No. 10481-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ALEXANDER DAVID WINTERTON and
MICHAEL MILLER, solicitors (The Respondents)

Upon the application of Ian Ryan
on behalf of the Solicitors Regulation Authority

Mr J. C. Chesterton (in the chair)
Mr D. J. Leverton
Mrs S. Gordon

Date of Hearing: 14 October 2010

FINDINGS & DECISION

Appearances

Ian Ryan, Partner and Member of Finers Stephens Innocent LLP of 179 Great Portland Street, London W1W 5LS appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

There were no appearances by or on behalf of either Respondent.

Application Date

The date of the Rule 5 Statement was 10 March 2010. The date of the Rule 7 Statement was 20 September 2010.

Preliminary Matters

(1) Mr Ryan for the Applicant informed the Tribunal that the Respondents had been served with the following documents:

- Rule 5 Statement and Exhibit IPR/1 dated 10 March 2010;

- Notice To Accompany Statement Of Evidence (of James Henry Roberts Dunn) dated 13 August 2010;
- Rule 7 Statement and Exhibit IPR/2 dated 20 September 2010;
- Notice to Admit Documents dated 20 September 2010.

(2) The Respondents had been served with Memoranda of Directions dated 30 July 2010 and 7 October 2010 and notice of the hearing date. Correspondence from the Respondents had been received by the Tribunal and Mr Ryan, satisfying the Tribunal that the Respondents were aware of the hearing date.

(3) As required by Rule 7 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"), Mr Ryan applied for leave to file the Rule 7 Statement dated 20 September 2010 within 30 days of the date fixed for hearing. Under Rule 21 (2) the Tribunal was at liberty to dispense with any requirements of the Rules in respect of Statements, service or time in any case where it appeared to the Tribunal to be just so to do. Mr Ryan submitted that it was just in this case. The allegations in the Rule 7 Statement related in part to an alleged failure to repay money to a member of the public. It was therefore in the public interest for the allegations to be allowed to proceed to determination. Both Respondents had been served with the Rule 7 Statement and supporting documents.

(4) The Tribunal granted the application. Time was abridged in respect of the filing of the Rule 7 Statement dated 20 September 2010 within 30 days of the hearing date. It was in the public interest for the allegations in the Statement to be determined by the Tribunal.

(5) The Chairman invited Mr Ryan to address the Tribunal on points raised by the Respondents in correspondence concerning the Tribunal's jurisdiction and the application of Article 6 of the Human Rights Act 1998. Mr Ryan submitted that, the Respondents having failed to comply with Directions issued by the Tribunal requiring the filing and service of statements and skeleton arguments, and having failed to attend the hearing, they had thereby lost the opportunity to pursue points raised solely in correspondence. The Tribunal accepted Mr Ryan's submission.

Allegations

1. The allegations against the Respondents were as follows:
   Against both Respondents, that they:

   (i) Failed to deal with the Investigation Officers of the SRA in an open, prompt and co-operative way in breach of Rule 20.05 and 20.08 of the Solicitors' Code of Conduct (SCC) 2007.

   (ii) Failed to lodge Accountants Reports for the years ended 31 May 2008 and 31 May 2009, such reports being due respectively by 30 November 2008 and 30 November 2009.

   (iii) Overcharged a client in breach of Rule 1.02 and 1.06 of SCC 2007.

(iv) Failed to comply promptly or at all with Court Orders dated 16 July 2009, 4 August 2009, and 9 September 2009.

Against the First Respondent alone, that he:

(v) Deliberately misled the SRA as to whether the firm held client monies. It was alleged by the Applicant that the First Respondent had behaved dishonestly in respect of this allegation, or was grossly reckless in his dealings with the SRA.

(vi) Contacted a third party directly in breach of Rule 10.04 of SCC 2007.

2. Further allegations against both Respondents were contained within the Rule 7 Statement dated 20 September 2010, that they:

(vii) Failed to comply with an order to pay compensation made by an Adjudicator of the SRA in breach of Rule 1.02 and 1.06 of the SCC 2007.

(viii) Acted in a situation where there was a conflict of interest, or a significant risk of a conflict of interest, between clients of the firm in breach of Rule 3.01 and Rule 4.03.

