

The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 18 November 2014 in respect of the Tribunal's findings of dishonesty. The appeal was heard by Mrs Justice Carr DBE and Judgment handed down on 20 November 2015. The appeal was dismissed. Benyu v Solicitors Regulation Authority [2015] EWHC 4085 (Admin).

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11197-2013

Case No. 11225-2014

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

LUCIA SHINGIRAI BENYU

First Respondent

RONNIE BENYU

Second Respondent

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Before:

Mr K. W. Duncan (in the chair)

Mrs E Stanley

Lady Bonham Carter

Date of Hearing: 30<sup>th</sup> September 2014 and 1<sup>st</sup> & 2<sup>nd</sup> October 2014

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### Appearances

Mr Edward Levey, Counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH for the Applicant.

The First Respondent appeared and was represented by Mr Edward Henry, Counsel of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London EC4R 0EU.

The Second Respondent did not appear and was not represented.

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## JUDGMENT

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## **Allegations**

1. The allegations against the First Respondent, Lucia Shingirai Benyu, were that:
  - 1.1 The Respondent failed to maintain properly written up and accurate accounting records in breach of Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR 1998"); and/or where such conduct relates to a period of after 6 October 2011, Rule 29 of the SRA Accounts Rules 2011 ("SAR 2011");
  - 1.2 The Respondent has authorised or permitted withdrawals of client money from client account in breach of Rule 22(1) SAR 1998 and Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007") and/or where such conduct took place after 6 October 2011, Rule 20 SAR 2011 and Principles 2, 3, 4, 6 and 10 of the 2011 Code of Conduct ("2011 Code");
  - 1.3 The Respondent has failed promptly, or at all, to remedy the said breaches of SAR 1998 and/or SAR 2011 in breach of Rule 7 SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Rule 7 of SAR 2011 and Principles 2, 3, 4, 6 and 10 of the 2011 Code;
  - 1.4 The Respondent has failed to manage the financial affairs of the firm, Peters & Company, Solicitors, ("Peters and Co") either effectively or properly in breach of Rules 1.02, 1.04, 1.06 and 5.01(j) of the 2007 Code or, where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6, 8 and 10 and Outcome 7.4 of the 2011 Code;
  - 1.5 The Respondent has submitted correspondence and/or documents to third parties which were intended to mislead contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2,4,6 and 10 and Outcome 1.1 of the 2011 Code;
  - 1.6 The Respondent has created correspondence and/or documents which were false contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code;
  - 1.7 The Respondent continued to act on behalf of clients when there existed a conflict between her own interests and those of her clients contrary to Rules 1.02, 1.04, 1.06, 3.01(1) and (2)(b) and 3.04 of the SCC 2007 and/or where such conflict exists on or after 6 October 2011, Principles 2, 3, 4, 6 and 10 and Outcome 3.4 of the 2011 Code;
  - 1.8 In respect of allegations 1.2, 1.3, 1.5, 1.6 and 1.7, it is alleged that the Respondent acted dishonestly although it is not necessary to prove dishonesty to prove the allegations themselves;
  - 1.9 The Respondent failed to provide to a client adequate information regarding costs contrary to Rule 1.02, 1.04, 1.06 and 2.03 SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4 and 6 and Outcome 1.13 of the 2011 Code.

2. The allegation against the Second Respondent, Ronnie Benyu, was that:
- 2.1 Having been employed or remunerated by a solicitor, but not being a solicitor, he has, in the opinion of the SRA, occasioned or been a party to, with or without the connivance of the solicitor by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors practice which involved conduct on his part of such a nature that, in the opinion of the SRA, it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

### **Documents**

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

Applicant:

*In respect of the First Respondent:*

- Application dated 8 November 2013;
- Rule 5 statement dated 8 November 2013, together with exhibit bundle MRH1 which included the witness statement of Mr Andrew Campbell dated 28 October 2013;
- Witness statement of Mr Steven Campbell dated 5 November 2013, together with exhibit bundle SC1;
- Document headed “The Lord Chancellor’s Visitors” relating to Mr Frederick Campbell;
- Bank statements relating to Peters & Co 6 April – 9 August 2012;
- Applicant’s schedule of costs.

*In respect of the Second Respondent*

- Rule 8 statement dated 24 February 2014, together with exhibit bundle MRH1;
- Applicant’s schedule of costs.

First Respondent:

- Witness statement of the First Respondent, Lucia Shingirai Benyu, dated 10 February 2014, together with exhibit bundle LSB1;
- Witness statement of Ms Helena Abrell dated 22 September 2014;
- Bundle of 24 personal testimonials relating to the First Respondent.

Tribunal

- Memorandum of case management hearing on 3 March 2014.

### **Preliminary Matter (1)**

4. The Tribunal noted that the Second Respondent was neither present nor represented. However, notice of the proceedings had been served on the Second Respondent's solicitor by recorded delivery, which had been signed for by the solicitor.
5. In his solicitor's letter to the SRA in November 2013, which formed part of the exhibit bundle, it was said that:
 

“Your comments concerning s43 have been noted by my client. He is not working in the legal profession and has no intention of doing so in the future. My client on reflection acknowledges that this is the best step to take in relation to all those concerned.”

### The Tribunal's Decision on the Preliminary Matter (1)

6. The Tribunal was satisfied that there had been good service of the proceedings under Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”).
7. The Tribunal had noted the content of the letter from the Second Respondent's solicitor and had applied the principles in R v Hayward, Jones and Purvis [2001] EWCA Crim 168. It had determined under Rule 16 of the SDPR that in all the circumstances, it would exercise its power to hear and determine the application notwithstanding that the Respondent had failed to attend in person or was not represented at the hearing.

### **Preliminary Matter (2)**

8. Mr Henry referred to the witness statement of Helena Abrell dated 22 September 2014. It was accepted that proper notice of the statement had not been given but he understood that the Applicant had no objection to its admission into evidence.
9. Mr Levey confirmed that there was no objection but said that in the circumstances no weight should be given to this statement.

### The Tribunal's Decision on Preliminary Matter 2

10. The Tribunal would allow the witness statement of Helena Abrell into evidence.

### **Factual Background**

11. The First Respondent, Lucia Shingirai Benyu, was born on 1 May 1972 and was admitted to the Roll of solicitors on 2 December 2002.
12. At the material time, the First Respondent practised as a sole practitioner under the style of Peters & Co, Solicitors (“the firm”), of Terminus House, Terminus Street, Harlow, Essex, CM20 1XA. On 1 July 2009, the First Respondent was automatically authorised as a Registered Sole Practitioner and she continued to practise as one. Her husband, Mr Ronnie Benyu, the Second Respondent, held the position of Practice

Manager and Bookkeeper. He had responsibility for the accounting function of the firm. He ceased employment with the firm in or around October 2012.

13. An investigation of the firm, and the conduct of the Respondents, was undertaken as a consequence of a complaint being made by Mr Andrew Campbell, the son of the late Mr Frederick Campbell who, up until his death on 1 May 2012 and throughout the material time, had been a client of the firm.
14. By a letter of 29 January 2013 solicitors instructed by the First Respondent, submitted a “self-report” to the SRA.
15. The investigation, which was undertaken primarily by an Investigation Officer (“IO”) from the SRA, Mr Jonathan Chambers, commenced on 30 January 2013. At the conclusion of that investigation the IO produced a Forensic Investigation Report (“FIR”) dated 22 February 2013.

#### Failure to Maintain Proper Accounting Records

##### Allegation 1.1 and Allegation 2.1

16. The client ledger account maintained for Mr “O” Deceased recorded a receipt of £154,685.49 on 10 August 2012, despite the fact that there had been no actual receipt of that amount. The entry gave the appearance of replacing the improper payments by way of transfer of funds that had been made from this account to that of Mr Frederick Campbell.
17. There were two versions of client ledger accounts for Mr Frederick Campbell which differed materially in relation to dates and amounts in respect of personal loans, gifts and costs transfers. Neither version of Mr Frederick Campbell’s ledger account recorded accurately the firm’s dealings with his monies.
18. There was an improper transfer of £30,556.72 from Mr “W”’s client account to office account and a cash shortage on client account.

#### Cash Shortage

##### Allegations 1.1, 1.2, 1.8 and 2.1

19. The IO identified thirteen improper payments being made from the client bank account totalling £425,242.21, partially rectified by sixteen receipts totalling £353,957.50. These payments and receipts were set out in a schedule prepared by the IO. The schedule illustrated that, in varying amounts, there had been a cash shortage on client account since 8 June 2010 to the date of the commencement of the investigation on 30 January 2013.
20. The First Respondent agreed the accuracy of the Schedule which showed that, as at the date of the commencement of the investigation, a minimum cash shortage existed of £71,284.71.

21. The cash shortage arose as a result of improper payments being made on two client matters, the first relating to Mr Frederick Campbell from whom the First Respondent took gifts totalling £70,000.00 and loans totalling £170,000.00 out of total funds deposited with the firm on 1 April 2010 of £244,710.37.
22. Another improper transfer of £30,556.72 was made from client to office account on 28 March 2012 in the sum of £30,556.72 on a client matter in the name of Mr W. The monies improperly transferred from the client account in the name of Mr W were not replaced.
23. Whilst £70,000.00 was properly repaid to Mr Frederick Campbell's estate from office monies, the balance of £154,685.49 (the loans of £170,000.00 less costs claimed by the First Respondent) was funded via the improper transfer from the client ledger in the name of Mr "O" Deceased to that of Mr Frederick Campbell. This transferred the cash shortage from one client to another.

Three Gift Transfers - £70,000.00  
Allegations 1.2, 1.5, 1.6, 1.7 and 1.8

24. At the time Mr Frederick Campbell first instructed the First Respondent on 21 July 2009, he was aged 84 years and a patient of the Court of Protection.
25. In January 2010, an application for Mr Frederick Campbell to be discharged as a patient was lodged by the First Respondent on his behalf.
26. On or about 1 April 2010, on the basis that Mr Frederick Campbell did not operate a bank account at that time, funds belonging to him totalling £244,710.37 were released to the firm, the application for Mr Frederick Campbell's discharge as a patient of the Court of Protection having been successful.
27. The IO prepared a schedule of dates representing attendances by the First Respondent on Mr Frederick Campbell based upon her manuscript attendance notes. The schedule showed nineteen attendances from 21 July 2009 to 10 April 2012. Such attendances were in person as Mr Frederick Campbell did not possess a telephone.
28. On 8, 11 and 29 June 2010, the sums of £20,000.00, £30,000.00 and £20,000.00 respectively, totalling £70,000.00, were transferred to office account from Mr Frederick Campbell's money.
29. The three payments were expressed by the First Respondent to be by way of gift from Mr Frederick Campbell. At the time of the first instalment on 8 June 2010, the First Respondent had attended on Mr Frederick Campbell on eight occasions since the initial instruction of 21 July 2009.
30. The only record of the gifts being made, over and above the detail contained within the client ledger, were handwritten attendance notes prepared by the First Respondent.
31. Whilst there was reference, for example, in the attendance notes of 26 February 2010 and 12 April 2010, to the First Respondent recommending to Mr Frederick Campbell that he should see another solicitor, Mr Frederick Campbell declined both to take

independent advice and to commit to writing that the money was paid by way of a gift.

