

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11375-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARIE-GARRARD NEWTON

Respondent

Before:

Mr L. N. Gilford (in the chair)

Mr A. N. Spooner

Mr S. Marquez

Date of Hearing: 30 September 2015

Appearances

Ms Katrina Wingfield, Solicitor of Penningtons Manches LLP of Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant

Mr Hal Branch, Solicitor of LSG Solicitors, 3 Piccadilly, London W1J 0LP for the Respondent, who was present

JUDGMENT

Allegations

1. The allegations against the Respondent, Marie-Garrard Newton, made by the Solicitors Regulation Authority were that:
 - 1.1 She deliberately gave untrue oral evidence at the trial of a High Court action, intending that the court would be misled, in breach of Rule 1.01 (justice and the rule of law), Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Solicitors Code of Conduct 2007 (“the Code of Conduct 2007”)
 - 1.2 She failed properly to identify who was her client in relation to a matter in which she acted, in breach of Rule 1(c) (acting in the client’s best interests) and Rule 1(d) (good repute of the solicitor/the profession) of the Solicitors Practice Rules 1990 (“the 1990 Rules”), and in breach of Regulation 4 of the Money Laundering Regulations 2003.
 - 1.3 She acted in a conveyancing transaction in which the true amount of the purchase price was deliberately concealed, in breach of Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Code of Conduct 2007.
 - 1.4 She allowed £500,000 to pass through Child & Child’s client account for no proper reason, in breach of Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Code of Conduct 2007 and in breach of Rule 15 note (ix) of the Solicitors Accounts Rules 1998.
 - 1.5 She deliberately made an untrue statement to her client’s agent, intending that the client’s agent and/or the client would be misled, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client’s best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007.
 - 1.6 She acted for and/or assisted her client’s agent in relation to a dispute between the agent and client, without the client’s knowledge or consent, in breach of Rule 1.04 (acting in the client’s best interests) and Rule 3.01 (conflict of interests) of the Code of Conduct 2007.
 - 1.7 She made a payment of £1.5 million from client account without authority from the client, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client’s best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007, and in breach of Rule 22 of the Solicitors Accounts Rules 1998.
 - 1.8 She deliberately made untrue statements to insurers and to her colleagues, intending that they would be misled, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in client’s best interest) and Rule 1.06 (public confidence) of the Code of Conduct 2007.
 - 1.9 She made a further payment of £2 million from client account without authority from the client, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client’s best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007, and in breach of Rule 22 of the Solicitors Accounts Rules 1998.

- 1.10 She failed to put in place a proper system for maintaining her conveyancing files, in breach of Rule 1.01(c) (acting in the client's best interests) and Rule 1.01(e) (proper standard of work) of the 1990 Rules in respect of the period prior to 1 July 2007, and in breach of Rule 1.04 (acting in the client's best interests) and Rule 1.05 (good standard of service) of the Code of Conduct 2007 in respect of the period from 1 July 2007.

As regards each of allegations 1.1, 1.3, 1.5, 1.6, 1.7, 1.8, 1.9, it was alleged that the Respondent acted dishonestly. Further, or in the alternative, it was alleged that in relation to allegations 1.3, 1.6, 1.7 and 1.9, the Respondent acted recklessly. However it was not necessary for the Tribunal to make findings of dishonesty or recklessness in relation to these allegations in order to find them proven.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 1 April 2015 with exhibit KEW 1
- Statement of Applicant's costs as at 14 September 2015

Respondent

- Letter dated 25 September 2015 to the Tribunal from LSG Solicitors enclosing:
- The Respondent's Personal Financial Statement and attachments

Preliminary Issues

3. The Chairman reminded the parties that the Tribunal office had communicated with them disclosing that the Chairman had in the 1970s worked in the same office as the Respondent but they had had no contact since that decade. The parties had communicated to the Tribunal office that they had no objection to the Chairman sitting in the proceedings.
4. For the Applicant, Ms Wingfield informed the Tribunal that the parties had signed a Statement of Agreed Facts and Admissions dated 1 September 2015 in which all the allegations including the allegations of dishonesty were admitted. Sanction was a matter for the Tribunal to determine. The issue of costs had not been agreed and again was a matter for the Tribunal to determine.

