SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11306-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HARVINDER KAUR MCKIBBIN Respondent

Before:

Mr A. N. Spooner (in the chair)
Mrs J. Martineau
Mr M. R. Hallam

Date of Hearing: 10 November 2015

Appearances

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

The Respondent was not present and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, Harvinder Kaur McKibbin made by the Solicitors Regulation Authority were that:

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

She withdrew client money from client account otherwise than in the circumstances permitted by Rule 20.1 SRA AR 2011 in breach of that Rule.

She withdrew money in respect of particular clients from her general client account in excess of the amount held on behalf of those clients in that account in breach of Rule 20.6 SRA AR 2011.

She failed to carry out reconciliations as provided for by Rule 29.12 SRA AR 2011 in breach of that Rule.

She failed to keep a central register of all bills given or sent by her and of all other written notifications of costs given or sent by her in breach of Rule 29.15 SRA AR 2011.

She failed to deliver to the SRA an accountant's report for the accounting period ending 30 June 2013 by 28 February 2014 in breach of Rule 32.1 SRA AR 2011.

Whilst dishonesty was alleged with respect to allegation 1.2, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

Rule 5 Statement dated 19 November 2014 with exhibits PL1
Email from Mrs Lavender of the Applicant to the Respondent dated 1 October 2015
E-mail from Mrs Lavender to the Respondent dated 7 October 2015
Letter from Mrs Lavender to the Respondent dated 12 October 2015
E-mail from Mrs Lavender to the Tribunal office dated 12 October 2015 with attachments
Applicant's statement of costs dated 30 October 2015

Respondent

Email exchanges with the Applicant and the Tribunal office including:

E-mail from the Respondent to the Tribunal office dated 3 September 2015 with attached:

Testimonials
Letter from the Respondent's GP dated 2 July 2015

E-mail from the Respondent to Mrs Lavender dated 30 September 2015
E-mail from the Respondent to Mrs Lavender dated 4 October 2015
Letter from the Respondent to the Clerk to the Tribunal dated 5 May 2014 (sic)
Letter from the Respondent to the Clerk to the Tribunal dated 27 October 2015 enclosing:

- Certificate of Readiness
- Statement of Means
- Copy bankruptcy order dated 17 September 2014

Letter from the Respondent to the Clerk to the Tribunal dated 5 November 2015 with enclosures

Preliminary Issues

3. The Respondent was not present. For the Applicant, Mr Bullock submitted that the Respondent had signified her intention not to attend in an Answer to the Rule 5 Statement by way of a letter which was dated 5 May 2014 but which was clearly intended to be dated 2015. She said:

> "Due to my personal and financial position, I do not have the financial means to attend the Case Management Hearing or the substantive hearing thereafter, or to pay for professional representation. I note that inferences can be made from my non-attendance but I would ask the Tribunal to take my personal circumstances into account."

and

> "I shall not be attending the substantive hearing and will not be calling any witnesses and would agree a hearing time estimate on that basis."

The Respondent had also stated in an e-mail to Mrs Lavender of the Applicant dated 25 October 2015:

> "I confirm that I will not be attending the substantive hearing and I will not be calling any witnesses..."

This e-mail was written in response to two e-mails dated 7 and 12 October and a letter dated 12 October 2015 from the Applicant notifying the Respondent of the hearing date. Mr Bullock applied for the Tribunal to proceed in the absence of the Respondent under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which 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."

The Tribunal was satisfied that the Respondent had been properly served with notice of the proceedings, was aware of the hearing date and had decided to absent herself voluntarily from the hearing and that in the circumstances it would be appropriate to proceed in her absence and without her being represented.

Factual Background

4. The Respondent was born in 1971 and admitted to the Roll of Solicitors in 2001. She did not hold a current practising certificate.

5. From 28 March 2007 up until 29 May 2014, the Respondent practised as a sole practitioner under the style of Harvey McKibbin Solicitors ("the firm") from offices in Lichfield.

