

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11479-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NOEL WILLIAM PUGSLEY

Respondent

Before:

Mr P. Housego (in the chair)

Mr P. Booth

Mr S. Marquez

Date of Hearing: 19 July 2016

Appearances

Andrew Bullock, barrister of 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 made against the Respondent by the SRA were that:
 - 1.1 By misappropriating client monies totalling £107,000 between 14 March and 24 April 2014 from the client account of Mr B, he breached any or all of:
 - 1.1.1 Principle 2 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 Principle 4 of the Principles;
 - 1.1.3 Principle 6 of the Principles; and
 - 1.1.4 Rule 20.1 of the SRA Accounts Rules 2011 (“SAR 2011”).
 - 1.2 By misappropriating client monies totalling £34,785 between the 25 March 2013 and 11 February 2014 from the client account of Mr G (deceased) he breached any or all of:
 - 1.2.1 Principle 2 of the Principles;
 - 1.2.2 Principle 4 of the Principles;
 - 1.2.3 Principle 6 of the Principles; and
 - 1.2.4 Rule 20.1 SAR 2011.
 - 1.3 By misappropriating client monies in the sum of £40,000 on 9 December 2013 from the client account of Mr S (deceased) he breached any or all of:
 - 1.3.1 Principle 2 of the Principles;
 - 1.3.2 Principle 4 of the Principles;
 - 1.3.3 Principle 6 of the Principles; and
 - 1.3.4 Rule 20.1 of SAR 2011.
 - 1.4 By misappropriating client monies in the sum of £22,000 on 22 April 2013 from the client account of Mrs F (deceased) he breached any or all of;
 - 1.4.1 Principle 2 of the Principles;
 - 1.4.2 Principle 4 of the Principles;
 - 1.4.3 Principle 6 of the Principles; and
 - 1.4.5 Rule 20.1 SAR 2011
 - 1.5 By misleading his client, Mrs LW, as to the progress of her divorce and fabricating a Decree Absolute dated 10 of March 2014 (“the Decree Absolute”) he breached any or all of:
 - 1.5.1 Principle 2 of the Principles;
 - 1.5.2 Principle 4 the Principles; and
 - 1.5.3 Principle 6 of the Principles.
2. While dishonesty was alleged with respect to the Allegations at paragraphs 1.1, 1.2, 1.3, 1.4 and 1.5, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Documents

3. The Tribunal considered all the documents in the matter including:

Applicant

- Application and Rule 5 Statement with exhibit EP/1 dated 29 January 2016
- Witness Statement of Justin Emmerson dated 19 April 2016
- Witness Statement of Liz Bond dated 14 June 2016
- Schedule of Costs

Respondent

- Response to proceedings dated 23 June 2016

Preliminary Matters

The Absence of the Respondent

4. The Respondent did not attend the hearing, having informed the Tribunal in his Response that he would not be doing so. The Respondent told the Tribunal that “absolutely no discourtesy is intended to either the Tribunal or the SRA in this respect”.
5. He told the Tribunal that he was suffering from ill-health which would cause him “great difficulties in attending the hearing”. In addition his financial circumstances were “dire” and as such could not afford to travel to London. He was also unable to afford professional representation. He informed the Tribunal that he was not seeking to deny the charges or make representations on sanction. There was no suggestion that he was seeking an adjournment.
6. The Applicant applied to proceed in absence pursuant to Rule 16(2) of the Solicitors (Disciplinary Procedure) Rules 2007 (“SDPR”). The Applicant informed the Tribunal that the Respondent had been served personally with the application and Rule 5 statement together with a copy of the SDPR, the Tribunal’s Practice Direction No. 6 and the Standard Directions. This had taken place on 16 April 2016 and was confirmed in the Witness Statement of Justin Emmerson. The Respondent had acknowledged that he knew the date of the hearing as he had referred to it in his Response.
7. The Applicant submitted that the assertions of ill-health in the Response were not supported by medical evidence and should not therefore be a ground to adjourn the matter. The financial position of the Respondent was also unsupported by documentation but in any case impecunious solicitors often attended the Tribunal to present their case, even if it was no more than mitigation. The Applicant submitted that in this case the Respondent had fully articulated his position in the Response, namely that he did not challenge any of the Allegations and did not wish to make representations on sanction. In all the circumstances it was submitted that it was in the interests of justice to proceed in the absence of the Respondent.

