SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11565-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NICHOLAS CHARLES STANSFIELD GODDARD Respondent

Before:

Mr D. Green (in the chair)
Mr J. C. Chesterton
Mrs C. Valentine

Date of Hearing: 22 - 23 February 2017

Appearances

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

Andrew Foden, barrister, of Liverpool Civil Law, 1 Old Hall Street, Liverpool L3 9HF, instructed directly by the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:-

1.1 Between 4 September 2015 and 15 March 2016, by improperly transferring a minimum sum of £77,387.00 from the client account of Total Law, a firm of which he was the Recognised Sole Practitioner, to that firm's office account, he breached any or all of:

1.1.1 Principle 2 of the SRA Principles 2011("the Principles");

1.1.2 Principle 6 of the Principles;

1.1.3 Rule 1.2(a) of the SRA Accounts Rules 2011 ("SAR");

1.1.4 Rule 1.2 (c) of the SAR;

1.1.5 Rule 20.1 of the SAR; and/or

1.1.6 Rule 20.3 of the SAR.

1.2 By failing to remedy the consequent shortage on the client account arising from the transfers referred to in allegation 1.1 above he breached Rule 7.1 of the SAR.

1.3 Between 10 December 2015 and 4 July 2016 he failed to pay the total sum of £88,500 received on behalf of his client Ms AK, to Ms AK, despite her numerous requests for him to do so, and therefore breached all or any of:

1.3.1 Principle 2 of the Principles;

1.3.2 Principle 4 of the Principles;

1.3.3 Principle 5 of the Principles;

1.3.4 Principle 6 of the Principles; and/or

1.3.5 Rule 14.3 of the SAR.

1.4 By failing to pay the sums of £2,887.00 and £1,000.00 due to his clients Ms SB and Ms FR respectively, he breached all or any of:

1.4.1 Principle 2 of the Principles;

1.4.2 Principle 4 of the Principles;

1.4.3 Principle 5 of the Principles;

1.4.4 Principle 6 of the Principles; and/or

1.4.5 Rule 14.3 of the SAR.

1.5 During the period 15 September 2015 (at the latest) to 4 July 2016, he failed to keep accounting records properly written up to show Total Law's dealings with client money and thereby each breached any or all of:

1.5.1 Principle 7 of the Principles;

1.5.2 Principle 8 of the Principles; and/or

1.5.3 Rule 29.2 of the SAR.

1.6 By failing to notify the SRA that he had been served with a Bankruptcy Petition dated 26 May 2015 and that he was consequently adjudged bankrupt on 18 May 2016, he breached or failed to achieve either or both of:

1.6.1 Principle 7 of the Principles; and/or

1.6.2 Outcome 10.3 of the SRA Code of Conduct 2011.

2. While dishonesty was alleged with respect to the allegations 1.1 and 1.3 proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

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

- Notice of Application dated 18 October 2016
- Rule 5 Statement and Exhibit EP1 dated 18 October 2016
- Respondent's Answer to the Rule 5 Statement dated 19 December 2016
- Applicant's Reply to the Respondent's Answer dated 9 January 2017
- Respondent's bundle including character references and report of Dr El-Assra dated 20 February 2017
- Applicant's Schedule of Costs dated 14 February 2017

Factual Background

4. The Respondent was born in March 1965 and was admitted to the Roll of Solicitors in August 1991. His name remained upon the Roll of Solicitors. He did not hold a current practising certificate. His practising certificate for the period 2015-2016 was suspended on 19 June 2016 as a result of his being adjudged bankrupt on 18 May 2016.

5. The Respondent was the Recognised Sole Practitioner of Total Law ("the Firm"), from 1 June 2009 until it was intervened into by the SRA on 4 July 2016. He was appointed as the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") on 14 November 2012.

6. On 16 June 2016 a duly authorised officer of the SRA ("the FIO") commenced an inspection of the books of accounts and other documents of the Firm. The FIO met with the Respondent on that date. The Respondent informed him that "he had been in financial difficulty and ... had used clients' monies to "prop up" his firm", and that there was a total client cash shortage of approximately £75,000-£76,000. In an email to the FIO dated 21 June 2016 the Respondent confirmed that the shortage was £77,387.

7. An Interim FI Report dated 23 June 2016 ("the Interim FI Report") and a Final FI Report dated 24 August 2016 ("the FI Report") detailed a number of improper withdrawals from the Firm's client account from 4 September 2015 to 15 March 2016.

