SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11384-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHANIE BERRY Respondent

Before:

Mr S. Tinkler (in the chair)
Mr J. A. Astle
Mr. P. Wyatt

Date of Hearing: 4 February 2016

Appearances

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

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1 The allegations against the Respondent Stephanie Berry made by the Applicant were that, whilst a solicitor at the former firm Garstangs Solicitors a non-trading recognised body, she:

1.1 between April 2011 and March 2012, used clients' monies for the benefit of other clients not entitled to the same in breach of Rules 1.2(c), 20.1, 29.1 and 29.2 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and, in so far as the conduct preceded 6 October 2011, breached Rule 1(c), 22(1), 32(1) and (2) of the Solicitors Accounts Rules 1998 and in breach of all or alternatively [any of] Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007.

1.1 between June and October 2011 misappropriated clients funds in breach of Rules 29.1 and 29.2 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011 and, insofar as the conduct preceded 6 October 2011, breached Rules 32(1) and (2) of the Solicitors Accounts Rules 1998, and in breach of all or alternatively [any of] Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

1.1 between October 2011 and March 2012 wrote misleading e-mails and a misleading letter to a client in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

1.1 misled solicitors in relation to an application to rectify the Register at HM Land Registry and concerning contact with HMRC in breach of or alternatively [any of] Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

All allegations were made on the basis that the Respondent acted dishonestly but it would be open to the Tribunal to find all allegations proven without finding dishonesty.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 5 May 2015 with Appendix A and exhibit SOM1
- Statement of Mr Michael Garstang dated 10 July 2015 with exhibit MEG1
- Statement of Ms SY dated 24 July 2015
- Statement of Ms JH dated 15 September 2015 with exhibit JH1
- Service bundle
- Proof of delivery dated 8 July 2015
- E-mail from Mr O'Malley to the Tribunal office dated 4 September 2015
- Applicant's certificate of readiness dated 5 January 2016
- Letter from the Applicant to the Tribunal office dated 27 January 2016

- Applicant's statement of costs as at final hearing dated 27 January 2016

Respondent

- Statement by the Respondent dated 8 June 2015 with attachment
- Statement by the Respondent dated 30 July 2015
- Personal Financial Statement of the Respondent with attachments
- Respondent's certificate of readiness dated 11 January 2016

Preliminary Issues

3. The Respondent was not present and for the Applicant, Mr Johal referred the Tribunal to Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 which provided:

> "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."

He referred the Tribunal to the service bundle which included a copy of a letter sent by the Tribunal office by recorded delivery on 7 July 2015 advising the Respondent of the date and time of the substantive hearing. Subsequent to that there had been a number of exchanges between the Applicant and the Respondent in which she had notified her intention not to attend the substantive hearing. The Respondent had filed a certificate of readiness dated 11 January 2016 in which she stated:

> "I will not be attending the hearing. Please see attached notes. There will be no other representative at the hearing on my behalf."

The Respondent had indicated in the notes attached dated 6 January 2016 that she had been trying to obtain a letter from her doctor confirming mental health problems following the allegations having been made against her by her former firm but that this had not proved possible. She stated she would not be relying on medical evidence to confirm why she would not attend the hearing because she had not had the opportunity to obtain it from a new doctor but stated that every time she considered attendance she suffered from a panic attack. The notes continued:

> "I would therefore respectfully ask the Tribunal to make any decision in my absence."

and

> "I have nothing further to add to that which I have already stated..."

The Respondent also referred to a medical report dated 11 July 2011 which had been provided to her former firm. Mr Johal submitted that it appeared that the Respondent had had a settled intention not to attend the hearing for some time and he invited the Tribunal to proceed in her absence.

4. The Tribunal had regard to the authority of the case of Hayward, Jones and Purvis [2001] EWCA Crim 168 which provided guidance on the criteria to be followed in determining whether to proceed in the absence of a Respondent. The Tribunal had regard to the need to exercise its discretion with great care. It was satisfied that the Respondent had been properly served with notice of the hearing date. The Tribunal was mindful of the need to consider whether an adjournment would be likely to secure the Respondent's attendance at a future date. It was noted that the Respondent had not served any counter notices or produced any new evidence or newly put any facts into dispute. The Respondent had not required the attendance of any of the witnesses for the purposes of cross examination. The Tribunal noted that there were multiple examples in the correspondence where the Respondent indicated that she would not attend. In her statement dated 8 June 2015 the Respondent stated that she believed that to proceed to a hearing in the matter would be most detrimental to her mental health and "therefore respectfully request of the Tribunal that any decision made in respect of the allegations be made without my presence at any hearing." In the service bundle there was an e-mail dated 11 June 2015 in which she said that she did not intend to be present or to be represented at the substantive hearing; in an e-mail dated 3 August 2015 she repeated her intention not to attend; in an e-mail of 20 August 2015 she repeated that she was waiting for medical evidence and said this was solely to support her request not to attend the substantive hearing. In all the circumstances the Tribunal did not consider that to adjourn would procure the attendance of the Respondent at a future date. It considered that she had voluntarily chosen not to attend the hearing. The Tribunal determined that it would proceed in the absence of the Respondent and without her being represented.

5. Mr Johal asked the Tribunal to disregard certain pages of the hearing bundle which had been mistakenly included and which related to redacted matters irrelevant to the application.

Factual Background

6. The Respondent was born in 1978 and admitted in 2005. At the date of the Rule 5 Statement the Respondent remained upon the Roll of Solicitors. The Respondent held practising certificates between 2005 and 2012 and her 2011/2012 certificate was terminated on 31 December 2012 because she had not applied to renew it. The Respondent's practising certificates had been unconditional.

7. On 1 May 2012, the Applicant received a complaint letter dated 27 April 2012 from Mr Michael Garstang ("Mr G"), senior partner of a firm of solicitors formerly Garstangs Solicitors. He alleged that the Respondent had "committed offences including theft; false accounting and fraud". The sums alleged to have been misappropriated by the Respondent totalled a minimum of £14,663.77 which included sums corrected prior to the investigation date.

8. On 17 October 2012, an Investigation Officer of the Applicant, ("the IO") commenced an investigation of the books of account and other documents of the firm. The inspection resulted in a Forensic Investigation (FI) Report dated 25 April 2013. The events relating to the conduct of the Respondent occurred during her employment with the dissolved firm of Garstangs Solicitors ("the firm"). The matters discussed in

the FI Report were concluded prior to the dissolution of the firm on 5 April 2012 and prior to the establishment of the firm of which Mr G was senior partner.

Allegation 1.1

Client T

9. The Respondent was the fee earner responsible in the administration of the estate of the late Mr T under the supervision of Mr NH. On 7 July 2011, following a client debit slip completed by the Respondent dated 4 July 2011, the sum of £1,096.58 was debited from the estate monies of Mr T and paid to Ms C, a barrister.

10. Ms C was instructed in relation to a matter concerning a client NW by the Respondent. The payment was in part payment of counsel's fees and had no connection with the matter of T.

Client P

11. The Respondent was the fee earner on this matter and the Respondent was the fee earner responsible under the supervision of Mr NH. On 8 November 2011, following a client debit slip completed by the Respondent dated the same date the sum of £2,146.71 was debited from the estate monies of Mr P and paid to Mr E a barrister.

12. Mr E was also instructed in relation to a matter concerning client NW by the Respondent. The payment was in respect of counsel's fees and had no connection with the matter of Mr P.

Client H

13. The Respondent was the fee earner responsible in the administration of the estate of the late Mr H under the supervision of Mr NH. Between 25 January and 21 December 2011 the Respondent had corresponded with Friends Provident Life and Pensions Ltd ("Friends Provident") with regard to four life assurance policies of Mr H. The Respondent completed and signed the relevant claim forms as solicitor to the executor. On 14 April 2011, Friends Provident forwarded to the firm a cheque in the sum of £8,820.05 in settlement of three of the four life policies.

14. The client ledger held on behalf of the estate of Mr H did not record the receipt of the Friends Provident life policy proceeds. Estate accounts of Mr H, prepared by the Respondent made no reference to the Friends Provident life policy proceeds.

15. On 19 April 2011, a credit slip completed and signed by the Respondent, instructed the firm's accounts department to credit the sum of £8,820.05 to a particular client ledger. The credit slip recorded that payment had been "received from Friends Provident re C... G... bills". The account number was a miscellaneous client ledger (G...miscellaneous) held on behalf of Mr CG. (Mr CG had a different surname from Mr G of the firm.)