The Tribunal's Decision

8. The Tribunal was mindful that any application to proceed in absence should be considered with the utmost care and caution.
9. The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

 - (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
 - (ii) ...;
 - (iii) the likely length of such an adjournment;
 - (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
 - (v) ...;
 - (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
 - (vii) ...;
 - (viii) ...;
 - (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
 - (x) the effect of delay on the memories of witnesses;
 - (xi) ...;”
10. The Tribunal also bore in mind GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, where at paragraph 19 a professional regulatory tribunal is advised “Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.”
11. The Tribunal was satisfied that the Respondent had voluntarily absented himself from the hearing and had therefore waived his right to be present. An adjournment had not been sought and even if the Tribunal was to adjourn, there was nothing to suggest that the Respondent would attend any subsequent hearing. The Respondent had submitted a full Response to the Proceedings, clearly setting out his position. Although he had referred to ill-health, he had not provided medical evidence to support this. It was in the public interest that these Allegations were dealt with in a timely manner and the Tribunal therefore decided that it was in the interests of justice to proceed in absence. The application was granted.

12. The Tribunal reminded the Applicant that, in the presentation of the case, any matters which the Respondent may have raised had he been present should be drawn to the Tribunal's attention and addressed. Although the Respondent had not challenged any of the Allegations, the Applicant was required to prove each of them beyond reasonable doubt.

Factual Background

13. The Respondent was born in 1973 and was admitted to the Roll of solicitors on 1 July 1999. At the date of the Rule 5 statement the Respondent's name remained on the Roll of solicitors but he did not hold a current practising certificate. At all material times, until 8 May 2014, the Respondent was one of the two Members at the Guisborough branch office of Askew Bunting LLP ("the Firm") where he specialised in Wills and Probate work.
14. On 6 May 2014 Mr AD, the Firm's Compliance Officer for Finance and Administration ("COFA") and another member of the Firm contacted an employee in the SRA's supervision department to advise the previous week the Firm had discovered that the Respondent, was experiencing personal difficulties. They had checked on his work. Following an internal investigation it transpired that he had misappropriated £107,000 from the client account. The Firm had replaced the shortage from cash reserves and it was anticipated that the Firm would enter into a deed of retirement with the Respondent. On 21 May 2014, following the completion of the internal investigation, Mr AD sent a detailed report to the SRA ("the Report") which set out to the chronology of the Firm's investigation into the Respondent's conduct.
15. The Report highlighted that the Respondent had allegedly misappropriated client funds totalling £203,785 on four client matters namely B, G (deceased), S (deceased) and F (deceased). The payments had been made from the client ledgers to unrelated client ledgers to conceal the Respondent's inactivity on unrelated files. This resulted in a total shortfall of £203,785 on client account.
16. On 2 June 2014 a further report was made to the SRA by the Firm ("the Second Report") confirmed that the remainder of the shortfall on client account of £96,785 had been replaced by the Firm following receipt of a loan.
17. As a result of the information contained in the Report and Second Report, the supervision department of the SRA commissioned an investigation into the Firm. On 24 June 2014 a duly authorised Forensic Investigation Officer in the employment of the SRA ("the FIO") commenced an investigation of the books of account and other documents of the Firm pursuant to that commission ("the Inspection").
18. The Inspection culminated in a final report dated 1 August 2014 ("the FIR"). The FIO confirmed that between March 2013 and April 2014 unauthorised payments were made by the Respondents to unrelated third parties in four client matters. The figures comprised the following amounts:

- £107,000 from the ledger of Mr B;
- £34,785 from the ledger of Mr G;
- £40,000 from the ledger of Mr S;
- £22,000 from the ledger of Mrs F.

