SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11556-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD NOEL SEDGLEY Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr M. Millin
Mrs S. Gordon

Date of Hearing: 2 February 2017

Appearances

Mr Inderjit Johal, counsel, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Ms Susannah Heley, solicitor, Radcliffes LeBrasseur, 85 Fleet Street, London EC4Y 1AE for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Richard Noel Sedgley, in an amended Rule 5 Statement dated 20 January 2017, were that:

1.1 During the period of 15 February 2016 and 20 April 2016 he improperly transferred £1,204,000 from client account to his personal account and used those monies for his own purposes, in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("AR 2011") and the SRA Principles 2011 ("the Principles"), Principle 2, 4, 6 and 10;

1.2 He failed to remedy breaches of the AR 2011 promptly on discovery in breach of Rule 7 of AR 2011, allowing a cash shortage to exist in the client account from 29 March 2016 to 15 June 2016;

1.3 He failed to reconcile his books of accounts, in breach of Rule 29.12 of the AR 2011;

2. In respect of allegation 1.1, the Applicant also alleged that the Respondent acted dishonestly, but submitted that dishonesty was not an essential ingredient to establish allegation 1.1.

Documents

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

Applicant: -

- Application dated 21 September 2016
- Amended Rule 5 Statement dated 20 January 2017
- Schedule of costs at issue of proceedings, dated 21 September 2016
- Schedule of costs at final hearing, dated 16 January 2017
- Applicant's Response to the Respondent's Answer, dated 3 November 2016
- Witness statement of Dan Clark dated 14 December 2016
- Certificate of Readiness dated 3 January 2017
- Copy Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra")

Respondent: -

- Answer to the Rule 5 Statement, dated 24 October 2016
- Respondent's witness statement with statement of means, dated 6 January 2017
- Respondent's witness statement dated 12 January 2017
- Witness statement of Susan Sedgley dated 12 January 2017
- Witness statement of Margaret Neville, with testimonial (undated)
- Witness statement of Richard Whitham, with testimonial (undated)

Other: -

- Tribunal's directions order dated 23 September 2016
- Directions order dated 6 January 2017

Preliminary Matter – Amendment of the Rule 5 Statement

4. By an application received at the Tribunal on 3 January 2017, the Applicant applied to amend the Rule 5 Statement by making corrections to information contained within the Rule 5 Statement dated 21 September 2016, specifically with regard to the dates mentioned in allegations 1.1 and 1.2. The Respondent confirmed, in an email from his solicitors, dated 3 January 2017, that the Respondent had no objection to the proposed amendments which appeared to be minor matters of clarification and correction.

5. On 6 January 2017, permission for the proposed amendments to be made was given by the Tribunal. The amended version of the Rule 5 Statement was dated 20 January 2017.

Factual Background

6. The Respondent was born in 1951 and was admitted to the Roll of Solicitors in 1978.

7. At all material times, the Respondent was trading on his own account, under the style of Richard Sedgley & Co ("the Firm") having been granted recognition as a sole practitioner since November 1988. The Firm closed on 6 June 2016 following an intervention by the Applicant. The Respondent was the Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA") for the firm.

8. On 3 June 2016, a duly authorised officer of the Applicant commenced an inspection of the books of account and other documents of the Firm. That inspection culminated in an interim memorandum dated 3 June 2016. A final report was subsequently prepared dated 10 June 2016 ("the FI Report").

<u>Allegation 1.1</u>

9. Rule 20.1 of the AR 2011 prohibits a solicitor from withdrawing client money from client account otherwise than in circumstances specified within sub paragraphs (a)-(k) of that Rule.

10. Principle 2 of the Principles requires a solicitor to act with integrity. Principle 4 requires a solicitor to act in the best interest of his client. Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in them and the provision of legal services and Principle 10 requires a solicitor to protect client money and assets.

11. The FI Report identified that the Respondent, upon his own admission, had taken money out of the Firm's client reserve account. The Respondent stated that he had done so since February 2016 in order to pay for gambling online, and that he was addicted to gambling.

12. The FI Report recorded that during the period of 15 February 2016 and 20 April 2016 the Respondent made 59 improper payments from the Firm's direct reserve client account to account number, *****832. That account number was the Respondent's

personal account. These payments ranged from £1,000 to £90,000. The total amount withdrawn by the Respondent amounted to £1,204,000.00.

13. None of the various transfers identified within the FI Report were transfers permitted as set at Rule 20.1 of the AR 2011 sub paragraphs (a) to (k).

Allegation 1.2

14. The Respondent regularly replaced the shortage in the client reserve account between 17 February 2016 and 29 March 2016. In that time the shortage was on some occasions completely replaced and the client reserve account contained surplus monies from the Respondent. On 29 March 2016, there was a surplus of the Respondent's monies in the client reserve account for a period of time. However, the net effect of the Respondent's withdrawals and credits made on that day resulted in a shortage of £246,000 as at the end of 29 March 2016.