16. On 20 April 2011, the miscellaneous client ledger for CG was credited with the sum of £8,820.05 and, prior to this credit, the client ledger account held a nil balance. On

28 April 2011, the CG miscellaneous ledger account was charged with 49 transactions in sums ranging from £1.06 to £3,100.55 and totalling £7,230.

17. From 13 May 2011 to 9 January 2012, the relevant client ledger account was charged with a further 20 transactions which resulted in a final client credit balance of £26.46. No other client monies saved those properly relating to client CG were credited to this client ledger account during the period 20 April 2011 to 9 January 2012.

18. On 20 March 2013, in written answers submitted by the Respondent to written questions from the IO, the Respondent confirmed that she was the fee earner on this matter under the supervision of Mr NH.

19. The IO provided the Respondent with a copy of the Friends Provident letter dated 18 April 2011 and accompanying cheque for the proceeds of the three life policies. The Respondent stated she was unable to recall whether the policies had been assets of the estate but conceded that the letter and cheque related to the estate of Mr H.

20. A copy of the client ledger held on behalf of Mr H was provided to the Respondent and she was referred to the fact that the sum of £8,820.05 had not been recorded on the client ledger. She was asked why she had failed to record receipt of that asset and her answer was: “I do not know”.

21. The Respondent was asked to confirm whether, when she had prepared the estate accounts for the late Mr H, she had checked the client ledger account against the client file. The Respondent said: “It would not appear from the information supplied by the [Applicant] that I did”.

22. The Respondent confirmed that she had completed the credit slip instructing the firm’s accounts department to credit the sum of £8,820.05 to the client ledger account held on behalf of Mr CG. In response to a question about why she had paid those monies to Mr CG, the Respondent stated:

> “The only thing I can think is that I was dealing with both files same time and have logged the cheque on the... file in error. I can assure you I have not done this on purpose.”

23. The Respondent confirmed that she was the fee earner responsible for the management of Mr CG’s miscellaneous client ledger account under the supervision of Mr NH. In relation to the 49 transactions charged to the account on 28 April 2011 the Respondent was asked if she had authorised those payments and stated: “I cannot specifically recall but imagine I did”.

24. The Respondent confirmed that she was the fee earner responsible for all the matters that benefited from monies transferred from the CG miscellaneous client account.

Response of the Firm

25. On 12 November 2012, Mr G informed the IO that the discrepancies on the client matter of Mr H had been discovered by the firm’s reporting accountants during the preparation of the report to the Applicant. Mr CG was the main client that benefited

from the incorrect transfer of funds from the estate of Mr H. Mr G commented that he had noticed a reduction in the number of bills being raised for work carried out on behalf of Mr CG. Mr G said that the Respondent had not raised many bills on the CG matters and that based on work in progress the firm had probably lost in the region of £13,000.

26. On 20 November 2012, the firm refunded the estate of Mr H in the sum of £8,833.97 including £13.92 interest.

Client R

27. The firm acted in the administration of the estate of the late Mr R and the Respondent was the fee earner responsible under the supervision of Mr NH.

28. On 27 April 2012, Mr G prepared a witness statement which referred to the use of estate monies, received on behalf of Mr R for the benefit of clients unconnected to the estate.

29. On 22 September 2011, National Savings and Investment ("NSI") notified the Respondent that the monies due to the estate totalled £28,657. On 11 October 2011, RBS notified the Respondent that the closing balance on the account was £7,228.98. The client ledger account held on behalf of Mr R's estate recorded the receipts from NSI and RBS in these amounts on 27 September 2011 and 11 October 2011 respectively.

30. On 20 March 2012, a letter bearing the Respondent's reference was sent to the executrix of the estate enclosing the estate accounts. On the same day, the Respondent provided a memorandum to her colleague Mr CR who would deal with a property forming part of the estate, to update him as to the current position on file and the outstanding matters.

31. On 13 April 2012, CR was contacted by Ms NO a former litigation client of the Respondent. She attended the firm's offices and produced to CR a letter she had received from the Respondent dated 23 March 2012 which included a client account cheque in the sum of £1,050 in respect of damages successfully recovered. Ms NO attended the firm's offices to settle her costs. On reviewing her client ledger account, the firm was unable to locate any record of receiving damages on her behalf. The accounts department traced the cheque number of the damages cheque back to the client ledger account of Mr R.

32. On 20 March 2012, the client ledger account of Mr R recorded a payment of £1,050 to "NO...boiler replacement". A review of the late Mr R's client file did not evidence any request for payment or any payment in relation to a boiler replacement.

33. Following the meeting with Ms NO, the firm contacted the executrix of the estate and requested her to provide a copy of the estate accounts previously submitted to her on 20 March 2012.

34. A comparison of the estate accounts submitted to the executrix with the estate accounts held on the client file revealed discrepancies in respect of the following assets/liabilities; for NSI and RBS the client ledger and estate accounts on the client file showed differences of £1,392.43 and £254 respectively in terms of credits; the client ledger and estate accounts on the client file showed the following debits: locksmith fees £50, counsel fees £204, survey & EPC £342.43, and boiler replacement £1,050. These debits did not appear on the estate accounts submitted to the executrix.

35. It was not evident from the relevant client file that the payments for survey and EPC, locksmith fees, counsel's fees and boiler replacement, unconnected liabilities totalling £1,646.43, related to the estate of Mr R.

36. The firm carried out a review of these unconnected liabilities and determined that they related to the following client matters: locksmith fees unknown matter; counsel fees Mrs LE; survey and EPC Mr CG; and damages (boiler replacement) Ms NO. Cheque request slips and invoices supported the fact that the above payments were not liabilities of the estate of Mr R. The client ledger also referred to "NO...boiler replacement" in relation to client disbursement of £1,050 on 20 March 2012 which was not a liability of the estate of Mr R.

Response of the Respondent

37. On 25 February 2013, the IO discussed the client matter of Mr R with the Respondent. She did not remember preparing or sending the letter sending the estate accounts to the executrix of the estate.

38. The Respondent was presented with the estate accounts submitted to the executrix and the copy held on the file and was asked if she had been aware of the discrepancies between the two accounts. The Respondent stated that she had not been aware until she received a visit from the police. She stated that she would not have prepared two different sets of accounts and asserted:

> "Well I don't understand why that's different. I certainly didn't prepare two, I would only ever prepare one estate account. And if this one is on the file, this is the one that I would've prepared."

39. The IO went through each of the discrepancies on the estate account and the Respondent responded as follows: the survey and EPC fee and the locksmith fees, she stated she could not understand why the two estate accounts were different; regarding the survey and EPC fee, the Respondent also wondered if she had "mistakenly put it onto this one" the R client ledger as opposed to the CG ledger,

40. The IO informed the Respondent that the payee of the survey and EPC fee had confirmed that the payment of £342.43 related to the client Mr CG. The Respondent responded:

> "I can only think I've made a mistake in writing down if I've been working on loads of files at same time, that's the only explanation I can think of".

It was put to the Respondent that this did not explain why the payment did not appear on the estate accounts submitted to the executrix. The Respondent responded: "No, I don't understand why they're different".

41. With respect to counsel fees, the Respondent was asked if she had any reason to instruct counsel on this matter. The Respondent stated she could not remember. The IO informed the Respondent that the payment of £204 related to the client matter of LE. The Respondent said "other than the same thing with the [CG] one, it's a mistake. I can't believe I made a mistake like that". The Respondent said the signature on the debit slip for this payment was not hers.

42. The IO presented a copy of the signed client debit slip in relation to the payment of £1,050 to Ms NO to the Respondent who replied: "No, it's not my signature".

43. The Respondent stated that she had not sent incorrect estate accounts to the executrix. When asked if she had provided the executrix with misleading information, the Respondent replied "No, not on purpose". When asked to explain what she meant by that comment, the Respondent stated:

> "Well I mean if there are mistakes and if that wasn't supposed to be on that file, then yeah, that's a mistake that's been made but I certainly didn't do it deliberately to try and hide or pay somebody else's file. If I've done that, if if (sic) that's been a mistake that I've made, then that's a mistake that I've made. But I certainly not in any way shape or form have I done that deliberately".

Response of the Firm

44. Mr G, as complaints officer at the firm stated that a meeting was agreed with the Respondent to take place on 26 April 2012 to discuss among other things the client matter of Mr R. He stated that the Respondent initially agreed to attend the meeting; however on the morning of 26 April 2012 she notified him by e-mail that she would not be attending.

