SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10814-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HARRY MARTIN EDWARDS Respondent

Before:

Mr A. G. Gibson (in the chair)
Mrs E. Stanley
Mr P. Wyatt

Date of Hearing: 17th April 2012

Appearances

Daniel William Robert Purcell, solicitor of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent appeared and was represented by Andrew Faux of Counsel, 85-87 Cornwall Street, Birmingham B3 3BY.

JUDGMENT

Allegations

1. The allegations against the Respondent, Harry Martin Edwards, on behalf of the Solicitors Regulation Authority were that he, while in practice as Martin Edwards Solicitor and Notary Public:

1.1 drew sums from his Client Account in respect of his fees otherwise than in accordance with Rule 19 of the Solicitors' Account Rules 1998 ("SARs");

1.2 drew sums from his Client Account otherwise than in accordance with Rule 22 of the SARs;

1.3 failed to comply with Rule 3.04 of the Solicitors Code of Conduct 2007 in that he drew sums from his Client Account by way of a gift for the benefit of himself or a family member without advising the client to take independent advice about the gift;

1.4 failed to comply with Rule 32 of the SARs in that he failed to maintain properly written up records in respect of his dealings with client money;

1.5 failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct;

2. For the avoidance of doubt it was also alleged that his conduct as set out above was dishonest, but it is not necessary for dishonesty to be proved for those other allegations to be made out.

The Respondent admitted all the allegations save for that of dishonesty.

Documents

3. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 1 September 2011 with exhibit;
- Statement of Costs on behalf of the Applicant dated 28 March 2012.

Respondent:

- Proof of the Respondent dated 17 February 2012;
- Letter dated 15 March 2012 from the Supervisor of the Respondent's IVA to the Respondent with attachments;
- Testimonials comprising 11 statements and one letter.

Factual Background

4. The Respondent was born in 1946 and admitted to the Roll of Solicitors in 1971. At the relevant time he practised as a sole Principal in Shifnal Shropshire.

5. An investigation was commenced by Alice Evans, a Forensic Investigation Officer ("IO") of the Applicant on 3 August 2010 and as a result she prepared a Forensic Investigation ("FI") Report dated 31 January 2011. In the course of her investigation, the IO interviewed the Respondent on 6 and 26 August 2010.

6. The FI Report disclosed that on or around the following dates, the Respondent drew funds from his Client Account and paid them to bank accounts in his own name or the name of his wife, when clients had not been provided with a bill of costs or other written notification of the costs incurred:

   - DJ deceased, paid into an account of the Respondent:
     - on 4 August 2008, £11,517.35
     - on 28 August 2009, £2,990.
   - EH deceased, paid into an account of the Respondent on 16 December 2009, £1,127.
   - BH deceased, paid into an account of the Respondent's wife JPE on 25 January 2010, £13,335.81.
   - KS deceased, paid into an account of the Respondent on 27 July 2009, £3,055.
   - DS deceased, paid into an account of the Respondent on 6 February 2006, £834.25.

7. In a letter to the IO dated 8 February 2011 in response to the FI Report, the Respondent said in respect of the alleged breach of Rule 19(2) of the SARs in allegation 1.1:

> "In every case on receipt of instructions a client care letter was sent to clients, giving an estimate of the likely overall costs of dealing with the matter. As you know I had considered this, in probate matters, adequate notification for me to take interim costs from encashed assets every three months…"

8. The FI Report also disclosed that on or around 29 November 2005, the Respondent drew the sum of £15,000 from his Client Account and paid it to an account in the name of his wife JPE by way of a gift without having advised the client to take independent legal advice about the gift and without confirming the client's instructions as to the transfer in writing.

Allegations 1.1, 1.4 and 1.5

Estate of DJ

9. The Will of DJ dated 10 January 2006 appointed the Respondent as executor and trustee of the Will. The grant of probate dated 7 July 2008 recorded that DJ died on 16 March 2008 and that the net value of her estate amounted to £440,596.

10. A copy of the ledger for the administration of the estate by the Respondent included payments apparently in respect of the Respondent's fees, for example an entry marked "Interim Bill" dated 18 November 2008 in the total amount of £1,947.56 and an entry

marked "costs for Admin of Estate" dated 8 January 2009 in the total amount of £1,279.95. It also included two payments from Client Account which were not described as being in respect of the Respondent's fees:

- On 4 August 2008 a payment of £11,517.35, "Bal due to Halifax to close a/c Halifax Plc"
- On 28 August 2009 a payment of £2,990, "Amount due to HSBC re: late husband HSBC"

11. For these payments as with the others set out below in respect of other client matters, there were matching client account cheque stubs for the payments.

