

IN THE MATTER OF MOJISOLA ADETOKUNBO ADESOLA KAREEM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr L N Gilford
Mr G Fisher

Date of Hearing: 23rd June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Margaret Eleanor Bromley, solicitor in the firm of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 29th July 2008 that Mojisola Adetokunbo Adesola Kareem of Tayler & Company, 14A Woodsley Road, Leeds, West Yorkshire, LS3 1DT, a solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. She failed to deal with sums received in respect of unpaid professional disbursements in accordance with Rule 19 of the Solicitors Accounts Rules 1998 ("SAR").
2. In breach of Rule 21 of the SAR she failed to transfer money received from the Legal Services Commission in respect of unpaid disbursements from office account to the client account within 14 days of receipt.
3. She withdrew money from her firm's client account in Breach of Rule 22 of the SAR.

4. She failed to undertake reconciliation of her client accounts at least once every five weeks in breach of Rule 32(7) of the SAR.
5. She failed to keep her accounts properly written up in breach of Rules 32(1) and (2) of the SAR.
6. In breach of Rule 7 she failed to remedy breaches of the Rules promptly on discovery.
7. She failed to deliver an Accountant's Report for the accounting period 1st April 2006 to 31st March 2007 within the timeframe required by the Rules in breach of Section 34 of the Solicitors Act 1974.
8. Contrary to the Solicitors Practice Rules 1990, Rule 1 she did something in the course of acting as a solicitor which compromised or impaired or was likely to compromise or impair her independence or integrity; her good repute or that of the solicitors' profession; namely: she utilised clients' money for her own purposes.
9. Contrary to Rule 1 of the Solicitors Code of Conduct 2007 she acted in a way which:-
 - (i) was in breach of her duty to act with integrity.
 - (ii) was likely to diminish the trust the public placed in solicitors and the profession namely: she made a misleading statement in an application for professional indemnity insurance for the year 2007/08.
10. For the avoidance of doubt allegations 3 and 4 were made on the basis that the Respondent was dishonest but it was not necessary to establish dishonesty for the allegations to be made out.
11. She failed to comply with an undertaking and/or delayed in complying with an undertaking given by her firm on 2nd July 2007 to A in breach of Rule 10.05 (1) of the Solicitors' Code of Conduct 2007.
12. She failed to co-operate with the Solicitors' Regulation Authority ("SRA") in breach of Rule 20 of the Solicitors' Code of Conduct 2007.

By a Supplementary Statement dated 26th January 2009, a further allegation was made against the Respondent that:-

13. She failed to file an Accountant's Report for the period 1st April 2007 to 22nd January 2008 contrary to Section 34 of the Solicitors Act 1974.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 23rd June 2009 when Margaret Bromley appeared on behalf of the Applicant and the Respondent did not appear and was not represented.

At the outset of the hearing the Applicant referred the Tribunal to a Memorandum of Application for Substituted Service dated 7th April 2009. By that hearing the originating application and Rule 5 Statement had been served personally on the Respondent and the Tribunal had been provided with an Affidavit of Service. However, additional documents

could not be served on the Respondent as the business address and home address were no longer used by her. At that hearing the Tribunal had directed advertisements be placed in a national newspaper, the Law Society Gazette and a local newspaper in the Leeds area confirming the date of today's hearing. The Applicant confirmed advertisements had been placed in The Times on 22nd April 2009, in The Law Society Gazette on 23rd April 2009 and in The Yorkshire Post on 16th April 2009. The Tribunal accepted Substituted Service had taken place and ordered the hearing proceed in the Respondent's absence.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent Mojisola Adetokunbo Adesola Kareem formerly of Tayler & Co., 14a Woodsley Road, Leeds, West Yorkshire, LS3 1DT and formerly of 18 West Lea Garth, Leeds, LS17 5DA be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment.

