SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11184-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEVEN RONALD SHEPHERD Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss J. P. Devonish
Mrs L. Barnett

Date of Hearing: 19 April 2016

Appearances

Mr Andrew Bullock, counsel, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Steven Ronald Shepherd, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Steven Ronald Shepherd, in a Rule 5 Statement dated 2 September 2013 were that he:

1.1 Failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code"), in:

1.1.1 using client funds for his own benefit, and

1.1.2 creating false attendance notes and file entries.

1.2 Failed to act in the best interests of each client, in breach of Rule 1.04 of the Code, in using client funds for his own benefit.

1.3 Behaved in a way likely to diminish the trust placed in him and the legal profession, in:

1.3.1 using client funds for his own benefit, and

1.3.2 creating false attendance notes and file entries in breach of Rule 1.06 of the Code.

1.4 Failed to fulfil an undertaking in breach of Rule 10.05 of the Code.

1.5 Improperly withdrew client money in breach of Rule 22(1) Solicitors Accounts Rules 1998 ("the Accounts Rules").

2. The Applicant further alleged that in relation to allegations 1.1, 1.2 and 1.5 above the Respondent acted dishonestly.

3. The further allegation against the Respondent, made in a Rule 7 Statement dated 23 September 2015 were that he:

3.1 Was convicted of 8 counts of fraud by abuse of position (contrary to Section 4 Fraud Act 2006) and 1 count of false accounting (contrary to Section 17 Theft Act 1968) on 20 February 2015, and thereby failed to:

3.1.1 Uphold the rule of law and proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the Principles");

3.1.2 Act with integrity, in breach of Principle 2 of the Principles;

3.1.3 Behave in a way that maintained the trust that the public placed in him and the provision of legal services, in breach of Principle 6 of the Principles.

Documents

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

Applicant: -

- Application dated 2 September 2013
- Rule 5 Statement, with exhibit "RH1", dated 2 September 2013
- Rule 7 Statement with exhibit, dated 23 September 2015
- Civil Evidence Act Notices dated 10 March 2014 and 15 March 2016
- Statement of costs dated 7 April 2016

Respondent: -

- Letters to the Tribunal dated:
  - 31 January 2014
  - 25 February 2014
  - 8 September 2015
  - 8 December 2015
  - 14 January 2016
  - Undated, received at the Tribunal on 18 February 2016
  - Letter 12 April 2016
  - Copy instruction to HM Prison Service (dated 12 April 2016) to cancel telephone conference for 19 April 2016

Tribunal Documents: -

- Memoranda of Case Management Hearings ("CMHs")/Adjournment on:
  - 18 March 2014
  - 27 March 2014
  - 23 September 2014
  - 14 November 2014
  - 6 October 2015
- Correspondence between the Tribunal and the Respondent.

5. In addition to the above documents, the Tribunal office received a letter from the Respondent dated 15 April 2016. This letter was received after the conclusion of the hearing and the determination of all issues.

Preliminary Matter (1) – Proceeding in the absence of the Respondent

6. The Tribunal noted the history of this matter. The proceedings were originally issued in September 2013. In January 2014 the Respondent asked the Tribunal to stay the proceedings, which were due for hearing on 27 March 2014, in the light of a police investigation into his conduct. On 18 March 2014 the Tribunal refused the application for a stay of proceedings. At a hearing on 27 March 2014 the Tribunal decided to adjourn the substantive hearing, and gave directions for the further management of the case. At a CMH on 14 November 2014 the Tribunal noted that the Respondent was due to face a criminal trial on 26 July 2015 and determined that there should be a further CMH on a date after that trial was due to take place. On 6 October 2015, the Tribunal gave permission for the Applicant to file the Rule 7

Statement out of time; this Statement referred to the Respondent's conviction for various offences on 20 February 2015.

7. The Tribunal noted that the Respondent was not present or represented at this hearing and that he was presently in prison for the offences for which he had been convicted. It therefore had to consider whether it was appropriate to proceed with the hearing in the Respondent's absence.

8. The Tribunal noted that in his letter to the Tribunal of 8 September 2015 the Respondent had indicated that his likely release date was October 2016 and he would be unable to attend any hearing until after that date. In his letter of 8 December 2015 the Respondent confirmed that he had received the Rule 7 Statement and referred to the notice of hearing. The Respondent indicated that he objected to the hearing going ahead in April 2016 as he would be unable to attend and stated that he considered this to be gross breach of natural justice. The Respondent referred to mitigation in relation to the offences which, he indicated, had not been fully put forward on his behalf in the criminal case. The Respondent asked the Tribunal to review the directions order made on 6 October 2015 and the plan to proceed with the hearing.