12. The Estate Account found on the Respondent's file in respect of this matter showed entries consistent with his ledger, in that there were entries under "Administration Expenses" reading:

"Mr Martin Edwards professional charges…	5,630.50
VAT	893.51
HSBC Bank plc – [WJ]	2,990
Halifax plc – late husband	11,517.35"

13. During the interview on 26 August 2010, the Respondent produced from his IT system a further version of an estate account in which the three payments were consolidated into a single figure for professional charges and the VAT figure was revised to reflect the new total.

14. No bills of costs were provided in respect of the payments. The notes of the interview with the Respondent on 6 August 2010 recorded that, when asked about these payments, the Respondent said that they related to his costs. When asked why they were not represented as costs in the estate accounts the Respondent replied:

> "I suspect I knew I wasn't doing the right thing",

and recorded an acceptance by the Respondent that he should have raised a bill in respect of the costs.

15. The transcript of the interview with the Respondent also recorded that the Respondent was asked about why he had made the records in the ledgers in respect of the payment of £11,517.35. He replied that:

> "… it would have made your life very easy wouldn't it if it had been HM Edwards…it was costs being paid into that account… there'd got to be something on the file and on the ledger to show what it was for. That is misleading."

16. When asked whether he accepted that the entries had been "put on there to mislead" the Respondent replied "That may be the impression it gives, yes". The Respondent was also asked during the interview about the payment of £2,990, described on the ledger as being related to "late husband". The Respondent accepted that the payment

was in respect of costs. When asked about the reason why the payment was so described, the Respondent replied that it was:

> "Same as before to um, cover the payments or the reason for the payments".

Estate of EH

17. The ledger for the administration of this estate by the Respondent included payments of £1,820 and £1,020 apparently in respect of the Respondent's fees on 24 November 2009 and 6 July 2010 respectively. It also included a payment from the client account of £1,127 on 16 December 2009 which was described as "HSBC re Shropshire Council HSBC". A copy of a record of the assets and liabilities of the estate dated 4 January 2010 obtained by the IO from the Respondent's file did not indicate any liability to Shropshire Council and recorded the Respondent's costs as £3,820 plus VAT, fees and disbursements. No bill of costs was provided in respect of the payment. Copies of bank statements recorded payment into a personal account of the Respondent.

18. A copy of a letter from the Respondent to Mrs MVL his co-executor, in respect of the administration of this estate, dated 13 November 2009 obtained from the Respondent's file stated:

> "I estimate that the costs involved in obtaining the Grant of Probate and administering the estate will be no more than £2,500.00… VAT and the cost of disbursements… will be added to your bill…"

The letter also stated;

> "I will deliver bills to you at regular intervals for the work carried out during the conduct of this matter. I anticipate that invoices will be sent to you every three months… The costs will be payable from the assets in the estate once Probate has been granted and the assets encashed."

19. When interviewed on 26 August 2010, the Respondent was asked whether the £1,127 was used for paying to Shropshire Council. He said "No…" When asked:

> "Why then did you not bill them as costs on the ledger and raise a proper bill?"

he replied:

> "Well I should have done shouldn't I".

20. The Respondent also answered "yes" to the question:

> "So it was a way of avoiding paying tax and VAT",

before saying:

> "Well yes, I mean …it's on reflection is the effect though that was not the purpose. The purpose was to get more funds into my [sic], or money that would be more available for my personal finances…"

Estate of BH

21. An undated copy of a record of the assets and liabilities of the estate of BH obtained by the IO from the Respondent's file recorded a liability to Halifax of £13,335.81 under the heading of "Administration Expenses", separately to an entry recording the Respondent's costs as £2,955 plus VAT, fees and disbursements.

22. A copy of the Estate Account in respect of this estate was obtained by the IO from the executor. The Estate Account recorded that the Respondent's costs were £14,534.31 plus VAT. No record appeared in the Estate Account of repayment of a loan to Halifax, or of any single payment in the sum of £13,335.81. A copy of the ledger for the administration of the estate by the Respondent included payments apparently in respect of the Respondent's fees (an entry marked "Costs 17.06.09 to 31.12.09 dated 22 January for £2,000 and an entry marked "costs" dated 11 June 2010 for £955.16). It also included a payment from the client account of £13,335 on 25 January 2010 which was described as "Halifax Loan Repayment Halifax".