The facts are set out in paragraphs 1 – 37 hereunder:-

1. The Respondent was born in 1963 and was admitted as a solicitor on 15th January 1999. Her name remained on the roll of solicitors.
2. At all material times the Respondent practised on her own account under the style of Tayler & Co from 14a Woodsley Road, Leeds, LS3 1DT.
3. On 26th November 2007 an inspection of the books of account and other records of Tayler & Co was commenced by a Forensic Investigation Officer ("IO") of the Solicitors Regulation Authority ("SRA"). A copy of his report dated 21st December 2007 was before the Tribunal.
4. During the course of the IO's investigation, it was apparent that the Respondent's firm was in considerable financial difficulties. The firm's office account statement for the period 7th February - 5th April 2007 showed seven occasions when the firm's bank refused to honour direct debits. In the same period the firm's office account was between £29,005.56 and £32,917.12 overdrawn. The firm's maximum overdraft limit was £20,000.
5. Until May 2006 the firm had received standard monthly payments from the LSC of approximately £9,000.00. During the initial meeting with the IO, the Respondent explained that the firm had lost the LSC contract and that the LSC sought repayment of approximately £38,000. A repayment plan of £2,000 per month had originally been arranged and the repayments had subsequently reduced to £500 per month. The Respondent said she probably would not be able to afford that. The firm's reporting accountants produced a handwritten listing showing loans and debts totalling £120,799.71, including the £38,000 due to the LSC.

Allegation 1

6. The Respondent acted for CH in a personal injury matter. The IO found that there were outstanding third party disbursements on this matter which remained unpaid at

the date of the investigation. The unpaid disbursements totalled £19,396.60 and the third parties confirmed these were still outstanding.

7. Between 10th July 2003 and 12th October 2006 the Respondent received a total of £141,000 (total agreed costs) in payment of both profit costs and disbursements. By the end of the second working day the Respondent should have either paid any unpaid professional disbursements or transferred a sum for settlement of the unpaid disbursements to client account. She did neither.
8. The total compensation for CH was £75,000. A letter dated 19th January 2006 confirmed that £5,000 was paid direct to CH. The matter ledger showed that interim payments were received of £2,500 each on 5th September 2003 and 18th May 2004. In addition £65,000 was received into client account on 17th January 2006. Therefore by October 2006 all payments by way of damages and costs had been received. In April 2007 the balance on the office account of this matter was £27,922.31 in debit. The balance on the client account was nil. The disbursements of £19,396.60 exclusive of VAT remained unpaid.
9. The Tribunal's attention was drawn to another similar matter of EW where unpaid disbursements in the total sum of £5,075.00 remained outstanding despite all costs and disbursements having been paid in full by the other side.

Allegation 2

10. The Respondent acted for Mr H in relation to an immigration matter. She instructed FA to prepare an expert's report and received an invoice from them on 26th June 2006 in the sum of £1,966.41.
11. On 13th November 2006 there was a receipt in the office account for £3,807.69 reference "Payment transfer from LSC ledger". After deducting payments for her charges of £1,607.28 and a disbursement of £50, on 14th November 2006 the Respondent made a payment of £184.00 for travelling expenses. This left a balance of £1,966.41 credit in the office account. This was the amount owing to FA based on the invoice dated 26th June 2006.
12. In accordance with Rule 21 the Respondent should, within 14 days of receipt, either have paid the disbursement or transferred the sum of £1,966.41 to client account. She did neither. On 31st January 2007 the balance was transferred to a nominal ledger "as per MAK instructions". This transfer served to remove the money from the ledger relating to the matter of Mr H and gave the misleading impression that the disbursement had been paid when it had not. It also gave the impression that no money was held by the firm in respect of that matter which was also misleading. The only payment which had been made from the nominal ledger was £983.20 paid to FA on 2nd July 2007.
13. The Accountant's Report for the year to 31st March 2006 was dated 26th September 2006. The report was qualified and stated "Monies received from the LSC are paid into office account. Such monies received in respect of unpaid professional disbursements are not transferred into client account within the regulatory 14 days period which results in credit balances on the office ledger. This breach of the

Solicitors Accounts Rules (Rule 21) will be rectified with immediate effect without loss to any clients.”

