SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11201-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ALISON HEYLIN, First Respondent

CLIVE HEYLIN Second Respondent

Before:

Mr. J. P. Davies (in the chair)
Mr. R. Hegarty
Mr. D. E. Marlow

Date of Hearing: 17 March and 26 June 2014

Appearances

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

Ms Janet Cragg, counsel, of Kenworthy's Chambers, Arlington House, Bloom Street, Salford, Manchester M3 6AJ for the First Respondent, who was present.

The Second Respondent was not present or represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent, Alison Heylin, were that:

1.1 She failed to remedy breaches of the Solicitors Accounts Rules 1998 ("SAR 1998") promptly on discovery in breach of Rule 7 of those Rules;

1.2 She failed to remedy breaches of the SRA Accounts Rules 2011 ("AR 2011") promptly on discovery in breach of Rule 7.1 of those Rules;

1.3 She transferred money from a client account to office account on account of costs:-

1.3.1 Without first giving or sending a bill of costs or other written notification of the costs incurred to the clients in breach of Rules 19(2) and (3) of the SAR 1998; and

1.3.2 In excess of the amount properly required for the payment of those costs in breach of Rule 22(3) of the SAR 1998.

1.4 She failed to transfer payments received from the Legal Services Commission ("LSC") in respect of unpaid professional disbursements from an office account to a client account (or pay the disbursements) within 14 days of their receipt in breach of:

1.4.1 (Insofar as that conduct occurred prior to 5 October 2011) Rule 21(1)(b)(ii) of the SAR 1998; and

1.4.2 (insofar as that conduct occurred subsequently) Rule 19.1 AR 2011;

1.5 She agreed to client money being withdrawn from client account and paid over to creditors of a recognised body of which she was a director in breach of:

1.5.1 Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC"); and

1.5.2 Rule 22(1) of the SAR 1998.

1.6 It was further alleged that in agreeing to the making of two transfers of £5,000 on 11 January 2011 the First Respondent acted dishonestly.

2. The allegations against the Second Respondent, Clive Heylin, were that he had, in the opinion of the SRA occasioned or been a party to an act or default in relation to Heylin Legal Limited, a recognised body, which involved conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice, namely:

That whilst employed by Heylin Legal Limited as a Practice Manager he dealt with client monies and with its client account in such a way as to cause the First Respondent to breach the SAR 1998 and the AR 2011 in the manner particularised in allegations 1.3 to 1.5 above.

Documents

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

Applicant:

- Application dated 15 November 2013
- Rule 5/Rule 8 Statement with exhibit "AJB1" dated 15 November 2013
- Schedule of costs for hearing 17 March 2014
- Note dated 25 June 2014
- Copy case report in Sohal v SRA [2014] EWHC 1613 (Admin)
- Schedule of costs for hearing 26 June 2014

First Respondent:

- Answer (jointly with Second Respondent) 17 December 2013
- Statement, with exhibit "AH1", dated 17 December 2013
- Email to Tribunal 30 January 2014
- Statement of means (jointly with Second Respondent), with exhibit "AH2", dated 5 March 2014
- Bundle of four testimonials
- Letter from Junction Alkrington Surgery dated 13 March 2014
- Report of Dr SP Sashidharan dated 20 May 2014

Second Respondent:

- Answer (jointly with First Respondent) 17 December 2013
- Statement dated 17 December 2013
- Statement of means (jointly with First Respondent) dated 5 March 2014

Preliminary Matter – Progress of Hearing

4. The hearing commenced at approximately 2.50pm on 17 March 2014. Mr Bullock opened the Applicant's case and Ms Cragg for the First Respondent confirmed to the Tribunal that the First Respondent admitted the allegations, including the allegation of dishonesty in relation to two transfers which took place on 11 January 2011. The Second Respondent had indicated in an Answer signed on 17 December 2013 that he admitted the allegations made against him, and this was confirmed in his witness statement.

5. The Tribunal having heard the allegations and principal facts in support, and noting the admissions by both Respondents, found the allegations proved. The Tribunal then heard mitigation and submissions on costs.

6. In the course of the submissions in mitigation, Ms Cragg referred to a letter from the First Respondent's GP dated 13 March 2014. This outlined medical problems from which the First Respondent had suffered from 2009 i.e. including the times relevant to the allegations.

7. The Tribunal was concerned that the matters referred to in the GP's letter might have formed the basis of a defence to the allegation of dishonesty. The finding that all of the allegations were proved, including dishonesty, was made before the Tribunal was aware of the matters in the GP's letter. Having allowed some time for the parties to consider the position, the Tribunal invited submissions on how it could proceed in the light of this new information. The Tribunal indicated that what was said by the GP would not be sufficient to provide a defence to the issue of dishonesty but it might be that the First Respondent would want to produce a report from a consultant psychiatrist. The Tribunal also invited submissions about whether it could, in any event, overturn the finding it had already made.

8. Ms Cragg told the Tribunal that being a solicitor meant a great deal to the First Respondent such that if there was any possibility that she could remain on the Roll she would like to pursue that route; the First Respondent was aware that a finding of dishonesty almost inevitably led to an order of striking off the Roll. Ms Cragg was instructed to seek an adjournment to try to obtain further evidence. This would be difficult in practice because of the cost of obtaining a report from a consultant psychiatrist, but the First Respondent would want to try to exhaust all of the possibilities. The First Respondent had instructed Ms Cragg that at the relevant time the First Respondent was in such a state of health that she would have admitted to almost anything; she remained in a similar state of health. It was submitted that if the Tribunal required further evidence it would be appropriate for the Applicant to contribute to the costs of that. It may be possible for the First Respondent to receive some assistance in meeting the costs of obtaining a report.

9. Ms Cragg could not identify any of the Tribunal's rules which would give it the power to reopen the matter, having made findings on the allegations. However, it was submitted that it would be unfair not to allow new evidence to be considered. Ms Cragg apologised for not submitting and drawing attention to the GP report before the findings were made.

10. Mr Bullock submitted that as a responsible prosecutor, and in the interests of procedural fairness, he would address the Tribunal on the issue of whether the Tribunal could reopen the matter, not whether it should.

11. So far as Mr Bullock could ascertain there were no powers under the Tribunal's procedural rules which would permit the Tribunal to overturn findings which it had made in a matter such as this. The Tribunal was established by statute and did not have an inherent jurisdiction and so could only act within the powers specifically given by statute. There were only two circumstances in which the Tribunal could reconsider its own decisions: a) under Rule 19, where a Respondent did not appear and was not represented; and b) Rule 21(5) where a conviction on which findings had been based was subsequently quashed.

12. There was a right of appeal to the Administrative Court from the Tribunal's decisions if it was considered that a Tribunal decision was wrongly made. This could potentially extend to cases where there was an appeal on the basis of fresh evidence which was not reasonably available at the time of the hearing. It was because there was a right of appeal that there was no general need for the Tribunal to have the power to reconsider its own decisions.

13. The Tribunal had already reached the stage in the proceedings at which it had made findings in relation to the allegations. It would therefore be difficult for the Tribunal properly to adjourn the hearing in order to re-open the issue of dishonesty.

