No. 10117-2008

IN THE MATTER OF MARTIN ANDREW CONROY, solicitor

\- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr E Richards (in the chair)
Miss T Cullen
Mrs S Gordon

Date of Hearing: 13th October 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 ("SRA") by Iain George Miller of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF on 21st October 2008 that the Respondent Martin Andrew Conroy, solicitor, c/o Mr Andrew Blatt, Murdochs Solicitors, 45 High Street, Wanstead, London E11 2AA might be required to answer the allegation contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation against the Respondent was that he is guilty of conduct unbefitting a solicitor and/or acted in breach of Conduct Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 in that he:-

(a) Failed to deal properly with money held by him in a fiduciary capacity.

(b) Used money, held in his capacity as a receiver, for his own benefit.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13th October 2009 when Iain Miller appeared as the Applicant and the

Respondent appeared and was represented by Ms Fenella Morris, Counsel of 39 Essex Street, instructed by Mr Andrew Blatt of Murdochs Solicitors.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant together with accompanying bundle, the partial admissions of the Respondent and the submissions on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, Martin Andrew Conroy of c/o Andrew Blatt, Murdochs Solicitors, 45 Wanstead High Street, London, E11 2AA, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,096.00.

The facts are set out in paragraphs 1 - 18 hereunder:-

1. The Respondent was born in November 1950 and was admitted to the Roll in July 1999. He still holds a practising certificate.

2. The Respondent operates a business, Martin Conroy Case Management Limited ("the Company"), which was established in 1998. The Company provides care management services for individuals with brain or spinal injuries. It has several functions. One of these functions is to act as professional receiver for the Court of Protection. The Company also offers care packages to severely disabled individuals which are approved by the Court of Protection. The Company does not operate as a solicitors practice and as such is not a recognised body for the purposes of the Solicitors Act 1974 (as amended) ("the Act").

3. The Respondent is the managing director of the Company. As part of his role, the Respondent acts as a deputy for the Court of Protection. Such a role permits the Respondent to be legally responsible for acting and making decisions on behalf of a person who lacks capacity to make such decisions.

4. On 7th March 2008 the Office for the Public Guardian informed the SRA that at that time the Respondent acted for 47 vulnerable members of the public. As at 6 December 2007, the Respondent held a total of over £980,000 of money in respect of vulnerable members of the public.

5. Legal work within the Company is outsourced and therefore the Respondent does not act in a capacity as a solicitor at the Company.

Forensic Investigation

6. On 20th November 2007, the SRA undertook a forensic investigation inspection ("the inspection") at the Company's registered office in Altrincham, Cheshire.

7. During the inspection, the Respondent advised the SRA that he maintained separate records and individual bank accounts of each receivership appointment. He advised

that he alone could operate the client account and that either he or his Accounts Manager, could operate office bank accounts. The Company had a client account, three office accounts (named account number one/two/three) and individual receiver's accounts.

8. During the investigation, the SRA found the following financial irregularities:-

Ms EW - £800,000.00

9. The Respondent was appointed receiver in respect of Ms EW by an Order dated 19th January 2006. He also provided a care management service for her. On 3rd March 2006, the Respondent opened an individual receivership account at Barclays Bank to deal with the funds in respect of Ms EW.

10. In May 2006, the Respondent received an interim payment of £800,000.00 from the defendants in relation to Ms EW's claim, which was received to purchase and alter a property for Ms EW and her family. Rather than place the money in a client account for Ms EW the Respondent put the money in office account number one on 1st June 2006. On 31st May 2006 the balance for the number one account was £231,963.77 overdrawn.

11. On 19th December 2006 and 29th January 2007 sums of £53,500.00 and £507,650.83 were paid from an office bank account in order to purchase property for Ms EW.

Ms GS - £56,386.45 and £50,000.00

12. The Respondent was appointed joint receiver with Mrs RS by an Order of the Court of Protection dated 8th September 2003. The Respondent also provided a care management service for Ms GS. An individual receivership account at Barclays Bank was opened by the Company to deal with money received on behalf of Ms GS.

