

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PETER HARRY WILLIAM EDWARD LAZARUS, solicitor
and WYN ROSSER, solicitor's clerk, (The Respondents)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr K W Duncan (in the chair)
Mr D Potts
Mrs V Murray-Chandra

Date of Hearing: 15th June 2010

FINDINGS & DECISION

Appearances

Mr George Marriott of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL for the Applicant.

The First Respondent, Mr Peter Harry William Edward Lazarus did not attend and was not represented.

Mr Christopher Childs of MLM Cartwright Solicitors, Pendragon House, Fitzalan Court, Fitzalan Road, Cardiff, CF24 OBA for the Second Respondent, Mr Wyn Rosser. The matter against Mr Rosser was dealt with on 16th March 2010 save in relation to the question of costs.

The application was dated 3rd July 2009.

Allegations

The allegations against the First Respondent, Peter Harry William Edward Lazarus were that he:-

1. Acted in circumstances of a conflict of interests.
2. [Withdrawn]
3. Failed to act in the best interests of his client, contrary to Rule 1(c) Solicitors Practice Rules 1990 ("SPR") and Rule 1.04 Solicitors Code of Conduct 2007 ("SCC").

4. Failed to provide client care and costs' information to clients, contrary to Rule 15 SPR and Rules 2.01, 2.02 and 2.03 SCC.
5. Failed to adequately supervise or direct an unadmitted member of staff, contrary to Rule 13 SPR and Rule 5.03 SCC.
6. Failed to comply with an Order served upon him pursuant to the terms of Section 44B Solicitors Act 1974 (as amended) contrary to Rule 20.03 SCC.

By a supplementary statement dated 8th December 2009 the further allegations against the First Respondent, Peter Harry William Edward Lazarus were that he:-

7. Abandoned and failed to make the necessary arrangements for the closure of his practice, contrary to Rules 1.04 and 1.06 Solicitors Code of Conduct 2007 SCC.
8. Failed to maintain his books of account in compliance with Solicitors Accounts Rules 1998 ("SAR"), contrary to Rule 6 SAR.
9. Held office money in client bank account, contrary to Rule 15(2) SAR.
10. Deliberately breached SAR and thereby withdrew monies from his failing practice which would otherwise have been available to commercial creditors including Counsel, contrary to Rules 1.02 and 1.06 SCC. This allegation was put on the basis of dishonesty.
11. Provided unadmitted members of staff with signed but otherwise blank client bank account cheques, contrary to Rule 23(1) SAR and Rules 1.04, 1.05 and 1.06 SCC.
12. Failed to submit completed Accountants Reports, contrary to Rule 35 SAR.
13. Failed to pay professional disbursements, contrary to Rules 1(a), 1(d) and 1(e) SPR and Rules 1.02 and 1.06 SCC.

The Tribunal had before it a letter dated 14th June 2010 from the First Respondent confirming he was currently in Dubai and was unable to attend before the Tribunal due to his severe financial position as he did not have sufficient funds to fly back to the UK or pay for representation. He indicated he was devastated that the allegations had been brought against him and distressed that he was not in a financial position to defend the allegations and attend in person. He referred to his statements as his evidence and asked the Tribunal to take all matters into consideration in his absence.

The Applicant reminded the Tribunal that this case had previously been adjourned on 16th March 2010 at The First Respondent's request and the Tribunal had made a number of directions, one of which was for the First Respondent to file a witness statement. The First Respondent had served a witness statement electronically on 7th June 2010 and had not mentioned in that statement that he would not be attending before the Tribunal today. Furthermore, there was the question of costs in relation to the Second Respondent which was still to be dealt with and which had been reserved to today.

The Applicant pointed out the Tribunal's own Practice Note on Adjournments stated that "inability to secure representation and financial difficulties were not sufficient reasons to adjourn".

The Tribunal had considered carefully the documents before it and the submissions of the Applicant. This matter had already been adjourned once at the First Respondent's request and, indeed, had specifically been re-listed with a time estimate of two days at the First Respondent's request. The First Respondent had not specifically asked for an adjournment in his letter of 14th June 2010 and, indeed, it appeared his letter had been written on the assumption that the Tribunal would proceed in his absence as he had referred the Tribunal to his two witness statements, both dated 12th March 2010.

Furthermore, the Tribunal's Practice Note on Adjournments dated 4th October 2002 made it clear that the inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing, or financial reasons for the non attendance of the Respondent were not generally to be regarded as providing justification for an adjournment. Accordingly, the Tribunal was satisfied that the matter should proceed in the First Respondent's absence.

Factual Background

1. The First Respondent, born in 1966, was admitted as a solicitor on 15th October 1992. His name remained on the Roll. At the material time the First Respondent practised on his own account under the style of Peter Lazarus & Co at 28 Llandeilo Road, Cross Hands, Llanelli, Dyfed, SA14 6NA. The First Respondent was not currently practising and did not hold a practising certificate. His practice was intervened on 1st October 2009.

Allegations 1, 3, 4 and 5

2. G and J were longstanding clients of Mr Rosser the Second Respondent, who at the material time was employed by the First Respondent.
3. In August 2005, the Second Respondent was instructed to act for G and J through their company, GDL, in relation to the purchase of land which G had discovered he might be able to develop. The land was to be purchased from G's mother. The land was situated to the rear of his mother's home ("No 66") under a separate Land Registry title. G and J owned and lived in the neighbouring property ("No 68") which they had had valued at £140,000.
4. The land was held in trust following the death of G's father whose will was not proved following his death and in respect of whose estate letters of administration had not been extracted. The executors and trustees of the will were G, his mother, and G's brother.
5. At the time of instruction G's mother and G's brother agreed to the trust being broken in order for the land to be conveyed to GDL. GDL intended to demolish the existing property at No 68 and to redevelop the land, which had the benefit of planning consent, together with the space previously occupied by No 68 (referred to as "the site").

