds from a client account was permitted; withdrawals other than in accordance with the Rules was improper.

71.8 The Tribunal accepted the evidence of Mr Page. The Tribunal found that other than the payments made to HMRC (which the Tribunal determined were payments in relation to Stamp Duty) the withdrawals from client account were improper; the withdrawal of the monies was not in compliance with the Rules. The Tribunal considered that the only payments that could legitimately be made to Orchards were for Estate Agent fees; the amounts involved could not feasibly be for that purpose. There was no evidence that the payments made to Orchards, and those made with the reference MICHAEL LY TRF were properly required. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt on the evidence and the submissions.

72. **Allegation 1.3 - he completed and/or submitted false documents to HMLR in breach of Principles 2 and 6 of the Principles**

<u>Flat 12</u>

72.1 Mr Goodwin submitted that in relation to Flat 12, the First Respondent completed and/or submitted forms TR1 and AP1 to HMLR; those forms contained inaccurate, misleading and untrue representations. In completing and/or submitting such AP1 and TR1 forms, the First Respondent failed to act with integrity and behaved in a way likely to diminish the trust the public placed in him and the provision of legal services.

72.2 Form TR1 was inaccurate, misleading and false because:

- It referred to the transferee, WH, having paid £115,000 for the property, when in fact he had paid £125,000.

- The form was purportedly signed by DF and whose signature was witnessed by the Second Respondent, when in fact the form was not signed in the presence of the Second Respondent.

72.3 The AP1 was inaccurate, misleading and untrue because:

- It represented that DF's conveyancer was "Orchards", when he was represented by the Firm

- It represented that "Orchard" address was 37 William Street, Herne Bay, which was the address of an Ex-Serviceman's club from which neither solicitors nor licensed conveyancers practised.

72.4 The completion and/or submission by the First Respondent of false forms TR1 and AP1 to HMLR resulted in an inaccurate and misleading Official Copy of Register of Title showing the proprietor as WH having paid £115,000 on 16 July 2012.

<u>Other Conveyancing Transactions</u>

72.5 In relation to the sale/purchase of 15 MP and 40 BC, Form AP1 referred to the conveyancer acting for the transferor as "Orchards, 37 William Street, Herne Bay, CT6 5NR". As discussed above, neither solicitors nor licensed conveyancers practised from that address. Seven further transactions were identified where "Orchards" of either "William Street" or "37 William Street" were acting for the transferor and/or transferee.

72.6 In the undated letter from the First Respondent's former solicitors, it was explained that:

> "AP1s were stored on the computer base and were usually overwritten on each application. Typographical errors from previous applications could creep in as could a single numerical error in the number of the William Street Office. The AP1 referred to in [Exhibit JRG1] is not signed….It seems like a draft AP1 unsigned was sent which had not been verified for accuracy".

72.7 In his answer the First Respondent further explained that:

> "…the use of precedent AP1's for overwriting was common practice at Lyons solicitors and mistakes could be perpetuated not necessarily by design."

72.8 In relation to the sale/purchase of 15 MP, 40 BC and the other conveyancing transactions, the First Respondent explained that "this evidences that [Flat 12] and the inaccuracies in the AP1 were not by design for that transaction. Clearly the lazy and dangerous use of rogue precedents was at work. I was always taught that you start with a fresh blank document to avoid this".

72.9 As regards the attestation, the First Respondent explained, via his former solicitors in their undated letter that:

> "[DF] never met Kelly Lyons and so a genuine and contemporaneous witnessing did not take place…..Regarding the witnessing; many clients try to get firms to add their witnesses later when they do not want to go through the inconvenience of witnessing by strangers (we live in times where people do not like to share their affairs in this manner and the fast pace of life does not always lend itself to these historical practices) and in this case [DF] had already indisputably signed one TR1 and had it witnessed locally and perhaps some deal was struck to reduce his inconvenience. Sellers sometimes forget to get a document witnessed and firms square the circle as a result for expediency particularly where a genuine witnessing has taken place and all money laundering compliance. There is the undisputed signed and witnessed transfer (the local resident witnessing so fears of [DF's] non-existence or incapacity would have been allayed had be signed in escrow on the second occasion)."