19. During the course of her investigation the FIO also noted issues of concern in connection with a matrimonial matter conducted by the Respondent. He had advised the client, Mrs LW, that her divorce had been completed and the Decree Absolute was sent to her and/or her former husband. It later transpired that the Decree Absolute was not genuine and had been created by the Respondent. The application for divorce had not in fact been completed.

Allegation 1.1

20. The Respondent commenced acting for Mr B in a conveyancing matter in October 2013 and received a mortgage advance of £147,965 into his client bank account on 12 February 2014. A redemption statement was received from the lender on 1 May 2014 for a sum of £119,289.07. Seven payments totalling £107,000 were made from the client account between 14 March and 24 April 2014 for sums between £5000 and £30,000. The payments were made to other clients whose matters were unrelated to the sale by Mr B of his property and the subsequent redemption of the mortgage in favour of the lender, thereby creating a shortage on client account of £107,000. This shortage was replaced by an office to client transfer on 1 May 2014 and the mortgage was redeemed on 7 May 2014.

Respondent's Response

21. During an interview with the FIO on 28 July 2014 the Respondent stated that he had misappropriated client monies in the matters of B, G, S and F and agreed with the amounts. He confirmed that he did not have the permission of the clients to withdraw monies from client account and understood at the time that it was dishonest and wrong. He told the FIO that he "had got into a state at work over the last 18 months" and with hindsight he should have talked to someone at the Firm about it. He had only appreciated the extent of his difficulties after the misappropriation came to light. He was not, at the time, thinking "in a correct state of mind". The Respondent further stated that he had made payments to other clients where he had failed to progress matters.

Allegation 1.2

22. The Probate matter of Mr G commenced in 2008 and was conducted by the Respondent. Mr G's Will made provision to leave his estate in equal shares to his grandchildren living at the time of his death. Five payments totalling £34,785 were made from the client account between the 25 March 2013 and 11 February 2014 for sums between £500 and £14,285. None of these payments were to beneficiaries of the will. They were not otherwise permitted by Rule 20.1 SAR 2011. They therefore created a shortage of client account of £34,785. The shortage was replaced by an office to client transfer on 30 May 2014.

The Respondent's Response

23. As set out above, during the interview on 28 July 2014 the Respondent admitted dishonestly misappropriating this sum.

Allegation 1.3

24. The Probate matter of Mr S commenced in February 2012 and was conducted by the Respondent. Mr S' Will made provision to leave his estate to named family members. A payment of £40,000 was made from the client account on 9 December 2013 with the narrative "AP Balance due". This payment was not to a beneficiary of the Will, nor was it otherwise permitted under Rule 20.1 of SAR 2011. It therefore created a shortage on the client account of £40,000 which was replaced by an office to client transfer on 30 May 2014.

The Respondent's Response

25. As set out above, during the interview on 28 July 2014 the Respondent admitted dishonestly misappropriating this sum.

Allegation 1.4

26. The Probate matter of Mrs F commenced in June 2011 and was conducted by the Respondent. The Will made provision to leave all of her estate to her husband and family, who were named in the Will. A payment of £22,000 was made from the client account on 22 April 2013 with the narrative "P&M Tax Payment". This payment was not to a beneficiary of the Will nor was it otherwise permitted under Rule 20.1 of SAR 2011. It therefore created a shortage of client account of £22,000 which was replaced by an office to client transfer 30 May 2014.

The Respondent's Response

27. As set out above, during the interview on 28 July 2014 the Respondent admitted dishonestly misappropriating this sum.

Allegation 1.5

28. The matrimonial matter of Mrs LW commenced in October 2013 and was conducted by the Respondent. Ms JB, a solicitor in the employment of the Firm, took over the conduct of the matter following the Respondent's departure from the Firm. Ms JB informed the FIO that she had received an email from Mrs LW on 8 May 2014 which stated that "as far as I'm aware my divorce is finalised and I have received my decree absolute". The client's husband, Mr SW, had provided Ms JB with a copy of the Decree Absolute that he had been sent by the Respondent. Ms JB advised the FIO that the Decree Absolute was not genuine as "it was not sealed and the assigned number was not as it should be".

