

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11455-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DALIDA RAJESHREE JHUGROO

Respondent

Before:

Mr. R. Hegarty (in the chair)

Mr W. Ellerton

Dr P Iyer

Date of Hearing: 8 June 2016

Appearances

Ms Kelly Sherlock, solicitor advocate, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Ms Dalida Rajeshree Jhugroo, did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Ms Dalida Rajeshree Jhugroo, in a Rule 5 Statement dated 14 December 2015 (as amended on 8 June 2016) were that:
 - 1.1 In failing to register the title of her client with HM Land Registry, she:
 - 1.1.1 failed to act in the best interests of her client in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 (“the 2007 Code”);
 - 1.1.2 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or
 - 1.1.3 behaved in a way that was likely to diminish the trust the public had placed in her or the professional in breach of Rule 1.06 of the 2007 Code.
 - 1.2 In failing to forward the sum of £27,600 to HM Revenue and Customs (“HMRC”), which was received on behalf of her client for the purpose of paying Stamp Duty Land Tax (“SDLT”) to HMRC, she:
 - 1.2.1 failed to act with integrity in breach of Rule 1.02 of the 2007 Code;
 - 1.2.2 failed to act in the best interests of her client in breach of Rule 1.04 of the 2007 Code;
 - 1.2.3 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or
 - 1.2.4 behaved in a way that was likely to diminish the trust the public had placed in her or the profession in breach of Rule 1.06 of the 2007 Code; and
 - 1.2.5 failed to return money to the client (or other person on whose behalf the money is held), as soon as there was no longer any proper reason to retain those funds in breach of Rule 15(3) of the Solicitors’ Accounts Rules 1998 (“SAR 1998”).
 - 1.3 In failing to forward the sum of £550 to HM Land Registry, which was received on behalf of her client for the purpose of paying the application fee for registering her client’s title with HM Land Registry, she:
 - 1.3.1 failed to act with integrity in breach of Rule 1.02 of the 2007 Code;
 - 1.3.2 failed to act in the best interests of her client in breach of Rule 1.04 of the 2007 Code;
 - 1.3.3 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or
 - 1.3.4 behaved in a way that was likely to diminish the trust the public had placed in her or the profession in breach of Rule 1.06 of the 2007 Code; and

- 1.3.5 failed to return money to the client (or other person on whose behalf the money is held) as soon as there was no longer any proper reason to retain those funds in breach of Rule 15(3) of the SAR 1998.

1.4 [Withdrawn]

Documents

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

Applicant: -

- Application dated 14 December 2015
- Rule 5 Statement, with exhibit “KS1”, dated 14 December 2015
- Civil Evidence Act Notice dated 15 March 2016
- Schedule of costs dated 13 May 2016

Respondent: -

- Respondent’s financial statement dated 24 March 2016

Preliminary Matter (1) – Proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was not present or represented, and so had to consider whether it could and should hear the proceedings in her absence.
4. Ms Sherlock for the Applicant referred the Tribunal to correspondence with the Respondent, which had taken place by email in the autumn of 2015, as requested by the Respondent. That email contact had ceased in October 2015 when the Respondent was asked to elaborate on the response she had set out in an email on 2 October 2015. Ms Sherlock referred the Tribunal to the Memorandum of the Case Management Hearing on 9 February 2016, in which the Tribunal had noted the importance of being satisfied that the Respondent had been made aware of the date of the substantive hearing.
5. Ms Sherlock reminded the Tribunal that thereafter the Tribunal had listed the matter for hearing on 26 April 2016. A process server had served the proceedings and notice of that hearing date on 3 March 2016; the statement of the process server dated 4 March 2016 was available to the Tribunal. Ms Sherlock told the Tribunal that thereafter, contact with the Respondent had resumed, by email and post. The Respondent had been served with notices under the Civil Evidence Act on 15 March 2016. On 24 March 2016 the Respondent had provided a personal financial statement to the Applicant; that had been forwarded to the Tribunal. The Respondent had sent an email to the Applicant indicating that she would not attend the hearing on 26 April 2016.
6. That hearing had been adjourned and the present hearing date was fixed. Ms Sherlock told the Tribunal that correspondence with the Respondent had continued, and she had been given notice of the new hearing date. Ms Sherlock referred the Tribunal to an

email she sent to the Respondent on 27 May 2016 which referred to this hearing date and, amongst other matters, stated,

