SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11196-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

IWAN MEREDYDD DAVIES Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr. P.S.L. Housego
Lady Bonham Carter

Date of Hearing: 10th and 11th June 2014

Appearances

Mr Jonathan Goodwin, solicitor advocate, of Jonathan Goodwin Solicitor Advocate Ltd, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

Mr Gareth Edwards, solicitor, of David Edward Rees and Co, 160 Bute Street, Treherbert, Rhondda, CF42 5PE for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Iwan Meredydd Davies, made in a Rule 5 Statement dated 1 November 2013, were that he:

1.1. Failed to ensure compliance with the accounts rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998") in the period up to 5 October 2011, and/or from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 ("AR 2011");

1.2. Failed to remedy breaches of the accounts rules promptly on discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or Rule 7.1 of AR 2011 from 6 October 2011;

1.3. Failed to carry out the required reconciliations, contrary to Rule 29.12 of the AR 2011;

1.4. Retained office money in client bank account, contrary to Rule 19(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 17.9 of AR 2011;

1.5. Withdrew money from client bank account, contrary to Rule 22(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011 Rule 20.1 of the AR 2011;

1.6. Improperly utilised a "suspense ledger" to fund office payments and allowed the same to become overdrawn, contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007") and Rules 22(5) and 32(16) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, he acted contrary to all, alternatively any of Principles 2, 3, 5 and 6 of the SRA Principles 2011 ("the Principles") and thereby failed to achieve outcome O(7.4) of the SRA Code of Conduct 2011 ("2011 Code") and Rules 20.9 and 29.25 of the AR 2011;

1.7. Failed and/or delayed in filing an accountants report for the period 1 September 2010 to 31 August 2011, due to be filed on or before 29 February 2012, contrary to Rule 35 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011 Rule 32 of the AR 2011;

1.8. Failed to promptly notify the Solicitors Regulation Authority ("SRA") that he was experiencing serious financial difficulty and/or that he entered into an Individual Voluntary Arrangement ("IVA") on 14 December 2011, contrary to all, alternatively any of Principles 7 and 8 of the Principles. Further, or alternatively, he thereby failed to achieve outcomes O (7.4) and O (10.3) of the 2011 Code.

2. Dishonesty was alleged against the Respondent in relation to allegations 1.4, 1.5 and 1.6. Dishonesty was not an essential ingredient of any one of the allegations and it would be open to the Tribunal to find the allegations proved, absent a finding of dishonesty.

Documents

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

Applicant:-

- Application dated 1 November 2013
- Rule 5 Statement, with exhibit "JRG1", dated 1 November 2013
- Schedule of costs dated 23 May 2014

Respondent:-

- Answer to Rule 5 Statement dated 4 December 2013
- First witness statement dated 12 May 2014
- Second witness statement, with exhibits, dated 3 June 2014
- Statement of Ann Davies, with exhibits, dated 3 June 2014
- Bundle of 27 testimonials
- Copy case report Law Society v Waddingham, Smith and Parsonage [2012] EWHC 1519 (Admin)

Other documents:

- Copy case report Weston v Law Society CO/0225/98 ("Weston")
- Copy case report Twinsectra v Yardley and Others [2002] UKHL 12 ("Twinsectra")
- Copy case report Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude")

Factual Background

4. The Respondent was born in 1956 and was admitted to the Roll of Solicitors in 1983. His name remained on the Roll of Solicitors at the date of the hearing and he held a current Practising Certificate.

5. At all relevant times, the Respondent carried on practice on his own account under the style of Iwan Davies & Co, from offices at 1 Church Street, Pontypridd, Rhondda Cynon Taff, CF37 2TH ("the Firm").

6. By email dated 22 May 2012 the Supervision, Risk and Standards Department of the Applicant wrote to the Respondent in relation to an outstanding accountants' report for the period 1 September 2010 to 31 August 2011, due for delivery on or before 29 February 2012 and which had not been received, together with the Individual Voluntary Arrangement ("IVA") which the Respondent entered into on 14 December 2011.

7. By letter dated 8 June 2012 the Respondent wrote to the Applicant enclosing documentation relating to his IVA. The Respondent had not notified the Applicant prior to the IVA that he was in serious financial difficulties or that he was to enter an IVA on 14 December 2011, although in early 2012 he had made reference to it in his annual practising certificate application made to the Applicant. The Respondent provided information in relation to the outstanding accountants' report and indicated that it was in the process of being dealt with.

8. The Forensic Investigation Department of the Applicant carried out an inspection of the Respondent's books of account and other documents. That inspection began on 22 June 2012 and led to the production of a forensic investigation report dated 5 July 2012 ("the FI Report").

9. The Respondent was interviewed by the forensic investigation officer ("FIO"), Ms Taylor, on 25 June 2012. A handwritten note of the interview, and a typewritten note, were appended to the FI Report; the two notes contained some differences.

10. The FI Report identified a cash shortage in the sum of £26,145.40 as at 31 March 2012, as a result of five overdrawn/debit balances ranging between £0.60 and £17,036.91. The FI Report indicated that the debit balances appeared to have arisen due to over payments made from the Firm's client bank account and over transfers from client to office bank account. In the interview on 25 June 2012, the Respondent conceded that he was not signing off monthly client account reconciliations and that he was unaware that the shortage in client bank account was so high.

11. The FI Report also identified that the Respondent operated a "suspense ledger" which was overdrawn between January 2010 and 31 March 2012 ranging between £135.14 and £30,170.99. As at 31 March 2012 the balance on the suspense ledger was nil.

12. The FI Report noted that the suspense ledger recorded payments for the Respondent's drawings, salaries for staff and general office payments. During the interview on 25 June 2012 the Respondent indicated that he did not know the purpose of the suspense ledger, but indicated that cheques drawn on the office bank account were not being honoured and that the situation was getting worse. The Respondent also told the FIO that he would raise bills for costs due to the Firm, retain such money in the Firm's client bank account and transfer those sums to the suspense ledger. Such money would then be utilised to pay the Firm's office overheads, using client account cheques or transfers.

13. In the period 1 April 2011 to 31 March 2012 payments for office overheads made from the suspense ledger totalled £45,937.70. These payments were: 27 payments for staff wages, totalling £18,677.68; 6 payments to the Respondent's pension totalling £392.58; 23 payments to the Respondent, totalling £4,367.40; 2 payments to Orange totalling £574.29;5 payments for petty cash/postage totalling £560.74; 3 payments to Premium Finance totalling £5,282.53; 1 payment to British Telecom for £277.50; 1 payment to Welsh Water for £858.02; 1 payment to the Welsh Law Society for £99; 1 payment to Computing Wales Ltd (internet set up) for £437.96; and one payment for professional indemnity insurance ("PII") for £14,410.

14. There were insufficient monies within the suspense ledger to cover all of the payments. At its highest, the ledger was £30,170.99 overdrawn on 21 December 2010.

The Respondent accepted that he authorised the payments, and that he had assumed that there was sufficient money transferred in bills to cover the payments.

15. The payment of £14,410 for PII cover (noted above) was made on 30 September 2011. This payment caused the suspense ledger, which was already overdrawn in the sum of £14,904.22, to become overdrawn in the sum of £29,314.22.

16. In interview with the FIO, the Respondent stated that he had raised four bills had been raised to cover the payment of PII. Those bills were not identified on the ledger. On 26 October 2012 the Respondent wrote to the Applicant indicating that he had raised three bills rather than four to cover the PII payment and giving details of those bills; copies of those bills were provided subsequently. Those bills related to:

- Mr M - £6,174 dated 16 September 2011
- Mr B - £7.848 dated 13 October 2011
- Mr E - £1,440 dated 13 October 2011

and totalled £15,462.

17. On 12 October 2011 the sum of £20,000 was received from the Respondent's mother and was lodged into the Firm's client account and credited to the suspense ledger. At the interview on 25 June 2012 the Respondent was asked why he had received the money from this mother, it was put to him that he must have been aware of the shortfall on the suspense ledger. The Respondent was noted to have replied, "Yes, J (the book keeper) would have mentioned it and the overdraft so put it in by raising funds." Even with the receipt of £20,000 on 12 October 2011 the suspense ledger remained overdrawn in the sum of £8,224.22.