6. G's mother instructed R Solicitors to act for her in relation to the transaction. G and J instructed the Second Respondent after being advised that they needed to be independently advised. Some details about the transaction had not been agreed.
7. At his initial meeting with G and J on 27th July 2005 the Second Respondent noted that the site was very saleable and made a record in his file note that he would "need to mention this matter to N" (a third party and one of "lots of people" whom the Second Respondent considered would be interested in his new clients' instructions).
8. Following a row between G and J and G's brother on 3rd August 2005, the Second Respondent decided on 4th August that he could no longer act for G's brother. Accordingly G's brother instructed another firm, JFD, to represent him.
9. A client care Terms of Engagement letter was sent to G and J on 8th September 2005 stating a rate of £130 per hour but giving no estimate of the total cost. No client care letter was sent to GDL or referred to GDL.
10. In November 2005 G and J decided to purchase the land from G's mother for £100,000 and to develop the site themselves. The Second Respondent was alerted to the Capital Gains Tax implications for G's mother as trustee of such a sale by the trust, in his conversation with her solicitors on 29th January 2006 but dismissed this as a reason to delay the transaction as it was not a matter for G and J to worry about.
11. Due to a restriction in the title it was necessary to appoint an additional trustee to convey the legal estate and to give a valid receipt for the completion monies. The Second Respondent prepared the transfer documents and sent them to G's mother's solicitors on 7th April 2006.
12. On 27th March 2006 the Second Respondent noted that he had not estimated the firm's costs to G and J but that he "expect[ed] it to be in the region of £1,500 plus VAT". On 10th April 2006 the Second Respondent met with G and J and told them his bill was "likely to be £2,000 plus VAT" and that he intended to "take it out of the mortgage".
13. The land was independently valued for G's mother by JF Limited instructed by her solicitors. The valuation was of a part of one title and of the whole of another title and took into consideration planning consent for the development of the site. The planning consent required construction of a new access road through No 68, without which the land could not be developed. By the time of the valuation, G and J had demolished their property and were living on site in a caravan. The Second Respondent did not dissuade G and J from demolishing their house, despite knowing that to do so was not in their best interests because the property remained subject to an outstanding mortgage.
14. Sold for development purposes together with access over No 68 the land was valued at £100,000. Without the benefit of this access the land could not be developed and was valued at only £12,000. Because the full valuation of the land could not be realised for development purposes without the coincidental sale of No 68, the valuer noted that No 68 represented a ransom strip and attributed an open market value of £100,000 for G's mother's interest in the land and of £150,000 for G's interest in No 68. Accordingly the open market value of the site as a whole with planning

permission was considered to be £250,000, being the total value of both sets of interests. In apportioning the total value of the site in this way, the valuer attributed two-fifths of the total value of the site to G's mother (i.e. the land) and three-fifths of the total value of the site to G (i.e. No 68) on account of the ransom strip.

Accordingly part of the development value of the land would be payable to G and J in recognition that the development of the trust's land could not go ahead without their cooperation.

15. G and J were anxious to make progress to complete the transaction to enable development. As completion seemed imminent, G's mother's solicitors raised a legal issue with the mechanics of the transfer which related to G's brother's interest in the land. The Second Respondent advised G and J to encourage G's mother to instruct another solicitor on the basis that he thought there was nothing to stop G's mother from selling the land "provided she keeps the money on trust".
16. The Second Respondent sought Counsel's Opinion upon the matter on behalf of GDL. Counsel advised that the vendors should be all of the executors of the will including his brother and that G's mother would need to be a vendor in her capacity both as the holder of her own beneficial interest and also in her capacity as executor and trustee of the estate's interest. G's mother's solicitors wrote to the Second Respondent on 8th May 2006 in terms that they were in agreement with Counsel but the Second Respondent rejected Counsel's Opinion as bad advice. He spoke at length to another firm of solicitors, TRS about the matter and faxed confidential documents to them with a view to them representing G's mother.
17. On 24th May 2006 G's mother's previous solicitors ceased to act and the Second Respondent wrote to TRS and asked them to contact G's mother and secure her instruction on 26th May 2006 stressing the urgency to complete quickly.
18. On 20th June 2006 the Second Respondent learned from J that disagreements had broken out between the trustees and potentially litigious correspondence was being exchanged. He was aware that the trustees were no longer in agreement.
19. In July 2006 the Second Respondent noted that the fees for the time that he had spent on the matter were likely to be approaching £5,000 to £6,000, although he stated that he "hate[d] to think how much is on this file altogether".
20. On 28th July 2006 J told the Second Respondent that they would be unable to afford to pay the trust £100,000. Under the terms of the Will G's mother could only sell the land in exchange for fair market value to be held on trust otherwise she would be in breach of her duties as a trustee and executor under the Will.
21. In August 2006 the Second Respondent learned through J that TRS had sought opinion from Counsel on whether the matter could proceed. He noted in August 2006 that he needed to secure a covenant and an easement from G's mother in favour of G and J to facilitate full access to the development and that he would have to notify TRS that G and J would not be able to give a first charge over the land. He sent the relevant documents to TRS but no progress was made and completion did not go ahead in October 2006. TRS did not complete the transfer for G's mother as they had concerns with the transaction.