14. It was clear that the First Respondent was impecunious; it was not clear how any report would be funded and it was in any event not right that the cost of funding it should fall on the profession.

15. Mr Bullock submitted that if the matter were to be adjourned in order to reopen the allegation of dishonesty, the case should be remitted to a different division as the case had been opened before this division on the basis of admissions to all of the allegations. Listing before a different division would be tantamount to agreeing that the finding of dishonesty made at this hearing was null and void. There would be nothing objectionable to the other findings, including the finding against the Second Respondent, being maintained. It was submitted that it would in any event be appropriate to make a s43 order against the Second Respondent, this being a regulatory rather than disciplinary order.

16. The Tribunal retired to consider its decision at approximately 5.10pm and was ready to resume in court at approximately 5.40pm.

17. The Tribunal considered carefully the submissions of the parties and the Tribunal's procedural rules. Due to the late hour and the unexpected development in the case the Tribunal would not be able to conclude the case on this occasion in any event.

18. The Tribunal had heard the First Respondent's application to adjourn the hearing and concerning the possible introduction of new evidence, in particular the possibility of a report from a consultant psychiatrist being obtained.

19. The Tribunal noted Rule 16(3) of the Solicitors (Disciplinary Proceedings) Rules 2007 which applied to these proceedings. This division had made findings on the allegations and determined that it should see the case through to a conclusion. There was no basis on which the Tribunal could revise or revisit the findings it had made, but it could hear further evidence in mitigation and this could deal in particular with the First Respondent's state of mind at the time of the admitted and proved misconduct. It was in the interests of justice that the First Respondent should have the opportunity to produce further evidence and that this should be considered by the Tribunal. This evidence might be relevant to mitigation, and possibly to the issue of whether there were exceptional circumstances; the Tribunal did not want to suggest that any further evidence would affect the outcome of the proceedings but it was right for such evidence to be considered, if the First Respondent wanted and was able to obtain a relevant report.

20. The Tribunal determined that the First Respondent could, by 4pm on 12 May 2014, file and serve any further evidence in mitigation. In order to ensure that this case would not be part-heard on a second occasion, it should be listed for the first open date after 1 June 2014, with a time estimate of one day. The Tribunal accepted that this might be an over estimate but it would not be fair for any party to be pressed for time, and the Tribunal itself would want time to consider the evidence and circumstances carefully. There was some possibility that the First Respondent and/or

any psychiatrist she instructed would be called to give evidence. It was noted that the Applicant is not usually able to challenge evidence which goes only to mitigation. It was possible that half a day would be sufficient; the parties were directed to inform the Tribunal as soon as possible if further evidence was to be presented and of their reasonable time estimate for the hearing, if less than one day. The parties were further directed to contact the Tribunal's office with details of availability as soon as possible. As the matter was ongoing, the Tribunal ordered that the costs of this hearing should be costs in the application.

21. The Tribunal directed as follows:

21.1 Case adjourned, part-heard, to the first available date after 1 June 2014 with a time estimate of one day;

21.2 Parties to contact the Tribunal office with details of their availability as soon as possible;

21.3 Parties to contact the Tribunal office as soon as possible if the time estimate for the hearing is substantially reduced;

21.4 The First Respondent may, by 4pm on 12 May 2014, file and serve such further evidence in mitigation as she considers appropriate;

21.5 Costs in the application.

22. The matters recorded at paragraphs 4 to 22 above were recorded in a Memorandum dated 17th March 2014 which was provided to the parties.

23. The hearing resumed at approximately 10.15am on 26 June 2014. The Tribunal had before it on that occasion the report of Dr SP Sashidharan dated 20 May 2014. Ms Cragg apologised as the report had been provided after the date set in the directions (at paragraph 21 above). Dr Sashidharan had provided the report pro bono and the report had taken a little longer than hoped due to the doctor's other commitments. Mr Bullock confirmed that no point was being taken concerning the slightly late delivery of the report.

24. The Tribunal heard further submissions in mitigation from Ms Cragg. The Respondent was then called to give evidence on points of mitigation and costs/means before Ms Cragg concluded her submissions. The Tribunal began its deliberations at approximately 11.45am, then heard representations on costs from about 12.30pm to 12.40pm. The Tribunal announced its orders at approximately 1.30pm, and the case was concluded.

Factual Background

25. The First Respondent, Alison Mary Heylin, was born in 1963 and was admitted as a solicitor in 1988. At the relevant time she was the sole director of Heylin Legal Limited of 8 Worsley Avenue, Harpurhey, Manchester M40 9NA ("Heylin Legal").

26. The Second Respondent, Clive Heylin, was an unadmitted person. At the relevant time he was employed by Heylin Legal as its Practice Manager and day to day responsibility for all of its banking and accountancy matters was delegated to him. The Second and First Respondent are married.

27. The allegations arose from two inspections of the books of accounts and other documents of Heylin Legal conducted by duly authorised investigation officers of the Applicant. The first commenced on 21 March 2011 and culminated in a forensic investigation report dated 31 May 2011 ("the first FI Report"). The second commenced on 1 May 2012 and culminated in a forensic investigation report dated 19 December 2012 ("the second FI Report").

Allegations 1.1 and 1.2

28. The first FI Report recorded that a cash shortage of £55,517.83 existed on the client account of Heylin Legal as at 28 February 2011.

29. The second FI Report recorded that a cash shortage of £15,935.72 (which included items identified as being a cause of the shortage identified in the first FI Report) continued to exist as at 30 April 2012. The shortage was rectified in full by payments made from the office account of Heylin Legal made between 25 May 2012 and 23 November 2012.

30. The causes of the cash shortage were various payments and transfers which formed the subject of allegations 1.3 to 1.5 and 2 (set out at paragraphs 32 to 41 below).

31. In the course of his interview with the Investigating Officer on 11 April 2011 the Second Respondent indicated that the First Respondent knew that he had committed breaches of the SAR as early as autumn 2009.

Allegations 1.3 and 2

32. The Second Respondent admitted to the Investigating Officer that, in the period between August 2009 and February 2011, he transferred monies for the firm's costs before the firm's bills had been raised in order to make "block transfers" to the office account so that the firm could "fulfil its commitments". On occasions, the amounts transferred were in excess of the actual amount due.

33. The cumulative amount transferred from client account to office account by the Second Respondent in excess of costs due was £6,238.83 as at 28 February 2011. In the period from August 2009 up to that date transfers had been made on account of costs in excess of the amount due in 13 out of 18 months, giving rise to a consequent cumulative shortage at each month end in the range £2,453.06 to £7,071.28.

34. In the course of his interview with the Investigating Officer, the Second Respondent admitted that he knew that making these transfers was a breach of the Rules and that the First Respondent had told him not to do it. However, the First Respondent took no steps to reverse the transactions, discipline the Second Respondent or restrict his ability to deal with the client account.

