

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11318-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN PHILIP DUNNE

Respondent

Before:

Miss N. Lucking (in the chair)

Mr A. N. Spooner

Lady Bonham Carter

Date of Hearing: 22 September 2015

Appearances

Mr Inderjit Johal, counsel, of The Solicitors Regulation Authority (“the SRA”), The Cube, 199 Wharfside Street, Birmingham B1 1RN, instructed by Mr Mark Gibson, solicitor, of the SRA of the same address for the Applicant.

Mr James Potts, counsel, of 39 Essex Chambers, 39 Essex Street, London WC2R 3AT, instructed by Mr Christopher Pugh, solicitor, of Nexus Solicitors, Carlton House, 16-18 Albert Square, Manchester M2 5PE for the Respondent, Mr John Philip Dunne, who was present.

JUDGMENT

Allegations

1. The allegation against the Respondent, John Philip Dunne (an unadmitted person), was that he had occasioned or been a part to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be employed or remunerated by a legal practice. The particular facts and matters relied on were:
 2. He made 140 improper withdrawals from the firm's client account, in respect of 20 client matters, creating a client account shortage of £730,700.51 between November 2001 and November 2012 and in so doing:
 - 2.1 he acted contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or Rule 20 of the SRA Accounts Rules 2011 ("AR 2011");
 - 2.2 he acted contrary to Principle 1(a) of the Guide to the Professional Conduct of Solicitors 1998 ("the Guide") by compromising or impairing his integrity;
 - 2.3 he failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the 2007 Code") and/or from 6 October 2011 Principle 2 of the SRA Principles 2011 ("the Principles");
 - 2.4 he acted contrary to Principle 1(c) of the Guide by compromising or impairing his duty to act in the best interests of the client;
 - 2.5 he failed to act in the best interests of clients, contrary to Rule 1.04 of the 2007 Code and/or from 6 October 2011 Principle 4 of the Principles;
 - 2.6 he acted contrary to Principle 1(e) of the Guide by compromising or impairing the solicitors' proper standard of work;
 - 2.7 he failed to provide a good standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or from 6 October 2011 Principle 5 of the Principles;
 - 2.8 he acted contrary to Principle 1(d) of the Guide by compromising or impairing the good repute of the solicitors' profession;
 - 2.9 he behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the 2007 Code and/or from 6 October 2011 failed to behave in a way that maintained the trust the public placed in him and the provision of legal services contrary to Principle 6 of the Principles; and
 - 2.10 he failed to protect client money and assets, contrary to Principle 10 of the Principles.
3. Further, by failing to obtain Local Authority funding for Miss L in relation to payment of her care home fees he:
 - 3.1 failed to act in the best interests of clients, contrary to Rule 1.04 of the 2007 Code and/or from 6 October 2011 Principle 4 of the Principles;

- 3.2 failed to provide a good standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or from 6 October 2011 Principle 5 of the Principles;
- 3.3 he behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the 2007 Code and/or from 6 October 2011 failed to behave in a way that maintained the trust the public placed in him and the provision of legal services, contrary to Principle 6 of the Principles.
4. Dishonesty was alleged with respect to allegations 2, 2.1.2 and 2.1.3 but proof of dishonesty was not an essential ingredient of the allegations themselves.

Documents

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

Applicant:-

- Application dated 12 December 2014
- Rule 8 Statement, with exhibit “1” dated 12 December 2014
- Amended Rule 8 Statement (amended with permission of the Tribunal on 22 September 2015)
- Applicant’s statement of costs at date of issue
- Applicant’s statement of costs dated 11 September 2015
- Hearing bundle including the above and correspondence from the Respondent to the Applicant.

Respondent:-

- Respondent’s Answer to the Rule 8 Statement, with exhibit “JPF1”, dated 22 January 2015
- Respondent’s witness statement dated 15 September 2015
- Income and expenditure statement and copy bank statement
- Skeleton argument on behalf of the Respondent dated 21 September 2015 with copies of:
 - Broomhead v SRA [2014] EWHC 2772 (Admin) (“Broomhead”)
 - Levy v SRA [2011] EWHC 740 (Admin) (“Levy”)
 - R v Lashari [2010] EWCA Crim 1504 (“Lashari”)

Preliminary Matter (1) – Amendments to the Rule 5 Statement

6. Prior to the hearing, the Applicant indicated an intention to apply to amend the Rule 8 Statement to correct certain typographical errors or incorrect references to the Principles. Mr Johan sought the Tribunal’s permission to make those amendments. The Respondent agreed those amendments could be made, and the Tribunal gave permission to make the amendments. The allegations as set out at paragraphs 1 to 4 above are as amended.