22. The Second Respondent provided details of the proposed development to another client, ERW. The Second Respondent later told J that ERW may be interested in purchasing the land for £450,000 and that he would be unable to represent both sides of the transaction.
23. On 18th December 2006 an invoice dated 24th April 2006 was issued to GDL in the amount of £4,500 plus VAT. The Second Respondent sent the new invoice to G and J and stated that he "could easily justify a bill of £5,500 plus VAT".
24. The Second Respondent noted that "G was angry at the size of his bill. I (the Second Respondent) snapped at J and told her that.... I could probably justify at least six [thousand pounds]" whereupon J apologised.
25. On 8th February 2007 G and J instructed the Second Respondent to sell the site including the land which belonged to the trust and was not theirs to sell. They instructed BJP to advertise the property for sale. However the Second Respondent had already disclosed information about the site to a third party, EC Limited. They offered to purchase the site for £400,000 on 13th March 2007 from G and J.
26. In an extensive file note dated 13th March 2007 recording his discussions with J following EC Limited's offer, the Second Respondent noted that the transaction was now a "genuine cash sale" in respect of which G's mother would be paid £100,000 which would go "into the estate to be placed on trust for the two boys" (i.e. G and G's brother). The Second Respondent recorded that G's brother would not be told of the transaction until it had taken place.
27. In a file note dated 16th March 2007 recording a conversation that the Second Respondent had with TRS, the Second Respondent wrote that there was "no reason" why he was unable to "act for everyone, including G's mother, on the proviso that £50,000 changes hand (sic) and [is] placed in trust for G's brother..... which is his share". The Second Respondent appointed the First Respondent, Mr Lazarus, as additional trustee to convey the legal estate in the land to EC Limited in order to conceal the transaction from G's brother. The firm represented G's mother from or around 15th March 2007. No retainer letter was delivered by the firm.
28. On 14th March 2007 the Second Respondent met with J and gave advice concerning the division of the purchase price for the site between the land and No 68. The Second Respondent noted that "the figure we can put in there..... is £100,000 for the whole of the land. This will mean that No 68 is worth £300,000 and as it is their main residence there is no question of capital gains tax". The Second Respondent stated that G and J's property had been "valued at £300,000" when no such separate valuation was obtained.
29. No new valuation was obtained in 2007 when EC Limited agreed to purchase the site from G and J for £400,000, a substantial uplift upon the 2006 valuation. The sale to EC Limited also included a further part of G's mother's land, which had not been included in the 2006 valuation. The Second Respondent apportioned the whole of the uplift over the original valuation to G and J's interest which leapt from £150,000 to £300,000. The Second Respondent did not consider that the increased sale price in any way altered the trust's interest, which remained unchanged from the original valuation at £100,000, notwithstanding that it was 12 months old and did not take into

consideration the full extent of all of the land which was transferred from G's mother even though he knew that the transfer included part of her garden.

30. The Second Respondent determined that the proceeds should be split between G and J and G's mother in this way because G and J sought to engineer the transaction in such a way that they avoided any Capital Gains Tax liability. By buying and then selling on the land at the £100,000 price quoted on the 2006 valuation and attributing the rest of the sale price to No 68 (being their principal residence) G and J were able to maximise their profit from the transaction and avoid any CGT liability.
31. Conversely, the trust's sale of the land attracted not only a 2006 sale price rather than 2007 market value but also attracted a future CGT liability in respect of which G's mother was forced to set aside £20,000 to cover that potential liability. In a conversation with G's mother the Second Respondent dismissed G's mother's likely CGT "problem" as something for her (G's mother) to "face some time in the future". He preferred the interests of G and J over those of G's mother, and acted where their respective interests conflicted. The higher sale price was not disclosed to G's mother and she was not informed of the onward sale to EC Limited.
32. The First Respondent was appointed as an additional trustee in order that certain of the titles (being those which were subject to the Will) could be properly conveyed and the Second Respondent noted "I need to prepare a transfer from G's mother plus [the First Respondent] as the additional trustee to G and J] and they can send it all on to [EC Ltd] for £400,000 to give it all a good title. The transfer has already been drawn up, which can be amended". The Second Respondent then confirmed in a letter dated 15th March 2007 that the consideration for the land of £100,000 was to be split as to £50,000 to G's mother for her interest in the land and the other £50,000 to be held on trust by G's mother and by the First Respondent under the Will. In fact the proceeds of sale belonged to the trust.
33. On 19th March 2007 J instructed the Second Respondent that she and G would split their legal costs, including those that they already owed, with G's mother. The Second Respondent did not confirm this instruction with G's mother and she did not confirm her agreement to splitting the bills with G and J either orally or in writing.
34. The Second Respondent recorded on the file that "They..."i.e. G and J "...want the costs split 50/50 between themselves and G's mother. I am therefore going to let those two bills stand and do another bill to G's mother. I am not going to give a detailed summary on it - I am just going to do a straight bill". The Second Respondent sent an invoice to G's mother on 18th April 2007 in the sum of £5,000 plus VAT without any detailed summary.
35. BJP submitted an invoice in respect of their commission due having provided information about the site to EC Limited on 19th March 2007. The Second Respondent disputed the invoice claiming that he had introduced EC Limited to the purchase despite having placed the site on the open market through BJP and despite EC Limited having received details of the site from BJP. BJP agreed to reduce their commission on the sale to £4,000 plus VAT.
36. The Second Respondent met with G and J on 21st May at which time he obtained a further £1,175 of client funds "to enable [Mr Rosser] to pay the bill [from BJP] in the

sum of £4,000 plus VAT. At that time the client ledger was £53,310.51 in credit. However, he advised BJP on 22nd June that he had "only just cleared our client's cheque to enable your costs to be paid". He did not settle BJP's account until 26th June 2007.

