SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11580-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ROLAND IVOR CASSAM, — First Respondent

PETER RHIDIAN LEWIS — Second Respondent

Before:

Miss J. Devonish (in the chair)
Mr G. Sydenham
Mr M. R. Hallam

Date of Hearing: 17 & 18 May 2017

Appearances

Mr Shaun Moran, solicitor advocate, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Neither the First Respondent, Mr Roland Ivor Cassam, nor the Second Respondent, Mr Peter Rhidian Lewis, attended or were represented.

JUDGMENT

Allegations

1. The allegations against the First and Second Respondents made by the Applicant in a Rule 5 Statement dated 30 November 2016 were that whilst in practice as Principals at Temple Law ("the Firm") from around February 2014 to March 2015 they:

1.1 Failed to keep accounting records properly written up at all times to show their dealings with client money, and office money relating to any client matter, contrary to Rule 29.1 of the SRA Accounts Rules 2011 ("AR 2011");

1.2 In relation to the Firm's book of accounts they failed to carry out reconciliations as they fell due contrary to Rule 29.12 of the AR 2011, and in breach of Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles");

1.3 Failed to keep proper accounting records to show accurately the position with regard to the money held for each client contrary to Rule 1.2(f) of the AR 2011;

1.4 Failed to ensure that the current balance on each client ledger was shown, or readily ascertainable from the records kept, contrary to Rule 29.9 of the AR 2011;

1.5 Failed to remedy breaches promptly upon discovery contrary to Rule 7.1 of the AR 2011;

1.6 By failing to comply with the requirements of the AR 2011, the Respondents breached any (or all) of Principles 4, 6 and 10 of the 2011 Principles;

1.7 Failed to use each client's money for that client's matter only contrary to Rule1.2(c) of the AR 2011;

1.8 Withdrew money from client account otherwise than in accordance with Rule 20.1 of the AR 2011;

1.9 By failing to comply with the requirements of the AR 2011, the Respondents breached any (or all) of Principles 4, 5, 6 and 10 of the 2011;

1.10 Failed to run their business effectively and in accordance with proper governance and sound risk management principles contrary to Principle 8 of the 2011 Principles and breached Rule 1.2(e) of the AR 2011;

1.11 On dates reasonably believed to be between 18 February 2015 and 5 July 2015 the Respondents failed to safeguard client files and in so doing breached any (or all) of Principles 4, 5, 6 and 10 of the 2011 Principles.

2. The allegations against the First Respondent only were that he:-

2.1 By failing to notify the Applicant of material changes to information held about the Firm, or a serious failure to comply with the Rules, namely that the Second Respondent had ceased performing the role of COLP and COFA during the period February 2014 to 30 March 2015, he failed to achieve Outcome 10.3 of the SRA

Code of Conduct 2011 ("the 2011 Code") and breached Principle 7 of the 2011 Principles;

2.2 Between November 2014 and March 2015 he used client monies for purposes otherwise than they were intended, and failed to redeem a mortgage in favour of Cheltenham & Gloucester ("C&G") on behalf of his clients Mr C and Mr J in breach of (any or all) Principles 2, 4, 5, 6 and 10 of the 2011 Principles and failed to achieve Outcome 11.2 of the 2011 Code.

3. The allegations against the Second Respondent only were that he:-

3.1 Between February 2014 and March 2015 failed to discharge his responsibilities as the firm's COLP and COFA contrary to Rules 8.5(c) and 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules");

3.2 Failed to notify the Applicant that he was not complying with the Authorisation Rules by not performing the role of COLP and COFA during the period February 2014 to 30 March 2015, and thereby failed to achieve Outcome 10.3 of the 2011 Code and breached Principle 7 of the 2011.

4. Dishonesty was alleged in respect of Allegation 2.2, but dishonesty was not an essential ingredient to prove the allegation.

Documents

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

Applicant: -

- Application dated 30 November 2016
- Rule 5 Statement, with exhibit "IJ1", dated 30 November 2016
- Statement of costs at the date of issue
- Statement of costs dated 10 May 2017
- Witness statement of Oliver Baker
- Witness statement of Eve Corbett, with exhibits (undated)
- Witness statement of Paul Caldicott, with exhibits, dated 8 May 2017
- Witness statement of Umar Mohamed, dated 15 May 2017
- Civil Evidence Act Notice dated 8 May 2017
- Various emails between the Applicant, the Tribunal and the First Respondent ("R1") and the Second Respondent ("R2"), including:
    - 10 April 2017 Applicant to Tribunal, copied to R1 and R2
    - 11 April 2017 Applicant to R1
    - 13 April 2017 Applicant to Tribunal and R1
    - 8 May 2017 Applicant to R1 with statements of Eve Corbett, Paul Caldicott and Oliver Baker (and equivalent email to R2)
    - 10 May 2017 Applicant to R1 re medical evidence

- Extracts from R v Hayward, Jones and Purvis [2001] QB 862, ("Hayward") and General Medical Council v Adeogba and Visvardis [2016] EWCA Civ 162 ("Adeogba").

First Respondent: -

- Emails between R1 and the Tribunal and/or the Applicant, including:
  - 4 April 2017 R1 to Tribunal
  - 4 April 2017 Tribunal to R1
  - 7 April 2017 R1 to Tribunal
  - 7 April 2017 Tribunal to R1
  - 7 April 2017 R1 to Tribunal
  - 7 April 2017 R1 to Tribunal
  - 10 April 2017 R1 to Tribunal, copied to Applicant and R2
  - 10 April 2017 R1 to Applicant, copied to Tribunal
  - 10 April 2017 Tribunal to R1 and Applicant, copied to R2
  - 10 April 2017 R1 to Tribunal, copied to Applicant and R2
  - 12 April 2017 R1 to Applicant
  - 27 April 2017 R1 to Tribunal, copied to Applicant
  - 8 May 2017 Applicant to Second Respondent with witness statements
  - 9 May 2017 R1 to Applicant
  - 16 May 2017 R1 to Applicant, copied to Tribunal
  - 17 May 2017 R1 to Applicant, copied to Tribunal – adjournment application
- Letter from First Respondent's GP dated 9 May 2017

Second Respondent: -

- Letter to the Tribunal, copied to the Applicant, 24 February 2017
- Financial statement 19 April 2017
- Email R2 to the Applicant, copied to the Tribunal, 8 May 2017
- Email R2 to the Tribunal and Applicant 11 May 2017

Other: -

- Memoranda of Case Management Hearings on 7 March, 4 April and 20 April 2017

Preliminary Matter (1) –Application to adjourn/proceeding in the absence of the Respondents

6. The Application and Rule 5 Statement in this case dated 30 November 2016 were served on the First Respondent on or about 10 December 2016. Due to initial difficulties in serving the proceedings on the Second Respondent, he was not served until 16 January 2017. Standard directions issued at that point to the parties provided, amongst other matters, for there to be a Case Management Hearing ("CMH") on 7 March and for the Respondents to file and serve their Answers to the allegations, and any documents on which they intended to rely, by 4pm on 3 March 2017.

7. The Second Respondent filed a brief Answer, in which he admitted the allegations made against him, dated 24 February 2017. No Answer was filed by the First Respondent in advance of the CMH on 7 March 2017. At that CMH, the case was listed for hearing on 17 and 18 May 2017 and directions were given for service of evidence. The First Respondent was directed to file and serve his Answer by 4pm on 28 March 2017. He did not do so and at a non-compliance directions hearing on 4 April 2017 a Deputy Clerk ordered the First Respondent to file and serve his Answer by 4pm on 10 April, together with any documents on which he intended to rely. Consequential directions were also made.

8. A further CMH took place by telephone on 20 April 2017, which the First Respondent attended by telephone. The First Respondent submitted in the course of that hearing that he would be able to serve his Answer by 27 April and that he did not see any problems with the date for the substantive hearing. The Tribunal directed that the First Respondent should file and serve his Answer to the allegations and any documents by 4pm on 27 April 2017 and in default he would not be permitted to file the Answer and documents without the permission of the Tribunal. The parties were directed to file and serve any witness statements which had not already been filed and served by 4pm on 9 May 2017.

9. On 27 April 2017 the First Respondent sent an email to the Tribunal which stated, so far as relevant:

> "...Owing to ill health I was unable to obtain the file of papers you originally sent. I therefore accept therefore that I am not in a position to challenge any of the allegations directed at me personally. There was no intention of permanently depriving anyone of anything and the Law Society has already had a six figure sum from me and is of course welcome to other funds. It is on record that I have co-operated with them as far as I could.
> I'd be grateful therefore if you and Mr Moran will treat this email as confirmation of my reply in terms of the directions made last Thursday."

10. The First Respondent provided to the Applicant a letter from his GP, dated 9 May 2017, which set out information about the First Respondent's ill health from about 2011 onwards and noted that the First Respondent was unable to work for a period from 2010 into 2011. Whilst there was reference to two physical conditions which were ongoing, there was no indication of the extent to which these were debilitating, nor was there reference to any current condition which would prevent the First Respondent from taking part in these proceedings.

11. In an email to the Tribunal on 16 May 2017 the Respondent referred to the letter from the GP and said, "... I would be grateful if the Tribunal will consider it in such manner as they think fit." The First Respondent also stated,

> "It will be exceptionally difficult if not impossible for me to attend the hearing, which I note is scheduled for two days. This is not intended to show any disrespect to the Tribunal in any way but my health and indeed financial position (of which you are already aware) are considerable barriers."

12. On the afternoon of 16 May 2017, Mr Moran of the Applicant sent an email to the First Respondent, stating:

> "To assist the Tribunal who may be considering tomorrow whether or not to proceed in your absence, can you please confirm whether you would like to attend the hearing but are prevented from doing so by your health? Can you confirm whether an application for an adjournment is made (to enable a later date to be arranged when your health will allow you to attendance)? or are you content for the matter to be heard in your absence tomorrow?"

13. The First Respondent replied to that email at 7.24am on 17 May, copied to the Tribunal. That email contained what appeared to be a request to adjourn the substantive hearing, albeit it was not an application made to the Tribunal. The email included the following:

> "Thank you for your email. Yes, I would like to attend, but unfortunately cannot do so today. I have no wish to delay matters unduly and don't know whether [the Second Respondent] planned to appear today/tomorrow.
>
> I appreciate that the final decision will rest with the Tribunal, and I don't wish to cause them what may be great inconvenience. But I should be grateful if the Tribunal would consider adjourning the matter. I will ask the GP to provide a further email if required…
>
> I will endeavour to obtain further assistance from my GP in any event and email this to you as soon as I can. However, I accept that the final decision on the timing of the hearing is down to the Tribunal…"

14. No further information concerning the First Respondent was received from the First Respondent's GP prior to this application for an adjournment being considered.

15. The Tribunal noted an email from the Second Respondent dated 11 May 2017 which referred to the substantive hearing, albeit it incorrectly stated the hearing was listed for 16 May. The Second Respondent explained that for work reasons he would be unable to return to the UK for the hearing and stated,

> "I would not wish the proceedings to be delayed for this reason but would ask that you not consider my absence to be in anyway a lack of respect for the Tribunal or for the seriousness of the proceedings.
>
> Largely for financial reasons I will not have legal representation at the hearing however will endeavour to make myself available by telephone should the Tribunal need to speak to me…"

The email then set out various matters by way of mitigation, which the Second Respondent asked the Tribunal to consider in his absence.

16. The Tribunal noted that it would need to consider the First Respondent's application to adjourn the hearing and, depending on the outcome of that application, may need to consider whether to proceed in the absence of the Respondents. Mr Moran was invited to make submissions on the position.

17. Mr Moran submitted that the position so far as the Second Respondent was concerned was straightforward. There was no doubt that he had had notice of the proceedings and the hearing and so, under The Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") the Tribunal could proceed to hear the case in his absence; see Rule 16(2). The Second Respondent had made full admissions of the allegations against him and did not want the hearing to be delayed. It would therefore be appropriate to hear the case as the Second Respondent had chosen to absent himself, for the reasons he had given in his email.

18. Mr Moran submitted that the position concerning the First Respondent was more complicated. The First Respondent had supplied a GP letter and had been asked to clarify the basis on which this was put forward; was it by way of a defence or mitigation? That had not been clarified. However, in response to the Applicant's query about the First Respondent's health, in the email of 16 May (see paragraph 12 above), the First Respondent had stated he would like to attend but could not "today". Again, the Tribunal could be sure that the First Respondent had been served with the proceedings and notice of the hearing and so could proceed to hear the case under Rule 16(2) if it was just to do so.

19. Mr Moran referred the Tribunal to the cases of Hayward and Adeogba on the issue of proceeding in the absence of the Respondent. It was clear from the case law that the discretion to proceed in the absence of a party, particularly if that party were not represented, should be exercised with the utmost caution. However, the Tribunal should be fair to all parties, including the regulator. The Tribunal would need to consider if the Respondent would attend at a later date if the hearing were adjourned, the seriousness of the allegations and the desirability of proceeding with a case promptly in the public interest. Mr Moran submitted that the case law indicated that the Tribunal should only rarely commence a trial if a Respondent's absence was due to ill health, such that the non-attendance was involuntary. However, in this instance the Applicant had no information about the First Respondent's current health and so could not assist the Tribunal further on the issue of whether or not the hearing should be adjourned. As the most serious allegations (2.2 and 4) were against the First Respondent only, he may want to attend to deal with those allegations. The GP letter of 9 May 2017 may not have been prepared in anticipation of an adjournment application. If the matter were to be adjourned, Mr Moran would invite the Tribunal to make robust directions, requiring a proper medical report, including on prognosis. Whilst the First Respondent did not hold a Practising Certificate and so did not pose any risk to the public, it was in the public interest for serious allegations to be determined as promptly as possible.

The Tribunal's Decision

20. The Tribunal first considered the First Respondent's application to adjourn the hearing in the light of the Tribunal's Practice Note on Adjournments.