32. The transfer of £20,000.00 on 29 June 2010 enabled the firm to pay staff wages of £27,959.20 on 30 June 2010 without exceeding its overdraft limit of £50,000.00.

Allegations 1.5, 1.6 and 1.8

Letter of 21 April 2010

33. At a meeting with the First Respondent on 6 August 2012 Mr Andrew Campbell was provided with a copy of the files of papers relating to his late father.
34. In the First Respondent's handwritten note of that meeting it was stated that she had confirmed to Mr Andrew Campbell and his brother that: "You have all the files that we hold in relation to your father".
35. Within those files, Mr Andrew Campbell located a copy of a letter said to have been sent to Mr Frederick Campbell on 21 April 2010.
36. Following the death of Mr Frederick Campbell, his other son, Steven, attended Mr Frederick Campbell's home to continue to organise his late father's affairs. In the course of that process, he came into possession of the correspondence sent to Mr Frederick Campbell by the First Respondent. One piece of correspondence was the original of the letter of 21 April 2010.
37. Whilst the first page of the file copy and of the original letter were identical, the first paragraph of the second page of the original was materially different to the file copy given to Mr Andrew Campbell in that the file copy made reference to the gift whereas the original did not.

Allegation 1.5 and 1.8

Letter of 2 July 2010

38. On 2 July 2010, the First Respondent sent a letter to Mr Frederick Campbell in which she confirmed that "the balance of your account is in the sum of £243,511.75".
39. As at 2 July 2010, the balance on the account stood at £174,710.37, the First Respondent having transferred by this date the three instalments by way of gift amounting to £70,000.00. There was no suggestion that Mr Frederick Campbell queried the accuracy of the letter.

Letter of 14 January 2011

40. On 14 January 2011, the First Respondent sent a further letter to Mr Frederick Campbell in which she stated "I can confirm that we hold £239,739.35 in the client account on your behalf." The client ledger showed that, as at January 2011, the balance stood at £166,926.39.
41. Neither a copy of the letter of 2 July 2010 nor the letter of 14 January 2011 was found on the First Respondent's files handed to Andrew Campbell on 6 August 2012.

Personal Loan Transfers of £170,000.00Allegations 1.2, 1.5, 1.6, 1.7 and 1.8

42. Between 30 July 2010 and 24 June 2011, a period of some 11 months, eight amounts totalling £170,000.00 were transferred to the firm's office bank account from Mr Frederick Campbell's monies held on client account. These transfers, together with the £70,000.00 that the First Respondent said was paid by way of gifts, amounted to nearly all of Mr Frederick Campbell's money.
43. The office bank statements illustrated that the transfers were used partly to support the firm's cash flow requirements.
44. The bank statement issued on 9 August 2010 showed that the transfer dated 30 July 2010 of £15,000.00, which was the first of the eight loan transfers made, enabled the firm to make a staff payroll payment of £28,784.19 without which the firm would have exceeded its overdraft limit of £50,000.00.
45. The First Respondent accepted that each of the payments amounted to personal loans from Mr Frederick Campbell. There was no written documentation to verify the loans, nor their terms, nor was any security offered in respect of the payments, nor any arrangements with regard to payment of interest.
46. Other than an attendance note, which was produced by the First Respondent following the interview with the SRA on 13 February 2013, there were no other documents confirming the amount of money taken as loans. The First Respondent confirmed in interview that Mr Frederick Campbell was not told at any point the amounts that had been borrowed.
47. The three matter files produced by the First Respondent referred to the loans on six occasions but made no mention of the requirement for Mr Frederick Campbell to obtain independent legal advice in the absence of which the First Respondent would not be entitled to act.

Letter of 29 March 2012Allegation 1.5

48. A copy letter dated 29 March 2012 was provided to Mr Andrew Campbell when the First Respondent handed over the papers relating to Mr Frederick Campbell on 6 August 2012.
49. The letter referred in the third paragraph to the gift made to the Respondent by Mr Frederick Campbell.
50. That letter was discovered by the IO on the matter files. However, a second version of the letter, also on the matter files, contained the first two identical paragraphs but the third paragraph was different. In the third paragraph there appeared the following additional wording:

“...and can confirm that we have borrowed the monies as agreed. I am willing to sit and discuss with yourself how to repay this money to yourself. You advised me that this was not necessary at the moment as you have not made concrete plans to return to Jamaica. However, you advised me that you would advise me in good time when you have decided to go back to Jamaica. Please advise me of your wishes at the earliest opportunity...”

51. It was not possible to establish which version of the letter had been sent out. In her interview, the First Respondent stated initially that she would have sent out only the first version of the letter but then stated that she had sent out both.
52. There were five attendance notes made by the First Respondent which referred to the loans. The following amounts were taken by way of gift and loan:

Attendance Note	Transfer Date	Amount £
8 June 2010	8 June 2010 11 June 2010 29 June 2010 30 July 2010 27 August 2010	20,000 Gift 30,000 Gift 20,000 Gift 15,000 Loan 5,000 Loan
13 September 2010		
27 September 2010	30 September 2010	20,000 Loan
11 October 2010	15 October 2010 6 January 2011 24 January 2011 1 June 2011 24 June 2011	15,000 Loan 10,000 Loan 50,000 Loan 11,000 Loan 45,000 Loan
10 April 2012		

53. There was no evidence that Mr Frederick Campbell was ever informed of the level of borrowing, neither was there any indication that Mr Frederick Campbell was advised that he had to take independent legal advice because otherwise the First Respondent was precluded from acting, no security was given in relation to the loans, nor any arrangement made with regard to interest. No part of the arrangement was committed to writing nor any terms agreed regarding repayment.
54. Throughout this period, it was apparent that the firm was in financial difficulties.
55. In her interview with the IO and another Investigation Officer of the SRA, Mr Grehan, the First Respondent stated that:
- she was aware of the gifts and loans taking place;
  - there were no internal documents to evidence the transfers and payments, just verbal discussions with the Second Respondent;
  - all transfers of money relating to the gifts and loans were authorised by her;
  - there were issues relating to cash flow in the firm throughout 2010;
  - in the period January to June 2010, the First Respondent took £151,500.00 in drawings;

- there was never an offer to pay interest on the gifts and loans;
- she accepted that Mr Frederick Campbell did not know how much she had borrowed from him;
- there was no indication of how she would repay the loans;
- Mr Frederick Campbell's executors, namely Andrew and Steven Campbell, were not informed of the loans;
- the ledger supplied to the executors made no reference to loans.

Mr W: Transfer of £30,556.72  
Allegations 1.2, 1.7, 1.8 and 2.1

56. The bank statement of the firm for 9 March 2012 to 5 April 2012 showed that, on 28 March 2012, £30,556.72 was transferred from client to office bank account. These monies were held for a Mr W who lacked mental capacity. They were used to enable staff wages to be paid.
57. Throughout this period, it was apparent that the firm was in financial difficulties. From 1 June 2011 to 1 August 2012 there were at least seven occasions when the firm's overdraft limit of £50,000 was, or was about to be, exceeded and the bank rejected cheque and direct debit payments.
58. On 19 September 2011, the firm had issued a client account cheque for £30,556.72 to Mr W in settlement of a claim for compensation in which the First Respondent had been acting on behalf of Mr W. However, he failed to cash the cheque and it was cancelled by the firm which then held onto the money, utilising it in the manner described over six months later.
59. Whilst it was alleged by the First Respondent that it was the Second Respondent who had made the transfer using internet banking without her knowledge and authorisation, she admitted that Mr W's monies had been improperly taken from client bank account. The Second Respondent confirmed that the transfer was made by him without reference to the First Respondent and that he "...believed that this transfer was necessary to support the cash flow of the firm."
60. The use of Mr W's compensation for the benefit of the firm was not included in the First Respondent's self-report.

Mr O Deceased: Payment of £154,685.45  
Allegations 1.2, 1.7, 1.8 and 2.1

61. The circumstances relating to the payment of £154,685.49 were linked with the cash shortage that existed on the client ledger of Mr Frederick Campbell deceased. The payment represented an attempt to repay the estate of Mr Frederick Campbell the amount of loans that had been taken from Mr Frederick Campbell's account less costs, the £70,000 taken as a gift having been repaid by payment out of office account.
62. The total amount held on the Mr O deceased ledger was £179,180.60, the bulk of which was received on 17 July 2012, a matter of weeks before it was used.

63. The sole beneficiary of the estate of Mr O was a Mrs "D" who lacked mental capacity.
64. On 6 August 2012 the balance held in the firm's client account was £170,814.22, the vast majority of which was held on behalf of the estate of Mr O. On that day the firm issued a client account cheque of £154,685.49, signed by the First Respondent, to Mr Andrew Campbell. There was no evidence of any connection between Mr Frederick Campbell and Mr O nor any written consent for the payment to be made.
65. The issues relating to the misuse of funds in relation to Mr O deceased were not included in the self-report submitted to the SRA.
66. The Second Respondent confirmed that he presented the cheque to the First Respondent knowing that the funds owing to Mr Frederick Campbell's estate had not been repaid.

### Failure to Rectify Cash Shortage

#### Allegation 1.3

67. There was a cash shortage on client account as from the time that the First Respondent started to take money from Mr Frederick Campbell's account, by way of gifts from 8 June 2010 and by way of loans from 30 July 2010. At the time that the investigation commenced in January 2013, the cash shortage stood at a minimum of £71,284.71.
68. The First Respondent indicated in interview on 13 February 2013 that she intended to make full replacement of the remaining cash shortage.
69. The cash shortage was also increased when £30,556.72 was transferred from the account of Mr W to office account on 28 March 2012. There was no indication when this cash shortage was remedied.
70. A cash shortage on the account of Mr O Deceased was created when the First Respondent wrote the cheque for £154,685.49 which enabled those funds to be transferred to the client account of Mr Frederick Campbell. There was no indication that this cash shortage had been remedied.

### Failing To Manage the Firm

#### Allegation 1.4

71. It was evident from the self-report of the First Respondent and from the investigations of the IO that there had been a widespread failure on the part of the First Respondent to manage the firm effectively, particularly with regard to the financial control of budgets, expenditure and cash flow.
72. The First Respondent was ultimately responsible for the management of the firm.

