SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11509-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LINDA MARY BOX Respondent

Before:

Mr S. Tinkler (in the chair)
Mr H. Sharkett
Mr D. E. Marlow

Date of Hearing: 6 October 2016

Appearances

Inderjit Johal, barrister of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared and was represented by Mark Harries, Counsel of Carmelite Chambers, 9 Carmelite Street, London, EC4Y 0DR.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Between October 2015 and November 2015 the Respondent misappropriated £537,650.53 of client money from Mrs MT's probate estate for her own purposes or benefit and/or the purposes or benefit of others in breach of Rule 20.1 of the SRA Accounts Rules 2011 (SRA AR 2011) and in breach of all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles"). It was alleged the Respondent had acted dishonestly;

1.2 Between May 2014 and August 2015 the Respondent misappropriated £625,721.35 of client money from Mrs CC's probate estate for her own purposes or benefit and/or the purposes or benefit of others in breach of Rule 20.1 of the SRA AR 2011 and in breach of all or alternatively any of Principles 2, 4, 6 and 10. It was alleged the Respondent had acted dishonestly.

The Respondent admitted the allegations.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant

- Application dated 5 May 2016 together with attached Rule 5 Statement and all exhibits
- Witness statement of Liz Bond (SRA Forensic Investigation Officer) dated 15 July 2016
- Letter dated 8 September 2016 from the Applicant to the Respondent's solicitors
- Applicant's Statements of Costs dated 6 May 2016 and 28 September 2016

Respondent

- The Respondent's Answer to the Rule 5 Statement dated 11 July 2016
- Email dated 8 September 2016 from the Respondent's solicitors to the Applicant and the Tribunal, together with attached Restraint Order dated 4 February 2016

Factual Background

3. The Respondent, born in April 1949, was admitted to the Roll on 1 December 1973.

4. At the material times the Respondent was the Senior Partner of Dixon Coles & Gill Solicitors of Bank House, Burton Street, Wakefield, WF1 2DA ("the firm") until she resigned on 3 January 2016 following the discovery by her partners that she had

misappropriated client money. The Respondent admitted what she had done when confronted by two of the partners at the firm and agreed to leave the firm.

5. On 6 January 2016, the Solicitors Regulation Authority ("SRA") received a report from a partner at the firm stating the Respondent had misappropriated client money from various probate estates.

6. The firm's report stated that one of the partners of the firm discovered, around Christmas 2015, improper payments made to a firm of solicitors by the Respondent from the probate estate of MT. Having examined the MT ledger, the firm discovered further improper payments to H, a PR/Marketing company, and to A Ltd. The Respondent admitted in meetings with two of the partners of the firm that the payments to H were to a marketing firm employed by her husband's funeral business and related to invoices for their work on behalf of his business. She also admitted the payments to A Ltd were to settle her credit card liabilities.

7. The firm also discovered that the Respondent had made a number of improper payments from the probate estate of CC. Payments were made to individuals who were not beneficiaries of the estate as well as payments to settle the Respondent's credit card liabilities and to the same PR/Marketing company, H, as on the MT file. The Respondent accepted responsibility for making the payments to non-beneficiaries and making payments to settle her credit card debts, as well as payments for the benefit of her husband's company.

8. On 7 January 2016 the SRA carried out an urgent inspection of the firm and produced an interim Forensic investigation Report ("the Report") dated 11 January 2016. The Forensic Investigation Officer ("FIO") was informed that the firm had instructed its accountants to complete a full review of the Respondent's probate files to ascertain the exact amount of the shortage arising from her actions. The review had not been completed at the time of the Report, but the accountant had indicated the shortage could be in excess of £2million.

9. The FIO was unable to calculate the total value of the shortage but was able to identify a minimum cash shortage of £1,163,371.88 caused by improper payments made by the Respondent on the MT and CC probate estates. The Respondent had repaid £94,078.70 to the firm to replace the shortage on further probate matters on which she had made improper payments but that did not affect the shortage on the MT and CC matters which was ongoing at the date of the Report.