18. The FI Report identified that ledger was created in the name "Davies, Iwan waiting office A/C" on 1 December 2011. This ledger was used to pay office overheads and the Respondent's payments in respect of his IVA which he entered in December 2011; at that point he owed various creditors £221,021.08. Between 1 December 2011 and 31 March 2012 the ledger was overdrawn, showing a debit balance. The Respondent indicated during the interview on 25 June 2012 that the client matter ledger had been used to pay office overheads because his office account had been closed by Lloyds Bank, so that he was then exceeding it, and that this was a way of keeping the business running.

19. The FI Report also indicated that the Firm's accountants' report for the period 1 September 2010 to 31 August 2011 had not been submitted to the Applicant. That report was due to be filed on or before 19 February 2012. It was understood that it was filed on 16 January 2013.

20. The Respondent confirmed that he had not informed the Applicant that he had entered the IVA in December 2011 and explained that he was not aware this was a requirement. The Respondent indicated that when he completed his practising certificate renewal application in February 2012 he had made reference to the IVA.

21. The Respondent provided further information and documentation to the Applicant by letters dated 6 July, 16 July, 27 July, 23 October, 25 October and 26 October 2012; the last included his response to the FI Report. By letter dated 26 April 2013 the

Applicant wrote to the Respondent requesting further documentation, which was provided under cover of a letter dated 2 May 2013. The Respondent sent further documentation to the Applicant under cover of letters dated 13 May and 17 June 2013.

Witnesses

Ms Sarah Taylor, for the Applicant

22. Ms Sarah Taylor, a forensic investigation officer of the Applicant, confirmed that the FI Report which she had prepared was true to the best of her knowledge and belief. Ms Taylor was asked about the discrepancy between the handwritten and typed notes of the interview with the Respondent, noted at paragraph 9 above. Ms Taylor told the Tribunal that the handwritten notes which were produced had been written by her, at the time of the interview on 25 June 2012. The Firm's SRA supervisor, Ms Hardeep Toor, had also been present and she had made notes which were then typed up; it was those typed notes which were among the appendices to the Rule 5 Statement, but Ms Toor's handwritten notes were not appended. Mr Edwards told the Tribunal that he did not raise any issue concerning the interview notes, which the Respondent accepted were a fair record of the interview; he did not question their veracity. Ms Taylor told the Tribunal that the cash shortage (referred to at paragraph 10 above) was a separate matter to the suspense ledgers. There had been two separate suspense ledgers; Ms Taylor told the Tribunal that she understood that the "waiting office" ledger (referred to at paragraph 18 above) had been opened because of the Respondent's IVA.

23. Ms Taylor was asked by Mr Edwards about the Respondent's conduct during the investigation. She told the Tribunal that the Respondent had fully co-operated with the investigation and had not been at all furtive or evasive.

The Respondent, Mr Iwan Meredydd Davies

24. The Respondent confirmed that his two witness statements (dated 12 May 2014 and 3 June 2014) were true to the best of his knowledge and belief. He confirmed that he admitted the eight basic allegations, but denied that he had been dishonest. The Respondent confirmed his present working arrangements; he was a consultant to Mr Collings who practised from the Firm's address.

25. The Respondent told the Tribunal that at the relevant time he had been trying to keep his Firm afloat. At no time did he think that he was taking clients' money; he thought there were always funds in client account which were his/to which he was entitled. He may have billed some matters late, but he had never been dishonest. The Respondent told the Tribunal that he had perhaps not paid sufficient attention. Due to personal difficulties at the time he had perhaps taken his eye off the ball.

26. The Respondent accepted that his use of the suspense account had been as described in the FI Report. The Firm's bank had not been honouring any payments from the office account, due to reaching the limit of the overdraft facility, which was then reduced. This he said was due to cashflow problems. The Respondent told the Tribunal that his lifestyle had been frugal; it was not a case of overspending. The Respondent told the Tribunal that the bank had made clear that any money paid into office account would have been retained by the bank in reduction of the overdraft (and would not have been

available to pay office expenses etc.) The Respondent told the Tribunal that there were no other banking facilities that he could use. He had been owed client money for costs and had believed that there were funds in the suspense account which were properly due to him. Whilst bills had been drawn and delivered, the Respondent admitted that he may have been late in preparing some of those bills. This was a breach of the accounts rules, and the Respondent noted that the Applicant had given him credit for the admissions he had made. The Respondent told the Tribunal that the payments made from the suspense accounts for office expenses were from amounts to which he was entitled. The Respondent acknowledged that such payments were funding the Firm, but told the Tribunal he did not know he should not do this. The Respondent stated that he was not great with accounts matters. He had only felt he was entitled to use the money in the suspense account if the funds would ordinarily have been transferred to office account; he could not make transfers in the normal way due to the problems with the bank.

27. With regard to the payment of the PII premium of £14,410 on 30 September 2011, the Respondent told the Tribunal that he did not know there were insufficient funds in the suspense account to meet that payment. He suspected that a lack of billing had caused there to be a debit balance on the suspense ledger; he knew he was entitled to the money but may not have billed quickly enough. The bills (referred to at paragraph 16 above) totalled just over £15,000 and were sufficient to cover the PII payment. At the time the Respondent had written the cheque for the PII premium he had thought the bills had been done.

28. The Respondent told the Tribunal that he became aware that the suspense account had gone overdrawn in the course of the inspection by Ms Taylor (June 2012). The Respondent told the Tribunal that he had borrowed money to replace the funds as quickly as he could; it had been embarrassing to have to borrow from his family. The Respondent did not want to blame anyone else for what had happened, but told the Tribunal that his accountants had not pointed out the problem with the suspense account and that if he had been aware he would have put matters right earlier. The Respondent had replaced the funds sometime in 2012. He had been surprised at the extent to which the client account had been overdrawn when this was pointed out to him during the inspection.

29. The Respondent told the Tribunal of a number of personal difficulties experienced before and at the relevant time; these are not recorded here to protect the Respondent's right to privacy and respect for his family life.

30. With regard to the shortage on client account, the Respondent accepted that in the matter of Mr G he had sent Mr G a cheque in respect of the estate of Mr G's brother on 4 December 2009. There had then been a nil balance on the client account. In error, a further cheque in the same amount had been sent on 31 January 2011, which caused the client ledger to be overdrawn in the same sum. Mr G had been a personal friend of the Respondent and the Respondent told the Tribunal that he had often telephoned Mr G to ask him to return the money which had been sent to him in error. The Respondent told the Tribunal that he wished he had chased up Mr G earlier; the money had been recovered after some time, after the Applicant had written to Mr G, but previously Mr G had been uncooperative about returning the money.

31. The Respondent told the Tribunal that he could understand that the way he had dealt with his accounts would look dishonest but at no time had he taken clients' money intentionally. If the problem had been pointed out to him earlier, he would have cut back or stopped what he was doing. The Respondent told the Tribunal that he did not know he should have informed the Applicant about his IVA, but he knew that he could not practise if he became bankrupt, which was why he had opted for the IVA. Many of his friends also did not know that the Applicant should be informed about financial difficulties/an IVA. The Respondent worked in a small legal community, who knew of his present situation; he had not been shunned by anyone although some had commented that he had been stupid (albeit using a different, more colloquial expression).

32. The Respondent was then cross-examined by Mr Goodwin.

33. The Respondent accepted that being a solicitor was a privilege, which carried with it the responsibility to act with the highest standards of integrity, probity and trustworthiness. The Respondent accepted that he had fallen below the expected standards, but had not done so deliberately. The Respondent told the Tribunal that he was not very good with accounts, but he knew that client money was sacrosanct and should be kept separate from his own money. He also knew that there should never be a shortage on client account.

34. The Respondent told the Tribunal that he had conducted a normal general practice, dealing with crime, probate and some matrimonial matters. He had a number of years of experience and he accepted that he had the sole responsibility in the Firm to ensure that the Firm's accounts were in order. He had engaged a self-employed book keeper, J, who used to attend the office once a fortnight but since the inspection had attended once a week to post the ledgers. The Respondent told the Tribunal that he had prepared bills, which he would dictate and which would then be sent out by the staff with a covering letter, which the Respondent would sign. The Respondent confirmed that no bill was sent out without his knowledge.

