SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11166-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HEIDI MAGUIRE Respondent

Before:

Mr D. Green (in the chair)
Mr R. Hegarty
Mr M. R. Hallam

Date of Hearing: 5 December 2013

Appearances

Mr Mark Gibson, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Ms Heidi Maguire, the Respondent, appeared and represented herself.

JUDGMENT

Allegations

The allegations against the Respondent made by the SRA were that:

1. By reason of her conduct in receiving money paid in settlement of professional disbursements by way of counsel's fees and the cost of medical reports into the office account of Heidi Maguire Associates ("the Firm") and neither paying those disbursements nor transferring a sum for their settlement into a client account by the end of the second day following their receipt but instead retaining them within the office account of the Firm for its benefit she:

1.1 Failed to act with integrity in breach of Rule 1.02 Solicitors Code of Conduct 2007 ("the SCC") (insofar as that breach occurred prior to 6 October 2011) and Principle 2 of the SRA Code of Conduct 2011 ("the Code") (insofar as that breach occurred after 6 October 2011); and/or

1.2 Behaved in a way that was likely to diminish the trust the public placed in her and in the legal profession and had not behaved in a way that would maintain the trust that the public placed in her in breach of Rule 1.06 SCC (insofar as that breach occurred prior to 6 October 2011) and Principle 6 of the Code (insofar as that breach occurred after 6 October 2011); and/or

1.3 Breached Rule 19(1) of the Solicitors Accounts Rules 1998 ("the SAR") (insofar as that breach occurred prior to 6 October 2011) and Rule 17.1 of the SRA Accounts Rules 2011 ("the AR") (insofar as that breach occurred after 6 October 2011).

2. By reason of her conduct in transferring money paid in settlement of professional disbursements by way of counsel's fees and the cost of medical reports from the client account of the Firm into its office account and thereafter retaining them within that account for the benefit of the Firm she:

2.1 Further failed to act with integrity in breach of Principle 2 of the Code; and/or

2.2 Further had not behaved in a way that maintains the trust that the public placed in her in breach of Principle 6 of the Code; and/or

2.3 Breached Rule 20(1) of the AR.

3. She failed to remedy breaches in that she had not promptly replaced the monies which she had improperly withdrawn or withheld from client bank account contrary to Rule 7.1 of the SAR (insofar as that failure occurred prior to 6 October 2011) and Rule 7.1 of the AR (insofar as that failure occurred after 6 October 2011).

4. It was further alleged that, by reason of her actions in causing payments in respect of professional disbursements to be credited to and retained in the office account of the Firm and improperly transferring monies held in respect of professional disbursements from the client account of the Firm to its office account the Respondent acted dishonestly.

Documents

5. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 10 July 2013
- Rule 5 Statement, with exhibit "MNG1", dated 10 July 2013
- Copy Twinsectra Ltd v Yardley and others [2002] 2 All ER 277 ("Twinsectra")
- Copy Iqbal v SRA [2012] 2012 EWHC 3251 (Admin) ("Iqbal")
- Schedule of costs dated 28 November 2013

Respondent:-

- Respondent's statement, with exhibit "HM1", dated 2 December 2013
- Bundle of references, certificates, client satisfaction surveys/comments, information on work experience provided and support for charities together with testimonial from Mr JT, solicitor.
- Copy Tribunal judgments in matters 10586/2010 ("Branton and McQuaid-Bridge") and 10959/2012 ("Evans").

Preliminary Matter (1) – Independence of the Tribunal

6. The Chair confirmed to the parties that the Tribunal is independent of the SRA and/or Law Society and would make sure that the hearing was fair. It was noted that the highest standard of proof would be applied in considering the allegations.

Preliminary Matter (2) – Documents and house-keeping

7. The Tribunal checked that the Respondent had copies of all of the documents to be referred to by the Applicant and that copies of the Respondent's documents had been provided to the Applicant. The Respondent confirmed to the Tribunal which allegations she admitted – and the basis of those admissions – and which were denied, as set out below in relation to the allegations. A copy of the Tribunal's Practice Direction Number 5 was provided to the Respondent.

Preliminary Matter (3) – Amendment of Rule 5 Statement

8. Mr Gibson told the Tribunal that there were some typographical errors in the Rule 5 Statement and he sought the Tribunal's permission to amend the Rule 5 Statement to correct those errors.

9. At paragraph 9 of the Rule 5 Statement, there was reference to allegations at paragraph 2 but it should have referred to paragraphs 2-5. At paragraph 20, the reference to pages in the Forensic Investigation Report should have read "page 4", rather than "page 38-41". At paragraph 34 the figure given should have been £191,839.02, not £198,436.75; although the latter figure had been mentioned in the Forensic Investigation Report as an initial figure, further investigation had shown the correct figure to be the former figure.

10. The Tribunal gave permission for the Rule 5 Statement to be amended as requested. It noted that there had been no prejudice to the Respondent.

Factual Background

11. The Respondent was born in 1969 and was admitted to the Roll of Solicitors in 2003. The Respondent held a Practising Certificate but was not in practice at the date of the hearing.

12. At all material times the Respondent practised as a sole practitioner under the style Heidi Maguire Associates at 1, The Malt House, Trinity Way, Salford M3 7BD and later at The Clarendon Centre, 38 Clarendon Road, Eccles, Manchester M30 9ES ("the Firm") (may not be necessary as "the firm" defined at para 1). The Firm was started in or about November 2005 and closed on 19 October 2012.

13. The factual matters underlying the allegations were set out in a Forensic Investigation Report dated 28 November 2012 ("the FIR") prepared by Mr Gordon Hair, an Investigation Officer ("IO") of the SRA following an inspection which commenced on 9 October 2012. The factual matters set out in the FIR were admitted by the Respondent.