14. The Accountant’s Report predated the receipt of monies from the LSC in the H matter and therefore was referring to other breaches of this Rule. Notwithstanding that the Respondent received a copy of the Report and was therefore aware of the breach she again breached Rule 21 in respect of the H matter.

Allegations 3, 8 and 10

15. A total of eight separate cheques totalling £8,951.51 were issued from the client bank account in settlement of the firm’s own liabilities. Details of those payments were provided to the Tribunal.
16. On 28th November 2007 the Respondent agreed with the IO that she had made payments from the firm’s client bank account for her own benefit. She said that the payments, which included staff wages, had been set off against costs due to the firm but not physically transferred from client to office bank account.
17. The Accountant’s Report for the year to 31st March 2007 referred to these payments and noted that they were “unrecorded payments.” The Report stated “Eight separate cheques were issued from the client bank account in settlement of the firm’s own liabilities. Such payments in respect of settlement of the firm’s own liabilities were not authorised by clients. In any event, the amounts of the cheques could not be capable of allocation to separate client matters.”
18. At the date of the transfers to the nominal accounts, in two client matters the Respondent’s office account was overdrawn by £28,465.16 against an authorised borrowing limit of £20,000. The Respondent therefore had an incentive to retain those funds in her office bank account and had no ability to pay the professional disbursements or to transfer such funds to the client bank account. This was a dishonest use of client money and an attempt to conceal that.

Allegations 4, 5 and 10

19. At the time of the investigation the IO was informed by the firm’s bookkeeper that she had been working unpaid since February 2007, but that the books of account were up to date as at 30th September 2007. No reconciliations had been undertaken from the period 30th September to 27th November 2007 and no record had been kept of dealings with client or office money relating to client matters.
20. On 20th November 2007 bailiffs removed the firm’s computers and all accounting software and records. Hard copies of computerised records seen by the IO were disorganised and appeared to be far from complete. The Accountant’s Report for the year to 31st March 2007 stated at Section 7 that “the accounting records have not been written up on a timely basis. The firm’s cashier a self employed bookkeeper has not attended the firm’s premises regularly since February 2007”.

Allegation 6

21. The breaches set out above had been in existence for many months and the disbursements remained outstanding. The Respondent admitted that funds for payment of outstanding liabilities were not held in the firm's client bank account and she offered no solution as to how she intended to resolve these matters.

Allegation 7

22. The Respondent's accounting year ended on 31st March 2007 and the Accountant's Report was therefore due to be delivered to the Society by 30th September 2007. An Adjudicator granted the Respondent an extension to 31st October 2007. The Respondent failed to comply with this, and the Accountant's Report was delivered by the firm's accountant on 29th November 2007. The report was qualified.

Allegation 9

23. On 15th June 2007 NLS obtained judgment against the Respondent's firm for £4,468.53. On 22nd August 2007 the Respondent was served with a warning notice which clearly stated that a High Court Enforcement Officer had called at the Respondent's premises to take legal control of goods and to discuss payment of an outstanding High Court judgment debt. The Respondent was advised that she should make such payment immediately to prevent the removal of goods from her premises.
24. On 1st October 2007 the Respondent signed an application for Professional Indemnity Insurance to be sent to PYV Legal, Insurance Brokers. The proposal form clearly stated "It is very important that you disclose fully and accurately all material facts". The Respondent in Section 6 of the proposal form was asked "In the last 10 years has any fee earner in the practice: ... had a civil or criminal judgment against him or her." The Respondent marked the answer as "No". The declaration at Section 15 signed by the Respondent stated "The statements in this proposal form are true and complete and shall form the basis of any contract of insurance effected thereupon"
25. The Respondent's answer in the proposal form was clearly inaccurate and deliberately misleading. She received an offer of insurance in response to her proposal form and she signed a "No Claims Declaration and Acceptance of Quote" on 4th October 2007 in which she stated:

"I declare that to the best of knowledge or belief the particulars and statements given in this application...are true and complete...I declare that I have informed the Insurer of all facts which are likely to influence the Insurer in the acceptance or assessment of my insurance...I declare that I have made full enquiry of all partners and employees, I am not aware of any claims or circumstances which may give rise to a claim against this practice...that has not already been notified to you".

