SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10784-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROBIN ALASTAIR JACKSON First Respondent

and

[RESPONDENT 2 – NAME REDACTED] Second Respondent

Before:
Mr D. Leverton (in the Chair)
Mr D. Green
Mrs V. Murray-Chandra

Date of Hearing: 20th February 2012

Appearances

Mohammad Afzal, Solicitor of HMA Law, 5 Tenby Street, Birmingham, B1 3EL for the Applicant.

The First Respondent did not appear and was not represented at the hearing.

Paul Ford, Solicitor, of Cheshire Law Associates LLP, 56 Market Street, Hoylake, CH47 3BQ for the Second Respondent.

JUDGMENT

Allegations

The allegations against the First Respondent were that:

1.1 In breach of Rules 1.02 and 1.04 of the Solicitors Code of Conduct 2007 (the "Code"), the First Respondent made a claim for costs which he could not justify.

In respect of this allegation, the Applicant contends that the First Respondent has been dishonest although, for the avoidance of any doubt, it is not necessary to establish dishonesty for this allegation to be proved.

1.2 In breach of Rule 15 (4) of the Solicitors Account Rules 1998 (the "SAR"), the First Respondent failed to inform the client in writing at least once every twelve months of the amount of any client money retained at the end of the matter (or the substantial conclusion of the matter) and of the reason for that retention.

1.3 In breach of Rule 3.04 of the Code, the First Respondent accepted a significant gift from a client and ceased to act for the client as required.

The allegation against the First and Second Respondents were that:

2. In breach of Rule 2.03 of the Code, the Respondents gave costs information to clients which were inaccurate and misleading by accepting discounts on search fees which were not then passed on to clients.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:-

Applicant:

- Application dated 14 July 2011;
- Rule 5 Statement dated 14 July 2011 with exhibit "MA1";
- Statement of Costs dated 14 February 2012.

First Respondent:

- Letter from First Respondent to Applicant's solicitor dated 16 February 2012 enclosing medical reports.

Second Respondent:

- Email to Tribunal dated 17 February 2012;
- Copy bankruptcy order;

- Copy extract from partnership agreement;
- Schedule of income and expenditure;
- Bundle of references and testimonials.

Preliminary Matter (1)

4. Mr Afzal referred the Tribunal to the letter from the First Respondent dated 16 February 2012. In that letter, the First Respondent had disputed allegation 1.1 and had made admissions in relation to allegations 1.2 and 1.3. He had neither admitted nor denied allegation 2 and had stated that the Second Respondent would deal with the allegation. The Second Respondent admitted allegation 2.

Preliminary Matter (2)

5. The Tribunal had noted that the wording in relation to allegation 1.3 was incorrect as it should have referred to the First Respondent having failed to cease to act for the client. In view of the Tribunal's comments, Mr Afzal made an application for permission to amend the allegation in accordance with Rule 11(4)(c) of the Solicitors (Disciplinary Proceedings) Rules 2007 to which the Tribunal consented.

Factual Background

6. The First Respondent was born on 3 March 1946 and admitted as a solicitor on 15 April 1972. His name remained on the Roll of Solicitors. The Second Respondent was born on 20 December 1964 and admitted as a solicitor on 15 July 1994. His name remained on the Roll of Solicitors. The Respondents were partners in a firm called Jacksons based at 56 Market Street, Wirral, Merseyside, CH47 3BG ("the firm"). The Respondents were made bankrupt on 23 March 2011.

7. The allegations arose from an inspection of the books of accounts and other documents by the Solicitors Regulation Authority ("SRA") which resulted in a forensic investigation report dated 25 June 2010 ("the report").

<u>Allegation 1.1</u>

8. The First Respondent had conduct of eight probate matters. He acted as sole executor in four of these matters and co-executor in three of the others. The firm's accounts were computerised in May 1999. At that time, seven of the eight client account balances were brought forward onto "LawByte", the firm's computerised accounting system and were recorded as client balances.

9. On 8 December 2003, the First Respondent wrote to five of the beneficiaries concerned with these matters, and asked them to contact the firm about the balances. At that point, the balances were held as client funds which were due to the beneficiaries. There was no response from any of the beneficiaries to the letters.

10. On 27 March 2009, 31 March 2009, 30 April 2009 and 8 May 2009, the First Respondent transferred profit costs relating to the eight probate matters to the firm's office account. The total amount transferred was £12,554.30. The First Respondent was unable to produce any evidence of work undertaken against the profit costs transferred and stated that such evidence had been mislaid.