72.10 In relation to the TR1 showing the price to be £115,000 instead of the £125,000 paid by WH, it was stated:

> "…that the price of the property is a matter for conjecture given the sub-sale which [the First Respondent] believes took place. [The First Respondent] further states that [DF] has not denied signing the transfer which was apparently witnessed by a neighbour. Also [DF] emailed to [WH] ……..a contract and transfer with a price of £115,000 selling and transferring the property to Mr Saunders. Clearly [DF] believed that his buyer was Mr Saunders for a price of £115,000. Stamp Duty is not payable unless the price is above the threshold of £125,000. There would have been no need to create a transfer direct to [WH] from [DF] to avoid double payment of any stamp duty. Direct transfers to sub buyers were historically used in sub sales to avoid double stamp duty but that would not have applied here.
>
> [WH] says he paid £125,000 and that is the price he agreed to pay. Why then would there be a transfer created by design to [WH] for £115,000. It is nonsensical unless of course there was a sub sale at that price and incompetence in handling the sub sale legal documents took place and the second transfer document, as per the first one signed by [DF]' should have again stated the buyer as Saunders."

72.11 The Tribunal found that the TR1 was inaccurate, misleading and false as alleged, as the attestation on the form was false, and because it referred to a price which was not the price that the buyer actually paid. The Tribunal also found that the AP1 was inaccurate, misleading and untrue, as it showed that DF was represented by Orchards of 37 William Street, when DF was represented by the Firm, and Orchards was not based at 37 William Street.

72.12 The Tribunal further found that the First Respondent had breached the Principles as alleged and pleaded. The evidence of both WH and DF exemplified the lack of trust in him as a solicitor. In his email to the First Respondent of 16 September 2013, DF stated:

> "What a load of tosh. You've not provided a single piece of evidence to support your story. (The absurdity of thinking that a name is sufficient to authenticate it, emphasises the hollowness of your position). The plain truth is this is a case of fraud. Your writhing is understandable, given that you wish to avoid the consequences of your actions, but it is tiresome when repetition of your excuse is your sole means of justifying it."

72.13 WH had relied on the First Respondent and his Firm to act in his best interests, it being his first property purchase; WH later discovered that the HMLR records did not reflect the price he paid. Further enquiries revealed that it was the Firm that had provided the information in relation to the price; it was not an error on the part of HMLR.

72.14 The Tribunal found the First Respondent's lack of integrity to be evident on the facts.

Dishonesty

72.15 Mr Goodwin submitted that the First Respondent's conduct, in completing and/or submitting forms AP1 and TR1 to HMLR in relation to Flat 12 which contained inaccurate, misleading and false information, was dishonest by the standards of reasonable and honest people, and he realised by those standards that his conduct was dishonest.

72.16 Applying the Twinsectra test the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor, who submitted forms to HMLR which contained information that he knew to be incorrect had acted dishonestly. Further, the First Respondent knew, that by those standards, his conduct was dishonest. The Tribunal determined that the incorrect details submitted on the AP1 were for the purpose of concealing that the First Respondent's Firm acted for both DF and WH. Accordingly the Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Respondent's conduct was dishonest.

73. **Allegation 1.4 - he failed to comply with requests from a Forensic Investigation Officer for the production of documentation in breach of Principle 7 of the Principles and Rule 51 of the AR 2011, and thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the Code.**

Allegation 1.5 - he failed to comply with Section 44B Notices dated 6 January 2015 and/or 28 January 2015, in breach of Principle 7 of the Principles, and thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the Code.

73.1 Mr Goodwin submitted that the First Respondent was required to comply with his legal and regulatory obligations and to deal with his Regulator and Ombudsman in an open, timely and cooperative manner. Such included complying promptly with any written notice from the Applicant for the production for inspection by the Applicant of documents held by him, or under his control and the provision of all information and explanations requested.

73.2 The First Respondent failed to comply with requests from the IO for explanation and documentation, and failed to comply with Notices served pursuant to Section 44B of the Solicitors Act 1974 dated 6 and 28 January 2015. Those failures to comply, it was submitted, represented a serious breach of Principle 7 of the Principles, particularly having regard to the number and areas of concern identified by the IO, and which called for the First Respondent's explanation and co-operation.

