

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11289-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLAIRE LOUISE TUNSTALL

Respondent

Before:

Mr A. Ghosh (in the chair)

Miss T. Cullen

Mr M. R. Hallam

Date of Hearing: 10 June 2015

Appearances

Jonathan Leigh, solicitor employed by The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 The Respondent, whilst working as an assistant solicitor fabricated documents and/or correspondence on the client file of Mr C, in so doing covering up inactivity and misleading both the client and her firm about the progress of Mr C's case thereby breaching all or alternatively any of the following:
 - (i) Principle 2 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.02 of the Solicitors Code of Conduct 2007: you must act with integrity;
 - (ii) Principle 4 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.04 of the Solicitors Code of Conduct: you must act in the best interest of each client;
 - (iii) Principle 5 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.05 of the Solicitors Code of Conduct 2007: you must provide a proper standard of service to your clients;
 - (iv) Principle 6 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.06 of the Solicitors Code of Conduct 2007: you must behave in a way that maintains the trust the public places in you and in the provision of legal services and/or you must not behave in a way that is likely to diminish the trust the public places in you or the legal profession.
 - 1.2 The Respondent caused and/or permitted a payment of £2,000 to be made from her firm's office account to Mr C, such payment purportedly being an interim payment in respect of his claim, thereby breaching all or alternatively any of the following SRA Principles 2011:
 - (i) Principle 2: you must act with integrity;
 - (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.
 - 1.3 The Respondent made false entries on the time recording system operated by her firm to record work on matters that had not actually taken place thereby breaching all or alternatively any of the following SRA Principles 2011:
 - (i) Principle 2: you must act with integrity;
 - (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.
 - 1.4 The Respondent misled a client, Mr U, into believing that the settlement reached with the defendant on his matter exceeded the true amount agreed thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) Principle 2: you must act with integrity;
- (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.

1.5 The Respondent caused an overpayment of £1,150 from her firm's office account to a client, Mr U, following settlement of his claim thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) Principle 2: you must act with integrity;
- (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.

1.6 The Respondent acted dishonestly in relation to Allegations 1.1 to 1.5 inclusive.

1.7 [Withdrawn with the leave of the Tribunal]

The Respondent admitted Allegations 1.1 to 1.5

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 10 October 2014 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 2 June 2015

Respondent:

- Respondent's Response dated 14 December 2014
- Statement of Means dated 14 December 2014
- Respondent's Admissions document dated 27 January 2015
- Letter from the Respondent to the Tribunal dated 29 May 2015 together with attached documents
- Statement of Means dated 29 May 2015 together with attached documents

Application to Withdraw Allegation 1.7

3. Mr Leigh, on behalf of the Applicant, made an application to withdraw Allegation 1.7. This had been an allegation brought jointly against the Respondent and a co-respondent against whom proceedings had earlier been withdrawn with the Tribunal's permission. The Applicant was now of the view that this allegation would not add anything to the substance of the allegations against this Respondent and therefore sought leave to withdraw it. It had been withdrawn against the co-respondent and Mr Leigh submitted that it would be unfair to continue to pursue it against this Respondent as it had been a joint allegation. The Respondent had no objection to the application. Accordingly, the Tribunal, having taken into account the nature of the other allegations, granted leave to withdraw Allegation 1.7 as requested.

Factual Background

4. The Respondent was born in July 1985 and admitted to the Roll of Solicitors on 15 December 2009. She did not have a current practising certificate.
5. At all material times the Respondent was employed, initially as a trainee, and then as an Assistant Solicitor by Scott Duff and Co Solicitors, 32 St John's Street, Keswick, Cumbria, CA12 5AS ("the firm").
6. On 9 January 2013 the Solicitors Regulation Authority ("SRA") received a report from the firm concerning the Respondent's conduct. On 15 May 2013 a SRA Forensic Investigation Officer ("FIO") commenced an investigation into the firm and produced a Forensic Investigation Report dated 22 July 2013.

