

IN THE MATTER OF LYNN DIANE CORNTHWAITE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr K W Duncan
Lady Maxwell-Hyslop

Date of Hearing: 13th February 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton, solicitor, of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX on 15th January 2008 that Lynn Diane Cornthwaite of 2 Brighton Avenue, Victoria Square, Cleveleys, FY5 2AA, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

David Elwyn Barton further applied for an Order to be made by the Tribunal that the direction of the Adjudicator of The Solicitors Regulation Authority dated 23rd March 2007 in respect of the Respondent by which the Respondent was required to refund fees in the sum of £4,437.50 to Mrs KR be treated for the purposes of enforcement as if it were contained in an order of the High Court.

The allegations against the Respondent were that she had been guilty of conduct unbecoming a solicitor in the following particulars, namely:-

1. She prepared a Will dated 19 January 2006 for her client which made a gift to herself and a member of her staff in circumstances which breached Principle 15.05 of the Guide to the Professional Conduct of Solicitors 1999 (8th Edition) thereby bringing

herself and the solicitors' profession into disrepute contrary to Rule 1 of the Solicitors' Practice Rules 1990;

2. She prepared a Will dated 9th October 2006 for her client which made a gift to herself and a member of her staff in circumstances which breached Rule 16D of the Solicitors Practice Rules 1990;
3. She delayed unreasonably in answering correspondence from the Solicitors Regulation Authority;
4. She had failed to comply with a decision of the Adjudicator dated 23rd March 2007 thereby compromising her good repute and that of the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990;
5. She acted for the buyer and seller of a property (279 B, Fleetwood) in breach of Rule 6 of the Solicitors Practice Rules 1990;
6. She delayed in applying for a Remuneration Certificate in relation to her costs of administering the estate of EP deceased;
7. She failed to apply for a Remuneration Certificate in relation to her costs of acting on the sale of 279 B, the deceased's property;
8. She had culpably overcharged for administering the said estate contrary to Principle 14.12 of the Guide to the Professional Conduct of Solicitors (8th Edition) 1999;
9. She failed to comply with a Remuneration Certificate issued in relation to the costs of the said estate and had thereby compromised her integrity and good repute contrary to Rule 1 of the Solicitors' Practice Rules 1990;
10. She gave a false and misleading explanation to the Consumer Complaints Service concerning the marketing of the said deceased's property and had thereby compromised her integrity contrary to Rule 1 of the Solicitors' Practice Rules 1990;

By a supplementary statement dated 11th July 2008, the further allegations were alleged:

11. She practised as a solicitor without there being in force a certificate issued by The Law Society in accordance with the provisions of Part 1 of the Solicitors Act 1974, contrary to Section 1(A) of the said Act;
12. Contrary to Rule 1 of the Solicitors' Practice Rules 1990 she compromised or impaired her integrity, her good repute and that of the solicitors' profession having charged fees to which she was not entitled. The Respondent was also dishonest;
13. Contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 she failed to act with integrity. She had also been dishonest;
14. Contrary to Rule 10 of the Solicitors' Code of Conduct 2007 she used her position to take unfair advantage of another for her own benefit and had been dishonest;

15. Contrary to Rule 22(3)(b) of the Solicitors' Accounts Rules 1998 she withdrew money from client account in circumstances other than permitted by the said Rules, namely monies purporting to be in respect of fees but which were not properly due to her within the meaning of the said Rule. The Respondent was also dishonest;
16. Contrary to Rule 6 of the Solicitors' Practice Rules 1990 she acted for a seller and buyer of a property in circumstances where there existed a conflict of interests;
17. Contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 she compromised or impaired her duty to act in the best interests of the client;
18. She had failed to reply to correspondence from the Authority and the Legal Complaints Service, and failed to comply with a direction dated 14th December 2007 made under Section 44(B) of the Solicitors Act 1974 thereby failing in her duty to deal with the Solicitors' Regulation Authority and the Legal Complaints Service in an open, prompt and cooperative way.