21. The First Respondent's application to adjourn appeared to be made on the basis of his ill health. He had informed the Applicant, and copied to the Tribunal, an email indicating that he would like to attend but was unable to do so on 17 May. The implication of the email chain leading to the adjournment application was that the First Respondent was in ill health. However, he did not state in any of his emails the nature of the condition which prevented him from attending. There was no indication in any of the emails from the First Respondent when he contended he would be able to attend, for example whether he expected to recover from whatever his condition was in a matter of weeks or months.

22. The letter from the First Respondent's GP recorded that there had been health conditions from about 2011 onwards, which had been particularly acute in the period 2011/12. With reference to one particular health issue, the GP stated, "This would have affected his concentration and organisational skills within his work..." However, it was clear that this related to a period in the past and there was no comment in the letter about the First Respondent's current ability to prepare for, attend or participate in the hearing. The Tribunal also noted that in an email to the Tribunal dated 4 April 2017 the First Respondent had stated, in relation to the CMH on 4 April, "I replied saying I would be on a train then..." This suggested that the First Respondent was sufficiently mobile to be able to use public transport.

23. The Tribunal was satisfied that there was no good reason to adjourn the hearing on the basis of the First Respondent's health, as he had not provided any proper information about his position.

24. The Tribunal noted the secondary ground put forward by the First Respondent, namely his financial position, as mentioned in his email of 16 May (but not repeated in the email of 17 May). The Tribunal noted that under its Practice Note on Adjournments it was made clear that financial reasons for non-attendance would not generally be regarded as a good reason to adjourn a hearing. The Tribunal was also aware that in some circumstances, where a Respondent had indicated a clear intention to attend but was not in a financial position to do so, the Applicant could meet the travel/accommodation costs, in the first instance, to ensure a fair hearing. However, in this instance the First Respondent had taken little part in the proceedings and had not made it clear he had any intention of appearing; he had not made any request for financial assistance to enable him to attend. (The Tribunal noted that a Respondent making any such request would have to satisfy the Applicant of their impecuniosity).

25. The Tribunal noted that there was no information from the First Respondent about his current health, and in any event there was no evidence in support of his proposition that he was currently unwell and unable to attend. The First Respondent had consistently delayed in complying with the Tribunal's directions and had not cited ill-health as a reason. Indeed, at the telephone hearing on 20 April 2017 he had indicated that he did not see any problems with the date for the substantive hearing and did not mention any health, or financial problems, which would prevent him from attending. There was nothing on the face of the emails from the First Respondent which showed any deterioration in his ability to prepare a lucid document in the period after 20 April 2017.

26. The Tribunal went on to consider the application of the case law on proceeding in the absence of a Respondent, in particular Hayward and Adeogba.

27. At paragraph 22(3)-(5) of Hayward, approved by the Court of Appeal and set out in Adeogba, it was provided:

> "3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
>
> 4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> 5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> > (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> >
> > (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;
> >
> > (iii) the likely length of such an adjournment;
> >
> > (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> >
> > (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;
> >
> > (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> >
> > (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;
> >
> > (viii) the seriousness of the offence, which affects defendant, victim and public;
> >
> > (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> >
> > (x) the effect of delay on the memories of witnesses;

> (xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."

28. Those criteria were substantially approved by the House of Lords in R v Jones [2002] UKHL 5 ("Jones"), which emphasised that the discretion to proceed in the absence of a defendant should be, "exercised with great caution and with close regard to the overall fairness of the proceedings". Lord Bingham, in that Judgment, observed that if attributable to involuntary illness or incapacity it would very rarely "if ever" be right to exercise discretion in favour of commencing the trial unless the defendant is represented and asks that the trial should begin. The principles in Hayward and Jones were later applied to professional disciplinary proceedings in Tait v Royal College of Veterinary Surgeons [2003] UKPC 34, ("Tait").

29. In Adeogba, which concerned a medical practitioner, but applied also to solicitors, it was noted that the context in which disciplinary proceedings was taken was the duty of the regulator to protect the public (amongst other duties) and that "In that regard, the fair, economical, expeditious and efficient disposal of allegations made against (medical practitioners) is of very real importance." It was further noted that there should be fairness to the practitioner and to the regulator, a regulator could not compel a Respondent to attend. It was stated,

> "It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

30. The Tribunal noted that it is the right of a Respondent to attend a disciplinary hearing at which allegations are made against him/her. However, that right can be waived. The Tribunal had no doubt that the Second Respondent had chosen not to attend and was content for the hearing to proceed in his absence.

31. In contrast, the First Respondent had stated that he wanted to be present but was unable to attend. The Tribunal therefore considered carefully the criteria set out in Hayward, insofar as relevant – not all the criteria applied in the context of professional disciplinary hearings, and all the relevant circumstances.

32. There was no evidence to support the First Respondent's contention that he was unwell and unable to attend, and the First Respondent had not even specified the nature of any current problems which were so debilitating that he was unable to attend. In the absence of such evidence, the Tribunal concluded that the First Respondent had voluntarily absented himself from the hearing and thus waived his right to participate. If the proceedings were put off to another date, there was no evidence to indicate when the First Respondent might feel ready to attend. There was disadvantage to the First Respondent in not having the opportunity to present his account, but he had had plenty of opportunity to do so in the course of the Applicants' investigation, in response to the Applicant's Explanation with Warning

("EWW") letter and in an Answer to the current proceedings, with which he had been served in December 2016. The allegations against the First Respondent, particularly the allegation of dishonesty, were serious and it was in the public interest that they should be resolved with reasonable expedition. The Tribunal also noted that this was not a case where severance of the allegations against the First and Second Respondents would be appropriate and that it was in the Second Respondent's interests that matters should be resolved at this hearing. It was also in the interests of the regulator to proceed; this was a factor given particular prominence in Adeogba.

33. The Tribunal also noted that the First Respondent had not chosen to challenge any of the Applicant's evidence. As the facts of the case were not disputed, the Tribunal would be able to consider the case fully on the papers and on the submissions. Further, the Tribunal noted the requirement set out in Hayward that if it was decided to proceed in the absence of a Respondent, the Judge/Tribunal "must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits…"

34. The Tribunal was satisfied on the facts of this case that it was just and proportionate to proceed with the hearing, for the reasons set out above; there was no good reason not to proceed. The Tribunal would ensure that the Applicant's case was tested, particularly with regard to the disputed allegation of dishonesty.

Preliminary Matter (2) – Amendment of Allegations

35. In the course of opening the case, it was noted that some amendments may be required to some allegations, and to one paragraph in the Rule 5 Statement. As these were noted, Mr Moran for the Applicant applied for permission to make amendments.

36. Allegation 1.8, as drafted in the Rule 5 Statement, referred to withdrawal of client money "other that in accordance with Rule 20.1…" With the permission of the Tribunal, this was amended to read, "… other than in accordance with Rule 20.1…"

37. Allegation 1.9 in the first paragraph of the Rule 5 Statement referred to alleged breaches of Principles 4, 5 and 10, whereas just before paragraph 21 of the Rule 5 Statement, the allegation was repeated with the inclusion of an alleged breach of Principle 6. At paragraph 40 of the Rule 5 Statement, it was submitted that the Respondents' actions would "undermine the trust that the public places in a solicitor and the provision of legal services". A breach of Principle 6 was clearly alleged in the body of the Rule 5 Statement, and the Tribunal agreed that the allegation should be amended to state this clearly.

38. It was noted that paragraph 53 of the Rule 5 Statement should have referred to allegation 1.10, not 1.9; the Tribunal agreed that this could be amended on the documents as it was clear from the heading of the relevant section that it was allegation 1.10 which was being discussed.

Preliminary Matter (3) – Issues with documents

39. A number of issues with documents occurred before and during the hearing, and are set out here for convenience.

40. Neither Respondent filed a formal Answer to the allegations, but both filed and served letters and emails which were treated as their Answers. The First Respondent's Answer was contained in an email on 27 April 2017, set out at paragraph 9 above. Prior to that email, in an email of 10 April 2017 the First Respondent wrote:

> "I have to say that I feel undue pressure is being put on me very unfairly. I have co-operated throughout this matter as promptly as I could! After careful consideration therefore, I feel I have no option other than to accept the allegations on a joint and several basis. You may treat this email therefore as confirmation that the allegations are admitted by me on a joint and several basis."

In an email dated 12 April 2017 the Respondent stated, "If there were any allegations of dishonesty against me then they are denied".

41. The Second Respondent's letter of 24 February 2017 contained an unequivocal admission of the allegations against him, including those made jointly with the First Respondent. Further, the Second Respondent had on 11 May 2017 sent an email to the Tribunal which contained some submissions by way of mitigation.

42. The First Respondent had sent to the Tribunal an email on 16 May 2017. That email was redacted by Tribunal staff to remove a reference to a previous appearance at the Tribunal, so that the Tribunal members considering the case would not be aware of the previous appearance until after their findings on the allegations had been made. As part of the Tribunal's usual procedures, members were not made aware of any previous findings against a Respondent unless and until allegations had been found proved.

43. During the hearing on 17 May it became clear that the Applicant placed reliance in particular on the witness evidence of Mr Mohamed, Ms Corbett and Mr Caldicott. Whilst the Tribunal had seen an email from the Second Respondent (dated 8 May 2017) which indicated he had received the witness statements of Ms Corbett, Mr Baker and Mr Caldicott and did not require their attendance, the Tribunal did not have a copy of anything similar regarding the First Respondent. The Tribunal had also seen an email from Mr Moran, copied to the Respondents, which attached the witness statement of Mr Mohammed, dated 15 May 2017. It had not, however, seen an email confirming that the First Respondent did not require the attendance of any witnesses. As Mr Moran was unable to access the relevant emails, the hearing was adjourned on the afternoon of 17 May so that he could obtain the necessary items overnight. On the morning of 18 May, Mr Moran was able to produce his email to the First Respondent dated 8 May 2017 attaching the witness statements of Mr Baker, Ms Corbett and Mr Caldicott and a Civil Evidence Act Notice. An email from the First Respondent, dated 9 May 2017 was also produced. This made a further reference to the First Respondent's health issues in 2010/12, stated that the

First Respondent was "confident that any shortfall will be settled" and "There is no need for any witnesses to attend."

44. The Tribunal was therefore satisfied that the Respondents had been served with the witness statements of Mr Baker, Ms Corbett and Mr Caldicott and did not require their attendance. The Tribunal was also satisfied that the Respondents had been served with the witness statement of Mr Mohamed, who was present to give evidence.

45. The Tribunal noted that in his email of 17 May 2017 the First Respondent had referred to obtaining a further letter from his GP. Nothing further concerning the First Respondent's health was received at the Tribunal on 17 or 18 May 2017. However, the Tribunal office received an email from the GP surgery which appeared in its title to refer to the First Respondent, but attached a letter concerning a different individual. That document was not relevant to the case and was not distributed or referred to during the hearing. The clerk to the case asked the Tribunal's administrative office to contact the GP surgery to inform them that an incorrect document had been sent.

Factual Background

46. Roland Ivor Cassam, the First Respondent, was born in 1951 and he was admitted as a solicitor in England and Wales in 1977. As at the date of the Rule 5 Statement his name remained on the Roll. His Practising Certificate was suspended on 30 March 2015 and no application to lift the suspension was received by the Applicant.

47. Peter Rhidian Lewis, the Second Respondent, was born in 1974 and he was admitted as a solicitor in England and Wales in 2000. As at the date of the Rule 5 Statement his name remained on the Roll. His Practising Certificate was suspended on 30 March 2015 and no application to lift the suspension was received by the Applicant.

48. The Firm was a partnership between the First and Second Respondents which began trading on 6 September 2004. The Firm's principle areas of work were residential and commercial conveyancing. On 30 March 2015 the Firm was intervened into by the Applicant.

Allegations 1.1 to 1.6

49. An inspection of the Firm's books of account and other documents commenced on 16 February 2015 and the Respondents were interviewed by the Investigation Officer ("IO") on 19 February 2015. An interim Forensic Investigation Report ("the Interim Report") was produced during the investigation and was dated 2 March 2015. A final Forensic Investigation Report ("the Final Report") was produced at the conclusion of the investigation and was dated 1 September 2015.

50. The Interim Report indicated that the most recent bank account reconciliation made available to the IO to review during the inspection was that for the month ending 31 August 2013. In the interview conducted on 19 February 2015 the IO (denoted by

his initials OB) asked the First Respondent (denoted as RC below) and the Second Respondent (denoted as PL below) about the current status of the Firm's accounting records. A relevant excerpt is set out below:

"**OB** … How would you describe the firm's books of account when you first came back in yesterday?

PL Yesterday I was able, I was aware from our conversation the day before that I think we'd gone around the houses a few times, but I think we'd come to the conclusion that no reconciliations had been done since the last time I had done anything and I had in my mind a date, March, February of last year although I couldn't be absolutely sure, but there should have been a file because they're kept as they always are the reconciliations, the matter balances in a file because you have to print them out once you've committed them and otherwise the information would disappear. So, as far as I was concerned when we spoke on Tuesday, it became apparent to me that they were quite out of date, possibly as much as 12 months, 11 months. So I was able to yesterday get on to the system and I think you were there when I had a look at it on the reconciliation because the system if you put in the date that you want to reconcile and the balance, if you've already done the reconciliation, it will tell you. So we got to the point yesterday, quite quickly, that the last reconciliation that was done was February 2014 so that's the, there doesn't seem to me to be any other way that it can be anything other than that, so my you ask me what my opinion is of where the accounts were, that's where they are. They're at 2014, end of February, as far as being up to date with being reconciled against the bank statements.

OB OK. So I'll ask you both in terms of the SRA's accounts rules, the SRA's accounts rules in relation to reconciliations, Rule 29 requires them to be carried out every 5 weeks, client account bank reconciliations, so would you concede that you're in breach of that Rule at this moment in time?

