SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10969-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JEFFREY GRAHAM CUNLIFFE Respondent

Before:

Mrs E. Stanley (in the chair)
Mr J. Astle
Mr M. Palayiwa

Date of Hearing: 18th September 2012

Appearances

Peter Steel, Solicitor of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Jeffrey Graham Cunliffe, on behalf of the Applicant were that he, while practising in partnership at Jackson & Canter:

1.1 acted in breach of Rule 19(2) of the Solicitors Accounts Rules 1998 ("the SARs") by failing to provide a bill or written notification of costs prior to transferring money from client account to office account;

1.2 acted in breach of Rule 22(1) of the SARs by making payment from client account other than in the circumstances permitted by Rule 22(1);

1.3 acted in breach of Rules 1(a) and 1(d) of the Solicitors Practice Rules 1990 ("the SPRs") or Rules 1.02, 1.04, and 1.06 of the Solicitors Code of Conduct 2007 ("the SCC") in that he compromised his integrity, failed to act in the best interests of his clients and behaved in a manner likely to diminish the trust the public placed in him or the profession by:

1.3.1 withdrawing monies from client account and using them to pay his personal debts;

1.3.2 withdrawing monies from client account and using them to pay costs and damages in cases where he had failed to pursue proceedings in time or incurred a default costs order; and

1.3.3 completing office account cheque request forms which falsely described the reasons for the requested payments.

It was also alleged that the Respondent's conduct as set out above was dishonest though it was submitted for the avoidance of doubt that it was not necessary for dishonesty to be established for the other allegations to be made out.

The Respondent admitted all the allegations including dishonesty.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 5 April 2012 with exhibit;
- Applicant's schedule of costs dated 14 September 2012.

Respondent

- Statement dated 15 September 2012.

Factual background

3. The Respondent was born in 1960 and admitted in 1985. He did not hold a current practising certificate. At all material times, he was practising as a partner at Jackson &

Canter which became Jackson & Canter LLP on 1 June 2009, trading as Quality Solicitors Jackson & Canter ("the firm") at Church Street in Liverpool. He became a part equity partner in 2005 and a full equity partner in June 2009. He resigned from the firm on 6 June 2010.

4. An investigation was commenced by Valerie Smith, an Investigation Officer ("IO") of the Applicant, and she prepared a forensic investigation report ("FI Report") dated 6 September 2011.

5. During the course of the investigation, a recorded interview was held with the Respondent by Ms Smith and Bob Copeland, Investigation Manager of the Applicant. The interview took place on 12 July 2011 at the offices of Liverpool Law Society. A transcript of the interview was made. Eight of the withdrawals covered in the Rule 5 Statement were specifically discussed in the interview. The Respondent was legally represented at the interview.

6. In an e-mail to Ms Smith dated 12 November 2011, the Respondent set out his written representations on the FI Report. He stated:

> "I accept what I did was wrong and I am truly sorry for the situation that I allowed myself to get into. The only point that I think is relevant at this point is that no clients lost out and all "losses" were covered in the negotiations between the Firm and Mr [R] on my behalf largely out of my Capital account."

7. Mr H, Managing Partner of the firm, explained in his witness statement how concerns arose in relation to the Respondent's conduct and how he carried out the firm's investigation. He stated that, on 25 May 2010, he drafted a report to the firm's partners setting out his concerns about the Respondent. In summary, Mr H was concerned that the Respondent:

- Had made an inappropriate payment for van hire with the firm's credit card, when the van was not used for the firm's purposes;
- Had taken on a case for a friend in which he incurred £17,000 in respect of Counsel's fees without having any money on account from the client, who was then unable to pay Counsel's fees;
- Failed to return calls;
- Was out of the office for significant amounts of time; and
- During the process of sorting out the firm's ledgers, approximately £100,000 of disbursements incurred by the Respondent in the course of his work had to be written off.

8. Before he gave the report to his partners, on 26 May 2010, Mr H became aware that the Respondent had made a withdrawal from office account, involving completion by him of an office account Cheque Request Form using apparently false information. Mr H added a further three paragraphs to his report to address this development. He

noted in his report that, when he showed the Respondent the letter which had alerted him to the improper withdrawal, the Respondent said words to the effect of:

> "Oh ****. I have been dreading this. I cannot do my job properly. I think I am having a breakdown. Sometimes I think it would be better if I packed it in."