14. The FIR exhibited a schedule prepared by the Respondent headed "Outstanding Payments – Client Matters" ("the Schedule") which totalled £198,436,67 in respect of unpaid client disbursements on settled personal injury claims that had been retained in the office bank account of the Firm. The Schedule recorded 171 specific amounts of between £14.69 and £9,046.34 in respect of 86 individual clients. The IO amended the figure outstanding to £195,486.52 after a small number of payments were made after 30 September 2012 and after further payments and adjustments the figure was further reduced to £191,839.02.

15. The FIR set out five examples of client matters in which monies had been paid into or retained on office account instead of being transferred to client account or used to pay disbursements. The Rule 5 Statement exemplified two of these matters.

<u>Re Mr A – Road Traffic Accident Claim – Disbursement £387.76</u>

16. The Firm was instructed to pursue a damages claim following Mr A's road traffic accident on 10 January 2007. On 8 December 2008 the client ledger for Mr A recorded receipt directly into the office bank account of £2,160.61 in respect of recovered costs and professional disbursements of £387.76. Rule 19(i)(b) of the SAR required that either the disbursement should have been paid or the sum of £387.76 should have been transferred to client account no later than close of business on 10 December 2008. Neither step was taken.

17. Also on 8 December 2008 the payment of £387.76 was recorded in respect of medical fees for provision of a report (the invoice for which was dated 1 July 2008). That payment was subsequently reversed (on 30 June 2009). The payment was subsequently shown again on 16 July 2009 (reversed on 31 January 2010), 1 February 2010 (reversed on 30 July 2010), 13 September 2010 (reversed on 30 March 2011) and 30 September 2011 (reversed on 30 March 2012).

18. The Firm's internal bill dated 8 December 2008 recorded the disbursement as "to be paid". On the same day an office account payment out chit was prepared; this was the means by which cheques were requested. A letter addressed to the medical expert dated 8 December 2008 appeared on the client matter file but it did not appear that the letter had been sent.

19. In an interview with the IO on 14 November 2012 the Respondent accepted the following:

19.1 £387.76 was the correct amount for the disbursement, and it was part of the Schedule;

19.2 The disbursement of £387.76 should have been paid promptly after receipt of monies for costs and disbursements;

19.3 The cheque was not sent out;

19.4 The Respondent had held the cheque back;

19.5 The Firm had had the benefit of the sum of £387.76;

19.6 The medical expert had not been advised at the time that the Firm was late with the payment.

20. The Firm had the benefit of £387.76 for a period of approximately 3 years and 10 months.

<u>Re Mrs B – Clinical Negligence – Disbursements £13,130.48</u>

21. The Firm was instructed to pursue a claim for damages for Mrs B.

22. On 30 November 2011 the Firm's internal bill recorded disbursements (of which there were 12 in total) as either "paid" or "to be paid". On 6 December 2011 the client ledger recorded the transfer of £31,000 from client to office bank account in respect of recovered costs and unpaid professional disbursements. The AR provides that money received by a solicitor in respect of unpaid professional disbursements is client money and so should not be withdrawn from client account otherwise than when required for payment of the disbursement.

23. The client ledger recorded the payment of the following disbursements: £300 to Nerves ETC for a medico-legal letter; £2,902.79 to Bush and Co for a medical report; £9,046.34 to First Assist for an after the event insurance premium; £881.25 to Jason Wells for counsel's advice. The latter was recorded on 21 February 2012, the others on 30 November 2011. The disbursements totalled £13,130.48.

24. The payment of £881.25 was reversed on the client ledger in March 2012 and posted again, also in March 2012.

25. On 6 December 2011 office account payment out chits were prepared, this being the process by which cheques for payment of disbursements were requested. The chit in respect of the payment to Jason Wells was for an electronic transfer but there was no evidence that the transfer was made and the client ledger recorded a cheque payment for this amount in February 2011. On 6 December 2011 letters enclosing cheques for the payment of disbursements had been prepared but it did not appear that these letters had been sent.

26. In an interview on 14 November 2012 the Respondent accepted the following:

26.1 The disbursements should have been paid promptly;

26.2 The cheques had not been sent;

26.3 The Firm had the benefit of the disbursements;

26.4 The service providers had not been advised at the time that the Firm was late with the payments.

27. The Firm had the financial benefit of retaining the sum of £13,130.38 in office bank account for a period of approximately 10 months.

General

28. The Respondent admitted to the IO in interview that cheques drawn on office account in respect of professional disbursements would have been dishonoured on presentation.

29. On 17 December 2012 the Applicant wrote to the Respondent to seek an explanation of her actions, to which the Respondent replied (through her then solicitors) by letter of 1 March 2013. The Respondent further commented on the allegations by way of a letter dated 22 March 2013. The Applicant decided to refer the Respondent's conduct to the Tribunal on 18 April 2013.

Witnesses

30. Mr Gordon Hair, an investigation officer of the SRA, confirmed the contents of the FIR were true and was asked questions by the Respondent.

31. The Respondent gave evidence on her own account, confirmed the contents of her witness statement of 2 December 2013, was cross-examined by Mr Gibson and was asked some questions by the Tribunal. The Respondent's evidence dealt primarily with the allegation of dishonesty, which she denied, and will be set out below insofar as that evidence was material.

