SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11296-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN JACKSON Respondent

Before:

Mr A. Ghosh (in the chair)
Mr D. Green
Mrs L. McMahon-Hathway

Date of Hearing: 3-4 May 2016

Appearances

Mr J. Goodwin, of Jonathan Goodwin, Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, made by the Solicitors Regulation Authority were that:

1.1 He withdrew £12,739.54 on 4 May 2010 from client account and paid it to HM Revenue and Customs in order to meet his personal tax liability and thereby:

1.1.1 Improperly withdrew client money from client account in breach of Rule 22(1) of the Solicitors Accounts Rules 1998

1.1.2 Failed to promptly remedy a breach of the rules by failing to replace client money that had been improperly withdrawn in breach of Rule 7(1) of the Solicitors Accounts Rules 1998

1.1.3 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.1.4 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

1.2 He received a cheque for £2,000, dated 18 August 2011, from a client, made payable to him in respect of counsel's fees, paid it into his bank account and then failed to pay the £2,000 into client account for a period of over 12 months and thereby:

1.2.1 delayed in paying money for unpaid professional disbursements into client account in breach of Rule 19(1) of the Solicitors Accounts Rules 1998 and/or Rule 17.1 of the SRA Accounts Rules 2011

1.2.2 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 and/or Principle 2 of the SRA Principles 2011

1.2.3 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 and/or failed to behave in a way that maintains trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

1.3 He collected £2,870.02 in cash on 23 October 2009 in relation to a deceased estate, failed to pay £900 of that cash without delay into client account and retained it for a period of 350 days and thereby:

1.3.1 delayed paying £900 into client account contrary to Rule 15(1) of the Solicitors Accounts Rules 1998

1.3.2 failed to promptly remedy a breach of the rules by delaying replacing money improperly withheld from client account into client account in breach of Rule 7(1) of the Solicitors Accounts Rules 1998

1.3.3 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.3.4 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

1.4 He permitted money to pass into and out of client account when not accompanied by the conduct of a legitimate underlying legal transaction and thereby:

1.4.1 breached note (ix) of Rule 15 of the Solicitors Accounts Rules 1998

1.4.2 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.4.3 allowed his independence to be compromised in breach of Rule 1.03 of the Solicitors Code of Conduct 2007

1.4.4 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

1.5 He did not return monies to D(UK) and/or its administrators and thereby:

1.5.1 breached Rule 15(3) of the Solicitors Accounts Rules 1998

1.5.2 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.5.3 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

1.6 He misled the administrators of D(UK) by advising them that U(UK) had no interest in N Limited which was planning to purchase D(UK) when it did and thereby:

1.6.1 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.6.2 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

1.7 He acted for D(UK) which was selling its assets and acted for P which wished to purchase the assets and thereby:

1.7.1 acted when a conflict or a significant risk of a conflict of interest existed between two clients in breach of Rule 3.01 of the Solicitors Code of Conduct 2007

1.7.2 failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.7.3 behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

While dishonesty was alleged with respect to allegations 1.1, 1.2, 1.3 and 1.6 above, proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 22 October 2014 with attached exhibit MNG1
- Witness statement of Mr Michael Brough dated 3 September 2015 with attachments
- Witness statement of Mrs Gillian Rickson dated 27 August 2015 with attachment
- Witness statement of Mr Henry Dixon dated 20 August 2015
- Bundle comprising:
    - Memorandum of Case Management Hearing held on 24 November 2015
    - E-mail from the Tribunal to the parties dated 21 December 2015
    - Letter from the Tribunal to the Respondent dated 21 December 2015
    - E-mail from Tribunal to the Respondent dated 6 January 2016
    - Copy of envelope marked 'refused' by Royal Mail dated 31 December 2015
    - E-mail from the Respondent to the Tribunal dated 28 January 2016
    - E-mail from the Tribunal to the Respondent dated 28 January 2016
    - E-mail from the Applicant to the Respondent dated 12 February 2016
- Bundle of email exchanges between the parties from April 2015 to October 2015 with attachments where appropriate
- E-mail from the Applicant to the Tribunal dated 29 April 2016
- Judgment in the case of General Medical Council v Olufemi Adeyinka Adeogba [2016] EWCA Civ 162
- Applicant's statement of costs for the Case Management Hearings on 16 April 2015 and 7 July 2015
- Applicant's statement of costs as at date of (anticipated) final hearing dated 28 September 2015
- Applicant's statement of costs as at date of final hearing on 3, 4 and 5 May 2016 dated 26 April 2016

Respondent

- Letter to the Respondent from Moorfields Eye Hospital dated 20 January 2016
- Letter to the Respondent's GP from Moorfields Eye Hospital dated 20 January 2016
- Letter to the Respondent from Moorfields Eye Hospital dated 1 March 2016
- Undated letter from Moorfields Eye Hospital regarding appointment on 8 June 2016
- Application by the Respondent for an adjournment dated 28 April 2016
- E-mail from the Respondent to the Tribunal dated 29 April 2016

- Sworn statement of the Respondent undated
- Personal Financial Statement of the Respondent dated 28 April 2016

Preliminary Issues

Absence of the Respondent

3. The Respondent was not present. In support of an application for the Tribunal to proceed and hear the matter in the absence of the Respondent, for the Applicant Mr Goodwin drew the attention of the Tribunal to the background and chronology of the matter. The Rule 5 Statement was dated 22 October 2014 and Standard Directions had been issued on 16 December 2014. A Case Management Hearing ("CMH") took place on 10 February 2015. One of the directions made required the Respondent to file at the Tribunal and serve on the Applicant an Answer to the Rule 5 Statement by 10 March 2015 which the Respondent failed to do. A further CMH was listed for 16 April 2015 but there was doubt whether regarding whether proper notice had been served on the Respondent and it was adjourned to 6 July 2015. The Respondent referred to medical problems with his eyes but did not provide a medical report. A direction was made that the Respondent file at the Tribunal and serve an Answer by 4 August 2015. The substantive hearing was fixed for 6 October 2015. Instead on 6 October a CMH took place by telephone to hear an application by the Respondent to adjourn. Mr Ghosh had been a member of the panel. The Tribunal decided that it would adjourn the matter but directed that the Respondent should file at the Tribunal and serve upon the Applicant a reasoned opinion of an appropriate medical adviser covering the Respondent's ability to prepare for, travel to and participate in the substantive hearing both at the time of the report and a prognosis following treatment. The Respondent provided a copy of a letter to his GP dated 17 October 2015 from Moorfields Eye Hospital about his condition and an appointment card for an appointment on 18 November 2015 but no further medical evidence was provided. A further CMH took place by telephone on 24 November 2015 at which listing the substantive hearing was dealt with. Mr Green chaired the Panel. The Tribunal noted that the letter to the GP did not deal with the points covered by the direction in respect of medical evidence and expressed concern that the Respondent had not complied with previous directions. Mr Goodwin referred the Tribunal to a small bundle of documents which he had submitted and particularly to part of paragraph 12 of the Memorandum of the November 2015 CMH which said:

> "The Tribunal noted that the Respondent expected that, following surgery in January 2016, he should be fully recovered and able to deal with the case from early February onwards. The Tribunal's directions, in order to ensure that this matter progressed properly, were based on the Respondent's indication that he expected to have treatment and to have recovered before the beginning of February 2016. If this were not in fact the case, the Respondent would have to provide full medical evidence from a suitable medical adviser, dealing with his ability to prepare for, travel to and participate in the substantive hearing, both at the time of the report and a prognosis following treatment. This requirement would not be specifically incorporated into an order, as the Respondent had assured the Tribunal that it was not likely to be needed. However the Respondent should note that it was not likely that any application to adjourn

> the substantive hearing would be granted in the absence of persuasive and comprehensive medical evidence…"

4. The direction regarding filing an Answer which was repeated at the November 2015 CMH was not complied with.

5. On 21 December 2015 at 16.39, the Tribunal staff sent an e-mail to the Respondent stating "Please see revised date of hearing letter attached." The letter gave the dates of the substantive hearing as 3, 4 and 5 May 2016. On 6 January 2016, the 21 December 2015 letter was returned to the Tribunal marked as "refused". On 28 January 2016 at 11.37, the Respondent sent an e-mail to the Tribunal staff stating:

> "I am not sure why the letter was refused
>
> I am going into hospital on 1st March for major surgery on my left eye. The recovery process will take about six weeks, and I will then have my right eye operated on. In the circumstances, I will not be able to accommodate the dates in May. I will forward confirmatory documents within the next few days."

6. On the same day at 12.22, the Tribunal staff sent an e-mail to the Respondent including:

> "If you wish to apply for an adjournment, you must do so taking into account the Policy and Practice Note on Adjournments attached…"

7. On 12 February 2016, Mr Mark Gibson of the Applicant sent an e-mail to the Respondent stating:

> "I refer to your e-mail to the Tribunal of 28 January 2016 in which you advised that you could not accommodate the hearing dates in May due to major surgery. You advised that you would send confirmatory documents "within the next few days".
>
> It is now two weeks since you sent your e-mail to the Tribunal yet you have not provided any confirmatory documentation. Please could you explain why the confirmatory documentation has not been submitted.
>
> As no formal application for an adjournment has been made, the SRA is proceeding on the basis that the hearing will take place on 3, 4 and 5 May 2016 and costs are being incurred."

8. Mr Goodwin submitted that the Respondent was on clear notice that if he wished to seek a further adjournment he had to apply but he left it until 28 April 2016 when he e-mailed at 13.04. He stated that he was still suffering from severely limited vision, which meant that he was unable to prepare properly for the hearing or to travel. He stated that he was waiting for further surgery on his eyes and asked that the hearing be adjourned to the first date after 1 October 2016 to allow him to recover. On 29 April 2016 at 09.23, the Tribunal staff advised the parties by e-mail that the Tribunal had considered the Respondent's application for an adjournment and decided as follows:

> "The Respondent's application is refused. The Respondent has failed to adduce any medical evidence as to the poor health that he alleges that he suffers from. The application is not supported by a statement of truth, contrary to the requirement in paragraph 5 of the Tribunal's Practice Note on Adjournments."

