SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10777-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARTIN CLIVE BOULTON Respondent

Before:

Mrs J. Martineau (in the chair)
Mr P. Housego
Mr D. E. Marlow

Date of Hearing: 8th October 2012

Appearances

Timothy Dutton QC instructed by Robin Havard, solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant.

The Respondent attended in person and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 He conducted himself in a manner which was likely to compromise his integrity and/or independence contrary to Rules 1.02 and/or 1.03 of the Solicitors' Code of Conduct 2007;

1.2 He failed to act in the best interests of clients contrary to Rule 1.04 of the Solicitors' Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;

1.3 He failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors' Accounts Rules 1998;

1.4 He paid, or permitted payment, into office account monies which should have been paid into client account in breach of Rule 15 of the Solicitors' Accounts Rules 1998;

1.5 He paid or permitted payment directly into office account monies received from clients which the Respondent described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors' Accounts Rules 1998;

1.6 He failed to fulfil his responsibilities with regard to the management of MacIntyre Clark LLP and/or supervision of the work undertaken contrary to Rule 5 of the Solicitors' Code of Conduct 2007;

1.7 He failed in his duty to keep confidential to his firm the affairs of clients contrary to Rule 4.01 of the Solicitors' Code of Conduct 2007;

1.8 He entered into agreements with Introducers and, in doing so, failed to comply with the requirements of Rule 9.02 of the Solicitors' Code of Conduct 2007;

1.9 He allowed MacIntyre Clark LLP to operate as a firm without having in place professional indemnity insurance contrary to Rule 4.1 of the Solicitors' Indemnity Insurance Rules 2007;

1.10 He failed to cooperate with the Solicitors Regulation Authority contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007;

1.11 He allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of MacIntyre Clark LLP:

1.12 He failed to ensure compliance with Adjudicators' Decisions relating to awards of compensation for inadequate professional service;

1.13 He acted recklessly;

1.14 He provided misleading statements to the SRA and, in doing so, he acted dishonestly.

Documents

2. The Tribunal reviewed all of the documents submitted by the Applicant and the Respondent, which included the Application and Rule 5 Statement and exhibit dated 8 July 2011, the Statement of Agreed Facts dated 5 October 2012, the Note for the Tribunal dated 5 October 2012, the undated Applicant's Schedule of Costs and the Respondent's undated Defence Statement.

Statement of Agreed Facts

3. By a Statement made pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 8 July 2011 the Applicant brought proceedings before the Tribunal making fourteen allegations against the Respondent.

4. The Respondent admitted the fourteen allegations against him save in relation to allegation 1.14, he denied that he had acted dishonestly. The Applicant accepted his partial admission that he had provided misleading statements to the Applicant and the allegation of dishonesty was left to lie on the file.

5. The Respondent was born on 1 March 1958 and admitted to the Roll of Solicitors on 1 October 1983. At the time of the events in question he was a member of MacIntyre Clark LLP ("the firm") which operated from offices in London, Birmingham and Manchester.

6. On 24 March 2010 Investigation Officers of the Applicant visited the offices of MacIntyre Clark LLP 11th Floor, 3 Piccadilly Place, Manchester M1 3BN, Colmore Plaza, 20 Colmore Circus, Queensway, Birmingham B4 6AT and Omagis House, 17a-19 Harcourt Street, London W1H 4HF and an investigation was undertaken into the activities of the firm. The investigation concluded with the preparation of a Forensic Investigation ("FI") Report dated 13 August 2010, the factual contents of which were admitted as accurate by the Respondent.

7. On 24 December 2009 the Applicant intervened into the practice of W LLP on the grounds of suspected dishonesty and failure to comply with the Solicitors' Accounts Rules 1998 ("SAR"). There was a link between W LLP and MacIntyre Clark LLP in that both firms undertook similar internet marketing and certain individuals had an interest or involvement in both firms. Internet marketing was undertaken for both firms by "One Stop Car Solutions" and "One Stop Visa" through a company known as Pickles or Jigsaw Sales and Marketing Limited. Payments were made to both firms through Cardnet.

