SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11485-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

HOWARD SAMUEL NORMAN — Respondent

Before:

Ms A. E. Banks (in the chair)
Miss N. Lucking
Dr S. Bown

Date of Hearing: 21 June 2016

Appearances

Mr Geoff Williams QC, counsel, of Farrar's Building, Temple, London EC4Y 7BD, instructed by Shaun O'Malley, legal adviser, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Gregory Treverton-Jones QC, counsel, of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD, instructed by Mr Paul Bennett, solicitor advocate, of Aaron & Partners LLP, Canon Court North, Abbey Lawn, Shrewsbury SY2 5DE for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Howard Samuel Norman, made in a Rule 5 Statement dated 16 February 2016, as amended with the permission of the Tribunal on 21 June 2016, were that:

1.1 During the period December 2010 to August 2015 he provided a banking facility through the client accounts of clients Mr JJ and Mr JB, and in doing so he:

1.1.1 between December 2010 and 5 October 2011 breached Rule 15(2) of the Solicitors Accounts Rules 1998 ("SAR 2998") and the notes thereto;
1.1.2 from 6 October 2011 breached Rule 14.5 of the Solicitors Accounts Rules 2011 ("SAR 2011") and the notes thereto.

1.2 He failed to return client money to the client promptly after there was no proper reason to retain those funds and thereby breached Rule 14.3 of the SAR 2011.

1.3 During the period January 2011 to June 2014 he borrowed a total of £407,758.55 from clients who did not obtain independent legal advice, and in doing so he:

1.3.1 between January 2011 and 5 October 2011 breached Rule 3.01(2)(b) of the Solicitors' Code of Conduct 2007 ("the 2007 Code"); and
1.3.2 from 6 October 2011 breached Principles 3 and 4 of the SRA Principles 2011 ("the 2011 Principles"); and
1.3.3 failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011 ("the 2011 Code").

Documents

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

Applicant: -

- Application dated 16 February 2016
- Rule 5 Statement, with exhibit "SOM1", dated 16 February 2016
- Amended Rule 5 Statement (permission given on 21 June 2016)
- Bundle of documents re amendment to Rule 5 Statement
- Statement of Gordon Hair, dated 10 March 2016
- Applicant's statement of costs at date of issue
- Applicant's statement of costs dated 10 June 2016

Respondent: -

- Answer to Rule 5 Statement, dated 22 March 2016
- Respondent's witness statement dated 9 May 2016
- Witness statement of Mr JJ dated 19 May 2016
- Witness statement of Mr JB dated 14 June 2016
- Bundle of disclosure documents, with index
- Respondent's financial statement (undated)
- Note to the Tribunal on the history of Rule 14.5 SAR 2011 dated 17 June 2016

Preliminary Matter – Amendment of allegations

3. On 26 May 2016 the Applicant made an application in writing to the Tribunal for permission to amend the Rule 5 Statement. The proposed amendment had been addressed in correspondence from 22 April 2016 onwards between the Applicant and the Respondent's solicitors. As there was no agreement by the Respondent to the proposed amendments, the contested application was presented to the Tribunal on the papers.

4. At the commencement of the hearing, Mr Williams for the Applicant sought the permission of the Tribunal to amend allegation 1.1, clarify allegation 1.3 and amend part of the body of the Rule 5 Statement. Mr Williams told the Tribunal that the amendment to allegation 1.1 was to ensure that the period December 2010 to October 2011 (when the SAR 2011 came into force) was covered. The amendment to allegation 1.3 was to ensure that the dates and Code in force were clarified. The proposed amendment in the body of the Rule 5 Statement was to set out the relevant points from the Tribunal's decision in Wood and Burdett, which had been included in the SAR 1998 as a "note" and which had become a mandatory rule from 31 March 2009, forming part of the SAR 1998 from that point. The SAR 2011 specifically included the points arising from Wood and Burdett as a Rule.

5. Mr Treverton-Jones for the Respondent told the Tribunal that he had no objection to the proposed amendments.

6. The Tribunal determined that the proposed amendments were reasonable, would help to clarify matters and that the Respondent would suffer no prejudice through the amendments to the Rule 5 Statement. Accordingly, the Tribunal gave its permission to amend as requested.

Factual Background

7. The Respondent was born in 1949 and was admitted to the Roll of Solicitors in 1976. He held a current Practising Certificate, free from conditions, at the date of the hearing.