Allegation 1.2

45. The Respondent signed a compliments slip dated 7 October 2011 confirming receipt of £304 in respect of costs from the client Mr RW. The client ledger for Mr RW did not record any credit in the sum of £304 in respect of the cash received

46. The firm acted in the litigation matter of client Ms NO for which the Respondent was the fee earner responsible under the supervision of Mr NH. The Respondent had been instructed by NO to commence court proceedings against her neighbour with respect to damage caused to her home. The client file for this matter could not be located by the firm but was reconstituted with assistance from the client.

47. On 17 July 2011, the Respondent forwarded a claim form to the client NO for signature with a request for the sum of £250 to settle court fees. On 30 June 2011, the client NO attended the firm's offices and provided £250 cash to the Respondent in

respect of the requested court fees. The Respondent signed a compliments slip which acknowledged receipt of the cash. The cash payment was not recorded on the relevant client ledger account.

Allegation 1.3

48. Mr G confirmed in his statement dated 27 April 2012 that the client NO had forwarded e-mails between her and the Respondent on 2 December 2011. By e-mail dated 2 December 2011, the Respondent suggested to the client that a hearing had taken place at court on 1 December 2011 and that the Judge had laid down directions to the effect that the defendants had been given until 18 January 2012 to file their defence and the matter was to be listed for trial between 20 and 25 February 2012. The e-mail also indicated that the Judge hoped that settlement could be reached and the Respondent suggested to NO that the Judge was not impressed with the litigation and asked if she still wished to proceed.

49. The Respondent sent an earlier e-mail dated 18 October 2011 to the client stating: "I have a date which is November 30th for a hearing". The Respondent sent a further e-mail dated 17 November 2011 in which she referred to 30 November again, indicating that the client need not necessarily attend as it would be a directions hearing where the court would set a timetable for provision of reports and the trial itself.

50. The client file retained a copy of a letter to NO dated 23 March 2012 and an invoice and cheque which notified her that the Respondent had successfully obtained judgment in her case and received damages of £1,050. The letter gave NO instructions to refrain from cashing the client account cheque until 28 March 2012. It was not evident from the relevant client account ledger that the sum of £1,050 had ever been received by the firm in relation to this matter. It was not evident from the client file that the Respondent had ever submitted the court issue fee or had any communications with the court in relation to this matter.

Allegation 1.4

51. The firm acted on behalf of Mr NW in an application to rectify the register at HM Land Registry with the Respondent as the fee earner responsible under the supervision of Mr NH.

52. NW's properties were the subject of a confiscation order requiring a number of properties purchased by him and his business partner to be transferred from him to his former wife and into the sole name of his business partner. Due to alleged negligence of solicitors who acted on the purchases, these had not been registered at the HM Land Registry and the Respondent was instructed to deal with the rectification of the Land Register.

53. On 19 January 2009, the Respondent sent a memorandum to her colleague Ms K in the firm's London office requesting her to make an application to the court to obtain the necessary court order.

54. Between 19 January 2009 and April 2010 the preparation of the application was seriously delayed and the Respondent was required to chase Ms K on numerous occasions to complete the court application.

55. On 2 November 2009, a telephone attendance note prepared by the Respondent recorded that Ms K had advised her that a witness statement would be ready for signature by NW following day and the notice of application might be made.

56. The Respondent had been under pressure from S Solicitors acting on behalf of Mr NW's former wife and B Solicitors acting on behalf NW and his business partner in a negligence claim against his former solicitors as to progress regarding the rectification of the Land Register.

57. On 25 January 2010, the Respondent chased Ms K by e-mail. She replied on the same day:

> "... we have to put the app in as you are probably aware, counsel don't usually trot off to court to do that".

58. On the same day the Respondent sent an e-mail to S Solicitors stating:

> "The application has been sent to the court and I will take over the chasing of the same from here, I will let you know when I have heard further from tehm (sic)."

59. On 1 February 2010, the Respondent e-mailed Ms K chasing the application and was concerned about a potential complaint from the client.

60. On 17 February 2010, the Respondent sent an e-mail to counsel, Ms B and enquired:

> "Has the witness statement been finalized now? We really need to get the application into Court".

61. On 16 April 2010, the Respondent responded to S Solicitors in response to a chasing e-mail stating:

> "I confirm the application was sent to the Court on 11th January 2010. The court then send this back requesting further information… I apologise for the delay and understand the Judge is looking at the matter to determine if it can be dealt with on an ex parte basis".

62. The IO noted that there was a gap in the correspondence retained on the relevant client file between April 2010 and August 2011. On 23 August 2011, the Respondent notified S Solicitors by e-mail that she had received:

> "... an order to register the properties. I understand this will be typed at the court and with me within 10 days or so…"

63. On 28 November 2011, S Solicitors wrote a letter of complaint to the firm with regard among other things to its continuing failure to complete the rectification of the Land Register.

64. On 2 February 2012, HM Land Registry cancelled the application of one of the properties contained within the order, due to a discrepancy in the order. This delayed rectification of the register of all the properties contained in the order.

65. On 7 June 2012, Mr NH of the firm contacted the firm's London office to locate any correspondence that would assist him in amending the order. On the same day the firm contacted the Administrative Court Offices and requested a copy of the Order. The Court replied:

> "... This matter has been discharged on the 24/11/2009 and to be honest I don't think it was made in our division as I don't have any records of it. I would suggest contacting Serious Fraud Office, as it is possible that the order was made in a different division."

66. On 7 June 2012, the firm contacted the Respondent at home and requested details as to:

> "Which counsel dealt with it at the hearing in August? Or was it dealt with by post?"

The Respondent replied on 13 June 2012 and confirmed "the order was dealt with by post".

67. On 2 August 2012, the firm notified their client Mr NW that the police had confirmed: "that this High Court Order used by [the Respondent] to effect Registrations… was indeed a forgery".

The Response of the Respondent

68. In relation to the involvement of the firm's London office in the court application matter, the Respondent said:

> "I basically at that point just handed it all over to [K] and thought that my involvement was done, at that point. I thought… all I needed to (sic) was to send it to [K] to send it to counsel to prepare the application… I've got no idea what happened from that period to it coming back to me. I know that [K] didn't really do much… From what I remember I think I sent her the whole file because there was boxes and boxes of it and I think I just sent it all back down to London"

69. The Respondent was referred to the fact that she had advised S Solicitors that an application to court had been made, when that statement was incorrect. The Respondent replied:

> "I would've just have gone with what [K] was telling me at that point I would assume, I don't know, I don't remember"

In relation to being chased by S solicitors for progress reports, the Respondent stated:

> I know that's why [Mr G] and [NH] got more involved towards the end, because I hadn't, or according to them I hadn't been proceeding with it as quickly as I should have done and the fact that I was in and out you will quite a lot and then that's when [Mr G] and [NH] got involved when [S] made a complaint to [Mr G] about the fact that nothing seemed to be happening"

70. The Respondent could not remember whether it was she or NH who had concluded the preparation of the order, (save that it had taken place in the Bolton office) or whether she had instructed counsel to attend the court hearing. The Respondent stated that it would have been more likely to have been counsel or someone from the London office who attended in respect of the application but she could not remember.

71. When presented with a copy of the order, the Respondent confirmed that it was the order that she had sent to HM Land Registry to register the properties. The Respondent explained that she came into possession of the order as it would have been placed on her desk or chair and that she did not know whether the order had arrived with a covering letter.

72. The Respondent confirmed that the police had been made aware that the order had not been lodged at court and, when asked for her comment, responded:

> "Other than it's come on my desk, I thought excellent here's the court order I'll go and register these properties. No. I don't know, other than that, that's where it's come from at all"

73. In response to the IO's written questions regarding the delay in progress in this matter by the firm's London office, Mr NH stated that counsel had prepared the required witness statements to accompany the application in early 2010 and blamed the Respondent for not dealing with that document and asserted that she had spun a web of lies to all concerned regarding her progress.

74. During correspondence with B Solicitors who were also representing NW and his business partner in the negligence claim, the Respondent stated in an e-mail dated 25 September 2008 to B Solicitors:

> "Enquiries have been made of the Inland Revenue and they are searching their records. We will liaise between the Inland Revenue and the land (sic) Registry when they have completed their search"

It was not evident from the client file that the Respondent had made any contact with HMRC.