Findings of Fact and Law

32. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

33. **Allegation 1 - By reason of her conduct in receiving money paid in settlement of professional disbursements by way of counsel's fees and the cost of medical reports into the office account of Heidi Maguire Associates ("the Firm") and neither paying those disbursements nor transferring a sum for their settlement into a client account by the end of the second day following their receipt but instead retaining them within the office account of the Firm for its benefit she:**

Allegation 1.1 - Failed to act with integrity in breach of Rule 1.02 Solicitors Code of Conduct 2007 ("the SCC") (insofar as that breach occurred prior to 6 October

2011) and Principle 2 of the SRA Code of Conduct 2011 ("the Code") (insofar as that breach occurred after 6 October 2011)

33.1 This allegation was admitted by the Respondent. The factual matters underlying the allegation are set out at paragraphs 14 to 20 and in particular at paragraph 14.

33.2 The Respondent admitted that she had received money into office account which was intended to settle professional disbursements, in particular counsel's fees and medical report fees and that those disbursements were not paid promptly and/or the sums received transferred to client account. The Respondent told the Tribunal that she had not perceived these sums as being client money or as money owed to the client. The Respondent told the Tribunal that it was rare for clients of her Firm (which particularly dealt with personal injury and clinical negligence claims) to pay disbursements as the case progressed; these were usually funded by the Firm. For example, in the matter of Mrs B (paragraphs 21 to 27 above) the Firm had paid seven disbursements in the course of the case, before receiving any reimbursement from the other party. The sums received from the other party were not seen by the Respondent as money due to the client.

33.3 The Respondent had initially denied that she had failed to act with integrity but now admitted that failing to pay disbursements and retaining the sums received in office account, to the benefit of the Firm, had amounted to a breach of the relevant Rule and Principle. It was noted that the conduct in question had occurred in the period 2008 to 2012 and so both the SCC and the Code applied during the relevant period.

33.4 The Tribunal was satisfied to the highest standard that the facts underlying the allegation had been proved; indeed, the facts were admitted by the Respondent. The Respondent had failed to pay professional disbursements promptly when the funds to do so had been received by the Firm and had used those funds for the benefit of the Firm, in that they were retained in office account. The Tribunal was therefore satisfied to the required standard that the Respondent's conduct displayed a lack of integrity and that accordingly the allegation was proved.

34. Allegation 1.2 - Behaved in a way that was likely to diminish the trust the public placed in her and in the legal profession and had not behaved in a way that would maintain the trust that the public placed in her in breach of Rule 1.06 SCC (insofar as that breach occurred prior to 6 October 2011) and Principle 6 of the Code (insofar as that breach occurred after 6 October 2011)

34.1 This allegation was admitted by the Respondent, on the basis that the allegation related to disbursements and not monies due to the client or received from clients on account of disbursements. The factual matters underlying this allegation were the same as for allegation 1.1, and were also admitted by the Respondent. The Respondent confirmed that her Firm had regularly paid disbursements on behalf of clients in the course of claims.

34.2 The Tribunal was satisfied to the required standard that the factual matters underlying the allegations had been proved; indeed, they had been admitted. In failing to pay disbursements promptly after receipt from third parties of the funds to do so, and in retaining the funds within office account, to the benefit of the Firm, the Respondent had behaved in a way which would diminish the trust and/or fail to maintain the trust the public placed in her. The allegation was accordingly proved.

35. Allegation 1.3 - Breached Rule 19(1) of the Solicitors Accounts Rules 1998 ("the SAR") (insofar as that breach occurred prior to 6 October 2011) and Rule 17.1 of the SRA Accounts Rules 2011 ("the AR") (insofar as that breach occurred after 6 October 2011).

35.1 This allegation was admitted by the Respondent. The factual basis of the allegation is set out at paragraphs 14 to 20 above, in particular at paragraph 14.

35.2 It was clear on all the evidence presented, in particular as contained in the FIR and its appendices, that the Respondent had received money into office account and neither paid the professional disbursements promptly nor transferred funds to client account within 2 working days. Such matters had occurred on a considerable number of occasions over the period of about four years. The Tribunal was satisfied to the highest standard on the evidence, and on the Respondent's admission, that this allegation had been proved.

36. Allegation 2 - By reason of her conduct in transferring money paid in settlement of professional disbursements by way of counsel's fees and the cost of medical reports from the client account of the Firm into its office account and thereafter retaining them within that account for the benefit of the Firm she:

Allegation 2.1 - Further failed to act with integrity in breach of Principle 2 of the Code

36.1 This allegation was admitted by the Respondent. The factual matters underlying this allegation are set out at paragraphs 14 and 21 to 27 and were admitted by the Respondent. The matter of Mrs B exemplified a matter in which funds had been transferred from client to office account and then retained instead of paying professional disbursements.

36.2 The Tribunal was satisfied that on at least one occasion after the introduction of the Code the Respondent had transferred money from client to office account and had then failed to deal with that money as permitted by the AR. Retaining these funds in office account, which benefitted the Firm, demonstrated a lack of integrity. The Tribunal was satisfied to the required standard that this allegation had been proved.

37. Allegation 2.2 - Further had not behaved in a way that maintains the trust that the public placed in her in breach of Principle 6 of the Code

37.1 This allegation was admitted by the Respondent, on the basis that the sums in issue related to disbursements and not to other client money. The factual basis of the allegation was as for allegation 2.1 and that factual basis was admitted.

37.2 The Tribunal was satisfied that in transferring and then retaining money on office account instead of paying disbursements which were properly due to be paid the Respondent had not behaved in a way that maintained the trust the public placed in the Respondent. The allegation had been proved to the required standard.

38. **Allegation 2.3 - Breached Rule 20 (1) of the AR.**

38.1 This allegation was admitted by the Respondent. It was beyond doubt that in the matter of Mrs B the Respondent had transferred monies from client to office account other than in accordance with the provisions of the AR, which provisions were

intended to protect client money. The Tribunal was satisfied that the Respondent had not taken any client money in the sense of money which was due to clients but the sums in question, which amounted to over £191,000, should have been in client account and not office account. The Tribunal was satisfied on the evidence and on the admission that this allegation had been proved to the required standard.