6. On 12 May 2014, a duly authorised officer of the Applicant commenced an inspection of the books of accounts and other documents of the firm which culminated in a Forensic Investigation ("FI") Report dated 21 May 2014. The Investigation Officer ("IO") Ms Alice Evans interviewed the Respondent on 15 May 2014. The allegations all arose out of the FI Report.

7. On 27 May 2014, a Panel of Adjudicators Sub-Committee of the Applicant decided to intervene into the practice of the Respondent and refer the conduct of the Respondent to the Tribunal.

8. The Respondent was not given the opportunity to explain her conduct to the Applicant in correspondence before the Decision was taken to refer her to the Tribunal. As was recorded in the Decision: "... In light of the key admissions made to the FI Officer, the Committee considered it just and in the public interest to make a referral at this stage."

Witnesses

9. None.

Findings of Fact and Law

10. 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.

<u>General Submissions</u>

11. For the Applicant Mr Bullock submitted that allegation 1.2 was the most serious. As to the others, the Tribunal would give them the emphasis it thought appropriate but some were more minor and technical accounts rules breaches. Allegations 1.3 and 1.4 were also quite serious. Relevant statutory notices under the Civil Evidence Acts had been served dated 12 October 2015 and no counter notices had been served.

12. By the Respondent's Answer dated 5 May 2014, but clearly sent on 5 May 2015, she admitted all the allegations but denied in respect of allegation 1.2 that she had acted dishonestly.

13. **Allegation 1.1: She [the Respondent] failed to remedy breaches of the SRA Accounts Rules 2011 ("SRA AR 2011") promptly on discovery in breach of Rule 7.1 of those Rules.**

13.1 For the Applicant it was set out in the Rule 5 Statement that Rule 7.1 of the SRA AR 2011 provided that:

> "Any breach of the rules must be remedied promptly upon discovery. This includes replacement of any money improperly withheld or withdrawn from a client account."

Furthermore, and by virtue of Rule 7.2 of those Rules, that duty to remedy rested upon the Respondent as the principal of the firm. For the Applicant, Mr Bullock drew the attention of the Tribunal to the reconciliation dated 31 July 2013 which showed that a cash shortage of £4,273.80 existed on the client account at that date. In interview, the Respondent had accepted the shortage identified by the IO's comparison between the reconciliation and the list of liabilities to clients which was also before the Tribunal. The shortage was caused by various breaches by the Respondent of the SRA AR 2011. By the date of the inspection that shortage had increased substantially to a figure which the Respondent estimated to be in the region of £15,000-£17,000. As at the date of the Rule 5 Statement, the shortage remained unremedied. The Respondent told the IO that the only rectification that had occurred was the amount of £6,000 which was paid into client bank account in October 2013.

13.2 In her Answer, the Respondent stated in respect of the allegation of dishonesty and allegation 1.2 but also relevant to this allegation:

> "In respect of paragraph 31.6 of the Rule 5 Statement, I would confirm that I was not in a position to make payments into the client account in order to rectify the shortfall in client monies. If I had <u>any</u> savings or personal funds, this would have been utilised to rectify the situation as soon as I was able."

13.3 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.1 proved on the evidence, indeed it was admitted.

14. **Allegation 1.2: She [the Respondent] withdrew client money from client account otherwise than in the circumstances permitted by Rule 20.1 SRA AR 2011 in breach of that Rule.**

14.1 For the Applicant, it was set out in the Rule 5 Statement that Rule 20.1 SRA AR 2011 prohibited a solicitor from withdrawing client money from client account other than in circumstances specified in subparagraphs (a) – (k). The FI Report confirmed that the following withdrawals had been made from the client account of the firm:

- On 12 occasions between 25 April 2012 and 29 July 2013, the Respondent transferred sums ranging in value from £100 (the least) to £900 (the greatest) from the client account to the office account of the firm which could not be allocated to specific client matters.

- On 25 March 2013, a cheque for £270 had been drawn upon the client account which could not be allocated to a specific client ledger.

