SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11549-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GILES SANDFORD SCOTT Respondent

Before:

Mrs J. Martineau (in the chair)
Mr B. Forde
Mr S. Marquez

Date of Hearing: 24 February 2017

Appearances

Shaun Moran, solicitor of The Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegation against the Respondent was:

1.1 In his capacity as Attorney for four client matters, namely JLW, EF, JIW and WC, the Respondent made improper transfers and payments between 5 October 2009 and 20 August 2014 totalling £468,712 to his personal bank account in breach of any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and (prior to 6 October 2011) Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007. It was alleged the Respondent had acted dishonestly.

Documents

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

Applicant:

- Application dated 31 August 2016 together with attached Rule 5 Statement and all exhibits
- Rule 7 Supplementary Statement dated 20 January 2017
- Applicant's Statements of Costs dated 31 August 2016 and 21 February 2017
- Letter dated 22 February 2017 from the Applicant to the Respondent

Respondent:

- Letters from the Respondent to the Tribunal dated 31 January 2017, 14 February 2017 and 20 February 2017
- Undated letter from the Respondent and further undated letter from the Respondent to the Tribunal received on 7 February 2017

Service of Proceedings

3. The Respondent was not present at the hearing. He was currently in prison. Mr Moran, on behalf of the Applicant, submitted the Respondent had been properly served with notice of today's hearing. On 20 February 2017, the Respondent had sent a letter to the Tribunal making reference to the hearing.

4. The Tribunal considered carefully all the documents before it and was satisfied the Respondent had been properly served with notice of this hearing. On 6 September 2016, the Tribunal had issued standard directions and written to the Respondent attaching a copy by recorded delivery. Those directions also gave notice of today's hearing. Notification from the Post Office confirmed that letter was delivered on 7 September 2016.

5. The Tribunal further noted the Respondent in his letter to the Tribunal dated 20 February 2017 had made reference to the date of today's hearing so he was clearly aware of it.

Proceeding in Absence

6. Mr Moran submitted that the Tribunal should proceed with this hearing in the Respondent's absence as the Respondent had indicated he would not be attending in his letters to the Tribunal received on 7 February 2017 and also dated 14 February 2017. The Respondent was serving a custodial sentence as a result of the issues that had led to these allegations. He had not requested an adjournment and Mr Moran submitted it was in the public interest for the hearing to proceed in the Respondent's absence.

7. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had written to the Tribunal in letters received on 7 February 2017 and also dated 14 February 2017 in which he had referred to the date of the hearing and confirmed he would be unable to attend. There was no information about whether the Respondent had contacted the Prison Governor to request permission to attend.

8. The Tribunal concluded the Respondent was content to allow these proceedings to continue in his absence and indeed, noted he had indicated in his undated letter to the Tribunal that he consented to the Tribunal making an order in his case. The Respondent had not requested an adjournment and it was unlikely he would attend on a future date if the hearing was to be adjourned.

9. This was a case involving serious allegations. The Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without further delay.

Factual Background

10. The Respondent, born in 1953, was admitted to the Roll of Solicitors on 15 January 1980. He did not hold a current practising certificate.

11. At all material times, the Respondent carried on practice as a partner and subsequently as a member of Langleys Solicitors LLP ("the firm"). He became a partner at Langleys Solicitors in 2007 after his previous firm, Munby & Scott, of which he was a partner, merged with Langleys Solicitors LLP.

12. The firm made a report to the Solicitors Regulation Authority ("SRA") on 29 August 2014 concerning the Respondent's conduct in relation to 4 clients for whom he had held a Power of Attorney. The Respondent was alleged to have made a number of transfers and payments from the firm's clients' bank accounts to his own personal bank account.

13. A Forensic Investigation Officer ("FIO") from the SRA commenced an investigation into the matter on 28 April 2015 and produced a report dated 24 November 2015.

14. The Respondent was the Attorney for clients JLW, EF, JIW and WC. The FIO identified the Respondent held a personal bank account which was a joint account with his wife, into which funds had been received which related to these four clients. The FIO found that at 31 March 2015, there was a minimum cash shortage on the firm's clients' accounts in the sum of £331,503.76. The FIO found that this had been caused entirely by the Respondent making improper transfers and payments from the four accounts of the clients, for whom he held a Power of Attorney, into his own personal bank account.

Client JLW – Improper Payments of £182,940

15. On 18 September 2006, client JLW signed an Enduring Power of Attorney appointing the Respondent as her Attorney. There was a client care letter on the file confirming the Respondent was the fee earner on this case, however there were no financial transactions and the file was closed in 2008. The firm was subsequently instructed to act for JLW and a client care letter confirmed the Respondent was the fee earner.