The Respondent's Response

29. During the interview with the FIO on 28 July 2014 the Respondent had stated that he prepared a divorce petition but things had gone wrong "as this was not my area...". He said he had panicked and created a document purporting to be a Decree Absolute which he had sent to the client. The FIO had asked the Respondent if he thought he had misled his client into believing her divorce was finalised. The Respondent confirmed that he had, although it was "not through any malice towards the client" but rather due to his state of mind at the time.
30. On 17 November 2014 the SRA sent an Explanation with Warning ("EWW") letter to the Respondent requesting his response to the allegations against him by 8 December 2014. On 9 December the SRA agreed to extend that deadline until 16 December 2014. No response was received to the EWW. On 12 October 2015 an authorised officer of the SRA decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

Liz Bond (FIO)

31. The FIO confirmed that the FIR was true to the best of her knowledge and belief. She was asked by the Tribunal whether the comments attributed to the Respondent from his interview on 28 July 2014 were accurate. She confirmed that they were an accurate reflection of the Respondent's comments.

Findings of Fact and Law

32. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
33. **Allegation 1.1 - By misappropriating client monies totalling £107,000 between 14 March and 24 April 2014 from the client account of Mr B he breached any or all of:**
- 1.1.1 Principle 2 of the Principles;**
 - 1.1.2 Principle 4 of the Principles;**
 - 1.1.3 Principle 6 of the Principles; and**
 - 1.1.4 Rule 20.1 of the SAR 2011.**
- 33.1 The Applicant submitted that a solicitor of integrity would have understood that his professional and fiduciary duties meant that client monies were sacrosanct. The Respondent had not dealt with those monies in a manner which was consistent with his duties and could not be said to have acted in the best interests of his client. He had moved the money from predominantly probate matters to conceal inaction on litigation files. The trust the public placed in a solicitor to protect any monies held on trust for their clients was breached by any misappropriation of client money. The Applicant submitted that by misappropriating client monies from the client account of

Mr B, the Respondent had failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services.

Dishonesty

- 33.2 The Applicant submitted that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly and had done so knowingly.
- 33.3 In misappropriating client monies from the client accounts the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Not only was his conduct in misappropriating the monies from client accounts in breach of Rule 20.1 of SAR 2011 dishonest by the ordinary standards of reasonable and honest people but the Applicant submitted that he was aware it was dishonest by the standards. The Applicant submitted that the Respondent had engaged in the course of conduct involving the misappropriation of client funds to the total value of £203,785 from four client accounts on 14 separate occasions over a 13 month period. It was clear from this that he was acting with conscious impropriety.
- 33.4 The Respondent had admitted to the FIO that he had been dishonest. He confirmed that during the interview on 28 July 2014 that he did not have the permission of the clients to withdraw the monies from client account and understood at the time that it was dishonest and wrong. The Respondent had further confirmed that he had acted in a dishonest manner, had not acted in the best interests of his clients, had not acted with integrity and had breached the Principles by his actions. He had planned on making things right in the future by returning the money to the client ledgers. The Applicant submitted that it was therefore clear that the Respondent was aware that the monies were not his to use and that he was using them in a manner contrary to his clients' best interests. He had advised the FIO that he had used the monies to make payments to other clients where he had failed to progress matters and where insufficient action had been taken. The purpose had been to cover up the fact that the matters had not been adequately progressed. The Applicant submitted that the Respondent, who had 13 years of post-qualified experience and would have known exactly what he was doing, had misappropriated funds in furtherance of the improper purpose of concealment of wrongdoing. The Applicant confirmed that the Respondent had not attempted to benefit himself financially, and had personally taken nothing from client account. All the money had been paid out to other clients, and the Respondent had told those clients the money was money recovered for them by him in litigation.
- 33.5 In his response to the Tribunal the Respondent set out his background to working at the Firm and explained that he had become "completely overwhelmed by the work". The Respondent described in some detail the personal and health-related difficulties he had been experiencing, which had deteriorated in the last 12-18 months that he was at the Firm. He had lost the ability to make rational decisions and "that is the only explanation which I can give for my actions". The Respondent stated that in relation to the cases of the misappropriation of client funds "they related to files which I had

not dealt with appropriately. To cover up my failures, payments were made out of client files referred to in the Rule 5 statement.”