Factual Background (based on the Statement of Agreed Facts)

5. The Respondent was admitted to the Roll of Solicitors in 1971. In 1998, the Respondent joined Pettman Smith ("PS") as a salaried partner. She practised with PS until it merged with Child & Child ("the firm") on 1 December 2007. From that date she worked as a salaried partner at the firm until 2011. She was subsequently a consultant until 21 August 2015.

6. The allegations arose out of the adverse findings in the judgment of Mr Justice Henderson [2011] EWHC 2156 (Ch) concerning the Respondent's conduct and her evidence in the trial of a claim (Case number HC08C02338) in the Chancery Division bought by her former clients Mr C and two Liechtenstein Foundations (P and V) connected with him against PS and the firm.

Witnesses

7. None.

Findings of Fact and Law

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

(The submissions below include those made by the Applicant in the Statement of Agreed Facts and Admissions and those made at the hearing for both parties.)

9. In considering the allegations of dishonesty the Tribunal employed the test in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton said:

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

10. **Allegation 1.1 - She [the Respondent] deliberately gave untrue oral evidence at the trial of a High Court action, intending that the court would be misled, in breach of Rule 1.01 (justice and the rule of law), Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Solicitors Code of Conduct 2007 (“the Code of Conduct 2007”)**

- 10.1 For the Applicant, it was submitted that pursuant to Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 the Application relied on certain relevant findings of fact made by Mr Justice Henderson. The Rule stated:

“The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based shall be admissible as proof but not conclusive proof of those facts.”

In her evidence at trial, the Respondent denied that she was aware that a “side payment” of £4.5 million had been made to Mr C's agent (Mr N); and denied assisting Mr N with the preparation of documents setting out his (Mr N's) position in relation to a dispute with Mr C. However, in his judgment Mr Justice Henderson concluded on the basis of the evidence before him that (i) the Respondent had been aware that the side payment had been made and (ii) had assisted Mr N with the preparation of

documents. In respect of the Respondent's evidence in relation to the side payment, Mr Justice Henderson stated in his judgment:

“I have naturally thought long and hard before reaching the uncomfortable conclusion that a solicitor of [the Respondent's] long experience has, on oath, given evidence that she must have known to be untrue.”

It was stated in the Statement of Agreed Facts and Admissions that by deliberately giving untrue oral evidence concerning (i) the side payment and (ii) the creation of the documents, in both cases intending that the court would be misled, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and was aware that it was dishonest by those standards.

- 10.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.1 including the allegation of dishonesty proved to the required standard; indeed it was admitted.
11. **Allegation 1.2 - She [the Respondent] failed properly to identify who was her client in relation to a matter in which she acted, in breach of Rule 1(c) (acting in the client's best interests) and Rule 1(d) (good repute of the solicitor/the profession) of the Solicitors Practice Rules 1990 (“the 1990 Rules”), and in breach of Regulation 4 of the Money Laundering Regulations 2003.**
- 11.1 For the Applicant, it was submitted that when engaged to act on the purchase of the property at A Street, London, in 2006 (the “A Street property”), the Respondent failed properly to identify for whom she was acting, and to confirm the position in a client care letter. This led to a dispute between Mr C and Mr N as to whether Mr N had acted as agent for Mr C in the transaction, or on his own account.
- 11.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.2 proved to the required standard; indeed it was admitted.
12. **Allegation 1.3 - She [the Respondent] acted in a conveyancing transaction in which the true amount of the purchase price was deliberately concealed, in breach of Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Code of Conduct 2007**
- 12.1 For the Applicant it was submitted that in 2008, the Respondent acted for Mr C in the sale of his interest in the A Street property. The ostensible sale price was £13.3 million, but the vendor made a further “side payment” of £4.5 billion to Mr N as part of the consideration. The existence of the side payment gave rise to the obvious risk that the true price had been concealed for improper purposes. In his judgment, Mr Justice Henderson stated:

“It seems not unreasonable to speculate that there may have been (discreditable) tax reasons for this”.