35. The Respondent told the Tribunal that his financial difficulties started in or about 2009/10. This was caused by a lack of work; in particular, conveyancing work decreased from about three completions per week to about one per month. Criminal work also declined, and the Legal Aid Board recouped a payment of £20,000 by instalments of £3,000 per month; the Respondent could not recall when this was. In one year he had made good profits, due to a major criminal matter which went to trial; this led to a larger tax bill than usual, for which the Respondent had not budgeted. The Respondent told the Tribunal that some months he took no drawings from the Firm; some months were good and some were bad. It was because of the large tax and VAT liability that the Respondent had had to enter an IVA; the combined liability was about £50,000. Also, the Respondent had a bank loan of over £40,000 which he was repaying at about £400 per month. That loan was from Lloyds Bank, the Firm's bankers, and contributed to the bank's refusal to honour drawings on the office account. The Respondent could not say when that position began, but the bank had made it clear he could have no more money, either by way of overdraft or loan. The Respondent told the Tribunal that he had been allowed a £10,000 overdraft, but this amount was reduced to about £5,000. It was because the bank would retain any money paid into office account that the Respondent had decided to use a suspense

account to make payments of wages, pension contributions and the like. The Respondent had considered that he had no option but to use a suspense account.

36. The Respondent told the Tribunal that he had made the decision to open a suspense account. He realised that he should have kept client and office money separate, and that his decision had been wrong; there had been potential to mix client and office money. The Respondent told the Tribunal that he regarded the money, when billed, as his money but he was not able to transfer it to office account. The Respondent told the Tribunal that he had not told the bank what he was doing as it was not their concern so long as no office account cheques were written. The Respondent had not been pressed by the bank to repay further sums. The cheques he had written on client account for office expenses had been using money that was his (because of the work done and billed). The major financial problem which the Respondent had faced was linked to the debt to HMRC.

37. The Respondent accepted that the word "suspense" appeared on the title to the ledger which was created on 1 October 2010. The Respondent told the Tribunal that he did not deal with accounts matters day to day. He had not taken advice about creating a suspense ledger from his accountants or from other solicitors. It was put to the Respondent that he had opened the ledger without knowing or caring if this was the right thing to do. The Respondent told the Tribunal that he did care. He did not seem to have any other choice at the time. He wanted to continue his practice and believed that the money he was using was his, not that of clients, even if the bills were submitted late. The Respondent accepted that the accounts rules provided that a solicitor was only entitled to money from client account when a bill had been rendered and delivered.

38. The Respondent was referred to paragraph 11 of his first witness statement, which stated:

> "In retrospect I have to admit the system did break down to the extent that on occasions I was mistaken as to the level of the funds that were available to me as opposed to the number of bills I had done in order to facilitate them but at no time did I feel that I was acting dishonestly because (of) my belief, no matter how mistaken of "entitlement" remained."

The Respondent told the Tribunal that he had made an assumption about the funds being available and had a firm and honest belief that the funds were there. It was put to the Respondent that he could not have a firm and honest belief if he did not check the position. The Respondent stated that he believed the money was there; it was not that he did not care. He accepted that he did not check the ledger and that he had been negligent in failing to check, but he denied he had been reckless. Looking back, the Respondent accepted that he had been wrong to fail to check. The Respondent told the Tribunal that he had been working hard – often 12 hour days – and had thought the money was there (and that he could use it).

39. It was put to the Respondent that he knew there was a shortage on the suspense ledger in October 2011, when he had borrowed £20,000 from his mother. The Respondent told the Tribunal that he was not sure when he became aware that there was a shortage. It was put to the Respondent that the payment of £20,000 into the suspense ledger on 12 October 2011 had come about because the Respondent was aware then that there was shortage on the ledger. The Respondent told the Tribunal that he had

put money in as soon as he was aware there was a shortage and accepted that this must have been by about October 2011. The Respondent told the Tribunal that he hardly ever looked at the accounts, but J, the book keeper, must have told him of the shortfall. The Respondent told the Tribunal that he did not know that the suspense ledger was already overdrawn to the extent of almost £15,000 when he wrote the cheque for PII on 30 September 2011. It was put to the Respondent that in writing the cheque for the PII premium when he knew or ought to have known that there were not funds available to meet it, he had been reckless and/or dishonest. The Respondent told the Tribunal he had not been dishonest or reckless as there had been bills prepared to cover the payment.

40. The Respondent was referred to paragraph 12 of his first witness statement, which stated:

> "One example is the question of payments for indemnity insurance where I felt, before writing the cheque, sufficient was in the "Suspense Account" in order to meet these payments but unfortunately within my own mind I was confused at the time as to what bills had actually been typed and presented (thus "providing" the funds that were necessary) as I accept that on closer inspection I technically used clients' funds (in the strict sense of the word) because one or more of the bills I had prepared at the time had not actually been produced by the time the cheque was drawn."

The Respondent was asked in what way he had been "confused". The Respondent told the Tribunal that this related to whether or not the bill had been typed and sent, or whether the bill was still to be typed. The Respondent accepted that he had been negligent in not checking the bill had been prepared. The Respondent told the Tribunal that he would have thought he would be told if there were not sufficient funds available. He appreciated that he should have looked at the ledger, which was already overdrawn before the PII cheque was written. It was put to the Respondent that he had used client funds to make the payment; the Respondent stated that he thought there was money there. He accepted that the word "technically" in paragraph 12 of his statement was otiose. Looking back, the Respondent accepted that he would not have been able to pay for the PII, which would normally be drawn on office account.

41. The Respondent told the Tribunal that he had hardly ever looked at the ledger. It was put to the Respondent that he had been very wrong about the bills he thought had been issued. The Respondent noted that two of the bills (referred to at paragraph 16 above) had been issued two weeks after the PII payment, but he had thought he was entitled to that money. He had seen and sent the bills and he accepted that he would have known that the bills had not been sent. It was put to the Respondent that he knew his operation of the suspense account was inappropriate. The Respondent told the Tribunal this had been the only way he could keep the Firm going; he had only used money he believed was his. He had never thought he was using clients' money but rather had been using his own money which was in client account. The Respondent told the Tribunal that if he had been dishonest, he would not have left a paper trail which showed exactly what had happened. It was put to the Respondent that he had had a choice about how to act. The Respondent told the Tribunal that he had not just helped himself to client money, but had only used money to which he thought he was entitled; he queried whether these proceedings would be as they were if he had

prepared two bills a couple of weeks earlier. It was put to the Respondent that the PII payment was simply the largest example of payments made from the suspense account. The Respondent told the Tribunal that it was not normal to pay office expenses, such as wages, from client account and he was not proud of what he had done. However, no client had lost anything because of what the Respondent had done.

42. The Respondent accepted that he had been aware of the shortage on the suspense account from about October 2011 and so had asked for assistance (in the form of the £20,000 from his mother). He further accepted that even with this amount paid into the account, a shortage continued. It was put to the Respondent that from that time, he knew that the account was overdrawn; the Respondent told the Tribunal that he was negligent in not checking the ledger, but that he had been working all the time and that he had been entitled to the money which he had used. The Respondent accepted that during November 2011 the account had remained overdrawn, albeit by modest amounts.

43. The Respondent told the Tribunal that a payment made from the suspense ledger on 12 January 2012 in the sum of £40,856 had been made to an insolvency practitioner in connection with his IVA but he was not sure of the precise purpose of this payment. It was noted that this payment meant that the suspense ledger was overdrawn by £17,491.43 (largely due to the overpayment to Mr G of £17,036.91). The Respondent accepted that he had authorised this payment and that he was the only person who could authorise such payments. The payment was made after his wife had paid in £25,000 largely in respect of her acquisition from the IVA receiver of his interest in their matrimonial home and another £20,000 from his wife's parent. The Respondent told the Tribunal that at no stage had he taken clients' money, as the money was taken for work he had done. The Respondent accepted that he had still not checked the ledger and told the Tribunal that he had never had any dishonest intent.

44. It was put to the Respondent that honest people did not take money belonging to others. The Respondent accepted this, but told the Tribunal that he had not made any enquiries and so had been negligent. The Respondent told the Tribunal that objectively what he had done might appear dishonest; it would look, prima facie, "dodgy" until the public had heard his explanation and point of view. It was put to the Respondent that what he had done was inappropriate and wrong by the ordinary standards of reasonable and honest people; the Respondent disagreed that he had been dishonest as he did not know that what he did was wrong - he did not know that he had been wrong about there being sufficient money due to him from clients.

