SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11068-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

WILLIAM JOHN OWEN Respondent

Before:

Mr R. Nicholas (in the chair)
Mr S. Tinkler
Mrs L. McMahon-Hathway

Date of Hearing: 27 May 2015

Appearances

Mr Geoffrey Hudson, Solicitor of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations made against the Respondent in a Rule 5 Statement dated 28 September 2012 were that:

1.1 he acted in breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") and Rules 1 and 22 of the Solicitors Accounts Rules 1998 ("SAR") in that he made improper and unauthorised withdrawals from client bank account; and

1.2 he acted in breach of Rules 1.02, 1.05 and 1.06 SCC in that he failed to adhere to the terms of a will of which he was an executor; and

1.3 he acted in breach of Rule 7(1) SAR and (after 5 October 2011) Rule 7.1 of the SRA Accounts Rules 2011 ("SRA AR") in that he has failed to remedy the improper withdrawal of funds from client account;

For the reasons set out in the Rule 5 Statement it was alleged that the Respondent's conduct in respect of the matters in paragraph 1.1 above was dishonest, although it was not necessary to prove dishonesty to prove the allegation itself.

2. The allegation made against the Respondent in a Rule 7 Statement dated 22 January 2015 was that:

2.1 On 9 September 2014, he was convicted, upon his own confession, of:

(a) nine charges of theft, contrary to Section 1(1) of the Theft Act 1968; and

(b) eight charges of false accounting, contrary to Section 17(1)(a) of the Theft Act 1968;

and on 14 November 2014:

(c) he was sentenced to five years imprisonment in respect of the 17 offences at (a) and (b) above, the prison terms to run concurrently; and

(d) a confiscation order under the Proceeds of Crime Act 2002 for £125,868.36 was imposed in default of payment of which he is to serve two additional years in prison;

and as such acted contrary to all, alternatively any of Rules 1.01, 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (in respect of all the instances of false accounting and such thefts which took place before 6 October 2011) and Principles 1, 2 and 6 of the SRA Principles 2011 (in respect of the instances of theft which took place on or after 6 October 2011 and his conviction and sentence).

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 28 September 2012 with exhibit GRFH 1
- Rule 7 Statement dated 22 January 2015 with exhibit GRFH 2
- Certificate of conviction dated 19 November 2014 from the Cardiff Crown Court
- Chronology
- Letter to the Clerk to the Tribunal from Pennington Manches dated 22 January 2015
- Applicant's statement of costs dated 15 May 2015

Respondent

- Letter from the Respondent to the Tribunal dated 9 March 2015
- Letter from the Respondent to the Tribunal dated 14 May 2015 with attachment
- Letter from the Respondent to the Tribunal dated May 2015 (received on 19 May 2015)
- Letter from the Respondent to the Tribunal dated 20 May 2015
- Letter from the Respondent's GP to his solicitors in the criminal proceedings dated 8 October 2014

Preliminary Issues

4. The Respondent was not present. The Tribunal was aware that he was serving a sentence of imprisonment and considered that in the circumstances to expect a production order would be disproportionate. The Respondent had been given notice of the proceedings dated 19 December 2014. He had written to the Tribunal several times and in the heading to his letter dated 14 May 2015 he referred to the hearing date. It was clear that he was aware that the proceedings were scheduled to take place and the inference was that he was expecting the application to be heard in his absence. For the Applicant, Mr Hudson informed the Tribunal that on 9 March 2015 the Respondent had been moved from Cardiff prison to another prison of which move neither the Applicant nor the Tribunal had been aware until recently. Notice of the Rule 7 Statement had been sent to the Cardiff prison after the Respondent had been moved but Cardiff had confirmed that if his prison number had been shown on the papers they would be forwarded. Mr Hudson submitted that it was known that the Respondent received the Rule 7 Statement as letters received from him since 9 March 2015 referred to his conviction and the sentencing remarks which were annexed to that document. The Applicant had obtained those documents and it was not conceivable that the Respondent had received them other than through the Rule 7 Statement and his letter could only be interpreted that he knew that the Tribunal would look at the certificate of conviction and sentencing remarks. Mr Hudson referred the Tribunal to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 where it was stated:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Mr Hudson also referred to Rule 10(1) regarding service of documents and pointed out that Cardiff prison was the Respondent's last know abode for the purposes of service. As to whether he had deliberately absented himself, Mr Hudson acknowledged that the Respondent was constrained from attending because of his imprisonment but there was no evidence of an attempt to obtain leave to attend and it was reasonable to assume that he had not made those efforts because he accepted that he could not defend proceedings or avoid what Mr Hudson submitted was the inevitable outcome. The Tribunal was aware that it was necessary to exercise its discretion to hear the proceedings in the absence of the Respondent and without his being represented carefully but Mr Hudson submitted that an adjournment to a further hearing date in the near future was unlikely to secure the Respondent's attendance and that in the light of his admissions his absence was not likely to be disadvantageous to him and the Tribunal would not reach improper conclusions. It was in the public interest that the matter be dealt with. The Tribunal was satisfied that the Respondent was aware of the hearing which he had confirmed by correspondence and while he had not absented himself voluntarily the Tribunal considered that he had indicated in correspondence his agreement to the hearing preceding in his absence. It did not consider that he would be disadvantaged and it would be disproportionate to adjourn in the circumstances. The Tribunal decided that it would proceed with the application in the absence of the Respondent and with his not being represented.

