SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11516-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LUKE ANTHONY WELSH Respondent

Before:

Mr I. R. Woolfe (in the chair)
Miss H. Dobson
Lady Bonham Carter

Date of Hearing: 2 November 2016

Appearances

Mr Andrew Bullock, counsel, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN, instructed by Ms Emma Priest, solicitor, of the same address for the Applicant.

Mr Paul Bennett, solicitor advocate, of Aaron & Partners, Canon Court North, Abbey Lawn, Shrewsbury SY2 5DE for the Respondent who was present.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Luke Anthony Welsh, in a Rule 5 Statement dated 19 May 2016 were that: -

1.1 By knowingly creating misleading invoices in respect of the matters of Ms AR and Mr AP dated 29 June 2015 and 15 July 2015 respectively, he breached any or all of:

1.1.1 Principle 2 of the SRA Principles 2011 ("the 2011 Principles");

1.1.2 Principle 6 of the 2011 Principles; and

1.1.3 Rule 29.4 of the SRA Accounts Rules 2011 ("the AR 2011").

1.2 By failing to transfer the total sums of £21,000 and £3,000 received in respect of costs on the matters relating to Ms AR and Mr AP on 12 and 14 August 2015 respectively from client account to office account he breached any or all of: -

1.2.1 Principle 2 of the 2011 Principles;

1.2.2 Principle 6 of the 2011 Principles;

1.2.3 Rule 17.1 of the AR 2011;

1.2.4 Rule 17.3 of the AR 2011;

1.2.5 Rule 18.3 of the AR 2011;

1.2.6 Rule 29.1 of the AR 2011;

1.2.7. Rule 29.4 of the AR 2011; and

1.2.8 Rule 29.6 of the AR 2011.

1.3 By making an improper withdrawal of £1,500 on 17 August 2015 from the client account ledger of Ms AR in settlement of a wasted costs order in favour of Darwin Gray Solicitors on the unconnected matter of Ms DP, he breached any or all of: -

1.3.1 Principle 2 of the 2011 Principles;

1.3.2 Principle 6 of the 2011 Principles; and

1.3.3 Rule 20.1 of the AR 2011;

1.4 By attempting to make improper withdrawals in the sums of £1,500 and £1,800 on 26 August 2015 from the client account ledgers of Ms AR and Mr AP respectively he breached either or both of: -

1.4.1 Principle 2 of the 2011 Principles; and

1.4.2 Principle 6 of the 2011 Principles.

1.5 By fabricating a fee note dated 21 August 2015 for £1,800 including VAT, purportedly for Counsel's fees on a matter where Counsel had not been instructed, and in so doing mislead his employers that that sum was genuinely owed to Counsel, he breached either or both of :-

1.5.1 Principle 2 of the 2011 Principles; and

1.5.2 Principle 6 of the 2011 Principles.

2. While dishonesty was alleged with respect to allegations 1.1, 1.2, 1.3, 1.4 and 1.5, proof of dishonesty was said not to be an essential ingredient for proof of any of the allegations.

Documents

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

Applicant: -

- Application dated 19 May 2016
- Rule 5 Statement, with exhibit "EP1", dated 19 May 2016
- Statement of costs at date of issue of proceedings
- Statement of costs dated 25 October 2016

Respondent: -

- Response to the Rule 5 Statement, dated 30 June 2016
- Respondent's witness statement, dated 11 October 2016
- Respondent's statement of means, dated 5 October 2016
- Civil Evidence Act Notice re Response and witness statement, dated 12 October 2016

Other: -

- Tribunal's standard directions order, 27 May 2016
- Certificates of readiness and proposed hearing timetables from each party

Factual Background

Background

4. The Respondent was born in 1985 and was admitted to the Roll of Solicitors in 2010. At the date of the Rule 5 Statement, the Respondent remained on the Roll of Solicitors, but did not hold a current practising certificate.

5. The Respondent joined Howells Legal Limited ("the Firm") as an Assistant Solicitor in June 2013. At all material times, he was responsible for the new employment law department, predominantly based at the Firm's Swansea office.

6. The Respondent acted for Ms DP in a claim against her former employers, PM. About the time the claim was settled between the parties, the Employment Tribunal issued a Notice to Dismiss the claim due to procedural irregularities, of which the Respondent had been aware; the point at which he became aware of the dismissal of the proceedings was disputed.

7. Darwin Grey, the solicitors for PM, applied for the settlement agreement to be set aside, and sought a wasted costs order against the Firm, which was made by a consent order dated 23 July 2015 in the sum of £1,500.

8. The Respondent also represented Ms AR in a claim against her former employers, HL. At the conclusion of the matter, HL agreed to pay Ms AR's costs and disbursements in the sum of £21,150 inclusive of VAT. On 29 June 2015, the Respondent sent an invoice to HL for this sum. The same day he submitted a different invoice, relating to the same matter, to the Firm's accounts department, in the sum of £18,000 inclusive of VAT.

9. On 12 August 2015 HL paid the sum of £21,150 to the Firm in respect of costs. This sum was credited to Ms AR's client account ledger, before the sum of £18,000 was transferred to the Firm's office account in settlement of the invoice dated 29 June 2015. A payment of £150 was also made on 18 August 2015 to Christopher Howells of counsel who had advised on the matter. This left a balance of £3,000 on the client account ledger for Ms AR.

10. At the Respondent's request, on 17 August 2015, a cheque for £1,500 was requested to be debited against the client account ledger of Ms AR. This cheque was sent to Darwin Grey in settlement of the wasted costs order on the unconnected matter of Ms DR on 19 August 2015.