- On 11 occasions between 24 August 2012 and 24 June 2013, bank charges to a total value of £189 been debited from client account. Ten of these were in the amount £15 each and the final one was £39. The Respondent stated that further bank charges were debited from client bank account after July 2013. She said that this continued until April 2014, when she asked her bank to debit the amounts from office account instead.

14.2 The withdrawals were evidenced by the Reconciliation Summary Sheet for the month ending 31 July 2013 in which full particulars of the dates and amounts of the individual withdrawals were set out. Mr Bullock submitted that it would be right to say that it could be seen from the FI Report that the Respondent told the IO at the outset of the investigation that she had made improper transfers from client bank account in order to cover the firm's overheads. She also admitted that she did not keep a record of the transfers and so she could not say how much had been transferred but estimated the consequent shortage at the time of the inspection as above. It was set out in the Rule 5 Statement that none of the various transfers identified within the FI Report was permitted by subparagraphs (a) – (k) of Rule 20(1) of the SRA AR 2011.

14.3 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.2 proved on the evidence, indeed it was admitted.

15. **Allegation of dishonesty in respect of allegation 1.2**

15.1 For the Applicant Mr Bullock referred the Tribunal to the test for dishonesty set out in the case of Twinsectra v Yardley [2012] UKHL 12 which required that a person has acted dishonestly by the ordinary standards of reasonable and honest people and realises that by those standards he or she was acting dishonestly. He referred the Tribunal to the Rule 5 Statement where it was set out that in transferring client money into her office account in order to cover the overheads of her practice, the Respondent acted dishonestly in accordance with the objective test; reasonable and honest people would not regard it as honest for a solicitor to use their clients' money for such a purpose without their permission. In respect of the Respondent realising that what she had done was dishonest, Mr Bullock submitted that on her own admission the Respondent engaged in a course of conduct over two years whereby client funds were misappropriated while the firm was struggling financially and she was unlikely to be able to repay the money and kept no records of the funds which were being transferred across. It was inconceivable that she could not have appreciated that her actions would be viewed as dishonest by others. The Rule 5 Statement continued that the Respondent must have been aware of her dishonesty for the following reasons:

> The written record of her interview by the IO showed that the Respondent was asked: "Consider you have been dishonest in making these withdrawals?" To which she replied "I understand that it can be looked on as dishonest..." Although she then went on to deny dishonest intent, and expressed an intention to replace the funds as soon as possible, Mr Bullock submitted that this was nevertheless an

admission that her actions would be viewed as dishonest by others. It was also asserted that at the conclusion of the interview the Respondent was asked if she had anything else to add and replied: "I deeply regret what has happened. Deeply wish I could change that. No that's not possible…" It was asserted that an expression of remorse of this nature was an implicit admission that the acts in question were wrong.

Mr Bullock placed greater reliance on the following points set out in the Rule 5 statement:

Since the admitted purpose of each of the transfers was to cover the running costs of the firm it must necessarily follow that they were made as a result of a conscious choice on the Respondent's part to pay creditors out of client funds.

Additionally the transfers in question were not isolated acts but constituted a course of conduct extending over a period of approximately two years from 25 April 2012 to April 2014. The Respondent had therefore had ample opportunity to reflect upon the propriety of her actions.

Moreover, in the circumstances in which the transfers were made, the Respondent could not have had a real expectation of being able to replace in full the funds which she was misappropriating. Her inability to pay creditors without recourse to client money demonstrated that she was insolvent at the points at which the transfers were made. The Respondent stated to the IO that she was struggling financially and in her written statement of 15 May 2014 she said: "…I started to experience cash flow difficulties in respect of running costs of my firm".

However if, notwithstanding the parlous financial position of her firm, the Respondent was nevertheless in a position to make payments into her client account in full reimbursement of her misappropriation of client monies then she had ample opportunity to do so but she did not.