5. Mr Hudson went on to submit that two applications had been intimated when the Rule 7 Statement had been lodged and they had been referred to on the face of the document. The Rule 5 Statement had referred to improper billing/transfers in respect of the estate of Mr JW between 2 June 1997 and 10 August 2011 while the Rule 7 Statement referred to the Respondent being convicted upon his own confession of stealing funds belonging to that estate and false accounting between 2003 and 2011. Mr Hudson wished to rely on improper conduct over the period to which the criminal convictions related rather than the longer period referred to in the Rule 5 Statement.

6. Mr Hudson also submitted that the Rule 5 Statement referred to three other clients one of whom was RH. The Applicant accepted that the evidence against the Respondent in that matter was of less cogency than the others and the Applicant did not wish to occupy the Tribunal's time in determining allegations in respect of that estate as it did not consider that it would alter the eventual outcome. The Applicant therefore sought permission to withdraw paragraphs 27, 28 and 29 of the Rule 5 Statement and the related paragraphs which had been relied on in support of that matter. The Tribunal gave permission for the Applicant to proceed with the allegations in respect of the estate of JW by reference to the period 2003 – 2011 and to the withdrawal of allegations in so far as they referred to the estate of RH.

Factual Background

7. The Respondent was born in 1935 and was admitted in 1960. He did not hold a Practising Certificate and his name remained on the Roll of Solicitors.

8. At all material times, the Respondent was principal of Moreb Limited trading as John Owen Solicitors ("the firm") from Llandeilo, Dyfed.

9. On 22 August 2011, an inspection of the books of accounts and other documents of the firm was commenced by a Forensic Investigation Officer ("IO") of the Applicant, Mr Richard Esney at the firm's offices. This resulted in a Forensic Investigation ("FI") Report dated 31 August 2011.

10. On 19 September 2011, the firm was intervened into, at which time the Respondent's practising certificate was suspended. It had since been terminated.

<u>JW Deceased</u> (see below under Criminal conviction)

<u>SG Deceased</u>

11. On 11 July 2011, the firm's reporting accountants reported to the Applicant concerns regarding file S24/11, the SG probate file. It was reported that invoices were raised in March 2009, February 2010 and October 2010 totalling £10,200 but the last entry on the file was in 2001 and there was "no evidence of transactions or work undertaken since… although we were advised by the solicitor that there were other ongoing matters for the same client".

12. On the basis of this report on 8 September 2011, a notice pursuant to Section 44B of the Solicitors Act 1974 was served on the Respondent, requiring the production of files and information regarding this matter.

13. When attending the firm's offices to serve the section 44B noticed, the IO raised with the Respondent the matter of what appeared to be excessive costs of around £200,000 on this file. In response, the Respondent indicated that he had agreed the costs of £200,000 with the Executors; was unable to recall when that agreement had been reached; and indicated that he did not believe it had been in writing; when questioned further indicated that he did not wish to answer any further questions in respect of this matter and that he would reserve his position until he had taken legal advice upon it.