8. On 30 June 2016 a Decision was made by a Panel of Adjudicators to intervene into the practice of the Firm, and the Firm was intervened into by the SRA on 4 July 2016.

Allegation 1.1

9. Principle 2 of the Principles states that: "You must act with integrity".

10. Principle 6 of the Principles states that: "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

11. Rule 1.2 (a) and (c) of the SRA Accounts Rules 2011 states that: "You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

    (a) keep other people's money separate from money belonging to you or your firm;

    (c) use each client's money for that client's matters only"

12. Rule 20.1 of the SAR sets out the circumstances in which client money can be withdrawn from client account.

13. Rule 20.3 of the SAR sets out the circumstances in which office money can be withdrawn from client account.

14. On 8 August 2016 the FIO reviewed the Firm's bank statements and available accounting records, and confirmed that the Respondent had made unallocated round sum transfers from the Firm's client account to its office account between 4 September 2015 and 15 March 2016.

15. Due to the limited access to the Firm's accounting records and the unreliability of those records, the FIO was unable to verify to what extent the unallocated transfers represented a cash shortage. The cash shortage figure of £77,387 as stated in the Interim FI Report was relied upon, but stated as being a minimum shortage, and not more than £149,179.82.

16. The Respondent initially advised the FIO that there was a "client bank account deficit in the sum of £73,000 in respect of [Ms AK's] matter.... also client bank account deficits on the client matters of [Ms FR and Ms SB] in the sums of approximately £1,000 and £2-3,000 respectively".

17. The Respondent further informed the FIO that he "had been transferring client monies from client to office bank account in round sum amounts of, for example, £1,000, £2,000 or £5,000 to put office bank in funds to enable him to pay staff salaries ... [he] continued to do this until there was no money left in client bank account".

18. On 10 December 2015 the client bank statement recorded a payment of £108,500 being received in respect of the matter of Ms AK. On the same day, two transfers totalling £20,000 were made from the Firm's client account to its office account in respect of costs on that matter, leaving the sum of £88,500 held in client account due to Ms AK.

19. Between 14 December 2015 and 19 February 2016, there were a further 18 transfers from the Firm's client account to its office account, totalling £93,440, ranging in value between £1,200 and £20,000. This sum was in excess of the sum being held for Ms AK in client account. Each of those transfers were made by the Respondent; only he could operate the Firm's bank accounts.

Allegation 1.2

20. Rule 7.1 of the SAR states that: "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account".

21. According to the Respondent, as of 16 June 2016 there was "a client account deficit in the sum of £73,500 in respect of [his client Ms AK's] matter" together with client bank account deficits on the client matters of [his clients Ms FR and Ms SB] in the sums of approximately £1,000 and £2-3,000 respectively".

22. The Respondent advised the FIO during his 16 June 2016 interview that he would "raise funds from family and friends to rectify this cash shortage within two to four weeks". However, on 18 August 2016 he advised the FIO during a telephone conversation that he "had not replaced those funds".

23. On 24 August the Intervention Agent advised the FIO that no funds had been received from the Respondent. No monies had since been repaid and as at the date of the hearing the shortage remained on client account.

Allegations 1.3 and 1.4

24. Principle 4 of the Principles states that: "You must act in the best interest of each client".

25. Principle 5 of the Principles states that: "You must provide a proper standard of service to your clients".

26. Rule 14.3 of the SAR states that: "Client money must be returned to the client (or any other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds....."

27. Ms AK instructed a former employee of the Firm in respect of a personal injury claim arising from a road traffic accident in January 2013. In early December 2015, Ms AK agreed to accept a Part 36 offer from the Defendant's Insurer, on the understanding that her settlement monies would be received within fourteen days.

28. On 10 December 2015, the sum of £108,500 was received into the Firm's client account in respect of personal injury damages due to Ms AK. After two transfers totalling £20,000 were made from the Firm's client account to its office account in respect of costs, the sum £88,500 remained in client account due to Ms AK.

29. When she had not received the monies from the Firm, Ms AK chased the Respondent in January and February 2016, following which the sums of £5,000 and £10,000 were forwarded to her on 23 February and 1 April 2016 respectively, leaving an outstanding balance owing to her of £73,500.

