SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11390-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LISA DAWN NOONAN Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr E. Nally
Mr S. Hill

Date of Hearing: 4 November 2015

Appearances

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

Mr Steven Noonan, family member spoke for the Respondent who was present

---

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority were that:

1.1 Between 16 November 2009 and 18 March 2014 she made statements to a client concerning the progress of a claim for criminal injuries compensation which were untrue and misleading and which she knew to be untrue and misleading and thereby breached:

1.1.1 Principle 2 SRA Principles 2011; and
1.1.2 Principle 6 SRA Principles 2011

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

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 20 May 2015 with exhibit DN1
- Transcript of text correspondence between the Respondent and Mr SR
- Applicant's schedule of costs dated 20 October 2015

Respondent

- Respondent's bundle including:
  - Respondent's Answer to the Applicant's Rule 5 Statement dated 18 June 2015
  - Respondent's statement dated 10 October 2015
  - Respondent's statement of means dated 3 October 2015 with documents in support
  - Notes to the Tariff – excerpt from "A Guide to the Criminal Injuries Compensation Scheme" (Effective from 1 April 1996)
  - Criminal Injuries Compensation Authority (pages from Wikipedia)
  - Bundle of testimonials

Preliminary Issues

3. The Respondent was unrepresented but accompanied by her brother Mr Steven Noonan who asked to speak on her behalf. The Tribunal while recognising that Mr Noonan was not entitled to be heard, determined that under Rule 21(3) of the Solicitors (Disciplinary Proceedings) Rules 2007 which permitted the Tribunal to regulate its own procedure, it would hear Mr Noonan on the Respondent's behalf. Mr Bullock did not object.

4. For the Applicant, Mr Bullock informed the Tribunal that all the allegations were admitted save dishonesty.

Factual Background

5. The Respondent was born in 1978 and admitted in 2006. She did not hold a current practising certificate. She was at the material time employed as an Assistant Solicitor at Rushton Hinchy Solicitors LLP ("the firm").

6. On 24 March 2014, Mr R a Director of the firm in his capacity as firm's Compliance Office for Legal Practice ("COLP") sent an e-mail to the Applicant concerning matters relating to the professional conduct of the Respondent. The report included:

> "In March 2007, [the Respondent] visited clients and took instructions to commence a potential claim for injuries from the CICA. A claim form was completed and a statement taken.
>
> Unfortunately, [the Respondent], outside of accepted standard company policy, failed to arrange for a new file to be opened and thereby register the claim on the firm's case management system. It seems that [the Respondent] forgot about the claim completely and in addition the claim form was then misplaced and only retrieved a couple of years later shortly after limitation expiry for such claims. Instead of immediately reporting the incident at that point to her supervisor or the partners she clearly panicked and instead embarked on a series of events which have led to sporadic exchanges of communication with the clients over the intervening five year period in which the client has been left under the impression that all was well with her claim and the firm left completely in the dark.
>
> All such communications have been outside of the firm's case management system and have mainly been via a mixture of texts and calls to [the Respondent's] personal mobile phone..."

7. Subsequently on 22 July 2014, the Applicant obtained from the firm an e-mail sent by the Respondent to her supervising partner Miss HC at 12.30 on 17 March 2014 together with the internal notes of a meeting between Mr R, Miss HC and the Respondent held at the home of the Respondent's brother on 18 March 2014. The documents showed that in March 2007 the Respondent accompanied by her manager Miss HC took instructions from the client Mrs SR in connection with a potential criminal injuries compensation claim relating to a robbery which took place at the client's home on 15 February 2007.

8. Following the meeting with the client, the Respondent did not open a new matter file and register the claim on the firm's case management system. She did not realise the omission until after the two-year anniversary of the incident by which date the limitation period for bringing the claim had expired. The Respondent did not inform her employer of her omission immediately upon realisation and only reported the matter to her employer via the e-mail sent to Miss HC on 17 March 2014.

9. In the intervening period, the Respondent had sent text messages to the client and her husband Mr RS (the client and her husband had the same initials but in reverse). The Applicant obtained copies of various e-mails and text exchanges passing between the Respondent and Mr RS in the period from 16 November 2009 until 18 March 2014 in

which the Respondent made various statements to him concerning the purported progress of his wife's claim.

