SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11538-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

HABIBULLAH KHAN — Respondent

Before:

Mr D. Glass (in the chair)
Mr P. Booth
Mrs V. Murray-Chandra

Dates of Hearing: 1-2 March 2017

Appearances

Nimi Bruce, barrister of Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, for the Applicant.

Russell Wilcox, barrister of Thompsons & Co, 1 Royal Exchange, London, EC3V 3DG for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent, on behalf of the SRA, were that he, while in practice as the Principal of HK Solicitors (the "Firm"):

1.1 Between 30 July 2013 and 1 April 2015, caused or allowed client monies to be held in the Firm's Office Account in breach of Rules 13.1 and 14.1 of the SRA Accounts Rules 2011 ("SARs") and Principles 2, 8 and 10 of the SRA Principles 2011 and Outcome O (7.4) of the SRA Code of Conduct 2011;

1.2 During 2015, failed to keep properly written up records of dealings with client money received and held by the Firm and in doing so breached Rules 29.1 and 29.2 of the SARs and Principles 8 and 10 of the SRA Principles 2011;

1.3 Between 30 July 2013 and 1 April 2015, failed promptly to account to clients for sums received on their behalf in matters on which the Firm was instructed and in doing so breached Rule 14.3 of the SARs and Principles 5, 8 and 10 of the SRA Principles 2011;

1.4 Between 14 October 2014 and 11 May 2015, caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limits prescribed by Rule 17.1 and/or 19.1(b) of the SARs, and in doing so acted in breach of Principles 8 and 10 of the SRA Principles 2011;

1.5 Between 12 February 2015 and 11 May 2015, failed promptly to remedy breaches of the SARs on discovery, in that the Respondent failed promptly to remedy the facts and matters set out at 1.1 to 1.4 above, and in doing so breached SAR 7.1 and Principles 2, 8 and 10 of the SRA Principles 2011;

1.6 In his capacity as the Firm's Compliance Officer for Finance and Administration ("COFA"), he failed to ensure compliance with the Firm's obligations under the SARs and failed to record or report to the SRA material breaches contrary to Rule 8.5 of the SRA Authorisation Rules 2011;

1.7 Made an untrue and misleading statement on a proposal form for professional indemnity insurance dated 21 September 2015 in that he gave the answer "No" to a question regarding SRA investigations and enquiries in the knowledge that such answer was incorrect, and in doing so breached Principles 2 and 6 of the SRA Principles 2011;

1.8 During the course of the SRA's investigation into the Firm, provided information to the SRA which he knew or ought to have known to be untrue contrary to Principles 2 and/or 7 of the SRA Principles 2011 and/or failed to achieve SCC Outcome 10.2;

2. It was the SRA's case that in respect of the facts and matters set out at 1.1, 1.3, 1.5, 1.7 and 1.8 above the Respondent failed to act with integrity contrary to Principle 2 of the SRA Principles 2011. Failure to act with integrity was not an essential ingredient to the allegations at 1 above, and it was open to the Tribunal to find those allegations proved with or without a finding of failure to act with integrity.

3. It was further the SRA's case that in respect of the facts and matters set out at 1.1, 1.7 and 1.8 above the Respondent acted dishonestly. Dishonesty was not an essential ingredient to the allegations at 1 above, and it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.

Documents

4. The Tribunal considered all the documents in the case including:

Applicant

- Application and Rule 5 Statement with exhibit DWRP/1 dated 26 July 2016
- Witness Statement of Adrian Burke with exhibits AB/1-AB/23 dated 11 July 2016
- Schedule of Costs

Respondent

- Response to allegations dated 27 September 2016
- Witness Statement of Respondent dated 2 February 2017
- Response to allegations dated 28 February 2017
- Medical evidence
- Character References
- Statement of Means

Preliminary Matters

Application for part of the hearing to take place in private

5. The Respondent's case required discussion of details of various health issues with which he was dealing at the material time and subsequently. The parties jointly applied for the details of his medical history to be heard in private in order to protect his privacy.

The Tribunal's Decision

6. SDPR Rule 12(4) states:

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application".

7. The Tribunal had in mind the principles of open justice, which they balanced with the right to privacy to which the Respondent was entitled. It would not be appropriate to make no reference of any sort to the fact that medical issues were relevant or that the Respondent had been suffering from ill-health. He had raised it as a key part of his defence to the Allegations. However it would not be proportionate to have highly personal information discussed in detail in a public hearing.

8. The Tribunal directed that when the details of the Respondent's medical conditions including diagnosis, treatment and symptoms were being discussed, that part of the hearing would be held in private. Those parts of the hearing that were heard in private are redacted in the published version of this Judgment.

Factual Background

9. The Respondent was admitted to the Roll of Solicitors on 15 July 2008. At the relevant time he practised as the Principal of the Firm, from premises at Peel House, Suite 2-08, 34-44 London Road, Morden, Surrey, SM4 5HP.

10. In February 2015 an investigation was commenced by Lisa Bridges, a Forensic Investigation Officer ("FIO") of the SRA, and as a result she prepared two forensic investigation reports; the first report was dated 30 July 2015 ("FIR1") and the second report was dated 28 January 2016 ("FIR2"). In the course of the investigation, the Respondent was interviewed at the Firm's offices on 16 December 2015.

Allegation 1.1

11. The FIR1 had identified three cases, AL, NA and ST, in which the Respondent held client monies in office account.

12. In the case of AL, the Respondent was instructed to represent the client in a personal injury claim arising from a road traffic accident. On 2 September 2014, a payment of £2,750 was received by the Firm from an insurer "in full and final settlement of your client's claim against the Policyholder". On 12 February 2015, the Respondent had confirmed to the SRA that Client AL had not received the payment. He had suggested at the time that it was an "oversight". The Respondent subsequently produced a copy client account cheque to Client AL, which was raised on 11 March 2015 and cleared on 1 April 2015.

13. The Respondent stated that Client AL had informed him on 11 March 2015 that she was travelling and would provide bank details on her return. An attendance note dated 11 March 2015 stated "Spoke to client who is travelling to Dubai and will give her bank details on her return. Attended by: HK". The Respondent subsequently provided client and office account statements which showed that, prior to 11 March 2015, when a payment was made into the Firm's office account from the Respondent's personal account, the office account was overdrawn in the sum of £4,642.38.

14. The Firm's office account statement showed that a payment of £800.00 was made to the Respondent from the account on 6 March 2015, when the account was £3,063.82 overdrawn. Further payments were made from the office account in respect of office expenses prior to the cheque for Client AL being raised on 11 March 2015.

15. In the case of Client NA the Respondent was instructed to represent the client in a personal injury claim arising from a road traffic accident. A letter of authority signed by Client NA dated 15 July 2013 was retained on the file authorising the Firm "to receive the cheque with respect to the compensation for my general damages into their account".

16. On 22 July 2013 the Firm had written to the insurer stating "Further to our telephone conversation with your offices last week, please find attached the cheque for £2,250.00...in relation to [Client NA's] personal injury claim. Could you please cancel the above mentioned cheque and re-issue the cheque in favour of 'HK SOLICITORS' [sic] To this effect, please find attached our Authority letter signed by our client...".