73.3 The First Respondent, excluding any email exchanges and production of documents in those emails, admitted allegations 1.4 and 1.5. He stated that he did not understand or have the ability or expertise to assist further. He discovered in March 2014 that most solicitors instruct regulatory lawyers to deal with matters such as this, as it would be within their competence.

73.4 Outcome 10.6 provided that:

> "You co-operate fully with the SRA…at all times ….."

73.5 Outcome 10.8 provided that:

> "You comply promptly with any written notice from the SRA"

73.6 Outcome 10.9 provided that:

> "Pursuant to a notice under Outcome 10.8, you:
>
> (a) produce for inspection by the SRA documents held by you, or held under your control;
>
> (b) provide all information and explanations requested; and
>
> (c) comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;
>
> in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee."

73.7 The Tribunal noted that the First Respondent was asked to provide explanations, or documentation on a number of occasions. The explanations provided were not sufficiently detailed so as to answer the questions asked, and the First Respondent had failed entirely to respond to the section 44B Notices. The Tribunal accepted in its entirety the evidence of Mr Page who stated that the Respondent had failed entirely to provide a response to both Section 44B Notices, and where he had responded to requests for explanations, the responses provided had been unsatisfactory. The Tribunal noted that despite a number of requests to provide bank statements, the First Respondent failed to so. This resulted in the Applicant applying for and obtaining a production order from the High Court. Accordingly, the Tribunal found allegations 1.4 and 1.5 proved beyond reasonable doubt on the evidence and submissions. Indeed they were admitted.

74. **Allegation 1.6 - he failed to disclose material information to his client(s) in breach of Principles 2, 4 and 10 of the Principles and thereby failed to achieve Outcome O(4.2) of the code.**

74.1 Mr Goodwin submitted that the First Respondent was required to treat his clients fairly, act in their best interests and to make his clients aware of all information material to their retainer of which he had knowledge. He failed to disclose to his clients WH and/or DF the following material information:

- That in relation to Flat 12 he acted for them both;
- The true nature of the transaction (if, in fact, there was a genuine sub sale);
- That the difference of £10,000 was paid by the First Respondent to the Second Respondent/Orchards Estate Agents.

74.2 At no point throughout his email correspondence with DF did the First Respondent inform him that he had acted for WH. Instead he suggested that a sub sale had taken place without his (the First Respondent's) knowledge. This was inconsistent with there being a client file on the purchase by WH, the letters from the Firm to WH and the receipt into the Firm's account of funds from both WH and his mortgage provider.

74.3 As a consequence of the First Respondent failing to inform DF of the involvement of the true purchaser for the higher price of £125,000, DF did not receive the full sale proceeds. In failing to disclose material information to his client(s), the First Respondent acted contrary to Principles 2, 4 and 10 of the Principles.

74.4 The First Respondent submitted that the allegation assumed that he "was physically acting for all parties and had all knowledge of the matters to tell everyone what I am accused of not telling them. Contrary to what [WH] says I never dealt with him in any way with his matter. There is no contemporaneous record of such a meeting….Likewise with [DF]. I do not see any communications between myself and [DF] in the Bundle other than one dated 30 March 2012 and then the jump to 16 August 2013 when he emails me about having been contacted by [WH]." The First Respondent submitted that the inference of the Applicant seemed to be that he "deliberately tried to keep secret from [DF] my firm's involvement with [WH]. Other reasons could exist for not mentioning such. When did I know to be able to make such disclosure. Alternatively, why tell someone something they know ([DF] said in his initial email in August 2013 that he had been contacted by [WH] direct). Client confidentiality." The First Respondent further submitted that:

> "It is imputed to me that I had knowledge at all times of the sale of [Flat 12] to [WH] by dint of the circumstantial documents mentioned and events which the SRA refer to but no detail or evidence from them as to the date of creation of such documents or when I am supposed to have had actual knowledge of such".

And:

> "The SRA states that the "First Respondent acted for both [DF] and [WH]". Given that I never spoke to, nor met, nor emailed nor had any signed correspondence with either of them that is a pretty loose use of the word "acted"."

74.5 The Tribunal accepted the evidence of DF, who explained that the First Respondent had previously acted for his (DF's) father in a previous sale, and was also the joint executor of his father's estate. The Tribunal saw the client care letter dated 2 May 2012 sent to WH. The covering letter was signed by the Second Respondent. The client care letter, (which was unsigned) stated:

> "I am a solicitor and will carry out most of the work in this matter personally. In the event that I am not available when you contact the office, please speak to Kelly Lyons who will be familiar with your file."