10. The Applicant took the following steps to investigate the allegations which it made against the Respondent. An Explanation With Warning Letter ("EWW") was sent to the Respondent on 5 November 2014. The Respondent replied on 19 December 2014. In her reply she stated:

> "Firstly, I do not take issue with the documentation provided by [the firm] or their contents as they are original copies and/or factually correct.
> Equally, I do not intend to take issue with the factual history of events involving my handling of the claim on behalf of Mrs [SR]. The facts are well documented and I would not wish to either patronise or disrespect any persons involved by trying to state an alternative set of events.
>
> However, what I would like to say is that, as with most things, the circumstances surrounding this very regrettable set of circumstances are not as clinical as detailed within your letter.
>
> There is no doubting that after visiting the client with Miss [HC] I made a very damaging mistake by failing to immediately pass the file to the appropriate department to have it set up and registered on the firm's case management system. This was a basic administrative procedure and one I had carried out many times before. Had I simply carried out this task then the situation that followed would never have occurred."

The Respondent went onto describe what followed and her personal circumstances at the time. She denied dishonesty. The letter stated among other things:

> "I fully accept that once I realised the mistake I should have reported the incident to Miss [HC] or one of the other Directors but in hindsight I simply panicked...
>
> I am unable to defend myself in relation to the conduct which preceded my e-mail of the 17th March 2014 other than to try and put my situation into context...
>
> I voluntarily accepted that my errors in judgement led to this situation and that my professional obligations owed to the client fell well below those expected by the [Applicant], my employers, the client and most importantly myself...
>
> ...I do appreciate the gravity of my conduct and it would be impossible to express here how remorseful and ashamed I actually am..."

11. On 6 February 2015, an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

12. None.

Findings of Fact and Law

13. 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.

14. **Allegation 1.1 - Between 16 November 2009 and 18 March 2014 she [the Respondent] made statements to a client concerning the progress of a claim for criminal injuries compensation which were untrue and misleading and which she knew to be untrue and misleading and thereby breached:**

1.1.1 Principle 2 SRA Principles 2011; and
1.1.2 Principle 6 SRA Principles 2011

14.1 For the Applicant, Mr Bullock submitted the Respondent had been qualified for three years when the misconduct began. The factual background to this matter was largely agreed. The Respondent accepted that a file should have been opened within the firm and entered on its internal case management system and this was not done. In consequence the client's claim was overlooked until after the expiry of the limitation period, in February 2009. Notwithstanding that she had overlooked the matter, thereafter the Respondent created a fiction that the claim was being progressed by sending a series of texts from her personal phone and e-mails from her personal and work e-mail addresses to the client and her husband spanning the period 16 November 2009 to 18 March 2014. Because of a legibility issue about some of the texts in the bundle, the Applicant had prepared a typed transcript by reference to a clearer copy of the texts which was on the Applicant's file. This had been agreed as accurate by the Respondent. (Not all the texts showed date sent but this could be inferred from the chain of communications.) There had been eight e-mails to Mr RS. Mr Bullock highlighted the following exchanges:

- On 16 November 2009 at 08.54, Mr RS to the Respondent:

  "any news?"

- On 16 November 2009 at 09.00, the Respondent to Mr RS via her work email:

  "Not as yet, will chase up today and let you know as soon as I hear anything.
  Hope this is okay…"

Mr Bullock submitted that by the time the Respondent sent the above reply the claim was time limited and nothing was being done to progress the case.

- On 15 February 2010 at 17.24 from Mr RS to the Respondent

  "Re: any news?
  How about now?"

- On 16 February 2010 at 09.58 from the Respondent to Mr RS by her personal e-mail:

> "... I am working from home today and I do not have [Mrs SR's] file here or access to the system however I think we are waiting for her to be seen by the medical expert? As soon as I have the report then I will of course provide you with a copy.
>
> I do know that the police were having some problems in locating a report but this is not unusual given the amount of requests and backlog that they have. Can you confirm whether or not you heard anything from the police, whether you have any letters re-any prosecution etc?? If you have anything at all and can you let me have a copy as this would assist me in chasing the police...
>
> I will review this file when I get back in work and provide you with a further update at that stage if you have any queries prior to responding to this e-mail, then I am back in the office tomorrow or you can e-mail me if it is easier for you."

Mr RS replied providing further information and the Respondent e-mailed him back. Mr Bullock submitted that again the Respondent was suggesting steps were being taken to progress the claim when they were not. In particular she was suggesting that an appointment with a medical expert was outstanding when nothing had been done on the file.

