No. 10509-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PETER HARRY PERREY, solicitor (The Respondent)

Upon the application of Geoffrey Hudson
on behalf of the Solicitors Regulation Authority

Mr L N Gilford (in the chair)
Mr R Prigg
Mrs L Barnett

Date of Hearing: 23rd September 2010

FINDINGS & DECISION

Appearances

Mr Geoffrey Hudson, solicitor, of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, the Applicant, appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented.

The Application to the Tribunal on behalf of the SRA was made on 22nd April 2010.

The Statement pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 made on 22nd April 2010 was supplemented with a Statement dated 15th July 2010.

Allegations

The allegations against the Respondent contained in the Statement of 22nd April 2010 are:

1. In breach of Rule 22(1) of the Solicitors Accounts Rules ("SAR") he made improper withdrawals from client account.

2. In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC") he utilised client funds for his own benefit.

3. In breach of Rule 7 of SAR he failed to remedy breaches of SAR promptly on discovery.

4. In breach of Rule 19(3) of SAR he wrongfully retained office monies in client account.

5. In breach of Rule 22(1) (e) of SAR he failed to withdraw funds from client account contrary to a client's instructions, following the transfer of client matter files to another practice.

6. In breach of Rule 23 (1) of SAR he permitted unadmitted staff to withdraw client funds.

7. In breach of Rules 1.04, 1.05 and 1.06 of SCC he abandoned his practice in that he failed to deal adequately with the closure of his practice and failed to put in place adequate arrangements for the continuous safe keeping of client files and other assets of his practice.

Dishonesty was alleged against the Respondent in respect of allegations 1 & 2.

8. By way of the Supplementary Statement dated 15th July 2010 it was further alleged that:

   At the Crown Court at Wolverhampton:

   1. On 26th February 2010 he was convicted upon his own confession of one count of theft and one count of false accounting for which he was;

   2. On 7th June 2010 sentenced to 20 months imprisonment on each count, such sentences to be concurrent.

Factual Background

The Respondent was born on 27th March 1931. He was admitted to the Roll of Solicitors on 1st June 1957.

At all material times up until 7th April 2009 the Respondent practised in partnership with Mr David Charles Hall and Mr David Frederick Ratcliffe under the style of Reynolds & Co of Churchill House, Hagley Street, Halesowen, West Midlands B60 33AX. From 7th April 2009 until 10th December 2009 the Respondent practised on his own account as Reynolds & Co at the same address. On 28th May 2009 an Investigation Officer ("IO") employed by the SRA commenced an investigation of the books of account and other documents of the practice of Reynolds & Co and the report of the IO was dated 9th July 2009.

On 8th December 2009 a decision was made by the SRA to intervene into Reynolds & Co and any other practice(s) of the Respondent on the grounds that the Respondent had abandoned his practice in that he had:

1. Failed to deal adequately with the closure of his legal practice.

2. Not put in place adequate arrangements for the continuous safekeeping of client files and other assets of Reynolds & Co.

On 26th February 2010 the Respondent was convicted upon his own confession of one count of theft and one count of false accounting for which he was sentenced to twenty months imprisonment on each count. The Respondent was accordingly at the time of the hearing serving a term of imprisonment from which he may be released on license in or about April 2011.

The Respondent was aware of the proceedings and had received some assistance from the solicitor who had represented him in relation to the criminal proceedings. The Respondent had made full and early admissions in relation to all of the allegations against him in these proceedings.

Findings as to Fact and Law

1. The Respondent was convicted on 26th February 2010 on his own conviction of one count of theft and one of false accounting as alleged in the supplementary statement and eighth allegation. The factual background underlying those charges and subsequent conviction was the same as that underlying the allegations 1 and 2 of the allegations before this Tribunal. Allegations 1, 2 and 8 were the most serious allegations against the Respondent, although the other matters brought before the Tribunal were also serious.