9. Mr Goodwin submitted that the Tribunal referred to medical evidence which had been at the two previous CMHs. The Respondent then renewed his application by e-mail at 13.04 on 29 April 2016 with a short statement with a statement of truth and provided some medical documents but they were not new. At 16.25 on 29 April 2016, Mr Gibson e-mailed the Tribunal with the Applicant's objections to the renewed application to adjourn. (Mr Gibson relied on the documentation provided by the Respondent not constituting a reasoned opinion of an appropriate medical adviser. He also referred to the documentation not showing that the Respondent had trouble seeing but only that he had an operation on his left eye approximately two months previously and the recovery period was not indicated. Mr Gibson also pointed out that the Respondent had had ample time to obtain a report from an appropriate medical adviser since the substantive hearing was adjourned in October 2015 and that he had failed to comply with directions to do so. Finally he pointed out that the Respondent was in possession of most of his documentation on or about 21 January 2016 but had failed to disclose it prior to the application to adjourn which was made extremely late.) By e-mail at 17.58 on 29 April 2016, the Tribunal refused the renewed application to adjourn because of failure to submit appropriate medical evidence including evidence that the Respondent could not conduct a defence of the proceedings. The Tribunal made the point that the allegations in the matter were extremely serious.

10. Mr Goodwin submitted that on the basis that the request to adjourn had been refused by the Tribunal, in the absence of the Respondent to renew his application, there was no adjournment application before the Tribunal and in all the circumstances it would be appropriate to proceed in his absence. The Respondent had been served with notice of the proceedings and the papers in the case. The hearing dates were referred to in e-mails which he had received. He had been given the opportunity to present his case and had been allowed previous adjournments and had also been given the opportunity to submit medical evidence. Mr Goodwin referred the Tribunal to the Solicitors (Disciplinary Proceedings) Rule 2007, Rule 16(2) of which provided:

> "If the Tribunal is satisfied that notice of hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Mr Goodwin also referred to a recent Court of Appeal case determined on 18 March 2016 General Medical Council v Olufemi Adeyinka Adeogba [2016] EWCA Civ 162 where it was stated:

> "It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC ... In that regard it is important that the analogy between

> criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.
> There are other differences too. First, the GMC represents the public interest in relation to standards of healthcare. 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, it is only right that it should proceed.
>
> Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice."

11. Mr Goodwin submitted that the Respondent had received notice, had applied to adjourn and had been refused. The judgment continued:

> "That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

12. Mr Goodwin submitted that regarding all the circumstances and the failures by the Respondent to submit an Answer to the Rule 5 Statement and in particular to submit medical evidence which the Respondent asserted was the basis on which he could not proceed, the Tribunal could quite fairly proceed to hear the matter. Mr Goodwin submitted that the same points about the protection of the public applied to the Applicant in respect of solicitors as applied to the GMC and medical practitioners in the Adeogba case and here there were allegations of dishonesty and given the historical perspective it was important to proceed and deal with the matter at this hearing.

13. The Tribunal having carefully considered the application to adjourn twice in the days leading up to the hearing and having heard the submissions from Mr Goodwin and the Respondent having failed to renew his application to adjourn and to provide medical evidence as he had been advised on several occasions he should do if he was to have a prospect of succeeding in his application to adjourn, the Tribunal decided to exercise its discretion to proceed in the absence of the Respondent and without his being represented.

Partial Document

14. During his submissions, Mr Goodwin referred to a letter dated 18 May 2011 in the hearing bundle from HP Solicitors acting on behalf of N Ltd to the directors of that company, which it was clear from the numbering ran to eight sides but was missing its even numbered pages. The letter was referred to at paragraph 86 of the FI Report. Mr Goodwin advised the Tribunal that the Investigation Officer's ("IO") papers were to be delivered back to the Applicant from archive so that this omission could be corrected. It transpired that the IO's working file also contained a defective copy of the letter. Mt Goodwin then submitted that it was apparent from the file that the IO had the complete letter before him when he wrote the FI Report as he referred to even numbered pages 8 and 12. The IO had also sent documents including a copy of that letter to the Respondent prior to the interview which the IO conducted with the Respondent in December 2012. However Mr Goodwin submitted that he could not be sure that the Respondent had been provided with a copy of the full document at that time and the safest course would be for the Applicant not to rely on paragraph 86 of the FI Report or the letter itself. The Tribunal agreed that this was the fairest approach to take, particularly as the Respondent was not present. The Tribunal therefore disregarded that paragraph and the letter in question.

Factual Background

15. The Respondent was born in 1953 and admitted to the Roll in 1983 and his name remained on the Roll. He held a current practising certificate.

16. At the material time, the Respondent carried on practice as a consultant solicitor at Michael Brough & Cohen Solicitors ("the firm") in Buckinghamshire. He was employed by the firm between 9 July 2007 and 30 September 2011.

17. On 4 September 2012, an IO of the Applicant Mr Stephen Cassini commenced an investigation of the firm which culminated in a Forensic Investigation ("FI") Report dated 4 March 2013.

Allegation 1.1

18. The FI Report identified that in the matter of D(UK)/P, in which the Respondent was the fee earner, a withdrawal of £12,739.54 was made from client bank account on 4 May 2010 in favour of HM Revenue and Customs ("HMRC").

19. A copy of the cleared cheque was endorsed on the reverse by the payee HMRC with a reference 74263...

20. An extract from the Respondent's Tax Return 2010 showed that the form was addressed to the Respondent and showed his Unique Tax Reference number as 74263...

21. The cheque was signed by the Respondent.

Allegation 1.2

22. The Respondent acted for a Mr BH in relation to his taxi hire business and the damage caused to a taxi-cab by fire.

23. Confirmation that the Respondent was acting was included in a client care letter to Mr BH of 18 November 2009.

24. On 15 July 2011, the Respondent advised Mr BH that there was a forthcoming hearing on 26 August 2011 and that he required £2,000 for counsel's fees in advance of the hearing.

25. In response Mr BH sent to the Respondent an e-mail in which he advised: "will get 2k to you by your return or at least before the hearing date."

26. On 18 August 2011, Mr BH provided the Respondent with a cheque for £2,000 which had been drawn in favour of the Respondent.

27. On 25 August 2011, the Respondent appeared to have agreed counsel's fees for £2,000 according to an e-mail from counsel's clerk.

28. Counsel's fee note for £2,000 plus VAT of £400 was dated 23 April 2012. Payment of the VAT element of the fee note was made by the firm on 4 May 2012 and the firm advised that they were chasing the Respondent for the £2,000, he having left the firm by that stage.

29. On 25 September 2012, the firm received a cheque from the Respondent in respect of the £2,000 paid by Mr BH in respect of counsel's fees.

30. In an interview on 5 December 2012, the Respondent advised:

> "I sat on it and eventually gave it back to [Mr B]"

Allegation 1.3

31. The executors of the estate of Mr MK instructed the firm to deal with the administration of the estate and the Respondent was the fee earner who dealt with the administration.

32. The estate was very small and consisted of a small amount of cash and two financial policies totalling just over £8,000. The sole beneficiary of the estate was MacMillan Cancer Relief.

33. An attendance note of 23 October 2009 recorded that the Respondent attended the home of one of the executors of the estate, Mr Dixon ("Mr D") and was handed, amongst other things, cash belonging to the deceased of £1,970.02 and a tin containing coins to the value of £10.52.

34. A cash journal maintained by the firm and completed by the firm's recognised sole practitioner Mr B recorded a receipt of £1,970.02 on 23 October 2009 as did the Client Ledger Card.

35. The balance of the estate consisted of a National Savings policy of £5,199.51 and a Post Office account of £95.61.

36. Following the firm's deduction for costs a sum of £6,582.03 was sent to MacMillan Cancer Support (sic) on 1 February 2010.

37. Receipt of these funds was confirmed by the charity in their letter of 4 February 2010 and on 9 March 2010 they confirmed a further receipt of £95.61.

38. On 5 July 2010, the Respondent wrote to Mr D confirming that the administration of the estate had been finalised.

39. In the client file papers there was a further letter dated 9 August 2010 in which the firm purported to send a further cheque for £900 to MacMillan Cancer Support.

40. On 16 August 2010, the Respondent wrote to Mr D and advised that the total amount of cash found in the deceased's flat was £2,870.02. He advised that in addition £5,199.51 was received from National Savings and Investments and £95.61 was received from the Post Office. He advised that the total estate amounted to £8,165.14.

41. On 6 October 2010, Mr D wrote to the Respondent and recounted a telephone conversation with him in which he stated that the Respondent had found that a final cheque to "MacMillan Cancer Research" for £900 had not cleared.

42. On 7 October, 2010 the Respondent sent a client bank account cheque for £900 to MacMillan Cancer Support and the charity confirmed receipt by letter of 12 October 2010.

43. The firm's client ledger relating to the deceased estate recorded that the total cash received by the firm on 23 October 2009 was £1,970.02. On 8 October 2010, an entry on the ledger recorded "Cheque from S Jackson" and a credit of £900.

44. In interview on 5 December 2012, the Respondent admitted that he paid £900 into the client account on 8 October 2010.

<u>Allegation 1.4</u>

45. During the period 8 April 2010 to 14 July 2011, the firm received £604,564.47 into its client account as identified on the client ledger card of an entity P.

46. The client ledger card identified that £75,987.38 was paid out in respect of legal fees and disbursements. The client ledger card identified that there were also other numerous payments out.

47. The balance of the payments into the client account apart from the payments in respect of legal fees and disbursements, were not accompanied by an identifiable legal transaction.

Allegation 1.5

48. The Respondent acted for a company called D(UK) from August 2009. However it appeared that a client care letter was only sent out on 9 March 2010.

