

CO/5748/2014

Neutral Citation Number: [2015] EWHC 4085 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 20 November 2015

B e f o r e:

MRS JUSTICE CARR

Between:

MRS LUCIA BENYU

Appellant

v

SOLICITORS REGULATION AUTHORITY

Respondent

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(Official Shorthand Writers to the Court)

The Applicant in person

Mr E Levey (instructed by the Solicitors Regulation Authority) appeared on behalf of the
Respondent

J U D G M E N T
(Approved)

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1. MRS JUSTICE CARR:

2. Judgment

3. This is the adjourned hearing of the Appellant's appeal brought pursuant to section 49 of the Solicitors Act 1974 against the order of the Solicitors Disciplinary Tribunal ("SDT") dated 3 October 2014, striking the Appellant off the Roll of Solicitors and ordering her to pay costs in the sum of £48,000.

4. The decision followed a full three day hearing at which the Appellant was represented by experienced counsel, although she has indicated that she has now made a complaint against that counsel. The SDT found the Appellant to have been dishonest to the criminal standard. But it went on to say that the seriousness of her misconduct was such that it would have struck her off even if it had not made such a finding.

5. An order pursuant to section 43 of the Solicitors Act 1974 was made in respect of the Appellant's now former husband, he having been the Appellant's practice manager, with responsibilities with regarding to the accounting function in particular. He has brought no appeal.

6. The Appellant acted in person at the substantive appeal hearing. She has not attended for the hand down of this judgment, although she is fully on notice of it. She invites the court to the set aside the SDT's order; or, alternatively, to strike her off with no dishonesty attached.

7. Proceedings before the SDT

8. The Appellant was formerly a solicitor practising as a sole practitioner under the style of Peters & Co Solicitors ("the practice") based in Essex. Before qualifying as a solicitor in 2002, the Appellant had been a psychiatric nurse and mental health commissioner.

Upon qualifying as a solicitor, she practised exclusively in the field of mental health.

9. The disciplinary proceedings arose primarily, though not exclusively, out the Appellant's dealings with one of her clients, Mr Frederick Campbell, an 84 year old man, who was under the Court of Protection ("COP"), due to his lack of mental capacity as a result of a persistent delusional disorder.
10. Mr Campbell told the Appellant on at their first meeting on 21 July 2009 that he had been under the COP since 2002. He had made a number of unsuccessful applications to be discharged from it. He asked the Appellant for assistance to obtain a discharge from the COP. On the Appellant's own evidence he promised her at that first meeting that, if discharged, he would make sure that she was "well looked after."
11. His approximate words were, on her evidence:
 - i. "I will make sure that you are well looked after. I cannot say much, but I will let you see. You wait."
12. The Appellant completed the appropriate application form and Mr Campbell signed it there and then on 21 July. The discharge application required Mr Campbell to undergo a medical assessment as to his mental capacity. The Appellant identified a junior GP, a Dr Osman, who carried out an assessment on 5 December 2009, by which time the Appellant had already filed the discharge application some months earlier. I have been shown a copy of Dr Osman's report dated 5 December 2009, although it was not in evidence before the SDT.
13. The application to be discharged was successful. A restoration order was made on 20 January 2010, discharging Mr Campbell from the supervision of the COP. Upon his discharge (perhaps because he did not have a bank account), Mr Campbell's entire life savings in the sum of approximately £240,000 were transferred by the Deputy

(previously appointed by the COP to manage Mr Campbell's affairs) to the Appellant's practice.

14. Thereafter, between June 2010 and June 2011, all but a few thousand pounds of Mr Campbell's savings were transferred to the Appellant, or her practice.
15. The first £70,000 was allegedly transferred pursuant to a "gift" which Mr Campbell had allegedly promised to the Appellant at a meeting of 26 February 2010.
16. Although promised in February, she did not in fact take it until June 2010, and then in three separate instalments of £20,000, £30,000 and £20,000 taken on 8, 11 and 29 June respectively.
17. The "gift" coincided with a period in which the practice was experiencing financial difficulties. For example, the transfer of the £20,000 on 29 June 2010 enabled the practice to pay staff wages the following day without exceeding the practice overdraft limit.
18. Before taking a gift from a client, a solicitor is under a professional obligation to ensure that the client takes independent legal advice but, if the client refuses to do so, the solicitor is not permitted to continue to act. The rule, at the relevant time Rule 3.04 of the Solicitor's Code of Conduct 2007, allows for no exceptions.
19. The Appellant's evidence to the SDT was that she was aware that a rule existed dealing with the giving of gifts. She claimed to have been referred to the relevant rule when she had allegedly contacted the Respondent's ethics' hotline to discuss the "gift". Her evidence was that, although aware that a rule existed, she had not taken the time to read it, and nor had the rule been properly explained to her by the adviser on the ethics' hotline. The SDT in due course rejected this part of the Appellant's evidence as simply "incredible".

20. On her evidence, the Appellant advised Mr Campbell to take legal advice and even went to so far as to send him a consent form to sign, confirming that he had given the "gift" willingly and without duress. However, she said that Mr Campbell was "adamant" that he wanted to give the "gift" and did not want independent legal advice. She claimed that in those circumstances she believed that she was entitled to accept the monies.
21. Aside from this payment of £70,000, between July 2010 and June 2011, £170,000 of Mr Campbell's life savings was also transferred and used at least partly in order to support the practice's cashflow. Those monies were transferred pursuant to an alleged loan from Mr Campbell, a loan which, on the Appellant's own case, was unlimited in amount, was unsecured, was not recorded in writing, and contained no terms in relation to repayment or interest. In her evidence in cross-examination, the Appellant confirmed that she would never have advised any client to enter into such a loan.
22. The loan was entered into by Mr Campbell without the benefit of independent legal advice, as the Appellant well knew, and on the Appellant's own evidence, other than the first £30,000 of the loan which she claimed to have told Mr Campbell about, Mr Campbell was entirely unaware as to how much of his money the Appellant had "borrowed" from him.
23. Indeed, on the Appellant's evidence, Mr Campbell did not know that she had borrowed all but the entirety of his life savings and nor was he aware that the practice was struggling financially, with the result that the Appellant would inevitably struggle to repay his money to him, whether promptly or at all.
24. Following Mr Campbell's death, when confronted by his two sons in relation to her dealings with their late father, some £154,000 was transferred from a different client ledger to Mr Campbell's ledger. Transfer was from the estate of a deceased, Mr Orris,

whose beneficiary was a Mrs Dean, who lacked mental capacity.