74.6 The First Respondent's name was printed at the bottom of that letter. Further, the funds from WH and his mortgage provider for the purchase of Flat 12 were paid into the First Respondent's client account. Given the overwhelming evidence, the Tribunal had no hesitation in finding, as a fact, that the First Respondent had acted for both DF and WH. Further, he also acted for WH's mortgage provider. Having determined that the only transaction was between DF and WH (and that there was no sub sale), the Tribunal found that the First Respondent, in failing to inform them that he acted for them both, had failed to disclose material information to his clients as pleaded and alleged. The Respondent had failed to act in the best interests of his clients; DF had received £10,000 less than the price paid by WH; WH's title had been registered with a purchase price of £115,000 as opposed to the £125,000 he paid; Nationwide had a charge over a property valued at £115,000 by HMLR whereas they had advanced a mortgage to WH based on the valuation of £125,000. Not only had the First Respondent failed to act in his clients' best interests, he had also failed to protect client money and assets. The Tribunal determined that it was evident on its factual findings that the First Respondent had acted without integrity. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt on the evidence and the submissions.

Dishonesty

74.7 Mr Goodwin submitted that in failing to disclose material information to his clients, the First Respondent was dishonest by the ordinary standards of reasonable and honest people, and he realised by those standards that his conduct was dishonest.

74.8 Applying the Twinsectra test the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor, who acted for both parties in a transaction and failed to inform them of this had acted dishonestly. Further, the First Respondent knew, that by those standards, his conduct was dishonest. The First Respondent had tried to conceal his involvement with the purchase of Flat 12 by WH when he was first contacted by DF. He was quite clearly untruthful in his email to DF where he positively asserted that he was unaware of a sub sale. Even if (which the Tribunal did not find) a sub sale had taken place, the First Respondent would have been aware of it, as he acted for the eventual purchaser, WH; given the completion date of 16 July 2012, the sub sale would have been almost

simultaneous. Throughout their email exchange, the First Respondent failed to inform DF that he had also acted for WH. Accordingly the Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Respondent's conduct was dishonest.

75. **Allegation 1.7 - he failed to remedy the shortage on client bank account promptly upon discovery, in breach of Rule 7.1 of the AR 2011.**

75.1 Mr Goodwin submitted that the IO had identified a minimum cash shortage in the sum of £10,000. The First Respondent failed to replace the misappropriated monies in that sum. Whilst the First Respondent purported not to agree that shortage existed, in correspondence with DF, he offered to make payment in the sum of £10,000, payable by way of monthly installments of £1,000 to DF.

75.2 The First Respondent denied that there was a shortage and asserted that "if there was a sub sale then the money was accounted for by this".

75.3 The Tribunal found that, in misappropriating the sum of £10,000, the First Respondent had created a shortage in client account of that amount. The First Respondent was aware of the shortage by, at the latest, the time he received the Report from the IO. The First Respondent did not replace that shortage. Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt on the evidence and the submissions.

76. **Allegation 2.1 – the Second Respondent falsely attested on a TR1 Form that the person purporting to sign the document had signed in her presence when he had not, in breach of Principles 2, 4 and 10 of the Principles.**

76.1 Mr Goodwin submitted that the Second Respondent falsely attested on the TR1 form submitted to HMLR, that the person purporting to have signed that document signed it in her presence when he had not. The Applicant was not pursing any allegation in relation to the authenticity of the signature. DF confirmed in his statement, and when giving evidence, that he had never met the Second Respondent, and it was therefore impossible that he had signed the document in her presence.

76.2 In her answer of 22 March 2016, the Second Respondent stated:

> "I do not know why [DF] says the signature on the document is not his and he does not say why in his statement. Clients would sometimes leave the witnessing blank whether intentionally or by mistake. When it was intentional it was because they were known to me or did not want the inconvenience. In this case I see a transfer had already been sent to [DF] but it had come out on his printer in the wrong format and therefore another would have had to have been sent by post……. I worked at solicitors firms with the omission by the client of having a signature witnessed was not going to delay a completion if not spotted in time and unfortunately this practice can get expedient in all omissions of witnessing without thinking as to the significance of what is being done. [DF] had already signed a witnessed transfer".

