SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11245-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

YVONNE RUTH PAINTER Respondent

Before:

Mr. R. Hegarty (in the chair)
Mrs E. Stanley
Mr. M. C. Baughan

Date of Hearing: 7 October 2014

Appearances

Andrew Bullock, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN appeared for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent Yvonne Ruth Painter were that:

1.1 By withdrawing client monies for her own purposes and not on behalf of the client in the circumstances described in specified paragraphs in the Rule 5 Statement, she:

1.1.1 Failed to use each client's money for the client's matter only in the period up to 5 October 2011, in breach of Rule 1(c) of the Solicitors Accounts Rules 1998 ("the SAR 1998") and since 6 October 2011, in breach of Rule 1.2(c) of the SRA Accounts Rules 2011 ("the SRA AR 2011"); and/or

1.1.2 Improperly withdrew client money in the period up to 5 October 2011, in breach of Rule 22(1) of the SAR 1998 and since 6 October 2011, in breach of Rule 20.1 of the SRA AR 2011.

1.2 She failed to remedy promptly upon discovery breaches of the SAR 1998 by replacement of money improperly withdrawn from the client account in the period up to 5 October 2011 in breach of Rule 7 of the SAR 1998 and since 6 October 2011 failed to remedy promptly the breaches of the SRA AR 2011 by replacement of money improperly withdrawn from the client account, in breach of Rule 7 of the SRA AR 2011.

1.3 By creating false letters addressed to the beneficiaries, legatee or creditor of the clients' estates and false copy cheques and placing them on client matter files and making false entries within client ledgers in relation to the withdrawals from client account in the circumstances described in specified paragraphs in the Rule 5 Statement, she:

1.3.1 Failed to act with integrity in the period up to 5 October 2011, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the SCC 2007") and since 6 October 2011, in breach of Principle 2 of the SRA Principles 2011; and/or

1.3.2 Behaved in a way which was likely to diminish the trust the public placed in her and in the legal profession in the period up to 5 October 2011, in breach of Rule 1.06 of the SCC 2007 and since 6 October 2011, in breach of Principle 6 of the SRA Principles 2011; and/or

1.3.3 Failed to keep accounting records to show clients money received, held or paid in breach of Rule 32(1)(a) of the SAR 1998 and since 6 October 2011, in breach of Rule 29.1(a) of the SRA AR 2011.

In relation to allegations 1.1 and 1.3 above, the Applicant also alleged that the Respondent acted dishonestly. However, dishonesty was not an essential ingredient to sustain the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 15 May 2014 with exhibit PL 1
- E-mail from the Respondent to Ms Lavender of the Applicant dated 23 June 2014 timed at 07.07
- E-mail from Ms Lavender to the Respondent dated 23 June 2014, timed at 10.37
- E-mail from the Respondent to Ms Lavender dated 23 June 2014 timed at 16.04
- Applicant's statement of costs for the substantive hearing dated 15 September 2014

Respondent

- E-mail from the Respondent to the Tribunal dated 12 June 2014
- Personal Financial Statement of the Respondent with attachments dated 1 September 2014
- Letter from the Respondent to the Tribunal dated 18 September 2014
- Letter from the Respondent to the Tribunal dated 26 September 2014
- E-mail from the Respondent's spouse to the Tribunal dated 6 October 2014

Preliminary Issues

3. The Respondent had expressed the intention in her letter to the Tribunal of 18 September 2014 to attend the substantive hearing. On 6 October 2014, the Respondent's spouse sent an e-mail to the Tribunal advising that the Respondent had been rushed into hospital late the previous evening and was now suffering from pneumonia and that she might be in hospital for 48 hours. The e-mail continued that the Respondent:

> "has said that the hearing should go ahead in her absence. She apologises to the Tribunal members for her non-attendance but this is due to circumstances beyond her control. She hopes that the Tribunal members will consider her written representations especially in relation to the SRA's costs in view of her financial position."

