Case No. 10301-2009

SOLICITORS' DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF IWONA DETTLAFF, solicitor (respondent)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mr. W. M. Hartley (in the chair)
Mr. M. Sibley
Mr. M. C. Baughan

Date of Hearing: 18th March 2010

FINDINGS & DECISION

Appearances

Mr David Elwyn Barton solicitor of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Solicitors Regulation Authority ("SRA"). The Respondent did not appear and was not represented.

The Application was made on 28th July 2009. A supplementary statement containing further allegations was made on 25th January 2010.

Allegations

The allegations against the Respondent contained in the original and supplementary statements were:

(a) Contrary to Rule 1 of the Solicitors' Practice Rules 1990 she has compromised or impaired each and all of the following:

(i) Her independence or integrity. The Respondent has also been dishonest, although it is not necessary to establish dishonesty for this allegation to be proved. The particulars were first that on 15th May 2003 the Respondent wrote to her client Mr T and falsely stated to him that she had instructed a medical expert to review his professional negligence claim whereas she had not in fact done so, and secondly that she wrote a series of letters to Radcliffes

LeBrasseur ("Radcliffes") stating that she was writing with her client's instructions whereas she had no such instructions.

(ii) Her duty to act in the best interests of her client.

(iii) Her good repute and that of the solicitors' profession.

(iv) Her proper standard of work.

(b) She had breached Rule 1 of the Solicitors Code of Conduct 2007 in each and all of the following respects:

(1) she had failed to act with integrity;

(2) she had failed to act in the best interests of each client;

(3) she had behaved in a way that was likely to diminish the trust the public placed in her or the profession.

(c) Contrary to Rule 20.03 of the Solicitors Code of Conduct 2007 she had failed to deal with the Legal Complaints Service and the Solicitors Regulation Authority in an open prompt and cooperative manner.

(d) In breach of Rule 7 of the Solicitors Accounts Rules 1998 she failed to remedy breaches promptly on discovery.

(e) In breach of Rule 19(1) of the said Rules she failed to pay professional disbursements or to transfer to client account a sum or sums for their settlement.

(f) In breach of Rule 20.05 of the Solicitors Code of Conduct 2007 she failed to deal with the SRA in an open, prompt and cooperative manner.

(g) In her application for a Practising Certificate for the year 2007/2008 she failed to declare to the SRA that she was subject to the provisions of Section 12(1) of the Solicitors Act 1974.

Factual Background

1. The Respondent addressed a letter to the Applicant which was undated. The Applicant told the Tribunal he had received it on the evening before the hearing in which the Respondent said she had never denied that of which she was accused. In a letter of 17th September 2009 the Respondent had indicated that she did not propose to defend the proceedings. The Tribunal considered that in the light of her letters the Respondent had admitted the facts and the allegations. The Applicant had nevertheless served notices under the Civil Evidence Acts and no counter notice had been received.

2. The Respondent, born in 1959, was admitted as a solicitor in 1994. Her name remained on the Roll of Solicitors. At the material times the Respondent had

practised on her own account as Dettlaff Limited at Bromley in Kent. She was the sole director of that company.

3. The SRA had intervened into the Respondent's practice.

Mrs J's Matter

4. In April 2000 Mrs J instructed the Respondent to act for her in a medical negligence claim. Radcliffes acted for the defendant.

5. On 27th April 2000 a Conditional Fee Agreement (CFA) was made between Mrs J and the Respondent. The CFA did not cover the issue of proceedings. A letter from the Respondent dated 5th May 2000 confirmed to Mrs J that the agreement did not cover court proceedings and that if such proceedings became necessary, advice would be given on "litigation insurance which you might have to take". That letter also contained the statement that the CFA was the way for Mrs J to fund her claim as it put her at no risk on costs.

6. The Conditional Fee Agreements Regulations 1995 applied when the CFA was created and contained a requirement that the CFA should state that immediately before it was entered into the legal representative had drawn the client's attention to the following:

   (a) whether the client might be entitled to legal aid and the conditions that would be relevant;

   (b) the circumstances in which the client might be liable to pay her representative's fees;

   (c) the circumstances in which the client might be liable to pay the costs of any other party to the proceedings;

   (d) the circumstances in which the client might seek an assessment of the fees and expenses of the legal representative and the procedure for so doing.