- 33.6 The Respondent went on to state “I appreciate that these actions are totally unacceptable, though at the time they were made I was devoid of any rational thought process”. The Respondent confirmed that no other member of staff was involved in his actions
- 33.7 The Tribunal considered the client account ledger in respect of Mr B which contained seven withdrawals from the client account. Each of the transactions were supported by individual Client Ledger Payments Posting Forms. The Tribunal noted that in the box marked “Cheque required in respect of:” the Respondent had entered “Legacy” on five of them, “investment” on one and “balance due” on the final one when in fact this had been a conveyancing transaction. The payments had gone to client ledgers for litigation matters and had nothing to do with legacies. The Tribunal was satisfied that the payments had been misappropriated and that the purpose for the entries being incorrect was to mislead and conceal. The Tribunal noted the Respondent’s admissions to the FIO and his confirmation that he did not challenge the Allegation in his Response.
- 33.8 The Tribunal considered the issue of dishonesty and in doing so applied the two-stage test as set out in Twinsectra. The Tribunal found that the misappropriation of client funds by a solicitor would be regarded as dishonest by the ordinary standards of reasonable and honest people, even in circumstances where it was not for the solicitor’s own personal gain.
- 33.9 The Tribunal considered the subjective test. The Tribunal found that the Respondent had knowingly described the payments as “Legacy” when they were for a completely different purpose. The reason was to conceal that purpose and the Respondent did so because he knew he was acting dishonestly by the ordinary standards of reasonable and honest people. The Tribunal noted that there were multiple payments from Mr B’s client account, not a one-off transaction. It was therefore inconceivable that it could be a simple mistake. The Tribunal noted the Respondent’s comment to the FIO that he “planned” to return the monies to Mr B’s client account (and the other client accounts) and this reflected the fact that he knew what he was doing at the time. He had further admitted to the FIO that he knew he was acting dishonestly at the time. The Tribunal was satisfied beyond reasonable doubt that this admission was properly made and that the Respondent had been dishonest in accordance with the test in Twinsectra.
- 33.10 As a matter of logic, a solicitor who is dishonest cannot have acted with integrity. The misappropriation of client monies was the complete opposite of the Respondent’s duties to act in the best interests of his clients. The trust the public placed in the Respondent and in the provision of legal services was completely undermined when client money was inappropriately removed from the client account. The Tribunal was satisfied beyond reasonable doubt that this Allegation was proved in full, including dishonesty.

34. **Allegation 1.2 - By misappropriating client monies totalling £34,785 between the 25 March 2013 and 11 February 2014 from the client account of Mr G (deceased) he breached any or all of:**

- 1.2.1 Principle 2 of the Principles;**
- 1.2.2 Principle 4 of the Principles;**
- 1.2.3 Principle 6 of the Principles; and**
- 1.2.4 Rule 20.1 SAR 2011.**

- 34.1 The Applicant submitted that by misappropriating client monies from the client account of Mr G the Respondent failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services.

Dishonesty

- 34.2 The Applicant made the same submissions concerning dishonesty as contained in relation to Allegation 1.1.
- 34.3 The Respondent's submissions referred to in relation to Allegation 1.1 above applied equally to this Allegation.
- 34.4 The Tribunal considered the client account ledger in respect of Mr G which contained five withdrawals from the client account. This had been a probate matter and the client ledger posting forms described the payments as either "Legacy" or "balance due". However the destination of those monies bore no relation to the probate matter of Mr G and as such the Tribunal was satisfied that the forms were again misleading. The circumstances of this Allegation were therefore almost identical to Allegation 1.1. For the same reasons as set out in relation to Allegation 1.1, the Tribunal was satisfied beyond reasonable doubt that this Allegation was proved in full, including dishonesty.

