



The Law Society

Adjudication in a matter raised by AD
Law Society Freedom of Information Code
January 2013



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code in its responses to a series of questions asked by an applicant (referred to here as AD) arising partly from an earlier Fol adjudication.

2. The background

The background to this case is available in an earlier adjudication dated 16 August 2012. That had arisen out of questions AD had asked about the handling of a complaint he had made to the Solicitors Regulation Authority (SRA) concerning the way a solicitor had handled a bequest AD said had been due to him under his late father's Will. In summary, AD says that the solicitor transferred a portion of AD's inheritance without his knowledge or consent to an undisclosed third party bank account. AD says that he has received legal advice to the effect that the solicitor committed a "breach of trust". AD therefore wants to understand how his complaint – which resulted in no further action by the SRA - was investigated.

During the course of the earlier adjudication AD received from The Law Society a copy of much of the information held in the file on his case, including the completed Risk Assessment Profile (RAP) that the SRA Assessor had completed during her investigation. However, the adjudication upheld the Society's decision to redact from AD's copy of the file some information which had been given in confidence to the SRA by the solicitor. Withholding this information, said the adjudication, was in accordance with section 14.10 of the Society's Freedom of Information Code ("the Code").

Having received that adjudication, AD wrote to The Law Society on 19 August 2012 with a request for more information about various aspects of the RAP and about how, and why, it had been completed in the way that it was. He then went on to ask a range of further questions prompted by the Society's submissions to the earlier adjudication, or by the adjudication itself. In total, AD asked some dozens of questions.

On 6 September the Society's Information Compliance Manager, Mr Bob Stanley, replied. He said that responding to the request would cost the Society more than £450, the limit set by Parliament in 2004 to enable public bodies covered by the Freedom of Information Act to decline to release information if providing it would be prohibitively expensive. Mr Stanley told AD that he could appeal against this decision and AD did so.

On 8 September I invited The Law Society to make a written submission as to why it believed that, in withholding the information AD had asked for, it had acted appropriately in accordance with the Code. I noted that, without prejudice to any argument about the overall cost of answering all AD's questions, it appeared that at least some of them could be answered relatively easily. In response, on 11 October, Mr Stanley sent AD information in answer to sixteen of his original questions. The Society stated that the cost of answering the remaining questions would exceed the limit of £450.

Following an exchange of correspondence with AD, on 22 October it was agreed that I should adjudicate on the Society's refusal, on grounds of cost, to provide answers to the remaining questions. I invited each party to let me have a written submission no later than 12 November.

On 12 November AD made his submission. He addressed at considerable length why he believed that it was inappropriate for The Law Society to have declined to answer his questions on grounds of cost.

On the same day The Law Society withdrew its reliance on the cost limit of £450 and indicated to AD that it would provide him with answers to the remaining questions.

On 13 November the Society provided further answers but AD remained dissatisfied and requested adjudication.

In order to clarify the issues for adjudication I invited AD to supply a list of the questions which he believed had not been answered by The Law Society in the way the Code required. On 10 December he did so.

For the sake of clarity I summarised AD's list and provided it to The Law Society for its response, which I received on 3 January 2013. What follows therefore is a list of the questions to which AD believes he has not received appropriate answers, and a short summary of The Law Society's previous responses to those questions. In each case these are followed by AD's submissions to the adjudicator as to why he thinks that The Law Society's previous responses were not in accordance with the Code. Those in turn are followed by The Law Society's submissions to the adjudicator.

3. Outstanding questions

3.1 On 19 August AD asked: "Exactly which criteria and various methodology [sic] from the SRA website page below were used to calculate the "Score" of 12.60".

On 11 October the Society replied: "The "Score" is calculated from the scores generated by the Event, Impact, Source credibility and Strength of evidence scores."

On 24 October AD responded: "I wanted the Society to provide me with a list of the actual criteria and corresponding score for each of the elements selected by the SRA which created the "Score" of 12.60. Did the Society initially access [sic] that the solicitor in question was Gross Negligent (1.6) + Reckless (1.8) + Deliberate and/or Dishonest (2.0) etc... What exactly was the range of criteria and their corresponding scores which led to the "Score" of 12.60? I was also expecting a similarly detailed answer for question Section A: 6. I want to know exactly which Event Assessment categories and their individual corresponding score (or Impact, Source credibility, or Strength of evidence scores) were applied to the RAP form to generate the "Score" & "Total Score" of 12.60."

On 6 November the Law Society told him: "The "Score" is calculated from the scores generated by the Event, Impact, Source credibility and Strength of evidence scores. The Assessment document (RAP form) looks up and multiplies the scores associated with the data that is entered into the Event, Impact, Source credibility and Strength of evidence fields".

AD's submission to the adjudicator: "[I am asking for]...a list of the actual risk scoring criteria and the corresponding score for each of the elements selected by the SRA which created the "Score" of 12.60 as indicated on 24.10.12. For example, did the Society initially access [sic] that the solicitor in question was Gross Negligent (1.6) + Reckless (1.8) + Deliberate and/or Dishonest (2.0) etc... What were the individual scores and categories assigned whose sum was 12.60? What exactly was the range of criteria and their corresponding scores which led to the "Score" of 12.60? As I outlined to the Society, I want to know exactly which specific Event Assessment categories and their individual

corresponding score (or Impact, Source credibility, or Strength of evidence scores) were applied to the RAP form to generate the "Score" & "Total Score" of 12.60 which was never addressed by the Society."

The Law Society's submission to the adjudicator: "We have looked again at AD's queries and we are of the view that we have disclosed all relevant information to him. We have explained why we selected the various options on the RAP form & the triage form.

What he is now doing is trying to argue that the wrong options were chosen & asking us to explain why we didn't choose this over that reason. The SRA cannot go through each different option because this would end up in very lengthy correspondence. There are approximately 180 different 'Events' on the RAP form and hundreds of different reasons & scenarios where the different tick boxes on the Triage form could be used. It is not possible to give a definitive answer as to why each and every one of these wasn't used. The important thing is to select the most appropriate reason & tick box. We have also previously explained the purpose of the Triage form and the tick boxes included on the form. AD appears to be confusing the two.