Preliminary Matter (2) – Respondent’s applications

7. In his skeleton argument dated 21 September 2015, Mr Potts for the Respondent set out three primary submissions, only one of which was a preliminary issue for determination at the outset of the hearing.

Respondent’s Submissions

8. Mr Potts submitted that the Respondent accepted the factual allegations against him, and had done since he was interviewed by the Applicant’s forensic investigation officer (“FI Officer”) in February 2013. Further, the Respondent accepted that his actions constituted serious breaches of the Guide, the 2007 Code, the Principles, the SAR 1998 and AR 2011. The Respondent agreed that the Tribunal should make an order under s43 of the Solicitors Act 1974 (as amended). However, the Respondent denied that he had been dishonest or had acted without integrity.
9. Mr Potts referred to the Tribunal’s practice of holding a hearing to determine disputed facts, where allegations were admitted but the facts were in dispute to some extent, to determine the factual basis upon which sanction would be based; this was commonly referred to as a “Newton hearing” after the principle in R v Newton [1983] Crim LR 198. Mr Potts submitted that in this case a Newton hearing was not necessary or in the public interest because the disputed issue of dishonesty/lack of integrity would not materially affect sanction. Mr Potts referred to the case of Levy in which the Tribunal’s practice of determining the factual basis on which it was to impose sanction was approved. This procedure was also referred to in the Tribunal’s Guidance Note on Sanction (December 2014) in which it was stated:

“A respondent may admit the alleged misconduct, but dispute particular details. Where the dispute is such that it would materially affect sanction, the Tribunal decides the factual basis upon which sanction will be based”.
(Emphasis added)

10. In this instance, the Respondent had accepted that the highest sanction the Tribunal could impose on him was appropriate. Mr Potts recognised that there was a public interest in testing the allegations and having the Tribunal’s findings published. Mr Potts submitted that against this the Tribunal should take into account the circumstances of the case including: a) the Respondent was not an admitted person; b) he was close to normal retirement age, had resigned from his previous employment in November 2012 and had stated he would not seek employment in a solicitors’ firm again; and c) a s43 Order would, in effect, ensure that the Respondent was not employed by a regulated person or entity again. Mr Potts submitted that there was no public protection or public interest reason which suggested the Tribunal should, as he submitted, “depart from the usual practice that a Newton hearing is held only where it may materially affect sanction”.

Applicant’s Submissions

11. Mr Johal for the Applicant submitted that the Tribunal should proceed with the hearing in the usual way, to determine whether the Respondent had been dishonest and/or had lacked integrity. Those two matters were denied by the Respondent.

Mr Johal submitted that the function of the Tribunal included determining disputed allegations, even if the Respondent agreed to a particular sanction.

12. Mr Johal submitted that there was strong evidence in support of the two disputed matters, which involved the misappropriation of huge amounts of money in 140 transfers over a period of 11 years. The Respondent's position was that on each occasion the transfer had been a mistake. Mr Johal submitted that there was a public interest in pursuing and determining the allegations of dishonesty and/or lack of integrity. Mr Johal submitted that the Tribunal's findings on these issues may affect any application in future by the Respondent to discharge the s43 Order or for employment, should the Respondent change his mind about working in a law firm in the future.
13. Mr Johal submitted that to accede to the application would send an inappropriate message to solicitors' employees who committed misconduct that they could avoid findings of serious misconduct by admitting lesser matters.
14. In response to a question from the Tribunal, Mr Potts told the Tribunal that all claims arising from the Respondent's misconduct had been settled by the professional indemnity insurers or otherwise; it was not thought there was any extant claim on the Compensation Fund.