39. **Allegation 3 - She failed to remedy breaches in that she had not promptly replaced the monies which she had improperly withdrawn or withheld from client bank account contrary to Rule 7.1 of the SAR (insofar as that failure occurred prior to 6 October 2011) and Rule 7.1 of the AR (insofar as that failure occurred after 6 October 2011).**

39.1 This allegation was admitted by the Respondent.

39.2 The Respondent, who was the sole principal of the Firm, should have replaced promptly the money she had improperly withdrawn or withheld from client account. She did not do so, such that at the date of the FIR there was a shortage on client account of £191,839.02 which the Respondent was unable to rectify. The evidence showed that in the matter of Mr A the Respondent had failed to remedy the breach for a period of approximately 3 years and 10 months.

39.3 The Tribunal was satisfied to the required standard that this allegation had been proved.

40. **Allegation 4 - It was further alleged that, by reason of her actions in causing payments in respect of professional disbursements to be credited to and retained in the office account of the Firm and improperly transferring monies held in respect of professional disbursements from the client account of the Firm to its office account the Respondent acted dishonestly.**

40.1 This allegation was denied by the Respondent.

40.2 It was noted that the test to be applied in considering the allegation of dishonesty was that set out in the Twinsectra case. The "combined test" for dishonesty, which the Tribunal had to apply, was set out at paragraph 27 of the Judgment in the Twinsectra case where it was stated:

> "Thirdly, there is a standard which combines an objective test 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."

40.3 The Applicant's case was that the Respondent knew – and admitted to the IO – that cheques drawn on the office account in respect of professional disbursements would have been dishonoured on presentation. It was submitted that, as a consequence, her conduct in receiving, retaining and transferring payments in respect of professional disbursements into the office account of the Firm in the knowledge that she would not be able to pay the fees of the professionals entitled to those monies out of the office account was dishonest by the standards of reasonable and honest people.

40.4 The Applicant's case was that the subjective element of the Twinsectra test was met as the Respondent had concealed what she had done, and therefore she plainly realised that her conduct was dishonest by the standards of reasonable and honest people. The Applicant relied in particular on the following:

40.4.1 The Respondent wrote (or raised) cheques to the professionals entitled, notwithstanding that she knew they would be dishonoured if presented. The cheques were then retained, but the payments were recorded as debit items in the client ledger of the Firm, such that the ledger appeared to show that the Respondent had complied with the SAR/AR;

40.4.2 The Respondent placed letters on the relevant client matter files addressed to the professionals entitled, purportedly enclosing cheques in settlement of their fees so as to create the misleading impression that those cheques had been sent out;

40.4.3 The Respondent caused the debit entries in the client ledger of the Firm to be reversed after about six months, when a replacement cheque would be generated and recorded on the appropriate client ledger so as to create the misleading impression that the original cheque had become invalid due to the delay in presentation and that a replacement had therefore been issued;

40.4.4 The Respondent took no steps to notify the professionals, whom she had instructed on behalf of her clients, that she had received funds in payment of their fees nor did she explain to them that she was unable to settle their invoices as her cheques would not be honoured.

40.5 The Applicant further submitted that the Respondent had engaged in a course of conduct over a period of more than three years which resulted in funds totalling £191,839.02 being diverted away from the professionals entitled to those monies and into the account of the Firm, in 171 separate transactions. It was submitted that it was inconceivable that the Respondent did not realise that such a course of conduct would be viewed as dishonest by the standards of reasonable and honest people.

40.6 In addition to consideration of the documents, the Tribunal had the benefit of hearing from Mr Hair (the IO), and from the Respondent who chose to give evidence in order to explain her actions and thoughts at the time of the relevant events.

40.7 Mr Hair confirmed the contents of his FIR, which in any event were accepted by the Respondent. In answer to questions from the Respondent, Mr Hair confirmed that the Respondent had been fully co-operative during his investigation. He also told the Tribunal that he might well take at face value the apparent payment of invoices e.g. if a letter appeared on the file which appeared to send a cheque and if the ledger showed a debit for the payment, although whether he would in fact do so would depend on the circumstances and what he was investigating.

40.8 The Respondent told the Tribunal in evidence that she did not believe she had been dishonest. She had not had an intention to avoid payment to the professionals involved. The Respondent further told the Tribunal that she had never perceived the money received and paid/transferred to office account for disbursements as being

client money whereas damages received clearly were due to the client and were always paid in full. It had been rare in the Respondent's Firm for clients to pay disbursements as the case progressed and these were usually met by the Firm until reimbursed by other parties at the end of a case. The Respondent gave as an example the disbursements paid in the matter of Mrs B (see paragraphs 21 to 27 and 33.2). The Respondent told the Tribunal that she had been very conscious of the position of her clients, and no money due to clients had been withheld.

40.9 The Respondent submitted (and re-stated in evidence) that she did not put letters on the client matter files to conceal the position; she emphatically denied that this had been her motivation. The Respondent told the Tribunal that it had been standard practice in her Firm, and other firms in which she had worked, for the fee-earners to generate letters to send to those to whom payments were due. The Respondent told the Tribunal that she had never given any thought to whether such letters would give a misleading impression and had never thought this would be construed as concealment.

40.10 The Respondent submitted that the case of Branton and McQuaid-Bridge was similar to this case, as it dealt with unpaid disbursements in a similar amount to the sums in question here. The Respondent submitted that she accepted her failings and had done everything possible to recover and pay the monies and so in several respects her case was similar to the case against Branton, who had not been found to be dishonest. The Respondent also submitted that her case was similar to that of Evans, in which again no finding of dishonesty was made, as she had self-reported to the SRA and had made attempts to repay the money owed.