16. On 5 October 2009, following the sale of JLW's house, the Respondent wrote to the client's bank informing them of a change of address for the client and requesting all correspondence to be sent care of himself and to his own home address.

17. The FIO found that between 5 October 2009 and 10 April 2014, there were 69 improper transfers from JLW's bank accounts to the Respondent's personal bank account ranging from the sum of £20 to £18,000, in the total sum of £182,940. None of these transfers were recorded in the accounting records and the client file did not indicate any reason for the transfers.

18. The largest transfer made was in the sum of £18,000. At the time that this transfer was made the Respondent's personal bank account was overdrawn by £5,409.76. There was no reference to this withdrawal on the accounting records.

19. Between 12 October 2009 and 16 July 2014, there were 53 amounts repaid to JLW's account from the Respondent's personal bank account in the total sum of £83,030. There was still a minimum cash shortage on the client's account in the sum of £99,910.

20. At the instigation of the firm, the Respondent signed a Deed of Disclaimer on 2 September 2014 disclaiming him as JLW's Attorney.

Client EF – Improper Payments of £147,560

21. On 23 February 2007, client EF signed an Enduring Power of Attorney appointing the Respondent as her attorney. The firm was subsequently instructed to act for EF under the terms of the Enduring Power of Attorney. In January 2009 a client care letter was sent to EF confirming the Respondent was the fee earner.

22. Between 22 October 2010 and 14 July 2014, there were 28 improper withdrawals from EF's bank account, 26 of which were paid into the Respondent's personal bank account. The payments ranged from £30 to £26,000 and came to a total of £147,560.

None of these were recorded in the accounting records and the client file did not indicate any reason for the withdrawals.

23. Between 25 May 2011 and 9 April 2014, there were 9 amounts repaid to EF's bank account from the Respondent's personal bank account totalling £23,278.24. This resulted in a net minimum cash shortage on the client's account in the sum of £128,281 at the date of the investigation.

24. The largest withdrawal was in the sum of £26,000 on 4 January 2012 by a cheque made payable to the Respondent and signed by him as EF's Attorney. On 5 January 2012, there was a deposit into the Respondent's personal bank account in the sum of £26,000. At the time of the deposit the Respondent's personal bank account was withdrawn by £12,093.95. The accounting records did not include this withdrawal of £26,000 and there was nothing on the client file to indicate the reason for it.

Client JIW – Improper Payments of £81,232

25. On 29 November 2016, client JIW signed an Enduring Power of Attorney appointing the Respondent as his Attorney. On 29 November 2010, a client care letter to JIW confirmed the Respondent was the fee earner on this case.

26. Between 26 October 2011 and 15 August 2014, there were 19 improper transfers from JIW's account to the Respondent's personal bank account in the sums of between £200 and £18,000 in the total sum of £81,232. None of these amounts were recorded in the accounting records and the client file did not indicate any reason for the transfers. The largest of the transfers was on 15 August 2014 in the sum of £8,500 and at the time of this transfer the Respondent's personal bank account was overdrawn by £12,489.44.

27. At the instigation of the firm, the Respondent signed a Deed of Disclaimer disclaiming him as JIW's Attorney.

Client WC – Improper Payments of £56,980

28. On 7 September 2007, client WC signed an Enduring Power of Attorney appointing the Respondent and a former employee of the firm as her Attorneys. The Firm was subsequently instructed to act for WC under the terms of the Enduring Power of Attorney and on 5 August 2011, a client care letter was sent to WC confirming the Respondent and the former employee of the firm were the fee earners.

29. Between 28 March 2013 and 20 August 2014, there were 27 improper withdrawals from WC's bank account, 24 of which were paid into the Respondent's own bank account (3 of which were bank charges in relation to the improper transfers). The amounts transferred varied from £30 to £10,000 making a total of £56,980. None of these payments were recorded in the accounting records and the client file did not indicate any reason for the withdrawals.

30. The largest improper transfer in the sum of £10,000 was made on 27 December 2013. At the time of this transfer the Respondent's personal bank account was withdrawn by £8,778.78.

31. Between 23 April 2013 and 13 February 2014, there were 4 amounts repaid to WC's bank account in the total sum of £8,200 leaving a minimum shortage on the client's account of £48,780 at the date of the investigation.