9. In response to a letter from the Tribunal dated 15 December 2015, the Respondent stated in his letter of 14 January 2016 that he had made enquiries, from which he had established that he was not currently eligible for leave from prison, that attending by video-link was not possible but attending by telephone may be possible. The Respondent went on to query what the point of attending would be, as he did not want to remain on the Roll of Solicitors. Also on 14 January 2016 the Tribunal was contacted by HMP/YOI Thorn Cross as the Respondent had made a request to attend the hearing by telephone.

10. The Tribunal due to hear this case considered the position and noted that the Respondent should be encouraged to attend if he wished – by telephone if necessary. In his letter received by the Tribunal on 18 February 2016 the Respondent indicated that he saw no purpose in attending and "wasting the time" of the Tribunal or the Applicant. The Respondent stated that he admitted the allegations.

11. On 13 April 2016 the Tribunal office received a telephone call from the Prison Service in which it was stated that the Respondent had applied to cancel any arrangements which had been made for him to attend by telephone. This was confirmed by a written document signed by the Respondent in which he confirmed that the arrangement for him to have a telephone conference on 19 April should be cancelled.

Applicant's Submissions

12. Mr Bullock submitted that the Respondent had had ample notice of the hearing. He had been written to on at least three occasions, including by the Applicant on 7 April 2016, with the hearing date. The recent correspondence from the Respondent confirmed that he was aware of the hearing date. Further, it was clear from the application form to cancel the telephone conference that the Respondent had had the ability to attend by telephone but had chosen not to do so. In these circumstances, the

Respondent had voluntarily absented himself from the hearing and the Tribunal could therefore proceed in the Respondent's absence.

13. Before determining this issue, the Tribunal noted that in his correspondence the Respondent had stated: a) that he had not received the bundle for the hearing, and b) he had not received the costs schedule. The Tribunal asked Mr Bullock to check the files to determine the position with regard to these issues and allowed a short break for these checks to be made.

14. After the short adjournment, Mr Bullock told the Tribunal that there was no doubt from the correspondence that the Respondent had received the Rule 5 papers. The Tribunal noted that the Respondent had certainly received the Rule 5 bundle on or before 31 January 2014, as he had applied for a stay of the proceedings (which was considered at a Case Management Hearing ("CMH") on 18 March 2014, and that the substantive hearing had been listed to take place on 27 March 2014.

15. Further, it was submitted that there was no doubt that the Respondent had received the Rule 7 Statement and supporting papers. The Tribunal had given permission on 6 October 2015 for that Statement to be filed and served. It was noted that the Tribunal had sent the Memorandum and Rule 7 Statement to the Respondent in October 2015, but these had been returned as the Respondent had moved to a different prison. On 4 December 2015 the Tribunal sent to the Respondent four letters, including one enclosing the Rule 7 Statement and supporting documents. On 8 December 2015 the Respondent wrote to the Tribunal. His letter included the following:

> "Thank you for the four letters dated 4 December 2015"; and
> "I have already received the supplementary statement".

16. Mr Bullock told the Tribunal that a letter with the costs schedule had been sent to the Respondent, to the prison address used on 12 April 2016 in the Respondent's application to cancel the telephone conference, under cover of a letter of 7 April 2016. That letter had not been acknowledged. It was noted that in his letter to the Tribunal dated 12 April 2016 the Respondent had indicated that he may have home leave so it may be that he would next receive post on 15 April 2016.

17. Mr Bullock submitted that the Respondent had received all of the papers necessary for the hearing and had had notice of the hearing date. The Tribunal was invited to proceed in the absence of the Respondent.

Tribunal's Decision

18. The Tribunal noted that the Respondent had referred in some correspondence to not having received a hearing bundle. However, in this case there had been no need to prepare a hearing bundle; the case was to proceed on the papers already submitted to the Tribunal and there had been no need to duplicate those papers by placing them into a "new" bundle.

19. The Tribunal was satisfied that the Respondent had received the Rule 5 and Rule 7 Statements and had had the opportunity to respond to them. Further, he had received notice of the hearing and his correspondence confirmed that he was well aware of the hearing date. The Tribunal was satisfied that the Respondent had been properly served with the proceedings. It may be that he had not received the costs statement until about 15 April, but that was not a bar to proceeding in the Respondent's absence.