Lastly as the Respondent admitted to the IO in the course of the interview, she did not have a comprehensive record of the amounts which she had transferred from client account to office account and believed that such records as she had were only 50% complete. An "honest" solicitor who had had temporary recourse to client account in order to pay creditors with an intention to replace those funds would have been at pains to ensure that they were scrupulous in keeping a full and proper record of the amounts being transferred. If they were unable to do so, or entertained any doubts as to the accuracy of the records they were maintaining then they would have desisted from making such transfers.

15.2 Mr Bullock also referred to the authorities regarding the suggestion by the Respondent in interview that she would have repaid the money if she had been able to do so. The case of Bultitude v Law Society [2004] EWCA Civ 1853 set out that an intention permanently to deprive was not a necessary prerequisite for dishonesty in the Tribunal jurisdiction. He also referred to the case of Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 and the obligation on a professional person to attend the Tribunal and given an explanation of their actions; impecunious solicitors came to the Tribunal to give such an explanation but the Respondent had not done so.

Mr Bullock confirmed that he had no objection to the Tribunal considering the supplementary papers which the Respondent had submitted in terms of testimonials as these went to the question of dishonesty and could be taken into account at this stage of the proceedings by virtue of the authority in the case of Donkin v Law Society [2007] EWCA Civ 414 (Admin). The other supplementary evidence provided by the Respondent related to her financial means and her state of health including the report from her GP. Mr Bullock submitted that the medical report dated 2 July 2015 confirmed various disorders from which the Respondent suffered from 2011 but there was nothing in the report going to her state of mind in respect of the subjective test for dishonesty.

15.3 In her letter of 5 May 2014 (2015) the Respondent stated, omitting the paragraph numbering:

> "For the purposes of these proceedings, I admit the allegations but denied dishonesty. I genuinely did not believe that I was acting dishonestly and would like the Tribunal to take into account the following:
>
> From the outset of the investigation, I was at pains to be as open and transparent with the investigating officer as was possible in the circumstances, and I did not at any point try to hide any issues. Further, on the day of the intervention into my firm, I was fully cooperative and helped the intervening officers to the best of my ability, for which I was thanked.
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> The outstanding accountancy reports were delivered after the deadline due to a combination of issues including my ongoing ill-health and unexpected delays by my accountants.
>
> It respect of paragraph 31.2, I would reiterate that I deeply regret what happened but would point out to the Tribunal those genuine expressions of remorse as to what happened are not on the face of it, an admission of dishonesty, but a natural, human response to the situation.
>
> In respect of paragraph 31.6 of the Rule 5 Statement, I would confirm that I was not in a position to make payments into the client account in order to rectify the shortfall in client monies. If I had any savings or personal funds, this would have been utilised to rectify the situation as soon as I was able.
>
> In respect of paragraph 31.7 of the Rule 5 Statement, I did not have a comprehensive record of the amount transferred because I had fallen behind in my accounts. I was working to bring those accounts up to date which would have then provided the comprehensive record required. I had requested (and dearly hoped) to be granted a reasonable period of time so that I could put the records in order and bring those accounts and figures up to date. I was regrettably not allowed that time so did not have the further opportunity to clarify these figures. It is my opinion that if I had been granted a period of time to rectify the accounts, I would have been able to finalise the shortfall figure and, crucially, make arrangements to repay the funds and rectify the risk to clients. In the event, the decision to intervene meant that it made it was (sic) impossible to find the funds – no one will lend money to a business that

is closed. If I had been allowed to rectify, I could have saved costs and saved inconvenience to my clients."