49. D(UK) was a small paper business in South Wales whose principal supplier was P. In March 2010 one of D(UK)'s finance streams (G Capital) withdrew its finance facility and that placed D(UK) in financial difficulty.

50. As from 8 April 2010, the firm received money into client account from either entities which were providing financial support to D(UK) or from its debtors. The firm also paid monies out of the client account for D(UK). The firm continued to receive money into client account and pay money out of the client account until 14 July 2011.

51. On 25 May 2010, D(UK) was placed in administration and subsequently an agreement was entered into with N Ltd to purchase D(UK)'s assets.

52. On 23 September 2010, the Joint Administrators of D(UK) F Partners ("the administrators") a division of HWF & Company e-mailed the Respondent to express their concern about the manner in which he was dealing with D(UK)'s debts. Correspondence between them ensued.

53. The client ledger recorded a balance as at 24 May 2010 of £33,882.92 and that two payments were made to the administrators subsequently but the balance was not paid over to the administrators or its solicitors.

Allegation 1.6

54. This allegation arose out of statements made by the Respondent to LC Accountants and to U(UK) also referred to as U SA ("U") by e-mail and in a conversation with F Partners, all of which concerned the structure of the new company N Ltd.

Allegation 1.7

55. This allegation arose out of the Respondent acting for both D(UK) and P from March 2010 in a transaction which was designed to resolve debt owed by the former to the latter.

56. In an interview on 5 December 2012, the Respondent denied that he acted for D(UK) and did not consider that there was a conflict of interest.

The Applicant's Investigation

57. Potential allegations against the Respondent were raised with him by letter dated 15 August 2013.

58. In a response dated 24 September 2013, the Respondent replied as follows:

> "I refer to your letter of 15th August. As you know, I was interviewed by Mr Cassini on 5th December 2012. It then took you more than eight months to communicate with me.
>
> My preliminary response to your points is as follows, using your numbering:
>
> 1. The payment to HMRC represented commission due to me from [the firm] because the office account at [the firm] was heavily overdrawn, it was agreed that I would be paid from client account, upon which I was a signatory. In fact, I was owed more than £12,739.54 but agreed to accept a lesser amount.
>
> 2. This allegation is vehemently denied, in any event, I require inspection of the entire file to enable me to respond fully to this point [misleading D(UK)'s administrators as to the beneficial ownership of N Ltd].
>
> 3. I have already explained the circumstances surrounding this "allegation"; in any event, I repaid this sum upon request [in relation to the cheque for £2,000 in the case of Mr BH].
>
> 4. I will provide a full statement in relation to this matter; there was no dishonesty on my part, which seems to be the implication. Again, I would like to have access to the complete file to refresh my memory, bearing in mind that the matter was concluded more than three years ago [in relation to the retention of £900 in cash for a period in the case of MK deceased]
>
> 5. ...
>
> 6. This allegation is denied; there was a significant, underlying transaction [in relation to the allegation that he allowed client account to be used as a banking facility]
>
> 7 & 8 I will respond fully to these matters from an inspection of the file [in relation respectively to the allegation of failing to pay monies held in client account to the administrators and acting for the target company and the beneficial owners of an acquiring company in the sale of a business - D(UK)]"

59. By e-mail dated 4 April 2014, the Respondent advised:

> "I am in the process of closing my practice and have not been able to inspect the original file for [Mr MK].
>
> Given the passage of time, I cannot recall the circumstances in which there was a shortfall of £900 paid into client account. The events are now four and one half years ago. I certainly did not receive those funds personally, and once I discovered the shortfall, I made it good from my own resources.
>
> You have confirmed that I am not accused of dishonesty in regard to that matter; I can only apologise for the delay in accounting for the sum of £900; I cannot add anything further to the statement I made to Mr Cassini on 5 December 2012."

60. In a document dated 15 April 2014, the Respondent provided a response regarding D(UK):

> "I have been provided with what purports to be a complete copy of the [D(UK)] file. It consists of about 3,000 pages, and the events occurred about four years ago. I have not received any complaints about my handling of the matter from my clients and, save for a dispute concerning funds received by [the firm] post-administration, nor from any other party to the matter.
>
> It is useful to consider the background to this matter. I had acted for [DM], one of the directors of [D(UK)], in several matters since the late 1990s. We had become friends, and in latter years, our only meetings had been of a social nature.
>
> In 2009, Mr [DM] contacted me to discuss a problem he had with [D(UK)] which was a manufacturer and distributor of sanitary products, mainly of the "feminine hygiene" type. It made products for a number of UK and European companies including Tesco and [NC]. The company operated from a factory in South Wales, and for a number of reasons, had become unprofitable. Mr [DM] asked me if I knew of anyone who could advise the directors of the company, and their Swiss owners and financial backers [P] and [U] about a trade sale of the business. [U)] owned [D(UK)], and [U)], in turn was owned by [P].
>
> I knew of one [J], who ran a consultancy known as [O], which specialised in advising companies on disposals of part or whole of their businesses. A meeting took place on 29 September 2009 in Richmond, Surrey at which Mr [J] advised Mr [DM] that a trade sale may be possible, but that it would be difficult to achieve.
>
> Because [D(UK)] was "owned" by the Swiss entities, there was no conflict of interest between them, even though the Swiss parents were concerned at [D(UK's)] indebtedness to them. As can be seen from the copy files provided, a client care letter was produced and ultimately signed on behalf of the Swiss; so far as I am aware no such signed letter was received from [D(UK)].

Mr [DM] had close involvement with both entities; he was a director (inter-alia) of [D(UK)].

As is evidenced by the thousands of pages of this file, this was a complex matter where the emphasis shifted almost on a daily basis. Further, we as solicitors were not always kept informed of events within the company. Throughout, we acted with the best interests of our clients in mind.

The allegations against me are as follows, and I will deal with them as briefly as possible:

1. I misled the company's administrators as to the beneficial ownership of a new company which had been set up to take over trade from the client company.

The new company was called [N]; I did not act for the new company or its directors as directors of [N]. So far as I can recall, I made no representations as to the beneficial ownership of the new company. In the event, I never did hold any shares in [N] and there never were any common directors or shareholders between [U] or [N].

2. The firm used client account as a banking facility where there was no underlying transaction.

Quite clearly, there was an underlying transaction and so I categorically reject this allegation.

3. The firm used client account to hold monies for a client company in administration instead of paying it out the administrators

It is true that, unbeknown to me or [Mr B], [N] received funds which related to sales made by [D(UK)]. I made it quite clear to those involved that this was not acceptable. The administrators were appointed on 25th May 2010; without knowing the final outcome of the matter or speaking with [MB] the firm's accountant, I cannot provide a detailed analysis of the sums received by [the firm] post-25th May. However, I can see that [Mr B] has provided an explanation to [BJ] of [F Partners].

4. The client care letter was not, so far as I can recall, sent to [D(UK)], but only to the Swiss. I cannot see where the conflict of interest arises here. [Mr DD] and his fellow director [AT] were highly experienced businessmen and at no stage did the question of conflict arise.

As a result of ill-health, I have been unable to spend as much time as I would have liked on this enormous file.

I reserve the right to write this response should the need arise."

61. On 16 June 2014, a decision was made to refer the Respondent to the Tribunal.

Witnesses

62. **Mr Stephen Cassini** IO confirmed the accuracy of the FI Report which he had prepared subject to the omission of the reverse sides of the letter from HP Solicitors to the Directors of N Ltd dated 18 May 2011 referred to under Preliminary Issues above.

63. **Mr Michael Brough** Recognised Sole Practitioner at the firm gave evidence. He confirmed the accuracy of his statement dated 3 September 2015 and the documents attached to it which he had collated. In addition to those aspects of his evidence covered in Mr Goodwin's submissions, the witness stated that he had asked the Respondent to leave the firm in August 2011 because he was an extremely unreliable attendee at the office. Issues had arisen after the Respondent left which if they had been brought to his attention earlier the witness would have addressed. The witness endorsed, so far as he was able, the statements of Mrs R and Mr D.

63.1 The witness stated that it had been intended that the Respondent should be an authorised signatory on client account. The firm had had the Respondent sign the necessary mandate which would have covered both client and office account. The bank lost the form. When the firm eventually discovered that fact, the witness was already reaching the point of some exasperation with the Respondent's performance and so no replacement mandate was completed. The Respondent was not therefore an authorised signatory. However the witness did not think that the Respondent knew although the Respondent once went to the bank and tried to cash a cheque on office account which the bank refused to allow and the witness took the view that the refusal would have indicated to the Respondent that he was not an authorised signatory.

64. **Mrs Gillian Rickson ("Mrs R")** gave evidence concerning the matter of MK deceased. The witness confirmed the accuracy of her statement dated 27 August 2015 and the document attached to it. She was employed at the firm as secretary and bookkeeper. In addition to those aspects of her evidence covered in Mr Goodwin's submissions, the witness stated that she knew that what the Respondent had done was wrong in the matter of MK deceased because as she set out in her statement she had typed the letter dated 16 August 2010, addressed to Mr D which stated that the total cash found at the home of Mr MK was £2,870.02 but she knew that Mr D had not paid that amount of money into the firm.

65. **Mr Henry Dixon ("Mr D")** gave evidence concerning the matter of MK deceased. He confirmed the accuracy of his statement dated 20 August 2015. The witness could not recall precisely the amount of cash which he had handed to the Respondent. He agreed that the amount of £1,970.02 which the Respondent referred to in the attendance note dated 23 October 2009 was significantly less than the amount that the witness had given him.

Findings of Fact and Law

66. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his

private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(Paragraph numbers in quotations have been omitted unless they aid comprehension. Submissions include those in the documents and those made orally at the hearing.)