45. The Respondent told the Tribunal, under questioning, that the idea for the suspense ledger came from someone else; he could not recall who, but it was a member of staff and possibly J, the book keeper. The Respondent did not want to blame J, but it was probably her suggestion; he had probably discussed his financial difficulties with J, prior to setting up the first suspense account on 1 January 2010. At all times, the Respondent thought he had done enough work to prepare the bills, and that the money became his at that point. The Respondent now realised what a complete mess his accounts had been in; he accepted that he had not checked the ledgers but did not accept he had been reckless or dishonest in failing to check as he had believed there were funds available which he could use. It was put to the Respondent that each time the suspense ledger became overdrawn, he was using clients' money. The Respondent again told the Tribunal that the thought there was money there which belonged to him.

He accepted that over time about £45,000 had been transferred from the suspense ledger for the benefit of himself/the Firm.

46. The Respondent told the Tribunal that he did not know that purpose of the "waiting office account" which was set up in 1 December 2011 save that he had to use client account cheques as he could not use office account cheques to pay expenses; the office account had remained open. The Respondent told the Tribunal that he did not know why the second suspense ledger had been created, but he presumed he had discussed it with J. The Respondent told the Tribunal that he did not know if the bank had been aware of the pending IVA at that time; the IVA began on 14 December 2011. The Respondent confirmed that only he could give instructions to open a ledger and to operate it but he could not tell the difference between the two suspense ledgers. The Respondent accepted that the second suspense ledger had also been overdrawn for significant periods. He confirmed that he would not do things the same way again, as he now knew that what he had done was wrong but had not known this at the relevant time. The Respondent told the Tribunal that he had been under stress because of various family issues and his financial problems, but this was not an excuse for what had happened. The Respondent told the Tribunal that the way he had done things had been completely wrong, but he had had no dishonest intent.

47. The Respondent told the Tribunal that he had not explored bankruptcy as an option as he had believed at the time that he would not be able to practice if he were bankrupt. For this reason, and because of personal pride, he did not want to become bankrupt and so entered an IVA. One way to avoid bankruptcy, and to continue to practice, was to operate the suspense account to meet office payments; the Respondent told the Tribunal that he did not have any other option but to use the suspense ledger as he had done. The Respondent confirmed that he had not informed his bank. The suspense ledger, in his mind, had represented money which he could utilise as he believed he was entitled to it. It was put to the Respondent that he had had no reasonable basis to believe that to be the case as he had not checked the ledger; the Respondent confirmed that he had admitted he had been negligent. It was put to the Respondent that his setting up and operation of the suspense ledgers had been dishonest. The Respondent accepted that it had been unprofessional, but not dishonest. If he had been dishonest, he would not have left a clear audit trail. He told the Tribunal that he had been open and had tried to explain what had happened. The Respondent told the Tribunal that he would not do the same again, but he had not cheated his clients; he had not had any luxuries. His motive had been a good one, to keep the Firm going. The Respondent told the Tribunal that he had never asked J to check the ledgers before using money from the suspense ledgers; he wished that he had.

48. The Respondent told the Tribunal that he had been stressed, but he did not suggest that he had any psychiatric condition which had affected his judgment and he had not attended his GP. The Respondent told the Tribunal that he had taken his eye off the ball. He had believed the client account contained funds which could properly be billed and then used. It was put to the Respondent that his use of the suspense ledgers had continued for a couple of years, and that he had chosen not to look at the ledgers. The Respondent denied this.

49. There was no re-examination and the Tribunal then put some questions to the Respondent.

50. The Respondent was asked to clarify the basis of his assumption that there had been money available on client account which could be billed. He told the Tribunal that this was based on the amount of work coming in. In each case, for example the bills referred to in paragraph 16 above, there had been money held on the client ledger e.g. in probate matters; it was not a question of a bill being sent out and having to await receipt of payment from the client. The Respondent told the Tribunal that he billed matters as soon as possible after the work had been completed.

51. The Respondent was asked about the organisation of his office. The Respondent told the Tribunal that he was a sole practitioner. He had been assisted by J, who attended once per fortnight for most of the relevant period. At one stage he had been assisted by a person who was thinking of transferring from the Bar to the solicitors' profession. He also employed one full-time secretary and two secretaries who job-shared, i.e. equivalent to two full-time secretaries. The Respondent alone organised cheques. J was a book keeper with many years of experience. The Respondent did not always see her when she came into the office. The Respondent knew that the buck stopped with him, but his accounting knowledge was limited. He could not recall a discussion with J about setting up the suspense ledgers. It was noted that the Respondent had accepted that it was not normal to pay wages and the like from client account, that he was not proud of what he had done but that no client had lost out. It was suggested to the Respondent that the fact his Firm had been able to continue was a benefit to him; the Respondent told the Tribunal that he took this point. He had honestly thought that the work he had done was sufficient to issue bills so he could use the money on the suspense ledger. The Respondent told the Tribunal that he had not checked, or asked J to check; he had not really known what was going on.

Mr Ieuan Morris – character witness

52. Mr Morris was interposed as a witness, before cross examination of the Respondent, as he had a professional commitment in Cardiff.

53. Mr Morris told the Tribunal that he had been called to the Bar at Grays Inn in 1979 and currently practised at 9 Park Place Chambers, Cardiff. Mr Morris' work was primarily in serious crime matters, which he prosecuted, including in fraud, historic child sexual abuse matters, violence and murder. He was a Grade 4 CPS prosecutor (albeit independent of the CPS) and was on the panel of prosecutors for rape cases. He had been involved in many reported cases, including a multi-million pound complex fraud.

54. Mr Morris told the Tribunal that he had known the Respondent for the last 34 years, and had regularly been instructed by him, albeit that defence work in criminal matters was a relatively small part of Mr Morris' work. In the early part of his career, the Respondent and others had briefed Mr Morris in personal injury and breach of contract cases but the Respondent had usually briefed him in Crown Court cases.

55. Mr Morris told the Tribunal that he had read the papers in this case, including the allegations against the Respondent. He told the Tribunal that he had found the Respondent to be totally honest, open, fair and meticulous in his preparation. The Respondent was multi-talented, having skills in crime, divorce and probate matters. The Respondent would attend court with Mr Morris when he could; Mr Morris found

that the Respondent always put his clients' interest first. He had had no cause to question the Respondent's integrity.

56. Mr Morris thanked the Tribunal for interposing him. He had been due to deal with a case in court at Cardiff today, but with the permission of the Judge the start of the case had been delayed until 4 June so that Mr Morris could attend the Tribunal; the court had been totally fair in allowing him to attend so that he could assist the Respondent.

Mrs Ann Davies

57. Mrs Davies confirmed that her witness statement dated 3 June 2014, which dealt with both financial matters and the Respondent's character, was true to the best of her knowledge and belief.

58. Mrs Davies told the Tribunal that she and the Respondent had been married for over 27 years and had one adult son. Mrs Davies told the Tribunal that she is a law graduate, who undertook articles of clerkship but did not qualify as a solicitor, and now works as a senior case worker at the Legal Aid Agency. Mrs Davies told the Tribunal that she was fully aware of her husband's professional difficulties, but she had not been involved in his business as she did not consider that she had the necessary skills.

59. Mrs Davies told the Tribunal that it was difficult to accept that anyone could think the Respondent was dishonest; such allegations were just not true. Mrs Davies described her husband as the most honest person she knew; in all the time she had known him, she had never known him to act dishonestly. The Respondent could be described as loyal and kind. Mrs Davies told the Tribunal that she would not have married or remained married to a dishonest man.

60. Mrs Davies then described various family difficulties, involving the ill health and other problems of family members; these are not set out here to respect the privacy of those individuals. Mrs Davies told the Tribunal that her husband had worked throughout these difficulties, as he was responsible for his Firm and could not take time off. Although not able to give a medical opinion, Mrs Davies considered that the Respondent had been suffering from depression. Mrs Davies told the Tribunal that the Respondent was an honest man, who had been described by a magistrate as an excellent lawyer and one of the best advocates; Mrs Davies considered this to be a better description of the Respondent than that suggested by the Applicant.

61. Mrs Davies then confirmed the family's financial position; again, this is not reproduced here in detail to preserve the privacy of the witness although some relevant matters will be referred to in the section on costs below.

62. Mrs Davies was then asked questions by Mr Goodwin.

63. Mrs Davies described her work and experience at the Legal Aid Agency, for which she had worked (in its various guises) since 1986. She had not qualified as a solicitor as she had not passed the accounts part of the course.