17. On 30 July 2013, a payment of £2,250 was received by the Firm from the insurer and paid into the office account. On 19 February 2014 a cheque for £1,800 was paid out of the Firm's office account to Client NA. The Respondent had told the FIO that the reason that Client NA did not receive the full payment of £2,250 was that it had been agreed with Client NA that a success fee would be charged. When he had been asked about the reason for the delay in making the payment, the Respondent stated that Client NA was sometimes unavailable as he often travelled to Europe.

18. In the case of ST the Respondent was instructed to represent the client in a personal injury claim arising from a road traffic accident. On 3 March 2014, a payment of £2,500 had been received by the Firm from an insurer's solicitors.

19. On 2 June 2014 a cheque for £1,875 had been paid out of the Firm's office account to Client ST. The Respondent had told the FIO that the reason that Client ST did not receive the full payment of £2,500 was that it had been agreed that a success fee would be charged. He claimed that Client ST had been travelling for four months to Egypt at the time of receipt of the damages. The Respondent's bank statements showed that prior to 11 March 2015, when a payment was made into the Firm's office account from the Respondent's personal account, the office account was £4,642.38 overdrawn.

Allegation 1.2

20. The Respondent had not produced properly written up accounts recording his dealings with client monies, including client cash accounts and client ledger accounts. No such accounts were identified by the FIO, and the Respondent had accepted in his interview that the Firm did not keep individual client ledger accounts.

Allegation 1.3

21. The Respondent retained sums received by way of damages on behalf of clients in office account for periods of up to and in excess of six months as set out in relation to Allegation 1.1. In each case the Respondent had identified the clients' travel arrangements as being part or all of the reason for the delay. No record was kept on any of the client files of the clients' requests to delay receipt of payments with the exception of an attendance note in relation to Client AL dated 11 March 2015. There were no records of attempts to contact the clients and it had not been explained how the clients had been able to provide instructions as to the negotiation and acceptance of such payments. When the FIO asked the Respondent about this he told her that the clients were "not out of the country but the clients were not approachable at the time".

Allegation 1.4

22. In an email to the SRA dated 18 May 2015, the Respondent confirmed that he had received payment from the Legal Aid Agency ("LAA") of sums in respect of professional disbursements, namely Counsels' fees, in the total sum of £3,900.15 on 14 October 2014. The payment was received into the office account. No transfer was made by the Firm of such sums until 11 May 2015 when a payment was made to one of the Counsel, RS, for £1,524.00. The Respondent had stated that the disbursements had all been paid in his email to the SRA dated 18 May 2015, although the SRA was unable to find evidence of any payment to the other two members of Counsel.

23. The Respondent subsequently provided the SRA with copies of cheques from the Firm's office account dated 10 April 2015 as attachments to an email dated 20 April 2015, as evidence of payment of the Counsels' fees.

24. The office account statement showed that £7,700.00 was paid into the account on 9 May 2015. The Respondent told the SRA that the payment was "my personal money which I transferred into the office account". The bank statement shows that prior to the transfer on 9 May 2015, and the payment to RS on 11 May 2015, the office account was overdrawn by £3,214.26.

Allegation 1.5

25. The Respondent was aware by 12 February 2015 that breaches of the SARs had been identified including the payment into the office account of client monies and the failure promptly to pay client monies to clients. He continued to retain client monies held on the office account in respect of professional disbursements, until at least 11 May 2015. He continued to retain client monies held on the office account in respect of damages payable to clients until, in the case of Client AL, March 2015.

Allegation 1.6

26. The Respondent was the Firm's COFA. It was the Applicant's case that the matters referred to in Allegations 1.1-1.5 were matters that should have been reported to the SRA.

27. In addition the FIO identified an instance of apparent theft from the Firm of client funds by an employee of a contractor. The Respondent had reported that J had "intercepted" cheques representing monies payable to clients and paid them to his (J's) personal bank account in May 2015. He had then made a partial repayment in October 2015, in a lesser sum which the Respondent had stated was the total amount due to clients. The Respondent had not produced supporting documents, or otherwise identified the steps taken to seek to recover the full or any amount.

Allegation 1.7

28. The Respondent had produced to the FIO a copy of a proposal form for PII cover for the Firm. The Respondent had signed and dated it 21 September 2015.

29. Question 10 on the form asked:

> "In the last 10 years has any fee earner in the practice or any fee earner previously employed in the practice:
>
> ...
>
> d) practised in a firm subject to an investigation or intervention by the Law Society or SRA
>
> ...
>
> k) ever been the subject of any visit from or enquiry by the Forensic Investigation Unit of the Law Society or SRA or received notice of a proposed visit?"

30. The Respondent answered "No" to both of the questions identified above.

Allegation 1.8

31. The Applicant's case was that the Respondent had made a number of representations to the SRA during the course of the investigation which were untrue. This Allegation consisted of four particulars as follows:

- The Respondent was alleged to have initially told the FIO that the Firm did not hold client funds, when the Firm did hold such funds but they were in the office account; the Respondent denied making this representation.
- The Respondent was alleged to have told the FIO that all disbursement payments to a provider of ATE insurance cover had been made when sums were outstanding at that time; the Respondent's case was that he erroneously thought that all relevant payments had been made and therefore did not realise this was an untrue representation.
- The Respondent was alleged to have told the FIO that the Firm had an arrangement with LDF in regard to disbursements payments when in fact this arrangement was limited to funding for PII cover; the Respondent denied that this representation was untrue.
- The Respondent was alleged to have told the FIO that the Firm had recently been audited by the LAA and that "no issues were identified", when this was not correct; the Respondent denied making this representation.

32. The Respondent denied knowingly making any untrue representations and in some cases denied making the representation at all.

Witnesses

33. Lisa Bridges (FIO)

33.1 Ms Bridges confirmed that her Witness Statement and the contents of the FIR1 and FIR2 were true to the best of her knowledge and belief.

33.2 Ms Bridges confirmed that at the start of the investigation, the Respondent would have been given an Investigation Notification letter. This would set out what was required from him before her visit. On arrival she would meet the Respondent and talk him through the process. The Respondent could have been in no doubt, at the point of completing the PII form, that he was under investigation.

33.3 The Respondent had told her that he did not hold client monies during the various meetings that they had. She regarded it as "vitally important" to be accurate and told the Tribunal that she took her responsibilities in that regard "extremely seriously".

33.4 In respect of the representations concerning ATE insurance, these came from Ms Bridges attendance note and were reiterated in her email of 9 April 2015 and the Respondent's reply to that email.

33.5 Ms Bridges understanding of what the Respondent was telling her about LDF was that he had entered into an arrangement with them for a loan from which he would pay outstanding disbursements, including to counsel. In his interview the Respondent had accepted that the contents of his emails were not accurate.

33.6 Ms Bridges stated that her recollection of the Respondent's representation concerning the outcome of the LAA audit was now based on reliance on documents rather than an independent recollection. However she told the Tribunal that she would not made further enquiries with Mr Hill, of the LAA, if the Respondent had not told her this.

33.7 In cross examination it was put to Ms Bridges that there had been occasions, when responding to questions, when it was not immediately clear that the Respondent had understood the question or that she had understood his answer. Ms Bridges stated that she would have made it very clear to the Respondent that if he did not understand the question he should let her know. There may have been occasions when he may not have understood her at the first time of asking, but if that happened she would have asked further questions to seek clarification. Ms Bridges acknowledged that English was not the Respondents first language. She was also aware of the difficulties he had regarding his health.