14. In a submission entitled "Response to the notice under section 44B Solicitors Act 1974 dated 8 September 2011 and voluntary report on other client account issues", Mr Andrew Hopper QC made admissions on the Respondent's behalf in respect of this file.

<u>EJ Deceased</u>

15. The section 44B Response contained a voluntary report including admissions in the matter of EJ deceased.

<u>Correspondence with the Respondent</u>

16. On 1 September 2011, the Respondent was provided with a copy of the FI Report and asked to comment on its contents. Mr Hopper responded on 5 September 2011 (second letter). There was further correspondence between the Applicant and the Respondent/Mr Hopper following which on 23 September 2011; an authorised officer of the Applicant referred the Respondent's conduct to the Tribunal.

Criminal conviction

17. On 9 September 2014, the Respondent was convicted upon his own confession, on indictment at Cardiff Crown Court of nine counts of theft and eight charges of false accounting. All the charges related to the estate of JW deceased.

18. The sentencing remarks of His Honour Judge Hopkins included the following background facts.

19. On 24 September 1993 Mr JW made a will drawn up by the Respondent by virtue of which the Respondent who was "clearly trusted" by Mr JW was appointed co-executor and co-trustee with two local doctors.

20. Mr JW died in 1997.

21. The intended beneficiaries under the will were a number of named individuals with the bulk of the estate being for the benefit of charitable purposes, the choice of charity being left to the three trustees.

22. By the end of 1999, the assets in the estate had been sold. The named individual beneficiaries received the sums bequeathed to them and some charitable donations were made, the last such donation being made in 2005. (All save one legacy of £500 were paid in 1997.)

23. The value of the estate was approximately £2.3 million of which a sum just in excess of £1 million was legitimately distributed.

24. Between 1997 and 2002, fees charged by the Respondent for work done work amounted to £278,000.

25. Although the Respondent carried out legitimate work on behalf the estate initially, that work tailed off. The Respondent nevertheless issued monthly invoices. Between 2003 and 2011, the Respondent carried out no work on behalf of the estate such as to justify substantial charges in excess of £1.2 million charged by him to the estate. Although the will had made provision for the payment of usual professional charges there was nothing unusual about the charges the Respondent purported to make.

26. The Respondent's co-trustees had both died in 2010, one of them having been ill for some time.

27. In 2010 the Respondent produced 10 invoices totalling £182,418 when he had carried out no work on behalf of the estate.

28. In the first eight months of 2011, the Respondent produced a further seven invoices totalling £210,000, the last of which was issued on 19 August 2011 in the sum of £16,800.

29. The invoices were paid by way of transfer from monies held on behalf of the estate in the firm's client account.

30. On 14 November 2014, the Respondent was sentenced to five years imprisonment for each of the 17 convictions with the prison terms to run concurrently. A confiscation order for £125,868.36 was also imposed; in default of payment of that confiscation order the Respondent was liable to serve two years imprisonment consecutive to any terms served in custody for the substantive offences. The benefit amount was stated as £1,002,678.85. It was further ordered that the confiscation amount was to be paid as compensation to the Applicant.

31. On 22 December 2014, an authorised officer of the Applicant decided to add the fact of the Respondent's conviction and sentencing into the existing proceedings.

Witnesses

32. None.

Findings of Fact and Law

33. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

34. Allegation 1.1 - He [the Respondent] acted in breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") and Rules 1 and 22 of the Solicitors Accounts Rules 1998 ("SAR") in that he made improper and unauthorised withdrawals from client bank account; and

Allegation 1.2 - he [the Respondent] acted in breach of Rules 1.02, 1.05 and 1.06 SCC in that he failed to adhere to the terms of a will of which he was an executor; and

Allegation 1.3 - he [the Respondent] acted in breach of Rule 7(1) SAR and (after 5 October 2011) Rule 7.1 of the SRA Accounts Rules 2011 ("SRA AR") in that he has failed to remedy the improper withdrawal of funds from client account;

For the reasons set out in the Rule 5 Statement it was alleged that the Respondent's conduct in respect of the matters in paragraph 1.1 above was dishonest, although it was not necessary to prove dishonesty to prove the allegation itself.

