

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF LISA MICHAELSON, solicitor (The Respondent)

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

---

Ms A Banks (in the chair)  
Mrs E Stanley  
Mrs C Pickering

Date of Hearing: 28th September 2010

---

**FINDINGS & DECISION**

---

**Appearances**

David Elwyn Barton, Solicitor Advocate, of 13-17 Lower Stone Street, Maidstone, Kent appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent, who was present, was represented by Geoffrey Williams QC of Geoffrey Williams & Christopher Green, The Mews, 38 Cathedral Road, Cardiff, CF11 9LL.

The application to the Tribunal, on behalf of the SRA, was made on 23<sup>rd</sup> February 2010.

**Allegations**

The allegations against the Respondent were that she had:

1. Breached Rule 1 of the Solicitors Practice Rules 1990 in each and all of the following respects:
  - (i) She had compromised or impaired her independence or integrity or had been likely to do so;

- (ii) She had compromised or impaired her duty to act in the best interests of the client, or had been likely to do so;
  - (iii) She had compromised or impaired her good repute or that of the solicitors' profession, or had been likely to do so. The Respondent had also been dishonest.
2. Used her position as a solicitor to take unfair advantage for herself, contrary to Principle 17.01 of the Guide to the Professional Conduct of Solicitors 8<sup>th</sup> Edition.
  3. In breach of Rule 22 of the Solicitors Accounts Rules 1998 withdrawn client money from client account in circumstances other than permitted by that Rule. The Respondent had also been dishonest.

### **Factual Background**

1. The Respondent, born in 1971, was admitted as a solicitor on 15<sup>th</sup> October 1999. As at the date of the hearing, her name remained on the Roll of Solicitors.
2. At all material times the Respondent had been a partner in Freedman Green Solicitors of 89 Boundary Road, London, NW8 ORG
3. On 1 November 2007 Jee Hartley, a Senior Investigation Officer employed by the SRA, had commenced an investigation of the books of account and other documents of Freedman Green Solicitors. The said investigation had been continued by Kathleen Beenham, an Investigation Officer, from July 2008 resulting in a Report dated 8 September 2009 with Appendices ("the Report").
4. The Report had disclosed the existence of a cash shortage on client account in the sum of £52,053.25 as at 30 September 2007. Freedman Green had replaced that shortage from office account on 10 and 16 December 2008.
5. Paragraph 13 of the Report stated the cause of the cash shortage, namely the improper transfer of the said sum from client to office account pursuant to a number of bills drawn by the Respondent who had had the conduct of the administration of the two estates of PB and DDE.
6. In the first such estate, PB, she had acted as solicitor for the sole executor, and in the second, DDE, she had been appointed by the Court of Protection and thereafter had acted as Receiver for the widow of DDE who had been appointed his executor in his Will but who had lacked capacity through mental ill health.

### **PB deceased**

7. The total sum of £21,048.05 had been transferred from client to office account following the drawing of the eight bills specified in the Report. Each bill had been for a round sum, with the exception of the last bill dated 18 May 2005. The last transfer had reduced the client balance to nil.

8. PB had died on 14 February 2003 and a Grant of Probate had been extracted in the name of the sole executor, JLB. The Respondent had acted for the executor from September 2003.
9. On 4 June 2004 the Respondent had written to her client to inform her that she had completed the administration of the estate.
10. On 9 June 2004 the Respondent had written to the Capital Taxes Office to seek confirmation on behalf of the estate that all taxes had been paid. By letter dated 15 June 2004 the Respondent had received such confirmation.
11. Having completed the administration of the estate and confirming that no further tax liabilities existed, the Respondent had sent the estate accounts to her client. She had enclosed her firm's charges for finalising the administration. The bill had been described as a final account and had charged an uplift. The bill had been paid from money held on behalf of the estate. Thus, according to the matter file, the work had been completed.
12. On 23<sup>rd</sup> June 2004 the Respondent had written to the Inland Revenue stating that she thought the estate was entitled to a tax refund because "having finalised the administration of the estate we have realised that two of the residuary beneficiaries are registered charities."
13. By letter dated 17 December 2004, the Inland Revenue had indicated its agreement and had calculated a tax refund of £19,663.17. That had been paid together with interest on 29 December 2004 and had been credited to the client ledger on 4 January 2005. The sum credited had been £20,335.06 and the credit balance on the ledger had been £21,048.05 as at that date. It had been client money belonging to the estate.
14. Over the following four and a half months the ledger was debited with eight bills.
15. The first bill had been drawn and debited on the same date as the tax refund had been credited, containing the narrative "Administration of Estate to 4 January 2005". The second bill had been debited on 27 January containing the narrative "Administration of Estate to 27 January 2005". Fees charged in those two bills had totalled £5,500 plus VAT.
16. The estate had been charged £1,500 by a bill dated 10 February 2005 for "preparing estate account". The remaining bills had purported to charge for administering the estate to their respective dates and the final bill of 18 May 2005 had charged the balance standing to the credit of the client ledger for "finalising the administration of the estate".
17. The bills contained no description of the work purportedly undertaken apart from the short narratives.
18. The Respondent had not told the executor that she had written to enquire about the tax refund, nor that she had received it.