23. A copy of a letter dated 25 January 2010 from the Respondent to the Manager of Halifax in Leeds, enclosing a cheque in the sum of £13,335.81 was found by the IO on the Respondent's file. It stated:

> "I am very pleased to report that the sale of Mr [H's] property in Bristol completed on Friday afternoon of last week (22 January 2010).
>
> I am therefore able to enclose herewith my cheque in the sum of £13,335.81 in repayment of your unsecured loan
>
> I would be grateful if you could confirm that the account is now closed and that no further sums are due from the estate."

24. The bank statement for the Respondent's wife's account showing receipt of the payment did not indicate that it related to a loan repayment or that the account was closing following receipt.

25. No bill of costs was provided in respect of the payment. A copy of a letter from the Respondent to Mrs SEK, in respect of the administration of this estate, dated 5 August 2009, obtained by the IO from the Respondent's file stated that:

> "It is impossible to estimate the costs involved in resolving the issues and selling the property because I have no idea what is likely to be involved. I can say to help you that the costs, if you choose to proceed, will be no more than £18,000…"

plus VAT and disbursements. The letter also stated that:

> "I will deliver no bills to you until the eventual sale of the property in Bristol".

Estate of DS

26. The last Will of Mr DS dated 21 February 1989, appointed Ms KS as executor. A Deed dated 18 August 2005 granted the Respondent power of attorney in respect of the administration of the estate of DS.

27. The ledger for the administration of the estate by the Respondent included payments apparently in respect of the Respondent's fees (for example, an entry marked "Interim Account" dated 18 November 2005 in the total amount of £2,908.12 and an entry marked "Final Bill" dated 27 January 2006 in the total amount of £3,950.95). It also included a payment for £834.25 on 7 February 2006 which was not described as being in respect of the Respondent's fees but which was described as being "Final Fees to RBS (Court of Protection)". No bill of costs was provided in respect of such payments. Bank statements recorded payment into a personal account of the Respondent.

Estate of KS

28. The IO obtained two different records of the assets and liabilities of the estate of KS, both headed "Estate Account". They recorded the Respondent's costs as £13,062 plus VAT, fees and disbursements on one record, and £12,850 plus VAT fees and disbursements on the other record. The ledger for the administration of the estate by the Respondent included payments apparently in respect of the Respondent's fees. The entries were as follows:

- "INTERIM Estate Account" dated 7 September 2007 for £4,535;
- INTERIM ACCOUNT Sept 2007 to date" dated 12 January 2008 for £5,715.00;
- "Costs Due" dated 2 February 2009 for £212.00;
- "Costs 12/1/08 to 2/7/10" dated 6 July 2010 for £1,443.75.

The ledger also included a payment:

- "HSBC Bank - Wellington…Re: K[S] deceased" dated 27 September 2007 for £3,055.

29. A copy of a letter dated 27 September 20007 from the Respondent to the Manager of HSBC Bank in Wellington, Telford, enclosing a cheque in the sum of £3,055 was found by the IO on Respondent's file. The letter was headed "Re: [KS], deceased". There was no evidence on the file to the effect that the late Ms KS had assets held by, or liabilities owed to HSBC, or that the matter being handled by the Respondent involved HSBC other than by reason of his payment of sums from the client account to his account at HSBC. A bank statement of the Respondent's personal bank account showed receipt of a payment of a different but slightly larger amount (£3,207.75) on 2 October 2007, three working days after the date of the cheque.

30. A copy of a letter from the Respondent to Mrs WJP, in respect of the administration of this estate, dated 29 May 2007, obtained by the IO from the Respondent's file stated:

> "I estimate that the costs involved in obtaining the Grant of Probate and administering the estate will be no more than £8,000.00"

plus VAT and disbursements. The letter also stated:

> "I will deliver bills to you at regular intervals for the work carried out in the conduct of this matter. I anticipate that invoices will be sent to you every three months… The costs will be payable from the assets in the estate once Probate has been granted and the assets encashed."

31. When interviewed on 26 August 2010, the Respondent was asked:

> "But they were not billed in the right way on the ledger"?

and answered

> "£2,600 plus VAT was not put through the office".