73. The First Respondent was unable to produce any internal documentation to justify the transfers and payments, but only verbal discussions with the Second Respondent and she suggested in her responses in interview that she had had a total lack of awareness of the firm's financial position. She indicated that the internet banking was operated solely by the Second Respondent and that she had no knowledge of transactions taking place, saying that, until October 2012, "... I did not know how to do it".

#### Correspondence with the SRA following the Inspection

74. By letter of 1 March 2013 the SRA wrote to the First Respondent enclosing a copy of the FIR asking her for her observations. The First Respondent's solicitors responded to the SRA's letter by letter dated 15 April 2013.
75. By email of 8 March 2013 the First Respondent's solicitor sent an email and copy document from the First Respondent to him of the same day, confirming that £10,000.00 had been paid into client account reducing the shortfall on client account to £46,284.71. An email and copy document sent on 5 April 2013 confirmed that a further £5,000.00 had been paid into client account on that day by the First Respondent.
76. By email of 15 April 2013, the SRA wrote to the First Respondent asking her for further information with regard to the financial status of the firm. On 22 April 2013 the First Respondent's solicitors sent to the SRA copy documents in satisfaction of the requirements under the compliance plan.
77. On 1 October 2013 the SRA wrote to the Second Respondent seeking his response to the allegations and requesting further information within 14 days.
78. On 8 October 2013 the Second Respondent sought an extension of time to provide a response which was agreed to on 29 October 2013. The Second Respondent subsequently instructed a solicitor who responded to the letter on 18 November 2013. In that letter the Second Respondent effectively admitted the allegations against him and apologised profusely for his actions.

#### Interest

##### Allegation 1.5

79. A letter from the Respondent to Mr Frederick Campbell dated 14 January 2011 was included in the papers collected by Mr Steven Campbell from Mr Frederick Campbell's home but was not included in the papers given to Mr Andrew Campbell by the First Respondent. This letter stated that Mr Frederick Campbell's funds were not in interest bearing accounts.
80. However, by letter of 14 September 2012 to Mr Andrew Campbell the First Respondent confirmed that interest had accrued on the funds and she provided a cheque to him in the sum of £449.37. Despite Mr Andrew Campbell attempting to challenge the rate of interest that would have accrued, no satisfactory response was forthcoming from the First Respondent.

## Costs

### Allegation 1.9

#### Court of Protection

81. Whilst letters of engagement appeared to have been sent to Mr Frederick Campbell, there was no indication provided to him of the likely level of costs that would be incurred.
82. There was no evidence that, in the course of a particular matter, the First Respondent updated Mr Frederick Campbell with regard to costs being incurred.
83. The consent given by Mr Frederick Campbell appeared to provide the First Respondent with an open ended authority to transfer money from the funds held on behalf of Mr Frederick Campbell in respect of costs. There was no evidence that the First Respondent communicated in writing the level of fees being incurred or that she explained the basis on which those charges were calculated to Mr Frederick Campbell.
84. There appeared to be confusion about which invoices had been paid and not paid.

#### Claim against Boots the Chemist

85. An invoice dated 2 July 2012 was sent to Mr Frederick Campbell at his address by the First Respondent, despite the fact that she knew that he had died on 1 May 2012. The invoice amounted to £6,673.20 and related to a claim pursued by Mr Frederick Campbell against Boots the Chemist Ltd. The money was transferred to office account. There was no evidence to confirm that either Andrew or Steven Campbell, the executors of Mr Frederick Campbell's estate, were made aware of this invoice.

## Bankruptcy

86. The same issues applied in relation to advice concerning Mr Frederick Campbell's bankruptcy claim. The First Respondent charged Mr Frederick Campbell the sum of £4,346.00 plus VAT and disbursements for this matter and there was no evidence that Mr Frederick Campbell was aware of or consented to this level of fees.

#### Submissions on behalf of the Applicant in relation to the First Respondent

87. Mr Levey took the Tribunal carefully through the evidence and the Rule 5 statement. In his submission her dealings with Mr Frederick Campbell had involved a course of reckless and dishonest conduct by the First Respondent. She had abused her position of trust, taken advantage of an elderly and vulnerable client and had disregarded her professional obligations in order to benefit herself and the firm. It was difficult to imagine a solicitor acting contrary to a client's best interests in a starker fashion.

The claims pursued by the First Respondent on behalf of Mr Frederick Campbell

88. The First Respondent had been dealing with three matters for Mr Frederick Campbell, the Court of Protection restoration, a bankruptcy compensation claim dating from 1991 and a claim against Boots the Chemist dating from 1996. Whilst there was no allegation of overcharging, this did not mean that the Tribunal was not entitled to form a view that this was the case and in Mr Levey's submission the charges made were plainly disproportionate.
89. Mr Levey referred to the documentary evidence which dealt with the bankruptcy compensation claim. In Mr Levey's submission both this claim and the one against Boots the Chemist were obvious nonsense. Counsel's advice dated 23 September 2010 stated in terms that there was "No evidence whatsoever that Mr Campbell was ever made bankrupt. A man with the same surname was made bankrupt...The possession proceedings seem to be based on Mr Campbell's mortgage arrears..." Counsel concluded by saying that "I therefore must make it clear that I can see no basis for any legal action against anybody". Counsel had subsequently not been able to bring himself to make any further charge for additional advice when his original advice had been queried by Mr Campbell, saying that "I feel that I cannot ask Mr Campbell to pay for further advice which will only be a re-statement of what I have said before, and which I fear he will not accept anyway."
90. The First Respondent had herself instructed Counsel and provided all the information to him; she would have seen Mr Campbell's beliefs and been able to assess them. For this work she had charged £5,567, of which Counsel's fee was £300, and the money had been taken from Mr Frederick Campbell's client account immediately. There was no evidence that he had seen and agreed the costs charged.
91. The personal injury claim against Boots the Chemist had been issued in 1996 and settled in 1999, some 10 years before Mr FC had met the First Respondent. Mr Levey took the Tribunal to the evidence concerning this matter. The First Respondent had been asked to find out whether Mr Frederick Campbell had received the settled compensation of £3,000 and that was her only task. For this matter she had charged £6,673 and had recovered nothing. Again the fees had been taken immediately from client account but on this occasion it had been after Mr Frederick Campbell had died.
92. For the restoration order from the Court of Protection, the First Respondent had been unable to obtain a report on his mental health from Mr Frederick Campbell's own GP but had obtained one from a relatively junior GP and it was unclear what documents that GP had seen. Mr Levey asked the Tribunal to look at the document entitled "Lord Chancellor's Visitors". This was a report of an examination of Mr Frederick Campbell by a Dr Kaeser in 2001 to assess whether he was incapable of managing his property and affairs by reason of mental disorder. The conclusions of the doctor were instructive but it was not necessary for the Applicant to show that Mr Frederick Campbell was suffering from a mental disorder but he was clearly a troubled, fragile and vulnerable man.
93. Mr Levey said that the bill for the restoration order had been £7,783 but there was a dispute as to whether Mr Frederick Campbell had ever agreed to pay the fees. Mr Andrew Campbell said that it was not his father's signature on the authority

produced by the First Respondent; that authority had not been on the original file given to the Campbell brothers but had been produced when Mr Andrew Campbell complained. An expert opinion obtained by Mr Andrew Campbell confirmed that this was not his father's signature but a "poor attempt at copying". However, the First Respondent denied this and there was no allegation in relation to it. If the Tribunal did find that the First Respondent had forged the signature then this would be seriously damaging to her credibility. Even if this document was genuine then it only applied to the restoration order and all it contained was a consent to using Mr Frederick Campbell's monies to pay the fees; it did not answer allegation 1.9, Mr Frederick Campbell had never been given a costs estimation.

94. A signed receipt dated 17 September 2010 showed that the firm had also received £3,200.70 in cash from Mr Frederick Campbell. There was no record in the ledger. However, the First Respondent said that although a bill was raised and a receipt issued no payment was made by Mr Campbell. In Mr Levey's submission this explanation was baffling and the evidence did not begin to explain the position. A letter from the First Respondent to Mr Frederick Campbell dated 27 September 2010 indicated that Mr Campbell was not willing to consider using the monies in client account until the bankruptcy compensation point was settled. He had told her himself that he had had to borrow £300 in cash for the Barrister's fee. It was plain that the First Respondent was dealing with a vulnerable and confused man.

#### The Gift of £70,000

95. The Applicant did not accept that Mr Campbell had made a genuine gift to the First Respondent. She had taken advantage of his generosity in a way no honest solicitor could have done and in full knowledge of her obligations. The Tribunal would see in the documentation repeated references to her asking "are you sure?"; in Mr Levey's submission the Tribunal should look at such references with scepticism. Indeed, the Tribunal might take the view that the documents were not reliable. However, that was of no importance as even on her case these documents displayed that she was not comfortable with the situation. She knew that there was a serious risk that the gift was not genuine and her constant seeking of reassurance on the point demonstrated that it was playing on her mind.
96. There had been no proper explanation concerning the gift which had been taken months after it was first made. It had been promised to the First Respondent at the first meeting between her and Mr Campbell on 21 July 2009, although the quantum had not been specified. The monies from the Court of Protection had been received by the firm in March 2010 and the letter dated 26 February 2010 from the First Respondent to Mr Campbell had been written before that receipt. However, it was not until June 2010 that the First Respondent had taken the gift. Mr Levey said that this time delay was in itself evidence of dishonesty. Neither was there any explanation as to why the gift had been taken in three instalments but Mr Levey suggested that it could have been because the circumstances were playing on her mind or because the money could be better hidden in three smaller instalments.
97. Further evidence of the First Respondent's dishonesty was that she so readily paid the money back. She drew a cheque before she met the Campbell brothers on 6 August 2012.