15. During the period 29 March 2016 to 10 June 2016, the Respondent replaced the shortage, in part. The maximum amount of the shortage during this period was £366,000, as at 18 April 2016. As at 23 May 2016 the shortage had reduced to £136,000 and by the date of the FI Report (10 June 2016) the shortage was £56,000 as the Respondent had repaid a further £80,000.

16. The remaining shortage was replaced in its entirety by the 15 June 2016 with further payments made by and on behalf of the Respondent. A cash shortage therefore existed in the client account from 29 March 2016 to 15 June 2016.

Allegation 1.3

17. The FI Officer identified in the FI Report that the Firm's book of accounts were not in compliance with the AR 2011.

18. The Respondent admitted to the FI Officer, as recorded in the FI Report, that he had not reconciled the Firm's client account since the end of January 2016. The Respondent said this was partly because a member of staff who helped him with the process was suffering from a long-term illness, and also as a result of the extra work caused by the unexpected death of a colleague in January 2016.

The Applicant's Investigation

19. The Applicant took the following steps to investigate the allegations which it made against the Respondent in these proceedings

- FI Report dated 10 June 2016 by Dan Clark
- Letter to the Respondent dated 1 July 2016.

20. In his response to the letter of 1 July 2016 the Respondent admitted a number of the allegations as set out in that letter, which are allegations 1.1 and 1.3 in these proceedings. The Respondent denied other allegations set out within the letter. In response to the allegation of dishonesty the Respondent, via his legal representatives, stated:

> "...we believe that there is a strong possibility that [the Respondent] was unable to form the subjective intention necessary to establish dishonesty. [The Respondent] accepts that his conduct was objectively dishonest and deeply regrets his actions. ...it is plain...that his misconduct occurred at a time of great stress, shock and grief...which interfered with this reasoning."

21. On 5 June an Adjudicator decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

The Respondent

22. The Respondent confirmed that the contents of his witness statement signed on 12 January 2017 were true to the best of his knowledge, information and belief.

23. In cross examination, it was put to the Respondent that what he had done was, in effect, borrow money from client account. The Respondent told the Tribunal that he could not say that he saw what he was doing in those terms at the time. The Respondent accepted that on 15 February 2016 he had made three transfers from client reserve account to his personal account and three similar transfers on 16 February 2016, totalling £55,000. On 17 February 2016 he had replaced those sums by way of two transfers (£50,000 and £5,000). The Respondent accepted that he had been taking money from client account and then putting it back. The Respondent told the Tribunal that he had had no intention permanently to appropriate client funds; in stating that in his witness statement, he had had regard to the definition of theft in the Theft Act. The Respondent did not accept that he intended to appropriate client money, but he had been taking it and putting it back.

24. The Respondent told the Tribunal that the whole period had been very difficult. He had found it hard to define what had been in his mind in the relevant period, but said he had been in a "kamikaze state of mind". The Respondent told the Tribunal that he had been receiving counselling for his gambling addiction from the Steven James partnership. The counselling had helped him to understand what had been going on and the sequence of events. The Respondent told the Tribunal that he had suffered two bereavements in a short period, being the sudden death of a work colleague and the death of a close personal friend; both funerals had taken place in the week ending 12 February 2016. The Respondent told the Tribunal that the first relevant withdrawal from client account was on the Monday after the second funeral. The Respondent told the Tribunal that he did not appreciate at the time what had been going on and it was only through counselling that he had come to understand his actions.

25. It was put to the Respondent that the transfers had been huge, had taken place almost daily and sometimes there had been several transfers on the same day. The Respondent was asked if it was his evidence that he did not know that what he was doing was wrong. It was put to the Respondent that as an experienced solicitor, he knew it was wrong to take client money and that was why he was replacing it. The Respondent told the Tribunal that he could not say that he had seen the rights and wrongs of what he was doing. Through counselling, he had come to understand his

actions on a subconscious level. The Respondent was asked why he had replaced the funds if he did not know it was wrong to take it. The Respondent told the Tribunal that through counselling he had come to understand that after a build up of work pressures and personal grief he had "pushed the "sod it button". The Respondent told the Tribunal that he could not say he addressed the rights and wrongs of his actions; he had been acting in a kamikaze way.

26. It was put to the Respondent that he knew that the money he was taking was client money and that it was wrong to take it for his own purposes. The Respondent reiterated that he did not address the rights and wrongs of his actions, as he was in a bad state mentally.

27. In response to a question about how he made the transfers, the Respondent told the Tribunal that the bank had set up the Firm's four accounts and his personal four bank accounts in such a way that they all appeared on one screen. He had not asked the bank to set things up that way. He was able to transfer money from one account to another on screen. The Respondent confirmed that he would go online, put in the relevant figure, indicate the transfer to be made and then "push the button". The Respondent accepted that he had done this almost daily for a period of about two months. He had been able to see the transfers on the screen.

28. It was put to the Respondent that he knew he was transferring money from client account. The Respondent told the Tribunal that he had had no intention to deprive clients permanently, but he had intended to take the money.