General Submissions for the Applicant

67. In respect of allegations 1.1, 1.2, 1.3 and 1.6, Mr Goodwin referred to the two limbed test for dishonesty in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton had said:

> "... before there can be a finding of dishonesty it must be established that the conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

68. Mr Goodwin also referred to the Tribunal's Guidance Note on Sanctions reference to the case of Bolton v The Law Society [1994] 1 WLR 512:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal."

The case of Bolton also dealt with the purpose of sanction:

> "...the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth…"

Mr Goodwin also referred to reference in the Guidance Note to Weston v Law Society [1998] Times, 15th July:

> "... the tribunal had been at pains to make the point, which was a good one, that the solicitors accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed."

Mr Goodwin also reminded the Tribunal that based on the case of Bultitude v The Law Society [2004] EWCA Civ 1853 it was not necessary to prove intent permanently to deprive in order to prove dishonesty before the Tribunal.

69. Mr Goodwin submitted that all the allegations were denied and all were serious and even if the Tribunal had any doubt regarding certain allegations the allegations regarding the cheques of £12,000 plus to HMRC (allegation 1.1), the £2,000 received from Mr BH and retained in respect of counsel's fees (allegation 1.2) and the payment of £900 withheld from the estate of Mr MK (allegation 1.3) were proved beyond

doubt and related to misappropriating client money and retaining the same for the Respondent's own benefit in which he acted dishonestly.

70. **Allegation 1.1 He [the Respondent] withdrew £12,739.54 on 4 May 2010 from client account and paid it to HM Revenue and Customs in order to meet his personal tax liability and thereby:**

1.1.1 Improperly withdrew client money from client account in breach of Rule 22(1) of the Solicitors Accounts Rules 1998

1.1.2 Failed to promptly remedy a breach of the rules by failing to replace client money that had been improperly withdrawn in breach of Rule 7(1) of the Solicitors Accounts Rules 1998

1.1.3 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.1.4 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

70.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report concerning the cheque made out to HMRC and endorsed on the reverse with the Respondent's Unique Tax Reference. It was set out in the FI Report that on further investigation the client in the matter of D(UK)/P indicated that this payment was unauthorised. Mr Goodwin also indicated that the Respondent was not an authorised signatory on the client bank account. Annexed to the FI Report was a copy of the P client ledger which showed that on 4 May 2010 an entry was made entitled "Revenue" and the ledger recorded a debit item of £12,739.54. The IO was unable to find any reference within the client file papers provided during the course of the investigation regarding any client liability for D(UK), P or otherwise to HMRC, to find any reference to the payment within the client file papers explaining it or to find any authority within the client file papers to the client permitting the Respondent to make a payment from client bank account in respect of his personal tax liability. In his witness statement, Mr B stated that he also discussed this with the client following the start of the Applicant's investigation and:

> "On further investigation [D(UK)]/P indicated that the payment was unauthorised, having asked me at the meeting mentioned above to bespeak the original paid cheque from the bank."

70.2 HK Solicitors acting for the administrators provided to Mr B the client account statement for D(UK)/P previously provided by the Respondent to the client. It showed an entry on 4 May 2010 for "[D(UK)] 2nd Ledger £12,739.54 Fees".

70.3 Mr Goodwin relied upon Rule 22(1) of the SARs which set out the circumstances in which withdrawals could properly be made from client account (allegation 1.1.1). Rule 22 related to "Withdrawals from a client account":

"(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 payment of a disbursement on behalf of the client;

(c) properly required in full or partial reimbursement of money spent by the solicitor on behalf of the client;

(d) transferred to another client account;

(e) 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 the solicitor to the client in writing;

(f) a refund to the solicitor of an advance no longer required to fund a payment on behalf of a client (see rule 15(2)(b));

(g) 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 paragraph (4) below;

(ga) money not covered by (a) to (g) above, where the solicitor complies with the conditions set out in rule 22(2A); or

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

70.4 Mr Goodwin submitted that the Respondent had also breached Rule 7 of the Solicitors Accounts Rules 1998 ("SARs") because there had been failure to remedy the breach promptly upon its discovery (allegation 1.1.2). Rule 7 of the SARs related to "Duty to remedy breaches":

"(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."

70.5 Mr Goodwin submitted that the IO had written to the Respondent on 30 January 2013 seeking an explanation in respect of the cheque and the Respondent replied substantively by e-mail on 26 February 2013 at 14.08 in which he said:

"The position with regard to the cheque is clear. I was owed substantial commission from Mr [B] in relation to the introduction of the [P] matter, on the basis that it would produce substantial fees to his practice.

> It was agreed that part of the commission would be paid direct to HMRC on my behalf, and that is what happened."

Mr Goodwin submitted that the Respondent accepted that the money was used for the payment of his personal tax. In Mr B's statement confirmed in an e-mail from Mr B to the IO on 26 February 2013 at 16.08, Mr B entirely disputed the Respondent assertion that the monies represented a payment of commission:

> "[The Respondent] is in error. There was no agreement that any sum should ever be paid to him by way of commission for the introduction of any business to this practice. His consultancy fees were paid, initially by the hour (you have seen several of his accounts rendered at the time), and subsequently by payment of one third of his bills delivered and paid. No payment was therefore due to him in respect of the actual introduction of the work being done for [P/D(UK)/U/ N]
>
> It would have been odd to have agreed the payment of any definite sum based on unquantified future receipts and I should not have agreed to such an arrangement. I am not sure I have worked with anyone who would.
>
> Even if it were otherwise, no payment to [the Respondent] could or would have been permitted from the client account (obviously). I had no idea that any payment was being made to HMRC in respect of [the Respondent's] own tax, of course, and neither had Miss [F of the entity U] and Mr [MB]…"

70.6 Mr Goodwin submitted that the key point was that the Applicant did not accept that the Respondent was owed money by his employer or otherwise but in any event it would be wholly improper for any such monies to come out of client bank account. They would have been paid from the office account.

70.7 Mr Goodwin further submitted that by withdrawing £12,739.54 from client account and then using it to pay to HMRC for his personal tax liability, the Respondent's conduct was dishonest; taking client money without any entitlement and consent would be regarded as acting dishonestly by the ordinary standards of reasonable and honest people satisfying the objective test in Twinsectra and regarding the subjective test the Respondent knew that he was not entitled to the money and not entitled to use it for his own purposes.

70.8 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013. The Tribunal had seen a copy of the cheque made payable to HMRC signed by the Respondent which was endorsed on its reverse with his Unique Tax Reference evidenced by an extract from his tax form. The Tribunal found based on the evidence of Mr B that the Respondent might have been unaware that he was not in fact an authorised signatory on client account but nothing turned on that. The Tribunal found as a fact that the Respondent had withdrawn an amount of £12,739.54 from client account and used it for his own purposes to pay his personal tax liability to HMRC. The Respondent maintained that he was owed this money by way of commission from the firm and that an arrangement had been made that he would satisfy the amount owed in this way. Even if this were the case, which the Tribunal, based on the

evidence of Mr B, did not accept, such a payment fell outside the provisions of Rule 22(i) and such an arrangement would not justify the monies in question being taken out of client account (allegation 1.1.1). The Tribunal found that the Respondent had not repaid the money withdrawn promptly (allegation 1.1.2). The Tribunal found that in acting as he did the Respondent had failed to act with integrity in breach of Rule 1.02 (allegation 1.1.3) and behaved in a way likely to diminish the trust of the public as alleged (allegation 1.1.4). The Tribunal found all aspects of allegation 1.1 proved on the evidence to the required standard.

70.9 Dishonesty was also alleged in respect of allegation 1.1. In respect of this and all the allegations of dishonesty, the Tribunal applied the two limbed test in the case of Twinsectra. The Tribunal found that for a solicitor to withdraw a cheque from client account in order to pay off his own personal tax liability was clearly something which was dishonest by the ordinary standards of reasonable and honest people and therefore the objective test was satisfied. As to the subjective test, client account was sacrosanct and the Respondent was aware of that. The Tribunal rejected his defence that he used the money in that way with the consent of the firm in order to pay off a liability of the firm to him; he knew that if he had a grievance with the firm then he should have raised it with Mr B and any monies due to him would come from office rather than client account. The Tribunal found that the Respondent was well aware that his actions would be considered dishonest and that the subjective test was therefore satisfied. The Tribunal found dishonesty proved on the evidence to the required standard in respect of allegation 1.1.

71. **Allegation 1.2 He [the Respondent] received a cheque for £2,000, dated 18 August 2011, from a client, made payable to him in respect of counsel's fees, paid it into his bank account and then failed to pay the £2,000 into client account for a period of over 12 months and thereby:**

1.2.1 Delayed in paying money for unpaid professional disbursements into client account in breach of Rule 19(1) of the Solicitors Accounts Rules 1998 and/or Rule 17.1 of the SRA Accounts Rules 2011

1.2.2 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 and/or Principle 2 of the SRA Principles 2011

1.2.3 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 and/or failed to behave in a way that maintains trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

71.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. He submitted that the FI Report recorded that the review of the client file papers relating to Mr BH (allegation 1.2) and Mr MK (allegation 1.3) revealed that on at least two occasions client monies were received by the Respondent but not paid into the firm's client bank account. Rule 19 of the SARs 1998 – "Receipt and transfer of costs" provided:

(1) A solicitor who receives money paid in full or part settlement of the solicitor's bill (or other notification of costs) must follow one of the following four options:

(a) determine the composition of the payment without delay, and deal with the money accordingly:

(i) if the sum comprises office money only, it must be placed in an office account;

(ii) if the sum comprises only client money (for example an unpaid professional disbursement - see rule 2(2)(s), and note (v) to rule 2), the entire sum must be placed in a client account;

(iii) if the sum includes both office money and client money (such as unpaid professional disbursements; purchase money; or payments in advance for court fees, stamp duty land tax, Land Registry registration fees or telegraphic transfer fees), the solicitor must follow rule 20 (receipt of mixed payments); or

(b) ascertain that the payment comprises only office money, and/or client money in the form of professional disbursements incurred client money but not yet paid, and deal with the payment as follows:

(i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and

(ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or

(c) pay the entire sum into a client account (regardless of its composition), and transfer any office money out of the client account within 14 days of receipt; or

(d) on receipt of costs from the Legal Services Commission, follow the option in rule 21(1)(b)."