15.4 The Tribunal had regard to the submissions for the Applicant, and the evidence and the submissions made by the Respondent about her denial of the allegation of dishonesty which were set out in her 5 May 2015 letter. The Tribunal was satisfied that by the ordinary standards of reasonable and honest people they would feel that it was dishonest for a solicitor to use client money to prop up their practice. The objective test was therefore proved to the required standard. As to the subjective test, the Tribunal did not attach any weight in applying the test to the statements about dishonesty made by the Respondent in interview. The Tribunal felt that the assertions made for the Applicant in this respect did not take the matter much further and could be interpreted either for against the Respondent. Expressions of remorse such as this one were often made not thinking of the consequences. The Tribunal agreed with Mr Bullock's submissions that the Respondent had made a conscious decision to pay her creditors out of client funds, that there was a course of conduct extending over approximately two years and that she could not have had a realistic expectation of being able to reimburse what she had taken because of the financial state of her firm. While intent permanently to deprive was not a requirement for dishonesty, the Tribunal considered that in this case the unlikelihood of repayment and the fact that if she was in a position to make repayment the Respondent did not do so were factors in applying the subjective test. In her 5 May 2015 letter, the Respondent agreed with the assertion in the Rule 5 Statement when she said "... I would confirm that I was not in a position to make payments into the client account in order to rectify the shortfall in client monies…" Her expressed intention to repay was also undermined by the absence of record keeping as the Applicant asserted and which again the Respondent admitted in her letter. The Tribunal considered that it was telling against the Respondent that the 12 transfers which could not be allocated to specific client matters took place over an extended period of time from 25 April 2012 to 29 July 2013. The Respondent denied dishonesty and referred on several occasions to her ill-health. The report from her GP referred to issues with her physical health but did not constitute a full psychological report or anything that went to her mental state at the material time. The Tribunal paid careful attention to the testimonials submitted by the Respondent from people who had known her from three to five years. They were to the effect that the Respondent always came across as honest and that it was a surprise that she should be before the Tribunal. The points which the Respondent herself made in her letter of 5 May 2015, in addition to saying that she genuinely did not believe that she was acting dishonestly, referred to her position after the event rather than at the material time and she made submissions in mitigation. In her letter of 5 November 2015 to the Tribunal, the Respondent stated: "I would remind the Tribunal that I understand that my striking off is inevitable..." The Tribunal found that the Respondent made a conscious choice to prop up her practice with client funds; she did so over an extended period of time and could not have had a realistic expectation of being able to repay. The Tribunal was satisfied that the subjective test was met. Accordingly the Tribunal found dishonesty proved in respect of allegation 1.2 to the required standard.

16. **Allegation 1.3: She [the Respondent] withdrew money in respect of particular clients from her general client account in excess of the amount held on behalf of those clients in that account in breach of Rule 20.6 SRA AR 2011.**

16.1 Rule 20.6 SRA AR 2011 provided:

> "Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts"

It was set out in the Rule 5 Statement that the FI Report confirmed that between 20 December 2011 and 13 February 2013 debit balances ranging in amount between £245.20 and £0.20 and totalling £614.18 had arisen on seven individual client matter ledgers. The debit balances were evidenced by copies of the relevant client matter ledgers in which full particulars of the individual debit balances were set out. For the Applicant, Mr Bullock also referred the Tribunal to the reference in the FI Report to the list of liabilities as at 31 July 2013 which included the seven debit balances. The IO's hand written note of her interview with the Respondent on 15 May 2014 recorded that the Respondent was asked: "Consider you have breached SAR 20 in allowing client's accounts to become overdrawn?" and she replied "Yes regrettably I would agree with that."

16.2 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.3 proved on the evidence; indeed it was admitted.

17. **Allegation 1.4: She [the Respondent] failed to carry out reconciliations as provided for by Rule 29.12 SRA AR 2011 in breach of that Rule.**

17.1 Rule 29.12 SRA AR 2011 provided that a solicitor must:

> "... At least once every five weeks:
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> compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all presented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and
>
> as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also
>
> (c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."

It was set out in the Rule 5 Statement that the Respondent did not carry out reconciliations at five weekly intervals in accordance with the requirements of Rule 29.12. As at 15 May 2014, the most recent reconciliation statement produced in relation to the client account of the firm was completed to 31 July 2013. The Respondent confirmed that she was in breach of Rule 29.12 to the IO in the course of her interview.

17.2 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.4 proved on the evidence indeed it was admitted.