PL Yes, definitely.

RC Yes, we are.

OB And in relation to the accuracy of your firm's books of account, which is Rule 29.1 of the Accounts Rules, would you accept that you're in breach of that Rule at this moment in time?

RC That follows, doesn't it

PL Yes, absolutely".

51. The IO reviewed the client ledgers from the intervening period (that is to say the period after the reconciliations ceased to the date of the inspection visit) and found them incomplete. As at the date of the preparation of the Interim Report a definitive list of liabilities to clients had yet to be produced to the IO by the Respondents, despite requests for the information. The IO was informed that the Second Respondent, as COLP and COFA, was to bring the books of account up to date.

52. The books of account remained incomplete as at the date of the Firm's Intervention on 30 March 2015. Consequently, the IO was only able to calculate that there was minimum shortage on client account (by reference to two specific client matters referred to below) which as at 31 December 2014 was £147,380.83.

53. Both Respondents accepted their failure to keep the books of account properly written up and to undertake reconciliations. Each also accepted that they had breached Rule 29.1 and Rule 29.12 in interview with the IO. These breaches were longstanding and not remedied before or after the IO's inspection and remained until the Firm was intervened into in March 2015.

54. An SRA Supervisor, with conduct of this investigation ("the Supervisor"), wrote to the Respondents on 25 February 2015 outlining the consequences of operating a deficient client account. The First Respondent replied on behalf of both on 2 March 2015, agreeing the shortage as identified by the IO. The First Respondent indicated that they were making arrangements to replace the shortage and that it would be replaced by 6 March 2015.

55. Further information was requested by the Supervisor on 3 March 2015. The Second Respondent telephoned the Supervisor and explained that he would be liaising with the First Respondent to conclude his own investigation. When asked what sorts of issues he had identified thus far, he said he had found: a possible failure to bank two cheques in relation to probate matters in relation to which payments had then been made to beneficiaries, causing a possible shortage; incomplete or unclear postings; payments made in excess of funds available for particular clients; and unallocated transfers of costs.

56. On 6 March 2015, the First Respondent informed the Supervisor that the books of account were almost up to date and any shortage would be "made good without delay."

57. Prior to the Intervention Resolution being made the Respondents were invited to comment on the intervention casenote prepared for the Adjudication committee. The Respondents made representations dated 17 March 2015 in which they asserted that the Firm's books of account had been brought up to date and a number of shortages identified. They subsequently provided, on request, a copy of their most recent reconciliation and a summary of the shortages they identified.

The summary recorded: -

Matter reference	Shortage identified	Additional comments provided by Mr Lewis
BOY/004	£209,980.00	(conv); *"confusing billing...it appears that a number of postings on that file belong to other ledgers"*
WIL/052	£45,590.99	(probate)
LLA001	£318.00	(com conv)
UNA/001	£20,818.00	(unallocated transfers); *"client to office transfers that are yet to be allocated to matters and are being looked into..."*
SAU/002	£42,928.00	(probate)
N003	£3,518.15	(conv)
Total	£323,153.79	

The matter balance listing provided in support of the reconciliation recorded a number of debit balances which did not accord fully with the Second Respondent's list: -

Matter reference	Debit balance recorded
BOY004	£209,980.00
FEN002	£20.00
HAR004	£99.38
HES002	£1.00
LLA001	£318.00
NOO003	£3,518.15
SAU003	£600.00
WAL010	£54.00
WIL052	£45,590.99*
UNAA001	£20,818.00
Total	£280,999.52

*shown as two balances of £18,780.00 and £26,810.99

58. The matter SAU/002 from the Second Respondent's list did not appear as a debit balance and so, if added, the total shortage as at 28 February 2015 increased to £323,928.17. Further, referring to the minimum cash shortage of £147,380.83 as identified by the IO which related to two matters, the Firm's matter balance listing in relation to one of those, Mr C and Mr J (COO001), recorded a balance of £139,700.67. It was not clear to the IO, without sight of the relevant ledger(s) and documents, whether the shortage of £127,000 agreed as at 31 December 2014 had been replaced.

59. There was, therefore, doubt as to the accuracy of at least two client balances per the listing; COO001 and SAU/002. Further, the reconciliation was subtracting debit balances from the credit balances in order to make the cashbook reconcile. If they were not subtracted then the actual liabilities to clients, per the ledgers, was £396,250.75 at 28 February 2015 (having taken account of unrepresented cheques and lodgements) against a bank balance on that date of £115,253.59; giving rise to a shortage of £280,997.16. In light of these issues, it was not clear that the books of account had been brought up to date or were reliable.

60. On 1 June 2015 Blake Morgan, the intervention agents appointed by the Applicant, produced a spreadsheet to the Applicant, detailing that their investigations had identified that as at 30 March 2015, there was a minimum cash shortage of £238,748.70 on the Firm's client account.

61. The Supervisor wrote to the Respondents on 27 March 2015 seeking an explanation of matters and warning as to the prospect of disciplinary proceedings ("the EWWs"). The Respondents were specially asked in the EWWs to explain the cause(s) of the shortages identified. Neither Respondent replied to their EWW so no explanation was provided to the Applicant.

Allegations 1.7 to 1.9

62. The IO was unable to carry out an extensive interrogation of the books of account and client ledgers as they were not properly written up and the Respondents could not furnish him with the information required. However, the IO was able to determine that the following amounts should have been held in the firm's client account at 31 December 2014:

Date received	**Client**	**Description**	**Amount**
06/11/14	C and J	Sale proceeds	£127,000.00
18/12/14	Mr & Mrs W	Deposit monies	£21,165.00
Minimum Client Liabilities			£148,165.00
Cash held in Client bank account at 31 December 2014			£784.17

Mr C & Mr J: Sale of 21 DC, Aberdare, Wales

63. The Firm acted for Mr C and Mr J in relation to the sale of the above-named property and the related purchase of 81 TG, Aberdare, Wales. The First Respondent had conduct of the matter.

64. The IO asked the First Respondent for the purchase file (81 TG) and was provided with a client file that was headed such that it appeared to be a combined sale and purchase file for Mr C and Mr J. However, upon review of this file, it was noted by the IO that the file related solely to the sale of 21 DC. The IO completed the Interim Report without the benefit of reviewing the purchase file; despite requests to furnish the purchase file for 81 TG, the Respondents failed to do so.

65. The IO noted that the sale file contained no client identification, no client care letter and no client ledger. A completion statement was not present on the file but was subsequently provided by the First Respondent following a request by the IO. The IO was able to determine from the limited information/documentation available, that Ms P, represented by Hughes Jenkins Solicitors ("HJ"), had agreed to purchase 21 DC from Mr C and Mr J for £127,000.00.

66. In a letter, dated 6 November 2014, HJ wrote to the Firm referring the property and "Memorandum of Exchange of Contracts by Telephone" and enclosed a copy of their client's signed contract. This document stated that the sale price was £127,000.00 and that exchange and completion was to take place simultaneously, on 6 November 2014.

67. A review of the Client Bank Account statements for the Firm, showed that the sum of £127,000.00 was received on 6 November 2014 and recorded under the narrative "From Hughes Jenkins L 677635 EW Pow0013".

68. Further to the above, in an email, printed on 5 November 2014, Mr C emailed the First Respondent and confirmed his mortgage account number and amount required to redeem the same with the Cheltenham & Gloucester ("C&G").

69. In an email, printed on 1 December 2014, Mr C again emailed the First Respondent in relation to his existing mortgage with the C&G. Mr C raised his concern that a mortgage payment has been taken from his bank account for the C&G mortgage relative to 21 DC, which had been sold to Ms P on 6 November 2014. No response from the Firm to the above email was seen on the client file.

70. In a letter, dated 12 December 2014, HJ wrote to the Firm in connection with their client's purchase of 21 DC and stated that "Despite reminders, we have still not received the title deeds from you in accordance with the Conveyancing protocol" and "If we do not hear from you today, we shall have no alternative but to refer the matter to the regulators".

71. In a further letter, dated 28 January 2015, HJ wrote to the Firm and stated, inter alia, "...the Land Registry has informed us the charge of the 1st October 2007 in favour of Lloyds Bank Plc is present on the Title charge. Please send us confirmation of END as soon as ever possible".

72. The IO also identified on the client file an 'Official copy of register of title' for title number CYMxxxxxx, showing the entries on the register of title on 30 September 2014. This document relates to 21 DC. The second page of this document referred to a transfer of land on 1 October 2007 between a property development company and Mr C and Mr J. The document showed that a registered charge was entered in favour of Lloyds Bank Plc at the same time as the transfer. Accordingly, it appeared that the charge dated 1 October 2007 in favour of Lloyds Bank Plc related to Messrs C and J's C&G mortgage over 21 DC.

73. In light of a letter from HJ dated 28 January 2015 it appeared that Messrs C and J's C&G mortgage had not been redeemed as at 28 January 2015.

74. In a letter, dated 18 February 2015, HJ again wrote to the Firm in connection with their client's purchase of 21 DC as set out below:

> "We are somewhat surprised that we have not had a response to any of our letters or telephone calls to your office since December 2014.
>
> We have telephoned the Land Registry this morning and have been advised that your Client's charge still remains on the title which means we have still not been able to register our Client's purchase.
>
> You will appreciate this must be reported to our Client and the Mortgage lender. Pursuant to the Law Society Conveyancing Protocol please provide a full explanation as to the reason for the delay in fulfilling your undertaking to remove the Charge.
>
> In light of both the highlighted delays and your apparent failure to respond to our communications, should we not hear from you at close of business on Friday 20th February 2015 we will advise our Client to take the matter up with the SRA as this clearly is a matter of professional conduct.
>
> We hope this course of action is unnecessary and would ask urgently that you communicate with us".

75. The IO found no response from the Firm to the above letter on the client file. The IO reviewed the Client Bank Account statements for the Firm and was unable to identify a payment to either Lloyds Bank Plc or C&G post receipt of £127,000.00 on 6 November 2014, being the completion monies received from HJ in connection with their client's purchase of 21 DC.

76. The client ledger relating to Messrs C and J's purchase of 81 TG was within the Rule 5 bundle but was not available to the IO during the inspection. The IO was not provided with a specific client ledger relating to the sale of 21 DC, but he did have the completion statements for the sale of 21 DC and the purchase of 81 TG.

77. As at 31 December 2014, the Firm should have been holding £127,000.00 on behalf of their clients Mr C and Mr J in the Firm's client bank account. The IO noted that the balance on client bank account at 31 December 2014 was £784.17. The IO could find no evidence confirming that the mortgage had been redeemed.

Mr & Mrs W: Purchase of BC, Pencoed, Wales

78. The Firm acted Mr & Mrs W in relation to their purchase of the above property for £95,000.00 with Mr MM, Consultant, having conduct of the matter.

79. Robertsons Solicitors acted for the vendors, Mr & Mrs H, and contracts were exchanged on 12 January 2015. The IO noted that completion was agreed for 20 January 2015 "or earlier by agreement".

80. According to the TR1 form, completion took place on 16 January 2015 and a review of the Firm's client account bank statements indicated £95,000.00 (being the completion monies) was sent to Robertsons Solicitors on 16 January 2015.

81. On further review of these bank statements the IO identified a receipt into client bank account of £21,165.00 on 18 December 2014 under the narrative "Direct credit from [SW] Ref: [B] Deposit". The completion statement in this matter, recorded the "FINAL BALANCE DUE FROM YOU" as £21,165.00.

82. The client ledger for this client matter recorded receipts of £21,165.00 on 22 December 2014 and £74,948.00 on 13 January 2015, before the payment of £95,000.00 was made to Robertsons Solicitors on 16 January 2015.

83. Accordingly, on 31 December 2014, the firm should have been holding £21,165.00 on behalf of their clients Mr and Mrs W in the Firm's client bank account. The IO noted that the balance on client bank account at 31 December 2014 was £784.17.

Allegation 1.10

84. The IO conducted a recorded interview with both Respondents present on 19 February 2016, a full transcript of which appeared in the exhibit to the Rule 5 Statement. During the interview the Respondents could not be sure when they last discussed the accounts and disagreed amongst themselves as to the last occasion they had met to review the books and carry out reconciliations.

85. The following extracts from the interview were referred to as having probative value in relation to this allegation:

> "**RC** Peter really we should have got something sorted out before Peter should have gone, but it kind of just rolled on, didn't it, and well we've now resolved that we have to. I'm too old and too tired and Peter really, in fairness, has got this other line of business and he doesn't want to be a Solicitor any more, do you. I think I can say, right, you've never actually really wanted to be a Solicitor for quite some time, have you, although you were very successful as a duty Solicitor and everything, but anyway, that's how we are. You're quite right, you have to judge it on facts. I would be very keen now to get everything sorted, have it all re-inspected by you or whatever has to happen, but you know, we would come out of Temple Law in whichever way we can...
>
> **OB** Ok, so let's take a step back, if we may. Let me try to pick up on some of the points that were made there. Peter, you're saying that, if I understand correctly, that the last active involvement that you had in the firm was around February of last year when you were involved in the accounts and at that point, you effectively ceased to fee earn and ceased to have a, what would you say changed at that point?
>
> **PL** I had ceased to fee earn well before then.

OB Ok.

PL But I was aware that I needed to make sure that because there were duties that I was fulfilling whilst I was here and that we, I think the date I have in mind for really ceasing to fee earn would have been August 2013, which is the year end accounts, but and at which point I'd gone from pretty much part-time to no time, but I continued to because we had that year worth of reporting to do to make sure that the accounts were up to date so that I was aware that I wouldn't be around. So, from the last point that I worked on the accounts would have been February last year 2014.

OB Ok, so what you're saying is that you effectively finished fee earning by the end of your August 2013 accounting year and that you effectively finished any management or accounting function that you were undertaking at the firm in February 2014, is that right?