29. It was put to the Respondent that he knew he was dishonest in transferring money from client account as he had. The Respondent told the Tribunal that he did not understand that what he was doing was wrong, because he had had no intention permanently to deprive clients of their money. The Respondent told the Tribunal that he used client money, which he knew was sacrosanct.

30. The Respondent told the Tribunal that at the time he started transferring money from client account he had not entirely used up his own money. The amount he had used from client account was more than he had had available from his own resources.

31. The Respondent was referred to the letter from his solicitors dated 29 July 2016, which indicated that as at that time the Respondent was not able to either admit or deny the allegation of dishonesty. The Respondent confirmed that although that letter referred to commissioning a medical report to address the issue of subjective dishonesty, there was no medical report produced or relied on in these proceedings. The Respondent denied that he was subjectively dishonest, as set out in the Twinsectra test.

32. It was put to the Respondent that he had borrowed client money as that was an easy target, and doing so was dishonest. The Respondent told the Tribunal that he did not believe he had an understanding that what he was doing would be regarded as dishonesty. The Respondent confirmed that he had been the COLP and the COFA at his Firm, had been in practice for about 38 years, and knew that client money was sacrosanct.

33. In response to questions from the Tribunal, the Respondent told the Tribunal that the client reserve account, from which the transfers had been made, was an interest-bearing account, unlike the normal client account.

34. In response to a question from the Tribunal about where the money had come from to repay the money he had used, the Respondent told the Tribunal that it came from his winnings. However, on 23 May 2016 the two transfers back to client account, each of £50,000, had been made from his personal resources. The Respondent told the Tribunal that the last transfer out from client account had been £30,000 on 20 April 2016. After that, he told the Tribunal, he had been coming to his senses and vowed to himself that he would stop making transfers and would try to correct matters. The Respondent told the Tribunal that he came to his senses after a difficult period involving the death of a colleague. He described the difficulties he had found in arranging for that colleague's litigation work to be handled. After a period, and after transferring some complex cases to another firm, he had started to get a grip on the work. He had been working long hours, including at weekends, to deal with the added workload.

35. In response to a further question from the Tribunal, the Respondent told the Tribunal that he had paid the two amounts of £50,000 from his own resources on 23 May 2016 as he could see by then that what he had done was wrong and dishonest. The Respondent told the Tribunal that he had come to that realisation as by then he was getting a handle on the workload. The Respondent told the Tribunal that he had not received counselling until after the intervention by the Applicant into his Firm (which was in June 2016). In response to a question about what a fellow solicitor would think of his conduct, the Respondent told the Tribunal that other solicitors would regard it as horrendous. The Respondent told the Tribunal that he could hardly believe he was the person who had done this. The Respondent told the Tribunal that, given his state of mind at the time, he did not appreciate that an honest person would regard his actions as dishonest.

36. In response to a further question from the Tribunal, the Respondent told the Tribunal that where several transfers occurred on the same day, they were at different times of day. The Respondent told the Tribunal that he had kept a running total of what he owed to client account at any given time, in a handwritten note.

37. In response to a further question from the Tribunal, the Respondent confirmed that over time the amount outstanding from client account increased, to a maximum of £366,000 on 22 April 2016. This was after the final withdrawal, on 20 April 2016, at which point he had vowed to stop. The Respondent was asked what he meant by his references to a "kamikaze" state of mind. The Respondent told the Tribunal that he had not thought in terms of bringing matters to an end e.g. being struck off the Roll. The Respondent told the Tribunal that there was a difference between his conscious and sub-conscious thinking; the latter was responsible for what was described as "the sod it button."

Ms Margaret Neville

38. Ms Neville, a solicitor admitted in 1978 and who had known the Respondent for over 30 years, gave evidence with regard to the Respondent's character. Ms Neville

confirmed that the contents of her witness statement and the exhibited letter dated 21 July 2016 were true to the best of her knowledge, information and belief.

39. Ms Neville told the Tribunal that she had been prepared to give a testimonial for the Respondent as to his honesty as she had been totally shocked when the allegations surfaced in the local press in Bournemouth around the time of the intervention. Ms Neville had known the Respondent for many years, and wanted to help. Ms Neville's testimonial included information about her professional background and how she had come to know the Respondent professionally. Ms Neville confirmed that when it was written she had seen the Applicant's letter of 1 July 2016, which set out the allegations including the allegation of dishonesty.