13. On 5th October 2005, and 7th June 2006, sums received in respect of Ms GS of £4,959.39 and £51,427.06 respectively (totalling £56,386.45) were paid into the Respondent's office account number one as opposed to Ms GS's client account. The balance of that office account as at 4th October 2005 was £179,576.98 overdrawn.

14. On 28th September 2005, a sum of £21,500.00 in respect of Ms GS was paid from office account number three in respect of Ms GS.

15. On 26th October 2005 a further sum of £50,000, received for Ms GS's parents in respect of past care, was paid into office account number three.

Shortfall in Office Accounts

16. At the time of the forensic inspection on 20th November 2007, the Company should have been holding the sum of £323,735.62 (238,849.17 and £50,000 - £21,500 + £4,959.30 + £51,427.06). This related to the sums of money received (and paid out) in respect of Ms EW and Ms GS. However, at the inspection the inspector noted that as at 31st October 2007, office accounts numbered one and three had balances of only

£130,473.69 and £35,512.98 respectively, a total of £165,986.67. This is a shortfall of £157,748.95.

17. The Respondent acknowledged during the inspection that he had paid receivership funds into the office accounts and that he had the benefit of much of those funds since October 2005. He also agreed that the Company's bank overdraft had been eliminated by the introduction of receivership funds into office bank accounts.

18. On 27th November 2007, the Respondent wrote to the SRA attaching copy statements showing that on 22nd November 2007 he paid £238,849.17 into the receivership account for Ms EW and £84,886.45 into the receivership account for Ms GS. The SRA understands that subsequently the Respondent has paid into each of the receivership accounts the interest calculated to be due.

The Submissions of the Applicant

19. The Applicant indicated that the facts were admitted by the Respondent however the Respondent did not admit that he had acted with any conscious impropriety or dishonesty or that he was in breach of the Conduct Rules.

20. The Applicant submitted that as a receiver the Respondent owed a fiduciary duty to Ms EW and Ms GS. He was responsible for ensuring that the money he received on their behalf, and the powers granted to him by the Court of Protection, were held appropriately for their benefit until such time as the money was required. The distinction between office and client account was hardwired into every solicitor at qualification. It was a central tenet that there was a distinction between client money and one's own money. It was submitted that a non-solicitor in these circumstances would be expected to separate the money and a solicitor had an obligation to do so. The Respondent had failed to separate the client money and he benefited from mixing it in his office account. He had the benefit of much of the compensation funds relating to Ms EW and Ms GS since October 2005, a substantial period of time, he earned interest on those funds. It also appeared that the monies were paid into office account at a time when the office account would otherwise have been substantially overdrawn (thus saving interest charges on that overdraft facility).

21. By putting the money into the Company's own office account the Respondent seriously undermined the trust his position held and he ought to have known that it was not proper to expend money on his business that had been entrusted to him to be used for the benefit of others.

22. In the Applicant's submission dishonesty was not an essential element of the allegation but it was alleged that in the absence of a satisfactory explanation, the Respondent's acts amounted to conscious impropriety or dishonesty.

23. In the leading case of Bolton v The Law Society [1994] 1WLR512 the Master of the Rolls, Sir Thomas Bingham said that:-

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness...any solicitor who has shown to have discharged his

> professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors...if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the Tribunal be likely to regard as appropriate any order less severe than one of suspension".

Thus the Master of the Rolls distinguished dishonesty and a wider lack of integrity, probity and trustworthiness. The Respondent would say that lack of integrity and dishonesty could be equated but in the Applicant's submission, based on Bolton, they were different things.

24. The relevant test for dishonesty was that laid down in a line of cases such as Bultitude v The Law Society [2004] EWCA Civ 1853, where the mixing of client and personal money would always be objectively improper and would therefore satisfy the first leg of the dual test for dishonesty as formulated by The House of Lords in Twinsectra Limited v Yardley and others [2002] UKHL 12, that is that the defendant's conduct was dishonest by the standards of reasonable and honest people. The Applicant was also aware that the burden was upon him to prove to a criminal standard i.e. beyond reasonable doubt that the second limb of the test in Twinsectra was satisfied, that is that the Respondent was aware that by the standards of reasonable and honest people that he was acting dishonestly. It would be the Applicant's submission that the Respondent did know that he was acting improperly as he had set up receivership accounts to receive the monies on behalf of the two individuals. The conclusion from the facts must therefore be that he was acting with conscious impropriety.