71.2 Rule 17 of the SRA Accounts Rules 2011 "Receipt and transfer of costs" provided:

"17.1 When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:

(a) determine the composition of the payment without delay, and deal with the money accordingly:

(i) if the sum comprises office money and/or out-of-scope money only, it must be placed in an office account;

(ii) if the sum comprises only client money, the entire sum must be placed in a client account;

(iii) if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments); or

(b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:

(i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and

(ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or

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

(d) on receipt of costs from the Legal Aid Agency, follow the option in Rule 19.1(b); or

(e) in relation to a cheque paid into a client account under rule 14.2(e), transfer the costs element out of the client account within 14 days of receipt."

71.3 In the case of Mr BH, Mr Goodwin submitted that the amount involved was £2,000. The client file papers indicated that the firm was first instructed by Mr BH in connection with proposed civil proceedings related to his business in November 2009. To assist with the proposed action, Mr GB of counsel was instructed in February 2010 and again in March 2010 and shortly afterwards a letter before action was sent to the solicitors acting for the defendant in accordance with the pre-action protocol. On 23 July 2010, £793.30 was sent to counsel in settlement of fees. On 15 July 2011, the Respondent advised Mr BH that there was a forthcoming hearing on 26 August 2011 in which the defendant's wished to amend the name of the defendant and strike out the previous application. The Respondent advised the client that he had already engaged Mr GB for the hearing but that he required £2,000 in advance. The client drew a cheque in the sum of £2,000 in favour of the Respondent dated 18 August 2011. It was apparent that the hearing took place on 26 August 2011 with the Judge advising that he wished to consider the matter further and that he would contact both parties' respective counsel. The Judge sent a draft judgment to counsel and this was also sent to the Respondent along with correspondence between counsel and the

Judge. There appeared on the client file papers an internal note from Mr B to the Respondent in which Mr B was chasing the Respondent for the payment of the outstanding invoice of £3,100.63 plus counsel's fees. The cheque which the client drew in favour of the Respondent had on the reverse the number of a Santander account ending 8819. Counsel attended court on 22 September 2011. It appeared that the hearing did not go in the client's favour with his claim being struck out with an order for costs. The solicitors for the defendant in the claim wrote to the firm on 29 September 2011 reminding it of the Order and that payment of £7,500 should be made by 6 October 2011. Mr B sent a message to the Respondent written on a used envelope:

> "Stephen,
>
> This is surely extremely bad news for Mr [B]. He has £7500 to pay by the end of the 1st week of Oct., + he owes counsel's fees + £3600 to us as well.
> How is he going to do all this? M"

71.4 Mr Goodwin submitted that Mr B did not receive counsel's fees for 12 months. In interview with the IO on 5 December 2012, the following exchange took place with the Respondent:

> "IO: OK. Can you explain why you cashed the cheque knowing it was for counsel's fees? Retaining counsel and given that issue regarding the undertaking because (sic) between [the firm] and Chambers?
>
> R: Because at that time, I was literally I thought on the verge of opening my new practice in fact it took much longer than that
>
> IO: Do you not think it should have gone to Mr [B] though? His firm was giving the undertaking. Mr [BH] paid the money on the basis that that's the arrangement
>
> R: Mmh, but he gave the money to me I suppose I should have then if I think carefully about it at the time perhaps I should have given it straight back, I mean in the end of course I did
>
> ...
>
> IO: OK, Mr [B] has confirmed that he received a cheque for £2,000 from you in October 2012
>
> R: Yeah
>
> IO: In respect of counsel's fee note?
>
> R: Yeah
>
> IO: Why did you send the £2,000 to Mr [B]?

R: Because he, it was only part of counsel's fees and that's what he asked me to do

IO: Is this not the £2,000?

R: Yeah

IO: That previously

R: It is the same £2,000

IO: So in your mind that's the £2,000 that was initially Mr [BH] drew the cheque in your name

R: I sat on it and eventually gave it back to [B]

IO: Presumably you cashed it, the cheque

R: Yeah

IO: OK and you sent it back to him because

R: Well he was under pressure from counsel's clerk to pay the fees and contrary to my expectations [Mr BH] did not instruct me in my new practice and, in fact, I've not heard from him for more than a year so

IO: So you don't think the £2,000 should have been paid to Mr [B] in the first place?

R Well at the time, you know, it's difficult to remember exactly everything that was happening at the time because it was all very confusing. I'd been given this letter from [B] saying he wanted me to leave. I was already, you know, well along the way of setting up my practice. I thought it would simply, you know, be a fairly smooth transition from [BH] instructing [B] to [BH] instructing me. I introduced [BH] to [the firm], I'd acted for him before at previous firms. I saw him as a, you know, fairly long term client

IO: That £2,000 was counsel's fees, it wasn't for costs

R: No, it was specifically for counsel's fees, yes..."

71.5 Mr Goodwin drew particular attention to the statement above:

"R: Mmh, but he gave the money to me I suppose I should have then if I think carefully about it at the time perhaps I should have given it straight back, I mean in the end of course I did"

He reminded the Tribunal that there was no need to demonstrate an intent on the part of the Respondent permanently to deprive in order to prove dishonesty but only that

the Respondent took the money for his own benefit initially rather than paying it into client bank account. During the above exchange the Respondent confirmed that he had the cheque and he confirmed that: "it was specifically for counsel's fees, yes..." Mr Goodwin submitted that the Respondent had therefore banked counsel's fees when he was not entitled to do so and as set out in the Rule 5 Statement not paid the money into client account for a period of over 12 months and that was dishonest by the ordinary standards of reasonable and honest people and he knew it was. The fact that the Respondent paid the money back was beside the point.

71.6 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013. The Tribunal had seen the correspondence and had the benefit of Mr B's oral evidence confirming his statement which set out that in or around December 2011 Mr B had raised a concern with the Respondent that the client Mr BH owed the firm £3,600 in costs plus counsel's fees. It was not until 25 September 2012 that Mr B received a cheque for £2,000 from the Respondent to settle counsel's fees. It was not disputed by the Respondent that the amount of £2,000 was owed by the client to the firm by way of counsel's fees and that the client Mr BH had paid a cheque in that amount to the Respondent in the latter's own name on 18 August 2011. The Tribunal had seen a copy of the cheque. While the Tribunal accepted that the Respondent ultimately set up a new practice; it had seen the letter with the heading of the new entity to the Applicant dated 24 September 2013, the Respondent's explanation for retaining the money relating to his expectation that Mr BH would follow him to his new practice was not an answer to the allegation. In interview, the Respondent said that he supposed he should have then thought carefully at the time and perhaps should have given the money straight back to Mr B. The Tribunal found that in the face of an undertaking given on behalf of the firm, the Respondent decided to cash Mr BH's cheque himself knowing full well the purpose of the cheque which was evident from the documents. The Tribunal found that the Respondent did not seriously think that it was for him. The Tribunal found proved on the evidence to the required standard that the Respondent had delayed in paying money for unpaid professional disbursements into client account in breach of the accounts rules alleged (allegation 1.2.1); that by so doing he had failed to act with integrity (allegation 1.2.2); and that he had behaved in a way likely to diminish public trust (allegation 1.2.3). The Tribunal therefore found all aspects of application 1.2 proved.

71.7 Dishonesty was alleged in respect of allegation 1.2. The Tribunal found that by the ordinary standards of reasonable and honest people for the Respondent to appropriate to himself £2,000 paid to him in respect of counsel's fees which was the subject of an undertaking by the firm and to retain that money for more than 12 months would be considered dishonest and that the objective test in Twinsectra was satisfied. The Tribunal accepted Mr Goodwin's submission that the case of Bultitude meant that the fact that the Respondent belatedly paid the money over to the firm was not an answer to the allegation. As to the subjective test, the Respondent was clearly aware of the purpose for which the money had been paid to him and he knew that Mr B was chasing the money because he needed it to satisfy an undertaking given on behalf of the firm of which again the Respondent was aware. In spite of his knowledge the Respondent delayed in paying the money back and the Tribunal found that in doing so the Respondent knew that he was dishonest and the subjective test was satisfied. The

Tribunal found dishonesty proved on the evidence to the required standard in respect of allegation 1.2.

72. **Allegation 1.3 He [the Respondent] collected £2,870.02 in cash on 23 October 2009 in relation to a deceased estate, failed to pay £900 of that cash without delay into client account and retained it for a period of 350 days and thereby:**

1.3.1 Delayed paying £900 into client account contrary to Rule 15(1) of the Solicitors Accounts Rules 1998

1.3.2 Failed to promptly remedy a breach of the rules by delaying replacing money improperly withheld from client account into client account in breach of Rule 7(1) of the Solicitors Accounts Rules 1998

1.3.3 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.3.4 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

72.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. He also referred the Tribunal to the statements of Mrs R and Mr D. Rule 15 of the SARs 1998 "Use of a client account" provided:

> "(1) Client money and controlled trust money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary..."

72.2 It was set out in the FI Report that the administrators of the estate of Mr MK instructed the firm to deal with the administration of the estate. Mr D and Miss BH were appointed as executors under the Will and the Respondent sent Mr D a client care letter in which he stated that he was the fee earner responsible for the file and that he was employed as a consultant with overall management and responsibility for the matter. The client care letter referred to it being a matrimonial matter and it was presumed that this was an error. An attendance note appearing with the client file papers dated 23 October 2009 recorded that the Respondent attended the home of Mr D and was handed:

> "... Some cash belonging to the late Mr [M], amounting in total to £1,970.02 and various papers relating to his account with the Post Office. Mr [D] also handed over a tin containing some old silver threepenny bits and a few other odds and sods and a separate tin containing coins to the value of £10.52."