64. Mrs Davies told the Tribunal that she had been aware of her husband's financial difficulties from about 2010. In particular, she was aware of the recoupment of legal aid costs which had been paid on account, and that some clients were not paying costs promptly. Mrs Davies had been aware of the difficulties with the bank, in relation to

the overdraft, but had not discussed with the Respondent any ways to resolve this; she had been able to listen, but not offer any guidance to the Respondent. Mrs Davies told the Tribunal that she had not been able to discuss anything about the accounts rules, but was aware that because of the Respondent's IVA he could not operate a bank account. Mrs Davies referred to having read J's explanation of how the suspense account had worked.

65. The Tribunal noted that J had not been tendered as a witness and the document mentioned by Mrs Davies had not been seen by the Applicant or the Tribunal. The Tribunal allowed the parties a short adjournment so that the advocates could discuss how to deal with this issue.

66. On resuming, Mr Goodwin indicated that he would raise questions on points he considered relevant unless and until stopped by the Tribunal.

67. Mrs Davies told the Tribunal that J had explained that the suspense account, or "waiting office account", had contained money which had been billed. The money was transferred to that account so that the Firm could keep operating, paying staff wages etc. Mrs Davies told the Tribunal that she did not know when J had provided this explanation and she had not discussed it with her.

68. Mrs Davies was asked about various sums which had been introduced into the suspense account, in particular payments of £20,000 on 12 January 2012 and £25,000 on 16 January 2012. Mrs Davies told the Tribunal that the £25,000 was introduced by her, with money received from her parents, but the £20,000 came from someone other than her parents. The £25,000 was not to replace any overdraft on the ledger, but was to purchase the Respondent's share of the equity in the matrimonial home, following the IVA. Although the half share of the equity was not £25,000 the figure had been rounded up to deal with a credit card debt as well. Mrs Davies told the Tribunal that she did not understand all the figures which had been bandied about very well. In response to a question from the Tribunal, Mrs Davies stated that she had taken out a loan of about £9,000 to pay Mr Edwards and some other expenses and debts.

Mr Kim Collings – character witness

69. Mr Collings told the Tribunal he had been a solicitor since 1977. He was the principal solicitor of Kim Collings Solicitors, incorporating Iwan Davies Solicitor. The Respondent was currently working with Mr Collings as a consultant. He had considered going into partnership with the Respondent but had not proceeded following advice from a professional indemnity insurance broker.

70. Mr Collings told the Tribunal that he had known the Respondent personally for over 30 years. They had practised in the same area of Wales and some of their areas of work overlapped. Mr Collings told the Tribunal that he had read the papers in this case and was familiar with their contents. Mr Collings told the Tribunal that he was aware of the Respondent's professional difficulties but was happy to work with him. The Applicant had not expressed any views when Mr Collings had made the application (subsequently withdrawn) to join the Respondent in partnership. On a personal level, Mr Collings described his relationship with the Respondent as fine, although there was some tension in the office. In the 15/16 months they had worked together, there was nothing in the Respondent's conduct which had caused Mr Collings any concern. It was for the Tribunal to determine the Respondent's

honesty, but Mr Collings could say that he was extremely hard-working, honest and was a man of integrity. In his many years of work in the area he had never seen or heard anything about the Respondent which would cause him to doubt that assessment.

71. Mr Collings told the Tribunal that he was his Firm's COLP and COFA. He would not allow any breaches of the accounts rules or other rules. At the moment, both Mr Collings and the Respondent could sign cheques; Mr Collings told the Tribunal that he had been ill and needed someone to be able to sign cheques if he was away from the office but this might change and the Applicant had advised him to change the bank mandate. In response to a question from the Tribunal, Mr Collings confirmed that he would not pursue a partnership with the Respondent, whatever the outcome of these proceedings, but that their present arrangement was a partnership in all but name as they jointly discussed business development and other issues.

Mr David Rees – character witness

72. Mr Rees told the Tribunal that he had been a solicitor for 30 years. He had worked as a sole practitioner since 1988 and had been President of his local Law Society (in Pontypridd and area) in 2000/2001. Mr Rees told the Tribunal – as previously indicated to the Tribunal by Mr Edwards – that he was professionally connected to Mr Edwards, albeit only since Friday 29 May 2014; Mr Edwards had joined his firm as a consultant. His involvement as a character witness for the Respondent pre-dated the professional connection with Mr Edwards. He wanted to give evidence for the Respondent to show solidarity with him.

73. Mr Rees told the Tribunal that he had known the Respondent since the latter was an articled clerk. They had socialised together, including playing rugby; the Respondent had played for Welsh Schools, had been capped at under-19 level for Wales in a match against Ireland and had played for Pontypridd during their successful 1979/80 season. Mr Rees told the Tribunal that he, Mr Collings and the Respondent were also keen cyclists and the Respondent had undertaken charity cycle rides e.g. to raise money for Romanian orphanages during the 1990s.

74. Mr Rees told the Tribunal that he had read the papers in the case, but these did not affect his opinion of the Respondent in any way. In all the time he had known the Respondent he had not heard anything which would cast doubt on the Respondent's integrity. The Respondent was a well-respected member of the profession in South Wales. In that legal community, one would hear if there was anything adverse known about an individual.

75. Mr Rees told the Tribunal that the Respondent was a decent chap, who was honest, straight and well-respected.

Findings of Fact and Law

76. 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.

77. The Tribunal noted that the FI Report was not challenged by the Respondent and the Tribunal was satisfied that it could accept the facts and matters stated in that report as true. It further accepted that the Respondent had co-operated with the investigation into his Firm, as stated by Ms Taylor in her evidence to the Tribunal. The Tribunal had been concerned that there was a discrepancy between the handwritten and typed notes of the interview which took place on 25 June 2012, in particular in the way in which it appeared a question had been put to the Respondent. However, the Respondent and his solicitor did not pursue that point and the Tribunal did not have to make any findings specifically on that point.

78. The Tribunal noted that the Respondent had admitted all of the allegations, save the allegation of dishonesty. The Respondent had consistently denied that he had been dishonest and this issue therefore fell to the Tribunal to determine, to the required standard.

79. Allegation 1.1 - Failed to ensure compliance with the accounts rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998") in the period up to 5 October 2011, and/or from 6 October 2011, Rule 6 of the SRA Accounts Rules 2011 ("AR 2011")

79.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out at paragraphs 10 to 18 above.

79.2 The Respondent was the sole principal of the Firm and as such was responsible for ensuring compliance with the relevant accounts rules. There had been breaches of both the SAR 1998 and AR 2011, as clearly recorded in the FI Report. Those breaches included a cash shortage of £26,145.40 as at 31 March 2012 and shortages on both of the suspense ledgers.

79.3 The Respondent had told the Tribunal that he was not good with accounts. However, as principal of the Firm it was his responsibility to ensure the accounts were properly managed, in compliance with the rules, and he had failed to do so. The allegation was satisfied, on the facts and on the admission, that this allegation had been proved to the required standard.

80. Allegation 1.2 - Failed to remedy breaches of the accounts rules promptly on discovery, contrary to Rule 7 of the SAR 1998 in the period up to 5 October 2011 and/or Rule 7.1 of AR 2011 from 6 October 2011

80.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out at paragraphs 10 to 18 above.

80.2 The Respondent had, properly, admitted that there was a cash shortage of £26,145.50 on client account as at 31 March 2012. This was not fully replaced until about July 2012, on receipt by the Respondent of a substantial payment of costs from the LSC. There was therefore a period of at least three months between the existence of a substantial shortfall and its rectification. Indeed, some of the shortage had arisen rather earlier. The Tribunal noted in particular that in the matter of Mr G, set out at paragraph 30, had led to a shortfall of £17,036.91 on that ledger, following the payment out of a second cheque to Mr G in error in that sum. That second payment was made on 31 January 2011 but the Respondent had not recovered the sum from Mr G, or replaced it, by the time of the investigation in June 2012.