20. The Tribunal went on to consider whether it was appropriate to proceed with the hearing in the absence of the Respondent. The judicial guidance on the factors to be considered when deciding whether or not to proceed was set out in R v Hayward and others [2001] EWCA Crim 168 ("Hayward"), as approved on appeal by the House of Lords (under the name R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 ("Jones")). This decision had been applied to disciplinary proceedings in the matter of Tait v Royal College of Veterinary Surgeons [2003] UKPC 34. At paragraph 22 of the Hayward decision, which concerned a criminal matter, it was made clear that in general a defendant had a right to be present at his trial. This right could be waived. The trial judge had a discretion as to whether a trial should take place or continue in the absence of a defendant but,

> "That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if a defendant is unrepresented.
>
> In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must take into account all of the circumstances of the case."

The judgment then set out 11 factors which should be considered.

21. The Tribunal noted that not all of the 11 factors were relevant in this case – some of them referred specifically to criminal cases. The most relevant were (using the numbering in the Hayward case):

    (i) The nature and circumstances of the defendant's behaviour in absenting himself from the trial… and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
    (iii) the likely length of such an adjournment;
    (iv) whether the defendant, though absent, is, or wishes to be legally represented at the trial or has, by his conduct, waived his right to be represented;
    (v) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
    (viii) the seriousness of the offence, which affects defendant, victim and public;
    (ix) the general public interest… that a trial should take place within a reasonable time of the events to which it relates.

22. In this instance, the Tribunal was satisfied that the Respondent had voluntarily absented himself from the hearing. Arrangements had been made for the Respondent to attend by telephone – his personal attendance not being possible – but the Respondent had chosen to cancel that arrangement. There was no reason to believe that the Respondent would attend if the matter were adjourned for a short period.

There was a clear public interest in proceeding with serious regulatory and disciplinary matters such as this within a reasonable time. In this instance, the proceedings had begun in 2013 and it was appropriate to deal with them without further delay. In all of the circumstances, the Tribunal was satisfied that the Respondent had waived his right to attend and was voluntarily absent. It was fair and just to proceed in his absence, in the circumstances of this case.

Preliminary Matter (2) – Proceeding on Rule 7 Statement

23. In a letter to the Tribunal dated 2 March 2016 the Applicant indicated that it wished to proceed on the Rule 7 Statement only, with the matters in the Rule 5 Statement to "lie on the file". After the Tribunal had announced its decision to proceed in the absence of the Respondent, Mr Bullock applied for permission to proceed on the Rule 7 Statement only and to withdraw the Rule 5 Statement. Mr Bullock submitted that the matters in the Rule 5 Statement would not affect the appropriate sanction in this case. Further, proceeding on the Rule 7 Statement alone would shorten the hearing and thus save costs and the Tribunal's time.

24. The Tribunal determined that the application was reasonable and should be granted. It was just and proportionate to proceed with the matters in the Rule 7 Statement alone. The Tribunal noted that the convictions referred to in the Rule 7 Statement arose from at least some of the facts and matters dealt with in the Rule 5 Statement, so there was considerable overlap. The Rule 5 Statement and the allegations therein were withdrawn and the matter was to proceed on the basis of the Rule 7 Statement alone.

Factual Background

25. The Respondent was born in 1960 and was admitted to the Roll of Solicitors in 1984. His name remained on the Roll at the date of the hearing but he did not hold a current Practising Certificate.

26. From 20 September 1994 to 9 November 2011 the Respondent was a partner in Shepherd Evans of Mulberry House, 10 Little Street, Macclesfield SK10 1AW ("the Firm"). The Respondent was expelled from the Firm in November 2011.

27. The remainder of this section deals only with the Rule 7 allegations, not the details contained in the Rule 5 Statement.

28. On 20 February 2015 the Respondent was convicted on indictment, on his own confession, of eight counts of fraud by abuse of position (contrary to Section 4 of the Fraud Act 2006) and one count of false accounting (contrary to Section 17 of the Theft Act 1968).

29. On 27 April 2015 the Crown Court in Manchester sentenced the Respondent to 3 years' imprisonment. It further ordered the Respondent to pay the total sum of £145,000 in compensation and £700 in prosecution costs.