2. Between August 2002 and December 2007 the Respondent stole the sum of £329,750 from a series of trusts known as "The Tree Settlements". In 1998 the Respondent was instructed by a Mr K McD to set up a series of trusts, which became known as "The Tree Settlement" for the benefit of Mr McD's children. The Respondent and another were appointed trustees of those trusts. Following the sale of trust assets in 2002 the sum of £794,622.06 had been placed by Reynolds & Co, the Respondent's firm, on behalf of the trustees on money market deposits with National Westminster Bank. Between 8th August 2002 and 29th June 2006 the Respondent made or caused to be made a number of withdrawals from the client monies deposited with National Westminster Bank on behalf of the trustees. In early February 2009 Mr McD's accountants identified that withdrawals in the sum £329,750 had been wrongfully made from the funds. The Respondent admitted, and the Tribunal found, that he had wrongfully made use of the £329,750 belonging to "The Tree Settlements". The Respondent had stated that he used those sums to support his practice. The sum mentioned had been withdrawn in a series of 18 transactions over a period of more than 5 years. The SRA had specifically alleged that the Respondent had been dishonest. The Respondent had admitted that in addition to using the funds to support his practice he had also purchased a car for £18,500 using funds improperly

withdrawn from "The Tree Settlements". The Respondent knew at the time of making the withdrawals that he did not have authority to do so.

3. The Tribunal found that in taking money from "The Tree Settlements" to fund his practice and purchase a car without any authority to do so the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having seen the written evidence, including the certificate of conviction and a copy of the Judge's sentencing remarks, and having heard submissions from the Applicant the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that he had any authority to make the withdrawals he did and therefore he knew that what he was doing was dishonest by the standards of reasonable and honest people. This finding of fact was sufficient in itself to prove the first allegation, that the Respondent had made improper withdrawals from client account in breach of Rule 22 (1) of the SAR and allegation 2 that he utilised client funds for his own benefit in breach of Rule 1.02 of the SCC 2007.

4. The charge and conviction for an offence of false accounting against the Respondent had arisen as the Respondent had dishonestly borrowed £295,000 and made false entries in the records to conceal this.

5. The sum of £295,000 was withdrawn from "The Tree Settlements" account on 1st June 2006. An equivalent sum was transferred back to the account with National Westminster Bank on 29th June 2006. The Respondent had admitted that this sum was used by a way of a "bridging loan" for the purchase of a property. The Tribunal considered the evidence, including the certificate of conviction and the Judge's sentencing remarks and was satisfied so that it was sure that in withdrawing £295,000 from "The Tree Settlements" account in order to provide a bridging loan to himself when he was aware that he had no authority to do so the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal were satisfied so that it was sure that the Respondent did not have an honest belief that he had any authority to make the transaction and therefore that he knew that what he was doing was dishonest by those same standards.

6. The other matters before the Tribunal were matters of professional conduct and had not formed part of the criminal proceedings.

7. The allegation that the Respondent had failed to remedy breaches of SAR promptly on discovery in breach of Rule 7 of SAR was a corollary of the improper withdrawals which had been made by the Respondent and to which he had admitted. The improper withdrawals had occurred over a significant period of time and had not been remedied. The Tribunal was satisfied so that it was sure that this allegation was proved.

8. The fourth allegation, that the Respondent had wrongfully retained in office account money which should have been placed in client account related to dealings in respect of two different clients. The SAR require that client money should be transferred to office account within 14 days to pay a bill. On 9th January 2005 a bill was posted to office account for £40,021.16 inclusive of VAT in respect of a commercial property transaction for Mr McD. Although as at that date Reynolds & Co held the funds on

client account with which to discharge the bill it was discharged via a series of eleven transfers between 20th January and 16th March 2009 which varied in size between £1,500 and £11,500.