76.3 The Tribunal noted that the First Respondent, in the undated letter sent by his then solicitors, stated that "[DF] never met Kelly Lyons and so a genuine and contemporaneous witnessing did not take place…." The Tribunal further noted that whilst the Second Respondent denied the allegation, at no point in her answer or statement, did she assert that the TR1 form had in fact been signed by DF in her presence.

76.4 The allegation against the Second Respondent was that she had attested that DF had signed the TR1 form in her presence when he had not. To that end the Tribunal considered that whether the signature on the TR1 form submitted to HMLR was DF's was immaterial to the allegation; the authenticity or otherwise of the signature was irrelevant to the Tribunal's considerations. The Tribunal accepted DF's evidence that it was "impossible" for him to have signed in the Second Respondent's presence, as he had never met her. Accordingly, the Tribunal found allegation 2.1 proved beyond reasonable doubt on the evidence and submissions.

Dishonesty

76.5 Mr Goodwin submitted that in attesting that the document had been signed in her presence when it had not, the Second Respondent had acted dishonestly by the ordinary standards of reasonable and honest people, and that she realised that by those standards her conduct was dishonest.

76.6 The Tribunal found that reasonable and honest people applying ordinary standards would find that it was dishonest to sign a form to say that a signature had been witnessed when it had not, and that the Second Respondent knew that it was dishonest to sign a form stating that a signature had been witnessed when it had not. The fact that the Second Respondent asserted that DF had signed a previous version that had been witnessed, but was in the wrong format for submission to HMLR was immaterial. Accordingly the Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Second Respondent's conduct was dishonest.

77. **Allegation 2.2 - misappropriated client funds in the sum of £10,000 in breach of Rule 20.1 of the AR 2011.**

77.1 Mr Goodwin submitted that the Second Respondent misappropriated and/or received the benefit of £10,000, being the difference between the sale and purchase price of Flat 12.

77.2 The Tribunal accepted the evidence of WH, who explained that Flat 12 was marketed by Orchards. The first viewing of the property was undertaken on his behalf by his Mother and Aunt. He went for a viewing with his Uncle. The viewings took place with the Second Respondent in attendance. The Second Respondent had explained that the vendor was not accepting offers, so an offer of the full asking price was made to the Second Respondent, who in turn was to communicate the offer to the vendor. The Tribunal also accepted the evidence of DF, who stated that the offer of £115,000.00 was communicated to him by the Second Respondent via email.

77.3 The Tribunal, having already determined that there was no sub sale, found that the Second Respondent had been instrumental in the misappropriation of the £10,000.00; the offer of the full asking price of £125,000.00 was made to her by WH, and the communication of an offer of £115,000.00 was made by her to DF. Further, the financial transaction in relation to the sale and purchase had been routed through her Estate Agent accounts, so as to disguise the difference in the sale and purchase price, and to facilitate the misappropriation.

77.4 Accordingly the Tribunal found allegation 2.2 proved beyond reasonable doubt on the evidence and submissions.

Dishonesty

77.5 Mr Goodwin further submitted that the Second Respondent's conduct in misappropriating the sum of £10,000.00 was dishonest by the standards of reasonable and honest people, and that she realised that by those standards her conduct was dishonest.

77.6 The Second Respondent denied that her conduct was dishonest.

77.7 Applying the Twinsectra test the Tribunal found that there could be no doubt that reasonable and honest people, applying ordinary standards, would consider that a solicitor's clerk who was also an estate agent, telling the vendor of an offer that was lower than the actual offer which had been made, such as to misappropriate the difference, was dishonest. Further, the Second Respondent knew, that by those standards, her conduct was dishonest. The Second Respondent's conduct was integral to perpetrating the misappropriation. Accordingly, the Tribunal found, beyond reasonable doubt, that both elements of the Twinsectra test had been satisfied, and the Second Respondent's conduct was dishonest.