The loan of £170,000

98. The loan was taken between 30 July 2010 and 24 July 2011. The First Respondent had said that after she had taken the gift from Mr Frederick Campbell's client account he had told her that she could then borrow his money. Even if that did happen there was no dispute that the loan was never documented, interest had not been agreed, there was no date for repayment and no security had been offered or given. Neither was there any dispute that the firm was in financial difficulties with a cash shortage problem. Indeed, the firm was in a parlous financial position, borrowing money from a clearly vulnerable man who had just been removed from the Court of Protection. His state of mind during the period in question could be ascertained from his pursuit of the claims.
99. In Mr Levey's submission, even if Mr Campbell had told the First Respondent to use his money she effectively gambled with it in such a way that he had no obvious remedy for the return of his money. She had borrowed £170,000 and there was no dispute that, save for the first £30,000, Mr Frederick Campbell was blissfully unaware of the extent of her borrowing. This much was clear from her interview. There was evidence before the Tribunal that Mr Frederick Campbell had no other money and that his home had been repossessed; he was hoping to keep his money until he could buy a house in Jamaica. It was clear from the evidence that he was not able to pay his bills but that had not mattered to the First Respondent. No honest solicitor would allow a client to do what Mr Frederick Campbell had done; to lend her money with no security or other conditions.
100. The Applicant said that the First Respondent had tried to hide the loan from Mr Frederick Campbell's sons and, in Mr Levey's submission, this was because she knew it was beyond acceptable behaviour.
101. She had also falsified documents. The letter of 21 April 2010 provided to the Campbell brothers and the SRA referred to the gift but Mr Steven Campbell had discovered the original of that letter in his father's home. It made no such reference. In Mr Levey's submission, this was clear evidence that the First Respondent had created documents to give the impression that Mr Frederick Campbell had given her the gift and thereby mislead others.
102. Mr Levey referred to the cases of Mr W and Mr O deceased and said that a significant part of the First Respondent's professional background before and after she had become a solicitor was in mental health. In the case of the Mr O deceased, Mr O had been under the Court of Protection and the First Respondent had been his Deputy. The beneficiary had also lacked mental capacity. The majority of the approximately £175,000 had been received on 17 July 2012 from another firm which had been dealing with probate and the First Respondent had had to press for the payment; until that time there had been almost no money at all in client account. The balance held in client account was then £179,180.60. On 6 August 2012, the day the First Respondent met with the Campbell brothers, she had taken £164,685.49 from the Estate of Mr O to give to them. A false credit had then been created for that amount to give the impression that client account was untouched.

103. Mr W had also lacked mental capacity and the First Respondent had used the monies from his account to pay the firm's wage bill.
104. The First Respondent admitted the majority of the allegations against her. The only real dispute was on the dishonesty allegation and whether the First Respondent had created false documents or those intended to mislead.
105. The Applicant said that the First Respondent's story concerning duplication of letters in the office of the firm was obvious nonsense and would be dishonest evidence if given. The letter dated 21 April 2010 found on the file and given to the Campbells had obviously been amended to reflect that Mr Campbell was "happy with the gift that you gave the firm" and the First Respondent had had no idea that the original would be found at Mr Fredrick Campbell's home. However, she had not paid attention to detail for the gift had not been taken until June 2010.
106. There were four classes of document included within allegations 1.5 and 1.6. The letter of 21 April 2010 that the Applicant said had been doctored before being given to Mr Andrew Campbell; the letters of 2 July 2010 and 14 January 2011 which were misleading; the two letters of 29 March 2012 which differed as to their content, both of which were on the matter file, and the copy ledger given to the Campbell brothers on 6 August 2012 which failed to record the loans.
107. At the time of writing the letter of 2 July 2010, the gift had been taken and the First Respondent had known that there was not £243,511.75 in Mr Fredrick Campbell's account. The Tribunal might form the view that this letter was probative that Mr Frederick Campbell never knew about the gift; there was nothing in his home to show that he did. It might also be that she did not want to remind him of the gift or record it. The letter to Mr Frederick Campbell of 14 January 2011 recorded that there was £239,739.35 held in the client account on his behalf and yet the First Respondent, having taken the gift and the loans, knew that there was considerably less than that. She also knew that interest was being earned and ultimately interest of £449.37 had been paid to the Campbell brothers. It did not matter that she had fixed the blame on the Second Respondent, she had known about these things.
108. Mr Levey asked why the First Respondent would still be asking Mr Campbell about the gift in her letters in March 2012 if a real gift had been made. He suggested that this indicated either a false document or an obviously guilty mind. The Applicant's position was that the first letter had been created to cover the gift and the second one to deal with the loan.
109. The case against the First Respondent was very serious even on the admitted allegations, which included those of a lack of integrity, probity and trustworthiness.
110. Mr Levey referred to paragraphs 25 and 26 of SRA v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin.), a copy of which was before the Tribunal. Where a lack of integrity, probity and trustworthiness had been found by the Tribunal then the Solicitor should expect to be struck off.

Submissions on behalf of the Applicant in relation to the Second Respondent

111. In essence the Rule 8 statement covered the same ground and the same allegations. The First Respondent had blamed everything on the Second Respondent. It was plain that the Second Respondent had acted dishonestly. However, it was impossible to believe that everything that had occurred was the fault of the Second Respondent and that the First Respondent had known nothing at all about it. If his admissions were designed to assist the First Respondent then they had failed. In Mr Levey's submission they had done her a disservice.

**Witnesses**

112. **Mr Johnathan Chambers ("Mr Chambers")** gave sworn oral evidence which can be summarised as follows:

112.1 In examination-in-chief Mr Chambers said that he had reviewed the FIR and that its contents were true to the best of his knowledge, information and belief. He confirmed that the interview carried out during the inspection had been digitally recorded and a transcription had been made by SRA staff. The notes produced had not been approved by those in attendance.

112.2 In cross-examination Mr Chambers was asked about the SRA's telephone attendance note dated 11 April 2013 between the First Respondent's solicitor and an officer at the SRA, concerning the SRA's decision not to intervene into the firm. He confirmed that he was aware that there had been no intervention, the First Respondent had not been suspended and that a compliance plan had been imposed. He did not know whether that compliance plan had been complied with.

112.3 The First Respondent had assisted with his enquiries, she had been helpful and had answered questions. He did not know if there had ever been any repetition of the behaviours in question.

112.4 Mr Chambers was also referred to the summary of the First Respondent's responses in the FIR. He confirmed that she had said that her husband had been in control of practice management and had had absolute responsibility for bookkeeping and accounts. She had also said that her husband had been dismissed and no longer played any role in the practice.

112.5 He was asked about the discussion in interview of the two attendance notes both dated 11 October 2010, one of which made reference to a loan and the other of which did not. In the interview he had asked the First Respondent why the reference to the loan was the very last thing on the attendance note and had suggested that this was like other attendance notes in that respect. It was put to Mr Chambers that the First Respondent had repeatedly denied making additions to attendance notes and that no evidence had been produced to show that any such additions had been made.

112.6 Mr Chambers was unable to make any comment about the handwriting analysis of the consent note dated 18 August 2009 which had been obtained by Mr Andrew Campbell.

- 112.7 Mr Chambers was asked about entries numbered 7, 12 and 16 on his calculation of the minimum cash shortage. He said that whilst the ledger had showed costs transfers, when he had examined the bank statement he had been unable to reconcile it and had concluded that the monies had never been removed from client account.
- 112.8 In re-examination Mr Levey asked Mr Chambers whether he had seen the bill for £7,783.98 dated 14 September 2010 or the entry for that amount in Mr Frederick Campbell's ledger when he had constructed the table showing the calculation of the minimum cash shortage. Mr Chambers said that the problem was that there was more than one version of Mr Chamber's ledger and he could not say that he had seen this one. The adjustments for costs were purely accounting adjustments. The issue for him was that the accounting records suggested that the costs had been taken twice.
- 112.9 In questioning by the Tribunal Mr Chambers said that the First Respondent had told him that she was unable to find an attendance note of her conversation with the Ethics Department of the SRA concerning the gift. She had also said that she had not contacted that Department about the loan.
113. **Mr Andrew Campbell** gave sworn oral evidence which can be summarised as follows:
- 113.1 In examination-in-chief Mr Andrew Campbell said that his witness statement dated 28 October 2013 was true to the best of his knowledge, information and belief, save for a correction to the first line of paragraph 62 where the date should be 2012 rather than 2010.
- 113.2 He was asked by Mr Levey how he now felt about the legal profession. He responded that what had happened to his father, who had been an 85-year-old with mental health problems, had been quite astonishing. His father had been taken advantage of and he felt that he did not know the complete story. He had been truly, truly shocked by what had occurred. His father had been an honest man who had worked hard all his life. Mr Andrew Campbell said that he had always had enormous respect for the legal profession but that it had now plummeted. He was determined to bring these proceedings to a conclusion on behalf of his father.
- 113.3 In cross-examination Mr Andrew Campbell said that he had always had a good relationship with his father but that had not been reciprocated and they had last spoken in 2009. He was not aware of his father's discharge from the Court of Protection until March 2012. He had sent an e-mail to the First Respondent on 1 May 2012 in response to an e-mail from her of 30 April 2012. In that e-mail she said that she had written to his father to ask for his permission to disclose information to him. However she had not written to his father. It was put to Mr Andrew Campbell that the First Respondent had said that although the letter had originally been dated 29 April 2012, she had changed the date as she had decided to deliver the letter herself next day. Mr Andrew Campbell said that he had discovered that six weeks later when he had seen on the letter "by post and hand". It was further put to Mr Andrew Campbell that the First Respondent had been in a "bit of a state" at time due to his father's death and that she had apologised. Mr Andrew Campbell said that he was not sure of her exact words. He could make no comment on her motivation.

- 113.4 Mr Andrew Campbell said that his father dressed smartly and acted reasonably for the majority of the time; it was just when certain topics were raised that he would go off at a tangent. He said that he had had two choices, to let him believe the stories or to be honest with him and tell him the truth. He had told him the truth but he would not budge from his position. He said that following previous events he had always tried to protect his father and get monies back for him; in order to do that he had had to put him into the Court of Protection. This had made his father think that he was an enemy.
- 113.5 Mr Henry asked Mr Andrew Campbell about the cheques for £70,000 and £154,685.49 given to him and his brother on 6 August 2012 by the First Respondent. She had signed these cheques in front of them. He confirmed that he had later calculated that the family was owed £48,026 more and that the First Respondent had made an offer of £30,000 which had then been withdrawn on legal advice. She had also offered independent costs assessment which Mr Andrew Campbell had declined. He had never been given the full files relating to his father and he believed that it was not possible for anyone to assess costing without the full file.
- 113.6 Mr Andrew Campbell said that at the meeting with the First Respondent on 6 August 2012 the First Respondent had shown them a ledger which showed the figure of £154,685.49 and he had asked her how it should be read; she had tried to explain. He had then asked about other sums and it was then that she referred to the gift. He asked her for the written consent of his father for this gift and she got it and he then saw that it was not signed. She had said that she was in the process of getting it signed. She had then given him the cheque for £70,000.
- 113.7 It was put to Mr Andrew Campbell that there was no attempt by the First Respondent to hang on to the money. He said that he would have found out about it later on in any event; she had not volunteered the information.
- 113.8 Mr Henry asked Mr Andrew Campbell whether the first cheque had been written in front of him by the First Respondent and the second cheque written by the Second Respondent and signed by the First Respondent. Mr Andrew Campbell said that this was correct but that the First Respondent had left the room and come back with the cheques.
- 113.9 Mr Henry said that the First Respondent denied that the consent for the payment of fees to the firm dated 18 August 2009 was a forgery.
114. **Mr Steven Campbell** gave sworn oral evidence which can be summarised as follows:
- 114.1 In examination-in-chief Mr Steven Campbell confirmed that his witness statement dated 5 November 2013 was true to the best of his knowledge, information and belief. He confirmed that he remembered the meeting with the First Respondent on 6 August 2012; the First Respondent had left the room to get some files and then offered a cheque. He had first learned about the gift of £70,000 when he had looked at the ledger on that day. He had been shocked, asking himself why his father would give this money to the First Respondent. She had showed him a letter about a meeting she had had with his father, an attendance note dated 26 February 2010 and an unsigned consent form and confirmed that his father had never perfected the gift. She then said

that she would pay the money back, left the room for five minutes and came back and gave him a cheque for £70,000.