37. Exchange and completion took place on 20th April 2007 when £400,000 was received on behalf of EC Limited and credited to G and J's ledger. No separate client ledger was maintained for G's mother. On the same date £57,229.93 was sent to Alliance & Leicester to redeem G and J's mortgage and a further £9,010.04 was sent to Barclays Bank to redeem a loan held by G and J. On 23rd April 2007 payment was made to G and J in the sum of £30,279.32.
38. G and J agreed to purchase another property in March 2007 using the profit anticipated in their sale of the site. The ledger showed that in total out of £400,000 received, by 24th April G and J had benefitted from £316,521.29 whereas even on the Second Respondent's figures their benefit was restricted to £300,000. Land Registry records showed that G and J purchased a property on 27th April 2007 for £192,500 and these monies were utilised on behalf of G and J prior to payment for the land being made to G's mother or to G's brother.
39. The completion statement prepared for G's mother recorded her "share" of the proceeds of sale of the site as being £100,000 rather than the sale price to G and J as being £100,000. Her completion statement showed deductions for half of the Second Respondent's charges, namely £5,000 plus VAT and for half the costs of BJP, which had been incurred on behalf of G and J leaving G's mother's proceeds of sale at £42,102.50. In December 2008 G's mother expected a tax liability of up to £20,000 in respect of the transaction further reducing her proceeds from the sale. £50,000 was recorded on her completion statement as being "monies on deposit" but no such sum was ever placed on deposit. The firm also charged his mother a telegraphic transfer fee of £25 when it was not incurred on her behalf. The payment of the balance of funds following the sale was paid by cheque, which the Second Respondent gave to J to deliver to G's mother rather than include the cheque with his letter to G's mother. 50% of BJP's fees and TRS's fees were deducted from G's mother without her agreement. There was no separate file or ledger for G's mother and the file contained no records of meetings or correspondence with G's mother.
40. Upon learning that the transaction had been completed without his prior knowledge, G's brother instructed TLP to raise concerns about the transaction in correspondence with the firm. G's mother telephoned the Second Respondent on 30th April 2007 and requested that the £50,000 held on trust for G's brother be released to him. The Second Respondent advised G's mother that he was only prepared to release the money if G's brother arranged to attend his offices and "sign a document acknowledging receipt of the £50,000 and confirming that he [had] no further claims on his father's estate and also confirming that he [had] taken independent legal advice in relation to the matter." The Second Respondent was not a trustee or adviser to the trustees of the estate.
41. On 11th May 2007 the Second Respondent received a telephone call from G's brother's solicitor, TLP, who had just learned that the sale had completed. The Second Respondent told TLP that "everyone had had independent advice" and that he [Mr Rosser] "was not paying out anything to G's brother until G's brother had taken

advice." The Second Respondent noted that he intended to "tell G's brother what was what and send him down to see his solicitor". This was despite the telephone call being with G's brother's solicitor.

42. Following the conversation, TLP wrote to the Second Respondent on 16th May expressing concern that G's mother's share in the site had been sold for 25% of the total sale price whilst she had not had separate legal representation, that the Second Respondent had acted in a clear conflict of interest in acting jointly for G and for G's mother and that no information had been provided to G's brother who was an executor and trustee under the Will.
43. The Second Respondent responded on 28th June 2007 and stated that the land was valued by BJP at £100,000 and transferred from G's mother to "our clients", [i.e. G and J] who "subsequently sold it on. That £100,000 is in trust". It was misleading for the Second Respondent to state that the land was valued at £100,000 in the context of the sale of the site for £400,000 as the valuation by BJP had been based upon an entirely different proposal and in any event did not take account of the increase in the size of the plot transferred to G and J or of the general house price inflation. No monies were placed in trust.
44. The Second Respondent's letter to TLP went on to state that G's mother "was independently advised in relation to this matter and it was only when she was happy with everything that this firm agreed to act for her as well as the remainder of her family in, what was in essence, a simple conveyancing transaction". The First Respondent later described the matter to the SRA as a "very difficult and protracted conveyancing matter". G's mother was not separately and independently represented throughout the transaction.
45. TLP replied on 23rd July 2007 indicating G's brother's acceptance of £25,000 plus interest "in full and final settlement of any claims he had against the land you sold under the estate of the late Mr G" provided that it was paid within seven days. On 11th September 2007, the Second Respondent requested his Practice Manager to calculate the interest that was due to G's brother and then sent payments to TLP more than ten weeks after payment was first offered on 28th June 2007.
46. The Land Registry raised a requisition on title on 16th May 2007 due to three of the title numbers within the site being in the ownership of G's late father and G's mother. The Second Respondent failed to inform EC Limited's solicitor that a requisition had been raised and they learned of the issue directly from the Land Registry. They wrote to the firm on 30th May requesting confirmation that the issue was being dealt with as a matter of urgency as they were unable to register the transfer to their client. The Second Respondent did not reply to them or to the Land Registry. On 12th June the Land Registry wrote a letter to the firm warning that the application would be cancelled on 19th June 2007 because it had not received a reply to its 16th May requisition. The firm requested an extension of time within which to respond which was granted until 25th June, although in the meantime a further requisition was raised due to an error on a deed that the Second Respondent had prepared. The Second Respondent sent the amended documents to the Land Registry on 21st June 2007.
47. On 31st August 2007 the Land Registry noted that part of the land remained registered to G's late father and G's mother and that no transfer had been received or was

pending in respect of it. EC Limited's solicitors expressed their dissatisfaction with the position in a fax of 5th October 2007 in which they noted that, despite the passage of time "all that has occurred so far is a transfer of some of the title from G's mother to G and J". The Second Respondent submitted the documents to the Land Registry on 23rd October 2007. Even then they were returned by the Land Registry as "substantially defective", those defects being set out in a more comprehensive manner on 5th November 2007. The Second Respondent responded to the Land Registry on 16th November which he copied to EC Limited's solicitors under cover of a letter in which he referred to the matter as "turning into one of 'pro-bono' work" and suggested that the work that he had done merited thanks from their client. Despite this, the Land Registry raised further requisitions on 21st November.