30. A copy of the Certificate of Conviction, dated 26 May 2015, was produced to the Tribunal and relied on by the Applicant as proof of the convictions.

31. It was understood that the Respondent initially faced a 26 count indictment; the nine guilty pleas were accepted by the Crown as being reflective of the Respondent's overall criminality. At least two of the matters to which the Respondent pleaded guilty were matters which were referred to in the Rule 5 Statement.

32. In summary, the offences for which the Respondent was convicted involved the withdrawal of money from the client account of the Firm in which he had been a partner, in the period between April 2009 and July 2011. The Respondent had concealed the withdrawals by falsifying client ledgers and other documents on client files. In one instance, the Respondent withdrew £100,000 of damages due to his client Mr M, having misled the client as to the amount awarded in compensation.

33. The total amount withdrawn from the Firm's client account was £145,117.95. Some of this was used to pay for the Respondent's personal tax liability and some was paid to the Respondent by cheques made out to himself. £50,000 of the money withdrawn from client account remained in the Firm's office account.

34. Section 4 of the Fraud Act 2006 states:

> "(1) A person is in breach of this section if he –
>
> (a) Occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
> (b) Dishonestly abuses that position, and
> (c) Intends, by means of the abuse of that position –
> (i) To make a gain for himself or another, or
> (ii) To cause loss to another or to expose another to a risk of loss.
>
> (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act."

35. Section 17 of the Theft Act 1968 states:

> "(1) Where a person dishonestly, with a view to gain for himself or another, or with intent to cause loss to another –
>
> (a) Destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
> (b) In furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular;
>
> He shall, on conviction or indictment, be liable to imprisonment for a term not exceeding seven years."

36. The mens rea of both offences was dishonesty.

37. A copy of a transcript of the trial Judge's sentencing remarks was provided to the Tribunal. This included the following passages:

- "You committed these offences whilst working as a solicitor. At the material time you were a partner in your practice, Messrs Shepherd Evans in Macclesfield, Cheshire. The offending represents a series of acts of dishonesty undertaken by you to take client money and then cover up the misappropriation by you. You defrauded a significant amount of money in this way… The evidence in front of me suggests that you did so, it seems, entirely for your own benefit to, in turns, fund your gambling habit. As you well know, Mr Shepherd, yours were the acts of a greedy and selfish man, taking money from vulnerable people to stave off your creditors and, in particular it seems from the evidence, Her Majesty's Revenue and Customs".

- "The dishonest activity took place over a significant period of time, between April 2009 and November 2011 and inevitably a degree of sophistication was required to conceal this activity from others in the solicitors' practice and often clients themselves. You did this by creating a dishonest web of misleading and forged documents supported by, on frequent occasions, you telling bare-faced lies. As I have already said, the monies were taken from more than one client account, thus exposing more than one client of the practice to the risk of loss".

- "In total, you defrauded a sum of just over £145,000 from clients of the practice. Of this sum, it appears that £50,000 remains in the office account of the practice, that is not having subsequently been taken out of the Firm and spent by you. Your dishonesty, of course, relates to the £145,000 because this was the money you took belonging to clients and as you well know, Mr Shepherd, at the time client money is sacrosanct and cannot be placed into the office account, save to say (for) profit costs reasonably charged. There is no suggestion at all in this case that that was the case".

- "Your dishonesty has had far more far-reaching effects than the extremely serious consequences of clients' money being put at risk in the way I have described. Other serious consequences are as follows. Firstly, you have caused significant harm to your practice and of course the employees thereof. Secondly, you have caused significant harm to your business partner who has had to deal with the ruinous consequences of your actions within his professional and, indeed, personal life. Any reading of the victim personal statement of Mr Evans makes clear the devastating effect your greed has had upon him, his family and, as I have just alluded, the business itself. Thirdly, you have caused significant harm to the reputation of the legal profession. Quite rightly, the public have an expectation that they can trust solicitors to look after their money with probity and honesty. Your selfish and dishonest acts undermine public confidence in solicitors accordingly. Finally, of course, you have destroyed your own professional career but, as your advocate properly says, you only have yourself to blame for this".