8. Various unqualified individuals were involved in both firms in particular Mr MC, Mr WS, his brother Mr AS, Mr IH, Mr AH and Mr MK. The Respondent referred to some or all of these individuals as "the Boys". The Respondent had known Mr MC and Mr WS through business dealings he had with them from about 2005. MacIntyre Clark LLP had also employed AR, IH2, SK and LM the chief cashier, each of whom had been employed at W LLP.

9. MacIntyre Clark LLP was established in December 2008. The Respondent indicated to the Applicant that the firm was set up with Mr RFS as a member, although he did

not have an active involvement in the firm and left the firm in approximately September 2009 and at about the same time as the Respondent became involved with "the Boys" in the firm. The only other person who was a member of the firm was Ms LA who was admitted to the Roll on 15 April 2009 and became a member on joining the firm in September 2009.

10. The London office was located at Omagis House, 17a-19 Harcourt Street, London W1H 4HF. Omagis Limited was the landlord of Omagis House and also operated from that address. The Respondent stated to the Applicant's Investigation Officer that he was a director of Omagis Capital Limited ("OCL"). The Respondent's Professional History Form and his CV referred to him being a director and Chief Executive of OCL.

Manchester Office

11. On the Applicant's Investigators' arrival on 24 March 2010 at 11th Floor, 3 Piccadilly Place, Manchester M1 3BN, the premises were found to be vacant.

12. The Respondent informed the Applicant that the firm had moved its Manchester office to City Wharf, 30 New Bailey Street, Manchester but despite being the person primarily responsible for the activities of the firm, the Respondent had not previously been aware that the firm had moved its Manchester office, having been under the impression that it was due to take place in two weeks time. He was not able to say who would have signed the new lease on the firm's behalf but that it would have been either Ms LM, the firm's chief cashier or Mr MB, the resident solicitor.

13. However, an Investigation Officer of the Applicant, was informed by Mr ZD, the Managing Director of the landlord company, Arriga, that these premises were in fact let by his company to Pickles Services who were also the tenants of the office in Birmingham. Mr ZD indicated that his main dealings were with one Mr MC and, whilst Pickles Services had initially made a six month rental payment in advance, the company was now almost six months in arrears. Whilst there had been approximately seventy desks and a call centre operation at the premises, when he had visited the premises on 22 March 2010, Mr ZD discovered that the tenants had vacated the premises having removed the furniture and other equipment. This was consistent with Ms LM stating that she had become aware by a text on 20 March 2010 that the firm was moving its offices to the City Wharf address with immediate effect.

14. The firm's accounts function was controlled from the Manchester office where the Respondent employed two accounts staff. The only solicitor located at the office was Mr MB who conducted employment matters. The Respondent admitted that the firm's accounts function was inadequately supervised.

15. Mr MC and Mr WS worked from the Manchester office and it was also the site of a call centre operated by a company called Pickles Sales and Marketing Limited which traded under the name of "Jigsaw".

16. Despite MacIntyre Clark LLP having been formed in December 2008, it was not until January 2010 that the Manchester office had commenced operations, which had then ceased on or about 6 April 2010.

Birmingham Office

17. The Birmingham office had commenced business in or about January 2010 operating from Colmore Plaza, 20 Colmore Circus, Queensway, Birmingham B4, moving to 65 Church Street, Birmingham at or about the beginning of April 2010 and ceasing operations on 23 April 2010.

18. On attending the Birmingham office on 24 March 2010, an Investigation Officer of the Applicant found approximately fifteen fee earners conducting both immigration and personal injury files, the latter having been inherited from W LLP. The instructions in relation to the personal injury matters originated from the referrer One Stop and the immigration matters had been sourced through a website advertising under the style of One Stop Visa.

19. When she attended the Birmingham office on 24 March 2010 with a colleague, the Applicant's Investigation Officer met with Mr IH and Mr AS who were not solicitors but who indicated that they had a background in mobile telephones and not in the legal profession. Mr IH and Mr AS described themselves as being the "Administration Manager" and involved in the "marketing campaign" of the firm respectively. Each had been involved in the management of W LLP. Three members of staff at the Birmingham office, namely AR, IH2 and SK had formerly been employees of W LLP.