- On 8 March 2010, Mr RS emailed again:

> "Anything further Lisa? Hi by the way."

- The Respondent replied on 9 March 2010:

> " Hiya [RS], hope you are well
>
> I am not in work today but did call your insurance company last week to request they send me whatever information they had in relation to your claim. I was advised to put my request in writing so [Mrs SR's] file was in dictation. Am back in work tomorrow so will make sure it has been typed on. It will be in my diary for next week to chase.
>
> Will let you know when I receive an update."

Mr Bullock submitted that again this was a fiction; there was no file and no work had been done.

- There was then a gap of two years to 15 May 2012 when Mr RS texted the Respondent to her personal phone:

> "Morning, still no (sic) received anything in post"

- The Respondent replied:

> "Morning, I signed the post Friday but it may have only gone yesterday and it usually goes second-class so give it a couple of days and it should arrive, let me know if it's not there by Friday."

Mr Bullock submitted that it was clear that there was some discussion between the Respondent and Mr RS in the intervening period. He was expecting some correspondence from her regarding the matter. Those exchanges were not in possession of the Applicant. The Respondent's reply was untrue.

- On 18 May 2012 at 09.07, the Respondent texted Mr RS:

> "Hey there, did my letter arrive?

- On 21 May 2012 at 14.28, Mr RS texted:

> "Not rec anything"

- The Respondent replied:

> "Sorry, I am just on another call. No worries, checked with our post room and I will print another copy and make sure I stick it in the post box myself so I know it has defo (sic) gone. Hope you are ok."

Mr Bullock submitted that this response reinforced the fiction of the 15 May 2012 text that some correspondence had gone into the post.

- On 9 May 2013 at 14.28 the Respondent texted:

> "Hey there, sorry I missed your call. Happy to chat things through but could do with you sending me a copy of the report she had done by the Social Security. Am in conference tomorrow so tied up but if you e-mail it to me will have a look ASAP and then give you a call next week. Hope this is ok."

- Mr RS replied:

> "She says they didn't give her any report, they just continue to issue her a sick note and accept she is unfit to work. I will get her to call you on Monday."

- The Respondent replied by an untimed text:

> "Ok, great, will speak to her next week"

- Subsequently Mr RS texted:

> "Can you tx me an address I've sum (sic) paperwork to send u"

- On 22 May 2013 at 14.30 the Respondent replied:

> "fax or e-mail is better [mobile number and office e-mail address] but if you can't do either send to [office address] and mark it for my attention. What is it you are sending"

Mr Bullock submitted that the Respondent's text was not directly untrue but created an overall impression that the case was live when it was not. The exchanges continued;

- Mr RS:

> "a couple of letters that her or her GP has put 2gether regards her condition a (sic) that it's due to the robbery."

- On 22 May 2013 at 14.48, the Respondent:

> "Fab will ring her to discuss when I get them."

Mr Bullock submitted that this response was not a direct lie but it created the illusion that the claim was alive and well and being progressed when it was not. These exchanges concluded:

- On 22 May 2013 at 15.25, from the Respondent

> "Got them! Leave it with me, am off Friday so will try and ring her tomorrow but if not will ring her after the bank holiday. Hope this is ok."

- Mr RS:

> "Thank you"

The matter then moved forward by a year.

- On 3 March 2014 at 1504, Mr RS texted :

> "Hi Lisa hope ur well. Can you tell me where u r up 2 with regards [SR's] file?

- The Respondent replied;

> "Hiya [Mr RS], I am good thank you, hope you are okay? We are waiting for records/an appointment for [Mrs SR] to see a specialist. I will get it reviewed and chased and come back to you shortly."

- On 14 March 2014, 11 days later Mr RS texted again at 1439:

> "Any news Lisa?

- The Respondent replied:

> "Hey there, sorry I'm off today but will check and come back to you."

14.2 Mr Bullock submitted that the correspondence by text and e-mail between the Respondent and Mr RS ended there because on 17 March 2014 before anything further had passed the Respondent very properly reported what had happened to her supervising partner and to the COLP at the firm for which she worked. The Respondent acknowledged that she had not done what she should have; that was to report internally when she became aware that the limitation period had expired. Her email included

> "I most recently spoke to [Mrs SR] around September 2013 when she advised that she had been to her GP and she had told him that we would be requesting her records.
>
> [Mr RS] messaged me two weeks ago and asked for an update, I advised we were waiting records and a medical appointment, I advised I would review the matter and return to him. He messaged me again on Friday and asked if there was an update. I advised that I was off but I would return to him Monday with an update. As there is no computer file, I have never requested any records. I have no update for him and I'm concerned that his patience is now, understandably, wearing very thin."