Factual Background

Respondents' Histories

1. The First Respondent was born on 9 April 1973 and was admitted as a solicitor on 1 October 1999. According to Law Society records he does not hold a current practising certificate.

2. The Second Respondent was born on 6 November 1973 and was admitted as a solicitor on 1 October 1998. According to Law Society records he does not hold a current practising certificate.

3. At all material times the Respondents carried on practice in partnership under the style of City Legal Services LLP ("the Firm"). Between 31 October 2008 and 9 November 2009 the Firm operated from the First Respondent's residential address. From 9 November 2009 the Firm operated from a service office in London. The Firm had previously operated from a number of different addresses. The Firm was intervened on 22 January 2010.

4. Upon due notice to the Respondents an Investigation Officer of the SRA made several attempts to arrange an inspection of the Firm's books of account, but was unable to gain access to the Firm's practice address, which was then at 66 Stanton House, 620 Rotherhithe Street, London. A report by Gillian Seager, the SRA's Head of Casework Investigations and Operations was produced dated 18 December 2009.

Documents before the Tribunal

5. The Tribunal had before it the following documents:

Applicant

- Rule 5 Statement and Exhibit IPR/1 dated 10 March 2010;
- Notice To Accompany Statement Of Evidence dated 13 August 2010;
- Rule 7 Statement and Exhibit IPR/2 dated 20 September 2010;
- Notice to Admit Documents dated 20 September 2010.

Respondents

- All letters to and from the Respondents at Exhibits IPR/1 and IPR/2
- All documents listed at paragraph 2 of the Memorandum of Directions of the Tribunal dated 7 October 2010.

The evidential weight able to be attached to the Respondents' documents was limited due to their non-attendance at the hearing.

Facts

6. Rule 20.08 of the SCC 2007 required solicitors to comply promptly with written notices from the Applicant in relation to the production of documents, information and explanations. An inspection of the Firm was authorised by the Applicant and written notice given to the Respondents by letter dated 15 September 2009. Inspection was ultimately fixed for 18 November 2009. The First Respondent responded to the notice on behalf of the Firm by letter dated 15 November 2009. The Applicant's Caseworker replied by fax the same day. She asked the Respondents to confirm the address of their main practice office and to state whether either Respondent would be at the inspection which was to take place the next day. The Investigation Officers attended at an address provided by the Respondents, which was a service office address. They then attended at the Stanton House address, but were unable to speak to the Respondents. The Applicant wrote to both Respondents on 20 November 2009, but received no reply. Details of the attempts made to carry out the inspection were provided in the 18 December 2009 report. The inspection did not take place. The Investigation Officer was unable to confirm whether the books of account were in compliance with the 1998 Rules.

7. The First Respondent's letter to the Applicant dated 15 November 2009, written two months after the initial notice of inspection had been given, stated:

> "To suggest that a matter of days notice is sufficient for a major investigatory visit is ludicrous and is further example of the SRA's harassing tactics towards this small firm, consisting of two solicitors only...... This is a further attempt to use the Rules unlawfully."

and it continued:

> "As previously pointed out in every return made by this firm, we do not hold client monies, therefore you have no authority to visit. Furthermore, as a result of the regulatory terrorism inflicted by the SRA onto this firm, it has

done very little business in a difficult economic climate. Therefore in the spirit of openness there is nothing to review or investigate, certainly not enough to send two people on an unlawful fishing expedition."

8. The Respondents failed to lodge Accountants Reports for the years ended 31 May 2008 and 31 May 2009, such reports being due respectively by 30 November 2008 and 30 November 2009.

9. It was alleged that the Respondents had overcharged their former client, Mrs H., in breach of Rule 1.02 and 1.06 of SCC 2007 and had failed to comply promptly or at all with Court Orders dated 16 July 2009, 4 August 2009 and 9 September 2009. The facts with evidence in support of these allegations were set out in the 18 December 2009 report.