33.8 [REDACTED].

33.9 It was not usual practice to remind an interviewee of their entitlement to legal representation but if the Respondent had asked to bring such representation to the interview she would not have objected. Ms Bridges denied that the nature of the interview was adversarial or that there was a "good cop bad cop" approach to questioning.

33.10 Ms Bridges agreed in cross-examination that it would be helpful in future if contemporaneous attendance notes were attached to FIRs. This would provide additional confirmation of what was said, however in this case she was "100% certain that if it's there it came from my notes". She was asked if there had been a possible misunderstanding and that in fact the Respondent had been saying that he did not hold funds in the client account, as opposed to not holding client funds at all. Ms Bridges accepted that this was a potential possibility. She agreed that there was clear evidence from the client and office deposit books that he did hold client funds. It was put to her that it therefore made no sense for him to deny that he held them in the face of such evidence. Ms Bridges was unable to answer to that, but stated that he could possibly still have said it.

33.11 Ms Bridges agreed that she had been faced with a chaotic situation at the Firm when she intervened and that the Respondent's assistants appeared to have "a better handle on things" that he did. It was put to Ms Bridges that it was therefore simply a mistake on his part when he had told her that the payments in respect of the ATE insurance cover had been made. Ms Bridges was unable to answer that question, stating that it was a matter for the Respondent to explain.

33.12 In respect of the arrangement with LDF, it was put to Ms Bridges that this was another example of miscommunication and that what the Respondent had been trying to get across in his interview was that the contents of the emails he had sent were not inaccurate, as opposed to not accurate. Ms Bridges did not agree with this assessment in view of the context of the emails sent by the Respondent. Her only interpretation was that he had been saying that LDF were paying the disbursements in his emails and then in his interview he was saying that they were only paying his PII and that therefore the emails were not accurate.

33.13 Ms Bridges' recollection of the representations concerning the outcome of the LAA audit was not a specific recollection now, but a deduction based on the documents. Ms Bridges explained that if the Respondent had told her that issues had arisen on the audit she would have asked him for all the correspondence with the LAA. On the basis that he told that there were no issues she wrote to Mr Hill. It was put to Ms Bridges that the mere fact of not having the correspondence from the LAA was reason in itself to write to Mr Hill. Ms Bridges accepted that was a possibility but confirmed that she was quite satisfied that the Respondent had told her that no issues had arisen on the audit. The email to Mr Hill had been written when her exchange with the Respondent had been fresh in her memory. It was put to Ms Bridges that in his interview he did refer to contract notices. Ms Bridges said that the Respondent had still attempted to make the issues appear minor and that they related to IT and billing.

34. Adrian Burke (LAA)

34.1 Mr Burke confirmed that the contents of his witness statement were true to the best of his knowledge and belief. He had undertaken a re-audit of the Firm on 17 February 2015. The outcome of that audit was that a contract notice dated 13 March 2015 was issued to the Firm.

34.2 In cross examination Mr Burke was asked whether he had to ask Respondent the same question again to ensure that he understood during the audit. Mr Burke stated that he would occasionally have to ask twice.

34.3 Mr Burke gave evidence and was cross-examined about representations that the Respondent had made to the LAA concerning the status of the SRA investigation. However the Tribunal noted that the Respondent faced no allegation in respect of those representations and therefore this part of Mr Burke's evidence did not assist the Tribunal and did not form part of its overall assessment of the case against the Respondent.

35. Respondent

35.1 The Respondent confirmed that the contents of his Witness Statement were true to the best of his knowledge and belief.

35.2 [REDACTED].

35.3 He told the Tribunal that he had intended to tell the investigators that the emails were not inaccurate in respect of his arrangement with LDF. He described his comment in which it said that the emails were inaccurate as possibly being "a slip of the tongue". At the time of the interview the application for funding for disbursements, namely barristers fees, was in progress and the decision was pending. He had started enquiring with LDF about such an arrangement in September and he had provided documents to them in November. At that stage they had told them that they would be back in contact with him within a week. They had not done so and he was unclear as to why it had taken so long.

35.4 The Respondent told the Tribunal that he had told the FIO that the Firm did hold client monies but that they were in the office account. He had explained to her that Legal Aid money came directly into the office account and he had not transferred it across, which was his error. Privately-funded cases were generally fixed fee cases therefore they would also go into office account.

35.5 In cross examination the Respondent agreed that he had taken all the necessary exams to qualify as a solicitor and was familiar with legal concepts and dealing with paperwork.

35.6 He was fully aware that signing a declaration was an important matter as was an interview with forensic investigators. He further agreed that being under investigation was a significant matter and not something which would slip his mind. He agreed that a PII document was very important, including to clients who were protected by the existence of a PII policy. The Respondent maintained that he had made an error when completing the form. He did not suggest that he had misunderstood the form, simply that an error had been made. He denied that he had any intention to deceive anyone or to be dishonest. The mistake was unintentional but no more than that.

35.7 The Respondent was asked when he had first raised the suggestion that Ms Bridges had misunderstood him in relation to his comment about the existence or otherwise of client funds. The Respondent confirmed that this was contained in a statement of

2 February 2017. There was no point in raising it earlier, as the hearing date was fixed. It was put to him that the allegation of dishonesty was so serious that he would have been protesting his innocence at a much earlier stage. The Respondent maintained that his explanation was true, telling the Tribunal that there would be no point in telling Ms Bridges anything other than the truth as she had the deposit books. The Respondent again denied acting dishonestly.

35.8 The Respondent was asked whether it was true that he had not taken the trouble to check that the ATE payments had been made when asked the question by the FIO. The Respondent stated that at the time he believed they had been paid and some of the files that had to be checked were closed files. He had told the FIO that "I think" the payments had been made. He denied lying to Ms Bridges and again accepted that he had first raised this defence on 2 February 2017.

35.9 In respect of the arrangement with LDF, it was put to the Respondent that the meaning of his emails was clear and his English was obviously of a good standard. These emails were therefore inaccurate as they referred to there being an arrangement in place and some disbursements having been paid. The Respondent reiterated that an application had been made and they were awaiting a decision and therefore there was an arrangement in process. The Respondent denied that this was "nonsense" and maintained that the emails were consistent with his position that the application was being processed by LDF. The Respondent denied that his statement been untruthful and therefore denied being dishonest in his representations to the SRA.

35.10 In cross-examination the Respondent denied telling Ms Bridges that the LAA had identified no issues. He again agreed that he had not raised this until 2 February 2017. He denied that he had simply been "putting off the evil day" or that he had deliberately misled Ms Bridges. Such a suggestion was totally wrong.

35.11 It was put to the Respondent that by retaining client monies for up to seven months while the office account was in overdraft amounted to using client money as office money and that as such he had been acting in a way that was fundamentally dishonest. The Respondent rejected this and told the Tribunal that he had not used it for personal gain although he accepted that the money should have been in client account. The clients were not available to receive their monies, hence the delays in payment. Throughout his evidence the Respondent denied that he had acted dishonestly at any stage or that he had lacked integrity.