14.3 Mr Bullock submitted that on the basis of the Respondent's e-mail amongst other material it could be seen that the information given to Mr RS in e-mail correspondence and text messages was untrue and there was no way that it could be true. Mr Bullock also referred the Tribunal to the note of the internal meeting which took place on 18 March 2014 with Mr R, Miss HC and the Respondent where again the Respondent had accepted her error in not recording the matter on the firm's case management system and not progressing it despite telling Mr RS that she was. This led to the firm's COLP making a report to the Applicant. The Applicant wrote to the Respondent on 5 December 2014 and excerpts from her response dated 19 December 2014 are quoted in the background to this judgment.

14.4 Mr Bullock noted that the Respondent made admissions at an early stage and it was to her credit that she did so. She had resigned from the firm. She had provided the context for her failure to progress the client's claim over a seven-year period which constituted a failure to comply with Principles 2 (a solicitor "...must act with integrity") and 6 ("...must behave in a way that maintains the trust the public places in you and in the provision of legal services..."). Breach of these principles was not in issue but the allegation of dishonesty was denied. It was submitted in the Rule 5 Statement that in acting as she did, the Respondent breached the Principles. The public would expect their legal adviser to be strictly honest with them and keep them fully appraised of any problems with their case. A solicitor acting with integrity would have been honest with the client and would have informed the client that no client file was opened and that the case had not been progressed at all and provide an explanation for the omission. Such a solicitor would also have informed the client that by the time the solicitor had realised the omission, the case was statute barred, of the

consequences of it being statute barred and advised the client to seek independent legal advice as to any potential claim against the firm.

14.5 The Tribunal considered the submissions for the Applicant, the evidence and the admissions of the Respondent and found the underlying allegation 1.1 proved to the required standard in both its aspects.

15. **Allegation of dishonesty**

15.1 In respect of the allegation of dishonesty, for the Applicant, Mr Bullock referred to the two limbed test in the case of Twinsectra v Yardley [2012 UKHL 12 which required that the person had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly. Mr Bullock submitted that the objective test was satisfied because the totality of the text and e-mail correspondence demonstrated that the Respondent was misleading her client that the case was being progressed which it could not be, because it was statute barred and she did this either by making statements which were untrue and which she knew to be, for example by stating that reports were awaited and that post had been sent to the client when this was not the case. This demonstrated that the Respondent was dishonest by the standards of ordinary and honest people.

15.2 As to the subjective element of the test, Mr Bullock submitted that the starting point was that the Respondent must have understood that her clients would expect to tell her the truth and that reasonable and honest people would expect her to do so. She did not tell the truth and knowingly made statements that were untrue. The Tribunal might feel that it needed to go no further. Although the correspondence with Mr SR was sporadic by its very nature it went on for a considerable period of time; over a period of almost five years. The Respondent had ample opportunity to reflect on the propriety of her actions and numerous opportunities to do the right thing and come clean with the client until she ultimately self reported in March 2014. There were occasions when the untrue statements became self-referential. The Respondent told an untruth to Mr SR and then reinforced it by a further fiction. Mr Bullock referred particularly to the text correspondence in May 2012 and its suggestion that a letter had been sent and not received and that the Respondent would go to the post room and place a copy in the post. Furthermore there were a number of obvious trigger points for the Respondent to have explained the position to the client and to her superiors; first when she appreciated that she had made an error and that the case was statute barred in consequence, secondly when Mr RS first started chasing for news in 16 November 2009 and thirdly when he chased again on 15 February 2010. In her reply e-mail, the Respondent told a further untruth about waiting for the client to be seen by medical expert. It was not suggested that the Respondent had acted otherwise than in full knowledge that her messages were untrue and Mr Bullock invited the Tribunal to find that the allegation of dishonesty was proved to the required standard. Mr Bullock confirmed that he was not saying that the Respondent's earlier admissions in respect of the allegation of dishonesty were binding; it was all about her state of mind.