Allegations 1.4 and 2

35. Between April 2010 and 13 April 2012 Heylin Legal received 104 individual payments from the LSC in respect of unpaid professional disbursements ranging in amount from £37.50 to £3,359.85, which were credited to the office account of the firm by the Second Respondent but not then transferred to the client account within 14 days of receipt. This resulted in a cash shortage of:

35.1 £31,482.55 as at 28 February 2011; and

35.2 £11,126.60 as at 30 April 2012.

36. When interviewed by the Investigation Officer on 11 April 2011 the Respondents both said that they knew that professional disbursements had to be paid within 14 days of funds being received into the office account, but said that they were not aware that, if payment was not made, the monies had to be transferred to the client account. The Second Respondent admitted that those payments had been retained by him on the office account for the benefit of the firm and that he would pay disbursement invoices based on the degree of urgency, which in turn was based on their age and the pressure for payment from the service provider.

Allegations 1.5 and 2

37. Between 30 September 2009 and 7 October 2010 the Second Respondent made 10 transfers from the client account to the office account of Heylin Legal in relation to the client matter of Mrs CJ of sums which ranged in value between £40 and £10,000, and which amounted to the total sum of £27,796.45. Those transfers resulted in a cash shortage on the client account of £17,796.45 as at 28 February 2011, which had been partially rectified by 11 April 2011 (the shortage at that date being £4,389.07).

38. When interviewed by the Investigation Officer, the Second Respondent said that he had made an initial transfer of £10,000 on 30 September 2009 "… to see us through a financially difficult period". The Second Respondent knew this transfer was in breach of the SAR. He told the Investigation Officer that he had discussed this with the First Respondent, who had told him "… to do what you need to do …" The Second Respondent also told the Investigation Officer that he had tried to correct the situation in June 2010 but that in September and October 2010 he had needed to make further transfers which increased the cash shortage.

39. The Applicant accepted that the Second Respondent made two transfers from the office account to the client account in June 2010 by way of partial rectification of the cash shortage of £12,790 which then existed. The total sum transferred on those occasions was £10,000.

40. On 11 January 2011 the Second Respondent made two further transfers from the client account to the office account of Heylin Legal in relation to the matter of Mr CC, which were each in the sum of £5,000 and which therefore amounted to the total sum of £10,000. The consequent shortage was remedied in its entirety by a transfer from the office account to the client account made on 14 February 2011.

41. When interviewed by the Investigation Officer, the Second Respondent explained that there were bailiffs in the firm's office at the time the transfer was made (to levy distress in respect of unpaid rates) and "… we decided that we would make the transfer and pay it back as quickly as possible." The First Respondent said that she "… knew it was wrong…" but "… there was no other choice" and she "… had agreed to it…"

Allegation 1.6

42. It was alleged that in agreeing to the making of the two transfers of £5,000 on 11 January 2011 the First Respondent acted dishonestly.

Witnesses

43. There were no witnesses for the Applicant, the FI Reports having been accepted by the Respondents.

44. The First Respondent gave evidence on her own account, in mitigation, after the Tribunal had found the allegations proved.

Applicant's Submissions

45. Mr Bullock told the Tribunal that the Second Respondent was the principal actor in the events in issue; he was the one who moved the money around. The First Respondent was strictly liable for his actions, in accordance with both SAR 1998 and AR 2011. In some instances, the actions were carried out with the concurrence of the First Respondent. All of the allegations, including the allegations of dishonesty had been admitted by both Respondents. Accordingly, Mr Bullock's submissions would be relatively brief.

46. At the relevant times the First Respondent was aged about 46 and had been a solicitor for about 21 years. She was the sole director of the Firm, which carried out Legally Aided family work in the Harpurhey area of Manchester. The Second Respondent was employed as the Practice Manager.

47. Two investigations were carried out into the Firm. The first started on 21 March 2011 and led to the production of a Forensic Investigation Report ("FI Report") dated 31 May 2011. The second started on 1 May 2012 and led to a second FI Report dated 19 December 2012.

48. In the Second Respondent's witness statement, he had asked for a recording of the interview with the investigation officer in the first investigation to be played to allow the Tribunal to gauge the Respondents' state of mind at the time of the interview. Mr Bullock told the Tribunal that the recording was not available in court. It was quite lengthy, being about 1 hour 12 minutes in duration, and it was submitted that in the light of the admissions it would disproportionate to listen to the recording in its entirety. It was in any event accepted by the Applicant that the First and Second Respondents were under personal and professional stress in the course of the interview; they were facing serious financial and personal difficulties.

49. Ms Cragg, for the First Respondent, told the Tribunal that she was not asking the Tribunal to listen to the interview. The Chair commented that the Tribunal had taken on board the points made by the Respondents about the stress they were under. Mr Bullock confirmed that this was not controversial; it was a sad case.

Allegations 1.1 and 1.2

50. Mr Bullock told the Tribunal that this related to the First Respondent's failure to rectify the shortage on client account of £55,517.83 as at 28 February 2011; this was not rectified in full until 23 November 2012. From the FI Reports it was apparent there had been a shortage for a longer period. The Applicant said that the First Respondent would have known of the shortage from September 2009; this was the first time the Second Respondent made an improper transfer with the First Respondent's knowledge. The unremedied shortage lasted about 3 years.

Allegations 1.3 and 2

51. Mr Bullock told the Tribunal that these allegations related to taking payment for fees from money held for clients in a client account without first giving or sending a bill of costs, or other written notification of the costs incurred to the clients.

52. On various occasions from August 2009 to February 2011 the Second Respondent transferred a sum he estimated to be due from client to office account before bills were raised, in order to meet the firm's commitments. This was putting the cart before the horse; bills should be raised before making transfers. Unfortunately, the Second Respondent's estimates of the amounts to be billed were inaccurate in 13 out of 18 months, which led to a cumulative shortage which varied from around £2,500 to around £7,000. At the end of the period (28 February 2011) the shortage arising from these transfers was £6,238.83.

53. Mr Bullock told the Tribunal that it was the Second Respondent who made the transfers. The allegation against the First Respondent was not only on the basis of strict liability; although she did not expressly consent to the transfers, she knew that they were carried out and had taken no steps to prevent a recurrence.

Allegations 1.4 and 2

54. These allegations related to the retention in office account of monies received from the LSC to pay professional disbursements; the Respondents failed to pay the disbursements or transfer the funds to client account within 14 days, as required by the Rules.

55. In the two year period April 2010 to April 2012 the firm received 104 individual payments, ranging from £37.50 to £3,359.85 which were credited to office account.

56. The allegations arose in part on the basis that the Respondents were ignorant of the relevant provisions. They were aware that they should pay the disbursements when the money was received but did not realise it was improper to retain it in office account if the disbursements were not paid promptly. The Applicant alleged that the any solicitor should be fully conversant with the relevant Rules about dealing with client money.

57. The Second Respondent's explanation to the Investigation Officer was that the monies were used as working capital for the firm.

Allegations 1.5 and 2

58. Mr Bullock told the Tribunal that these allegations related to the withdrawal of client money from a client account otherwise than in circumstances permitted by Rule 22(1) of the SAR 1998.