40. Ms Neville stated in the testimonial that,

> "I always found [the Respondent] to be totally honest and a worthy member of the profession. He is much liked and respected in the area…"

Ms Neville went on to say,

> "It appears to me that [the Respondent] may well have suffered a mental and physical breakdown since summer 2015, and was not in his right mind then and later when he became so disastrously obsessed with the online gambling…"

41. In response to questions in cross examination, Ms Neville told the Tribunal that she had kept in touch with the Respondent and his wife, for example taking walks along the sea-front and exchanging birthday cards. It was an ongoing friendship, with irregular contact in the period 2015/16. In response to a question about how it had appeared to her that the Respondent may have had a break down, Ms Neville told the Tribunal that the Respondent's obsession with gambling was out of character and unlike the person she had known for so many years. Ms Neville told the Tribunal that she felt that events had been precipitated by events in the Respondent's office, in particular arising from a negligence claim relating to a matter handled by a colleague of the Respondent and later claims and instances which had to be reported to insurers. Ms Neville told the Tribunal that the Respondent had also had difficulties relating to the colleague who had died in January 2016; during 2015 that colleague had been distracted by matrimonial and financial problems. That colleague's death had been unexpected and the Respondent had not been able to recruit anyone to take over the work. Ms Neville told the Tribunal that this had pushed the Respondent over the edge. Apart from the gambling, there was nothing out of character in the Respondent's behaviour.

Mr Richard Whitham

42. Mr Whitham, a retired solicitor, confirmed that his witness statement and the contents of a testimonial he had written for the Respondent dated 20 July 2016 were true to the best of his knowledge, information and belief. Mr Whitham told the Tribunal that he was prepared to give evidence as to the Respondent's character. He had first learned of the allegations against the Respondent when there was a report in the local press. Mr Whitham told the Tribunal that he had then written to the Respondent, whom he

had known for a long time and considered to be a totally decent and honest person. Mr Whitham told the Tribunal that the Respondent's actions were totally out of character.

43. In cross examination, Mr Whitham told the Tribunal that he had retired as a solicitor in 2008 but had continued to see the Respondent regularly at the Rotary Club, usually at least once a month. Mr Whitham told the Tribunal that he learned of the Respondent's problems through the local paper after the intervention. When he had then written to the Respondent he knew the Respondent had had two assistant solicitors and assumed that any problems would have been caused by one of them. Mr Whitham told the Tribunal that he had not seen the Respondent at the Rotary Club for a couple of months before the intervention.

Ms Susan Sedgley

44. Mrs Susan Sedgley, the Respondent's wife, confirmed that the contents of her witness statement dated 12 January 2017 were true to the best of her knowledge, information and belief. The statement gave a history of Mrs Sedgley's knowledge of the Respondent as an honest man, and the circumstances in which his gambling habit began, together with the work and personal stresses encountered in 2015/2016.

45. In cross examination, Mrs Sedgley was asked if there had been any other behaviour of the Respondent's which was out of character in the period February to April 2016, when he was using client money for online gambling. Mrs Sedgley told the Tribunal that he could be moody and very depressed, but sometimes could be "high". Mrs Sedgley told the Tribunal that he could be verbally aggressive at times. They used to do a lot of walking, but in this period they did not, so the Respondent was not getting much fresh air and did not see friends as often as usual. Mrs Sedgley told the Tribunal that the period was unpleasant for her. The Respondent was not the sort of man to go to a doctor unless he was almost at death's door, so he had not sought help about the gambling problem.

Findings of Fact and Law

46. 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.

47. The Respondent admitted the allegations, save for the allegation of dishonesty (allegation 2).

48. **Allegation 1.1 - During the period of 15 February 2016 and 20 April 2016 he improperly transferred £1,204,000 from client account to his personal account and used those monies for his own purposes, in breach of Rule 20.1 of the SRA Accounts Rules 2011 ("AR 2011") and the SRA Principles 2011 ("the Principles"), Principle 2, 4, 6 and 10.**

48.1 The factual background to this allegation, which was admitted by the Respondent, is set out at paragraphs 9 to 13 above.

48.2 The Applicant's position was that in failing to comply with Rule 20.1 of the AR 2011 and using client monies for gambling the Respondent failed to act with integrity, failed to act in the best interest of his clients, failed to behave in a way which maintained the trust the public placed in him and failed to protect client money, in breach of Principles 2, 4, 6 and 10.

48.3 The Tribunal was satisfied that the facts underlying this allegation, which were not disputed, had been proved and that this conduct was in breach of Principles 2, 4, 6 and 10. Accordingly, the allegation had been proved to the required standard, on the facts and on the admission.

49. **Allegation 1.2 - He failed to remedy breaches of the AR 2011 promptly on discovery in breach of Rule 7 of AR 2011, allowing a cash shortage to exist in the client account from 29 March 2016 to 15 June 2016**

49.1 The factual background to this allegation, which was admitted by the Respondent, is set out at paragraphs 14 to 16 above.

49.2 The Applicant's position was that a cash shortage therefore existed in the client account from 29 March 2016 to 15 June 2016, in varying amounts, and that this was in breach of Rule 7 of the AR 2011.

49.3 The Tribunal was satisfied that the facts underlying this allegation had been proved and that the Respondent had been in breach of Rule 7 AR 2011. The Tribunal noted that in some periods prior to 29 March 2016 the client account shortage had been cleared, and on occasions there had been a surplus on client account. However, from 29 March 2016 there had been a shortage of at least £126,000 (on 8 April 2016), reaching a maximum of £366,000 on 18 April 2016. As at 29 March 2016, the shortage was £246,000. The Tribunal heard and accepted that the shortage had been replaced in full by the Respondent by 15 June 2016. The Tribunal was satisfied that this allegation had been proved to the required standard, on the facts and on the admission.