15.3 For the Respondent, Mr Noonan submitted that she did not dispute the facts but he wished to place them in context and to explain her frame of mind at the material time. The Respondent was struggling with personal issues which affected her judgement

and he therefore disputed that she was knowingly dishonest. Mr Noonan described the Respondent as newly qualified in a newly established firm at the time. She made an error of a significant nature but there had been a number of traumatic events. The Respondent owned up to what she had done having gained perspective and insight into her behaviour while she was on maternity leave. She might have chosen to cover her tracks and pay off the clients in order to make the claim go away but instead she shared everything with her employer. She resigned her post and walked away from her career. The Respondent's apologetic manner had been noted and commented on when her employer reported to the Applicant. Mr Noonan asked the Tribunal to have regard to the testimonials in her support by Mr R of the firm and other people including a doctor of psychology, the Respondent's new employer and from Mr Noonan himself. He submitted that the people closest to the Respondent knew how detrimental a close family member's terminal ill-health was and he also referred to the Respondent's workload. The Respondent's office hours were 9 am to 5:30 pm but she stayed later most days, took work home and worked at weekends. Mr Noonan confirmed that in her statement, the Respondent said that towards the end of 2009 she had approximately 465 files.

15.4 Mr Noonan asked the Tribunal to consider the character witnesses which had been provided for the Respondent. She was genuinely sorry and regretful to have her integrity and honesty questioned and to have put her client, her employer and her profession in this position. He submitted that her failure was not indicative of her as a person. She was naive and misguided and not normally dishonest. This had started with a genuine mistake. She did not have knowledge of CICA claims and thought she could salvage the situation. It was an isolated incident at a difficult time. The Respondent had panicked and not done the right thing; she had buried her head in the sand on the basis that she would put the matter right in future. The Respondent had not led the client to think that she had a good prospect of success on the few occasions when they spoke. She had been hopeful that she could obtain new medical evidence (via the NHS) that would lead to a new claim. In reality this was a delusion and the Respondent was not acting as a normal person. The Respondent had come to the Tribunal to be held accountable and apologised for what she had done; she was not knowingly dishonest. She was upset and fraught with emotion, and made poor decisions for far too long. She never thought that she had not been acting in the best interests of the client. The Respondent had dealt with other cases as required and was not a danger to the public. She had learnt from what had happened and would deal very differently with such a situation now; she would know to speak to colleagues and supervisors. Mr Noonan submitted that the Respondent's personal life had been impacted by what had happened. She was totally open and honest. She had complied with the Tribunal's directions and not flooded the Tribunal with the witness statements showing that she was an honest person which had been offered to her. Financially she was in a very difficult place.

15.5 The Respondent gave evidence on her own behalf. She stated that at the time of taking instructions from the client she had seven months post-qualification experience. This was her first CICA claim. It was fundamentally different from the rest of the cases she dealt with which had a three-year rather than a two-year limitation period. The Respondent referred to the CICA "Notes to the Tariff" which said:

> "Minor multiple injuries will only qualify for compensation where the applicant has sustained at least three separate injuries of the type illustrated below…
> (a) Grazing, cuts, lacerations (no permanent scarring)"

In this case the client had suffered bruising to her face and was shaken. She did not attend a doctor until after the limitation period had expired. The Respondent had not referred to these notes when she received instructions. She had not undertaken research into the CICA. The case needed her attention because she had not done this work before but she did not have time to allocate to it. She was asked what she thought the likely outcome would have been. She thought the case would have been rejected. The Respondent stated that she had first looked at the case in March 2009 and thought that there was still time. She did not know why she had not set up a file but wished she had. She had never subsequently failed to set up a client file and this kind of action on her part was an isolated incident. As to the use of her personal e-mail account; she would work from home on a regular basis and would forward e-mails to her private account in order to do so because she did not have remote access to the office system. She would also use her personal phone when working at home.

15.6 The Respondent stated that she did not think that she was being dishonest. The client had been through a traumatic event and ironically the Respondent liked her and wanted to do something for her. The Respondent just panicked; she could not think about it or deal with it. The Respondent stated that the high regard in which she was held made it worse in terms of telling her superiors about her error because she was letting her principal down as well as everyone else. She stated that she struggled to answer why between March 2009 and December 2014 when she was in frequent contact with the client she did not admit her mistake. It was absurd but time just went by. She always thought that she would get to the matter and resolve it. She understood that there were exceptions to limitation and she thought that if evidence could be obtained from an expert in the NHS it might be shown that what the client suffered went back to and was caused by the incident and that the Respondent would then be able to go to the CICA. She could now see that she had been desperate and misguided.