59. The Applicant's case was that in the 15 months from September 2009 to January 2011 the Second Respondent made 12 transfers from client to office account, ranging in amount from £40 to £10,000, totalling over £37,000. There were 10 payments in relation to Mrs CJ's matter, from 9 September 2009 to October 2010, leading to a shortage on the client ledger which was partially rectified in June 2010.

60. On the ledger of Mr CC there were two payments, each of £5,000, in January 2011 from client to office account. A corrective payment was made in early February 2011. These withdrawals were made to pay creditors. It was noted in the FI Report that there were bailiffs in the office at the time of the transfers.

61. It was submitted that at least three of the withdrawals were made on the First Respondent's instructions – that for £10,000 on the Mrs CJ ledger and both transfers on the Mr CC ledger.

62. The Applicant's case was that in giving such instructions the First Respondent acted without integrity and in a way which would damage the trust the public would place in her and in the profession.

Allegation 1.6

63. Dishonesty was alleged against the First Respondent in relation to the two transfers on the ledger of Mr CC on 11 January 2011. The test to be applied was that set out in Twinsectra v Yardley and others [2002] UKHL 12 ("the Twinsectra case"). The Applicant was required to prove that the First Respondent's conduct was dishonest by the standards of reasonable and honest people and that she realised that her conduct was dishonest by those same standards. The First Respondent had admitted to the investigation officer that she knew that what she was doing was wrong, as set out at paragraph 41 above.

64. Using money belonging to another to pay the trade debts of a company (of which she was the sole director) without permission would be regarded as dishonest by the standards of reasonable and honest people.

65. The Applicant's case was that the admissions showed that the First Respondent knew that what she was doing was wrong; she had accepted that she was subjectively as well as objectively dishonest. By her admissions to the Tribunal – it being confirmed through her counsel that she admitted all of the allegations, including that of dishonesty – the First Respondent further confirmed that she accepted she had known she had acted dishonestly.

66. Mr Bullock referred the Tribunal to the very specific consequences of a finding of dishonesty in the Tribunal. In the case of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma") it was made clear by the Administrative Court that save in exceptional circumstances, the normal and necessary penalty where there was a finding of dishonesty was an order striking the solicitor off the Roll. The judgment in Sharma went on to note that there was a small residual category of cases where striking off would be disproportionate. The relevant factors in determining whether a case was exceptional were noted to include the nature, scope and extent of the dishonesty itself, whether it had been momentary or over a lengthy period of time, whether there had been benefit to the solicitor and whether there had been an adverse effect on others.

67. Mr Bullock submitted that the case of Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") was authority for the proposition that it was not necessary to have an intention permanently to deprive in order for there to be a finding of dishonesty; in that case, the Respondent had always intended to repay the money he had used. Further, the line of High Court cases in which exceptional circumstances had been found (e.g. the case of Burrowes v Law Society [2002] EWHC 2900 (Admin) ("Burrowes") arose in a period before it had been necessary to formulate an allegation of dishonesty. Further, it was submitted, the Burrowes case was exceptional in that the solicitor had been acting on his client's instructions, there had been no loss and there had been no potential loss to anyone. Mr Bullock submitted that the present case was a sad case, but should not be confused with an exceptional case.

68. Mr Bullock submitted that in relation to the application under s43 of the Solicitors Act 1974 (as amended) the Tribunal had to consider whether the Second Respondent had occasioned or been a party to an act or default which made it undesirable for him to be involved in a legal practice, and that the act or default had taken place in relation to a legal practice. Mr Bullock submitted that on the facts of this case, the Tribunal could be satisfied in relation to both points.

69. On resumption of the hearing on 26 June 2014, Mr Bullock presented to the Tribunal a Note which outlined the relevant authorities, but also acknowledged that,

> "… the complexion of the matter has been altered by the report of Dr Sashidharan which is now in evidence."

The authorities referred to in the Note included: Bolton v The Law Society [1994] 1 WLR 512; Sharma; Burrowes v Law Society [2002] EWHC 2900 (Admin); SRA v Dennison [2011] EWHC 291 (Admin); SRA v Block; Weston v The Law Society (Unreported) 29 June 1998 Divisional Court; Levy v SRA [2011] EWHC 740 (Admin) and Sohal v SRA [2014] EWHC 1613. In relation to the Second Respondent, the Note referred to: Ojelade v The Law Society [2006] EWHC 2210 (Admin), Gregory v The Law Society [2007] EWHC 1724 (Admin) and R (ex parte SRA) v Solicitors Disciplinary Tribunal, SRA v Ali [2013] EWHC 2584 (Admin)

Submissions for the First Respondent

70. Ms Cragg for the First Respondent told the Tribunal that the First Respondent accepted the allegations, the seriousness of which she did not seek to minimise.

Findings of Fact and Law

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

72. **Allegation 1.1 - She failed to remedy breaches of the Solicitors Accounts Rules 1998 ("SAR 1998") promptly on discovery in breach of Rule 7 of those Rules**

72.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission.

73. **Allegation 1.2 - She failed to remedy breaches of the SRA Accounts Rules 2011 ("AR 2011") promptly on discovery in breach of Rule 7.1 of those Rules**

73.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission.

74. **Allegation 1.3 - She transferred money from a client account to office account on account of costs:-**

1.3.1 Without first giving or sending a bill of costs or other written notification of the costs incurred to the clients in breach of Rules 19(2) and (3) of the SAR 1998; and

1.3.2 In excess of the amount properly required for the payment of those costs in breach of Rule 22(3) of the SAR 1998.

74.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission.

75. **Allegation 1.4 - She failed to transfer payments received from the Legal Services Commission ("LSC") in respect of unpaid professional disbursements from an office account to a client account (or pay the disbursements) within 14 days of their receipt in breach of:**

1.4.1 (Insofar as that conduct occurred prior to 5 October 2011) Rule 21(1)(b)(ii) of the SAR 1998; and

1.4.2 (insofar as that conduct occurred subsequently) Rule 19.1 AR 2011

75.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission.

76. **Allegation 1.5 - She agreed to client money being withdrawn from client account and paid over to creditors of a recognised body of which she was a director in breach of:**

1.5.1 Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC"); and

1.5.2 Rule 22(1) of the SAR 1998.

76.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission.

77. **Allegation 1.6 - It was further alleged that in agreeing to the making of two transfers of £5,000 on 11 January 2011 the First Respondent acted dishonestly.**

77.1 This allegation was admitted by the First Respondent and the Tribunal was satisfied to the required standard that the allegation had been substantiated, in the light of the facts of the case and in particular on the First Respondent's admission. Although that admission had been made before she had had the benefit of legal representation, it had been maintained at the hearing at which the First Respondent had representation by counsel.

78. **Allegation 2 - Whilst employed by Heylin Legal Limited as a Practice Manager he (the Second Respondent) dealt with client monies and with its client account in such a way as to cause the First Respondent to breach the SAR 1998 and the AR 2011 in the manner particularised in allegations 1.3 to 1.5 above.**

78.1 This allegation was admitted by the Second Respondent and the Tribunal was satisfied that it was proved to the required standard on the facts and on the admission. The Tribunal noted in particular that in his Answer to the Rule 5/8 Statement (which was a joint document with the First Respondent) the Second Respondent stated that he admitted the allegations against him, and that this was confirmed in his witness statement of the same date. The Second Respondent had further stated that he had no intention of working within a legal practice again.