The Tribunal's Decision

15. The Tribunal considered carefully the submissions of the parties.
16. The Tribunal determined that there was a strong public interest in hearing and resolving the allegations of dishonesty and/or lack of integrity. This was particularly so as the Respondent may change his mind in the future about his career, and the Tribunal's findings on these important allegations would be relevant in assessing any applications by the Respondent for permission to work for a law firm. The Tribunal should not take into account the age of a Respondent in determining any issues as it could not discriminate on grounds of age; the submission that the Respondent was approaching normal retirement age therefore had to be disregarded. The Tribunal had certified that there was a case to answer, and it was in the public interest for that case to be heard. This was not a case in which the Respondent had admitted all of the allegations and simply disputed some of the facts; he had denied two significant allegations. Whilst this was a case in which there may be only one usual sanction (albeit the Tribunal also had power to fine a non-admitted person), some allegations had been denied, so there was no question of holding a Newton hearing. It must be appropriate and in the interests of justice for the Tribunal to hear the case in full in the usual way.

Factual Background

17. The Respondent was born in 1953 and was an unadmitted person. At all material times he was employed by Butcher & Barlow LLP (and its predecessor practice) at 2-6 Bank Street, Bury, Lancashire BL9 0DL ("the Firm") as a Probate Manager. The Respondent resigned from that employment on 26 November 2012.

18. Having obtained authorisation, on 14 January 2013 a FI Officer of the Applicant, Ms Barrowclough, commenced an investigation into the Firm which culminated in a Forensic Investigation Report dated 3 July 2013 (“the FI Report”). This followed on from an internal investigation by the Firm.

Facts relied on in support of the allegations

19. The Firm’s investigation and the FI Report identified that 140 improper withdrawals from client account were made, to the value of £730,700.51, on 20 different client matters between November 2001 and November 2012. All 20 client matters were or had been under the control of the Respondent.
20. The majority of the improper withdrawals identified by the investigation related to payments to care homes for fees for clients of the Firm from monies held on behalf of other, unrelated, clients of the Firm. This caused shortages on the client ledger.
21. The investigation identified that monies held for a number of clients had been used to fund payments for other unrelated clients, which then caused shortages on those client ledgers. In order to rectify the shortages on those client ledgers, monies held for other unrelated clients would then be used to make up the shortfall.
22. It was reported to the FI Officer that in a meeting with three of the partners of the Firm on 15 November 2012 the Respondent had admitted that payments had been made on the wrong files and explained that this was due to pressure of work.
23. The manner in which the Respondent made the improper withdrawals from the various client accounts was exemplified in the FI Report by the matters of the estates of Mr F deceased, Mr S deceased and Ms L, with regard to her business affairs.

Estate of Mr F deceased

24. The Firm was unable to locate the physical file for this matter, but was able to produce a copy of the client ledger. This recorded the Respondent as the fee earner.
25. The first entry on the ledger recorded a credit of £230,700.69 on 12 October 2005. The ledger also recorded two interim payments to Mr MF on 16 November 2005 and 18 July 2006, totalling £120,000 which left a balance of £110,083.61.
26. Between 7 September 2006 and 15 June 2007 21 payments were made to 5 different care homes, to the value of £111,128.09; the care homes were Brookdale Nursing Home (“Brookdale”), Kersal Dale, Limefield Court, Southern Cross Healthcare (“Southern Cross”) and Lily Care. Copies of 20 of the payment requests for the transactions were provided by the Firm.
27. The effect of these transactions was that a cash shortage on the client account ledger in the sum of £111,128.09 was created.

28. As part of the Firm's investigation into the improper withdrawals, it was noted that the probate file was opened in 2004 in respect of Mr F, when his home was sold. The care home fees started to be paid in September 2006; the fees did not appear to be Mr F's fees.
29. In an interview between the FI Officer and her manager and the Respondent on 26 February 2013 the Respondent admitted that the payments related to payments for care homes for other clients.

Estate of Mr S deceased

30. The file in relation to this estate was conducted by the Respondent.
31. The Will of Mr S provided that the trustees of the estate, who were the partners of the Firm, were free to distribute the estate at their discretion to charities in the absence of any memorandum left by the client stating his wishes as to the distribution of the estate. The Respondent was asked by the FI Officer whether the client had left a memorandum, to which he replied that he could not remember.
32. The Grant of Probate recorded the date of Mr S's death as 20 October 2000 and the estate accounts of 23 March 2011 recorded the net value of the estate as £78,400.44.
33. The client ledger showed that on 13 May 2005 a payment of £19,726.80 was made to Kersal Dale care home. Thereafter, a further 15 payments were made to Kersal Dale from August 2005 to September 2006. The Firm provided copies of 11 of the payment requests, but was unable to find the remaining payment slips.
34. As part of the Firm's investigation into the improper payments, a note recorded, "Balance of £40,000 used to pay care fees at Kersal Dale – uncertain which client this relates to". The note refers to the fact that Mr S had not lived at Kersal Dale or another care home.
35. The client ledger recorded a payment of £40,000 on 13 June 2005 to Mr DB; the payment request slip recorded Mr DB as the recipient. The file for Mr S did not provide any evidence as to the identity of Mr DB, nor was there any explanation as to why the payment had been made. Further investigation by the Firm identified that Mr DB was a beneficiary of an unrelated estate, that of Mr JBB deceased. The Will of Mr JBB identified Mr DB as a grandson of Mr JBB.
36. In the interview on 26 February 2013 the Respondent could not provide an explanation for the payments.