30. On 15 June 2016 Ms AK wrote to the SRA detailing her complaint against the Respondent, alleging that he had avoided her "for several months", and then provided her with his personal mobile number so that she "would not contact the office and discover his lies".

31. In her letter, Ms AK described the effect that stress can have on her health, and stated that:

> "Since the accident in January 2013, life has been a great challenge. The claim was settled in December to help me move forward with my life. [The Respondent] has prevented this from happening. He abused the trust of a sick individual, and has caused me considerable upset and emotional distress as a result of his actions. This is (sic) turn has considerably increased the pain that I suffer".

32. Ms AK advised that until she spoke directly to the Defendant's insurers on 18 February 2016 she was not aware that the monies had been transferred to the Firm, as "up until this date [the Respondent] failed to acknowledge these funds were received". She further stated that "[the Respondent] should have discussed when the remainder would be transferred but he has avoided me, lied to me and manipulated me in order to not discuss this issue".

33. Ms AK exchanged a number of text messages with the Respondent between the start of February and 8 June 2016. These included a text on 16 May 2016 which stated:

> "Hi Nick.
>
> You'll recall in April, I stated I wanted to discuss o/s funds (& my future).
>
> You hadn't come back to me. It's nearly June now.

Regardless of personal circumstances, I would have expected the issue of returning the sum of £73,500 to have been of paramount concern.

What is happening in relation to this?

I am getting really upset with how people take advantage of my good nature - I should never have been put in this position and it's really unfair that I have"

34. Despite his assurance on 18 May 2016 that he had "been sorting everything out I can get you 5 to 10k for the end of the week and work towards giving you the full balance over the course of the next 2 weeks", Ms AK did not receive any further monies from the Respondent.

35. On 1 June 2016 Ms AK sent a text to the Respondent asking "Could you confirm the status of the o/s funds. I'm assuming you're now in a position to transfer over the funds?" The Respondent replied "I will definitely be in a position to transfer at the start of next week. Could you give me your account details again when you have a minute", however the Respondent failed to forward the any or all of the outstanding balance of £73,500 to Ms AK.

36. In addition to retaining the sum £73,500 due to Ms AK, the Respondent also failed to return the sums of £2,887 and £1,000 due to his clients Ms SB and Ms FR

Allegation 1.5

37. Principle 7 of the Principles states that: "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner".

38. Principle 8 of the Principles states that: "You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles".

39. Rule 29.2 of the SAR states that: "All dealings with client money must be appropriately recorded:

    (a) in a client cash account or in a record of sums transferred from one client ledger to another; and

    (b) on the client side of a separate client ledger account for each client (or other person, or trust).

    No other entries may be made in these records."

40. A list of client ledger balances as at 18 July 2016 recorded total liabilities to clients of £16,598.65 ("the List"). No funds were held on the Firm's client account as of that date. The List did not record any monies being held for the Respondent's clients Ms AK, Ms SB or Ms FR, despite the Firm's liability to them in the sums of £73,500, £1,000 and £2,887 respectively.

41. The List also included a debit balance of £66,956.03 in respect of a miscellaneous client ledger referred to as 'MISC2010'. The ledger for that account detailed various unallocated transfers.

42. Further, as stated above, the Respondent had transferred client monies from client to office bank account to put the office bank account in funds to enable him to pay staff salaries, and that he had continued this until there was no money left in the client bank account.

Allegation 1.6

43. Outcome 10.3 of the SRA Code of Conduct 2011 states that: "You notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook".

44. On 7 June 2016 HM Insolvency Service reported to the SRA that the Respondent had been adjudged bankrupt on 18 May 2016.

45. The Respondent had failed to notify the SRA that he was in financial difficulty. During a telephone conversation with the FIO on 14 June 2016 the Respondent advised that he had been adjudged bankrupt and acknowledged that he should have contacted the SRA sooner but was "trying to do his best" and "wanted to cooperate".

46. At his meeting with the FIO on 16 June 2016, the Respondent stated that his current debt to HM Revenue and Customs was approximately £155,000 and that his Firm's total debt was approximately £250,000 to £300,000, plus personal debts to family and friends who had loaned monies to him.