35. **Allegation 1.3 - By misappropriating client monies in the sum of £40,000 on 9 December 2013 from the client account of Mr S (deceased) he breached any or all of:**

- 1.3.1 Principle 2 of the Principles;**
- 1.3.2 Principle 4 of the Principles;**
- 1.3.3 Principle 6 of the Principles; and**
- 1.3.4 Rule 20.1 of SAR 2011.**

- 35.1 The Applicant submitted that by misappropriating client monies from the client account of Mr S the Respondent failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services.

Dishonesty

- 35.2 The Applicant made the same submissions concerning dishonesty as contained in relation to Allegation 1.1.

- 35.3 The Respondent's submissions referred to in relation to Allegation 1.1 above applied equally to this Allegation.
- 35.4 The Tribunal considered the client account ledger in respect of Mr S which contained the withdrawal of £40,000 from the client account. This had been a probate matter and the client ledger posting form described the payment as "[AP] Balance due". However the destination of that money bore no relation to the probate matter of Mr S and was in fact related to a litigation claim against an insurance company. As such the Tribunal was satisfied that the form was again misleading. The circumstances of this Allegation were therefore almost identical to Allegation 1.1. For the same reasons as set out in relation to Allegation 1.1, the Tribunal was satisfied beyond reasonable doubt that this Allegation was proved in full, including dishonesty.
36. **Allegation 1.4 - By misappropriating client monies in the sum of £22,000 on 22 April 2013 from the client account of Mrs F (deceased) he breached any or all of:**
- 1.4.1 Principle 2 of the Principles;**
1.4.2 Principle 4 of the Principles;
1.4.3 Principle 6 of the Principles; and
1.4.5 Rule 20.1 SAR 2011.
- 36.1 The Applicant submitted that by misappropriating client monies from the client account of Mrs F the Respondent failed to act with integrity, failed to act in the best interests of his client and failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services.

Dishonesty

- 36.2 The Applicant made the same submissions concerning dishonesty as contained in relation to Allegation 1.1.
- 36.3 The Respondent's submissions referred to in relation to Allegation 1.1 above applied equally to this Allegation.
- 36.4 The Tribunal considered the client account ledger in respect of Mrs F which contained the withdrawal of £22,000 from the client account. This had been a probate matter and the client ledger posting form described the payment as "P&M Tax Payment". However the destination of that money bore no relation to the probate matter of Mrs F and was in fact related to a claim for rent arrears. As such the Tribunal was satisfied that the form was again misleading. The circumstances of this Allegation were therefore almost identical to Allegation 1.1. For the same reasons as set out in relation to Allegation 1.1, the Tribunal was satisfied beyond reasonable doubt that this Allegation was proved in full, including dishonesty.
37. **Allegation 1.5 - By misleading his client, Mrs LW, as to the progress of her divorce and fabricating a Decree Absolute dated 10 of March 2014 he breached any or all of:**

1.5.1 Principle 2 of the Principles**1.5.2 Principle 4 the Principles****1.5.3 Principle 6 of the Principles**

- 37.1 The Applicant submitted that a solicitor of integrity would have been aware of his professional responsibilities towards his client and was aware that the public should be able to trust that any document leaving a solicitor's office should be strictly accurate and true. Consequently by misleading Mrs LW as to the progress of divorce and by fabricating the decree absolute and sending a copy to his client he had failed to act with integrity, failed to act in his client's best interests, failed to provide a proper standard of service and failed to behave in a way which maintained the trust public placed in him and in the provision of legal services.