Involvement of:

- One Stop Visa;
- Pickles/Jigsaw;
- Mr MC;
- Mr WS;
- Mr AS; and
- Mr IH.

20. The firm's Manchester office originally occupied premises at 11thFloor, 3 Piccadilly Place, Manchester M1 3BN. The firm shared premises with other organisations, one of which was a "marketing services company" called Pickles Services Limited which traded under the name of "Jigsaw". The Respondent knew a person involved with that company, Mr MK. Mr IH, who was employed at the firm's Birmingham office, was Company Secretary of Jigsaw.

21. The Respondent had been introduced to Mr MK through Messrs WS and MC whom he had known since approximately 2005. Mr MC was held out by the Respondent as a consultant to the firm and both Mr MC and Mr WS worked at the firm's Manchester office. "One Stop Visa" was the website operated by One Stop Car Solutions Limited of which Mr IH was Company Secretary and which was operated and controlled from a call centre in Manchester run by Pickles Services Limited, trading under the name of Jigsaw. One Stop Visa and Pickles/Jigsaw were controlled by Messrs MC, WS, AS and IH. As stated, the Respondent referred to them collectively as "the Boys".

22. Prospective clients would place instructions via the One Stop Visa website and via Cardnet, a retail card acceptance service operated by Lloyds TSB Bank. This related

to immigration work. The clients were directed to the firm. The clients' funds should have been treated as funds paid on account of costs as opposed to agreed fees. This was because they were not truly "agreed fees" but were conditional on the outcome – "no stay – no fee". These fees were paid directly into the office account of the firm.

23. The firm received from Cardnet a total of £407,788.18, and the entire sum was paid into the firm's office account.

24. Consequently, the personal injury work and immigration work conducted by the firm was generated via One Stop Visa and Jigsaw, both of which were controlled by "the Boys". All four of them were unqualified. However, all four maintained an involvement in the activities of the firm and exerted a significant influence over the way in which the firm operated.

25. At a meeting with an Investigation Officer of the Applicant on 11 June 2008 the Respondent stated that he believed he was in danger from "the Boys" having received threats against him and his family. Furthermore, the Respondent indicated that he suspected the personal injury matters might involve fraudulent claims (staged accidents) which were the subject of a Police investigation.

26. The level of influence of "the Boys" over the activities of the firm was also illustrated by the fact that clients' ledgers were held on a server maintained by One Stop to which the Respondent, despite being the senior member of the firm, did not have access. At the meeting on 11 June 2010 with the Investigation Officer of the Applicant, the Respondent indicated that the chief cashier, Ms LM, had made four payments of £10,000 each to One Stop Car Solutions without his authority. Ms LM said she had been threatened by "the Boys" into making the payments which were made out of the firm's office bank account on 17 and 19 March 2010.

27. Having regard to the lack of knowledge and involvement of the Respondent in the management of the finances of MacIntryre Clark LLP, the premises in Manchester and Birmingham from which the firm operated, and the work undertaken by staff within the firm, the Respondent admitted that he had:

- Failed to comply with his obligations to manage and supervise the firm effectively (Allegation 1.6);
- Failed to keep confidential to his firm the affairs of clients (Allegation 1.7); and
- Permitted non-solicitor third parties to exercise an inappropriate and improper level of influence and control over the firm's activities (Allegation 1.11).

In doing so, the Respondent had acted in breach of his core duties as a solicitor (Allegations 1.1 and 1.2) and acted recklessly (Allegation 1.13).

Failure to co-operate

28. The investigation commenced on 25 March 2010.

29. The next occasion on which the Investigation Officers of the Applicant attended at the London offices of the firm was 3 June 2010. The Officers attended that day without

notice. Access to the firm's office was denied. Telephone messages were left for the Respondent but he advised the Officers through his solicitor that he would not be available to meet them. The Respondent, whilst he was indeed not at the premises that day accepted that he could have done more to assist the Applicant's Officers.

30. The Applicant entered into correspondence with the landlord of the London premises, Omagis Limited, between 4 June 2010 and 23 June 2010. On 8 and 9 June 2010 the Applicant exercised statutory powers in order to gain access to information necessary to the Applicant's investigation.