Allegations 1.2, 1.3, 1.4 and 1.5

32. In respect of the estate of DS, a payment was made by cheque in the sum of £15,000 from the Respondent's client account to the account of Mrs JPE on 29 November 2005. The ledger recorded the payment as "Q to Halifax – Bond in her Name Halifax PLC". The cheque stub recorded the payment as "Miss [S] Bond to Halifax". No reference was made within the ledger, or on any other document produced to the IO to the effect that a Bond was purchased or otherwise relevant to this payment, and the ledger contained no record of the fact that payment was made to Mrs JPE.

33. The Respondent admitted in interview that the recipient was his wife. The Respondent's letter to the IO acknowledged and asserted that the sum was a gift and accepted that the client was not advised to obtain independent advice. No written confirmation from or to the client had been identified or produced recording that the payment was to be made to Mrs JPE. No documents identified by the IO indicated that any of the conditions set out in Rule 22 of the SARs was satisfied in respect of this payment. The Respondent accepted when interviewed on 26 August 2010 that he should have sent a proper invoice before transferring money in respect of costs from his client account to personal accounts. He said that he took the money because he "probably needed the money" and that he had acted "unwisely". Ms KS had subsequently died.

Witnesses

34. The Respondent gave evidence on his own behalf and that is recorded in the relevant findings of fact and law.

35. There were no other witnesses.

Findings of Fact and Law

36. **The allegations against the Respondent, on behalf of the Solicitors Regulation Authority were that he, while in practice as Martin Edwards Solicitor and Notary Public:**

Allegation 1.1: drew sums from his Client Account in respect of his fees otherwise than in accordance with Rule 19 of the Solicitors' Account Rules 1998 ("SARs");

36.1 On behalf of the Applicant, Mr Purcell referred the Tribunal to the funds withdrawn from the Respondent's client account and paid into bank accounts in his own name or in the name of his wife, when clients not been provided with a bill of costs or other written notification of the costs incurred in breach of Rule 19(2). The cases exemplified were those of the estate of DJ, EH, BH, DS and KS all deceased. Mr Purcell took the Tribunal through the evidence in the matter of DJ deceased.

36.2 The Tribunal had considered the evidence and the submissions on behalf of the Applicant and found allegation 1.1 to have been proved beyond reasonable doubt, indeed it was admitted.

37. **Allegation 1.2: drew sums from his Client Account otherwise than in accordance with Rule 22 of the SARs;**

Allegation 1.3: failed to comply with Rule 3.04 of the Solicitors Code of Conduct 2007 in that he drew sums from his Client Account by way of a gift for the benefit of himself or a family member without advising the client to take independent advice about the gift;

(These allegations were considered together as they arise out of the same facts.)

37.1 On behalf of the Applicant, Mr Purcell referred the Tribunal to the sum of £15,000 withdrawn from client account in the matter of DS deceased and paid to an account in the name of the Respondent's wife by way of a gift for the benefit of the Respondent or a member of his family, without having advised the client to take independent legal advice about the gift, and without confirming the client's instructions as to the transfer in writing. The Respondent did not advise the client to seek independent advice. He said [during the 26 August interview] that initially he said he could not accept the gift then he had done so.

37.2 The Tribunal had considered the evidence and the submissions on behalf of the Applicant and found allegations 1.2 and 1.3 to have been proved beyond reasonable doubt, indeed they were admitted.

38. **Allegation 1.4: failed to comply with Rule 32 of the SARs in that he failed to maintain properly written up records in respect of his dealings with client money;**

38.1 On behalf of the Applicant, Mr Purcell referred the Tribunal to the evidence in support of allegations 1.1 and 1.2 and the descriptions of the payments in the ledgers

and the documents on the Respondent's files in respect of the probate matters exemplified in the FI Report which were said to relate to client liabilities rather than professional fees or, in one case, a gift.

38.2 The Tribunal had considered the evidence and the submissions on behalf of the Applicant and found allegation 1.4 to have been proved beyond reasonable doubt, indeed it was admitted.