11. On 26 August 2015, the Respondent requested a further cheque be debited from the client account ledger of Ms AR, in the sum of £1,500 payable to "N. Jones" purportedly in respect of counsel's fees.

12. Although the Firm had no reason to doubt that counsel had been instructed on this matter, it was the Firm's policy that counsel's full name must be provided when paying counsel's fees, not just an initial. Accordingly, when Mr LEK, a director at the Firm, was asked to sign the cheque payable to "N Jones" on 27 August 2015 he thought this unusual. Mr LEK requested a copy of counsel's fee note on the matter of Ms AR, (which he eventually received from the Respondent via Ms EGW, the Firm's Accounts / Practice Manager, on 11 September 2015).

13. On closer examination of the client and office account ledgers and file relating to Ms AR Mr LEK noticed the unconnected payment of £1,500 to Darwin Grey. He also discovered a copy of the original invoice sent to HL on 29 June 2015, which was different to the invoice posted by the Firm's accounts team.

14. Mr LEK immediately notified his co-director and the Firm's COFA Mr JOC, and at the same time emailed the Respondent asking him to clarify the position. No response from the Respondent was received to that email, nor to an email sent the following day by Mr LEK.

15. Following Mr LEK's concerns, Mr PH, a director and Manager of the Swansea office spoke to the Respondent on 1 September 2015. The Respondent admitted he had been too embarrassed to admit to his error on the matter relating to Ms DP, and had instead devised a way to meet the costs order using the artificially created surplus in the Ms AR matter. This was confirmed in an email from the Respondent later that day.

16. The Respondent was asked to attend a disciplinary hearing on 9 September 2015, following which he received a final written warning, which he accepted by email dated 11 September 2015.

17. The Firm decided that the Respondent's actions in paying the wasted costs order in favour of PM out of a payment received on account of costs on the matter of Ms AR was a serious but one-off case of bad judgment. When asked if there was anything further he wanted to add, the Respondent stated there were no further issues. The Respondent denied that he had been asked whether there were any further matters. In any event, Mr LEK continued to investigate the possibility of whether there were similar issues on any of the Respondent's other files.

18. The Respondent also acted for Mr AP in his claim against SG. This claim was settled in favour of Mr AP for a global sum, to include £3,000 (inclusive of VAT) to be paid to the Firm in respect of costs. However, on 15 July 2015 the Respondent created an invoice to be submitted to the Firm's accounts department for £1,200 (inclusive of VAT) instead of the agreed £3,000, thereby leaving a balance of £1,800 on the client account ledger for Mr AP. The global sum was received by the Firm on 14 August 2015.

19. During his investigations, Mr LEK discovered that on 26 August 2015 the Respondent had requested a second cheque payable to "N. Jones" again purportedly in respect of "counsel's fees" of £1,800, to be drawn against the client account ledger for Mr AP.

20. Mr LEK made further enquiries with Civitas Chambers and discovered that the reference on the fee note provided by the Respondent on Ms AR's matter in fact related to a separate matter dealt with by the Respondent where a different barrister (Mr William Rees) had been instructed.

21. Although there was a barrister called Nicholas Jones at Civitas Chambers, the Respondent had not instructed him on the matters relating to Ms AR or Mr AP.

22. The Respondent was subsequently advised by an email at 10.57 on 2 October 2015 that a further disciplinary hearing was required. After various emails between the Respondent and the Firm, including one at 13.51 from the Firm, the Respondent emailed notice of his resignation with immediate effect at 14.38 that day.

23. On 25 September 2015, the Firm reported the Respondent's conduct on the matters of Ms DP, Ms AR and Mr AP to the SRA. On 21 October 2015, the Firm sent a further, more detailed report to the SRA.

Allegation 1.1

24. When the case between his client, Ms AR and her former employer, HL, was concluded, an agreement was reached between the parties whereby HL would pay Ms AR's costs in the sum of £21,150. On 29 June 2015, the Respondent sent an invoice to HL for this sum. The same day he created a bill, described as a final bill, relating to the same matter, in the sum of £18,000, which he submitted to the Firm's accounts department.

25. On 15 July 2015, the Respondent created a further bill, again described as a final bill, to be sent to the Firm's accounts department in respect of his client Mr AP. On this occasion the bill was in the sum of £1,200. In fact, it had been agreed in or about July 2015 that the sum of £3,000 would be paid by SG in respect of costs.

Allegation 1.2

26. The Respondent received the sum of £21,150 from HL in settlement of Ms AR's costs on 12 August 2015 only £18,000 of which was transferred to office account. After a cheque for £150 was sent to Mr Christopher Howells of Counsel in settlement of his outstanding fees on 20 August 2015 £3,000 owing the Firm in respect of the balance of Ms AR's costs was left on the client account ledger relating to Ms AR.

27. On 14 August 2015, the Respondent received a global sum of £43,029.33 from SG on the client account ledger for Mr AP, inclusive of the £3,000 agreed in respect of costs. Only £1,200 was transferred to office account in settlement of the invoice dated 15 July 2015 leaving the balance of the agreed costs of £1,800 on the client account ledger for Mr AP.

Allegation 1.3

28. In order to settle the wasted costs order in favour of PM, on 18 August 2015 the Respondent requested a cheque payable to Darwin Grey for this sum to be debited from the client account ledger relating to Ms AR. The Respondent subsequently admitted that he did this because he "didn't want to highlight a mistake [he] had made".

Allegation 1.4

29. On 26 August 2015, the Respondent requested that a further cheque be debited from the client account ledger of Ms AR, in the sum of £1,500 payable to "N. Jones", purportedly in respect of counsel's fees.