40.11 The Respondent told the Tribunal that she had been operating in a difficult set of circumstances, and she described the financial pressures to which her Firm had been subject. The Respondent accepted that the professionals her Firm had instructed on behalf of her clients should have been paid properly. However, there had been so much going on and she had been under phenomenal pressure such that the Respondent had reached a point at which she did not know what she was doing. The Respondent had sought professional advice and had been advised not to close the practice and had borrowed to keep the Firm going; a charge had been placed on her father's property to support the borrowing she had arranged to maintain the Firm, and this had caused particular stress. The problems had occurred mostly from 2009, when the Respondent had been confused and isolated; she had felt like a failure because she was unable to pay professionals when she should have done so. The Respondent told the Tribunal that the non-payment of disbursements was not orchestrated and that she had never realised the true extent of the problem until about the time of the investigation. If she had pushed the issue of payment to one side it was not because of any intention not to pay; rather, she had believed that she would pay the disbursements. The Respondent specifically denied concealment of the non-payment.

40.12 In evidence, the Respondent confirmed the contents of her witness statement and her submissions, as noted above. The Respondent also stated that disbursements had been paid to some professionals, by the Firm and so there had been no wholesale failure to pay. The Respondent confirmed that she had exhibited some medical records to her statement, but had chosen not to obtain medical evidence as, although her mental health had been affected at the material time, she took full responsibility

for her actions. The Respondent accepted that her actions had been wrong, but not that she had been dishonest.

40.13 Under cross-examination by Mr Gibson, the Respondent confirmed that her Firm had been in financial difficulty from 2009. She did not believe she had thought that the Firm would benefit from receiving and retaining money for disbursements in office account but now accepted that there had been a benefit for her Firm. With the benefit of hindsight, the Respondent accepted that the money had propped up the Firm but she did not believe that to be the case at the time as the Firm had a lot of work in progress and she expected to sell her house and use the equity for the Firm. The Respondent had been advised, and had expected a cash injection into the Firm in about September 2009. With hindsight, the Respondent wished that the Firm had closed earlier; she had thought she would be able to meet the liabilities and had been advised not to close the Firm and to inject capital. The Respondent told the Tribunal that she had thought the Firm was financially viable and had tried to raise extra funds.

40.14 The Respondent, in answer to further questions, told the Tribunal that she did not accept that the objective part of the Twinsectra test had been met. Her thinking had been severely impaired due to the pressure she was under. She was an extremely professional person and diligent and had set out to run a practice of which the Law Society would be proud. The Respondent told the Tribunal that a reasonable and honest person who had all of the facts would not perceive her actions as dishonest; she accepted that what she had not done was not morally right, but there had not been any intention to avoid payment. The Respondent confirmed that on occasion cheques which were requisitioned would be dishonoured and that was why, on occasions, the cheques had not been sent. The Respondent told the Tribunal that as a sole practitioner the pressure on her was phenomenal; for example, the responsibility of reviewing medical records in clinical negligence cases would fall on her. The Respondent accepted that she had not paid for services for which the Firm was obliged to pay. The Respondent told the Tribunal that she was embarrassed and ashamed, and accepted what was said about what she had done.

40.15 In response to a question about recording payments in the client ledger, the Respondent told the Tribunal that those entries were made by the bookkeeper, but she accepted that as the principal she was responsible for the Firm's accounts. The Respondent told the Tribunal that she did not see all of the ledgers and she accepted that she had failed in not ascertaining the full position earlier.

40.16 In response to a question concerning the placing of letters on the files, which appeared to show payments had been sent, the Respondent stated that she had not had any intention to mislead or to avoid payment. It had not occurred to the Respondent that the letters would have been taken at face value, but with the benefit of hindsight and the evidence of Mr Hair (see paragraph 40.7) she accepted that a misleading impression could be given. However, the Respondent told the Tribunal that she never thought the letters could be misleading to anyone; the fact that a letter was on the file simply showed what should be paid.

40.17 In response to a question concerning the fact that the professionals had not been informed that payment would be delayed – after receipt of costs and disbursements from the other party – the Respondent confirmed that she accepted this was the

position. However, she had been attempting to raise the funds to pay. The Respondent told the Tribunal that if any of the professionals contacted her she told them she had financial difficulties and did not lie to anyone about whether payments would be made. With hindsight, the Respondent accepted that she could have told the professionals to whom her Firm owed money.

40.18 The Respondent denied that in: not sending out cheques; having debit entries on the ledgers; having letters to professionals on the files which appeared to show the payments being sent; and not informing those due payment that her actions had not been those of an honest person. The Respondent told the Tribunal that she had tried to rectify the position and had had no intention to conceal the situation. It was put to the Respondent that for a period of about three and a half years she had received money for disbursements, to the tune of over £191,000, which she had not paid to those to whom payments were due and had said nothing and that this was dishonest. The Respondent accepted that it was morally wrong but she had not reviewed and was not aware of the true extent of the problem until shortly before the investigation.

40.19 In response to a question from the Tribunal concerning the Firm's usual procedures, the Respondent confirmed that generally when costs were received from a third party that sum would be transferred to office account. With the benefit of hindsight, the Respondent recognised that the disbursements should have been paid from client account, for example in the matter of Mrs B set out at paragraphs 21 to 27 above. The Respondent told the Tribunal that her understanding was that there was no breach of the SAR/AR if money was transferred to office account and the disbursement paid promptly. It was noted that in one case the disbursement had been unpaid for well over three years. The Respondent confirmed she was aware there was a problem from about 2009; the professional advice she received was to inject cash and carry on the Firm. The Respondent had downsized the Firm, but had been deluged with work.

