

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10798-2011

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT WARREN HEATLEY

Respondent

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Before:

Mr R. B. Bamford (in the chair)

Mr J. Astle

Mr D. E. Marlow

Date of Hearing: 17th July 2012

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## Appearances

Ms Sara Dickerson, Counsel of the Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire, B98 OTD for the Applicant.

The Respondent did not appear and was not represented.

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## JUDGMENT

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## **Allegations**

1. The allegations against the Respondent, Robert Warren Heatley were that he:
  - 1.1 Failed to pay client money without delay into client account contrary to Rule 15(1) of the Solicitors' Accounts Rules 1998 ("the SAR's");
  - 1.2 Used client monies for his own purposes and manipulated accounting records in breach of Rule 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC");
  - 1.3 Failed to deal in an open, prompt and cooperative way with the SRA contrary to Rule 20.05 of the SCC.
2. For the avoidance of doubt allegations 1.1 and 1.2 were made on the basis that the Respondent was dishonest but it was not necessary to establish dishonesty for the allegations to be made out.

## **Documents**

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

### **Applicant:**

- Application dated 9 August 2011;
- Rule 5 Statement dated 9 August 2011 and Exhibit "SEJ1";
- E-mail to Respondent dated 3 July 2012;
- Schedule of costs dated 31 January 2012;
- Second schedule of costs dated 16 July 2012.

### **Respondent:**

- None.

## **Preliminary Matter**

4. The Respondent did not appear and was not represented. Ms Dickerson reminded the Tribunal that the Respondent had been present at the last hearing on 14 February 2012 when the Tribunal had directed that the Respondent should file and serve his response to the allegations by 13 March 2012. Ms Dickerson pointed out that the Respondent had failed to comply with the Tribunal's direction. She had sent an e-mail to the Respondent on 3 July 2012 reminding him of the need to file his response and confirming the date of the hearing. She had not received any response.
5. Notification of the hearing date had been sent to the Respondent by the Tribunal office on 29 February 2012. The notification had not been returned as undelivered. In addition, the Respondent had received further notice of the hearing date in Ms

Dickerson's e-mail dated 3 July 2012. The Tribunal was satisfied that notice of the hearing had been served on the Respondent and in accordance with Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007, decided to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented.

### **Factual Background**

6. The Respondent was born on 14 February 1968 and admitted as a solicitor on 2 January 2002. He last held a practising certificate for the year 2009/2010.
7. At all material times, the Respondent practised as an assistant solicitor at Redferns, 9 Churchill Court, 58 Station Road, North Harrow, Middlesex, HA2 7SA ("the firm"). The Respondent resigned from the firm on 3 September 2010.
8. On 15 November 2010, Forensic Investigation Officers ("FIO's") employed by the Solicitors Regulation Authority ("SRA") commenced an inspection of the firm's books of account and other documents. The inspection resulted in the preparation of a Forensic Investigation Report dated 9 December 2010 ("the Report").

#### Allegation 1.1

9. Payments totalling £16,250 made by clients to the Respondent in relation to matters that he was dealing with and for which he had provided receipts had not been paid into the firm's client bank account or recorded in the firm's books of accounts. These payments came from 27 clients and were listed in the Report.

#### Allegation 1.2

10. During an interview with the FIO on 30 November 2010, the Respondent admitted and agreed that he had used the monies totalling £16,250 for his own purposes. He stated that he was aware of the Rules and Code applicable to such conduct. He further agreed that he had manipulated accounting records by creating different versions of the cash account for the client to the ones retained on the client matter files and for the firm's case management system.
11. The Respondent acted for Mr and Mrs C in the purchase of Flat 8, Stanley Road. Mr and Mrs C paid a total of £900 in cash on account to the Respondent. This was not entered on the client ledger account. The Respondent provided receipts for this payment which was made up of £100 paid on 5 August 2009 and £800 paid on 1 September 2009.
12. The cash account statement provided to Mr and Mrs C by the Respondent following completion was different to the cash account statement created by the Respondent for internal purposes which did not record receipt of the £900.

### Allegation 1.3

13. On 9 December 2010, the SRA wrote to the Respondent and requested his explanation in relation to the breaches that had been identified in the Report within 14 days. The time for a response was extended to 24 January 2011. No reply was received.
14. The identified shortage of £16,250 was rectified by the firm. The Respondent's father contributed £14,744.61.