“I note that you have previously indicated that you will not be attending at the final hearing. Please be advised that if you do not attend, my application to the Tribunal will be that the case should proceed in your absence. I would be grateful if you could confirm whether it remains your intention not to attend.”

The Respondent replied on 5 June 2016, setting out some further information concerning her financial position. The Respondent did not comment on whether or not she intended to attend the hearing. There had been no indication from the Respondent that she would attend if the hearing were to be put back to another date.

7. Ms Sherlock submitted that the Tribunal could be satisfied that the Respondent had been served with the proceedings and with notice of the hearing date. In those circumstances, the Tribunal had a discretion to proceed with the hearing under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the Rules”).

The Tribunal’s Decision

8. The Tribunal was satisfied in the light of the correspondence produced that the Respondent had been served with the proceedings and with notice of this hearing date.
9. The Tribunal was aware that the discretion to proceed in the absence of a Respondent should be exercised with great care. It noted the factors to be considered as set out in R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 (“Jones”) and the recent case of GMC v Adeogba [2016] EWCA Civ 162 (“Adeogba”), in which the decision of the Court of Appeal was given on 18 March 2016. This case dealt, amongst other matters, with proceeding in the absence of a Respondent in disciplinary proceedings and included a review of the existing authorities, including Jones. In the Adeogba case it was noted that whereas a defendant in a criminal case could be arrested and brought before a court, there was no such remedy available to a professional regulator. There was a need to be fair to the prosecutor/regulator as well as to the regulated professional. The needs of regulation, in the public interest, meant that cases should proceed unless there was good reason not to do so. The Court of Appeal further stated that there was an obligation on professionals to engage with the regulator, which may include ensuring that the regulator had an effective address for the regulated person.
10. The Tribunal noted in particular that there was no reason to think that the Respondent would attend if the hearing were adjourned. The Respondent was aware of the hearing and had voluntarily chosen to absent herself. In these circumstances, it was appropriate and in the interests of the public and the profession to proceed with the case, which dealt with serious allegations.

Preliminary Matter (2) – Withdrawal of allegation 1.4 and amendment of allegation 1.2

11. Ms Sherlock made an application to withdraw allegation 1.4. The allegation, which concerned a failure to advise in writing on issues concerning applications for a lease extension of a short lease property, had been reviewed in line with the Applicant’s on-

going duty to consider the proportionality of proceeding with allegations. Although there had been evidence in support of the allegation, it was not the most serious of the allegations and it had arisen from the same transaction as dealt with under the other allegations. There was some overlap in allegation 1.4 between what may be seen as possible professional negligence and possible professional misconduct. The Applicant wished to focus on the allegations concerning the failure to register the transaction and pay the monies necessary to permit registration.

12. Ms Sherlock also applied to amend the wording of allegation 1.2 to make clear that the recipient of the SDLT should have been HM Revenue and Customs, not HM Land Registry. Ms Sherlock told the Tribunal that the Respondent had been notified that she would apply to withdraw allegation 1.4 and amend allegation 1.2 and no objection had been raised.

The Tribunal's Decision

13. The Tribunal determined that the Applicant should be permitted to withdraw allegation 1.4; it was proportionate to do so. Further, the Tribunal would not take into account the parts of the Rule 5 Statement which related solely to that allegation. The Tribunal agreed to the proposed amendment of allegation 1.2, and consequential amendments in the Rule 5 Statement. The amendment could cause no prejudice to the Respondent and simply made the allegation more accurate. The case would proceed on the basis of the amendment to allegation 1.2 and that allegation 1.4 had been withdrawn.