7. Practice Rule 15 of the Solicitors Practice Rules 1990 and the Solicitors' Costs Information and Client Care Code 1999 required the Respondent to discuss with Mrs J her eligibility for legal aid and whether her liability for another's party's costs might be covered by insurance. After the event insurance was a requirement where there was a CFA.

8. The Respondent did not discuss the above matters with or advise Mrs J upon them.

9. In about June 2004 the experts instructed by each party met and prepared a joint report. The report was not favourable to Mrs J who was advised of this by letter from the Respondent dated 28th June 2004. In a further letter of 5th July 2004 the Respondent offered her view that the case could not go on. The hearing of Mrs J's claim was scheduled for 28th July 2004.

10. On 14th July 2004 the Respondent served a Notice of Discontinuance on Radcliffes who acted for the defendants. A pre trial review had taken place that day but proved ineffective. Radcliffes telephoned the Respondent from the Court because nobody from her firm was present. The Respondent did not advise Mrs J of the costs implications of discontinuance.

11. Subsequently Radcliffes prepared their bill. A hearing date for detailed assessment had been scheduled for 19th September 2005. On 15th September the Respondent wrote to Radcliffes, "We are instructed to offer your client the sum of £13,500 in full and final settlement of the costs claim." Mrs J had not given such instructions. Mrs J had been unaware of the claim for costs against her. Following Radcliffe's rejection of her offer, the Respondent wrote again on 16th September 2005, "We are instructed to increase the offer to £14,500". As before the Respondent had given no such instructions. The detailed assessment was heard on the scheduled date and the Final Costs Certificate was served on 4th January 2006 and was in the sum of £18,031.12. That was in due course served on Mrs J who had been unaware of her costs liability until she received correspondence in November 2007 from Radcliffes.

12. In July the Respondent agreed to pay Radcliffe's assessed costs by instalments. The Respondent had not complied fully with that agreement but had sent some cheque payments. One had been returned by her bankers unpaid. A subsequent cheque had been met. The Respondent had not responded to a number of letters about this addressed to her by Radcliffes.

13. Mrs J had instructed Goodhand and Forsyth (Goodhand) solicitors to advise her. They had written to Radcliffes and to the Respondent, asking for Mrs J's papers. The Respondent did not reply. Radcliffes told Goodhand that the balance due to them was £15,031.12.

14. Goodhand had addressed further letters to the Respondent but the only step taken by her was to notify Goodhand by undated letter received by them on 17th June 2008 that a cheque for the balance due had been sent to Radcliffes. Their repeated requests for Mrs J's file were ignored.

15. By letter dated 30th July 2008 Radcliffes informed the Respondent that her cheque for £15,031.12 had been presented to the bank twice and had been returned unpaid. Two such cheques sent by the Respondent had been drawn on client account.

16. Mrs J had been distressed by the situation and had feared that her home was at risk.

17. The SRA sought Mrs J's file, writing to the Respondent on 1st August 2008, telephoning on 13th August 2008. On 14th August a direction was made under Section 44B of the Solicitors Act 1974 requiring her to deliver the file. Further letters were written to which the Respondent did not reply and so on 19th September the SRA instructed an agent to collect the file. The file was retrieved in October.

18. Radcliffes wrote to Goodhand on 22nd October 2008 starting that a further cheque had been received from the Respondent in settlement of the balance due. The costs incurred by Mrs J in dealing with the matter to that stage were £1,230 exclusive of VAT.

19. On 11th May 2009 an SRA Adjudicator decided that the Respondent had provided an inadequate professional service to Mrs J and awarded £1,442.63 financial compensation and £2,000 for distress and inconvenience to be paid within 7 days.

Mr T's Matter

20. In about December 2001 Mr T consulted Dettlaff solicitors in connection with a medical negligence claim. By letter dated 2nd July 2002 the Respondent confirmed that her firm would deal with his claim "under our no win no fee arrangements". A second letter of the same date set out the firm's client care policy and enclosed the CFA. The matter was initially dealt with by Ms B under the Respondent's supervision. The Respondent had conduct of the matter after Ms B left the firm in February 2003.

21. The letter of 2nd July 2002 was clear that Dettlaffs was to be responsible "... for any disbursements payable during the progress of the case such as medical reports or medical records. There will be no cost to you associated with the running of the case." The CFA did not cover court proceedings.