4. For the Applicant, Mr Bullock submitted that the Respondent had made full admissions to all the allegations including that of dishonesty. An e-mail in similar terms to that received by the Tribunal had also been sent to Ms Lavender of the Applicant who had been dealing with the matter. The e-mail address used by the

Respondent's spouse was the same as that used by the Respondent to communicate with the Applicant. Mr Bullock pointed out that there was nothing by way of a medical note to support the contents of the e-mails. The Tribunal considered the position under the Solicitors (Disciplinary Proceedings) Rules 2007. Rule 16(2) provided that:

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

5. The Tribunal had been made aware before the commencement of the hearing of the e-mail from the Respondent's spouse and had reminded itself of the guidance afforded by the cases of R v Hayward, Jones, and Purvis [2001] QB 862 CA and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 concerning the right of a Respondent to be present at their trial and the discretion available to the Tribunal as to whether the trial should continue in their absence. The Tribunal took into account that its discretion must be exercised with great care and that it was only in rare and exceptional cases that it should be exercised in favour of the trial taking place or continuing, particularly if the Respondent was unrepresented. In the particular circumstances of this case where the Respondent had admitted all the allegations including that of dishonesty and also had indicated that she had taken legal advice before making the latter admission as well as her wish communicated to the Tribunal by her spouse that the matter should be determined in her absence, the Tribunal considered that it would be appropriate to hear and determine the application notwithstanding that the Respondent was not present and was not represented.

Factual Background

6. The Respondent was born in 1967 and admitted in 2009. Her name remained on the Roll of Solicitors although she did not hold a current practising certificate.

7. At all times material to the allegations, the Respondent practised as a solicitor and was a member at the firm of Caldicotts Solicitors LLP ("the firm") from offices in Herefordshire. The Respondent resigned from the firm on 4 April 2013. From 1 August 2011 until 4 April 2013, the Respondent was the Designated Complaints Handler for the firm. She was also appointed as the Compliance Office for Legal Practice on 1 January 2013, again until she left the firm.

8. The firm had two offices and carried out work in the areas of crime, accounting for approximately 50% of the work, and probate, conveyancing, family law and military law. The firm employed a staff of 15 including the two members and five solicitors.

9. At all times material to the allegations, the Respondent could operate the client account and office account and was a signatory to those accounts. Only one signature was required to sign cheques from those accounts.

10. On 30 March 2013, Ms EJ, the other member of the firm submitted a report to the Applicant by e-mail stating that she believed that the Respondent was involved in making improper withdrawals from client account.

11. On 23 May 2013, a Forensic Investigation Officer ("IO") of the Applicant Ms Carolann Shimmin commenced an inspection of the books of account and other documents of the firm at its offices. That inspection culminated in a Forensic Investigation ("FI") Report dated 21 August 2013.

Allegations 1.1 and 1.3

12. The FI Report confirmed, by reference to information provided by the firm, that on five probate client matters and one conveyancing matter between 12 July 2011 and 28 December 2012 the Respondent drew 13 cheques to a total value of £60,306.34 on the client account of the firm (apart from one cheque from office account which was subsequently covered by money from client account). As at 30 June 2013, this figure of £60,306.34 represented the shortfall on the firm's client account.

13. The 13 cheques were made payable to:

- The Respondent, two cheques to a total value of £10,725.82
- The Respondent's spouse, one cheque to a value of £6,664.12
- JG two cheques to a total value of £13,028
- "Lloyds TSB Bank Plc" ref: Y.R. Painter, one cheque to a value of £1,715.46
- "E-On Electricity", one cheque to a value of £1,101.62
- "Nat West", one cheque to value of £929.32
- "[A] Limited" two cheques to a value of £15,760
- "HM Revenue & Customs", two cheques to a total value of £7,500; and
- "Cash" with "Yvonne Painter" on reverse of cheque, one cheque to a value of £2,582.

14. In the case of 10 of the cheques, the payments which had in fact been made to the Respondent or a third party were recorded in the relevant client account ledger as a debit in favour of a different payee.

15. In the case of four of the 10 cheques, copy cheques appeared on the client matter files made payable to the purported payee, namely the beneficiaries or legatee of the Estates whereas the presented cheques obtained from the bank showed different payees.

16. In relation to six of the 10 cheques, copy letters appeared on the relevant client matter file addressed to the purported payee and bearing a date contemporaneous with the relevant withdrawal which stated that a cheque in the sum withdrawn was enclosed.