48. On 23rd November EC Limited's solicitors advised that the delay in registration was now such that it threatened their client's funding for the development of the land, which was likely to be withdrawn on 10th December. The Second Respondent resubmitted amended documentation to the Land Registry on 26th November and informed EC Limited's solicitors that he was "thoroughly fed up" with the matter.
49. The application was again rejected by the Land Registry and returned on 27th November, this time because the Second Respondent had failed to answer one of the Land Registry's questions. The Land Registry stated that the application could only be accepted once the Second Respondent had responded to all of the points raised in previous correspondence. The application was rejected for the last time on 4th December 2007 and was finally completed and the registration documents forwarded to EC Limited's solicitors on 10th December 2007.

Allegation 6

50. The SRA wrote to the First Respondent on 7th February 2008 requesting the original matter file under Section 44B Solicitors Act 1974 with a copy of the relevant client ledgers by 14th February 2007.
51. It was not until 14th March 2008, after the SRA sent a reminder letter that what was purported to be the full file was received. However the file contained gaps and did not include the valuation which was provided by the Second Respondent on 28th September 2008 from another "G file...from storage." There was no separate file or client ledger in the name of G. Indeed, the file contained no file notes, no records of meetings with and no correspondence with G throughout the transaction.
52. The First Respondent's explanations to the SRA in his various letters of 12th February 2008, 19th February 2008, 13th March 2008, 11th July 2008 and 29th September 2008 stated that:-
- He discussed the matter with the Second Respondent on an "almost weekly" basis.
 - He firmly believed that the Second Respondent "has done everything to safeguard the interests of all parties concerned."
 - The Second Respondent acted in clients' best interests throughout.

- He trusted the Second Respondent “implicitly to do everything possible to act properly on behalf of his clients.”
- He carried out regular file reviews.
- He was fully aware of the G matter and had full confidence in the Second Respondent’s ability to deal with the file.
- He opened all incoming post and was aware of faxes received.
- He accepted no client care documents had been provided to G.

Allegation 7

53. The SRA commenced an inspection of Peter Lazarus & Co (“the firm”) on 19th November 2008 and found that the office had been closed to the public and a notice displayed in the window indicated that the firm had ceased trading.
54. At the time of the inspection, the firm’s cashier and an assistant solicitor were the only staff in attendance at the firm’s offices. The First Respondent was not available as he was overseas and he had not been in attendance since 27th October 2008 when he indicated to his staff that he was travelling abroad on business and would be returning within a matter of days. He failed to return to the office on any of the days that he told staff that he would, causing the majority of the staff to leave the firm on account of the First Respondent’s continued absence. He told the SRA that he had no intention of returning to the firm.
55. The First Respondent stated that he had instructed another solicitor, Mr L, to undertake a controlled closure of the firm, with the client matter files being passed to other firms at the discretion of Mr L. Mr L told the SRA that he had been instructed to give financial and debt advice to the First Respondent and was liaising with the First Respondent’s insolvency practitioner regarding the closure but did not know that that First Respondent would not be returning to the firm.
56. The SRA discovered that the First Respondent had not given instructions concerning the long term storage of client files and had not made any adequate provision for the payment of storage fees. The First Respondent told the SRA that he was unaware of any problem concerning the storage of such files and stated that they were to be stored with a commercial storage company in Swansea. Subsequently he told the SRA that the files would be stored by Mr L at his firm’s offices. Mr L disputed this assertion.
57. The First Respondent denied that he abandoned his practice and told the SRA that he borrowed money from his parents to help pay his debt to HMRC, adding “had I any intention of abandoning the practice this payment would not have been made.”

Allegation 8

58. The firm’s books of account were not in compliance with SAR. The client account did not reconcile in breach of Rule 32(7) SAR. A list of client liabilities as at 31st

October 2008 totalled £150,103.21 whilst client bank account had a credit balance of £230,722.05, indicating a surplus in client bank account of £80,618.84.

Allegations 9 and 10

59. Office money was intentionally held in the firm's client bank account. Due to restrictions placed upon the office bank account by his bankers after the account exceeded the authorised overdraft limit by more than £15,000, the First Respondent instructed his cashier that the office bank account would no longer be routinely used and that the client account was to be used for all office transactions.
60. As a result, office money was deliberately held in and withdrawn from the client bank account with the full sanction and authority of the First Respondent, in contravention of Rule 15(2) SAR.
61. The SRA noted that a number of office payments were made from client bank account. These payments included the payment of staff wages on 31st October 2008 totalling £13,301.80, a number of payments to the First Respondent's father between 8th October and 17th October 2008 totalling £23,134.46, and payments to "quick-divorce.net" between 3rd October and 17th October 2008 totalling £3,700. Quick-divorce.netcom Limited was a separate business belonging to the First Respondent. The payments to his father related to the repayment of invested capital.
62. At the time of the transfers, the firm's office bank account was overdrawn substantially beyond the agreed overdraft limit. No further payments could be made from it, and the outstanding liabilities to HMRC and to Counsel in respect of unpaid disbursements could not be met from it.
63. Had the First Respondent not ordered office monies to be improperly held in and paid from the firm's client bank account, the funds which he transferred to his business and to his father would not have been available to him as they would have been set against the firm's overdraft and liabilities. The bank was, at the time, insisting that the unauthorised arrears were cleared immediately.