Ms L – Business affairs

37. The Respondent acted for Ms L, a permanent resident of Oak Lodge care home, in respect of her financial affairs, including the sale of a property.
38. A file note dated 23 April 2009 recorded the Respondent's attendance on Ms L. The note referred to a discussion about payment of care home fees of £16,587.59 for the sister, Mrs O. The note stated that Ms L had signed a letter of instruction prepared by

the Respondent which confirmed that she was happy with the arrangements in respect of paying her sister's fees. However, the FI Officer was not provided with and did not find on the file any evidence of the letter of instruction.

39. The client ledger recorded a payment of £16,587.59 on 22 May 2009 with the narrative "Lily Care Ltd Care Fees". A file note of the same date confirmed the payment was for outstanding care home fees for Mrs O. The client ledger for Ms L recorded a further 5 payments to Lily Care Ltd between 14 July 2009 and 15 October 2009 to the value of £20,854.80. In each case the file note stated that the Respondent had received a telephone call from Oak Lodge on behalf of Ms L requesting payment of her sister's account due to Lily Care.
40. In interview on 26 February 2013, when questioned about the payments to Lily Care and his meeting with Ms L, the Respondent stated that "It is very difficult or was very difficult to have a conversation with her" and "I'm not sure she entirely understood or appreciated and I think we should have taken greater care on that and that has occurred to me since".
41. In addition to the payments to Lily Care Ltd, the client ledger recorded 9 payments to Oak Lodge between 2 Jun 2009 and 12 April 2011 totalling £24,372.32.
42. As at 31 October 2009 the client ledger balance was £23,144.18. In interview on 26 February 2013 the Respondent told the FI Officer that the threshold at which an elderly client residing in a care home would become eligible for Local Authority funding was £23,500. The FI Officer noted that the Respondent had not made an application for Local Authority funding in October 2009. The client file contained a letter dated 16 October 2012 from the Respondent to Adult Care Services at Bury MBC confirming that he wanted to claim assistance for Ms L, and requested details of the requirements and form which needed to be completed.
43. Conduct of Ms L's file was taken over by another solicitor at the Firm and a file note of a meeting with Ms L on 11 January 2013 recorded that "Client stated that she had no family and had no visitors at Oak Lodge".
44. As part of the Firm's investigation into the improper payments a note recorded "£37,442.39 paid to Lily Care for Oldham. [The Respondent] claimed arrangement between sisters/sister-in-law but subsequently said that is untrue".

The Applicant's Investigation

45. On 27 March 2014 a Supervisor in the employment of the Applicant wrote to the Respondent to seek an explanation of his actions. In a letter from solicitors acting for the Respondent, dated 22 May 2014, the Respondent indicated:
 - 45.1 He accepted that he had appeared to make 140 errors between November 2001 and November 2012 in connection with cheques and payment requests;
 - 45.2 He had a fairly limited understanding of the Solicitors Accounts Rules and did not receive any training from the Firm at any stage;

- 45.3 He was not provided with adequate or sufficient support in connection with his employment;
 - 45.4 The various systems which were in place at the Firm were grossly inadequate;
 - 45.5 There was no proper or effective supervision of his work and had the supervisory responsibilities been properly fulfilled, the deficiencies would have been discovered at a far earlier stage;
 - 45.6 If the Firm had properly robust accounting procedures in place then the errors would have been discovered immediately;
 - 45.7 The Firm's external accountants and auditors should have detected the problem at an early stage; and
 - 45.8 He did not receive any financial benefit.
46. A decision was made to refer the Respondent's conduct to the Tribunal on 7 August 2014.