Previous Disciplinary Matters

79. There were no previous matters in which allegations against either Respondent had been substantiated.

Mitigation

First Respondent - 17 March 2014

80. Ms Cragg for the First Respondent told the Tribunal that the First Respondent did not seek to minimise her role in what had happened, but there were a number of points which would mitigate matters.

81. The first FI Report had identified a shortfall on client account as at 28 February 2011 of £55,517.83. This was partially replaced by the end of March 2011, such that the shortfall was then £31,482.55. The second FI Report showed that by 30 April 2012 the cash shortage had been reduced to £15,935.72 and the cash shortage had been replaced in full by 23 November 2012. The greatest part of the shortfall had been made up of unpaid professional disbursements.

82. Ms Cragg told the Tribunal that neither the First nor Second Respondents had known that they should have transferred money received to pay professional disbursements to client account if not used to pay the disbursement within 14 days. The shortage represented money owed to other professionals e.g. for counsels' fees.

83. With regard to the matter of Mrs CJ the First Respondent accepted that in the relevant period (30 September 2009 to 31 March 2011) the Second Respondent had made transfers from client to office account on this ledger in the total sum of £27,796.45. However, there had also been transfers into client account, and the transfers were not all one way, such that the shortfall was £17,796.45. This shortfall was reduced to £4,389.07 by 11 April 2011. Ms Cragg told the Tribunal that this was the amount due to the Legal Services Commission for the statutory charge.

84. The First Respondent accepted that whilst she was not aware of every transaction carried out by the Second Respondent, she had allowed him to "do what had to be done" to maintain the Firm. The First Respondent accepted her responsibility as a solicitor for what had happened. However, the context of the matter of Mrs CJ was that the First Respondent had carried out work for the client over a two year period, for which she had been paid about £2,500 for the Firm's costs. This was typical of the level of charging undertaken by the First Respondent.

85. With regard to the matter of Mr CC, the two transfers of £5,000 on 11 January 2011 occurred in circumstances where there were bailiffs in the office to collect monies from the Firm. The First Respondent acknowledged that she knew that it was wrong to make the transfers. The monies had been repaid on 14 February 2011, about a month later; it was only for this period that the client had potentially suffered any detriment. The monies were properly paid when the bill for this matter was issued.

86. Ms Cragg submitted that the First Respondent had been working in extreme circumstances, which were possibly exceptional. Having bailiffs in the office was clearly a difficult circumstance. Further, the First Respondent had been suffering from depression; this was not an excuse, but was part of the context of what had happened. The incorrect transfers had occurred in blocks, based on inaccurate assessments of what could be billed. The two phrases which summed up the First Respondent's position were that she had "buried her head in the sand" and had instructed her husband (the Second Respondent) to "do what you have to do."

87. Ms Cragg accepted the summary of the position on sanction as set out in the Sharma case but the Tribunal was asked to consider that a proportionate approach, taking into account the exceptional circumstances and the First Respondent's personal circumstances, suggested that striking off should not be inevitable. The Firm was a small Legal Aid practice. The First Respondent was inexperienced, having opened the Firm in 2005. From 2008 the First Respondent and her mother had been ill; the Respondent's sisters had not been able to help due to their own personal circumstances. The First Respondent had two young children.

88. Ms Cragg referred to the report of the First Respondent's GP, dated 13 March 2014 which was provided to the Tribunal. There then followed the consideration and discussions set out at paragraphs 6 to 20 above.

89. In response to a question from the Tribunal, Ms Cragg told the Tribunal that the Firm had had problems both with its profitability (in that its income was insufficient to cover all of the costs) and that there had been insufficient working capital. However, by the time the Firm had closed the shortfall on client account had been replaced. The fundamental problem was that the Firm was not generating sufficient income. The First Respondent had started her Firm with enthusiasm and had trained three solicitors at the Firm. However, she had bitten off more than she could chew. The Firm had been established at a difficult time for Legal Aid work. The First Respondent's financial difficulties had coincided with her ill-health and ill-health in her immediate family. The First Respondent had not been living beyond her means, having lived in the same house for about the last 20 years.

First Respondent - 26 June 2014

90. Ms Cragg referred to the report of Dr Sashidharan dated 20 May 2014. The First Respondent's state of mind had been such that she had not taken steps to obtain such a report at an earlier stage in the proceedings. Ms Cragg told the Tribunal that she had found Mr Bullock's Note helpful in identifying the issues on which she would need to address the Tribunal, in particular the issue of whether a striking off order would be proportionate in this case.

91. Ms Cragg told the Tribunal that the First Respondent had asked her to explain to the Tribunal why she had become a solicitor. The First Respondent's desire to help vulnerable people arose from experiences in her own childhood, when she had been brought up in a household with very little money after her parents' divorce. The First Respondent had a passion for her work; she was committed to helping poorer members of the community, and she had an excellent professional reputation.

92. When the First Respondent set up Heylin Legal, she was an experienced solicitor but was not experienced in business. Not long after establishing the business, the First Respondent and other family members became ill. The First Respondent had supported her sister through a course of medical treatment and later health problems. The First Respondent had also supported her mother through her illness, whilst also looking after her own two young children. The Second Respondent had taken charge of the management side of the practice.

93. It was without doubt that the firm had been struggling. The First Respondent was behind with billing; the Second Respondent would estimate what he expected would be billed and make transfers before the First Respondent had prepared the bills. Ms Cragg submitted that the First Respondent had worked amazingly hard to remedy the breaches; the shortfall had been made up in full before the firm closed.

94. The First Respondent had experienced a number of difficulties arising from the health problems of family members throughout the period 2009 to 2012. Dr Sashidharan's report confirmed that the First Respondent had been suffering from depression. The Tribunal noted in particular the following passages in the report:

> "According to Mrs Heylin, she accepted from the outset that what she did was wrong. She told me that she agreed to move the money from the client account but, remembering what happened at the time "is all a blur". She said, "I am

> not sure if I knew that my husband was taking money out of the client's account. I don't know what the hell happened at the time. I must have known.""
>
> "The misconduct charges relate to events in the early part of 2011. As far as I can establish, she was suffering from mood symptoms at this time. She had consulted her GP for over a year with ongoing depression before that…"
>
> "While it was reported at the time that her mental condition was responding to treatment, with the benefit of hindsight and on the basis of the detailed psychiatric history I have elicited, I believe that she was clinically depressed during much of this time. Therefore, I advise that Mrs Heylin was suffering from a mental disorder at the time of her misconduct, which subsequently led to charges of dishonesty."
>
> "I believe that her depressive episodes were associated with significant functional impairment… It would appear that her general functioning was severely compromised as a result. In my opinion, her mental condition (depression) during this period is likely to have had an adverse impact on her judgment, coping and overall functioning."