72.3 A further cash journal maintained by the firm and completed by Mr B recorded a receipt of "£1,970.02" on 23 October 2009 described as "Cash in the flat". Following the firm's deduction for costs, the total estate amounted to £6,582.03 and a client bank account cheque drawn in this amount was sent to MacMillan Cancer Support on 1 February 2010. A further letter dated 16 August 2010 was contained on the file from the Respondent to Mr D in which he stated, among other things the following:

> "...The total amount of cash found in the late Mr [MK's] flat was £2,870.02. In addition, £5,199.51 was received from National Savings and Investments and £95.61 from the Post Office, in respect of the uncashed postal orders also found with Mr [MK']s effects. Accordingly the total estate amounted to some £8,165.14.
>
> This firm's total charges were £587.50 (£500.00 plus VAT), so that the total amount of funds remitted to MacMillan Cancer Support was £7,577.64.
>
> …
>
> I trust this now concludes matters once and for all.…"

72.4 This letter recorded £900 more cash having been recovered from the home than that recorded in the Respondent's attendance note, Mr B's journal and ultimately the client ledger. Mr Goodwin relied on the facts set out in the Rule 5 Statement and FI Report for the subsequent history of the matter including the entry on the ledger dated 8 October 2010 recording a "Cheque from S Jackson" and a credit of £900 as evidence that the Respondent paid a personal cheque for £900 into the firm's client bank account a total of 350 days after the initial cash deposit. When the IO spoke to the bookkeeper Mrs R about the above entry she advised that she was absent from the office on 8 October 2010 and made the entry because she "knew" that the Respondent had credited the client bank with his own funds. The IO noted that the corresponding paying-in book recorded that the credit came from Mr D. The entry stated "Dixon R. 091210 Residuary Legacy 900.00". The bookkeeper stated that the handwriting was that of the Respondent and that it was unusual for him to attend to the banking. Mr B contacted Mr D regarding the apparent credit, who stated that he made no payment to the estate after 23 October 2009. He also confirmed that he did not pay £900 into the firm's client account on 8 October 2010. Mr D confirmed that the contents of the attendance note were incorrect and that he provided the Respondent with a cash amount in excess of £1,970.02. He further stated that the co-executor had no dealings with the estate. Mr D provided two statements regarding this matter both of which were before the Tribunal. Mrs R's statement also recorded that she had typed the letter to Mr D on 16 August 2010 which recorded the total cash found at the home was £2,870.02. She noted that this was a discrepancy and took this up with the Respondent. The statement recorded that the Respondent would be dealing with the matter and that she persisted in having the matter resolved which ultimately occurred when £900 was paid into client account. It was submitted that by taking and retaining £900 of cash from a deceased estate and not paying it into client account for 350 days, the Respondent's conduct was dishonest. In relation to the objective test, his conduct was dishonest as by taking client money without any entitlement and consent would be regarded as acting dishonestly by the ordinary standards of honest people. In respect of the subjective test for dishonesty, the Respondent knew that he was not entitled to the money and was not entitled to use it for his own purposes. Mr Goodwin also submitted that the fact that again the Respondent repaid the money was of no help to him because his dishonest act was that of taking the money.

72.5 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013 and his email of 24 April 2014 to the Applicant about this matter.

The Tribunal had the benefit of hearing from two witnesses. One of the executors Mr D confirmed that the Respondent's attendance note dated 23 October 2009 recording that Mr D had passed the sum of £1,970.02 to the Respondent was inaccurate because Mr D had in fact paid a greater sum. Mrs R who was both a secretary and bookkeeper in the firm knew from a letter she typed from the Respondent to Mr D dated 16 August 2010 that Mr D had given the Respondent £2,870.02 but that an amount less by £900 had been paid into the bank. She was also able to say in her statement from her knowledge of the Respondent's handwriting that he completed the paying in book in October 2010 recording that a cheque from £900 had been received from Mr D which Mr D denied and which cheque Mr B told her had come from the Respondent. The Tribunal found proved on the evidence to the required standard that the Respondent had collected the greater amount in cash from Mr D on 23 October 2009 as executor and failed to pay £900 of that cash without delay into client account and retained it for a period of 350 days. In so doing, the Tribunal found that the Respondent had breached Rule 15(1) of the SAR 1998 (allegation 1.3.1). The Tribunal also found that the Respondent had breached Rule 7(1) (allegation 1.3.2). The Tribunal found that the Respondent had failed to act with integrity (allegation 1.3.3) and behaved in a way likely to diminish public trust (allegation 1.3.4). The Tribunal found all aspects of allegation 1.3 proved to the required standard on the evidence.

72.6 Dishonesty was alleged in respect of allegation 1.3. The Tribunal had found that the Respondent had taken and retained £900 in cash from the estate of Mr MK deceased and had not paid this into client account, as had been alleged. The Tribunal also found that the Respondent went to considerable lengths to conceal what he had done in taking an unauthorised loan to himself from the deceased's estate, including putting a false figure in the attendance note dated 23 October 2009 and making false entries on the manual ledger card and paying in book referring to Mr D as having paid the £900 when it came from the Respondent himself. The principle enunciated in Bultitude that the Applicant was not required to prove intent permanently to deprive applied in this situation just as it did in relation to allegation 1.2. In respect of the objective test for dishonesty, the Tribunal found that by the ordinary standards of reasonable and honest people what the Respondent had done would be considered dishonest and that in acting as he did to conceal his misappropriation the Respondent showed that he knew that by those standards he was dishonest. The Tribunal found dishonesty proved on the evidence to the required standard in respect of allegation 1.3.

73. **Allegation 1.4 He [the Respondent] permitted money to pass into and out of client account when not accompanied by the conduct of a legitimate underlying legal transaction and thereby:**

1.4.1 Breached note (ix) of Rule 15 of the Solicitors Accounts Rules 1998

1.4.2 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.4.3 Allowed his independence to be compromised in breach of Rule 1.03 of the Solicitors Code of Conduct 2007

1.4.4 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

73.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. He submitted generally regarding the allegations arising out of work connected with D(UK) that the firm was first instructed in respect of this matter in August 2009 however it sent a client care letter to D(UK) dated 9 March 2010 and to P dated 17 March 2010. The client care letters did not offer any information on the basis of the retainer and a review of the considerable client papers provided little insight into exactly what the firm's role was to be. The IO noted that the Respondent involved himself in many meetings throughout 2010 and 2011 and that he corresponded with a great many different people. The IO found their involvement and that of organisations mentioned in the papers often to be unclear and the function and benefit derived from the Respondent's input were similarly unclear. Mr Goodwin submitted that there was no indication in the papers of what the Respondent was instructed to do. The IO was unable to identify for whom the firm was acting. The FI Report pointed out that the Applicant's record's showed the Respondent's specialist areas of law to be "Family; Litigation – general and Children Law". The Respondent wrote to an entity, M Law, on 26 February 2010 apparently to explain the basis of the retainer and to seek advice about the proposed transaction between D(UK) and P and preferences. It was clear from the letter that the Respondent considered his client to be D(UK). It was also very clear from the client papers that D(UK) was in severe financial difficulty and was considering transferring its freehold interest in its factory to P, albeit through a subsidiary company wholly owned by P.

73.2 With particular reference to allegation 1.4, Mr Goodwin referred the Tribunal to the case of Wood and Burdett which formed the basis of note (ix) to Rule 15 of the SARs:

> "(ix) In the case of Wood and Burdett (case number 8669/2002 filed on 13 January 2004), the Solicitors' Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if a deposit is taken in circumstances which do not form part of a solicitor's practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."

73.3 In the FI Report, the IO noted that the client ledger maintained in respect of the client matter of P/D, which was titled P, had been used simply to receive and pay funds. Furthermore the underlying client transaction recorded within the client file papers did not appear to support the transactions recorded within the ledger. The IO gave a detailed analysis of the client file papers in the FI Report. He noted that the payments appeared to be from bona fide customers of D(UK) and that the payments were received and made ostensibly on the client's instructions. It was apparent from interviewing the Respondent that determining that "client" was not clear and that the Respondent was unable to state precisely for whom he was acting in this matter beyond "the Swiss" whom he at one point said were P and U. Mr Goodwin referred

the Tribunal to an e-mail from the Respondent to Mr B dated 16 February 2012 which began:

> "My figures suggested an interim total £97,717.50. To this must be added the agreed fixed amount acting as bankers for [D(UK)] – the sum is £15,000 which was the minimum fee imposed by [GEH*]"

(*GEH also referred to as G Capital was described by the Respondent in a letter dated 26 February 2010 as having a debenture. D(UK)'s debt was factored by GEH.)

73.4 The email prompted a reply from Mr B expressing some concern as he had "not come across a solicitor charging for such a service before". The IO noted from the Respondent's e-mail that he appeared to have agreed with the client that the firm would charge the sum of £15,000 for the use of the firm's client bank account. The IO could not find any evidence of the client agreeing to such a fee. He noted that the majority of the correspondence was with Mr DM a director of D(UK). It was unclear from the client papers precisely why the firm chose to provide such a service. The Respondent stated that it was simply to enable the client to continue to trade in the lead up to its administration. The firm however continued to provide the facility after D(UK) went into administration and contrary to the administrators' wishes. In interview on 5 December 2012, the Respondent said that he did not consider that Mr DM/D(UK) was his client(s) and the IO was unable to find any further explanation as to why the firm had received the total funds of £592,106.70 during the period April 2010 to July 2011 in the absence of any express written client authority. It was set out in the Rule 5 Statement that the client ledger card identified that there were numerous payments out to various entities which were not accompanied by an identifiable legal transaction. The quantity of payments in and out as demonstrated by the client ledger card evidenced the use of client account to provide banking facilities for the entities identified therein.