Witnesses

47. Nicholas Goddard – the Respondent (in mitigation only).

Findings of Fact and Law

48. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

49. **Allegation 1.1 – Between 4 September 2015 and 15 March 2016, by improperly transferring a minimum sum of £77,387.00 from the client account of Total Law, a firm of which he was the Recognised Sole Practitioner, to that firm's office account, he breached any or all of Principle 2 of the Principles; Principle 6 of the Principles; Rule 1.2(a) of the SAR; Rule 1.2(c) of the SAR; Rule 20.1 of the SAR; and/or Rule 20.3 of the SAR.**

49.1 The Respondent admitted allegation 1.1.

49.2 The Tribunal determined that the transfer of monies from client to office account was in breach of the SAR as pleaded and alleged. Further, the Tribunal found beyond reasonable doubt, that the Respondent had breached the Principles as pleaded and alleged. The Respondent, in the knowledge of his professional obligations had used client money for his own purposes; this clearly showed that the Respondent had acted without integrity and had acted in a way that diminished the trust the public placed in him as a solicitor and the provision of legal services. The public would be extremely concerned to learn that a solicitor had misappropriated almost the entirety of his client's award for damages, and had done so in complete disregard of the Rules designed to protect client monies. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts, evidence, submissions and the admission of the Respondent.

50. **Allegation 1.2 - By failing to remedy the consequent shortage on the client account arising from the transfers referred to in allegation 1.1 above he breached Rule 7.1 of the SAR.**

50.1 The Respondent admitted allegation 1.2.

50.2 The Tribunal found that the Respondent had failed to replace the shortage on client account promptly or at all. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts, evidence, submissions and the admission of the Respondent.

51. **Allegation 1.3 - Between 10 December 2015 and 4 July 2016 he failed to pay the total sum of £88,500 received on behalf of his client Ms AK, to Ms AK, despite her numerous requests for him to do so, and therefore breached all or any of Principles 2, 4, 5 and 6 of the Principles; and/or Rule 14.3 of the SAR.**

Allegation 1.4 - By failing to pay the sums of £2,887.00 and £1,000.00 due to his clients Ms SB and Ms FR respectively, he breached all or any of Principles 2, 4, 5 and 6 of the Principles; and/or Rule 14.3 of the SAR.

51.1 The Respondent admitted allegations 1.3 and 1.4.

51.2 The Tribunal determined that the Respondent had no legitimate reason for retaining monies belonging to his clients, and had admitted that he had used client monies for his own purposes. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Rule 14.3 of the SAR as pleaded and alleged. Further, the Tribunal found beyond reasonable doubt that the Respondent had breached the Principles as pleaded and alleged. The Respondent, in the knowledge of his professional obligations, had failed to treat client monies in accordance with the rules and had utilised client monies for his own purposes. He had failed to return monies properly due to his clients either promptly or at all. This clearly showed that the Respondent had acted without integrity; failed to protect client money; failed to provide a proper standard of service to his clients and had acted in a way that diminished the trust the public placed in him as a solicitor and the provision of legal services. Accordingly, the Tribunal found allegations 1.3 and 1.4 proved beyond reasonable doubt on the facts, evidence, submissions and admissions of the Respondent.

52. **Allegation 1.5 – During the period 15 September 2015 (at the latest) to 4 July 2016, he failed to keep accounting records properly written up to show Total Law's dealings with client money and thereby each breached any or all of Principles 7 and 8 of the Principles; and/or Rule 29.2 of the SAR.**

52.1 The Respondent admitted allegation 1.5.

52.2 The Tribunal determined that it was clear on the facts, that the Respondent, in failing to maintain accurate and properly written up records, was in breach of Rule 29.2 of the SAR and thus found beyond reasonable doubt that the Respondent was in breach of Rule 29.2 as pleaded and alleged. Further, the Tribunal found beyond reasonable doubt that the Respondent had failed to run his business effectively in breach of Principle 8, and had failed to comply with his legal and regulatory obligations in breach of Principle 7. Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt on the facts, evidence, submissions and the admission of the Respondent.

53. **Allegation 1.6 - By failing to notify the SRA that he had been served with a Bankruptcy Petition dated 26 May 2015 and that he was consequently adjudged bankrupt on 18 May 2016, he breached or failed to achieve either or both of Principle 7 of the Principles; and/or Outcome 10.3 of the SRA Code of Conduct 2011.**

53.1 The Respondent admitted allegation 1.6.

53.2 The Tribunal determined that the service of a bankruptcy petition was a material change which the Respondent should have reported to the Applicant. In failing to do so, he had failed to achieve Outcome 10.3 and had breached Principle 7 as pleaded and alleged. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt on the facts, evidence, submissions and the admission of the Respondent.