15.7 The Respondent stated that when she was on maternity leave she did not have the daily chaos of her working life and had the opportunity to think. The Respondent rejected the assertion that she had owned up in 2014 because she was backed into a corner by the client. She was not a dishonest person and ironically all her friends would say that she was too honest.

15.8 In cross-examination, the Respondent was asked whether she thought it was honest or dishonest to tell the client things that were untrue about the claim which she knew to be untrue. She stated that she did not think in that way each time she was in communication with the client or the client's husband. She made no conscious decision to be dishonest; she had not provided much information but had given vague replies to buy her time. She stated it was common practice in any solicitors' firm to manage clients' expectations because some clients were unreasonable although this was not the case with Mr RS and Mrs SR. The Respondent agreed that she regarded telling a client something one knew to be untrue as being dishonest.

15.9 Mr Bullock referred the Respondent to her e-mail at 09.58 on 16 February 2010 where she spent four paragraphs discussing the state of the client's claim and where she had referred to waiting for the client to be seen by the medical expert. She agreed this was untrue. In the final paragraph she said she would review the matter the following week and it was put to her that this was also untrue because there was no file to review. She replied that she had advised the client that she would chase next week and she had every intention of trying to do something. The Respondent stated there was a claim form at that point but she could see what Mr Bullock was saying. In respect of the text dated 15 May 2012 about the letter with medical authorisation where the Respondent had said she had signed the post on Friday but it might only have gone the day before, the Respondent agreed that this was not a case of managing expectations about what she was about to do but a statement of what she had done. She was merely trying to do what she had to do to get through the day. When she sent the message she had every intention of getting the form in the post as soon as possible, hopefully that day. The Respondent agreed that when she sent the text saying that she would check with the post room and print out another copy she could not check that the letter had been sent because she had not signed it but she did post the letter that day with the medical authority and the client returned it.

15.10 In respect of the Respondent's text of 3 March 2014 stating that she was waiting for records/an appointment for the client to see a specialist, the Respondent stated that it was her intention to make things better so that the Respondent would not need medical records or an appointment. She pointed out that she did not say that she had instructed someone just that she was waiting. She had never requested any records.

15.11 The Respondent was referred to her e-mail to the firm of 17 March 2014 and to the text messages that she had sent just two weeks before. As to whether the totality of the various texts and e-mails to the client and her husband must inevitably have created the impression in their minds that that the claim was ongoing when it was not the Respondent replied "Yes and no" in as much as they never received anything and the client never attended for a medical appointment. The Respondent could not imagine a client going on for that length of time and not doing anything about the case; she was not criticising the client at all but it was very unusual. She accepted that it was her responsibility to progress the case. She had never raised their expectations; she had not told definitive untruths. She would tell that client what she told other clients; to go to the doctor and get herself better and that evidence was needed relating back to the incident.

15.12 It was put to the Respondent that when she said she had not told the client anything definitively untruthful she had been pointed to four specific occasions when she had told the client something about the claim which she knew to be untrue. The Respondent replied that they were arguing about semantics; her intention when she wrote the messages was to buy time and appease the client.

15.13 The Respondent was referred to her answer dated 18 June 2015. The Respondent explained that perhaps she had misinterpreted the situation; she wanted to confirm by her replied "Noted and admitted" in respect of dishonesty that she was not being obstructive and had not wanted to cause a problem by disputing everything but she was not dishonest at the time.

15.14 As to her mental state over the five-year period, the Respondent stated that she had been depressed although she had not thought so at the time and had not sought medical help but she was not functioning as she did now and should have done. The very serious illness and then death of a very close family member had a massive impact on her.

15.15 The Tribunal asked about the Respondent her other casework and she clarified that these were what she did every day; she had been operating as if on autopilot. No claims were made in respect of her other work and she had never been disciplined. When she discovered that she missed the time-limit it was hard to say how she felt; her close family member had become very ill and she assumed that the firm would discipline her or might terminate her employment. The Tribunal noted that in the meeting on 18 March 2014 with senior members of the firm it was accepted that there was no financial gain to the Respondent but she protected her employment which she accepted at that meeting. The Respondent explained that she didn't think of it like that. She had asked at the meeting whether it would be construed as gain that she had remained in employment and would not necessarily be employed after that.