- "This offending amounts to a naked and blatant abuse of (the) trust imposed upon you as a solicitor. It was sophisticated and continued over a long period of time…"

- "There is some mitigation available to you. Firstly, whilst you failed to assist the police in their interview with you by declining to answer questions, you have pleaded guilty… Secondly, I have read the pre-sentence report in your case and extend to you what mitigation is apparent from its content. Thirdly, I have read a psychiatric report in your case from [Dr A]. It appears that at the time of this offending you were suffering from a moderate depressive episode… Thirdly (sic) as is obvious from the fact that you are currently a solicitor, you have no previous convictions recorded against you. Fourthly… I accept that money is to be repaid and therefore the loss has been made good, but this has occurred long after the harm you caused to people's life has been done."

Witnesses

38. No witness evidence was given, and the matter proceeded on the papers, in particular the Certificate of Conviction.

Findings of Fact and Law

39. The Applicant was required to prove the allegation 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.

40. **Allegation 3.1 - (The Respondent) was convicted of 8 counts of fraud by abuse of position (contrary to Section 4 Fraud Act 2006) and 1 count of false accounting (contrary to Section 17 Theft Act 1968) on 20 February 2015, and thereby failed to:**

    3.1.1 Uphold the rule of law and proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the Principles");
    3.1.2 Act with integrity, in breach of Principle 2 of the Principles;
    3.1.3 Behave in a way that maintained the trust that the public placed in him and the provision of legal services, in breach of Principle 6 of the Principles.

40.1 The Respondent admitted this allegation.

40.2 The Tribunal noted that in his letter of 14 January 2016 the Respondent, in dealing with the issue of whether attendance at the hearing would be possible by video-link or telephone, had commented, "What's the point?" He had gone on to say,

> "… I may as well just admit all the accusations, whatever they are (as I don't have any papers here), I pleaded guilty, paid all the money back and am in prison on a three-year sentence. There is nothing else you or anyone else can do to me. All that the process has demonstrated to me is my wish to cut links with a profession that is no longer honourable or respected.
>
> Please enter your judgement, by consent, to striking me off the Roll. If you want details of mitigation, then I will happily relay the true story, not the one

remotely set out in the sentencing hearing transcript – another example of the travesty of our justice system. I relayed much to my solicitor/barrister who seemed to forget half of it. Anyone who knows me I am an honest, hard working and dedicated person, sadly I made mistakes but truly those around me have ripped me off remorselessly."

40.3 The Tribunal was concerned that this "admission" to the allegations appeared to be equivocal. In his letter received by the Tribunal on 18 February 2016, the Respondent stated:

> "Further to recent correspondence let me make matters clear.
>
> It will serve no purpose to waste your time or that of the SRA on 19 April. From the outset I asked for my name to be removed from the 'Roll'. To facilitate that let me formally admit all the allegations made within these proceedings. Whilst I may have extensive mitigation (much of which was not mentioned at the Crown Court to my eternal annoyance) it does not detract from the facts – I borrowed client monies and concealed this from the clients – I accepted the prosecution on legal advice that permanent deprivation was not required to prove the offence – even temporary deprivation (where I could prove intention to repay – as I could) was insufficient and to obtain as much credit as possible I pleaded guilty even though parts of the money alleged were and remain disputed.
>
> So, please enter my admission to the allegations. I will, however, set out the true circumstances of which I was going through and why what took place happened. I have no reason to lie as all the damage is done, accepted and repaid".

40.4 The Tribunal noted that this appeared to be a full admission. Reference to the Respondent's mitigation will be made below.

40.5 The Tribunal considered all of the evidence submitted, including the Respondent's submissions.

40.6 There was no doubt at all that the Respondent had been convicted, on his own confession, of nine offences of dishonesty. His dishonesty involved taking money belonging to clients and using it for his own benefit. The Tribunal noted that the money had been repaid to the clients and those affected, following the investigation by the Applicant and by the police. There could be no doubt that the convictions for these offences showed that the Respondent had failed to uphold the rule of law and the proper administration of justice, act with integrity and behave in a way that maintained the trust the public place in him and the provision of legal services. This allegation had been proved in full, to the required standard.