Dishonesty

- 37.2 The Applicant again submitted that the Respondent had acted dishonesty in accordance with the Twinsectra test. The Applicant submitted that the Respondent, in fabricating the Decree Absolute in or around 10 March 2014 and sending it to his client, he had acted dishonestly by the ordinary standards of reasonable and honest people.
- 37.3 It was further submitted that the Respondent had made a deliberate and conscious decision to fabricate this document, as he had confirmed in his interview with the FIO when he stated that "things had gone wrong as this was not my area" and he had panicked. He had then forwarded a copy of it with the deliberate intention of misleading his client into thinking that her divorce was finalised. He had known that he was acting dishonestly by the ordinary standards of reasonable and honest people.
- 37.4 In the Respondent's response to the Tribunal he stated that this was an act carried out by him shortly prior to his departure from the Firm and at the height of the difficulties that he was encountering. He had acted on behalf of the client on a number of matters over a period of some years. When the client asked the Respondent to deal with her divorce he had suggested that it would be more appropriate for a colleague to deal with it as he was no longer conducting divorces. However the client specifically requested that the Respondent deal with it and he agreed. The matter was not correctly actioned and he had stated that "in a state of sheer panic I created the document". The Respondent accepted that this was something that was "totally unacceptable". The client was not charged any fees in relation to this matter. The Respondent stated "I believe that my actions were such that, realistically, they were bound to end in the manner which they did. I don't believe that any reasonably thinking person would have acted as I did, as they were clearly bound to failure. There was no realistic possibility of me getting away with my actions".
- 37.5 The Tribunal considered dishonesty and in doing so applied the two-stage test as set out in Twinsectra. It was not in dispute that the Decree Absolute was a false document. The Tribunal found that the fabrication of any document, especially a Court document, by a solicitor, would clearly be regarded as dishonest by the ordinary standards of reasonable and honest people.

- 37.6 The Tribunal considered the subjective test. The Tribunal found that the Respondent could not possibly have issued such a document without knowing that he was acting dishonestly by the ordinary standards of reasonable and honest people. He had admitted to the FIO that he had created the document in a panic and had then sent it to Mrs LW with the intention of misleading her by concealing his inactivity on her matter. He had repeated the admission that he created the document in his Answer. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew he was acting dishonestly by the ordinary standards of reasonable and honest people.
- 37.7 As a matter of logic, a solicitor who is dishonest cannot have acted with integrity. The creation of a false document which misled Mr and Mrs W into believing they were divorced flew in the face of the Respondent's duties to act in the best interests of his clients, to put it mildly. The trust the public placed in the Respondent and in the provision of legal services would be destroyed if solicitors fabricated Court documents. The Tribunal was satisfied beyond reasonable doubt that this Allegation was proved in full, including dishonesty.

Previous Disciplinary Matters

38. None.

Mitigation

39. In his Response, the Respondent told the Tribunal that he became a salaried partner at the Firm in 2006 and an equity partner in 2009. He felt that for the most part his work at the Firm had been of a good standard. Until approximately 2013 he had never received a complaint of any nature and he had entered the legal profession with the sole purpose of obtaining the best results for his clients. He stated that his difficulties commenced around 2011-2012 when he began to see an increase in his workload to "overwhelming levels".
40. He explained that the Firm was coming through the credit crunch and there was pressure to increase turnover. The Respondent took an active role in establishing new work streams which was both time-consuming and demanding. In 2011 one of the partners left the Firm and following that departure the Respondent took on many of the roles which had previously been exercised by the departing partner. The Respondent took on an increasing amount of managerial responsibilities from this point onwards.
41. As the Firm recovered from the credit crunch there was a rapid growth in the area of conveyancing work. The Respondent was heavily involved in the recruitment of new fee earners and support staff and the oversight of their work. The Respondent also explained that he became the member of staff who would deal with unusual or difficult cases. He was largely responsible for overseeing the running of the branch office, including a relocation in 2011.
42. The Respondent felt that he became overwhelmed by work and lost the ability to work in a rational manner. It was in this context that the matters giving rise to the Allegations had occurred.