11. Four examples of the matters concerned were:

MGR deceased

12. The First Respondent acted for Mr R and Ms H who were the executors of the estate. Probate was granted on 26 February 1991. The gross value of the estate was £115,000 and it had been left to two beneficiaries, SLR and DAR in equal shares. The client ledger account was in credit between 14 May 1999 and 8 May 2009 in the sum of £638.13. On 8 May 2009, the full balance was transferred to the firm's office account as costs.

13. A letter from the First Respondent dated 8 May 2009 was sent to the two executors, and enclosed a bill of costs which was also dated 8 May 2009. The bill was for £690 inclusive of VAT. The client matter file did not contain any evidence of work to justify the bill. The First Respondent told the Forensic Investigation Officer ("FIO") that the invoice was in respect of his time in reviewing the file and dealing with an issue in respect of dividends. He stated that, in view of the amount involved, he had not informed the executors. He accepted that he had not provided a good standard of service.

14. Mr R, one of the executors, confirmed that he had not received the letter and invoice of 8 May 2009 and that he had not heard from the firm in over 19 years.

NCW deceased

15. The First Respondent was co-executor in respect of the estate of NCW deceased with Mr M. Probate was granted on 28 July 1992 and the value of the gross estate was £100,000. Under the terms of the will, the residue was to be divided equally between H, K and PM.

16. Between 14 May 1999 and 8 May 2009, the client ledger account was in credit in the sum of £3,530.04. On 8 December 2003, the file showed that the First Respondent had written to PM and asked him to contact the firm about the distribution of a small residual balance. The First Respondent confirmed to the FIO that, as at 8 December 2003, the balance was to be distributed to the beneficiaries.

17. On 8 May 2009, the sum of £1,725.00 was transferred from the firm's client account to the office account in respect of costs. The First Respondent told the FIO that the invoice was in respect of a final review and discussions with his co-executor and that he may have made notes in his "daybook" to support the work carried out. The First Respondent explained that the failure to distribute the remaining balance following his invoice on 8 May 2009 was "an oversight". No daybook was produced.

18. The co-executor, Mr M confirmed that he had no recollection of a letter from the firm dated 8 December 2009 and that he had not heard from the firm in over 10 years. He was not aware of the balance of £1,805.04 held by the firm. He stated that he had been requesting a detailed breakdown of the status of the estate and the associated costs "for many months and years but to no avail".

DFB deceased

19. The First Respondent was sole executor in the estate of DFB deceased. Probate was granted on 28 September 1991.

20. Between 20 May 1999 and 31 March 2009, the client account ledger was in credit in the sum of £1,742.75. The file showed that on 8 December 2003, the First Respondent had written to the son of the deceased, who was the beneficiary under the will, and had asked him to contact the firm about the distribution of a small residual balance. There were no other letters or records of correspondence before or after the letter dated 8 December 2003.

21. On 31 March 2009, the sum of £1,742.75 was transferred from the firm's client account to office account in respect of costs. A bill in the sum of £1,782.50 and dated 30 March 2009 was prepared and directed to the firm, as the First Respondent was executor. The First Respondent claimed that the costs related to a general file review and stated that any notes would be in his daybook. No daybook was produced.

NLR deceased

22. The First Respondent was co-executor with Ms R in the estate of NLR deceased. Probate was granted on 31 March 1992. Between 11 April 2006 and 8 May 2009, the client account ledger was in credit in the sum of £511.74. The file showed that on 8 December 2003, the First Respondent wrote to the co-executor Ms R, and asked her to contact the firm about the distribution of a small residual balance.

23. On 8 May 2009, the sum of £511.74 was transferred from the firm's client account to the office account in respect of costs. A bill in the sum of £563.50 and dated 8 May 2009 was directed to the firm as the First Respondent was co-executor. The First Respondent stated that the costs were in relation to a general file review and that any notes would be in his daybook.

24. In a letter to the SRA dated 6 October 2010, the First Respondent stated that there had been an element of undercharging on all the files and the bills had been prepared to rectify the situation. He stated that the reviews and cost assessments were recorded in his daybook and that these had been mislaid.

Allegation 1.2

25. In five of the probate matters (B,P,R,W and R all deceased), no further attempts were

made by the First Respondent to contact the beneficiaries or the executors following the letters dated 8 December 2003. The First Respondent admitted that he had not chased the beneficiaries and stated that he had considered instructing a private investigator to attempt to trace them.