Findings of Fact and Law

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

37. **Allegation 1.1 - Between 30 July 2013 and 1 April 2015, caused or allowed client monies to be held in the Firm's Office Account in breach of Rules 13.1 and 14.1 of the SARs and Principles 2, 8 and 10 of the SRA Principles 2011 and Outcome O (7.4) of the SRA Code of Conduct 2011**

37.1 The Respondent had admitted this Allegation in part. He had accepted the factual basis behind the Allegation and admitted thereby breaching Rules 13.1 and 14.1 of the SAR, breaching Principles 8 and 10 of the Principles and failing to achieve Outcome 7.4. The Tribunal considered the evidence and was satisfied that these admissions were properly made. The disputed issues related to the allegations of lack of integrity and dishonesty.

Applicant's Submissions

37.2 The Applicant submitted that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which required that the Respondent had a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly and had done so knowingly.

37.3 The Respondent had acted dishonestly by using client monies for the purposes of the Firm by paying those funds into the Firm's office account and accruing an overdraft on that account. Client money should be sacrosanct and once it was in the office account the Respondent had been on notice of the breach of the SAR.

37.4 The Applicant submitted that the Respondent had lacked integrity by causing or allowing client and office monies to become mixed, by allowing an overdraft to accrue when the monies were mixed and thereby allowing client monies to be used to support the overheads of the Firm. This had put client monies at risk and was therefore contrary to Principle 2 of the Principles.

37.5 As regards the medical context, this did not have a nexus to the Allegation. The medical material had been provided late and had not been tested. There was no suggestion that the Respondent had been unable to distinguish between right and wrong. At its highest it might be relevant to mitigation.

Respondent's Submissions

37.6 It was submitted on behalf of the Respondent that he came before the Tribunal with an unblemished career stretching back to 1982 when he qualified as an advocate in Pakistan. He had qualified in England and Wales in 2008. He had run a successful practice and had provided service to the community including through charitable work.

37.7 [REDACTED].

37.8 The Respondent made no excuses for the errors that had occurred because of his mistaken belief that he could continue to practise in the manner had had previously despite his ill-health.

37.9 In addition to his health issues, the Firm had been granted a Legal Aid contract in April 2013, which represented a significant change in how the Firm operated. In each of the cases referred to in this Allegation (AL, ST and NA) the Respondent had provided clear reasons why the funds were not paid to the client sooner. It was accepted that the lack of supporting attendance notes was not satisfactory. However

this was a lapse in judgement in the context in which he found himself. It was a significant mistake but it was not dishonest. There had been no complaints from any client and this reflected the fact that all had received their money back satisfactorily as far as they were concerned. The Respondent had not done this to benefit himself or the Firm and the fact that the account was overdrawn could not bring matters to the level required for a finding of dishonesty. When matters were brought to his attention by the FIO he had rectified it from his own funds. While the situation was undoubtedly troubling, it should be considered in the context of an office in chaos.

37.10 It was further submitted that lack of integrity was not the same as dishonesty. However many of the submissions made above were relevant to consideration as to whether the Respondent had lacked integrity. He had made errors but this did not amount to the description referred to in Hoodless v FSA [2003] UKFTT FSM007 (3 October 2003) in that it did not demonstrate a lack of "moral soundness, rectitude and steady adherence to an ethical code". Indeed he had remedied the errors once they were identified to him and had done so from his own personal funds.

Tribunal's Findings

37.11 The Tribunal considered the evidence and the submission made by both parties. This included the medical evidence and character references. The Tribunal applied the test set out in Twinsectra when considering dishonesty.

37.12 The Tribunal considered the objective test. The Firm had retained client funds in the office account for extended periods, including at times when the account was overdrawn. Client money was sacrosanct and the Tribunal was satisfied beyond reasonable doubt that by the ordinary standards of reasonable and honest people this would be regarded as dishonest.

37.13 The Tribunal considered the subjective test. In doing so the Tribunal had full regard to the character evidence. There was no doubt that the Respondent was viewed as a competent solicitor and an honest individual by those who had supplied the references.

37.14 [REDACTED].

37.15 There was nothing in the medical evidence that indicated that he lacked the capacity to distinguish right from wrong or that he was not in control of his actions.

37.16 The breaches of the SAR continued for nearly two years and involved identifiable client monies belonging to three clients. The Respondent's evidence that each of these clients had instructed him to retain their funds was not credible or plausible. Further, even if the clients had instructed the Respondent to retain the funds, they should have been held in the client account and not the office account.

37.17 The Tribunal found that the Respondent's explanation that this amounted to nothing more than a series of errors and oversights, was neither cogent nor honest. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that he was acting dishonestly by the standards of reasonable and honest people.

37.18 Having found the Respondent to have acted dishonestly it followed as a matter of irresistible logic that he had acted without integrity.

37.19 The Tribunal found this Allegation proved in full beyond reasonable doubt including the alleged dishonesty and lack of integrity.

38. **Allegation 1.2 - During 2015, failed to keep properly written up records of dealings with client money received and held by the Firm and in doing so breached Rules 29.1 and 29.2 of the SARs and Principles 8 and 10 of the SRA Principles 2011**

38.1 This Allegation was admitted in full. The Tribunal considered the evidence and was satisfied on the basis of the evidence that the Respondent's admission was properly made. The Tribunal found this Allegation proved in full beyond reasonable doubt.

39. **Allegation 1.3 - Between 30 July 2013 and 1 April 2015, failed promptly to account to clients for sums received on their behalf in matters on which the Firm was instructed and in doing so breached Rule 14.3 of the SARs and Principles 5, 8 and 10 of the SRA Principles 2011**

39.1 The Respondent had admitted the factual element of this Allegation in part, save that he had denied failing to remedy the alleged breaches promptly upon discovery, including failing to replace money said to be improperly withheld or withdrawn from the client account. He had admitted breaching Rule 14.3 of SAR and Principles 5, 8 and 10 of the Principles but had denied acting without integrity.

Applicant's Submissions

39.2 The Applicant submitted that the Respondent had failed to remedy the breaches promptly upon discovery and had failed to replace money improperly withheld or withdrawn from the client account in breach of Rule 7.1 of the SAR. It was submitted that in failing to properly account to clients for the sums received that the Respondent had demonstrated a lack of integrity. There had been no records kept of any requests from clients to withhold the payments nor was there any record of an attempt to contact them. The Respondent had not explained how clients who were travelling at the time that the damages were received would not have been able to provide instructions as to the settlement and payment of the claims. The Respondent had told the FIO on 12 February 2015 that the clients were "not out of the country but the clients were not approachable at the time". The Respondent had not provided further clarification in respect of this.

Respondent's Submissions

39.3 It was submitted on behalf of the Respondent that this was a further example of a set of circumstances that were troubling and reflected the unusual situation in which the Respondent found himself. However just because something was troubling did not mean that the Tribunal could find beyond reasonable doubt that the Respondent lacked integrity. It was submitted that he had presented a plausible alternative, namely that the office was in chaos and he was unwell. It was accepted that the lack of attendance notes was unsatisfactory, but in the wider context and in the absence of

any complaints from clients, this amounted to a lapse in judgement as opposed to a lack of integrity.

The Tribunal's Findings

39.4 The Tribunal considered the issue of integrity. In doing so the Tribunal had regard to the definition in Hoodless as well as the approach adopted in SRA v Chan and ors [2015] EWHC 2659 (Admin) at [48], namely that "Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case". The Tribunal noted that the test to be applied in considering integrity was not a subjective one, as stated in Scott v SRA [2016] EWHC 1256 (Admin).