The policy was issued with an inception date of 1st October 2007.

Allegation 11

26. FA who had provided an expert report sent numerous reminders, telephone calls and emails for payment of their fee but it remained unpaid until 2nd July 2007. On 2nd July

2007 the Respondent wrote to FA stating that her firm was going through a very difficult time, and was having problems with cash flow. She enclosed a cheque for half the amount owed (£983.20). She stated “We would be very grateful if you would bear with us until the end of July when we will settle this amount in full”.

27. FA did not receive further payment, and therefore wrote to the Respondent on 6th August 2007 pointing out that she had failed to comply with her promise to pay the final £983.20 by the end of July and that, if the outstanding fees were not paid by return, then County Court action would be commenced. The Respondent failed to reply to this. FA commenced Court proceedings in the Leeds County Court on 17th August 2007. The Respondent failed to file a defence and judgment was given for FA in default on 6th October 2007 for £1,063.21.
28. On 7th November 2007 FA complained to the SRA stating that since the Respondent’s letter of 2nd July 2007, the Respondent had declined to answer any of his letters or telephone calls and that the judgment debt had not been paid.

Allegation 12

29. On 19th November 2007 the SRA wrote to the Respondent notifying her of the inspection. The letter was sent by recorded delivery. On arrival at the offices on 26th November the IO found the office closed and a notice on the door giving a telephone number to ring. After various attempts the IO eventually succeeded in speaking to the Respondent who said that she had not received the investigation notification letter. It appeared that the only way to arrange a meeting was for the IO to meet the Respondent at the offices of her reporting accountants and this was eventually arranged on 26th November 2009, where the IO provided the Respondent with a copy of the letter of 19th November.
30. The next morning the Respondent met the IO outside her office, provided him with access and left shortly afterwards. The bookkeeper attended for a short meeting at the IO’s request. The IO remained at the office without the benefit of staff or access to computer records until 1400 hours.
31. On 28th November 2007 the Respondent provided the IO with access to the offices. A discussion with the Respondent and the IO took place lasting about one hour in the course of which she advised the IO that she would be handing back the keys of her office to the landlord on Friday 30th November 2007.
32. The IO made arrangements with the Respondent for a meeting to take place on 4th December 2007 to discuss his findings. He asked the Respondent to bring with her items requested at their meeting on 28th November and certain additional items including details of her loans.
33. On the day of the meeting, the Respondent’s husband, Mr O, informed the IO that the Respondent would not be available as she was ill. The IO subsequently met Mr O who provided copies of certain documents and sight of others.
34. During the meeting the IO spoke to the Respondent on the telephone. She stated that she was not in a proper frame of mind to meet with the IO and did not see the point in

doing so. The IO pointed out that she had provided little documentation and that he had not been able to carry out a proper investigation of her firm and that there were a number of issues that he had not been able to discuss with her. She stated that she did not feel that answering any questions would make any difference. It was apparent that she was not in fact ill. She did not give any indication as to when or if she would meet the IO.

35. The Respondent did not authorise the release of information to the IO by Northampton County Court despite advising the IO that she would do so.
36. A copy of the Forensic Investigation Report was sent to the Respondent by the SRA on 28th December 2007 requiring a response. The Respondent did not respond to this or to a number of subsequent letters, some of which related to complaints against her.

Allegations 12 and 13

37. The Respondent's firm was intervened into on 22nd January 2008 and she was advised by the SRA that an Accountant's Report for the period ending 22nd January 2008 must be filed by 22nd July 2008. The Accountant's Report remained outstanding. Correspondence sent to the Respondent by the SRA was returned, some of which was marked "Addressee has gone away" and "No access letterbox sealed".