15.16 The Tribunal ask for clarification as to whether after medical forms had been sent to the client, the matter of the medical examination was taken forward. The Respondent explained that she had the client's authority but could not use it within the firm's system without setting up a file. As to whether it occurred to her that what she was doing was wrong, the Respondent explained that she tried to look for a different way out; she thought that the Social Security authorities would obtain medical records that she could use in respect of fixing the client's state of knowledge in order to go back to the CICA.

15.17 As to the fact that only a fortnight before she self-reported, on 3 March 2014 the Respondent had sent a text which was quite untrue about awaiting an appointment for the client to see a specialist, the Respondent stated that she had not heard from the client's husband for a while and in her response she was just repeating herself but it possibly was the trigger that made her deal with the situation. As to whether she knew that the text was untrue, the Respondent stated that she had not done anything on the file but if it was to be progressed that was what she would have been doing.

15.18 The Tribunal considered the evidence including the oral evidence of the Respondent and the submissions for the Applicant and Respondent. The Tribunal found that what had happened had flowed from a catastrophic mistake which the Respondent had made at a time when she had a large caseload which in the main she was able to deal with in a fairly mechanistic way. It had been submitted on her behalf that what had happened was a one off but in fact it was a course of conduct which began when she discovered her mistake. The firm's control systems did not permit the Respondent belatedly to create a normal file and she embarked on a policy of concealment. Under cross-examination, the Respondent admitted that the conduct of someone who had behaved with the client as she had done, would be considered dishonest. The Tribunal found that over a long period of time the Respondent had made untrue statements to the client's husband which created an impression that a claim which had not even been launched was progressing and that by the ordinary standards of reasonable and honest people that would be considered dishonest so that the objective test in Twinsectra was satisfied.

15.19 As to the subjective test and whether the Respondent knew that by those standards what she was doing was dishonest, the Tribunal considered the chronology. In her statement the Respondent said that she had missed the deadline by just over a week. This must have occurred in February 2009 as the incident took place on 15 February 2007. She suffered a close bereavement in May 2009 and gave birth in December 2013 which led to her only material absence from work during the whole course of events. She resigned in March 2013. From the date of her discovery of her error until she was contacted by the client's husband in November 2009, the Respondent displayed an admitted lack of integrity in failing to own up to what had happened. Ironically this might not have attracted any serious censure particularly as the prospects of success in the case seemed slight. The Tribunal found that the situation worsened when the Respondent started to respond to the e-mails and texts from the client's husband. What the Respondent had said about progressing the case in the context that she knew that the case had passed its limitation period was plainly untrue and this was accordingly very damaging to her credibility. The communications which the Respondent had with the client's husband were often quite specific, in many instances stating that she had carried out an activity for example checking with the post room for a letter she had not written or signed or that she was awaiting records she was not in a position to request or for an appointment she had not made and could not arrange. The sequence of texts was clear to her from her mobile phone. She could see that by a conscious process she was building upon the lies and layering detail upon detail. Even if not all the lies were direct she knew what she was doing. Not all of the communications were one line messages; some of them were quite elaborate. The Respondent deliberately withheld the key piece of information that the limitation period had expired. She said that she had done that because she was trying to put things right and hoping that the situation would present itself in which she could do so or that the problem would go away. Researching the matter she realised that the case was a very low value. It constituted a professional embarrassment to her because of her high reputation at the firm where she felt she had let her supervisors down and the position was made worse because of the respect and affection in which she was held. Although she had clearly been fragile her actions later on could be seen as more calculated. She testified that she hoped that she would be able to use an account of her client's injuries from the Social Security authorities to start a new file based on the client's date of knowledge. The Tribunal found that this showed that she was analysing the situation and casting around for an escape route. The Tribunal agreed with the submissions of Mr Bullock that the impression created by the totality of the e-mails and texts led the client to believe that the case was alive and progressing. At the time she missed the deadline there were clearly traumatic family circumstances relating to the illness and then death of a close family member and subsequently she had other personal problems. The Respondent was straightforward in giving her evidence and generally the Tribunal found her to be honest in character in a general sense but the evidence proved that by her conduct the Respondent showed that she knew what she was doing in this course of conduct was dishonest by the ordinary standards of reasonable and honest people and that the subjective test was satisfied. The Tribunal therefore found dishonesty proved to the required standard.