Factual Background

14. The Respondent was born in 1970 and was admitted to the Roll of Solicitors in 1998. The Respondent's name remained on the Roll but she did not hold a Practising Certificate at the date of the hearing.
15. At all material times, the Respondent was a partner at Hartington Law of 15 Thayer Street, London W1U 3JT ("the Firm"). The partnership was dissolved on 21 April 2010. Thereafter, the Respondent continued to trade alone until the Firm closed on 1 November 2010.
16. On 4 August 2014 the Applicant received a complaint from a firm of solicitors, instructed in respect of a conveyancing transaction. The report was forwarded on behalf of their client, who had previously been represented by the Respondent in respect of the purchase of a property. In acting for the client in respect of the sale of the same property, the new firm of solicitors identified that their client's title had not been registered, and that the client was therefore not confirmed as being the legal owner at HM Land Registry. This complaint led to an investigation by the Applicant.

Allegations 1.1, 1.2 and 1.3

17. Ms Frances Marshall ("Ms Marshall") is a solicitor, employed by Guy Clapham & Co Solicitors ("GC & Co"). On or around 14 July 2014 Ms Marshall was approached by Ms L with a view to being instructed to carry out the conveyancing on the sale of her

property in London W1H (“the Flat”). The statement of Ms Marshall, with exhibited material, was relied on by the Applicant in respect of the events in relation to the Flat.

18. As part of the conveyancing process, Ms Marshall obtained an official copy of the register of title from which it was apparent that the Flat had not been registered in the name of Ms L. The official copy showed that as at 14 July 2014 the Flat was still registered in the name of the previous owners, Mr and Mrs D.
19. In giving instructions to Ms Marshall, Ms L handed to her a report on contract dated 13 August 2010 which had been provided to her by the Firm. The report appeared to be signed by the Respondent and was written on the Firm’s headed paper. The document related to the purchase of the Flat.
20. The report on contract contained the heading “Stamp Duty”. It confirmed that a Land Transaction Return form should be signed and returned, failing which completion could not take place. The document also described how a land tax return certificate would be required in order to register the property.
21. Ms L also provided Ms Marshall with a printed completion statement which stated a completion figure of £720,597.93. This included a purchase price of £690,000, £27,600 for SDLT and £550 for the Land Registry registration fee.
22. Ms Marshall’s statement reported that Ms L had originally purchased the Flat under the terms of a divorce settlement. An email exchange between a family solicitor at Osbornes Solicitors and the Respondent was exhibited to Ms Marshall’s statement. In the email exchange, the Respondent acknowledged receipt of the completion monies from Osbornes Solicitors.
23. The official copy which accompanied the report on contract referred to above was dated 28 April 2009 and showed Mr and Mrs D as the owners of the Flat. It also showed two mortgages registered against the Flat, in favour of CF Mortgages Ltd and LL Ltd.
24. Enquiries made by Ms Marshall established that the Flat was sold by LL Ltd, as the mortgagee in possession. LL Ltd was in administration, and its administrators were represented by Lightfoot LLP Solicitors. Ms Marshall obtained a certified copy of the TR2 transfer deed in favour of Ms L, dated 3 September 2010. Ms Marshall deduced from these documents that the proceeds of sale were received by the seller and used to discharge the first mortgage. If registered at the Land Registry, the TR2 would have transferred the Flat to the buyer and removed the charge registered in the seller’s name, this being the second mortgage in favour of LL Ltd.
25. The official copy dated 14 July 2014 confirmed that Mr and Mrs D were the registered proprietors of the Flat and the charge in favour of LL Ltd remained.
26. Ms Marshall’s statement set out the procedure that a conveyancer would ordinarily go through when acting on a purchase. This was said to include obtaining an OS1 priority search from the Land Registry, which protects the buyer’s interest for 6 weeks, pending registration. Prior to registration, a SDLT return is submitted to HM Revenue and Customs (“HMRC”) to obtain an SDLT 5 certificate, which must be

included in an application to register. Ms Marshall's statement explained that submitting the SDLT return and paying the SDLT is an important part of the conveyancing process and that it was common practice to do these things immediately after payment was received. This was to ensure that payment was not overlooked, to ensure that the SDLT 5 was obtained in time to submit the application to register within the six-week priority period, and to avoid holding onto client money for longer than is necessary.