10. The Legal Complaints Service had received a complaint from Mrs H.'s solicitors following the detailed assessment of a bill submitted by the Firm to Mrs H. The relevant invoice was dated 9 March 2009, and claimed a total sum of £147,977.15. It bore the First Respondent's reference ADW/LB/HIT1.1 and described both Respondents as fee earners employed to work on the case at a charging rate of £500 per hour each. Mrs H. had paid £77,139.02 on account, leaving a balance outstanding of £70,838.13. She instructed new solicitors to act on her behalf. The Respondents refused to release her papers to the new solicitors until the outstanding fees were paid. In January 2009 Mrs H. applied to the Court for assessment of the Respondent's bill. Her complaint to the Legal Complaints Service had been closed on 2 April 2009 pending that assessment of costs, and was re-opened in October 2009 following the conclusion of the assessment process.

11. At a hearing in the High Court on 9 September 2009 before Costs Judge Master Gordon-Saker the bill had been assessed in the sum of £24,271.97 including disbursements and value added tax. The Respondents were ordered to repay £52,867.05 plus interest from 9 March 2009 until the date of payment, to Mrs H. by 4pm on 23 September 2009. The Respondents were also ordered to pay Mrs H.'s costs of the assessment proceedings in the sum of £3,825, plus the Court fee of £1,200. The Respondents sought permission to appeal the assessment of the bill. Permission was refused on the grounds that an appeal would have no real prospect of success, and that there was no other good reason for pursuing an appeal.

12. As at the date of the Tribunal hearing the Respondents had not complied with the Order dated 9 September 2009. Further they had not fully complied with interim costs orders of Master Gordon-Saker in the assessment proceedings dated 16 July 2009 and 4 August 2009, under which the total sum outstanding was £3,725. Only £1,725 had been paid to Mrs H. by the Respondents.

13. It was alleged against the First Respondent alone that he deliberately misled the Applicant as to whether the Firm held client monies, and that in doing so he behaved dishonestly, or was grossly reckless in his dealings with the Applicant.

14. The First Respondent wrote to the Applicant asserting, amongst other things, that the firm held no client monies. Specifically he wrote to the Applicant as follows:

- Letter dated 23 October 2009 bearing reference ADW, stating: "This is now the third time we have written to you pointing out that we do not hold client money and do not need to file an Accountants Report."

- Letter dated 15 November 2009 bearing reference ADW, stating: "As previously pointed out in every return made by this firm, we do not hold client monies..."

15. The First Respondent completed the Applicant's standard Form RF1 (Application to Renew Practising Certificate) for 2009-2010. Form RF1 is signed by the First Respondent and dated 23 October 2009. The signature page (RF1 16) states:

> "The SRA requires a managing partner or the principal of each firm to declare compliance with the rules that govern practice. Knowingly or recklessly giving the SRA information which is false or misleading in a material particular or failure to inform the SRA of materially significant information of which the firm is aware may lead to disciplinary action by the SRA."

Section 2.1 is headed:

> "Solicitors: Please give dates of all changes under "Additional information".

Please make sure that the pre-printed information about client money is correct."

There then followed a paragraph to be completed for each Respondent containing certain pre-printed information. Question A1 asked: "Did the solicitor hold or receive client money in the 12 months to 31 October 2009?" The form was pre-printed with a cross in the "No" box for each Respondent. Question A2 asked: "Did the solicitor hold or receive client money through a LLP or company in the 12 months to 31 October 2009?" The "Yes" and "No" boxes required completion for both Respondents. In each case a cross appeared to have been inserted in the "Yes" box, and then struck out in manuscript and a manuscript cross placed in the "No" box instead, answering "No" to the question. The same process had been applied to Question B1: "Is the solicitor required to deliver an accountant's report in respect of practise in England and Wales in the 12 months to 31 October 2009."

16. Print-outs from the Firm's Barclays Bank plc "Clients Premium Account" for the period 22 December 2008 to 7 December 2009 were exhibited to the 18 December 2009 report. The print-outs revealed that money had been held in that account during the 12 months to 31 October 2009.

17. On 22 October 2009, the day before Form RF1 was signed by the First Respondent, the sum of £20,373.17 was transferred from the "Client Premium Account" leaving a nil balance in that account.