25. The Appellant went on to provide Mr Campbell's sons with a false ledger, which made no reference to any of the alleged loan transfers. She provided Mr Campbell's sons with a copy of a letter dated 11 April 2010 from her to Mr Campbell. The SDT found that she had in fact doctored that letter by inserting a paragraph relating to the "gift", which paragraph had not appeared in the original version of the letter later discovered amongst Mr Campbell's papers at his home.

26. In addition to the allegations concerning the affairs of Mr Campbell, there was one allegation concerning a different client, a Mr Whitehorn, who also lacked mental capacity. The practice had transferred approximately £30,000 of his money to the office account, thus enabling staff wages to be paid.

27. The Respondent made a number of serious allegations against the Appellant arising out of her conduct relating to these matters. The Appellant admitted the majority of the allegations of the breaches of the Solicitors' Code of Conduct, but denied creating misleading or false documents and critically denied acting dishonestly.

28. At the hearing before the SDT she gave evidence and was cross-examined for some one and a half days. Applying the criminal standard of proof (as it was obliged to) the SDT found all of the allegations against her proved, including that she had acted dishonestly on certain counts. She was struck off the Roll of Solicitors, as already indicated.

29. Findings of the SDT in detail

30. The SDT produced a detailed 38 page judgment, dated 18 November 2014. The judgments set out the allegations against the Appellant, with 9 heads of misconduct, dishonestly being alleged in relation to 5 of them.

31. The allegations were particularised in the Rule 5 statement of Mr Havard. The SDT then set out the documents which it had reviewed as submitted by the parties to it. Those documents included the Appellant's witness statement and testimonies provided by her, some 24.
32. After preliminary matters, including the late admission of a statement on behalf of the Appellant, the SDT went on to set out the factual background. It then summarised the forensic investigation report. It recorded, where appropriate, the Appellant's position in relation to certain points, for example, where she agreed the accuracy of a schedule, or that certain transfers amounted to personal undocumented loans. Or it recorded her evidence, for example, as to which version (or versions) of letters might have been set out.
33. It then set out the submissions for the Respondent. The Respondent's counsel had gone through the evidence and the Rule 5 statement carefully. It was submitted that the Appellant's dealings with Mr Campbell had involved a reckless and dishonest course of conduct by the Appellant: she had abused her position of trust, taken advantage of an elderly and vulnerable client, and disregarded her professional obligations in order to benefit herself and the firm. It was difficult to imagine a solicitor acting contrary to a client's best interests in a starker fashion.
34. The SDT went through the submissions by reference to:
- a. The claims pursued by the Appellant on behalf of Mr Campbell, the COP restoration, a bankruptcy compensation claim from 1991, and a claim against Boots the chemist dating from 1996;
 - b. The alleged "gift" of £70,000 from Mr Campbell to the Appellant;
 - c. The alleged loan of £170,000 by Mr Campbell, including the falsification of documents and also financial dealings with a Mr Whitehorn and Mr Orris (deceased);

d. The falsification of additional classes of documents.

35. So far as the allegations against the Appellant's husband were concerned, it was submitted that it was plain that he had acted dishonestly. The Appellant blamed everything on him, but it was impossible to believe that everything that had occurred was the fault of the husband and that the Appellant had known nothing at all about the matters in question. If his admissions had been designed to assist the Respondent, they had failed.
36. Having set those submissions out, the SDT then summarised the sworn oral evidence of the live witnesses. Mr Jonathan Chambers, the Investigation Officer; Mr Andrew Campbell, one of Mr Frederick Campbell's sons; Mr Stephen Campbell, another of his sons and; finally, the Appellant. She had confirmed the truth of her lengthy and full witness statement of February 2014.
37. The SDT then set out her oral evidence in some 40 detailed paragraphs, covering some 8 pages. It recorded the fact that she was cross-examined fully by reference to a very large number of documents.
38. Full submissions were made on behalf of the Appellant by her counsel. He asked the SDT to rely on the Appellant's witness statement and her solicitor's response to the investigation dated 15 April 2013. It was submitted that the Appellant was responsible but not culpable. There had been no dishonesty. She had placed an absolute trust in her husband. She had made a serious error in of judgment in failing to supervise him. Though she had made errors in her dealings with him, she denied any cynical exploitation to Mr Campbell. Her judgment had been clouded by her personal difficulties at the time. Her life was chaotic. Had she been dishonest, she would have done a better

job of concealing her flaws. She represented people like Mr Campbell, who had no voice. There was a degree of emotional intimacy between them. He had been a lonely man who had taken comfort in this visits to the Appellant.