9. The Respondent was asked to take a leave of absence and by 3 June 2010, having commenced an investigation, Mr H realised that the Respondent had on a number of occasions made cheques drawn on office account out to his own credit card accounts. While looking through the Respondent's office following his departure, Mr H found, in a briefcase, a Royal Bank of Scotland credit card statement which indicated that the Respondent had an account with that bank and that he was making the minimum payment on the account.

10. As part of his investigation, Mr H looked at all of the cheque stubs of the Office Account cheque book used in the Church Street office from February 2007, when HSBC became the firm's bankers, to the date on which the Respondent was last in the firm's offices being 28 May 2010. If it was clear from the cheque stub that the cheque had been drawn by the Respondent, Mr H then looked at the corresponding client file to see if the payment appeared to be genuine. If he was not certain that it was genuine, he asked the firm's cashier, to obtain a copy of the cheque from HSBC. He then compared the copy cheque with the entries in the relevant ledger. Some of the payments were proper but he found that a number of payments were inappropriate.

11. Mr H reported the matter to the Applicant by way of an e-mail dated 4 June 2010. On 29 November 2010, he provided to the Applicant a schedule of items of loss allegedly suffered by the firm as a result of the Respondent's conduct. Mr H confirmed that the Respondent at no point disputed the contents of the schedule.

12. Mr H described in his witness statement the firm's procedures for requesting office account cheques during the period to which the allegations related. There was an office account cheque book at the firm's office in Church Street, where the Respondent practised at that time. This cheque book was intended to be for emergency use only. The accounts team for the firm which would normally issue cheques for payment of disbursements was based at its offices at Princes Road. The Church Street cheque book was generally kept in a drawer of the desk belonging to another equity partner and the Respondent could take it whenever he needed it.

13. As a partner, the Respondent was able to draw cheques by completing and initialling a transfer chit and a form entitled "Office Account Cheque Request – Disbursement" ("Cheque Request Form") as well as writing out and signing a cheque. The firm's procedures at the time only required the authorisation of a single partner in order for a cheque to be drawn on office account.

14. Mr H confirmed that all the cheques referred to in the Rule 5 Statement were signed by the Respondent and that all the Cheque Request Forms referred to were completed and initialled by the Respondent.

15. The FI Report set out that the Respondent used the firm's emergency cheque book by creating a fictitious disbursement posted on office account, then completing a Cheque

Request Form ostensibly in respect of that disbursement, but in fact drawing a cheque made payable to credit card companies with which he held accounts. An analysis of the client ledgers and corresponding accounts records indicated that, of 21 matters where the Respondent use the office cheque book in this way, 11 of the matters involved sums of money being present on the client account at the time, so transfers were made from client to office account to clear the disbursements, on the Respondent's authority. The money on client account had come to the firm either as "mixed payments" from third parties, being a mixture of damages, costs and repayment of disbursements, or as entirely client funds, being monies paid by the clients on account of costs, where no bill or other written notification of costs had been delivered to the client. Where monies were not present on client account, postings were merely made on office account.

16. It was noted that, in respect of the transfers from client account to office account, immediately upon discovering instances where monies were incorrectly paid by the Respondent using the emergency cheque book, the firm had arranged for a transfer from office to client account to repay them. Consequently, no shortage was found on the client account as at the investigation date.

17. The Respondent reached a settlement with the firm in March 2011 whereby £50,000 was deducted from his capital account and the Respondent was paid £4,300, being the agreed remaining balance of his capital account.

18. Twenty-seven matters were detailed in the Rule 5 Statement. The cheques drawn ranged from £108 to £6,500. Those matters included the cases where cheques had been drawn to cover credit card indebtedness and also where payments had been made for other purposes including payment of default costs orders. The following matters are examples drawn from the cases detailed in the Rule 5 Statement.

<u>Mrs Sa, withdrawal of £225</u>

19. A Cheque Request Form dated 30 January 2009 noted the client name as Sa and the matter number as 92084. The form requested a payment in the sum of £225, noting the payee as HMCS and the purpose of the payment as "issue fee". The cheque number recorded on form was 101163. The client ledger for Mrs Sa showed that on 20 February 2008, £5,551.17 was received into client account with the description "costs and disbs". On 3 February 2009, £225 was posted to office account, with the ledger description "issue fee" and £225 was transferred from client account to office account, again with the description "issue fee".

20. Cheque number 101163, in the sum of £225, was dated 30 January 2009 and made payable to RBS MasterCard.

<u>Mr S, withdrawal of £250</u>

21. A Cheque Request Form dated 10 October 2008 noted the client name as S and the matter number as 94081. The form requested a payment in the sum of £250, noting the payee as HMCS and the purpose of the payment as "issue fee". The cheque number recorded on the form was 101054. The client ledger for Mr S showed that, on 10 October 2008, £250 was posted to office account, with the description "issue fee".