54. **Dishonesty in relation to allegations 1.1 and 1.3**

54.1 Mr Bullock stated that the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings; i.e. the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12 was the appropriate test. Twinsectra required that the person has acted dishonestly by the ordinary standards of reasonable and honest people (the objective test) and that he himself realised that by those standards his conduct was dishonest (the subjective test).

54.2 Mr Bullock submitted that in knowingly transferring monies from the Firm's client account to its office account, in circumstances other than those permitted by Rules 20.1 and 20.3 of the SAR, causing the client account to be overdrawn and failing to pay monies rightfully due to his clients, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Accordingly, it was submitted that the objective element of the Twinsectra test was satisfied

54.3 Mr Bullock further submitted that not only was the Respondent's conduct objectively dishonest, but he must also have realised that it was dishonest by the ordinary standards of reasonable and honest people for the following reasons:-

- The Respondent admitted dishonesty.

- The Respondent was a solicitor with nearly 25 years' experience in practice and had practiced on his own account at the Firm for nine years. It was inconceivable that a solicitor possessing that degree of experience would not have understood his obligations under the Accounts Rules and the sacrosanct character of client money.

- This was not a single isolated incident, but was a course of conduct spanning eight months and numbering 35 separate transactions. In the circumstances this was not a 'moment of madness'. An honest solicitor, it was submitted, during that period of time would have realised the impropriety of his actions. The Respondent had continued on regardless.

- The Respondent was fully aware of the shortage on client account, and brought it to the attention of the FIO during the initial meeting on 16 June 2016 admitting that he had "had made unallocated transfers from client to office bank account to "prop up" his firm". Indeed, the Respondent admitted that he continued to make round sum transfers from the Firm's client account to its office account "until there was no money left in client bank account".

- The Respondent was aware that the sum of £73,500 was due to be paid to his client Ms AK, and made a number of reassurances to her between 19 February and 2 June 2016 that he would "sort everything out on Monday when I'm back in the office" (on 19 February 2016), that "I've been sorting everything out I can get you 5 to 10k for the end of the week and work towards giving you the full balance over the course of the next 2 weeks" (18 May 2016) and "I will definitely be in a position to transfer at the start of next week" (2 June 2016). Notwithstanding these assurances to his vulnerable client, he made a deliberate decision to continue to use money received in respect of damages due to Ms AK to "prop up" his Firm.

- The Firm's office account was very close to its agreed overdraft limit when the Respondent transferred the monies from the Firm's client account, which allows an inference to be drawn that the monies were taken deliberately and intentionally to enable the Firm's liabilities to be met. The use of client monies in this way was not, it was submitted, a choice that a solicitor acting honestly would make.

- The Respondent was fully aware that he was not entitled to use client money to "prop up" his Firm, and gave a number of assurances to the FIO that the shortage on client account would be repaid. If he had believed that he was entitled to use the client funds as he did, he would not have acknowledged that he needed to replace the shortage.

54.4 Mr Bullock submitted that in all the circumstances, notwithstanding the Respondent's admission, the subjective element of the Twinsectra test had been proved to the required standard.

54.5 The Respondent admitted that he had been dishonest as pleaded and alleged.

54.6 The Tribunal determined that reasonable and honest people operating ordinary standards would find it dishonest for a solicitor to improperly utilise client monies for his own benefit, and fail to pay clients monies to which they were rightfully due. Accordingly, the objective test was satisfied.

54.7 The Respondent had admitted that he had used client monies to "prop-up" the Firm, and had failed to return monies to clients to which they were rightfully entitled. The improper transfers made by the Respondent spanned a period of eight months and were directly related, in the main, to keeping the office account within its overdraft limit. Those monies were deliberately taken by the Respondent, as per his admission, to keep the firm afloat. The Respondent was aware of his liability to repay those monies, and had repaid £15,000 to Ms AK. The Tribunal considered that the Respondent, given his experience, was fully aware of his duties and obligations in relation to client monies, and knew that in improperly transferring client monies and failing to give clients monies which were due to them that he had acted dishonestly by the standards of reasonable and honest people. Accordingly the Tribunal found the subjective test was satisfied and found dishonesty proved beyond reasonable doubt as pleaded and alleged, on the facts, evidence, submissions and admission of the Respondent.