17. An explanation by the Respondent of the various payees on the presented cheques and how those withdrawals from client monies came about was set out in the Respondent's letter to the Applicant of 6 September 2013. The Respondent further explained why the payments had been made in her letter to the Applicant of 5 November 2013.

18. The conduct of the Respondent in relation to making improper withdrawals out of client funds and falsifying accounting records was exemplified within the FI Report by reference to the matters of PT (Deceased) and SM (Deceased) amongst others.

PT Deceased

19. The firm was instructed to act on the estate of PT (Deceased). The Respondent took over conduct of the file between 1 October 2012 and the first week in January 2013 from the original fee earner Mrs JG who was absent from work for medical reasons.

20. The client ledger recorded that on 30 November 2012 the firm paid three cheques from client account to the beneficiaries of the Estate, AT, AB and FT, each for £6,664.12. The debit payments were evidenced by entries on the firm's Lloyds TSB client bank statements.

21. Three copy letters dated 3 December 2012 addressed to each of the beneficiaries AT, AB and FT appeared on the client matter file in relation to the Estate which stated that a cheque for £6,664.12 was enclosed, together with an amended estate account for their approval. These letters were not sent to AT, AB and FT. The payments to the beneficiaries were in part settlement of their entitlement. The letters included the Respondent as the signatory. Copy cheques sent out to AT in the sum of £6,664.12 (cheque number-003798); to AB in the sum of £6,664 (cheque number 003799) and FT in the sum of £6,664 (cheque number 003802) also appeared on the client file. All three cheques were signed by the Respondent as the authorised signatory. These cheques were not sent to the individuals concerned.

22. Copies of the presented cheques were obtained from the bank. Again all three cheques were signed by the Respondent as the authorised signatory. Cheque number 003798 in the sum of £6,664.12 purportedly payable to AT as seen from the client ledger, copy letter and cheque on the file in fact recorded the Respondent's husband as payee.

23. Cheque numbers 003799 purportedly payable to AB and 003802 purportedly payable to FT also as seen from the client ledger, copy letters and cheques on file, both in the sums of £6,664 in fact each recorded JG as payee. The payment to JG of £13,328 related to the Respondent's payment due to Mrs JG following the merger of her firm with the Respondent's firm on 1 July 2010.

24. An explanation by the Respondent of how these withdrawals from client monies came about was set out in her letter to the Applicant of 6 September 2013. The Respondent further explained why the payments had been made in her letter to the Applicant of 5 November 2013. In that letter she said:

> "I fully accept that I breached the rules, but I was convinced that if no payment was made to Mrs [JG] then she would sue the firm for Breach of Contract, and win."

SM (Deceased)

25. The firm was instructed to act on the estate of SM (Deceased). The Respondent was the fee earner acting in this matter.

26. The client ledger recorded that the firm paid from client account on 23 May 2012 a cheque number 003353 to Her Majesty's Revenue and Customs ("HMRC") in the sum of £1,715.46 and on 28 December 2012 a cheque number 003901 to St M's

Hospice. The debit payments were evidenced by entries on the firm's Lloyds TSB client bank statements.

27. Copy letters appeared on the client matter file in relation to the Estate dated 24 May 2012 to HMRC and St M's Hospice. These letters were not sent to the addressees. The letter to HMRC stated that a cheque for £1,715.46 was enclosed representing "a sum which was overpaid to us by yourselves in error". The letter to St M's Hospice enclosed a cheque for £10,000 in payment of the legacy under SM's Will and Codicil. The letters included the Respondent's initials under the firm's reference.

28. The IO who conducted the investigation and prepared the FI Report was provided by SS, the Practice Manager and Cashier at the firm with a copy of a cheque number 003901 written out to "St [M's] Hospice" and signed by the Respondent as the authorised signatory. The IO was informed by SS that this copy cheque appeared on the client file. This cheque was not sent to St M's Hospice. An unsigned requisition slip requesting payment of £10,000 from the firm's client account in favour of St M's Hospice was also supplied to the IO by the firm.

29. Copies of the presented cheques were obtained from the bank. The cheques were signed by the Respondent as the authorised signatory. Cheque number 003353 in the sum of £1,715.46 purportedly payable to HMRC in fact recorded as payee "Lloyds TSB bank plc YR Painter". Cheque number 003901 in the sum of £10,000 purportedly payable to St M's Hospice in fact recorded as payee "Mrs Y Painter".

