SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11578-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL HEALEY Respondent

Before:

Mr E. Nally (in the chair)
Miss H. Dobson
Mr P. Hurley

Date of Hearing: 21 June 2017

Appearances

Suzanne Jackson, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent, Mr Michael Healey, did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant in a Rule 5 Statement dated 23 November 2016 were that the Respondent: -

1.1 Between April 2015 and June 2016, misappropriated client monies in the minimum sum of £31,078.25 by paying them into the office account of Michael Healey Solicitors ("the Firm") and thereafter withdrawing them from that account in order to make payments upon his own behalf and on behalf of the Firm. He therefore breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles");

1.2 Provided misleading information to two separate clients, Mr B on 23 February 2016 and Ms A on 18 January 2016 and 23 March 2016, when they contacted him for an update on their files. The information implied that their claims had still not been settled, when their compensation payments had already been received by the Respondent on 23 November 2015 and 10 August 2015 respectively. He therefore breached any or all of Principles 2 and 6 of the Principles;

1.3 Specified on his annual practising certificate and registration forms for the practice years 2015/2016, that he had "Never Held Client Money", (in the 12 months to 31 October 2015) when this was untrue, having held client money from at least February 2015. He therefore breached any or all of Principles 2, 6 and 7 of the Principles;

1.4 Between at least February 2015 and June 2016 held and received client money but failed to have a bank or building society account identifiable as a client account to pay it into to keep it safely. He therefore breached any or all of Rule 1.2 (a) and (b), Rule 13.1 and 2 and Rule 14.1 of the SRA Accounts Rules 2011 ("AR 2011").

1.5 From the commencement of the practice in September 2014 to its cessation on 28 June 2016 did not establish and maintain proper accounting systems, and proper internal controls over those systems to ensure compliance with the Rules. He therefore breached Rule 1.2 (e) of the AR 2011.

1.6 From the commencement of the practice in September 2014 to its cessation on 28 June 2016 did not keep proper accounting records to show the position with regard to the money held for each client. He therefore breached any or all of Rule 1.2 (f), Rule 29. 1, 2, 4, 9 and 15 of the AR 2011.

1.7 Failed to replace a shortfall of client money promptly on discovery. He therefore breached Rule 7.1 of the AR 2011.

1.8 Failed to notify the SRA promptly that he/ the Firm was in serious financial difficulty in that it was unable to pay debts due to HMRC and its landlords as they fell due and in so doing:

1.8.1 Breached Principle 7 of the Principles; and

1.8.2 Failed to achieve Outcome 10.03 of the SRA Code of Conduct 2011 ("the Code").

2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1, 1.2 and 1.3 but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement with exhibit "SEJ1", dated 23 November 2016.
- Forensic Investigation Report of Lindsay Barrowclough, dated 26 July 2016, with exhibits ("the Report").
- Costs Schedules, dated 23 November 2016, 11 April 2017 and 14 June 2017.
- Copy letter Applicant to Respondent, dated 24 March 2017
- Copy emails between the Applicant and Respondent, dated 30 and 31 March 2017
- Copy emails, Respondent to Applicant, dated 10 May and 16 June 2017
- Schedule of applications to and payments from the Compensation Fund.

Respondent

- Answer to the Applicant's Rule 5 Statement, dated 18 January 2017.
- Letter from the Respondent to the Applicant dated 15 September 2016.
- GP letter dated 23 May 2017.

Other: -

- Memorandum of Adjourned Substantive Hearing, dated 11 April 2017

Preliminary Matter (1) – Previous Adjournment

4. This matter had been listed for substantive hearing on 11 April 2017. On the morning of the hearing, the Tribunal received a telephone call from a member of the Respondent's family indicating that the Respondent had been taken into a hospital in Liverpool overnight, with chest pains, and was undergoing tests. The Tribunal noted that although the Respondent had made admissions in writing to the allegations he faced, he had requested the opportunity to make personal representations to the Tribunal. The Tribunal adjourned the hearing, and made directions concerning provision of medical evidence if the Respondent wished to rely on such evidence. The case was re-listed for hearing on 21 June 2017. The Respondent provided a letter from his GP dated 23 May 2017 and a copy of a discharge letter from Aintree University Hospital dated 12 April 2017, confirming certain matters about his medical history. There was no application in advance to adjourn this hearing.

Preliminary Matter (2) – Proceeding in the absence of the Respondent

5. This matter was listed to commence at 10am, but due to other matters did not commence until approximately 1.20pm. The Respondent was not present at the Tribunal at any point before the start of the hearing.

6. The Tribunal's Head of Case Management received a telephone call at approximately 9.25am and prepared a note of that telephone call. The note indicated that the call was from the Respondent's mother, who stated that the Respondent had been taken into a hospital in Liverpool overnight with chest pains and was undergoing investigations. The caller asked if the case could be adjourned, as the Respondent wanted to attend. There was no information from the hospital about how long it would be before the Respondent was discharged.

7. The Tribunal therefore had to consider the Respondent's application to adjourn the hearing, on which submissions were invited from Ms Jackson, who represented the Applicant.

8. Ms Jackson told the Tribunal that she opposed the application, and made an application for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules").

9. Ms Jackson accepted that, in the circumstances, there had been no opportunity for the Respondent to submit specific medical evidence. However, it was submitted, there would be no injustice in proceeding with the hearing and concluding the proceedings in a timely way. Ms Jackson submitted that there would be no injustice in proceeding as:

9.1 The Respondent had admitted all of the allegations, including the allegation of dishonesty. The Respondent's Answer made it clear that he admitted allegations 1.1 to 1.8 inclusive. It had not been spelt out unequivocally in that Answer that dishonesty was admitted but that admission had been made in an email of 10 May 2017 in which, amongst other matters, the Respondent wrote: "I confirm that I admit the dishonesty as alleged in 1.1, 1.2 and 1.3."

9.2 The Respondent had had the opportunity to make representations on the Report and the intervention report, and had done so. The representations, dated 15 September 2016, were included in the Rule 5 bundle.

9.3 Since the last adjournment, the Tribunal had received the letter from the Respondent's GP. In an email dated 16 June 2017 to the Applicant, the Respondent wrote: "... I obtained the GP letter for information purposes only and do not intend asking the Tribunal to do anything with it." The Respondent was not, therefore, proposing to rely on any medical evidence with regard to the allegations or in mitigation. It was submitted, therefore, that no further representations from the Respondent would be material to the Tribunal's deliberations.

10. Ms Jackson submitted that the Tribunal could be satisfied that the Respondent was aware of the hearing. The Applicant had served Civil Evidence Act Notices, on 24 March 2017, in relation to all of the papers relied on by the Applicant, including

the Report. No counter-notices had been served. Ms Jackson submitted that the Tribunal was therefore able to proceed on the papers. Further, in the letter of 24 March 2017, the Applicant had drawn to the Respondent's attention the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) which required a Respondent who wanted to rely on his financial position with regard to sanction and/or costs to provide information about his means. Ms Jackson told the Tribunal that the Respondent had provided some further information about his financial position, in an email on 16 June 2017.