27. On 14 and 17 July 2014 Ms Marshall faxed the Stamp Duty office of HMRC to enquire whether the SDLT return had been submitted and/or the SDLT paid, as a failure to do so would have been a likely reason why the transfer had not been registered. On 1 August 2014 Ms Marshall received confirmation by telephone from HMRC that there was no record of the return having been submitted, or of the SDLT having been paid. On 12 August 2014 Ms Marshall received a further telephone call from HMRC confirming that there was no record of a return or a payment.
28. Ms L's purchase was a cash purchase, so there was no mortgage lender to check that the transfer had been completed. The Respondent failed to forward a copy of the new registered title to Ms L, to submit the SDLT return to the Land Registry or forward payment in respect of SDLT.
29. The Respondent was asked about these matters by email on 25 September 2015. On 2 October 2015, the Respondent replied by email, as follows:

“The files were in storage as stated together with the accounts, unfortunately they are no longer available. As you are aware I filed for bankruptcy and was unable to sustain the cost of the storage.

During the summer of 2010 I was trying to close down the firm on my own without any support staff as I was unable to pay salaries. All monies were paid into client account and due to the hectic situation the property was not registered. This was not done deliberately or intentionally, it was an oversight.

I cannot add anything further to the matter and I am devastated as the mistakes that have taken place.”
30. A further email was forwarded to the Respondent on 5 October 2015, making enquiries about the money which had been forwarded to the Firm's client account. No response was received from the Respondent by the date of the Rule 5 Statement. It was not known what had happened to the monies forward to the Respondent to pay the SDLT (£27,600) and registration fee (£550).
31. As a consequence of the Respondent's failure to register the Flat, Ms L was not the registered legal owner of the Flat, which remained registered in the names of Mr and Mrs D. Due to the difficulties Ms L encountered in trying to establish title to sell the Flat in 2014, and also due to the complications of applying for a lease extension (as dealt with in respect of allegation 1.4 below), the prospective sale of the Flat fell through and so too did Ms L's proposed purchase of another property.

The SRA's Investigation

32. On 2 April 2015 a regulatory supervisor in the employment of the Applicant wrote to the Respondent, inviting her explanation of the alleged breaches of the 2007 Code. On 13 April 2015, that letter with its accompanying bundle was returned to the Applicant by the Royal Mail, marked on the envelope with the words, "Not known at this address. Return to Sender."
33. On 15 May 2015 a duly authorised officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.
34. Following enquiries by the Applicant, an email address was established for the Respondent. The Respondent acknowledged receipt of contact by email from the Applicant on 4 September 2015, requesting that the email address was used as her address for service.
35. On 25 September 2015 the Applicant forwarded correspondence by email inviting the Respondent's explanation for the alleged breaches of the 2007 Code.
36. On 2 October 2015, the Respondent replied, as set out above at paragraph 29. On 5 October 2015 the Respondent was asked for further details of her response, but no further response was received from the Respondent by the time the proceedings began. The Respondent provided her personal financial statement on 24 March 2016 but provided no submissions or other documents to the Tribunal.

Witnesses

37. No witness evidence was heard and the hearing proceeded on the papers.

Findings of Fact and Law

38. 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.
39. The Tribunal noted that Civil Evidence Act Notices had been served in relation to the documents in the case, and it was satisfied it could accept those documents as authentic and as proof of the matters set out in those documents. There had been no challenge to the witness statement of Ms Marshall.
40. **Allegation 1.1 - In failing to register the title of her client with HM Land Registry, she:**
 - 1.1.1 failed to act in the best interests of her client in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 ("the 2007 Code");**
 - 1.1.2 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or**