114.2 When Mr Steven Campbell had gone to his father's house there had been very many documents there, going back some 30 years. All the documents found in his father's house relevant to the firm were in his exhibit.

114.3 Mr Levey asked Mr Steven Campbell what he now felt about the legal profession. He responded that his father had gone to the firm for guidance and what he got was shocking. He had trusted them and thought that his money was safe but when he died there was no money in his account. His father had been told by the First Respondent that there was some £239,000 in the account and he had been unaware that it was empty. What had happened was disgraceful.

114.4 In cross-examination Mr Steven Campbell was asked whether he was aware that the Legal Ombudsman had investigated the case and concluded that there was no overcharging. Mr Steven Campbell said that he had not read the report. He agreed that the First Respondent had not withheld monies on 6 August 2012 but said that it was only after they had asked to see the ledger and had known there should be more money in the account that the First Respondent had offered the repayment.

114.5 In re-examination Mr Steven Campbell said that he had known that there should be more money in his father's account as one of the letters he had found said that there was £239,000.

115. **The First Respondent, Lucia Shingirai Benyu,** gave sworn oral evidence which can be summarised as follows:

115.1 In examination-in-chief the First Respondent confirmed that the contents of her witness statement dated 10 February 2014 were true to the best of her knowledge, information and belief and that she had replaced the cash shortage.

115.2 In cross-examination by Mr Levey, she agreed that the notes of the interview with the IO and Mr Grehan on 13 February 2013, the IO's calculation of the cash shortage and the extracts from her attendance notes concerning Mr Frederick Campbell were all accurate and complete. She also confirmed that she had taken £151,500 in drawings from the firm between 15 January 2010 and 8 June 2010.

115.3 She accepted that the firm's website was confusing as the Second Respondent was still shown on the website for Peters Legal Ltd which had acquired the firm at the end of December 2013. She said that the Second Respondent left in October 2012 and had moved out of her home between January and February 2013.

115.4 The First Respondent confirmed that she had been a psychiatric nurse and now dealt exclusively with mental health law or work emanating from it. However, the first application she had made to the Court of Protection was for Mr Frederick Campbell, although she was already familiar with the Court and understood its purpose.

- 115.5 When she had first met Mr Frederick Campbell on 21 July 2009 she had had no prior contact with him; he had told her about his Court of Protection difficulties and the matters that he wished her to deal with on his behalf. She had dealt with the Court of Protection matter first and had not paused to consider the other matters at the time. He had told her that he had been trying to remove himself from the Court of Protection for a number of years with no success, had produced letters from GPs and told her what Mr Andrew Campbell had been doing. She had not assumed that anything was wrong and had made no judgement but had seen her role as to assist in filling in the appropriate form. The main role was for the doctor. She had known at that stage that Mr Frederick Campbell's money was held by his Deputy but not the amount.
- 115.6 The First Respondent said that she was not aware that Mr Frederick Campbell had been suffering from a delusional disorder and she had only seen the "Lord Chancellor's Visitors" report two days before this hearing. Mr Frederick Campbell himself had said that it was his behaviour and speech content that caused his admission to the Court of Protection. In general, Mr Frederick Campbell's capacity issue was one of having no capacity to manage his financial affairs but that did not necessarily mean that he had a mental health problem. She would have to know the diagnosis as a nurse before she could reach a judgement. It was put to the First Respondent that she had known that the reason that Mr Frederick Campbell was in the Court of Protection was to do with his mental health and that those paragraphs of her witness statement which dealt with his account and her reaction to it were not credible. Mr Levey suggested that the First Respondent was being evasive and untruthful.
- 115.7 The First Respondent said that she did not recall whether Mr Frederick Campbell had said that he had no assets apart from those under the Deputyship. However Mr Levey pointed to that section of the First Respondent's own attendance note of 18 September 2009 where it was recorded that Mr Frederick Campbell had told her that he borrowed money from his family to pay basic expenses and that it was not easy.
- 115.8 The First Respondent said that she had told Mr Frederick Campbell to see a financial adviser concerning his monies on countless occasions but for some reason he had never done so. She had not regarded this as odd but as in character for him as it was not easy to deter him from a course of action once he had made his mind up. She had not at the time appreciated that he was vulnerable but her personal circumstances at the time had clouded her judgement. She agreed that on 5 December 2009 Mr Frederick Campbell had told her that he wanted to buy a house in Jamaica and retire but he had taken no steps to do so and she had only asked about it occasionally.
- 115.9 The First Respondent agreed that she had told Mr Frederick Campbell that there was some £236,000 in his account on 2 February 2010. He had told her that this money had come from the sale of his house but that he had always thought that it was worth more. He had said to keep the money until he needed it. It was put to the First Respondent that Mr Frederick Campbell had told her that he wanted to manage his own affairs and yet he could not do so whilst he left his money with her firm; he had no money other than that held under the Deputyship. She replied that the Deputy had been paying his bills and that he had a pension and benefits to live on. She had cared for Mr Frederick Campbell as a father and that had clouded her judgement.

- 115.10 Mr Levey asked the First Respondent to confirm that it was at their very first meeting that Mr Frederick Campbell had alluded to giving her money. She replied that he had said that he would reward her but that he could not say how much it would be. She said that she had been shocked when Mr Frederick Campbell had told her at their meeting on 26 February 2010 that she could have a gift of £70,000 but she had not been surprised due to the relationship she had with him. She pointed out that this had been the day when she had been at her weakest point. Mr Levey referred to some of the attendance note of the meeting on 26 February 2010; Mr Frederick Campbell had insisted that she have the £70,000 and when she had asked him to confirm the gift in writing he had said that there was no need and that he knew what he was doing. Mr Levey said that this was very quick and that it was clear that she had known that she needed something in writing. She said that she had not looked up the SRA Rule concerning the acceptance of gifts from clients and had not known it was mandatory. She had not been emotionally stable on that day and had imagined that he wanted to give her the gift because of their relationship. She had contacted the Ethics Department at the SRA in March or April 2010 to discuss the matter but could not find the telephone attendance note and could not recall who she had spoken to. She had called primarily about the amount she could have as a gift and not the procedure to be followed, as she was under the impression that she knew what that entailed. The SRA had told her that it was Rule 3.04 that applied in these situations. It was then put to the First Respondent that that part of the attendance note of the meeting with Mr Frederick Campbell on 8 June 2010, which contained the words “(Rule 3.04 explained)” had been fabricated and that she had not in fact phoned the SRA. The First Respondent denied that she had added this entry to the attendance note and insisted that she had phoned the SRA - “Rule 3.04” had come from the Ethics Department at the SRA. She had not looked up the relevant Rule but agreed that she should have done so; she was not aware that it was mandatory.
- 115.11 The First Respondent said that both versions of the letter of 26 February 2010 had been sent out according to the post book at the firm and that she had never received the signed gift consent attached to the first letter back. However, Mr Frederick Campbell had not said he would not return the consent form. Mr Levey asked her whether alarm bells had sounded when she did not get the signed consent form back. The First Respondent insisted that her understanding was that if the client did not sign the consent form then so long as the matter was continuously discussed and documented that would be sufficient to discharge her obligation under the Rules. She would not knowingly take money in breach of those Rules.
- 115.12 The First Respondent was asked whether the bankruptcy matter dating from the late 1980s had troubled her. She replied that Mr Frederick Campbell had been aware of time, place and person; he was rational and had produced documentation. She had not felt competent enough to deal with the matter and had been unaware of the aspects in that particular area of law so could only give limited advice. She had therefore referred the matter to a Barrister. She agreed that she had not told Mr Frederick Campbell that pursuing the claim would cost some £3,500 or of the benefits likely to accrue from doing so.
- 115.13 It was put to the First Respondent that in a conference with Mr Frederick Campbell on 27 September 2011 he had told her that she could not use any money from the bankruptcy claim to pay the Barrister’s fees. She denied that he had ever said that or

that he said he would pay in cash. He had come in with £300 in cash for the Barrister's fees but that had been returned to him.

115.14 She was referred to Mr Steven Campbell's exhibit, a letter dated 28 September 2010, written the day after that conference. In that letter it was said by her that

“furthermore, you advised me that you made a payment of £300 on account of costs to cover the fees for the Barrister. I advised you that you did have money on client account however you maintained that you were not willing to consider exploring or using those monies until you had gone through your bankruptcy compensation or received advice from the Barrister pertaining to this.”

It was put to her that this was an accurate record of the meeting and that she had signed the receipt for £300 dated 27 September 2010. She responded that she had explained that the money had been given back to him, she had taken no money from him; the fee had been taken from client account.

115.15 It was put to the First Respondent that Mr Frederick Campbell's claims concerning the bankruptcy and the Court of Protection were utterly far-fetched. She said that she had not perceived it in that way and that Mr Frederick Campbell had never been confused in her presence.

115.16 The First Respondent was asked about the note written on the back of the attendance note of 27 September 2010 regarding the gift and why she was still advising Mr Frederick Campbell to get advice concerning it. It was put to her that she had taken the money in June 2010 and it appeared that she had advised the client some months later, that she had conveniently added this part. The First Respondent denied that she had done so and said that it was not preying on her mind.

115.17 The First Respondent was asked about the Barrister's advice concerning the bankruptcy. It was put to her that she had read it and immediately appreciated that Mr Frederick Campbell's claim was utter nonsense as there was not a shred of evidence that Mr Frederick Campbell was ever bankrupt. She denied this saying that she was not an expert. On receipt of the Barrister's advice she had advised Mr Frederick Campbell accordingly and he had not come across as troubled by it. Mr Levey put it to her that she knew when she got the advice that Mr Frederick Campbell might be delusional but she again denied that assertion. It could be seen from the attendance note of 11 October 2010 that he had not accepted the advice and Mr Levey again queried why there should a reference to the gift in that note which dealt with Counsel's advice.