RC Yeah, but we did, the reconciliations were only done, the meeting about the reconciliation was only a few months ago, wasn't it? You did come in from time to time obviously when you could.

PL Well, no, I didn't do anything active on the accounts since then. Obviously, we had discussions and things like that were brought up and there seems to be some kind of cross wires as to what I thought was being done and what you might have thought was being done and I think that's where there's been confusion and a problem effectively, but the last time that I worked on any accounts was February 2014.

RC It wasn't, it was when you came in a couple of months ago when you had the file that you were working on, which I've never seen since.

PL That would have been February time.

RC It wasn't February. It was definitely in the latter months of last year, definitely.

PL No, the only thing that I've done is I come and make sure that the VAT is done because of my liability there and that's the only thing I've done.

RC It definitely wasn't a year ago, right, it wasn't a year ago. It was more like 3, 4, 5 months ago.

PL Ok, well we'll agree to disagree on that.

RC No, because you came in and you started to teach me the rudiments of doing the things. You had a file, you then had to go and I don't know what happened. We got caught up in things. You came in for a couple of hours and then you had to go back for something and I have to say, in fairness, since that day, I've not seen that file. I just happened to be

searching for it, but I myself, in my own mind, am absolutely positive that it wasn't left until last February. You may disagree, but I'm actually clear that you came in. The meeting that we had was definitely not February and it was, you know, the autumn of last year, but I mean I can't, you know.

OB And to be clear, what we're saying here is that this was a meeting where Peter was explaining to you how to do the reconciliations, is that what we're talking about.

PL Well, I'm not sure we're talking about the same meeting, but the meeting we did have, I wanted to be, Roland was going to be taking over the day to day so I wanted to make sure he knew the things I was doing, how to do them and obviously was available to assist at any time if there was a problem, but that would have been, I can remember doing it, I said let's do the next reconciliation and the next one that was due was the February, so that's when I would have done it.

RC Definitely not, well, I don't know about the months of the reconciliation, but the meeting was definitely not a year ago. But anyway, you know, that doesn't change anything, doesn't change the present position, but I'm positive that that's the case and I, you know, I myself, but there you go, it doesn't change anything. We have to sort the problem out."

86. The following further extract from the interview contained admissions that the Respondents' efforts in respect of the accounting system had fallen short.

"**OB** So why did you think that your reconciliations were up to date if you'd never done a reconciliation before?

RC Well, because Peter and I had this meeting and it was a couple of months ago and he started teaching me and I'd assumed that they were up to date to the time we had the meeting, which was certainly not 1st February, ok. You know, it wasn't, but you know, at the end of the day, right, I suppose if I have to take all the responsibility so be it. I'm not, my shoulders are broad. I can see that we haven't organised it well between us and I haven't organised it well on my own and I, you know, there's no way out of that and I don't seek to make any way out of it, ok. It's not a situation I would want to be in and I, you know, clearly Peter doesn't want to be in that situation, but he, at the end of the day will probably not wish to practise as a lawyer again and I will retire. Not that, you know, I'm not saying, it mustn't be right before we do it, but that's the situation. I mean, if it was a larger firm or something, we obviously would have had someone in to do the books and bits and pieces, but obviously failings are self-evident and, you know, I'm not disputing them in any way.

PL It's Peter Lewis speaking. Actually, now I come to try to work back in my mind. The last reconciliation that I did, I did with Roland together we did have a meeting. It can't have been February because we were due in February. It would have been March or April.

RC No, it was much later than that.

PL It was certainly not later than that

RC it was because you, sorry, we're not falling out over it, but it was certainly summer or after summer, I'm sure it was. I can't prove it, that's just my feeling, ok, and it doesn't alter anything because we should have done it, but…

PL What I'm saying is it can't have been February because we were doing February's reconciliation, so you'd have to have February's statement.

RC It doesn't matter because at the end of the day, you know, it's absolutely strict liability, but I'm, you know, we just have to agree to differ on that, ok.

OB So how would you describe your firm's books of account at the point that I first visited with you on the 16th?

RC Well they weren't as I had anticipated or thought. I thought we actually had done much more than we had because…

OB What I'm trying to understand is on what basis did you think that the accounting records were more up to date than they were?

RC Well I mean I wasn't doing them.

OB So who did you think was doing them?

RC Well I assumed we were more up to date than we were at the last meeting, which is certainly…

OB But the information requested of you in the letter was very clear and it said an extraction date at 31st December and at no time beforehand had you said to me that you didn't think your books of account were up to date until then.

RC No, I said I thought that we were up to date or relatively up to date. If I'm honest, I didn't know what the position was.

OB What I'm trying to piece together is the most available records that you had for me were August 2013 and you were being asked for December 2014, so why is there this big disconnect between what was available and where you thought the accounts were up to?

RC Well, I thought they were far more advanced than they were.

OB But you've never done a client account reconciliation before.

RC Well, I did one with Peter very briefly, but as I recall and Peter had to go and I think again we didn't follow it up and I'm not, you know, I think the thing to say is we're not denying that these things have happened, alright, and I don't know the way out except to put it right and if we breach things, we've done misdemeanours, we're jointly and severally liable, I suppose I should have looked at it as being a more senior person when I was here. I wasn't aware of any problems and, you know, I don't mind taking the blame, it's not that, I just, I don't know if it saves any useful purpose, we will get it right and then we will fulfil our plan to close the business down.
I know that doesn't make any difference as far as the SRA's concerned, but at least we'll get it sorted and then presumably, it will have to be finally audited. I don't know what happens when you succeed, when you close down, but we will get that done, make sure everything is ok and what follows, follows. You know, I can't say any fairer than that, can I?

OB Thank you, Roland. Peter, I met with you first yesterday, which was the 18th.

PL Yes, but we'd spoken the day before, didn't we.

OB We had spoken briefly the day before, that's quite right. How would you describe the firm's books of account when you first came back in yesterday?

PL Yesterday I was able, I was aware from our conversation the day before that I think we'd gone around the houses a few times, but I think we'd come to the conclusion that no reconciliations had been done since the last time I had done anything and I had in my mind a date, March, February of last year although I couldn't be absolutely sure, but there should have been a file because they're kept as they always are the reconciliations, the matter balances in a file because you have to print them out once you've committed them and otherwise the information would disappear. Yesterday, so, as far as I was concerned when we spoke on Tuesday, it became apparent to me that they were quite out of date, possibly as much as 12 months, 11 months. So, I was able to yesterday get on to the system and I think you were there when I had a look at it on the reconciliation because the system if you put in the date that you want to reconcile and the balance, if you've already done the reconciliation, it will tell you. So, we got to the point yesterday, quite quickly, that the last reconciliation that was done was February 2014 so that's the, there doesn't seem to me to be any other way that it can be anything other than that, so my you ask me what my opinion is of where the accounts were, that's where they are. They're at 2014, end of

February, as far as being up to date with being reconciled against the bank statements."

Allegation 1.11

87. The IO reported that a number of files were not recovered following the intervention into the firm. The IO noted that five of those files had been reviewed by him at the Firm's office during his inspection from 18 to 23 February 2015 but were not subsequently handed over by the Respondents to the intervention agent on 30 March 2015.

88. By way of High Court Sealed Order dated 22 June 2015, the First Respondent and a former consultant, Mr MM, were ordered to produce or deliver all documents in their possession or control to the intervention agent, Blake Morgan LLP.

89. The First Respondent and Mr MM were also ordered to:

> "...file and serve witness statements within 5 days of being served with this order detailing to the best of their knowledge
>
> (a) what documents which existed and were in the Defendant's possession and control as at 30th March 2015, but are no longer in his possession or control, giving full details of what has become of them, and, in so far as any such documents relating to client matters which had not been finalised or in relation to which funds remained held as at 30th March 2015, identifying those matters, the relevant funds held and reason why they were held;
>
> (b) why the Defendants have not delivered the Documents referred to above to the Agent; and;
>
> (c) the whereabouts of any Property, and any computer passwords required to enable a person to extract information from any computer, server or other electronic device which contains or may contain Documents"

90. By way of affidavit dated 15 July 2015 and in response to the Order of 22 June 2015 the First Respondent stated:

> "...I confirm to the best of my knowledge:
>
> 3(A) On the 30th March 2015 which was the date of the intervention all documents relating to the practice of Temple Law apart from the irrelevant papers referred to in clause 2 hereof were at the offices of Temple Law. The Claimant's solicitors were given full access to all parts of the office and removed all documents and papers relating to Temple Law and even took photographs of the empty offices thereafter. In connection with client matters which had not been finalised or in relation to what funds remained held at 30th March 2015 I have no records in my possession, as all such were

removed by Messrs Blake Morgan who actioned the freezing of our Client and Office Accounts.

(B) The Agents removed all such documents as far as I am aware

(C) As regards our computer records all information was given to the Agent on the day of Intervention and all computers were removed by them.

4. I place on record that as I have advised the Agents previously, I am happy to assist them in any matters so far as I am able".

91. A copy of Mr MM's affidavit was within the exhibit to the Rule 5 Statement.

92. The IO was provided with a list of missing files by Blake Morgan LLP. The IO noted that of the 71 client files referred to 5 were reviewed onsite during the period 18 to 23 February 2015. Copies of relevant papers had been taken during file reviews by the IO on the following matters:

(i) Messrs C and J - Sale of 21 DC;
(ii) D - Purchase of 10 CG;
(iii) M - Purchase of 8 GL;
(iv) T- Purchase of 21 NFC;
(v) Mr and Mrs W - Purchase of BC.

93. It was reported in the final Report that the IO made repeated and ultimately unsuccessful attempts to discuss the missing files with the First Respondent.

94. The Respondents were required in the EWW's sent to them by the Supervisor to confirm what happened to the missing files reviewed by the FIO between 18 to 23 February 2015 and the date of the intervention. The Respondents were asked if the files were given to a third party, to confirm when they ceased to be in their possession, who they were given to and why. Neither Respondent replied.

Allegation 2.1

95. The First Respondent was the only remaining partner in the Firm exercising day to day control and with management responsibilities after the Second Respondent ceased effective involvement in the Firm. As the Second Respondent ceased to fulfil his duties as the Firm's COLP and COFA, the First Respondent failed to notify the Applicant of a serious failure to comply with the SRA Authorisation Rules 2011.

Allegation 2.2

96. The background material facts supporting this allegation are set out at paragraphs 62 to 77 above. The First Respondent acted for Mr C and Mr J in the sale of 21 DC to Ms P, represented by HJ.

97. On 6 November 2014 the First Respondent wrote HJ undertaking to discharge their clients mortgage upon transfer of funds in the following terms:

> "...3. The only mortgage we are aware of is that in favour of Cheltenham & Gloucester. On completion we will discharge this by CHAPS payment. We understand C & G/Lloyds will transmit END1 directly to the land registry."

98. In an email dated 5 November 2014 Mr C contacted the First Respondent and confirmed his mortgage account number and amount required to redeem the same with the C&G.

99. In an email dated 1 December 2014 Mr C again contacted the First Respondent in relation to his existing mortgage with the C&G, raising the concern that a mortgage payment has been taken from his bank account for the C&G mortgage in relation to 21 DC, which had been sold to Ms P on 6 November 2014. On reviewing the file the IO could find no response by the First Respondent to this email.

100. In a letter, dated 12 December 2014, HJ wrote to the Firm in connection with their client's purchase of 21 DC and stated:

> "Despite reminders, we have still not received the title deeds from you in accordance with the Conveyancing protocol" and "If we do not hear from you today, we shall have no alternative but to refer the matter to the regulators".

101. In a further letter, dated 28 January 2015, HJ wrote to the Firm stating:

> "...the Land Registry has informed us the charge of the 1st October 2007 in favour of Lloyds Bank Plc is present on the Title charge. Please send us confirmation of END as soon as ever possible"

102. Lloyds Banking Group (of which C&G was a part) confirmed to the Applicant that the mortgage account of Mr C and Mr J, in relation to 21 DC, remained open with an outstanding balance of £130,062.95 during February 2015.

103. During the interview on 19 February 2015, the First Respondent was asked about the redemption of this C&G mortgage account. The relevant excerpt was set out in the Rule 5 Statement as:

> "**OB** OK. So, what I would ask you, Roland, as the fee earner on this matter is do you have any evidence that you have redeemed the Cheltenham and Gloucester mortgage at this time?
>
> **RC** Well I can't produce it to you now, but I'm positive that it was
>
> **OB** So you don't have any evidence that...
>
> **RC** Well, I haven't got it, it may be on the other file. I genuinely don't know. I'm not trying to be obstructive, I don't know.
>
> **OB** But that would be a redemption. So that would be the redemption of a mortgage on the [DC] address being held on the purchase file

RC Well, sometimes with the best will in the world, you know, things do get transposed.

OB Ok, but just to be absolutely clear, would you accept that there is no evidence on the client file that that mortgage has been redeemed?

RC No, but it might be a repeat. We discussed many other things, didn't we, basically about it and Peter thought one of our colleagues whose on another panel might have done it, but I don't think it was the case, but I'm waiting. I'll get you a fax tomorrow confirming that it's, of course, you want to know when it was done".

104. The IO reported that notwithstanding this indication from the First Respondent that he would supply evidence of redemption, no such confirmation was produced.

105. The First Respondent failed to reply to the Applicant's EWW letter and failed to provide an explanation of why the mortgage was not redeemed or how the funds received from H J were ultimately utilised, if not for the purpose they were intended.

106. Further facts concerning this transaction, and payments from the Compensation Fund, were contained in the witness statements produced for the hearing and are set out in the section on the Tribunal's findings.