39.5 The Tribunal did not accept the Respondent's evidence that the clients had instructed him to retain their funds. There was no evidence to support this other than an email from AL, dated 11 April 2016, in support of this assertion and one attendance note of a telephone call with AL. However AL had not provided a Witness Statement and so the weight that could be attached to this email and isolated attendance note was minimal. Further, it did not advance matters with regards ST or NA and the retention of their funds. The Respondent had not provided any further contemporaneous correspondence that supported his explanations. There was no evidence that he had tried to get in contact with the clients at the time nor that he had received such instructions.

39.6 The Tribunal was satisfied beyond reasonable doubt that, by failing to account to clients for the sums received on their behalf, the Respondent lacked integrity. The Tribunal found this Allegation proved in full including that the Respondent had failed to act with integrity.

40. **Allegation 1.4 - Between 14 October 2014 and 11 May 2015, caused or allowed the retention in the Firm's office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limits prescribed by Rule 17.1 and/or 19.1(b) of the SARs, and in doing so acted in breach of Principles 8 and 10 of the SRA Principles 2011**

40.1 The Respondent had admitted this Allegation, save that his position was that the fees had been paid by the time he stated they had.

40.2 The Tribunal considered the evidence in this matter. The breach of the SAR occurred when payment had not been made within 14 days. On the Respondent's own account the fees had not been paid within that time frame. The Tribunal was not required to determine the exact date of payment beyond that in order to make a finding that the Allegation was proved. This Allegation was proved in full beyond reasonable doubt.

41. **Allegation 1.5 - Between 12 February 2015 and 11 May 2015, failed promptly to remedy breaches of the SARs on discovery, in that the Respondent failed promptly to remedy the facts and matters set out at 1.1 to 1.4 above, and in doing so breached SAR 7.1 and Principles 2, 8 and 10 of the SRA Principles 2011**

41.1 The Respondent had admitted this Allegation in part. He had accepted the factual basis behind the Allegation and admitted thereby breaching Rule 7.1 of the SAR, breaching Principles 8 and 10 of the Principles. The Tribunal considered the evidence and was satisfied that these admissions were properly made. The disputed issue related to the allegation of lack of integrity.

Applicant's Submissions

41.2 The Applicant's submissions were encompassed in the submissions made in relation to Allegations 1.1 and 1.3.

Respondent's Submissions

41.3 The Respondent's submissions were largely encompassed in the submissions made in relation to Allegations 1.1 and 1.3. The Respondent had put his own funds into the Firm in order to remedy the defects and it was submitted that this demonstrated integrity on his part.

The Tribunal's Findings

41.4 The Tribunal had addressed the factual background to this Allegation when considering Allegations 1.1-1.4. The Tribunal had found that the Respondent had known about the breaches in Allegation 1.1 and 1.3 at the time, or very shortly after, they occurred. However even if that had not been the case, by 12 February 2015 Ms Bridges had made it abundantly clear to the Respondent that there had been breaches. In respect of the breaches identified in Allegation 1.1 and 1.4 the breaches continued for almost three months.

41.5 The Tribunal had examined the circumstances of the client funds being held on the office account in detail when considering Allegation 1.1. The situation persisted for nearly two years. While it was correct that the Respondent did replenish the office account, the question for the Tribunal was whether it was done promptly upon discovery. The Tribunal had found in relation to Allegation 1.1 that the Respondent had held the funds in office account knowingly. It therefore followed that he was aware of the breaches either immediately or shortly after each breach occurred. It could not therefore be prompt rectification to put his own money in as this was several months after the breaches had occurred, even after his meeting with Ms Bridges on 12 February 2015.

41.6 The Tribunal approached the question of integrity in the same way that it had in relation to Allegation 1.3, namely with reference to Hoodless, Chan and Scott. The Tribunal had found that the Respondent knew he was holding money in office account that ought to have been in client account and that he had failed to promptly account to clients. In considering this conduct in relation to Allegations 1.1 and 1.3, the Tribunal had found that in doing so the Respondent had failed to act with integrity.

41.7 The failure to promptly remedy the breaches reflected an ongoing course of misconduct on the part of the Respondent. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity. Allegation 1.5 was therefore proved in full beyond reasonable doubt.

42. **Allegation 1.6 - In his capacity as the Firm's Compliance Officer for Finance and Administration ("COFA"), he failed to ensure compliance with the Firm's obligations under the SARs and failed to record or report to the SRA material breaches contrary to Rule 8.5 of the SRA Authorisation Rules 2011**

42.1 This Allegation was admitted in full. The Tribunal considered the evidence and was satisfied on the basis of the evidence that the Respondent's admission was properly made. The Tribunal found this Allegation proved in full beyond reasonable doubt.

43. **Allegation 1.7 - Made an untrue and misleading statement on a proposal form for professional indemnity insurance dated 21 September 2015 in that he gave the answer "No" to a question regarding SRA investigations and enquiries in the knowledge that such answer was incorrect, and in doing so breached Principles 2 and 6 of the SRA Principles 2011**

43.1 The Respondent had admitted this Allegation in part. He had accepted answering the questions incorrectly and thereby admitted the factual basis behind the Allegation and Principle 6 of the Principles. The Tribunal considered the evidence and was satisfied that this admission was properly made. The disputed issues related to the allegations of lack of integrity and dishonesty.

Applicant's Submissions

43.2 The Applicant submitted that the Respondent had acted dishonestly in providing information to the PII provider that he knew to be untrue. The information that he concealed was highly relevant to their decision as to whether to offer PII cover to the Firm, and if so on what terms. This was dishonest and demonstrated a lack of integrity on the part of the Respondent. The Respondent's command of English was good and he would have been aware of the importance of completing the form accurately.

Respondent's Submissions

43.3 It was submitted on behalf the Respondent that at the time of completing the form he had misunderstood it because he did not have his mind on the job. It was accepted that he could be criticised for this and he recognised that the inaccurate completion of the form was a serious matter. At the time however he was not up to the job and he had allowed things to slip. Whilst the conduct was not acceptable, he had not acted dishonestly nor had he acted without integrity. The Tribunal was referred to the earlier submissions concerning the Respondent's health at the material time.

The Tribunal's Findings

43.4 The Tribunal again applied the test for dishonesty set out in Twinsectra. The Tribunal considered the objective test. The Respondent had accepted that the answers he gave to questions 10(d) and 10(k) were not correct. These were questions of fundamental importance to the insurer in determining whether to provide cover for the Firm. Had the questions been answered correctly it was inevitable that the insurer would have, at the very least, sought further information from the Respondent before proceeding with the application. The Tribunal was satisfied beyond reasonable doubt that providing an

untruthful answer on such an important document would be regarded as dishonest by the ordinary standards of reasonable and honest people.

43.5 The Tribunal considered the subjective test. As in the case of Allegation 1.1, the Tribunal had in its mind the character evidence about the Respondent.

43.6 The form that the Respondent had completed on 21 September 2015 was an 11 page form containing 20 sections that concluded with a signed declaration that the particulars and statements made in the form were true and complete. The declaration also contained a statement that the Respondent had informed the prospective insurer "of all facts which are likely to influence that insurer in the assessment or acceptance of this proposal".

43.7 The Respondent had completed this form in detail, including providing specific figures for fee income over a three-year period. The Respondent had been a sole practitioner for a number of years and was therefore familiar with the completion of such forms. The Respondent had not suggested in his evidence that he did not understand the questions on the form and indeed the Tribunal did not detect any difficulties in his English during the course of his evidence. The Respondent was aware of the serious implications of making an untrue statement on the form.