8. At all relevant times the Respondent practised on his own account at Black Norman Solicitors, 67 – 71 Coronation Road, Crosby, Liverpool, Merseyside L23 5RE ("the Firm"); the Respondent was the sole equity partner at the relevant time but now practised in partnership in the same Firm.

9. On 19 September 2014 a duly authorised forensic investigation officer of the Applicant, Mr Hair, ("the FI Officer") commenced an inspection of the books of account and other documents of the Firm. On 16 May 2015 the FI Officer interviewed the partners of the Firm, together with Mr Beck, the Firm's practice manager and Compliance Officer for Finance and Administration ("COFA"). The inspection led to the production of a report dated 16 June 2015 ("the FI Report").

Allegations 1.1 and 1.2

10. The Firm held money for 2 clients, Mr JB and Mr JJ, both of whom spent much of their time abroad.

Mr JB – "Invest Abroad" matter

11. The client ledger for Mr JB was opened on 27 October 2009 and remained open and active until 15 April 2015. Mr JB, who provided a witness statement on behalf of the Respondent, was a business man engaged in property development who lived in Dubai. He and his family members had instructed the Respondent over a number of years in relation to property transactions and other matters.

12. In the period 22 December 2010 to 26 July 2011 Mr JB's client ledger recorded client funds held in the range of £323,475.13 to £175,050.75.

13. The sum of £2 million was received into the client account on 29 August 2013 which was understood to be in respect of a proposed property purchase. That transaction did not proceed. During the period 7 February 2013 to 20 August 2014 the client ledger for Mr JB recorded client funds held in the range £32,006.58 to £2,032,006.58, with a balance of £888,021.51 held as at 20 August 2014.

14. In an email of 10 October 2014 the Respondent's Firm wrote:

> "Having examined the details for payments as requested (detailed below), on reflection and with hindsight, [the Respondent] accepts the fact that we have in fact in innocence been providing banking services for this client. It is often the case that we receive a simple instruction to make a payment and follow those instructions without further due diligence. We will be writing to the client and informing him that following an SRA audit, we find that we have been acting in breach of regulations by providing Bank Services (sic) to him and that we must return the balance of funds held and he must make the necessary arrangements."

15. In the course of the investigation, the Firm provided to the FI Officer a schedule showing 16 payments made on behalf of Mr JB, on his instructions, including the dates, amounts and payees. Some of those payments were in the nature of personal payments on behalf of Mr JB. As noted above, as at that time the Respondent accepted that the monies held must be returned to Mr JB.

16. A further copy of Mr JB's ledger provided to the FI Officer on 15 April 2015 recorded a number of entries in the period 21 August 2014 to 23 February 2015, including payments to third parties. In the period to 23 February 2015 the ledger recorded sums received of approximately £5,950,000 (via 9 transactions) and payments out of approximately the same amount (via 45 transactions). No bills were recorded on the office side of the client ledger. A number of the transactions occurred after the initial meeting with the FI Officer in which this issue had been discussed. The funds had not been returned to the client in one lump sum but in stages.

17. The FI Officer's interview with the Respondent noted that the Respondent had been concerned about returning the funds in one transaction in order to keep the client "on side". Mr JB's statement noted that he may be dealing with two or three transactions at the same time, or may move from one transaction to another very quickly; sometimes matters would not proceed. He had left funds with the Firm in order to have funds available in the UK in order to be able to proceed quickly, if required, as it was difficult to move funds from his base in Dubai to the UK.

Mr JJ – Property Matter

18. Mr JJ was understood to be a retired gentleman who lived in New Zealand. He had instructed the Respondent over many years in relation to various property transactions; he was no longer in business. Mr JJ provided a witness statement for the Respondent in these proceedings, in which he spoke highly of the Respondent.

19. The client ledger for Mr JJ was opened on 26 November 2013 and recorded receipt of client monies in the sums of £49,994 and £250,816.78 on 26 November 2013 and 5 March 2014 respectively. The client ledger also recorded transfers of £50,000 and £5,000 on 9 April 2014 and 14 August 2014 respectively from client to office bank account.

20. It was understood that the funds received were in respect of a proposed property purchase in the UK, which did not proceed. The first £50,000 (approximately) was understood to relate to a bridging loan. That transaction did not proceed, and the Respondent was asked to retain those monies, which were later added to, in respect of the property purchase. The Respondent's Answer to the allegations recorded that the property transaction "fell through" in September 2014. These funds were returned to the client in April 2015; some of the funds were used, prior to April 2015, as a loan to the Respondent – see allegation 1.3 below.