The Applicant's Investigation

75. The IO interviewed the Respondent at her home address and at the offices of her then solicitor on 23 January 2013 and 25 February 2013 respectively. The second interview was digitally recorded. The Respondent advised that she had been diagnosed in October 2009 with an auto-immune disease. The IO asked the Respondent to confirm whether the disease had any effect on her short or long term memory if she took prescribed medication. She replied that it could cause memory and other cognitive problems. When asked if she suffered from any other illness which would impair either her short or long term memory, the Respondent replied she suffered from depression which she believed could interfere with short-term memory.

76. The Applicant sent an Explanation with Warning letter to the Respondent dated 27 August 2014. The Respondent's then solicitors responded by letter dated 20 October 2014 referring to the earlier written responses to interview questions and stated:

> "If monies had been put in the wrong account or not made a note of it was purely a mistake on her part due to overwork, lack of proper supervision and her medical condition at the time and not done dishonestly, deliberately or in a purposeful way"

The Respondent made further suggestions in the letter of difficulties arising with the firm. The matters were denied by the firm which provided a medical report dated 11 July 2011 which they stated was sought following the specific authority of the Respondent so that they could be satisfied that she was fit and able to return to work. The Applicant investigated the adequacy of supervision and took no further action.

Witnesses

77. **Mr Michael Garstang** gave evidence. He confirmed the truth of his witness statement dated 10 July 2015 and other statements referred to in its exhibits. He was the complaints officer of the firm tasked with trying to go through the Respondent's files and letters to find out what had happened and so the statements were made at various stages as the issues began to unfold.

78. The witness confirmed that the Respondent had conduct of the R file. When during his investigation he had discovered the payments made from client account funds on that ledger he examined the file and found the estate accounts. He stated that the person who had prepared those was the person with conduct of file that is the Respondent. He contacted the executrix/beneficiary and she brought in the other set of estate accounts which she said had been sent to her by the Respondent.

79. Regarding the client Ms NO the witness had learned from enquiries he commissioned of the local County Court that no proceedings had been issued for her. When she came to see him, the witness made an attendance note (dated 23 April 2012) which was in the hearing bundle. She was in dispute with a neighbour and wanted to issue proceedings in the County Court with damages limited to £800. The witness attributed significance to this amount because at the end of the matter and on the final day when the Respondent was in the office she had sent a letter to Ms NO with a cheque in the amount of £1,050 which was the total of the damages of £800 and £250 that the client

claimed to have paid to her for costs and disbursements. The only person with care and conduct of the matter was the Respondent. The witness was satisfied that the signature or "squiggle" as he described it on the relevant cheque requisition slip for the payment of £1,050 to NO was that of the Respondent. He had queried with the cashier who had given her the slip and had been advised that it was the Respondent. He had not seen her sign it but he believed it to be the case. As to whether the witness had made any enquiries of the proposed defendant in the proceedings, the witness stated that the file had disappeared from the firm's system. They had managed to reconstruct some of it with the help of the client. Much of it had been conducted by e-mail. There was a letter to the neighbour but nothing on the file relating to the issue of proceedings in the County Court.

80. Mr Johal referred the witness to the points made by the Respondent in a letter dated 20 October 2014 to the Applicant from her then solicitors. Mr Johal pointed out that that the letter had been produced as an exhibit to the witness's statement (and therefore the Respondent was apprised of it). The Tribunal therefore permitted him to ask the witness about it. The Respondent was quoted as commenting: "When I was ill I did express some concerns to Mr Garstang about my workload." The witness explained that the Respondent raised an issue about illness at his specific request because of concern that the physical nature of her treatment would impact on others. A medical report was obtained in July 2011 which was in the hearing bundle. The witness could not comment on any impact of the Respondent's illness on her behaviour as they worked in different departments on different floors of the building and did different types of work. The Respondent was away from the office sometimes seeking medical advice and treatment but he was unable to comment on the frequency.

81. The witness was asked to comment on an assertion made by the Respondent in the letter from her then solicitors of 20 October 2014 that the firm had asked for details of her doctors so that they could obtain a report "but only after they began to try and push me out". The witness did not accept this assertion. The Respondent's employment did not conclude until the end of March 2012 although there had been some issue with her work prior to that. The witness rejected the suggestion that NH had indicated that the problems had arisen as a result of pressure or her mental health. The witness stated that it was totally untrue that the Respondent's problems started only after she had indicated that she could not make a payment for a small share of the business. The Respondent had joined the firm nine years before having trained under Mr NH one of the partners. On qualifying she worked in Bolton and was "Young Solicitor of the Year" there. Her work was so good that the partners discussed recommending an increase in salary and potentially a salaried partnership. The Respondent immediately said that she would prefer to go to equity partnership. The witness explained to her that would necessitate her putting money into the firm. Possibly they had mentioned a sliding scale of amounts to be paid in. He disputed an amount she had referred to. The Respondent said she would discuss the matter with her father. They heard nothing more about it from her.

Findings of Fact and Law

82. 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.

(Paragraph numbers in quotations have been omitted unless they aid comprehension. Submissions include those in the documents and those made orally at the hearing.)

83. In considering the allegation of dishonesty attached to each of allegations 1.1 to 1.4, the Tribunal employed the two limbed test for dishonesty in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton had said:

> "... before there can be a finding of dishonesty it must be established that the conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

General Submissions

84. For the Applicant, Mr Johal submitted that he relied on the evidence of Ms Y the IO, Mr G and Ms H of Her Majesty's Courts and Tribunals Service. The Respondent had not required the attendance of any of them. Ms Y and Mr G were present but he did not intend to call Ms Y but would call Mr G in respect of discrete matters relating to the allegation of dishonesty. There were also peripheral matters regarding medical issues and the Respondent's workload upon which Mr G could give evidence.

85. **Allegation 1.1 - Between April 2011 and March 2012, [the Respondent] used clients' monies for the benefit of other clients not entitled to the same in breach of Rules 1.2(c), 20.1, 29.1 and 29.2 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and, in so far as the conduct preceded 6 October 2011, breached Rule 1(c), 22(1), 32(1) and (2) of the Solicitors Accounts Rules 1998 and in breach of all or alternatively [any of] Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007.**

85.1 For the Applicant, Mr Johal relied on the facts set out in the Rule 5 Statement and the FI Report. In respect of the clients T and P, it was alleged that the Respondent had used sums of money £1,096.58 and £2,146.71 to pay counsel Ms C and Mr E respectively in the matter of Mr NW an unconnected client. A statement given by Mr G on 9 April 2013 under the Criminal Justice Act 1967 gave details of both transactions including that the Respondent conducted the T and P matters exclusively and that the signature on the cheque requisition slips was the Respondent's. In answer to questions posed by the IO, the Respondent said she could not remember if she had authorised the payments or not and if she did so it was by mistake.

85.2 In respect of client H, the Respondent instructed the firm's accounts department on 19 April 2011 to credit the sum of £8,820.05 to the client ledger of an unrelated client and thereafter to use those monies for the purposes of the unrelated client. A cheque was received from Friends Provident dated 14 April 2011 under cover of a letter of the same date making it clear that the monies were for the benefit of H and not CG. On the credit slip the Respondent had completed "Friends Provident re [CG]". Her explanation was that she was working on both files at the same time and logged the

cheque on the CG file in error. The Tribunal noted that the slip contrasted with the slip for the monies paid to Ms C of Counsel dated 4 July 2011 where no client name was completed just that of the payee. Mr Johal agreed but submitted that it was clear that that the Respondent had received a cheque and letter from Friends Provident for H (his name was in the heading to the letter) and intentionally credited it to CG and he submitted that she planned to do so. He invited the Tribunal to consider what the Respondent did with the monies once they were on the CG file. She did not deny that she authorised the transfers although there were no debit slips to prove that she had done so and Mr Johal referred the Tribunal to her answers to written interview questions from the IO dated 12 March 2013. Mr Johal submitted that the Respondent could not have made the transactions without the money from Friends Provident being credited to the CG account and so her actions had been intentional and not by error. Twenty further transfers were made between 13 May 2011 and 9 January 2012 leaving a balance of £26.46 on the account. Mr Johal submitted that the Respondent used all the money for CG and other clients. Mr Johal submitted that while the Applicant had not gone into the question of motive to any extent it appeared that the Respondent she had some kind of non-work relationship with CG which could provide the context for her using the money for his benefit. Mr Johal could not put his hand on evidence to that effect and submitted that the Tribunal did not need to find motivation. As to the Respondent saying that she had made the credit by mistake and that the payments followed, Mr Johal submitted that he would take the Tribunal to other "mistakes" which would show a course of conduct.