The scores that he is asking about in questions 3.1 and in 3.4 are as follows:-

On 6 November the Law Society told AD: "The "Score" is calculated from the scores generated by the Event, Impact, Source credibility and Strength of evidence scores. The Assessment document (RAP form) looks up and multiplies the scores associated with the data that is entered into the Event (6.0) , Impact (6.0), Source credibility (0.5) and Strength of evidence fields (0.7)". Score = 12.6

In question 4.4, the calculation would be exactly the same except it would be (Event (6.0) , Impact (6.0), Source credibility (0.5) and Strength of evidence fields (0.7)". Total score 12.6 *1 (there is only 1 Risk Event applicable) = Total Score = 12.6

The methodology for the calculation has already been explained to AD.

3.2 On 19 August AD asked: "Under "Event Category" why was "Breach of undertaking – outstanding" or "Inadequate costs information – non client" not assigned instead of assigning "Taking unfair advantage of non client"?"

On 11 October the Society replied: "... the Assessor selects the most appropriate choices based on the information presented to them in the report."

AD's submission to the adjudicator: "[I am clearly asking]... why the "breach of undertaking – outstanding" or "Inadequate costs information – non client" were deemed as inappropriate choices for the Event Category. The Law Society has failed to provide an explanation as to why these 2 Event categories were specifically not assigned in this case."

The Law Society's submission to the adjudicator: "See response to 3.1 above."

3.3 On 2 August AD asked: "[Under 'Strength of Evidence']...What is the criteria used to determine this rating? What scale of scores are possible and how are they ranked within a range? Is there a grading table available?"

On 15 August the Society replied: "This reflects the strength of evidence in support of the allegation. The values represent a sliding scale of the strength of the evidence, as follows:-

- 1 - Known to be true without reservation
- 2 - Clear, well documented

- 3 - Poorly documented/circumstantial evidence
- 4 - Cannot be judged on evidence presented
- 5 - Suspected to be false/no evidence presented”

In response, on 20 August AD asked: “Why did the “Strength of Evidence” receive a rating of “3” which signifies that my Report Form submission to the SRA was “poorly documented/circumstantial”? Did the SRA deem my complaint to be “poorly documented” or “circumstantial” or both and on what basis did they make this determination?”

On 11 October the Society responded: “... the Assessor selects the most appropriate choices based on the information presented to them in the report.

On 26 October AD replied: “... the Society never provided an answer to my initial question which was Did the SRA deem my complaint to be “poorly documented” or “circumstantial” or both and on what basis did they make this determination?, in order to substantiate the level "3" rating which was allocated to the "Strength of Evidence" category. I would ask that the Society provide a direct and specific response to this question as I initially requested, as the answer currently provided is ambiguous and does not specially address which "appropriate choices" were considered which is only referenced by the Society in its answer to me.”

On 6 November the Society told him that it had been “... the appropriate choice for the information that has been sent in.

‘A’ is used for ‘always reliable’ and is primarily ‘technical’ evidence such as DNA, fingerprints etc.

A certificate of conviction from the Courts, for example, could be classed as ‘A’

‘B’ is ‘mostly reliable’ and relates to sources where intelligence has been tested and proven true in the

past e.g. internal referrals where they are original sources. There is no element in this rating of

‘status’

or any form of an individual’s job imparting a ‘natural reliability’ (such as being a judge), although

reports from law enforcement will naturally have a source of 'B'.

‘C’ is ‘sometimes reliable’ and again should be used for known and tested sources.

‘D’ is ‘unreliable’ and again should be used for sources that have previously provided information

which could not be relied on.

‘E’ is ‘untested’ and is used for the majority of matters assessed where the source of the information

does not have a history of reporting that has been tested in the past.”

AD’s submission to the adjudicator: “Within the Event Assessment Section of the RAP Form pertaining to my complaint, the “Strength of Evidence” box was assigned the Number “3” (NOT a letter between A – E which refers to the “Source Credibility” box!) On 15.08.12, the Society clearly stated that the assignment of the number 3 meant my report form was accessed [sic] as “Poorly documented/circumstantial evidence”. I am not sure what the Society’s response from 06.11.12 is addressing as my question does not concern “Source Credibility” which is a completely different category and rating. ... If the number 3 was assigned to “Strength of Evidence”, based on my question on 20.08.12, the answer from the Society should state this was due either to the SRA considering complaint to be “poorly documented” or “circumstantial” or both. I also clarified my question again very clearly on 26.10.12, however the Society never answered the basis upon which they made their determination which was the second part of my question, in spite of my clarification on 26.10.12 which stated the Society did not specially address exactly which "appropriate

choices" were considered in its answer to me as requested. It is clear that the Society has failed to answer my question."

The Law Society's submission to the adjudicator: "See response to 3.1 above."

3.4 On 19 August AD asked: "Why is number assigned to the "Total Score" the same number as "Score"? Exact [sic] which criteria and various methodology from the SRA website page below were used to calculate the "Total Score" of 12.60? (Quantitative & Qualitative)? Are these the exact same criteria and various methodology reflected in the number assigned to the "Score" or are these separate and different criteria and methodology used to generate the figure of 12.60 in both cases?"

On 11 October the Society replied: "See our website page <http://www.sra.org.uk/sra/strategy/risk.page> for details and information about the criteria & calculation used to determine this number. On the RAP form, it is possible to add more than 1 Event Assessment & each Event Assessment will generate its own score. This Total Score is the sum of the Event Assessment Scores and can range from zero upwards, depending on the sum of all the Event Assessment Scores.

On 24 October AD responded: "...I wanted the Society to provide me with a list of the actual criteria and corresponding score for each of the elements selected by the SRA which created the "Score" of 12.60. Did the Society initially assess that the solicitor in question was Gross Negligent (1.6) + Reckless (1.8) + Deliberate and/or Dishonest (2.0) etc... What exactly was the range of criteria and their corresponding scores which led to the "Score" of 12.60? I was also expecting a similarly detailed answer for question Section A: 6. I want to know exactly which Event Assessment categories and their individual corresponding score (or Impact, Source credibility, or Strength of evidence scores) were applied to the RAP form to generate the "Score" & "Total Score" of 12.60. I simply do not know how to articulate my request in a clearer manner."