- 1.1.3 behaved in a way that was likely to diminish the trust the public had placed in her or the professional in breach of Rule 1.06 of the 2007 Code.**
- 1.2 In failing to forward the sum of £27,600 to HM Revenue and Customs (“HMRC”), which was received on behalf of her client for the purpose of paying Stamp Duty Land Tax (“SDLT”) to HMRC, she:**
- 1.2.1 failed to act with integrity in breach of Rule 1.02 of the 2007 Code;**
- 1.2.2 failed to act in the best interests of her client in breach of Rule 1.04 of the 2007 Code;**
- 1.2.3 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or**
- 1.2.4 behaved in a way that was likely to diminish the trust the public had placed in her or the profession in breach of Rule 1.06 of the 2007 Code; and**
- 1.2.5 failed to return money to the client (or other person on whose behalf the money is held), as soon as there was no longer any proper reason to retain those funds in breach of Rule 15(3) of the Solicitors’ Accounts Rules 1998 (“SAR 1998”).**
- 1.3 In failing to forward the sum of £550 to HM Land Registry, which was received on behalf of her client for the purpose of paying the application fee for registering her client’s title with HM Land Registry, she:**
- 1.3.1 failed to act with integrity in breach of Rule 1.02 of the 2007 Code;**
- 1.3.2 failed to act in the best interests of her client in breach of Rule 1.04 of the 2007 Code;**
- 1.3.3 failed to provide a good standard of service to her client in breach of Rule 1.05 of the 2007 Code; and/or**
- 1.3.4 behaved in a way that was likely to diminish the trust the public had placed in her or the profession in breach of Rule 1.06 of the 2007 Code; and**
- 1.3.5 failed to return money to the client (or other person on whose behalf the money is held) as soon as there was no longer any proper reason to retain those funds in breach of Rule 15(3) of the SAR 1998.**
- 40.1 The factual background to the above allegations is set out at paragraphs 17 to 31 above. The Tribunal noted that the relevant events and conduct took place in 2010 when the SAR 1998 and the 2007 Code were in effect.

Applicant's Submissions

- 40.2 It was submitted that the Respondent's failure to register the Flat in the name of Ms L constituted a breach of all or any of Rules 1.04, 1.05 and 1.06 of the 2007 Code, in that she failed to act in the best interests of her client, failed to provide a good standard of service and had behaved in a way that was likely to diminish the trust the public placed in her or the profession.
- 40.3 It was submitted that the email exchanges between the Respondent and Osbornes Solicitors showed that the monies required for completion were received in full by the Respondent. Those monies included both the SDLT and registration fees to be paid on behalf of Ms L. The enquiries of the Stamp Duties office of HMRC and Ms Marshall's statement confirmed that the SDLT return was not submitted and SDLT was not paid. This would have been required for registration to take place.
- 40.4 The Respondent had confirmed in her email to the Applicant on 2 October 2015 that the completion monies had been received in full and that the property was not registered. No explanation had been given about what happened to the monies provided for SDLT and registration fee (totalling £28,150) thereafter. It was submitted that in failing to pay this sum to HM Land Registry or HMRC the Respondent was in breach of Rules 1.02, 1.04, 1.05 and 1.06 of the 2007 Code. It was further submitted that in failing to make the payments in respect of the Land Registry fee and SDLT, or return those monies to Ms L, the Respondent was in breach of Rule 15(3) of the SAR 1998.