80.3 The Tribunal also noted and found that there had been shortages on the suspense ledgers, for much of the time for which those ledgers had been operated. The Respondent's position was, briefly, that he was unaware that there were insufficient funds in the suspense ledger to meet the payments he made from it; he had believed that he was entitled to use money from client account when it was billed (and became, de facto, office money) and believed that the bills had been done. The Tribunal noted that the suspense ledger had been overdrawn to the extent of about £15,000 in late September 2011, prior to the payment of £14,410 for the Firm's PII premium on 30 September 2011. That payment had caused the suspense ledger to be overdrawn in the sum of £29,314.22. In addition to the bills mentioned at paragraph 16 above, the suspense account had been credited with £20,000 on 12 October 2011. The Respondent told the FIO in interview on 25 June 2012 that he had borrowed this money from his mother. When it was put to him by the FIO that he must have been aware that there was a shortfall on client account, the Respondent was recorded as saying, "Yes, J would have mentioned it and the overdraft to put it in by raising funds." The Tribunal was satisfied on the evidence – which was not challenged by the Respondent – that he was aware by October 2011, if not before, that the suspense ledger was overdrawn. The Tribunal further noted that even with the injection of the £20,000 the ledger remained overdrawn by over £8,000.

80.4 The shortages and the failure to rectify them spanned the period of operation of both sets of accounts rules. The Tribunal was satisfied to the required standard on the facts and on the admission that this allegation had been proved.

81. Allegation 1.3 - Failed to carry out the required reconciliations, contrary to Rule 29.12 of the AR 2011

81.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out in particular at paragraph 10 above.

81.2 The Respondent had admitted to the FIO in interview on 25 June 2012 that he had not been aware that the shortage was as high as had been identified and that he was not aware that the client account reconciliations were 2 months behind; he accepted that he had not been signing off the monthly client account reconciliations.

81.3 The Tribunal took the Respondent's admission to apply to a period in 2012; there was no information in the report identifying a longer period in which the Respondent had failed to carry out the required reconciliations. Client account reconciliations were an important first warning of any problems with the management of client account and it was clear that the Respondent had failed to ensure they were properly carried out; had he done so, the shortage on client account should have been noted and rectified earlier. The Tribunal was satisfied to the required standard on the facts in the FI Report and on the admission that this allegation had been proved.

82. Allegation 1.4 - Retained office money in client bank account, contrary to Rule 19(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, Rule 17.9 of AR 2011

82.1 This allegation was admitted by the Respondent, but he denied the related allegation of dishonesty (which is dealt with further under allegation 2.) The factual background to this matter is set out at paragraphs 11 to 18 above.

82.2 It was clear from the information in the FI Report that the Respondent had operated one or more suspense accounts, within his client account, from 1 January 2010. Indeed, the Respondent had confirmed to the FIO and to the Tribunal in his evidence that he had made office payments from the client account/suspense ledger as he could not transfer money into or out of the Firm's office account. He had used the suspense ledger, which was a client account ledger, as a de facto office account. Money for costs had been retained in the suspense account and used to meet office expenses rather than transferring costs to office account and paying wages etc. from office account. A total of nearly £46,000 had been utilised in this way.

82.3 The Tribunal was satisfied to the required standard on the evidence and on the admission that in periods spanning the operation of both the SAR 1998 and AR 2011 the Respondent had retained office money (in particular money due to him for costs) on the client account rather than transfer it to the office account. The allegation had been proved.

83. Allegation 1.5 - Withdrew money from client bank account, contrary to Rule 22(1) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011 Rule 20.1 of the AR 2011

83.1 This allegation was admitted by the Respondent, but he denied the related allegation of dishonesty (which is dealt with further under allegation 2.) The factual background to this allegation is set out at paragraphs 10 to 18, and in particular paragraphs 14 to 17 above.

83.2 The withdrawal of money from client account in breach of the accounts rules related to both the general client account, on which there had been a shortage, and the suspense ledger. It was clear that the Respondent had made a number of overtransfers or payments from client account in excess of the funds available. The example of Mr G was the most notable, and the largest single example, of making a payment from client account which caused the ledger to be overdrawn. While the payment was an error, it was one known to him and he had taken no step promptly to replace the money when Mr G did not repay it. As noted elsewhere, the Respondent had operated a suspense account from which payments had been made for office expenses in excess of the monies held on that account such that the account was frequently overdrawn. The clearest example was in relation to the payment for the PII premium, which caused the suspense ledger to become further overdrawn.

83.3 The Tribunal was satisfied on the evidence and on the admission that this allegation, which spanned the operation of both sets of accounts rules, had been proved to the required standard.

84. Allegation 1.6 - Improperly utilised a "suspense ledger" to fund office payments and allowed the same to become overdrawn, contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007") and Rules 22(5) and 32(16) of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011, he acted contrary to all, alternatively any of Principles 2, 3, 5 and 6 of the SRA Principles 2011 ("the Principles") and thereby failed to achieve outcome O(7.4) of the SRA Code of Conduct 2011 ("2011 Code") and Rules 20.9 and 29.25 of the AR 2011

84.1 This allegation was admitted by the Respondent, but he denied the related allegation of dishonesty (which is dealt with further under allegation 2.) The factual background to this allegation is set out at paragraphs 10 to 18, and in particular at paragraphs 14 to 17 above.

84.2 The Tribunal noted that the existence of a suspense ledger was not inherently wrong, or in breach of the accounts rules, but it could in some instances allow breaches of the rules to be undetected for a period. In this instance, it was the operation of the suspense ledger itself which was alleged to be in breach of various accounts rules and core duties of the profession.

84.3 The Respondent had accepted from the outset that he had used the suspense ledgers to fund office payments. He had also accepted that the ledgers had become overdrawn. It was clear from examination of the suspense account ledgers that they had been used to pay over £45,000 of office expenses in one year and that they were frequently, if not always, overdrawn. The clearest example of an instance in which payment of an office expense had led to an increase in the debit on the suspense ledger was in relation to the payment of the PII premium on 30 September 2011. The suspense ledger was already overdrawn at the time of the payment of £14,410 and the level of the debit increased to over £29,000 as a result of the payment. Although the Respondent had referred to some bills, which were sufficient to cover the amount of the PII payment, two of those bills had not been issued until about two weeks after the payment was made. Those bills in any event only reduced the overdraft rather than extinguished it. There had clearly been insufficient funds to meet the payment when it was made.

84.4 Further, the Respondent had been on notice from October 2011 that the suspense ledger was overdrawn. The Tribunal found that it was because he was aware the account was overdrawn that he had arranged for the injection of £20,000, borrowed from the Respondent's mother, on 12 October 2011. Even that payment had not rectified the shortfall completely.

84.5 The Respondent had told the Tribunal in evidence that he had not checked the ledger before making any payments from it for office expenses. To fail to check the position before using money which was, or might well have been, client money to pay office expenses displayed a lack of integrity, a failure to act in the best interests of clients and was conduct which would diminish the reputation of the Respondent and/or the profession. He had known that he had difficulty in keeping to his overdraft limit, even before it was reduced by the bank, and his failure to check that his suspense ledger was in credit displayed a lack of integrity.

84.6 The Respondent had, properly, admitted all aspects of this allegation. The Tribunal was satisfied to the required standard on the evidence and on the admission that this allegation had been proved in its entirety, both with regard to the breaches of the accounts rules and the breaches of the core duties and Principles of the profession.

85. Allegation 1.7 - Failed and/or delayed in filing an accountants report for the period 1 September 2010 to 31 August 2011, due to be filed on or before 29 February 2012, contrary to Rule 35 of the SAR 1998 in the period up to 5 October 2011 and/or from 6 October 2011 Rule 32 of the AR 2011

85.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out at paragraphs 6, 7 and 19 above.

85.2 The Tribunal noted that the accountants report had been filed early in 2013, but it was clear that it had not been filed when due. The Tribunal was satisfied to the required standard on the evidence and on the admission that this allegation had been proved.

86. Allegation 1.8 - Failed to promptly notify the Solicitors Regulation Authority ("SRA") that he was experiencing serious financial difficulty and/or that he entered into an Individual Voluntary Arrangement ("IVA") on 14 December 2011, contrary to all, alternatively any of Principles 7 and 8 of the Principles. Further, or alternatively, he thereby failed to achieve outcomes O (7.4) and O (10.3) of the 2011 Code.

86.1 This allegation was admitted by the Respondent. The factual background to this allegation is set out at paragraphs 6, 7 and 20 above.

86.2 The Tribunal found that the Respondent had not notified the Applicant that he was experiencing serious financial difficulty. On his evidence to the Tribunal, the particular problems began in 2009/10 and culminated in the making of an IVA in December 2011. The duty to notify the Applicant of serious financial difficulties did not arise until the implementation of the Principles and the Code on 6 October 2011. The Respondent did not notify the Applicant of the IVA until after it had begun; he should have done so reasonably promptly after the new Code came into effect as he was in difficulty by then. The Tribunal was satisfied on the evidence and on the admission that this allegation had been proved to the required standard.