### **Witnesses**

15. Sean Grehan, one of the FIO's employed by the SRA gave evidence. He confirmed that the contents of the Report were true and accurate to the best of his knowledge and belief and he provided the Tribunal with details of his qualifications. He confirmed that he had worked as an investigator with the SRA for the last five years.
16. Mr Grehan told the Tribunal that the firm had identified some concerns following the Respondent's resignation and had investigated matters. The firm had provided him with a list of payments made by clients to the Respondent. He confirmed that he had listed these payments in the Report and had conducted his own investigation. He had identified that the monies had not been paid into the firm's bank account or recorded in the firm's books of account. He told the Tribunal that the Respondent had agreed, in interview, that he had misappropriated those funds and that in doing so, he had failed to comply with the Solicitors' Code of Conduct.
17. The witness was asked to explain how the Respondent had been able to manipulate the firm's case management system. Mr Grehan told the Tribunal that there had been an element of "teeming and lading". This had involved the Respondent allocating one client's payment to another client's ledger in order to detract from a possible shortfall. Once the Respondent had resigned, he had not had the opportunity to replace the payments which had been identified by the firm. Mr Grehan stated that he had formed the impression that the Respondent had known what he was doing. He told the Tribunal that the Respondent had admitted, during interview, that he had been dishonest in relation to these transactions.
18. In relation to the transaction involving Mr and Mrs C, Mr Grehan told the Tribunal that the clients had subsequently provided receipts for the payments that they had made. These receipts had been signed by the Respondent but the payments had not been shown on the client ledger. Mr Grehan stated that, during interview, the Respondent had admitted that he had manipulated the accounting records in relation to this matter. The clients had been provided with the cash account which showed the receipt of the £900 but the cash account that had been created for the firm's internal accounts system did not show receipt of the money. Mr Grehan explained that he had decided to exemplify only one transaction in the Report following the interview with the Respondent but he had examples of other transactions in his investigation file which could be exemplified if necessary.
19. Mr Grehan confirmed that he had asked the Respondent to give an explanation for his conduct. The Respondent had told him that he had been experiencing personal problems concerning access to his two daughters who did not live near him. He had

been finding it difficult to find the money to continue to visit his daughters and he had become involved with drink and substances like cocaine. He had also started gambling in order to try and repay the funds that he had taken. At the time of the interview, the Respondent had stated that he had been “clean” for 30 days and was attending Cocaine Anonymous.

20. Mr Grehan told the Tribunal that the Respondent had been compliant during the interview and had answered all the questions that had been put to him. He had not had any concerns about interviewing the Respondent on that day and he had no reason to believe that the Respondent had been intoxicated or under the influence of drugs. He confirmed that he had not coerced the Respondent into making any admissions during the interview. He had recommended that the Respondent should take legal advice before the interview had started. He confirmed that a copy of the Report had been sent to the Respondent following the interview. He had written to the Respondent on 10 January 2011 giving him extra time in which to provide his response to the Report but he had not heard from him.
21. In answer to questions put by the Tribunal, Mr Grehan confirmed that he could recall the interview itself. He told the Tribunal that he had not edited the transcript of the interview in any way. He had not cautioned the Respondent as the interview had not been conducted as part of a criminal investigation and he had assumed that the Respondent, as a solicitor, would understand the consequences of giving the answers that he had. There had been nothing subsequently that had given him cause for concern in relation to the admissions made by the Respondent during interview.

### **Findings of Fact and Law**

22. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.
23. **Allegation 1.1: Failed to pay clients’ money without delay into client account contrary to Rule 15(1) of the Solicitors Accounts Rules 1998 (“the SARS”);**  
  
**Allegation 1.2: Used clients’ monies for his own purposes and manipulated accounting records in breach of Rule 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”);**  
  
**Allegation 1.3: Failed to deal in an open, prompt and cooperative way with the SRA contrary to Rule 20.5 of the SCC.**
- 23.1 Ms Dickerson told the Tribunal that the firm had notified the SRA of concerns regarding the Respondent’s conduct following his resignation. The firm had identified that receipts for payments from clients had not been recorded in the books of account. She referred the Tribunal to the transcript of the interview that had taken place between the Respondent and the FIO’s and pointed out that during the interview, the Respondent had agreed that he had misappropriated clients’ money. She told the Tribunal that the Respondent had acted dishonestly and she referred the Tribunal to the “combined” test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. She stated that the Tribunal would need to consider whether the Respondent’s conduct had been dishonest by the standards of reasonable

and honest people and whether the Respondent knew by those standards that what he was doing was dishonest. She asked the Tribunal to rely on the evidence given by Mr Grehan in relation to these matters.

- 23.2 The Tribunal found the allegations substantiated against the Respondent on the facts and documents before it. The Tribunal had been invited to find that the Respondent had acted dishonestly in relation to allegations 1.1 and 1.2. Having carefully considered the transcript of the interview with the Respondent and having heard Mr Grehan's evidence, the Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct had been dishonest by the standards of reasonable and honest people and that the Respondent knew by those same standards that what he was doing was dishonest.

### **Previous Disciplinary Matters**

24. None.

### **Mitigation**

25. None.

### **Sanction**

26. The Tribunal had found all the allegations substantiated against the Respondent. He had also been found to have been dishonest. The Tribunal was mindful of the observations made in Bolton v The Law Society [1994] 1 WLR 512 in which it had been stated that:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him....”

In order to protect the public and to maintain the reputation of the profession, the only appropriate sanction in this case was that the Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered.

### **Costs**

27. The Applicant's total claim for costs was £7,651.07. It was appropriate that the Respondent should pay the Applicant's costs fixed in the sum of £7,651.07. The Tribunal considered the limited evidence available in relation to the Respondent's means. The Respondent's father had contributed towards the rectification of the shortage at the firm which implied that the Respondent was likely to be impecunious. In addition, the Tribunal was mindful of the observations made in Merrick v Law Society [2007] EWHC 2997 (Admin). The Respondent was being deprived of his livelihood and given those circumstances, the Tribunal decided that the order for costs should not be enforced without leave of the Tribunal.

**Statement of Full Order**

28. The Tribunal Ordered that the Respondent, Robert Warren Heatley, 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 £7,651.07, such costs not to be enforced without leave of the Tribunal.

Dated this 17<sup>th</sup> day of August 2012  
On behalf of the Tribunal

R. Bamford  
Chairman