Allegation 2.1 - On 9 September 2014 he [the Respondent] was convicted, upon his own confession, of:

a) nine charges of theft, contrary to Section 1(1) of the Theft Act 1968; and

b) eight charges of false accounting, contrary to Section 17(1)(a) of the Theft Act 1968;

and on 14 November 2014:

a) he was sentenced to 5 years imprisonment in respect of the 17 offences act (a) and (b) above, the prison terms to run concurrently; and

b) a confiscation order under the Proceeds of Crime Act 2002 for £125,868.36 was imposed in default of payment of which he is to serve two additional years in prison;

and as such acted contrary to all, alternatively any of Rules 1.01, 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (in respect of all the instances of false accounting and such thefts which took place before 6 October 2011) and Principles 1, 2 and 6 of the SRA Principles 2011 (in respect of the instances of theft which took place on or after 6 October 2011 and his conviction and sentence).

(The allegations were considered together as they mainly arose out of related facts. Allegation 1.2 related only to the estate of JW deceased.)

34.1 For the Applicant, Mr Hudson explained to the Tribunal that the proceedings issued in 2012 in the Tribunal had been deferred because of the criminal proceedings brought against the Respondent. Mr Hudson submitted that the firm was not large; in addition to the Respondent there were two other solicitors who were a Mrs M who joined in 1997 when the Respondent took over another practice and the Respondent's daughter. The Judge in the Crown Court noted that the Respondent was a trusted pillar of the community. He was not only a solicitor but he held other public offices including coroner which would have led to him being well-regarded in and possibly made it more difficult for people to question his actions.

Allegations 1.1, 1.2, 1.3 and 2.1 re the Estate of JW deceased

34.2 The criminal charges set out that from 2003 the Respondent had taken monies from the estate of JW. His practice over the period was that he helped himself and his reason for doing it was to shore up an otherwise failing practice. Mrs M was completely unaware of what was happening (as was the Respondent's daughter). The Respondent's actions had brought suspicion on Mrs M for a period. The Judge's sentencing remarks addressed to the Respondent recorded:

> "When Mrs [M] joined the firm in 1997 she, as she describes in her witness statement, found the system for billing clients and client care letters somewhat haphazard. Whereas she in her department had a fee structure for charging clients you she says seemed to charge what you thought was appropriate.
>
> It was when you would go on holiday that you would bill the clients."

34.3 Mr Hudson submitted that Mrs M did not suspect at least in the early years that there was any irregularity. She began to notice all was not well when the building society began to send monthly statements to the firm and she noticed that the balance on JW's estate was reducing on a fairly regular basis by considerable amounts and this aroused her suspicions. Between 1997 and 2002 the Respondent billed £278,000 for work

done in the estate of JW. There was no more work between 2003 and 2011 that could justify the substantial fees he charged during that period; £1.2 million was charged. That charging went beyond the terms of the will and did so dishonestly. Mr Hudson referred the Tribunal to what he described as five typical invoices which would have been passed to the firm's accounts clerk who innocently put the data into the client file and transferred the money. The invoices were delivered by the Respondent to himself as executor and not to his co-trustees/executors who were happy to defer to him and knew nothing about what he was doing regarding costs. One of them had been ill for some time and both died in 2010. There was no one to check up on him after that and there had not been much checking beforehand. The Rule 7 Statement set out what the Respondent had done and what he had taken:

- Counts 5 to 13 alleged respectively that in each year between 2003 and 2011, the Respondent stole funds belonging to the estate. The Respondent pleaded guilty to those counts, thereby admitting that in 2003 he stole a total of £141,723.75; in 2004 a total of £164,115; in 2005 a total of £152,250.50; in 2006 a total of £77,767.50; in 2007 a total of £39,445.50; in 2008 a total of £59,159.10; in 2009 a total of £127,305; in 2010 a total of £182,418.75; and in 2011 a total of £210,000. In total therefore he admitted to stealing £1,154,185.10.

- Counts 14 to 21 each alleged false accounting, contrary to section 17(1)(a) of the Theft Act 1968. They related to the invoices which the Respondent raised fraudulently for the purposes of stealing some of the funds described above. The invoices were for work on behalf of the estate which had not been carried out. The false invoices were as follows: on 27 August 2008 in the amount of £23,500; on 29 May 2009 in the amount of £28,750; on 13 July 2009 in the amount of £23,000; on 28 October 2010 in the amount of £24,968.75; on 18 November 2010 in the amount of £24,675; on 26 January 2011 in the amount of £56,400; on 14 July 2011 in the amount £35,400; and on 10 August 2011 in the amount of £16,800.