31. In the circumstances, the Applicant served the two Notices under Section 44B of the Solicitors' Act 1974 (as amended) dated 8 and 9 June 2010 with deadlines set for the delivery of the information and documents requested in the Notices being forty-eight hours and seven days respectively from the date of service of the Notices.

32. The Respondent accepted that he should have permitted the Applicant's Officers to gain access to the firm's offices on 3 June 2010. He was however angry that they had not made a prior appointment. The Respondent did permit access to occur on 11 June 2010 and an interview occurred with the Senior Investigating Officer ("SIO"). It was in the course of this meeting that the Respondent explained the involvement of "the Boys" in the operation and activities of the firm. The Respondent acknowledged receipt of the two Section 44B Notices on the dates they had been issued and requested an extension of the deadlines to 18 June 2010. The SIO agreed that he would recommend the extension to his manager and the investigating team would return on 21 June 2010. This was agreed by the Respondent.

33. The SIO had stressed the importance of the Applicant continuing with its investigation on Monday 21 June 2010 but the Respondent did not confirm their appointment and the meeting did not take place. Despite the urgency of the situation having been impressed upon the Respondent, it was not until 8 July 2010 that a further meeting took place at which the Respondent's compliance with the Section 44B Notices was discussed. The Respondent accepted that his email correspondence which led up to that meeting illustrated a lack of co-operation on his part.

34. The Respondent accepted that he had failed to co-operate with the Applicant (Allegation 1.10) and, in so doing, failed to act with integrity (Allegation 1.1) and acted in a way which was likely to impair the trust the public placed in him and the profession (Allegation 1.2).

Books of Account

35. Whilst the production of relevant accounting documents had been requested via the Notices served on 8 and 9 June 2010 under Section 44B, the Respondent had been unable to produce any such accounting documentation. Such accounting documentation which did exist was controlled by "the Boys" who had denied the Respondent access to the server containing the accounts information which was held in Manchester. The chief cashier, Ms LM, had left the firm on or about 23 April 2010.

36. The accounting function was operated by Ms LM from the Manchester office. The Respondent had little knowledge or control over the Manchester office and its accounting function.

37. On 8 July 2010 the Respondent spoke with Mrs M of the Applicant. He suggested that the current balances as at 31 March 2010 as shown in the accounts ledger maintained in Manchester were available; no individual client ledger accounts were available nor were any office side or client side entries provided. Transactions in respect of unidentified clients were to be entered on a suspense account and allocated when identified.

38. As a result of the complete lack of client ledgers, it was not possible to produce a current list of liabilities to clients and there was no client account cash book or office account cash book for the two office bank accounts.

39. As a consequence, there was no basis upon which bank reconciliations could be carried out.

40. The Respondent confirmed that the accounts were formally maintained by Ms LM on a computer in Manchester owned or controlled by Jigsaw which in turn was controlled by "the Boys".

41. It had been intended in June 2010 by the Respondent to retain the accountants Deloitte to reconstruct and recreate the firm's accounting records but during the investigation the Applicant was given no evidence of any involvement of Deloitte and the Respondent accepted that none had occurred.

42. Consequently the Respondent admitted that there was:

- A failure by the Respondent to maintain books of account (Allegation 1.3);
- A breach of his duty of confidentiality (Allegation 1.7); and
- The Respondent allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the firm (Allegation 1.11).

43. In so doing, the Respondent acted in breach of his core duties (Allegations 1.1 and 1.2) and acted recklessly (Allegation 1.13).

<u>Misuse of clients' monies leading to breaches of Rules 15 and/or 19 of the SAR 1998</u>

<u>Failure to ensure proper compliance with awards made by Adjudicators in respect of inadequate professional service ("IPS")</u>

44. In March 2010, approximately £250,000 had been received into the firm's office bank account from Cardnet.

45. In the Section 44B Notice dated 9 June 2010 the Respondent had been requested to produce evidence to support his contention that the amounts paid into office account were agreed fees. The Respondent failed to produce to the Applicant either at the meeting on 8 July 2010 or at all any documentation which supported the contention that the funds represented agreed fees.