9. On 10th March 2009 a bill was posted to office account for £29,118 inclusive of VAT in respect of a commercial property transaction for,WMH. Although on 10th March 2009 Reynolds & Co received monies with which to discharge the bill it was instead discharged by a series of 9 transactions between 23rd March and 6th May 2009 varying in size between £600 and £6,800. The Respondent's explanation for his failure to transfer the sums to discharge the bills from client account was that he did not want the firm's bank to think that the firm was in a better financial position than it was. The Respondent had wished to maintain the size of overdraft the bank had permitted.

10. The Tribunal was satisfied so that it was sure that the Respondent had dealt with payment of the bills to Mr McD and WMH in the way described and that this was sufficient to prove the fourth allegation.

11. In relation to the fifth allegation, in or about late February 2009 all client matter files held for Mr McD were transferred from Reynolds & Co to another firm. As at 31st March 2009, the Respondent's firm had retained the sum of £918.46 in a designated client deposit account for Mr McD. It was understood that this sum had been repaid to "The Tree Settlement" trustees by 6th August 2009. The Respondent had transferred more significant sums held for Mr McD to his new solicitors. It was not clear why the sum of £918.46 had been retained. The Tribunal was satisfied that there was no reason for retention of this sum after transfer of the files and accordingly there had been a breach of Rule 22 (1) (e) of SAR. In addition, the Tribunal was satisfied that in relation to another client the sum of £1,335 should have been transferred to that client's new solicitors upon transfer of the files. Again, the Tribunal was satisfied that there had been a breach of Rule 22 (1) (e).

12. The sixth allegation was that the Respondent had allowed unadmitted staff to withdraw client funds in breach of Rule 23 (1) of SAR. This had been admitted by the Respondent, and the Tribunal found that the Respondent's office arrangements had been such that the Respondent habitually signed blank cheques in the chequebook for the practice's account which enabled unadmitted staff to withdraw client funds. Further, a partner's authority was not required to enable telegraphic transfers to be made from the same client account. The Respondent stated that the reason for these arrangements was that his wife's ill health meant that he could not say when he would be in or could reach staff to sign cheques and he wished to minimize disruption. The two unadmitted staff who had been permitted to make withdrawals were regarded as very experienced and trustworthy. There was no allegation that this arrangement had adversely affected clients, but the Tribunal was satisfied so that it was sure that in making these arrangements for his office the Respondent had been in breach of the provisions of the SAR.

13. The seventh allegation was that the Respondent abandoned his practice and had failed to deal adequately with the closure of his practice, put in place adequate arrangements for the continuing safe keeping of client files and other assets of the practice such that he was in breach of Rules 1.04, 1.05 and 1.06 of SCC. The Respondent had two

partners until the practices were separated in April 2009. Those former partners had continued to be concerned for the Respondent and his clients and made efforts concerning the orderly transfer of files. However, it had become clear from the autumn that the Respondent could not maintain any staff at his firm or on the premises and he had had no proposals to ensure a proper transfer of files to either his former partners or another practice. On 8th September 2009 the SRA had decided to intervene in the practice of Reynolds & Co. The Tribunal were satisfied so that it was sure that the allegations in relation to failure to close the practice properly had been made out and that the SRA's decision to intervene had been necessary.

Mitigation

14. The attention of the Tribunal was drawn to a letter addressed to it from the Respondent's solicitors in the criminal proceedings, Williamson and Soden, dated 21st September 2010. The letter confirmed that the Respondent had waived his right to attend the Tribunal to save costs. He was aware that the Tribunal would strike him off the Roll of Solicitors. It was important for the Tribunal to know how devastated the Respondent was. He was more than aware that he had damaged the legal profession, betrayed his friend Mr McD and that the consequence of his offending was far reaching and costly to many others. The Respondent wished the Tribunal to be aware that the vast amount of money stolen was spent on keeping his office running and paying his staff. He had not had a lavish lifestyle and had not had a holiday for over ten years. By way of mitigation it was stated that the Respondent's personal circumstances had caused great pressures. His first wife died tragically in a car accident leaving him to bring up three young children. He remarried and gained three more step children that he brought up as his own. He nursed his second wife through a terminal illness. His third wife had a serious medical condition, which the criminal trial judge referred to when sentencing. The trial judge had had before him a large folder of references from professional colleagues which reflected the very high regard the Respondent had been held in previously. The Tribunal should appreciate the very real pressures facing the Respondent. It was not an excuse but it was an explanation as to why a man of previous good character had acted in the way that he did.