30. The client ledger recorded that the firm paid from client account in cash on 11 July 2011 the sum of £2,582 to "HMRC". The debit payment was evidenced by an entry on the firm's Lloyds TSB client bank statement.

31. A copy of the presented cheque number 002366 in the sum of £2,582 was obtained from the bank. The cheque purportedly in favour of HMRC in fact recorded the payee as "Cash". The reverse of the cheque stated "Yvonne Painter".

32. An explanation by the Respondent of how these withdrawals from client money came about was set out in her letter to the Applicant of 6 September 2013. The Respondent further explained why the payments had been made in her letter to the Applicant of 5 November 2013. In that letter, she said:

> "... the sum of £2,582.00 was taken to cover the amount due to my husband for his building work and renovation of 10 South Street"

and

> "I accept that I breached the rules when I made this payment, but I believed the money would be replaced when the firm could afford to pay my husband's account."

As regards the withdrawal of £10,000, the Respondent stated in her letter of 5 November 2013:

> "The £10,000 was taken from this account as again I knew it was not going to be completed for some time."

and

> "I did however, repay this money within the first month of leaving the firm..."

Allegation 1.2

33. In consequence of the Respondent's actions an unremedied shortage arose on the client account of the firm which amounted to £60,306.34 as at 30 June 2013.

34. At the date of the FI Report, the shortage had been rectified with the last credit to client account taking place on 4 July 2013. The Respondent repaid the firm £49,564.34 by 2 July 2013, with the firm replacing the balance of the shortfall of £10,742 into client account on 4 July 2013.

35. The Respondent stated in her letter to the Applicant of 5 November 2013:

> "I accept that I have failed to pay all monies back to the firm. As at 16th June 2013 the amount outstanding was £10,742.00. Since that date I made 10 payments of £75.00 to their client account and since August 24th I have placed a further 9 payments of £75.00 into an online saver account."

and

> "I have not provided any proof of my repayments as I fully agree with the figures you have supplied to me."

36. As at the date of the Rule 5 Statement, the Respondent had paid to the firm a further £525.

Correspondence with the Respondent

37. On 2 May 2013, the Respondent wrote to Ms EJ the other member of the firm and said in her e-mail regarding two of the withdrawals from client account:

> "I know that the trouble I have caused is unbelievable and I'm so very very sorry. It was stupid stupid behaviour that I could not rectify before...
>
> ...I know you will find it hard to believe me, but I have never done anything like this before and I wish I could turn back the clock to before I did this."

38. On 23 August 2013, a supervisor employed by the Applicant wrote to the Respondent enclosing a copy of a report recommending the immediate imposition of conditions on the Respondent's practising certificate. In response to the letter and report, the Respondent stated in her letter of 6 September 2013:

> "I fully accept the outcome of your investigation. I did use funds from my firm's Client Account, therefore it would be wrong for me to ask for any concessions.
>
> I am extremely sorry for my actions and the distress caused to any individuals. If placed under the same amount of pressure in the future I would obviously act very differently. Hindsight being that wonderful thing.
>
> Please accept my statement that it was never my intention to deprive any beneficiaries from estates from their money. I fully intended to repay the money when each estate was concluded, by a separate payment from my own personal account, as I believe I would be repaid monies due to me from [the firm]. I cannot prove this statement as none of the estates that I removed money from had been settled."

and

> "Although I am not going to try and justify my actions, I would like to take this opportunity to explain how I found myself under an extreme amount of pressure and acted as I have. Please rest assured that, regardless of the decision by the Adjudicator, following your investigation, I am never, ever, going to work in or around the legal profession in any way."

39. Later she said:

> "Thank you for this opportunity to explain about the pressure I felt under. It is no excuse for the action I have taken and I would like to apologise again for my actions."

40. On 23 October 2013, the supervisor wrote to the Respondent enclosing a copy of the FI Report and requesting an explanation of the matters raised.

41. On 5 November 2013, the Respondent replied including:

> "I fully accept that I breached the rules as you have stated to a total of £60,306.34 and confirm that by 16 June 2013 I had repaid £49,564.34."

and

> "I...fully accept that I breached the trust placed in me by both the clients and my fellow solicitors and for this I am deeply sorry."