32. In June 2013, a cheque in the sum of £8,800 was drawn on WC's bank account and made payable to GSS. This cheque cleared through WC's account on 24 June 2013. On 20 June 2013 there was a deposit into the Respondent's personal bank account of £8,800. At the time of this transfer, the Respondent's account was overdrawn by the sum of £8,485.37.

33. On 28 May 2015 and 26 August 2015, the FIO wrote to the Respondent requesting documents and further information in relation to the Power of Attorney matters for JLW, EF, JIW and WC. The Respondent did not reply. On 1 June 2015, the Respondent's wife wrote to the FIO stating the Respondent was unable to meet the FIO as he was ill. She provided the FIO with details of his medical condition.

34. On 25 April 2016 the Respondent appeared at Teeside Crown Court where he pleaded guilty to 5 counts of fraud, 6 counts of theft and 7 counts of transferring criminal property. These convictions related to the improper transfers made on the files of JLW, EF, JIW and WC. On 30 September 2016, the Respondent was sentenced to a total of 4 years of imprisonment.

Witnesses

35. No witnesses gave evidence.

Findings of Fact and Law

36. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.

37. **Allegation 1.1: In his capacity as Attorney for four client matters, namely JLW, EF, JIW and WC, the Respondent made improper transfers and payments between 5 October 2009 and 20 August 2014 totalling £468,712 to his personal bank account in breach of any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and (prior to 6 October 2011) Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007. It was alleged the Respondent had acted dishonestly.**

37.1 Mr Moran, on behalf of the Applicant, drew the Tribunal's attention to the Certificate of Conviction from the Teeside Crown Court dated 12 January 2016 confirming the Respondent's convictions, together with the remarks of the Sentencing Judge which confirmed the convictions related to the Respondent taking advantage of his position as Attorney for JLW, EF, JIW and WC.

37.2 Mr Moran submitted the Respondent's conduct was dishonest as there had been no good reason for the systematic transfers which had been made over a long period and at times when the Respondent's own bank account had been overdrawn. The transfers had allowed the Respondent to benefit from money which did not belong to him.

37.3 The Respondent had written various letters which were before the Tribunal. In his undated letter he stated:

> "I can't disagree with evidence [sic] except for some points Re [JLW] I can only show deep down remorse and abject apology to those persons & family I have betrayed and failed in my duty and agrieved [sic].
>
> With my constant lapses of judgement, my failure to manage my own and my clients financial matters I became tempted to balance my own account by using money belonging to my clients. I never intended to permanently deprive my clients and fully intended to repay, some of which I did……
>
> Debt was mounting my judgement had failed, I panicked and kept transferring money even when in hospital…..
>
> I was so desperate to balance my Account & my clients banks that I made transfers by phone when I should have rested at night……."

37.4 In his letter to the Tribunal of 31 January 2017 the Respondent had stated:

> "I have real humility remorse and a deep down apology for what has happened and what I did and have done to the agrieved [sic] parties and all those I have hurt so badly ….."

37.5 In his letter of 20 February 2017, the Respondent had referred to medical reports and references but copies of these were not provided to the Tribunal by either the Respondent, or his former solicitors who had indicated they did not have instructions from him.

37.6 The Tribunal also had before it a Certificate of Conviction from the Teeside Crown Court dated 12 January 2016 which confirmed that on 25 April 2016, the Respondent had pleaded guilty to various offences which related to the improper transfers made from the bank accounts of JLW, EF, JIW and EC. These offences included fraud, theft and transferring criminal property which were all dishonest actions. The Certificate also confirmed the Respondent had been sentenced to 4 years imprisonment on 30 September 2016.

37.7 The remarks of the Sentencing Judge indicated the Respondent had, having a Power of Attorney in respect of the four elderly and vulnerable clients, gained access to their bank accounts and "plundered those accounts in order to fund your own financial difficulties".

37.8 It appeared from the Respondent's correspondence to the Tribunal that he accepted his actions and that he realised he had taken client funds which he was not entitled to.

37.9 The Tribunal also carefully considered all the documents which had been provided. These included the four Power of Attorney documents and copies of the bank statements for JLW, EF, JIW and EC together with the Respondent's own personal bank statements. It was clear from these that the Respondent had made transfers from each of those client bank accounts into his own personal bank account as alleged.

37.10 The Tribunal noted that the documents provided included a letter from a Consultant Psychiatrist dated 6 August 2015 which made reference to the Respondent's health in July 2015, which was after the date of the conduct. The letter did contain some information about what the Respondent had told the Psychiatrist about his medical history. The Tribunal did not consider this letter provided sufficient evidence of the Respondent's state of mind at the time of the conduct complained about.