Allegation 1.1

7. Mr C instructed the firm in or around January/February 2009 to deal with a clinical negligence matter. The Respondent initially had day to day conduct of the matter. There appeared to be a long delay on the file with no action taken between February and December 2011. In a letter dated 16 December 2011 a partner of the firm wrote to the client apologising for the delay and stating he was taking over the conduct of the file.
8. The Forensic Investigation Report noted a number of copy documents were found on Mr C's file which included:
 - An undated letter stating that breach of duty was admitted, purportedly from a Case Manager for the relevant NHS Trust which appeared to respond to a letter dated 1 April 2011;
 - An undated letter to an expert Orthopaedic Surgeon, Mr R, requesting a liability and causation report be prepared;
 - A further letter dated 16 December 2011 marked "Draft" to the expert, Mr R, requesting he prepare two reports in relation to the matter;
 - An email dated 7 February 2012 from the Respondent to the relevant NHS Trust requesting confirmation that reliance was placed upon the agreement to

extend limitation in the matter and an undated response purportedly confirming the agreement to extend time in the manner suggested;

- An undated letter purportedly from the expert, Mr R, enclosing two purported reports on causation and prognosis dated 2 February 2012;
 - An Advice purportedly received from Counsel and a letter to Mr C dated 2 July 2012 enclosing the Advice purportedly received from Counsel;
 - A letter to Mr C dated 8 November 2012, sent in the name of a partner of the firm, stating that an offer to settle of £10,000 had been made by the relevant NHS Trust.
9. The firm subsequently made enquiries with the expert, Mr R, who confirmed he had never received instructions in relation to this matter and nor had he prepared the reports on the file. Enquiries were also made of the relevant Counsel who stated there was no note of the matter on their system.
10. The Respondent was interviewed by the FIO on 4 June 2013. She admitted she had fabricated the documents purportedly sent to and from the NHS, the letters to Mr R and the medical reports from him and the Advice from Counsel. The Respondent stated:

“It was all fabricated by me as I was completely panicked and couldn’t see a way out.”

She stated she was not surprised that the NHS had no details of the client on their database. The Respondent accepted she had not acted in the best interests of Mr C.

Allegation 1.2

11. At a meeting on 3 July 2012 a letter attaching an office account cheque in the sum of £2,000, both being dated 3 July 2012, were given to Mr C purporting to be an interim payment in relation to his clinical negligence claim. The firm’s report stated that no interim payment was received on this case and the money was funded by a transfer from the file of another client, Mrs A, where costs had been received.
12. There was a note on Mrs A’s file purporting to explain the £2,000 transfer. It stated:
- “Call to Def querying overpayment of costs”
- The note stated the funds should have been for an interim payment on another file. The transfer from the client ledger of Mrs A to the client ledger of Mr C was shown in both respective ledgers on 1 July 2012. The transfer slip showed the request was made between client accounts however the cheque to Mr C was paid from the office account.
13. During her interview with the FIO, the Respondent stated:

“The client rang and went mad down the phone at [a partner’s secretary]. [The partner] wasn’t there and I couldn’t speak to him [the client] as he didn’t know I was involved. So out of desperation I told [the partner’s secretary] I would speak to the other side to see if they would make an interim payment. I then pretended that they had said yes and I used the [Mrs A’s] costs money hoping I could put it back.”

14. The Respondent was asked whether by paying £2,000 to Mr C from costs received on Mrs A’s file the Respondent had committed fraud against the firm. The Respondent replied:

“In hindsight yes but not at the time. [A partner] signed the cheque on this matter and didn’t ask any questions.”

Allegation 1.3

15. The firm’s report to the SRA stated that a number of files of which the Respondent had conduct had been dormant for some time. However, the firm’s time recording system showed time was recorded to give the impression that the matter was not dormant. The FIO reviewed four matters where this had happened.
16. One of those matters was the file of Miss H. This contained no correspondence or file notes from April 2012 and the potential claim became time-barred. However, the time recording system contained several entries after this date.
17. The FIO asked the Respondent about these files. Her explanation was:

“We received a housekeeping list monthly so I would make entries on the time recording system so that the matters wouldn’t keep coming up. This was to try and give myself more time to catch up. I appreciate that it was a stupid thing to do but I just needed more time to complete things on the files.”

During her interview the Respondent confirmed she did not think it was honest to have recorded actions when they had not taken place.

Allegations 1.4 and 1.5

18. The Respondent acted for Mr U in relation to a personal injury matter which commenced on 29 July 2011. There had been negotiations relating to the settlement of the claim. On 1 November 2012, a payment of £4,150 was made to Mr U from the office account. On 5 November 2012 payment was received by the firm from the defendant’s insurer for £3,000, which was £1,150 less than had already been sent to Mr U.
19. The firm’s report to the SRA indicated this matter came to the attention of one of its directors on 20 December 2012. The report stated that the Respondent subsequently admitted when questioned, that the payment to the client exceeded the amount agreed in settlement. A file note dated 21 December 2012 stated the defendant’s insurer confirmed the settlement was for £3,000 only.