22. On 15th May 2003 the Respondent wrote to Mr T to inform him that she had sent the papers to a medical expert, Mr M, to prepare a report on liability. On 28th May 2003 the Respondent wrote to Mr T, following a meeting the previous week, ... "I am afraid I do not believe you have a strong case to pursue against the hospital." At that stage the Respondent had received the hospital records and she had reported that she had instructed the medical expert. By the date of the meeting during the week commencing 19th May 2003 the Respondent was able to tell Mr T that he did not have a strong case to pursue against the hospital even though she had informed him by letter dated 15th May that she had instructed the medical expert. The medical expert had not been instructed as the Respondent claimed.

23. The inconsistency between the Respondent's two letters of 15th and 28th May was further exemplified by the advice contained in the second letter, namely that obtaining an expert report was likely to cost in the region of £1,000. In her earlier letter to Mr T of 15th May she told him that he could fund his own expert report at a cost of "say £800." Mr T had already been told that the firm would pay for all disbursements. In the letter the Respondent had made reference to a note made by Professor T. No report had been obtained from the medical expert.

24. Mr T replied to the Respondent on 3rd June 2003 asking whether he could claim legal aid. Mr T took legal advice from Powell and Co who reported that he had not been advised to claim legal aid despite being in receipt of Income Support. Mr T had no reply to his 3rd June letter.

25. The Respondent issued a claim in the Bromley County Court on 15th October 2003 on Mr T's behalf but it was never served. The claim had been struck out on 16th February 2004.

26. On 14th October 2003 the Respondent wrote to Mr T stating that she was still waiting to hear from Professor T. Mr T telephoned the Respondent in July, August and

November 2004 and he made four calls in February 2005. The Respondent did not respond.

27. When the Respondent wrote to Mr T on 25th February 2005 she acknowledged a delay in responding to his telephone calls and stated that the file had been closed the previous year "... as we had come to the conclusion that you could not prove negligence and causation in relation to your appendicitis in October 2003. I enclose copies of the correspondence sent out to you explaining the above. I am sorry if you did not receive all the letters. We had not heard further form (sic) you and therefore the matter was regarded as concluded and closed with your consent. I am sorry if this was a misunderstanding and has led to your concern".

28. Mr T had received no letters telling him that his file had been closed. He had not been informed that a claim had been issued nor that it had been struck out.

29. The Respondent did not reply to four letters addressed to her by Powell & Co in April, May and June 2005 all of which requested Mr T's papers.

30. Powell & Co commenced proceedings against the Respondent and on 12th August 2005 obtained an order for pre action disclosure. The Respondent's failure to deal with that Order resulted in a penal notice being endorsed thereon by Order dated 25th November 2005. Proceedings were commenced in September 2007. In October 2007 the Respondent accepted a CPR Part 36 proposal to settle the proceedings on payment of £10,000 and costs. Mr T was legally aided in the proceedings.

31. By letter dated 1st August 2005 the Legal Complaints Service initiated correspondence with the Respondent and the Respondent did not reply to its letters or telephone calls. The investigation had been temporarily closed pending the professional negligence proceedings and reopened in October 2007. The Legal Complaints Service and the SRA wrote repeatedly to the Respondent from 21st December 2007 to 25th July 2008. They received one letter dated 1st July stating that the Respondent was then on annual leave and that the SRA would hear shortly after her return.

32. By letter dated 9th September 2005 the Respondent sent copies of Mr T's matter files to Powell & Co. They were sent after the court order had been obtained. On 16th September Powell & Co wrote to express their concern at the inadequacy of the disclosure. After further correspondence and an application to the court, the Respondent wrote on 22nd November 2005 to state that there was no more correspondence "save for the file that has been sent to you."

33. When the SRA asked for the matter file and instructed an agent to collect it, the Respondent wrote on 22nd October 2008 to state that she had been unable to locate it.

34. On 28th April 2009 an SRA Adjudicator decided that the Respondent had provided an inadequate professional service to Mr T and awarded him £500 for distress and inconvenience to be paid within 7 days.

35. On 19th March 2009 an SRA Investigation Officer (the IO), commenced an investigation of the Respondent's books of account and other documents and the IO's report dated 26th June 2009 was before the Tribunal.