39. **Allegation 1.5: failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct;**

39.1 In respect of all the payments, the subject of allegations 1.1 and 1.2, it was submitted in the Rule 5 Statement on behalf of the Applicant, that the Respondent had created records which did not properly record the nature of the payments being made, in that records were created which gave the impression that the payments made related to liabilities of clients rather than payments of the Respondent's fees, or in the case of the gift, a gift for the benefit of the Respondent or a family member. It was submitted that the records were intended to create a misleading record for the financial benefit of the Respondent, in that he sought to conceal his true level of fees from his bank and so reduce or delay his tax liability. The Tribunal was referred to an exchange in respect of all the payments including the gift, in the transcript of the interview with the Respondent where he had been asked:

> "Would you agree that you failed to act with integrity respect these matters?"

The Respondent had replied:

> "Yes, I've not been very clever"

39.2 The Tribunal had carefully considered the evidence, the submissions on behalf of the Applicant and the Respondent and had heard the evidence of the Respondent. It found allegation 1.5 to be proved beyond reasonable doubt and indeed it was been admitted.

40. **Allegation of dishonesty (not numbered in Rule 5 Statement)**

40.1 The element of the alleged conduct upon which the Applicant relied to support allegation 1.5 also formed the basis of the allegation of dishonesty. Mr Purcell submitted that it was a narrow allegation. There was no suggestion that client money had been stolen or that work in respect of which fees were taken had not been done. The dishonesty alleged related solely to the Respondent's records of dealing with client money. Mr Purcell referred the Tribunal to the six payments recorded in the FI Report which totalled almost £33,000. He referred to the details of the case of Mrs DJ deceased where a charity was a beneficiary of the estate. The ledger recorded an interim payment of costs on 18 November 2008 in the sum of £1,657.56 and on 4 August 2008 a payment of £11,517.35 had been made from client account described as "Bal due to Halifax to close a/c". That amount of money had been recorded as being credited to the personal account of the Respondent's wife. On 28 August 2009, a payment of £2,990 had been made from client account recorded as "Amount due to HSBC re: late husband". The Estate Account on the Respondent's file referred to a

payment of £11,517.35 to Halifax plc regarding the deceased's late husband. In a letter to that charity beneficiary dated 22 September 2009 the Respondent had included:

> "I would advise you that I have no information concerning the late Mr [J's] estate".

40.2 In the estate of BH deceased, Mr Purcell referred the Tribunal to the ledger which recorded a payment of costs on 22 January 2010 in the sum of £2,300 and a loan repayment to Halifax on 25 January 2010 in the sum of £13,335.81. The latter monies could be seen arriving in the Respondent's wife's personal bank account while on the Respondent's file there was a letter to Halifax plc dated 25 January 2010. No answer from the Halifax was located in the Respondent's file by the Applicant. As set out in the Rule 5 Statement, the Estate Account obtained from the executor did not record repayment of a loan to Halifax nor any single payment in that amount. The transcript of the interview with the Respondent recorded in respect of this sum, a question:

> "So this letter was put on file to mislead your accountants as to where the money has really gone?"

The Respondent answered:

> "Well it's to cover my tracks certainly"

40.3 Mr Purcell took the Tribunal through the evidence relating to the gift of £15,000 which the Respondent received from the estate of the DS deceased. The client ledger described a payment on 25 November 2005 in that amount as "Q to Halifax – Bond in her Name Halifax PLC". The Respondent's wife's bank account statement showed a receipt of that amount on 29 November 2005. The Respondent acknowledged that this was a personal gift.

40.4 Mr Purcell submitted that the Respondent had accepted at interview that his purpose was to mislead his accountant as to the scale of drawings made from the firm. The Respondent accepted that the records he created were misleading and the transcript of the interview recorded that the Respondent had been asked:

> "Is it the actions [sic] of an honest solicitor to go out of your way to avoid paying income tax?

The Respondent had replied:

> "Well no it isn't …"

40.5 The Respondent had also made reference to covering his tracks during interview.

40.6 On behalf of the Respondent Mr Faux took the Tribunal again to the transcript of the interview and the full answer that the Respondent had given to the question about the actions of an honest solicitor. The full answer had been:

> "Well no it isn't but that wasn't, I, that was absolutely not the purpose or even in mind I know that is the effect, I know that is how it looks but it wasn't it was just getting some funds out to assist my personal cash flow and it's very naive but I didn't even think about that."