On 6 November the Society replied: "See previous answer to this question. On the RAP form, it is possible to add more than 1 Event Assessment & each Event Assessment will generate its own score. This Total Score is the sum of the Event Assessment Scores ("Score") and can range from zero upwards, depending on the sum of all the Event Assessment Scores. In this case, there was only 1 Event Assessment so the Total Score and the "Score" are the same."

AD's submission to the adjudicator: "[I am]...clearly not asking about how the "Score" is calculated, but rather a list of the actual risk scoring criteria and corresponding score for each of the elements selected by the SRA which created the "Score" of 12.60 as indicated on 24.10.12 and similar to Question 1. For example, did the Society initially assess that the solicitor in question was Gross Negligent (1.6) + Reckless (1.8) + Deliberate and/or Dishonest (2.0) etc... What were the individual scores and categories assigned whose sum was 12.60? What exactly was the range of criteria and their corresponding scores which led to the "Score" of 12.60? As I outlined to the society, I want to know exactly which Event Assessment categories and their individual corresponding score (or Impact, Source credibility, or Strength of evidence scores) were applied to the RAP form to generate the "Score" & "Total Score" of 12.60. It is also simply ludicrous for the Society to answer my

question using the following link <http://www.sra.org.uk/sra/strategy/risk.page> which I myself initially included in the initial question on 20.08.12. ... The Society's response on 10.11.12 attempts to address how the "Total Score" is calculated or could be calculated, however never addresses my initial question, "Are these the exact same criteria and various methodology reflected in the number assigned to the "Score" or are these separate and different criteria and methodology used to generate the figure of 12.60 in both cases?" as requested on 20.08.12. As the society never provided the actual risk scoring dated [sic] which provided the sum of 12.60 or addressed whether the 12.60 "Total Score" actually reflects the same components as the score or different ones my question was not most certainly answered."

The Law Society's submission to the adjudicator: "See response to 4.1 above."

3.5 On 19 August AD asked: "Why was my complaint assessed as an "Urgent" matter by the SRA?"

On 11 October the Society replied: "When post initially comes into the Unit, it is processed or triaged. There are certain indicators that the triage staff look for and where appropriate, they will mark the file up for Urgent assessment. This simply means that the file will be Risk Assessed more quickly than files that are not marked up as Urgent. It has no bearing on the outcome of the Risk Assessment."

On 24 October AD responded: "I want to have a list of the exact "indicators" which were used and which led to my complaint being assessed as "Urgent".

On 6 November the Society replied: "See previous answer to this question. It was NOT assessed as an Urgent matter. When post initially comes into the Unit, it is processed or triaged. There are certain indicators that the triage staff look for and where appropriate, they will mark the file up for Urgent assessment. This simply means that the file will be Risk Assessed more quickly than files that are not marked up as Urgent. It has no bearing on the outcome of the Risk Assessment.

AD's submission to the adjudicator: "On page 2 of the RAP Form, in the box next to Section 7, "Urgent" is ticked. I consider this to indicate that the SRA assessed my complaint to be an Urgent matter related to Fraud as the Fraud box under section 7 is also ticked. There simply cannot be any other meaning behind this! As I clarified on 24.10.12, I want to have a list of the exact "indicators" which were used and which led to my complaint being assessed as "Urgent" based on the Law Society's response on 10.11.12 which stated that there are "certain indicators that the triage staff look for" when marking up a file for Urgent Assessment. I am not interested in how it bears on the outcome of the Risk Assessment as this is not what I asked in my initial question or my clarification. I was never provided with the list of indicators which the triage staff used when deciding to mark my file as Urgent as I have requested."

The Law Society's submission to the adjudicator: "The Society has nothing to add to its response to AD."

The following matters (3.6 – 3.11) refer to the contents of an earlier adjudication dated 16 August 2012

3.6 On 19 August AD asked: "On Page 4, Section 5- Submission by the Law Society- it states "The Society said that s.14.10 allowed it not to release information which had been given in confidence, where releasing the information would put the Society at risk of legal action either for breaking a confidence or for breaking a contract". On what basis did

the SRA guarantee the solicitor and his firm that it would not release the information that had been given to them in confidence? What is the exact source of this duty of confidence to the solicitor and his firm? Is there a written contract existing between the SRA and the solicitor and or his firm which guarantees that this information provided in confidence will not be released? Does the SRA believe that releasing this information will put them at risk of legal action for breaking a confidence or for breaking a contract or both? What is the basis for this reasoning?”

On 13 November the Society said: “The firm owe a duty of confidentiality to their clients who were, in this case, the executors of the estate. Whilst the SRA has the ability to look at material that is either subject to client confidentiality or legal professional privilege (LPP) for regulatory purposes we also protect the LPP and confidentiality of clients of solicitors. We will only make disclosures where lawful and in the public interest to do so.”

AD’s submission to the Adjudicator: “The Law Society’s response on 13.11.12 does not cover whether there is a written contract existing between the SRA and the solicitor and or his firm which guarantees that the information provided in confidence pertaining to client confidentiality will not be released by the SRA as requested. Their response also does not address whether the SRA believes that the releasing the information will put them at risk of legal action for breaking a confidence or for breaking a contract or both as requested. These 2 questions relate to agreements made between the solicitor and the SRA and have nothing to do with the issue of client confidentiality. The responses provided only pertain to the solicitor’s obligations and not the SRA’s as requested. I would like for the response to this [to] be adjudicated on the basis of whether it would be in the public interest for this information to be released into the public domain. It is clear that the Society has failed to answer the 2 questions above in this case and I would like to receive an answer: Is there a written contract existing between the SRA and the solicitor and or his firm which guarantees that this information provided in confidence will not be released? Does the SRA believe that releasing this information will put them at risk of legal action for breaking a confidence or for breaking a contract or both? What is the basis for this reasoning?”