Allegation 1.3

26. The First Respondent acted as sole executor in the estate of ADRD deceased. Probate was granted on 28 October 2009. The value of the gross estate was £325,000.00. Under the terms of the will dated 27 June 2008, the sum of £6,000.00 was gifted to the First Respondent. Payment of the gift to the First Respondent was recorded on the client ledger on the 4 November 2009.

27. The First Respondent told the FIO that he had advised the late Mrs D to take independent advice at the time that she had made her will but that she had not wanted to do so. He was unable to provide any documentation to confirm the advice that he had given and stated that it had been given orally. The FIO asked the First Respondent if he had complied with Rule 3 of the Code in relation to the gift. The First Respondent stated that he did not consider that the gift was “significant” within the meaning of the Rule.

28. The First Respondent produced a letter from Mrs D deceased dated 25 July 2000 which stated:

> “Before his death, my husband agreed we would like to leave you, in the event of my own demise, the sum of £6,000.00”.

The First Respondent told the FIO that the letter showed that the intention was a joint gift from Mr and Mrs D. He considered that the joint gift amounted to £3,000.00 from each of them and “was not significant in itself taking into account the value of her estate i.e. approximately £275,000.00”.

Allegation 2

29. The Second Respondent told the FIO that the firm had received rebates from the Property Search Group (PSG) in respect of searches that they had carried out on behalf of the firm's clients. He stated that the rebates had been received for the firm's prompt payment of the search fees. He confirmed that the firm had received rebates totalling £4,140.00 for searches carried out between March 2009 and February 2010 and that the firm had been receiving rebates from PSG since 2002.

30. The Second Respondent confirmed that the rebates, amounting to £20 per search, had not been passed on to the firm's clients. He confirmed that the firm had not complied with Rule 2 of the Code and stated that the firm had cancelled the arrangement with PSG once the position had been drawn to its attention during the investigation.

Witnesses

31. None.

Findings of Fact and Law

32. The Tribunal determined all the allegations to the criminal standard of proof.

33. **Allegation 1.1. In breach of Rules 1.02 and 1.04 of the Solicitors Code of Conduct 2007 (the "Code"), the First Respondent made a claim for costs which he could not justify.**

33.1 It was the Applicant's case that the First Respondent had acted dishonestly and that he could not justify the transfer of costs in relation to the probate matters. Mr Afzal referred the Tribunal to the schedule that had been prepared by the FIO during the investigation in order to demonstrate that these were very old matters. He pointed out that the date of death had been some time ago in all of these cases. In one instance, the deceased had died as far back as 1983 and in others, the death had occurred in the early 1990's.

33.2 Mr Afzal asked the Tribunal to consider one of the letters that the First Respondent had written to the beneficiaries in order to show the way in which matters had been dealt with. He suggested that on a natural reading of the letter, it was apparent that the only issue that had been outstanding in relation to the administration of these estates was the payment of some small legacies. Between March and May 2009 bills had been prepared in relation to the probate matters and the total amount that had been transferred as costs was £12,554.30. Mr Afzal told the Tribunal that there was no evidence on any of the files to justify the costs that had been charged by the First Respondent and he referred the Tribunal to the matters of MGR and NCW deceased by way of example. He reminded the Tribunal that the witness statements filed on behalf of both of the co-executors had confirmed that they had not received the firm's invoice dated 8 May and had not heard from the firm for a number of years.

33.3 The Tribunal was asked to consider the "combined" test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. Mr Afzal submitted that the test for dishonesty had been met as the First Respondent's conduct had been dishonest by the standards of ordinary and honest people and the First Respondent himself had realised that what he was doing was dishonest.

33.4 Mr Afzal told the Tribunal that there was no evidence of the additional work that had apparently been carried out by the First Respondent in relation to the probate matters. He reminded the Tribunal that the First Respondent had claimed that his day books would contain further information about the bills. He had been given the opportunity to produce the day books but had failed to do so. The Tribunal was referred to an example of one of the bills dated 8 May 2009. The bill did not give any detail as to how the total figure had been calculated. It did not give an hourly rate or provide any information as to the work that had been carried out. The Tribunal was asked to compare the sample bill with

examples of previous bills that had been sent by the First Respondent. The earlier bills had contained more detail about the work that had been charged for.

33.5 The Tribunal was told by Mr Afzal that, in effect, the probate matters had come to an end. The letters of the 8 December 2003 had not indicated that any further work was required. Mr Afzal suggested that it would not be usual to send out legacies to beneficiaries until all matters had been concluded anyway. There had been no response from the beneficiaries to the letters and Mr Afzal submitted that the First Respondent could not justify charging for work after the date of the letters.