Allegation 1.1

10. The Respondent had conduct of the MT (deceased) matter which was ongoing at the time of the investigation. The Respondent and the sister of the deceased were appointed as executors of MT's estate. Having examined the MT office account ledger, the FIO identified 12 payments totalling £537,650.53 that did not appear to have been provided for in the Will. The payments were set out in the Report and included:

- 12 October 2015 - £5,523.60 was paid to H, the PR/marketing company
- 16 October 2015 - £11,793.73 was paid to Barclaycard repay a loan
- 20 October 2015 - £30,000 was paid to a bank for "transfer to investment A/C payment on account residue"
- 21 October 2015 - £30,000 was paid to A Ltd as "on account residue"
- 23 October 2015 - £67,300.93 was paid to a firm of solicitors
- 10 November 2015 - £250,000 was paid to a bank for "investment A/C"
- 19 November 2015 - £50,000 was paid to a bank as "interim payment"
- 19 November 2015 - £30,000 was paid to A Ltd as "on a/c residue"
- 23 November 2015 - £50,000 was paid to a bank as "further interim Payment under will"

11. The FIO conducted a review of the client bank account statements and payment slips and was able to confirm that the 12 payments identified on the ledger, including the above, were made from the client account.

12. During the meeting between the Respondent and two of the partners of the firm on 3 January 2016, the Respondent admitted that the payments to H, the PR/Marketing company, were for the benefit of her husband's company. She also admitted the payments made on 21 October 2015 and 19 November 2015 to A Ltd were to settle her credit card liabilities. She admitted a number of the other payments made to banks were to service her own loans and credit cards. She confirmed a payment in the sum of £5,000 made on 26 October 2015 did not relate to the MT estate.

13. In relation to the payment of £67,300.93 to a firm of solicitors on 23 October 2015 by the Respondent and a transfer to office account in the sum of £5,473.20 on 3 November 2011, one of the firm's partners stated he could not immediately identify a reason for these payments. However, he discovered having seen copies of letters on the firm's system that the monies were sent by the Respondent to the solicitor's firm to settle negligence proceedings brought by their client against the firm. It appeared the Respondent did not refer the matter to the firm's insurers but had come to a settlement agreement which she had paid from the funds held on the MT estate. The transfer of £5,473.20 was made to replace a payment of the same amount made to the same firm of solicitors on 2 November 2011.

14. The Respondent admitted to the two partners that she had made payments to the firm of solicitors. She stated she had telephoned the firm's insurance broker who managed their professional indemnity insurance but he had not returned her call, and in any event it had been too late to refer the matter to insurers to deal with.

Allegation 1.2

15. The Respondent had conduct of the estate of CC deceased, which was ongoing at the time of the investigation. CC's Will appointed the partners of the firm as executors of the estate. Having examined the CC client ledger the FIO identified 29 payments totalling £625,721.35 which did not appear to be provided for in CC's Will. These included the following:

- 23 May 2014 – a payment of £115,402.47 was made to Mrs H
- 23 May 2014 – a payment of £115,402.47 was made to CB
- 23 May 2014 – a payment of £57,701.24 was made as " [PST] share of sale of shares"
- 16 June 2014 – a payment of £40,000 was made to Barclaycard for repayment of a loan
- 26 August 2014 – a payment of £40,000 was made to a bank as "PYMT to Investment trust"
- 16 January 2015 – a payment of £25,000 was made to "[EF] – Interim payment"
- 16 January 2015 – a payment of £25,000 was made to "[EH] – Interim payment"
- 20 April 2015 – a payment of £50,000 was made to a bank as "payment on account"
- 3 July 2015 – a payment of £50,000 was made to a bank as "PYMT to Investment trust"
- 24 July 2015 – a payment of £30,000 was made to a bank as "Investment A/C"
- 29 July 2015 – a payment of £24,360.35 was paid to "HMRC only – payment of IHT"
- 29 July 2015 – a payment of £22,434.03 was made to "[JMA] – payment of share"
- 29 July 2015 – a payment of £11,200.74 was made to "[RS] – payment of share of estate"
- 11 August 2015 – a payment of £11,200.74 was made to "[LC] – payment of gift & int"

16. The FIO conducted a review of the client bank account statements and payment slips and confirmed that all of the 29 payments had been made from the client account.

17. During the meeting with the two partners of the firm on 3 January 2016, the Respondent admitted a number of payments had been made to service her own personal loans and credit cards. The firm's report to the SRA confirmed payments had been made to MH, CB, PST, EF, EH, NS, AE, JA and LC but none of these were beneficiaries of CC's estate. The Respondent, when questioned by the two partners, explained these were people she knew CC wanted to benefit, but she had not made a further Will or executed a codicil in time before her final illness. The Respondent accepted responsibility for making payments.

18. The firm's report also identified payments were made to a bank for "investment" totalling £170,000 but the Respondent had conceded these were used to settle her credit card debts.

19. The FIO noted that beneficiaries named in CC's Will had not received their legacies under the provisions of the Will by the date of the investigation.