By a second supplementary statement dated 11th September 2008, a further allegation was added, namely:

19. She failed to deliver her Accountant's Report for the year ended 31st October 2007, due for delivery on or before 30th April 2008.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 13th February 2009 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing, the Applicant gave the Tribunal details of the steps he had taken to ensure that the Respondent continued to be at the same address at 2 Brighton Avenue, Victoria Square, Cleveleys, FY5 2AA, as referred to above, this being the address to which the Rule 5 Statement and the Civil Evidence Act Notices and notification of the hearing date had been served. The Tribunal was referred to a statement from a process server dated 17th January 2009 and were also referred to a letter from the Respondent received by The Law Society on 19th August 2008 in which the Respondent had returned the application and supporting statement together with the supplementary statement to The Law Society with a covering letter. The letter from the Respondent returning the documents to the Solicitors Regulation Authority on 4th July 2008 contained the same address as last known to the Authority as the Respondent's business address, being 2 Brighton Avenue, Victoria Square, Cleveleys, FY5 2AA. The Tribunal was referred to the statement from the process server dated 17th January 2009 which confirmed all documents had again been pushed through the letter box of the same address as the address used by the Respondent in her letter on 17th January 2008. The Applicant also confirmed that none of the letters sent by first class post to this address had been returned through the postal service and as the same address was referred to in the Respondent's letter to the Solicitors Regulation Authority in August 2008, the Applicant submitted the Respondent had been properly served. The Tribunal was satisfied from the information available that the Respondent had been properly served and ordered that the matter should proceed in her absence.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal Orders that the Respondent, Lynn Diane Cornthwaite of Martin, Blackpool, Lancashire, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £24,224.91.

The Tribunal Orders that the Decision of the Adjudicator of the Solicitors Regulation Authority dated 23rd March 2007 in respect of Mrs K.R. might be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The facts are set out in paragraphs 1-15 hereunder:

1. The Respondent, born in 1958, was admitted as a solicitor on 1st December 1982 and her name remained on the Roll of Solicitors. At the material times the Respondent practised on her own account as John Gibbs & Co at 2 Brighton Avenue, Victoria Square, Cleveleys, FY5 2AA. The Respondent's last known address was in Martin, Blackpool, Lancs.
2. The Respondent acted for Mr LH and accepted instructions to prepare his Will. She drew up a Will which was executed on 19th January 2006. Clause 3(b)(2) of the said Will contained a gift to the Respondent and LM, a member of the Respondent's staff. Principle 15.05 of the Guide to the Professional Conduct of Solicitors 1999 required the Respondent to advise Mr LH to be independently advised about the gift and to decline to act if he refused to take such advice. Mr LH was not advised to take independent advice and the Respondent proceeded to act.
3. The Respondent acted again for Mr LH and accepted instructions to prepare an amended Will. She drew up the new Will which was executed on 9th October 2006. Clause 3 contained a gift to the Respondent and LM of £16,500.00 and £3,500 respectively. Rule 16D of the Solicitors Practice Rules 1990 came into force on 25th April 2006. The Respondent's interests (which included those of members of her firm) conflicted with those of her client or there was a significant risk that would happen. The new Will was witnessed by two employees of the Respondent.
4. Mr LH died on 31st January 2007 aged 80 years. His son complained to the Legal Complaints Service on 5th March 2007 and on 11th May 2007 the Solicitors Regulation Authority ("SRA") wrote to the Respondent to seek her explanation. The Respondent admitted on the same day on the telephone to a caseworker employed by the SRA that she had drafted both Wills and would provide evidence that independent advice was given to her client.
5. Further reminders were sent to the Respondent on 30th May, 21st June and 29th June 2007 and the Respondent replied on 3rd July 2007. She did not provide any evidence that Mr LH was independently advised and stated the gifts were in recognition of fees due to her and kindness shown by her clerk. The letter also stated that Mr LH was "severely physically incapacitated".
6. The Respondent acted in connection with divorce and ancillary relief proceedings on behalf of her client Mrs KR. Following a complaint by Mrs KR the Adjudicator directed that the Respondent should pay compensation to Mrs KR in the sum of

£1,500. The Adjudicator also directed that the Respondent should refund fees in the sum of £2,937.50. The Respondent was required to comply with these directions within 7 days of 23rd March 2007 but failed to do so.