73.5 In an interview on 5 December 2012, the Respondent stated that he did not believe that the client account was being used as a banking facility as he believed what occurred was a fundamental part of the underlying transaction. Mr Goodwin pointed out that in the interview the Respondent confirmed to the IO that he was familiar with the case of Wood and Burdett. Mr Goodwin submitted that the Respondent breached Rule 15(1) by allowing the client bank account to be used as a banking facility and for a fee to be charged for doing so.

73.6 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response regarding D(UK) dated 15 April 2014 and his overall response dated 24 September 2013. The evidence showed that during the period 8 April 2010 to 14 July 2011, the firm received £604,564.47 into its client account of which £75,987.38 was paid out in respect of the legal fees and disbursements. The evidence also showed that in April 2010, D(UK) had its banking facilities withdrawn and went into administration on 25 May 2010. In interview, the Respondent stated:

> "Well the underlying client transaction is preserving the situation on behalf of the Swiss until the pre-pack administration agreement had been completed so this runs from, for about 12 weeks…"

73.7 An attendance note of the Respondent's dated 1 April 2010 recorded that it was agreed in that meeting that P would provide short-term finance to enable D(UK) to continue to trade and:

> "It was agreed that the necessary funds would have to pass through a secure bank account, and [the Respondent] confirmed that [the firm] would be prepared to offer this facility…"

73.8 The Tribunal also noted the nature of the transactions passing through the account including payments received from Tesco, Mothercare and Boots the Chemist. Having stated explicitly that he was providing a secure bank account for about 12 weeks, the Tribunal found based on this evidence that the Respondent was offering D(UK) short-term banking facilities with the aim of keeping D(UK) going for a while longer until the company's situation could be sorted out. In effect the Respondent allowed D(UK) to run the financial side of its business through the firm's client account because D(UK) could not obtain secure banking facilities. The Tribunal found that the Respondent had permitted money to pass in and out of client account when not accompanied by the conduct of legitimate underlying legal transaction and was therefore in breach of note (ix) to Rule 15(1) (allegation 1.4.1). The Tribunal did not consider it necessary for the purposes of allegation 1.4 to determine whether D(UK) was a client of the Respondent as a banking facility had been provided. The Tribunal also found that in providing a banking facility where D(UK) was in financial difficulties and then went into administration the Respondent had failed to act with integrity (allegation 1.4.2); and had allowed his independence to be compromised (allegation 1.4.3) and that his conduct was likely to diminish public trust (allegation 1.4.4). The Tribunal therefore found all aspects of allegation 1.4 proved on the evidence to the required standard.

74. **Allegation 1.5 He [the Respondent] did not return monies to D(UK) and/or its administrators and thereby:**

1.5.1 Breached Rule 15(3) of the Solicitors Accounts Rules 1998

1.5.2 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.5.3 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

74.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. He submitted that the latter attached a copy of the firm's client ledger and referred to the ledger recording receipts including a credit of £160,000 from an entity, IC, on 8 April 2010 and a further £30,000 on 9 April 2010 and it was understood by the IO that these credits were diverted to the firm by U. On 8 April 2010, the firm made a final payment of £141,369.81 to GEH (G Capital) and on 9 April 2010 the firm also send £17,625 to the administrators for D(UK) (at this point the administration of D(UK) was apparently under discussion). On 25 May 2010, D(UK) entered into administration and subsequently an agreement was entered into with N Ltd to purchase D(UK's) assets. On 23 September 2010, the administrators of D(UK) e-

mailed the Respondent to express concern that money that had been received from the debtors of D(UK) were being paid into the firm's client account and they requested that the money be repaid. By e-mail of 6 October 2010, the Respondent confirmed:

> "[D (UK)] had no banking facilities and because it was anticipated that there would be a considerable timeline before the new company was established and could arrange its own banking facilities this firm agreed to receive payments from the Company's debtors and to pay those out to [U] as its agents..."

The administrators responded to the Respondent's e-mail on 14 October 2010 amongst other things, advising:

> "Frankly I am entirely unimpressed by the rationale offered for dishonestly taking funds that belong to the company in administration."

A meeting between the administrators and the directors of N Ltd took place later in October 2010. The minutes of the meeting recorded:

> "... [BJ of the administrators] explained that [N] had unintentionally but effectively given preferential treatment to certain creditors, which was not correct:

Mr BJ of F Partners sent a letter (dated 23 December 2010) to the Respondent on 5 January 2011. Mr BJ stated that he had reviewed the firm's client ledger and had many observations and comments regarding the various entries, particularly those post-administration.

74.2 By e-mail of 25 January 2011, the administrators referred to a cash balance of £33,889 held in the firm's client account on the appointment of the administrators on 25 May 2010. The e-mail confirmed that the money belonged to D(UK) and should have been transferred to the administration estate. Mr K on behalf of Mr BJ e-mailed the Respondent on 25 February 2011, his letter stating amongst other things:

> "Turning to the rather serious matter of the cash balance of £33,889 held in your client account on the appointment of Joint Administrators on 25 May 2010. As discussed during the meeting in December 2010, these monies belong to the Company and should have been transferred to the administration estate as neither you nor your firm were not (sic) provided with any authority by the administrators post appointment to deal with that money.
>
> At the meeting in December [BJ] pointed out that the statement you provided indicated £9,824.89 remained in your client account. You agreed to transfer the sum to the Administration bank account.
>
> We have had a number of conversations and corresponded about the funds your firm should have been holding in your client account as your letter of 24 February is the first time you have indicated that no monies remain in your client account for the company in administration. You will appreciate that this matter goes beyond the issue of realisation and brings up serious SRA issues.

> Please urgently provide an up-to-date statement for the client account and provide me with details of how and when the £33,889 will be repaid. A proposal for early payment will be appreciated, as if the asset is outstanding when I next report to creditors, the issue will need to be reported to creditors…"

In response on 25 February 2011, the Respondent advised:

> "If you care to consider the legal position, which we have researched carefully, we have a solicitors' lien over those monies."

When pressed for an explanation on the issue, the Respondent provided no response.

74.3 On 12 April 2011, the administrators' solicitors HK wrote to the Respondent setting out a number of issues including their view regarding monies held in the firm's client bank account following D(UK) entering into administration and advised:

> "Any monies held on client account held for and on behalf of the Company as of the date of administration are, unless authorised by the Administrators, repayable. The Insolvency Act 1986 section 246 and the ability to claim a lien relates solely to documents giving title to property and are held as such. As such, please arrange for the balance held on appointment of the administrators, being £33,889, to be transferred into the following account…"

74.4 The FI Report said that it would be noted that the client ledger recorded a balance as at 24 May 2010 of £33,888.92 and that payment was made to HK on 25 May 2010 of £15,500 reducing the balance to £18,388.92. A payment of £8,000 was paid to administrators on 17 August 2010 but the balance was not paid over to the administrators or their solicitors.

74.5 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013 and "Response to the SRA re D[UK] Ltd" dated 15 April 2014. By Rule 15(3) client funds must be returned to the client (or other person on whose behalf the money was held) promptly as soon as there was no longer any other proper reason to retain them. The Tribunal noted that in September 2010 the administrators accused the Respondent/the firm of misappropriation of funds. The Respondent asserted that the firm had a lien over the funds. Ultimately the firm returned £23,500 of the amount claimed to the administrators in two tranches. It was for the Applicant to prove its case beyond reasonable doubt. No evidence had been provided from the firm about the monies and the allegation was not referenced beyond the FI Reports, the ledger and the assertions of the administrators. The Tribunal considered that the Applicant had not proved to the required standard that in not returning monies to D(UK) and/or its administrators the Respondent had been in breach of Rule 15(3) and allegation 1.5 was not proved on the evidence.

75. **Allegation 1.6 He [the Respondent] misled the administrators of D(UK) by advising them that U(UK) had no interest in N Limited which was planning to purchase D(UK) when it did and thereby:**

1.6.1 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 20071.6.2 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

75.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. In an e-mail to LC Accountants on 26 April 2010, regarding the formation and structure of a new company to be called N Ltd (the formation of which LC was retained to deal with), the Respondent advised that he was to have a 43% shareholding:

> "The shareholders in the new company should be:
>
> [JR]
> [DM] 43%
> Stephen Jackson [address and date of birth] 43%..."

75.2 In an e-mail to the Respondent dated 1 June 2010 at 09.40, U required additional information to enable funding the purchase of D(UK) including: "What is the shareholding of [N] Ltd?". In response, the Respondent advised on the same day at 11.01:

> "It is my understanding that the shareholding will be: 14% to [JR], 43% to [DM] and 43% to me; so far as Close Bros understand, I am beneficial owner, but in reality, I am holding on behalf of the Swiss."

75.3 In a conversation between the administrators of D(UK) on 8 June 2010 a week or so after the above e-mail exchange, the Respondent advised as set out in an attendance note:

> "I confirmed in answer to his query that there is no connection between [U] and [N] nor is there any connection between [B] Investments and [U] or [P]. [The Respondent] confirming there were no common directors or shareholders."

75.4 Mr Goodwin submitted that the Respondent misled the administrators about U not having an interest in N Ltd which was planning to purchase D(UK). In the e-mails of 1 June 2010 he confirmed that there was a connection but a week later he represented to the administrators that there was not a connection. The Respondent accepted in interview that there was an apparent contradiction:

> "IO: The state of knowledge was that you were aware you'd said explicitly in an e-mail a week before that you were holding them as nominee, now clearly the administrators were relying on you to give the correct information to enable them to write to the creditors
>
> R: Well I didn't deliberately mislead them clearly
>
> IO: Well I would suggest that you have it's only a week's difference
>
> R: That's quite a serious allegation

IO: Yes it is

R: Yeah

IO: Yes – yes it is and it's quite a serious matter… your e-mails suggest that you're holding as nominee you then subsequently had a letter, had a conversation with the administrator whereby you said there is no connection which contradicts your earlier e-mail and they've obviously then relied on that and issued a statement to the creditors – relying on that information as a solicitor, do you agree there is a contradiction there?