115.18 Counsel's opinion made it clear that the claim was hopeless, so much so that he did not charge for an additional e-mail reconfirming his advice. Mr Levey noted that this occurred during the period when the Respondent was taking Mr Frederick Campbell's money; she had been papering the file and had known from the outset that what she was doing was wrong, he had put references in as many documents as possible to give her half a chance of defending herself. The First Respondent categorically denied that that was the case.

- 115.19 With regard to the Boots the Chemist matter, the First Respondent agreed that Mr Frederick Campbell had received his compensation of £3,000. It was put to her that she had been dishonest in charging £6,673 for a matter when the most that was recoverable was £3,000. She denied that she had been dishonest.
- 115.20 Mr Levey asked the First Respondent why, when the bankruptcy claim was finished in January 2011, she had not told Mr Frederick Campbell to take his money and go back to Jamaica and suggested that reason was that she still needed to borrow £105,000 which she needed as an overdraft facility to prop-up the firm. She said that her judgement had been clouded at the time but that what she had done had not been deliberate and she rejected Mr Levey's suggestion as to her motive.
- 115.21 It was put to the First Respondent that the gift had been taken in three separate tranches and that she had known that when she met the Campbells. She said that she had not asked the Second Respondent about that aspect. When she was pressed upon the point she said that if she had asked him then she did not recall; there were things that the Second Respondent had done that had no explanation. She was asked whether it had been done in that manner so that it would go unnoticed and she responded that that was not the case as it was on the ledger. It was put to her that she had never been offered the £70,000 or that she was uncomfortable with it to the extent that she took £20,000 first, then a few weeks later when she had been told that further money was needed she had taken a further £30,000 from Mr Frederick Campbell's account. She firmly denied all these assertions.
- 115.22 The First Respondent was asked about the invoice to Mr Frederick Campbell of £7,783.98 dated 14 September 2010; it could be seen from the ledger that this money was taken on that date. However there was also an invoice found at his home for £3,200.70, apparently relating to the same matter, the restoration order. Also at Mr Frederick Campbell's home Mr Steven Campbell had found a receipt for cash in the sum of £3,200.70. The First Respondent said that it was not her signature on the receipt and she agreed that the £3,200.70 was not shown in the ledger. Monies had been transferred from client account to office account as seen by the IO in the bank statement. The secretary had sent a receipt, which had been a mistake. The First Respondent denied that Mr Frederick Campbell had brought cash in that sum to the office.
- 115.23 It was put to the First Respondent that she had effectively taken all but £2,000 of Mr Frederick Campbell's money. She denied that she had known that this was the case. She had given a general authority to the Second Respondent and had delegated the accounting function to him and only he could use the computerised system. Despite the fact they had been sent to her, she had not looked at the bank statements and was simply not aware of what he was taking. She had trusted the Second Respondent. It was further put to her that if the loan had ever happened that she had known it was wrong and she had never told Mr Frederick Campbell how much she had borrowed. She replied that her judgement had been clouded by her relationship with Mr Frederick Campbell and other issues in her life but she should have told him about the amounts and she deeply regretted not having done so. It had not been a conscious decision and she had not been dishonest.

- 115.24 The First Respondent agreed that she had admitted to the IO that she had authorised the transfer from Mr W's account shown on the IO's calculation of the minimum cash shortage. However, she had not had a clear understanding of what was being asked of her and did not understand what was meant by "authority". She now recognised that this was an error which had been corrected in her witness statement. In her witness statement she also said that she now noted that the transfer had been made to facilitate the payment of staff wages. The letter from the Second Respondent's solicitor dated 11 November 2013 disclosed that the Second Respondent had made the transfer without her knowledge or authority. She had given a general authority for the items marked "gift" or "loan" on the IO's schedule. She told the Second Respondent that the firm could take amounts representing the loan and the gift from Mr Frederick Campbell's account, however she was not responsible for the transfers themselves.
- 115.25 The First Respondent said when Mr Frederick Campbell had initially given the gift she had told the Second Respondent about it in around June 2010. Mr Levey asked the First Respondent why it had taken her four months to tell the Second Respondent about the gift. She replied that when the gift was made, she had told the Second Respondent but that the authority for the gift was not given until June 2010.
- 115.26 Mr Levey asked the First Respondent how often she had checked how much had been borrowed from Mr Frederick Campbell's account and she replied that she very rarely checked the bank statements and only glanced at the current account. She would see amounts on the bank statement but didn't know how the figures had been reached. She said that she had hardly ever asked the Second Respondent about the loan as was demonstrated by her letters to Mr Frederick Campbell. Mr Levey asked her whether she was concerned about how much the Second Respondent had taken and she replied that she had put a blind trust in the Second Respondent and he had concealed the true figure from her. She had completely delegated the matter to the Second Respondent and in that respect she accepted that she had not discharged her duties.
- 115.27 The First Respondent said that she had written the letter referred to in her e-mail to Mr Andrew Campbell dated 30 April 2012 but had decided to take it to his house herself on 1 May 2012 and to re-date it. The letter asked Mr Frederick Campbell for his permission to disclose information to Mr Andrew Campbell. She was concerned because she had not seen Mr Frederick Campbell and when she had last seen him on the High Street he had become annoyed; he was not happy that she was apparently in touch with Mr Andrew Campbell. It was put to her that it was rather odd to write such a letter when Mr Frederick Campbell already knew the situation and she replied that she had needed to write the letter.
- 115.28 Mr Levey referred to the letter written by the First Respondent to Mr Frederick Campbell dated 14 January 2011 which had been exhibited by Mr Steven Campbell. In that letter she had told Mr Frederick Campbell that the firm held £239,739.35 in client account on his behalf. Mr Levey observed that it was odd that when she had handed over the file to the Campbells that letter was not in it. The First Respondent responded that a junior had photocopied the file.
- 115.29 Mr Levey put it to the First Respondent that the loan from Mr Frederick Campbell had not been repaid until Mr O's money had come in in July and that she had known there was a hole in Mr Frederick Campbell's account that she needed to fill. She had

had no prospect whatsoever of being able to pay the Campbells on 6 August 2012 without Mr O's money. The First Respondent said that the firm of solicitors doing the probate could not find the beneficiaries and this was the reason that they could not distribute the monies. She did not know why they had transferred the monies to the firm at the time they did but it was nothing to do with Mr Frederick Campbell. It was put to her that she had pressed for the money as she needed it but she insisted that the two things were not related. It was further put to her that she had put off the meeting with the Campbells as long as she could but she said that the meeting was on the date agreed with Mr Andrew Campbell. At that meeting she had told the Second Respondent that she needed cheques for the Campbells but she was unaware that there was no money with which to meet those cheques.

115.30 The First Respondent said that she had been investigating the position and had asked the Second Respondent for the balance; he had indicated that this was around £155,000 and she had told Mr Steven Campbell that this amount was available. She denied that she had been in a complete panic but she said that she was concerned about the unperfected gift. The Second Respondent had been lying to her and she could not use the computerised system. She had genuinely believed that Mr Frederick Campbell had wished to lend her money and there was no dishonesty involved.

115.31 Mr Levey referred to the version of the letter of 29 March 2012 which contained reference to the loan; the Applicant did not accept this letter as genuine but Mr Levey said that if one imagined that it was, then the First Respondent must have asked the Second Respondent how much had been borrowed. The First Respondent said that the Second Respondent had given her incorrect balances and she had not known the specifics.

115.32 The First Respondent was asked why she had given the Campbells a copy ledger which made no mention of the loans. She replied that the documents had been prepared by the Second Respondent and she had thought that the loan had been repaid; the Second Respondent had told her that there was no need to show the loan. It was suggested to the First Respondent that she had put the ledger forward to the Campbells as she did not want them to know how much she had borrowed. She had also told the Campbells that the amount held for their father was £244,710.37. Mr Levey asked how she had to come to that conclusion when the figure shown in the ledger was £154,685.49. The First Respondent said that the figures did not include the gift but Mr Levey suggested that her figures did not add up and that she was making it up. The First Respondent said that if she had given the wrong amount it was not intentional. She herself had created another ledger shown in the exhibit bundle to assist the IO. She accepted that there was no documentation for the loan, no arrangement for the payment of interest, no repayment date, no security for the loan, that the cash had been borrowed to assist with cash flow problems and that Mr Frederick Campbell was unaware of the extent of the borrowing save for £30,000.

115.33 She denied that Mr Frederick Campbell was vulnerable or that she knew that he had or may have psychiatric problems. She denied that she had abused her position as a solicitor or that she had taken advantage of Mr Frederick Campbell. She similarly denied that she was acting in breach of her professional obligations and that she had known that she was not following the ordinary standards of honest behaviour.

- 115.34 Mr Levey referred to the different versions of the letter dated 21 April 2010 and asked whether there was any explanation as to why the second version found on the file, which referred to the gift, was not found in Mr Frederick Campbell's home. The First Respondent said that she would dictate letters and the secretary would bring them back to check, sign and take to the post; they would then be entered in the post book. However the post book was not a reliable record when amended letters were sent out. In this case the letter found in Mr Frederick Campbell's home would have gone out and the second one may have been a draft or may have gone out, she could not be sure. Mr Levey suggested that the version of the letter on the file had been created but the First Respondent denied that this was the case.
- 115.35 Mr Levey said that in respect of the letter dated 2 July 2010, also found in Mr Frederick Campbell's home, wherein it was said that the balance on Mr Frederick Campbell's account was £243,511.75, the First Respondent had known at that point that the £70,000 had been taken as a gift and she had therefore been lying. She accepted that incorrect information had been given but she had asked the Second Respondent when she should have stopped and looked herself. She accepted that the letter was misleading but it was not deliberately so. It was also put to her that she had been lying in the letter dated 14 January 2011, also found in Mr Frederick Campbell's home. At this stage she knew that at least £30,000 had been taken as a loan. She accepted that the letter was incorrect but said that she had written it based on information given to her by the Second Respondent. Mr Levey said that neither of the letters was on the file given to the Campbells and he suggested that they had been removed deliberately; the First Respondent denied that this was the case and blamed the error on poor record keeping. Whilst the First Respondent accepted that some letters may have been misleading, she denied that she had been dishonest.
- 115.36 Mr Levey said that there were two versions of the letter dated 29 March 2012 neither of which was found at Mr Fredrick Campbell's home and only one of which, the one that did not refer to the loan, was given to the Campbells. The SRA had found the other one in the files. The First Respondent denied that she had been dishonest in this regard or that she had created the document to support the story about the loan. She acknowledged that no correspondence had been given to the Campbell brothers which referred to the loan and that this was the only document which did so. She was asked what required her to confirm the borrowing so long after the event and she replied that she was not sure, that it was maybe an attendance by Mr Frederick Campbell. Mr Levey pointed out that she had accepted that all of the attendance notes were complete and correct and they showed no meeting with Mr Frederick Campbell on that date; further that there was no reference to the loan in the attendance notes. The First Respondent replied that she had met with Mr Campbell on 23 March 2012.
- 115.37 It was put to the First Respondent that the Second Respondent had had no involvement in Mr W's matter. She replied that she was not aware that the staff wages had been paid with Mr W's monies.
- 115.38 In re-examination by Mr Henry, the First Respondent was asked why she had instructed the doctor in relation to Mr Frederick Campbell's restoration order. She replied that it was to assess his capacity in relation to his ability to manage his own affairs. In the exhibit to her witness statement there were letters from Mr Frederick Campbell's own GP to a number of people written in 1996, 1999 and 2003, which

indicated that he was mentally capable of handling his affairs and that there was no record of any mental illness. The First Respondent was asked what weight she had given to these letters. She replied that she had not given much weight to them as Mr Frederick Campbell was under the Court of Protection. Once Mr Frederick Campbell had been discharged, she had had no concerns or reservations about his capacity.