Allegations 3.1 and 3.2

107. During an interview with the IO the Second Respondent stated:

> "I was no longer fee earning. I was no longer here on a day to day basis or was very rarely here so in that respect, it was more or less like being a sole practitioner with the difference of I hadn't disappeared."
>
> "I willingly and knowingly remained as a partner although not effectively practising and that is something that was agreed between us."

108. When asked by the IO about his ability to discharge his responsibilities as COLP and COFA given his absence from the firm the Second Respondent replied:

> "...over the last 10-12 months, I haven't been fulfilling those roles."

This answer was consistent with the fact that the Second Respondent had full time business commitments elsewhere.

The Applicant's Investigation

109. On 2 March 2016, a letter was sent to each Respondent requesting an explanation and warning them as to the prospect of disciplinary proceedings given the allegations made against them. Neither Respondent replied and no explanation of their conduct was provided prior to the commencement of these proceedings.

110. On 21 June 2016 an Authorised Officer of the Applicant decided to refer the conduct of the Respondents to the Tribunal.

Witnesses

111. Mr Umar Mohamed, a senior adviser of the Applicant within the client protection team, gave evidence to the Tribunal on behalf of the Applicant.

112. Mr Mohamed confirmed that the contents of his witness statement dated 15 May 2017 were true to the best of his knowledge, information and belief.

113. Mr Mohamed told the Tribunal that his role largely involved dealing with claims made to the Compensation Fund. Of relevance to this matter, a claim had been made to the Compensation Fund on 18 May 2015 by Mr C and Mr J through Blake Morgan LLP, the intervention agents, largely in respect of the funds needed to redeem the mortgage on 21 DC (£131,113.67), together with SDLT of £8,000 and Land Registry fees of £270, being a total of £139,483.67. There had also been penalties and interest incurred in respect of Mr C and Mr J's purchase of 81 TG, such that the total paid from the Compensation Fund for these clients, on 3 July 2015, was £143,945.26.

114. Mr Mohamed told the Tribunal that the information from the intervention agents showed that there was a shortfall on the Firm's client account. To ensure equal treatment of clients a fixed percentage (52.79%) of each balance which should have been held by the Firm was paid out to clients from the client account. In respect of this matter, the Compensation Fund received £73,636.72 from the funds which had been held by the Firm, whereas it paid out £143,945.26.

Findings of Fact and Law

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

116. In considering these allegations, the Tribunal had available the Rule 5 Statement and supporting documents. With regard to allegation 2.2 and the related allegation of dishonesty, the Tribunal also read and considered the witness statements of Eve Corbett and Paul Caldicott, after it was satisfied that these statements had been served on the First Respondent and that he had not required these witnesses to attend to give evidence. Relevant parts of the evidence in the witness statements will be referred to below.

117. The Tribunal noted that allegations 1.1 to 1.11 below were made against both Respondents, whereas allegations 2.1, 2.2 and 4 were made against the First Respondent only and allegations 3.1 and 3.2 were made against the Second Respondent only.

118. **Allegation 1.1 - Failed to keep accounting records properly written up at all times to show their dealings with client money, and office money relating to any client matter, contrary to Rule 29.1 of the SRA Accounts Rules 2011 ("AR 2011");**

1.2 In relation to the Firm's book of accounts they failed to carry out reconciliations as they fell due contrary to Rule 29.12 of the AR 2011, and in breach of Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles");

1.3 Failed to keep proper accounting records to show accurately the position with regard to the money held for each client contrary to Rule 1.2(f) of the AR 2011;

1.4 Failed to ensure that the current balance on each client ledger was shown, or readily ascertainable from the records kept, contrary to Rule 29.9 of the AR 2011;

1.5 Failed to remedy breaches promptly upon discovery contrary to Rule 7.1 of the AR 2011;

1.6 By failing to comply with the requirements of the AR 2011, the Respondents breached any (or all) of Principles 4, 6 and 10 of the 2011 Principles.

118.1 The factual background to these allegations, which were admitted by both Respondents, is set out at paragraphs 49 to 61 above.

118.2 There was no doubt, in the light of the facts set out above and in the interim and final Reports that the Respondents failed to keep accounting records properly written up, carry out reconciliations, failed to keep records to enable the position with regard to each client's money to be readily ascertained and failed to remedy promptly upon discovery the breaches of the AR 2011.

118.3 The Tribunal accepted that the Respondents' failure to comply with the requirements of the AR 2011 precluded the Respondents from being in a position to identify and remedy the existence of a client account shortage. It further precluded the IO from being a position to accurately determine the client account deficiency. It was plainly in the best interests of clients that accounting records were maintained, such that any client account shortage could be identified and rectified at the very earliest opportunity. The public would expect a solicitor to have accurate and detailed records of the monies that were being held on behalf of his clients. A failure to keep such proper records, which precluded the prompt identification and rectification of a client account shortage, would undermine the trust the public placed in a solicitor and the provision of legal services. In failing to maintain accurate accounting records and carry out the necessary reconciliations, the Respondents failed to ensure that they protected client money.

118.4 Breaches of the accounts rules, which rules were in place to protect client money, were serious and had persisted from about March 2014 until the intervention in March 2015. There could be no doubt on the facts that allegations 1.1 to 1.5 had been proved and that the nature of those breaches was such that there had been breaches of the Principles 4, 6 and 10 as alleged. All of allegations 1.1 to 1.6 had been proved to the required standard.

119. **Allegation 1.7 - Failed to use each client's money for that client's matter only contrary to Rule1.2(c) of the AR 2011;**

1.8 Withdrew money from client account otherwise than in accordance with Rule 20.1 of the AR 2011;

1.9 By failing to comply with the requirements of the AR 2011, the Respondents breached any (or all) of Principles 4, 5, 6 and 10 of the 2011

119.1 The factual background to these allegations, which were admitted by both Respondents, is set out at paragraphs 62 to 83 above.

119.2 There was no doubt on the evidence presented that the Firm had failed to utilise the completion monies received from HJ (in connection with 21 DC) and the monies the Firm should have been holding for Mr and Mrs W only for those clients' matters. As at 31 December 2014, the Firm should have been holding £127,000 for Mr C and Mr J (as those monies had not been used, as intended, to redeem the C&G mortgage) and it should have been holding £21,165 for Mr and Mrs W. In fact, at that date, the Firm's client bank account held only £784.17. There was no proper explanation by the First Respondent of what had happened to those funds. However, it was perfectly clear that the monies had been withdrawn from client account other than for the clients' purposes and otherwise than in accordance with Rule 20.1 of the AR 2011.

119.3 The Tribunal also accepted the Applicant's submissions that, in addition, the Respondents failed to safeguard client monies, and to offer a proper standard of service. Further, they did not act in their clients' best interests. The Respondents' failure to use the funds received to redeem the mortgage resulted in the clients being liable to the bank for the outstanding mortgage. The public would expect a solicitor receiving client funds to observe the sacrosanct nature of client monies, using them only for that client matter, and in accordance with the client's instructions. The use of client monies for other purposes, and in particular to the detriment of the interests of the client, would undermine the trust that the public places in a solicitor and the provision of legal services.

119.4 The Tribunal was satisfied to the required standard that the above allegations had been proved, both on the evidence and on the admissions made by the Respondents.

120. **Allegation 1.10 - Failed to run their business effectively and in accordance with proper governance and sound risk management principles contrary to Principle 8 of the 2011 Principles and breached Rule 1.2(e) of the AR 2011**

120.1 This allegation, the factual background to which is set out at paragraphs 84 to 86 above, was admitted by both Respondents.

120.2 It was clear from the facts established in relation to allegations 1.1 to 1.10 that the Firm's accounts were not properly kept; there had been a failure properly to record dealings with client monies and no reconciliations had been carried out for about a year at the time of the inspection.

120.3 Further, from the information provided in the interview with the IO, it was clear that there was no proper accounting system in place and that there had been a failure to run the business effectively in accordance with proper governance and sound risk management principles. This was borne out by the significant minimum shortfall on client account and the breaches of the Accounts Rules. The Tribunal accepted the Applicant's submission that the failure to uphold Principle 8, the Respondents' mismanagement and abrogation of their regulatory responsibilities ultimately led to the Intervention Resolution being made and the Applicant having to act to safeguard client assets and funds.

120.4 The Tribunal noted with concern the uncertainty concerning the Firm's accounting system displayed during the interview, extracts from which appear at paragraphs 85 and 86 above. Both Respondents accepted that their efforts had fallen short of what was required. The First Respondent had conceded that "If I'm honest, I didn't know what the position was", whilst the Second Respondent admitted that effective book keeping had ceased when he stood down from an active role in the Firm in February 2014.

121. **Allegation 1.11 - On dates reasonably believed to be between 18 February 2015 and 5 July 2015 the Respondents failed to safeguard client files and in so doing breached any (or all) of Principles 4, 5, 6 and 10 of the 2011 Principles.**

121.1 The factual background to this allegation, which was admitted by both Respondents, is set out at paragraphs 87 to 94 above.

121.2 It was clearly the case that during the inspection on 18 to 23 February 2015 the IO had inspected a number of files, listed at paragraph 92 above, but those files were not available to the intervention agents as at 30 March 2015. It was notable that two of the missing files were those which had been relied on by the Applicant in relation to allegation 1.9, in particular the file relating to Mr C and Mr J, as well as the file concerning Mr and Mrs W.

121.3 Whilst the First Respondent, and a Mr MM, had been working at the Firm in the relevant period, the Second Respondent as a principal of the Firm had a duty to safeguard clients' files and the clients were entitled to rely on their solicitors to do so.

121.4 It was concerning that files had gone missing between the inspection and the intervention. It was even more concerning that the Applicant had had to take the step of obtaining a High Court order requiring the First Respondent and Mr MM to explain what had happened to the files. An extract from the First Respondent's affidavit in response to the High Court order is set out at paragraph 90 above. This

simply stated, in effect, that the intervention agents had had access to all of the Firm's documents. There was no explanation either in that affidavit or subsequently about what had happened to the listed files, or the further 66 files which the intervention agents expected to see but which were not available, as recorded in the final Report. The Tribunal noted that the IO had made attempts to discuss matters with the First Respondent, who had referred to difficulties with having lost his mobile phone, difficulties in accessing emails and the like which had delayed his response. In an email dated 10 August 2015 the First Respondent stated, "... I wonder whether I can actually be of any constructive help about files. I have already made the position clear as far as I understand it. Having racked my brains as to the events surrounding the intervention, it may be that when the office was being sorted out the day before (Sunday) some things were inadvertently removed with old boxes which were jettisoned. I was not involved in the transferring of papers from the attic rooms, but it is a thought which occurred to me." If that explanation were correct, the First Respondent had failed completely to supervise when the office was being "sorted out". However, the First Respondent had not volunteered any information about who had been involved in clearing the office so that they could give information about what had happened to the 71 missing files, including the 5 which had definitely been on the premises in mid-February 2015.

121.5 The Tribunal was satisfied to the required standard that this allegation had been proved on the facts and on the admissions.

122. **Allegation 2.1 - By failing to notify the Applicant of material changes to information held about the Firm, or a serious failure to comply with the Rules, namely that the Second Respondent had ceased performing the role of COLP and COFA during the period February 2014 to 30 March 2015, he (the First Respondent) failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code") and breached Principle 7 of the 2011 Principles**

122.1 The factual background to this allegation, which was admitted by the First Respondent, is set out at paragraph 95 above.

122.2 It was clear on the facts that the First Respondent had not informed the Applicant that the Second Respondent had ceased to perform the roles of COLP and COFA from about February 2014. The fact that the Firm no longer had an effective COLP and COFA was a significant change in the Firm and it should have been reported. The Tribunal accepted the submission by the Applicant that this omission was aggravated by the fact that the Second Respondent's failure to perform the COLP and COFA roles coincided with the failure of the accounts system and the matters which led to the Intervention.

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

123. **Allegation 2.2 - Between November 2014 and March 2015 he (the First Respondent) used client monies for purposes otherwise than they were intended, and failed to redeem a mortgage in favour of Cheltenham & Gloucester ("C&G") on behalf of his clients Mr C and Mr J in breach of (any**

or all) Principles 2, 4, 5, 6 and 10 of the 2011 Principles and failed to achieve Outcome 11.2 of the 2011 Code.

Dishonesty was alleged in respect of Allegation 2.2, but dishonesty was not an essential ingredient to prove the allegation.

123.1 The factual background to this allegation is set out at paragraphs 63 to 77 and 96 to 106 above. The First Respondent had admitted allegation 1.13 but denied dishonesty, as set out at allegation 4.

123.2 Further, the Tribunal received into evidence the witness statements of Eve Corbett and Paul Caldicott, with exhibits, which were both relevant to these allegations, and heard the evidence of Mr Mohamed.

123.3 The First Respondent had acted for Mr C and Mr J in their sale of 21 DC, which was completed on 6 November 2014. The relevant funds were received from the purchaser. Prior to completion, the First Respondent gave an undertaking to discharge the mortgage on the property, being a mortgage in favour of C&G (part of the Lloyds banking group). Ms Corbett was a member of HJ and had acted for Ms P in the transaction.

123.4 Ms Corbett stated that by 12 December 2014 her firm had not received the signed Transfer or associated title deeds and notification of discharge of the mortgage ("END"). She wrote to the Firm on 12 December 2014 by fax, marked for the attention of the Senior Partner, a letter which included:

> "We refer to the above matter which was completed on 6 November.
>
> Despite reminders, we have still not received the title deeds from you in accordance with the Conveyancing protocol.
>
> Please confirm by return that the title deeds will be placed in the post system first class this evening.
>
> If we do not hear from you today we shall have no alternative but to refer the matter to the regulators.
>
> We hope to avoid this course of action and look forward to hearing from you."

123.5 Ms Corbett's statement attached an email in response from the First Respondent, with an attachment. The email read:

> "We attach a copy of our letter to you on 1 December which enclosed the original TR1 duly executed. It appears by your faxed letter of today that you have not received it. We therefore attach a copy of the executed TR1 which we have today certified as a true copy of the original, since we assume that you may effect registration electronically at the Land Registry. If not, then we will ask our clients to execute a new Transfer.