18. **Allegation 1.5: She [the Respondent] failed to keep a central register of all bills given or sent by her and of all other written notifications of costs given or sent by her in breach of Rule 29.15 SRA AR 2011.**

18.1 It was set out in the Rule 5 Statement that in interview, the Respondent admitted to the IO that she did not currently keep a central record of bills. Mr Bullock referred the Tribunal to the handwritten notes of the interview where the Respondent was recorded as saying that they had "fallen by the wayside due to pressure of circs. Kept record in...so could go back & put that together. Can get info from [A] (if I gave them the info)..."

18.2 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.5 proved on the evidence indeed it was admitted.

19. **Allegation 1.6: She [the Respondent] failed to deliver to the Applicant an accountant's report for the accounting period ending 30 June 2013 by 28 February 2014 in breach of Rule 32.1 SRA AR 2011.**

19.1 Rule 32.1 SRA AR 2011 provided that:

> "If you have, at any time during an accounting period, held or received client money, or operated a client's own account as signatory, you must deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period. This duty extends to the directors of a company, or the members of the LLP, which is subject to this rule."

It was set out in the Rule 5 Statement that the Respondent held client money in the accounting period ending 30 June 2013 and she was obliged to deliver an accountant's report for that period to the Applicant by 28 February 2014 (the Applicant having granted her an extension of time for so doing from 30 December 2013 in the interim). However, the report was not delivered to the Applicant until 11 April 2014. On 2 April 2014, an Administrative Officer in the employment of the Applicant e-mailed the Respondent and asked her to: "Please advise why the report has not been delivered within the required timescale". The Respondent replied that day to explain that her accountants had been dealing with her accountant's report for the period to 30 June 2013 and also that she had "...suffered a bout of illness which has delayed matters on this report…"

19.2 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent and found allegation 1.6 proved on the evidence, indeed it was admitted.

Previous Disciplinary Matters

20. The Respondent had been before the Tribunal on one previous occasion in case number 9930-2008 on 9 December 2008. She and another Respondent faced allegations relating to failing to deliver two accountant's report and the Respondent was also alleged to have failed to deliver a first half yearly accountant's report. The Tribunal ordered that unless the Respondent filed the reports she would be suspended from practice until such time as she did. The Respondent was also ordered to pay costs in the sum of £2,500.

Mitigation

21. The Respondent was not present but had offered mitigation particularly in her letter of 5 May 2015, by way of a medical report from her GP, in her letters of 27 October 2015 about her financial position and of 5 November 2015 which included information about her ill-health and the effects of the intervention into her firm upon her finances leading her to seek bankruptcy. In her letter of 5 May 2015, in addition to making representations denying dishonesty, the Respondent had stated:

> "By way of mitigation, I have admitted that I had fallen behind with my accounting duties. As a true sole practitioner, matters had become a bit too much being on my own with no support, and for this I'm truly sorry. This situation had an adverse effect on my health, both physically and mentally, and I was under an enormous amount of stress over a prolonged period of time. It was this atmosphere that produced actions that are completely out of character.
>
> I would also like to ask the Tribunal to take into account that, throughout my entire time in private practice, I was an excellent practitioner and gave the highest standards of service to my clients. Despite being unique in offering my clients a complete money back guarantee on my service (and thereby actively encouraging them to complain), I did not receive a single complaint in respect of my practice.
>
> I would state again that I asked for the opportunity to replace the shortfall in client funds but was not allowed that opportunity. It was my intention to replace those funds and to rectify the position."