19. The Respondent had not sent any of the bills to the executor nor had she sent her a written notification of costs and of her intention to take the costs from the money held in client account. None of the costs had been properly due in any event because no further work had been done by the Respondent who had completed the administration by 4 June 2004. The executor had written to the authority to confirm this on 2 February 2009.
20. The Respondent had been in correspondence with the executor in April and June 2005 concerning late receipt by the executor of two modest dividends from O2 Plc and Lloyds TSB for £260 and £4.50 respectively. Those sums had been credited to client account and the letters exchanged between the Respondent showed how the money had been distributed. In her letter of 21 April 2005 the Respondent had stated that she would not be charging for the correspondence, although she had on 8 April drawn a bill on the estate for £2,000 plus VAT. The Respondent had not then taken the opportunity to inform the executor of the tax refund, nor that some of it still remained in client account. She had not then taken the opportunity to tell the executor that bills had been drawn and paid.
21. The same factual position applied to the letters dated 12 and 21 June 2005.
22. The Respondent had commenced maternity leave in July 2005.
23. On 20 January 2009 the SRA's Investigation Officers (Kathleen Beenham and Nick Ireland) had spoken with the Respondent about her dealings with the PB estate. The meeting had taken place at Davenport Lyon's office and the Respondent's solicitor had been present throughout. The meeting had been recorded and transcribed.
24. The Respondent had said that she had acted for the executor and that she had sent the letter to the Inland Revenue dated 23 June 2004. She had confirmed that she had known of the receipt of the tax refund and that she had dealt with the late dividends from O2 and Lloyds TSB referred to above.
25. A paying-in slip dated 4 January 2005 had credited to client account the sum of £20,335.06 being a "tax refund" from the In.Rev". It was signed off "LM". The ledger also had the corresponding narrative "Tax Refund", taking its description from the paying-in slip. The first of the eight bills was also dated 4 January 2005. It had been posted to the client ledger on the 5 January and had been paid on the same day.
26. At that stage the Respondent had denied drawing the bills but could not say who else would have drawn them or why anyone else would have worked on her matter file.
27. The Respondent had been interviewed again on 10 March 2009 and as before her solicitor had been present and the meeting had been recorded and transcribed.
28. The Respondent had stated to the SRA's Investigation Officers that she had maintained a record of her bills on a spreadsheet which she had personally completed. The spreadsheet had been shown to her and she had been directed to the estate of PB's bills. The following exchange had taken place:

"Miss Beenham: March '05. So you agree the PB bills are included in your calculation.

Respondent: They are, they are.

Miss Beenham: And would you have put them there? You would have prepared these spreadsheets?

Respondent: Yes."

29. The Respondent had conceded that she must have known about the PB bills. At that point the recording had been stopped at the request of the Respondent and her solicitor so that they could speak privately and the meeting had subsequently reconvened.
30. The Respondent had accepted again that she had maintained the spreadsheet but could not recall drawing the bills. The Respondent had accepted that the bills had been included in her bonus calculation.