50. **Allegation 1.3 - He failed to reconcile his books of accounts, in breach of Rule 29.12 of the AR 2011**

50.1 The factual background to this allegation, which was admitted by the Respondent, is set out at paragraphs 17 to 18 above. The Applicant's position was that the Respondent had breached Rule 29.12 of the AR 2011 by failing to reconcile the accounts.

50.2 The Tribunal noted that the period in which the reconciliations had not been carried out was February to May 2016, as accepted by both parties. The Tribunal was satisfied on the evidence and on the admission that this allegation had been proved to the required standard in respect of the period February to May 2016.

51. **In respect of allegation 1.1, the Applicant also alleged that the Respondent acted dishonestly, but submitted that dishonesty was not an essential ingredient to establish allegation 1.1.**

51.1 The factual background to this allegation, which was denied by the Respondent, is set out at paragraphs 9 to 13 above. As noted at paragraph 48 above, the Tribunal found the underlying allegation, concerning the transfer of money from client account to the Respondent's personal account, proved to the required standard. The issue for determination was whether, in making the 59 transfers, totalling £1,204,000 in the period, the Respondent had acted dishonestly.

Applicant's Submissions

51.2 The Applicant submitted 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. That test requires that before a finding of dishonesty can be made, the Tribunal needs to be satisfied, to the required standard, that the person acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards (s) he was acting dishonestly.

51.3 The Applicant submitted that in transferring client money into his personal account, in circumstances in which he was not entitled to do so, and using those monies for online gambling, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Reasonable and honest people would not regard it as honest for a solicitor to transfer clients' money to their personal account and then use those monies for their own purposes.

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

- The Respondent admitted to the Forensic Investigation Officer that he withdrew funds from the client reserve account to fund his gambling activities. This showed that he made a conscious decision to withdraw and use the money;

- The Respondent made 59 transfers from client account over the course of two months; that could properly be regarded as a course of conduct.

51.5 It was submitted that borrowing from client account to fund his gambling was dishonest and that the Respondent knew; his actions were deliberate and conscious. The Applicant submitted that the amount which had been taken was "breath-taking". Replacing the money in tranches showed that the Respondent knew it was wrong to take the money. Even if he had been stressed, the Respondent as an experienced solicitor and sole practitioner, was aware that client money was sacrosanct. The Respondent had borrowed money from client account as it was an easy target, and he knew what he was doing.

Respondent's Submissions

51.6 Ms Heley submitted on behalf of the Respondent that the Tribunal had to determine if the subjective part of the Twinsectra test had been satisfied. Ms Heley submitted that the Respondent's state of mind at the relevant time was a matter of fact.

51.7 Ms Heley noted that there had been no serious challenge to the Respondent's account of events and his gambling addiction, for which he had now received some counselling. The Respondent had admitted immediately to the Forensic Investigation Officer that he had taken money and should not have done so. The question for the Tribunal was whether the Respondent had been aware of his own actions at the relevant time, such that there was an element of conscious impropriety in his actions. The Tribunal was reminded that it had to consider this issue applying the criminal standard of proof.

51.8 Ms Heley submitted that it was always difficult to know what was in someone else's mind. The Respondent had not attended a doctor at the relevant time. He had given evidence that he had been coming to his senses from about 20 April 2016. He had been paying back the sums taken, and had repaid all of the sums taken from client account by 15 June 2016; there had been some delay in notification that some funds held by the online gambling company had been transferred to the Applicant.

51.9 Ms Heley referred to Mr Johal's characterisation of the Respondent's actions as "borrowing" from client account. Ms Heley submitted that the Tribunal could reach different conclusions depending on whether it considered the actions as borrowing or whether the Respondent had been taking the money without an intention of repaying it. These questions could affect whether the Tribunal concluded that the Respondent had been aware that his actions could be seen as dishonest.

51.10 Ms Heley submitted that the Respondent had been affected by the deaths of two people – a colleague and a close personal friend – in close succession. Both of those individuals were of a similar age to the Respondent. Whether the shock and grief of those losses compounded the gambling addiction was for the Tribunal to determine. The Tribunal was invited to read the Respondent's witness statement and that of Mrs Sedgely again as part of their deliberations.

51.11 Ms Heley referred to a number of testimonials included in the Rule 5 bundle, from former colleagues and clients, all of which spoke highly of the Respondent's honesty and integrity. Ms Heley submitted that it indicated the regard in which the Respondent was held that two witnesses had been prepared to travel from the Bournemouth area to speak on his behalf.

51.12 Ms Heley referred to a letter from the gambling counselling organisation dated 25 July 2016, within the bundle, which confirmed that the Respondent had been receiving counselling. It was submitted that the Tribunal would have to consider the extent to which the Respondent's gambling addiction was relevant to his actions.