Rule 15 SAR 1998

21. Rule 15 of the SAR 1998 set out the circumstances in which a client account could be used. Guidance Note (ix) to Rule 15 stated as follows:

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

22. From 31 March 2009 the SAR 1998 was amended by the inclusion of an interpretation clause, which provided that the Notes to the Rules formed part of the Rules and were mandatory.

Rules 14 SAR 2011

23. Rule 14.3 of the SAR 2011 provided:

> "Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly."

24. Rule 14.5 of the SAR 2011 provided:

> "You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities.

25. The Guidance Note to Rule 14 SAR 2011, stated (amongst other points):

> "(v) Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not…"

26. The SRA issued a Warning Notice on 18 December 2014 entitled, "Improper use of a client account as a banking facility" and case studies, which provided guidance to all regulated persons holding client monies, and highlighted the associated risks.

Response

27. In the interview with the FI Officer on 15 May 2015, the Respondent appreciated that it could be interpreted that the Firm was providing banking services, but he had not seen it as such. The Respondent explained that, in hindsight, there should have been separate ledger cards for each of the individual matters, but the clients were very wealthy and active clients, who instructed the Firm on numerous matters and transactions.

28. In an exchange during the interview concerning not returning the money in a single lump sum. (R refers to the Respondent and FIO to Mr Hair, the FI Officer).

> "FIO um the various transactions involved and why the monies went to where they went to but the point I'm making is you could've just said
>
> R What you're saying is that when you, when you were here in September you pointed it out we should have ceased immediately.
>
> FIO It should have just gone back as one sum then. I appreciate that you've got to keep the client on board, keep the client onside.
>
> R I think that's more the reason.
>
> FIO Is that the reason?

R … than anything else, yeah

FIO right

R Because um clients they easily get spooked and particularly when they're living abroad and um things suddenly happen. If I just sent them a cheque and said "hey [Mr JJ/JB] um we can't uh do this for you anymore, here's your money back…"

FIO um

R I think that would have, you know, I don't think it would have destroyed our relationship, I think it would have gone some way to him saying "Well, hang on, what's going on here?"

FIO Commercially, it would have been a bad move, but can you see from a regulatory point of view it would have bene better if it had just gone?

R Yes, of course I can."

Allegation 1.3

29. At an initial meeting with the FI Officer on 19 September 2014 the Respondent told the FI Officer that he had a number of long-standing, wealthy clients (including Mr JB and Mr JJ) who were also personal friends and who were happy to lend him money without taking independent legal advice.

30. On 30 September 2014 the Respondent provided the FI Officer with a schedule entitled "Schedule of Client Loans". This document detailed 12 loans from 5 clients (Mr JB, Mr JJ and also Messrs DB, SM and JW) between January 2011 and June 2014. The loans totalled £407,758.55. An updated schedule was handed to the FI Officer on 15 May 2015 which recorded additional loans from clients Mr JJ and P and G. After adjustment, the sum of £424,500 was still to be repaid to clients.

31. The Respondent had received additional loans of £300,000 from client Mr JJ by 2 September 2014 and a £65,000 loan was from client P. On 2 September 2014 the sum of £310,000 was transferred from the client ledger of Mr JB and on 14 August 2014 £5,000 had been transferred from the client to office ledger of Mr JJ. The loans from Mr JB and Mr JJ were exemplified in the FI Report.

Mr JB loans - £244,785.55

32. The client ledger for Mr JB recorded client loans to the Respondent over a period of approximately 3 and a half years, as follows:

Date	**Amount - £**	**Narrative**
19/01/11	15,000	Transfer (w/o to HSN short-term loan a/c)
15/02/11	25,000	Transfer (to HSN short-term loan a/c)
14/02/13	30,000	Transfer (to short-term loan)
13/06/14	27,000	Transfer (to short-term loan)

33. The Respondent held a signed client authority dated 2 January 2012 which stated:

> "I hereby authorise you to take from funds which you hold for me, such amounts as shall be agreed between us and confirmed by email or fax to be repaid on such terms as we agree between us.
> I confirm that you have advised me to take independent advice with regard to this matter, but in view of our longstanding friendship I have chosen not to do so."

34. The Respondent's client Mr JB loaned £15,000 to the Respondent on 19 January 2011 and £25,000 on 15 February 2011. At that time, the 2007 Code was in force. Rule 3.01(2)(b) of the 2007 Code stated:

> "… (2) There is a conflict of interests if:
> …(b) your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter."