20. The Respondent informed the FIO during interview that she had had a meeting with the client and informed him of the offer of £3,000. However, the client had been persistent and wanted an offer of about £4,000. The Respondent stated she had let the client manage her and told him that a higher offer had been made. As there were insufficient funds in the client account, she had used the office account. The Respondent stated she had written a cheque for £4,150 and had told the partner who signed the cheque that the case had settled. During her interview with the FIO, the Respondent accepted she had committed a fraud against the firm.

Allegation 1.6

21. It was alleged that the Respondent had fabricated letters and documents on the matter of Mr C to purportedly show that the case was progressing, and that an Advice had been obtained from Counsel and medical reports from an expert when this was not the case. It was alleged she had caused her firm to make an interim payment to Mr C when no interim payment had been made thereby causing the firm to suffer a loss of £2,000. It was alleged these actions were dishonest.
22. It was alleged the Respondent had created false entries on her firm's time recording system in relation to files she was purportedly working on and she allegedly misled Mr U into believing a settlement had been reached which exceeded the amount actually agreed. It was further alleged she caused her firm to make an additional payment of £1,150 to Mr U over and above the amount of the actual settlement. It was alleged these actions were dishonest.
23. On 11 February 2014, the SRA wrote to the Respondent with a copy of the Forensic Investigation Report. In her response she admitted the matters referred to and the factual background. She stated she had almost repaid monies due to the firm, that she had incurred financial hardship in doing so and that she took responsibility for her actions. She accepted she had not performed her role as a solicitor to a reasonable standard and stated she had decided not to practise as a solicitor in the future.

Witnesses

24. The following witness gave evidence:
- Claire Louise Tunstall, the Respondent

Findings of Fact and Law

25. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. 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.
26. **Allegation 1.1: The Respondent, whilst working as an assistant solicitor fabricated documents and/or correspondence on the client file of Mr C, in so doing covering up inactivity and misleading both the client and her firm about**

the progress of Mr C's case thereby breaching all or alternatively any of the following:

- (i) Principle 2 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.02 of the Solicitors Code of Conduct 2007: you must act with integrity;
- (ii) Principle 4 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.04 of the Solicitors Code of Conduct: you must act in the best interest of each client;
- (iii) Principle 5 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.05 of the Solicitors Code of Conduct 2007: you must provide a proper standard of service to your clients;
- (iv) Principle 6 of the SRA Principles 2011 and/or, where such conduct relates to a period before 6 October 2011, Rule 1.06 of the Solicitors Code of Conduct 2007: you must behave in a way that maintains the trust the public places in you and in the provision of legal services and/or you must not behave in a way that is likely to diminish the trust the public places in you or the legal profession.

Allegation 1.2: The Respondent caused and/or permitted a payment of £2,000 to be made from her firm's office account to Mr C, such payment purportedly being an interim payment in respect of his claim, thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) Principle 2: you must act with integrity;
- (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.

Allegation 1.3: The Respondent made false entries on the time recording system operated by her firm to record work on matters that had not actually taken place thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) Principle 2: you must act with integrity;
- (ii) Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.

Allegation 1.4: The Respondent misled a client, Mr U, into believing that the settlement reached with the defendant on his matter exceeded the true amount agreed thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) Principle 2: you must act with integrity;

- (ii) **Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.**

Allegation 1.5: The Respondent caused an overpayment of £1,150 from her firm's office account to a client, Mr U, following settlement of his claim thereby breaching all or alternatively any of the following SRA Principles 2011:

- (i) **Principle 2: you must act with integrity;**
- (ii) **Principle 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.**

26.1 The Respondent admitted Allegations 1.1 to 1.5 and accordingly the Tribunal found these allegations all proved.

27. **Allegation 1.6: The Respondent acted dishonestly in relation to Allegations 1.1 to 1.5 inclusive.**

27.1 The Respondent did not admit she had acted dishonestly. The Tribunal had been referred to a number of character references and, pursuant to the case of Donkin v The Law Society [2007] EWHC 414 (Admin) the Tribunal took these into account, in view of the fact that dishonesty had been alleged.