The Law Society’s submission to the adjudicator: “There is no written contract. The issue of client confidentiality is relevant to this matter. There are private law duties of confidentiality that the SRA owes to people whose confidential information we hold in addition to our statutory obligations. Further, LPP is a fundamental human right that attaches to confidential communications between a solicitor and a client and whilst we can inspect such material for our regulatory purposes the SRA will not breach that fundamental right by disclosing LPP material to someone who is not entitled to see it. None of the exceptions to LPP exist here. The public interest test does not apply to material subject to LPP. The issue of whether the SRA believes that the releasing of information will put it at risk of legal action is not the determining factor rather our obligations to deal with information in a lawful and proper manner is key.”

3.7 On 19 August AD asked: “On Page 4, Section 5 - Submission by the Law Society- it states The Law Society said “the names and identifying information concerning individuals had been withheld under section 16 because the Society was not allowed to publish personal data in response to requests under the Code”. Further, in Mr. Stanley’s email on August 1st 2012 he states “The redacted information has been withheld under section 16 of the Code which states that Society is not allowed to publish personal data in response to requests under the Code” which also references some of the comments which were withheld at the bottom of the RAP Form. Please advise as to exactly which Chapter and Section of the Data Protection Act of 1998 the redactions, including the comments at the bottom of the RAP Form are being withheld. Please note the Information Commissioner’s Guidance when it applies the provisions of its own Code; when a public authority is to rely upon one of the exemptions in the Act in order to withhold information, the

Guidance says:... “The authority must issue a refusal notice clearly stating upon which exemption it is relying and the reasons why the exemption applies.” It is insufficient to merely state that a particular exemption applies. The authority must clearly explain why it believes a particular exemption applies and not just which exemption applies.”

On 13 November the Society replied: “The redacted information was withheld because to disclose it would be a breach of the first Data Protection Principle which states that personal data shall be processed fairly and lawfully. It would be a breach of this principle to publish the redacted personal data.”

AD’s submission to the adjudicator: “I have clearly asked for exactly which Chapter and Section of the Data Protection Act of 1998 the redactions, including the comments at the bottom of the RAP Form are being withheld. I have also called the Information Commissioner myself and they have advised me that by law, the Law Society is obligated to provide me with a citation of the exact section of the Data Protection Act they are adhering to when refusing to disclose the information requested. The Law Society are then obligated to show how the cited section supports their decision to withhold information. The Law Society have mere [sic] stated disclosure would be a breach of the first Data Protection Principle (this is not a section or citation) which states personal data shall be processed fairly and lawfully (where is this exact phrase cited in the Act?) My questions asks for a citation from the Section of Data Protection Act upon which the Law Society is now relying upon for non-disclosure and also a clear explanation as to why this exemption applies and not the general answer which they provided.”

The Law Society’s submission to the adjudicator: “The Society has nothing to add to its response to AD of 13 November 2012.”

3.8 On 19 August AD asked: “In response to Mr. Ayre’s request for a clear public statement of the limits of an SRA investigation, the Society provided the following within their statement, “... we may also decide to investigate the conduct of a solicitor in their professional capacity, if for example they have been convicted of an offence, or have discriminated against someone. “ In my complaint against the solicitor which I submitted to the SRA, the primary basis of my complaint is that the solicitor specifically “discriminated” against me versus all other beneficiaries of my father’s will and was in breach of his legal duty to act impartially towards all beneficiaries as he only retained my funds alone and did not withhold any funds from any of the other beneficiaries who were entitled to receive funds from my late father's estate. How was my claim that I was a victim of discrimination by the solicitor investigated, as this clearly falls under the limits of an SRA investigation? What was the SRA’s conclusion regarding verifying whether I was actually discriminated against by the solicitor? Did the SRA: 1) Examine the Client Bank Account Statement from [name of firm redacted by the adjudicator] showing the distribution of funds from the sale of the property & 2) Verify what price the property was sold at and what amount was left after all costs associated with the sale were subtracted? If the SRA did perform an analysis of items 1 & 2 mentioned above what were their findings? If they did not conduct this analysis, what was the reason this critical analysis was omitted?”

On 13 November the Society replied: “This information is being withheld under section 14.10 of the Code for the same reasons as set out in the Adjudication relating to your request FOI/BS/808 (attached).

The SRA Supervisor, [name redacted by adjudicator], requested relevant evidence from the firm which is subject to client confidentiality (the executor’s confidentiality) and after reviewing that evidence determined that the matter should not be taken any further from a regulatory or disciplinary perspective.

AD's submission to the adjudicator: "The following parts of Question 4 [were] not addressed directly in the Law Society's response: Did the SRA: 1) Examine the Client Bank Account Statement from [name of firm redacted by the adjudicator] showing the distribution of funds from the sale of the property & 2) Verify what price the property was sold at and what amount was left after all costs associated with the sale were subtracted? If the SRA did perform an analysis of items 1 & 2 mentioned above what were their findings? If they did not conduct this analysis, what was the reason this critical analysis was omitted, as I have personally received legal advice that this would be a very easy way to reach a conclusion regarding this matter. I would like these above questions ... to be adjudicated on the basis of whether the Society's decision to withhold this information adheres to section 14.10 of the Code. I also think there is a strong public interest in understanding the rigour with which the SRA undertakes its investigations. By answering Yes or No, to the following 2 questions about the SRA's investigation - 1) Examine the Client Bank Account Statement from [name of firm redacted by the adjudicator] showing the distribution of funds from the sale of the property & 2) Verify what price the property was sold at and what amount was left after all costs associated with the sale were subtracted - neither the Law Society or SRA is breaching client confidentiality in any way as they are only revealing how the SRA analysed this complaint, the actual details from both these questions are already in the public domain.

The Law Society's submission to the adjudicator: "This question has been answered as fully as the Society can answer it. The SRA reviewed evidence that it determined was relevant to the issues and the decision that was reached not to pursue the matter was based upon that evidence. The list of what evidence was reviewed by the SRA was withheld under section 14.10 of the Code and this was upheld in the subsequent adjudication."