40.20 In response to further questions, the Respondent told the Tribunal that she had chosen not to obtain a medical report. The Respondent stated that she had felt terrible during the relevant period and had been confused. Whilst she had done some things impeccably well, she had found it hard to focus and had made errors such as on more than one occasion putting diesel into a car which used petrol. The Respondent linked the feeling that she was not herself to the time when a charge had been placed on her father's property and later when the amount of the charge was increased. The Respondent told the Tribunal that her condition had deteriorated such that she was not able to function properly; she had sometimes thought that there was something physically wrong. The Respondent re-stated that she now accepted that placing letters on the files which appeared to show payments being made might have been misleading, but she had not thought that at the time and had had no intention to mislead.

40.21 In response to further questions concerning the letters on the files, the Respondent told the Tribunal that the letters were generated automatically by the administrative staff; at the time she had given no thought as to whether a misleading impression might be given. The Respondent could not recall the last time she had had accounts training and told the Tribunal that she had been led by the Firm's accounts staff. The Respondent accepted that if the Firm's accounts were placed before her she may not have understood what they showed and at the time was concentrating on other issues.

The Respondent told the Tribunal that she now understood what the ledger cards showed, but did not understand the information at the relevant time. Whilst the Respondent accepted full responsibility, she told the Tribunal that she had had the wrong accounts staff. The Respondent told the Tribunal that she had been diligent with regard to client money and the only problem was with regard to disbursements.

40.22 The Tribunal considered carefully the evidence and submissions of the parties, bearing in mind that it was for the Applicant to prove the case.

40.23 The Tribunal considered the cases of Branton and McQuaid-Bridge and Evans, both of which had been referred to by the Respondent. These cases were distinguishable on the facts. The Branton and McQuaid-Bridge case appeared to deal with similar issues but the evidence was not the same; in particular, it appeared that during the course of the forensic investigation the SRA's officer had accepted that on the face of it there was no dishonesty. In any event, the Tribunal had found that there was a real doubt in the Evans case, in that there had been psychiatric evidence which had raised reasonable doubts about the Respondent's knowledge of what he was doing at the relevant time. Furthermore, no two cases were identical and the Tribunal was not bound by the decision of any other division in a different matter.

40.24 The Tribunal also took into account the testimonials and other documents submitted by the Respondent. These included testimonials from Mr JT which referred to his utmost regard for the Respondent as a personal injury lawyer and that he had no reason to doubt or question her complete honesty or integrity.

40.25 The Tribunal accepted that the Respondent had clearly been under stress for a period whilst running the Firm and that such stress could have led to a reduced capacity for effective functioning. However, there was no medical evidence of any ill health which caused any inability to function properly. The Tribunal noted the medical records appended to the Respondent's witness statement, but observed that although records from September 2009 were available the first mention of stress or anxiety in the records was in December 2011, which was over two years after the Firm's financial problems had developed.

40.26 It was clear in the light of the Respondent's own evidence that she had not understood the rules governing solicitors' accounts properly. It was clear from the Respondent's evidence that she had delegated accounts functions to the accountant she employed, without having sufficient interaction with the accountant or sufficient understanding of how funds were being used. Whilst the Respondent was comparatively inexperienced at the relevant times, having been admitted in 2003 it was also noted that this meant her training in solicitors accounts was quite recent. The Respondent had presented her documents and her case clearly and intelligently. The Tribunal considered that the Respondent was well-organised and articulate. The evidence she had presented concerning the various accreditations achieved by her Firm, the work experience offered to students and the testimonials concerning work she had done demonstrated that she had set up her Firm with good intentions. The Tribunal had no reason to doubt the Respondent's ability as a personal injury lawyer. There was no suggestion that any client of the Respondent had suffered as a result of her conduct. Further, the Tribunal was satisfied that the Respondent had not set out to deprive professionals of money to which they were properly entitled. However, the

Respondent had not grasped the fundamental importance of proper and robust accounts systems and the responsibility of the sole principal of the Firm to ensure the accounts were managed appropriately. The Tribunal noted that the Respondent had taken professional advice concerning the viability of the Firm in 2009 and in the light of that advice had decided to continue. It appeared that at that stage the Respondent had not taken account of, for example, the matter of Mr A in which disbursements had been withheld from December 2008. The Respondent's own evidence was that she had not appreciated the full extent to which disbursements were being withheld from professionals; if this were so, she had clearly not understood the Firm's client ledgers. In any event, there was no doubt on the Respondent's evidence that she was aware that payments were being, at best, postponed and yet she had apparently not established the true nature and extent of the problem, despite clear concerns about the financial viability of the Firm.

40.27 The Tribunal was satisfied to the required standard on the evidence presented, including the Respondent's own evidence, that she had known that some cheques drawn on the Firm's office account to pay disbursements would be dishonoured. The Respondent knew that professionals instructed by her Firm were entitled to be paid. The Respondent further knew that monies had been received by the Firm to pay those professional disbursements. Her usual practice, as confirmed in her evidence, was to pay monies received for costs and disbursements into office account rather than into client account. It would have been preferable to receive monies into client account, pay disbursements from that account and transfer to office account only the sums due for the Firm's professional fees. That said, the SAR and AR provided that monies for unpaid professional disbursements could be received into office account but in such a case the disbursement must be paid within two working days; if this were not done, the money should be transferred to client account. In any event, the Respondent was aware that her Firm had received money which was payable to professionals instructed by her Firm and that, in many cases, those professionals had not been paid promptly, or indeed at all prior to the closure of the Firm. The extent to which professionals had been deprived of payment – either completely or for a significant period – was great. Over a period of more than three years over £191,000 was received by the Firm and not used to pay professionals on a total of 171 separate occasions. The Respondent had told the Tribunal that she had not considered that the Firm had received any benefit from this conduct. However, whilst the Respondent had had no personal gain the retention of money in office account had allowed the Firm to continue trading.