The Tribunal's Decision

11. The Tribunal considered carefully the applications made by the Respondent and the Applicant.

12. The Tribunal had regard to its Policy and Practice Note on Adjournments. The part of that Note engaged by the present application was that dealing with ill-health. The relevant provisions were:

> "The following reasons will not generally be regarded as providing justification for an adjournment:
>
> ...
>
> (c) Ill-health
>
> The claimed medical condition of the Applicant or Respondent, unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient."

13. The Tribunal accepted that given that the Respondent had been admitted to hospital overnight it would not be possible to obtain proper medical evidence setting out his condition and/or prognosis. The Tribunal accepted that the Respondent had felt unwell and had attended a hospital overnight. This had happened previously, and had been verified by documents submitted by the Respondent, including the notice of discharge dated 12 April 2017. The Tribunal had no evidence to gainsay the information provided by the Respondent's mother that he had attended hospital and was undergoing tests.

14. There was no evidence either that the Respondent's condition was, or was not just as it had been on the last occasion, when he had been well enough to be discharged on the morning after admission. The only evidence was the telephone message and the medical evidence sent following the last admission. The Respondent had not sought to rely on the letter from the GP, but the Tribunal noted that he had a history of various medical problems, which were being managed with medication. The letter provided information about the Respondent's history, but did not explain what had happened overnight on 20/21 June.

15. In the circumstances, and given that there was no specific medical evidence, the application to adjourn did not fall within the criteria set out in the Note on Adjournments, which criteria appeared to be directed towards applications made prior to the hearing date. The application to adjourn would not be granted.

16. The Tribunal went on to consider whether it was appropriate to proceed in the Respondent's absence. It noted the criteria to be considered, as set out in R v Hayward, Jones and Purvis [2001] QB 862, ("Hayward"), which was applied to disciplinary proceedings by Tait v Royal College of Veterinary Surgeons [2003] UKPC 34, ("Tait"). and GMC v Adeogba and Visvardis [2016] EWCA Civ 162 ("Adeogba"). The Tribunal noted in particular that any decision to proceed in the absence of a Respondent should be taken with great care and should take into account all of the circumstances of the case, including fairness to the prosecutor and the Respondent. The Tribunal noted that it had the power to proceed in the Respondent's absence under Rule 16(2) of the Rules. The Tribunal had no doubt that the Respondent was aware of this hearing, and had been properly served with the relevant proceedings, in the light of the correspondence between the parties.

17. The Tribunal did not consider that the Respondent had voluntarily chosen to absent himself from the hearing; there was some evidence he had become unwell, and he had expressed an intention to attend both on this and on the previous occasion. However, there was no evidence that postponing the hearing would result in the Respondent's attendance. The hearing due to take place on 11 April had been adjourned, to allow the Respondent to attend, but he had not done so on this occasion. There was little disadvantage to the Respondent in him not being able to attend. The Tribunal had received his admissions and his representations on the facts of the case and would take them into account. The allegations were serious, and there was a public interest in serious allegations being determined with reasonable expedition.

18. The Tribunal had a concern that further postponing the hearing would not be in the Respondent's best interests. There was some evidence, given the timing of the Respondent's admissions to hospital, that he became particularly unwell immediately prior to the hearing date. Whilst somewhat speculative, it seemed reasonable to form the view that the stress of facing a hearing was contributing to the Respondent's ill health. It may be that concluding the proceedings would assist his recovery. In any event, it was clearly in the public interest to conclude the consideration of the serious matters in this case. Given the admitted dishonesty, and that the Respondent had not given any indication in writing that he would submit there were any exceptional circumstances, it was far from clear that the Respondent's attendance would make any significant difference to the outcome. However, the Tribunal was conscious of the need to ensure that the hearing was conducted fairly. It would take care to consider the Respondent's representations, made during the course of the investigation and subsequently, before reaching any conclusions.

19. In all of the circumstances, it was reasonable and in the interests of justice to proceed with the hearing.

Factual Background

20. The Respondent was born in 1962 and was admitted as a solicitor in 2002. At the date of the Rule 5 Statement his name remained on the Roll of Solicitors. At all relevant times the Respondent carried on practise as a sole practitioner, Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") at the Firm which was based in Stockbridge Village, Liverpool, Merseyside. The Firm had been authorised by the Applicant on 1 September 2014.

21. The Respondent had been awarded a criminal contract with the Legal Aid Agency ("LAA") which was due to commence in July 2015. The start date for the contract was postponed by the LAA to October 2015 and then again to January 2016. During this period, the Respondent undertook litigation in respect of personal injury and flight delays.

22. Following the receipt of information from HM Insolvency Service that the Respondent had been adjudged bankrupt on 24 May 2016 (which bankruptcy was annulled on 14 June 2016) a Forensic Investigator Officer of the Applicant, ("FIO"), commenced an inspection of the Firm's books of account and other documents on 8 June 2016. The inspection culminated in a memorandum from the FIO to the Firm's Supervisor dated 15 June 2016 and a formal interview with the Respondent on 22 June 2016.

23. The memorandum and notes of the interview were then used in an Intervention Report, which led to the Firm being intervened into on 28 June 2016 and the Respondent's Practising Certificate being suspended. On 29 June 2016 the Respondent applied for the suspension to be lifted and was subsequently granted a Practising Certificate for 2015/2016. His Practising Certificate for 2016/17 had been suspended when the Respondent was made bankrupt (for the second time) on 20 March 2017.

24. The Report, produced on 26 July 2016 identified that there was a minimum cash shortage of £31,078.25 as at 8 June 2016. The shortage continued to exist at the date of Intervention.

Witnesses

25. No oral evidence was heard. Appropriate Civil Evidence Act Notices had been served and there had been no counter-notices. The case therefore proceeded on the documentary evidence and on submissions.

Findings of Fact and Law

26. 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. The record below, in relation to each allegation, of the Applicant's case is based on the facts and submissions made in the Rule 5 Statement, whilst the Respondent's case is drawn

from his Answer, representations in the course of the investigation, his letter to the Applicant dated 15 September 2016 and recent emails to the Applicant.

27. **Allegation 1.1 - Between April 2015 and June 2016, the Respondent misappropriated client monies in the minimum sum of £31,078.25 by paying them into the office account of the Firm and thereafter withdrawing them from that account in order to make payments upon his own behalf and on behalf of the firm. He therefore breached any or all of Principles 2, 4, 6 and 10 of the Principles.**

The Applicant's Case

27.1 From the date the Firm commenced, until the Intervention, the Firm did not have a client account. In the Firm's Application for Recognition dated 23 June 2014, the Respondent stipulated that the Firm did not intend to hold or receive client money. This was not adhered to and client monies were paid into office account. Six personal injury matters were identified where payments for damages had been received by the Firm but had not been paid out to the clients. The total damages received for these six matters amounted to £14,107.50. A review of the Firm's office account bank statements and emails identified a further fifteen flight delay claims where compensation monies had been received by the Firm but had not been paid out to clients. The total compensation received for these fifteen matters was £10,922.75. The damages/compensation had been received between 8 April 2015 and 1 June 2016. The shortage calculated for these twenty-one matters was £25,030.25.