Allegation 11

64. The First Respondent signed 17 blank client account cheques and left them with his unadmitted accounts clerk while he was out of the country. He told the SRA that these were left with strict instructions as to their use while he was away from the office.

Allegation 12

65. The accountant's report for the year ending 30th March 2008 was due to be delivered to the SRA by 31st October 2008. The First Respondent wrote to the SRA and requested an extension of time until 30th November 2008 within which to provide the report. No report has been received. The First Respondent since told the SRA that he had not paid and no longer had the means to pay his accountant to complete the task. The accountant's report for the year ending 30th April 2009 was due to be delivered to the SRA by 31st October 2009 and this also remained outstanding.

Allegation 13

66. The SRA discovered that the firm was in considerable financial difficulty and there were a number of commercial creditors. A CCJ had also been entered against the firm by HMRC in the sum of £71,601.49 in relation to unpaid PAYE.
67. The firm's accounts clerk provided the SRA with 45 fee notes which had been received from barristers' chambers, all of which were in respect of unpaid professional disbursements, some of which were incurred as long ago as June 2001.
68. The Tribunal reviewed all the documents submitted by the Applicant which included:-
- Rule 5 Statement dated 3rd July 2009 together with all enclosures.
 - Supplementary Statement dated 8th December 2009 together with all enclosures.
 - Witness Statement of Richard Esney dated 8th April 2010.
 - Statement of Costs dated 14th June 2010.
69. The Tribunal reviewed all the documents submitted by the First Respondent which included:-
- Two witness statements of Peter Lazarus, both dated 12th March 2010.
 - Email from the First Respondent to Mr L dated 9th November 2008.
 - Letter from the First Respondent dated 14th June 2010.

Witnesses

70. The following persons gave oral evidence:-
- Richard Esney (Forensic Investigation Officer with the SRA).

Findings as to Fact and Law

71. The Tribunal had considered carefully all the documents and submissions made. The Tribunal found the First Respondent, as sole principal of the practice, was fully responsible for what went on within his firm. It was no defence for the First Respondent to state that he had every confidence in the ability of the Second Respondent to properly conduct files in accordance with best practices, having regard to his extensive experience.

Allegation 1

72. The First Respondent had stated in his witness statement of 12th March 2010 that in his meetings with the Second Respondent, the file he was shown did not present the conflicts of interest alleged. He also relied on the fact that no complaint had been made by any of the clients. It was clear to the Tribunal that the firm was hopelessly conflicted when G's mother became a client and as sole principal, it was the First Respondent's responsibility to ensure the firm had not acted in circumstances where there had been a conflict of interest. The Tribunal found this allegation substantiated.

Allegations 3 and 4

73. The First Respondent was unable to explain in his witness statement why client care documentation was missing from the file, although he maintained the firm's policy was to send out documentation as required by The Law Society regulations. In correspondence with the SRA he accepted no client care documentation had been provided to G.
74. G's mother appeared to have participated very little in the transaction and it was clear to the Tribunal that the firm had not acted in G's mother's best interests. Indeed, it appeared to be the case that the firm had acted as if all the clients were one client. There had been no client care letters to any of the clients. The proceeds of sale had not been divided in the best interests of G's mother and it was quite clear that no proper costs information had been provided, and nor had any update on costs been given as the case progressed. The clients had, quite understandably, been shocked at the amount of the bills. The Tribunal found both these allegations were substantiated.

Allegation 5

75. The First Respondent in his witness statement said that regular meetings were held between him and the Second Respondent, when the Second Respondent's caseloads were discussed together with any pertinent issues arising. In his letters to the SRA the First Respondent claimed he discussed the matter with the Second Respondent on an almost weekly basis, he carried out regular file reviews, and that he was fully aware of the G matter. However, the Tribunal was of the view that if the First Respondent had indeed closely supervised the Second Respondent, and had been checking all incoming post and faxes as he claimed, he would have been fully aware of the numerous requisitions raised by the Land Registry, and, on reviewing the file, would also have seen the various notes the Second Respondent had made to himself. The First Respondent had played no part in resolving the issues with the Land Registry speedily. Whilst the Tribunal accepted that requisitions may be raised by the Land Registry, the Tribunal was most concerned that the first requisition was raised on 16th May 2007 and matters were not resolved satisfactorily until 10th December 2007.
76. The First Respondent's claim of being intimately involved in the supervision of the Second Respondent was inconsistent with the paperwork on the file, and the manner in which the Second Respondent had acted. The First Respondent had told the SRA that the Second Respondent told him G had already received independent advice, so the First Respondent decided the firm could act "as there was no conflict". If the First Respondent had indeed been discussing the case on a weekly basis, and conducting regular file reviews as a principal of the practice, he would have seen the conflict of interest was clear and that the client care/costs information provided was lamentable. The Tribunal did not accept the First Respondent was doing what he claimed, otherwise he would have been alerted to the problems that were clearly apparent. Accordingly, the Tribunal found this allegation substantiated.