39. Her files were in disarray, but she had not papered them. She had not sought to argue that the "gift" monies of £70,000 should not be repaid. She had told the Campbells that the "gift" had not been perfected. She had genuinely not been aware of Rule 3.04 in relation to gifts, and she wrongly believed that she was acting appropriately. Equally, with the loans, she would not have advised Mr Campbell to seek independent legal advice, had she been acting dishonestly. She was just a confused, mistaken and troubled woman.
40. The SDT should give weight to her propensity to carry out the acts complained of, and to have credibility. She had made admissions, had made a self report to the SRA, had co-operated, repaid the monies, and with worked with conditions on her practising certificate. Express reference was made to the combined test for dishonesty as set no out in Twinsectra Limited v Yardley and others [2002] AC 164 ("Twinsectra").
41. The Appellant had genuinely believed that she was not being dishonest. Dishonesty had not been proved. She had not been consciously transgressing the ordinary standards of honesty of reasonable and honest people. The SDT was asked to lay as much weight as possible on the Appellant's husband's admissions.
42. Having correctly identified the burden of proof and the Appellant's right to a fair trial and respect for private and family life, the SDT then proceeded to make its findings. It had examined carefully the documentation and listened to the witnesses. It gave the statement of Helena Abrell (the late statement adduced on behalf of the Appellant) limited weight as it had been served late and she had not attended to give evidence.

Further, Ms Abrell's reference to Mr Campbell sitting on a bench in the shopping centre at various times of the day enhanced the SDT's view as to his vulnerability.

43. At paragraph 119 of the decision, the SDT made the following findings on credibility:

- i. "The Tribunal had found Mr Andrew Campbell to be an impressive witness and accepted his account of his relationship with his father. It similarly found that Mr Steven Campbell was a reliable and honest witness. The Tribunal accepted the evidence of both of these witnesses in its entirety. In contrast, the Tribunal found the First Respondent to be evasive and not believable; she was a thoroughly unsatisfactory witness."

44. Having made those findings on credibility, the SDT then went to say:

- i. "121.3 The Tribunal found that at the very first meeting with Mr Frederick Campbell any solicitor would have been put on notice that he was a vulnerable individual if not worse. He had told her he was 85 years old and that he was lonely and lived alone. He had presented her with two old matters from 1989 and 1996 and she had been told that he had been under the Court of Protection since 2002 and had made a number of applications for discharge which had not been successful. Whilst she said that he appeared to be giving clear and succinct instructions that did not override the concerns that she must have had about him.
- ii. 121.4 The First Respondent had been extremely evasive in cross-examination about Mr Frederick Campbell's state of mind. She had been asked by the Tribunal about it and she said that she had not formed a view as to why he was in the Court of Protection. At that very first meeting he had told her that he would give her something at a later date; at that stage she should have been asking herself whether he had capacity to make a gift or loans.
- iii. 121.5 The Tribunal found that as the relationship between the First Respondent and Mr Frederick Campbell developed she must have been increasingly on notice about his state of mind. He was fixated on his claims which had some bizarre features and was unable to accept that his bankruptcy complaint was hopeless. It must have been more and more obvious to her

that he was vulnerable and disturbed. It was not open to say that her judgement was clouded at that time.

- iv. 121.6 The Tribunal found it extremely suspicious that the money, said to have been given as a gift, was transferred at a later date in three tranches which just happened to fit in with the firm's cash flow problems.
- v. 121.7 In regard to the alleged loan the Tribunal did not believe that the First Respondent did not know that a solicitor borrowing money from a client constituted a conflict of interest. This was exacerbated by other factors such as the age of the client and the fact that the loan was not documented. The First Respondent had not written to Mr Frederick Campbell about the loan. The only evidence available was the attendance note in which it was said that she had told him she had taken £30,000. The Tribunal did not accept the authenticity of this note and was of the view that Mr Frederick Campbell knew nothing about the loan. The Tribunal had found her evidence in this regard thoroughly unconvincing. She had prevaricated in meeting the Campbells until she had received the money relating to Mr O. The Tribunal did not accept her explanation that the timing of this was a pure coincidence; it was a fact that the client account was not in a position to provide the amounts of cash required to repay the Campbells and the Tribunal found that she had known that was the case.
- vi. 121.8 Rule 3.04 of the SCC 2007 was a fundamental rule which was comprehensible to any solicitor, in the circumstances covered by the rule the client must take independent legal advice and if he does not then the solicitor must refuse to act. There was no note of the conversation that the First Respondent said that she had had with the Ethics Department at the SRA although she said that she made one. She said that the SRA had drawn her attention to Rule 3.04. The Tribunal had considerable reservations as to whether that conversation had ever taken place as it was confident that the SRA would have explained the effect of Rule 3.04 to her. Regardless of that the Respondent had admitted she was aware of the existence of Rule 3.04 and the Tribunal found her claims not to have read it to be incredible.
- vii. 121.9 The Tribunal also had considerable reservations as to the First Respondent's evidence concerning Mr W's account. It did not believe that she and the Second Respondent had not

discussed the firm's financial matters. The bank statements for the firm had gone to her home and although she had said that she had only glanced at them and had not been able to access the computerised system, she had admitted in an unguarded moment that she did go into the Second Respondent's computer to reconstitute the ledger. It therefore did not find her explanation credible and it was not clear how the money would have become available without the fee earner knowing.