20. The SRA sent a letter to the Respondent dated 15 January 2016 concerning the allegations. In a letter dated 1 February 2016 from the Respondent's solicitors to the SRA, it was confirmed the Respondent had made the payments identified and they had been made for her own purposes and benefit, or for the purposes or benefit of others. In an email from the Respondent's solicitors to the SRA dated 1 February 2016 it was accepted the Respondent had misappropriated at least £537,650.52 of client money from MT's estate, and at least £625,721.35 of client money from CC's estate for her own purposes/benefit, and/or for the purposes/benefit of others with whom she was associated, that she had created a client account shortage by making improper payments from the firm's client account in respect of the estates and that she had acted dishonestly.

Witnesses

21. No witnesses gave evidence.

Findings of Fact and Law

22. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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.

23. **Allegation 1.1 - Between October 2015 and November 2015 the Respondent misappropriated £537,650.53 of client money from Mrs MT's probate estate for her own purposes or benefit and/or the purposes or benefit of others in breach of Rule 20.1 of the SRA Accounts Rules 2011 (SRA AR 2011) and in breach of all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles"). It was alleged the Respondent had acted dishonestly;**

Allegation 1.2 - Between May 2014 and August 2015 the Respondent misappropriated £625,721.35 of client money from Mrs CC's probate estate for her own purposes or benefit and/or the purposes or benefit of others in breach of Rule 20.1 of the SRA AR 2011 and in breach of all or alternatively any of Principles 2, 4, 6 and 10. It was alleged the Respondent had acted dishonestly.

23.1 The Respondent admitted both the allegations including the allegations of dishonesty. The Tribunal found the allegations proved based on both the Respondent's admissions and on the documents provided.

23.2 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. First, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent herself realised that by those standards her conduct was dishonest.

23.3 The Tribunal was satisfied that taking money from client account and using those client funds without the clients' authority for personal purposes would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, the Respondent, who was an experienced solicitor with a position of seniority in the firm, knew those funds belonged to the estates of her deceased clients. She had repeatedly and deliberately used the funds to make improper payments for her own benefit and for the benefit of her husband's company. She had also sought to conceal the true nature of the payments by using false narratives on some of the payment transfer slips. This all demonstrated actual knowledge on the part of the Respondent that what she was doing was wrong and dishonest. In addition the Respondent had admitted that she knew what she was doing was wrong and dishonest. The Tribunal was therefore satisfied beyond all reasonable doubt that the Respondent knew her conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. All the allegations were found proved.

Previous Disciplinary Matters

24. None.

Mitigation

25. Mr Harries, Counsel on behalf of the Respondent, confirmed the Respondent had attended before the Tribunal as she wanted to "face the music" and show her genuine contrition and remorse. She accepted that in a case such as this it was likely she would be struck off the Roll of Solicitors. Whilst she had not asked her Counsel to advance an argument against this, Mr Harries considered it was his responsibility to submit that an indefinite suspension should be considered as it would have the same effect as removal from the Roll. It was accepted the profession had been undermined by the Respondent's conduct but it may be that a strike off was not needed in this case.

26. Mr Harries accepted there were aggravating features in this case. These were serious allegations involving a breach of trust over a lengthy period of time where the conduct had been repeated on two estates. The amount misappropriated was a high value and the Respondent acknowledged she had acted dishonestly. However, Mr Harries submitted there was no evidence of direct concealment, such as forged documents, and when matters were scrutinised, everything unravelled very quickly and in a straightforward manner.

27. Mr Harries submitted there was mitigation in this case that the Tribunal could take into account. The Respondent had admitted her conduct to her fellow partners on 3 January 2016 and had resigned immediately. She had tried to repay what she could and the sum of £94,078.70 was paid immediately into the firm's client account. The Respondent acknowledged that there were money related deficiencies on a number of other estates which were not part of these allegations but she did try to make good her wrongs. In addition, a cheque in the sum of £19,398.72 was paid by the Respondent's husband to the firm as some payments had been made by the Respondent to a PR/Marketing company for him.

28. Mr Harries submitted the Respondent had tried to make additional restitution. On 4 February 2016, a Restraint Order was made ex parte over the Respondent's assets and her husband's assets. Since that was put in place, the Respondent had tried to consolidate her funds so that she could repay further sums to the firm. This, Mr Harries submitted, demonstrated her contrition. Mr Harries provided details of assets and money held in various accounts by the Respondent which indicated there would be over £400,000 available which the Respondent would be able to use to repay those who had lost funds. In addition to this, Mr Harries stated the Respondent had a pension pot of £400,000 which could also be added to apply for restitution. Mr Harries submitted this demonstrated the Respondent's intention to do what she could to make good her wrongs. She had also cooperated fully with the disciplinary process.