7. The Respondent was instructed to deal with the administration of the estate of EP deceased, who died on 6th October 2000. The Respondent was appointed sole executor and trustee of the Will of the deceased. The Respondent acted as solicitor in connection with the administration of the estate. The deceased's property was to be sold and the Respondent acted as the estate agent in connection with the sale. Her firm also acted for the purchaser of the property which was conducted by CH, a conveyancing executive employed by the Respondent.
8. A complaint was made by Mrs L, a joint residuary beneficiary. The Respondent completed the administration of the estate and provided a schedule of costs, assets and liabilities on 19th March 2004, a copy of which was delivered to Mrs L. On 29th March 2004 Mrs L requested the Respondent obtain a Remuneration Certificate. The Respondent did not obtain one until 3rd May 2005 but when the assessors report was obtained in July 2005, it was apparent that the certificate had been obtained by the Respondent in relation to the administration of the estate only and she had failed to obtain one in relation to the costs of the sale of the property. The costs were reduced by approximately 60%. The files were obtained by the SRA and the complaints were investigated by a caseworker from the Legal Complaints Service who submitted a Report dated 8th December 2006 to the Adjudicator. The Report addressed issues of service and conduct, and the Adjudicator found that the Respondent had provided an inadequate professional service.
9. On 7th January 2008, Mr Robert Freeman, a Senior Investigation Officer (IO) from the SRA commenced an inspection of the Respondent's books of account and other documents. His Reports dated 30th January 2008 and 2nd April 2008 were before the Tribunal. The IO witnessed the Respondent practising as a solicitor between 7th and 24th January 2008. Her practising certificate had been terminated from 13th December 2007.
10. The Tribunal were referred to a number of cases which had similar features. In each of the cases the level of billing was high in relation to the value of the estates, there was little or nothing on the files to show the work done, there was little or nothing on the files to show how the fees had been calculated, there were repeated instances of bills not having been delivered and bills were drawn within short periods of time of each other, regularly involving round sums. The Respondent stated that the file of Mrs W had been shredded even though it had been billed recently.
11. Four of the files were examined by a costs expert instructed by the SRA, Mr Nick Shelley, to give an opinion about the level of billing. His report dated 8th February 2008 was before the Tribunal and he gave the view that the level of billing was extremely high and wholly unjustifiable in that there had been overcharging by between three and twelve times the amount properly due. This was allowing for a generous margin in favour of the Respondent.
12. The Respondent was asked to explain why one particular file, the file of Mr L could not be provided. She gave a false explanation as to why the file was not available.

13. The Respondent acted as sole executor on the administration of the estate of Mr L deceased. She acted on the sale of his property to existing clients, for whom she also acted. There was no evidence that the property had been properly valued and marketed and the purchasers were able to sell the property after only five months with an apparent profit of £47,000.
14. On 14th December 2007, the SRA made a direction under Section 44 (B) of the Solicitors Act 1974 requiring the Respondent to produce to a person duly appointed all documents in her possession including ledger sheets which related to the complaint made by N & P Building Society. The Respondent manifestly failed to deal with the SRA and the Complaints Service in an open and frank way and failed to comply with the direction.
15. On 21st May 2008 the Authority wrote to the Respondent to inform her that her Accountant's Report for the period ending 31st October 2007 had not been received. The Respondent had not delivered her Accountant's Report as required.

The Submissions of the Applicant

16. The Applicant indicated dishonesty was alleged on a number of the allegations and that the Respondent had not offered any proper explanation in relation to any of the very serious allegations made against her.
17. The Applicant submitted that the evidence before the Tribunal showed that there had been a course of conduct by the Respondent which had been very similar in nature and this supported the allegation of dishonesty. There had been limited dialogue between the Respondent and the Investigation Officer and the Respondent had not complied with her duty to be open and frank during the course of the investigation. She had not been able on any single occasion to explain to the Investigation Officer how the bills had been calculated, and the level of billing was not supported by anything produced or said by her.
18. The Applicant submitted that the report from the costs expert, Mr Nick Shelley, showed there had been a huge amount of overcharging and again the Applicant submitted this supported a dishonesty allegation. There had been round sum bills rendered to estates in probate matters and no proper reason had been given for these. Furthermore the file of Mr W had been shredded even though it had been billed as recently as May 2007. The Applicant submitted that the only reason for this was dishonesty.