- viii. 121.10 The Tribunal did not accept Mr Henry's submissions that this was an individual whose judgement had been clouded and was operating in a sub-optimal fashion; it had concluded that she was both clever and manipulative.
- ix. 121.11 In regard to the two letters dated 21 April 2010, the Tribunal found that the First Respondent had given an incredible explanation as to why she would write a second letter. It had concluded that the letter found on the file had been created at a later date to cover her tracks and/or to lend credence to her position.
- x. 121.12 The letter dated 10 July 2010 gave a figure for the balance on client account which was incorrect and the First Respondent must have known that it was not right as she knew that the £70,000 gift had been taken by that stage. In fact the Tribunal did not believe that she did not know the precise state of affairs. The letter had gone to Mr Frederick Campbell and had been intentionally misleading.
- xi. 121.13 There were two versions of the letter dated 29 March 2012 and the Tribunal found that both were misleading and that there was no reason to believe that either had been sent out. They were designed to convey that the firm had the money when it did not and they were misleading.
- xii. 121.14 The Tribunal found each of the allegations 1.1-1.4, 1.7 and 1.9 to have been proved beyond reasonable doubt on the facts and documents before it.
- xiii. 121.15 The Tribunal found each of the allegations 1.5 and 1.6 to have been proved beyond reasonable doubt on the evidence that had been presented to it. It was in no doubt that intentionally misleading and false documents had been provided to Mr Frederick Campbell, the Campbell brothers and the SRA."

45. The SDT expressly considered the allegation of dishonesty against the Appellant. It reminded itself in express terms of the combined test for dishonesty as set out in Twinsectra.
46. Having carefully reviewed all of the evidence, the SDT found the objective part of the test was clearly passed in relation to the relevant allegations; and in addition, the SDT had no doubt that the Appellant had known that she was acting dishonestly in each instance. The SDT stated that it was satisfied so that it was sure that the dual test for dishonesty as set out in Twinsectra was passed in relation to each of the relevant allegations.
47. Having then referred to the mitigation advanced on behalf of the Appellant, including the many testimonials in evidence before the SDT, the SDT concluded:
- i. "131. The First Respondent had admitted a lack of integrity and had had several allegations of dishonesty proved against her. The Tribunal had heard a litany of the most ruthless exploitation of an obviously vulnerable individual and had disbelieved much of what the First Respondent had to say whilst giving evidence on oath.
 - ii. 132. In cases where dishonest misappropriation of client's funds had been found then it was well-established that that would invariably lead it to mitigate that penalty. The First Respondent would be struck off the Roll of Solicitors. Indeed, the seriousness of her misconduct was such that this would have been the appropriate sanction even if she had not found to be dishonest."

48. The approach on appeal

49. This appeal proceeds by way of review, not rehearing. An appeal will be allowed if the court concludes that the decision below was wrong or unjust because of a serious procedural or other irregularity. Where a professional supervisory body such as the SDT

has reached a conclusion on disciplinary matters the court will, except in a clear case, be slow to interfere with the SDT's findings(see, for example, Newfield v The Law Society [2005] EWHC 765 (Admin)). Where findings of fact are concerned, as with other appeals, the appellant Court readily acknowledges that the first instance body enjoys the very significant advantage of having seen and heard the witnesses; here, particularly, the Appellant.

50. Cross-examination in cases involving allegation of dishonesty is particularly important.

The first instance tribunal will have been in a far better position than I to judge issues of credibility (see for example, Chyc v General Medical Council [2008] EWHC 1025 (Admin); Gupta v General Medical Council [2002] 1 WLR 1691 at paragraph 10).

51. The position was also neatly put by Langstaff J in Bhatt v General Medical Council [2011] EWHC 783 (Admin) at paragraph 9 where, after reviewing the authorities, he said this:

- i. "I accept and adopt the approach outlined in these authorities, in particular that although the court will correct errors of fact or approach:

52. it will give appropriate weight to the fact that the Panel is a specialist tribunal, whose understanding of what the medical profession expects of its members in matters of medical practice deserves respect;

53. that the tribunal has had the advantage of hearing the evidence from live witnesses;

54. the court should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body;

55. findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are close to being unassailable, and must be shown with reasonable certainty to be wrong if they are to be departed from;

56. but that where what is concerned is a matter of judgement and evaluation of evidence which relates to police practice, or other areas outside the

immediate focus of interest and professional experience of the FTTP, the court will moderate the degree of deference it will be prepared to accord, and will be more willing to conclude that an error has, or may have been, made, such that a conclusion to which the Panel has come is or may be "wrong" or procedurally unfair. To this extent I accept and adopt the submissions of Mr Coker QC."

57. Grounds of appeal

58. The Appellant relies on 8 grounds of appeal and a supplemental ground based on Article 6 of the Human Rights Act 1998. I address each in turn.

59. Ground 1: The SDT failed to apply the test for dishonesty set out in Twinsectra.

60. By way of overview, the Appellant relies on the well-known dictum in Fish v The General Medical Council [2012] EWHC 1269 (Admin), in particular:

- i. "67. What, however, seems to be a proposition of common sense and common fairness is this: an allegation of dishonesty should not be found to be established against anyone, particularly someone who has not been shown to have acted dishonestly previously, except on solid grounds. Given the consequences of such a finding for an otherwise responsible and competent medical practitioner, any Panel will almost certainly (without express reminder) approach such an allegation in that way.
- ii. 68. An allegation of dishonesty against a professional person is one of the allegations that he or she fears most. It is often easily made, sometimes not easily defended and, if it sticks, can be career-threatening or even career-ending. Who would want to employ or otherwise deal with someone against whom a finding of dishonesty in a professional context has been made? I am, of course, dealing with the issue of dishonesty in a professional person simply because that is the issue before me. It is, however, a finding that no-one, whatever their walk in life, wishes to have recorded against his or her name.
- iii. 69. I do not think that I state anything novel or controversial by saying that it is an allegation (a) that should not be made without good reason, (b) when it is made it should be clearly

particularised so that the person against whom it is made knows how the allegation is put and (c) that when a hearing takes place at which the allegation is tested, the person against whom it is made should have the allegation fairly and squarely put to him so that he can seek to answer it. It is often uncomfortable for an advocate to suggest that someone has been deliberately dishonest, but it is not fair to shy away from it if the same advocate will be inviting the tribunal at the conclusion of the hearing to conclude that the person being cross-examined was dishonest. (I should say that Counsel presenting the case to the FTP did put the case advanced against him fairly to the Appellant. The problem, as I see it, for the reasons I will give below, is that what she put to him and what the Panel in due course concluded were arguably different or, at all events, the conclusion for which she contended did not have the compelling logic behind it that made its acceptance by the Panel valid.)