87. Allegation 2 - Dishonesty was alleged against the Respondent in relation to allegations 1.4, 1.5 and 1.6

87.1 This allegation was denied by the Respondent in its entirety. The factual background to this allegation is set out at paragraphs 10 to 18 above. The findings in relation to allegations 1.4, 1.5 and 1.6 should be read as part of the findings of fact in relation to this allegation.

87.2 The Tribunal was aware that the test for dishonesty to be applied was the combined test set out in Twinsectra, in particular at paragraph 27 of that Judgment, where Lord Hutton stated,

> "Thirdly, there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

87.3 The Tribunal was also aware that Donkin v The Law Society [2007] EWHC 414 (Admin) ("Donkin") provided that the Tribunal should take into account character evidence and testimonials before determining any allegation of dishonesty.

87.4 The Tribunal had to determine the allegations in the light of the evidence which was presented. The evidence of the Applicant was in the form of the FI Report, which was confirmed by Ms Taylor, the FIO, to be true to the best of her knowledge and belief. The FI Report was not challenged by the Respondent, and the Tribunal accepted that its contents were true and accurate. The Tribunal had also heard evidence from the Respondent himself concerning the allegation of dishonesty, and from his wife, Mr Morris, Mr Collings and Mr Rees on the question of the Respondent's character, as set out in some detail at paragraphs 52 to 75 and had read a number of testimonials, as set out at paragraph 87.3 above. The Tribunal took into account the submissions made on behalf of the Respondent by Mr Edwards, which drew the Tribunal's attention to: the high standard to which an allegation of dishonesty had to be proved; the fact that the Respondent had co-operated with the investigation and had not hidden anything; the Respondent's hitherto unblemished career and the supportive testimonials; and that this case did not involve "round sum" transfers, but only transfers for bills which were properly rendered, and with a full audit trail. Mr Edwards asked the Tribunal to consider if it could be really sure that the Respondent had realised that he had acted dishonestly by the ordinary standards of reasonable and honest people.

87.5 There had been eight basic allegations made against the Respondent, all of which he had admitted. This was to his credit. The Respondent had consistently denied that he had been dishonest in relation to allegations 1.4, 1.5 and/or 1.6, as alleged by the Applicant.

87.6 The basis of the allegations of dishonesty were set out in the Applicant's Rule 5 Statement dated 1 November 2013 and arose from the Respondent's operation of one or more suspense ledgers on his Firm's client account.

87.7 It was alleged that the Respondent had operated one or more suspense ledgers from 1January 2010 until the time of the inspection (June 2012). Between 1 April 2011 and 31 March 2012 the suspense ledger had been used to make office payments totalling £45,937.70. There were for lengthy periods between January 2010 and 31 March 2012 there were insufficient funds to cover those payments, such that the ledger was overdrawn in amounts varying between £135.14 and £30,170.99. The Applicant further alleged that in making payments from the suspense ledger when there were insufficient funds available the Respondent utilised client funds for his own benefit and/or for the payment of office overheads.

87.8 There was no doubt that the Respondent authorised these payments; he had confirmed this in his evidence. His further evidence was that he had assumed that there were sufficient funds transferred in respect of costs to cover these payments.

87.9 The Applicant gave as an example of a payment made when there were insufficient funds the payment of £14,410 for the Firm's PII premium on 30 September 2011, which caused the suspense ledger to be overdrawn by £29,314.22. The Respondent had told the Applicant, and the Tribunal, that he had raised three bills to cover the payment of the PII premium, but two of the three bills on which he relied had been raised about two weeks after the payment had been made. The Applicant alleged that in making payments, such as that made on 30 September 2011, when there were insufficient funds in the suspense account to cover the payments, the Respondent had caused the suspense ledger to be overdrawn and had the result that the Respondent was using clients' funds to pay office expenses.

87.10 It was common ground that throughout the relevant period the Respondent had been experiencing serious financial difficulties. He had entered into an IVA on 14 December 2011. The Respondent had explained to the FIO that he had not been transferring costs to his Firm's office account because cheques drawn on office account were not being honoured by the bank; any costs he paid into the office account would be used by Lloyds Bank to repay his overdraft or other borrowings from the bank. The Applicant alleged that the Respondent improperly misapplied client funds and used them for his own benefit and the payment of the Firm's overheads. It was further alleged that such conduct was improper and dishonest, and that the Respondent knew that to act as he did was inappropriate and dishonest. In the interview with the FIO on 12 June 2012 the Respondent had been asked if was "propping up his office by the use of client account", to which he responded, "Seems that way, I know. Not deliberately intended to but it is what happened. Only reason why I was doing this because of cash flow…"

87.11 In summary, the Applicant's case was that the Respondent took a conscious decision improperly to utilise a suspense account and retain money in client bank account to facilitate the payment of office overheads and for the Respondent's own benefit, as a result of his financial difficulties.

87.12 The Respondent in evidence said that he knew that the client account was sacrosanct, that it should be kept separate from office account and that there should not be a shortage on client account. The Respondent had also confirmed that he was in financial difficulties, with monies owed to HMRC and to the bank. Because of this he was unable to borrow money from a commercial lender. He needed funds to be able to pay himself and office overheads, including wages. The Respondent told the Tribunal that he had no option but to use the suspense account. He accepted that "the buck stopped with him" as the sole principal of the Firm. The Respondent's evidence was that he decided to open the suspense account as he did not know what else to do due to his financial difficulties.

87.13 The Respondent told the Tribunal that he never looked at the ledger but that he had honestly believed that money due to him was there. The Respondent accepted that he had been negligent, but he did not accept that he had been reckless or dishonest in failing to check the ledger. The Respondent also denied that he did not care whether

or not the money was there. The Respondent said that the suspense account was the only way that the Firm could continue to operate; he now accepted that he should have looked at the ledger. The Respondent had accepted that he did not make any proper enquiry as to whether he was entitled to the money he used from the suspense ledger and under cross-examination accepted that from an objective point of view acting in this way would look "dodgy".

87.14 The Respondent also told the Tribunal that he had wanted to remain in practice as a solicitor and that he believed that if he were bankrupt there would not only be a stigma attached to that locally but also that he would not be able to practice as a solicitor. The Respondent had therefore operated the suspense accounts to enable him to continue to work as a solicitor for a period of over two years.

87.15 Overall, the Respondent accepted that he had been foolish but he did not accept that he had been dishonest. The Respondent stated that no clients had lost any money and that he had not made a penny from what he had done.

87.16 At the relevant time, the Respondent had been under considerable stress with family matters. Although the Respondent's wife in evidence had said that she now believed that the Respondent was suffering from depression, he did not seek medical help and there was no evidence before the Tribunal in respect of this.

87.17 In considering this case, the Tribunal took a careful note of the character evidence which was available. The Respondent had provided a considerable number of written testimonials from fellow professionals (many of whom might be regarded in some ways as his professional competitors), clients and others. These testimonials were of the highest quality, and spoke of his honesty, integrity and professionalism. The Tribunal took into account the large amount of support expressed for the Respondent. It also noted and had regard to the fact that two solicitors and a barrister (as well as the Respondent's wife) had taken the time and trouble to travel from South Wales to speak on behalf of the Respondent and had given evidence about the Respondent's personal and professional qualities. Those who attended had confirmed that they had read the case papers and so were aware, in some detail, of the issues in the case. The Tribunal was impressed by the fact that Mr Morris had taken steps to delay a hearing in which he was involved (with the permission of the Judge) in order to attend the Tribunal. The character witnesses who attended and those who provided written testimonials had for the most part known the Respondent for many years and none had been given any reason to doubt his honesty and integrity. The Tribunal had rarely seen such a weight of evidence which commented so favourably on a person's honesty and integrity. However, the Tribunal could only take all of this evidence into account on the general issue of whether or not the Respondent had any propensity towards or history of dishonesty; none of the character witnesses could speak to what the Respondent had actually done in relation to his Firm's accounts. The Tribunal had to determine the allegations of dishonesty on the basis of the specific evidence.