43.8 It was significant that the only two answers on the form that were untrue related to matters which would have had significant consequences on the Respondent's ability to obtain PII cover. The consequence of a truthful answer to these questions may well have been a refusal of cover altogether or at least an increase in the premiums. It would certainly have triggered further enquiry on the part of the insurers. The Tribunal found that the Respondent was motivated by desire to avoid such complications and additional expenditure. The Tribunal rejected the Respondent's evidence that this was simply a mistake brought about by a chaotic situation which in turn had been triggered by his ill-health. The Tribunal had addressed the matter of the Respondent's health in relation to Allegation 1.1. Again there was no evidence before the Tribunal that the Respondent was incapable of truthfully filling in a form such as this, particularly in circumstances where the vast majority of the form had been completed truthfully and accurately.

43.9 The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that he was acting dishonestly by the standards of reasonable and honest people when he provided untruthful answers to questions 10(d) and (k). Having found the Respondent to have acted dishonestly it followed as a matter of logic that he had also acted without integrity. The Tribunal found this allegation proved in full beyond reasonable doubt including the alleged dishonesty and lack of integrity.

44. **Allegation 1.8 - During the course of the SRA's investigation into the Firm, provided information to the SRA which he knew or ought to have known to be untrue contrary to Principles 2 and/or 7 of the SRA Principles 2011 and/or failed to achieve SCC Outcome 10.2**

Applicant's Submissions

Statement to the FIO that the Firm did not hold client funds

44.1 The Applicant submitted that the Respondent had acted dishonestly by providing information which he knew to be untrue and highly relevant to the investigation. The FIR had recorded the following; "Ms Bridges was unable to view any client matter ledgers because Mr Khan stated that the firm did not maintain them as they did not hold client funds". The Applicant relied on the evidence of Ms Bridges and the points put to the Respondent in cross-examination.

Statement to the FIO that all disbursement payments due to a provider of ATE insurance cover had been made

44.2 The Applicant submitted that the statement provided by the Respondent to Ms Bridges was untrue as the payments due to the ATE provider had not in fact been made. The Applicant submitted that in providing such a statement, the Respondent had acted dishonestly and had lacked integrity. The Applicant relied on the FIR which Ms Bridges had confirmed was accurate.

Statement to FIO concerning LDF

44.3 The Applicant submitted that the Respondent had been untruthful with the FIO when discussing the arrangements with LDF and the payment of disbursements. It was submitted that these representations had been dishonest and reflected a lack of integrity. The Applicant relied on the cross-examination of the Respondent, the emails contained within the FIR and the December 2015 interview in support of their case.

44.4 On 30 November 2015 the Respondent had stated the following in an email to the FIO:

> "Please be advised that we have an arrangement with LDF in regards to our disbursements payments. We do supply LDF with our outstanding disbursements to which they process the payments for them".

44.5 On 2 December 2015 the Respondent stated in an email "We started using LDF in September 2015". He had also again stated "We do supply LDF with our outstanding disbursements to which they process the payments for them".

44.6 In his interview he had been asked about these emails and his arrangements with LDF. He was asked "So was the information you provided me in these emails inaccurate?" to which the Respondent had replied "They are not accurate but LDF we did use them previously, that's what I'm saying, and we used them in 2010 as well for our Indemnity Insurers, and we used them after that for Indemnity Insurers".

44.7 The truth of the matter was that the only arrangement with LDF was for funding of the PII cover. There was no handling or payment of disbursements.

Statement to FIO that no issues had been identified by the LAA

44.8 The Applicant submitted that the Respondent had deliberately and dishonestly misled the FIO as to the outcome of the recent investigation by the LAA. The Applicant relied on the evidence of Ms Bridges, the content of her email to Mr Hill dated 16 November 2015 and the cross-examination of the Respondent. The email to Mr Hill dated 16 November 2015 had stated "The firm have told me that they were recently audited by The Legal Aid Agency and that no issues were identified".

Respondent's Submissions

Statement to the FIO that the Firm did not hold client funds

44.9 It was submitted on behalf of the Respondent that he had never told Ms Bridges that the Firm did not hold client funds, but that he had told her that they were not held in client account. Ms Bridges may have conflated matters in a way that was common in situations where the first language being spoken, in this case by the Respondent, was not English. It was plausible that either he had misunderstood her question or she had misunderstood his answer. At the time she was in possession of the ledgers and it would have served no purpose in any event to try to mislead the FIO. The Respondent denied that he had lied to Ms Bridges or been in any way dishonest or that he had demonstrated a lack of integrity. The Respondent relied on the cross-examination of Ms Bridges and the Respondent's evidence.

Statement to the FIO that all disbursement payments due to a provider of ATE insurance cover had been made

44.10 It was submitted on behalf of the Respondent that he had believed that somebody else had made the payments in respect of the ATE insurance cover. This was clearly erroneous and it lent credence to the evidence he had given concerning the state of affairs at the Firm at the time. The Respondent denied that his representation to Ms Bridges was dishonest or that he had lacked integrity.

Statement to FIO concerning LDF

44.11 The Respondent denied that there was a contradiction between what he had told the FIO and the truth of the situation. The company provided the services of the sort that the Respondent was describing. He had been attempting to arrange a new relationship with LDF to include disbursement funding and it was quite possible that the negotiations took place over an extended period.

44.12 [REDACTED].The comments in interview were nothing more sinister than a slip of the tongue. The Tribunal was invited to look at the answers in the context of the rest of the interview and it was submitted that this would make clear that the Respondent was not seeking to mislead or lie.

Statement to FIO that no issues had been identified by the LAA

44.13 It was submitted on behalf of the Respondent that he had simply never made such a representation. It would have been a "monumentally stupid" thing to have said given that it could have been easily established to be untrue. Ms Bridges had accepted in her

evidence that she did not have an independent recollection of the comment, rather it was informed by her reference to the documents and the fact that she had emailed Mr Hill. It was submitted that there was the possibility of misunderstanding and that she may have mis-remembered the exchange. The Tribunal was referred to the following section of the December 2015 interview which addressed this topic. The Respondent had been asked about the outcome of his most recent audit and he replied;

> "The outcome as that, that as far as I was concerned was ok but he, he pointed out two things was the IT one, the IT system should be upgraded and one was...some billing was not done properly because due to the wrong...or something...so".

44.14 The Respondent was then asked by Ms Bridges "OK were any contract notices from the LAA served on you?" to which the Respondent had replied "Yes, yes, yeah, yeah".

44.15 It was submitted that this was inconsistent with the Respondent having given a false answer earlier in the year.

44.16 The Respondent had denied making the alleged representation and the Tribunal was invited to accept his evidence. The Respondent denied having been dishonest or lacking integrity.

Tribunal's Findings

Statement to the FIO that the Firm did not hold client funds

44.17 The Respondent's case was that he did not make such a statement to the FIO and that what he had told her, or intended to tell her, was that the Firm did hold client funds but not in the client account. His case was that her reason for recording that he did must have arisen from a misunderstanding on the part of one or both of them arising out of the fact that English was not his first language.