25. With regard to the allegation that Rule 1.02 of the Solicitors Code of Conduct 2007 had been breached, the Applicant said that the facts did indeed straddle the introduction of the 2007 Code which was brought into effect on 1st July 2007. However, all of the monies the subject of the allegations had gone into the Respondent's own account before 1st July 2007 and stayed in there until November 2007, the date of the SRA inspection. The matter had been put in terms of the 2007 Code as the previous Practice Rules had been narrower in scope and all cases had been dealt with as conduct unbefitting a solicitor. In the Applicant's submission it was wrong to try to limit conduct unbefitting a solicitor to mean that a solicitor did not have to exercise integrity outside his legal practice. However if Rule 1.02 was found not to apply then Rule 1.06, Public Confidence, would apply by virtue of Rule 23.02 as the Respondent had been acting "in some other business or private capacity". It was therefore a distinction without a difference and in the Applicant's submission

there was no lesser obligation on a solicitor outside practice than there was within practice.

26. In regard to the outline written submissions given on behalf of the Respondent the Applicant wished to make the following submissions:-

(i) As previously submitted lack of integrity and dishonesty could be differentiated according the test laid down in Bolton.

(ii) Whilst the Respondent would say that he voluntarily transferred his functions to a new deputy in early 2007, this may have been merely pre-empting the inevitable.

(iii) Sacha v GMC [2009] EWHC 302 (Admin) could be distinguished. The behaviour of other regulators such as the GMC in deciding other aspects was neither here nor there. The Applicant urged the Tribunal to apply the principles in Bolton.

(iv) With regard to the witness statements submitted by the Respondent these witnesses were not available today to be crossed-examined. In addition the statements were over a year old and the Tribunal was asked to take both of these factors into account in deciding the weight to be given to the statements.

(v) Whilst it was said by the Respondent that as soon as he appreciated his error in placing monies in office account he put matters right, this was not done until the error was pointed out to him by the SRA.

(vi) It had already been submitted that there was no real difference between the duties laid out in the Code between 1.02 and 1.06.

(vii) There was in the Applicant's submission no separation between dishonesty or lack of integrity in a professional or a non professional context and there were therefore not different tests to be applied.

(viii) The Applicant did not allege that since there was a prima facie case to answer that the burden of proof had been transferred to the Respondent to provide an explanation for his conduct, failing which he may be found to be dishonest. The Applicant said that the facts demonstrated that he had been dishonest. The burden of proof had therefore not been reversed.

27. The Applicant indicated that costs had been agreed in the sum of £5,096.00.

The Submissions of the Respondent

28. It was submitted on behalf of the Respondent that whilst he admitted that he had done something wrong he did not admit to dishonesty or lack of integrity, or indeed any wrongdoing which could be regulated by the Tribunal as he was operating as a receiver and not as a solicitor. The distinction in this case was important.

29. Mr Conroy was not working as a solicitor at the relevant time and indeed never had worked as a solicitor. He was operating a case management company and was a receiver with his functions defined by the Court of Protection. It was submitted on the Respondent's behalf that these functions could be performed by anyone and just because money was involved it did not need to be a professional person. Indeed there was no such thing as a "professional" receiver. In this case it was purely coincidental that Mr Conroy was also a solicitor. When legal work had been required it was commissioned and this was highly significant. Mr Conroy acted throughout with proper intentions and expressly deny any "conscious impropriety" that would be required for a finding of lack of integrity or dishonesty.

30. Whilst Mr Conroy operated office and client accounts in the company, these were not solicitor's office and client accounts. Interest had been paid to Ms EW and Ms GS at the rate of 6% from the commencement of their monies having been in the office account. This was a greater figure than would have applied in the receivership account and they were better off.