115.39 The First Respondent was asked whether the schedule of dates prepared by the IO showing her attendances on Mr Frederick Campbell was accurate. She replied that it was not the totality of the dates and that she had had a lot of meetings with Mr Frederick Campbell.

115.40 She had had marital problems with the Second Respondent and following those difficulties had decided to adopt a blind trust in him as the best way to deal with things.

#### Submissions on behalf of the First Respondent

115.41 Mr Henry asked the Tribunal not to be swayed by rhetoric but to rely on the First Respondent's witness statement and her solicitor's response to the FIR dated 15 April 2013.

115.42 In Mr Henry's submission the First Respondent was responsible but not culpable; she had not managed the affairs of the practice well but there had been no dishonesty. She had made a serious error of judgement in failing to supervise the Second Respondent and had delegated non-delegable duties because she lacked skill on the practical side of accounting. She had placed an absolute trust in the Second Respondent.

115.43 The First Respondent denied dishonesty and any cynical exploitation of Mr Frederick Campbell. She did however accept that she had fallen short of the conduct unbecoming a solicitor and had affected the reputation of the profession. She had not ensured that Mr Frederick Campbell received independent legal advice and had accepted a gift and loans from him. In hindsight she acknowledged that this was a serious error. Her judgement had been clouded at the time due to her personal situation and she had wrongly believed that what she had done was sufficient to discharge her professional obligations.

115.44 Whilst the Applicant had characterised the First Respondent as a calculating, heartless, ruthless and cynical villain, her life was, and remained, chaotic. There were flagrant errors on the face of the records and a fraudster would surely have done better. She had admitted to errors of judgement and Mr Henry noted that the firm had not been intervened upon and had been permitted to continue under conditions. All of this smacked of misjudgement as opposed to predation. She had replaced the monies and whilst the Applicant said that this was proof of guilt she wondered what else she was supposed to do; it was in fact a reflection of an error of judgement and a decent and proper response to the Campbells' complaint.

115.45 With reference to Mr Frederick Campbell, Mr Henry said that the First Respondent represented people who had no voice. She did not prejudge Mr Campbell but listened to him and he had called her "daughter", which was a term of affection consistent

with his cultural background. There was a degree of emotional intimacy. It had been suggested by the Applicant that she must have known that Mr Campbell was delusional and vulnerable but the Tribunal had heard that he may not have appeared vulnerable. He had been restored and that had not been opposed either by the Court of Protection or his Deputy. He had been a lonely man who had taken comfort in his visits to the firm and he had presented well and appeared confident.

115.46 Mr Henry said that in cross-examination Mr Levey had appeared to range further than the allegations in the Rule 5 statement, with allegations of monies having been “stolen”. In Mr Henry’s submission the alleged cash payments did not take the matters in hand very far.

115.47 Whilst the First Respondent had been accused of “papering the file”, it could be seen from her interview that the files were in a state of disarray. In Mr Henry’s submission what was involved was incompetence. Additionally, it was dangerous for the Tribunal to assume that the only documents sent to Mr Frederick Campbell were those found by Mr Steven Campbell.

115.48 The First Respondent was hapless and prone to error. In Mr Henry’s submission the Tribunal should give weight to both her propensity to carry out the acts complained of and to her credibility. In her favour was that she had made admissions, had made a self-report to the SRA, had cooperated throughout the inspection, had repaid the monies and had worked with conditions on her practising certificate.

115.49 Mr Henry referred to the test for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL. In this case the First Respondent had genuinely believed that she was not being dishonest. In Mr Henry’s submission dishonesty had not been proved; the First Respondent had not been consciously transgressing the ordinary standards of honesty of reasonable and honest people. Whilst the First Respondent’s conduct was lamentable and utterly foolish it was not dishonest. Mr Henry asked the Tribunal to give as much weight as it felt able to do to the Second Respondent’s solicitor’s letter, which gave the truth of the matter. The Second Respondent himself had had no reason to attend the Tribunal but if he had wanted to assist the First Respondent then he would have come. He had admitted responsibility for the matters involving the transfers from the client accounts of Mr W and Mr O.

115.50 With regard to the gift of £70,000 Mr Andrew Campbell in his witness statement said that the First Respondent had not tried to argue that the gift monies should not be refunded to the estate. However she had told the Campbells that the “gift was not perfected” and she had returned the monies. Whilst there was an obvious breach of Rule 3.04, she had genuinely not been aware of it and she wrongly believed that she was acting appropriately. The same point could be made concerning the loans and she had not taken serious due care; whilst she was responsible she was not culpable. Mr Henry asked why she would have advised Mr Frederick Campbell to get independent legal advice if she was being dishonest. The First Respondent was hapless and due to stress had misdirected herself. Many factors before the Tribunal indicated that she was a confused, mistaken and troubled woman.

## Findings of Fact and Law

116. The burden was on the Applicant to prove each and every disputed allegation beyond reasonable doubt.
117. The Tribunal had due regard to the Respondents' right to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
118. The Tribunal had carefully examined all of the documentation before it and listened intently to the witnesses, including the First Respondent. In the case of the witness statement from Helena Abrell, the Tribunal gave this limited weight as it had been served late and she had not attended to give evidence. It noted her reference to seeing Mr Frederick Campbell sitting on a bench in the shopping centre at various times of the day and this statement enhanced the Tribunal's view as to his vulnerability.
119. The Tribunal had found Mr Andrew Campbell to be an impressive witness and accepted his account of his relationship with his father. It similarly found that Mr Steven Campbell was a reliable and honest witness. The Tribunal accepted the evidence of both of these witnesses in its entirety. In contrast, the Tribunal found the First Respondent to be evasive and not believable; she was a thoroughly unsatisfactory witness.
120. The Tribunal restricted itself to considering only those matters which were alleged against the First Respondent.
121. **The allegations against the First Respondent, Lucia Shingirai Benyu, were that:-**  
**Allegation 1.1 - The Respondent failed to maintain properly written up and accurate accounting records in breach of Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR 1998"); and/or where such conduct relates to a period of after 6 October 2011, Rule 29 of the SRA Accounts Rules 2011 ("SAR 2011")**

**Allegation 1.2 - The Respondent has authorised or permitted withdrawals of client money from client account in breach of Rule 22(1) SAR 1998 and Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007") and/or where such conduct took place after 6 October 2011, Rule 20 SAR 2011 and Principles 2,3,4,6 and 10 of the 2011 Code of Conduct ("2011 Code")**

**Allegation 1.3 - The Respondent has failed promptly, or at all, to remedy the said breaches of SAR 1998 and/or SAR 2011 in breach of Rule 7 SAR 1998 and Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Rule 7 of SAR 2011 and Principles 2,3,4,6 and 10 of the 2011 Code**

**Allegation 1.4 - The Respondent has failed to manage the financial affairs of the firm, Peters & Company, Solicitors, ("Peters and Co") either effectively or properly in breach of Rules 1.02, 1.04, 1.06 and 5.01(j) of the 2007 Code or, where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6, 8 and 10 and Outcome 7.4 of the 2011 Code**

**Allegation 1.5 - The Respondent has submitted correspondence and/or documents to third parties which were intended to mislead contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2,4,6 and 10 and Outcome 1.1 of the 2011 Code**

**Allegation 1.6 - The Respondent has created correspondence and/or documents which were false contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code**

**Allegation 1.7 - The Respondent continued to act on behalf of clients when there existed a conflict between her own interests and those of her clients contrary to Rules 1.02, 1.04, 1.06, 3.01(1) and (2)(b) and 3.04 of the SCC 2007 and/or where such conflict exists on or after 6 October 2011, Principles 2, 3, 4, 6 and 10 and Outcome 3.4 of the 2011 Code.**

**Allegation 1.9 - The Respondent failed to provide to a client adequate information regarding costs contrary to Rule 1.02, 1.04, 1.06 and 2.03 SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4 and 6 and Outcome 1.13 of the 2011 Code.**

- 121.1 The First Respondent admitted allegations 1.1-1.4, 1.7 and 1.9.
- 121.2 The First Respondent denied allegations 1.5 and 1.6.
- 121.3 The Tribunal found that at the very first meeting with Mr Frederick Campbell any solicitor would have been put on notice that he was a vulnerable individual if not worse. He had told her he was 85 years old and that he was lonely and lived alone. He had presented her with two old matters from 1989 and 1996 and she had been told that he had been under the Court of Protection since 2002 and had made a number of applications for discharge which had not been successful. Whilst she said that he appeared to be giving clear and succinct instructions that did not override the concerns that she must have had about him.
- 121.4. The First Respondent had been extremely evasive in cross-examination about Mr Frederick Campbell's state of mind. She had been asked by the Tribunal about it and she had said that she had not formed a view as to why he was in the Court of Protection. At that very first meeting he had told her that he would give her something at a later date; at that stage she should have been asking herself whether he had capacity to make a gift or loans.
- 121.5 The Tribunal found that as the relationship between the First Respondent and Mr Frederick Campbell developed she must have been increasingly on notice about his state of mind. He was fixated on his claims which had some bizarre features and was unable to accept that his bankruptcy complaint was hopeless. It must have been more and more obvious to her that he was vulnerable and disturbed. It was not open to her to say that her judgement was clouded at that time.