The guidance note to Rule 3, at paragraph 41, read:

> "In conduct there is a conflict of interests where you in your personal capacity sell to, or buy from, or lend to, or borrow from, your client. In all these cases you should insist the client takes independent legal advice. If the client refuses, you must not proceed with the transaction."

35. The client authority was obtained nearly 12 months after the first loan, and 11 months after the second loan.

36. Mr JB loaned the Respondent £30,000 on 14 February 2013 and £27,000 on 13 June 2014. The "Schedule of Client Loans" document provided by the Respondent also recorded a loan of £147,785.55 made on 28 March 2014. Mr JB's client ledger recorded a payment made to HMRC on 28 March 2014 for the same amount from client bank account. This payment was made in respect of the Respondent's personal tax liability, as detailed in emails between the Respondent and Mr JB which were provided to the FI Officer by way of confirming Mr JB's specific approval of this element of the loans.

37. Chapter 3 of the 2011 Code deals with conflicts of interest and notes that such conflicts can arise between a solicitor and a current client and was known as an "own interest conflict", defined as follows:

> "…means any situation where your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter."

Under Outcome 3.4 of the 2011 Code, a solicitor should not act where there is a conflict, or a significant risk of conflict, between the solicitor and his client. Indicative Behaviour 3.8 refers to borrowing from a client in a personal capacity as an act which may tend to show that the Outcomes have not been achieved and the 2011 Principles not complied with, unless the client had obtained independent legal advice.

Mr JJ loans in 2014 - £300,000

38. The client ledger for Mr JJ recorded loans made by Mr JJ to the Respondent in 2014 as follows:

Date	**Amount - £**	**Narrative**
09/04/14	50,000	Transfer (transfer to short-term loan a/c)
14/08/14	5,000	Transfer (write off disbursements)
02/09/14	245,000	Transfer (to ledger of Mr JB)

39. The Respondent held a written authority from Mr JJ, in identical terms to that held for Mr JB, as set out at paragraph 33 above. This authority was dated 1 December 2013, so pre-dated the loans listed above. Those loans were received whilst the 2011 Code was in force, as set out at paragraph 37 above.

Response

40. During the interview on 15 May 2015, the Respondent commented (amongst other matters) as follows:

40.1 the background of his relationship with clients and the Jewish community in which "… people have been incredibly generous to me… it's appreciated and I try where I can to reciprocate";

40.2 That the client authorities in respect of the loans could have been more specific, and dated prior to the loans, and stated the amounts borrowed rather than just being, "… a blanket authority";

40.3 That clients had always been told that they should take advice and "you can't force people to do what they don't want to";

40.4 The loans would "follow" the Respondent (i.e. were his loans and not loans to the Firm);

40.5 That there was no conflict of interest and his independence was not lost in respect of the clients who loaned him money;

40.6 That he had "… sufficient equity elsewhere to cover whatever needs to be done";

40.7 That the clients understood that they were lending him the money for the purpose of the business.

The SRA's Investigation

41. Following the investigation by the FI Officer, the Applicant sent to the Respondent a letter on 14 July 2015 seeking his comments on various matters raised in the FI Report. The Respondent replied to that letter by way of a letter from Legal Risk Solicitors LLP dated 9 September 2015, with enclosures, in which it was stated on behalf of the Respondent:

41.1 that he was aware of the prohibition on providing banking facilities but did not appreciate that the manner in which transactions proceeded may have breached Rule 14.5 SAR 2011. The transfers of client money were on behalf of longstanding business clients;

41.2 all the clients who provided personal loans were experienced businessmen, who were longstanding personal friends of the Respondent;

41.3 he believed that all clients who loaned money were highly commercially aware and well able to understand the nature of the transactions;

41.4 the remaining loan amounts would be repaid to the client.

42. In a supplementary response letter dated 9 October 2015 from Aaron & Partners Solicitors LLP on behalf of the Respondent, it was stated:

42.1 that the Firm experienced the same difficulties and confusion as other firms in respect of the provision of banking facilities through the client account, those difficulties being set out in the SRA Warning Notice dated 18 December 2014;

42.2 that there was a transaction in relation to the client Mr JJ;

42.3 while the loans from clients to the Respondent were unusual they were, "… reflective of sophisticated business people taking a decision which they were fully aware of".

43. On 22 October 2015, an authorised officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

44. All the allegations being admitted, no evidence was heard and the matter proceeded on the papers.

Findings of Fact and Law

45. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his/her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

46. The Tribunal took into account the witness statements of the Respondent, Mr JJ and Mr JB, which set out the context and circumstances in which the admitted matters had occurred. The Tribunal noted that all of the allegations had been admitted by the Respondent.