> We did take exception in no uncertain terms to your fax of today, as we had already sent you the Transfer. The writer apologises for his strident tone, but had not considered that our letter may have gone astray.
>
> We have been chasing the mortgagees for evidence that they have redeemed the mortgage account, and that they will forward END to the Land Registry. We will confirm this as soon as possible."

The document attached appeared to be a letter dated 1 December 2014 from the Firm to HJ which referred to the property and read:

> "Thank you for your email. We enclose the executed TR1 and are sorry this was not sent earlier. We confirm that our clients' mortgage to Cheltenham & Gloucester has been discharged. We believe they will file form END at the Land Registry but will let you know when we have confirmation from them."

123.6 Ms Corbett's statement attached a copy of an email she sent to the Firm (the First Respondent's email address) on 7 January 2015, which read:

> "We note from the Land Registry that the Charge of Lloyds Bank is still on the title. Please forward confirmation of END by return to enable us to complete our registration."

There was no response to that email, and on 28 January 2015 Ms Corbett wrote to the Firm, in a letter marked "urgent" and bearing the First Respondent's reference as follows:

> "Further to our email of the 7th January (copy enclosed for ease of reference) the Land Registry has informed us the charge of the 1st October 2007 in favour of Lloyds Bank Plc is present on the Title Register.
>
> Please send us confirmation of END as soon as ever possible."

Again, there was no response to this correspondence and on 11 February 2015 Ms Corbett wrote to the Firm as follows:

> "We refer to completion of the above matter which took place on 6 November 2014.
>
> Regretfully we are advised by the Land Registry that your client's charge still remains on the title.
>
> We refer to your undertaking given in respect of the same and await hearing from you as a matter of urgency with evidence of discharge.
>
> We note again we have not received a reply from our earlier correspondence and would be grateful if you would please respond to this letter with evidence of discharge within the next 7 days.
>
> We await hearing from you."

123.7 Again, the First Respondent failed to reply and Ms Corbett's statement recorded that on 18 February her assistant attempted to speak to the First Respondent on the telephone. An attendance note of those attempts, which were met by recorded messages, was exhibited to the statement. Ms Corbett wrote to the Firm, with the First Respondent's reference, by post and fax on 18 February 2015, stating:

> "We are somewhat surprised that we have not had a response to any of our letters or telephone calls to your office since December 2014.
>
> We have telephoned the Land Registry this morning and have been advised that your client's charge still remains on the title, which means we have still not been able to register our client's purchase.
>
> You will appreciate this must be reported to our client and the mortgage lender. Pursuant to the Law Society Conveyancing Protocol please provide a full explanation as to the reason for the delay in fulfilling your undertaking to remove the Charge.
>
> In light of both the highlighted delays and your apparent failure to respond to our communications, should we not hear from you at close of business on Friday 20th February 2015 we will advise our client to take the matter up with the SRA as this clearly is a matter of professional conduct.
>
> We hope this course of action is unnecessary and would ask urgently that you communicate with us."

123.8 The First Respondent replied by email on 20 February 2015. The email, a copy of which was exhibited to Ms Corbett's statement, read:

> "Thank you for your recent letter. Our clients' mortgage was repaid on completion but we have not yet had evidence of removal of the charge. We have complained to the lender as we know this is hindering your registration.
>
> We apologise for the inconvenience caused and will be on to them again today."

123.9 The Tribunal noted that the letter from HJ was sent the day before the IO's interview with the Respondents, and that the First Respondent's email of 20 February was sent the day after that interview. In the interview, the relevant extract of which appears at paragraph 104 above, the First Respondent stated that he could not produce evidence of discharge of the mortgage but he was positive that it had been discharged. The First Respondent indicated that he understood that the IO would want confirmation of discharge and that he would get a fax "tomorrow" confirming the position. No such fax was produced, nor was any bank statement indicating that the redemption figure was sent to the mortgage lenders on completion or subsequently.

123.10 Ms Corbett's statement recorded further attempts to resolve this matter. On 4 March 2015 she asked the Land Registry to investigate. She also wrote to the First Respondent again, stating:

"We refer to your email of 20 February and would be grateful for an urgent update.

We have spoken to the Land Registry who have confirmed that they are unable to intervene until your lender has confirmed that they have transmitted the evidence of discharge and the Land Registry has not received it.

Please can you provide copies of your correspondence with the lender together with copies of their responses so that we can take our client's instructions as to how to proceed with the matter.

We also need to report to our mortgage lender as to why their charge has not been registered for nearly 4 months. You will appreciate that we cannot submit our application as it will be completed under Early Completion rules with your clients' charge still remaining.

Please may we hear from you by the end of this week."

Again, there was no response to this correspondence. The First Respondent did not produce to HJ, the IO or anyone else any evidence that he had been in contact with C&G to make any complaint, and did not produce any evidence he had sent the redemption monies to them.

123.11 Ms Corbett's statement recorded that on 16 March 2015 she contacted Lloyds/C&G in the hope of obtaining information. Some basic information was given to Ms Corbett, to the effect that there was an outstanding balance on the mortgage, that the sellers' direct debit to pay the mortgage was still being paid and that on 23 February 2015 they had told the First Respondent that no redemption had been made. As Ms Corbett pointed out in her statement, this contradicted what the First Respondent had said in his email of 20 February 2015 as the mortgage had not been redeemed. The bank had also told Ms Corbett (who was on their solicitors' panel) that they had asked the First Respondent to provide evidence that the redemption money had left the Firm's account but they had not received that information. Further, it was confirmed that the First Respondent had not made a complaint to Lloyds/C&G. Ms Corbett's statement recorded that the borrower had contacted C&G on 1 and 12 December 2014 as payments were still being made towards the mortgage.

123.12 Ms Corbett's statement confirmed that she had spoken to the Land Registry on 17 March 2015 when it was confirmed that the sellers' charge was still on the title. On the same date, Mr Hughes of HJ wrote to the First Respondent referring to the prima facie breach of the undertaking of 6 November 2014 and stating that the matter would be referred to the Applicant. Thereafter, the statement dealt with Ms Corbett's dealings with the intervention agents, in particular concerning the removal of the charge after a payment was made from the Compensation Fund. Ms P's registration was completed on 27 July 2015.

123.13 Mr Caldicott's statement was consistent with that of Ms Corbett. Mr Caldicott of Blake Morgan LLP was the intervention agent appointed by the Applicant. In that role, he had received correspondence from Mr C and Mr J on 1 April 2015 about the fact that they were still paying two mortgages and that they had been chasing this up since completion, to no avail. Mr Caldicott's statement exhibited correspondence between the clients and the First Respondent. It was notable that in an email from Mr J to the First Respondent on 16 March 2015 Mr J stated that he had spoken to C&G who had stated that after sending the settlement figure they had no record of any correspondence between the bank and the First Respondent. On 20 March 2015 the First Respondent wrote in an email to Mr J, "... The problem has been with our bank not C&G but there is clearly no excuse for it dragging on so long. I will chase them up and confirm I will advise you immediately I have confirmation."

123.14 It was clear from Mr Mohamed's evidence, and that of Mr Caldicott, that it was only after a payment was made from the Compensation Fund that the mortgage was eventually redeemed.

123.15 It was incontrovertible that the necessary funds had been received by the Firm and had not been used to redeem the mortgage in November 2014 or later. There was no evidence from the First Respondent about what he had done with the money. There was nothing to suggest he had tried to send it to C&G. On a number of occasions, the First Respondent had stated that he had redeemed the mortgage, or believed he had done so, but was not able to produce anything to support this contention. If he had believed he had sent the money and there was some administrative failure on the part of one or other of the banks concerned, he should have made a complaint; there was not a shred of evidence that he had done so, for the very good reason that he was aware he had not transmitted the funds the redeem the mortgage.

123.16 Innocent errors could sometimes occur in conveyancing transactions. However, this was not such a case. As set out above, the First Respondent had received the funds and had disbursed them, in some unknown way, as they had disappeared from the Firm's bank account. He had failed to comply with an undertaking to redeem the mortgage, with no credible explanation for his failure. The First Respondent was well aware that there were problems with this transaction, as his clients had raised the issue with him, and he had correspondence from HJ expressing concern. The Tribunal had no doubt that the Respondent's conduct of this transaction lacked integrity. It was clearly not in the best interests of his clients to receive funds to discharge a mortgage and fail to do so, such that they remained liable for repayment of the charge and the mortgage installments under that charge. The First Respondent had failed to provide a proper standard of service to his clients. The Tribunal noted that the conveyancing system depends to a significant degree on trust; those involved in a transaction should be able to rely on undertakings given by solicitors. The First Respondent had failed to maintain the trust that the public would be able to place in him, or in the provision of legal services. As the money which should have been used to redeem the mortgage was disbursed, for unrelated purposes, the First Respondent had clearly failed to safeguard client money.

123.17 The Tribunal had no doubt that allegation 2.2 had been proved to the required standard. It then considered the linked allegation of dishonesty.

123.18 The Tribunal noted that the test for dishonesty to be considered was that set out in Bultitude v Law Society [2004] EWCA Civ 1853 which applied, in the context of solicitors' disciplinary proceedings, the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12. The Tribunal had to be satisfied that the First Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly. The Tribunal noted that the First Respondent had submitted in various correspondence that he had had no intention permanently to deprive anyone of their assets. The Tribunal did not have the opportunity to determine that contention as the First Respondent was not present, and had not submitted a witness statement with his explanation of events. In any event, in determining dishonesty it was not necessary to find that a Respondent had committed an act of theft or intended to deprive the owner of their property permanently.

123.19 The Tribunal noted the Applicant's submissions on the issue of dishonesty and found that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people by failing to comply with an undertaking to redeem the mortgage with C&G on behalf of his clients Mr C and Mr J. It was also dishonest by those standards to make untruthful statements about the redemption of the mortgage to his clients and to Ms Corbett.

123.20 The Tribunal further found that not only was his conduct dishonest by the ordinary standards of reasonable and honest people but he was also aware that it was dishonest by those standards for the following reasons:-

123.20.1 The First Respondent was aware that £172,000 was to be transferred to the Firm's client account by HJ and provided an undertaking that "On completion we will discharge this by CHAPS payment.";

123.20.2 The First Respondent was therefore aware that those funds were deposited in his client account for a specific purpose on or about 6 November 2014, namely to redeem his clients Mr J and Mr C's mortgage with C&G;

123.20.3 Between November 2014 and March 2015 those funds were dispersed from the Firm's client account over which the First Respondent had effective sole control;

123.20.4 The First Respondent was aware throughout this period that the mortgage had not been redeemed. He received numerous reminders after completion that he had not redeemed the mortgage, both from his clients and HJ on behalf of the purchaser.

123.20.5 The First Respondent was therefore on notice that the mortgage was not redeemed, yet he failed to comply with his undertaking to do so and was responsible for the account from which these funds were dispersed.

123.20.6 The First Respondent was an experienced solicitor and was aware both of the general duty to comply with undertakings and the particular importance of this undertaking to his clients' position given their

mortgage was not redeemed despite the funds required to do so being entrusted to him in his professional capacity.

123.20.7 If the First Respondent genuinely and honestly attempted to redeem the mortgage but was unable to do so for a legitimate reason he would have communicated this to his clients, HJ and/or the Applicant's IO when given the opportunity.

123.20.8 In interview with the IO the First Respondent informed him that he was positive the mortgage had been redeemed, notwithstanding the numerous items of correspondence referred to above which had put him on notice that the mortgage had not been redeemed.

123.20.9 An honest solicitor would have provided a truthful account of the facts and been able to supply evidence of his conduct in redeeming the mortgage, or attempting to do so, if it was his contention that this was the case.

123.20.10 There was no legitimate basis on which the First Respondent could have used the funds entrusted to him to redeem his clients' mortgage for another purpose.

123.20.11 The First Respondent was aware of the true position concerning the mortgage. He failed to either redeem it or explain the reasons for not doing so. He failed to explain where the sale proceeds had been utilised if not for the purpose they were intended. The First Respondent knew that he was acting dishonestly by failing to transfer his clients' funds to C&G to redeem the mortgage. The First Respondent acted dishonestly in using these funds for another purpose.

123.21 In addition to the above matters, which were included in the Applicant's submissions on dishonesty in the Rule 5 Statement, the Tribunal noted and found that the First Respondent was the fee earner on the case; there was no suggestion anyone else had been involved. Further, the Tribunal noted that the First Respondent's bill for the conveyancing transaction had been paid from the funds provided to him, yet he had failed to complete the transaction in accordance with his undertaking and the norms of conveyancing practice.

123.22 The Tribunal found it compelling that despite being informed by Ms Corbett on 18 February 2015 that the charge remained on the title, he had stated to the IO on 19 February that he was positive the mortgage had been redeemed. On 20 February 2015 he had stated to Ms Corbett "Our clients' mortgage was repaid on completion…", when he knew this was not the case and there was no evidence of any steps he had taken to repay the mortgage. Further, it was clear from the information Ms Corbett was given by Lloyds/C&G on 16 March 2015 that the First Respondent had been informed by them on 23 February 2015 that no redemption had been made. Thereafter, he took no steps to correct the information he had given to Ms Corbett and to the IO.

123.23 The Tribunal concluded that an honest solicitor would have complied with the undertaking given to discharge the mortgage or would have provided an explanation to all parties if, for any reason, he was unable to do so. The First Respondent's conduct was dishonest and he knew it to be dishonest, for the reasons set out above. Accordingly, the allegation of dishonesty (allegation 4) was proved to the required standard, together with all elements of allegation 2.2.