Previous Disciplinary Matters

16. None.

Mitigation

17. Mr Noonan had already offered considerable mitigation for the Respondent and in addition asked for leniency and for the Respondent's financial position to be taken into account in respect of costs.

Sanction

18. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation offered for the Respondent and the testimonials. In terms of seriousness this was not a case where client funds had been misappropriated and the Tribunal noted that in practical terms very little financial harm was done to the client because the case was almost certainly bound to fail and she had not been given anything other than low expectations of success. The firm had however made some recompense for what had occurred but otherwise it had not suffered significant harm. The Respondent was clearly motivated by concealing a mistake which she felt would be detrimental to her career and possibly to her employment and she was the only one culpable for misleading the client and her husband and the firm. The Tribunal was prepared to accept that the first exchange with the client's husband might have been spontaneous but following on from that the exchanges were calculated, planned and part of a sequence over a significant period of time. The repeated lying to the client's husband constituted a breach of trust. The Respondent was the only person who was involved and she chose to conceal what had occurred. The Tribunal took into account that the Respondent was newly qualified when the misconduct started and did not have litigation experience in this particular type of work. However there were several aggravating factors. Dishonesty had been proved. The Respondent persevered in a series of untruthful e-mails and texts in exchanges with the lay client's husband. This went to the heart of a solicitor's duty. Her initial mistake was just a mistake but thereafter she embarked on a course of conduct designed to conceal it and thereby significantly departed from the complete integrity probity and trustworthiness expected of a solicitor as set out in the case of Bolton v The Law Society [1994] 1 WLR 512. Her dishonest conduct was deliberate calculated and repeated, taking place over a long period. She knew or ought reasonably to have known that this conduct was in material breach of obligations to protect the public and the reputation of the legal profession. In terms of mitigating factors the Respondent had self-reported albeit at a point when the client's husband was beginning to become impatient but the Tribunal accepted that she had taken stock of her position while on maternity leave. The Tribunal did not find the Respondent to be a dishonest person in character but she had perpetrated a series of dishonest acts over a long period. She has shown genuine insight, made admissions and had been very contrite which was to her credit. She participated fully in the Tribunal proceedings and complied with orders and directions. However the Respondent had been found to have been dishonest in her actions and it was set out in the Guidance 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. The Tribunal considered the guidance in the case of SRA v Sharma [2010] EWHC 2022 (Admin) and looked at the case of Sohal v SRA [2014] EWHC 1613 which had some parallels. There it was stated:

> "In my judgment, despite the mitigating evidence in this case, both as to the appellant's general good character, his youth and inexperience, the pressures upon him at the material time and the deleterious effects of his accident upon his thought processes, not only was the Tribunal entitled in the interest of the protection of the profession's reputation to conclude that the appropriate sanction in this case was one of striking off, but I am satisfied that it was the most appropriate sanction in this case.… in the light of the admitted deliberate and repeated dishonesty…"

The misconduct had not been a moment of madness, nor were there other exceptional circumstances and while the Respondent had experienced very difficult circumstances in her personal life the Tribunal did not consider that they constituted exceptional circumstances in the terms of Sharma. The Respondent's family member had ably put forward mitigation on her behalf but the Tribunal considered that the appropriate sanction was strike off.

Costs

19. Mr Bullock applied for costs in the sum of £3,714.80. He had had useful discussions with the Respondent about the costs claim and they had been marginally agreed including by the reduction of several items and the removal of some others. An apportionment was being made to reflect the fact that Mr Bullock was not at the Tribunal for just this matter. One minor item was disputed; Mr Bullock's overnight stay and he submitted that his expenses would have in fact been somewhat higher if he had travelled only for the day. Costs were assessed in the amount £2,276.92. The Tribunal had before it considerable financial information about the Respondent and while it was removing her ability to practise as a solicitor she was in self-employment and was generating income from that source. The Tribunal indicated that it expected that the Applicant would agree an appropriate payment arrangement to enable the Respondent to settle the liability.

Statement of Full Order

20. The Tribunal Ordered that the Respondent Lisa Dawn Noonan, 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 £2,276.92.

Dated this 9th day of December 2015
On behalf of the Tribunal

A.G. Gibson
Chairman