33.6 The Tribunal was referred to the First Respondent's letter of the 6 October 2010 in which he had claimed that he had previously undercharged for the work carried out in relation to the probate matters. In that letter, the First Respondent had suggested that he had been trying to remedy the undercharging by submitting further bills. Mr Afzal told the Tribunal that there was no evidence of previous undercharging on the files. He submitted that the First Respondent's explanation simply lacked credibility. He questioned how the First Respondent could have justified his costs so many years later. It would have been difficult for him to decide on an appropriate hourly rate for example. Mr Afzal claimed that it was suspicious that the work had been carried out so much later. He reminded the Tribunal that two of the co-executors had stated that the May 2009 bills had never been received.

33.7 The Tribunal was also asked to consider the fact that as at 26 March 2009, the firm had exceeded its agreed overdraft with the bank. The first transfer of costs had taken place on the following date and Mr Afzal suggested that this was significant. He claimed that the First Respondent had decided to utilise the funds that had been held on his client account for some considerable time in order to assist with the firm's financial difficulties. He reminded the Tribunal that the overdraft limit had been exceeded again in May 2009 and further bills had been submitted at that time.

33.8 The Tribunal concluded that the sum of £12,554.30 had been taken from the client account without good reason. The probate matters were old cases for which no further work had been required save to pay out the small balances left in the estates. There had been no proper attempts made to trace the beneficiaries and the witness statements indicated that the letters which the First Respondent had said were written were not received. The First Respondent had failed to produce any documentary evidence to justify his bills. The Tribunal considered that the First Respondent's explanation that there had been previous undercharging was not credible and no documentary evidence had been produced to substantiate his claim. The firm's overdraft had been exceeded and it was clear that the firm had been in financial difficulties.

33.9 The Tribunal found the allegation substantiated against the First Respondent on the facts and documents before it. This was a serious matter for which client money had been utilised to run the firm. The Tribunal had carefully considered the question of dishonesty and had no difficulty in deciding that both limbs of the "combined" test for dishonesty as set out in Twinsectra had been satisfied. The First Respondent's conduct had been

dishonest by the standards of reasonable and honest people and the First Respondent knew himself that he was being dishonest.

34. **Allegation 1.2. In breach of Rule 15 (4) the Solicitors Account Rules 1998 (the "SAR"), the First Respondent failed to inform the client in writing at least once every twelve months of the amount of any client money retained at the end of the matter (or the substantial conclusion of the matter) and of the reason for that retention.**

34.1 The Applicant's case in relation to this allegation was set out in the Rule 5 Statement. The First Respondent had been under a duty to inform his clients in writing of any monies retained and the reasons for that retention at the end of the matter and thereafter every twelve months. In five of the probate matters, no further attempts had been made by the First Respondent to contact the beneficiaries or the executors after the letters dated 8 December 2003.

34.2 The Tribunal found the allegation substantiated against the First Respondent on the facts and documents before it and indeed the First Respondent had admitted the allegation.

35. **Allegation 1.3. In breach of Rule 3.04 of the Code, the First Respondent accepted a significant gift from a client and ceased to act with client as required.**

35.1 Mr Afzal reminded the Tribunal of the requirements of Rule 3.04 of the Code. He stated that where a gift was made to a solicitor, there was an obligation on the solicitor to advise the client to take independent legal advice and if the client failed to do so, then the solicitor must cease acting. Mr Afzal told the Tribunal that the purpose of the Rule was to protect the client and the good reputation of the profession. He stated that the gift needed to be of a significant amount in itself or with regard to the size of the estate and the expectations of the beneficiaries.

35.2 In his letter dated 6 October 2010, the First Respondent had suggested that the gift was not significant given the value of the estate. Mr Afzal told the Tribunal that the word "significant" was self explanatory and meant anything other than a "token" payment of say £150 to £250. In answer to questions from the panel, Mr Afzal conceded that the gift amounted to only 2% of the value of the estate but stated that the gift was significant in itself and the First Respondent should have stopped acting.

35.3 The Tribunal noted that the First Respondent had admitted the allegation but had raised an issue about whether the value of the gift could be seen as a significant amount. The Tribunal had taken time to consider the matter carefully and decided that the sum of £6,000 was a significant sum in itself and as such found the allegation substantiated against the First Respondent on the facts and documents before it.