Further passages are not reproduced here to preserve the privacy of the Respondent and members of her family, but the report was read in full and considered by the Tribunal. Ms Cragg told the Tribunal that the report showed that the Respondent's depression had been aggravated by the death of her mother in March 2010.

95. Ms Cragg told the Tribunal that the Respondent did not seek to minimise the seriousness of the breaches. She had shown insight and remorse and, indeed, had done so since the Applicant's first investigation in March 2011.

96. The First Respondent's position, as set out in Dr Sashidharan's report, was that the period in question was all a blur, and she had no specific recollection of events. The First Respondent had been anxious to make admissions and apologise for what had happened. Her illness had had an impact on her judgment. The First Respondent was then called to give evidence in mitigation; her evidence is noted below.

97. At the conclusion of the First Respondent's evidence, Ms Cragg submitted that from the beginning the First Respondent had been very anxious not to avoid her responsibility. It was submitted that what the First Respondent had said in evidence was supported by the documents in the case and by Dr Sashidharan's report. The latter contained evidence that the First Respondent's functioning had been severely compromised and her judgment had been affected during a period when she had been stretched to the limit. It was submitted that the medical evidence in this case meant that there were exceptional circumstances. Further, the dishonesty matters related to events on one day, in January 2011, which the First Respondent had put right as soon as she could. Her own role in the events of that day had been limited.

98. Ms Cragg submitted that in the light of the medical evidence, it would be disproportionate to strike off the First Respondent; it would not be necessary to protect the reputation of the profession in these circumstances. Ms Cragg submitted

that if this case were not exceptional, it would be difficult to imagine what would be exceptional. The First Respondent represented a very low risk for the future. What had happened occurred whilst she was running her own firm, something she had no intention of doing again. The benefit the First Respondent had derived had been limited in duration.

99. Ms Cragg referred the Tribunal to the testimonials provided for the First Respondent and told the Tribunal that the First Respondent was held in high esteem by her colleagues and clients. The First Respondent had served her community with dedication and passion; the testimonials illustrated that she provided an excellent service. Ms Cragg confirmed that the testimonials had been provided by the practice manager and members of her own chambers. Ms Cragg had represented the First Respondent on a pro bono basis.

Second Respondent

100. No oral submissions were made for the Second Respondent. The Tribunal read and considered his witness statement. It noted that he had admitted the allegations made against him, and his role in making the improper transfers. It also noted that he (and the First Respondent) had been under considerable personal and professional stress at the time of the investigations.

First Respondent's evidence in mitigation

101. The First Respondent confirmed that her two witness statements were true to the best of her knowledge and belief.

102. The First Respondent told the Tribunal that she had carried out fee-earning work and supervised staff whilst the Second Respondent had dealt with the financial aspects of the firm, including the accounts. The First Respondent told the Tribunal that she was responsible for the overall financial management of the firm, which she acknowledged had not been run as it should have been at the relevant times.

103. The First Respondent told the Tribunal that she had been working long hours when she could, but had also for a period been spending time caring for her mother; she had worked on Sundays, to try to catch up with preparation for court hearings, preparation of witness statements and the like. The firm dealt exclusively with family law and about 95% of the work was publicly funded. The work included domestic violence, children cases (including care and contact matters) and financial disputes. The First Respondent did a lot of work referred by a refuge, and did lots of work with members of the deaf community. Harpurhey, where the firm had its office, was one of the most deprived areas of England. The office was about 15 minutes by car from the First Respondent's home; her mother's home had been about 15 minutes by car in a different direction.

104. The First Respondent told the Tribunal that the letter from the Applicant about the inspection arrived on the first anniversary of her mother's death. The First Respondent described the whole period as being a blur. She could not recall if she was taking any medication for depression at the time, but thought she probably was.

This period was prior to the First Respondent having any Cognitive Behavioural Therapy ("CBT").

105. The First Respondent was referred to paragraph 20 of the Rule 5 Statement which dealt with the events of 11 January 2011 and read:

> "When interviewed by the FI Officer, Mr Heylin explained that there were bailiffs in the firm's office at the time the transfer was made (to levy distress in respect of unpaid rates) and "… we decided that we would make the transfer and pay it back as quickly as possible…" whilst Mrs Heylin said that "… she knew it was wrong…" but "… there was no other choice…" and "… she had agreed to it…"

The First Respondent told the Tribunal that she could not recall being in the office when the bailiffs attended. She did recall the Second Respondent saying that the bailiffs had come in and that he had said he had transferred some money. The First Respondent told the Tribunal that she had been unhappy about this, as he should not have transferred the money. The First Respondent could not recall how long after the money was transferred that she had been told about it, as it was all such a blur.

106. In response to questions from the Tribunal, the First Respondent stated that Mr CC, the relevant client, had been privately paying and that the firm had been entitled to some costs from him but she could not recall how much he owed in costs at that point. The First Respondent told the Tribunal that she would not normally bill a case until it was completed. In any event, the bill to Mr CC would not have been as much as the £10,000 which was transferred. The money which was in client account on this ledger was probably settlement money, in a matrimonial dispute, rather than being on account of costs. The First Respondent was not sure of the amount which was billed on this matter, but thought it was probably around £2,500.

107. The First Respondent told the Tribunal that she had repaid the money to the client account for Mr CC as soon as she could, which was when some costs were received from the LSC.

108. In response to a question from the Tribunal, the First Respondent stated that she did not recall the Second Respondent asking her permission before he made the transfers on 11 January 2011 but she was clear that he had told her about it after the event. The First Respondent told the Tribunal that if the Second Respondent had asked her, she would have told him not to do it, but the events were all such blur. The First Respondent told the Tribunal that she did not recall being in the office when the bailiffs were there; the Second Respondent's response to the presence of the bailiffs was to make the transfers.

109. The First Respondent told the Tribunal that with hindsight she could see that her eye had not been on the ball during the relevant period. She had left the Second Respondent to run the financial side of the firm, although she had been ultimately responsible for what happened in the firm. The First Respondent told the Tribunal that during the relevant periods she had stopped attending court as often and instead relied on counsel. She had not been able to concentrate or prepare properly to present cases in court and had found it easier to prepare paperwork than to attend court. The

First Respondent told the Tribunal that she had been assisted by a very good trainee solicitor.

110. The First Respondent told the Tribunal that she thought that either she or the Second Respondent had been able to sign both office and client account transfers/cheques and that the Second Respondent dealt with electronic banking. The Second Respondent also dealt with salaries on a monthly basis and routine payments of creditors. When bulk cheques were received from the LSC, the First Respondent would prepare the relevant bills and the Second Respondent would apportion the money between the ledgers. However, the First Respondent was behind with billing and she was the only person who could do the billing.

111. The First Respondent told the Tribunal that she would love to remain on the Roll of Solicitors; she had worked so hard to become a solicitor and would never again run her own business.

112. In response to a question from the Tribunal, the First Respondent stated that she had admitted dishonesty as she was responsible for what the Second Respondent did, as she was the solicitor in charge of the firm.

113. In response to a further question from the Tribunal, the First Respondent stated that prior to setting up Heylin Legal she had worked as an assistant solicitor in Manchester, before a period of maternity leave. All of her experience had been in family law firms which dealt with publicly funded work.