The Tribunal's Findings

- 40.5 The Tribunal was satisfied that the Respondent had failed to register Ms L's title to the Flat. It was further satisfied that the Respondent had failed to pay £27,600 in SDLT to HMRC and the £550 registration fee to HM Land Registry. Without payment of the SDLT, Ms L's purchase of the Flat could not be registered. As at 2014, the registered proprietors of the property were Mr and Mrs D, and a charge in favour of LL Ltd was still registered.
- 40.6 There could be no doubt that where a client instructed a solicitor to act on a property purchase, the solicitor's failure to register the client's legal title to the property amounted to a failure to act in the best interests of the client. Ms L had paid to the Respondent all of the money needed to buy the Flat and register the title and had found, about 4 years after the purchase, that she was not the legal proprietor. That had inevitably caused her inconvenience and expense; in particular, she had been unable to purchase the property she had hoped to buy in 2014. In the same way, there could be no doubt that the Respondent had failed to provide a proper standard of service to her client. The Respondent had been instructed to deal with conveyancing and had failed to complete the task she had agreed to carry out; failure to register a title and to pay the sums due to allow that registration, when in possession of the relevant funds, was clearly well below the standard of service which would be expected. In addition, the failure to carry out the normal and expected task of ensuring Ms L was the legal owner of the Flat was conduct which would diminish the trust the public would place in the Respondent and in the profession.

- 40.7 The Tribunal was also satisfied to the required standard that the Respondent had received client money to pay SDLT and the Land Registry fee, totalling £28,150 on or about 19 August 2010 (together with the other sums needed for completion) in preparation for completion on 3 September 2010. Those funds were not used as intended. The Respondent's firm had closed with effect from 1 November 2010. She had not by that time paid the SDLT or Land Registry fee; it was not known what had become of those monies. In any event, it was clear that the money was not returned to Ms L or used in accordance with her instructions. It was clearly the case that the Respondent had retained client monies when there was no longer a proper reason to do so.
- 40.8 The Tribunal considered carefully the allegation that the Respondent had lacked integrity in failing to pay the SDLT and Land Registry fee.
- 40.9 In considering this matter, the Tribunal noted that the conduct had occurred at a time when the Respondent had been trying to close her firm, after the departure of her business partner. The Tribunal noted and took into account what the Respondent said in the email of 2 October 2015 (set out at paragraph 29 above) about the "hectic" situation and that the failure to register the property was not deliberate, but was an oversight.
- 40.10 The Tribunal noted and found that there was nothing to suggest any failure on the part of the Respondent up to and including the day of completion, 3 September 2010. The completion monies had been paid to the vendor in the normal way. The Tribunal noted and found that Ms L had purchased the property without a mortgage, so there had been no lender to "chase up" the registration of the Flat. The matters to which the allegation of lack of integrity related were the failure to pay the sums of £27,600 and £550; registration of the title could not take place unless and until those sums were paid over.
- 40.11 The Tribunal accepted that the Respondent's fault was one of omission rather than commission. There was nothing to suggest that the Respondent had made a conscious choice to retain the money rather than use it for its intended purpose, and the Tribunal accepted that the Respondent's misconduct had not been deliberate.
- 40.12 However, the Respondent had been entrusted with a significant sum of money by her client, which was to be used for specified purposes. The Respondent was well aware that the money was to be used as part of the requirements of the registration of Ms L's title to the Flat. This was clear from the report on contract letter, dated 13 August 2010, in which the Respondent explained that payment of SDLT, with accompanying documents, was essential. Whilst the Respondent had no doubt faced difficulties arising from the departure of her partner and the closure of the Firm, she was aware she had received and retained a substantial sum of money on behalf of Ms L. It was a normal and uncomplicated part of conveyancing to deal with post-completion matters, including payment of SDLT. There was a period of almost two months between completion of the purchase and the closure of the Firm. This was ample time to notice and deal with all the post-completion matters.

- 40.13 The Respondent knew she had received a significant amount of client money for a specific and important purpose and she failed to carry out that purpose. The Tribunal was satisfied that in the circumstances of this case, the Respondent's conduct had been reckless. She had failed to turn her mind to the proper interests of her client and carry out Ms L's instructions. Whilst the (perhaps) chaotic situation of the Firm provided a context for this misconduct, it was not an excuse as the Respondent had allowed matters to reach the point where her Firm was dysfunctional. On the facts of this case, the Respondent's recklessness in failing to deal with the payments needed to register Ms L's title was at a level which amounted to a lack of integrity.
- 40.14 The Tribunal was satisfied on the facts and on the evidence that allegations 1.1, 1.2 and 1.3 had been proved in their entirety to the required standard.