36. The Respondent had incurred professional disbursements totalling £17,728.77. She had received such monies but had not paid the disbursements and had not transferred such monies to client account.

37. At a meeting with the IO on 15th April 2009 the Respondent indicated that uncleared items had probably not been checked sufficiently and that cheques might have been held on the file.

38. Eight judgment debts had been registered against the Respondent totalling £23,630 so that Section 12(1) of the Solicitors Act 1974 applied to her. In her application for a practising certificate for the year 2007/2008 the Respondent had confirmed that she was not subject to Section 12.

39. The SRA sought explanations from the Respondent by letter and by other forms of communication. The Respondent replied to none of these.

40. On 17th September 2009 the SRA resolved to intervene into the Respondent's practice.

41. The Tribunal reviewed the original and supplementary statements with the exhibits annexed thereto made on behalf of the Applicant. The Tribunal considered the aforementioned letter which the Respondent had written to Mr Barton.

Findings of Fact and Law

42. Allegation (a). The Tribunal considered that the Respondent in falsely representing to her client Mr T that she had instructed a medical expert and when she wrote to Radcliffes stating that she was writing upon her client's instructions (Mrs J) the Respondent had not acted with integrity. She had not fulfilled her duty to act in the best interest of her clients. What she did served to damage her good reputation and that of the solicitors' profession and indeed compromised her proper standard of work.

43. Allegation (b) related to breaches of the Solicitors Code of Conduct 2007 because this had been introduced and replaced the Practice Rules during the course of the matters of complaint. Allegation (b) was not a separate allegation but a restatement of the rule under which the allegation had been made.

44. The Tribunal did conclude in addition, allegations (a) ii, iii and iv were substantiated the Respondent had behaved in a way which was likely to diminish the trust of the public placed either in her or the solicitors' profession. She had not acted in the best interest of Mr T or Mrs J and had not maintained a proper standard of work when handling their cases.

45. Allegation (c). It was clear from the facts that the Respondent had not on many occasions responded to the Legal Complaints Service or the SRA and therefore the

Tribunal found allegation (c) to have been substantiated in that the Respondent had not dealt with those bodies in an open, prompt and cooperative manner.

46. Allegation (d). Breaches upon which the IO reported had not been remedied promptly upon discovery and this allegation as found to have been substantiated.

47. The Respondent had received monies for professional disbursements but had neither paid those disbursements nor transferred the money to client account and was thereby in breach of the Solicitors Accounts Rules 1998 Rule 19(1). The Respondent had written out cheques for these disbursements and these had been recorded on the individual client ledgers as debits but the cheques had not been dispatched. The failure to dispatch the cheques meant, of course, that the individual client ledgers did not accurately reflect the position.

48. Allegation (f) concerned further examples of failure on the Respondent's part to deal with the SRA in an open, prompt and cooperative manner which was in breach of Rule 20.05 of the Solicitors Code of Conduct 2007. The Tribunal has treated allegations (c) and (f) as a single allegation but had noted the large number of examples disclosed by the facts of such failures on the part of the Respondent.

49. With regard to allegation (g) the Respondent had a number of judgment debts made in respect of her. A solicitor becomes subject to Section 12 of the Solicitors Act 1974 upon having such a judgment debt entered against him. The Respondent did not declare the fact that she was subject to Section 12 in her written application for a practising certificate made to the SRA for the practice year 2007 to 2008.

Mitigation

50. In her aforementioned letter addressed to Mr Barton immediately before the hearing the Respondent confirmed that the documents referred to in Mr Barton's statement were admitted. She presumed that the Tribunal would have the statement that she made to the SRA and their agents in September 2009 just after the intervention (neither Mr Barton nor the Tribunal had this).

51. The Respondent confirmed that she would not attend the hearing as she was in no fit state to do so. She said that she had been crushed by the SRA, they had ruined her, made her penniless and unemployed.

52. The client who complained had been compensated.

53. The disbursement monies about which the complaint had been made had never been clients' money in the normal accounting sense. That money could never be given to the clients; it was money that the Respondent, through her firm, had taken upon her shoulders to pay to the third parties. The experts had sued the Respondent and her firm if they were not paid. They had not sued the clients.