The oral evidence of Mr Robert Kenneth Freeman

19. Mr Robert Kenneth Freeman, a Senior Investigation Officer with the SRA took the oath and gave evidence in connection with his reports dated 30th January 2008 and 2nd April 2008. He stated that the contents were true and gave further evidence concerning his impression of the Respondent whilst he had carried out his investigation. He confirmed the office had a large reception area and that he had been working in a small office at the back of the reception area from which he could see

the car park at the back of the building. Next to the reception area there was a cashier, another fee earner who was not a solicitor and a typist.

20. Mr Freeman confirmed that whilst he had been at the offices the Respondent was not there very often and that the staff were concerned about this. The staff had told him they would arrive at the office to find a note from the Respondent saying she had been in the office at approximately 6am and had had to leave. Mr Freeman stated the Respondent would disappear regularly when she was at the office and he knew this because he could see the car park from the room in which he was working and he saw her getting into her car and leaving. The staff would go out and try to stop her from leaving and ask her where she was going and indeed Mr Freeman confirmed that on one occasion he went out and asked her where she was going himself. She said she had to see some matrimonial clients who were in court but on each occasion when she left, she did not return to the office.
21. On one occasion when Mr Freeman attended the offices, there was a sign on the door saying "Office closed due to power cut". However, the Respondent seemed to behave as if she felt that everything was OK.
22. Mr Freeman confirmed he had spoken to the Respondent eventually on 24th January 2008 when he had been able to go through a number of matters with her. When he had advised the Respondent that he intended to arrange for the files to be checked by a costs expert, the Respondent had had no objection to this and seemed to be under the impression that everything was OK. Mr Freeman felt that she was detached from what was going on.
23. Concerning the file of Mr L, Mr Freeman asked the Respondent how she had calculated the amounts she had charged and she replied "Just going through the file, I presume, and costing it". When Mr Shelley had reviewed the file, he stated that the fees charges were nearly 10 times the maximum reasonable amounts. The charges exceeded a reasonable amount by more than £44,000.
24. Mr Freeman had requested a copy of the file for Mr L on or about 8th January 2008 but had been told by the Respondent that it could not be produced because a problem had arisen in relation to an allegedly overpaid pension and that the Respondent had provided the file to the Department of Work and Pensions. Mr Freeman had asked the Respondent to retrieve the file and indeed served a notice upon her to produce it under Section 44(B) of the Solicitors Act 1974 (as amended). The Respondent eventually provided the file to Mr Freeman on 16th January 2008. Mr Freeman contacted the Department of Work and Pensions and had been verbally informed that it would be highly unusual for a solicitor's file to be obtained by them. Subsequently on 4th February 2008, Mr Freeman received a letter from the DWP stating, "We have certainly never asked for any documents other than the request for copies of bank statements". By a further letter dated 14th February 2008, a manager from DWP stated, "I can confirm we have never been in receipt of a solicitor's file for Mr L".
25. Mr Freeman indicated that a number of files were similar in features, in that there were no bills on the files and there were no covering letters sending bills out to clients. The Respondent had advised Mr Freeman that bills were normally sent out with compliments slips. The Respondent had been asked about charges concerning

another matter, Mr M, and she had been asked by Mr Freeman how she had calculated the amounts she had charged to this matter. The Respondent replied, "Same answers as on the others." When asked to confirm what her previous answers were she said, "Just going through the file, I presume, and costing it". Mr Freeman asked the Respondent why six bills of costs had been posted to the ledger after the latest correspondence he had seen on the file dated 13th July 2007. The Respondent replied that, "The Law Society has had the file for months" and then added, "Can't answer that." Mr Freeman asked her why she could not answer the question and she replied, "Just can't". She was asked if she considered the costs she had billed on this matter to be reasonable and she replied, "Yes". The total costs on this particular file were £61,924.74 and when the file was costed by Mr Nick Shelley, his opinion was that the charges were more than 12 times the maximum reasonable amount and they exceeded a reasonable amount by £47,000.00.