#### DDE deceased

31. In about April 2005 the Respondent had been appointed by the Court of Protection as the Receiver of Mrs E who was the deceased's widow. Probate had been granted to the Respondent because of Mrs E's incapacity.
32. The Respondent had drawn three bills and they had been paid from Mrs E's Receivership funds. The bills had all been drawn in February 2007.
33. The Respondent had needed the authority of the Court of Protection before taking her costs. The costs taken had been excessive, such as to amount to culpable overcharging. The Respondent had accepted that she should not have charged an uplift of 1.5% on the deceased's assets but rather 0.5%.
34. The bills had been drawn and paid during the final month of the Respondent's bonus year, namely February 2007. They had been used to calculate her bonus.

#### **Documentary Evidence before the Tribunal**

35. The Tribunal reviewed the Rule 5(2) Statement and the documentary exhibits attached to the Statement including the Report and the two interview transcripts. It also had the benefit of a supplementary bundle, supplied by the Applicant, containing, inter alia, witness statements from Mr and Mrs Freedman. A further bundle of documents had been filed on behalf of the Respondent including, inter alia, a medical report from Dr Stephen Humphries, a consultant psychiatrist.

#### **Opening Submissions by the Applicant**

36. The Applicant took the Tribunal through the allegations, the agreed facts and the relevant documents including the transcribed interviews. He noted that the Respondent had accepted that she had prepared the pink paying-in slip in respect of

the tax refund of £20,335.06 and that she had been the only person who, on 4 January 2005, the date of the first bill, had known of that payment into the client account. He submitted that the circumstances admitted of no other reasonable explanation but that the Respondent had raised the eight bills, on the file of PB Deceased, during the period from 5 January 2005 to 18 May 2005.

37. The Applicant stressed that the eight bills had not been delivered to the client but that on 18 April 2005 and on 21 June 2005, the Respondent had written to the executor of the estate of PB about further payments falling into the estate.
38. The Applicant referred the Tribunal to the details of the Respondent's remuneration as a salaried partner including her bonus structure which had involved a bonus calculated as a percentage of bills delivered and paid over a specific billing level; a basic pay of £55,000 with, on achieving a billing of £120,000, a 50% incentive scheme followed by a lower rate of 25% above a certain level. He detailed how her pay structure had been revised, following her return to working three days a week in the office in March 2006, after her first period of maternity leave.
39. The Applicant referred to the Respondent's second pregnancy and her second period of maternity leave in 2007. With reference to the details in the medical report before the Tribunal, the Applicant submitted that it was important to distinguish between the possible effects on the Respondent of the very different medical difficulties of both pregnancies.
40. The Applicant explained that Mr Freedman had contacted the SRA in August 2007, during the period of the Respondent's second maternity leave, because of his concerns about the Respondent's conduct of certain receivership files. The SRA had commenced an investigation in November 2007 that had been continued by Ms Beenham in July 2008. It had been Ms Beenham who had asked to see the ledgers on all of the Respondent's files and had investigated the file relating to the estate of PB.

### **The Opening Submissions on behalf of the Respondent**

41. Geoffrey Williams QC reminded the Tribunal of both the objective and the subjective tests of dishonesty in the case of Twinsectra v Yardley [2002] UKHL 12 and of the burden and the standard of proof. He stressed that in order to find the allegations proved the Tribunal would have to be certain so that it was sure, that the eight bills had been drawn by the Respondent and that she had organised the transfer of the funds to pay those bills. Moreover, he submitted that if the Tribunal made its findings on the basis of inferences, such inferences from the facts as found by the Tribunal, would have to be irresistible.
42. Turning to the status of the medical report, Leading Counsel explained that the maker of the report was not being called to give evidence but that the medical evidence within the report had been agreed. However, he told the Tribunal that what had not been agreed, were certain remarks made to the expert by the Respondent. Leading Counsel explained his concern that certain witnesses in the proceedings had been given unrestricted access to the contents of the medical report and had consequently filed second statements. He asked the Tribunal to have regard to such disclosure when assessing those statements.