18. It was alleged against the First Respondent alone that he contacted a third party, Mrs. M., directly in breach of Rule 10.04 of the SCC 2007. On 18 February 2009 Mrs M. instructed a solicitor at Russell Jones & Walker to act on her behalf in relation to a potential class action arising out of a financial dispute. She had had some previous dealings with the First Respondent in relation to the dispute. On 10 March 2009 Mrs

M. copied the First Respondent into an email addressed to a number of individuals. That email stated that Russell Jones & Walker had been instructed by Mrs M. to act on her behalf. In the email she sent to the First Respondent Mrs M. suggested that he contact Russell Jones & Walker. On 11 March 2009 the First Respondent emailed Mrs M. direct in response. Mrs M. repeated her request that he contact her solicitor. The First Respondent again replied substantively direct to Mrs M. Russell Jones & Walker confirmed by letter to the Applicant dated 22 May 2009 that they had been instructed by Mrs M. on 18 February 2009 and that the First Respondent had been aware that they were so instructed since 19 February 2009.

19. In the Rule 7 Statement it was alleged against both Respondents that they failed to comply with an order to pay compensation made by an Adjudicator of the SRA in breach of Rule 1.02 and 1.06 of the SCC 2007. As set out in paragraphs 9 and 10 above, a number of complaints were made to the Legal Complaints Service by solicitors on behalf of their client Mrs. H in respect of inadequate professional services by the Firm, including a failure to comply with Orders of the Costs Judge, Master Gordon-Saker, dated 16 July 2009 and 4 August 2009. The Legal Complaints Service wrote to the First Respondent in his capacity as Rule 2 partner on 22 January 2009 and 29 October 2009 giving him an opportunity to comment on the complaints made. An Adjudicator of the Applicant considered the matter on 18 May 2010. The Respondents were directed to pay Mrs H. general compensation of £4,000 and compensation for legal costs of £3,490.08, and to account to her for the overpayment of costs of £52,867.05 plus interest arising out of the Order of Master Gordon-Saker dated 9 September 2009. Payment was to be made within seven days. The Respondents were informed of the Adjudicator's decision by letter dated 24 May 2010. The Respondents failed to comply with the Adjudicator's direction. On 4 June 2010 they were informed that the matter had been referred to the Applicant for further action. As at the date of the Tribunal hearing the Adjudicator's decision had not been complied with.

20. It was also alleged that the Respondents acted in a situation where there was a conflict of interest, or a significant risk of a conflict of interest, between clients of the firm in breach of Rule 3.01 and Rule 4.03. The First Respondent acted for Mr A. and Mr P. in respect of a claim by the Financial Services Authority. In parallel, a restraint order was made at the Crown Court freezing the assets of those individuals and those of their co-defendant. The assets frozen included monies invested with the co-defendant and his company by the complainant, Ms C. and others, through her investment vehicle, IPF. Subsequently, in early 2009, three of the investors in IPF issued proceedings against the complainant for the return of their monies. The complainant was represented by the First Respondent in those matters. On 28 October 2009 the Second Respondent issued a Statutory Demand against the complainant on behalf of another investor, Mr L. The First Respondent was invited to provide an explanation by letter from the Applicant dated 10 August 2010, and again on 31 August 2010, but no reply was received. Correspondence was also sent to the Second Respondent on the same dates, but the address used was no longer occupied by him.

Witnesses

21. No oral evidence was called on behalf of the Applicant.

Submissions

22. Mr Ryan relied upon the contents of the Rule 5 and Rule 7 Statements, Exhibits IPR 1 and 2, and the two Notices to Admit Evidence.

23. He submitted that the tone of the Respondents' correspondence was reflective of their attitude and approach to the Applicant throughout the proceedings. Allegation (i) was capable of proof on the papers, namely the contents of the correspondence and the Respondents' complete failure to engage with the Applicant. The Respondents had provided no explanation for their conduct.

24. The failure to lodge Accountants Reports for the years ended 31 May 2008 and 31 May 2009 was also evidenced on the papers, and again demonstrated the Respondents' refusal to engage with the Applicant.