Previous Disciplinary Matters

55. None.

Mitigation

56. The Respondent gave evidence in mitigation. He explained that he had admitted matters to the FIO when he attended the Firm. He wanted to co-operate fully with his regulator and did not want to make an already bad situation worse. He accepted that he had clearly been in breach of the Rules and Principles as pleaded and alleged, and had admitted all the allegations (save dishonesty) before receipt of legal advice. He had admitted dishonesty as soon as he had the benefit of legal advice.

57. At the time of the misconduct there had been a catastrophic series of events. He was going through an extremely acrimonious divorce, and his new partner was chronically ill and had been hospitalised. On a number of occasions he had attended hospital expecting the worst. The Firm had lost a client from which it derived approximately 70% of its income, and HMRC were demanding payment of outstanding sums due. The Respondent was also unwell at the time and had been diagnosed in April 2015 with chronic Adjustment Disorder with both anxiety and depression. The report of Dr El-Assra stated that this condition had affected the Respondent's ability to make the right decision at the time.

58. Mr Foden submitted that the Respondent recognised the shortcomings demonstrated by his conduct, however the particular circumstances had created a "perfect storm". The situation he found himself in was wholly exceptional such that he fell within the residual category of cases referred to in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). The Respondent's conduct, as was

demonstrated by the numerous testimonials from eminent legal professionals, was out of character; the Respondent had been held in extremely high regard by his peers and members of the Judiciary; the medical evidence submitted showed that he was suffering from a mental health illness at the time of his misconduct; and his personal and financial circumstances at the time were extremely difficult. It was these matters, taken together, which had created the "perfect storm", and the Tribunal should assess the Respondent's conduct in that context. The Respondent hoped that when his conduct was assessed taking into account all of the circumstances, the Tribunal would find that exceptional circumstances applied such that the Respondent should not be struck off the Roll.

59. Mr Foden submitted that if exceptional circumstances were found, the appropriate sanction would be an indefinite suspension. This would afford the public protection from the Respondent, who would have to return to the Tribunal before being able to practice in future. Further, the lifting of any indefinite suspension, where dishonesty had been found, would only occur in exceptional circumstances.

Sanction

60. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition -December 2016) and to the cases of Bolton v Law Society [1994] 1 WLR 512 CA, Sharma, and R (on the application of the Solicitors Regulation Authority) v Imran [2015] EWHC 2572 (Admin). The Tribunal also considered, in detail, the Respondent's evidence, submissions in mitigation and his character references.

61. The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

62. The Tribunal assessed the seriousness of the misconduct with reference to culpability and harm. This was a case in which the Respondent had been motivated by his desire to keep his firm going. His actions were planned and continued as a course of conduct. He was fully responsible for the circumstances giving rise to the misconduct. The Respondent had acted in breach of a position of trust and was an experienced practitioner. The Tribunal assessed the Respondent's culpability as being high.

63. The Respondent had caused extensive harm to Ms AK and to the reputation of the profession. In her statement to the Applicant dated 20 June 2016, Ms AK explained that she considered that the Respondent's conduct was "a disgrace to the legal profession." Further, his failure to provide her with her funds had caused a property transaction to 'fall through' and his actions had meant that her medical condition had been exacerbated and she had been unable to "move on" with her life. The Tribunal considered the comments made by Ms AK demonstrated the effect that his conduct had had both on her, and on the public perception on the reputation of the profession, and assessed the harm caused by him as serious.

64. The Respondent's conduct was aggravated by his proven and admitted dishonesty. The Tribunal found that the Respondent knew that his conduct was in material breach of his obligations to protect the public and the reputation of the profession. His misconduct was deliberate, calculated and had continued over a period of time. He had taken advantage of his client, and had concealed the receipt of her damages award from her. As stated above, it was clear that the Respondent's conduct had had a significant effect on Ms AK.

65. The Tribunal noted the Respondent's previous unblemished career, his early admissions and the testimonials submitted on his behalf. The Tribunal considered that the Respondent had demonstrated genuine insight and remorse.

66. Given the finding of dishonesty, the Tribunal did not consider that sanctions of a reprimand, fine, restrictions or fixed term suspension were appropriate or proportionate. The Tribunal determined that given the finding of dishonesty, consideration of striking the Respondent off the Roll was required.