30. On 26 August 2015, the Respondent requested that a second cheque payable to "N. Jones", again purportedly in respect of "counsel's fees", be drawn against the client account ledger for Mr AP.

31. Later that day the Respondent emailed Ms RM, an employee in the Firm's accounts department, asking "Can these 2 cheques be processed please so I can get them tomorrow so can pay them out - barrister chasing me haha".

32. Upon later investigation by Mr LEK, it transpired that although there was a barrister by the name of Nicholas Jones at Civitas Chambers, he had not been instructed by the Respondent on behalf of his clients Ms AR or Mr AP.

33. The Respondent subsequently prepared a 'statement of [his] recent actions' in which he admitted:

> "I therefore decided to issue two cheques on the same day to "N. Jones" with the intention of asking a friend of mine with the same name to bank the cheques and for me to have the money in order to pay the fee notes. I raised the cheques expecting them to come down to Swansea on 28 August 2015 and I chose this date because I was aware S would be off and I knew that she would query the cheques".

Allegation 1.5

34. In response to Mr LEK's request for a copy of counsel's fee note on the matter of Ms AR, the Respondent provided what purported to be a fee note raised by Nicholas Jones of Civitas Chambers. However, enquiries made by Mr LEK of Civitas Chambers disclosed that the reference number on fee note related to a separate matter in which Mr Williams Rees, a barrister at those Chambers, had previously been instructed by the Respondent. The Respondent subsequently admitted that the fee note in question as not a genuine document but was one which he had forged by amending a fee note raised by Mr Rees**.**

The SRA's Investigation

35. On 1 December 2015, the SRA sent an "Explanation with warning" ("EWW") letter to the Respondent, asking for his response to the allegations against him by 16 December 2015.

36. The SRA sent a further letter to the Respondent on 23 December 2015, chasing a response to the EWW letter by 19 January 2016.

37. On 19 January 2016, the Respondent provided his response to the EWW ("the Response"). In the Response, the Respondent stated that he:

> "accepts that [I] made the false accounting records as detailed".

38. The Respondent further stated that he:

> "was effectively tasked to set up an Employment Department within the firm single-handedly. Although I relished the challenge and believe I accomplished a lot, in hindsight I was particularly let down by the firm by having no support or supervision".

39. The Respondent further stated that:

> "I want to stress that I had never made accounting errors such as the ones on [AR] and [AP], and believe that it was a result of the immense stress I was undergoing at the time"

and

> "again with hindsight, I believe I was on the verge of a breakdown".

40. The Respondent also stated that:

> "It is important to note that the surplus funds retained on both matters were not for personal gain whatsoever.....I would never have used client account money as I know how carefully you need to treat client money"

and

> "I appreciate how this may call into question my 'integrity' but I have taken great pride in being a solicitor and have always been entirely honest with my clients."

41. In respect of the two cheques requested by the Respondent to be payable to "N. Jones" the Respondent stated:

> "I accept that I requested the cheques, however that evening I had realised the seriousness of my actions and had decided to cancel the cheques upon receiving them from the Accounts Team. As such, I believe that this was not a withdrawal as the money was not in fact taken. Further, the monies were not monies of the client but were profit costs for the firm".

It was noted that the Firm itself had already cancelled the cheques before they were sent to the Respondent.

42. The Respondent did not accept that he had breached Principles 5 or 6 of the SRA Principles 2011. However, he did accept:

> "that I have committed a number of mistakes, and have learnt significantly from making such errors. I have not renewed my practising certificate and knowing that I am currently not able to practice has made me feel worthless".

43. On 15 February 2016, an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

44. No oral evidence was given and the matter proceeded on the papers and on the Respondent's admissions.

Findings of Fact and Law

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

46. **Allegation 1.1 - By knowingly creating misleading invoices in respect of the matters of Ms AR and Mr AP dated 29 June 2015 and 15 July 2015 respectively, he breached any or all of:**

1.1.1 Principle 2 of the SRA Principles 2011 ("the 2011 Principles");

1.1.2 Principle 6 of the 2011 Principles; and

1.1.3 Rule 29.4 of the SRA Accounts Rules 2011 ("the AR 2011").

46.1 The Respondent admitted this allegation, the factual background to which is set out at paragraphs 4 to 23 and 24 to 25.

46.2 Principle 2 of the SRA Principles 2011 states that "You must act with integrity" whilst Principle 6 of the SRA Principles 2011 states that "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

46.3 Rule 29.4 of the SRA Accounts Rules 2011 states that "All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account".

<u>The Applicant's Submissions</u>

46.4 It was submitted for the Applicant that the description of the bills dated 29 June and 15 July 2015, on the matters of Ms AR and Mr AP as final bills was misleading. A final bill sets out the total amount of the costs which are payable to a solicitor by the paying party in respect of work undertaken on a given client matter after allowance has been made for payments on account made pursuant to interim bills (if appropriate). However, neither of the bills raised by the Respondent set out the total amount of the costs payable; each covered part only of the sum concerned although a reader would have assumed they covered the whole amount payable.

46.5 Furthermore, it was submitted, the Respondent must have known that the bills which he was raising did not cover the full amount of costs payable on the matters concerned because (in the case of Ms AR) he had raised an invoice for the full amount of the costs to be paid the day before and because (in the case of Mr AP) of the proximity in time between the date upon which agreement had been reached as to costs and the date of the purported final bill.

46.6 It was submitted that the bills were created with the intention of misleading the Firm as to the level of costs received from HL and SG, and so create apparent credit balances of £3,000 and £1,800 respectively on client account, which could then be utilised by the Respondent without the Firm's knowledge.