27.2 Mr Leigh, on behalf of the Applicant referred the Tribunal to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent herself realised that by those standards her conduct was dishonest.

27.3 The Applicant's case was that the Respondent's conduct involved multiple files and had occurred over a long period of time in a manner showing planning and consideration. Mr Leigh submitted these were not isolated departures. These were actions taken by the Respondent to cover up inactivity, and mislead her firm as well as clients. She had fabricated documents and reports from Counsel and a medical expert by using their names and reputations.

27.4 Mr Leigh submitted there had been a deliberate course of conduct by the Respondent who had created fictitious documents, and made representations to clients and to her firm, which she knew were not true. He submitted the Respondent's conduct had prevented the firm from monitoring the true position and, indeed, the firm had lost the sum of £1,150 which was paid to Mr U over and above the settlement agreed with the defendant's insurers.

27.5 Although the Respondent had indicated she had been suffering a great deal of stress at home and at work, Mr Leigh submitted most solicitors experienced stress during their working life and this was no excuse for the conduct. He also reminded the Tribunal that the Respondent had not provided any medical evidence in support and that she had managed to work successfully on other files. Mr Leigh submitted the Respondent

had chosen to act dishonestly on these files and that it was inconceivable that she did not intend to mislead when fabricating documents.

- 27.6 The Tribunal heard evidence from the Respondent and also considered the statements and written responses she had filed. In her correspondence to the Tribunal the Respondent gave details of her personal circumstances at the material time.
- 27.7 In her letter dated 29 May 2015 to the Tribunal the Respondent stated the partner who had been in charge of the office where the Respondent worked would frequently be absent from the office. He regularly worked from home or from his flat in Scotland, and would leave instructions that the other partners were not to be told he was not there. The Respondent stated that particular partner also took two long periods of time off work to study and for medical reasons. During the time that partner was absent, the Respondent stated she was left to deal with the office and the staff alone. The Respondent stated that some of the staff at the Keswick office had very turbulent relationships and she found herself playing the role of peacemaker, as well as supervising a trainee solicitor and dealing with the absent partner's workload.
- 27.8 The Respondent also stated in her letter of 29 May 2015 that combined with her own caseload, she was struggling to cope as a junior member of staff and that:

“On some days I found it difficult to make rational decisions and could feel myself sinking. The Keswick office was often a difficult place to work...

I did not feel able to tell my family how I was feeling..... I wanted to be able to do my best for all of my clients.....I did not think that I was being dishonest at the time, but I would panic and not be thinking clearly and I was being completely naive. Unfortunately it is these impulsive and erratic decisions that will overshadow all of the good work that I did.

..... I even got to the point where I contemplated having an accident so that I wouldn't have to go to work anymore.....

I felt completely lost and like I had no one to turn to. [The partner] repeatedly told me I would be made redundant if I didn't meet my targets or that if I complained they would withdraw the Clinical Negligence department I felt that I had to put a brave face on and felt that everyone was relying on me to keep things going at the Keswick office. I lost over three stone in weight and couldn't eat or sleep properly. [The partner] told me that I could not have time off following the breakdown of my marriage and said that I should not be dramatic about it and should get on with my work. I felt that I had no option but to do as I was told and try to make the best of things.”

- 27.9 In her Response dated 14 December 2014 the Respondent provided further details of her personal circumstances and her health. She stated she had neglected her own work and problems trying to help out other members of staff and deal with a series of staff problems. She also stated:

“[The partner] would often leave the office but tell me not to tell the Directors/Partners that he was not there and if they rang to just put them

through to his mobile. This meant I was left to deal with these issues and I felt I couldn't go to the Partners/Directors as then [the partner] would know that I had told them that he was not in the office."