On 17 October 2008, £250 was transferred from client account to office account, with the description "from client" and £250 was withdrawn from office account, with the description "issue fee". The monies then on client account were the remnant of a payment on account of costs received on 19 July 2007. The transfer chit was completed and signed by the Respondent and was also dated 10 October 2008.

22. Cheque number 101054, in the sum of £250 was dated 10 October 2008 and made payable to Royal Bank of Scotland MasterCard.

23. In interview, the Respondent confirmed that it was his handwriting on the office account Cheque Request Form and that he signed the cheque, which he had drawn in order to repay his personal indebtedness.

Client Mr A, withdrawal of £1,250

24. A Cheque Request Form dated 3 July 2009 noted the client name as A and the matter number as 92068. The form requested a payment in the sum of £1,250, noting the payee as DA [D being a forename] and the purpose of the payment as "bal of damages". The cheque number recorded on the form was 100046. The client ledger for Mr DA showed that on 3 July 2009, £1,250 was posted to office account, with the description "balance of damges" (sic). On 6 July 2009, £1,250 was transferred from client account to office account, with the description "trans to office" and £1,250 was withdrawn from office account, with the description "trans from client – balance of dam".

25. Cheque number 100046, in the sum of £1,250, was dated 3 July 2009 and made payable to Ms PSm, the name E having been crossed out.

26. The client ledger for Mrs Sm had only two entries. On 5 November 2008, £108 was withdrawn from office account, with the description "court fee" and on 10 December 2009, £108 was credited to office account, with the description "write off as per graham instructio" (sic), bringing the balance to nil.

27. Mr H explained that on the matter of Mr A, which was handled by the Respondent, substantial costs had been paid by the Defendant; the client ledger showed that client account was credited with £14,500 on 30 January 2009. Mr H's evidence was that the Respondent did not render a bill for the full amount of the firm's costs but used £1,250 of the monies to pay damages due to Ms E Sm following his failure to issue proceedings within the limitation period. The File Opening Form for the Sm matter noted that the limitation period expired on 5 July 2008. The covering letter showed that the Claim Form in relation to Mrs Sm's claim was sent to the court on 5 November 2008. The writer of the letter was the Respondent's assistant at that time.

Client Mrs F, withdrawal of £3,000

28. A Cheque Request Form dated 6 August 2009 noted the client name as "F" and the matter number as 66273. The form requested a payment in the sum of £3,000 noting the payee as JKP and the purpose of the payment as "Previous Sols Costs". The cheque number recorded on the form was 100092. The client ledger for Mrs F showed that on 6 August 2009, £3,000 was posted to office account with the description

"previous sols costs". On 11 August 2008, £3,000 was transferred from client account to office account, with the description "trans to office" and £3,000 was withdrawn from office account with the description "trans from client – previous sols".

29. Cheque number 100092, in the sum of £3,000 was dated 6 August 2009 and made payable to W LLP.

30. Mr H noted that on the matter of Mrs F, substantial costs and disbursements had been paid by the Defendant; the client ledger showed that client account was credited with £12,000 on 28 April 2009. He stated that the Respondent did not render a bill for the full amount of these costs but used £3,000 of the monies in part payment of monies owed as a result of the default costs order made on the matter of Sp, on which the Defendant's solicitors were W LLP. Mr H confirmed that a copy of the Costs Order was not available and nor was a copy of the covering letter to W LLP enclosing the cheque. However, from his review of Mrs F's file, he was able to confirm that no monies were payable to W LLP in relation to this matter.

31. The Rule 5 Statement also set out that it appeared that the Respondent used £5,250 from Mrs F's client account for part payment of default costs to the Defendant's solicitors on a matter of client Miss W and that £5,000 from client Mr B and £6,500 from client Mrs H were believed to have been used for default costs on Miss W's matter.

32. Aside from the two main uses to which the cheques were put there were other matters; one related to the hire of a van referred to above and another to a cheque for £250 to an individual PL who could not be identified as a party related to the particular matter from which the money was drawn.