124. **Allegation 3.1 - Between February 2014 and March 2015 (the Second Respondent) failed to discharge his responsibilities as the firm's COLP and COFA contrary to Rules 8.5(c) and 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules");**

3.2 Failed to notify the Applicant that he (the Second Respondent) was not complying with the Authorisation Rules by not performing the role of COLP and COFA during the period February 2014 to 30 March 2015, and thereby failed to achieve Outcome 10.3 of the 2011 Code and breached Principle 7 of the 2011.

124.1 The factual background to these allegations, which were admitted by the Second Respondent, is set out at paragraphs 107 to 108 above.

124.2 There was no doubt on the facts that from about February 2014 until the inspection and subsequent intervention, the Second Respondent had failed to discharge his duties as COLP and COFA of the Firm. He had, on his own admission, been engaged in other business activities on a full-time basis and was rarely in attendance at the Firm. He had no longer discharged any role in maintaining the accounts of the Firm. The Tribunal noted that in the extract of the interview set out at paragraphs 85 and 86 above, there had not been any agreement between the Respondents about when the last reconciliations had been done or whether/when the First Respondent had been trained to carry out reconciliations. It was clear that not only had the Second Respondent ceased to perform his roles in the Firm, he had failed to ensure that the First Respondent, or anyone else, would carry out those duties. Furthermore, the Second Respondent had not informed the Applicant of his disengagement from the day to day activities of the Firm.

124.3 The Tribunal was satisfied to the required standard that these allegations had been proved, on the facts and on the admissions.

Previous Disciplinary Matters

125. There was one previous matter in which findings were made against both Respondents.

126. In case number 10262/2009, heard on 20 April 2010, the Respondents admitted five breaches, including two relating to the Accounts Rules, namely that they had failed to keep books of account properly written up and that they had permitted client account to become overdrawn.

127. The Tribunal had determined that the breaches were "all of a minor procedural nature" and that the case was one of "muddle and omission". The errors were unintentional. For the reasons set out in the Judgment dated 19 June 2010 both Respondents were Reprimanded and ordered to pay the costs of the proceedings, in the sum of £15,000, on a joint and several basis.

Mitigation

128. No specific mitigation was offered at the hearing, but the Tribunal read and considered the documents and submissions made by the Respondents in correspondence.

First Respondent

129. The First Respondent had repeated in several emails that he had had no intention permanently to deprive his clients of their money.

130. The Tribunal noted that there was medical evidence that in 2011/12 the First Respondent had been ill, in a way which would affect his concentration and organisational skills, and he had ongoing physical conditions although the nature of their effect on his day to day life was unclear. The GP had also stated in her letter of 9 May 2017, "I would like to add a personal note and make the court aware how highly regarded [the First Respondent] is in [area of Wales]. He has always gone out of his way to help anyone when in need."

131. The Tribunal noted that in an email of 16 May 2017 the First Respondent had referred to health and financial problems. He stated that, "There must clearly be a paramount responsibility on solicitors when dealing with clients' affairs and money." The First Respondent also stated that the Second Respondent had only visited the office once to teach him how to do bank reconciliations, but had been distracted by telephone calls about his other business. The First Respondent stated, however, "The plain fact is of course that I was jointly and severally liable so clearly I can't excuse myself." The First Respondent opined that the Applicant's intervention was prompted by the Second Respondent's attempt to stand down as a partner, without the First Respondent's knowledge. The First Respondent stated that he was not trying to score points against the Second Respondent, of whom he had always been very fond, and did not seek to minimise his personal responsibility. The First Respondent also stated that he had found out by chance that the Second Respondent had engaged solicitors to defend a negligence claim against the Firm. The First Respondent referred to there being an injunction, obtained by "the Law Society" against the sale proceeds of his home and all of his assets but did not provide any details of this to the Tribunal. The First Respondent stated that he was determined that the balance of any shortfall in the client account would be made good as soon as possible.

Second Respondent

132. The Tribunal noted that the Second Respondent had promptly admitted all of the allegations made against him, by way of his letter of 24 February 2017.

133. In an email of 11 May 2017, the Second Respondent had stated that he would not be able to return to the UK for the hearing, and did not mean any disrespect to the Tribunal, or the seriousness of the proceedings. For financial reasons, the Second Respondent would not be represented at the hearing, which he did not wish to delay due to his non-attendance. The Second Respondent stated that he would respect the decision of the Tribunal and drew the Tribunal's attention to the statement of means he had filed in compliance with the Tribunal's directions.

134. The Second Respondent went on to state that when he became aware of the Applicant's investigation (in February 2015) he "immediately provided full assistance and co-operation to the best of my ability and took a 4 week leave of absence to look into the issues raised therein. I continued to assist the SRA thereafter as best I could given the circumstances I found myself in." The Second Respondent further stated that he had given full and honest responses to questions raised in the interview with the IO, as recorded in the transcript of the interview.

135. The Second Respondent stated that by failing to end his relationship with the First Respondent and the Firm in the procedurally correct manner, he had breached his regulatory obligations. He added, "I cannot comment as to whether the eventual outcome would have been any different with regard to Temple Law had I left the Firm in the proper way, but I accept responsibility through my failure to act in accordance with regulation in abandoning my post." The Second Respondent stated that in 2012 the Firm had been inspected by the Applicant and was found to be, in the main, compliant. The Second Respondent had stopped fee earning in 2013 and, he stated, his only involvement thereafter was regulatory, including managing client account. The Second Respondent stated that he passed this role to the First Respondent in early 2014 and thereafter had no further involvement "expecting either an imminent succession or closure of the Firm". The Second Respondent stated that from the time he stopped fee earning until the intervention he took no financial benefit from the Firm.

136. The Second Respondent stated that he understood that he should have acted differently and that he was "at the least" naïve in his actions. Whilst he could not have predicted the problems which developed during 2014, he did not offer this as an excuse. The Second Respondent stated that he had worked hard to become a solicitor, and always acted with honesty and integrity on behalf of the profession and his clients; he was proud to have assisted many people in many aspects of the law. The Second Respondent stated that if given the opportunity in the future he would like to think he could continue to represent the profession and clients in the same way. The Second Respondent stated that the demise of the Firm, the intervention and subsequent proceedings had caused great embarrassment and heartache to him and his family; he stated he had suffered significantly both mentally and financially as a result. The Second Respondent stated that he was working hard to rebuild his life and meet his current and future obligations which had arisen as a result of his mistakes. The Second Respondent stated that he accepted responsibility for the matters raised against him and that he carried the heavy burden of this matter with him every day.

137. With regard to costs, the Second Respondent confirmed he had received the costs schedule from the Applicant and asked that any order made against him was fair and proportionate, and that given his means he should be allowed to pay any costs over a reasonable period. The Second Respondent asked for time to settle any financial penalty, if such a penalty were imposed.

138. The Tribunal noted the Second Respondent's financial statement. Full details are not set out here, to preserve the Second Respondent's privacy, but the Tribunal noted that the Second Respondent had listed liabilities to pay the Firm's debts (e.g. to HMRC) or charges due to the Law Society/SRA (not including the costs of these proceedings) totalling over £394,000, along with various personal debts and liabilities. Whilst the Second Respondent had an income, his regular expenditure and repayment of debts, including debts of the Firm, reduced the sums available to him.

Sanction

139. 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. The Tribunal also noted the previous disciplinary matter involving both Respondents.

First Respondent

140. In assessing the seriousness of the First Respondent's misconduct, the Tribunal considered his culpability, the harm caused and the presence of any aggravating or mitigating factors.

141. The First Respondent's motivation for misusing client money, and for failing to maintain proper accounts, was unclear. It could be that this was one of those cases where there was a loss of control and one hole in client account was plugged with other money, until ultimately the true nature of the shortage was uncovered. The Tribunal noted that the First Respondent had stated that he had no intention permanently to deprive anyone of money. Whether or not that was the case – and the Tribunal had not heard the First Respondent in evidence, so could not assess his credibility on this point – the First Respondent had undoubtedly, at best, "borrowed" client money and used it inappropriately. This was forbidden; client money was sacrosanct and should only be used for the client's purposes. The First Respondent had been in sole charge of the Firm's accounts, and his misconduct in relation to the Messrs C and J matter involved receipt and transfer of money. Whilst the general failure to maintain accounts may have been unplanned, the specific transfer and use of client money was clearly planned rather than spontaneous.

142. The First Respondent's actions, particularly with regard to the C and J matter, had breached the trust of his clients, his professional colleagues and the public generally. The conveyancing system depended on the public and profession being able to trust that solicitors would carry out their undertakings; that trust had been breached. The First Respondent had been in direct control of what happened and, although the Second Respondent had abrogated his responsibilities (see below) the misconduct in relation to the C and J matter, and the creation of an unrectified client account shortage was the sole responsibility of the First Respondent. The First Respondent

was an experienced practitioner, who had been involved in running his own Firm for some time and should have been aware of the necessity of complying with the Accounts Rules. This was particularly so given that in 2010 the First Respondent had been reprimanded by this Tribunal for matters including breaches of the Accounts Rules. At that point, the breaches had been judged to be inadvertent but the First Respondent should have been alerted by that appearance to the need to ensure his accounting systems worked properly. One principle which had been clear throughout the First Respondent's many years in practice was that client money was sacrosanct. Even if the First Respondent had, for some reason, lacked a proper understanding of the current regulatory requirements prior to his appearance at the Tribunal in 2010, he had no excuse for failing to bring his understanding up to date from then.

143. The First Respondent's culpability for the serious misconduct, particularly with regard to allegations 2.2 and 4, was at the highest level and it was significant with regard to the other failures to comply with the Accounts Rules and regulatory requirements.

144. The harm caused by the First Respondent's misconduct was significant. He had harmed his clients, C and J, the lenders in the transaction and his fellow solicitors. The harm caused to the reputation of the profession for integrity, probity and complete trustworthiness was serious. The Tribunal noted that at the date of the intervention, as set out in the witness statement of Paul Caldicott, there was a minimum shortage on client account of £328,748.46, made up of 18 overdrawn client ledgers with combined debit balances totalling £328,322.46 and three debits from the client account totalling £426.24 which the intervention agents could not allocate to a client ledger. The Tribunal had received specific evidence that the Compensation Fund had had to pay out £143,945.26 for Mr C and Mr J, of which only £73,636.72 had been recovered from the Firm's client account. The Compensation Fund had only recovered about 52 pence in the pound in respect of the sums paid out to clients for their losses. The extent of the harm caused had been foreseeable, particularly because the First Respondent should have learned his lesson from the previous Tribunal hearing.

145. Aggravating factors which were present included, most significantly, the First Respondent's dishonesty. His misconduct had been deliberate, calculated and repeated. The Tribunal noted in this regard that the funds on the C and J matter had been received on or about 6 November 2014 and had not been either used for the intended purpose or recovered by the time of the intervention on 30 March 2015. In that period, the First Respondent had made repeated claims that he had redeemed the C&G mortgage, when he had not, and had even had the temerity, in his email of 12 December 2014, to upbraid Ms Corbett when she pointed out that, despite reminders, her firm had not received the title deeds.

146. There was nothing to suggest that Mr C and Mr J were inherently vulnerable clients but they had relied on the First Respondent to carry out their conveyancing transactions properly, and had entrusted the First Respondent with a significant sum of money for that purpose. A client should be able to trust a solicitor to deal properly with their money; in this case, the clients had remained liable to C&G for much longer than should have been the case and had had to pay two mortgages for

the period until this was resolved, which was only after the payment from the Compensation Fund mentioned above.

147. The Tribunal also found that the First Respondent had concealed his misconduct. Whilst he had admitted to the IO that the Firm's accounts were not properly kept, he had concealed what had happened and been untruthful to the IO, his clients and Ms Corbett. The Tribunal noted in particular that by 23 February 2015 the First Respondent had been specifically told that the mortgage had not been redeemed – although this must have been clear to him before that date – yet he did not correct the statements he had made to the IO and Ms Corbett on 19 and 20 February 2015 to the effect that the mortgage had been repaid.

148. The Tribunal was satisfied that the First Respondent should have known that his misconduct was in material breach of his obligations. Whilst the First Respondent's previous professional disciplinary matter had been much less serious, he should have learned lessons from that. There was no evidence that the First Respondent had undertaken any training in accounts, or practice management after his Tribunal appearance in 2010. The precise effect on the clients, particularly C and J, was not known as there was no evidence from the affected clients, but a loss of trust in the profession could be inferred without any difficulty. They had had to continue to pay out monies on two mortgages until the Compensation Fund was able to make good their losses; such payments would at best have been an inconvenience, and in some circumstances could have caused very significant losses and distress.

149. The Tribunal could find few mitigating factors in this matter. The First Respondent had made admissions to the many breaches of the Accounts Rules and regulatory obligations, but had not admitted his dishonesty. The Tribunal could not conclude that the First Respondent had shown genuine insight.

150. The Tribunal noted the letter from the First Respondent's GP dated 9 May 2017. This referred to significant ill health in the period 2011/12; the First Respondent in an email had referred to being ill from 2010. There was no reference to ill-health in the Judgment relating to the 2010 hearing, so it appeared this had begun at some point thereafter. It was clear from what the Second Respondent said in his mitigation that he, the Second Respondent, had played a full role in the Firm until 2013, when he had ceased fee-earning. As at 2012, the Firm's accounts were in reasonable order. There was nothing in the medical evidence put forward, or anything said by the First Respondent in his emails, to suggest that the First Respondent had been ill during 2014/15 in any way which would have affected his ability to deal with work or to know right from wrong. The Tribunal noted that the First Respondent stated that he had always tried to provide a good service, that he had let people down and that he would have to make restitution. That said, there was no evidence that the First Respondent had tried to make good the shortfall on client account or pay the Firm's various debts in the two-year period since the intervention.