29. Whilst the firm was no longer in existence, Mr Harries submitted the reputation of the Respondent's co-partners not been sullied as they, along with the other staff, had gained alternative employment. The firm's insurers had made good some of the losses although Mr Harries accepted this did not detract from the fact that loss had been suffered by either beneficiaries or insurers.

30. The Respondent was now 67 years of age, she was of previous good character with a long career. Mr Harries stated her actions had not been motivated by greed, rather they were motivated by pride. She had always been in a position where she had provided for her close family and friends. She had been an extremely successful solicitor working 50 or 60 hours per week and had been a high fee earner within the firm bringing in a great deal of work. The perception of her success had pressurised her to feel that she had to provide for her family and friends. Her generosity in later years had extended far beyond her means and she had lacked the courage to say that she could not afford to provide the lifestyle they had become accustomed to. This had let her down. Her inability to admit that her success could no longer provide what she wanted had caused her to incur huge credit card debts and loans. It was notable that she had made a peculiar payment to a firm of solicitors for a negligence settlement which the insurers could have met.

31. Once the Respondent started spending beyond her means, Mr Harries submitted it was an inevitable path to ruin. When the figures had been placed before her by the firm the Respondent had been as staggered as others to learn about the extent of the sums taken. She recognised the impact of her actions on the families of the deceased and had acknowledged the distress that she had caused to them for which she was extremely remorseful.

32. Mr Harries informed the Tribunal that the Respondent's husband was 72 years old and she had two adult sons, all of who had also been arrested, interviewed under caution and who were now all on police bail pending further investigation. It was not known whether they would be charged. The Respondent herself had been arrested for fraud by abuse of position and accepted she would be charged as she had made admissions. She hoped her acknowledgment would be sufficient to persuade the authorities not to prosecute her husband and children. She knew that if charged, she could be facing an imprisonment sentence of some years. However the Respondent's primary concern was for her family and those who had suffered due to her actions. She wanted to put them first and would accept whatever punishment came to her. Mr Harries submitted this was a sorry conclusion to a long legal career. Her actions had shattered her.

33. Mr Harries stated the Respondent wished to express her abhorrence at her own behaviour which had led to catastrophic consequences for her partners, her clients and their families. She had contemplated her conduct a great deal over the last nine months and could only express her apologies and remorse. Her reputation was shattered. She was now beyond retirement age, she did not have a practising certificate and did not plan to practise again. Mr Harries submitted the Tribunal needed to consider whether the public would be adequately protected if the Respondent was to be indefinitely suspended rather than struck off the Roll.

Sanction

34. The Tribunal had considered carefully the Respondent's submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

35. The Respondent's conduct involved planned, deliberate, systematic, repeated dishonesty over a long period of time. She had breached the trust placed in her by vulnerable people, of whom she had taken advantage, as well as the trust placed in her by her fellow partners. These were all aggravating factors.

36. In response to questions from the Tribunal, Mr Johal had confirmed the Compensation Fund had made payments to clients in the sum of £300,000 to date and there were still claims pending in the sum of £600,000 which were being processed. Insurers had made payments of £800,000 so far but may seek to limit their liability by aggregating claims. It was clear therefore that there had been losses of a breathtaking amount.

37. The Tribunal took into account the Respondent's attempts to make good the shortfall she had created, but noted that her assets were significantly less than the amount she had stolen. Whilst the Respondent had shown contrition, this seemed to be after her

conduct had been discovered. However, she had cooperated with the disciplinary process, she had made open and frank admissions and the Tribunal took into account her previously long unblemished record. These were mitigating factors.

38. However, this was a case which related to the dishonest appropriation of very significant amounts of money from the estates of deceased clients who had trusted the Respondent and her firm as a solicitor and executor to look after their wishes when they could no longer do so themselves. The scale of the misappropriation was one of the highest this Tribunal had come across. The Respondent had deprived individuals and charities of monies due to them. Her conduct was systematic, and over a long period of time whilst funds were under her control. This had been a dishonest and utter breach of trust which was driven by personal motives of pride and loss of face with her family and friends.

39. The Respondent was a very experienced solicitor. Her conduct had a huge impact on the reputation of the profession and on the public. A solicitor is to be trusted with client monies. The highest level of trust had been placed in the Respondent by her deceased clients. Beneficiaries and charities relied on the trust placed in solicitors to ensure they received their legacies. The perception of the public was of paramount importance and there must be confidence that a solicitor will do what they say.