Witnesses

33. There were no witnesses

Findings of Fact and Law

34. **The allegations against the Respondent, Jeffrey Graham Cunliffe, on behalf of the Applicant were that he, while practising in partnership at Jackson & Canter ("the firm"):**

Allegation 1.1: acted in breach of Rule 19(2) of the Solicitors Accounts Rules 1998 ("the SARs") by failing to provide a bill or written notification of costs prior to transferring money from client account to office account;

Allegation 1.2: acted in breach of Rule 22(1) of the SARs by making payment from client account other than in the circumstances permitted by Rule 22(1)

Allegation 1.3: acted in breach of Rules 1(a) and 1(d) of the Solicitors Practice Rules 1990 ("the SPRs") or Rules 1.02, 1.04, and 1.06 of the Solicitors Code of Conduct 2007 ("the SCC") in that he compromised his integrity, failed to act in the best interests of his clients and behaved in a manner likely to diminish the trust the public placed in him or the profession by:

Allegation 1.3.1: withdrawing monies from client account and using them to pay his personal debts;

Allegation 1.3.2: withdrawing monies from client account and using them to pay costs and damages in cases where he had failed to pursue proceedings in time or incurred a default costs order; and

Allegation 1.3.3: completing office account cheque request forms which falsely described the reasons for the requested payments.

(The submissions for the Applicant recorded below were either set out in the Rule 5 Statement or made at the hearing.
The Tribunal's findings in respect of the allegation of dishonesty are reported following the findings in respect of allegations 1.1 to 1.3.)

34.1 For the Applicant, Mr Steel submitted that the essence of the allegations was that between 23 February 2007 and 15 March 2010 the Respondent, while a partner at the firm wrote cheques from an "emergency" cheque book drawn on the office account of the firm for his personal use, mainly to pay off his own indebtedness to various credit card companies and that he sometimes diverted funds to rectify errors which he had made in the conduct of cases where otherwise clients or the firm would have experienced loss. The allegations against the Respondent related to 27 matters which in the Applicant's submission, demonstrated clear breaches of the SARs, the SPRs and/or the SCC. Mr Steel referred the Tribunal to the Rule 5 Statement which described the 27 instances of misuse of the cheque book. In 22 of the matters the Respondent had represented to the firm's accounts department that cheques were being drawn for fictitious purposes including disbursements.

34.2 Mr Steel submitted that in nine of the matters, monies had been taken from client account to cover a deficit on office account where a supposed disbursement had been drawn from office account.

<u>Allegation 1.1</u>

34.3 In the Rule 5 Statement with regard to allegation 1.1, it was submitted for the Applicant, that the transactions undertaken on the matter of client Mr S exemplified the Respondent's breach of Rule 19(2) of the SARs. The funds for the supposed disbursement were derived from a payment on account of costs originally received on 19 July 2007. The Respondent transferred funds describing the transfer as being for a disbursement. He did not send a bill or written notification of costs to the client. The FI Report confirmed that no bill had been provided.

34.4 The Tribunal considered the evidence and the submissions made by Mr Steel for the Applicant. It found allegation 1.1 to have been proved to the required standard, that is beyond reasonable doubt, indeed it had been admitted.

Allegation 1.2

34.5 In the Rule 5 Statement with regard to allegation 1.2, it was submitted for the Applicant, that the Respondent's breach of Rule 22 (1) of the SARs was demonstrated by the transactions in respect of Mrs Sa, whereby the Respondent withdrew money from her client ledger. Money described on the ledger as "costs and disbs" was received into client account on 20 February 2008. A bill for £2,812.50 plus VAT was rendered on 25 February 2008. The balance of the funds remained on client account. The payment for a supposed issue fee of £225 on 3 February 2009 was self evidently not properly required for a payment to or on behalf of the client or in payment of a disbursement (and indeed the payment could not fall within any of the other exceptions within Rule 22(1)(a) to (h)). The payment was therefore patently in circumstances other than those permitted by Rule 22(1).

34.6 The Tribunal considered the evidence and the submissions made by Mr Steel for the Applicant. It found allegation 1.2 to have been proved to the required standard, that is beyond reasonable doubt, indeed it had been admitted.

Allegation 1.3

34.7 For the Applicant, Mr Steel informed the Tribunal that in respect of the first five matters particularised in the Rule 5 Statement, the transactions had taken place before 1 July 2007 and the SPR therefore applied to the particulars of those allegations.

34.8 The Tribunal considered the evidence and the submissions made by Mr Steel for the Applicant. It found allegation 1.3 to have been proved to the required standard, that is beyond reasonable doubt, indeed it had been admitted.