46. The information on the One Stop Visa website advertising for immigration work and in the client care letters examined by the Applicant indicated that the fees lodged directly into the firm's office bank account were not agreed fees but fees on account of costs which should have been held in client account. The total amount deposited as shown on a spreadsheet sent to the SIO by the Respondent by email dated 2 July 2010 showed that a sum of £407,788.18 had been deposited into the firm's office account;

47. By email dated 19 July 2010 the Respondent provided the SIO with a fifty-six page document entitled "fixed fee.pdf".

48. However client care letters typically stated that the fees received were not agreed fees but rather payments on account which should therefore have been paid into client account. The Respondent indicated that, in describing the fees as agreed fees, he had relied on legal advice but the legal advice forwarded by the Respondent to the Applicant directly contradicted the Respondent's assertion that such advice supported the view that the fees were capable of being described as agreed fees.

49. One Stop Visa via its website and on behalf of the firm promised that if the firm was unsuccessful in obtaining a visa for a client, clients were entitled to a refund of their fees described as "no stay – no fee".

50. Consequently the business model operated by the firm was improper for the following reasons:

50.1 At the time invoices were rendered at the outset of the retainer, the fee was potentially refundable and therefore could not properly be described as an agreed fee;

50.2 The funds in respect of an invoice or bill were not "properly required" as defined in Rule 19(2) of the SAR 1998 until and unless the work had been done which was not the case;

50.3 The firm's sample client care letter made no reference to agreed fees. Rather, the letter suggested that the funds had been paid on account; and

50.4 The business model was being operated contrary to the legal advice provided to the firm.

51. The Cardnet receipt schedule showed approximately 840 transactions which gave rise to a total of £407,788.18 being paid into office account. On each occasion it was done, the Respondent had breached Rule 15 (1) of the SAR.

52. As at 11 June 2010, only £2,511 was held in the firm's office bank account meaning that almost the entirety of the £407,788.18 had been disbursed. Clients' money had been improperly appropriated and put at risk.

53. There was a serious lack of accounting information within the firm. 297 of the 840 receipts of funds had not been identified on the firm's records as no client name appeared. Consequently it was impossible to identify with accuracy clients who were or might be entitled to a refund of their fees.

54. The Legal Complaints Service ("LCS") received multiple complaints about the firm, the vast majority of which concerned clients who had paid money for immigration advice and representation but who were dissatisfied. Adjudicators' Decisions made in respect of awards of compensation to clients who had complained were not complied with by the Respondent and nor did the Respondent comply with costs awards against him. A schedule illustrating the position in relation to awards, non-payment by the Respondent and payment of the IPS awards by the Assigned Risks Pool was contained in the exhibit to the Rule 5 Statement and the Respondent accepted that it was accurate.

55. The Respondent admitted that the best interests of clients were severely compromised and the Applicant was put into the position where it was unable to express an opinion with regard to the extent of the firm's liabilities to clients.

56. As a result, the Respondent admitted that:

- He acted in breach of Rules 15 and/or 19 of the SAR (Allegations 1.4 and 1.5); and
- He failed to comply with Adjudicators' Decisions (Allegation 1.12).

57. In doing so, the Respondent placed client monies at risk and breached his core duties (Allegations 1.1 and 1.2). The Respondent admitted that his conduct had been reckless in the sense of having been grossly careless.

Professional Indemnity Insurance

58. At the outset of the investigation the Respondent was requested to provide the Applicant with a copy of the firm's Professional Indemnity Insurance ("PII") Certificate. It was not forthcoming and by email dated 5 July 2010 advance warning was given to the Respondent that he would be asked about the PII at the meeting due to be held on 8 July 2010.

59. At the meeting on 8 July 2010 the Respondent stated that he did not possess a copy of the PII Certificate but clearly stated to the Investigation Officer that Hiscox were the firm's insurers. The Respondent was asked to provide a copy of the Certificate by 16 July 2010.