Witnesses

47. The Respondent gave evidence on his own behalf. He confirmed that the content of his Answer dated 22 January 2015 and his Statement dated 15 September 2015 were true, subject to the correction of one date, to the best of his knowledge and belief. The Respondent was then cross examined by Mr Johal.
48. The Respondent told the Tribunal about his experience as a probate and trust manager and confirmed he was aware that it was improper to use the money of one client for the benefit of another. The Respondent maintained that on each occasion the transfer or payment was an error which was sad and regrettable. The Respondent told the Tribunal that he had had access to the Firm's accounts ledgers but he had failed to have proper control of the matters he was handling. he told the Tribunal he had not chosen to make improper transfers. The Respondent told the Tribunal that he could recall less about the transactions now than at the time of the investigation.
49. The Respondent was asked about the exemplified transactions. With regard to the Mr F matter, the Respondent told the Tribunal that when making transfers from that ledger he must have thought it was the right file from which to make the various payments. The Respondent told the Tribunal that he could not say that he had had the files to hand when preparing the transfer vouchers. The Respondent did not deny that he had prepared the various vouchers, for example that for the transfer of £40,000 to Mr DB on the Mr S estate. The Respondent denied that he had made the transfers intentionally, although he accepted it may appear that way.
50. In re-examination, the Respondent told the Tribunal that a cheque would not be issued if there was not enough money on the ledger. There had been no "targeting" of ledgers on which there was money.

51. The Tribunal asked some questions concerning the Firm's accounts system. The Respondent told the Tribunal that he had been overworked and the workload became impossible to handle; he had generated fee income of around £300,000 per annum for the Firm, and had responsibility for checking documentation across the Firm's 8 offices. The Respondent was asked about a number of payments to care homes. He told the Tribunal that he had been working in a muddle and that he did not always have files to hand when he drew cheques. The Respondent told the Tribunal that one error may have led to another, as the mistake was repeated, due to his lack of attention. The Respondent told the Tribunal that not all of the invoices from the care homes named the client in respect of whom payment was sought, although most did include a name and the period to which the charge related. The Respondent told the Tribunal that he could not recall any of his payment requests being queried by the Firm's accounts department.

Findings of Fact and Law

52. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
53. The overarching allegation in the case was that set out at allegation 1. In order to determine that allegation, the Tribunal had to make findings of fact in relation to the matters set out under allegations 2, 3 and 4.
54. The facts in the case were not substantially disputed, but the circumstances of the various transactions were in issue. The cross examination of the Respondent did not disturb his evidence that he had made mistakes due to working in a muddle.
55. **Allegation 1 - The allegation against the Respondent, John Philip Dunne (an unadmitted person), was that he had occasioned or been a part to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be employed or remunerated by a legal practice. The particular facts and matters relied on were:**

Allegation 2 - He made 140 improper withdrawals from the firm's client account, in respect of 20 client matters, creating a client account shortage of £730,700.51 between November 2001 and November 2012 and in so doing:

- 2.1 he acted contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or Rule 20 of the SRA Accounts Rules 2011 ("AR 2011");**
- 2.2 he acted contrary to Principle 1(a) of the Guide to the Professional Conduct of Solicitors 1998 ("the Guide") by compromising or impairing his integrity;**
- 2.3 he failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the 2007 Code") and/or from 6 October 2011 Principle 2 of the SRA Principles 2011 ("the Principles");**
- 2.4 he acted contrary to Principle 1(c) of the Guide by compromising or impairing his duty to act in the best interests of the client;**

- 2.5 he failed to act in the best interests of clients, contrary to Rule 1.04 of the 2007 and/or from 6 October 2011 Principle 4 of the Principles;
- 2.6 he acted contrary to Principle 1(e) of the Guide by compromising or impairing the solicitors' proper standard of work;
- 2.7 he failed to provide a good standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or from 6 October 2011 Principle 5 of the Principles;
- 2.8 he acted contrary to Principle 1(d) of the Guide by compromising or impairing the good repute of the solicitors' profession;
- 2.9 he behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the 2007 Code and/or from 6 October 2011 failed to behave in a way that maintained the trust the public placed in him and the provision of legal services contrary to Principle 6 of the Principles; and
- 2.10 he failed to protect client money and assets, contrary to Principle 10 of the Principles.