31. The sum of £800,000 due to Ms EW was paid into the office account because it was intended it should be used to purchase a house, and then adapt it, and it was intended by Mr Conroy and his client's family that the money should be instantly accessible. Ultimately there were unforeseen delays in the purchase and then adaptation which led to the monies remaining in the account longer than planned. No issue was taken by Ms EW's family, who were in entire agreement with the course taken by Mr Conroy, particularly since there was an express agreement at the time that Ms EW would receive a good rate of interest on the money. Ms EW's parents had made statements entirely supportive of the Respondent which were before the Tribunal; they were in no doubt that the Respondent had always acted in Ms EW's best interest. However, the Respondent did accept that with hindsight the monies would have been equally accessible in the client and receivership accounts.

32. Ms GS's mother, who was joint receiver with Mr Conroy, was in entire agreement at the material time with the course taken by Mr Conroy and the Tribunal would note from her statement before them today that it was at her express instructions that the sum of £50,000 was transferred out of the receivership account. This action had been taken to protect the monies from GS's father.

33. The office account into which the sums were paid had an agreed overdraft facility of £200,000. Given this agreement, the overdraft on the office account was not a problem that required solution by the payment in of client funds, contrary to the suggestion by the SRA. Whilst it was true that, in the short term, Mr Conroy obtained the benefit of sums being held in office account, there was no intent to benefit from the arrangement whether to the detriment of the clients or otherwise. As soon as the error was realised, Mr Conroy paid to the two persons concerned a sum larger than the interest that would have been due to them had the sums been held in their accounts. It was denied that Mr Conroy's holding of the sums in the office account amounted to their "expenditure" by him as the SRA alleged. Mr Conroy placed the relevant sums in the office account in the belief that that was the appropriate course at the time, and that his actions were in his clients' best interests. As soon as he appreciated his error, he put matters right.

34. In regard to dishonesty the test of dishonesty had been affirmed in the case of Bryant v the Law Society [2007] EWHC 3043 (Admin) as a dual test being (1) did the solicitor act dishonestly by the ordinary standards of reasonable and honest people and (2) was the solicitor aware that by those standards he was acting dishonestly. It was submitted that when the question is whether there has been dishonesty or lack of integrity in a non professional context then the higher test as laid down in R v Ghosh [1982] 1QB 1053 should apply. On the facts of Mr Conroy's case the necessary subjective element of dishonesty cannot be and was not made out. There was absolutely no evidence of Mr Conroy being aware that what he was doing might be considered dishonest and indeed there was no evidence of intent to the contrary as Mr Conroy's openness with the relatives of his clients as to the arrangements at the time and their complete corroboration of his explanation given to the SRA and the Court of Protection demonstrated.

35. It was further submitted that the SRA had formulated the case in such a way that the prima facie case transferred the burden to a solicitor to provide an explanation for his conduct failing which he may be found to be dishonest. However the burden of proving dishonesty to the criminal standard of proof remained with the SRA in respect of every element of the allegation including the mental element.

36. In regard to Bolton it was submitted that that case concerned a solicitor discharging a solicitor's duty. It was submitted that that situation could not be mapped on to when a solicitor was not acting as a solicitor. The position here was concerned with only being honest or not being honest and a lack of integrity was confined to the application of the solicitors' rules.

37. Since the matters complained of commenced just before the coming into force of the new Code and concluded just after it came into force, the question for the Tribunal was both whether the factual matters it found amounted to conduct unbefitting a solicitor and whether they amounted to breaches of the Code. Whilst it was accepted that non professional conduct might constitute conduct unbefitting, it was submitted that a cautious approach must be taken when considering whether and to what extent non professional conduct could and should be regulated by the Tribunal. The distinction in the Code between 1.02, the need to act with integrity in all professional dealings and 1.06, the risk that conduct outside professional practice might undermine public confidence in the profession, was highly relevant. It was submitted that the facts in this case only engaged 1.06 of the Code and its equivalent within the preceding conduct "unbefitting" framework. Therefore the only question for the Tribunal was whether Mr Conroy's actions were likely to undermine public confidence and if so the Respondent would accept that his actions amounted to non professional wrongdoing. This therefore had important implications for the seriousness of the wrongdoing when it came to considering any sanction.