- 27.10 The Respondent stated she would often spend days working on the partner's files when he was not in the office and played a major role in some of his largest cases. The Respondent stated that she had been shown how to alter the time recording by another colleague who had used this to avoid that colleague's supervisor finding out about delay on her files. The Respondent stated that although she accepted this did not excuse the practise, the altering of time recording was used by other fee earners.
- 27.11 The Tribunal heard evidence from the Respondent. The Tribunal found her to be a highly credible witness who appeared to be frank, candid, open and honest in her responses. She showed a great deal of contrition, remorse and, indeed, insight regarding what had happened. Furthermore, she provided a transparent account of her actions and accepted full responsibility without excusing her actions in any way.
- 27.12 In her evidence, the Respondent stated she had been "overwhelmed" and that everything was "a muddle". She stated she had been intimidated by Mr C and had been trying to juggle his interests with those of her supervisor. The Respondent stated that in relation to both Mr U and Mr C, she had followed the conduct of her supervisor who had done the same thing previously. The Respondent stated:
- "At the time I didn't think clearly with any clarity. I was under a lot of stress at the time."
- 27.13 The Respondent provided the Tribunal with details of the number of staff at the firm and the number of files she had dealt with. She had initially been employed as a trainee solicitor with the firm for two years prior to which she had been a secretary carrying out some fee earning work. She had qualified in 2009 and was then given around 130 files to deal with. She was also seeing approximately 10 new clients a week and did not have her own secretary until 2010. Even after 2010 her secretary was only part-time.
- 27.14 The Respondent stated that the supervising partner in charge was not in the office much and would sometimes go to Scotland for 2/3 days a week. She stated he told the staff not to tell the other partners he was away. The Respondent stated his secretary did not get on with the other staff. On one occasion there had been a physical fight between the staff in reception. Along with the Respondent and the supervising partner, there was one other solicitor, who dealt with conveyancing, a trainee solicitor and 3 secretaries.
- 27.15 The Respondent stated with hindsight she wished she had approached another partner at the Penrith office who she believed would have helped her. The Respondent stated that although 5 file reviews should have taken place every month by her supervising partner, they were done in a "job lot".
- 27.16 On cross-examination, the Respondent stated that she did not intend to act dishonestly at the time although she now accepted it was not honest to behave in the way that she had. She accepted her conduct had not been appropriate and that she had deliberately

fabricated two long expert reports by cutting and pasting from genuine reports from the same expert. She stated that at the time she had acted in “blind panic” and that it was “impulsive” because she had been “petrified of what could happen”.

- 27.17 In relation to the fabricated Counsel’s Advice, the Respondent accepted she had put her mind to what she was doing and stated “I thought I could put it right.” She stated that she had acted impulsively, in “complete panic” and that there had also been long periods when nothing actually happened.
- 27.18 In relation to the interim payment of £2,000 to Mr C, the Respondent stated she did not even consider whether her actions were dishonest. During cross-examination, the Respondent now accepted she had taken a dishonest action to appease Mr U and that it had not been a moment of madness. She accepted she had recorded time for work she had not carried out but stated that she had not entered any narrative on the entries. She had simply clicked a button to open a letter and the system automatically recorded that letter. She stated this was “common practise at the firm” and that she “wanted to get time to get the files straight”. The Respondent stated she did not think about whether her conduct was honest.
- 27.19 During cross-examination the Respondent appeared to make some admissions relating to dishonesty, although it was not clear that she was referring to the subjective limb of the Twinsectra definition; on further questioning by the Tribunal, the Respondent stated:
- “At the time I didn’t think one way or another if it was dishonest. It was blind panic at the time. From now I accept it was dishonest. On the time recording I do accept it was dishonest, I was clicking on a button and knew what I was doing at the time.”
- 27.20 Throughout her evidence the Respondent accepted her actions had been wrong and unacceptable, and she took responsibility for them.
- 27.21 The Tribunal took into account the various references and letters provided by the Respondent’s colleagues and clients. One letter in particular was from a former employee of the firm, LW, who had worked closely with the Respondent. She stated the Respondent was of excellent character, a conscientious solicitor and very trustworthy in all aspects of her work. She stated the Respondent was given a high level of responsibility very early on in her career and could often be found working after hours and spending her evenings ensuring she did the best she could for her clients and her employers alike. LW stated the Respondent had found herself in a similar position to the position LW was in whilst working at the firm, with limited supervision and support provided once qualification had been achieved.
- 27.22 There were various other references which spoke about the Respondent in glowing terms and referred to her being reliable, conscientious, honest, trustworthy, professional, diligent, loyal and hard-working.
- 27.23 The Tribunal was satisfied that fabricating documents, misleading clients and her firm, causing payments to be made to clients from the firm’s funds when clients were not due those monies and making false entries on the time recording system was

conduct that would be regarded as dishonest by the ordinary standards of reasonable and honest people.