34.4 Mr Hudson submitted that the invoices in respect of which false accounting was alleged were a sample which it was found had all been used to facilitate theft in order to create a false paper trail to justify to his office what the Respondent was doing. Mr Hudson referred the Tribunal to the sentencing remarks which included:

> "The principle that I think it is important, however, to bear in mind even with those substantial mitigating factors is this; you were a solicitor who was, as all solicitors are, permitted by legislation to handle clients' money. Solicitors are officers of the court. They owe a duty of utmost good faith to their clients and to the public at large. Any breach of that position of trust damages not only the victims but it damages your colleagues, it damages the profession at large, and it reduces public confidence in the legal profession. Here your breaches were extensive, involving I say again over £1 million, and were over a significant period of time, no less than eight years."

The Applicant endorsed those remarks; this was a large-scale dishonesty over a significant period of time.

Allegations 1.1, and 1.3 re the estates of SG and EJ deceased

34.5 For the Applicant, Mr Hudson submitted that the Respondent's conduct in respect of the estates of SG and EJ followed the same pattern as he had with JW; there were improper and unauthorised withdrawals of funds involving breaches of the Code and of the accounts rules. In respect of the estate of SG over £100,000 had been unjustifiably billed and for EJ it was £12,700. It was alleged that the Respondent's conduct was dishonest because by raising invoices for which there was no proper justification and/or by taking client funds in respect of costs without telling the client in the knowledge that there was no proper justification for those costs, the Respondent was dishonest by the standards of reasonable and honest people and realised that by those standards his conduct was dishonest. The Respondent through Mr Hopper had said that his conduct was not materially different from that in respect of JW which by his admissions he had accepted was dishonest by the standards of reasonable and honest people. Mr Miller referred the Tribunal to a letter dated 11 July 2011 from the firm's reporting accountants to the Applicant where they stated in respect of the estate of SG:

> "We write further to our letter of 27 May 2011. Since that date and during the course of finalising our audit work for the purposes of the Solicitors Accounts Rules, we noted two other files where fees appear to have been raised with very little or no activity on the client matter file as follows: –
>
> Client Matter S24/11 –Probate -Three invoices were raised in March 2009, February 2010 and October 2010 totalling £10,200. The last entry on the file was in 2001 with no evidence of transactions or work undertaken since to demonstrate that it was properly billable although we were advised by the solicitor that there were other ongoing matters for the same client."

34.6 Mr Hudson submitted that he relied on the admissions that Mr Hopper had made for the Respondent in a formal response to the section 44B notice on 8 September 2011 in respect of the estate of SG:

> "... after the estate was substantially finalised funds remained in client account and [the Respondent] accepts that they were depleted by subsequent unjustified bills totalling, regrettably, more than £100,000, which would include the bills (and the much smaller amount) mentioned in the section 44B notice. This is not materially distinguishable from his misconduct in relation to the [JW] will trust."

Mr Hopper also confirmed that the Respondent did "not seek to justify the amount charged in the later bills" and that "The relevant bills were not discussed with or disclosed to the executors."

34.7 In respect of the estate of EJ, in the response to the Section 44 B notice, Mr Hopper wrote on behalf Respondent:

> "Bills totalling £12,700 were raised in 2009 and 2010. None of these bills is justified. This is not materially distinguishable from [the Respondent's] misconduct in relation to the [JW] will trust."

34.8 Mr Hudson submitted that the Respondent's conduct involved a significant number of invoices for a significant amount of money, in the case of SG £100,000 and the Applicant was alleging breaches of the Code and the Solicitors Accounts Rules in addition to dishonesty.

34.9 Mr Hudson referred the Tribunal to the Respondent's statement in respect of the dishonesty which was included in his Response to the section 44B notice. Mr Hopper had noted that the Respondent had, in that document, made admissions of further misconduct when:

> "It had previously been forcefully asserted by me on express instructions and by [the Respondent] to the investigators that there were no other matters of concern. [The Respondent] recognises the irretrievable further loss of credibility that this entails, and is bitterly and sincerely sorry. It seems that he had forced himself to forget his actions, so that it was only on the relevant client name being mentioned that the memory came back."