27.2 Additionally, twenty-eight personal injury matters were identified by the Respondent, on a list of closed matters, where monies had been received from third party insurers, in respect of costs for medical reports, which had not been paid. This resulted in a shortage of £6,048.00. There was a total minimum shortage of client monies in the sum of £31,078.25. As at 8 June 2016 the office bank account statement recorded a nil balance. During the inspection, the Respondent stated that he was unable to replace the minimum cash shortage.

27.3 A review of the Firm's office account bank statements from September 2014 to June 2016 identified details of personal and non-business related expenditure. In addition to a number of regular online transfers to the Respondent's personal account, there had been cash withdrawals from ATM's and post offices. There were also debit card payments made to supermarkets, restaurants, a mobile phone provider and retail shops. Payments had also been made to a holiday park in Wales in the total sum of £3,690.00 between March and July 2015. Between 19 and 24 August 2015 ATM withdrawals had been made in Europe. From April 2016 to 31 May 2016 the statements showed twenty-seven online payments to www.skybet.com to the value of £1,305.00 and two receipts from them in the period to the value of £1,100.00.

27.4 During the inspection, the Respondent said that due to experiencing problems in trying to recover the success fees from clients who received their damages directly, he had been paying the settlement monies received from third party insurers into the Firm's office account. He would then pay out the client's damages (less the success fee) on the same day. The Respondent had confirmed in his application for

recognition of the Firm that ".... all damages would be paid by the defendants directly to the client. No client moneys (sic) will be taken on account".

27.5 The Respondent said that over time he had delayed paying compensation monies received to clients for both personal injury and flight delay claims. Subsequently, he had been unable to pay out monies received in respect of clients' damages due to the financial problems the Firm was experiencing. The monies had been retained in office account to cover office expenditure.

27.6 On 9 June 2016 the Respondent informed the FIO that he maintained a personal bank account but had used the office bank account for personal expenditure items when he did not have sufficient funds in his personal account. He further confirmed to the FIO that he had started to make some high odd bets around this time in an attempt to generate funds. In interview on 22 June 2016 the Respondent told the FIO that his financial problems with the business began around December 2014/January 2015. He said that at this stage he believed that once the LAA criminal contract started in July 2015, he would be able to resolve the financial issues.

27.7 The Respondent told the FIO that at times he used the office account, "Basically as a, (sic) at times as a personal account" and that it had been used for, "shopping yeah for food etc, and maybe once or twice where it's been clothing or something like that, for a member of the family. It may be my grandchildren". He confirmed this was personal expenditure and that the payments to the holiday park did not relate to business. In relation to regular payments that had been shown to a particular shop, the Respondent said they were "Probably for gas or electricity".

27.8 The Respondent confirmed that he did not know what the fee income generated from September 2014 to the date of interview was. The bank statements showed that in excess of £3,000 was being drawn most months, excluding debit card payments. When asked, "How were you satisfied that you could take that money out of the business, if you didn't know how much money the business had brought in?" The Respondent replied, "Well obviously I didn't" and went on to state that, "I didn't realise it was that much each month." He added that, "Obviously I didn't assess it the way you're, you're (sic) saying I should have assessed it." When asked why he continued to use that office account for personal expenditure when he knew it contained office money he replied, "...Probably because a lot of (sic) would have been for, for personal commitments um and yeah, I, I (sic) shouldn't have done that, I know that. I can't give an excuse for it. I'm not going to try to I couldn't."

27.9 When asked if he had used client money for his own personal expenditure, the Respondent said, "No. Um... I suppose with it being rolled into one account, then the answer probably would be yes, but not intentionally thinking I'm going to use their money for, for me". When asked if he had used client money to support the business, the Respondent answered, "Yeah". The Respondent confirmed that the payments were for "personal liabilities" and that he did not have a gambling problem or anything like that.

27.10 The Respondent when asked if he had acted with integrity with regard to those clients; had acted in the best interest of those clients; had provided a proper standard of care to those clients; and had taken appropriate steps to protect client money replied "No"

to each question. When asked if his actions had been reckless, the Respondent answered "Yes". When asked if his actions had been dishonest, the Respondent replied "Yes, because the clients should have been paid immediately. So I can't say that, that they weren't anything but, but that, but they were always, always intended to be paid".

27.11 The Applicant's submission was that the Respondent misused client monies over a long period of time by using clients' compensation/damages payments and monies received for payment of medical reports for his own personal and/or business use. His actions resulted in a shortage of client monies which persisted as at the date of Intervention. Such conduct undermined his integrity, the trust that the public placed in him and the provision of legal services and showed a failure to act in the best interests of each client and a failure to protect client money and assets. A solicitor acting with integrity would not have used client monies for his own personal and/or business use knowing that he held the monies in trust for those clients. The public would not expect a solicitor to use client monies in that way. By failing to account to clients when their monies fell due the Respondent preferred his own interests to those of his clients and thereby failed to act in their best interests. By failing to safeguard clients' monies and instead use them for his personal use the Respondent failed to protect clients' monies and assets.

The Respondent's Case

27.12 The Respondent admitted the allegation. The Respondent stated that he did not disclose false and misleading information to the Applicant in his initial application. There was no intention to hold client monies or undertake Personal Injury work. However, circumstances necessitated that income was sourced from other areas of work. All compensation cheques that came into the Firm from clients contained an element of costs within them by way of a success fee. Initially, there was no requirement for a client account. A client account was only required once clients' money was not paid out within forty-eight hours of it being received.

27.13 Virtually all of the bets placed followed a win in the sum of £900 that was paid into the office account on 8 April 2016. The bets were not "high stakes" bets but low stakes bets for high odds. The Respondent was not an addicted gambler but bet on football and golf at weekends but never placed high stakes. The Respondent denied that client money was used for the bets; he stated that the monies used were the money from the win and money put into his account by his mother. The Respondent had been trying to utilise the winning funds to claw back money for his liabilities.

The Tribunal's Findings

27.14 The Tribunal noted the cases of both parties.

27.15 The Tribunal noted that it had been the Respondent's intention to undertake criminal work and that he did not propose to have a client account. A client account would not have been necessary if he had worked only in the way he had originally intended. There was no doubt that as the Firm had only an office bank account, any monies received were paid into that account.