**Witnesses**

43. Kathleen Beenham, a Forensic Investigation Officer with the SRA, gave evidence as to the truth and contents of the Report dated 8<sup>th</sup> September 2009.
44. In cross-examination, inter alia, she explained the reasons for the delay from the commencement of the investigation in November 2007, by another Officer, to the issue of the Report in September 2009. Ms Beenham said that as soon as she had seen the ledger relating to the estate of PB, she had been concerned and had called for the Respondent's files. She explained that although she had seen the relevant ledger in June or July of 2008, she had not finally confirmed the cash shortage and requested replacement by the firm until she had completed her investigations towards the end of that year.
45. Ms Beenham agreed that in interviews the Respondent had always said that the eight bills had not been drafted in her usual style. However, Ms Beenham had noted that about a third of the value of the estate's tax rebate had been taken by way of three bills before the end of the Respondent's bonus year of 2004/05.
46. Ms Beenham confirmed that while she may not have said specifically, in the Report, that the Respondent had raised the eight bills, such had been implied. She confirmed that she had considered that the eight bills had been raised by the Respondent and that they had been the authorities for the transfers of funds from client to office account on the matter of the estate of PB. Ms Beenham explained that she had accepted that the firm's practice had been to send a signed copy of the bill to the client and to keep one unsigned copy in the file and one unsigned copy in the accounts system.
47. Ms Beenham said that during the interviews the Respondent had appeared to be fine and helpful but had become emotional when shown her own documents containing reference to the PB estate bills.
48. When referred to the Properties Screen of the Respondent's 2004 and 2005 billing documents, Ms Beenham said that she had not found it unusual that the modified and accessed dates had been 9<sup>th</sup> March 2009. She explained that the PB estate bills had been in the firm's computer system and had been included in the firm's monthly billing records and checked and agreed by the Respondent with the firm's cashier, Mrs Freedland's monthly bills paid figures. Ms Beenham said that she did not believe that the Respondent's own documents had been modified on 9<sup>th</sup> March 2009; the day on which they had been sent to her by e-mail by Mr Freedland.
49. Nick Shelley, a costs draftsman since 1995, who had recently retired, gave evidence as to the truth and the contents of his report dated 28<sup>th</sup> November 2008.
50. Gillian Lucile Freedman, the office manager with Freedman Green Solicitors, gave evidence as to the contents and truth of her statement dated 9 March 2009 dealing with the firm's billing and financial procedures.
51. In cross-examination, Mrs Freedman explained the various ways in which fee-earners would instruct her to transfer funds from client to office account. Although she could

not recall the specific details of the consequent transfers relating to the eight bills posted on the ledger of PB deceased between 4 January and 19 May 2005, she insisted that she would not have transferred those funds without the specific instructions of the Respondent, who had been the fee-earner. Mrs Freedman explained that she had transferred funds by way of drawing cheques on client account and paying sums into office account. She said that each fee-earner would see the monthly bills issued and reports detailing their billing.

52. Jeremy Michael Freedman, formerly a partner in the firm of Freedman Green Solicitors, currently a partner in Freedman Green Dhokia Solicitors, gave evidence as to the truth and contents of his statement, dated 9 November 2009, which detailed the bonus system under which the Respondent had been remunerated. He also gave evidence as to the truth and contents of his second statement dated 22 September 2010.
53. Mr Freedman explained that he had been asked to look at the Receivership files of Mrs E because of concerns raised on similar files by a locum employed by the firm during the Respondent's second maternity leave.
54. After the first meeting with the Investigation Officer, Mr Freedman said that he had been asked to locate the electronic files that the Respondent had produced to track her bills. He explained that he had searched the Respondent's computer and had found documents in sub-directories headed "Billing" which he had sent, without any alterations or amendments, to the Investigation Officer.
55. In cross-examination, inter alia, Mr Freedman gave details of the various disputes that had arisen and were continuing, relating to the Respondent's terms and conditions of employment. He agreed that any proceedings, by the firm against the Respondent to recover monies, had been put on hold pending the outcome of the Tribunal proceedings.
56. Mr Freedman insisted that no person in the office, other than the Respondent, could have raised the eight bills on the file of Re PB between January and May 2005 and that Mrs Freedman would not have transferred monies on that file on anyone's instructions other than those of the Respondent.
57. In response to a question from the Tribunal, Mr Freedman explained that the only person who would have known that there was money in the client account of Re PB which could be used to meet a bill raised on 5 January 2005, the day after the receipt of the HMRC refund, had been the Respondent. He said that if she had distributed the refund, as she should have done within a few days of receipt, any fraudulent bills would have come to light.