44.18 The Tribunal had considered carefully the evidence of Ms Bridges and of the Respondent.

44.19 Ms Bridges evidence was that she was satisfied that the Respondent understood her questions, even if she had been required to ask a question on more than one occasion. The summary contained in the FIR was clear and Ms Bridges evidence was that she was certain that what was contained in the FIR would have come from her contemporaneous notes. Ms Bridges had accepted that it was potentially possible that the Respondent had said something different.

44.20 The Respondent had given evidence without the assistance of an interpreter and had not had any apparent difficulty in understanding the questions. At appropriate times he had sought clarification of a question, which he had then proceeded to answer. He had also been interviewed in December 2015 for 95 minutes, without any apparent language difficulties. In that interview he had answered questions in detail on issues that were, on occasion, more complex than this.

44.21 The Tribunal accepted that English was not the Respondent's first language but that did not mean that his English was not of a good standard. He was well able to understand both what was being asked of him and to express himself accurately. The question as to whether he held client funds was not a complicated one and did not require a complex answer. The Tribunal found that he had fully understood the question he was asked by Ms Bridges and that he had made himself clear in his reply.

44.22 The Tribunal was satisfied beyond reasonable doubt that Ms Bridges had accurately recorded the Respondent's answer and found, as a fact, that he told her that the Firm did not hold client funds.

44.23 The Tribunal again applied the Twinsectra test in considering the allegation of dishonesty. The Tribunal was satisfied beyond reasonable doubt that telling an investigator that client funds were not held by the Firm when this was not true would be regarded as dishonest by the ordinary standards of reasonable and honest people.

44.24 The Tribunal applied the subjective test. The FIO was asking the Respondent a question that was of fundamental importance to any investigation, namely the existence of and/or location of client funds. The reality of the situation at the time the Respondent was asked about this was that if he had told Ms Bridges the truth, he would have been admitting to being in breach of the SAR. It was inconceivable that if he had said to Ms Bridges that client funds were held in the office account that she would have not urgently followed that matter up. The Tribunal had already rejected the submission that the Respondent's English was poor and that there had been a misunderstanding as a result.

44.25 The fact that Ms Bridges had access to the cash books did not advance matters greatly. They may not have revealed the truth of the matter and it did not affect the Tribunal's findings, based on the evidence of Ms Bridges and the Respondent.

44.26 The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that his answer was untrue and that he provided it deliberately. He therefore knew that his actions were dishonest by the ordinary standards of reasonable and honest people. Having found the Respondent to have acted dishonestly, it followed as a matter of logic that he had failed to act with integrity when making this statement to the FIO.

44.27 The Tribunal found this particular of Allegation 1.8 proved in full beyond reasonable doubt including the allegations of dishonesty and lack of integrity.

Statement to the FIO that all disbursement payments due to a provider of ATE insurance cover had been made

44.28 The Tribunal accepted that there had been a chaotic situation at the Firm at the time the payments were due the provider of the ATE insurance cover. The Respondent's case was that he had held an honest belief that the Firm had made the payments. The Applicant had not cross-examined him in any detail on this aspect of the case, indeed this particular part of the allegation had not featured prominently. The Tribunal found that the Respondent had held an honest belief that the representation he was making was true.

44.29 The Tribunal once again applied the test for dishonesty as set out in Twinsectra. In circumstances where the Respondent had held an honest belief that the payments had been made, the Tribunal was not satisfied beyond reasonable doubt that his relaying that honest belief, however mistaken it was, to Ms Bridges was dishonest by the ordinary standards of reasonable and honest people. The first limb of the test having not been met the Tribunal was not required to consider the subjective limb.

44.30 The Tribunal considered whether the Respondent had lacked integrity. The Respondent had clearly not properly checked the position before making his representation to Ms Bridges. While this was not satisfactory the Tribunal was not satisfied to the requisite standard that it met the definition of lack of integrity as set out in Hoodless.

44.31 The Tribunal did not find lack of integrity or dishonesty proved in respect of this part of Allegation 1.8.

Statement to FIO concerning LDF

44.32 The Tribunal considered carefully the emails the Respondent had sent on this matter and the contents of his interview, taken as a whole. The Respondent's case had been that the stage reached in the discussions with LDF amounted to an arrangement in his mind at the time he wrote the emails. The Tribunal could not be satisfied beyond reasonable doubt that he had not been in possession of a genuine belief that he had an arrangement with LDF, even if that belief was in fact mistaken. It would have made little sense to give false answers to the FIO on 30 November and 2 December 2015, only to admit that the emails were not accurate ten days later in interview.

44.33 The Tribunal again considered the objective test for dishonesty. In circumstances where the Tribunal could not be sure that the Respondent lacked a genuine belief that his representation was truthful, it was not possible to conclude that his actions would be regarded as dishonest by the ordinary standards of reasonable and honest people. The first limb of the test having not been met the Tribunal was not required to consider the subjective limb.

44.34 The Tribunal considered whether the Respondent had lacked integrity. The Respondent had not been clear in his explanation of his arrangement with LDF and it was unsurprising that Ms Bridges had interpreted his emails and comments as she had. This was far from ideal. However the Tribunal was not satisfied to the requisite standard that it met the definition of lack of integrity as set out in Hoodless.

44.35 The Tribunal did not find lack of integrity or dishonesty proved in respect of this part of Allegation 1.8.

Statement to FIO that no issues had been identified by the LAA

44.36 The Tribunal considered carefully the evidence of Ms Bridges and of the Respondent on this issue. Ms Bridges had been consistently clear in her evidence that if the Respondent had told her that issues had arisen on the audit she would have asked him to provide the correspondence between himself and the LAA. The email to Mr Hill had been written when the conversation was fresh in her mind.

44.37 The question about the LAA would have been an obvious one for Ms Bridges to have asked and the Tribunal was satisfied that she had made such an enquiry of the Respondent. He would have been fully aware of the truth of the situation. Had he answered truthfully this would have opened up a new line of enquiry by Ms Bridges. Instead Ms Bridges had sent an email to Mr Hill in which she recounted that the Respondent had told her that no issues had been identified. The Tribunal was satisfied beyond reasonable doubt that the reason she had sent an email in those terms was that this reflected what the Respondent had said to her. The Tribunal rejected the suggestion that there had been a misunderstanding or mistake on her part. The Respondent had been personally involved in the LAA audit and was clear about what it involved, as demonstrated in the December 2015 interview.

44.38 The Tribunal again applied the Twinsectra test in considering the allegation of dishonesty. The Tribunal was satisfied beyond reasonable doubt that telling an investigator that no issues had been identified by the LAA, when in fact the complete opposite was true, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

44.39 The Tribunal applied the subjective test. The FIO was asking the Respondent a question that was, again, of fundamental importance to any investigation, namely whether the LAA, who provided significant funding to the Firm, had raised issues that required attention. The issues that had been raised were not trivial. They had resulted in formal contract notices which were serious matters. They related to IT as well as billing issues, which were critical. If he had told Ms Bridges the truth, this would have had significant consequences for the direction of the investigation. The Tribunal found that the Respondent had been firefighting at this point and he was trying to delay the inevitable by misleading Ms Bridges.

44.40 The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that his representation was untrue and that he provided it deliberately. He therefore knew that his actions were dishonest by the ordinary standards of reasonable and honest people. Having found the Respondent to have acted dishonestly, it followed as a matter of logic that he had failed to act with integrity when making this statement to the FIO.