The Applicant did not accept that explanation. Mr Hopper also stated that the Respondent had conducted "a trawl through the whole list of client matters to enable the identification of cases in which there could possibly be some criticism" and that the Respondent stated that the section 44B Response was "a Complete disclosure". Mr Hudson submitted that it was for the Tribunal to judge if it was credible that the Respondent had forgotten two matters especially that of SG where he had systematically misappropriated £100,000. He submitted that the Respondent was aware and the inference was that he did not want the Applicant to make further investigations into those additional matters. Mr Hudson submitted that the Respondent had sent a number of letters to the Tribunal which it was difficult to summarise. Regarding the substantive matters the Respondent referred to the basis of his plea in the criminal matter which was also referred to by the Judge in his sentencing remarks:

> "Your basis of plea, accepted by the prosecution at the plea and case management hearing, reads as follows: "The defendant accepts that he charged the [JW] estate for services he did not provide. It is not possible to accurately calculate the total value of legitimate fees charged to the estate due to the passage of time and the fact that not all legitimate work was recorded. The majority of the money was used for the benefit of your firm trading as John Owen, Solicitors. The firm was not profitable and the defendant took money from the estate to keep the firm afloat. No one else was involved in the thefts or was aware that you had taken the money from the estate." By virtue of simple mathematics it means therefore upon your basis of plea that to keep your firm afloat you were stealing £125,000 a year."

Mr Hudson submitted that he was not sure why the Respondent wished the Tribunal to bear that in mind. The Respondent said that it was also the basis for his not contesting these proceedings. Mr Hudson did not understand that but in substance the Respondent did not seek to defend any of the allegations. Mr Hudson also asked the Tribunal to note that the false accounting convictions were only a sample and represented only a proportion of the full amount of the Respondent's misappropriation.

34.10 The Respondent had asked for his health to be taken into consideration and stated that his period of offending coincided with dealing with a period of serious illness. The Respondent also referred to his sad family background and his own failing health of which some evidence had been produced. The Respondent said that he bitterly regretted what he had done it and talked about asking the Tribunal to impose an indefinite suspension rather than strike off on the basis of compelling personal mitigation and that he would not apply to be restored to the Roll. He also referred to the considerable adverse publicity which his conviction had attracted and asked the Tribunal to take that into account. Mr Hudson submitted that the facts which the Respondent relied on were a chronology of his family, personal background and the history of his firm against that chronology. In terms of what he said regarding truly compelling and exceptional personal mitigation justifying a sanction short of strike off that was a matter for the Tribunal to determine but Mr Hudson reminded the Tribunal that the sentencing Judge had voiced what might be taken as what the public would expect the Tribunal to do when he said "You have now, prior of course to the inevitable being struck off, resigned as a solicitor.". The Judge had said this with knowledge of all the facts and details of the Respondent's health. Mr Hudson also submitted that the majority of documents sent in by the Respondent were copies of documents from the criminal proceedings particularly those put in prior to sentencing. There was a public expectation regarding strike off and Mr Hudson submitted that weighing the Respondent's personal circumstances the scales came down on the side of preserving the reputation of the profession with the public. Mr Hudson referred Tribunal to the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) where it was said:

> "...(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as in Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes) and whether it had an adverse effect on others."

Determination of the Tribunal

34.11 The Tribunal noted that in his letter 20 May 2015 to the Tribunal the Respondent had stated:

> "I wish to make it clear that I am not contesting the Tribunal proceedings other than on the same basis as my said basis of plea to the court which I contend is equally appropriate to the tribunal proceedings as to the prosecution."

Allegation 1.1

34.12 The Tribunal had regard to the submissions for the Applicant, the evidence and the three letters received from the Respondent by the Tribunal. The Tribunal found that the Respondent had breached the Solicitors Accounts Rules by making improper and unauthorised withdrawals from client bank account in respect of funds held for the estates of JW, SG and EJ; indeed the Respondent admitted the facts of what he had done in his Response submitted by Mr Hopper. The Tribunal also found that by his

conduct the Respondent had breached Rules 1.02 (integrity) and 1.06 (behaving in a way that maintained public trust). The Tribunal therefore found allegation 1.1 proved to the required standard on the evidence.