Allegation 6

77. In his witness statement, the First Respondent claimed there had been issues over the operation of his DX system. He said that files and documents had been sent to the SRA by the Second Respondent and he believed they were complete. The original

file had been requested by the SRA on 7th February 2008 and, when the file was provided on 14th March 2008, it did not contain a number of documents and was therefore incomplete. Accordingly, the Tribunal found this allegation substantiated.

Allegation 7

78. The Tribunal had heard evidence from Mr Esney, who had spoken to Mr L, who informed him that the First Respondent had sought advice on the financial feasibility of his company from Mr L. Mr L had told Mr Esney he received instructions from an initial meeting with the First Respondent, and from brief text messages and telephone calls. Whilst the First Respondent had instructed Mr L to close the practice, from that point on the First Respondent had washed his hands of the practice and effectively buried his head in the sand. Mr L had told Mr Esney that if he had known he would be required to close the practice he would not have got involved.
79. The Tribunal accepted it would have been difficult for Mr L to close the practice without funds and proper instructions from the First Respondent. Furthermore, the Tribunal was satisfied that the First Respondent had abandoned his practice and failed to make the necessary arrangements for the closure of the practice having told his staff that he was travelling abroad on business and would return within a matter of days, and then failing to do so. The Tribunal noted the First Respondent in his statement said he had every intention of returning to the office but was unable to return due to difficulties in arranging a flight back at short notice but the Tribunal did not accept this was an adequate explanation and it certainly did not abrogate the First Respondent from his responsibilities as Principal of the practice. It was quite bizarre that the First Respondent claimed he had been told by The Law Society that if he was involved in working with Mr L on the closure of the practice, this could be viewed as “an interference”. The Tribunal found this allegation substantiated.

Allegations 8 and 9

80. The Tribunal found these allegations to have been substantiated indeed, the Respondent had accepted in his statement that there had been a surplus of office money in client account, and that the situation regarding client account reconciliation was due to a change in computer software.

Allegation 10

81. The First Respondent stated in his witness statement that office money was held and used from client account on the advice of his accountants. He accepted payments had been made from that client account in respect of staff wages, to his father and to “quick divorce”. Barclays Bank had been owed monies and by avoiding using his office account, the First Respondent had prevented the bank from taking any funds in his office account to pay outstanding debts to them. Accordingly, the Tribunal found this allegation, save dishonesty, substantiated.
82. On the question of dishonesty, the Tribunal did not find the Respondent had acted dishonestly. The Respondent had used his own money to pay for staff wages and to make other payments to his father and his company. Whilst the Tribunal accepted that money was in the wrong place and should not have been in client account, it was nevertheless the First Respondent’s own money and it was the First Respondent’s

choice to decide where that money should be held. The Tribunal took account of the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12 and the test of dishonesty. The Tribunal considered whether the First Respondent's conduct would have been regarded as dishonest by the ordinary standards of reasonable and honest people. Whilst the First Respondent had breached the SAR by paying office money into client account, there was actually no obligation on him to pay that money into his office account with Barclays Bank and indeed, the First Respondent could have used any other bank account to pay his office money into. Accordingly, the Tribunal was not satisfied that the First Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people.

Allegation 11

83. The Tribunal had heard evidence from Mr Esney that he had spoken to the Cashier at the practice and she had shown him 17 blank signed client account cheques that were undated. She had told Mr Esney on 19th November 2008 that the cheques had not been given for any specific purpose and were for general use. She had been concerned that she was in control of blank client account cheques. The First Respondent in his witness statement had said the blank cheques had been left in control of an admitted solicitor, specifically for completion transactions, and had been kept in the firm's safe but the Tribunal had not been provided with any evidence of this. The Tribunal accepted the evidence of Mr Esney and accordingly found this allegation substantiated.

Allegation 12

84. The First Respondent claimed his accountants had failed to complete the accounts and he was not in a financial position to instruct another firm. However, as Principal of the practice, it was his responsibility to meet his obligations under the SAR. The accountant's reports for the years ending 30th March 2008 and 30th April 2009 had still not been filed and accordingly, the Tribunal found this allegation substantiated.

Allegation 13

85. This was an allegation that the First Respondent had failed to pay professional disbursements. Some of these had appeared to be outstanding since June 2001. The First Respondent had stated in his witness statement that a number of Counsel's fee notes had been withdrawn and were therefore not overdue. However, the First Respondent had not provided the Tribunal with any evidence of this. Accordingly, the Tribunal found this allegation substantiated.

Costs application

86. The Applicant provided the Tribunal with a Schedule of his Costs which came to a total of £58,029.97. Of these, £27,870 were common to both Respondents and a further £28,759 related only to the First Respondent. This had been emailed to the First Respondent and the Applicant confirmed he had received a reply from the First Respondent seeking a detailed assessment. The Applicant submitted the Second Respondent should only be restricted to pay the costs relating to the allegations against him and should not have any liability for the allegations contained in the Supplementary Statement. The Applicant requested the Tribunal to assess the costs

and in the absence of doing so, he requested an interim payment to be made pending detailed assessment.