- 27.24 The Tribunal, having heard from the Respondent, was of the view that she had been ill equipped, and indeed not qualified to be running or supervising the Keswick office. The conduct took place from February 2011/2012, not long after the Respondent had qualified. She had been a junior member of staff who had found herself taking on a management role in the absence of her supervising partner. The Respondent had been very inexperienced, having only ever worked in one office during her legal career. She had been given wholly inadequate support and had found herself in a very difficult position.
- 27.25 In relation to whether the Respondent herself, knew that her conduct was dishonest by those standards, the Tribunal found her conduct in fabricating documents, misleading clients and her firm, causing payments to clients to be made which were not due and making false entries on the time recording system to have been quite extraordinary. The Tribunal was persuaded by the Respondent's evidence, which it found to be highly credible, that she had been struggling to cope to the extent that she contemplated having an accident so that she wouldn't have to go to work anymore. Whilst no medical report was provided, the Tribunal entirely accepted the Respondent's evidence on her state of mind at that time and accepted that at the material time the Respondent had acted in blind panic under immense pressure, with no thought of the consequences of her actions.
- 27.26 Throughout the period of conduct, the Tribunal accepted the Respondent was not properly supervised by the partner in charge of the Keswick office. She had been required to deal with a heavy caseload and had no other appropriately qualified fee earner to work alongside her. She had been working in a difficult environment, being placed in the invidious position of being expected to deal with difficult staff management issues, which was wholly inappropriate for one of her level of experience. Her difficulties were compounded by the fact that she was unable to discuss the absence of her supervising partner with other partners of the practice and this limited her ability to seek assistance from them. The Respondent had been placed in an unenviable and wholly unacceptable position where she was in the middle of a conflict of interest situation between the partners.
- 27.27 The Tribunal placed considerable weight on the reference provided by LW in which she highlighted the responsibility and pressure the Respondent was placed under at a very early stage in her career with limited supervision/support available. Furthermore, the Tribunal took into account the impact this had had on the Respondent herself in relation to her weight loss, stress, anguish, migraines and being unable to discuss her difficulties with anyone including her family.

- 27.28 The Tribunal concluded that the conduct in this particular case, based on the specific facts presented, did not amount to the actions of a rational person particularly as the behaviour was so extreme. The Respondent had fabricated documents to and from third parties, including an advice from Counsel and two lengthy and detailed medical reports, and had misled both clients and her employers. She had caused payments to be made to clients to which they were not entitled and thus incurred losses to the firm. The Tribunal considered in the context of the full facts before it, that the Respondent had not acted in a rational frame of mind at the material time.
- 27.29 The Respondent had also made false entries on the firm's time recording system, but this appeared to be the culture within the firm and a generally accepted common practise. The Respondent was simply opening and closing letters on the system to create a record but not actually entering any information or data into the document itself. Although the Respondent accepted she knew what she was doing when she was "clicking a button on the system", the Tribunal was not convinced that the Respondent realised at the material times that her conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people, taking into account the other factors the Tribunal had found concerning her inexperience, health, frame of mind and the immense stress and pressure she had been under.
- 27.30 The Tribunal accepted the Respondent's evidence in its entirety and found, in this particular case, that the Applicant had not substantiated beyond reasonable doubt that the Respondent knew at the time that her conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was satisfied that the Respondent had not been thinking rationally at the time and had not given any thought at all to the question of dishonesty. She had simply been trying to keep her head above water in extremely difficult circumstances. Accordingly, the Tribunal found the Respondent had not acted dishonestly and Allegation 1.6 was not proved to the requisite standard.

Previous Disciplinary Matters

28. None.

Mitigation

29. The Respondent referred the Tribunal to her evidence, written responses and her Statement of Means in relation to mitigation. She stated in her Response dated 14 December 2014 that she had been left very distressed and embarrassed by the events. She stated she had let herself down as well as her family and former employers, having worked hard to obtain her qualification by self funding her university and working every weekend to be able to continue with her studies.
30. In her Statement of Means dated 14 December 2014, the Respondent stated she had repaid all sums due to the firm in full and provided further details of her current financial and personal situation. She was working with a non-legal company. The Respondent stated she had unsuccessfully tried to find a second job in order to clear her debts but there was high unemployment in the area where she lived. The Respondent requested the Tribunal not to impose a fine or make any order for costs

against her as this would most likely result in her bankruptcy because she would be unable to meet such additional liabilities.

31. In her letter dated 29 May 2015, the Respondent stated she would never return to a job in the legal sector and had not applied for a practising certificate. She provided the Tribunal with details of her personal circumstances and her current employment which was not within the law. The Respondent stated she felt her life had changed immeasurably since leaving the firm and that she was enjoying the work she was now doing. She stated:

“I feel that I am myself again and that I have my life back.”