46.7 It was submitted for the Applicant that submitting invoices which the Respondent knew to be misleading resulted in dealings with office account money received in respect of costs on the matters of Ms AR and Mr AP to being inaccurately recorded on the office side of the appropriate client ledger accounts.

46.8 Further, it was submitted that, by knowingly creating misleading invoices and submitting the same to the Firm's accounts department, the Respondent failed to act with integrity and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services, and therefore breached Principles 2 and 6 of the SRA Principles 2011. The Respondent also failed to ensure that all dealings with office money relating to any client matter, or to any trust matter, were appropriately recorded in an office cash account and on the office side of the appropriate client ledger account and he therefore breached Rule 29.4 of the SAR Accounts Rules 2011.

The Tribunal's Findings

46.9 The Respondent admitted the allegation in full, and made no submissions on the allegation.

46.10 The Tribunal accepted the Applicant's submissions as to the events and the breaches of the Principles and AR 2011. The Tribunal was satisfied on the evidence presented and on the Respondent's admission that this allegation had been proved to the required standard.

47. **Allegation 1.2 - By failing to transfer the total sums of £21,000 and £3,000 received in respect of costs on the matters relating to Ms AR and Mr AP on 12 and 14 August 2015 respectively from client account to office account he breached any or all of: -**

1.2.1 Principle 2 of the 2011 Principles;

1.2.2 Principle 6 of the 2011 Principles;

1.2.3 Rule 17.1 of the AR 2011;

1.2.4 Rule 17.3 of the AR 2011;

1.2.5 Rule 18.3 of the AR 2011;

1.2.6 Rule 29.1 of the AR 2011;

1.2.7. Rule 29.4 of the AR 2011; and

1.2.8 Rule 29.6 of the AR 2011.

47.1 This allegation, the factual background to which is set out at paragraphs 4 to 23 and 26 to 27, was admitted by the Respondent.

47.2 Rule 17.1 of the SRA Accounts Rules 2011 prescribes the steps a solicitor must take when sums are received in full or part settlement of a bill, including:

- at Rule 17.1 (a)(i) "if the sum comprises office money .....only, it must be placed in an office account";

- at Rule 17.1 (a) (iii) "if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments)"... or

- Rule 17.1 (c) "pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt".

47.3 Rule 17.3 of the SRA Accounts Rules 2011 states "Once you have complied with rule 17.2...., the money earmarked for costs becomes office money and must be transferred out of the client account within 14 days".

47.4 Rule 18.3 of the SRA Accounts Rules 2011 states "If the entire payment is placed in a client account, all office money and/or out-of-scope money must be transferred out of the client account within 14 days of receipt".

47.5 Rule 29.1 of the SRA Accounts Rules 2011 states "You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you.....; and

(b) any office money relating to any client or trust matter.

47.6 Rule 29.6 of the SRA Accounts Rules 2011 states "Money which has been paid into a client account under rule 17.1(c) (receipt of costs), or rule 18.2(b) (mixed money), and for the time being remains in a client account, is to be treated as client money; it must be appropriately identified and recorded on the client side of the client ledger account."

<u>The Applicant's Submissions</u>

47.7 It was submitted for the Applicant that in failing to transfer the total monies paid to the Firm in respect of costs on the matters relating to Ms AR and Mr AP, and instead creating apparent credit balances on the respective client account ledgers, unbeknownst to the Firm, which he later withdrew or attempted to withdraw for improper purposes, the Respondent failed to act with integrity and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services, and therefore breached Principles 2 and 6 of the SRA Principles 2011.

47.8 It was also submitted that the Respondent failed to properly account for monies received in respect of costs and failed to maintain proper and accurate accounting records, and therefore breached Rules 17.1, 17.3, 18.3, 29.1, 29.4 and 29.6 of the SRA Accounts Rules 2011.

The Tribunal's Findings

47.9 The Respondent admitted this allegation and did not make any submissions. The Tribunal accepted the Applicant's submissions and was satisfied on the facts and on the admission that this allegation had been proved to the required standard.

48. **Allegation 1.3 - By making an improper withdrawal of £1,500 on 17 August 2015 from the client account ledger of Ms AR in settlement of a wasted costs order in favour of Darwin Gray Solicitors on the unconnected matter of Ms DP, he breached any or all of: -**

1.3.1 Principle 2 of the 2011 Principles;

1.3.2 Principle 6 of the 2011 Principles; and

1.3.3 Rule 20.1 of the AR 2011;

48.1 The Respondent admitted this allegation, the factual background to which is set out at paragraphs 4 to 23 and 28.

48.2 Rule 20.1 of the SRA Accounts Rules 2011 prescribes the circumstances in which monies can be paid out of client account. Withdrawals from client account in circumstances other than those prescribed by Rule 20.1 are in breach of that rule.

The Applicant's Submissions

48.3 It was submitted for the Applicant that by withdrawing funds from the client account ledger of Ms AR to settle an entirely unconnected liability on the matter relating to Ms DP, without the client's knowledge or consent, the Respondent made a withdrawal from client account in circumstances other than those prescribed in Rule 20.1 of the SRA Accounts Rules 2011. His actions in so doing also demonstrated a lack of integrity, in that a solicitor of integrity would not misappropriate monies properly due to his employers. Such actions and would therefore also tend to undermine the trust and confidence the public would place in him and in the provision of legal services.

The Tribunal's Findings

48.4 The Respondent had admitted the allegation and made no submissions. The Tribunal accepted the Applicant's submissions and was satisfied on the facts, and on the admission, that this allegation had been proved to the required standard.