42. The Respondent then provided an explanation for her actions in relation to the six client matters concerned.

Witnesses

43. None.

Findings of Fact and Law

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

(The submissions recorded below include those made orally at the hearing and those in the documents.)

45. For the Applicant, Mr Bullock submitted that at the time of the conduct in question the Respondent had just over two years post qualification experience and was one of two members in the firm. Mr Bullock relied on the Rule 5 Statement and the FI Report. He referred the Tribunal to the facts of the case. The FI Report confirmed that between 12 July 2011 and 28 December 2012 the Respondent misappropriated £60,306.34 from client account by way of 13 cheques including two cheques for herself totalling £10,725.82, a cheque in favour of her spouse and others being paid to several of her creditors and creditors of the firm. In respect of each cheque, the relevant client matter was purportedly a probate file of which the Respondent had day-to-day conduct and the true identity of the payee was concealed because the Respondent entered another payee in the client account ledger or copied a cheque in an identical sum in favour of another payee and placed it on the file. She also placed on the client matter file a letter to the purported payee. Her misappropriation gave rise to a shortage on client account which was not remedied in full until 4 June 2013. The Respondent made admissions at a very early stage on 5 November 2013, responding to a letter from the Applicant dated 23 October 2013 sending the Respondent the FI Report. It was not disputed that the Respondent remedied a substantial part of the shortage. In her letter of response the Respondent confirmed line by line what she had done and why.

46. The Respondent admitted all the allegations in the Rule 5 Statement.

47. **The allegations against the Respondent were that:**

48. **Allegation 1.1 - By withdrawing client monies for her own purposes and not on behalf of the client in the circumstances described in specified paragraphs in the Rule 5 Statement, she:**

1.1.1 Failed to use each client's money for the client's matter only in the period up to 5 October 2011, in breach of Rule 1(c) of the Solicitors Accounts Rules 1998 ("the SAR 1998") and since 6 October 2011, in breach of Rule 1.2(c) of the SRA Accounts Rules 2011 ("the SRA AR 2011"); and/or

1.1.2 Improperly withdrew client money in the period up to 5 October 2011, in breach of Rule 22(1) of the SAR 1998 and since 6 October 2011, in breach of Rule 20.1 of the SRA AR 2011.

48.1 The Tribunal had regard to the submissions for the Applicant, the evidence and the admissions of the Respondent. The Tribunal found that as alleged the Respondent had improperly withdrawn client monies by way of 13 cheques for her own purposes rather than those of the client. The Tribunal found allegation 1.1 proved in all its aspects to the required standard, indeed it had been admitted.

49. **Allegation 1.2 - She failed to remedy promptly upon discovery breaches of the SAR 1998 by replacement of money improperly withdrawn from the client account in the period up to 5 October 2011 in breach of Rule 7 of the SAR 1998 and since 6 October 2011 failed to remedy promptly the breaches of the SRA AR 2011 by replacement of money improperly withdrawn from the client account, in breach of Rule 7 of the SRA AR 2011.**

49.1 The Tribunal had regard to the submissions for the Applicant, the evidence and the admissions of the Respondent. The Tribunal found that the Respondent had failed to remedy promptly upon discovery breaches of the Accounts Rules. She had only begun to make payment when her misconduct was discovered. The Tribunal found allegation 1.2 proved to the required standard, indeed it had been admitted.

50. **Allegation 1.3 - By creating false letters addressed to the beneficiaries, legatee or creditor of the clients' estates and false copy cheques and placing them on client matter files and making false entries within client ledgers in relation to the withdrawals from client account in the circumstances described in specified paragraphs in the Rule 5 Statement, she:**

1.3.1 Failed to act with integrity in the period up to 5 October 2011, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("the SCC 2007") and since 6 October 2011, in breach of Principle 2 of the SRA Principles 2011; and/or

1.3.2 Behaved in a way which was likely to diminish the trust the public placed in her and in the legal profession in the period up to 5 October 2011, in breach of Rule 1.06 of the SCC 2007 and since 6 October 2011, in breach of Principle 6 of the SRA Principles 2011; and/or

1.3.3 Failed to keep accounting records to show clients money received, held or paid in breach of Rule 32(1)(a) of the SAR 1998 and since 6 October 2011, in breach of Rule 29.1(a) of the SRA AR 2011.