Previous Disciplinary Matters

78. None.

Mitigation

79. None.

Sanction

80. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition – December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

81. The Tribunal firstly considered the seriousness of the Respondents' proven conduct. The Tribunal found the Respondents to be completely culpable for the breaches; the misconduct having arisen as a direct result of their actions. The Respondents had clearly been motivated by financial gain. The First Respondent was an experienced

solicitor, who had been calculatedly dishonest, and who, when first questioned about the discrepancy in the sale and purchase price, had sought to deny any impropriety. The Respondents' dishonest conduct was engineered and deliberate; the Second Respondent having received one offer, communicated a different offer to DF. The Respondents had routed the misappropriated difference (£10,000) between their businesses so as to disguise that difference.

82. The Tribunal found that in acting in the way that he did, the First Respondent had caused harm to the reputation of the profession and the public; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

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

83. In misappropriating client funds in the way that he did, the First Respondent had caused direct harm to both WH and DF.

84. The Tribunal found the First Respondent's conduct to be aggravated by his proven dishonesty which was deliberate, calculated and a complete departure from the standards expected of a solicitor. The First Respondent had sought to conceal his actions, both initially when dealing with the funds received, and subsequently, when confronted by DF. The Tribunal determined that the First Respondent knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. Further, he had failed to co-operate fully with the Applicant.

85. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

86. The Tribunal did not find that the circumstances of this case were enough to bring it in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the First Respondent off the Roll of Solicitors.

87. In relation to the Second Respondent the Tribunal found that her culpability was high notwithstanding her unadmitted status; she was an equal participator in the deception of DF and WH, and seemingly commenced the deception when communicating the offer to DF. In light of the seriousness of the misconduct of the Second Respondent, namely her calculated dishonesty and lack of integrity, the Tribunal determined that it was undesirable for the Second Respondent to be employed by a solicitor without the

permission of the Applicant. It was therefore appropriate to make an order restricting the employment of the Second Respondent under Section 43 of the Solicitors Act 1974.

88. The Tribunal determined that given the Second Respondent's proven dishonesty, it was appropriate to impose a disciplinary sanction in addition to the Section 43 order. Given that the Second Respondent was unadmitted, the Tribunal's disciplinary powers were limited to the imposition of a financial penalty. The Tribunal found that the appropriate and proportionate level of that penalty in this instance was £10,000.

Costs

89. Mr Goodwin requested an Order for the Applicant's costs. The costs schedule contained a breakdown of the costs, which amounted to £43,800.65. Mr Goodwin submitted that the Tribunal should make an appropriate reduction in the amount claimed, as it included his attendance at the Tribunal for 3 days, whereas the hearing had only taken 1½ days.

90. The Tribunal considered the Costs Schedule carefully, and noted that a claim for 21 hours had been made by the IO in relation to "File Closure Procedures". The Tribunal considered that this amount of time was excessive, and reduced the claim accordingly. The Tribunal reduced the Applicant's costs to £38,800.65, and ordered that this amount be paid by the Respondents both jointly and severally.

91. At the hearing on 16 December 2015, the Tribunal directed, amongst other things, that should the Respondents wish their means to be taken into consideration by the Tribunal in relation to sanction and/or costs, they should submit a statement of their means by the date 14 days prior to the substantive hearing (19 July 2016). Neither Respondent had submitted a Statement of Means, nor made any submissions about the ability to pay the Applicant's costs. In the absence of any information or evidence of the Respondents income, expenditure, capital or assets, the Tribunal did not consider that this was a case where there should be any deferment of the costs Order; no such deferment had been requested by either Respondent.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, Michael Joseph Lyons, 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 £38,800.65 jointly and severally with the Second Respondent.

93. The Tribunal Ordered that as from 3rd day of August 2016 except in accordance with Law Society permission:-

    (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Kelly Louise Lyons;
    (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Kelly Louise Lyons
    (iii) no recognized body shall employ or remunerate the said Kelly Louise Lyons;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Kelly Louise Lyons in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall, except in accordance with Solicitors Regulation Authority permission, permit the said Kelly Louise Lyons to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall, except in accordance with Solicitors Regulation Authority permission, permit the said Kelly Louise Lyons to have an interest in the body;

The Tribunal further Ordered that the said Kelly Louise Lyons do pay a fine in the sum of £10,000. And it further Ordered that the said Kelly Louise Lyons do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,800.65 jointly and severally with the First Respondent.

Dated this 6th day of September 2016
On behalf of the Tribunal

R. Hegarty
Chairman