It was stated in the Statement of Agreed Facts and Admissions that by acting in a conveyancing transaction where the true sale price was deliberately concealed, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and was aware that it was dishonest by those standards, because as an experienced property solicitor, the Respondent appreciated that deliberate concealment of the true price in a property transaction gave rise to the obvious risk that the price had been concealed for improper purposes.

12.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.3 including the allegation of dishonesty proved to the required standard; indeed it was admitted.

13. **Allegation 1.4 - She [the Respondent] allowed £500,000 to pass through Child & Child's client account for no proper reason, in breach of Rule 1.02 (integrity) and Rule 1.06 (public confidence) of the Code of Conduct 2007 and in breach of Rule 15 note (ix) of the Solicitors Accounts Rules 1998.**

13.1 For the Applicant, it was submitted that the Respondent allowed Mr N to use the firm's client account to receive and then pay £500,000 to a Mr S, ostensibly as an agency fee in respect of the sale of the A Street property. Mr Justice Henderson found that:

“In effect, the client account was used as a channel for a payment by Mr N to Mr S...”

However, in all the circumstances, there was no proper reason for the payment being routed through the firm's client account.

13.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.4 proved to the required standard; indeed it was admitted.

14. **Allegation 1.5 - She [the Respondent] deliberately made an untrue statement to her client's agent, intending that the client's agent and/or the client would be misled, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client's best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007.**

14.1 For the Applicant, it was submitted that the Respondent sent a letter to another of Mr C's agents, Mr B, stating that the sale price for the A Street property was £13.3 million. Additionally the Respondent later told Mr B that she was unaware of the side payment to Mr N. Both these statements were untrue, because the Respondent knew that the sale price included a further side payment of £4.5 million to Mr N. It was stated in the Statement of Agreed Facts and Admissions that by deliberately making untrue statements to Mr B, intending that he and/or Mr C would be misled, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and was aware that it was dishonest by those standards, because she knew the true position as regards the sale price and side payment, but chose to make false statements to Mr B in relation to those matters.

- 14.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.5 including the allegation of dishonesty proved to the required standard; indeed it was admitted.
15. **Allegation 1.6 - She [the Respondent] acted for and/or assisted her client's agent in relation to a dispute between the agent and client, without the client's knowledge or consent, in breach of Rule 1.04 (acting in the client's best interests) and Rule 3.01 (conflict of interests) of the Code of Conduct 2007.**
- 15.1 For the Applicant, it was submitted that in the second part of 2007 and the early part of 2008, Mr C was in dispute with Mr N, and the Respondent was aware of this. In January and February 2008, the Respondent acted for, or at least assisted, Mr N in relation to the resolution of his dispute with Mr C over the ownership of A Street and the division of the proceeds of sale, without Mr C's knowledge and consent, despite the fact that she was acting for Mr C in relation to the A Street matter. It was stated in the Statement of Agreed Facts and Admissions that by acting contrary to her client, Mr C's, interests, by acting for, or assisting, her client's agent, Mr N, in the resolution of his dispute with Mr C, without Mr C's knowledge and consent, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and she was aware that it was dishonest by those standards, because as an experienced solicitor she knew that she had a professional obligation to act in the best interests of her client, Mr C, yet she did not inform him that she was acting contrary to his interests or obtain his consent to so act.
- 15.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and found allegation 1.6 including the allegation of dishonesty proved to the required standard; indeed it was admitted.
16. **Allegation 1.7 - She [the Respondent] made a payment of £1.5 million from client account without authority from the client, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client's best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007, and in breach of Rule 22 of the Solicitors Accounts Rules 1998.**

Allegation 1.8 - She [the Respondent] deliberately made untrue statements to insurers and to her colleagues, intending that they would be misled, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in client's best interest) and Rule 1.06 (public confidence) of the Code of Conduct 2007.