47. **Allegation 1.1 - During the period December 2010 to August 2015 he provided a banking facility through the client accounts of clients Mr JJ and Mr JB, and in doing so he:**

1.1.1 between December 2010 and 5 October 2011 breached Rule 15(2) of the Solicitors Accounts Rules 1998 ("SAR 2998") and the notes thereto;

1.1.2 from 6 October 2011 breached Rule 14.5 of the Solicitors Accounts Rules 2011 ("SAR 2011") and the notes thereto.

47.1 The factual background to this allegation is set out at paragraphs 10 to 28 above.

47.2 The Applicant submitted that continued holding of client monies in client account was inappropriate as the monies did not relate to an underlying legal transaction to which the monies were reasonably connected, nor a service forming part of the Respondent's normal regulated activities. The monies should not have been held in client account for prospective transactions, but should have been returned to the client promptly when the original transaction was no longer effective, as there was no longer any proper reason to retain those funds. A client's convenience was not an appropriate consideration in continuing to hold such monies in client account. Alternatively, it was submitted, if there were underlying legal transactions to which the monies related, the relevant monies should have been transferred, following instructions, to separate ledgers for each proposed transaction.

47.3 It was submitted that the SAR 1998 Note to Rule 15, which became mandatory from 31 March 2009 and the provisions of the SAR 2011 with regard to banking facilities were always available to be known by the profession.

47.4 There was no suggestion that any of the Respondent's clients were engaged in money laundering or any other improper practices, but the Firm was exposed to this risk. The Rules against providing a banking facility were in place to protect the profession as well as the public. Where a solicitor was used as a bank, there was reputational damage to the profession. The sums involved in this case were considerable, and were held and used over a long period.

47.5 The Tribunal noted that the Respondent made unequivocal admissions to this allegation. It was satisfied on the facts and on the admission that this allegation had been proved to the required standard.

48. **Allegation 1.2 - He failed to return client money to the client promptly after there was no proper reason to retain those funds and thereby breached Rule 14.3 of the SAR 2011.**

48.1 The factual background to this allegation is set out at paragraphs 10 to 28 above.

48.2 Some of the submissions relating to this matter are set out in relation to allegation 1.1 above. The Applicant's position was that the Respondent should have returned funds to clients in one "lump". Although there was no suggestion of impropriety about the source of these funds, it could be a warning sign if a client did not use UK banking facilities but instead used a solicitor's client account.

48.3 The Tribunal was satisfied that the Respondent had retained client funds when there was no proper reason to do so. In particular, with regard to Mr JJ's proposed property transaction, it was clear by September 2014 that the transaction would not proceed but the funds were not all returned until April 2015.

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

49. **Allegation 1.3 - During the period January 2011 to June 2014 he borrowed a total of £407,758.55 from clients who did not obtain independent legal advice, and in doing so he:**

1.1.3 between January 2011 and 5 October 2011 breached Rule 3.01(2)(b) of the Solicitors' Code of Conduct 2007 ("the 2007 Code"); and
1.1.4 from 6 October 2011 breached Principles 3 and 4 of the SRA Principles 2011 ("the 2011 Principles"); and

1.1.5 failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011 ("the 2011 Code").

49.1 The factual background to this allegation is set out at paragraphs 29 to 40 above.

49.2 The Applicant's position was that the Respondent should not have taken loans from clients where those clients refused to take independent legal advice. The 2007 and 2011 Codes and the guidance notes made it clear that the Respondent should not have taken loans from clients in these circumstances.

49.3 The Tribunal noted and found that Mr JB loaned the Respondent over £400,000 over a 3-4 year period, without having taken independent legal advice. There was a written form of authority on the file but it was general and did not refer to specific amounts. No detailed terms were set out in relation to the loans, whether as to when or how the loan would be repaid. There was no doubt that the Respondent had approached Mr JB to seek funds to pay a personal tax liability. This had been agreed and the Respondent had therefore given instructions to his Firm's cashiers to transfer funds from Mr JB's client account to pay HMRC. It was notable that in the Respondent's witness statement he indicated that he had funds elsewhere but took the loan as it was convenient to do so. The loan was not properly recorded on the client ledger or elsewhere, which put the client at some risk. The Applicant accepted, and the Tribunal found, that the Respondent had repaid all of the loans he had received from Mr JB by 15 May 2015.