25. The allegations relating to the overcharging of Mrs H. and the failure to comply with court orders and the order of the Applicant's Adjudicator were very serious indeed. The conduct of the Respondents in grossly overcharging a client and non-compliance with court orders damaged the good name of the profession with the general public and was disgraceful.

26. Mr Ryan submitted that it was clear on the papers, namely the correspondence exhibited to the Report dated 18 December 2009, that both Respondents had acted in a situation where there was a conflict of interest, or a significant risk of a conflict of interest, between clients of the firm in breach of Rule 3.01 and Rule 4.03.

27. The allegation against the First Respondent that he misled the SRA as to whether the Firm held client monies, and that he did so either dishonestly or with gross recklessness, was extremely serious. The transfer of funds out of the "Client Premium Account" on 22 October 2009 was particularly significant. The transfer was completed the day before Form RF1 was signed by the First Respondent. By signing the form he was informing the Applicant on behalf of himself and the Second Respondent that the Firm had held no client monies in the twelve months to 31 October 2009. Mr Ryan submitted that this was untrue as the Firm had held client money as evidenced by the entries in the "Client Premium Account". He submitted that Form RF1 had been signed by the First Respondent with the intention of misleading the Applicant in an attempt to avoid the requirement to submit an Accountants Report. This was a very serious allegation which could be proved on the papers.

28. Mr Ryan referred the Tribunal to the decision of the House of Lords in the case of Twinsectra Ltd -v- Yardley & Others [2002] UKHL 12. He relied upon the combined test for dishonesty set out in detail in that decision.

29. In support of the allegation that the First Respondent had contacted a third Party

directly in breach of Rule 10.04 of SCC 2007, Mr Ryan submitted that the emails exhibited to the report dated 18 December 2009 established as a fact that the third party was contacted direct by the First Respondent when he had been informed that the third party was being represented by other solicitors.

30. The Respondents had failed to engage with the Applicant or with the proceedings before the Tribunal. They had provided no explanations for their conduct. They had served no counter-notice to the Notices to Admit Evidence and Documents dated 13 August 2010 and 20 September 2010 respectively.

The Tribunal's Findings as to Fact and Law

31. The Tribunal had heard submissions by Mr Ryan on behalf of the Applicant, and read the Rule 5 Statement supported by Exhibit IPR/1, the Rule 7 Statement supported by Exhibit IPR/2 and the Notices to Admit Evidence and Documents dated 13 August 2010 and 20 September 2010 respectively. The Tribunal also read the various documents submitted by the Respondents. The Tribunal did not have the opportunity to hear oral evidence or submissions from the Respondents as they had chosen not to attend the hearing and were not represented. They had not admitted any of the allegations. It was therefore for the Applicant to prove its case against the Respondents to the high standard required.

32. The Tribunal was satisfied that it had jurisdiction to determine the allegations against the Respondents in their absence. The Respondents had received procedural directions from the Tribunal in Memoranda dated 30 July 2010 and 7 October 2010. The Memorandum of Directions dated 30 July 2010 provided for the Respondents to serve witness statements by 11 August 2010 confirming which allegations were admitted and which were denied, and which facts were admitted and which facts were denied, together with the basis of any such denials. The Respondents were also required to serve skeleton arguments detailing any legal arguments that they wished to advance by 8 September 2010. The Respondents had not complied with any part of those directions.

33. The Memorandum dated 7 October 2010, following a hearing on 30 September 2010 which the Respondents failed to attend, contained additional directions. It was recorded that the Respondents had not complied with the previous directions order. The substantive hearing listed for 14 October 2010 was ordered to proceed on that day.

34. This Tribunal was satisfied that the Respondents had been properly served with the Memoranda and notice of the substantive hearing date. The Respondents had been given every opportunity to present their case, both in writing and by means of oral evidence and submissions. Instead the Respondents had absented themselves without explanation. Their failure to engage with the proceedings was consistent with their alleged repeated failure to engage with the Applicant and its Investigation Officers. In spite of having been given every opportunity to explain their conduct to the Tribunal they had steadfastly refused to do so. The Tribunal therefore proceeded to determine the allegations on the basis of the documents before it and oral submissions on behalf of the Applicant.