36. **Allegation 2. In breach of Rule 2.03 of the Code, the Respondents gave costs information to clients which were inaccurate and misleading by accepting discounts on search fees which were then not passed on to clients.**

36.1 Mr Afzal told the Tribunal that the firm had received rebates from search fees totalling £4,140.00 which had not been passed on to the firm's clients. He reminded the Tribunal that the Rule required clients to receive the benefit of any discount or rebate. The Tribunal was told that the First Respondent had been mainly responsible for probate work at the firm and the Second Respondent had dealt with conveyancing. The Tribunal noted that the allegation had been put to both Respondents and the First Respondent had stated that the Second Respondent would be dealing with the matter.

36.2 Although the Second Respondent had been the conveyancing partner, the First Respondent had to take responsibility as a partner of the firm. There was no evidence to show that he had not known that rebates were being received and the Tribunal had no difficulty in finding the allegation substantiated against both Respondents and indeed the Second Respondent had admitted the allegation.

Previous Disciplinary Matters

37. None.

Mitigation

First Respondent

38. None.

Second Respondent

39. Mr Ford referred the Tribunal to an extract from the partnership agreement which provided that in the event of a disagreement between the parties the views of the First Respondent would prevail. He told the Tribunal that this was evidence of the fact that although the Second Respondent had held an equal share of the equity, he had still been the junior partner. Mr Ford also pointed out that the probate matters had pre-dated the partnership agreement.

40. The Tribunal was told that there had been some confusion at the time regarding the stance that should be taken by firms in relation to the issue of rebates. Mr Ford stated that the value of each rebate had been only £20 but he acknowledged, in answer to a question from the panel, that it was the totality of the amount retained that was an issue in this case.

41. Mr Ford told the Tribunal that the Second Respondent had been a lecturer for the Institute of Legal Executives. He had received training updates but unfortunately had not been aware of the issue regarding rebates. He had missed the article that had appeared in the Law Society "Gazette" due to the pressures of work. He had taken very little holiday during his time in the partnership. Both he and the First Respondent had spent considerable time and effort in building up the firm. Mr Ford reminded the Tribunal that

the practice of retaining rebates had ceased as soon as the issue had arisen during the investigation.

42. The Tribunal was told that this was a matter of embarrassment to the Second Respondent. He had been under pressure and had been trying to keep things afloat. Unfortunately he had not succeeded. He had been made the subject of a bankruptcy order in 2011 and he was currently in financial difficulties with his outgoings exceeding his income. In addition, his marriage had now broken down. Mr Ford referred the Tribunal to the references and testimonials that had been submitted on behalf of the Second Respondent. He respectfully suggested that a reprimand would be a suitable penalty in this case.

Sanction

43. The Tribunal found that the First Respondent had been dishonest. This was the most serious of allegations and in view of this, the only sanction that was appropriate was to order that the First Respondent be struck off the Roll.

44. The Tribunal had read the references submitted on behalf of the Second Respondent and had considered the matters that had been raised in mitigation. It was correct to state that the Second Respondent had played a more minor part in this unfortunate matter. However, it was clear that the firm was receiving rebates that should have been passed on to their clients. In all the circumstances, the Tribunal considered that the appropriate penalty was to order that the Second Respondent should pay a fine of £500.

Costs

45. The Applicant’s claim for costs was £19,229.66. This included the costs of the forensic investigation. Mr Afzal accepted that the estimated time for the hearing would need to be adjusted as matters had not taken as long as he had anticipated. He acknowledged that the Tribunal needed to take account of the financial position of both Respondents and he submitted that it was appropriate that any order for costs should not be enforced without further leave of the Tribunal. He explained that if the Respondents’ financial circumstances changed, then a further application could be made to the Tribunal to try and enforce the costs orders.

46. The Tribunal made a summary assessment of costs in the inclusive sum of £18,000. In order to reflect the culpability of each Respondent, the Tribunal considered it appropriate that the First Respondent should pay 90% of the costs which would be fixed at £16,200 and the Second Respondent should pay 10% of the costs which would be fixed at £1,800. The costs orders should not be enforced against either Respondent without leave of the Tribunal.

Statement of Full Orders

47. The Tribunal Ordered that the Respondent, Robin Alastair Jackson, 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 £16,200.00, such costs not to be enforced without leave of the Tribunal.

48. The Tribunal Ordered that the Respondent, [Respondent 2 – Name Redacted], solicitor, do pay a FINE of £500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,800.00, such costs not to be enforced without leave of the Tribunal.

Dated this 26th day of March 2012
On behalf of the Tribunal

D Leverton
Chairman