49. **Allegation 1.4 - By attempting to make improper withdrawals in the sums of £1,500 and £1,800 on 26 August 2015 from the client account ledgers of Ms AR and Mr AP respectively he breached either or both of : -**

1.4.1 Principle 2 of the 2011 Principles; and

1.4.2 Principle 6 of the 2011 Principles.

49.1 The Respondent admitted this allegation, the factual background to which is set out at paragraphs 4 to 23 and 29 to 33.

The Applicant's Submissions

49.2 It was submitted for the Applicant that no explanation was given as to why the Respondent alleged that he intended to pay the outstanding counsel's fees this way (i.e. by paying money to his friend, Mr N Jones) as opposed to simply making a direct payment out of the artificially created surplus on client account.

49.3 It was submitted that the Respondent accepted that he had requested the cheques, but he maintained that that evening he realised the seriousness of his actions and had decided to cancel the cheques upon receiving them from the Firm's accounts department. The cheques, however, were cancelled by the Firm as a result of Mr LEK's concerns.

49.4 It was submitted that in intending to and/or attempting to make inappropriate withdrawals of monies belonging to the Firm, and by creating misleading cheque requests which he knew to be untrue, the Respondent failed to act with integrity and failed to behave in a manner which maintained the trust the public placed in him and in the provision of legal services, and therefore breached Principles 2 and 6 of the SRA Principles 2011.

The Tribunal's Findings

49.5 The Respondent had admitted the allegation and made no submissions. The Tribunal accepted the Applicant's submissions and was satisfied on the facts and on the admission that this allegation had been proved to the required standard.

50. **Allegation 1.5 - By fabricating a fee note dated 21 August 2015 for £1,800 including VAT, purportedly for Counsel's fees on a matter where Counsel had not been instructed, and in so doing mislead his employers that that sum was genuinely owed to Counsel, he breached either or both of: -**

1.5.1 Principle 2 of the 2011 Principles; and

1.5.2 Principle 6 of the 2011 Principles.

50.1 The Respondent admitted this allegation, the factual background to which is set out at paragraphs 4 to 23 and 34 above.

Applicant's Submissions

50.2 It was submitted that the fabrication of the fee note was done to create the incorrect impression that the genuine barrister Mr Nicholas Jones of Civitas Chambers had been instructed on the matter relating to Ms AR and the sum of £1,500 previously requested by the Respondent was legitimately outstanding.

50.3 It was further submitted that by deliberately fabricating the fee note purportedly for Nicholas Jones the Respondent failed to act with integrity and failed to behave in a manner which maintained the trust the public placed in him and in the provision of legal services, and therefore breached Principles 2 and 6 of the SRA Principles 2011.

The Tribunal's Findings

50.4 The Respondent had admitted the allegation and did not make submissions. The Tribunal accepted the Applicant's submissions. The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the required standard.

51. **Allegation 2 - While dishonesty was alleged with respect to allegations 1.1, 1.2, 1.3, 1.4 and 1.5, proof of dishonesty was said not to be an essential ingredient for proof of any of the allegations.**

51.1 The Respondent admitted the allegation of dishonesty with regard to each of the individual allegations, the factual background to which is set out at paragraphs 4 to 34 above.

Applicant's Submissions on Dishonesty

51.2 It was submitted for the Applicant that the Respondent's actions were dishonest in accordance with the test for dishonesty in Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") which applied, in the context of solicitors' disciplinary proceedings, the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12 ("Twinsectra"). Before a finding of dishonesty could be made, the Tribunal must find that the person acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

51.3 It was submitted that in knowingly creating false and misleading invoices in respect of monies rightfully due to the Firm in settlement of costs on the matters of Ms AR and Mr AP, and thereby leaving a credit on the respective client account ledgers, which he then withdrew or attempted to withdraw for improper purposes, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

51.4 It was further submitted that not only was his conduct in so doing dishonest by the ordinary standards of reasonable and honest people but he must also have been aware that it was dishonest by those standards for the following reasons: -

51.4.1 The Respondent made a conscious decision to create and submit the false invoice relating to the costs recovered from HL on the matter of Ms AR, and thereafter to use the artificially created surplus to settle the costs liability on the unconnected matter of Ms DR because he *"didn't want to highlight a mistake [he] had made"*;

51.4.2 The Respondent admitted that he made the false accounting records and stated that he could appreciate how *"this may call into question my 'integrity'"*;

51.4.3 The Respondent clearly realised that his actions in paying monies to Darwin Grey from the unconnected client account ledger for Ms AR were improper, stating in his letter forwarded to the Firm on 1 September 2015:

> "I am not in any way going to try to defend what [I] did";
>
> "Ever since raising the cheque, I have been sick with worry and regret but I know what's done is done and there can be no going back";
>
> that he was "willing to reimburse the Firm £1,500 immediately so at least the two ledgers can be rectified accordingly";
>
> that he could "appreciate that this is potentially a disciplinary offence, and again I am more than welcome to accept any written warnings which you wish to issue me with. Further, if you are of the opinion that what I have done amounts to gross misconduct, I am willing to tender my resignation with immediate effect";
>
> "this is without a doubt a mistake I'll regret for the rest of my life";

51.4.4 The Respondent made the further conscious decisions to request monies from the client accounts ledgers relating to Ms AR and Mr AP, falsely claiming these payments were in settlement of counsel's fees;

51.4.5 Moreover, he deliberately chose to pretend that they were for Nicholas Jones of counsel, as this was a similar name to that of his friend, to whom he in fact he intended to pay the monies:

> "I therefore decided to issue two cheques on the same day to "N. Jones" with the intention of asking a friend of mine with the same name to bank the cheques and for me to have the money .....";

51.4.6 In addition to the incorrect cheque requests maintaining that the monies were required for "counsel's fees", the Respondent made other misleading statements to the Firm to support his claim for the payments of £1,500 and £1,800:

- When the Firm queried why Nicholas Jones, a barrister specialising in personal injury work had been instructed on the employment claims of Ms AR and Mr AP he untruthfully stated that the cases had required some specialist personal injury advice;

- The Respondent ultimately only conceded that that the intended recipient of the cheques was in fact a friend of his called N Jones when the Firm advised that the Clerk to Nicholas Jones had confirmed that Mr Jones had not been instructed by the Respondent on the matter of Ms AR;

- He also emailed RM in the Firm's accounts department asking that the two cheques be processed because "barrister chasing me haha" when he knew this to be untrue.