35. Both Respondents faced serious allegations. It was also alleged against the First Respondent that he had behaved dishonestly, or alternatively was grossly reckless, in his dealings with the Applicant in that he deliberately misled the Applicant as to whether the Firm held client money.

36. The Tribunal found all facts proved on the papers, namely the Rule 5 and Rule 7 Statements, the Exhibits IPR/1 and IPR/2 and the documents attached to the Notices.

37. It was required of solicitors that they should discharge their professional duties with integrity, probity and complete trustworthiness. It was the duty of the Tribunal 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 and to sustain public confidence in the integrity of the profession. The public was entitled to expect that his or her solicitor was a person whose trustworthiness was not, and never had been, seriously in question.

Allegations (i) and (ii)

38. The Tribunal found it substantiated on the facts that both Respondents failed to deal with the investigation officers of the SRA in an open, prompt and co-operative way in breach of Rule 20.05 and 20.08 of the Solicitors Code of Conduct 2007. The Tribunal also found that they failed to lodge Accountants Reports for the years ended 31 May 2008 and 31 May 2009 by the due dates of 30 November 2008 and 30 November 2009 respectively.

39. The Tribunal found that the Respondents were incapable of accepting any form of professional regulation. Their correspondence left the Tribunal with the strong impression that they held the SRA, their professional colleagues and their clients in contempt. It was essential for the protection of the public that members of the solicitors' profession were regulated, and that solicitors accepted that regulation with good grace. The rules concerning the filing of Accountants Reports and co-operation with the SRA in relation to investigations were fundamental to the regulatory process. Accountants Reports provided the SRA with a snapshot of the state of any solicitors' practice during the preceding twelve months. This was an essential tool enabling the SRA to assess risk to the public in a fair and proper manner. If the SRA chose to make further enquiries and investigations, it was incumbent upon solicitors to co-operate, and not to be obstructive. The level of regulation imposed by the SRA was essential if the public was to be protected and confidence in the solicitors' profession maintained.

Allegations (iii) and (iv)

40. The Tribunal found it substantiated on the facts that the Respondents did overcharge a client, namely Mrs H., in breach of Rule 1.02 and 1.06 of the SCC 2007, and that they failed to comply promptly or at all with the Court Orders dated 6 July 2009, 4 August 2009 and 9 September 2009.

41. These allegations were very serious. The Respondents' bill of costs, for which they were both responsible as fee earners who carried out work for Mrs H., was assessed in the sum of £24,271.97 rather than the amount claimed of £147,977.15. The

Respondents were ordered to repay to Mrs H. the sum of £52,867.05 by 4 pm on 23 September 2009 together with interest from 9 March 2009 (the date on which the original invoice had been submitted) until the date of payment. Mrs H. had paid the very large amount of £77,139.02 on account. The bill was reduced on assessment by £123,705.18, or put another way by close to 84%. The Respondents were awarded only 16.4% of their original claim for costs.

42. The sums due to Mrs H. had yet to be repaid. The Respondents had therefore compounded an already disgraceful situation by failing to comply with the High Court Costs Orders. Such behaviour was entirely consistent with the pattern of their dealings with third parties, and provided further evidence of the contempt in which the Respondents held their positions as Officers of the Court, with all the responsibilities that such positions entailed.

Allegation (v)

43. The Tribunal found it substantiated on the facts that the First Respondent had deliberately misled the SRA as to whether his Firm held client monies. The Tribunal had no difficulty in finding that the print-outs of the transactions within the Firm's Barclays Bank plc "Client Premium Account" demonstrated that the Firm held client money in that account up to and including 22 October 2009. The Tribunal found as a fact that the sum of £20,373.17 was transferred out of that client account on 22 October 2009. On 23 October 2009 the First Respondent signed Form RF1, an application for practising certificates on behalf of himself and the Second Respondent. It was printed on page 16 of the form, signed by the First Respondent, that the information to be provided must not be false or misleading in a material particular. The statement at the top of page 2 of the form drew attention to the need to make sure that the pre-printed information about client money was correct. The form as signed by the First Respondent stated that he and the Second Respondent did not hold or receive client money through a LLP or company (or indeed directly) in the twelve months to 31 October 2009. The Tribunal found this statement to be false and deliberately misleading as evidenced by the bank account entries.