151. This was clearly a case which was far too serious for there to be no order, a reprimand or a fine. The Tribunal determined that the misconduct was also too serious to attract a suspension from practice as a solicitor. The Tribunal concluded that there were no exceptional circumstances in this case, in particular nothing with

regard to the First Respondent's dishonesty. In the light of the case law, in particular SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma"), it was clear that save in a small residual category of cases of dishonesty in which there were exceptional circumstances, the normal and proportionate sanction where dishonesty was proved was to strike the solicitor off the Roll. That was the appropriate sanction in this case and would be ordered by the Tribunal.

Second Respondent

152. In assessing the seriousness of the Second Respondent's misconduct, the Tribunal considered his culpability, the harm caused and the aggravating and mitigating factors which were present.

153. As with the First Respondent, it was difficult to identify with certainty the Second Respondent's motivation for his misconduct. However, as he had ceased fee-earning in 2013 and then had withdrawn from day to day involvement with the Firm from February 2014 it appeared that he had lost interest in the law or at least in this Firm, and was pursuing other business interests. The Tribunal noted that in his email of 16 May 2017 the First Respondent had opined that the intervention had been prompted by the Second Respondent indicating that he wanted to withdraw from the partnership. The Tribunal had no information about what exactly had triggered the inspection in February 2015, but the intervention was based on the Applicant having grounds to suspect dishonesty and/or breaches of the Accounts Rules. The Tribunal noted that despite the Second Respondent's de facto withdrawal from the Firm, which he had admitted and which underlay the allegations against him, the Second Respondent had continued to have a role in discharging the Firm's liabilities and even engaging solicitors in relation to a negligence claim against the Firm.

154. The Second Respondent had not planned any misconduct. Rather, he had abrogated his responsibilities in walking away and leaving everything to the First Respondent. As the Respondents had agreed that the Second Respondent would not play any active role, he should have resigned from his roles as COLP and COFA. The First Respondent was left in a position of having no checks and balances in place to ensure that the accounts were properly managed. The lack of oversight had allowed the First Respondent the opportunity to permit the accounts to fall into disarray and, ultimately, the First Respondent had had the chance to behave dishonestly with regard to C and J's transaction.

155. The Second Respondent was less experienced than the First Respondent, but had been involved in partnership from 2004 and it appeared that he knew more about accounts than the First Respondent. It had been made clear by the Applicant that the Second Respondent had been co-operative, had not misled the regulator in any way and had accepted responsibility for payment of the Firm's debts and liabilities.

156. As the Second Respondent did not play his full and proper role in the Firm from February 2014, allowing the Firm's accounts to deteriorate, his conduct had damaged the trust the public would place in the provision of legal services. The public should be able to rely on firms of solicitors to be properly managed, in a way which would safeguard each client's money. If the Second Respondent had resigned as the Firm's COLP and COFA, as he should have done, his responsibility for the

misconduct would be less; indeed, if he had resigned as a partner he would not have been liable for any misconduct in the Firm from the time of the resignation. The Second Respondent should either have discharged his responsibilities properly, or should have resigned; he did neither, so the Applicant was unaware that there was no-one effectively ensuring compliance within the Firm. The Tribunal noted that the First Respondent complained that the Second Respondent had not trained him properly to carry out reconciliations, or other accounts functions. It should not have been necessary for the Second Respondent to train an experienced solicitor such as the First Respondent, who could and should have arranged appropriate training for himself. The Second Respondent should have appreciated that his failures would cause harm, in that it was foreseeable that the accounts might not be properly managed, but the Tribunal was not satisfied that he should have foreseen that his long-time business partner would be dishonest.

157. The Second Respondent knew that the Firm was receiving and paying out significant sums of client money on conveyancing transactions. In those circumstances, it was an aggravating factor that over a protracted period the Second Respondent neither fulfilled his responsibilities nor ensured that someone else had taken on those responsibilities. The Second Respondent knew, or should have known, that he was in breach of his responsibilities, particularly as the previous Tribunal appearance should have caused him to understand what was required. The Second Respondent had accepted his misconduct had led to losses, which he had to help to repay. The Tribunal noted that he was making efforts to do so.

158. The Tribunal noted that the Second Respondent had accepted his responsibility and had made full and prompt admissions. The Second Respondent had not been misled by anyone, nor had he informed the Applicant that he had stepped down from his duties as COLP and COFA. The misconduct had continued for about a year prior to the Applicant's investigation. The Applicant accepted that the Second Respondent had been co-operative.

159. In determining sanction, the Tribunal was concerned to consider what the Second Respondent had done wrong rather than blame him for all of the serious consequences of what had followed. It was the First Respondent who had conducted the conveyancing transaction for Mr C and Mr J, and there was no certainty that the misuse of client money on that matter would have been picked up promptly even if the Second Respondent had been involved in the Firm regularly. That said, the Tribunal recognised that the Second Respondent had allowed the circumstances in which the First Respondent had been able to deal inappropriately with client money to occur, and which had ultimately led to a large shortfall on client account.

160. The Tribunal found that the Second Respondent's misconduct was far too serious to merit either no order or a reprimand, particularly as the latter had been the sanction on the previous occasion. Whilst the ultimate losses to clients had been large, the Tribunal did not find his misconduct had been so serious as to justify removing him, temporarily or permanently, from practice. The Tribunal determined that a financial penalty would be appropriate in these circumstances.

161. In determining the amount of the fine, the Tribunal determined that the Second Respondent's misconduct was more than moderately serious and that the appropriate fine, taking into account all of the aggravating and mitigating factors present was £7,600 (i.e. just within indicative fine band 3 in the Tribunal's current Guidance Note on Sanction). Such a fine was sufficient to reflect the misconduct and to demonstrate to the profession and the public that abrogation of responsibilities in this way would attract a significant sanction.

162. The Tribunal then took into account the fact that the Second Respondent was making efforts to pay some of the Firm's liabilities. The Tribunal noted, for example, that the Second Respondent had paid around £10,000 towards one of the Firm's liabilities in the last year or thereabouts. The Tribunal decided that it would be in the public interest, and in the interests of the reputation of the profession, to allow the Second Respondent to continue to discharge those liabilities rather than impose a large additional liability on him. Whilst it was still appropriate that the Second Respondent should pay a fine, the amount actually to be paid would be remitted to £3,000, which the Tribunal hoped could be paid over time in reasonable installments. It was reasonable and proportionate that he should be fined but the Second Respondent should not be punished by having to pay the full fine, which had been assessed as justified in addition to the sums he was already paying or responsible for paying on account of the Firm's debts.

Costs

163. Mr Moran made an application for costs, and referred to the schedules of costs at 18 November 2016 and 10 May 2017, which included the estimated costs of the hearing. The total costs claimed were £18,575 including £8,328 in forensic investigation costs and £1215 in supervision costs. The remaining costs were legal costs calculated at £130 per hour for Mr Moran and £70 per hour for work done by a paralegal.

164. Mr Moran submitted that the Tribunal would want to consider whether any costs order should be on a joint and several basis, as on the previous occasion, or if costs should be apportioned. Mr Moran submitted that the allegation of dishonesty had been made only against the First Respondent, and that had taken much of the time in the preparation and presentation of the case. Whilst the Second Respondent had abrogated his responsibilities with regard to the Firm's accounts, and the allegations against him were serious, fewer resources had been needed to investigate and prosecute the Second Respondent and he had made full admissions promptly.

165. The Tribunal considered carefully the costs schedule and the work done in bringing this case.

166. The Tribunal was satisfied that the time spent on the case was reasonable and proportionate to the issues and the rates at which work had been charged were reasonable. There had been an investigation, which had led to the preparation of a substantial forensic investigation report and proper consideration of the allegations which should be brought arising from the factual matters in that report. The Tribunal noted that at the point of issue of proceedings, the costs schedule claimed costs of £16,033 and the costs had risen to only £18,575 by the time of the hearing,

notwithstanding the need for three CMHs, preparation of further witness statements and correspondence with the Respondents and the Tribunal. The Tribunal was satisfied that it was proper to award the Applicant its costs as claimed, in the sum of £18,575.

167. The Tribunal considered whether to award the costs on a joint and several basis or apportion them between the Respondents.

168. As noted with regard to sanction, the Tribunal was aware that the Second Respondent was already shouldering responsibility for payment of the Firm's debts and other liabilities. It would not be right to leave him potentially liable for all of the costs, if the First Respondent did not make a proper contribution. The Tribunal also noted and accepted that whilst the Second Respondent was properly prosecuted, fewer resources were used in dealing with the allegations against him than against the First Respondent. The Tribunal determined that the appropriate amount of costs to order against the Second Respondent was £3,000. The Second Respondent's sanction had already taken into account his means and financial responsibilities and the Tribunal determined that there was no need to make any further reduction in the costs he should be ordered to pay. He would no doubt be able to make a suitable arrangement with the Applicant about paying those costs by instalments and the Tribunal would expect the Applicant to proceed in a proportionate and reasonable way in seeking to recover these costs.

169. The Tribunal determined that the First Respondent should be responsible for the remaining £15,575 of costs. This was a reasonable amount, given the resources needed to bring this case.

170. The Tribunal considered the information the First Respondent had given about his financial circumstances to determine whether there should be any reduction in the amount he should be ordered to pay. The First Respondent had not supplied a statement of means, as ordered in the directions made on 7 March 2017 and repeated in the directions made on 4 April 2017.

171. The First Respondent had given no information about his assets, and only limited information about his income. In an email to the Applicant on 10 April 2017, he stated,

> "They [the Law Society] obtained an injunction against me last year freezing my assets. They have had a six figure sum from me already and there should be sufficient available to meet the balance of the sum they were claiming, but they have made me bankrupt which means I could not practise anyway.
>
> … The Society was able to injunct the net proceeds of sale of my property because they did HMLR searches against our properties after I had completed the sale. Before the injunction I co-operated fully with them in providing information voluntary (sic).
>
> Pending the outcome of the bankruptcy proceedings, my only income is State Pension of about £640 monthly… I have been dependent upon my mother to supply accommodation for me…"

172. In an email on 27 April 2017 the First Respondent stated, "… the Law Society has already had a six figure sum from me and is of course welcome to other funds…" In his email to Mr Moran on 9 May 2017 he had stated, "As I have previously indicated, I am confident that any shortfall will be settled and I will let you have further details as soon as I can." In an email on 16 May 2017 the First Respondent stated, "You will be aware of the Law Society's injunctions of the sale proceeds of my home and all my assets. My income is as you know extremely small. However, I am determined that the balance of any shortfall in the client account will be made good as soon as possible." In his email of 17 May 2017 the First Respondent referred to his "estate being injuncted" and that he was "determined to ensure that the shortfall is made good…"

173. From all of the above, it appeared that whilst the First Respondent's income was limited, he had assets which may be subject to an injunction, but which may be available to pay or contribute to the shortfall in the Firm's client account, the costs of the intervention and the costs of these proceedings. The First Respondent had not provided proper information about his bankruptcy, such as the date of the order and the expected date of discharge.

174. In these circumstances, the Tribunal was satisfied that it was proper to order the First Respondent to pay the sum of £15,575 in costs in full; the Applicant would have to work out whether those costs fell into the bankruptcy as a contingent liability or fell outside the bankruptcy and in any event would need to proceed proportionately.

Statement of Full Order

175. The Tribunal Ordered that the Respondent, ROLAND IVOR CASSAM, 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 £15,575.00.

176. The Tribunal Ordered that the Respondent, PETER RHIDIAN LEWIS, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.00

Dated this 1st day of June 2017
On behalf of the Tribunal

Jacqueline Devonish

J. Devonish
Chairman

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11580-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROLAND IVOR CASSAM, First Respondent

PETER RHIDIAN LEWIS Second Respondent

Before:

Miss J. Devonish (in the chair)
Mr G. Sydenham
Mr M. R. Hallam

Date of Hearing: 17 & 18 May 2017

Appendix – Extracts from Principles, Accounts Rules and Code

SRA Principles 2011

There are ten mandatory Principles which apply to all those regulated by the SRA, as follows.

You must:

1. Uphold the rule of law and the proper administration of justice;

2. Act with integrity;

3. Not allow your independence to be compromised;

4. Act in the best interests of each client;

5. Provide a proper standard of service to your clients;

6. Behave in a way that maintains the trust the public places in you and in the provision of legal services;

7. Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

8. Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;

10. Protect client money and assets.

AR 2011
Rule 1.2:

You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

(c) use each client's money for that client's matters only;

(e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules;

(f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust;

Rule 7.1:

Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

Rule 20.1:

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

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

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

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

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

(e) transferred to another client account;

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

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

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

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

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

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

Rule 29.1: Accounting records which must be kept

You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and

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

Rule 29.9: All dealings with client money must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each client (or other person, or trust).

No other entries may be made in these records.

Rule 29.12: Reconciliations

You must, at least once every five weeks:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is

not a client account but in which you hold client money under rule 15.1(a) or rule16.1(d), and any client money held by you in cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

2011 Code
Outcome – O (10.3)

You notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook.

SRA Authorisation Rules 2011 8.5 (C)

The COLP of an authorised body must:

(i) take all reasonable steps to:

(A) ensure compliance with the terms and conditions of the authorised body's authorisation except any obligations imposed under the SRA Accounts Rules;

(B) ensure compliance with any statutory obligations of the body, its managers, employees or interest holders or the sole practitioner in relation to the body's carrying on of authorised activities; and

(C) record any failure so to comply and make such records available to the SRA on request;

SRA Authorisation Rules 2011 8.5 (E)

The COFA of an authorised body must:

(i) take all reasonable steps to:

(A) ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules;

(B) record any failure so to comply and make such records available to the SRA on request; and

(ii) in the case of a licensed body, as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:

(A) in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with Rule 8.7(a); and

(B) failure may be material either taken on its own or as part of a pattern of failures so to comply.

(iii) in the case of a recognised body or recognised sole practice, as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).