43. The Respondent told the Tribunal that following the exposure of his wrongdoing he had reached an agreement to retire from the partnership on the basis that he would receive no further payments. He has previously owned a one third equity share in the business. The Respondent had waived his capital payment and he understood that that money had been used towards repayment of the deficit in the client account. He was not seeking to alleviate the severity of his actions but felt that this ought to be pointed out.
44. The Respondent set out in some detail the personal and health issues that he had been experiencing both at the material time and subsequently. He confirmed that he had been declared bankrupt on 20 May 2015. He confirmed that he was not currently in employment.
45. The Respondent concluded by stating that he fully acknowledged that his conduct had fallen well below the standard which was acceptable. The Respondent apologised to any party who had been adversely affected by his actions, including his former clients. It had not been his intention at the outset to proceed down the path that he had taken and he regretted his actions.
46. In terms of sanction Respondent stated that he was aware “that the Tribunal has, realistically, only one option available in the circumstances” and he did not oppose that. He did not intend to seek work in the legal services sector in the future.

Sanction

47. The Tribunal referred to its Guidance Note on Sanctions (December 2015) when considering sanction. The Tribunal assessed the seriousness of the misconduct with reference to the culpability and harm together with any aggravating and mitigating factors.
48. The Respondent’s motivation was absolutely not personal financial gain. It was, as he had told the FIO and the Tribunal, to conceal his professional failings in respect of other clients. The actions had been planned and this had been reflected in the deliberate misleading entries on the Client Ledger Posting Forms. The Respondent had 13 years post-qualified experience and was operating at partner level. He therefore had direct control and responsibility for the circumstances giving rise to the misconduct.
49. The Tribunal assessed the harm caused. The Firm had clearly suffered financially as they had rectified the shortfall on the client account. This meant that no client had suffered a loss in respect of the misappropriations of monies. However the potential harm to those clients had been very significant. The consequences for Mr and Mrs LW, the latter of whom was the Respondent’s client, could have been catastrophic had the truth concerning the Decree Absolute not come to light when it did. They believed they were divorced when in fact they were still married, with all the consequences that could have flowed from that misapprehension.

50. The damage to the reputation of the profession was considerable. It was of fundamental importance that the public were able to trust solicitors to hold client money in accordance with the SAR without exception, and not to fabricate documents.
51. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:
- “34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
52. The misconduct had been deliberate, calculated and repeated. It had continued for over a year and steps had been taken to conceal it during that time. The Respondent knew he was in material breach of his obligations to protect the public and the reputation of the profession. That there were underlying health issues might partially explain how the Respondent came to commit these actions but did not excuse them.
53. The matters were mitigated by the Respondent's lack of any previous matters before the Tribunal. This departure from his usual standards, although over a period of time, was nevertheless out of character. The Tribunal found his insight and remorse to be genuine and this was reflected in his co-operation with the SRA and his early and comprehensive admissions.
54. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.
55. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances both at the material time and subsequently. The Tribunal found this to be a sad case in which the Respondent had struggled with work pressures as well as personal and medical issues. However these circumstances were not exceptional so as to justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

56. The Applicant applied for costs based on the Schedule provided but with a reduction as the time spent on preparation and at the hearing had been less than estimated. The Applicant calculated the reduction to be in the sum of £1,261.00, leaving a total costs figure of £10,417.60.
57. The Tribunal examined the Schedule of Costs and was satisfied that the sum claimed was reasonable and proportionate.

58. The Respondent had referred to his current financial difficulties in his Response but he had not submitted a Personal Financial Statement despite a direction being made that he do so if he wished his finances to be taken into account. There was no other documentary evidence of his financial position.

59. The Tribunal ordered that the Respondent pay the Applicant's costs in the sum claimed.

Statement of Full Order

60. The Tribunal Ordered that the Respondent, NOEL WILLIAM PUGSLEY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,417.60.

Dated this 2nd day of August 2016

On behalf of the Tribunal

P.S.L. Housego
Chairman