40. Although the Respondent did not conceal her behaviour, her conduct only came to light through others; she did not stop voluntarily. However, since January 2016, the Respondent had been open and had cooperated, facing the inevitable. She had made good the losses to an extent, although she may or may not be able to make them good in full. This looked unlikely. The Tribunal took into account the fact that the Respondent had attended before it, particularly in circumstances where many others would not have appeared.

41. This case involved the highest level of seriousness and culpability. This had been a monumental departure by the Respondent from the principles of integrity, probity and trust expected of a solicitor. The extent of harm caused had been extremely significant. The Tribunal considered whether an indefinite suspension would be a sufficient sanction in this case, but took into account the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

42. Whilst an indefinite suspension would prevent the Respondent from harming the public and clients, the Tribunal also had to consider the reputation of the profession and to ensure an example was set to others to prevent such conduct from being repeated. The Tribunal was satisfied that there were no exceptional circumstances, indeed this was dishonesty at the highest level and gravity. It was a very sad end to a long career for the Respondent and it was likely the criminal proceedings would result in a charge and conviction. The Tribunal concluded that, taking into account the public interest, the protection of the public and the maintenance of public confidence in the profession, the appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

43. Mr Johal requested an Order for the Applicant's costs in the total sum of £6,244.10. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs.

44. Mr Harries, on behalf of the Respondent, submitted the Respondent had acknowledged her culpability in relation to this matter from the outset and that must drive down the degree to which the SRA investigation was necessary. The police had been involved very early on and Mr Harries submitted the SRA would usually wait until the outcome of police proceedings as this would reduce the amount of costs incurred. In this case however, the SRA did not wait. The Respondent had a genuine intention to achieve restitution for the damage she had caused by her conduct, and whilst it was accepted the SRA needed funding, looking at matters globally, the SRA was in a better position to bear its losses than those who had suffered due to the Respondent's conduct. Mr Harries submitted it would be preferential for the Respondent's assets to meet losses to beneficiaries. He reminded the Tribunal that any order made in these proceedings would result in the SRA becoming a preferential creditor taking preference over the losses of others.

45. Mr Harries requested the Tribunal make an order for costs not to be enforced without leave of the Tribunal in light of the Restraint Order currently in place. Matters could then be considered at the conclusion of the Proceeds of Crime Act ("POCA") proceedings.

46. Mr Johal submitted the SRA had a duty to protect the public and the reputation of the profession. In this case the Respondent had admitted all the allegations and the amount claimed was a modest sum in comparison to costs on many of the cases brought before the Tribunal. Mr Johal pointed out the Respondent had not taken issue with any specific items on the Applicant's Costs Schedule. This was not a case where the SRA should wait for the outcome of police proceedings which, as it transpired, had still not concluded. There was no certainty of the outcome of the criminal proceedings and the SRA had no choice but to act very urgently to protect the public and bring this case. If the criminal proceedings had concluded quickly, the Applicant would have added the conviction to the allegations by way of a Rule 7 Supplementary Statement but those proceedings were still ongoing.

47. In relation to the enforcement of the costs order, Mr Johal submitted the Respondent had not filed a Statement of Means as required. If there was to be any restriction on the costs order, Mr Johal requested this should simply indicate the costs order was not to be enforced until after the Restraint Order was discharged.

48. The Tribunal considered carefully the submissions of both parties on the matter of costs. The Tribunal did not accept Mr Harries' submissions in relation to the speed of the SRA investigation. This was a case where it was imperative and absolutely right that the SRA conducted the investigation promptly. The police investigation had still not concluded and indeed no charges had yet been made against the Respondent. It was without a doubt the correct decision for the SRA to act as and when it did.

49. The costs claimed by the Applicant in this matter were reasonable. The costs incurred since the issue of the Tribunal proceedings were less than £1,500 and the Tribunal was satisfied a costs order should be made in the amount sought. The Tribunal therefore Ordered the Respondent to pay the Applicant's costs of £6,244.10.

50. On the matter of enforcement, the Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. However, in this case, Respondent had not provided a Statement of Means as required by the Tribunal's directions although it appeared from Mr Harries' submissions that she did have assets. Although a Restraint Order was in place, it was a matter for the Applicant to decide when to enforce the Costs Order made in its favour. The Applicant was clearly aware that a Restraint Order was in place and could only take any action when it was appropriate to do so. The Tribunal did not therefore consider it necessary to impose any restriction on the Order for costs.

Statement of Full Order

51. The Tribunal Ordered that the Respondent, LINDA MARY BOX, 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 £6,244.10.

Dated this 14th day of November 2016
On behalf of the Tribunal

S. Tinkler
Chairman