34.13 Dishonesty was alleged in respect of allegation 1.1. The Tribunal employed the test for dishonesty as set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12

> "… there is a standard which combines an objective and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. I will term this "the combined test""

The Tribunal was in no doubt that a reasonable and honest person would consider what the Respondent had done to be dishonest and that when he did it knew that what he was doing was dishonest by that standard. In respect of the estate of JW, the Tribunal was also entitled to rely upon Regulation 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 as proof of the facts of this allegation as those facts had also formed the basis of the Respondent's criminal conviction (see allegation 2.1 below). The Respondent had indicated that he did not contest these proceedings and the Tribunal did not consider that the basis upon which he adopted that position in any way undermined the strength of this allegation. The Tribunal therefore found dishonesty proved to the required standard on the evidence in respect of allegation 1.1.

Allegation 1.2

34.14 The Tribunal had regard to the submissions for the Applicant, the evidence and the three letters received from the Respondent by the Tribunal. His admissions in the criminal proceedings and the admissions in his Response submitted by Mr Hopper did not dispute the facts set out in Rule 5 Statement. The Tribunal found as a fact that the Respondent had failed to adhere to the terms of the will of JW of which he was an executor. The Tribunal also found that by his conduct he had breached Rules 1.02 (integrity), 1.05 (providing a proper standard of service to clients) and 1.06 (behaving in a way that maintained public trust) of the Code. The Tribunal therefore found allegation 1.2 proved to the required standard on the evidence.

Allegation 1.3

34.15 The Tribunal had regard to the submissions for the Applicant, the evidence and the three letters received by the Tribunal from the Respondent. The Tribunal found as a fact that the Respondent had been in breach of the relevant accounts rules in that he had failed to remedy the improper withdrawal of funds from client account and noted that he had stated in his letter to the Tribunal dated May 2015 in respect of August 2010:

> "By that time I had lost my way and I thought I could repay the money taken. So far had I moved from reality that I thought that in a year or so I could have repaid it all. Reality came to me at the time of the intervention."

The Respondent had also admitted the allegation on the basis of his basis of plea to the criminal court. The Tribunal found allegation 1.3 proved to the required standard on the evidence.

Allegation 2.1

34.16 The Tribunal had regard to the submissions for the Applicant, the evidence and the three letters received from the Respondent by the Tribunal. Rule 15(2) the Solicitors (Disciplinary Proceedings) Rules 2007 stated:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

The Tribunal found there to be no exceptional circumstances and was therefore entitled to rely upon the certificate of conviction. The Respondent had also admitted the allegation by his basis of plea to the criminal court. The Tribunal found that the Respondent had breached the Code of Conduct and the SRA Principles as alleged and found allegation 2.1 proved to the required standard on the evidence.

Previous Disciplinary Matters

35. None.

Mitigation

36. The Respondent was not present but he had written to the Tribunal. Mr Hudson had also mentioned some of the key points of the mitigation advanced by the Respondent. The Judge in his sentencing remarks had referred to the Respondent having been highly thought of previously by becoming the deputy chair and eventually the chairman of the Agricultural Land Tribunal for Wales. He had also served as a coroner for a long period. Numerous testimonials had been provided to the sentencing Judge. The Judge also referred to his financial difficulties at the firm, the length of time he had had to wait for trial and his own and his family's health issues. In his letters to the Tribunal, the Respondent had also referred to those matters. He stated in the attachment to his letter of 14 May 2015 that he believed that the key to the question as to why he started offending lay mainly in the health problems which he detailed separately. He also referred to his achievements in his judicial posts as well as his thinking that he could pay back the money at the time he took it. He referred to having temporarily lost his moral compass which he had recovered and taking no steps to cover up what was happening. The Respondent also pointed out that he had satisfied the compensation order made under the Proceeds of Crime Act 2002 in the sum of £125,868.36 from his share in the net proceeds of sale of the matrimonial home plus interest from a deposit account in which those proceeds were held by his then solicitors. The Tribunal also had regard to a letter written by Mr Hopper dated 5 September 2011 (second letter) in which he gave an explanation as to how matters had come about, why what was done was done, without seeking to excuse the

Respondent's actions. In the letter the Respondent had been described as "not a rogue or an evil man".