87. The Applicant accepted the First Respondent had a failing practice but submitted that impecuniosity did not follow as a result of this. It was only in the First Respondent's letter dated 14th June 2010 that the issue of the First Respondent's finances had been raised. This had never been raised previously and indeed, the Applicant's submitted that if impecuniosity was of such strength, it was surprising the First Respondent had travelled to the UK recently. Furthermore, the Applicant had been ready to proceed with the substantive hearing against the First Respondent on 16th March 2010 but there had been an adjournment at the First Respondent's request on that day. The First Respondent had not attended today so costs had been thrown away as a result of his conduct. Furthermore, the Applicant reminded the Tribunal that there had been a lengthy Rule 5 Statement which had been constructed from the haphazardly created file into some kind of coherence.
88. The First Respondent in his witness statement confirmed he was in part time employment with only sufficient income for food. He was living with a friend and had lost everything.
89. Mr Childs, on behalf of Mr Rosser, the Second Respondent, did not agree the costs claimed. It appeared that the amount of common costs was £27,870.00 and Mr Childs submitted the Tribunal should have regard to the respective roles and responsibilities of the two Respondents. The First Respondent was the sole Principal, whereas the Second Respondent was an unadmitted clerk. The Second Respondent had dealt with these proceedings promptly and had genuinely tried to resolve matters whereas the First Respondent had been uncooperative throughout and his behaviour had led to an increase in costs for the Authority and for Mr Childs returning to attend today again simply to deal with the question of costs.
90. It was submitted the Second Respondent simply took his eye off the ball at a late stage in the client transaction and had failed to consider the position of G's mother in an independent manner. However the clients had been very happy with the service he had provided and the Tribunal had been provided with statements from all the clients confirming this. If the First Respondent had been properly supervising the Second Respondent, then G's mother would have received independent legal advice. The Tribunal had not been provided with any evidence that the Second Respondent had withheld any information from the First Respondent and indeed, the SRA's case was based on the file which would have been available to the First Respondent if proper supervision had taken place.
91. Mr Childs submitted that if the practice had been run properly, the Second Respondent would not have found himself in the position that he was in after 30 years of practising as a clerk. He submitted the First Respondent should bear the brunt of the costs. Details of the Second Respondent's salary were provided to the Tribunal.

Previous disciplinary sanctions before the Tribunal

92. None.

Sanction and Reasons

93. The Tribunal had considered carefully all the documents and submissions of all parties. There had been a number of serious breaches of the regulatory rules which existed to protect clients and their funds. As a result of the First Respondent's conduct, clients had suffered and the reputation of the profession had been damaged. The First Respondent had breached the SAR, allowed the firm to act in circumstances where there were clear conflicts of interest, failed to ensure clients were provided with proper client care and costs information, and failed to properly supervise an unadmitted clerk. As a result of these failures the best interests of one particular client had not been properly pursued. Whilst the clients involved had not complained, this was irrelevant as the actual file was primary evidence of the failure to comply with the regulations and conduct rules imposed upon solicitors. Clients needed protection and the regulations were in place to ensure those clients were properly protected. Furthermore, the file provided was inconsistent with what those clients had said. G's mother had stated "I felt involved throughout" but in actual fact there was no evidence of her involvement in the matter.
94. Furthermore, abandoning a practice was an extremely serious matter which placed clients at risk and showed a complete disregard of those clients' best interests in failing to ensure proper arrangements were in place for those client files to be dealt with or placed in storage, and for client monies to be returned where appropriate. In this case, the First Respondent had not provided any support or funds to Mr L to enable him to close the practice and as a result of his conduct the SRA had to intervene.
95. Whilst the Tribunal had not made a finding of dishonesty, there were nevertheless a number of very serious breaches and indeed, it was absolutely sacrosanct that client funds should never be mixed with office funds.
96. The Tribunal was of the view that the First Respondent's conduct had caused serious damage to the profession and that clients needed to be protected from him. Accordingly, the Tribunal ordered the First Respondent be suspended for a period of three years. After those three years, the Tribunal recommended a practising certificate should not be issued to the First Respondent until all outstanding accountant's reports had been filed. Furthermore, the Tribunal recommended that if the First Respondent should return to practice in the future, a condition should be placed on his practising certificate for him to practice only in approved employment and not to practice as a sole practitioner.

Decision as to Costs

97. The First Respondent had not provided the Tribunal with any evidence of his financial position, his income, expenditure, assets or liabilities, and indeed, the Tribunal understood he had recently visited the UK. The Applicant had confirmed that the costs common to both Respondents were £27,870.00 and the sum of £28,759.00 were additional costs which related only to the First Respondent.
98. The Tribunal had considered the cases of *William Arthur Merrick v The Law Society* [2007] EWHC 2997 (Admin) and *Frank Emilian D'Souza v The Law Society* [2009]

EWHC 2193 (Admin) in relation to the First Respondent's means. However, as the First Respondent had not provided details of his financial position, the Tribunal was of the view that he was liable for his share of the costs in full.

99. Concerning the Second Respondent, he was an experienced conveyancer with 30 years of practice and indeed, it appeared that he took a number of files with him to his new practice. Given his substantial experience, the Second Respondent knew or ought to have known that what he was doing was wrong and indeed, the Tribunal noted he was described as a Conveyancing Manager on the firm's letter head so clearly had a fairly senior position within the firm.
100. The Tribunal did not regard the Second Respondent as a junior member of staff and accordingly ordered he pay costs assessed in the sum of £18,500.00. In relation to the First Respondent, the Tribunal ordered that he pay costs assessed in the sum of £38,040.00.

Order

101. The Tribunal Ordered that the Respondent, PETER HARRY WILLIAM EDWARD LAZARUS of Sahara FZC, PO Box 120532, Sharjah, UAE, solicitor, be suspended from practice as a solicitor for the period of three years to commence on the 15th day of June 2010 and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,040.00.

The time limit for appeal for Mr. Lazarus is extended to 14 days from the date the Findings are filed with the Law Society.

102. The Tribunal Ordered that the Respondent WYN ROSSER of 14-15 Spilman Street, Carmarthen, SA31 1SR, solicitor's clerk, do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,500.00.

Dated this 5th day of October 2010
On behalf of the Tribunal

K W Duncan
Chairman