3.9 On 19 August AD asked: "In response to Mr. Ayre's request for a clear public statement of the limits of an SRA investigation, the Society also provided the following within their statement: "Any investigation undertaken is limited to considering the obligations set out in the Handbook." Please confirm whether the SRA evaluated my complaint on the basis that the solicitor had breached the SRA Handbook Code of Conduct pertaining to Rule 14: Use of a client account and Rule 15: Client Money withheld from client account on client's instructions; specifically Rules 14.3, 14.4, and 15.2. If my complaint was evaluated by the SRA on the basis of Rules 14 & 15 of the handbook, what was the conclusion which was ultimately reached with respect to both rules? If the SRA had not considered Rules 14 & 15, what was the reason for not evaluating my complaint in relation to Rules 14 & 15 which apply directly to my complaint?"

On 13 November the Society replied: "You are referencing here the SRA Accounts Rules 2011 and not the SRA Code of Conduct 2011. You are making reference to rules that relate to the handling of client money. You were not a client of the firm – the executors were. [Name redacted by the adjudicator] will have considered all relevant aspects of the SRA Handbook 2011 and any other appropriate earlier rules / Codes of Conduct when determining whether this matter should be pursued and would not list rules that were not directly relevant to the matters in question."

AD's submission to the adjudicator: "The SRA Account Rules 2011 are located within the SRA Handbook, it is moot whether they are part of the Code of Conduct. By their own admission, the SRA and Law Society are bound by the obligations set out in the Handbook. My question specifically asks if the SRA considered Rule 14: Use of a client account and Rule 15: Client Money withheld from client account on client's instructions; specifically Rules 14.3, 14.4, and 15.2. This should be simple a Yes or No answer and was not addressed in the Law Society's answer to me. If the SRA did not consider these specific rules, I have also asked for a specific explanation as to why they have not done so and this point was not addressed in the response by the Law Society."

The Law Society's submission to the adjudicator: "The SRA Accounts Rules 2011 and the SRA Code of Conduct 2011 are separate parts of the SRA Handbook. The SRA Accounts Rules 2011 are not part of the SRA Code of Conduct 2011. This question has been answered before by stating that the SRA considered all relevant rules in relation to this particular matter before determining that no further action should be taken and would not consider rules or outcomes that it did not consider relevant."

3.10 On 19 August AD asked: "On Page 10, Section 9 – "Postscript" - it states that a crucial part of the SRA's conclusion was "whether or not the money belonged to [AD] and whether or not the firm [of solicitors] were entitled to retain the sum in this way is a legal issue that is not for us to determine"; why could the SRA not determine whether the funds were actually mine or why when the law firm transferred a portion of my assets to an undisclosed bank account without my knowledge or consent and whether they were actually entitled to do so? Of note, the law firm has not "personally" retained my funds which belong to me by their own admission, as the law firm has written that the funds were actually transferred to a clearing bank whose details they are unwilling to disclose. How can the SRA be sure that the firm was given instructions by the executors of the Estate to take this action? What was the actual evidence examined or analysis conducted by the investigation team to validate this fact? What actual evidence did the SRA examine to reach this conclusion?"

On 13 November the Society told AD: "...we will not list the evidence that was reviewed as part of the SRA investigation. This information is being withheld under section 14.10 of the Code for the same reasons as set out in the Adjudication relating to your request FOI/BS/808."

AD's submission to the adjudicator: "The following parts of [this question] were not addressed directly in the Law Society's response: How can the SRA be sure that the firm was given instructions by the executors of the Estate to take this action per Enclosure 2 of my SRA Report Form? What was the actual evidence examined or analysis conducted by the investigation team to validate this fact? What actual evidence did the SRA examine to reach this conclusion? I would like [the Society's answers to] these questions to be adjudicated on the basis of whether the Society's decision to withhold this information adheres to section 14.10 of the Code. I also think there is a strong public interest in understanding the rigour with which the SRA undertakes its investigations and the type of evidence it reviews. For example, it would be in the public interest to have an understanding that the SRA might have reviewed letters sent to the solicitor by the executors without actually disclosing the confidential contents of those letters to the public."

The Law Society's submission to the adjudicator: "The SRA reviewed evidence from the firm that confirmed the position. The form that this evidence took has been withheld under section 14.10 of the Code and this was upheld in the subsequent adjudication."

3.11 On 19 August AD asked: "On Page 10, Section 9 – "Postscript" - it states that a crucial part of the SRA's conclusion was "whether or not the money belonged to [AD] and whether or not the firm [of solicitors] were entitled to retain the sum in this way is a legal issue that is not for us to determine". Why did the SRA never contact me after the initial submission of my Report Form for any further information which [name redacted by the adjudicator], the SRA Supervisor handling my complaint, assured me she would do if necessary as per her email dated February 28th 2012. Perhaps I could have provided the SRA with further information so that the SRA would be in a better position to determine that the money belonged to me and has now been illegally transferred to an undisclosed location without my knowledge or consent. Why did [name redacted by the adjudicator] not deem it necessary or essential to contact me for further information or insights so that an educated determination regarding these matters could be made by the SRA, specifically as they pertained to both a matter of "discrimination" and Rules 14 & 15 in the SRA Handbook?"

On 13 November the Society told AD: “It was never in the SRA’s remit to determine who was the rightful or legal owner of the money in question as that is an issue for the Courts to determine but rather to determine if there had been any breaches of the rules contained in the SRA Handbook 2011, or Solicitors Code of Conduct 2007 or the Solicitors Accounts Rules 1998 (whichever were the relevant rules in force at the time of the alleged breaches). Therefore, even if there had been further contact between [name redacted by the adjudicator] and you, evidence to determine that and a discussion around that aspect would not be appropriate to the investigation.