60. On the Applicant perusing the firm's office account bank statements, there was no sign of any insurance premiums having been paid. The Respondent's explanation provided on 8 July 2010 was that he had paid the premiums before the firm's office bank accounts had been opened. Evidence of such payments was requested to be provided by 16 July 2010.

61. Whilst the Respondent provided the Applicant with a number of documents attached to an email dated 19 July 2010, neither the PII Certificate nor evidence of when and how premiums were paid was provided.

62. The Respondent subsequently provided the SIO of the Applicant with eight instalment invoices from GRO Risk Solutions Ltd covering the period August 2009 to March

2010 which quoted on it "Solicitors Professional Indemnity Insurance Hiscox Insurance – HX58964758SL" and stated that payments were to be made by ten monthly instalments of £2,887.50. This conflicted with the Respondent's earlier statement that he had paid the premium prior to the office account bank statements having been opened and it transpired that whilst Hiscox Underwriting Limited had provided an indication of terms, in a letter dated 2 August 2010 Hiscox advised that it had not provided PII cover for the firm. The firm was therefore uninsured and the Applicant had been given misleading information by the Respondent.

63. The importance of maintaining PII was illustrated by the fact that many clients experienced difficulty in ensuring that they received payments of compensation authorised by the Adjudicators following findings of IPS. Ultimately, the Assigned Risks Pool accepted responsibility for some payments.

64. The Respondent admitted that he failed to have in place PII (Allegation 1.9). In doing so, the Respondent admitted that he breached his core duties (Allegations 1.1 and 1.2) and acted recklessly in the sense of having been grossly reckless (Allegation 1.13).

Breach of Rule 9 of the SCC 2007

65. Agreements were entered into by the firm with; Grand Solutions dated 10 November 2009, One Stop Car Solutions Ltd dated 25 November 2009 and Jigsaw Sales and Marketing Ltd dated 5 March 2010.

66. The Respondent admitted that in breach of Rule 9.02(e)(i) and (ii), despite the Agreements with Grand Solutions and One Stop Car Solutions Ltd containing clauses which provided for a referral payment of £500 plus VAT and £700 plus VAT respectively, the Agreements did not state that the Introducer would give to the client all relevant information concerning the referral to include the fact that the Introducer had a financial arrangements with the firm, the amount of any payment to the Introducer and how that payment was calculated.

67. The Respondent was unable to provide to the Applicant the names of the individuals who had signed the Agreements on behalf of Grand Solutions and One Stop Car Solutions Ltd but confirmed that Grand Solutions had been introduced to him by "the Boys".

68. In addition, despite the requirements of Rule 9.02(g), there was no evidence that clients were informed by the Respondent's firm of the name of the referrer nor the amount of any referral fee paid by the firm to the referrer; this was because no such information was provided.

69. The Section 44B Notice dated 9 June 2010 contained a requirement that the Respondent provide a schedule of payments or receipts made to or by any referrer. By an email dated 19 July 2010, the Respondent provided a schedule of payments to the parties in the following sums:

Referrer	Amount
One Stop Car Solutions Ltd	£65,925.00

Pickles	£16,000.00
Jigsaw	£120,120.25
Total:	£202,045.25

70. The Respondent admitted that he failed to comply with Rule 9 of the Solicitors' Code of Conduct 2007 (Allegation 1.7) and that in doing so, he breached his core duties (Allegations 1.1 and 1.2).

Payment to Omagis Ltd of £126,647.46

71. In the Section 44B Notice dated 9 June 2010 the Applicant requested the firm to provide full details of all payments out of the firm's business instant access account number 30885168. Despite assurances, the Respondent failed to send to the Applicant sufficient documentation regarding the payments made out of the account save for one payment for £126,647.46 on 26 April 2010 by means of a CHAPS transfer signed by Mr B to H LLP, the solicitors for Omagis Ltd and purported to be for the provision of office facilities to the firm. No further documentation was forthcoming and the sum was said by the Respondent to have represented an advanced payment made to Omagis Ltd.

Loans and Funding

72. By the Section 44B Notice dated 9 June 2010 the Applicant had requested the Respondent to provide details of the financial resources available to the firm. By an email dated 19 July 2010 the Respondent provided a loan agreement dated 19 July 2009 between Omagis Ltd and the Respondent in respect of a loan facility of £240,000, a letter dated 22 April 2010 from Omagis Ltd to the Respondent and two letters dated 10 June 2010 regarding a US$1,000,000 facility.