54. Both The Law Society and the SRA had known that the Respondent had suffered financial problems in the past when experts complained about their unpaid fees and the standard reply of the SRA or the The Law Society was that they could not get involved and that the expert should simply sue for his fees.

55. The Respondent asked what was there to make her realise how this sort of practice would be viewed vis-a-vis the solicitors rules. She said the answer was nothing because her interpretation of the rules differed from those of Mr Barton. As far as she was concerned she was guilty of not paying her debts, not guilty of some offence against clients.

56. When the Respondent could have done with The Law Society's and the SRA's guidance, at a time when she was nearly bankrupt, no interest was expressed in her. When some 3 years later she was coming out of her troubles the SRA decided otherwise. 16 employees had been made jobless and dozens of clients had been left stranded and unable to find alternative representation. 12 years of hard work on the part of the Respondent had been ruined.

57. The Respondent's firm owed money to her employees, the tax authorities, the bank and a number of third parties to whom disbursements had not been paid. The Respondent had asked many times to be given information about what was happening to the firm's money, income and work in progress of which there was over a £1,000,000 so that she could give information to those writing to her to claim their money. In September the Respondent had been told that she would receive monthly information. She had received no information from the SRA whatsoever.

58. The Respondent's letter concluded by saying that she would not attend the hearing. She had never denied that of which she had been accused.

Costs

59. Mr Burton requested fixed costs in the full amount claimed of £12,620.34. Mr Barton told the Tribunal that he had notified the Respondent of the costs figure but she had not responded.

Sanction and Reasons

60. The Tribunal ordered the Respondent to be struck off the Roll of Solicitors. The Respondent had been seriously in breach of the requirement that solicitors act at all times with integrity, probity and trustworthiness. She had kept clients in the dark and had not reported crucial matters to clients. The consequences to Mrs J had been extremely serious. A client who believed that she was at risk of incurring costs had been presented with a very large bill indeed. The Tribunal accepted that the Respondent had sought to shoulder those costs herself but had managed only to pay part of them. The Tribunal considered it clear that the Respondent had not intended the liability for costs to fall on Mrs J but her own precarious financial position meant that she could not meet those costs herself. A solicitor is required to be entirely open and transparent in dealings with clients and the Respondent's proper course of action would have been to tell Mrs J exactly what had happened and advise her to seek independent advice. Similarly Mr T had been misled.

61. The Respondent's failure to respond to communications addressed to her serves seriously to damage her own reputation and that of the solicitors' profession. A

failure to respond to the professional regulator was serious because it prevented the regulator from fulfilling its own duties.

62. What amounted to the retention of monies to which she was not entitled by keeping those monies in office account and not using them to pay professional disbursements forthwith was a particularly serious matter aggravated by the fact that cheques had been written out and recorded on the individual client ledgers but had not been sent so that the true position was disguised in the firm's accounts.

63. The Tribunal regarded all of these matters as very serious indeed. A person who conducted herself in such a manner might not expect to remain a member of the solicitors' profession. In order to protect the public and the good reputation of the solicitors' profession the Tribunal concluded that it was both proportionate and appropriate to order that the Respondent be struck off the Roll of Solicitors.

Costs

64. The Tribunal heard Mr Barton's application for costs and his explanation as to how they had been calculated. The Tribunal concluded that the figure sought was entirely appropriate. The Respondent had not made any representations about costs and had not submitted any details of her means to the Tribunal although she had in her letter to Mr Barton mentioned above indicated she had suffered financial difficulties in the past but expected that she might derive some monies from work in progress following the intervention into her practice. Whilst the Tribunal recognised that that might be a vain hope the Tribunal considered that it would be both proportionate and appropriate to order the Respondent to pay the Applicant's costs in the full sum sought. The Tribunal additionally took into account the fact that the Respondent was some 50 years of age and although the effect of the Tribunal's order was to prevent her from earning a living in the capacity of a solicitor it was nevertheless open to her to obtain other paid employment. The Tribunal ordered the Respondent to pay the Applicant's costs fixed in the sum which he sought.

65. At the conclusion of the hearing the Tribunal made the following order:

The Tribunal Ordered that the respondent, IWONA DETTLAFF, solicitor, 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 fixed in the sum of £12,620.34.

Dated this 24th day of April 2010.
On behalf of the Tribunal

W. M. Hartley
Chairman