Sanction

37. The Tribunal had regard to the mitigation which the Respondent had advanced and also to its Guidance Notes on Sanction which set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Guidance Notes also stated that the dishonest misappropriation of client funds would invariably lead to strike off. The Tribunal assessed the seriousness of the misconduct as follows. The Respondent had been motivated at least in part by the desire to shore up his failing practice. The Tribunal noted that in his sentencing remarks, the Judge also mentioned a witness referring to his "maintaining an extravagant lifestyle even when, as it clearly was, the firm was struggling." In order to do this he had undertaken a planned course of conduct over a period of time which involved him acting in breach of his position of trust as a trustee/executor of the estate of JW and as custodian of the funds in the estates of SG and EJ. His dishonesty had extended to the affairs of three clients. The Respondent was in direct control of and responsible for the circumstances in which the funds were misappropriated. The Tribunal considered that the harm to the reputation of the legal profession was severe. The Respondent had himself referred to the extent of the adverse publicity which his misconduct had attracted. It was hard to see how he could have departed further from the complete integrity, probity and trustworthiness which had been referred to in the case of Bolton v The Law Society [1994] 1 WLR 512 as that expected of a solicitor and the harm to the reputation of the profession was commensurately great and totally foreseeable by the Respondent. There were several aggravating factors; dishonesty including the commission of criminal offences had been proved. The conduct was deliberate, calculated and repeated and involved the creation of false documents to hide what had been done. The Tribunal did not accept that what the Respondent had done was there to see. There had been taking advantage of a vulnerable person on a grand scale bearing in mind that JW had intended that his considerable residual estate should be applied for the benefit of charities. All that was left was £208,000 at the time the Respondent was found out and more than £1 million had been taken. The Tribunal agreed with Mr Hudson's submissions that this was a case where there had been no live clients to ask questions and the Respondent had done what he had done knowing that the losers would be charitable bodies. It was also true that he could have stopped his misconduct at any time but instead as the sentencing Judge noted over a period of eight years he had taken £125,000 a year of clients' money. The Respondent, a very experienced solicitor who had held two judicial positions, had embarked on a programme of sustained and systematic theft. The Tribunal did not consider that the mitigation which the Respondent had advanced including his medical problems and the stress which he had stated he was under could in any way constitute exceptional circumstances such as would mitigate the gross abuse of the positions of trust which he had held. The Tribunal considered that the Respondent should be struck off.

Costs

38. For the Applicant, Mr Hudson applied for costs in the amount of £20,689.61. The schedule of costs had been served on the Respondent and he had commented upon it. Mr Hudson submitted that the prosecution was properly brought and the costs claimed were reasonable. The Respondent stated that he had no resources having been made bankrupt in June 2012. He believed that he had been automatically discharged one year later in 2013. He asked for at most a nominal sum to be awarded by way of costs against him and stated in various of his letters that should the Tribunal make a more than nominal costs order he would be unable to pay it and would immediately apply for a further bankruptcy. Mr Hudson submitted that the Applicant had proved in the original bankruptcy and the liquidation of the firm for the intervention costs which were significantly greater than the sum of £120,000 which the Respondent stated in his letter of May 2015 he had included in his statement of affairs towards the costs of the Applicant. The amount of £189,000 in costs was outstanding and Mr Hudson understood that there was no prospect of a dividend being declared. Mr Hudson asked the Tribunal to summarily assess costs in the full sum claimed. He submitted that costs would become a contingent liability and provable in the 2012 bankruptcy based on a recent authority, the case of In re Nortel GmbH (SC(E)) [2013] 3 WLR also known as Bloom v Pensions Regulator [2013] UKSC 52. This was the understanding of the Applicant's recovery section. Mr Hudson asked that rather than a deduction being made to allow for the Respondent's circumstances the amount be made payable in full so that the Applicant could submit a claim and let it take its course in the bankruptcy. The Tribunal accepted Mr Hudson's analysis of the prevailing law while noting that it was most unlikely that the Applicant would be able to recover its costs. The Tribunal determined that the costs claimed were proportionate and considered that the Respondent had added to those costs by the stance which he had taken before pleading guilty. The Tribunal awarded costs in the amount sought.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, William John Owen, 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 £20,689.61.

Dated this 30th day of June 2015
On behalf of the Tribunal

R. Nicholas
Chairman