R: There is an apparent contradiction in yeah but I obviously need to

IO: By all means

R: Refresh my memory"

75.5 Mr Goodwin submitted that the Respondent made inaccurate representations and that by misleading the administrators of D(UK) by advising them that U had no interest in N Ltd which was planning to purchase D(UK) when it did, the Respondent's conduct was dishonest. Regarding the objective test for dishonesty his conduct was dishonest as by the ordinary standards of honest people his statement was false. Regarding the subjective test, the Respondent knew that his statement was false having informed others that the position was to the contrary.

75.6 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013 and his "Response to the SRA re D[UK] Ltd" dated 15 April 2014. The Applicant relied on an apparent discrepancy between statements made by the Respondent a week apart in respect of the structure of N Ltd. At the heart of the Applicant's case in respect of this allegation were statements made by the Respondent in interview. The IO put to the Respondent in respect of the Respondent's attendance note of 8 June 2010:

"IO: Administrator (sic) is asking you whether there is any connection between [N] and the Swiss

R: Um

IO: And you're saying no there isn't but in actual fact there is

R: Well, I'd obviously forgotten hadn't I that I'd been asked at some stage to hold some shares as a nominee but in fact in the end it never happened and I did never did hold any shares

IO: But at that time, at that point

R: I thought I might be

IO: The state of knowledge was that you were aware you'd said explicitly in an e-mail a week before that you were holding them as nominee, now clearly the administrators were relying on you to give the correct information to enable them to write to the creditors

R: Well I didn't deliberately mislead them clearly"

75.7 The Tribunal noted that the Respondent agreed in interview: "there is an apparent contradiction". However the Tribunal found that in his e-mail of 1 June 2010 to MB of U that Respondent was speaking about what he anticipated would happen in the future: "It is my understanding that the shareholding will be…". It seemed that it was intended that he would hold shares but he did not later do so. In his attendance note a week later on 8 June 2010, the Respondent confirmed: "that there is no connection..." In his Response to the Applicant regarding D (UK) dated 15 April 2014, the Respondent said:

> "In the event, I never did hold any shares in [N] and there never were any common directors or shareholders between [U] or [N]."

The Tribunal found that the administrators might have been misled but this was not the same as the Respondent misleading them which the Applicant alleged the Respondent had done. In the light of the Respondent's explanation which the Tribunal found not to be implausible, the Tribunal could not be satisfied beyond reasonable doubt that the Respondent misled the administrators. The Tribunal therefore found allegation 1.6 not proved to the required standard on the evidence and accordingly the allegations of breach of the conduct rules and the allegation of dishonesty associated with allegation 1.6 did not fall to be considered.

76. **Allegation 1.7 - He [the Respondent] acted for D(UK) which was selling its assets and acted for P which wished to purchase the assets and thereby:**

1.7.1 Acted when a conflict or a significant risk of a conflict of interest existed between two clients in breach of Rule 3.01 of the Solicitors Code of Conduct 2007

1.7.2 Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007

1.7.3 Behaved in a way that is likely to diminish the trust the public places in him or the legal profession in breach of Rule 1.06 of the Solicitors Code of Conduct 2007.

76.1 For the Applicant, Mr Goodwin relied on the Rule 5 Statement and the FI Report. Rule 3.01 stated:

> "Duty not to act
>
> (1) You must not act if there is a conflict of interests (except in the limited circumstances dealt with in 3.02).

(2) There is a conflict of interests if:

(a) you owe, or your firm owes, separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or

(b) your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.

(3) For the purpose of 3.01(2), a related matter will always include any other matter which involves the same asset or liability."

76.2 Mr Goodwin submitted that the Respondent acted for both D(UK) and P from March 2010. The Respondent sent client care letters to them on 9 March and 10 March 2010 respectively which did not set out the nature of the instructions from the client. A letter dated 26 February 2010 to M Law set out the proposed transaction between the two clients:

> "As a result of cut-price competition from abroad, the business has struggled in recent years. Its main supplier of raw material is a Swiss-based company called [P] by agreement with P, the balance on [D(UK)'s] accounts with that company has been allowed to reach a point where the amount now due to P is in the region of £800,000.
>
> ...
>
> What has been suggested, therefore, is that the company should transfer to P its freehold property in return for which P will write off more or less the whole of [D(UK)'s] debt."

The FI Report recorded that on 17 March 2010, the Respondent wrote to Mr DD a director at P enclosing the firm's client care letter and confirming,

> "For the purposes of this transaction, both P and [D(UK)] will be my clients and I am therefore enclosing with this letter two copies of our standard terms and conditions."

76.3 Mr Goodwin submitted that the Respondent acted for both buyer and seller giving rise to a risk of or a conflict of interests. The IO could not find any mention in the client files of the clients being advised of the apparent conflict of interest or of the clients' consent to continuing in light of the existence of such apparent conflicts. It was submitted that in the interview the Respondent made concessions regarding conflict:

> "R: There's always a potential conflict, yes
>
> ...

IO: As I say, I've already put it to you, I consider you're also acting for [D(UK)] in which case then there would obviously be an even greater conflict of interest

R: Potentially, potentially"

76.4 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. It also had regard to the Respondent's response dated 24 September 2013 and "Response to the SRA re D[UK] Ltd" dated 15 April 2014. On the evidence of the client care letters which the Respondent had sent to both D(UK) and P, the Tribunal found that the Respondent had acted for both entities. The interests of the two entities in the transaction relating to the assets of D(UK) were clearly different in a scenario where one was the debtor (D(UK)) and the other was the creditor (P/U). In his Response, the Respondent stated that he could not see where the conflict of interests arose and relied on the directors DD and AT (the latter described in the FI Report as a legal attorney) being "highly experienced businessmen" and he stated that "at no stage did the question of conflict arise". The Tribunal found that the question of conflict did not arise because the Respondent did not explain it to the parties; he failed to place them in a properly informed position which would have enabled them to give consent to his continuing to act for both of them. The client care letters which he sent were not satisfactory in circumstances where he was acting for both parties. The Tribunal found that the Respondent was in breach of Rule 3.01 (allegation 1.7.1) and that in acting as he did he failed to act with integrity (allegation 1.7.2) and that in so acting he behaved in a way likely to diminish public trust (allegation 1.7.3). The Tribunal found that all aspects of allegation 1.7 were proved on the evidence to the required standard.

Previous Disciplinary Matters

77. None.

Mitigation

78. The Respondent was not present, had denied the allegations and not offered any mitigation as such.

Sanction

79. The Tribunal had regard to its Guidance Note on Sanctions and also to the Respondent's letter dated 24 September 2013, his response email dated 4 April 2014 regarding the estate of MK deceased and his Response regarding D(UK) dated 15 April 2014. He referred to his repayment of monies in the cases of BH and MK deceased. The Guidance Note on Sanctions stated that the most serious misconduct involved dishonesty whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal did not lose sight of the fact that not all the allegations had dishonesty associated with them and one allegation where dishonesty was alleged the allegation was found not to have been proved. However the Tribunal had found three instances of dishonesty proved; all of them were very serious but the case of the dishonest misappropriation of

£900 from the estate of a deceased individual although the smallest in terms of amounts of money was particularly concerning because the Respondent had attempted to take advantage of a member of the public who was simply trying to discharge his duty as executor. Guidance on exceptional circumstances was set out in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin):

> "...(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as in Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes) and whether it had an adverse effect on others."

Multiple allegations of dishonesty had been found proved which took place over a significant period of time. In terms of mitigating factors, the Tribunal could not find that any applied. The Respondent had emphasised that the sums of £900 "borrowed" from Mr MK's estate and of £2,000 paid to him by way of counsel's fees in Mr BH's matter were ultimately repaid but the Tribunal did not consider that the delayed repayment mitigated his dishonest conduct. The Tribunal had found no evidence of genuine insight and there were certainly no open and frank admissions at an early stage. The Tribunal considered that strike off was the appropriate and proportionate sanction.

Costs

80. For the Applicant, Mr Goodwin applied for costs in the amount of £38,575.10 subject to reductions to allow for the shorter than expected duration of hearing; he suggested that the time claimed be reduced by half in which case an amount of £3,312 inclusive of VAT should be deducted from the total. He reminded the Tribunal that the Guidance Note on Sanctions pointed out that the purpose of an order for costs was to compensate the Applicant for the costs incurred in bringing the proceedings rather than to serve as an additional punishment for the Respondent. As to affordability, Mr Goodwin referred the Tribunal to the Respondent's Personal Financial Statement. He submitted that the Respondent had been informed on more than one occasion that if he wished to have this means taken into account he would need to submit a statement of means with evidence in support. The Respondent had submitted a Personal Financial Statement but without any supporting evidence. Mr Goodwin therefore applied for an immediately enforceable order for costs. The Tribunal in considering the application for costs took into account that two of the allegations one of which had an allegation of dishonesty attached had not been found proved. However the Tribunal considered that they had been properly brought in the interests of the profession and the public and that the bringing of those allegations had not significantly increased the costs of the case; they were intrinsically linked to the allegations which were substantiated and before reaching its decision the Tribunal had to give them detailed consideration. The Tribunal would not therefore make any reduction in the costs to be awarded on account of the allegations which had not been found proved. The Tribunal considered that the costs sought were reasonable and awarded costs in the reduced amount applied for. The Tribunal considered the Respondent's Personal Financial Statement in which he gave minimal information

and said that he was unable to pay as he had no income, was applying for state benefits and was too young to claim retirement pension. The Respondent had been properly informed of the need to provide evidenced information if he wished his means to be taken into account and the Tribunal saw no reason not to make an immediately enforceable order for costs.

Statement of Full Order

81. The Tribunal Orders that the Respondent, Stephen Jackson, solicitor, be Struck Off the Roll of Solicitors and further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,263.10.

Dated this 13th day of June 2016
On behalf of the Tribunal

A. Ghosh
Chairman