- 16.1 For the Applicant, it was submitted that Mr Justice Henderson found that the firm paid £1.5 million to Mr N from client account without seeking or obtaining the authority of the client, and that this payment was made in breach of trust. The £1.5 million was initially paid into the firm's client account by Mr N. Prior to the receipt of the £1.5 million into the firm's client account, the Respondent had been told by both Mr N and Mr B that the money belonged to Mr C, and related to the proceeds of sale from the A Street property. Mr N and Mr B both later made competing claims in respect of the money; Mr N on his own behalf, and Mr B on behalf of Mr C. Mr N sent a fax to the firm stating that the money had been transferred for the purposes of a new acquisition of which the firm were said to be aware, and that it had come from a joint account in the name of him and his son. As a result of the dispute over the funds

between Mr N and Mr B (C), the Respondent wrote to the firm's professional indemnity insurers about the matter, and discussed it with senior colleagues at the firm. In doing so, she reported only the version of events given by Mr N in his fax and neglected to mention the statements which had been made by both Mr N and Mr B prior to the funds having been received by the firm. She also stated (wrongly) that Mr N was a client of the firm. A barrister (counsel) advised the firm that it could pay £1.5 million to Mr N. However, Mr Justice Henderson found that the instructions given to counsel were "in an important and highly material respect, misleading" and that if the true position had been explained to counsel, he would not have given the advice that he had (i.e. that the firm could properly pay the £1.5 million to Mr N). Mr Justice Henderson went on to find:

"The main responsibility for this regrettable state of affairs must, in my judgment, lie with [the Respondent], who failed to explain the position fully and frankly to her colleagues."

It was stated in the Statement of Agreed Facts and Admissions that by paying £1.5 million of Mr C's money out of client account to Mr N, without Mr C's instructions; and deliberately making untrue and misleading statements to her firm's insurers and her colleagues about the circumstances in which the £1.5 million had been transferred to the firm, intending that they would be misled; the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and she was aware that it was dishonest by those standards, because:

- she knew that the £1.5 million received from Mr N on 30 January 2008 belonged beneficially to Mr C and, as an experienced solicitor, she knew that this could only be paid out on his instructions, yet she decided to pay it to Mr N without informing her client or obtaining his consent before doing so; and
- because she was aware of the true circumstances in which the £1.5 million came to be paid to the firm by Mr N (i.e. the explanation given by Mr N on 30 January 2008, when he transferred the money to the firm), but presented the version of events set out in Mr N's fax of 17 March 2008 to the firm's insurers and to her colleagues which she knew to be untrue.

16.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegations 1.7 and 1.8 including the allegation of dishonesty proved to the required standard; indeed they were admitted.

17. **Allegation 1.9 - She [the Respondent] made a further payment of £2 million from client account without authority from the client, in breach of Rule 1.02 (integrity), Rule 1.04 (acting in the client's best interests) and Rule 1.06 (public confidence) of the Code of Conduct 2007, and in breach of Rule 22 of the Solicitors Accounts Rules 1998.**

17.1 For the Applicant, it was submitted that in 2006, PS received £2 million from RP; a company owned and controlled by Mr C. Mr N later proposed that the funds be repaid to the company out of the proceeds of sale of A Street. At the time, Mr C and Mr N were in dispute about the proceeds of the sale of A Street. However, as a result of a

meeting with Mr C and two e-mails from Mr B, the Respondent knew that she could not make such a payment to RP without instructions from Mr B. The Respondent wrote to Mr B to seek instructions in relation to that proposal. In his reply, Mr B (on behalf of Mr C) stated:

“I suggest refusing [Mr N] any repayment... due to the firm objection on the part of [Mr C]”

Around a week later, in spite of not having received instructions from either Mr C or Mr B, the Respondent sent an e-mail to Mr B saying that she was arranging for £2 million to be paid to the company. Three days later, the Respondent received a message to say that her e-mail had bounced back. She therefore re-sent it but, without waiting for Mr B's reply, authorised the payment of £2 million later that day. Mr Justice Henderson found that the Respondent caused £2 million to be paid out of client account at Mr N's request in breach of trust. It was stated in the Statement of Agreed Facts and Admissions that in paying £2 million of Mr C's funds out of client account to RP at Mr N's request, in circumstances where she understood that she required Mr C's express consent to such transfer but had not received such consent, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people, and was aware that it was dishonest by those standards, because:

- she knew that she could not disburse the A Street sale proceeds on the sole instructions of Mr N, yet resolved without receiving instructions from either Mr C or Mr B to pay £2 million to RP; and
- she wrote to Mr B to clarify her instructions and give him the opportunity to object to the proposed payment, but without waiting for Mr B's response to her e-mailed letter, and without the authority of either Mr C or Mr B she paid the £2 million to RP.