40.7 Mr Faux accepted on behalf of the Respondent that his actions were likely to be viewed as dishonest and so the objective part of the test for dishonesty in the case of Twinsectra was met, but he submitted that as a matter of fact the Respondent did not apply his mind to the question and did not realise that his actions were dishonest by those (objective) standards. He was entitled for the Tribunal to have regard to the weight and quality of the testimonial evidence in his favour. If he were facing criminal proceedings, his good character would be relevant to his propensity to commit dishonest acts. There was a lot of evidence that he was less likely than others to behave in that way and it was submitted that the testimonials went to his credibility as a witness. Mr Faux accepted that character was not a defence to an allegation of dishonesty but he submitted that it was relevant.

40.8 The Respondent gave evidence and confirmed the truth of his witness statement dated 17 February 2012. Mr Faux referred him to his acceptance in the statement that in the estate of EH deceased, the payment of £1,127 was not transferred to his office account as two other costs payments had been, but instead was paid into his personal account at HSBC on 16 December 2009, that this was not reflected in the cheque stub which referred to the payment being to Shropshire Council which he accepted in the statement was misleading, and that this was a similar method of operating to that with other transfers. Asked why he had done that, the Respondent said that he felt he was entitled under the rules to take costs directly from client account to his personal account but he did not wish to expose the fact that he was doing so to his staff. They were under pretty tight administration from a financial point of view and he did not think that they would appreciate him taking sums directly. In respect of what he had said at interview about the possible resulting tax advantage, the Respondent said that when he was notified that there was to be an inspection of the practice he did not believe that he had done anything wrong or that he had anything to fear. When the IO came and pointed out the breaches it was also pointed out that he had deferred, or even got away without paying tax. His response as a fact was "yes now you're asking me" but it was certainly not his intention when he did it. His concern had been his staff's perception.

40.9 In cross examination, the Respondent accepted that the payments of £11,517 and £2,990 in the matter of DJ deceased were inaccurately recorded and had been entered by the office accountant on the basis of the letter which the Respondent had prepared. The Respondent accepted that this was not what a solicitor would ordinarily do. He did not, however, accept that he had breached the ordinary standards of behaviour of a solicitor but rather that he had put a note on the file to mislead his staff but not his accountant or to avoid tax. He had had no problems with his auditors. The Respondent was referred to the fact that this was the first time he had said it was his intention to mislead staff. He responded that he had not mentioned it at interview because he had had no idea that the Applicant was going to suggest that he had done anything wrong and he did not think that he had. He had admitted that he had acted to avoid the bank becoming aware of the payments. He always felt that he was entitled to do what he did. It was put to the Respondent that in August 2010 during interview

he had said that his purpose was to mislead the bank and that his true reason for his conduct was to mislead both his staff and others. It was put to him that during the interview he had been asked:

> "If you'd raised a bill, why would that have been detrimental to your cash flow rather than just transferring it across?"

The Respondent had replied:

> "Because the bank as soon as the accounts come through will say I'm taking too much drawings and the tax goes up"

40.10 The Respondent referred Mr Purcell to his earlier comments in the interview relating to his cash flow and personal cash flow. He said that he had believed that he was legally entitled to transfer the monies to his own account. His accountants always sorted out such matters. In respect of the Respondent's letter to the Applicant dated 8 February 2011 in which he had said:

> "I accept that some letters on files appear misleading, but my Accountants, quite rightfully, required evidence on file of every payment. If I had shown each of these as costs to me, then that would have increased my Income Tax liability and unnerved the bank with regard to drawings. The letters were only ever meant to be seen by the Accountants…"

the Respondent said it was his intention to put a letter on the file to cover the fact that the sums had gone out. If they had been transferred to office account and (then) gone out that would increase his drawings and make the bank nervous. In respect of whether it was his intention to mislead others, he said that it was not his intention to mislead anybody and if he had not put a letter on file he did not suppose there would have been the problems that there were. It was put to the Respondent that while he had said in his statement in respect of the gift of £15,000, that he had made a note of what Ms KS had said about her wanting him to have the gift and:

> "I was certainly not in the business of manufacturing a forgery to cover my back."

the letter to the Halifax had been such a document. The Respondent replied that this was a letter put on file to explain payment to the Halifax where money was being paid into a personal account. He had put the letter on file because the accountant wanted something on file to show that the money had gone out and he did not want staff to see the extra bank drawings. He said "If you like, that was misleading" but he denied it was a forgery because while the letter was not correct, it was never published to anyone.