49.4 The Applicant had accepted, and the Tribunal found, that the clients were content to make the loans and were asked to take independent advice, but refused to do so. There was an inherent conflict between the lender client and the borrower Respondent. Whilst the loans were convenient for the Respondent, and were repaid, accepting the loans was in contravention of the Respondent's professional obligations.

49.5 In taking loans in the circumstances set out, the Respondent acted where there was a conflict of interest, had failed to act in the best interests of his clients Mr JJ and Mr JB, allowed his independence to be compromised (as he was in debt to clients).

49.6 The Tribunal was satisfied, on the evidence and on the admission, that this allegation had been proved to the required standard.

Previous Disciplinary Matters

50. There was one previous matter in which findings had been made against the Respondent.

51. In matter number 11086/2012, heard on 29 April 2013, the Respondent was fined £15,000 and ordered to pay costs of £22,050.28.

52. The allegations which were admitted and proved on that occasion were that:

52.1 The Respondent failed promptly to remedy breaches of the SAR 1998 promptly upon discovery, in breach of Rule 7 of the SAR 1998;

52.2 In breach of Rules 13 and 22 of the SAR 1998 the Respondent retained client money received for payment of Stamp Duty Land Tax in office account;

52.3 The Respondent failed to act in the best interests of clients by failing to register property titles promptly, in breach of Rule 1.04 of the 2007 Code.

53. In relation to the allegations at 51.1 and 51.2 above, the Tribunal found that the Respondent had acted in breach of Rules 1.02 and 1.06 of the 2007 (i.e. he had lacked integrity and had behaved in a way which would tend to diminish the trust the public would place in the Respondent and in the profession).

Mitigation

54. Mr Treverton-Jones presented mitigation to the Tribunal on behalf of the Respondent. The Respondent apologised to the Tribunal and the Applicant for the breaches which had occurred. The Tribunal may decide the breaches were at the lower end of the scale of gravity when compared with other matters which came before the Tribunal.

55. In relation to the banking facilities allegation, it was submitted that the Accounts Rules dealing with this arose as a result of concerns that receiving money into client account where there was no underlying legal transaction gave rise to a risk of a solicitor being involved in money laundering. There was nothing to suggest any possibility of any risk of money laundering in the present case. The clients involved, Mr JB and Mr JJ, were long established clients of the Respondent. Both were men of integrity, who lived abroad. There was no evidence about whether or not either of these clients had UK bank accounts. The problem arose in the period before the Applicant issued a Guidance Note in December 2014. As with many other solicitors, the Respondent was not aware of the new Rule 14.5, and it had not been appreciated that the Note to Rule 15 SAR had been incorporated into the Rules from March 2009.

56. Mr Treverton-Jones submitted that the Rule had its origins in the unusual facts of Wood and Burdett, where the solicitors involved had offered a "cheque-cashing" service; whilst clearly wrong, there had been nothing specific in the Accounts Rules covering such a situation. Note (ix) to Rule 15 of the SAR 1998 had been prepared in the light of this case.

57. Mr Treverton-Jones referred to the further Tribunal case of Walker and Nathan (10640/2010), in which the Judgment was dated 14 July 2011. In that case, the Tribunal had been invited to give some guidance on what constituted offering a banking facility but chose not to offer wider guidance; it could be said that issuing Rules and guidance on those Rules was a matter for the regulator, not the Tribunal.

58. Rule 14.5 SAR 2011 came into force on 6 October 2011. Thereafter, there were cases from the Tribunal which were considered in the High Court. In Patel [2012] EWHC 3373 (Admin), the facts involved holding and using money so as to reassure investors in a client's business. In the case of Fuglers [2014] EWHC 179 (Admin), it was submitted, the facts involved the use of the firm's client account to "prop up" a client, Portsmouth City Football Club. It was submitted that both of these cases were on quite extreme facts, and there was clearly professional misconduct. There had been no clear guidance from the SRA about how the Rule should be applied or the extent of the activities it covered until December 2014.

59. Mr Treverton-Jones submitted that the Respondent had not appreciated that his dealings with his clients Mr JB and Mr JJ offended against the Rule or was significantly different to the way in which other solicitors dealt with client money. In particular, with regard to Mr JB, it was not uncommon for money to be received in respect of one proposed transaction which may not proceed, so the money would be held as another transaction may start at short notice. The Respondent did not deliberately breach the Rule, or appreciate that any breach was so serious as to amount to professional misconduct. The Respondent now recognised that he had breached Rule 14.5, for which he apologised. It was submitted that there had been no mischief caused by the breach, the money involved was "clean" and the breach was not deliberate or reckless. It was submitted that the misconduct was at the bottom of the scale of gravity.