17.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.9 including the allegation of dishonesty proved to the required standard; indeed it was admitted.

18. **Allegation 1.10 - She [the Respondent] failed to put in place a proper system for maintaining her conveyancing files, in breach of Rule 1.01(c) (acting in the client's best interests) and Rule 1.01(e) (proper standard of work) of the 1990 Rules in respect of the period prior to 1 July 2007, and in breach of Rule 1.04 (acting in the client's best interests) and Rule 1.05 (good standard of service) of the Code of Conduct 2007 in respect of the period from 1 July 2007.**

18.1 For the Applicant, it was submitted that the Respondent failed to maintain reliable files in relation to two property transactions (A Street and R Square) conducted on behalf of Mr C (or entities related to him) in that attendance notes of significant telephone calls and developments were not always made and she did not have a reliable system for retaining attendance notes that were made. In relation to the R Square matter, the Respondent failed to keep any attendance note of her conversation with Mr N whereby she informed him of the back-to-back nature of the sale and that the intermediate vendor would make a profit of £800,000 or £900,000, despite the importance of that fact, or to confirm these instructions in writing.

- 18.2 The Tribunal considered the evidence set out in the Statement of Agreed Facts and Admissions and found allegation 1.10 proved to the required standard; indeed it was admitted.

Previous Disciplinary Matters

19. None.

Mitigation

20. Mr Branch submitted that this was a very sad case. The Respondent had been working for over 45 years and had a wholly unblemished record. She was wholly cognisant that her career as a solicitor was at an end. She had retired on 21 August 2015 and had sought to avoid the time and expense of proceedings by surrendering her practising certificate a year ago and by making admissions. She dealt with the matter wholly appropriately and realistically throughout. She had been straightforward, forthright and cooperated with the investigation. She acknowledged what had taken place and did not intend to go behind Mr Justice Henderson's judgment although she had comments about it and wanted the Tribunal to understand the background to how he had come to his decisions. Following the High Court judgment the Respondent had been advised by the leading counsel for her former firm's professional indemnity insurers that it would be perfectly reasonable for her to appeal the Judge's comments about her. She felt that if she could have appealed there might have been a different outcome to the position that she now found herself in. The Respondent was not in a financial position to appeal and so she accepted the judgment. As stated in paragraph 4 above, both parties had signed a Statement of Agreed Facts and Admissions dated 1 September 2015 and the case proceeded on the basis of those admissions. However, in mitigation by Mr Branch, reference was made to an earlier letter dated 18 September 2014 sent by the Respondent to the Applicant in which she had denied the allegations put to her by the Applicant at that time. Her denials included that she denied giving evidence whilst under oath that she knew to be untrue or was untrue; had no knowledge of the side payment and did not accept the judgment in that respect; did not assist Mr N in creating any documents; denied failing to act in the best interests of Mr C; stated that she was asked by the senior partner to complete an internal form detailing the sum of money to be transferred etc to RP; and finally denied that she concealed any circumstances relating to and/or in respect of the funds from the firm and denied that she failed to act with integrity. Also in interview with the IO on 8 December 2011, the Respondent stated:

“... I do have a problem with the side payment about which I did know nothing, what I said in court, what I said in my witness statement and what I say to you is the truth. I can't get anybody to confirm because I'm the person who knows apart from the other side of the case...”

And:

“I just acted on instructions and I was told that Mr C had given authority to Mr N and that fact had been backed by Mr B to do what was necessary....”

In respect of the payment out of the £2 million to RP, her comments included:

“I didn’t send it. I asked the accounts department for authority, now the authority would have been from one of the Equity partners, I was not a cheque signatory, I didn’t have any authority to instruct the bank to send money”

And:

“As I have already said I was under the impression and belief that I was complying with the client’s instructions.”