Costs Application

15. The Applicant requested an Order for costs in the sum of £14,006.52, including forensic investigation fees of £6,968.75. A schedule of costs and a summary of the forensic investigation costs was submitted for consideration. The Tribunal was told that the investigation had been lengthy and complex.

16. The Tribunal was referred to the letter from Williamson and Soden dated 21st September 2010 which stated that financially the Respondent was in a serious position. The Tribunal was further referred to the Section 73 prosecutor's statement dated 12th July 2010 which dealt with the Respondent's means in the context of a proceeds of crime hearing and an application to make a confiscation order. The Section 73 statement showed that the Court was in a position to make a confiscation order in the amount of £624,750 but noted that the amount that may be realised from

the Respondent's assets was £382,900. The Respondent had no assets in his own name. The Respondent was 79 years old.

Previous Disciplinary Sanctions before the Tribunal

17. None

Sanction and Reasons

18. The Tribunal had listened to the submissions of the Applicant and had seen the letter from the Respondent's solicitor in the criminal proceedings in which it was acknowledged that the sanction which would be applied would be striking off the Roll. The allegations which had been made and proved were very serious. The Respondent had been convicted of offences on two counts of dishonesty. Dishonesty had been alleged in these proceedings and had been proved to the satisfaction of the Tribunal. The Tribunal was aware of the sentencing remarks of the judge in the criminal proceedings who had stated "I accept you have been subject to a number of heavy personal and business pressures, and that times have not been at all easy for small professional businesses like yours, but fortunately very few practitioners resort to dishonesty as a way out of it. They do not go down that road because they know it is wrong in itself and also, of course, they know what the inevitable consequences will be. But you did go down that route in a major way. This was a breach of a high level of trust over a long period." The Tribunal noted that these remarks related only to those matters which were the subject of the first, second and eighth allegations in these proceedings. The Tribunal was satisfied that the further allegations which had been brought and proved were also serious in nature. The Respondent had been responsible for the theft of £329,750 and false accounting in relation to a further significant sum together with a number of breaches of the SAR and SCC. In all the circumstances there was no alternative to the Tribunal but to strike the Respondent off the Roll of Solicitors.

Decision as to Costs

19. The Tribunal considered that the costs which had been claimed by the Applicant were reasonable in amount. The Tribunal had considered making an Order that the Respondent should pay those costs, as the application had been successful. The Tribunal had, however, considered the Respondent's means in deciding whether or not a costs order would be appropriate. This was not a situation in which the Respondent's position, although poor at the moment, might improve in time. The Respondent was now 79 years old and currently in prison. He faced a confiscation order in respect of the criminal proceedings which was considerably greater in amount than the realisable assets. There was thus no prospect of the Respondent being in a position to pay any costs order which the Tribunal may make. The Tribunal had considered making an order for costs not to be enforced without the permission of the Tribunal, but on the basis that there was no prospect of those costs being paid, it would not be appropriate to make such an order. Thus, although in principle it would be right to make an order for costs on the basis of the Tribunal's Findings on the allegations, the Tribunal would not in the particular circumstances of this case make an order for costs.

Order

20. The Tribunal Ordered that the Respondent, Peter Harry Perrey, solicitor, be struck off the Roll of Solicitors.

Dated this 11th day of November 2010
On behalf of the Tribunal

LN Gilford
Chairman