50.1 The Tribunal had regard to the submissions for the Applicant, the evidence and the admissions of the Respondent. The Tribunal found that the Respondent had created false letters and false copy cheques and made false entries within client ledgers as alleged and in so doing had failed to act with the integrity required of a solicitor and behaved in a way which was likely to diminish the trust the public placed in her and in the legal profession. Rather than keeping accounting records which showed client monies received, held or paid in accordance with the Accounts Rules, the very nature of the entries which she had made into her firm's accounting records was designed to conceal what had happened to client monies (see also allegation of dishonesty below).

The Tribunal found allegation 1.3 proved to required standard, indeed it had been admitted

51. **Allegation of Dishonesty**

51.1 In the Rule 5 Statement in respect of the allegation of dishonesty relating to allegations 1.1 and 1.3, it was submitted that the conduct of the Respondent in misappropriating a substantial amount of money belonging to others for her own purposes: and/or then concealing her actions by creating false entries in accounting documents; and/or creating and placing false letters addressed to beneficiaries, legatee or creditor of estates and false copy cheques on client matter files, was dishonest by the ordinary standard of reasonable and honest people. On 5 November 2013, the Respondent wrote to the Applicant, stating:

> "... My main objective was not to deprive any clients from their money, but to ensure the survival of the firm and its employees. I did not set out to profit from my actions. Indeed the majority of the monies paid out were, I believed, to assist the firm."

51.2 It was submitted that in any event, the Respondent took deliberate steps to conceal the withdrawals from anyone reviewing the relevant files in that she made false entries within client ledgers in relation to withdrawals from client account; and/or created or falsified other documents (letters addressed to the beneficiaries, legatee or creditor of estates and copy cheques purportedly payable to the beneficiaries or legatee) to support those false entries; and/or concealed her actions by placing such false copy letters or cheques on client matter files. The Respondent would not have behaved in this way unless she had believed that her conduct in making the withdrawals would be viewed as wrong by others. Furthermore the improper withdrawals made by the Respondent from client account and their subsequent concealment by the creation of false documents, were not isolated occurrences but were both frequent and repeated so as to amount to a course of conduct extending over a period in excess of 17 months. Lastly the nature of the Respondent's conduct was such that no reasonable solicitor would have considered it to be honest. The Tribunal was therefore invited to draw the irresistible inference that the Respondent knew that her actions would be viewed as dishonest by the standards of reasonable and honest people.

51.3 The Tribunal asked to be directed to the Respondent's admission as in her letter dated 18 September 2014 to the Tribunal; she had stated that she was aware that she would be struck off because of the admitted allegation of dishonesty. Mr Bullock handed up an exchange of e-mails between the Respondent and Ms Lavender of the Applicant and reminded the Tribunal that the Respondent's admission of dishonesty appeared to have been made following receipt of advice. On 23 June 2014, the Respondent stated in an e-mail timed at 07.07:

> "I am however going to take advice regarding the acceptance of the dishonesty as I am not entirely clear of the implications and shall revert to you later today."

Later the same day at 16.04, the Respondent sent a further e-mail including:

> "I can confirm that I am admitting the allegation of dishonesty based upon the evidence of the SRA and the admissions that I have already made."

51.4 The Tribunal considered the submissions for the Applicant, the evidence and the admissions of the Respondent. The Tribunal applied the two limbed test for dishonesty set out by Lord Hutton in the case of Twinsectra Ltd v Yardley [2002] UKHL 12:

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

51.5 The Respondent admitted the allegation of dishonesty. Clearly reasonable and honest people would consider that the Respondent's failure to use client's money for clients matters and improperly withdrawing such money and then creating false letters and false copy cheques and making false entries within client ledgers to conceal what she had done to be dishonest and the Tribunal found that the Respondent's conduct and her admissions showed that she knew that by the standards of reasonable and honest people her conduct was dishonest. The Tribunal found the allegation of dishonesty in respect of allegations 1.1 and 1.3 proved to the required standard.