37.11 The Tribunal was satisfied that, in light of the documents provided, the Respondent's admissions and his related convictions, he had breached Principle 2 of the SRA Principles 2011 ("the Principles") and Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code") as he had grossly breached his position of trust as an Attorney for these clients by taking their money. He had thereby failed to act with integrity. He had also breached Principle 4 of the Principles and Rule 1.04 of the Code in that he had failed to act in the best interests of each client as he had deprived them of their funds for his own personal benefit. In doing so the Respondent had failed to provide a proper standard of service to his clients and had breached Principle 5 of the Principles and Rule 1.05 of the Code.

37.12 The Tribunal was also satisfied the Respondent had failed to behave in a way that maintained the trust the public placed in him or in the provision of legal services by using his position of trust to take client funds and use them for his own purposes. He had behaved in a way that was likely to diminish the trust the public placed in him or in the profession. He had therefore breached both Principle 1.06 of the Principles and Rule 1.06 of the Code. In making the improper transfers and depriving each of his clients of their funds, the Respondent had failed to protect client money and assets and had breached Principle 10 of the Principles.

37.13 There was also an allegation of dishonesty. 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. Firstly, 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 himself realised that by those standards his conduct was dishonest.

37.14 The Tribunal was in no doubt that reasonable and honest people would regard the Respondent's conduct to be dishonest. Clients had trusted him to look after their personal affairs and he had taken advantage of that trust by transferring their funds to his own bank account and using their money for his own benefit.

37.15 The Tribunal was also satisfied that the Respondent himself realised that by the standards of reasonable and honest people his conduct was dishonest. He knew he had a Power of Attorney and he abused this position by using his authority to systematically transfer client funds, which he knew did not belong to him, from his clients' accounts to his own personal bank account for his own personal use, over a

very long period of time. He knew that his clients were elderly and vulnerable and he took advantage of this fact knowing they were unlikely to be aware of his actions. There were a number of occasions when his own bank account was overdrawn and the transfer of these funds allowed him to address his own financial difficulties.

37.16 It was clear from the Respondent's letters to the Tribunal that he realised what he had done was dishonest as he made reference to his lapses of judgment and his failure to manage his own and his clients' financial affairs. He had expressed his feelings of remorse and shame, and he made reference to his fear of the consequences of his behaviour which also indicated he knew he had acted dishonestly.

37.17 Furthermore, the Tribunal accepted the Certificate of Conviction from the Teeside Crown Court which included the Respondent's convictions for various offences related directly to these 4 elderly clients, which contained a dishonest element. This was also evidence of the Respondent's dishonest conduct.

37.18 The Tribunal found the allegation proved.

Previous Disciplinary Matters

38. None.

Mitigation

39. The Respondent had provided mitigation in the letters he had written to the Tribunal. In his undated letter he stated the following:

> "I am the subject of an application to strike me off the Roll. Please would you take into account the following in making your order which I consent to….
>
> …..I have betrayed the keystone of solicitor/client relationship, created a breach of trust of huge magnitude, destroyed the confidence which clients have in their trusted solicitor to act in their best interests with their well-being paramount and the protection of their assets, destroyed my own good reputation……..
>
> All this and the catastrophic mental and physical impact on those agrieved [sic] and their families leaves me in the greatest shame and abject sorrow and apology for those clients betrayed by their trusted adviser.
>
> As for me now these acts of betrayal deceit and deception to balance my own books at their expense leave me with nothing but fear in my eyes and soul and this is just and proper that I am facing that very same fear desperation hopelessness and overwhelming insecurity that I imposed on the victims and their families…….
>
> I ask myself every day why did I offend and why destroy those people's lives - why should I have had the arrogant greed and totally unforgivable attitude towards those persons who put absolute trust in me …."

40. The Respondent had also referred to his ill health which he stated had caused him to be absent from work for periods, and the impact his health had had on his work when he returned. He stated this had led to his financial difficulties.

Sanction

41. The Tribunal had considered carefully the Respondent's letters and the documents provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

42. Whilst the Respondent had referred to testimonials and medical reports which were with his former solicitors, these had not been provided to the Tribunal and could not therefore be considered, despite Mr Moran's efforts to try and obtain copies. Notwithstanding what these may have stated, the Tribunal had no doubt that the Respondent's level of culpability was extremely high. His motivation had been personal gain and his actions had been planned. He had acted in breach of a position of trust and had direct control of his behaviour. He was an experienced solicitor in a senior position, having been qualified since 1980, and his conduct had caused immense harm to both clients and the reputation of the profession.

43. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent's conduct had been calculated and had taken place repeatedly over a long period of almost 5 years. He had personally benefited from systematically defrauding elderly vulnerable clients of large amounts of money and this had resulted in various criminal convictions. The Respondent had acted dishonestly and the money had been used for his own personal benefit to address his financial difficulties. These were all aggravating factors.

44. The Respondent did have a previously long unblemished record. In his letters he had expressed insight, remorse and shame at his behaviour. These were mitigating factors. Whilst he had repaid some of the funds he had taken from clients, this was before his conduct had come to light so there was an element of concealment at that time. His conduct was eventually reported by the firm.

45. The Respondent had made reference to his medical conditions in his various letters. The only independent evidence to support this was in the letter from a Consultant Psychiatrist dated 6 August 2015 and that was limited. The remarks of the Sentencing Judge had made reference to medical reports provided and had concluded that whilst there was some force in mitigation in relation to the Respondent's health, that did not provide any defence or excuse, although it was an indicator as to why the Respondent had got himself into this situation. The Tribunal took these remarks into account.

46. The Tribunal considered each of the sanctions available to it in ascending order. In view of the gravity of the Respondent's conduct the Tribunal was satisfied that it would not be appropriate to impose No Order, or a Reprimand, or a Fine or a Restriction Order. None of these would reflect the Respondent's serious departure from the standards expected of a solicitor and the immense harm he had caused.

47. The Tribunal then considered whether a suspension was a sufficient sanction but concluded it was not. It was clear that the Respondent was a risk to the public, he could not be trusted with client funds and the public needed to be protected from future harm from him. The Tribunal was also mindful of 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"

48. There were no exceptional circumstances in this case. The Tribunal was satisfied that the appropriate and proportionate sanction which would ensure the public was properly protected was to Strike the Respondent off the Roll of Solicitors. This would reflect the seriousness of the Respondent's misconduct, which was at the highest level and it would maintain public confidence in the profession as well as protect the reputation of the profession. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

49. Mr Moran, on behalf of the Applicant, requested an Order for his costs in the total sum of £26,899.50 and provided the Tribunal with a breakdown of those costs. He submitted that given the serious nature of the allegations, it had not been appropriate for the SRA to wait for the conclusion of the criminal prosecution and take no action in the interim. The majority of the costs claimed related to the forensic investigation.

50. The Respondent had provided the Tribunal with details of his financial circumstances but had not provided any supporting evidence. It appeared from those details that the Respondent was the owner of a property although he indicated he had substantial debts. In his letters to the Tribunal the Respondent had stated he could not pay the costs and he confirmed he was subject to an Order under the Proceeds of Crime Act.

51. The Tribunal had considered carefully the matter of costs. The Tribunal entirely accepted the Applicant's position that it would not have been appropriate for the Applicant to take no action pending the criminal prosecution. The Applicant had acted properly in the way it had proceeded.

52. However, the costs claimed were rather high and needed some reduction. The Tribunal reduced the time claimed for attending the hearing from 7 hours to 3 hours as it had not taken as long as estimated on the Schedule. The Tribunal also reduced the time claimed for preparation from 5 hours to 4 hours as it considered this to be a reasonable amount of time. A claim had been submitted for both accommodation and travel which seemed high. The Tribunal reduced these elements to £200 on the basis that if overnight accommodation was to be awarded, there was no need for the Applicant's representative to travel into London during peak hours the previous day. The Tribunal also considered the claim of 28 hours for preparation of the application was too high and allowed 20 hours as it considered this to be reasonable. Having made these reductions, the Tribunal assessed the Applicant's total costs in the sum of £23,484.50 and Ordered the Respondent to pay this amount.

53. In relation to enforcement of those costs, the Tribunal noted the Respondent was currently in prison and subject to a Proceeds of Crime Act Order. The Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

54. In this case, although the Respondent had provided details of his financial position, there was no independent supporting documentary evidence. 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 in light of his age and the Tribunal's Order depriving him of his livelihood. However, in this case, the Respondent clearly had an interest in a property and there was no reason why the Order sought by the Applicant should not be made without any restriction.

Statement of Full Order

55. The Tribunal Ordered that the Respondent, GILES SANDFORD SCOTT, 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 £23,484.50.

Dated this 28th day of March 2017
On behalf of the Tribunal

J. Martineau
Chairman