51.4.7 The Respondent requested the cheques on a date when he thought his requests would not be questioned:

> "I raised the cheques expecting them to come down to Swansea on 28 August 2015 and I chose this date because I was aware S would be off and I knew that she would query the cheques";

51.4.8 When the Firm requested a copy of the fee note on 9 September 2015 to substantiate the cheque requested purportedly to pay counsel's fees on the matter of Ms AR the Respondent doctored a fee note he had previously received from a different barrister at the same chambers as the genuine Nicholas Jones, to substantiate his attempt to improperly withdraw finds from the ledger of Ms AR;

51.4.9 The Respondent had the opportunity to make full admissions on several occasions, including in response to the emails dated 27 and 28 August 2015 from Mr LEK, during his initial discussion with Mr PH and at the initial disciplinary hearing on 9 September 2015, yet chose not to do so, and instead continued to mislead his employers as to the extent of his wrongdoing;

51.4.10 In his subsequent statement to the Firm the Respondent admitted:

> "In terms of explaining those actions, I am no way going to try to justify them as I know how wrong it was and the consequences of doing so";
>
> "I have been unable to sleep properly and have not told a soul outside the firm as I know how disappointed people will be in my .... because of how much I have .... abused the enormous trust you had in me";
>
> that it would be "entirely understandable" if the Firm's trust in him had been "irrevocably broken";

51.4.11 In his email to the Respondent at 13.51 on 2 October 2015, Mr MH, the Firm's Managing Partner, refers to a comment made by the Respondent the previous day, that "you believe that you are likely to be struck off as a Solicitor".

The Tribunal's Findings

51.5 The Respondent made no submissions with regard to this allegation, having admitted it.

51.6 The Tribunal accepted the Applicant's submissions. He had created false and misleading invoices, failed to transfer monies which were properly due to the Firm in respect of costs, improperly withdrew £1,500 from the ledger of Ms AR to settle a wasted costs order in an unrelated matter, attempted to make improper withdrawals of £1,500 and £1,800 (purportedly for counsel's fees) and fabricated a fee note. Each and every aspect of this conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people.

51.7 Furthermore, the Tribunal was satisfied that the Respondent knew his actions were dishonest by those same standards, for the reasons set out at paragraph 51.4 above.

51.8 The Tribunal was satisfied to the required standard, both on the facts and on the admission, that this allegation had been proved.

Previous Disciplinary Matters

52. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

53. Mr Bennett, for the Respondent, submitted that at the time of the relevant misconduct the Respondent was a reasonably junior solicitor, with around five years' post-qualification experience. He was an assistant solicitor, not a partner. It was submitted that his actions had been naïve and stupid as well as dishonest.

54. Mr Bennett submitted that whilst the Respondent did not suggest that there were any exceptional circumstances to consider, he had felt under pressure at the relevant time and wished to record the circumstances in which he had made the misjudgements which had led to these proceedings.

55. The Respondent had made an error, which had resulted in a wasted costs order against the Firm. The Respondent had felt that he could not inform the Firm about this, as he believed it would lead to problems for him if he did so. This was in the context where the Respondent had been recruited to create an employment department for the Firm. He was the only employment lawyer in the Firm's five offices in South Wales. The focus of his work was as a "community" solicitor, acting for individuals rather than businesses. Mr Bennett submitted that the Respondent had felt under increasing pressure to bill significant sums during his two years with the Firm and he had increasingly felt unable to cope. Mr Bennett told the Tribunal that in addition to his usual workload, the Respondent was expected to write a regular newspaper column to raise the Firm's profile and to "blog" on employment law matters as well as to establish a new department.

56. Mr Bennett submitted that the Respondent's day to day work was unsupervised, although his dealings with accounts were clearly supervised. Mr Bennett submitted that being unsupervised led to the Respondent feeling unable to cope, which in turn led to the circumstances which led him to the Tribunal. The Respondent admitted that he had made an error of judgement, for which he was responsible, but he had faced a build up of pressure. By way of example, the Respondent's father, who had a property in Spain, had fitted broadband so that the Respondent could work whilst visiting. Mr Bennett told the Tribunal that at the time of the relevant events (August/September 2015) the Respondent was due to get married. He had returned from the airport, from which he was due to set off for his "stag do" with friends, in order to "face the music" when the misconduct came to light. Whilst the Respondent had felt stressed and anxious, he had not sought any medical assistance with these problems and so could not properly argue that there were exceptional circumstances.

57. Mr Bennett told the Tribunal about the Respondent's family circumstances, which are not recorded here to preserve the privacy of his family. The Respondent wanted to be able to support his family, but accepted that his career as a solicitor was over. Having trained and worked as a solicitor, the Respondent was devastated that he would be struck off the Roll. Mr Bennett told the Tribunal that the Respondent was now rebuilding his career outside the legal profession. He was self-employed, giving advice on employment matters. This was not a reserved activity and his work was outside the regulated sector.