60. With regard to the loans, the allegation arose as the Respondent had not insisted that his clients obtain independent legal advice. The Applicant had accepted that the Respondent advised his clients to take independent advice but they chose not to do so. The Respondent had not appreciated that he should have insisted they do this, or should have refused the loans.

61. Mr Treverton-Jones submitted that the rules in this area were in place to prevent exploitation of clients. There had been no risk of this with regards to the clients from whom the Respondent had borrowed. All monies had been repaid to clients and none had complained about the Respondent's conduct; indeed, Mr JB and Mr JJ remained friends and clients of the Respondent. Although there had been a breach of the relevant rules, it was a breach without adverse consequences; there had been no loss to the clients and there had been no lack of integrity on the part of the Respondent.

62. Mr Treverton-Jones submitted that the Respondent was a pillar of the community. Where the allegations were at the bottom end of the scale of seriousness, and the allegations were admitted, the Tribunal may wonder why the case had been brought to it rather than being dealt with "in-house" at the SRA.

63. Mr Treverton-Jones submitted that the Applicant had taken a sledgehammer to crack a nut because of the outcome of the previous Tribunal case – see paragraphs 50 to 53 above. Mr Treverton-Jones told the Tribunal that in 2011 the Respondent had been told by his practice manager, Mr Beck, that there was a "hole" in client account. This had led to the previous hearing, in which the Respondent had been cleared of an allegation of dishonesty. It was submitted that the Applicant had been aggrieved by this finding and appealed. At a hearing on 8 November 2013 in the High Court the appeal had been dismissed with the Applicant ordered to pay the Respondent's costs of that appeal.

64. Mr Treverton-Jones told the Tribunal that this further investigation began in November 2014. The Respondent spoke highly of the FI Officer, Mr Hair, who had suggested in December 2014 after the initial phase of the investigation that his report was almost finished. Mr Treverton-Jones submitted that the FI Officer had then been instructed to carry out a more detailed investigation, which led to the FI Report. It was submitted that the allegations in the FI Report did not amount to serious misconduct.

65. Mr Treverton-Jones referred to the Judgment given by Lady Justice Rafferty in the appeal. This included references to the Respondent's personal and professional background being beyond reproach, his successful firm which now included work for better funded clients (including well-known footballers), the Respondent's long marriage, charity and community work and impressive character references from prominent people. It was submitted that the Respondent remained the same conscientious and diligent solicitor as he was noted to be in 2013.

66. Mr Treverton-Jones told the Tribunal that the Respondent now had two non-equity partners and was considering exit planning, which may include staying at the Firm for a while to ensure continuity and to reassure clients. It was submitted that the Respondent had had a long career in the profession and was now looking to retire.

67. Mr Treverton-Jones submitted that this further prosecution had caused huge additional stress and costs for the Respondent. Costs had been agreed at £10,000, which was less than half of the costs incurred by the Respondent himself. There had been adverse publicity as the prosecution had been published on the Applicant's website.

68. Mr Treverton-Jones invited the Tribunal to deal with the matter as leniently as possible and submitted that the Tribunal may consider a reprimand or a modest fine as being appropriate.

69. Mr Williams briefly responded to the submissions at paragraphs 62 and 63 above. Mr Williams told the Tribunal that the enquiry which had led to this prosecution was not connected to the earlier case; he resisted any suggestion that the Applicant had conducted this matter in reaction to the reverse it had had in the High Court.

Sanction

70. The Tribunal had regard to its Guidance Note on Sanction (December 2015), to all of the facts of the case and the submissions of the parties.

71. The Tribunal considered the allegations which had been admitted and proved on the facts. In short, the Respondent had provided a banking facility to his longstanding clients Mr JB and Mr JJ from about December 2010 to early 2015; he had not returned funds completely to the relevant clients even after discussions with the FI Officer in September 2014 and when there was no proper reason to retain those funds. The Respondent had borrowed a total of over £400,000 from clients including Mr JB and Mr JJ in the period from January 2011 to June 2014; those loans had all been repaid by about the middle of 2015. The Respondent had properly admitted these allegations in the proceedings and in his answers to the FI Officer's questions during the investigation.

72. In assessing the seriousness of the misconduct, the Tribunal had regard to the Respondent's culpability, the harm caused and those aggravating and mitigating factors which were present.