The Submissions of the Applicant

38. The Applicant confirmed the Respondent's current whereabouts were not known and she no longer appeared to be residing at 18 West Lea Garth, Leeds LS17 5DA which was her last known address.
39. It was clear that the firm was in serious financial difficulties, with substantial debts and the allegations before the Tribunal were very serious allegations involving dishonesty in the use of client money.
40. The Applicant submitted that in relation to allegation 11, the Respondent had failed to comply with an undertaking as the definition of an undertaking was "any unequivocal promise to do an action." The Applicant submitted there was no need to use the word undertaking and by stating the balance of the monies due to FA would be paid by the end of July 2007, and then failing to comply with this promise, the Respondent had breached her undertaking.
41. The Respondent had not given any explanation for her actions and she had taken no part in these proceedings. The breaches of the Solicitors Accounts Rules were at the serious end of the scale and the Tribunal was reminded that the purpose of the Solicitors Accounts Rules was to protect client funds, which had not happened in this case.
42. The Tribunal was referred to the test of dishonesty laid down in the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12 whereby the Tribunal was required to consider both an objective and subjective test. The Applicant submitted that both tests were satisfied as the Respondent had used money that she knew did not belong to her or to her office.

43. The Applicant also submitted an application for costs. She provided the Tribunal with a schedule which indicated her costs came to a total of £33,933.88. The Applicant confirmed the schedule had not been served on the Respondent as the Applicant did not have an address for service upon her.

The Tribunal's Findings

44. The Tribunal had considered the submissions of the Applicant and all the documents in detail. In the absence of any representations or evidence from the Respondent, the Tribunal found the allegations were proved.
45. These were breaches of the most serious nature and the Respondent had brought the profession into disrepute by her conduct. It was clear that her firm was in serious financial difficulties and the Respondent had used client funds as well as funds owed to third parties to pay for her own liabilities. This was not acceptable behaviour. Client funds were sacrosanct and the purpose of the Solicitors Accounts Rules was to ensure those funds were protected and utilised properly. In this case the Respondent had admitted to the IO that she had made payments from the firm's client bank account for her own benefit and where breaches had been identified by her accountants, she had not taken any steps to remedy those breaches but had continued to allow further similar breaches to take place. Third parties had suffered as a result of her actions and the Respondent had ignored judgments entered against her.
46. The Tribunal had considered the test of dishonesty laid down in the case of *Twinsectra Ltd v Yardley* and was satisfied that the first part of the test, namely would the Respondent's conduct be regarded as dishonest by an ordinary, honest and reasonable member of the public, was satisfied. The Tribunal considered the second part of the test laid down in *Twinsectra*, namely by those standards would the Respondent have been aware that her own conduct was dishonest. The Respondent had admitted to the IO that she had made payments from the firm's client bank account for her own benefit. It was clear from the evidence that she had failed to pay liabilities to third parties having used those monies to pay the liabilities of her firm and in the circumstances, the Tribunal was satisfied that the second part of the test laid down in *Twinsectra Ltd v Yardley* had been met.
47. In all the circumstances, the Tribunal was of the view that the public needed to be protected from the Respondent and that it was not appropriate for her to continue to be a member of the profession. Accordingly, the Tribunal made an Order that the Respondent be Struck Off the Roll of Solicitors.
48. In relation to the question of costs, in the Respondent's absence, the Tribunal was not prepared to assess the costs, particularly as they were high. As the Respondent had not provided the Tribunal with any details of her income or expenditure the Tribunal considered the appropriate Order was that the Respondent should pay the costs subject to detailed assessment thereof.
49. The Tribunal Ordered that the Respondent, Mojisola Adetokunbo Adesola Kareem, formerly of Tayler & Co., 14a Woodsley Road, Leeds, West Yorkshire, LS3 1DT and formerly of 18 West Lea Garth, Leeds, LS17 5DA be STRUCK OFF the Roll of

Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment.

Dated this 23rd day of December 2009
On behalf of the Tribunal

J Martineau
Chairman