58. Mr Bennett submitted that the Respondent had shown significant insight into his misconduct. He deeply regretted his actions and was racked with guilt. Mr Bennett told the Tribunal that his instructions were that this matter was constantly on the Respondent's mind, and he was conscious he had let others down. The Firm was a respectable firm, and the Respondent wished to apologise to the Firm, the Tribunal and his family for his conduct.

59. The Respondent accepted that the Firm was obliged to report him to the Applicant. He wished the Firm well for the future and wanted to record his apology to the Firm for his mistake. The Respondent accepted that he should have spoken to the Directors of the Firm about the pressures he felt and about these events, in particular the wasted costs order. At the relevant time he had been distracted by issues concerning his workload, health issues within his family and his plans to marry. As already noted, the Respondent had not attended his own "stag do" in order to speak to the Firm about the investigation. He had not tried to run away. The Respondent had chosen not to apply to renew his Practising Certificate after leaving the Firm.

60. Mr Bennett submitted that the Respondent would face considerable challenges in rebuilding a career outside the profession. However, he accepted that in the light of the case law, in particular Bolton v The Law Society [1994] 1 WLR 512, maintaining the confidence of the public in the profession was the fundamental purpose of sanction in the Tribunal. The Respondent wished it to be noted that he had shown insight; the Tribunal's acknowledgement of that would help him to rebuild a career outside the profession. The Respondent had sought to limit the impact of his misconduct, by offering his resignation to the Firm. It was likely that the Tribunal's findings would have an impact on the Respondent's new business, and the

Respondent hoped that the Tribunal would find that he had shown insight into his misconduct.

Sanction

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

62. The Tribunal wished to record that it was impressed by the manner in which the Firm had dealt with the Respondent. It had promptly made a report to the Applicant, which was followed up with further detail as the Firm's investigation continued. Whilst the Firm had initially thought that the Respondent had made just one, albeit serious, misjudgement and had been prepared to allow him a second chance, the revelation of further misconduct had led it to the position where the Respondent had to leave the Firm. The Respondent had chosen to resign before the disciplinary process was completed. The Tribunal noted that the Firm had behaved as any firm ought to do when it discovered serious misconduct by an employee. It was also due to the Firm's internal system, of requiring cheques to counsel to set out the full name of the relevant barrister, that this matter had come to light. Mr LEK had properly raised a concern about the cheque, which had then been investigated by him and reported to the Firm's Compliance Officer for Finance and Administration. The Tribunal was satisfied that the Firm had dealt appropriately with the Respondent and with the Applicant concerning the Respondent's conduct.

63. The allegations in this case all concerned the manner in which the Respondent had dealt with costs due to the Firm in the course of his employment. There was no evidence that the Respondent had personally benefited from these matters, save that he had temporarily avoided the Firm discovering that a wasted costs order had been made against the Firm on a matter of which he had conduct. The common feature in the matters of Ms AR and Mr AP was that the Respondent had created invoices for internal accounting purposes which were for lower sums than the amount which was actually to be paid by the other party. The difference was then misapplied, or there was an attempt to misapply it, to pay third parties unconnected with the retainer. The allegations included the creation of false documents, which would always be regarded as a serious matter.

64. In assessing the seriousness of the Respondent's misconduct, the Tribunal considered the degree of culpability, the harm caused and any aggravating or mitigating factors which were present.

65. The Tribunal noted that the Respondent's motivation for his misconduct had been concealment of the error he had made in a case, which led to a wasted costs order being made against the Firm. Whilst he had not personally gained financially from his misconduct, it was clearly motivated by self-interest in that he had avoided (for a period) any internal sanction by the Firm for his error. His actions were clearly planned; it had taken some thought to create misleading bills, decide to draw cheques payable to "N Jones" and then fabricate a fee note. The Respondent had breached the trust the Firm placed in him as an employee. At about five years' post-qualification at the relevant time, the Respondent was not a junior employee. The Respondent bore sole and heavy culpability for the misconduct.

66. The Respondent's misconduct would have a considerable effect on the reputation of the profession, as there had been such a lack of probity and integrity on his part. It was correct that no client had suffered, but the reputation of the Firm would be damaged by the Respondent's actions.

67. There were clearly aggravating factors present. Dishonesty had been admitted and proved. The conduct had been repeated and the Respondent had taken steps to conceal what he had done. The Respondent well knew that he should not have acted as he did.

68. In considering mitigating factors, the Tribunal noted that Mr Bennett had stressed the submission that the Respondent had shown genuine insight. The Tribunal also noted that the Respondent had denied that the Firm had specifically asked him, on 9 September 2015 in the context of a disciplinary hearing, if there were any other matters (in addition to the Ms AR matter) ought to be reported. Whether or not the Respondent had been asked that question, there had been an opportunity for the Respondent to report what he had done with regard to Mr AP; he had not taken that opportunity. Whilst it was clearly the case that the Respondent had made full admissions to the Applicant and then to the Tribunal, he had not initially shown insight into his misconduct. There was no doubt, however, that with the benefit of legal advice the Respondent appreciated that what he had done was wrong. The Tribunal found that no member of the public had suffered as a result of the Respondent's misconduct, but his Firm had. The Tribunal noted that the sums involved were relatively small.

69. The Tribunal assessed the Respondent's conduct as having shown a high level of conscious impropriety. It was clear that a reprimand, fine, restrictions or suspension would not be sufficient to reflect the seriousness of the Respondent's misconduct. Indeed, where dishonesty had been established, the usual sanction was to strike off the Respondent unless there were exceptional circumstances. It was not submitted that there were any exceptional circumstances in this case, and the Tribunal could find none. In all of the circumstances, the only appropriate and proportionate sanction was for the Respondent to be struck off the Roll of Solicitors.