40.11 In respect of the estate of EH deceased, the Respondent accepted the letter on the file was deliberately misleading and was never sent to the Halifax. It was for his accountant's benefit and the transfer to his personal account was to prevent the bank becoming unnerved. As to whether his clients would view his conduct as acceptable, the Respondent said that he had always sent out a client care letter at the beginning of his work and always stated what the costs would be. They were sometimes increased

slightly and he had to write to tell the executor. He had not received any complaints about costing from clients. He did not think the clients would be particularly perturbed by his actions. He had not done anything wrong to them. It was just a means to an end. He was prepared to admit that what he had done was not very clever. As to whether he accepted that the letter to the Halifax was misleading, it has not been sent. His accountants could easily have looked into the cheque. It had been written using the correct account number and was not meant to be misleading. He had not thought at the time that he was breaching standards and did not agree that what he had done would be seen by others as breaching those standards. The Respondent confirmed to the Tribunal that as a result of the Applicant's inspection, he had gone through his accounts for the past six years and identified and submitted information to HMRC. Income tax and VAT due had been included in the IVA. In respect of his letter to the Applicant of February 2011, when he said that he had regularly paid all Income Tax, PAYE and VAT, the Respondent said that his accountants did his tax and would have had access to bank statements. He would therefore have expected to pay tax on the various amounts. His personal and practice accountants were the same and he had prepared a separate account for his notarial work, which was disclosed for tax.

40.12 Mr Faux reminded the Tribunal that if it was to find dishonesty proved, it had to be satisfied that the Respondent knew at the time of creating the false records that ordinary people would view his actions as dishonest and that it was not enough merely that they would take that view. Mr Faux submitted that the Tribunal had heard the Respondent's evidence that he did not regard what he done as dishonest and in the context of the pressures he was under and the possibility that he was suffering from depression as set out in the papers, this would be out of character. Mr Faux submitted that there was enough in the evidence to satisfy the Tribunal that the Respondent did not know that ordinary people would have considered his conduct to be dishonest. Mr Faux accepted that following the case of Bolton v The Law Society [1994] 1 WLR 512, testimonials were not relevant to the question of sanction, but he submitted that the weight and depth of the testimonial evidence went far more to the Respondent not realising about dishonesty and gave a real insight into the man. Mr Faux referred the Tribunal particularly to the testimonial provided by a retired judge who had intended to give evidence at the trial but had been prevented from doing so by a recent accident. His testimonial included:

> "In the course of a long career in the law, as Solicitor, Barrister and Judge, I have known a great many members of the profession good, bad and indifferent… As to the good ones, into which category I unhesitatingly put [the Respondent], their qualities so stand out that everyone knows how good they are and their honesty, integrity and ability shines out…"

40.13 There was also a testimonial from the Respondent's current employer and from a barrister who sat as a Recorder. His testimonial said that in preparing instructions to counsel, the work that the Respondent "…put in would not have been adequately compensated for in monetary terms…" The work done by the Respondent was what all barristers would hope for, in terms of being instructed in criminal work. It might be said that the Respondent was simply doing his job properly but Mr Faux admitted that his degree of dedication was unusual. There were also testimonials from a number of Justices of the Peace, from his Vicar and from a solicitor who was an

employment Judge. It was submitted that she would be aware of the principle regarding testimonial evidence in the case of Bolton. Her testimonial included that the Respondent:

> "…is the only solicitor for whom I have ever felt it appropriate to give a reference in these circumstances…"

She had also praised his conduct of cases and mentioned that the local magistracy felt as she did and held the Respondent in the highest regard. Mr Faux submitted that these testimonials showed that the Respondent did a proper professional job, gave proper advice and was a proper, upright and good lawyer. Their depth and breadth and the way they addressed his professionalism should cause the Tribunal to consider long and hard before concluding that when the Respondent made the transfers and created the misleading documents to hide money legitimately paid to him, he recognised that his actions were dishonest. Mr Faux further asked the Tribunal, if it was against him on that point and concluded that dishonesty was made out, to think very carefully if it was possible to let the Respondent remain in practice. He had no desire to administer estates in future. Mr Faux submitted that the public interest could be addressed by placing restrictions on the Respondent's practising certificate so that he could continue to serve the community that he had served so well in the past. What the Respondent had done was something very odd and quite unusual. It was taking money that he was entitled to and then for some confused reason creating a false trail regarding where the money had gone. Mr Faux emphasised that the Respondent had the support of his children who were well aware of the details of the allegations and who were standing by him. The details of his personal life were known to the Tribunal from the documents.