51.13 Ms Heley referred to a 2014 Faculty Report from the Royal College of Psychiatrists entitled "Gambling: the hidden addiction". Whilst this was not relied on as expert evidence, the Report highlighted alarming conclusions for the country arising from gambling addiction. It was stated that there were approximately 450,000 problem gamblers in Britain, with very little specialist support available. The Report set out some of the consequences of gambling. In particular, it was stated that "Left untreated, adults with a gambling disorder can experience negative consequences (including higher rates of physical illness, mental health conditions, financial difficulties and involvement in criminal activity)." The Report recommended that

gambling addiction should be classified as a public health problem, equivalent to drug and alcohol addiction, which required treatment.

51.14 Ms Heley submitted that the evidence showed that the Respondent was dealing with a number of serious problems when he took the money from client account. Mrs Sedgley's evidence was that the Respondent had been unable to cope, and this was supported by the evidence of Ms Neville and Mr Whitham. The Respondent's "kamikaze" frame of mind arose as he suffered one blow after another.

51.15 Ms Heley accepted that the Respondent was an experienced solicitor, with about 28 years' experience as a sole practitioner. The Tribunal was asked to consider that something had happened on 15 February 2016 which led to the Respondent overcoming all of his experience and his knowledge that he could not use client account for his own purposes. The Respondent had been caught in an obsession. The Tribunal had to consider if the Respondent had been capable of recognising that his behaviour had been dishonest by the ordinary standards of reasonable and honest people.

51.16 Ms Heley submitted that the subjective part of the Twinsectra test was important as it should not be possible for an amoral person to impose his/her own code on the circumstances. Ms Heley referred to the Judgment of Hutton LJ in Twinsectra, which at paragraph 31 quoted from R v Ghosh [1982] QB 1053, in particular the passage which read,

> "Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct.
>
> Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to the personal attributes of the third party, such as his experience and intelligence, and the reason why he acted as he did."

Ms Heley then referred to paragraph 32 of Twinsectra in which Hutton LJ stated,

> "The use of the word "knowing" in the first sentence would be superfluous if the defendant did not have to be aware that what he was doing would offend the normally accepted standards of honest conduct, and the need to look at the experience and intelligence of the defendant would also appear superfluous if all that was required was a purely objective standard of dishonesty. Therefore, I do not think that Lord Nicholls was stating that in this sphere of equity a man can be dishonest even if he does not know that what he is doing would be regarded as dishonest by honest people."

51.17 Ms Heley submitted that the Tribunal had to consider the Respondent's personal characteristics, which had to be done in the context of the circumstances at the time and his unchallenged evidence concerning his gambling addiction, his exhaustion and inability to cope during that awful time.

51.18 Ms Heley submitted that the Respondent did not pretend that the matters in issue were not serious. However, his behaviour was out of character. He deeply regretted it, and apologised to the Tribunal. His current recognition of his improper behaviour did not mean that he was thinking clearly at the relevant time and knew that his behaviour was objectively dishonest.

The Tribunal's Findings

51.19 There was no doubt that taking over £1.2 million from client account in a two month period, to fund an online gambling habit, would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent had recognised and accepted that his behaviour was objectively dishonest. The question the Tribunal had to consider was whether, at the relevant time, the Respondent knew, realised or recognised that his behaviour was dishonest by those same standards.

51.20 In addition to the passages from Twinsectra referred to by Ms Heley, the Tribunal noted that the quote from R v Ghosh set out at paragraph 31 of Hutton LJ's judgment included the following:

> "If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

51.21 There was no challenge by the Applicant to the Respondent's evidence that he was suffering from a gambling addiction during the relevant period – February to June 2016. The Tribunal noted the Report from the Royal College of Psychiatrists concerning gambling addiction and the great problems this could cause for the addict, their family and society generally. The Tribunal accepted that the Respondent had been caught up in his gambling activities, to a very serious degree; he was gambling large sums of money on a frequent and regular basis. Further, at the relevant time the Respondent had been disturbed by the deaths of a colleague and of a friend within a short period of time in January/February 2016.

51.22 The Tribunal had heard from the Respondent and from his wife about the difficulties with the Respondent's workload in early 2016 and the stresses and strains he had suffered. Mrs Sedgley's evidence, which was cogent and honest, had put the Respondent's conduct into context. Her evidence was that the Respondent had been moody, depressed and sometimes "high" in this period. The Tribunal accepted that the Respondent's behaviour, in particular from February 2016, was out of character.

51.23 The evidence of Ms Neville and Mr Whitham supported that finding. Whilst well intentioned, these witnesses had had limited contact with the Respondent in the relevant period and could not give direct evidence as to what the Respondent had done. On the basis of the evidence presented by the character witnesses – including those whose supportive letters were within the Rule 5 bundle – the Tribunal was satisfied that until the events in question the Respondent had been a thoroughly honest, decent and hard-working solicitor.