Allegation of Dishonesty

34.9 The Applicant relied on the conduct constituting the various breaches as set out in the allegations. It was submitted for the Applicant that the Respondent's conduct in making inappropriate transfers from client to office account based on request forms containing false details and subsequently misappropriating the monies to pay what were in some instances his personal debts was self evidently dishonest and a breach of the relevant provisions of the SPR and SCC. It was submitted that both the subjective and objective tests under the case of Twinsectra Ltd v Yardley 2002 UKHL 12 were met. Mr Steel referred the Tribunal to its recently published Guidance Note on Sanctions and submitted that in the Respondent's conduct there had been aggravating factors in that in perpetrating his admitted dishonesty there had been a protracted course of conduct, concealment and a fundamental breach of the obligations imposed on solicitors for the protection of the public. Mr Steel conceded that the Applicant did not allege that there had been any loss to the firm because, as part of his resignation from the firm, the Respondent had made good the amounts taken by way of deductions from his capital account. In respect of loss to clients, the Applicant took the view that the there had been an intent to deprive but the sums involved had been made good by the Respondent and the firm.

34.10 The Tribunal considered the evidence and the submissions made by Mr Steel for the Applicant. The allegation of dishonesty had been admitted by the Respondent and the

Tribunal was satisfied that it had been established, that his conduct was dishonest by the standards of reasonable and honest people and that, as he had admitted, he realised at the relevant time that by those standards his conduct was dishonest. Accordingly the two limbed test for dishonesty as set out in the case of Twinsectra had been met and the Tribunal found the allegation of dishonesty proved to the required standard, that is beyond reasonable doubt.

Previous disciplinary matters

35. The Respondent had previously appeared before the Tribunal in case number 7152/1996 in which, the allegations relevant to the Respondent as a partner of Deacon Goldrein Green were:

    (i) that they failed to comply with the Solicitors Accounts Rules 1991 in that they failed to pay clients' account money into a client account notwithstanding Rule 8 of the said Rules;

    (ii) that they failed to comply with the said Rules in that they drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules.

36. The Respondent had admitted these allegations on the basis of strict liability. The Tribunal had ordered that he be reprimanded and pay a contribution towards the cost of and incidental to that application and enquiry fixed in the sum of £1,000.

Mitigation

37. The Respondent referred the Tribunal to his statement dated 15 September 2012. He explained that he had genuinely not perceived the money in question to be client money at the time and he would not knowingly or willingly have acted against the interests of clients. He could not say that what he had done was not dishonest but he had done it for what he thought were good reasons; he did not think that clients had suffered loss. Clients had received damages and sometimes waited 12 months to receive costs while the money was with the firm. As set out in his statement he had decided to give some clients personal cash advances to seek to retain and obtain personal injury cases. These ranged from £20 to £50 and on occasions £100. The Respondent stated that other firms had been doing the same thing and therefore he felt under pressure to do so as well. He had got himself into such a mess that he made office account cheques out to pay some personal debts and hid them from his partners disguised as a variety of disbursements in different cases where interim payments had been made on account of costs where a case been settled but not yet finalised. He had taken the view that this was a way of recovering some of the money that he gave out. He started making mistakes which were probably rectifiable but that was not in his mind at the time. The situation had snowballed. In his statement the Respondent said he had tried to set down the sequence of events and explain what had happened. He had not personally gained anything, rather he was much worse off now than ever. In his statement he set out the serious personal difficulties which he had encountered and which had resulted in a situation where he frequently went to work having had no sleep. With professional advice and other support from family and a friend he felt that he was now coping. The Respondent said that he was really sorry for what had

happened and acknowledged that he understood how bad his conduct had been. There was nothing he could say that would in any way mitigate what he had done. He had always worked hard. He had ruined his own career and had no one else to blame for that. He had found himself in circumstances that he was unable to cope with both in his personal and his professional life. There were various matters relating to the management of the firm which he said had created difficulties for him. He could not compete and that had led him to his present situation.

Sanction

38. The Tribunal considered that the allegations against the Respondent including an allegation of dishonesty were of a very serious nature. The Respondent had admitted all the allegations and whilst he was to be commended for his presence before the Tribunal and for his full and frank admissions, there being no exceptional circumstances, the Tribunal considered that the only appropriate sanction was that the Respondent should be struck off the Roll of Solicitors.

Costs

39. After discussion between the parties and with the approval of the Tribunal, costs were agreed in the sum of £20,000.

Statement of Full Order

40. The Tribunal Ordered that the Respondent, Jeffrey Graham Cunliffe, 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 agreed sum of £20,000.00.

Dated this 15th day of October 2012
On behalf of the Tribunal

Mrs E. Stanley
Chairman