- iv. 70. At the end of the day, no-one should be found to have been dishonest on a side wind or by some kind of default setting in the mechanism of the inquiry. It is an issue that must be articulated, addressed and adjudged head-on.
- v. 71. Those general considerations should, in my view, inform the approach of a Fitness to Practice Panel of the GMC. I have little doubt that generally it does indeed do so and that, for the reasons I have already given, all members of such a panel will understand the serious implications of any finding of dishonesty in relation to a medical practitioner who comes before such a panel."

61. Dishonesty is an extremely grave allegation to make, especially against a professional. It needs to be fairly and squarely put and presented. The Appellant contends that she was questioned on evidence that the SDT chose to consider and ignored (or omitted to refer) to some of the documents or information pertinent to her case.

62. At the outset, there is in my judgment no reason to think that the SDT failed to apply the correct legal test. On the contrary, it is impossible to conclude that it did not. It recorded the submissions for the Appellant as to the absence of the necessary subjective awareness

of dishonesty. It later expressly set out the relevant test and applied it to the facts reaching that the conclusions that it did. It was in my judgment, for reasons which I will expand upon, entitled to find that the Appellant had been acting dishonestly for the reasons that it gave.

63. The Appellant raises certain discrete matters. She focuses in particular on the SDT's findings on allegation 1.2 (being the allegation combined with allegation 1.8) that the Appellant dishonestly authorised or permitted withdrawals of client money. She submits here on appeal that she was, and the SDT should have found, that she was unaware of the transfers or the withdrawals the subject of allegation 1.2, on the basis that those transfers were made by her ex husband without her knowledge.

64. There were two particular transfers which she sought to blame on her ex husband:

65. a) firstly, the transfer of approximately £154,000 from a different client ledger, this is the ledger for the estate of the deceased Mr Orris, to Mr Campbell's ledger in order for the Appellant to be in a position to pay money to Mr Campbell's sons when they arranged to meet with her;

66. b) secondly, the withdrawal of some of £30,000 from a Mr Whitehorn's ledger to pay staff bills. The Appellant says that she was not aware of this transfer until such time as the SRA commenced its investigations.

67. The SDT was (as its decision records at paragraph 59) fully aware at all times of the Appellant's position on this particular transfer. The Appellant submits on appeal that her position on this transfer has been consistent throughout, including an interview with the

investigation officer. She relies on a letter from her ex husband's solicitors, dated 11 November 2013, which was before the SDT, through which her ex husband confirmed that it was he who was responsible for the transfers and payments, all done without reference to the Appellant. She also makes reference to a testimonial from a former employee, a Scott Coupland, confirming that it was the Appellant's husband who was in the charge of the practices of accounting function.

68. By way of background, I remind myself that the Appellant had of course admitted the allegation that she had authorised or permitted withdrawals from her client account in breach of the solicitor's accounts' rules. The SDT rejected the suggestion made for the Appellant in clear terms that the relevant transactions had been done without her knowledge and consent. That is a finding which on appeal I am simply unable to overturn. The SDT was entitled to conclude that the Appellant's evidence was inherently unbelievable: she was the sole principal of the practice; the practice's bank accounts were being sent to her home address, and she admitted at one stage in her evidence that she had accessed her ex husband's computer to reconstitute the ledger, which was inconsistent with her earlier testimony that she lacked the necessary skills or capability to access the practice accounts and was wholly dependent on her ex husband to this extent.

69. On this appeal, the Appellant takes issue with the suggestion that her accessing the ledger system proved anything. She had only done so at the request of the Investigation Officer, and even then she not been capable of producing an accurate second ledger.

Nevertheless, her conduct could reasonably have been taken by the SDT as inconsistent with the general picture that she was attempting to paint: namely, that she did not have the necessary skills to access the practice's electronic system(see, for example, paragraph 17 and 18 of her witness statement and as recorded in paragraphs 115.30 and

115.23 of the judgment).

70. The Appellant also takes issue on appeal with the SDT's finding that bank statements went to her home address. As from 2012 onwards, this is factually accurate.

The Appellant contends that prior to that date, however, the bank statements were being sent to the practice's offices.

71. The Respondent does not recall this being suggested by or on her behalf at the the SDT.

But leaning in the Appellant's favour, even if it were true, the Appellant's case at the hearing before the SDT was that she had left the entire financial management of the practice to her husband and had no grasp of the practice's finances. The SDT rejected that evidence and it was entitled to do so having made the findings on credibility that it had.

72. The Appellant also takes issue on appeal with the SDT's finding that she did not only glance at the bank account statements. She says there was "no proof to demonstrate" that she had at any point looked at the bank statements. But again, the SDT, having assessed her credibility as it did, was entitled to reject her evidence that she was not aware of the state of the practice's bank accounts and there is no basis on appeal for any interference with that finding of fact.

73. Specifically, as for the withdrawal from Mr Whitehorn's client account, the SDT was again entitled to find that it was inconceivable that the Appellant was unaware of the practice's cashflow problems and the use of monies held on Mr Whitehorn's client account to pay staff wages. The transfer of the alleged "gift" money from Mr Campbell, at times when the practice in cashflow difficulties, shows by way of example the close nexus between the Appellant's knowledge and involvement and the unlawful use and transfers of monies.