73. The Tribunal noted and accepted that the Respondent had not realised that he was acting in breach of the rules against providing a banking facility and taking loans from clients who had not taken independent legal advice. He had not intended to breach any rules but had acted for his own convenience and that of his clients, without proper consideration of whether he was thereby acting in accordance with his professional obligations. Accepting loans from clients involved more deliberation than retaining client money and paying it out on instructions from the clients. There was no breach of trust; the clients involved were wealthy and competent individuals who were not exploited. The Respondent had direct control over the events in question. He was the sole equity partner in the Firm at all relevant times, with responsibility for the Firm's accounts and the loans were made to him personally, at his request. The Respondent was a very experienced solicitor, but he had failed to understand the Accounts Rules and his professional obligations with regard to taking loans from clients.

74. The Tribunal accepted that there had been no direct harm to the Respondent's clients. The loans which had been made had all been repaid, albeit no interest payments had been agreed or made. There had been no security offered or given for the loans. There was a clear risk to the clients that the Respondent may not have been able to repay the loans either at all or when requested by the clients. The reputation of the profession was damaged by a solicitor acting where there was a clear and inherent conflict between his own interests and those of a client, particularly where there was a risk (albeit it did not transpire) that the client would lose out financially.

75. The Respondent's misconduct had continued over a period of time both in respect of the banking facilities and the loans taken from clients. The Respondent should have known that he was acting in material breach of his obligations to protect the public and the reputation of the profession. The previous findings of the Tribunal were of concern to the Tribunal and are addressed separately below.

76. In considering mitigating factors, the Tribunal noted that it had not heard from the Respondent and so could not judge his insight into the misconduct. The Tribunal noted that in the High Court matter (and the previous Tribunal matter) the Respondent's evidence had been influential and persuasive. The Respondent had made admissions during the course of the investigation and had co-operated during the proceedings.

77. With regard to the previous findings, the Tribunal noted that these had not been overturned on the Applicant's appeal to the High Court. The "hole" in client account had been identified in late 2010. The Judgment indicated that the Firm had been using client money to support the Firm, by retaining monies some paid by clients for SDLT in office account rather than in client account and/or paying the SDLT promptly after receipt of funds. The Respondent had not realised that his practice was in breach of the Accounts Rules in the course of the Applicant's investigation from January 2012. He had given evidence to the Tribunal hearing in April 2013 to the effect that he had attended a number of courses on the SAR and now understood where he had gone wrong. The Tribunal had found that the Respondent had shown insight into his misconduct on that occasion, but his misconduct had involved a lack of integrity. That misconduct had been more serious than in the present case.

78. The Tribunal was concerned that despite having attended training on the Accounts Rules, in or before 2013, the Respondent had apparently not realised until late 2014 that he was not permitted to operate a banking facility for clients or borrow money from them where they had not taken independent legal advice. He had failed to learn from his previous mistakes.

79. The Tribunal was careful to avoid imposing a fresh sanction for the Respondent's previous misconduct, but regarded it as a significant aggravating factor. The Tribunal had regard to its duty, in considering sanction, to maintain the reputation of the profession as one whose members could be trusted to the ends of the earth. The Tribunal regarded taking loans from the clients as more serious than what could be seen as inadvertent provision of banking facilities due to the degree of deliberation required for the former, and the fact that there was greater risk to the clients.

80. The Tribunal considered that this matter was clearly too serious for either "no order" or for a reprimand to be imposed. However, it was not so serious as to justify interfering with the Respondent's ability to carry on in practise. The Tribunal determined that a fine would be sufficient to reflect the seriousness of the Respondent's misconduct. No submissions had been made to suggest that any financial penalty should be adjusted in the light of the Respondent's means, although a statement of means had been submitted.

81. The Tribunal determined that in order to maintain the reputation of the profession, and taking into account all of the factors noted above, the appropriate level of the fine should be fixed at £10,000.

Costs

82. The Tribunal was informed that the parties had agreed that the Respondent would pay the Applicant's costs of these proceedings in the agreed sum of £10,000.

83. The Tribunal noted that this figure was lower than the figure set out in the Applicant's costs schedule. The figure having been agreed by a represented Respondent and there being no reason to interfere with that agreement, the Tribunal agreed to order the Respondent to pay costs in the agreed amount.

Statement of Full Order

84. The Tribunal Ordered that the Respondent, HOWARD SAMUEL NORMAN, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £10,000.00.

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

A. E. Banks
Chairman