### **Oral Evidence from the Respondent**

58. The Respondent gave evidence including details of her professional and medical history and her maternity leave. She also explained her financial position during 2005 insisting that she had had no need to increase her bonus payment.



59. The Respondent explained how she had costed her files and raised bills and maintained that she would send invoices to clients for approval before informing Mrs Freedman, by e-mail, that a bill had been approved and funds could be transferred.
60. The Respondent accepted that the paying-in slip, in respect of the HMRC refund, was in her writing and she accepted that she had paid the sum of £21,048.05 into client account. However, the Respondent insisted that she had not raised any of the subsequent eight bills. She explained that during her first interview, when she had been shown her own spreadsheets containing details of the bills, she had said that she must have known, but she could not then and still could not remember raising those eight bills.
61. In relation to the e-mail that she had sent to her solicitor on 7<sup>th</sup> May 2009 in which she had written, inter alia:

“Dear Trevor,

As you can appreciate, I really just want all of this to be over, so I can continue working at my best, without this hanging over my head.

-----

As you know, I was devastated to realise that I had raised bills on a file when monies should have been distributed, especially to charities. As I have said from the beginning, I truly don't recall doing this and is so out of character.”

The Respondent explained that she had been under terrible stress as it had been going on for so long and she had thought that because of the Word documents, if she held her hands up it would be over, but she had not realised that she was actually admitting in writing something that she had not done.

62. In relation to the matter of the Receivership of Mrs E, the Respondent insisted that she had made a genuine mistake and had been shocked when Mr Freedman had referred her handling of the file to the SRA.
63. In cross-examination, the Respondent explained how her relationship with the firm had broken down because of her maternity leave. She insisted that someone else in the firm must have drawn the bills on her file. The Respondent said that she had not been the only person who could have seen the cheque from HMRC, but agreed that she would have been the only person who would have known what to do with that money.
64. The Respondent acknowledged that she had completed the paying-in slip and so should have been aware of the money in client account but could not explain why she had not written to the executor, her client, about it even though she had written to her subsequently about other payments. However, she noted that she would probably not have needed the file in order to deal with those two small payments.

65. The Respondent agreed that she had continued to work hard during 2005 and had achieved billing comparable with the previous year, despite her difficult pregnancy.
66. The Respondent agreed that she used to keep her own records of her monthly billing and that she would compare those records with Mrs Freedman's monthly records, often marking her own records "same as Gill". However, she did not accept that the Word documents from her computer, listing her bills monthly, and including some of the Re B bills, had not been modified.

### **Submissions on behalf of the Respondent**

67. Leading Counsel limited his submissions to the question of dishonesty stressing that in order to find the allegations proved the Tribunal would have to be certain, so that it was sure, and in the absence of any other possibility, that not only had the Respondent prepared the bills and authorised the transfers of the monies but that as she was so doing, she had been aware that she had been acting dishonestly.
68. Leading Counsel reminded the Tribunal that there was no documentary evidence as to the provenance of the Re PB bills or as to their authorisation for payment by the Respondent. He noted that the Respondent's own Word documents appeared to have been modified.
69. Leading Counsel referred to the lack of any propensity on the part of the Respondent to be dishonest and to the evidence as to her character before the Tribunal. Moreover, he submitted that there had been no evidence of any financial or other motive for the Respondent's alleged conduct. In addition, the documents on which the discussions as to the Respondent's bonus for 2004/05 had been based had not been available.
70. Referring to the email that the Respondent had sent to her solicitor on 7<sup>th</sup> May 2009, Leading Counsel submitted that reading the e-mail as a whole, it was clear that she had been under pressure and in distress but that she had not made an admission.
71. Turning to the report of Dr Stephen Humphries, a Consultant Psychiatrist, Leading Counsel stressed that the agreed part of the report, dealing with the Respondent's health problems, was crucial to the Respondent's defence of the proceedings. He submitted that if the Tribunal did make a finding that the Respondent had raised the bills, then the medical evidence was that it was more likely that she had done so in a state of stress-related dissociation of effect rather than in a conscious state of intent.