Previous Disciplinary Matters

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

Mitigation

42. The Tribunal noted the contents of the Respondent's letters of January and February 2016 which set out matters the Respondent put forward in mitigation. The Tribunal noted in particular the following matters:

42.1 The Respondent alleged that his former business partner had overdrawn his capital account;

42.2 The Respondent referred to his divorce and the financial difficulties that had created for him, particularly as the proposed sale of the former matrimonial home coincided with the recession;

42.3 The Respondent referred to an unexpected tax demand, for which no provision had been made;

42.4 With regard to the offences themselves, the Respondent stated in his letter:

> "Despite the suggestion that this started in 2009 this is not true. The creation of a bank account and ISA's for £10,000 of client money was a genuine investment for the client, I accept it was done without consultation (which was unwise) but there was no intention to use it then nor was it used (without replacing it) until after my expulsion – in fact the account will show the funds were still there when I was expelled and beyond and when I asked my solicitor if I should hand it over when asked in January 2012 he advised not until the investigation was complete. I cannot access documents at present but the account balances backs this up – no mention was made of this in court despite me pointing this out.
>
> The first time I borrowed money was, in fact, in February 2010 from the estate of [Ms SS]. This was exactly at the time I was being pressed by the Revenue – after the 31st January deadline. At the time I had accepted an offer on the house of £1.3 million so it was intended to be a short term loan. The estate was a long drawn out matter and this was insurance monies paid out pre-probate. The cheque was drawn directly to the Revenue and conceded on an advance payment on inheritance tax. The client (the executor) knew of the funds, they were on a computer printout list of assets he gave me – … and he knew (they) would be refunded (from my house sale) – hence never an intention to deprive.
>
> The house sale fell through the day it was due to exchange – I was devastated….
>
> The subsequent offences were of a similar nature and in similar circumstances (where clients knew of the funds) the files were never closed and kept together in my room so I knew what needed replacing. Most funds went direct to the Revenue only, I recall, one cheque went to my account – before being paid to the Revenue – I never used any personally, only to pay the Revenue."

42.5 With regard to medical matters, the Respondent stated:

> "A later assessment confirmed what I now realise – I was then and since suffering from moderate to severe depression (the Judge unkindly just said moderate – the report says moderate to severe) …"

The Respondent then set out further information about his ill health which is redacted to protect his privacy, and concluded, "I regard myself as now recovered".

42.6 With regard to the criminal convictions concerning the client Mr M, the Respondent stated in his letter:

> "In this matter I did err, however the truth is far from that which was presented.
>
> The client, advised by senior experience counsel, had expected about £150,000 maximum. The case took 16 years due to being 5 at the time and constant assessments of him over the years due to the effect on his education/employment. The above figure followed a detailed conference pre-trial. To my surprise an offer of £550,000 inclusive of all costs was made. This is significant. Later statements, including by the insurance company solicitor say I suggested a global figure –THIS IS NOT TRUE – it was [unclear] and gave rise to my costing the file (which was huge). The true costs figure was about £200,000. I told the insurance company this – they said they would allow £100,000 which was way too low. They maintained their position. At the time (end 2010/early 2011) I was very short of funds for tax (had loan application refused and the Firm (Shepherd Evans) was up to its overdraft limit (with Mr Evans still owing £70,000+ to the Firm). I took a rash decision to avoid prolonged taxation with the client and misinformed him of the figure at £350,000. Ironically, he won and I was (and counsel) flabbergasted at the offer which was way beyond his wildest dreams (and his parents). I concealed matters, took £50,000 for tax and left the extra £50,000 in the Firm along with the £100,000 which re-floated the Firm and saved everyone's jobs.
>
> This may seem easy to say but I still intended to give £50,000 back to the client as soon as the sale went through.
>
> By now my health was in shreds. It may be easy to say now but anyone who has known me over a 30-year career will know me as straight and honest."

42.7 The Respondent made various allegations about his business partner's conduct in relation to the investigation and prosecution of the criminal case. These are not repeated here as there was no opportunity for the business partner to respond to the criticisms.

42.8 The Respondent indicated that he had had to repay both the £95,000 he had taken and £50,000 which he had not received; payment had been made in full.

42.9 With regard to the mitigation advanced on his behalf at the Crown Court, the Respondent wrote that very little had been made in Court of his contention that he had been subject to blackmail. The Respondent stated:

> "…At one point the Judge asked what evidence there was. My Counsel had all the bank receipts but the Judge asked for more. Despite my solicitor and counsel having:
>
> 1. Copy e-mails of threats made which are in the CPS depositions;
> 2. The CPS acknowledging there was evidence (they kept quiet on the day);
> 3. The Police even attempting to visit me to discuss protection for my family – little or nothing was made of it.
>
> It was left as if it was made up. I had reported years of threats to myself, a member of staff and most of all to my then wife and child. Visits were not only made to my house, [unclear] I was followed across Cheshire and notes delivered to my parents and my new partner – I was taken away by the police. So yes plenty of evidence of more threats – none of which was given to the Judge.
>
> None of this excuses my actions but in a period of 2008-2011 I was divorced, had four failed house sales, harassed by the Revenue due to poor financial advice, blackmailed and threatened and [redacted allegations against the Respondent's business partner].
>
> Yes, I did wrong but I was trying to protect my family, including [my child], ex-wife, partners and parents, protect my business and just until all could be resolved by selling my house. Through all this my health suffered and I was at one point admitted as an emergency (just after the SRA interview) …I also developed a gambling addiction for a while."