Previous Disciplinary Matters

41. There was one previous matter in which findings had been made against the Respondent.
42. In matter number 10880/2011, heard on 28 June 2012, the Tribunal found that the Respondent's books of account for the firm were not in compliance with the SAR 1998 in the following respects:
- 42.1 A combined cash account was not operated where designated deposit accounts were in use, in breach of Rule 32(3);
- 42.2 A suspense account was improperly used, contrary to Rule 32(16);
- 42.3 Accounting records were not properly written up, contrary to Rule 32(1);
- 42.4 Banking facilities were provided for clients where there was no underlying legal transaction, contrary to Note (ix) to Rule 15;
- 42.5 Inter-ledger transfers were made between client ledgers without the prior written authority of both clients, in breach of Rule 30(2);
- 42.6 Monies were withdrawn from client account on behalf of clients in excess of monies held on behalf of those clients, in breach of Rule 22(5);
- 42.7 Breaches of the SAR 1998 were not remedied promptly on discovery, in breach of Rule 7.
43. In addition, the Respondent was found to have failed to pay the premium for the assigned risks policy for the year 2009/10 and to have practised as a sole practitioner without recognised sole practitioner status.
44. The Tribunal had ordered the Respondent to be suspended from practise as a solicitor for the period of three years, commencing on 28 June 2012, and was ordered to pay costs of £13,000.

45. In determining sanction, the Tribunal on that occasion had noted that the breaches of the SAR 1998 had been “very serious” and that the Respondent had had “grossly inadequate” accounting systems. The Tribunal had found that her approach to the SAR 1998 had been “reckless”.

Mitigation

46. The Respondent was not present and did not offer any mitigation. However, the Tribunal took into account the contents of her email to the Applicant dated 2 October 2015.

Sanction

47. The Tribunal had regard to its Guidance Note on Sanction (December 2015) and to all of the facts of the case.
48. The Tribunal assessed the seriousness of the Respondent’s misconduct, by reference to her personal culpability, the harm caused and the aggravating and mitigating factors which were present.
49. The Tribunal accepted that the Respondent had had no specific intention to act unprofessionally. Her Firm had been in a mess since the departure of her business partner in about April 2010, some five months before the misconduct occurred, and no harm had been intended. The Respondent had been trusted by her client, Ms L, and had breached that trust by taking the client’s money and not using it for the intended purpose. The Respondent had had sole control over what happened within the Firm. The Respondent had been an experienced solicitor, having been admitted to the Roll of Solicitors about 12 years before the relevant events.
50. The harm caused to Ms L had been serious. Her title to a property, which she had purchased for nearly £700,000 had not been registered and she had lost the chance to sell the property when she wanted to do so in 2014. The harm to Ms L’s interests was significant and readily foreseeable, even if there had been no intention to put Ms L in such a difficult position. Further, there was significant harm done to the reputation of the profession. The public would, rightly, expect solicitors they instructed to carry out conveyancing matters properly. Here, the title was not registered, when the client had provided all of the necessary funds; this appeared to be a total failure of a key part of the transaction.
51. Aggravating factors in this matter included the fact that the Respondent knew or certainly should have realised that she was in material breach of her obligation to protect the public and the reputation of the profession. The Tribunal also noted the previous findings made against the Respondent by the Tribunal. It noted that the events in that case occurred at around the same time as the events in the current case i.e. summer/autumn of 2010. The poor state of the Firm’s accounts records, recorded in the earlier findings, helped to explain but not excuse the Respondent’s failure to deal with Ms L’s matter properly. The Tribunal noted that the Respondent had not had an opportunity to learn from her previous misconduct, as the events had all occurred around the same time. However, she had chosen not to engage properly with these proceedings and give an explanation of her conduct to the Tribunal. It would

have been expected that a solicitor with a previous experience of Tribunal proceedings would appreciate the importance of explaining her conduct to the public and the profession.