Allegation 3 - Further, by failing to obtain Local Authority funding for Miss L in relation to payment of her care home fees he:

- 3.1 failed to act in the best interests of clients, contrary to Rule 1.04 of the 2007 Code and/or from 6 October 2011 Principle 4 of the Principles;
- 3.2 failed to provide a good standard of service to clients, contrary to Rule 1.05 of the 2007 Code and/or from 6 October 2011 Principle 5 of the Principles;
- 3.3 he behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, contrary to Rule 1.06 of the 2007 Code and/or from 6 October 2011 failed to behave in a way that maintained the trust the public placed in him and the provision of legal services, contrary to Principle 6 of the Principles.

- 55.1 The factual background to these allegations are set out at paragraphs 19 to 44 above. The Respondent admitted all the factual matters and the related allegations, save for 2.2 and 2.3, which related to integrity.
- 55.2 The Respondent admitted that he had made 140 improper withdrawals from the Firm's client account, in respect of 20 client matters and that this had created a client account shortage of £730,700.51. The improper withdrawals had taken place over a period of about 11 years. By the time the improper transactions were discovered, the Respondent had been the Probate and Trust Manager at the Firm for about 34 years, having started working at the Firm in 1978; the improper transactions began when the Respondent had about 24 years of experience in the Firm.
- 55.3 The Tribunal was satisfied that the Respondent knew that it was improper to use money belonging to one client for the purposes of another; his complaint that he had not had proper training on the Accounts Rules did not extend to any assertion that he did not understand this basic principle.

- 55.4 With regard to the improper withdrawals, the Tribunal was satisfied that this was not only a series of breaches of the relevant Accounts Rules but was also a failure to act in the best interests of clients, fell below a proper standard of work and was conduct which would diminish the trust the public would place in him and the provision of legal services. Further, from 6 October 2011 the Respondent had clearly failed to protect client money and assets.
- 55.5 With regard to the allegation of lack of integrity, it was submitted for the Applicant that the authorities showed that this could be found if there was some recklessness in the Respondent's conduct. There could be such a finding arising from the Respondent's failure to check files and completing payment request slips without checking to which file the payments related.
- 55.6 On behalf of the Respondent, it was submitted that the Tribunal should take into account the Respondent's evidence that there had been a series of mistakes, linked to poor record keeping. The Tribunal was invited to take into account the Respondent's good character in a long career in the law.
- 55.7 The Tribunal noted that the Respondent had attended in order to give his account of events. His explanation, in short, was that he had been careless due to pressure of work and lack of supervision and/or robust accounts systems. The lack of supervision, if this was the case, would be explained by the fact that the Respondent was clearly a trusted and long-standing member of staff who, on his own evidence, was generating about £300,000 in fees for the Firm each year.
- 55.8 The Respondent told the Tribunal that the invoices from the care homes did not always specify on whose behalf the payment was to be made; even if it did, the Respondent did not (on his own evidence) check that the ledger on which the payment was made corresponded with the ledger on which the payment should have been made. The same had happened with regard to the payment to Mr DB; that payment was due to be made from the ledger of Mr JBB on which there were insufficient funds at the relevant time as that ledger had been used to make payments due in respect of other matters.
- 55.9 The Tribunal noted that it did not appear that the Respondent had any particular motive to make the incorrect transfers, but that doing so had had the effect of covering up the shortages which had occurred on other client files. The Respondent had given evidence about the fact that he was working in a muddle or a mess and not checking files and the payments being made. The Tribunal accepted this evidence. The Tribunal also accepted that he had no links to any of the care homes involved in this case,
- 55.10 Had there been simply a handful of inappropriate transactions, it may have been possible to characterise the Respondent's actions as merely careless. However, the scale of the misuse and the period over which the improper transfers occurred could not be disregarded; there had been 140 separate "mistakes" to the value of over £700,000. The Tribunal noted that on the matter of Mr F deceased, the Respondent made three payments in one week to three different care homes. It was difficult to comprehend how the Respondent could have made those payments unless he was either dishonest or grossly reckless. The Tribunal also noted that the scale of some of

the payments was very significant, for example £37,000 to Southern Cross on the Mr F matter in January 2007 and £40,000 to Mr DB in June 2005.