51.24 The Tribunal had no medical evidence concerning the Respondent's state of mind from February 2016 to April 2016 when, on his evidence, he began to realise that what he had done was wrong. There was no medical evidence to support the Respondent's assertion to the Tribunal that he had been in such a mental state that he had not turned his mind to the rights and wrongs of what he was doing.

51.25 The Tribunal remained mindful that it was for the Applicant to prove dishonesty, not for the Respondent to disprove that allegation.

51.26 The Tribunal considered carefully the evidence given by the Respondent concerning his state of mind. It was clear that the Respondent had always known that client money is sacrosanct and that client account cannot be used for a solicitor's own purposes; he had not suggested that his knowledge or understanding of this point had failed in early 2016. Both his witness statement and the letter written on his behalf by his solicitors on 29 July 2016 showed that he was aware client account was sacrosanct. It was also clear that the Respondent had intended to repay the money he used; there was no evidence that he had had any intention permanently to deprive his clients of their money.

51.27 The fact that the Respondent had kept a written note of the amount due to be repaid to client account at any given time, and had made repayments regularly, from his winnings, supported the Tribunal's view that he knew he was not entitled to use the money. The Respondent clearly knew enough about what was happening to be aware that the money was not his and that he must repay it.

51.28 The Tribunal noted that although most of the money taken was repaid from winnings, there came a point in late April 2016 when the Respondent had to use his own resources to repay money to client account. The Tribunal considered whether there was any distinction between the earlier period and the later period such that the Respondent may have been unaware he was acting dishonestly at one point but came to recognise his dishonesty later. The Tribunal accepted that the Respondent's appreciation of the consequences of his actions, in particular the impact on his own financial security, changed by May 2016, when he had to draw on his own resources to repay money to client account. However, the test for dishonesty required an appreciation that the conduct was dishonest, not an appreciation of the consequences.

51.29 The Tribunal considered carefully the Respondent's evidence about his conduct and the way in which he described his state of mind. He had described a "kamikaze" state of mind, a phrase he used several times, including in his witness statement. He had also used a phrase, borrowed from the counsellor he had consulted, to the effect that he had "pressed the "sod it button". The Respondent had also indicated that the improper behaviour arose from his subconscious, rather than his conscious mind. The Tribunal noted and found that the Respondent had been reckless as to the consequences of his actions; his choice of words clearly showed this. Again, a lack of care about the consequences did not amount to a lack of understanding that the conduct was wrong. Rather, it showed that the Respondent was aware that his actions were wrong, but his mental state was such that he did not care that it was wrong.

51.30 The Tribunal regarded it as significant that there were a total of 59 improper transfers. Whilst up to ten transfers had occurred on any one day, the Respondent's evidence was that these were at different times of day rather than in one short session. On each occasion the Respondent had to log on or access the online bank accounts, select a figure, the account from which the money was to be taken and the account to which it was to be transferred, then confirm the transaction. On each occasion, the Respondent had to take a number of deliberate steps. Thereafter, the Respondent used the money for online gambling. He kept a record of the money he had taken. Further, he had used a similar process to that described above to transfer money back to the client reserve account on 35 occasions in the same period. Each such transfer required deliberate actions on the part of the Respondent, together with knowledge of how much money was involved. He knew, on each occasion, that the money he used belonged to clients; that was apparent from the fact that he used a client account rather than an office account. The Respondent also knew that he could not use client account money for his own purposes.

51.31 Whilst the Tribunal took into account the fact that the Respondent's behaviour in the relevant period was out of character, and considered carefully the difficult circumstances he faced at the time, it was forced to the irresistible conclusion that in making such a large number of transfers, totalling a staggering £1,204,000, from February to April 2016 the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Further, in taking steps to repay the money and keeping records of how much was owed when he knew the money belonged to his clients, and that he was not entitled to use that money, the Respondent realised that his conduct was dishonest by those same standards. The Respondent's conduct showed conscious impropriety, over a period which was long enough to show a course of conduct.

51.32 As noted at paragraph 51.20 above, the Respondent could not escape a finding of dishonesty where he had knowingly appropriated property belonging to another simply because he had, on his account, seen nothing wrong with the behaviour at the time. The Tribunal had no doubt that the Respondent knew he was appropriating property and that he should not have done this.

51.33 The Tribunal was satisfied to the required standard that this allegation had been proved.

Previous Disciplinary Matters

52. There were no previous disciplinary matters recorded against the Respondent.

Mitigation

53. In the light of the finding of dishonesty, Ms Heley noted that the Tribunal was unlikely to give significant weight to the Respondent's personal mitigation. However, the Tribunal should consider whether there were exceptional circumstances, such that striking off the Roll would be a disproportionate sanction.

54. Ms Heley referred to the Respondent's gambling addiction, which had reached the level of an obsession. All of the money which had been taken had been repaid, with repayments having been made throughout the relevant period. She submitted and accepted it would be for the Tribunal to consider whether the addiction and attempts to resolve the problem, even whilst the conduct was going on, amounted to exceptional circumstances.