Previous Disciplinary Matters

52. None.

Mitigation

53. The Respondent was not present to give oral mitigation but in her letter to the Tribunal of 18 September 2014, she made representations which she asked the Tribunal to consider. She said that she did not seek to justify her actions but to explain what led her to them. She also referred the Tribunal to her letter to the Applicant of 6 September 2013 in which she stated that she had written to outline the pressure she felt under "during my entire time as a solicitor" and "it fully outlines why I felt compelled to use client money to keep the firm going. It was wrong, but at the time I could not find an alternative way out". The Respondent also referred the Tribunal to her letters of 8 October 2013 (responding to the Applicant's correspondence about placing conditions upon her practising certificate) and 5 November 2013 to the Applicant. In her letter to the Applicant of 6 September 2013, the Respondent described the role she had played in moving the firm to new premises which had to be heavily refurbished and the burden that imposed on her; the financial obligations of the firm to former members; her lack of experience of managerial work leading to her paying for business coaching; her difficulties in managing cash flow including taking drawings irregularly from the firm and her personal financial difficulties. In her letter to the Tribunal of 18 September 2014, the Respondent stated that she realised she

should not have joined the firm as a partner immediately upon qualifying; she felt that as the most inexperienced and most recently qualified she had been left as the "last man standing" to bear sole responsibility for the finances of the firm. She submitted that her only concern from May 2009 to April 2013 when she was asked to leave the practice was "to keep the firm afloat so as to maintain employment for our staff and to maintain a service to our loyal client base." The Respondent stated that she had been cooperative with the Applicant throughout the investigation and admitted immediately to using money from client account. She had never been investigated by the Applicant previously nor had any complaints been made against her to the Legal Ombudsman. She stated that her work for clients was well regarded by clients and colleagues alike. It was always her dream to become a solicitor and she did not qualify until she was in her forties. Her previous career had been in accounts offices. The Respondent stated that she had paid back all the monies that were owed to the firm partly from income and partly from the sale of her home. She had managed to secure a job as an administrator in a small local company and had been working hard to try and get herself and her family back on their feet. The Respondent also emphasised the adverse impact upon her family of public knowledge locally of what she had done. She stated that she could never aspire again to anything other than a small income.

Sanction

54. The Tribunal had regard to the Tribunal's Guidance Note on Sanctions. The most serious misconduct involving dishonesty, whether or not leading to criminal proceedings and criminal penalties if proved would almost invariably lead to striking off save in exceptional circumstances. The Tribunal had regard to the Respondent's mitigation; it did not consider, even if the Respondent's actions had been undertaken in a misguided effort to assist the firm, although the Tribunal noted that a considerable amount of the money misappropriated had been applied for her own benefit, that they constituted exceptional circumstances as envisaged in the case of Solicitor Regulation Authority v Sharma [2010] EWHC 2022 (Admin). Accordingly the Tribunal determined that the Respondent should be struck off.

Costs

55. For the Applicant, Mr Bullock applied for costs in the amount of £11,822.08. He explained that he was in London for a number of matters during the week in which this hearing took place and so he suggested that an apportionment be made of the disbursements claimed in respect of his travel costs reducing the amounts claimed from £138 to £37.12 and from £169 to £67.91 respectively and that his travelling time to the substantive hearing be reduced from £260 to £65. The estimate for attendance at the substantive hearing should also be reduced as the hearing had not taken as long as the two and a half hours estimated. Mr Bullock drew to the attention of the Tribunal a letter from the Respondent to the Tribunal dated 26 September 2014 making representations about the Applicant's costs claim. No trace of this letter could be found at the Tribunal and Mr Bullock arranged for a copy to be provided by e-mail.