AD’s submission to the adjudicator: “Based on the Law Society’s response and previous discussions, I am in agreement with the Society that it was never in the SRA’s remit to determine the rightful or legal owner of the money in question as that is an issue for the Courts. However, in their response they do state that it is in the SRA’s remit to determine if there had been any breaches of the rules contained in the SRA Handbook 2011, or Solicitors Code of Conduct 2007 or the Solicitors Accounts Rules 1998 (whichever were the relevant rules in force at the time of the alleged breaches). In this case, the Law Society should have provided a direct response to the latter half of Question 7, specifically, Why did [name redacted by the adjudicator] not deem it necessary or essential to contact me for further information or insights so that an educated determination regarding these matters could be made by the SRA; specifically as they pertained to both a matter of “discrimination” and Rules 14 & 15 in the SRA Handbook?. An answer was not provided to this part of the question, which by the Law Society’s own admission is certainly appropriate to the SRA investigation.

The Law Society’s submission to the adjudicator: “[name redacted by the adjudicator] is no longer at the SRA so we cannot ask her such questions. However, whether further evidence or information from an informant is required by a Supervisor to determine if the matter needs to be pursued is a matter of judgement following an analysis of the issues and the relevant rules – Ms Butler’s judgement was that this was not necessary by virtue of the fact that she did not contact the informant. The issue as to what rules / outcomes Ms Butler considered to be relevant has been dealt with by earlier responses.”

The following matters (4.12 – 4.15) are what AD calls “miscellaneous” issues which remain unresolved.

3.12 On 19 August AD asked: “Please provide me with a full list of documents within the file which are currently being withheld from me”.

On 13 November the Society told AD: “... we will not list the evidence that was reviewed as part of the SRA investigation. This information is being withheld under section 14.10 of the Code for the same reasons as set out in the Adjudication relating to your request FOI/BS/808.”

AD’s submission to the adjudicator: “I would like [this] to be adjudicated on the basis of whether the Society’s decision to withhold the full list of documents adheres to section 14.10 of the Code. It is understandable that some of contents of these documents would require to be withheld based on reasons of clients confidentiality as previously stated, but there is no reason for the actual list of documents to be withheld. My request asks for a list of all documents which have been withheld from me by the Society, while the Society’s reply only says they will not list the evidence which was “reviewed” as part of the SRA investigation, which is not the basis of my request. A precedent has already been set in “Adjudication in a matter raised by Mr. Nicolas Gould; January 2012” where it is documented that in its submission to the Adjudicator, the Law Society listed all the specific documents withheld

from Mr. Gould including all those which were withheld both under S. 14.10 and S.14.5 of the Code. The Law Society must demonstrate that all requests are handled consistently and must also now release the list of documents which have been withheld from me as a result.

The Law Society's submission to the adjudicator: "The list of evidence that was reviewed as part of the investigation has been withheld under section 14,10 of the Code. The Gould case is not analogous as in that case listing the documents did not amount to a breach of confidence on the part of the Society. In this case, placing a list of evidence reviewed into the public domain would amount to an actionable breach of confidence on the part of the Society."

3.13 On 19 August AD asked: "Please provide me with a scanned electronic copy of the "SRA Validation and Quality Assurance Form" with any necessary redactions as you have done with the RAP Form.

AD's submission to the adjudicator: "The Law Society never provided me with an answer to this request and I would like to receive a response from them."

The Law Society's submission to the adjudicator: "A redacted copy of the SRA Validation and Quality Assurance Form is attached to this submission as Annex A. AD will receive a copy by cc email. The redacted section of the form has been withheld under section 14.10 of the Code.. This is because it summarises information provided by the firm to the SRA in confidence."

3.14 On 19 August AD asked: "Was the 'Manager of Accounts Assessment' and/or the 'Statutory Trust Project Team' involved in the investigation of my complaint regarding the solicitor to the SRA? If my complaint was referred to these parties, what was their involvement in the investigation and the conclusion of their analysis? If my complaint was not assigned to these parties during the investigation, what was the reasoning behind this?"

AD's submission to the adjudicator: "The Law Society never provided me with an answer to this request and I would like to receive a response from them."

The Law Society's submission to the adjudicator: "We can find no reference whatsoever in the SRA file to the Manager of Accounts Assessment and/or the Statutory Trust Project Team. Additionally, we are unable to see why they would have been involved in this matter. This matter was dealt with by the Authorisation and Supervision Units of the SRA and that is what is clear from the papers we have reviewed."

3.15 On 19 August AD wrote to the Society concerning the legal advice which he said he had received from two solicitors and which he had referred to when he contacted the SRA. He detailed the outcome of that advice and asked the Society: "Why was the advice given to me by both [name redacted by the adjudicator] and [name redacted by the adjudicator] not viewed as sufficient by the SRA to draw a conclusion regarding my complaint? How did the SRA weigh the correspondence from both of these 2 top rated solicitors in their investigation? How exactly was the correspondence from these 2 top solicitors weighed during the investigation process and how were matters pertaining to my complaint investigated as a result?"

On 13 November the Society told him: "The information was also the subject of your [previous] request. You have been provided with all the information to which you are entitled under the Code in relation to this matter. The information that you have not received has

been withheld under Code exceptions as set out in the findings of the Society's Freedom of Information Adjudicator [in the adjudication of August 16].”

AD's submission to the adjudicator: “The response from the Law Society does not include exactly which Section of the Code the Society has relied upon to justify not answering this question or disclosing additional information as required and as a result I would like for this question to be adjudicated. Moreover, the following parts of Question 5 were not addressed directly in the Law Society's response: Why was the advice given to me by both [name redacted by the adjudicator] and [name redacted by the adjudicator] not viewed as sufficient by the SRA to draw a conclusion regarding my complaint? How did the SRA weigh the correspondence from both of these 2 top rated solicitors in their investigation? How exactly was the correspondence from these 2 top solicitors weighed during the investigation process and how were matters pertaining to my complaint investigated as a result? I also think there is a strong public interest in understanding the rigour with which the SRA undertakes its investigations.”

The Law Society's submission to the adjudicator: “This information has been withheld under section 14.5 of the Code as originally set out in my response of 13 July 2012 to AD's earlier Fol request and upheld by the subsequent adjudication.”

4. Adjudication

In this complex case it might be helpful to note that the Freedom of Information Act (which The Law Society's voluntary Code aims to reflect) says that a public authority has a general duty to provide information “held at the time when the request is received”. I am not a lawyer, but it appears to me that “information held” must mean information stored in some tangible and objectively accessible form, whether on paper or disk or database or any other storage medium. I cannot construe “information held” by the Society to include the intellectual reasoning of a member of staff, unless that reasoning was itself committed to some tangible and objectively accessible storage medium.