- 55.11 The Respondent's clients were, generally, vulnerable on account of their age or, in many cases, the Respondent was dealing with an estate. Anyone working in law had a duty to act with care and in the best interests of clients; where the clients were vulnerable or when acting in an estate a lawyer should take particular care to ensure that matters were properly handled.
- 55.12 The Respondent could have avoided the many improper transactions had he taken the simple, and normal, step of comparing the invoice received or request for payment against the client file. Such a straightforward step would have prevented the Respondent from paying care home fees for clients who had died some years before, where the fees related to entirely unconnected clients. The Respondent had, in effect, turned a blind eye to whether or not the payments he was making were proper.
- 55.13 The Tribunal was conscious that there was no clear definition of integrity against which the Respondent's actions could be judged. However, it was satisfied that where there was significant recklessness which included disregard for the interests of clients and failure to take even basic steps to protect client money and assets, that could amount to a lack of integrity.
- 55.14 In this instance, the Respondent had failed on 140 occasions to check or cross-reference the files to establish whether he had any reason to make payments, in circumstances where there was no reason to make each of the payments from the files in question. He had, on his own account, failed to check properly even when paying out thousands of pounds. Given the degree of trust the public was entitled to place in the Respondent, as an experienced Probate practitioner, the Respondent's recklessness amounted to a lack of integrity.
- 55.15 With regard to the matters under allegation 3, the Tribunal was satisfied that the Respondent had failed to make an application at the appropriate time on behalf of Ms L for Local Authority funding. This was a failure to act in the best interests of his client and the Respondent had failed to act in Ms L's best interests. The Respondent had failed to act in a way which would maintain the trust the public would place in the Respondent and the provision of legal services.
- 55.16 The Tribunal was satisfied to the required standard, on the facts and on the admissions, that all aspects of allegations 2 and 3 had been proved to the required standards, and the Respondent's conduct was such that it would be undesirable for the Respondent to be employed or remunerated by a legal practice without the permission of the Applicant.
56. **Allegation 4 - Dishonesty was alleged with respect to allegations 2, 2.1.2 and 2.1.3 but proof of dishonesty was not an essential ingredient of the allegations themselves.**
- 56.1 The factual background to this allegation is set out at paragraphs 19 to 44 above, i.e. was the same as for allegation 2.

- 56.2 The Applicant submitted that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley [2002] UKHL 12 ("Twinsectra"), which requires that before there can be a finding of dishonesty it must be established that the person acted dishonestly by the ordinary standards of reasonable and honest people and realised that (s)/he was acting dishonestly by those same standards.
- 56.3 It was submitted for the Applicant that in making 140 improper withdrawals from the Firm's client account, in respect of 20 client matters, and thereby creating a shortage of £739,700.51 between November 2001 and November 2012 the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. It was further submitted that he was aware that it was dishonest by those standards for the following reasons:
- 56.3.1 He continued to make improper withdrawals on various matters over a period of 11 years when he knew he was not entitled to do so;
- 56.3.2 In relation to the estate of Mr F deceased he knew that Mr G was deceased and would not be required to pay care home fees when he began paying them some two years after the probate file had been opened;
- 56.3.3 He knew that he was paying out care home fees for other clients from the client account of the estate of Mr F when he was not entitled to;
- 56.3.4 In relation to the estate of Mr S he knew that the estate was to be distributed to charities, and he knew that Mr S had not lived in a care home. He therefore knew it would be improper to withdraw sums of money from the client account of the estate of Mr S to pay care home fees for which the estate of Mr S was not liable;
- 56.3.5 He knew that the estate of Mr S was to be distributed to charities and he therefore knew that he was not entitled to withdraw £40,000 and pay it to Mr DB, who had no entitlement to this payment from the estate of Mr S.
- 56.4 On behalf of the Respondent, it was submitted that as the higher standard of proof applied in the Tribunal, it would not be sufficient for the Tribunal to find that it was "most likely" that the Respondent knew that what he was doing was wrong. The explanation given by the Respondent was that he had made genuine mistakes, which continued over a period of time due to the Firm's inadequate accounting systems. Although there had been 140 errors, they had occurred over a period of 11 years. The Respondent's record-keeping, and that of the Firm, had been poor, such that accounts slips did not always appear on the files and mistakes happened. The Respondent was of good character, through a long career in the law and it was submitted that the Tribunal should not find that he had been dishonest or lacking in integrity.
- 56.5 The Tribunal considered carefully the evidence and the submissions of the parties.
- 56.6 The Respondent's consistent evidence, which was not shaken by cross examination, was that he did not know at the relevant times that he was misusing client money. As noted and found above, this lack of knowledge arose from his recklessness in

choosing to make payments which were not due on the files from which the payments were made. The Tribunal could not be sure that the Respondent had the requisite knowledge of what he was doing. In those circumstances, the Tribunal could not be sure that making payments which were not properly due if the Respondent did not appreciate they were not properly due could amount to dishonesty, either objectively or subjectively. Of course, the Respondent's misconduct was serious; he should have married up the payments he was requesting against the correct files. However, the Tribunal could not be sure that the Respondent's actions had been dishonest.