- 121.6 The Tribunal found it extremely suspicious that the money, said to have been given as a gift, was transferred at a later date in three tranches which just happened to fit in with the firm's cash flow problems.
- 121.7 In regard to the alleged loan the Tribunal did not believe that the First Respondent did not know that a solicitor borrowing money from a client constituted a conflict of interest. This was exacerbated by other factors such as the age of the client and the fact that the loan was not documented. The First Respondent had not written to Mr Frederick Campbell about the loan. The only evidence available was the attendance note in which it was said that she had told him she had taken £30,000. The Tribunal did not accept the authenticity of this note and was of the view that Mr Frederick Campbell knew nothing about the loan. The Tribunal had found her evidence in this regard thoroughly unconvincing. She had prevaricated in meeting the Campbells until she had received the money relating to Mr O. The Tribunal did not accept her explanation that the timing of this was a pure coincidence; it was a fact that the client account was not in a position to provide the amounts of cash required to repay the Campbells and the Tribunal found that she had known that was the case.
- 121.8 Rule 3.04 of the SCC 2007 was a fundamental rule which was comprehensible to any solicitor; in the circumstances covered by the rule the client must take independent legal advice and if he does not then the solicitor must refuse to act. There was no note of the conversation that the First Respondent said that she had had with the Ethics Department at the SRA although she said that she made one. She said that the SRA had drawn her attention to Rule 3.04. The Tribunal had considerable reservations as to whether that conversation had ever taken place as it was confident that the SRA would have explained the effect of Rule 3.04 to her. Regardless of that the Respondent had admitted she was aware of the existence of Rule 3.04 and the Tribunal found her claims not to have read it to be incredible.
- 121.9 The Tribunal also had considerable reservations as to the First Respondent's evidence concerning Mr W's account. It did not believe that she and the Second Respondent had not discussed the firm's financial matters. The bank statements for the firm had gone to her home and although she had said that she had only glanced at them and had not been able to access the computerised system, she had admitted in an unguarded moment that she did go into the Second Respondent's computer to reconstitute the ledger. It therefore did not find her explanation credible and it was not clear how the money would have become available without the fee earner knowing.
- 121.10 The Tribunal did not accept Mr Henry's submissions that this was an individual whose judgement had been clouded and was operating in a sub-optimal fashion; it had concluded that she was both clever and manipulative.
- 121.11 In regard to the two letters dated 21 April 2010, the Tribunal found that the First Respondent had given an incredible explanation as to why she would write a second letter. It had concluded that the letter found on the file had been created at a later date to cover her tracks and/or to lend credence to her position.
- 121.12 The letter dated 10 July 2010 gave a figure for the balance on client account which was incorrect and the First Respondent must have known that it was not right as she knew that the £70,000 gift had been taken by that stage. In fact the Tribunal did not

believe that she did not know the precise state of affairs. The letter had gone to Mr Frederick Campbell and had been intentionally misleading.

121.13 There were two versions of the letter dated 29 March 2012 and the Tribunal found that both were misleading and that there was no reason to believe that either had been sent out. They were designed to convey that the firm had the money when it did not and they were misleading.

121.14 The Tribunal found each of the allegations 1.1-1.4, 1.7 and 1.9 to have been proved beyond reasonable doubt on the facts and documents before it.

121.15 The Tribunal found each of the allegations 1.5 and 1.6 to have been proved beyond reasonable doubt on the evidence that had been presented to it. It was in no doubt that intentionally misleading and false documents had been provided to Mr Frederick Campbell, the Campbell brothers and the SRA.

122. **Allegation 1.8 In respect of allegations 1.2, 1.3, 1.5, 1.6 and 1.7, it is alleged that the Respondent acted dishonestly although it is not necessary to prove dishonesty to prove the allegations themselves**

122.1 Allegation 1.8 was denied by the First Respondent.

122.2 The Tribunal applied the test set down by Lord Hoffmann in Twinsectra and therefore asked itself in relation to allegations 1.2, 1.3 and 1.5-1.7:

- (i) whether the First Respondent had acted dishonestly by the ordinary standards of reasonable and honest people; and
- ii) whether she was aware that by those same standards she was acting dishonestly.

122.3 The Tribunal had carefully reviewed all of the evidence in regard to these allegations and its findings in relation to them. The objective part of the test was clearly passed in relation to each allegation and the Tribunal had no doubt that the First Respondent had known that she was acting dishonestly in each case. The Tribunal was satisfied so that it was sure that the dual test for dishonesty, as set out in Twinsectra, was passed in relation to each of these allegations.

123. **The allegation against the Second Respondent, Ronnie Benyu, was that:**

**Allegation 2.1 - Having been employed or remunerated by a solicitor, but not being a solicitor, he has, in the opinion of the SRA, occasioned or been a party to, with or without the connivance of the solicitor by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors practice which involved conduct on his part of such a nature that, in the opinion of the SRA, it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.**

- 123.1 The Second Respondent accepted this allegation by virtue of his solicitor's letter to the SRA dated 18 November 2013 and the Tribunal also found this allegation to have been proved beyond reasonable doubt on the evidence before it.

### **Previous Disciplinary Matters**

124. None for either of the Respondents.

### **Mitigation**

#### The First Respondent

125. Mr Henry asked the Tribunal to look at those paragraphs of the First Respondent's witness statement which dealt with the issues in her personal life which may have affected her judgement at the relevant time. She had been in a period of unprecedented stress at the material time which had affected her ability to act.
126. The First Respondent had made candid admissions to each of the allegations save for 1.5, 1.6 and 1.8; she had also given full co-operation to the SRA. Her apologies were sincere and augmented by the self-report that she had made to the SRA and the decision to repay the monies had been made of her own volition. The Tribunal had before it cogent testimonials as to her character.
127. Mr Henry said that there had been no repetition of the matters the subject of the allegation and neither was there any likelihood of any recurrence. The First Respondent had reacted well to the restrictions placed upon her practice and had done everything she could to rectify matters.
128. Mr Henry said that he was conscious of the shattering effect of a finding of dishonesty and asked the Tribunal to approach the matter as one of gross recklessness as any dishonesty had not been deliberate. Mr Henry asked that the First Respondent be suspended from practice rather than struck off, as in his submission this would meet the gravity of the situation and restore confidence in the profession.

#### The Second Respondent

129. In the letter from his solicitor to the SRA dated 11 November 2013 it was said that the Second Respondent apologised profusely for his behaviour.

### **Sanction**

130. The Tribunal referred to its Guidance Note on Sanctions when considering the appropriate and proportionate sanction.

#### The First Respondent

131. The First Respondent had admitted a lack of integrity and had had several allegations of dishonesty proved against her. The Tribunal had heard a litany of the most ruthless exploitation of an obviously vulnerable individual and had disbelieved much of what the First Respondent had to say whilst giving evidence on oath.

132. In cases where dishonest misappropriation of client's funds had been found then it was well-established that that would invariably lead to strike off. There were no circumstances put before the Tribunal that might lead it to mitigate that penalty. The First Respondent would be struck off the Roll of Solicitors. Indeed, the seriousness of her misconduct was such that this would have been the appropriate sanction even if she had not been found to be dishonest.

### The Second Respondent

133. It was clear that, even by his own admission, the Second Respondent was a totally unfit person to work in a solicitor's office. The Tribunal would have no hesitation in making the section 43 Order requested by the Applicant.

### **Costs**

134. The Tribunal had before it a Schedule of Costs in relation to the First Respondent in the sum of £52,334.31 and a Schedule of Costs in relation to the Second Respondent in the sum of £4,507.38.
135. Mr Henry told the Tribunal that the First Respondent was in an IVA
136. Mr Levey said that the Applicant had written to the First Respondent in November 2013, enclosing a blank personal financial statement for completion and referring to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin). The Applicant had written again in the last week but there had been no response. If the First Respondent wished her financial circumstances to be taken into account then the burden was upon her to produce proper evidence (SRA v Davis and McGlinchey). At present there was one line in her witness statement and an exhibit to show the existence of the IVA. There was nothing at all before the Tribunal about her creditors or any agreement she had come to in relation to her debts. An IVA did not prevent a person from incurring further debts. Mr Levey urged the Tribunal to make the order, since if a costs order was not made against her then those costs would be borne by the profession.
137. Mr Henry said that he had only been recently instructed and had seen the costs for the first time today; it was therefore difficult to assess their merits. However, notwithstanding that, the First Respondent could give evidence on oath as to her means. Her income would disappear following the Tribunal's sanction and the rent from her properties had to go to the IVA. Any suggestion made by the Applicant that the First Respondent was not being truthful about her means was disproportionate. Mr Henry asked the Tribunal to apply common sense and proportionality in this case.
138. In questioning by the Tribunal, Mr Levey was asked why there was apparent duplication between two grade A lawyers on the costs schedule and why it had been necessary to have a grade A fee earner sitting behind Counsel. He replied that this was a case that had been taken most seriously by the SRA. Whilst two Grade A fee earners had worked on the case, one had been taken over from the other and the rates charged were reasonable.

### The Tribunal's Decision in Relation to Costs

139. The Tribunal had considered very carefully what had been said to it concerning costs by both representatives and had spent some time considering the case of Davis & McGlinchey. It was most unsatisfactory that the First Respondent had provided no information as to her financial means despite reminders to do so from the Applicant. It was now too late for her to give that evidence as that left the Applicant at a substantial disadvantage.
140. The Tribunal therefore carried out a summary assessment of the Applicant's costs. It was concerned that there had been apparent duplication of work by Grade A lawyers. In this case the costs would be reduced to £48,000.
141. The Tribunal was satisfied that the First Respondent was in an IVA. It acknowledged that it had now removed her source of income. However, it appeared that she had several investment properties which may have available equity and so, in all the circumstances, the Tribunal would make an order that the costs were not to be enforced without its permission but would permit the SRA to apply for a charging order on any property.
142. The Tribunal had no information before it in relation to the Second Respondent's means and would therefore award the Applicant its costs in full in the sum of £4,507.38.

### **Statement of Full Orders**

143. The Tribunal Ordered that the First Respondent, Lucia Shingirai Benyu, 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 £48,000, such costs not to be enforced without permission of the Tribunal save that the Applicant may apply for a Charging Order in respect of any property owned by the Respondent.
144. The Tribunal Ordered that as from 2nd day of October 2014 except in accordance with Law Society permission: –
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor, Ronnie Benyu;
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Ronnie Benyu;
  - (iii) no recognised body shall employ or remunerate the said Ronnie Benyu;
  - (iv) no manager or employee of a recognised body shall employ or remunerate the said Ronnie Benyu in connection with the business of that body;
  - (v) no recognised body or manager or employee of such a body shall permit the said Ronnie Benyu to be a manager of the body;
  - (vi) no recognised body or manager or employee of such a body shall permit the said Ronnie Benyu to have an interest in the body;

And the Tribunal further ordered that the said Ronnie Benyu do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,507.38.

Dated this 18<sup>th</sup> day of November 2014  
On behalf of the Tribunal

K. W. Duncan  
Chairman