27.16 The Tribunal had been referred to evidence which clearly showed that from about February 2015 the Respondent paid client money into the office account. Particular examples to which the Tribunal was referred included a payment of £2,860 into the account on 24 February 2015 with the narrative "T Cook Tour Ops". There was no doubt that this, and other payments of compensation were received into the office bank account. There was also clear evidence that money had been received in respect of professional disbursements, from third parties, which had been paid into office account and not used promptly to pay the relevant expert.

27.17 The Tribunal noted the clear evidence in the Report that there was a minimum shortage of £31,078.25 (i.e. sums due to clients and professionals e.g. medical experts) as at 8 June 2016, at which point the balance on the Firm's office bank account was nil.

27.18 The Tribunal was referred to particular examples of the Respondent using the office account as a personal bank account. The Tribunal noted three payments, totalling £1,500 to a holiday park in north Wales and other expenditure of a non-business nature. In effect, the Respondent was using clients' money to support his personal expenditure and to keep his business afloat. The Tribunal noted that the Respondent had accepted that he was in financial difficulty, from about December 2014/January 2015, i.e. reasonably soon after the Firm began. In the course of the interview with the FIO on 22 June 2016 the Respondent had admitted that he had used client monies for his personal expenditure. The Tribunal noted and accepted that the Respondent had told the FIO that he had been drawing over £3,000 per month from the Firm's account at a time when he did not know what income the Firm was receiving. The Respondent knew that there were no "excess" monies in the office account which he could use for his own purposes.

27.19 That money the Respondent had used was in respect of compensation payments for personal injury and/or flight delay matters or was money due to third parties e.g. medical experts. Compensation due to clients should not have been paid into an office account. Having been received into an office bank account it should certainly not have been used by the Respondent for his personal expenditure.

27.20 The Tribunal was satisfied on the evidence presented and on the Respondent's admission that this allegation had been proved to the required standard. In misappropriating monies as he had, the Respondent had lacked integrity, had failed to act in the best interests of clients, had failed to maintain the trust the public would place in him and in the provision of legal services and had failed to protect client monies.

28. **Allegation 1.2 – The Respondent provided misleading information to two separate clients, Mr B on 23 February 2016 and Ms A on 18 January 2016 and 23 March 2016, when they contacted him for an update on their files. The information implied that their claims had still not been settled, when their compensation payments had already been received by the Respondent on 23 November 2015 and 10 August 2015 respectively. He therefore breached any or all of Principles 2 and 6 of the Principles.**

The Applicant's Case

28.1 The FIO noted that some client damages would be paid out to clients when received and other client damages would not be. When the FIO asked the Respondent how he determined which damages to pay and which to retain, he said: "There was, there was no um ... no fixed strategy. Um I probably had it in, in my mind the ones that I could probably hold, hold for a little longer than others". He also said that in deciding which clients monies to retain he, "... just sort of getting a general feel of the clients, but there was no hard and fast rule of who to pay and who not to." The FIO asked the Respondent: "Would it be fair to say that if a client was sort of fairly relaxed and not chasing you constantly ..... would that more than likely be one of the clients that you may be would say that ..... I'm not gonna pay that client, at this point?" The Respondent replied: "Yeah that's probably um near, near correct yeah."

28.2 The Respondent said that in some instances he would use monies in respect of damages received for one client for another client whose damages had already been received but had been retained. He said he kept track of which clients had not been paid by keeping their files in a "separate drawer".

28.3 When asked by the FIO what he told clients whose compensation had been received by the Firm but not been paid when they made enquires he said: "Um and it was a case of ... I think different things to different clients. Um mainly that we were still trying to negotiate um the, the, the (sic) Airline was still at a stance on whether they were gonna accept it and liability on it. That's basically all I could say really."

28.4 The FIO reviewed two files. One of these was the file of client Mr B in relation to a delayed flight on 3 June 2010. The matter involved thirteen passengers. Mr B instructed the Firm to act on his behalf in recovering compensation from the holiday tour operators. Instructions were confirmed in a client care letter dated 13 February 2015. There were a number of email exchanges between Mr B and the Respondent where Mr B chased the progress of the claim. In response to one such email dated 19 February 2016, the Respondent wrote: "Thomson are denying liability in this matter." He said that the Firm needed to, "obtain a barristers (sic) advice on the strength of our case". The Respondent said: "Once we have had the advice from a barrister we will contact you and discuss the next step to be taken." The Respondent did not inform Mr B that the compensation money had already been received, on 23 November 2015. When asked by the FIO in interview on 22 June 2016, "Can you describe your comments to Mr [B] for me?" The Respondent replied "Just mis, misleading". When asked, "So you attempted to mislead the client yeah?" The Respondent answered "Yeah".

28.5 The file for client Ms A related to a delayed flight on 20 August 2012. Ms A instructed the Firm to act on her behalf in a claim for compensation from the airline. The matter involved four passengers. Instructions were confirmed by way of a client care letter dated 13 May 2015. The only other piece of correspondence on the file was the letter of claim dated 20 May 2015 for €1,600. There were two handwritten notes of conversations with a Mr A (Ms A was the client) on the file. The note of 18 January 2016 said that the Firm had been in contact with the airline and they had confirmed that a letter would be sent to the Firm, "within 14 days." The note of 23 March 2016 read: "Told him with barrister. If he hasn't heard by end of April he

will go to another sols." Following a review of the Firm's office account bank statements, the Respondent said that Ms A's claim had been settled and that monies had been received from the airline on 10 August 2015.

28.6 When asked by the FIO whether the comments made in the note 23 March 2016 (wrongly referred to as 23 January in the transcript of the interview), "that the client was told that the matter was with a Barrister, and again you'd already been paid," were an attempt to mislead the Respondent answered, "It - well yeah. Well mislead in the sense it was a delaying tactic." He went on to say, "You know I do want to say that everyone of these clients would have been paid." The Respondent was asked whether in respect of these two matters he was being honest with his clients or attempting to mislead them. The Respondent answered, "No, I wasn't being honest with them."

28.7 The Applicant submitted that in providing his clients with information that was misleading the Respondent acted without integrity and failed to behave in a way that maintained the trust that the public placed in him and the provision of legal services. A solicitor of integrity would be completely frank in their dealing with their client, and would not provide a client with misleading information. A member of the public would expect a solicitor to be full and frank at all times in his dealings with his clients.

The Respondent's Case

28.8 The Respondent admitted the allegation.

The Tribunal's Findings

28.9 The Tribunal noted that the Respondent had frankly admitted in the interview with the FIO that he had held back compensation from clients. He had decided who would receive the money due to them reasonably promptly depending on who was more demanding; if a client was more "relaxed", their compensation would be held back to prop up the Firm.