Costs

70. Mr Bullock made an application for the Respondent to pay the Applicant's costs of the proceedings and referred to a statement of costs in the total sum of £5,034.05. That figure included costs at the date of issue in the sum of £2,688.50. Mr Bullock submitted that the actual figures claimed were lower than on the schedule. Firstly, the time spent in the hearing would be less than the time estimated. Further, the time for travel and travel expenses should be apportioned three ways, as Mr Bullock had dealt with three matters rather than the anticipated two matters.

71. On behalf of the Respondent, Mr Bennett submitted that the time claimed for preparation appeared high as this was an unusually simple case; Mr Bennett suggested that one to one and a half hours should be allowed rather than the four which had been claimed. Also, given that clear admissions had been made at an early stage, the time spent on preparation of documents and correspondence was high and disproportionate to the facts and issues in the case. Mr Bennett had no criticism of the solicitor who

had dealt with this matter at the Applicant (Ms Emma Priest), who had been professional and co-operative but it was hard to see how so much time had been spent on communications. Further, there may well have been duplication. As admissions had been made before the Rule 5 Statement had been prepared, the costs of preparation of the case for issue were also queried.

72. Mr Bennett submitted that the Respondent had offered to accept a Regulatory Settlement Agreement ("RSA"), to avoid the costs of the hearing, but had been told that it was not the Applicant's policy to agree a RSA where there were allegations of dishonesty. Whilst that policy was for the Applicant to determine, it was submitted that there was no reason it should be pursued at this Respondent's expense. There was no criticism of the conduct of either Ms Priest or Mr Bullock but the costs of a simple case, which had been a simple plea and sentencing hearing, had been claimed at over £5,000.

73. The Tribunal noted that the Respondent had submitted a statement of means, setting out some information about his financial circumstances. In discussion with the Tribunal, and on taking instructions, Mr Bennett told the Tribunal that the Respondent presently operated a business as a sole trader. Mr Bennett had assumed that this was a limited company and so had not asked the Respondent to produce documents concerning the business bank account. The Tribunal was told that the Respondent had made provision in the business account to meet a costs order, as he anticipated the need to pay such costs. Mr Bennett accepted that this should have been disclosed, as the personal bank statements did not show the full position.

74. Mr Bullock reminded the Tribunal that the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) only required the Respondent to provide information about means if it were to be argued that he could not pay a costs order. Here, the Respondent's position was that he could pay a reasonable costs order.

75. On the issue of the quantum of costs, Mr Bullock submitted that he had actually spent over four hours in preparation of the case but such preparation had enabled him to be very succinct in his presentation of the case to the Tribunal. Whilst the solicitor with conduct of this matter may have needed less preparation time, as she was already familiar with the file, as a less experienced advocate the presentation of the case may have taken longer. With regard to the time spent on documents, Mr Bullock submitted that this included time preparing the Certificate of Readiness and trial timetable, which had been required by the Tribunal. Also, the Applicant had to consider the Answer to the allegations and the Respondent's witness statement, together with his statement of means. It was accepted that admissions had been made, and none of the documents reviewed were unduly lengthy. However, spending 2 hours 36 minutes in considering the newer documents was not unreasonable.

76. With regard to the Respondent's proposal to accept a RSA at an earlier stage, Mr Bullock told the Tribunal that it was only in rare and exceptional circumstances that a RSA would be agreed where there was a sustainable case on dishonesty. If a RSA were offered by the Respondent after the issue of the Rule 5 Statement, it would still be necessary to spend time drafting and negotiating and a hearing to approve a RSA would have been needed. That process would not necessarily be cheaper for the Respondent. Mr Bullock submitted that the overall sums claimed in this case were

not high, even taking into account the early admissions made by the Respondent. Mr Bullock submitted that it was not a very straightforward case, as the chronology of events, across two client matters, had to be considered carefully.

The Tribunal's Decision

77. The Tribunal considered carefully the Applicant's application for costs and the submissions of the parties.

78. The Tribunal noted that the Respondent had not been required to submit a statement of means if he did not assert he was unable to pay costs. It appeared from the documents he had submitted that he did not have the means to pay. The omission of the business bank account or other records concerning the business had presented a misleading impression to the Tribunal. Whilst the Respondent had not been obliged to submit information about his financial position, having chosen to prepare a statement of means form he should have ensured that the information provided was accurate. In any event, in the light of the information now provided to the Tribunal, the Tribunal did not have to consider either reducing costs or making an order not to be enforced without permission of the Tribunal, as the Respondent would be able to meet any reasonable costs order.

79. The Tribunal accepted that the hourly rate at which work was charged by the Applicant (£130 per hour for solicitor and counsel and £70 per hour for paralegals) was reasonable and noted that VAT was not chargeable on the Applicant's internal legal costs. The Tribunal noted the proposed reductions to the schedule and reduced the costs for the hearing time, and disbursements by £740. Further, the Tribunal considered that 12 hours for preparation of the Rule 5 Statement was excessive, given that all of the relevant information had been provided by the Firm and presented in a coherent and comprehensive manner. The costs to be allowed for preparation of the Rule 5 Statement should be reduced by £500. The Tribunal assessed the reasonable and proportionate costs of these proceedings to be £3,800, all inclusive, and ordered the Respondent to pay that sum.

Statement of Full Order

80. The Tribunal Ordered that the Respondent, LUKE ANTHONY WELSH, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,800.00.

Dated this 18th day of November 2016
On behalf of the Tribunal

I. R. Woolfe
Chairman