73. The letter dated 22 April 2010 referred to Omagis Ltd having, to date, arranged for the drawdown of funds of £35,206.04 which was sent directly to the firm on 26 January 2010.

74. Initially, on inquiry by the Applicant the Respondent had indicated that the firm had not received any loans or funding. Yet the firm's office account bank statement showed a receipt dated 26 January 2010 in the sum of £35,206.04 from "B" as opposed to Omagis Ltd. The Respondent stated to Mr Shaw on 8 July 2010 that Omagis Ltd, of whose sister company OCL the Respondent was a director, had organised the funds which came from B and he knew no more than that.

75. A company search of B C LLP, based in Birmingham, showed that the members were a Mr ZA and Mr AS. The Financial Services Authority ("FSA") register dated 29 June 2011 regarding OCL recorded the FSA's decision to cancel its status as an "authorised person" for the purposes of the Financial Services and Markets Act 2000 ("FSMA 2000") and that it may not carry on regulated activities which fall within the scope of the FSMA 2000.

76. Consequently there was a lack of transparency and consistency with regard to the funding arrangements of the firm for which the Respondent was responsible. The Respondent admitted that he had provided statements to the Applicant regarding the

source of funding to the firm which were misleading, although he denied that such statements were subjectively dishonest. The Respondent however admitted that in making such statements, he acted in breach of his core duties to act with integrity and independence (Allegation 1.1) and in a way which was likely to impair the trust the public placed in him and the profession (Allegation 1.2).

Witnesses

77. None

Findings of Fact and Law

78. Allegation 1.1: He conducted himself in a manner which was likely to compromise his integrity and/or independence contrary to Rules 1.02 and/or 1.03 of the Solicitors' Code of Conduct 2007;

Allegation 1.2: He failed to act in the best interests of clients contrary to Rule 1.04 of the Solicitors' Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;

Allegation 1.3: He failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors' Accounts Rules 1998;

Allegation 1.4: He paid, or permitted payment, into office account monies which should have been paid into client account in breach of Rule 15 of the Solicitors' Accounts Rules 1998;

Allegation 1.5: He paid or permitted payment directly into office account monies received from clients which the Respondent described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors' Accounts Rules 1998;

Allegation 1.6: He failed to fulfil his responsibilities with regard to the management of MacIntyre Clark LLP and/or supervision of the work undertaken contrary to Rule 5 of the Solicitors' Code of Conduct 2007;

Allegation 1.7: He failed in his duty to keep confidential to his firm the affairs of clients contrary to Rule 4.01 of the Solicitors' Code of Conduct 2007;

Allegation 1.8: He entered into agreements with Introducers and, in doing so, failed to comply with the requirements of Rule 9.02 of the Solicitors' Code of Conduct 2007;

Allegation 1.9: He allowed MacIntyre Clark LLP to operate as a firm without having in place professional indemnity insurance contrary to Rule 4.1 of the Solicitors' Indemnity Insurance Rules 2007;
Allegation 1.10: He failed to cooperate with the Solicitors Regulation Authority contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007;

Allegation 1.11: He allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of MacIntyre Clark LLP:

Allegation 1.12: He failed to ensure compliance with Adjudicators' Decisions relating to awards of compensation for inadequate professional service;

Allegation 1.13: He acted recklessly;

Allegation 1.14: He provided misleading statements to the SRA and, in doing so, he acted dishonestly.

78.1 Mr Dutton referred the Tribunal to the Statement of Agreed Facts dated 5 October 2012 and his Note dated 5 October 2012 upon which he relied. Mr Dutton asked that the Statement of Agreed Facts be treated as read into the Tribunal record.

78.2 Mr Dutton informed the Tribunal that the Respondent had been advised and represented by Mr Hopper QC. The Respondent had made extensive admissions and had offered undertakings to the Applicant and the Tribunal as a result of which, if they were acceptable to the Tribunal and were complied with by the Respondent, the Applicant would not seek to pursue the unadmitted allegation against the Respondent.