114. Mr Bullock indicated that there were three areas he would like to explore. Firstly, as the First Respondent had not been able to recollect whether either or both of the Respondents could operate the firm's accounts, Mr Bullock referred to paragraph 8 of the first FI Report, which stated that either of the Respondents could operate the bank accounts alone.

115. With regard to the size of the bill on the matter of Mr CC, Mr Bullock referred to paragraphs 23 and 24 of the first FI Report, which showed that more money came into client account for Mr CC than was sent out by way of matrimonial settlement; it could be that the difference was the amount of the costs. The Tribunal did not consider that it needed the detail, as the First Respondent had acknowledged that her bill to Mr CC would have been much less than £10,000.

116. There was then discussion about whether the words recorded at paragraph 20 of the Rule 5 Statement (set out at paragraph 105) carried that necessary implication that the First Respondent had been aware of the transfers and had consented or agreed to the transfers before they took place. The Tribunal Chair noted that the First Respondent's evidence to this hearing was that she did not think she was present when the bailiffs were and the transfers were made; the impression this gave was that the First Respondent had become aware of the transfers after the event. However, the impression given from the words recorded in the Rule 5 Statement was that the Second Respondent had consulted the First Respondent before making the transfers. The First Respondent was asked to comment on these two possible scenarios. The First Respondent told the Tribunal that when she had been interviewed by the Applicant's investigation officer she had been very upset. She had been anxious not

to wriggle out of her responsibility as she was the principal of the firm. The First Respondent told the Tribunal that she did not want to say she had not been present as it would appear she was washing her hands of her responsibility and she did not want to make any excuses.

Sanction

117. The Tribunal had regard to its Guidance Note on Sanction (September 2013).

118. So far as the Second Respondent was concerned, it was clear that he had occasioned or been a party to an act or default in relation to Heylin Legal Limited, a recognised body, which involved conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice. He had dealt with client monies and with its client account in such a way as to cause the First Respondent to breach the SAR 1998 and the AR 2011 in the manner particularised in this case. The Second Respondent had admitted what he had done. In all of the circumstances, it was appropriate and proportionate that a s43 Order should be made, to regulate his future work (if any) in a legal practice.

119. In considering the appropriate sanction to impose on the First Respondent, the Tribunal took into account and was fully cognisant of the line of cases which established that where dishonesty was proved (and, indeed, admitted as in this case) the normal and necessary sanction was an order striking the solicitor from the Roll. The Tribunal noted in particular the Judgment of Coulson J in SRA v Sharma [2010] EWHC 2022 (Admin) where it was stated at paragraph 13:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll… That is the normal and necessary penalty in cases of dishonesty… There will be a small residual category of cases where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time…; whether it was a benefit to the solicitor… and whether it had an adverse effect on others."

120. The Tribunal considered that this had been a very sad case for the First Respondent in view of both her personal and medical circumstances at the relevant time. She had had to give up her practice as a solicitor; her work in the profession something she had striven to achieve from a young age. Both Respondents had accepted their responsibility for the breaches of the accounts rules which had occurred, and those admissions had been made from the outset. The Respondents had co-operated throughout the investigation and these proceedings. Both had admitted the allegations in full.

121. The First Respondent was the regulated person responsible for compliance with the accounts rules and she accepted responsibility as the principal of the firm for the breaches which had occurred, and had accepted the allegation of dishonesty with regard to the events on 11 January 2011. As noted above, in most cases of dishonesty the appropriate sanction would be to strike a solicitor off the Roll. In this case, the

Tribunal had been invited to find that there had been exceptional circumstances, as envisaged in the Sharma case. The particular factors the Tribunal was invited to consider were the nature, scope, extent, duration and impact of the dishonesty, including whether there was any benefit to the solicitor and/or an adverse effect on others.

122. The Tribunal had had the benefit of hearing from the First Respondent in evidence and of reading the report of Dr Sashidharan of 20 May 2014, which report was not challenged by the Applicant.

123. The First Respondent had given evidence that she had not been consulted before the Second Respondent made the two transfers of £5,000 on 11 January 2011. She recalled being told about the transfers after the event, not being consulted before the transfers took place, and that she had therefore become aware of what had happened shortly afterwards. The note of the evidence on this point read:

> "I don't recall being there. I'm not sure I was there when the bailiffs were. I remember (the Second Respondent) saying the bailiffs had come in and him saying that he had transferred the money; he told me it had been transferred. I was unhappy because he shouldn't have done it."

124. The action had been dishonest, and the First Respondent accepted that it was dishonest. She had not been able to rectify the matter by transferring money back as soon as she became aware of the transfers and so had admitted that she had "agreed" to what had happened. That was the context in which she had accepted responsibility and had admitted the allegation of dishonesty.

125. The Tribunal had seen the First Respondent giving evidence and accepted her evidence; she was a credible witness and what she said was not inconsistent with the documents in the case. Although the Applicant asserted that the words "she agreed to it", quoted in the Rule 5 Statement and in the FI Report meant that the First Respondent had given prospective approval, the Tribunal was satisfied that there was an alternative interpretation, namely that the First Respondent had had no choice but to accept what had happened as she could not put it right. She could be said to have "agreed" to the transfers retrospectively in that she did not self-report the transfers to the Applicant as soon as she became aware of them. The First Respondent had maintained throughout the investigation and these proceedings that she had been unhappy with what the Second Respondent had been doing, albeit she had not prevented the transfers he had made. The Tribunal had questioned the First Respondent searchingly on the issue of what she knew at the time of the transfers and was satisfied that her evidence that she had not been consulted on 11 January 2011 was credible. The Tribunal accepted, therefore, that the First Respondent did not give approval to the transfers in advance but accepted the transfers were dishonest and that she had responsibility for what had occurred.

126. The Tribunal also accepted the evidence in Dr Sashidharan's report, extracts from which are quoted at paragraph 94 above. The Tribunal noted and accepted in particular the passages which read:

> "The misconduct charges relate to events in the early part of 2011. As far as I can establish, she was suffering from mood symptoms at this time. She had consulted her GP for over a year with ongoing depression before that."

and,

> "I believe that she was clinically depressed during much of this time. Therefore, I advise that Mrs Heylin was suffering from a mental disorder at the time of her misconduct, which subsequently led to charges of dishonesty."

The Tribunal therefore accepted that at the time of the misconduct in question the First Respondent was unwell, with a recognised illness which had an adverse impact on her functioning and judgment.