74. Specifically, as for the use of monies from the estate of the deceased Mr Orris, the Appellant submits on appeal, as indicated, that she was unaware of the transfer of the £154,000-odd and the SDT was wrong to find otherwise. Although this was one of the Appellant's client matters, the probate work in respect of Mr Orris had in fact been subcontracted by the Appellant to a different firm of solicitors, Furse Sanders, a long time ago, in around 2009.
75. The sole beneficiary, as I have already indicated, was a Mrs Dean, who lacked mental capacity. The Appellant has noted on appeal that she was unaware that Mrs Dean lacked mental capacity. This, for the avoidance of doubt, is in no way dispositive of the finding of dishonesty as outlined below.
76. The Appellant's practice received £165,681-odd from Furse Sanders on, or around, 17 July 2012 in respect of the Orris estate. At a meeting with Mr Campbell's sons on 6 August 2012, the Appellant then handed over a cheque to them which she had signed in the sum of £154,685-odd. However, there were insufficient funds standing in the credit of Mr Campbell's ledger to cover that amount. Accordingly, on 10 August, an entirely fictitious entry was made to the Orris ledger, purporting to credit the sum of £154,000-odd to that ledger, and simultaneously transferring the same amount to Mr Campbell's ledger to cover the cheque which she had signed and which she gave to Mr Campbell's sons on 6 August.
77. Mr Campbell had died on 1 May 2012. His body had been discovered by the Appellant who visited his home that day. Even though she had been in contact with his sons since April 2012, she did not inform them of his death until some two weeks later, on 15 May. She informed them that she could not discuss any information concerning their father's affairs until such time as they had received a grant of probate. This was

technically correct, but she wrote in the letter dated 8 June 2012 that she hoped to let them have the "exact figure" as to how much money of their late father's money she was holding "within the next 14 days".

78. At trial in cross-examination, the Appellant was unable to explain why it would take precisely 14 days to let Mr Campbell's sons have the exact figure. It would have involved no more than checking the relevant client account ledger.
79. The evidence was that Furse Sanders had been holding the money relating to the Orris estate for some time. It was put in cross-examination to the Appellant that the reason she had taken steps in June or July to receive the money from them was because she knew that she would soon have to pay Mr Campbell's sons in respect of their late father and, as she was aware, the firm simply did not have the funds available to it to pay them.
80. The SDT found that the Appellant had prevaricated in meeting Mr Campbell's sons in early August, until such time as she was in a position to pay them the monies. On this appeal, the Appellant has submitted that there was simply no evidence to support the finding of prevarication. On one occasion, she said it was the Campbells, not she, who adjourned the meeting. She said there was nothing sinister in the giving of time limits and she said she was right to say that she could not discuss Mr Campbell's confidential affairs before grant of probate was in place.
81. It is clear to me that the SDT was entitled to make the finding of prevarication that it did. It is not a finding that I am able to overturn on appeal, having not seen or heard the witnesses.
82. It is indeed difficult to see why it would take 14 days to produce the exact figure for the amount held on client account, or a week to photocopy Mr Campbell's files, as the Appellant stated in her witness statement. In any event, I accept the submission that

the finding of prevarication was a finding that was only a small part of a far larger picture of dishonesty.

83. In all the circumstances, the SDT having listened to the cross-examination on this issue, and taken account of all the evidence, it seems to me impossible in this appellate jurisdiction to say that the SDT was not entitled to make the finding that it did.
84. More generally, and as I have set out from the decision itself, the SDT considered the Appellant to be: "an evasive, not believable and thoroughly unsatisfactory witness." It found as a fact that the Appellant had taken advantage of and exploited a vulnerable individual and had been "clever and manipulative" in her dealings with Mr Campbell. It found her evidence in critical respects, for example, in relation to reading Rule 3.04 to be "incredible". It further found as a fact the Appellant had fabricated documents to cover her tracks and/or to lend credence to her position in creating documents designed to mislead.
85. The SDT was thus plainly entitled to take account of all these matters in deciding whether the Appellant was telling the truth, in particular in relation to the two particular transactions referred to above. The SDT recorded that it had considered and examined all of the documents before it, and listened intently to the witnesses before reaching the conclusions that it did.
86. The testimonial provided by Mr Scott Coupland, a copy of which I have not in fact seen since it cannot be located, was before and was considered by the SDT. I proceed in the Appellant's favour on the basis that his statement indicated that the Appellant was not involved in the financial running of the practice. The Appellant chose not to call Scott Coupland, which was bound to reduce the impact of his evidence. But the evidence, in any event, could not override the clear conclusions reached by the SDT as to the

Appellant's credibility and involvement in the transactions in question.

87. Finally, even leaving aside the two particular transactions on which the Appellant has focused, it remains the case that the "gift" monies and the loan monies were transferred in breach of the solicitor's account rules. There is no suggestion that those were transfers from client to office account that were not carried out without the Appellant's knowledge or consent.
88. By way of updated skeleton argument on appeal, the Appellant has relied on the fact that the Respondent placed the Appellant on a compliance plan on 15 April 2013, after the Respondent's investigation in February 2013. She complied with all conditions of that plan. There were no breaches during the period February to December 2013.
89. Thus, she asks rhetorically, when was it then that the Respondent decided that she had acted dishonestly? She says that the SDT made no reference to this compliance plan.
90. In my judgment, this point does not assist the Appellant. The SDT was clearly aware of the fact that she had worked with the conditions on her practising certificate (see paragraph 115.48 of its decision). Beyond that, the point is at best a forensic one. The Respondent was entitled to take the view, later in 2013, that the Appellant had acted dishonestly in her earlier dealings with Mr Campbell and others, all of course before the compliance plan was in place, and then to prosecute her. Correct behaviour and compliance with the plan by the Appellant did not mean that she had not acted dishonestly previously.
91. The Appellant also made challenges by reference to the SDT's findings on allegation 1.3, an allegation of a failure by her to remedy the breaches of the accounts rules. This allegation was admitted (although dishonesty in regard to it was not). But the fact that the monies later repaid in the context of the investigation does not alter the fact that there

were breaches. Additionally, the repayment was effected, at least in part, by a false credit entry made to Mr Orris' ledger, as already referred to.