28.10 The Tribunal noted the two exemplified matters of Mr B and Ms A. In the former case, Mr B's compensation was received by the Firm on 23 November 2015, as could be seen from the bank statement. On an enquiry from the client on 19 February 2016, some three months later, the Respondent told his client that the case was still going on. In the case of Ms A, the compensation payment was received on 10 August 2015. In response to enquiries on 18 January and 23 March 2016, the Respondent told Ms A that the papers were with a barrister i.e. indicating that the claim had not been settled, when it had been settled and all relevant sums paid over five months before the first enquiry.

28.11 The Tribunal noted that in the interview with the FIO the Respondent had admitted that he had misled his clients.

28.12 The Tribunal was satisfied to the required standard on the evidence presented and on the admissions that this allegation had been proved. In misleading his clients the Respondent had failed to act with integrity and had damaged the trust the public would place in him and in the provision of legal services.

29. **Allegation 1.3 – The Respondent specified on his annual practising certificate and registration forms for the practice years 2015/2016, that he had "Never Held Client Money", (in the 12 months to 31 October 2015) when this was untrue, having held client money from at least February 2015. He therefore breached any or all of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

29.1 The Respondent, in his application form for Firm Authorisation in May 2014, stated that the Firm did not intend to hold or receive client money. In the Respondent's Practising Certificate renewal application form for 2015/2016 the Respondent answered, "No" to the question "Did the organisation, or individual with your organisation, hold or receive client money or operate a client's own account as signatory in the 12 months to 31 October 2015". The Respondent held client money from at least February 2015.

29.2 The Applicant submitted that by providing false information on the application form the Respondent acted without integrity and in a way that failed to maintain the trust the public placed in him and in the provision of legal services. A solicitor of integrity would be completely frank in their dealings with their professional regulator and would be astute to answer all questions on a form in a manner which was true to the best of their knowledge. The public would expect that any statement made in a document emanating from a solicitor's office would be completely true. A solicitor making an untrue statement would diminish that trust. Further, by providing false information on the application form the Respondent failed to comply with his legal and regulatory obligations and to deal with his regulator in an open and co-operative way.

The Respondent's Case

29.3 The Respondent admitted the allegation.

The Tribunal's Findings

29.4 The Tribunal considered the evidence presented. There was no doubt that the Respondent had held client money, from at least February 2015, yet he had clearly stated that he had not held client money in the period from 1 November 2014 to 31 October 2015. That statement was false.

29.5 The Tribunal was satisfied to the required standard, on the facts and on the admission, that this allegation had been proved. In providing false information on an important document the Respondent had failed to act with integrity, had acted in a way which would tend to diminish the trust the public would place in him and in the provision of legal services and had breached his regulatory obligations. The Tribunal noted that if the Respondent had answered the question on the form correctly, he would have been

required by the Applicant to submit an accountant's report. The fact that he did not answer correctly had the effect that the Applicant was unaware of any concerns about the Respondent's handling of client money, as it understood he did not hold any client money.

30. **Allegation 1.4 - Between at least February 2015 and June 2016 the Respondent held and received client money but failed to have a bank or building society account identifiable as a client account to pay it into to keep it safely. He therefore breached any or all of Rule 1.2 (a) and (b), Rule 13.1 and 2 and Rule 14.1 of the SAR.**

The Applicant's Case

30.1 The Respondent held and received client money from at least February 2015 but failed to have a client account into which the monies could be paid. As he did not have a client account, the Respondent failed to pay money into client account and thereby failed to keep it separate from money belonging to the Firm or to keep it safe.

The Respondent's Case

30.2 The Respondent admitted the allegation. The Respondent submitted that he was only required to have a client account from the time client monies were not paid to clients within forty-eight hours, as the payments he received were mixed funds and could be paid into office account initially.

The Tribunal's Findings

30.3 This allegation arose from the same underlying facts as allegations 1.1 and 1.2. The Respondent held and received client money, but did not have a client account. There could be no doubt on the facts, and on the Respondent's admission, that this allegation had been proved to the required standard.

31. **Allegation 1.5 - From the commencement of the practice in September 2014 to its cessation on 28 June 2016 the Respondent did not establish and maintain proper accounting systems, and proper internal controls over those systems to ensure compliance with the Rules. He therefore breached Rule 1.2 (e) of the SAR.**

The Applicant's Case

31.1 The Firm operated the accounting system Perfect Books. The FIO reviewed the full list of client matters shown on the system. There were a total of two hundred and sixty two files opened for the Firm. The Respondent confirmed that despite files being opened on the system, no other accounting records had been maintained and that no payments or receipts in respect of any of the client matters opened had been posted to the system or individual client account ledgers. The only accounting records held by the Firm were the office account bank statement, cheque book stubs and paying-in book stubs.

31.2 The Respondent told the FIO that bills of costs had been prepared on some files but not on all of the client matters, but that none of the bills of costs had been posted to client account ledgers. It was noted by the FIO, following a review of five personal injury files, that some of the files contained invoices to the client detailing the charges relating to the success fee but no other bill of costs. The Respondent confirmed that no bill of costs detailing costs and disbursements received by the Firm from third party insurers had been produced for any of the personal injury matters. In interview on 22 June 2016 the Respondent told the FIO that he raised bills of costs, but not where there was a fixed fee. The third party insurers had not required invoices and the Respondent had not realised that he needed to raise invoices to show VAT. Neither was there a central record of bills. The Respondent also told the FIO that Perfect Books had not been used, "the way it should have been used" and that "... it was a case of opening, generating a file number" and that, "... we didn't really enter anything further than that."

31.3 The Respondent, when asked if he created an individual ledger for each client said, "No, no". The FIO referred the Respondent to Rule 29 of the AR 2011 and the requirement to keep accounting records properly written up, to include dealings not only with client money that might come in, but also office money. The Respondent said that the Firm had not kept any accounting records as required by Rule 29. He said, "Um again it's, it's going back to the excuse I used before. It was something that would have been done eventually, once I was in a position maybe to employ someone else I could see to the admin side. I would have entered everything that needed entering, at a later date. But as far as the rules go, or the Accountancy Rules no, I didn't do what I should have done at the time I should have done it."

31.4 The Applicant submitted that the Respondent had failed to establish and maintain proper accounting systems, and proper internal controls over those systems to ensure compliance with the SAR and to show the position with regard to the money held for each client.

The Respondent's Case

31.5 The Respondent admitted the allegation. The Respondent submitted that he always produced a bill of costs to clients on personal injury matters, detailing the compensation amount and the success fee deducted. A bill of costs was not produced to compensating insurers. This was never required by the insurers as a fixed fee was always payable. The Respondent accepted that for the purposes of the SAR this should have been done.

The Tribunal's Findings

31.6 The Tribunal noted the clear evidence that the Respondent had failed to keep any proper accounting records. He simply had an office bank account, in respect of which he received statements, and an office account cheque book (with stubs). There was no record on monies held or received for particular clients. There was no central record of bills and hence no record of VAT liabilities. There could be no doubt on the facts, and on the admission, that this allegation had been proved to the required standard.