### **The Tribunal's Findings as to Fact and Law**

72. Having considered all the evidence, including the medical evidence and the references as well as the helpful submissions from and on behalf of the parties, the Tribunal found the allegations, including the allegation of dishonesty, proved to the higher standard in relation to the matter of the estate of Re PB deceased, but not proved in relation to the matter of the Receivership of Mrs E.
73. The Tribunal was satisfied that the Respondent had paid the amount of the tax refund into the firm's client account and had transferred that same sum, by way of eight bills, to office account between January and May 2005. The Tribunal considered that the

Respondent was evasive and not credible when giving her evidence in relation to those matters.

74. The Respondent accepted that she had completed the paying-in slip and had therefore been fully aware of the large sum of money in the estate's client account. In fact, she had written to the Inland Revenue on the 23 June 2004 seeking such a tax refund. The Tribunal did not accept that the Respondent had simply paid the money into client account and forgotten about it.
75. The Tribunal noted that the Respondent had communicated with the executor in April and in May 2005 but had failed to mention the refund. It also noted, from a comparison of the Respondent's billing for 2003/04 and 2004/05 and from her own evidence that she had continued to be busy and to work hard up until the commencement of her maternity leave in July 2005. There was no evidence before the Tribunal of any deterioration in her work during that period.
76. The Tribunal found the evidence of both Mr and Mrs Freedman credible. Mrs Freedman had explained the firm's billing and accounts systems. Both the firm's accounting records and the Respondent's own monthly billing records had contained details of the eight bills. The Tribunal accepted the evidence of Mrs Freedman in relation to the firm's use of selection reports and as to the matching of her monthly billing reports with the Respondent's own records. The Tribunal noted that the eight bills in the Re PB matter had appeared in the Respondent's own billing records for January, February, March, April and May 2005 with both the March and April records being annotated "same as Gill" and all the monthly totals being the same as the totals recorded in the firm's accounts. The Tribunal did not accept that the Respondent's own records had been modified by anyone either after or before she had left the firm.
77. The Tribunal did not accept that anyone, other than the Respondent, had raised the eight bills on the file of Re PB. The Tribunal was satisfied that the evidence resulted in an irresistible inference. Although other people, within the firm, might have been aware of the receipt of the funds, only the Respondent could have been aware that those funds had been available for billing. Once the Respondent had raised the first bill, it appeared to the Tribunal that further bills would have been necessary in order to clear the balance on client account so that the file of the estate of Re PB would not be selected for review, because of monies remaining on client account, during the Respondent's maternity leave. The Tribunal noted that the estate accounts had been finalised and the final account paid by the executor, who had never been told by the Respondent that she had written to enquire about a tax refund.

### **Mitigation**

78. Leading Counsel accepted that the Tribunal would be considering the penalty of a strike off. However, he submitted that the Tribunal had a discretion as to penalty and that there remained a small category of cases, involving a finding of dishonesty, where Respondents had not been removed from the Roll.
79. Leading Counsel submitted that the Respondent's case could be included in that residual category in that what had happened had been entirely out of character, involving no substantial gain, when she had been under great stress.

80. In the event that the Tribunal determined that the Respondent should be struck off the Roll of Solicitors, Leading Counsel asked if its Order could be delayed for three to four months in order to enable alternative arrangements to be made for the various matters in which the Respondent acted as a Receiver or executor.

### **Application for Costs**

81. The Applicant sought an Order for costs that was not resisted although Leading Counsel sought an order in the alternative for a detailed assessment.

### **Sanction and Reasons**

82. The Tribunal considered that it was an extremely unfortunate and distressing case but that in order to uphold the reputation of the profession and the confidence of the public in that reputation, the appropriate penalty in all the circumstances was that of Striking Off and it so Ordered. The Tribunal did not consider the Respondent to be a danger to her clients and Ordered that the filing of its Order be delayed until 17<sup>th</sup> December 2010 to enable the Respondent to make appropriate, alternative arrangements for her clients.

### **Decision as to Costs**

83. The Tribunal Ordered that the Respondent pay the costs to be subject to a detailed assessment if not agreed.

### **Orders**

84. The Tribunal Ordered that the Respondent, Lisa Michaelson, 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 to be subject to a detailed assessment unless agreed between parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 15<sup>th</sup> day of December 2010

On behalf of the Tribunal

Ms A Banks  
Chairman