92. The Appellant also seeks to challenge the SDT's finding on allegations 1.5 and 1.6, namely, allegations in relation to the creation of false or misleading documents. Here, as already identified, the SDT rejected the Appellant's evidence. There was, in my judgment, considerable material before the SDT to suggest that the Appellant had created false and/or written misleading or inaccurate documents. I have been taken to some of them, by way of example: (a) different versions of the ledger from Mr Campbell's account. The one handed to Mr Campbell's sons on 6 August 2012 did not show the loan payments, the actual ledger did; (b) the different versions of a letter dated 21 April 2010. The version found on the Appellant's file referred to the "gift". The version found at Mr Campbell's home, where his papers were found in neat piles in a briefcase made no such reference; (c) letters dated 2 July 2010 and 14 January 2011 giving inaccurate information to Mr Campbell as to the monies held in a client account for him; (d) different versions of a letter dated 29 April 2012 to Mr Campbell, neither version was found in Mr Campbell's home. One version on file simply referred back to the "gift". Another version, handed to the Respondent, referred both to the "gift" and the "loan". The timing of the letters themselves is very odd, given that the loans and gifts were made some considerable time ago.

93. There is in my judgment therefore no basis for this appellate court to interfere with the SDT's findings in circumstances where the SDT had heard and seen all of the evidence, including the Appellant's in cross-examination.

94. The Appellant has complained that the SDT did not look at the post books confirming at places her practice of sending multiple letters out to a client in a single day. She says the

post books are, on their face, unreliable. She points to this as evidence that she never acted dishonestly, otherwise the post books would have been corrected to match her story. She points to the fact that an entry for 26 February 2010 shows two letters going out to Mr Campbell that day, but there is only one letter on file, and there is no entry for any letter going out on 21 April 2010.

95. Save for one page, it does not appear that the post books (whilst referred to by the Appellant in her witness statement) were ever put before the SDT in evidence. That they were not a reliable record was noted. The SDT was entitled to find that documents had been manufactured *post facto* as it did in paragraph 121.11.
96. The Appellant also sought to challenge the SDT's findings on allegation 1.7 relating to conflicts of interest. Again, this was an allegation admitted, although dishonesty was not. The SDT was, on the evidence before it, entitled to find the Appellant's explanation that she never read rule 3.04 as incredible.
97. In any event, standing back from these individual criticisms, the overarching answer on appeal is that, even if they were justified, it is difficult to see how they would impact on the overall findings which the SDT made in respect of the central and important issues in the case.
98. Ground 2: Failure by the SRA to particularise and specifically plead allegations.
99. The Appellant on appeal raised four areas which she contended amounted to allegations not particularised or relied upon by the Respondent but relied upon by the SDT.
 - a. overcharging: this was not a charge alleged. Counsel for the Respondent nevertheless submitted that there had been clear overcharging and the SDT could form a view that that was the case. But consistent with

submissions of counsel for the Appellant, the SDT rejected that submission and expressly restricted itself to only pleaded matters. It made no findings in relation to overcharging;

b. forgery: the Respondent's counsel made it clear in submission that there was no allegation of forgery made, even although Andrew Campbell had asserted that his father's signature had been forged on a bill for a restoration order. The Appellant denied any forgery. The SDT did not entertain let alone rule on such allegation;

100. c) theft: the Appellant's counsel took the point that the Respondent in cross-examination had ranged further than the Rule 5 allegations, with allegations of monies having been stolen. The SDT agreed and expressly excluded such matters from its consideration. It made no find findings on the allegation;

101. d):pressing Furse Sanders for payment-over of the probate monies for the estate of Mr Orris: it was put to the Appellant in cross-examination that she had pressed for the monies since she needed them to pay the Campbells in August 2012. She denied this. The SDT did not in fact make any finding on whether or not she had pressed for payment, but it did find that the timing of the meeting with the Campbells was no coincidence by reference to the timing of the receipt of the monies from the Orris estate. This was a finding that it was entitled to make. The client account for Mr Campbell, as the Appellant knew on the SDT's findings, did not have sufficient monies to pay out, so she had to wait until monies came in from elsewhere.

102. In short, the Rule 5 statement clearly states what was or was not alleged against the Appellant. As the SDT made clear, it restricted itself to considering only those

matters that were so alleged against her.

103. The Appellant says that nevertheless, the matter would have played a part in the SDT's thinking. In circumstances where, for example, the allegation of forgery was denied by the Appellant, I cannot accept that submission. The SDT appears to have taken a principled and fair view as to the matters properly before it for its consideration.

104. Ground 3 and Ground 4: failure to give weight to character evidence and the Appellant's character.

105. The Appellant submits that the SDT failed to highlight any cogent evidence of positive good character. It is also suggested that the SDT misunderstood the submission for the Appellant on propensity. In fact, in context, when one reads the relevant paragraph, 115.48, it is quite apparent that the SDT did not misunderstand the submission being made. It was being invited to take good character into account.

106. The Appellant relies on Donkin v The Law Society [2007] EWHC 414 (Admin) as authority for the proposition that character may be relevant at the first stage, and not just sanction. The SDT noted at the outset that it had before it a bundle of 24 personal testimonials relating to the Appellant's character. The Appellant has not able to produce copies of all of these testimonials as part of this appeal, but they included one from Emmanuel Doku, a councillor at Harlow Borough Council, attesting to the fact that she was honest, hard working and highly principled; and one from a service manager at Cygnet Hospital, Harrow, again confirming that she dealt with integrity with staff and patients.