32. **Allegation 1.6 - From the commencement of the practice in September 2014 to its cessation on 28 June 2016 the Respondent did not keep proper accounting records to show the position with regard to the money held for each client. He therefore breached any or all of Rule 1.2 (f), Rule 29. 1, 2, 4, 9 and 15 of the SAR.**

The Applicant's Case

32.1 The Applicant's case in respect of allegation 1.6 is set out above in relation to allegation 1.5.

The Respondent's Case

32.2 The Respondent admitted the allegation.

The Tribunal's Findings

32.3 As with allegation 1.5 above, there could be no doubt that the Respondent had failed to keep any proper accounting records. This allegation was proved, to the required standard, on the facts and on the Respondent's admission.

33. **Allegation 1.7 – The Respondent failed to replace a shortfall of client money promptly on discovery. He therefore breached Rule 7.1 of the SAR.**

The Applicant's Case

33.1 The FIR confirmed that there was a minimum cash shortage of £31,078.25 as at 8 June 2016. The shortage continued to exist at the date of Intervention on 28 June 2016. It was submitted that the Respondent failed to remedy the shortfall of client money promptly in breach of the AR 2011.

The Respondent's Case

33.2 The Respondent admitted the allegation. The Respondent submitted that when he was interviewed by the FIO he said that he had no funds to remedy the shortage. However, money was due in from personal injury matters that were close to finalising and the Respondent had submitted a bill to the LAA which was in excess of £6,000. As at September 2016, the Respondent had started to address the client money deficit. He had paid a particular client, DM, the full money due to her in the sum of £4,200 and stated that he would continue to try and address the rest.

The Tribunal's Findings

33.3 The Tribunal noted the clear evidence of a shortage of £31,078.25 as at 8 June 2016. Indeed, on the facts of the case there had been shortages, of varying amounts, in the period prior to that date. In any event, it was incontrovertible that the identified shortage had not been remedied by the time of the Intervention, or subsequently. The Tribunal had no reason to doubt the Respondent's submission that he had made a payment to DM, but that by no means cleared the sums due to clients.

33.4 In response to a question from the Tribunal, the Applicant had produced a schedule showing the claims made against the Firm on the Compensation Fund. This showed that in the period from August 2016 to March 2017 payments totalling just under £14,000 had been made to 9 former clients of the Respondent. There were two claims pending as at the date of the schedule and it was understood that some further claims may be made.

33.5 The Tribunal had no doubt that this allegation had been proved, on the facts and on the admission.

34. **Allegation 1.8 – The Respondent failed to notify the SRA promptly that he/the Firm was in serious financial difficulty in that it was unable to pay debts due to HMRC and its landlords as they fell due and in so doing:**

1.8.1 Breached Principle 7 of the 2011 Principles; and
1.8.2 Failed to achieve Outcome 10.03 of the Code.

The Applicant's Case

34.1 The Respondent, in interview with the FIO, confirmed that the Firm was set up in September 2014, with the assistance of various loans made to him from friends (£45,000) and a loan from LDF Finance No1 Limited ("LDF"). He confirmed that he put in approximately £5,000. The bankruptcy of the Respondent on the 24 May 2016, (which was annulled on 14 June 2016) related to the loan from LDF. The Respondent said that prior to the bankruptcy proceedings taking place he had already negotiated a payment arrangement, which included a charge being put on his property.

34.2 The Respondent said in interview with the FIO that the delay in the LAA contract commencement date from July 2015 to October 2015 and then to January 2016 had a big effect on his business. With a LAA contract a monthly income would have been guaranteed. Work undertaken for flight delay and personal injury claims did not sustain the business. The Respondent confirmed that from September 2014 to when the LAA contract commenced in January 2016 he had insufficient income coming in to cover the overheads.

34.3 The Respondent had not paid the rent for his business premises from March 2015, and there was an outstanding PAYE liability for his secretary as no payments had been made to HMRC in respect of her Income Tax and National Insurance. A letter produced by the Respondent dated 3 July 2015 from HMRC, showed a VAT debt. On 8 July 2016, the Respondent confirmed to the FIO that no payments had been made in respect of VAT since the Firm was established in September 2014 and that no VAT returns had been submitted to HMRC. Further, as at September 2015, a self-assessment statement from HMRC showed that the Respondent had a significant outstanding personal tax liability. The Respondent confirmed that from when the Firm was established in September 2014 he had not paid any personal tax and that it was "a few years ago" when he last submitted an Income Tax return to HMRC.

34.4 When the Respondent was asked in the interview on the 22 June 2016, whether he had complied with Rule 10 of the Code, which requires notification to the Applicant of financial difficulty, the Respondent stated: "No I didn't".

34.5 It was submitted that it followed, therefore, that the Respondent failed to notify the Applicant of his financial difficulties and thereby failed to deal with his regulator in an open, timely and co-operative manner. The Respondent was aware that he was unable to pay his debts as they fell due, as he was unable to pay the rent on his business premises from March 2015 and had paid no taxes for his secretary or himself, or any VAT, since the business was established in September 2014. He was also having problems in making repayments of the loan from LDF. There were also accumulated taxes from before the start of the business that had not been paid. No notification of these financial difficulties had been provided to the Applicant.

The Respondent's Case

34.6 The Respondent admitted the allegation.

The Tribunal's Findings

34.7 The Tribunal noted that when the Respondent set up the Firm he had been reliant on loans. This was not unusual, but it was clear that by about three/four months after setting up the Firm, the Respondent was having difficulty servicing the loans and paying other business obligations. He had been unable to pay the rent on his office from about March 2015. The Respondent had not paid any VAT or income tax (for himself or his secretary) since the inception of the business and must have been aware of these obligations, if not the precise amounts due. The Respondent had himself admitted to the FIO that he was in financial difficulties from an early stage in the business. Even if there had been any doubt about that, the Respondent had been adjudged bankrupt in April 2016. Although that bankruptcy was later annulled, it must have been crystal clear to the Respondent by the time the Bankruptcy Petition was presented that he was in financial difficulty.

34.8 There was no doubt that the Respondent had failed to report to the Applicant that he was in financial trouble, in that he was unable to pay his rent and was unable to pay sums due to HMRC. This was in breach of Principle 7 and he failed to achieve Outcome 10.03 of the Code. This allegation was proved to the required standard on the facts and on the admission.

35. **Allegation 2- Dishonesty with respect to the allegations at paragraphs 1.1, 1.2 and 1.3.**

The Applicant's Case

35.1 The factual background to this allegation is set out in relation to each of allegations 1.1, 1.2 and 1.3 above.

35.2 It was submitted for the Applicant that the Respondent's actions were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") applying, in the context of solicitors disciplinary proceedings, the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 ("Twinsectra"), namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

35.3 The Applicant alleged that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people in the following ways:

- By misappropriating clients' money for his own personal and business use;
- By providing misleading information to two clients when giving them an update on their cases which implied that the cases were still ongoing when they had already been settled and the compensation received;
- By specifying on his annual practicing certificate and registration forms for the practice year 2015/2016, that he had never held client money, when this was untrue.