In respect of her evidence generally, the Respondent said in interview:

“I answered honestly all the questions which were put to me. I answered those questions as fully as I was able to do so in the light of the current system.”

And:

“It’s unfortunate that inevitably when you are being asked questions in court, you can only answer those questions and you can’t go into expanses (sic) which I am so obviously doing because it’s so much easier to explain things as to what the real background is.”

Mr Branch submitted that the adversarial system was not always as helpful as it might be. The Respondent had not come to the Tribunal to go behind the judgment but there were difficult issues to it and she should be given credit for that. The Judge had also said that the Respondent answered questions scrupulously when put to her.

21. For many years the Respondent had worked in well-known firms in central London. The allegations had arisen in respect of one client in wholly unique circumstances because of her relationship with the client C. Something had clearly gone terribly wrong in dealing with this particular client. Mr Branch addressed the role of Mr C in the proceedings. The Respondent’s letter of 18 September 2014 referred to the Judge having been highly critical of the evidence given by both Mr C and Mr N. The judgment of the High Court action included:

“More recently, the issue by the Spanish authorities of a European arrest warrant against Mr C on 20 May 2009, on charges of organised criminal activity and money-laundering, has meant Mr C is unable to set foot anywhere within the confines of the European Union without running the risk of immediate arrest...”

As a result Mr C had given evidence via a video link from Israel. As to Mr N, Mr Justice Henderson commented:

“In any event, having heard Mr [N] give evidence, and having read the transcript, I am satisfied that his evidence, like that of Mr [C] and Mr [B], needs to be treated with great caution...”

In respect of Mr B, Mr Justice Henderson commented:

“The upshot, in my judgment, is that Mr [B’s] evidence needs to be treated with great caution where it is uncorroborated...”

Mr Branch submitted that it was relevant to sanction that the Respondent was involved with clients and individuals who needed to be treated with great caution. Mr C was found not to have a valid claim and had suffered no loss save legal fees. The action against the Respondent’s former firm had been dismissed in the High Court.

22. Mr Branch invited the Tribunal, rather than striking the Respondent off the Roll to make an order for an indefinite suspension. The Respondent had accepted culpability and shown real insight in respect of how matters had gone wrong. The Respondent had agreed to pay £60,000 to her former firm’s professional indemnity insurers. She had no intention of ever practising again and Mr Branch submitted that an indefinite suspension would be adequate protection for the public as well as demonstrating the seriousness of her offence. She had been practising since 1971 and been under pressure for the last six to seven years. This matter had been outstanding for a very long time; the relevant transactions took place in 2008; the High Court proceedings began in 2009 and judgment was given in August 2011. The Respondent had been anxious to attend the Tribunal and had tried to deal with the matter appropriately and in the manner the Tribunal would expect.

Sanction

23. The Tribunal had regard to its Guidance Note on Sanctions and the mitigation which had been offered. The allegations against the Respondent were very serious. The misconduct included an admitted intention to mislead the Court. The Respondent had also misled her colleagues, Counsel and the firm’s professional indemnity insurers. The Tribunal had noted that the allegations related in the main to the affairs of one client but the misconduct continued over a period of time and related to more than one transaction in a global situation. It had been deliberate and repeated involving more than one improper transfer of money. The Respondent admitted the allegations and also admitted dishonesty attaching to seven of the nine allegations. As the Guidance Notes set out, the most serious conduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off save in exceptional circumstances. No submissions had been made to the Tribunal that there were exceptional circumstances and the Tribunal found there to be none. Reference had been made to the Respondent offering to cease practising but the Respondent originally contested the allegations and the Tribunal did not consider that she had shown much insight into what she had done until recently. As had been said in the case of Bolton v The Law Society [1994] 1 WLR 512, in determining sanction “the essential issue... is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.... The reputation of the profession is more important than the fortunes of any individual member.” The Tribunal considered that strike off was a proportionate and appropriate sanction to maintain the reputation of the solicitors’ profession.