41. **Allegation 2: For the avoidance of doubt it was also alleged that his conduct as set out above was dishonest, but it is not necessary for dishonesty to be proved for those other allegations to be made out.**

41.1 The allegation of dishonesty as set out above was narrowed down at paragraph 6.4 of the Rule 5 Statement, where it was recited:

> "The records referred to at 6.3 above were intended to create a misleading record for the financial benefit of the Respondent, in that he sought to conceal his true level of fees from his bank and so reduce or delay his tax liability. This element of the alleged conduct forms the basis of the allegation of dishonesty at paragraph 2 above."

Paragraph 6.3 stated:

> "In respect of the payments identified… above, the Respondent created records which did not properly record the nature of the payments being made, in that records were created which gave the impression that the payments made related to liabilities of clients rather than payments of the Respondent's fees (or… a gift for the benefit of the Respondent or a family member);"

The payments in question were the six payments from the estates of DJ, EH, BH, KS and DS deceased and the sum of £15,000 by way of gift from the estate of DS.

41.2 The Tribunal was satisfied beyond reasonable doubt that the Respondent had deliberately created records which were intended to create a misleading record for his financial benefit, in that he sought to conceal his true level of fees from his bank and accordingly to his own evidence his staff and so reduce or delay his tax liability. Following the two limbed test for dishonesty set out in the case of Twinsectra v Yardley [2002] 2 AC 164, the Tribunal was satisfied that the Respondent's conduct met the objective test and indeed through his Counsel he had almost gone so far as to concede that. As to the subjective test, the Tribunal had noted the various explanations which the Respondent had given at different stages of the matter and that his explanation of the motives for his conduct had changed. While giving evidence he had introduced a new explanation of wishing to avoid his staff finding out about the payments. He had also said that he had created documents for his files to confuse his accountants. He said that the tax authorities were informed of his drawings after his actions had been exposed by the investigation. No mention was made of liability for VAT. Notwithstanding the strength of the testimonials as to his character otherwise, the Tribunal did not consider that the Respondent's credibility as a witness stood up. The Respondent had been unable to defend his conduct convincingly in giving evidence. The Tribunal found beyond reasonable doubt that the subjective test had also been met and so found allegation 2 proved beyond reasonable doubt. As the allegation of dishonesty was made by reference to particular actions of the Respondent rather than by reference to the other numbered allegations, for the avoidance of doubt in respect of allegation 1.3, the Tribunal found that dishonesty had not been proved in respect of the Respondent taking the gift from the estate of DS deceased and failing to advise the client to take independent legal advice about the gift.

Previous appearances

42. There were no previous appearances.

Mitigation

43. In addition to the mitigation presented on behalf of the Respondent by Mr Faux in addressing the allegation of dishonesty, Mr Faux made submissions to the Tribunal as to the Respondent's present circumstances; he had entered into an IVA in May 2011 and made a first interim dividend payment just short of £0.23 in the pound to secured creditors. No other major payments had been made but the IVA was taking the whole of his share of the equity in the former matrimonial home which had not yet been sold. The Tribunal was referred to a letter dated 15 March 2012 from the supervisor of his IVA. The Respondent was presently employed on a PAYE basis (as a consultant) and for the 10 months to April 2012 had earned a little under £2,000 net per month. He also derived income as a notary public which generated over a year around £400 per month. He had no savings. The Tribunal was informed of the impact of his divorce on his financial position.

Sanction

44. The Respondent had been found guilty of dishonesty over a period of several years and in respect of a number of client matters. While no individual client had lost out or

been deceived, the Respondent's conduct could not be described as an aberration or a one-off act and the Tribunal determined that he should be struck off the Roll of Solicitors.

Costs

45. A schedule of costs has been served totalling £22,424.75. The Tribunal summarily assessed costs in the amount sought. Having regard to the considerable evidence of the Respondent's poor financial circumstances, it ordered that costs not be enforced without leave of the Tribunal.

Statement of Full Order

46. The Tribunal Ordered that the Respondent, Harry Martin Edwards, 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 £22,424.75, such Order not to be enforced without leave of the Tribunal.

Dated this 25th day of May 2012
On behalf of the Tribunal

A G Gibson
Chairman