67. At paragraph 13 of Sharma Mr Justice Coulson stated:

> "It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll, see Bolton and Salsbury. That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will [be] a disproportionate sentence in all the circumstances, see Salsbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or [over] a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes) and whether it had an adverse effect on others".

68. In Imran, Mr Justice Dove stated at paragraph 24:

> "Clearly, at the heart of any assessment of exceptional circumstances, and the factor which is bound to carry the most significant weight in that assessment, is an understanding of the degree of culpability and the extent of the dishonesty which occurred. This is not only because it is of interest in and of itself in relation to sanction but because it will have a very important bearing upon the assessment of the impact on the reputation of the profession which Sir Thomas Bingham MR (as he then was) in Bolton identified as being the bedrock of the tribunal's jurisdiction."

69. At paragraph 29 he stated:

> "The fact that many solicitors may be able to produce testimonials and may immediately confess the dishonest behaviour is certainly relevant to the determination of whether or not it is an exceptional case, but it is not a factor likely to attract very substantial weight. Of far greater weight would be the extent of the dishonesty both on the character of the particular solicitor

concerned but, most importantly, on the wider reputation of the profession and how it impinges on the public's perception of the profession as a whole."

70. The Tribunal considered carefully whether the circumstances of this case were exceptional such that the protection of the public and the reputation of the legal profession did not require the Respondent to be struck off.

71. The Tribunal determined that the extent of the Respondent's dishonesty was extensive. It had continued over 8 months and involved 35 separate transactions; his misconduct was not merely a 'one-off' or a 'moment of madness', but was a sustained and continuing course of conduct. The impact of his dishonesty on both Ms AK (as demonstrated in her statement) and on the wider reputation of the profession as a whole was significant. The Tribunal considered in detail each of the difficulties the Respondent had to deal with at the time of his misconduct. The Tribunal recognised that each of those problems, on their own, would be extremely difficult for anyone to cope with. Taken together, and given the Respondent's own health, the Tribunal considered that the Respondent would have been under significant pressure and stress. The Tribunal took account of the nature, content and eminence of the testimonials provided. Whilst the Tribunal recognised and empathised with the very difficult circumstances the Respondent faced it did not consider that they were sufficient such as to fall within the residual category of cases referred to in Sharma. Similarly, whilst the regard in which the Respondent was held was clear, that did not outweigh the seriousness of his proven and admitted misconduct. Accordingly, the Tribunal did not find there to be exceptional circumstances.

72. Having considered the Respondent's conduct, his culpability and the harm caused, the Tribunal determined that the appropriate and proportionate sanction for the protection of the public and the reputation of the profession, was to strike the Respondent off the Roll.

Costs

73. Mr Bullock applied for costs as per the Applicant's costs schedule, in the sum of £10,329.02. That amount was to be reduced to take account of the shortened hearing time, and reduced accommodation expenses.

74. The Respondent had provided a statement of means and supporting documentation which showed that:

- He had been made the subject of a Bankruptcy Order on 18 May 2016.
- He had no beneficial interest in his former matrimonial home.
- His only income was Universal Credit.

75. Mr Foden made no submissions in relation to quantum, but submitted that given the Respondent's financial circumstances, any order for costs against the Respondent should not be enforceable without the leave of the Tribunal.

76. The Tribunal considered the costs schedule submitted and determined that the costs claimed were reasonable and proportionate and, but for the Respondent's finances, should be recoverable by the Applicant in full. The Tribunal considered that given the Respondent's lack of income (other than state benefits), and his inability to practice, it was appropriate for him to pay a contribution towards the costs of the Applicant, and not the full costs as claimed. The Tribunal determined that £5,000 was an appropriate amount for the Respondent to contribute to the reasonably incurred costs of the Applicant.

77. The Tribunal noted that there had been no suggestion made by the Respondent that he would be in a position to pay costs at a future date, and accordingly did not deem it appropriate to make any order for the payment of costs other than an immediate order. The Tribunal anticipated that the Applicant's enforcement department would take appropriate steps when seeking to enforce any order, taking account of the Respondent's means and his ability to pay.

Statement of Full Order

78. The Tribunal Ordered that the Respondent, NICHOLAS CHARLES STANSFIELD GODDARD, 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 £5,000.00.

Dated this 10th day of March 2017
On behalf of the Tribunal

D. Green
Chairman