78.3 Of the fourteen allegations, the Respondent had not admitted one aspect which related to allegation 1.14. Mr Dutton said that the Respondent admitted that he had made misleading statements to the Applicant about the source of funding of his firm. He denied that he had done so in a subjectively dishonest state of mind. The Applicant had considered whether it remained in the public interest to pursue this contested issue in circumstances where admissions had been made not only as to serious rule breaches, and to reckless conduct, but also to having made misleading statements to the Applicant, and where the Respondent had agreed to be removed from the Roll of Solicitors and not to seek re-entry to the profession for at least six years.

78.4 Against that background, the Applicant was satisfied that the public interest did not require the expense of a public hearing on this issue.

78.5 Mr Dutton invited the Tribunal, in accordance with Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569 to approve the Outcome as set out in the Statement of Agreed Facts.

The Tribunal's Findings

78.6 The Tribunal had listened carefully to the submissions of Mr Dutton QC, had read all of the documentation and case law to which it had been referred and had heard from the Respondent that the Statement of Facts was agreed as was the Outcome reached between the parties and set out in that document.

78.7 The Tribunal was satisfied that the Outcome was appropriate, proportionate and constructive in the circumstances and that it afforded the public the protection it required and removed any risk of the Respondent practising again for the foreseeable future. In the event that he sought to apply for restoration to the Roll of Solicitors, he

would in any event have to apply back to the Tribunal for such permission to be granted.

Previous Disciplinary Matters

79. None

Mitigation

80. None

Sanction

81. In accordance with the Statement of Agreed Facts and Outcome as agreed by the Applicant and the Respondent and upon the Respondent having given various undertakings to the Applicant and the Tribunal, no Order was made other than in relation to costs.

Costs

82. Mr Dutton asked that the Tribunal make an order for costs in the sum of £79,655.34. Whilst the Respondent was bankrupt, the Applicant would seek to prove its costs in the bankruptcy.

83. The Respondent informed the Tribunal that he was unable to agree the costs due to his bankrupt status but said that he did not object to the costs sought.

84. The Tribunal ordered the Respondent to pay the Applicant's costs summarily assessed in the sum of £79,655.34.

Statement of Full Order

Upon the Respondent undertaking to the Applicant and the Tribunal that:

1. He will immediately cause his name to be removed from the Roll of Solicitors and that such undertaking will be deemed to operate as an Order striking the Respondent from the Roll under Section 47 of the Solicitors Act 1974;

2. He will not seek readmission to the Roll for a period of at least six years from the date on which the Respondent's name is removed from the Roll;

3. Between today's date and the expiry of six years from the date on which the Respondent's name is removed from the Roll, in accordance with the definition contained in Section 43(1)(A) of the Solicitors Act 1974, he will not take any part whether as owner, manager, employee or in any other capacity in the affairs of any entity providing legal services authorised by the Applicant, nor have an interest in any such entity;

4. If, after the expiry of six years from the date on which the Respondent's name is removed from the Roll, the Respondent does wish to take any part in the affairs of any

entity regulated by the Applicant, and he has not sought, nor been granted, an Order restoring his name to the Roll, the Respondent will cause any solicitor wishing to employ or remunerate the Respondent to make or cause to be made an application to the Applicant under Section 41 of the Solicitors Act 1974 for permission to employ or remunerate the Respondent and the Respondent will not carry out any work for the said solicitor without such permission being granted; and

5. In the event that the Respondent seeks restoration to the Roll of Solicitors, after the expiration of at least six years, the Respondent must apply to the Solicitors Disciplinary Tribunal for an Order for restoration under Section 47(2)(f) and (h) of the Solicitors Act 1974 and in the absence of such an Order, the Respondent will not be entitled to be restored to the Roll of Solicitors.

The Tribunal Ordered that the Respondent, Martin Clive Boulton, solicitor do pay the costs of and incidental to this application and enquiry fixed in the sum of £79,655.34.

Dated this 23rd day of November 2012
On behalf of the Tribunal

Mrs J. Martineau
Chairman