85.3 It was alleged in the Rule 5 Statement that in relation to client H the Respondent acted in breach of the SARs 1998 and 2011 when she incorrectly withdrew and/or transferred from client bank accounts monies received on his behalf for the benefit of unrelated clients in particular CG. It was alleged that the steps taken by the Respondent demonstrated, individually and cumulatively subjective dishonesty on her part and included:

- providing wrong information on the credit slip when paying the funds into the CG miscellaneous ledger in circumstances where it would have been clear that the ledger receiving the funds was a miscellaneous ledger and not an estates matter;

- providing instructions to the accounts department to undertake the numerous subsequent transactions, some over a single day while others were over several month period, all of which were to the benefit of unrelated client matters she was dealing with;

- preparing estate accounts in relation to the estate of Mr H which made no reference to the incoming funds from Friends Provident.

85.4 Mr Johal took the Tribunal to client R's matter where he submitted the Respondent instructed the firm's accounts department to debit sums totalling £1,646.43 received in relation to that client to the client ledgers of four unrelated clients, and thereafter to use those monies for the purposes of the unrelated clients. The largest payment was to Ms NO to whom the Respondent sent a cheque for £1,050 under cover of a letter dated 23 March 2012. Mr Johal submitted that it was clear from the ledger that no

damages had been received. Mr Johal relied on the evidence of Ms H whose statement was dated 15 December 2015 (see allegation 1.3 below). (She was head of the Business Support Team based at the Manchester Civil Justice Centre.) Her evidence confirmed that there were no proceedings. The Respondent completed a cheque requisition slip from the account of R payable to NO and the details given were "Boiler replacement". Mr Johal submitted this constituted evidence of concealment of the fact that the Respondent had not commenced any proceedings. Mr Johal submitted that there was concealment in respect of all four payments made and referred the Tribunal to the letter of 20 March 2012 to the executrix enclosing the estate accounts. He reminded the Tribunal that the estate accounts sent to the executrix differed from those on the client file as detailed in the FI Report. The difference of £1,646.43 between the two sets of accounts represented the exact sum total of the four improper payments made which Mr Johal submitted was evidence that the Respondent prepared both sets of estate accounts. She was the fee earner and made the four improper payments and therefore had a motive to conceal what she had done.

85.5 In relation to client R in the Rule 5 Statement it was asserted that the Respondent's conduct would be considered dishonest by the ordinary standards of reasonable and honest people and further that the steps taken by the Respondent demonstrated individually and cumulatively, subjective dishonesty on her part and included:

- issuing the cheque in the sum of £1,050 in respect of the NO boiler replacement on 20 March 2012 which occurred prior to the Respondent writing to the executrix of Mr R's estate enclosing the cheque in the sum of £31,973.89;

- the fact that the Respondent should have known that the unconnected liabilities were not liabilities of the estate of Mr R;

- the creation of further estate accounts which were inconsistent and the accounts sent out to the executor did not refer to the payments in relation to the unconnected liabilities which was evidence of concealment on her part.

85.6 In the Rule 5 Statement it was alleged that the Respondent's instructions to transfer monies between unrelated client accounts and, thereafter, to cause those monies to be used for the benefit of the unrelated clients demonstrated lack of integrity on her part and was an act likely to diminish the trust of the public placed in her or the legal profession, was not behaving in a way that maintained the trust the public placed in her and in the provision of legal services and did not protect client money and assets. It was further submitted that as a result of the debits in relation to clients T and P, the client NW benefitted and the beneficiaries of the estates of clients T and P had been deprived of that sum. As a result of the payment of the unconnected liabilities, other clients benefited to the detriment of the estate of the late Mr R which had been deprived of those sums. The Respondent facilitated the result and therefore failed to act in the best interests of the client and provide a good standard of service to her clients. The Respondent was asked to describe her service to probate clients by failing to ensure that estate accounts supplied to clients accurately reflected the estate assets and liabilities. The Respondent replied: "It would appear that the service was not good."

85.7 It was alleged that the Respondent adopted a similar method in transferring the monies detailed in the four clients exemplified which demonstrated a course of conduct and that the course of conduct was dishonest on the part of the Respondent who would have known that the monies were received in relation to estate matters but, instead, she paid the monies out in respect of unrelated counsel's fees and other matters. The use of the monies for unrelated matters was deliberate and demonstrated subjective dishonesty on the part of the Respondent. Such conduct would be considered dishonest by the ordinary standards of reasonable and honest people and was therefore objectively dishonest.

85.8 In her second answer the Respondent stated that allegation 1.1 was accepted save that dishonest intent was denied. She did not deny that the facts of each incident occurred. She referred to the medical report of July 2011 which she said stated that her illness could cause cognitive and memory problems. She therefore submitted that at the time of the incidents occurring and for some time prior to that her cognitive abilities was impaired and that this was the reason for the mistakes being made even though at the time she was not aware of it.

85.9 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and the answers filed by the Respondent dated 8 June and 30 July 2015 both of which were subsequent to the investigation and issue of the Rule 5 Statement. The Tribunal also had regard to various e-mails which the Respondent had sent. The Respondent had admitted the underlying allegation 1.1 but denied dishonesty.

85.10 In each of the cases of T and P, estate money had been paid to a barrister for work on a different client matter, that of client NW. The Respondent attributed the payments to mistakes. The payment on the T matter was made in July 2011 and fell within the SCC Code and the SAR 1998. The Tribunal found that the payment was a breach of the relevant accounts rules as alleged and constituted a failure to act in the best interests of the client (Rule 1.04), a failure to provide a good standard of service to your client (Rule 1.05) and was likely to diminish the trust the public placed in the Respondent or the legal profession (Rule 1.06). The payment on the P matter was made in November 2011 and fell within the SRA Accounts Rules 2011 and the SRA Principles 2011. The Tribunal's findings based on the evidence were the same as in the case of T. The Tribunal found proved to the required standard that the payment was a breach of the relevant accounts rules as alleged and constituted a failure to act in the best interest of each client (Principle 4), a failure to provide a proper standard of service to clients (Principle 5), that the Respondent had failed to behave in a way that maintained the trust the public placed in her and the provision of legal services (Principle 6) and that the Respondent had failed to protect client money and assets (Principle 10).

85.11 The Tribunal noted that in the transcript of her interview on 25 February 2013 with the Applicant, the following exchanges took place:

> "IO So when you prepare your estate accounts and you're putting these things onto the ledger. Do any work from the ledger; do you not check back to your files and make sure that you have…?

R: I was bad for only working from the ledger. There were a lot of times where I had forgotten to put in, for instance, office copies that hadn't made it onto the ledger through the Land Registry direct debit and I would get into trouble for that because it was £8.00 here and £8.00 there that Garstang's couldn't couldn't (sic) then recover. I was bad for that actually and the accounts department did quite often give me a kick up the backside for the fact that they had to keep changing my bills because I was getting them wrong a lot of the time."

The Tribunal had regard to this description of the way she worked and her explanation, consistently given, that it was an error and not intentional. There was no evidence from the Applicant that indicated any such intention or a motive for deliberate action. The Tribunal therefore considered that whilst the Respondent may have been careless or even negligent, the Applicant had not proved on the evidence to the required standard that the Respondent had failed to act with integrity with regard to client T (Rule 1.02) and client P (Principle 2). For the same reasons the Tribunal found that the issue of dishonesty could not be proved in respect of either client.

85.12 In the case of client H, an amount in excess of £8,800 had been received from the proceeds of insurance policies due to the estate into an account which had a zero balance and eight days later the monies due to that client estate had been used to make a raft of transfers for another client CG. Again the Respondent attributed this to a mistake. Having regard to the way she approached accounting records as described in her interview with the Applicant, the Tribunal could not be sure that the Respondent was aware that the money had been applied to the wrong account; it was possible that she had made a mistake and paid the money into the wrong account and then simply checked her computer screen and seen the money was available on CG's account and then embarked on the transactions for the benefit of CG. Although it was not necessary for the Applicant to prove motive, the absence of any conclusive evidence as to why the Respondent might have acted deliberately formed part of the context of the Tribunal's decision. The Tribunal found that the payment was a breach of the relevant accounts rules as alleged and constituted a failure to act in the best interests of the client (Rule 1.04), a failure to provide a good standard of service to your client (Rule 1 .05) and was likely to diminish the trust the public placed in the Respondent or the legal profession (Rule 1.06). The Tribunal found that the Applicant had not proved that the Respondent had acted other than by mistake and therefore had not proved on the evidence to the required standard that the Respondent had failed to act with integrity (Rule 1.02). For the same reasons, the Tribunal found that dishonesty was not proved to the requisite standard.