52. Whilst the Respondent had admitted, in her email of 2 October 2015, that the Flat had not been registered, she had not provided an explanation. The Tribunal could see only the most limited evidence that the Respondent had any insight into her misconduct and the harm caused by it. In particular, she had given no explanation about what had happened to the £28,150 in question. The Respondent had made some admissions of fact, and had co-operated to some extent with the Applicant but the former had not been at an early stage and the latter had been limited.
53. The Tribunal determined that this case was clearly too serious for “no order”, a reprimand, a fine or a free-standing restriction order.
54. There was a need to protect the public and the reputation of the legal profession from future harm from the Respondent by removing her ability to practise as a solicitor. The seriousness of the Respondent’s misconduct, particularly where she had not shown sufficient insight into her misconduct, was at the highest level and no lesser sanction than striking off the Roll was appropriate and proportionate. The effect of the misconduct on Ms L had been serious. Whilst all of the misconduct in this case arose from the same transaction, it was clear it had taken place against a background of a completely inadequate accounts system. The departure by the Respondent from the expected standards of integrity, probity and trustworthiness was very serious. The public’s confidence in the profession would be harmed if the Respondent were allowed to remain on the Roll.

Costs

55. The Applicant made an application for the Respondent to pay the costs of these proceedings, and submitted a costs schedule dated 13 May 2016 in the total sum of £4,816.85.
56. Ms Sherlock told the Tribunal that the hearing which had been due to take place on 26 April 2016 had been adjourned at short notice when the Applicant had noticed that there had been references in the Rule 5 bundle to the Respondent’s previous appearance at the Tribunal. As a result, the hearing had been adjourned and the bundle had been redacted. The Memorandum of the adjournment recorded that the Applicant should pay its own costs of the hearing on 26 April 2016, including all of the costs of preparation for that hearing. Ms Sherlock told the Tribunal that the costs schedule of 13 May 2016 had been prepared without any costs connected with 26 April 2016. Further, whilst there had been communications with the Respondent since 26 April 2016 the costs claimed had not been increased. The schedule had omitted items such as a charge for hotel accommodation, as there would not have been such a disbursement if the hearing on 26 April had been effective. The schedule included the additional expenses which had been incurred to trace the Respondent, as she had not provided an effective address to the Applicant.

57. Ms Sherlock referred the Tribunal to the Respondent's personal financial statement. This indicated that the Respondent had a limited income from self-employment. Some further information and proof of receipt of certain benefits had been provided with the Respondent's email of 5 June 2016. Ms Sherlock told the Tribunal that she had a report from the Respondent's trustee in bankruptcy dated 2 October 2015 which set out some information about properties which were or had been jointly owned by the Respondent. This document corroborated the information the Respondent had provided. The Respondent no longer owned any property and she paid rent for her present accommodation. It was understood that the Respondent had now been discharged from bankruptcy. Ms Sherlock submitted that the Tribunal should make a costs order in the usual way. The Applicant would not be unreasonable in its pursuit of costs recovery. However, there was no reason to believe the Respondent's income would remain so low indefinitely and the Applicant should be allowed to make enquiries of the Respondent to try to obtain some payment.

The Tribunal's Decision

58. The Tribunal considered carefully the schedule of costs which had been submitted.
59. The Tribunal was satisfied that the rates charged and the work done were reasonable and proportionate. The schedule had omitted any items connected with the ineffective hearing on 26 April 2016. The Tribunal was satisfied that the claimed costs of £4,816.85 were reasonable and the costs of the proceedings were summarily assessed in that sum.
60. The Tribunal noted that the Respondent had a limited income at the moment. However, it was not satisfied there was any reason to reduce the costs, or to make an order requiring the Applicant to seek the Tribunal's permission to enforce the costs order. The Tribunal would expect the Applicant to proceed in a proportionate and sensible way in seeking to recover costs.

Statement of Full Order

61. The Tribunal Ordered that the Respondent, DALIDA RAJESHREE JHUGROO 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 £4,816.85.

Dated this 29th day of June 2016
On behalf of the Tribunal

R. Hegarty
Chairman