35.4 Further, not only was the Respondent's conduct in so acting dishonest by the ordinary standards of reasonable and honest people, he must have been aware that it was dishonest by those standards for the following reasons:-

- The Respondent misappropriated client money by utilising it for his own personal and business use.
- By providing misleading information to two clients when giving them an update on their cases which implied the cases were still ongoing when this was not the case.
- By specifying on his annual practising certificate and registration forms for the practice year 2015/2016, that he had never held client money, when this was untrue.

35.5 At the time of the matters giving rise to the allegations of dishonesty the Respondent was an experienced solicitor, with fourteen years post-qualification experience at the date of the Intervention. It was inconceivable that an experienced solicitor would not have understood the nature of his professional and fiduciary obligations towards client money and the sacrosanct nature of dealing with client money and the need to have a client account to properly safeguard these moneys. Despite this, the Respondent engaged in an extended course of conduct involving the misappropriation of substantial sums of client's money to pay personal and business expenses over at least a fourteen-month period. At no stage during that period did he attempt to rectify the position by replacing the client money.

35.6 The Respondent admitted that he had used the office bank account (where client money was held) for personal expenditure items when he did not have sufficient funds in his personal account. The Respondent admitted using client money to support his business. The Respondent admitted that his actions had been reckless and when asked if he had been dishonest replied, "Yes, because the clients should have been paid immediately. So I can't say that, that, that they weren't anything but, but that, but they were always, always intended to be paid, that's all I can say..."

35.7 It followed from the fact that the Respondent was using clients' money, as he was in financial difficulty and had insufficient funds of his own to pay for personal and business expenditure, that there was a risk that he would be unable to replace the

monies that he had misappropriated unless the trading position of the Firm improved. That risk must have been obvious to the Respondent.

35.8 In respect of the two matters where the Respondent provided misleading information to the clients, the Respondent had conduct of these matters. It was submitted that it was inconceivable that he did not know that the claims had been settled and the compensation monies paid. The Respondent would have known that he was not being truthful with his clients by implying that the matters were still ongoing when the settlement monies had been received. He was in financial difficulties at the time and he had felt that he needed to ensure he had the use of the monies until he was able to account to the clients. He had a strategy in place whereby he consciously kept a track of clients that had not been paid by keeping their files in a "separate drawer". The Respondent admitted that the information given to his clients was an attempt to mislead them and admitted being dishonest.

35.9 Since the Respondent was a recognised sole practitioner it was inconceivable that he did not know that he held clients' money. However, the Respondent specified on his annual practicing certificate renewal form for 2015/2016 that he had never held client money, when this was untrue. The question asked on the application form was straightforward: "Did the organisation, or individuals within your organisation, hold or receive client money or operate a client's own account as signatory in the 12 months to 31 October 2015", to which the Respondent answered: "Never held Client Money". It was submitted that it was inconceivable that when he answered in this way he did not know that this was untruthful. The statement was made on a formal SRA application form. The Respondent must have realised that it was important to be truthful in such context. Instead, he chose to mislead his regulator. He must have known that it was wrong to provide false information in this way.

The Respondent's Case

35.10 In his email of 10 May 2017 the Respondent admitted this allegation.

The Tribunal's Findings

35.11 There was no doubt that in misappropriating client monies, misleading clients about their cases and making an untrue statement on his Practising Certificate renewal form, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

35.12 The Respondent was an experienced solicitor, with about 12-14 years' experience, including experience as a partner in another firm, at the relevant times. There could be no doubt that he knew that the monies he was using for his personal expenditure included client monies. This practice had continued for at least 14 months, at a time when the Respondent knew that he did not have financial resources of his own from which to pay his personal expenditure. The evidence was clear that he was withdrawing/spending over £3,000 per month, when he had no real idea how much the Firm was receiving in costs but knew that it was in financial trouble and having difficulty paying rent and other obligations. The Respondent was receiving and holding client money, yet did not set up a client account to provide some protection for his clients' funds.

35.13 The Respondent knew that his clients' compensation had been paid and yet misled his clients by stating that their case had not been settled and/or that the papers were with a barrister. His knowledge that the compensation had been paid was confirmed by the Respondent's practice of keeping files in separate drawers if the compensation had been received but not paid to the client.

35.14 The Tribunal was satisfied that the Respondent knew he had received and held client monies from at least February 2015, yet chose to inform the Applicant that he had not held client money in the period to 31 October 2015. The Tribunal noted that holding client money would trigger the need for an accountants' report. By making a false statement on the form, the Respondent prevented the Applicant realising that an accountants' report was needed; in effect, the Respondent had bought himself more time before any action would be taken to investigate or correct the position.

35.15 The Tribunal noted that the Respondent had not suggested that any health issues had prevented him from realising that his actions were dishonest, and there was nothing in the GP letter which the Tribunal had seen which suggested any such impairment.

35.16 The Tribunal applied the test in Twinsectra. It was satisfied to the required standard that the Respondent's conduct was objectively dishonest and the Respondent knew that his conduct was dishonest by the ordinary standards of reasonable and honest people. The Tribunal was satisfied that this allegation had been proved to the required standard.

Previous Disciplinary Matters

36. There were no previous disciplinary matters involving the Respondent.

Mitigation

37. The Tribunal considered the written representations which had been made by the Respondent, and which are summarised below.

38. The Respondent did not make any excuses for his actions. He had been a solicitor since 2002, with a previously unblemished record. He had opened up an office in his local area where there was high unemployment and deprivation. Much of the work the Respondent undertook was pro bono. He loved helping his community in this way.

39. The Respondent applied for and was granted a legal aid contract. That contract was due to commence in May 2015 but due to disputes between the LAA and the legal profession the commencement of the contract was delayed until October 2015 and then until January 2016. Whereas other criminal firms had their old contract and could practice under those contracts the Respondent could not practice criminal law until the new contract began. By that time, he had amassed considerable personal and professional debt and former clients had gone elsewhere. The Respondent should have wound the Firm down when the contract was first postponed, but this was his dream and neither common sense nor the stark reality was hitting home. The Respondent genuinely believed that he could get the Firm through. The Respondent acknowledged that this was a completely misguided and unprofessional attitude and that the consequences of this were evident. He had been dishonest with clients, some

of whom he had known for many years. He had used delaying tactics in order to buy himself and the Firm more time and was deeply sorry.

40. By the time the LAA contract started things had become so worrying that the Respondent's health had deteriorated and he spent time in hospital in January 2016. The worry and stress of the situation he created greatly contributed to the Respondent's ill-health.