Previous Disciplinary Matters

57. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

58. The Respondent had accepted from an early stage that it was appropriate that a s43 Order should be made. In his evidence, he had told the Tribunal about the lack of systems and support at the Firm, which had contributed to the muddle and the numerous errors. The Respondent had an otherwise unblemished record.

Sanction

59. The Tribunal had regard to its Guidance Note on Sanction (December 2014) and to the submissions of the parties and all of the circumstances of the case.
60. There was no doubt that in the light of the Respondent's lack of integrity, his failure to act in the best interests of clients, his failure to provide a proper standard of service and his failure to maintain the trust the public would place in him or the provision of legal services it was appropriate and necessary to make a s43 Order in the usual terms.

Costs

61. Mr Johal made an application that the Respondent should pay the costs of the proceedings, and submitted a schedule of costs in the total sum of £6,886.70, including forensic investigation costs of £2,444.70, SRA supervision costs of £150 and travel expenses from Birmingham to London. The hourly rate at which legal work was charged was £130 per hour; no VAT was payable on the Applicant's "internal" costs.
62. Mr Johal told the Tribunal that the schedule had been prepared based on the initial time estimate for the hearing of 2 days, so the hearing costs could be halved, approximately.
63. Mr Potts told the Tribunal that the Respondent accepted, in principle, that he should pay the costs of the proceedings. However, there were some issues with the amount of costs claimed and the Respondent's ability to pay. On the former point, it was submitted that too much time had been claimed for hearing preparation and on correspondence.

64. The Respondent gave evidence concerning his means, some information about which had been given in his witness statement of 15 September 2015. The Respondent gave information about the likely value of his family home, the amount outstanding on mortgage and his earnings from working in Will drafting, on his own behalf.
65. Mr Potts submitted that if a costs order were made, the Respondent would seek to pay it albeit that may have to be by instalments; he would accept a charge on his interest in his home, if that was required to provide security.
66. Mr Potts in his written submissions had referred to the Broomhead case, which indicated that the Tribunal should consider reducing costs where allegations had not been proved in full.
67. The Tribunal considered carefully the claim for costs, the submissions of the parties and the Respondent's means.
68. The Tribunal considered that the costs claimed should be reduced to reflect the actual time spent in the hearing. Also, the preparation time claimed appeared high and the amount payable should be reduced by half. The Tribunal considered that the amount by which costs should be reduced for these factors was about £970.
69. It was correct that the allegation of dishonesty had not been proved. However, the factual matters underlying that allegation were the same as for all of the other allegations so the costs related to that specific matter were limited; that said, there should be some marginal "rounding down" to take into account the fact that this allegation had not been proved. The Tribunal decided that taking this factor into account, the reasonable and proper costs of the proceedings should be assessed at £5,500.
70. The Tribunal noted that the Respondent had used his savings as part repayment of the client account shortfall and this had contributed to the fact he was now of limited means.
71. The Tribunal did not consider it necessary to reduce the costs further on account of the Respondent's means. It noted that the Respondent had not asked for enforcement of the costs order to be postponed. However, the Tribunal would expect the Applicant to proceed reasonably in seeking to enforce the order, for example by securing a charge over his interest in his home and/or agreeing a monthly repayment schedule.

Statement of Full Order

72. The Tribunal Ordered that as from 22nd day of September 2015 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor John Philip Dunne;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said John Philip Dunne
 - (iii) no recognised body shall employ or remunerate the said John Philip Dunne;

- (iv) no manager or employee of a recognised body shall employ or remunerate the said John Philip Dunne in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said John Philip Dunne to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said John Philip Dunne to have an interest in the body;

And the Tribunal further Ordered that the said John Philip Dunne do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,500.00.

Dated this 5th day of November 2015
On behalf of the Tribunal

N. Lucking
Chairman