26. Mr Freeman confirmed that he was rather surprised that a file of Mrs KW had been said to have been shredded, particularly as the transaction had only been completed two months before the file had been shredded. When the Respondent had been asked about this she had said this was normal and that the six years relating to keeping the file ran from the date the file was opened and that this file had been an old file and therefore the six years had concluded when the file had been shredded.
27. As to the case of Mrs KW, Mr Freeman asked the Respondent how she had calculated the amounts she had charged to the matter. The Respondent replied, "Work done". Mr Freeman asked her if she had any time records in relation to this matter and she replied, "No, they were kept on the file". Mr Freeman asked the Respondent if she could substantiate the amounts she had charged to the matter with work done and the Respondent replied, "That was a ludicrous question given that the file has been destroyed" and added "There is nothing I can do about it now." Mr Freeman had asked the Respondent why she had charged £20,000 to this matter on 1st September 2004 when she had charged £5,000 plus VAT only 6 days earlier. The Respondent replied, "Presume she had not been billed for ages." Mr Freeman asked the Respondent if she had delivered her bills concerning this matter to anyone and the Respondent replied she had delivered her bills to Mrs KW who, she said, was *compos mentis* up until one year before her death. Mr Freeman asked the Respondent if she considered the costs billed on this matter to be reasonable and she replied, "Yes".

Further Submissions of the Applicant

28. The Applicant requested the Tribunal make an order for his costs and produced a schedule confirming the total costs, including the costs of The Law Society's Investigation Accountant, of £24,224.91.

The Findings of the Tribunal

29. The Tribunal had very carefully listened to the evidence of the Applicant and had considered the documentation and submissions made. In the absence of any evidence or submissions put forward by the Respondent the Tribunal were satisfied from the documentation available to it that all the allegations were substantiated.

30. Regarding the finding of dishonesty, the Tribunal had regard to the test laid down in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal had considered the two stage test set out in that case namely would an honest, reasonable and ordinary person consider the Respondent's behaviour to be dishonest, and further whether the Respondent herself knew that her behaviour was dishonest. The Tribunal had considered the evidence before it. The Respondent had not been honest when asked to produce the file relating to Mr L claiming it had been sent to the Department of Work and Pensions when it was clear that this was not the case. Furthermore, the Respondent had rendered very high bills on matters where there was no evidence of the work carried out, or the way in which fees had been calculated, or indeed any proof that the bills had been delivered to clients. Furthermore, files had been shredded within a short time of being billed. The Tribunal had considered the Report of Mr Nick Shelley which had concluded that there had been a serious overcharging and that the billing levels were wholly unjustifiable. The Tribunal was satisfied that an honest, reasonable and ordinary person would regard the Respondent's behaviour as dishonest. By seeking to hide files from the IO and shred files soon after high bills had been rendered, the Tribunal were satisfied that the Respondent knew her behaviour was dishonest.
31. The Tribunal was extremely concerned about the manner in which the Respondent appeared to be running her practice. It was apparent from the evidence given by Mr Freeman that she was not properly supervising her office and even her staff were concerned about the amount of time that she was not there. Even the IO had found it difficult to speak to her due to her absences from the office.
32. The Tribunal felt that the behaviour of the Respondent overall had brought the profession into disrepute and had seriously damaged the reputation of solicitors. The Professional Code of Solicitors 1999 and the Solicitors Code of Conduct 2007 laid down very important rules and regulations which were designed to ensure the protection of the public and to give confidence to the public that solicitors would protect their interests. The Respondent had clearly failed to act in this manner and she had taken advantage of elderly and vulnerable clients, as well as using her position of trust to her own benefit by overcharging her fees when administering estates. She had failed to advise a client to take independent legal advice where there was a clear conflict of interest and she had failed to comply with a direction made by her regulatory body. When requested to apply for a Remuneration Certificate, she only did so for part of the work carried out, and she had practised as a solicitor without a practising certificate. She had not acted in her clients' best interests and was clearly not a person who was suitable to be a member of the profession.
33. In all the circumstances, the Tribunal felt that it was unacceptable for the Respondent to continue practising as she was a risk to the public who placed trust in her. She had abused that trust and thereby severely damaged the reputation of the profession. It was right that she should no longer be a member of the profession, to which she was a disgrace.
34. The Tribunal Ordered that the Respondent, Lynn Diane Cornthwaite of Martin, Blackpool, Lancashire, 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 £24,224.91.

35. The Tribunal Ordered that the Decision of the Adjudicator of the Solicitors Regulation Authority dated 23rd March 2007 in respect of Mrs K.R. might be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

Dated this 20th day of May 2009

On behalf of the Tribunal

A G Gibson
Chairman