44. The Tribunal noted that Form RF1 Section 2.1, Parts 1 and 2, Question A2 had at some time been completed in such a way as to state that the Respondents did hold or receive client money through a LLP or company in the twelve months to 31 October 2009. The entries in these sections had been altered before the form was submitted to the SRA to state that no client money was so held or received.

45. The First Respondent wrote to the Applicant on at least two occasions (23 October 2009 and 15 November 2009) stating that the Firm had not held client monies and therefore did not have to submit an Accountants Report. The Tribunal found that both these statements were false and deliberately misleading.

46. The Tribunal was required to determine whether the First Respondent had behaved dishonestly or was grossly reckless in his dealings with the Applicant in respect of this allegation. The Applicant had referred the Tribunal to the decision in the case of Twinsectra Ltd -v- Yardley and Others [2002] UKHL 12.

47. The Tribunal carefully considered all the documentary evidence relevant to this allegation as well as the submissions of the Applicant. The Tribunal found that, in signing Form RF1 and submitting it to the SRA, when included within that form was the false and deliberately misleading statement that the Respondents had not held or received client money in the twelve months to 31 October 2009, the First Respondent's conduct was dishonest by the standards of reasonable and honest people. The First Respondent chose to provide no explanation for his conduct. Indeed, such explanation as he did provide in correspondence was limited to repeated assertions that the Firm did not hold client money during the relevant period. The Tribunal had found that those assertions were also false and deliberately misleading. The Tribunal was satisfied so that it was sure that the First Respondent did not honestly believe that the Firm had held no client money in the twelve months to 31 October 2009. The Tribunal found that the First Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people. He attempted to hide his dishonesty by repeatedly denying that client money had been held. The objective and subjective elements of the combined test set out in the case of Twinsectra Ltd were therefore satisfied. The Tribunal found that the First Respondent had behaved dishonestly.

48. If the Tribunal had found that the First Respondent had not been dishonest, it would have found that the First Respondent was grossly reckless in his dealings with the SRA.

Allegation (vi)

49. The Tribunal found it substantiated on the facts that the First Respondent contacted a third party directly in breach of Rule 10.04 of SCC 2007. There was ample evidence on the documents demonstrating that the First Respondent did contact Mrs M. on 10 and 11 March 2009 when he had been instructed by Mrs M. to contact her solicitor at Russell Jones & Walker.

Allegation (vii)

50. The Tribunal found it substantiated on the facts that the Respondents had failed to comply with the Order of the SRA Adjudicator dated 18 May 2010. The Respondents were required to pay to Mrs H. the total sum of £60, 357.13 plus interest within seven days of 24 May 2010, being the date of the letter sending the decision to them. The Respondents had not complied with the Order. No explanation for their conduct had been forthcoming.

Allegation (viii)

51. The Tribunal found on the facts that the Respondents had acted in a situation where there was a conflict of interest, or a significant risk of a conflict of interest, between clients of the firm in breach of Rule 3.01 and Rule 4.03. The facts as set out in the Rule 7 Statement were amply substantiated by the documentary evidence in support extracted from the cases involving the various parties. No explanation for their conduct had been received from the Respondents.

52. The Tribunal therefore found the allegations against the Respondents, jointly and

the First Respondent alone, proved. The Tribunal also found that the First Respondent had behaved dishonestly in respect of allegation (v).

Mitigation

53. There had been no previous findings of the Tribunal against either Respondent.

54. The Respondents had not provided the Tribunal with any written submissions in mitigation and were not present to make oral submissions.

Costs

55. The Applicant sought costs in the sum of £39,351.32.

Sanction

56. The Tribunal considered the well-established general principles laid down by the Court of Appeal in Bolton -v- Law Society [1994] 1 WLR 512 CA. It had found all allegations against the Respondents proved, and in the case of the First Respondent he had been found to have behaved dishonestly. The behaviour of both Respondents towards their regulatory body, their clients, and their professional colleagues had been disgraceful. The Respondents had demonstrated a blatant disregard for the Solicitors' Code of Conduct, which existed to protect the public and the good name of the profession. The Respondents' conduct reflected badly on the solicitors' profession and was unacceptable.