38. In these matters Mr Conroy had been regulated under a comprehensive scheme by The Office of the Public Guardian and the Court of Protection. His conduct had been addressed by the Public Guardian and any concerns were addressed by the consent order under which Mr Conroy voluntarily transferred his function to a new deputy in early 2009.

39. The impact on Mr Conroy's business had been substantial and he no longer worked as a receiver. Therefore in terms of risk this had all now disappeared. He did not work as a solicitor or as a receiver. However, he valued his position as a solicitor and wished to remain on the Roll.

The Tribunal's Decision and Findings

40. The Tribunal found the allegations to have been proven on the facts and that the Respondent's conduct amounted to conscious impropriety or dishonesty.

41. Explanations had been offered as to why the monies held for Ms EW and Ms GS were originally held in office account. The Tribunal found both of these explanations to be less than convincing. In the first case it was said that monies were more accessible in office account. The monies in office account were there in regard to a conveyancing matter the nature of which was that the need for monies would not be a surprise and in the Tribunal's view adequate arrangements could have been made for the transfer from client account to office account leaving plenty of time for the conveyancing matter to be completed. In the second case it was said that the monies were in office account in order to shield them from a third party, Ms GS's father. However the Tribunal found that anonymity would only be required when the monies were paid out not whilst they were being held. If this had been a genuine concern then the Tribunal was of the view that the monies could have been transferred from client to office account on the same day or that a second client account could have been opened where the monies could have been held.

42. The Tribunal found that the Respondent had knowingly transferred the client monies to office account in order to assist with his overdraft. His overdraft would have attracted a higher rate of interest payable to the Bank than the rate of interest that he had paid to the two clients. In transferring the money from client account to office account he had given his clients monies less protection that they would have had in client account in the event of his business failing.

43. The Tribunal found that it had jurisdiction in this matter. Rule 1.06 of the Code imposed a high standard on solicitors acting in whatever capacity and the Respondent's conduct had fallen short. The Tribunal was not of the view, taken in submissions on behalf of the Respondent, that there was a separation between impropriety and dishonesty or that there was a higher test for dishonesty in such cases.

44. In this case the Respondent had retained his practising certificate whilst not practising as a solicitor and the fact that he was a qualified solicitor, upon the Roll of Solicitors, would have given his business dealings a high level of credibility.

45. There was evidence that the Respondent had known that what he was doing was wrong. There had existed a clear process with receivership accounts that he had elected not to follow with no very good reasons for having done so. He had in effect taken unauthorised loans from vulnerable people to obtain a financial benefit. The Tribunal noted the witness statements but due to the fact that no oral evidence had been given it had not heard any evidence to show that the arrangement had been properly explained to those persons as it clearly could not have been within their

interest to have agreed to such an arrangement, particularly in view of the lack of protection of monies within office account. Such vulnerable people deserved the highest standard of care.

46. The Tribunal had studied all of the documents before it most carefully and had listened attentively to the submissions put before it by both the Applicant and the Respondent. In looking at whether dishonesty was concerned within this case they had applied the two stage test agreed by both the Respondent and the Applicant and exemplified in the case of Twinsectra v Yardley. The Tribunal found that in placing the monies that should have been in the clients' accounts into his own office account, placing the clients at unnecessary risk and deriving personal benefit the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard that there were separate client accounts into which he should and could have placed the clients' monies, regulated by the Rules under which he was acting and his explanation as to why he placed the monies in office account the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he could do so and therefore that he knew that what he was doing was dishonest by those same standards. The Tribunal was concerned to note that the arrangements that the Respondent had reached effectively left vulnerable people with less protection in these cases.

47. The Tribunal Ordered that the Respondent, Martin Andrew Conroy of c/o Andrew Blatt, Murdochs Solicitors, 45 Wanstead High Street, London, E11 2AA, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,096.00.

Dated this 3rd day of February 2010
On behalf of the Tribunal

E Richards
Chairman