87.18 As noted above, at paragraph 87.2, the Tribunal had to apply to test set out in the Twinsectra case to the facts.

87.19 Having heard and considered carefully all of the evidence, the Tribunal found that:

- the Respondent knew that client money was sacrosanct and that there should not be a shortage on client account;
- the Respondent knew that client account should be kept separate from the office account;
- the Respondent set up the suspense account because he thought that otherwise he could be made bankrupt and be unable to continue in practice. The Respondent was worried about the stigma of being made bankrupt and that he would have not source of income if he could not practice. The Respondent wanted and needed to keep the Firm afloat;
- the Respondent accepted full responsibility for the decision to set up the suspense account, which was the only way that he believed the Firm could continue;
- in a two year period the suspense ledger was overdrawn for substantial periods and in the year from 1 April 2011 to 31 March 2012 it was used to make office payments of £45,937.70;
- The Respondent had been drawing cheques for his own benefit and that of the Firm which put the client account into overdraft;
- the Respondent knew what he was doing. The Tribunal did not accept, given the parlous financial state of the Firm, that at no time in the two year period did the Respondent look at the suspense ledger. If he had looked at the ledger he would have known beyond any doubt that he was misappropriating clients' money. If that finding were in any doubt, and the Respondent did not look at the ledger, then despite the Respondent's protestations that he had cared about the matter, it was clear that he did not know or care that he was using clients' money.
- The Respondent accepted that he had used client funds to prop up his business and the effect of this was that he put his own interest and that of the Firm before the interests of his clients.
- The state of affairs had continued for two years and the Respondent had no means of bringing the situation to an end.

87.20 Having regard to the test in the Twinsectra case the Tribunal found that by setting up and using the suspense account for the reasons he did and in the way that he did (i.e. allowing it to become overdrawn to meet office expenses) the Respondent was dishonest by the ordinary standards of reasonable and honest people. Further, the Tribunal found so that it was sure that the Respondent knew at the relevant time that he was acting dishonestly, by those same standards.

87.21 The Tribunal regarded this as a sad case in some respects, having heard the glowing testimonials on behalf of the Respondent. However, even bearing in mind that evidence, the Tribunal found beyond reasonable doubt that the allegations of dishonesty in respect of allegations 1.4, 1.5 and 1.6 had been proved.

Previous Disciplinary Matters

88. There were no previous matters in which findings had been made against the Respondent.

Mitigation

89. In the light of the finding of dishonesty made by the Tribunal, Mr Edwards submitted that there was nothing further he could add by way or mitigation in addition to the points raised in connection with the defence. He anticipated that there was only one sanction which the Tribunal could impose.

90. The Tribunal was referred by Mr Goodwin to the matter of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma"). In that case, at paragraph 13, it was decided that whilst striking off would be the normal and necessary penalty where there had been a finding of dishonesty,

> "There would be a small residual category where striking off will be a disproportionate sentence in all the circumstances"

It was further stated in that judgment that,

> "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 Burrowes, or over a lengthy period of time, such as Bultitude; whether it was of benefit to the solicitor (Burrowes), and whether it had an adverse effect on others."

Sanction

91. The Tribunal had regard to its Guidance Note on Sanction (September 2013). The Tribunal also had regard to the cases of Sharma and Weston.

92. The Tribunal had made a finding of dishonesty, in respect of three allegations. Proper stewardship of client money was an essential duty of solicitors. In this instance, the Tribunal had found that the Respondent had failed in that duty over a period of about 2 years, which was the period in which he had operated suspense ledgers which had been overdrawn. He had used client money for his own benefit, in that it was used to support the Firm and enable it to continue to operate. Whilst the Tribunal took full account of the many supportive and impressive references – both in assessing whether dishonesty had been proved and in considering sanction – it did not find that there were any exceptional circumstances which could allow any departure from the normal and necessary sanction of striking off.

93. This was in many ways a sad case. The Tribunal considered that the Respondent had had an exemplary career until he fell into financial difficulties in about 2009/10. However, and very unfortunately, he had then pursued a course of action which was dishonest. Even without the finding of dishonesty, the Respondent's handling of client money was such that a severe sanction would have been required. In all of the

circumstances, the appropriate and proportionate penalty was that the Respondent should be struck off the Roll.

Costs

94. On behalf of the Applicant, Mr Goodwin submitted a schedule of costs which totalled £27,377.03. The Tribunal was invited to summarily assess the costs as drawn; it was submitted that those costs were reasonable and proportionate.

95. Mr Goodwin submitted that it had been necessary to consider additional documents, which had not been included in the Rule 5 bundle. In response to a question from the Tribunal about possible duplication, Mr Goodwin told the Tribunal that it was possible there had been some modest duplication in respect of the work done in drafting the Rule 5 Statement. It was submitted that it was reasonable and proportionate for the instructing solicitor to attend the hearing, given its nature; there was no claim for her time, simply for her accommodation and travel. It was submitted that if a QC had been instructed in the case, it would have been reasonable for the instructing solicitor to sit behind counsel; in the circumstances, it was reasonable for the solicitor to attend but not claim for the time spent in doing so. In response to a further question from the Tribunal, Mr Goodwin submitted that there had been no specific policy change under which the Applicant had decided to send solicitors to sit behind the external advocate. However, the Applicant was trying to conduct more cases in-house. In this instance, Mr Goodwin had drafted the Rule 5 Statement, but it had to be approved by the Applicant, particularly given the seriousness of an allegation of dishonesty; such allegations were not made lightly.

96. Mr Goodwin submitted that the Tribunal could make a normal costs order, but that the Tribunal might consider an order that the costs should not be enforced without permission because of the Respondent's financial position. It was recognised that whilst the case had arisen because of the Respondent's actions, this may be a case where making an order for costs not to be enforced without permission would protect the Applicant but would take into account the Respondent's current and likely future financial position. The Tribunal would take into account the Respondent's IVA. It was submitted that it would not be appropriate for the costs to be subject to detailed assessment, as that would increase the costs overall.

97. Mr Edwards submitted that the Tribunal should take into account the Respondent's means. The Respondent had provided a witness statement, with supporting documents, about his financial position and his wife had also provided information in a statement and in oral evidence. Mr Edwards pointed out that the Respondent now had no financial interest in the matrimonial home. Mr Edwards further submitted that if the Tribunal made the expected order (i.e. striking off) it would remove the Respondent's opportunity to earn a living; his financial future was bleak. The Respondent's wife had a modest salary, which was used for reasonable household expenses. Mr Edwards submitted that it would be appropriate for the Tribunal to make a costs order which could not be enforced without the Tribunal's further permission.

98. Mr Edwards submitted that the time claimed for "preliminary and report" by the FIO, at 23.5 hours, was possibly excessive. It was also submitted that it appeared there

was some duplication of work between Mr Goodwin and his instructing solicitor. It was submitted that the overall costs of prosecuting the case were rather high; a QC could have been used for about the same costs.

99. The Tribunal considered carefully the application for costs made by the Applicant. The Tribunal was satisfied that an order for costs should be made; the case had been necessary as a result of the Respondent's actions and had been properly prosecuted. There was no need for the costs to be subject to detailed assessment as the Tribunal considered that it had sufficient information, together with direct knowledge of the case, which would enable it to make a proper summary assessment.

100. The Tribunal noted that for many years Mr Goodwin, who was an experienced advocate at the Tribunal, had been able to do a good job of conducting cases at the Tribunal without the presence of an instructing solicitor. The Tribunal considered that there had been some duplication of work, as Mr Goodwin had fairly conceded. It determined that the role of the instructing solicitor at the hearing had been limited. It noted that there was no claim for her time in attending, but given her limited role the Tribunal determined that the costs of her travel and accommodation should not be charged to the Respondent. The Tribunal also determined that the time claimed for preliminary work and preparation of the FI Report were a little high, and noted that the hearing had not taken quite as long as anticipated when the schedule was prepared. Bearing in mind these factors, the found that the costs claimed were higher than could reasonably be claimed from the other party, and summarily assessed the proper and proportionate costs in the sum of £25,000.

101. The Tribunal then considered the Respondent's means. He had properly provided information about his means. The Respondent was in an IVA; his future earning prospects were affected by the order for striking off the Roll and he and his wife lived a modest lifestyle. The Respondent's means were properly taken into account by making an order for costs which would not be enforced without further order of the Tribunal.

Statement of Full Order

102. The Tribunal Ordered that the Respondent, IWAN MEREDYDD DAVIES, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00, such costs not to be enforced without the permission of the Tribunal.

DATED this 16th day of July 2014
On behalf of the Tribunal

A. N. Spooner
Chairman