Costs

24. For the Applicant, Ms Wingfield applied for costs in the amount of £33,964.63. Mr Branch accepted that this was a very serious case with serious issues but it had all been set out in the High Court judgment and he questioned the amount of work which had been undertaken by leading counsel and solicitors. The Respondent had made admissions and so the allegations had not been in issue since 1 April 2015 when the Rule 5 Statement was issued. The Respondent had hoped that by offering to hand in her practising certificate and in being prepared to give an undertaking that she would not apply for another, a reasonable resolution of the matter could be achieved. Ms Wingfield responded that the issue of dishonesty had been at large until quite recently and there had been without prejudice negotiations and an agreement to adjourn the Case Management Hearing set for 14 July 2015 on the basis that the without prejudice negotiations were taking place at the time. Ms Wingfield submitted that it was not right to assert that work had not been needed after the application had been lodged at the Tribunal in April 2015 because the Statement of Agreed Facts and Admissions had not been finalised until fairly recently. The Tribunal enquired why the Applicant had felt it necessary to employ leading counsel in a matter based on a High Court judgment incurring fees in excess of £10,000 to draft the Rule 5 Statement. Ms Wingfield submitted that there were issues of the different standard of proof employed in the High Court in civil proceedings to that employed in the Tribunal and so bearing in mind the complex nature of the matters reviewed in the judgment it was felt appropriate to seek advice from leading counsel and it was considered that that would be more cost-effective than Ms Wingfield undertaking the work. Leading counsel had reviewed the files and transcript of evidence in the High Court proceedings and done very good work in clarifying the issues and as a result of taking his advice, the Applicant had not pursued other issues and so the Applicant's costs were more moderate as a result. Ms Wingfield also clarified that the Applicant had negotiated a substantially reduced rate for members of leading counsel's Chambers in matters being referred to the Tribunal and the costs claim for her firm was limited to just over £4,000. Most of their work had been undertaken by Ms Wingfield's assistant because they were using counsel. The Tribunal considered the cost claim of the Applicant to be generally reasonable although it did not consider that the different standard of proof impacted on the costs. The proceedings had been completely justified and the Respondent denied the allegations particularly in respect of the side payment and preparing documents for Mr N and it was not until the summer of 2015 that the Respondent indicated a change of position. By then most of the work had been done; leading counsel had completed his work by the end of March 2015. The Tribunal noted that the High Court judgment extended to 50 pages across a complex set of circumstances. The IO had to peruse a large number of files. The costs claim for Ms Wingfield's firm was modest as counsel had done much of the work. The Tribunal assessed costs in the total sum of £30,000.
25. The Applicant sought a costs order which would be immediately enforceable. It was noted that the Respondent had limited income but there was fairly substantial equity in her property which was in her sole name although subject to an interest for her husband. Ms Wingfield referred to documents produced for the Applicant which she submitted indicated that the property would be marketed at around £950,000 with indebtedness of £223,000 and a charge for the payment due to the professional indemnity insurers of £60,000. It was open to the Tribunal to permit the Applicant

take a charge on the property so that monies could be recovered at some stage in the future, should it be sold. Mr Branch had no comments to make upon that possibility. He referred to the Respondent's Personal Financial Statement with supporting evidence and asked that the inevitable costs order be made not to be enforceable without leave of the Tribunal. The Respondent had been the sole wage earner for a significant period of time. In broad terms save for a small private pension, her household depended on the state pension and outgoings exceeded income each month. The Respondent was not living the high life. Her expenditure was perfectly reasonable everyday expenditure. There was no realistic prospect of the sale or remortgage of her home because she had no income with which to fund it. The Respondent also had an overdraft of £40,000 with some building society savings which would have to be used to pay tax due on her income at her current firm. The Tribunal considered the information provided in respect of the Respondent's financial means; she appeared to be asset rich and cash poor but there was considerable equity in her main asset and while noting that she only had a share in that and the other assets disclosed and that she had retired from employment, the Tribunal did not consider it appropriate to defer the enforceability of the costs award.

Statement of Full Order

27. The Tribunal ordered that the Respondent, Marie-Garrard Newton, solicitor, be Struck off the Roll of Solicitors and it further ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00.

Dated this 4th day of November 2015
On behalf of the Tribunal

L. N. Gilford
Chairman