85.13 The fourth matter involved Mr R's estate where there was a discrepancy between the amounts on the estate accounts in the client file and on those sent to the executrix which equated exactly with payments which were made wrongly in respect of the accounts of three other clients and one unknown matter. The Tribunal considered that the evidence in the case of R was much more clear-cut than in the cases of T, P and H. The Tribunal noted that the amount paid in respect of "boiler replacement" £1,050 added exactly to the amount of damages claimed by Ms NO at £800 and the court fee of £250. The Tribunal did not consider that this could have been an administrative

error made under pressure. This was particularly so when it was taken in the context of all the other payments which the Respondent attributed to mistakes on this file. The Tribunal also noted that the estate accounts and letter to the executrix had been sent just before the Respondent left the firm. The Tribunal found that the Respondent had provided estate accounts to the executrix which concealed what had been done with £1,646.43 of estate monies. The Respondent denied in interview that the signature on the cheque requisition for the "boiler replacement" payment was hers but then admitted it (in that the matter of R was part of the overall attribution of the conduct giving rise to allegation 1.1 as actions by mistake.) This matter fell within the SRA Accounts Rules 2011 and the SRA Principles 2011. The Tribunal found proved to the required standard that the payment was a breach of the relevant accounts rules as alleged. The Tribunal also found proved on the evidence to the required standard that the Respondent deliberately made those wrongful payments and as such the Respondent's actions constituted a breach of the requirement to act with integrity (Principle 2), a failure to act in the best interests of each client (Principle 4), a failure to provide a proper standard of service to clients (Principle 5), that the Respondent had failed to behave in a way that maintained the trust the public placed in her and the provision of legal services (Principle 6) and that the Respondent had failed to protect client money and assets (Principle 10). The Tribunal also considered that by the ordinary standards of reasonable and honest people it would be considered dishonest to transfer money from an estate account of one client in order to pay off other clients including regarding "damages" in fictitious litigation (the payment of £1,050 to Ms NO) and to provide misleading estate accounts to an executrix. In terms of the subjective test for dishonesty, the Tribunal considered that the Respondent was the only person who could have created the duplicate accounts. The Respondent's conduct in creating those estate accounts to conceal what had been done indicated an active state of knowledge. Dishonesty was found proved on the evidence to the required standard in respect of the Respondent's actions concerning the estate of R.

86. **Allegation 1.2 - Between June and October 2011 [the Respondent] misappropriated clients funds in breach of Rules 29.1 and 29.2 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011 and, insofar as the conduct preceded 6 October 2011, breached Rules 32(1) and (2) of the Solicitors Accounts Rules 1998, and in breach of all or alternatively [any of] Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.**

86.1 For the Applicant, Mr Johal relied on the facts set out in the Rule 5 Statement set out in the background to this judgment and the FI Report. He submitted that there were two instances where the Respondent received cash payments from clients and failed to bank them in client account. They were £304 from client RW on 7 October 2011 which was evidenced by a compliments slip signed by the Respondent on that day acknowledging receipt "in respect of costs" and £250 in cash from client NO on 30 June 2011 which was evidenced by a signed compliments slip acknowledging receipt in respect of "court fee". The Tribunal had also seen the Criminal Justice Act witness statement of Ms DT who was a legal cashier at the firm. The Respondent's position was that she was due to take the cash to the accounts department straightaway but she assumed that she put it on the client file and left it there. The FI Report recorded the firm's procedure for handling client money:

> "This would involve the relevant fee earner, or if not available, the reception staff receiving the cash. A compliment (sic) slip would acknowledge the sum received, the date of receipt and signed (sic) by the relevant fee earner or receptionist. The signed slip would be handed to the client. If the cash was collected by the fee earner the appropriate credit slip would be completed and passed to the accounts department for entry onto the relevant client ledger account. If the cash was received at reception, the receptionist would pass the cash to the fee earner responsible for that client matter."

86.2 Mr Johal submitted in the case of Ms NO that the monies had been received to settle court fees but no proceedings were issued and so the money was not needed. If motive was required it represented the continued concealment of the situation regarding the proceedings from the client. Mr Johal submitted that the Tribunal could draw the inference regarding both clients that the Respondent misappropriated the money for her own purposes. In such circumstances, it was submitted that there was an inference of subjective dishonesty and that such conduct would be considered dishonest by the ordinary standards of reasonable and honest people. An honest solicitor would have taken great care, particularly when providing receipts for clients' cash to ensure that it was safely paid into client account and accounted for.

86.3 It was alleged in the Rule 5 Statement that the Respondent failed to ensure that a proper accounting record of receipt of the money was kept in accordance with the SRA Accounts Rules 2011. As a result, the Respondent failed to act in the best interests of the clients and to provide a good standard of service to them. The failure to pay the money into client account or to account to the firm or back to the clients was evidence of a lack of integrity, was behaviour that would not maintain the trust the public placed in her and in the provision of legal services and a failure to protect client money and assets.

86.4 In her second statement the Respondent denied allegation 1.2. She stated that whilst she did not recall with any specificity the matters referred to in the relevant paragraphs of the Rule 5 Statement she confirmed that she had never used client monies for her own purposes, She referred to her written replies where she confirmed that when busy she would put monies inside a client's file to be dealt with at the time of dealing with that particular file. She stated that these would be on her desk where anyone in the office could see. It was probable therefore that she then forgot about these monies and she again referred to the medical report confirming as she said the possible impairment to her cognitive abilities.

86.5 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and the answers filed by the Respondent dated 8 June and 30 July 2015. The Tribunal also had regard to various e-mails which the Respondent had sent. The Respondent denied allegation 1.2 in its entirety. The Respondent accepted that the two amounts of money had been handed to her in cash by clients and that the payments did not subsequently appear in client account. There was no evidence that the money had subsequently been given to somebody else for example the receptionist as office procedure indicated. The Respondent said that she might have left the money on the file and that someone took it out. The Tribunal had to

consider whether there was sufficient evidence to be sure that the Respondent had misappropriated the cash. The amount of £250 given to her by Ms NO related to court proceedings of which there was no evidence of issue but that fact was not conclusive of dishonesty regarding the payment. The Tribunal also took into account that in respect of both amounts the Respondent signed a receipt for the client which was an unlikely course of action if she had planned to misappropriate the money. Signing a receipt was however consistent with her own explanation of what might have occurred. The Tribunal considered that the Respondent's explanation had a degree of credibility and found allegation 1.2 not proved on the evidence to the required standard.

87. **Allegation 1.3 - Between October 2011 and March 2012 [the Respondent] wrote misleading e-mails and a misleading letter to a client in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.**

87.1 For the Applicant, Mr Johal relied on the facts in the Rule 5 Statement set out in the background to this judgment and on the FI Report. It was alleged that the Respondent wrote misleading e-mails and a misleading letter to her client Ms NO in relation to civil proceedings when no such proceedings had been issued. Mr Johal submitted that the Respondent misled the client about the institution of proceedings, obtaining damages and sent money purporting to be damages from the account of client R. The e-mails in question were dated 18 October 2011 referring to a 30 November 2011 hearing date, 17 November 2011 including references to whether or not the client should attend court and 2 December 2011 reporting on directions and the desirability of settlement as well as references to costs. On 23 March 2012, the Respondent wrote to the client enclosing the cheque for £1,050. Mr Johal submitted that there was no evidence that proceedings had been issued or that court fees had been paid and there was in no communication with the court. He again relied on the witness statement of Ms JH who confirmed the truth of exchanges of correspondence between the Applicant and HM Courts and Tribunals Service Northwest Regional Support Unit which included the area in question. The exhibits to her statement, two letters dated 2002 August 2015 and 9 September 2015 confirmed that court records showed that a case involving the particular parties or the particular property did not take place. She confirmed that a search had been undertaken of the names of both parties to the supposed litigation in the court database and records of the particular case could not be found. She confirmed that a strike had occurred at the court on 20 November 2011 but no cases had been vacated and this contradicted what the Respondent told NO in an e-mail dated 2 December 2011 which was stated to be written further to a hearing on 30 November but "which was actually heard on 1st December due to the strikes…"

87.2 The Tribunal enquired if there was any direct evidence from the client or the person allegedly sued by her about the existence or otherwise of the case. Mr Johal responded that there was no direct evidence but inferences could be drawn from the circumstantial evidence. NO had attended the firm for meetings and she provided the e-mails which were in the hearing bundle. Otherwise Mr Johal was not aware of any contact she had with the firm.