42.10 The Respondent went on to state:

> "I apologise to all concerned but as stated, none of this was for permanent gain or am I dishonest by nature. Desperation and depression are a dangerous cocktail and I have lost nearly everything.
>
> I hope this puts matters into context. All of this is true, some of the case present(ed) is at best misleading and in parts simply not true but upon the strict interpretation of the Fraud Act I was guilty and accept that. The full facts hopefully present a more accurate account. Yes, I remained silent to the police (on strict advice of my solicitor) but a lot of this was relayed openly to the SRA in March 2012. They failed to advise my solicitor they were looking at the [Mr M] case – I actually volunteered part of that, at which point they drew out the document they had with them. If that was a test of my openness then I believe, to a large extent, I passed."

42.11 The Respondent stated in his February 2016 letter:

> "I have always advised I do not seek, nor ever will, to practise as a solicitor. I have not since November 2011. I formally accept the allegations and do not intend to appear. I cannot in any event. I expect to be struck off and accept that."

42.12 The Respondent reiterated that during the period 2010/11 in particular he was not himself. He accepted that he had acted improperly and out of character. He had always had the intention to repay everyone.

Sanction

43. The Tribunal had regard to its Guidance Note on Sanction (December 2015), to all of the facts of the case and the submissions of the parties.

44. At the time of the events giving rise to the convictions the Respondent had been a solicitor of about 25 years' experience. The offences of which the Respondent had been convicted, on his own plea, were serious and committed in the course of his practice as a solicitor. The Tribunal noted the partial explanations and mitigation for the offences which had been submitted by the Respondent in his correspondence, but noted there was no substantive evidence to support those submissions.

45. The Tribunal noted the sentencing remarks of HHJ Potter in the Manchester Crown Court. In particular, the Judge had noted that:

- "The offending represents a series of acts of dishonesty undertaken by you to take client money and then cover up the misappropriation by you."

- "…inevitably a degree of sophistication was required to conceal this activity from others in the solicitors practice and often from clients themselves. You did this by creating a dishonest web of misleading and forged documents supported by, on frequent occasions, you telling bare-faced lies…"

- "This offending amounts to a naked and blatant abuse of (the) trust imposed upon you as a solicitor."

46. It was clear that the offending had continued over a significant period of time, rather than being a one-off offence. The offences were all dishonesty offences. The Tribunal noted that the offending was deliberate, calculated and repeated. At least one vulnerable person was directly affected. There had been concealment by the Respondent of his wrong-doing and he knew that what he was doing was in material breach of his professional obligations. By his actions, the Respondent had caused harm to clients, the profession and his business partner. A personal injury client, Mr M, had been misled.

47. The Respondent had indicated that he had intended to repay the monies he had taken when his house was sold. Repayment was in fact made after the conviction. There was little in the way of mitigation for the Respondent, save that he had no previous convictions or disciplinary matters recorded against him. The Tribunal noted what

the Respondent had said concerning blackmail said to have been carried out against him and the matter of a gambling problem, referred to both by the sentencing Judge and the Respondent himself. However, those matters did not reduce the seriousness of the offences, which had led to this very serious case before this Tribunal.

48. The normal and proportionate sanction where a solicitor was guilty of dishonesty was to strike the solicitor from the Roll, save where there were exceptional circumstances. No exceptional circumstances had been advanced by the Respondent and the Tribunal, having considered the matter carefully, concluded that there were no exceptional circumstances. In these circumstances, the right and proper order was to strike off the Respondent.

Costs

49. Mr Bullock, on behalf of the Applicant, made an application for the Respondent to pay the costs of these proceedings and submitted a costs schedule in the total sum of £7,400. This included investigation costs of £1,350, legal costs of £4,862 (all calculated at £130 per hour, save for travel time which was calculated at half of that rate) and disbursements of £990 (plus VAT on the disbursements).