Sanction

22. The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation offered by the Respondent and to the testimonials. It was set out in the Guidance Notes that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved would almost invariably lead to striking off, save in exceptional circumstances. The dishonest misappropriation of client funds would invariably lead to strike off. The Respondent was motivated by a desire to prop up her practice and embarked on a course of conduct for which she as sole practitioner was responsible. She was not inexperienced. Considerable harm had been caused to the reputation of the profession because the Respondent had dealt with client money for her own

purposes which constituted a serious departure from the "complete integrity, probity and trustworthiness" expected of a solicitor (Bolton v Law Society [1994]1 WLR 512). Such harm was reasonably foreseeable. The position was aggravated because dishonesty had been alleged and proved and misconduct was repeated and continued over a period of time. The Respondent had also appeared previously before the Tribunal and it could have been expected that following that appearance relating to filing of accounts she would have been more careful about keeping her financial house in order in future. In mitigation, once the situation had been uncovered the Respondent had been open and frank in her admissions to the IO. Her personal mitigation related to her parlous financial situation and her ill-health in the main but her medical evidence was not such as to remove the mental element forming subjective dishonesty. The Tribunal found there to be no exceptional circumstances in this case and determined that the Respondent should be struck off.

Costs

23. For the Applicant, Mr Bullock applied for costs in the amount of £10,002.70. The Tribunal was concerned at the amount of costs claimed as this was a relatively straightforward matter where it had been apparent for some time that the Respondent did not intend to appear and had made admissions in respect of everything save dishonesty. The Applicant's costs had increased by around £4,000 since the issue of the Rule 5 Statement in November 2014. The Tribunal, while appreciating that the Applicant might have internal policies about which members of staff should undertake advocacy, noted that the person with day-to-day conduct of the matter was not undertaking the advocacy and considered that this had led to some duplication of costs particularly in Mr Bullock having to familiarise himself with the matter. Mr Bullock informed the Tribunal that the amount of time, five hours claimed for preparation for the substantive hearing, was an estimate and this could be reduced to reflect his actual time of 3.7 hours. He accepted that the Tribunal might wish to discount it still further because he had come into the matter at a relatively late stage. Mr Bullock pointed out that advocates who appeared on a regular basis before the Tribunal could be more effective in terms of costs because they were attuned to the Tribunal's practices and the issues in which the Tribunal was likely to be interested and their preparation was therefore likely to be more rapid than someone with less experience. The Tribunal also asked why enquiry agents had been needed at an earlier stage of the matter. Mr Bullock did not have that information to hand. The Tribunal was also concerned at the amount of time spent, following attendance at the firm of just over six hours, at the investigation stage on information review at 8.5 hours and report preparation at 14.10 hours. Mr Bullock agreed with the Tribunal that time claimed for communication with an internal client at more than four hours should be removed from the claim and that an hour claimed for updating the costs schedule should also be removed. On summary assessment, the Tribunal reduced the cost of the investigation, halved the amount of time claimed for considering papers and preparing the application and Rule 5 Statement and revising and finalising that Statement and accompanying bundle of documents. As it did not have an explanation for the use of the enquiry agents and associated work that was removed. Preparation time for the substantive hearing was also reduced; the hearing was considerably shorter than estimated and the time claimed for that was reduced to two hours. An adjustment to the cost of overnight accommodation was also made. The Respondent in her letter of 5 November 2015 had expressed concern at the level of cost for overnight

accommodation and had challenged the reasonableness of the costs generally. Costs were summarily assessed in the sum of £7,000. The Tribunal considered the ability of the Respondent to pay costs. She had been made bankrupt on her own petition on 17 September 2014 and subsequently discharged. Her statement of means showed that her outgoings somewhat exceeded her monthly income and Mr Bullock accepted that she was in poor financial circumstances. In her letter of 27 October 2015 the Respondent had indicated that she had only been able to undertake intermittent agency work. The Tribunal had regard to the fact that by striking her off it was removing the Respondent's ability to work as a solicitor. Having regard to her circumstances the Tribunal determined that the order for costs in favour of the Applicant should not be enforced without leave of the Tribunal.

Statement of Full Order

24. The Tribunal Orders that the Respondent, Harvinder Kaur McKibbin, 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 such costs not to be enforced without leave of the Tribunal.

Dated this 5th day of January 2016
On behalf of the Tribunal

A.N. Spooner
Chairman