87.3 It was submitted that sending the e-mails and the letter referred to demonstrated a dishonest course of conduct which misled the client into the mistaken belief that court

proceedings had been issued by the Respondent and were ongoing to protect her legal interests. It was further submitted that the Respondent's actions in sending the e-mails were dishonest by the standards of reasonable and honest people and that she must have recognised that because she would have known that proceedings had not been issued as she was the instructing solicitor but the client, on receiving the e-mails and letter would have been under the mistaken impression that proceedings were ongoing. The misleading e-mails/letter were evidence of a complex process undertaken by the Respondent to mislead her client which demonstrated a considered act and supported a conclusion of subjective dishonesty on the part of the Respondent.

87.4 The Respondent in her second statement denied this allegation. She confirmed that she had not acted in any way with dishonesty, other than that she did not know what happened in this respect and did not recall details of any emails etc from the clients to herself or vice versa. Again she referred to the medical report and to the fact she could recall nothing further some two or three years after leaving the firm about any of the matters to which the allegations referred than she had recollection of when interviewed by the Applicant's representatives, nor more than what was contained in her written replies dated 11 April 2013.

87.5 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and the answers filed by the Respondent dated 8 June and 30 July 2015. The Tribunal also had regard to various e-mails which the Respondent had sent. The Tribunal found that there was no positive evidence that the proceedings for Ms NO had ever been issued and the Respondent did not herself claim to have issued them; she simply denied the allegation in its entirety. In her interview with the Applicant she claimed not to be able to remember what had happened in the case. This was preceded by the Respondent providing the client with updates on the non-existent proceedings including by e-mails dated 18 October 2011, 17 November 2011 and 2 December 2011. The letter had then been sent on the Respondent's last day at the firm. The Tribunal noted that before leaving the Respondent took steps to close off the case; she took money from another client's account, falsifying probate records in order to do that and sent a cheque for the exact amount of the maximum damages the client had intended to claim and the court fees to the client. The Tribunal concluded that the irresistible conclusion, in the absence of any other explanation, was that the Respondent wrote the misleading e-mails and misleading letter to the client and took steps to cover her tracks as she was leaving the firm. The Tribunal found proved to the required standard on the evidence that there had been a breach of Principle 2 (integrity) and Principle 6 (behaving in a way that maintained the trust in public places in you and in the provision of legal services). The Tribunal considered that by the ordinary standards of reasonable and honest people it would be considered dishonest to provide information to a client over a period of time maintaining a fiction that proceedings had been issued and then concluded successfully. As to the subjective test for dishonesty, as with all the other allegations the Respondent had relied in part on an assertion that her cognitive abilities had been impaired but had provided no evidence in support of that and indeed in correspondence expressly stated that she did not rely on it for the hearing. The Tribunal noted that the medical report dated 11 July 2011 provided information to Mr G that the Respondent's illness was diagnosed in November 2010, gave details of her treatment and did not anticipate any difficulties with regard to her capacity to work and attend clients so long as medication was taken.

The Respondent had provided no evidence of cognitive impairment at the material time and the maintenance of the fiction about the non-existent proceedings excluded any defence of mistake. The Tribunal concluded that the Respondent knew that no proceedings had been started, continued or concluded and on that account she knew that what she was doing was dishonest. The Tribunal found dishonesty proved on the evidence to the required standard in respect of allegation 1.3.

88. **Allegation 1.4 - [The Respondent] misled solicitors in relation to an application to rectify the Register at HM Land Registry and concerning contact with HMRC in breach of or alternatively [any of] Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007.**

88.1 For the Applicant, Mr Johal relied on the facts in the Rule 5 Statement, set out in the background to this judgment and on the FI Report. The Respondent was the fee earner assisted by Ms K. The client NW's properties were subject to a confiscation order and were to be transferred to his former wife and business partner. By the negligence of previous solicitors the transfers had not been registered and part of the problem was that they were presently registered in the names of people who could not be traced and so a declaration was needed from the High Court. It seemed that there had been delays in the case. S Solicitors acting for the ex-wife were chasing the Respondent. There were e-mail exchanges and although the Respondent was aware that no application had been made to the High Court, she told S Solicitors on numerous occasions that an application had been made. On 25 January 2010 she e-mailed K at 08.45:

> "Are you able to give me [counsel's] details in order that I can check with her if the application has now gone in to court, [NW] is chasing me quite hard about this."

K replied at 08.52 that she was having a conference with counsel that day. She gave details of the Chambers and indicated that the firm would have to put in the application. Mr Johal submitted that it seemed no application was made. At 15.18 on the same day S Solicitors e-mailed;

> "Have you had any update from your colleague in the London office yet?…"

88.2 The Respondent replied at 15.22:

> "The application has been sent to the court and I will take over the chasing of the same from here…"

88.3 On 17 February 2010 at 09.49, the Respondent e-mailed counsel:

> "Has the witness statement been finalised now? We really need to get the application into Court."

88.4 Mr Johal submitted that it seemed no application had been made and the Respondent was aware of that because she asked questions of counsel. Despite this knowledge she informed S Solicitors in an e-mail 16 April 2010 that it had been sent in on 11 January 2010. The e-mail continued by explaining that the court sent the

application back requesting further information in relation to two of the properties which was given promptly by NW. It continued that the solicitor who was dealing with the matter out of the London office mislaid the information and then left the firm. The Respondent stated in the e-mail that she had only recently been able to get this information together and it was sent again to the court "last week". She apologised for the delay and said she understood the Judge was looking at the matter to determine if it could be dealt with on an ex parte basis and that she would be able to update further in the next week or so. Mr Johal submitted that on 28 November 2011, S Solicitors complained to Mr G about the information obtained from the Respondent. The letter included:

> "9. I chased again on 22 December 2009 and received a response from [the Respondent] confirming that the application to court had been submitted.
>
> ...
>
> 12. I chased [the Respondent] by e-mail again on 19th February 2010 to which I received no response. I chased again on 16th April 2010 and finally received a response in which [the Respondent] said she had not received my e-mail of 9th March but confirmed that the application had been sent to the court on 11th January (contradicting what we had been told at point 9 above) and that the court had then sent this back…"

Mr Johal submitted that this matter of rectification of the Land Register rumbled on for some months. HM Land Registry cancelled the application to register a number of the properties because the High Court order turned out to be a forgery. The Applicant could not establish the genesis of the order. The Applicant was not suggesting that the Respondent had forged the document which she said she found on her desk. Mr Johal referred the Tribunal to Mr G's statement dated 27 April 2012 where he had dealt with the matter of Ms NO in some detail including dates of meetings and confirming that the Respondent's last day in the office was 23 March 2012.

88.5 The Tribunal referred to the e-mail exchange on 25 January 2010 between the Respondent and Ms K and enquired whether the Applicant had managed to ascertain whose job it was to file the court application and what further correspondence passed between the two solicitors about who was doing what having regard to the fact that one might expect a London solicitor to make the filing in the High Court. Mr Johal understood that the Respondent was the fee earner but it was not abundantly clear who did what however S Solicitors dealt exclusively with the Respondent and not with Ms K and it was the Respondent about whom they complained. Mr Johal understood that there had only been one application made to the High Court. He could not say with certainty whether an application had been made; he assumed one was made eventually. He could confirm that the Administrative Court offices said that no order was made there but the court did not say that there had been no proceedings.

88.6 In the Rule 5 Statement, it was alleged that the Respondent wrote misleading e-mails on 25 January 2010 to S Solicitors and on 16 April 2010 in both cases stating that an application had been submitted to the High Court to rectify the Land Register when it

had not. It was further alleged that she wrote a misleading e-mail dated 25 September 2008 to B Solicitors in which she informed them that she had been in contact with HMRC when she had not made any such contact. It was alleged that the conduct as detailed in the allegation was dishonest on the part of the Respondent who would have known the true position. In respect of the court application, the Respondent expressed concern about a potential complaint from the client in an e-mail dated 1 February 2010 but this did not excuse the dishonest conduct on her part. The Respondent had sent more than one misleading e-mail to S Solicitors in which she suggested that the application had been submitted to the Court. It was clear from her e-mail to counsel on 17 February 2010 that she knew at that time that the application had not been submitted. Despite having this knowledge, the Respondent repeated in her further misleading e-mail of 16 April 2010 that the application was sent to Court on 11 January 2010. It was submitted that in such circumstances there was an inference of subjective dishonesty and such conduct would be considered dishonest by the ordinary standards of reasonable and honest people. An honest solicitor would not, despite the potential risk of a client complaint, have sent misleading e-mails. It was further alleged in respect of the correspondence with B Solicitors that the conduct was dishonest on the part of the Respondent who would have known the true position that she had not made any contact with HMRC.