50. Mr Bullock submitted that the costs in this case appeared higher than normal for a "conviction case", as this had turned out to be. However, there had been CMHs on 18 March 2014, 23 September 2014, 14 November 2014 and 6 October 2014, together with the adjourned hearing on 27 March 2014. The case had begun before the conviction, with detailed allegations made in the Rule 5 Statement. Further, the items claimed for communications were higher than may appear normal due to the particular circumstances of this case.

51. Mr Bullock submitted that it was accepted that the Respondent's present income was very limited. However, no information had been given by the Respondent concerning the proceeds of sale of the former matrimonial home. It was submitted that there was insufficient information for the Tribunal to make an order postponing enforcement of any costs award.

52. The Tribunal considered what the Respondent said about his financial position.

53. First of all, it was noted that his income was £14.50 per week, being his prison income.

54. In his letter of February 2016, the Respondent stated, with regard to the sale of the house:

> "This subsequently had three more sales fall through at decreasing sums. It transpired my now ex-wife was failing to maintain (badly) which enabled her to stay for six years until sale in August 2014 – two days after I was charged. If any one of the sales had gone through then either this would never have happened or funds would have been replaced in full with no harm done."

55. With regard to his financial position generally, the Respondent had stated:

> "Financially I am without income, have no bank account any more (closed by the bank) and expect to seek job seekers allowance when I am eventually released. I have a pension fund for the future at some point but even this will have been damaged by the market condition recently. I cannot access any of this for the time being.
> If any costs award is made it will remain unpaid along with other debts I still have to Santander and family and RBS totalling just under £50,000 at last count. In light of that I would invite no award be made".

56. The Tribunal considered carefully the appropriate and proportionate costs for this case. It noted that the costs claimed were higher than usually seen for a case where the Respondent had been convicted of a serious offence. However, there had in this case been a number of preliminary hearings, which had either been initiated by the Respondent (for example in relation to his application to stay the proceedings) or there had been a good reason for those hearings to take place. A number of those hearings had taken place by telephone, thus minimising the costs involved. The case had started before the conviction, following a significant investigation; the case had initially been more complex than it had been in the light of the convictions.

57. The Tribunal was satisfied that the rates claimed and time spent were reasonable and that the proportionate costs of this case should be assessed in the sum claimed, i.e. £7,400.

58. The Tribunal went on to consider whether the award of costs should be reduced or its enforcement postponed in the light of what the Respondent said about his financial position. The Tribunal noted that at the CMH on 6 October 2015 the Tribunal had given a direction that if the Respondent wanted his means to be taken into account with regard to sanction or costs he should file and serve a statement of means, including details of property, income and outgoings, supported by documentary evidence, at least 28 days before the hearing. The Tribunal noted that the Respondent would have some difficulty providing full information and documents, given that he was presently serving a custodial sentence. However, it was concerned that he had not addressed in his correspondence an important issue regarding the sale proceeds of his former home.

59. The transcript of submissions made at the sentencing hearing made it clear that the sentencing Judge had ordered the Respondent to pay back the £145,000 or thereabouts which he had misappropriated. It had been stated by the Respondent's counsel that "Fortunately, in this case there is equity of £344,000" i.e. after the sale of the property. The Tribunal noted that approximately £146,000 was to be paid from this by the Respondent in respect of repayment and a contribution to the prosecution costs. This left approximately £200,000 about which the Respondent had made no comment. It may be that all or part of that sum had been disbursed to pay other liabilities but the Respondent had not given any explanation about that. He was well aware of his obligations to give information such as this in order to comply with the Tribunal's directions.

60. The Tribunal was satisfied that in the circumstances of this case, the Applicant should be allowed to make enquiries, and enforce the costs order for £7,400 in an appropriate and realistic way. If, indeed, there was £200,000 or thereabouts from the sale proceeds which had not otherwise been used the Applicant may be able to obtain payment of its costs.

Clerk's Note

61. The Respondent's letter dated 15 April 2016 commented on the Applicant's costs schedule but did not contain any further information about the Respondent's means. The letter was received after the hearing had been concluded and so was not taken into account in the Tribunal's deliberations. The Respondent had acknowledged in his letter that it may not arrive before the hearing.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, STEVEN RONALD SHEPHERD, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,400.00.

Dated this 28th day of April 2016
On behalf of the Tribunal

J C Chesterton
Chairman