The Respondent provided further details of her financial situation and again requested that the Tribunal not impose any financial penalty or any order for costs as this would cause her significant difficulty.

32. During her evidence the Respondent stated she never wanted to do any legal work again and that she intended to remove her name from the Roll of Solicitors if she was not struck off.

Sanction

33. The Tribunal had considered carefully the Respondent’s submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
34. The Respondent had admitted fabricating documents, misleading clients and her firm, allowing payments to be made to clients which caused losses to her employers and making false entries on the firm’s time recording system. She had admitted acting with a lack of integrity, failing to act in the best interests of each client, failing to provide a proper standard of service to her clients, and behaving in a way that did not maintain the trust the public placed in her and in the profession/provision of legal services.
35. The aggravating factor in this case was that the misconduct took place over a long period of time. However, the Tribunal took into account the factors it had found in relation to the pressures the Respondent had been under at the time. The mitigating factors were that the Respondent had repaid all the losses in full, she had cooperated with the regulator from the outset and had made early admissions. She had shown genuine insight and remorse and had an otherwise unblemished record.
36. These were very serious allegations and although the Tribunal did not consider the Respondent was a risk to members of the public, the gravity of the misconduct was high. As such, the Tribunal did not consider a reprimand or a fine to be sufficient to mark the seriousness of the allegations found proved. Fabricating documents, misleading clients/employers, causing employers to suffer losses and making false entries on the firm’s time recording system were extremely serious breaches which would normally attract the most severe sanction of all.

37. However, in this particular case, the Tribunal found there was truly compelling and exceptional mitigation. It took into account the Respondent's demeanour, contrition, genuine remorse and realisation with hindsight that her conduct was completely wrong. Taking all the circumstances of this particular case into consideration, the Tribunal was satisfied that the imposition of an indefinite suspension would be sufficient to mark the level of misconduct. The Tribunal was of the view that removing the Respondent from the Roll of Solicitors would be disproportionate in all the circumstances of this case. If the Respondent wished to make an application to lift the indefinite suspension in the future, she would need to satisfy the Tribunal, amongst other factors, that she was capable of working competently and safely in a legal environment, and that she had addressed the issues which had led to these events.

Costs

38. Mr Leigh made an application for the Applicant's costs in the sum of £14,897.85. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Leigh assured the Tribunal that the costs related only to this particular Respondent although he accepted one element needed to be removed as it related to another co-respondent. He submitted that although dishonesty had been found not proved, the case had been properly brought and the costs should be paid by the Respondent. Although the Respondent had provided a Statement of Means, Mr Leigh submitted there should be no restriction on enforcement as the Respondent would be able to pay by instalments and the SRA would be amenable to such an arrangement.
39. The Respondent referred the Tribunal to her Statement of Means.
40. The Tribunal considered carefully the matter of costs and was of the view that the costs claimed were excessive. The time claimed for drafting documents was too high and the Tribunal reduced this to 10 hours. Furthermore, the hearing had taken less time than the estimate claimed. The Tribunal made a reduction of two hours to this. The Tribunal reduced the preparation time for the hearing to 5 hours and the time claimed for working on other documents by an hour, as it considered the time claimed was too high. The Tribunal did not allow the claim for considering and preparing documents in relation to another co-respondent. Finally, the Tribunal made reductions to the costs claimed for the forensic investigation which it considered to be excessive. There was a claim for 13 hours of attendance at the firm, 12 hours referred to as "Info Review" and 24 hours for the preparation of the Forensic Investigation Report. The Tribunal reduced these items by 14 hours. Having made all these reductions, the Tribunal assessed the Applicant's total costs in the sum of £10,000 and Ordered the Respondent to pay this amount.
41. In relation to enforcement of those costs, the Tribunal noted the Respondent was relatively young and currently in employment, although she was on a low income. She had been able to obtain work outside the law. Mr Leigh had confirmed the SRA would be prepared to accept payment by instalments and the Tribunal anticipated this would be the position. As such the Tribunal did not consider it necessary to place any restriction on the enforcement of costs.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, CLAIRE LOUISE TUNSTALL, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 10th day of June 2015 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 29th day of July 2015
On behalf of the Tribunal

A. Ghosh
Chairman