88.7 In her second statement, the Respondent denied allegation 1.4. She confirmed that she had not acted in any way with dishonesty and stated that she did not know what happened in this respect and did not recall details of any e-mails etc from the client to herself or vice versa. Again she referred to the medical report and the fact she could recall nothing further some two or three years after leaving the firm about any of the matters to which the allegation referred than she had recollection of when interviewed by the Applicant's representatives, nor more than what was contained in her written replies dated 11 April 2013.

88.8 The Tribunal had regard to the evidence including the oral evidence, the submissions for the Applicant and the answers filed by the Respondent dated 8 June and 30 July 2015. The Tribunal also had regard to various e-mails which the Respondent had sent. This allegation arose out of the Respondent's role in a piece of litigation which involved the firm's office in Bolton where she worked and its London office. The key pieces of evidence were e-mails between those offices and also counsel mainly about the progress of an application to the High Court relating to rectification of the Land Register. The Tribunal particularly noted exchanges on 25 January 2010 in which the Respondent was chasing progress with preparation and filing of the application and in response a few minutes later Ms K stated that she was seeing counsel that day and the firm had to put in the application. Several hours passed and there was no evidence before the Tribunal of what happened next. At 15.22 on the afternoon of that day, the Respondent informed S Solicitors that the application had been sent to the court. The Tribunal also noted the e-mail exchange between S Solicitors and the Respondent on 16 April 2010 when the Respondent explained that the application was sent to the court on 11 January 2010 and returned by the court requesting further information. The Tribunal found on the evidence before it that there was confusion about who had responsibility for filing the application in the High Court; the Respondent seemed to rely on Ms K in London for those aspects of the matter while she, the Respondent, wrote letters to the other parties involved. In her

interview with the Applicant, the Respondent stated that she had asked Ms K to help her because Ms K had dealt with other aspects of the matter and stated that she had basically at that point just handed it all over to Ms K to send it to counsel to prepare the application and thought that her involvement was concluded. She also pointed out that Ms K was a "more senior fee earner" than she was. She stated that she thought she had sent the whole file back to London. She referred to her role in the preparation of the witness statement as being "just to take the notes with [Ms K] asking the questions". She also stated that she would have accepted whatever Ms K was telling her and would not in February 2010 have been involved in making the application to the court. The Tribunal considered that there were too many people involved in the matter to demonstrate conclusively that the responsibility for it came back to the Respondent. The Tribunal considered that there was some evidence that the e-mails sent by the Respondent were inaccurate but the Applicant had not demonstrated to the required standard that the Respondent was aware of that, there was a general confusion over roles, and the fee earner with primary responsibility was in London and it was quite plausible that the Respondent was relaying information she believed to be accurate. In respect of the matter of the email to B Solicitors the Tribunal similarly found that evidence was lacking to establish the allegation to the required standard. The Tribunal found allegation 1.4 not proved to the required standard on the evidence and so the question of rule breaches and dishonesty did not arise.

Previous Disciplinary Matters

89. None.

Mitigation

90. The Respondent was not present but had indicated in her statements that she had no intention of ever practising law again. She described the mental health problems that she stated that she had suffered from after which she received treatment for depression. She submitted it was a contributing factor to her inability to record anything further than what was set out in her written replies. The Respondent also asked for her financial situation to be taken into account.

Sanction

91. The Tribunal had regard to its Guidance Note on Sanctions and the mitigation put in by the Respondent including the medical report of July 2011. The Tribunal assessed the seriousness of the Respondent's misconduct. The Tribunal did not know the Respondent's motivation for her misconduct but it continued over a period of time. Some of her actions were clearly planned rather than spontaneous for example her misleading of the client NO about non-existent litigation. The Respondent had acted in breach of a position of trust as a number of the matters involved money which belonged to the deceased persons' estates. The Respondent was the fee earner in all of the matters where misconduct had been found proved and therefore had direct control over and responsibility for the circumstances giving rise to the misconduct. She was a relatively experienced solicitor. In terms of the harm which her misconduct had caused, the most serious aspects were that she had misapplied money from the estate of R and she had led the client NO to believe that her matter had been taken to court

when it had not, both of which impacted significantly upon the clients and reputation of the profession. There was also an impact on the firm which had to reimburse the estate of H. The harm was reasonably foreseeable as a result of the Respondent's misconduct. There was an aggravating factor as dishonesty was proved against the Respondent. In the case of Ms NO this had been repeated over a period of time and in respect of both this matter and that of R, the Respondent had concealed her wrongdoing and ought to have known that she was in material breach of obligations to protect the public and the reputation of the profession. As to mitigating factors, she was clearly unwell at the material time but she had provided no evidence that her medical condition had affected her cognitive abilities such as would amount to a defence. There was little evidence of insight on the Respondent's part although she did make some admissions. Often she stated that she could not remember what had happened or why. The Tribunal accepted that this may have been a more difficult time in terms of personal circumstances for the Respondent than if she were well and that might have contributed to the context for what she had done but she then made calculated decisions to act in a dishonest way and to conceal what she had done before leaving the firm. The matter was clearly too serious for either no order or a reprimand and the Tribunal considered the case of Bolton v The Law Society [1994]1 WLR 512, and the requirement for a solicitor to be trusted to the ends of the earth and therefore the matter merited more than a fine. Placing a restriction on the Respondent's ability to practise, were she minded to do so in future, would not reflect the seriousness of her misconduct. The Tribunal considered that there was a need to protect the reputation of the legal profession which called for a greater sanction than suspension. It was set out in the Guidance Note that the most serious misconduct 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 evidence had been provided of any exceptional circumstances at the material time such as would make striking off inappropriate. In the circumstances the Tribunal considered that strike off was an appropriate and proportionate penalty.

Costs

92. For the Applicant, Mr Johal applied for costs. He submitted that the majority of the costs were attributable to the forensic investigation. He acknowledged that a reduction should be made to reflect the length of the hearing and he would not claim for the attendance of the IO as she had not been called to give evidence. His schedule of costs totalled £22,673 but after those reductions he applied for £21,986.10. The Tribunal noted that some sections had been redacted from the FI Report and the Tribunal therefore assumed those matters were not relevant and not pursued at this hearing. Mr Johal had not carried out a detailed calculation but judged that about one quarter of the report had been redacted. The Tribunal also questioned the need for Mr Johal to have stayed overnight in London before the hearing. The Tribunal summarily assessed the costs and reduced the costs of the investigation from £11,435 to £8,750 to allow for the matters not pursued. It also disallowed the hotel costs for the Applicant's advocate. The Tribunal considered on the basis of Broomhead v SRA [2014] EWHC 2772 (Admin) whether to make a reduction in the costs to be awarded to the Applicant because allegations 1.2 and 1.4 had not been found proved. Allegation 1.2 involved a relatively small amount of work, allegation 1.4 somewhat more. Allegation 1.1 was

the most document intensive aspect of the case and allegation 1.3 involved a considerable amount of evidence. The Tribunal reduced the cost claim by 20% in respect of the unproved allegations. The Tribunal therefore assessed costs in the sum of £15,200. As to the ability of the Respondent to afford payment, she had provided a Personal Financial Statement which disclosed that while she lived in rented accommodation she was the joint owner of a property which was rented out and had equity of around £20,000. The Respondent had provided details of her employment; she worked part time in a minimum wage job but had a monthly surplus on her income. The Tribunal was mindful that by its decision to strike the Respondent off it had removed her ability to work as a solicitor but she could work elsewhere and the Tribunal did not therefore think it appropriate to reduce the amount of costs or make them not enforceable without leave of the Tribunal. It however expressed the hope that the Applicant would take a pragmatic approach to discussing payment of costs with the Respondent.

Statement of Full Order

93. The Tribunal Ordered that the Respondent, Stephanie Berry, 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 £15,200.00, such costs not to be enforced without leave of the Tribunal.

Dated this 30th day of March 2016
On behalf of the Tribunal

S. Tinkler
Chairman