40.28 The Tribunal was satisfied beyond reasonable doubt that the Respondent, in receiving, retaining and transferring payments in respect of professional disbursements into the Firm's office account in the knowledge that she would not be able to pay the fees of the professionals from office account was dishonest by the standards of reasonable and honest people.

40.29 The Tribunal then considered whether the Respondent knew that by those same standards her conduct was dishonest. The Tribunal noted that the Respondent had denied any dishonest motivation, or indeed any conscious plan to retain monies improperly.

40.30 The Tribunal found to the highest standard that the Respondent had caused cheques to be drawn, and made or allowed entries to be made on client ledgers which indicated that cheque payments had been made, when the Respondent knew that on many, if not all occasions, such cheques would be dishonoured on presentation. Drawing such cheques and making ledger entries indicating payments had been made promptly made it appear that the Respondent had complied with her professional obligations, and that the professionals in question had been paid. Taking such steps concealed the fact that payment had not been made.

40.31 The Tribunal further found to the required standard that the Respondent, either personally or through her employees, had caused letters to be placed on client matter files which purported to despatch cheques to professionals to settle their invoices. The Tribunal noted that the Respondent had said that such letters were generated almost automatically and further told the Tribunal that the letters indicated what payment was due. The Tribunal could not accept this. If a letter were not sent, it should have been removed from the file or marked "not sent"; allowing letters to be placed on files in these circumstances would give a misleading impression to anyone looking at the file. When combined with the entries on the client ledgers, the strong but incorrect impression would be given that the professional had been paid. The Respondent had told the Tribunal that she did not believe that anyone would be misled by such documents, but conceded in the light of Mr Hair's evidence that such documents could be taken at face value and that a misleading impression may have been given.

40.32 The Tribunal also found, to the required standard, that on numerous occasions – exemplified in particular in the matter of Mr A at paragraphs 16 to 20 above – the debit entries on the client ledger were reversed after approximately six months and a new cheque and corresponding ledger entry were created. This created the misleading impression that a cheque had become invalid, due to late presentation (when, in fact, the cheque had not been sent to the payee) and a new one issued; such later cheque was also not despatched. The Respondent had told the Tribunal that she had not planned or orchestrated a scheme to avoid or delay payment. However, she had on numerous occasions taken steps which had the effect of concealing the fact that the Firm had not paid and was not in a position to pay.

40.33 The Tribunal further found that the Respondent had not taken active steps to notify professionals that she was not able to pay them, despite the receipt of monies to make those payments. The Tribunal had no reason to doubt the Respondent's assertion that she had been honest with those who had contacted her concerning payment; there was nothing in the evidence presented by the Applicant which gainsaid this evidence. However, she had accepted that she had not informed those to whom payments were due that the Firm's cheques would be dishonoured and so she was unable to pay.

40.34 The Tribunal was satisfied beyond reasonable doubt that in the circumstances set out at paragraphs 40.30 to 40.33 the Respondent had concealed her misconduct. The Respondent had allowed client ledger entries to be made which were misleading; she had placed letters on client matter files which appeared to show cheques had been despatched when they had not been sent; she had caused debit entries to be reversed with fresh entries then made, which gave the misleading impression a cheque had been despatched but not presented for payment in good time; the Respondent had not

notified professionals that she had received payment from third parties, including an amount due in respect of their invoices, but was not able to make payments. In all of these ways, the Respondent had concealed the misconduct. The Tribunal further took into account the long period over which the misconduct had been repeated and the significant amounts involved. The Tribunal was satisfied to the required standard that in concealing her conduct - conduct which was repeated on numerous occasions over a long period - the Respondent had shown that she knew her conduct was dishonest by the standards of reasonable and honest people.

40.35 The Tribunal had considered carefully the Respondent's evidence, including her evidence that she had not considered that what she was doing was dishonest, but concluded that it could not accept that evidence. Her explanation about the way in which letters had been generated and ledger entries made was not plausible and those documents and entries had been wholly misleading. The Respondent knew that her Firm had the benefit of money due to others and had concealed that fact in the manner described above. The Tribunal was satisfied to the highest standard that the Respondent's conduct had been dishonest, with both limbs of the Twinsectra test being met.

Previous Disciplinary Matters

41. There were no previous matters in which findings had been made against the Respondent.

Mitigation

42. The Respondent indicated that she understood the serious nature of the finding of dishonesty which had been made against her. The Respondent told the Tribunal that she was dreadfully sorry for what she had done. The Respondent would have to live with the consequences professionally and personally, as the events in question had affected her and her family.

43. The Respondent told the Tribunal that she had reported the problem to the Applicant and she now understood the errors she had made. The Respondent told the Tribunal she had done her utmost to close the Firm in a professional way, despite her health problems. Her clients had not been prejudiced. Most files had been transferred to Stockslegal, whose letter confirmed that costs due to the Firm were still being recovered in matters which had been transferred and Stockslegal were in discussion with the Respondent's trustee in bankruptcy concerning the use of that money, some of which might be paid to the professionals who had not yet received any payment. The Respondent told the Tribunal she was hopeful that the disbursements due would be paid and that she would have given anything to pay them before her bankruptcy.

44. The Respondent told the Tribunal that she considered that she was a good solicitor with a lot to add to the profession. She had learned a hard lesson and would like the opportunity to give something back to the profession; she wished that she had been taught earlier in her career what she had now learned.

45. The Respondent told the Tribunal that she was not a dishonest person; the finding of dishonesty did not reflect the person she was. The Respondent hoped to have the

opportunity to return to the profession. Her family was financially dependent on her; although her husband was working he was approaching retirement age and had lost all of his equity in their home. The Respondent and her husband had three children of primary/early secondary school age.