41. The Respondent accepted that the Tribunal would give serious consideration to striking him off the Roll of Solicitors. He acknowledged that he would not be permitted to practice law where direct involvement with client money was required. However, the Respondent asked that the Tribunal give him the opportunity to continue to practise criminal law. The Respondent considered himself to be an accomplished criminal advocate and believed that a great many of his clients would bear testimony to this. The Respondent considered that he still had a lot to offer the profession, the public and providers of legal services. Criminal law was predominantly funded by the LAA and the Respondent submitted that with appropriate conditions placed on him he was confident that any apparent concerns could be addressed.

Sanction

42. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. It reviewed all the circumstances of the case in order to assess the seriousness of the misconduct, including the Respondent's culpability, the harm caused and the presence or absence of aggravating and mitigating factors.

43. In considering the Respondent's culpability, the Tribunal noted that the Respondent's motivation for his misconduct was to keep the Firm afloat, to fund his living expenses and to stave off the consequences of his personal debts and financial difficulties. Whilst there had been some expenditure by the Respondent on a gambling website (and some payment of winnings into the account), there was nothing to suggest that the Respondent had any sort of gambling problem. The Respondent's actions were neither planned nor spontaneous; he had not intended to commit any misconduct when he began the Firm but he had then carried on a course of misconduct for an extended period. The Respondent had breached the trust of his clients; they had expected him to represent them and to pay any compensation received promptly and he had not done so. Further, he had lied to his clients and thus further breached their trust. The Respondent was the only person involved in the misconduct and was solely responsible for it. The Respondent was experienced, with previous partner-level experience and so must have understood his responsibilities. His duties to his clients were not complicated or unusual; on receipt of their compensation, he needed to account to them for the appropriate sum (after any proper deduction for his costs) and he should have been honest with them. The Respondent had misled the regulator, in his false statement on his Practising Certificate renewal form.

44. There was obvious harm caused by the Respondent's misconduct. A number of clients had been directly affected, in that they had not received their compensation promptly and some had not received payments at all. This was shown by the number and level of claims made against the Compensation Fund. In addition to the financial

loss, there was an impact on the reputation of the profession. Both the clients directly affected and the public would be concerned that a solicitor had not acted as he ought to have done and had misappropriated client money.

45. Dishonesty had been alleged, admitted and proved; this was a significant aggravating factor. The conduct was repeated over a period of 14 months. Whilst there was nothing to suggest the clients affected had been particularly vulnerable, they had depended on the Respondent to carry out his duties and he had failed to be honest with them and had failed to account to them promptly. The Respondent had used their monies for his own purposes. The Respondent knew that his actions were in material breach of his obligations, and would damage his reputation and that of the profession. The impact of the Respondent's actions was significant, particularly for the clients directly affected. Whilst they may be able to recover from the Compensation Fund, this was not always an easy or quick process, and any claim on the Compensation Fund was a cost to the profession.

46. The Tribunal noted that the Respondent had no previous disciplinary record. He may have been able to repay one particular person, referred to as DM, but he had been unable to make good the losses of his clients. The Respondent had not voluntarily notified the Applicant of any regulatory breaches, despite the extended period in which the misconduct occurred. The Respondent had demonstrated contrition in his written representations; he had stated that he was deeply sorry. He could be given credit for his early admissions and co-operation during the investigation; he had enabled the regulator to bring this case reasonably promptly and without needing to bring witnesses to prove each point. The Respondent's written submissions dated 15 September 2016 included the acknowledgement that he should have wound up the Firm when he realised the extent of his financial difficulties.

47. The Tribunal noted that the Respondent had attributed his financial problems to a delay in the start of the LAA criminal contract he had been awarded. However, even on the Respondent's case, that contract had not been due to start until May 2015; he was already in financial trouble several months before then and must have been aware that the difficulties would continue when the start of the contract was delayed. Sadly, it was not unusual for a sole practitioner, particularly in more poorly paid areas of practice such as crime and personal injury to face financial difficulties. However, a solicitor is required to maintain their professional standards. Most do so, even in the face of significant financial problems. There could be no excuse for misusing client monies for personal purposes.

48. The Tribunal assessed the misconduct in this case as very serious. The Tribunal was aware of the case law, in particular the case of SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma") in which Coulson J reviewed the authorities and stated that the principles which emerged were that:

> "(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."

49. The Tribunal ruled out "no order", a reprimand and a fine as appropriate sanctions in this case; it was clearly far too serious for any such sanctions. The Tribunal noted that the Respondent had asked for leniency. The Tribunal considered whether there were any exceptional circumstances in this case which would indicate that leniency was appropriate. Whilst the Respondent had had problems with the LAA, neither this nor general economic conditions amounted to exceptional circumstances. The Tribunal could find nothing exceptional on the facts of this case. Indeed, even without the finding of dishonesty, the misconduct was serious and would probably have justified either striking off or a significant suspension.

50. The Tribunal was conscious of the purpose of sanction in the Tribunal, which is fundamentally to protect the reputation of the profession as one whose members can be trusted to the ends of the earth, and to protect the public. In the circumstances of this case, no lesser sanction than striking off was reasonable and proportionate; that was the order the Tribunal would make.

Costs

51. Ms Jackson of the Applicant made an application that the Respondent should pay the costs of the proceedings in the sum claimed in the schedules of costs.

52. The Tribunal noted that the costs at the date of issue of proceedings were said to be £8,753.06 at the date of issue, including forensic investigation costs of £5,609.80, supervision costs of £225 and internal legal costs of £2,918.26, calculated at £130 per hour for work done by Ms Jackson and at £75 per hour for work done by a paralegal. As at the date of the expected substantive hearing, 11 April 2017, the costs had risen to £11,226.08; that figure was adjusted downwards as the hearing had not taken the time estimated. The costs claimed up to and including the final hearing were £12,152.72.

53. The Tribunal noted that the costs schedules had been served on the Respondent. He had not made any comment on any of the schedules. The Tribunal also noted that the Respondent had been made bankrupt in March 2017. This was after the commencement of these proceedings, such that any costs award in this case would become a bankruptcy debt and dealt with in the same way as the Respondent's other liabilities in the bankruptcy.

54. The Tribunal considered carefully the schedules of costs and the time claimed on each. The Tribunal noted that although the hearing was shorter than had been estimated, there had been a considerable amount of waiting before the hearing began. Although advocacy and waiting time were charged at different rates (with travel and waiting time at half of the advocacy rate of £130 per hour), the Tribunal assessed that the reduction in hearing time and the waiting time balanced each other out.

55. The Tribunal was satisfied that the costs as set out in the schedules were reasonable and proportionate to the issues and complexity of the case. There was no claim for any time which appeared excessive or unreasonable. The costs, which would fall to be dealt with in the Respondent's bankruptcy, would be ordered in the sum of £12,152.72.

Statement of Full Order

56. The Tribunal Ordered that the Respondent, MICHAEL HEALEY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,152.72.

Dated this 10th day of July 2017
On behalf of the Tribunal

E. Nally
Chairman