55. It was submitted that the Respondent had always accepted that this was a serious matter and that no sanction less than suspension would be appropriate. Ms Heley submitted that instead of imposing the ultimate sanction, the Tribunal could consider an indefinite suspension, with a condition that if reinstated the Respondent could not deal with client money; this may be sufficient sanction in the circumstances of this case.

56. Ms Heley noted that matters of personal mitigation had been covered in her submissions on the allegations and the evidence heard.

57. Mr Johal reminded the Tribunal of the authority of SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma"), which indicated that save in exceptional circumstances the normal sanction where there was a finding of dishonesty was to strike off a Respondent. The Tribunal should analyse the nature and scope of the dishonesty before reaching a conclusion.

Sanction

58. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties.

59. The Tribunal noted that in the Sharma case, it was stated (at paragraph 13) by Coulson J, that the following points of principle could be identified from the authorities:

> "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll… That is the normal and necessary penalty in cases of dishonesty…
>
> (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances…
>
> (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time…; whether it was a benefit to the solicitor… and whether it had an adverse effect on others."

60. The Tribunal considered the seriousness of the Respondent's misconduct, assessing his culpability, the harm caused and the presence of any aggravating or mitigating factors. In considering these matters, the Tribunal had particular regard to allegation 1.1 in relation to the transfers of client money, and the finding of dishonesty. The other two allegations were not disregarded, but were comparatively minor matters.

61. The Tribunal found that the Respondent's motivation for his misconduct was to support his gambling problem. His actions were planned, in that he had to log on to the banking system and make the transfers; none of the transfers were accidental. As a solicitor, the Respondent was in a position of trust and in particular was expected to protect client money; he did not do so and therefore breached the trust placed in him by clients. The Respondent was solely responsible for the misconduct; no-one else was involved. The Respondent was very experienced, including in his role as a sole practitioner and in the management of client accounts.

62. The Tribunal considered the harm caused by the Respondent's misconduct. There had been no actual loss to clients, in that the money used by the Respondent had been repaid in full. However, there was a real risk that the Respondent may have been unable to repay the money he had used. At the time there was a shortage of £365,000 on client account, the Respondent's evidence was that he would not have been able promptly to repay that sum from his own resources. Not only did this expose the Respondent's clients to risk but the profession was at risk; the Compensation Fund may have been required to reimburse the losses in this situation. Also of significance was that it was reasonably foreseeable that the Respondent's conduct would cause considerable damage to the reputation of the profession.

63. A serious aggravating factor, of course, was that the Respondent's conduct had been dishonest. It was deliberate, calculated and repeated. The Respondent's misconduct had been concealed initially, and he had not reported his misconduct to the Applicant, but he had been open with the Applicant from the point at which its investigation began.

64. The Tribunal took into account that the Respondent had a long and previously unblemished career and the misconduct in question had taken place in a short period. He had made good the losses to client account in full within two months of his last transfer out from client reserve account. The Respondent had shown some insight into his misconduct, albeit he had defended the allegation of dishonesty on the basis that he had not understood his behaviour at the time due to stress and an addiction.

65. The Tribunal noted and accepted that the Respondent's behaviour in the period February to April 2016 was completely out of character and appeared to have been triggered by a build-up of stress. There was no medical evidence to help explain the Respondent's state of mind at the time of his misconduct but the Tribunal accepted that the death of a colleague and a friend and issues concerning insurance claims against the Firm would have preyed on the Respondent's mind.

66. There could be no doubt that the Respondent's misconduct was very serious. Neither a reprimand or a fine could be sufficient to mark the degree of harm caused to the reputation of the profession. The Respondent himself had accepted that he ought at least to be suspended. The Tribunal considered this option, together with the imposition of conditions. Whilst it was to the Respondent's credit that he had repaid the sums he had misused and that the misconduct was within a short period in a long and good career, there were no exceptional circumstances such that any lesser sanction than striking off was appropriate. This was a sad case, as until this period of misconduct the Respondent had been a good and honest solicitor. However, the maintenance of the reputation of the profession, as one whose members could be

trusted to the ends of the earth, required that the Respondent should be struck off the Roll.

Costs

67. The Tribunal was informed that costs had been agreed between the parties in the total sum of £5,600.

68. The Tribunal noted that the Applicant's costs schedule for the final hearing was calculated at a total of £6,218.76, calculated at £130 per hour for Mr Johal's work and £70 per hour for work done by a paralegal, together with travel and accommodation expenses.

69. In the light of the schedule, which the Tribunal considered to set out broadly reasonable and proper costs for a case of this type, the Tribunal was satisfied it should approve the agreement on costs reached by the parties.

Statement of Full Order

70. The Tribunal Ordered that the Respondent, Richard Noel Sedgley, 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 £5,600.00.

Dated this 16th day of February 2017
On behalf of the Tribunal

A. G. Gibson
Chairman