It is entirely understandable, given his circumstances, that AD wishes to understand the reasoning that led someone within the SRA to allot certain scores to the RAP, but unless that reasoning is recorded in some way I cannot see that there is an obligation upon the Society under Fol principles to provide it. To establish such a principle would mean that any member of staff involved in regulatory work might be required at any time in the future to try to reconstruct his or her reasoning on a past case. This could prove unduly onerous and, perhaps more importantly, any such reconstruction might well be inaccurate because it would be based in part at least upon an individual's recollection as to why certain judgments were made originally. As it happens, the SRA Assessor who was responsible for the RAP in this case is no longer employed by the SRA and cannot, therefore, be asked for her recollections even if that were necessary under the Code.

Accordingly, my role is to consider whether, in each of the outstanding cases identified by AD, there is information held in some tangible and objectively accessible form which the Society is withholding contrary to the requirements of the Code.

In respect of 3.1, AD asked what criteria and methodology had been used to calculate the score of 12.60 on the RAP. The Society explained that this number was the product of scores in each of the categories of Event, Impact, Source credibility and Strength of evidence. But AD wants a detailed explanation of how each of those separate scores had been arrived at by the Assessor.

In respect of 3.2, AD asks explicitly why the SRA selected “Taking unfair advantage of non client” from the drop-down list of options available on the RAP rather than one of the other available options, one or other of which AD may feel would have been more appropriate. In answering him, The Law Society has expressed the principle applied in completing the RAP, namely that the Assessor selects the most appropriate choice, based on the information available at the time.

Adjudication: The Law Society confirms that it holds no relevant information explaining the reasoning used by the Assessor in making this specific choice. I conclude that there is therefore no further information the Society is obliged to provide in response to an FoI request.

In respect of 3.3, AD asked a number of questions about the “Strength of Evidence” section of the RAP, where the score “3” had been selected from a drop-down box. His questions were: What is (sic) the criteria used to determine this rating? What scale of scores are possible and how are they ranked within a range? Is there a grading table available?

In response, the Society did provide the range or grading table, because this information was documented on the RAP software. It showed that a score of “3” indicated “poorly-documented/circumstantial evidence”. [A subsequent reply confusingly referred to a scale of “A” to “E” which, as AD points out, refers to a different part of the RAP.]

AD then wanted to know which of “poorly-documented” and/or “circumstantial evidence” had been judged to apply to his complaint, and upon what basis that judgement had been reached. However, the Society went no further than the answer it had already provided: that the Assessor selects the most appropriate choices based on the information presented to him or her.

Adjudication: The Law Society confirms that. That being the case, there is no further information for the Society to provide in response to an FoI request.

In respect of 3.4, AD asked why the “Total Score” on the RAP was the same figure as the “Score”. The Society explained that the RAP format allows for a number of “events” to be assessed, in which case the total score would be the sum of each event score. AD further asks (as in 3.1 above) what the individual criteria were that resulted in a score of 12.6.

In response to a further enquiry by the adjudicator on 8 January 2013 the Society repeated what it had told AD on 6 November, in summary that the RAP total score of 12.6 reflected the multiplication of the scores associated with the data entered into the Event (in this case 6.0), Impact (6.0), Source Credibility (0.5) and Strength of Evidence (0.7) boxes. The Society copied this information to AD. In return, he clarified that what he wanted to know was how each of those sub-scores had been arrived at, and what criteria had been applied in reaching them.

In response to a further query by the adjudicator, on 14 January The Law Society provided a more detailed breakdown of the scoring system for Event, Impact, Source Credibility, and Strength of Evidence. This included a list of approximately 180 criteria against which the Event category may be judged. The Society also provided this information direct to AD. The Society said that it had no record of how the scoring had been applied in this specific case, beyond asserting the principle that the Assessor selects the most appropriate choice.

Adjudication on items 3.1, 3.2, 3.3 and 3.4: The Law Society confirms that it holds no information to show why the Assessor chose as the most appropriate option “Taking unfair advantage of non client” beyond the information which the adjudicator of 16

August determined was properly withheld under section 14.10. The Society also confirms that it holds no further information to indicate whether the “Strength of Evidence” score of “3”, chosen by the Assessor, was chosen because AD’s complaint was judged to be poorly-documented or to consist of circumstantial evidence, or both. The Society, having outlined the range of criteria used to assess the individual “sub-scores” which, when multiplied together, produce the overall score and therefore the total score, confirms that it holds no information as to which sub scores the Assessor chose (for instance, of the 180 or so options available in the “Event” category).

That being the case, there is no further information for the Society to provide in response to these Fol requests.

In respect of 3.5, AD asked a similar question: what were the specific criteria which led the SRA Assessor to tick the “Urgent” box on the RAP.

The Society explained that, as part of the triage system for prioritising matters for investigation, "there are certain indicators that the triage staff look for and where appropriate, they will mark the file up for Urgent assessment". The Society did not say what those indicators may be.

Adjudication: Although The Law Society confirms that it holds no further information to indicate why the Assessor determined that urgent assessment was appropriate in this particular case, if there are general criteria which inform such assessments there appears to be no reason, under the Code, why they should not be provided to AD and I ask the Society to do so.

In respect of 3.6, AD asked a number of questions about the nature of the SRA’s obligation to observe a duty of confidence in relation to information provided to them by the solicitor concerned. In response, the Society informed him that the solicitor has a duty of confidence to his client, and that the SRA protects that confidence and the legal professional privilege attaching to dealings between solicitor and client. The SRA did not specifically answer AD’s question as to whether a written contract existed between the SRA and the solicitor, and nor did it respond to the question as to whether the Society believed that revealing the information AD had sought would be likely to lead to legal action for breach of confidence.