56. In her 26 September 2014 letter, the Respondent referred the Tribunal to her letter dated 18 September 2014 included under Mitigation above in which she had referred to her financial position and asked the Tribunal to "take account of the fact that my

professional career and therefore my means of livelihood will be at an end as a result of the striking off order." She requested that the Tribunal consider whether the order would be sufficient punishment of itself having regard to the case of Merrick v Law Society [2007] EWHC 2997 (Admin). The Respondent submitted that on the particular facts of this case she had already discharged her financial liability to the firm by selling her home; that she had faced up to the financial responsibility and that to impose a further financial penalty in addition to the striking off order would not in her view be proportionate. She also understood that where a striking off order was made effectively depriving a solicitor of their livelihood, the Tribunal should consider how an order for costs would be made again referring to the case of Merrick but also to Solicitors Regulation Authority v Davis & McGlinchey [2011] EWHC232 (Admin). The Respondent referred the Tribunal to her Personal Financial Statement and proposed to discharge any costs order made against her at the rate of £100 a month. She referred to other debts which she was discharging and submitted that this was a realistic proposal based on which, she would have a debt hanging over her head a very long time. In her letter of 26 September about the costs schedule, the Respondent submitted that the costs were generally excessive and should be reduced on the basis that she had admitted all the allegations and that sanction was a foregone conclusion. She also challenged particular aspects of the costs including a claim of over £500 for "Communications with internal client" which she submitted appeared to relate to supervision or internal liaison within the Applicant and were incurred for the sole benefit of the Applicant. The Respondent also challenged the 17.5 hours preparation and finalising time in respect of the Rule 5 Statement and bundle of documents in what she said was a relatively straightforward matter. She also reminded the Tribunal that in respect of the Case Management Hearing on 24 June 2014 the Tribunal had summarily assessed travel and waiting costs at £150 and the Respondent challenged the balance of the claim for the hearing on the basis that it could have been dealt with on the papers as she had indicated that she was admitting all the allegations. The Respondent also challenged the Applicant's claim for overnight accommodation for Mr Bullock.

57. In response, Mr Bullock submitted that that it was to the Respondent's benefit for him to stay over and apportion the costs between four matters in which he was involved and he had in any event already offered to accept a lower figure than that in the schedule. As to communications with internal client, some internal discussions were always required about issues such as disclosure and in respect of the FI Report; it was necessary to ensure that the file for the hearing was factually accurate. However Mr Bullock accepted that some part of the time claimed had been spent updating people and on supervision and he suggested bearing in mind that the Respondent had made early admissions that the time claimed was reduced to cover e-mails exchanges with the IO. Mr Bullock also submitted that the time spent on the Rule 5 Statement related to work done. The Case Management Hearing had been scheduled of the Tribunal's own motion and he submitted that the costs of attendance should be borne by the Respondent as part of the overall costs of the application. The Tribunal had assessed costs of travel time and expenses in a fixed amount because this had been a day when there had been a multiple attendances by the Applicant's staff about which the Tribunal had expressed some concern. Mr Bullock maintained that preparation and drafting time for the Rule 5 Statement not been excessive. He also submitted that there would be no reason for any updates to be given to the IO on the proceedings at the Tribunal as this was outside her role.

58. The Tribunal had regard to the submissions for the Applicant and those made by the Respondent including references to the various authorities. The Tribunal summarily assessed the Applicant's costs claim. It considered that the IO's costs were somewhat excessive with regard to time spent on information review and preparation of the FI Report and also the post report work. The Tribunal found the time spent preparing, revising and finalising the Rule 5 Statement and accompanying bundle and preparing for the substantive hearing also somewhat excessive as this was not a particularly complex case and all the allegations had been admitted at an early stage. The Tribunal agreed with Mr Bullock's proposed reductions and that his approach to the cost of travel and overnight accommodation worked in the Respondent's favour. The Tribunal found the amount claimed for attendance at the Case Management Hearing to be reasonable. The Tribunal assessed costs in the total sum of £7,000 and noted that of the amount allowed £5,000 was attributable to the costs of the Applicant's investigation and £2,000 to the Tribunal proceedings. The Tribunal considered what costs the Respondent could afford to pay. The Tribunal was aware that it was removing the Respondent's livelihood as a solicitor and considered the information that the Respondent had provided in her Personal Financial Statement and attachments. While the Respondent's financial state was presently parlous she was earning a regular salary from employment outside legal services and had many working years ahead of her. The Tribunal therefore consider it appropriate to make an award of costs in favour of the Applicant in the amount assessed.

Statement of Full Order

59. The Tribunal Orders that the Respondent, Yvonne Ruth Painter, solicitor be struck off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00.

Dated this 31st day of October 2014
On behalf of the Tribunal

R. Hegarty
Chairman