46. The Tribunal invited the Respondent to provide any information she wished concerning any circumstances in this case which might be exceptional, whether previously mentioned or otherwise.

47. The Respondent told the Tribunal that she had taken professional advice concerning the viability of the Firm. Her reliance on that advice had been catastrophic. In particular, the Respondent had allowed a charge to be placed on her father's property in the belief that her father was well-placed to understand that step. That decision, and in particular the imposition of a second charge, had had a major impact on the Respondent's well-being. The Respondent considered that but for the advice received and the placing of charges on her father's property she would not be in the position she faced today. There had been considerable stress as both her home and her father's property had been put at risk.

48. The Respondent told the Tribunal that whilst she was devastated by the finding of dishonesty, she respected that decision. She had tried to be frank about her own failings and how events had affected her.

49. In response to an invitation from the Tribunal, the Respondent stated that in her career she had handled catastrophic injury cases, with claims worth in excess of £2 million, as well as a variety of personal injury claims. The Respondent told the Tribunal she was particularly passionate about clinical negligence matters. The Respondent considered that she was a good lawyer – this case had not been about her legal skills. She had received much positive feedback from clients and other professionals about her work. The Respondent told the Tribunal that she was committed to system management, and had spoken at seminars on this issue as well as having a commitment to achieving environmental accreditations.

50. The Respondent told the Tribunal that she accepted that some professionals entitled to payment had not been paid; it was a cause of enormous regret that they were owed money by her/her Firm. The Respondent was hopeful that a large proportion would be paid over time such that the overall amount outstanding would be reduced if not extinguished. The Respondent was confident that the transfer of client matters, which mostly went to Stockslegal, had been in the best interests of her clients and that the clients had not been prejudiced in any way. The Respondent concluded by expressing her great and genuine regret about what had happened.

Sanction

51. The Tribunal had regard to its Guidance Note on Sanctions (September 2013). The fundamental purpose and principle of sanction in the Tribunal were set out in the case of Bolton v Law Society [1994] 1 WLR 512 ("Bolton"). This case identified that sanctions could address punishment, deterrence and removal of the opportunity to repeat the offence and that any solicitor who discharged his/her duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions.

The most fundamental purpose of sanctions by the Tribunal was stated to be the maintenance of the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.

52. It was clear in the light of the Bolton case, as set out in the Tribunal's Guidance Note on Sanctions, that purely personal mitigation was not relevant to determining the seriousness of the misconduct in issue, but would be considered when determining the fair and proportionate sanction.

53. There was no doubt that the Respondent's misconduct had been at the most serious end of the range of misconduct. In particular, a finding of dishonesty had been made against the Respondent. It was clear in the light of all of the case law that where a finding of dishonesty had been made the appropriate sanction was a striking off order, save in what were described as exceptional circumstances.

54. The Tribunal noted that the Respondent had been under stress and had not deliberately set out to avoid payment to professionals instructed by her Firm. However, these circumstances were not exceptional. The Tribunal noted that the misconduct had taken place for a period of over three years, which was approximately one third of the Respondent's career as a solicitor. There was no personal mitigation which could overcome the seriousness of the Respondent's misconduct.

55. In order to maintain and protect the reputation of the profession, the only appropriate and proportionate sanction was to make an order striking off the Respondent and the Tribunal made such an order.

Costs

56. On behalf of the Applicant, Mr Gibson made an application for an order that the Respondent should be ordered to pay the Applicant's costs of the proceedings and that the Tribunal should assess those costs. A schedule of costs was submitted, totalling £14,620, including forensic investigation costs of £9,666.40, which Mr Gibson stated reflected the time spent in dealing with the case. It was submitted that quite a lot of time had been required to check the ledgers of the Firm and that receipt of the Respondent's statement in the days before the hearing meant time was spent in consideration and preparation. The Applicant accepted that the Respondent was bankrupt; it was expected that the bankruptcy would end in May 2014. Mr Gibson submitted that if an order were made, enforcement could be left to the Applicant's costs enforcement team. Alternatively, the Tribunal could consider making an order not to be enforced without the Tribunal's further permission.

57. The Respondent made no submissions concerning the quantum of costs but submitted that any order should not be enforced without the leave of the Tribunal, because of her bankruptcy.

58. The Tribunal determined that it was appropriate to make a costs order against the Respondent. The proceedings had been properly brought and all allegations had been admitted and/or proved. However, the Tribunal considered that the costs claimed were a little high. The Tribunal determined that the time spent on documents was excessive and that ten hours was a more reasonable time for this. Further, the

schedule had estimated that the hearing would take approximately 7 hours, but it appeared that the hearing would conclude within about 5.5 hours. The case was not inherently difficult and a modest quantity of documents had been produced to the Tribunal. The Tribunal assessed that, in all of the circumstances, the reasonable and proportionate amount to be allowed for the Applicant's costs was £13,000, inclusive of disbursements and VAT.

59. The Tribunal noted that the Respondent was bankrupt and that by virtue of its order striking off the Respondent she would not be able to pursue a career as a solicitor. The Tribunal further noted that the Applicant's advocate, reasonably and properly, had raised the possibility that the Tribunal could order that the costs should not be enforced without the Tribunal's permission, if and when the Respondent was in a better financial position. In all of the circumstances of this case, such an order was reasonable and proportionate.

Statement of Full Order

60. The Tribunal ORDERED that the Respondent, Heidi Maguire, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,000.00 (all inclusive) not to be enforced without leave of the Tribunal.

DATED this 17th day of January 2014
On behalf of the Tribunal

D. Green
Chairman