57. Applying the principles set out in Bolton, any solicitor who was shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanction. The most serious lapse from the high standard required would involve proven dishonesty. In such cases the Tribunal had almost invariably ordered that the solicitor be struck off the Roll of Solicitors.

58. In this case, neither Respondent had demonstrated any remorse for his behaviour. The fundamental purpose of the sanction imposed was 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. A member of the public who consulted a solicitor was entitled to expect that the solicitor was a person whose trustworthiness was not, and never had been, seriously in question. The reputation of the profession was more important than the fortunes of any individual member. Membership of a profession brought many benefits, but there was a price to pay for those benefits, and that price would be exacted if the required high standard of behaviour was not maintained.

59. The Tribunal had found that the First Respondent had behaved dishonestly in respect of one allegation, and had found 7 other allegations against him proved. The Tribunal had no doubt that the correct sanction was to strike the First Respondent off the Roll of Solicitors. He was not fit to practise as a solicitor, and his removal from the Roll was necessary for the protection of the public and the reputation of the profession.

60. When considering the conduct of the Second Respondent, the Tribunal recognised that

there had been no allegation of dishonesty against him. However, he faced six serious allegations, all of which the Tribunal found proved. The Second Respondent, jointly with the First Respondent, was found by the Tribunal to have overcharged Mrs H. by almost 84%. The Second Respondent, jointly with the First Respondent, then failed to comply with the Order of the Costs Judge to repay Mrs H. Both Respondents then further compounded the matter by failing to comply with the decision of the SRA Adjudicator.

61. Lapses from the required high standard may take different forms and be of varying degrees. The conduct of the Second Respondent had fallen well below the required high standards of integrity, probity and trustworthiness. His lapses were very serious indeed in a member of a profession whose reputation depended upon trust. A striking off order would not necessarily follow where there was no proven allegation of dishonesty, but it may follow. The decision whether to strike off would often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. The Second Respondent was fully implicated in the joint allegation that the Respondents substantially overcharged a client and that they failed to comply with Court and Adjudication Orders. The Second Respondent had been a key participant in the events leading to the allegation that the Respondents had acted for clients where there was a conflict of interest. The Second Respondent had provided no explanation or shown any remorse for his conduct.

62. In all the circumstances the Tribunal did not consider that it was appropriate merely to suspend the Second Respondent, either for a specified period of time or indefinitely. The Tribunal did not consider that suspension was an appropriate penalty on the body of evidence before it. The Second Respondent had demonstrated by his conduct jointly with the First Respondent that he was not fit to practise as a solicitor, and his removal from the Roll was necessary for the protection of the public and the reputation of the profession.

63. The Tribunal therefore ordered that both the First and Second Respondent be struck off the Roll of Solicitors.

64. The Tribunal further ordered that the Respondents should bear joint and several liability for costs in the fixed sum of £37,000, slightly less than the amount claimed by the Applicant to reflect the fact that the hearing had been shorter than anticipated.

Orders

65. The Tribunal Ordered that the First Respondent, Alexander David Winterton, of 66 Stanton House, 620 Rotherhithe Street, London, SE16 5DJ, 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 £37,000, such costs to be joint and several between the Respondents.

66. The Tribunal Ordered that the Second Respondent, Michael Miller, of 66 Stanton House, 620 Rotherhithe Street, London, SE16 5DJ, 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 £37,000, such costs to be joint and several

between the Respondents.

67. The Tribunal Ordered that the Direction of the Adjudicator of the Solicitors Regulation Authority dated 18 May 2010, made for the repayment of money pursuant to Paragraph 2(1)(d) of Schedule 1A of the Solicitors Act 1974 and the payment of compensation pursuant to Paragraph 2(1)(c) of Schedule 1A of the Solicitors Act 1974, be enforced as if it were contained in an Order made by the High Court pursuant to Paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

Dated this 29th day of November 2010
On behalf of the Tribunal

J C Chesterton
Chairman