127. The Tribunal did not minimise the seriousness of the accounts rules breaches which had occurred, over a period of about two years; such breaches in themselves warranted a sanction towards the upper end of the range of sanctions available to the Tribunal. However, in this case the Tribunal found there were exceptional circumstances such that it would not be necessary or proportionate to strike the First Respondent off the Roll because of the admission and finding of dishonesty. This departure from the usual penalty was justified by a number of factors including: the First Respondent's illness at the relevant time; the fact her consent to what had happened was retrospective rather than given before the transfers; and the money had been repaid as soon as the First Respondent was able to do so (which was within about a month of the transfers). The dishonest acts themselves had occurred on one day and the adverse effects of those acts had been mitigated completely in about a month; it could therefore be said that the dishonesty was of short duration. The First Respondent had had some benefit from the transfers, in that her firm had been able to pay a debt which it was being pressed to pay (under, it seemed, the threat of distraint) but had derived no direct benefit. Further, the First Respondent had been responsible for what had happened and had properly accepted this, but her personal culpability was minimised by the fact she was not properly consulted and by her illness at the relevant time. The Tribunal also noted that all of the shortages which had occurred had been repaid so no client had suffered any loss (although there had been a risk of loss) and there had been no claims on the Compensation Fund.

128. The Tribunal noted that the First Respondent had been a hard-working and committed solicitor who had not derived any significant financial benefit from her work in the publicly funded sector. The firm had had little if any working capital and it was well-known that the LSC was sometimes slow in paying costs. The testimonials provided indicated that the First Respondent was well thought of and referred to her professionalism, her dedication to her clients and her strong work ethic. The testimonials themselves did not go to the issue of whether there were exceptional circumstances, but illustrated that the First Respondent was a generally decent solicitor who had got into financial and health difficulties.

129. Having determined that there were exceptional circumstances, and that striking off was not required, the Tribunal considered the appropriate sanction to impose. In view of the breaches of the accounts rules, and the admitted and proved dishonesty, a

period of suspension was necessary. The Tribunal determined that on the facts of this case, the appropriate period of suspension was three years.

130. The Tribunal also determined that it was appropriate and proportionate to impose conditions on the First Respondent after the period of suspension expired. It was clear that the First Respondent had suffered with medical issues over a number of years, not just at the time of the breaches and those difficulties had had an adverse impact on her ability properly to work as a solicitor. Therefore, she should be required to provide medical evidence of fitness to practice on applying for a Practising Certificate after the period of suspension ended. Further, the problems had arisen from her failure adequately to manage her firm and it was important to restrict her ability to practise as a principal in a firm. Indeed, it was in the public interest that on returning to the profession the First Respondent should only be able to work in employment approved by the Applicant, to ensure that she was working within an adequate and supportive structure.

Costs

131. The Tribunal heard initial submissions in relation to costs at the hearing on 17 March 2014.

132. After opening the case, Mr Bullock told the Tribunal that he understood there was an agreement in relation to costs. As the First and Second Respondents had provided evidence of impecuniosity Mr Bullock proposed to seek an order for costs on the basis that such order should not be enforced without the Tribunal's permission, and that the Respondents would notify the Applicant if they received any capital or other assets within the next 6 years. The Applicant recognised the hardship which would be caused by enforcement. Mr Bullock told the Tribunal that the total of costs claimed and set out in the schedule of costs was £13,535.88.

133. Ms Cragg, for the First Respondent, told the Tribunal that she had not seen the schedule of costs. The Respondents had both submitted information about their means and her client did not have any money to pay costs.

134. The Chair expressed some concern about whether the Applicant would be prejudiced if the Tribunal made an order which was not to be enforced without further permission, as the Respondents' other creditors might be able to take priority. The matter of costs was not concluded on 17 March, as the case was adjourned.

135. For the hearing on 26 June 2014 the Applicant provided an updated schedule of costs, in the total sum of £15,457.18. Mr Bullock told the Tribunal that the First Respondent had agreed with the Applicant that the Tribunal should summarily assess the costs. The Applicant had considered the statements of means submitted by the Respondents and did not think there would be any point in seeking immediate payment. However, there was a property which was jointly owned by the Respondents (their home) and Mr Bullock submitted that it would be appropriate to allow the Applicant to obtain a charge over that property, but not enforce costs in any other way without the Tribunal's permission. The Applicant accepted the evidence of the Respondents that they were unable to pay a costs order immediately. It was noted

that although the First Respondent consented to this approach, the Second Respondent was not present or represented.

136. Mr Bullock asked the Tribunal to make any order for costs a joint and several order; the First Respondent had agreed that this was the appropriate order. Mr Bullock submitted that the costs arose from the same facts and investigations; whilst the actions had been those of the Second Respondent, the First Respondent was responsible as the firm's principal.

137. Ms Cragg did not have any submissions with regard to the amount of costs claimed, but it was noted that the costs estimated for this hearing should be reduced as the hearing had taken less than the 7 hours estimated in the schedule. Both Ms Cragg and Dr Sashidharan had provided their services pro bono, for which the Tribunal expressed its thanks.

138. The Tribunal considered carefully the costs schedule and the submissions of the parties.

139. The Tribunal accepted that the legal costs claimed were generally reasonable as to the time spent and rate claimed but there should be some reduction as less time had been spent at the hearing on 26 June than had been anticipated. Further, the costs of investigation by the Applicant and the investigation officers' costs appeared to be slightly high for a matter of this kind. Overall, the reasonable and proportionate costs of the case would be summarily assessed at £14,000 all inclusive.

140. The Tribunal determined that in the circumstances of this case, where the Respondents were jointly responsible for matters and had an ongoing relationship it was right that the costs should be payable on a joint and several basis.

141. The Tribunal did not consider that any further reduction was required by virtue of the Respondents very limited financial circumstances; their position could be protected by making an order that the costs should not be enforced without the further permission of the Tribunal, although as there was a property the Applicant should be able to obtain a charge over that property. The Applicant would thereby have some protection with regard to the recovery of costs, but the Respondents would not suffer undue hardship.

Statement of Full Order

142. The Tribunal Ordered that the First Respondent, ALISON HEYLIN solicitor,

1. be suspended from practice as a solicitor for the period of Three Years to commence on the 26th day of June 2014;

2. that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00, such costs to be payable jointly and severally with the Second Respondent Clive Heylin and further that such costs are not to be enforced save by way of a Charge (or in the absence of agreement a Charging Order) on the Respondents' jointly owned property at Middleton, Manchester.

3. Upon the expiry of the fixed term of suspension referred to above, the First Respondent shall be subject to the following conditions imposed by the Tribunal

3.1 The First Respondent must provide to the Solicitors Regulation Authority medical evidence that she is fit to practise on applying for a Practising Certificate;

3.2 The First Respondent may not practise as a sole practitioner, partner or member of a limited liability partnership, legal disciplinary practice or alternative business structure; and

3.3 May only work as a solicitor in employment approved by the Solicitors Regulation Authority.

4. Liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 3 above

143. The Tribunal Ordered that as from 26th day of June 2014 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor the Second Respondent CLIVE HEYLIN;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Clive Heylin

(iii) no recognised body shall employ or remunerate the said Clive Heylin;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Clive Heylin in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Clive Heylin to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Clive Heylin to have an interest in the body;

And the Tribunal further Orders that the said Clive Heylin do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00, such costs to be payable jointly and severally with the First Respondent Alison Heylin and further that such costs are not to be enforced save by way of a Charge (or in the absence of agreement a Charging Order) on the Respondents' jointly owned property in Middleton, Manchester.

DATED this 22nd day of July 2014
On behalf of the Tribunal

J. P. Davies
Chairman