44.41 The Tribunal found this particular of Allegation 1.8 proved in full beyond reasonable doubt including the allegations of dishonesty and lack of integrity.

44.42 The Tribunal found beyond reasonable doubt that in providing untrue information to the SRA in the first and fourth particulars above that he had failed to comply with his regulatory obligations to deal with his regulators in an open, timely and co-operative manner. He had therefore breached Principle 7 of the Principles.

44.43 Allegation 1.8 was therefore proved in part, to the extent set out above.

45. **Allegation 2: It was the SRA's case that in respect of the facts and matters set out at 1.1, 1.3, 1.5, 1.7 and 1.8 above the Respondent failed to act with integrity contrary to Principle 2 of the SRA Principles 2011. Failure to act with integrity was not an essential ingredient to the Allegations at 1 above and it was open to**

the Tribunal to find those allegations proved with or without a finding of failure to act with integrity.

45.1 The Tribunal had addressed the question of lack of integrity when it considered Allegations 1.1, 1.3, 1.5, 1.7 and 1.8. Allegation 2 was proved to the extent that the Tribunal had found it proved in respect of each substantive Allegation.

46. **Allegation 3: It was further the SRA's case that in respect of the facts and matters set out at 1.1, 1.7 and 1.8 above the Respondent acted. Dishonesty was not an essential ingredient to the allegations at 1 above and it was open to the Tribunal to find those allegations proved with or without a finding of dishonesty.**

46.1 The Tribunal had addressed the question of dishonesty when it considered Allegations 1.1, 1.7 and 1.8. Allegation 3 was proved to the extent that the Tribunal had found it proved in respect of each substantive Allegation.

Previous Disciplinary Matters

47. None.

Mitigation

48. It was submitted on behalf of the Respondent that in light of the Tribunal's findings of dishonesty there was little that could be said with regard to sanction. The Respondent did not submit that there were exceptional circumstances that could enable the Tribunal to depart from a Strike Off. The circumstances surrounding the misconduct had been explained in the Respondent's evidence and in the submissions made on his behalf in relation to the allegations of dishonesty and lack of integrity.

Sanction

49. The Tribunal referred to its Guidance Note on Sanctions (December 2016) when considering sanction. The Tribunal assessed the seriousness of the misconduct with reference to the Respondent's culpability, the level of harm caused and any aggravating and mitigating factors.

50. The Respondent's motivation had been to keep the Firm afloat and as such he had been firefighting. His goal was not personal enrichment. The actions were not carefully crafted but rather instances of the Respondent taking advantage of opportunities to avoid further problems. The completion of the PII form was an obvious example of this. The Respondent had direct control and responsibility for the circumstances giving rise to the misconduct as he was a sole practitioner. He had significant experience and some of the proved Allegations related directly to his deliberately misleading the SRA.

51. Although there was no evidence of harm caused to individual clients, the potential for financial loss was always present when a solicitor failed to adhere to his obligations under the SAR. Client money was sacrosanct and the Respondent had failed to treat it as such. The consequences to clients of an invalid PII policy could have been very serious.

52. The matters were aggravated by the findings of dishonesty. The misconduct was repeated and deliberate and had continued over a period of time. There was an element of concealment of misconduct in his completion of the PII form and the answers he provided to the SRA. He knew that his actions were in material breach of his obligations to protect the public and the reputation of the profession.

53. The matters were mitigated by the fact that he had rectified the office account with his own money. He had made some admissions to the Allegations and the Tribunal gave him credit for doing so.

54. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession required nothing less.

55. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances both at the material time and at the time of the hearing, including his health. The Tribunal also took account of the character references submitted on his behalf, all of which spoke well of him on a personal and professional level, together with the mitigating circumstances that had been referred to in his evidence and in submissions.

56. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

57. The Applicant applied for costs. The sum in the schedule was £50,843.96 but the Applicant indicated that this should be reduced by approximately £2,245 due to an error contained in the timesheets. There should also be a modest reduction to reflect the actual time spent in Court on the second day of the hearing.

58. The Applicant told the Tribunal that the FIO had attended the Firm on four occasions and that the investigation has taken place in two parts owing to the Respondent's ill-health. This had been a complex investigation and the costs were reasonable. The Rule 5 statement had, as the Tribunal had acknowledged, been well drafted but it had required a lot of work. The Applicant was aware of the Respondent's limited means and confirmed that the SRA always took into account a Respondents' ability to pay any costs order. The Applicant opposed any application that costs not be enforced without leave of the Tribunal.

59. It was submitted on behalf of the Respondent that this had not been a complex case and the only issues for the Tribunal had been the allegations of dishonesty and lack of integrity. There had not been a great amount of correspondence between the Respondent and the SRA and therefore the costs of the legal fees were significantly higher than one would expect for a case of this nature. While the Rule 5 statement was indeed well drafted, the costs were on the high side and the Tribunal was invited

to make a significant reduction to take account of the fact that there had been duplication of the work done by the FIO.

60. The Respondent had submitted a Statement of Means in accordance with the Tribunal's direction as an earlier hearing. He was in receipt of jobseekers allowance and was running a monthly deficit in excess of £2,300. He was being supported by the community ties and by family but this situation could not continue indefinitely. The Respondent's wife was not in employment and they were living in rented accommodation. They did not own a property. While it was right that the Respondent pay something, he was not at present in a position to pay anything and finding work in the future would be extremely difficult due to his age and his health. A heavy costs order would not just punish him but also his wife. The Tribunal was invited to direct that any costs order not be enforced without leave the Tribunal as the SRA adopted an adversarial approach to these matters and this would be an appropriate shield to protect the Respondent and his dependents.

61. Both parties invited the Tribunal to summarily assess the costs.

62. The Tribunal considered the cost schedule and found that costs were on the high side. The Tribunal noted that three solicitors and a trainee solicitor had been involved in the preparation, during which 300 hours had been spent on the documents, which the Tribunal considered excessive. The appropriate and proportionate level of costs in all circumstances was £40,000.

63. The Tribunal then considered the Respondent's means. It was clear to the Tribunal based on the Statement of Means and supporting documentation provided by the Respondent that his ability to pay was very limited. The Tribunal could not see any prospect of the Respondent paying £40,000 within a realistic timeframe. As a result, a reduction was required to bring the cost to a level which took account of the Respondent's limited finances. The Tribunal decided that an appropriate and proportionate contribution towards the Applicant's costs was £7,000. The Tribunal make clear that the reduction from £40,000 to £7,000 was based solely on the Respondent's ability to pay.

64. The Tribunal considered the Respondent's application for costs not to be enforced without leave the Tribunal. Having heard the submissions made on behalf of the Respondent there was no realistic prospect of him coming into a windfall or securing lucrative employment. In those circumstances such an order would serve little purpose. In addition the costs of bringing the matter back before the Tribunal would have to be borne either by the Respondent or the profession. The Tribunal noted the Applicant's assurance that the SRA took a pragmatic view when it came to enforcement. In the circumstances the Tribunal was not satisfied that it was appropriate to make an order that the costs not be enforced without leave and accordingly directed that the Respondent pay costs in the sum of £7,000 usual way.

Statement of Full Order

65. The Tribunal Ordered that the Respondent, HABIBULLAH KHAN, 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 £7,000.00.

Dated this 28th day of March 2017
On behalf of the Tribunal

D. Glass
Chairman