107. The Appellant says that these testimonials should have been drawn to the SDT's attention on the question of propensity and the unlikelihood of her acting dishonestly, and

they were not so drawn. Had they been, the findings of dishonesty, she submits, would not have been made.

108. The testimonials do appear to have been relied on only as part of the Appellant's mitigation but the SDT was of course aware of them, the Appellant says, at all times.

And on any view, the SDT was aware of the Appellant's good character and the submission being made on her behalf as to her lack of propensity to dishonesty.

109. In those circumstances, even if the SDT had been invited expressly to rely on the personal testimonials in relation to the issue of whether the Appellant had acted dishonestly, it cannot be said that it would not have reached the same conclusion that it did.

110. Ground 5: the SDT Chair had episodes of somnolence during the hearing.

111. There is no evidence of this and the Respondent does not accept that it occurred. The matter was not raised by the Appellant's counsel with the Respondent's counsel at any stage, although the Appellant says that she did raise the matter with the SDT's clerk.

112. In fact, correspondence between the Appellant and her counsel, which she has chosen to produce, demonstrates that her counsel considered this point to be totally without merit at the time, although there is clear evidence of the Appellant's concern of the issue. He says that it was "emphatically not the case" that the chairman fell asleep or nodded off on what he saw. There was one instance of a momentary lapse in concentration by the chair, but that was quickly rectified.

113. I note that the SDT stated in its decision that it had listened to the evidence "intently" in particular to the witnesses including, of course, the Appellant.

114. Ultimately, recognising the difficulties in her path, the Appellant let this matter

rest on the basis that she simply wanted her view of what had happened on the record. She had been giving her evidence at the front and to her eyes, the chair had “nodded off”.

115. Ground 6. Failure to consider the current mental state of Mr Campbell.

116. The Appellant complains that the SDT failed to consider the mental state of Mr Campbell, as he was with her, between 2010 and 2012, rather relying on a report carried out by Dr Kaeser in 2001. Dr Kaeser had concluded that Mr Campbell suffered from a persistent delusional disorder but many areas of his day to day life were handled in a perfectly ordinary and appropriate manner. The Appellant suggests that the SDT should have relied on the GP report from Dr Osman. She also refers to other evidence that Mr Campbell was able to give instructions to her.

117. As I have already indicated, the report of Dr Osman was not in fact admitted in evidence before the SDT. But in any event, it is not clear to what extent, if at all, it would have assisted the Appellant (not least since Dr Osman had not seen any of Mr Campbell's medical notes, psychiatric or otherwise).

118. Moreover, and perhaps more significantly, the SDT was at all times fully aware that Mr Campbell had been released from the COP and had been deemed able to manage his own affairs and make his own decisions. It was not part of the Respondent's case that Mr Campbell lacked mental capacity in any way. But his status was relevant. The SDT was entitled to find that Mr Campbell at the material time with the Appellant was vulnerable and disturbed, even if he knew his own mind, and to find that the Appellant must have been on notice of the sale. There was more than sufficient evidence before the SDT to justify its finding that Mr Campbell was vulnerable and disturbed. He was 85,

lonely and lived alone. He had clearly become fixated on claims with bizarre and sometimes hopeless features, as evidenced, for example, by the contents of an advice from counsel to him dated 23 September 2010, and follow-up in November 2010.

119. Ground 7: Failure to place weight on the evidence of Ms Helena Abrell.

120. Ms Abrell's statement was served late but there was no objection to that. It was a short statement. Ms Abrell was the Appellant's legal secretary from October 2009 to March 2012. She deposed to the frequency of Mr Campbell's visits and her view that in the office he seemed to know what he wanted, and why he wanted to see Mrs Benyu.

121. She admitted helping the Appellant with letters from Mr Campbell and to sometimes using the wrong matter number and mis-filing letters. She also said that often more than two letters for one client could go out in a day. They might not be identical and have different wording.

122. As already indicated, Ms Abrell was not called to give evidence and the SDT placed little weight on her statement, as it was plainly entitled to do. Even if the SDT had attached great weight to her statement, it is impossible to see how that might have affected the ultimate findings. Her evidence did not disable the SDT from the finding that the Appellant had been involved in the falsification of documents. The discrepancies and oddities on the documents on the key issues such as the "gift" and the loan are very striking.

123. Ground 8: the SDT failed to receive or make a note of submissions made on behalf of the Appellant

124. This first submission appears to be based on the way in which submissions made

on behalf of the Appellant are summarised in the decision, in particular at paragraph 115.48. As I have already indicated, there is nothing in this point. The SDT clearly understood the point that was being made to it.

125. The second submission appears to be a criticism that the SDT did not accept the submission that because she had advised Mr Campbell's sons to obtain independent legal advice, she could not on her case have been acting dishonestly. Again, the SDT clearly understood this submission, (see paragraph 115.50). The fact that the Appellant correctly advised Mr Campbell's sons to seek independent advice did not mean that she had acted dishonestly in her prior dealings with their father.

126. Human Rights Act 1998

127. There is no arguable breach of the Appellant's right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights.

128. Sanction

129. Finally, the Appellant complains that the SDT stated at paragraph 132 that there were no circumstances that would lead to it mitigating the otherwise inevitable penalty of striking off. Here she refers again to her ex husband's solicitor's letter of November 2011. But of course his assertions were rejected by the SDT. The appeal against the costs order made against the Appellant falls away in the light of my other findings.

130. Conclusion

131. For all these reasons, this appeal will be dismissed.