Adjudication: The earlier adjudication of 16 August 2012 accepted that The Law Society had acted appropriately under the Code in withholding, on grounds of confidence, certain information provided by the solicitor. For the avoidance of doubt, that adjudication was not dependent upon whether or not there was a written contract between the solicitor concerned and the SRA. However, the Society has now confirmed that no written contract existed, so I regard that matter as now resolved.

As regards whether or not the Society believed that revealing the redacted information provided by the solicitor would be likely to lead to action for breach of confidence, that seems to me to be a judgement made by the Society at the time and I have seen no record of it in the file. However, section 14.5 of the Code allows information to be withheld if information has been given in confidence and “releasing it would put the Society at risk of legal action”. No test of the likelihood of legal action is necessary. For the record, however, I am entirely satisfied that, had the Society released the information provided in confidence by the solicitor, there would have been a risk of legal action for breach of confidence.

In respect of 3.7, AD refers to redactions made by The Law Society to information previously provided to him. These redactions had been made citing section 16 of the Code,

reflecting the requirements of the Data Protection Act (DPA) and they were the subject of the adjudication in August 2012. That adjudication upheld the Society's redactions. AD says he has been advised by the Information Commissioner that the Society is legally obliged to specify the exact section of the DPA which requires the information to be withheld. He says that he wants a clear explanation as to why this exemption applies and not the general answer which the Society had given.

Adjudication: The earlier adjudication of 16 August 2012 concluded that The Law Society had acted appropriately in withholding certain personal information under section 16 of the Code. AD believes the Society has a legal obligation to provide further details as to why it did so. My role as adjudicator is to judge the Society's adherence to its FoI Code. I am not a lawyer and AD may wish to take his own legal advice as to whether the Society has erred in law. There is nothing for me to adjudicate upon in this respect.

In respect of 3.8, AD asks a series of specific questions about the questions the SRA asked of the solicitor and the nature of evidence that may have been provided by him. The Law Society says that it reviewed the evidence it considered to be relevant but that that evidence, having been provided by the solicitor, was all subject to a requirement of confidentiality, reliance upon which was upheld in the adjudication of 16 August 2012.

Adjudication: I have the advantage of having seen the unredacted information provided by the solicitor. It is clear that the basic facts alleged by AD - that a sum of money was not paid to AD as beneficiary but was paid instead into another bank account - are not in dispute. The SRA's exchanges with the solicitor concerned why that was the case, and although both the questions and the answers are properly the subject of confidence and exempt from publication under section 14.10, they led the SRA to conclude that no regulatory action against the solicitor was appropriate. There is therefore no further information held by the Society which it is required to release in response to an FoI request.

In respect of 3.9, AD asks for details of which of the SRA Account Rules the Assessor considered when investigating his complaint. The Law Society's response is two-fold: that the Assessor would have considered all relevant rules, and that rules concerning the conduct of Client Accounts were not relevant because AD was not a client of the solicitor.

Adjudication: The Law Society confirms that there is no information held regarding precisely which of the relevant rules were considered by the Assessor, beyond those which were considered and recorded in the part of the RAP which was redacted on grounds of confidence. There is therefore no further information the Society is required to release in response to an FoI request.

In respect of 3.10, AD wants to know what evidence the SRA saw to satisfy itself that the solicitor had acted in accordance with the instructions of the Executors of his father's Estate. The Law Society considers that all such information is covered by section 14.10 of the Code and that its release would breach a confidence.

Adjudication: I cannot see how the Society could answer these specific questions without disclosing the nature of the information provided by the solicitor to the SRA in confidence. That information is covered by section 14.10 of the Code and I therefore agree that the Society is entitled to withhold it.

In respect of 3.11, wants an explanation of why the SRA Assessor did not contact him for further information so that she might have been better placed to assess whether the solicitor had acted appropriately. The Law Society points out that the Assessor no longer works for

the SRA and cannot therefore be questioned, but that if she did not seek further information it must follow that her judgement was that it was not necessary to do so in order to reach a decision.

Adjudication: it seems to me that even if the Assessor were still employed by the SRA the only information that AD is entitled to under the Code is information held by the Society. The Society would not be required under the Code (though it might chose to do so) to invite an employee to recall the thought processes that led to a judgement if those thought processes had not been documented. Nothing in the relevant SRA file, either in the redacted or unredacted material, specifically addresses the question of why the Assessor made no further enquiries of AD, and therefore there is nothing for the Society to disclose in this respect in response to an FoI request.

In respect of 3.12, AD asks for a list of all documents withheld from him under section 14.10. The Law Society says that release of such a list would itself breach the confidence of the solicitor who provided the documents, and the Society has therefore withheld it under section 14.10. AD cites an earlier adjudication (Gould, January 2012) where the Society listed the documents it wished to withhold. In response, the Society says that in that case it could do so without breaching a confidence, whereas in the current case it could not.

Adjudication: In the same way as applied in 3.10 above, I cannot see how the Society could list the documents withheld from AD without indicating the nature of the information supplied in confidence by the solicitor. That information is covered by section 14.10 of the Code and the Society is entitled to withhold it.

In respect of 3.13, AD asked for a scanned and, if necessary, redacted version of the SRA Validation and Quality Assurance Form. In response, the Society provided a redacted copy to him.

Adjudication: This matter is resolved.

In respect of 3.14, AD asks whether the Manager of Accounts Assessment and/or the Statutory Trust Project Team were involved in the SRA's investigation. The Law Society says it can find no reference in the file to their having been involved and nor can it see why they would have been.

Adjudication: I regard The Law Society as having provided the answer to this question, so the matter is resolved.

In respect of 3.15, AD wants to know whether the SRA's investigation took account of the legal advice which he had received from two solicitors and why it was not regarded as sufficient basis upon which to reach a decision on his complaint. The Law Society said in its submission that that information was being withheld under section 14.5 of the Code.

Adjudication: Having myself seen the SRA file I queried The Law Society's submission because I had seen no information in it which threw light on whether the Assessor had taken account of AD's report of legal advice he had received. In response, the Society confirmed that no such information was held and apologised to AD for having suggested otherwise. I therefore regard this matter as resolved.

Richard Ayre
Freedom of Information Adjudicator
15 January 2013