

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10387-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KIRIT CHHAGAN PANKHANIA

Respondent

Before:

Mr J. N. Barnecutt (in the chair)

Mr R. B. Bamford

Mrs L. McMahon-Hathway

Date of Hearing: 15th February 2011

Appearances

Robin Havard, solicitor (Morgan Cole Solicitors of Morgan Cole Solicitors Bradley Court Park Place Cardiff CF10 3DP) for the Applicant

The Respondent, who was present, was represented by Jonathan Greensmith of Russell, Jones and Walker, Solicitors, 50-52 Chancery Lane, London, WC2A 1HL.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he had:
 - 1.1 Conducted himself in a manner which was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or where such conduct had occurred after 1 July 2007, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007.
 - 1.2 Either amended, or authorised or allowed the amendment of, a letter from another firm of solicitors with the intention to deceive.
 - 1.3 Sent a letter to the Legal Complaints Service and/or his client when he knew, or should have known, that its content was false.
 - 1.4 Acted dishonestly.
 - 1.5 Failed to comply with his client's instructions.
 - 1.6 Failed to act in the best interests of his client contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 and/or, where such conduct had occurred after 1 July 2007, in breach of Rule 1.04 of the Solicitors' Code of Conduct 2007.
 - 1.7 Failed to provide a good standard of service contrary to Rule 1(e) of the Solicitors' Practice Rules 1990 and/or, where such conduct had occurred after 1 July 2007, Rule 1.05 of the Solicitors' Code of Conduct 2007.
 - 1.8 Failed to provide to his client the best information with regard to costs either at the outset or throughout the course of the retainer contrary to Rule 15 of the Solicitors' Practice Rules 1990 and/or where such conduct had occurred after 1 July 2007, Rule 2.03 of the Solicitors' Code of Conduct 2007.

The Documentary Evidence before the Tribunal

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:
 - Application and Rule 5 Statement dated 19 November 2009 with its documentary exhibits.
 - Witness Statement of the Respondent dated 13 September 2010.
 - Witness Statement of Raymond Coleman dated 24 April 2010.
 - Medical evidence submitted by the Respondent.

Preliminary Matters

3. The Respondent confirmed that he denied allegations 1.1 - 1.6 but admitted allegations 1.7 and 1.8.

Factual Background

4. The Respondent, born in 1964, was admitted to the Roll of Solicitors on 15 August 1989.
5. At all material times, the Respondent had practised on his own account under the style of KCP Law 77 Hanworth Road, Hounslow, Middlesex, TW3 1TT.
6. The proceedings related to the Respondent's conduct in the course of acting on behalf of one client, Raymond Coleman, in a dispute with his former partner, Ms Q.
7. In December 1991, Mr Coleman and Ms Q had purchased a flat together, Mr Coleman providing the deposit of £20,000. In or about December 1993, the relationship had come to an end with Ms Q continuing to live in the flat.
8. Following a sale and purchase, a further loan from Mr Coleman to Ms Q and various agreements for payments by Ms Q when such payments had not been forthcoming, Mr Coleman had instructed solicitors, Lovell Chohan, to issue proceedings against Ms Q.
9. In order to protect his interest, Mr Coleman had also registered a restriction against dealings on the property owned by Ms Q.
10. Lovell Chohan had acted for Mr Coleman up until November 2004 at which time he had transferred his instructions to the Respondent's firm. Throughout the litigation, Ms Q had been represented by Chivers Easton Brown, Solicitors ("CEB").
11. In January 2005 the proceedings had been settled by way of a Consent Order which had confirmed that Ms Q should pay to Mr Coleman the sum of £60,000 in full and final settlement of his claim together with his costs.
12. Whilst settlement had been reached in January 2005, and although in March 2005 Mr Coleman had paid Counsel's fees in the sum of £8,971.14, there had been lack of progress with regard to resolution of Mr Coleman's claim for costs leading to his letter of complaint dated 29 August 2005 to the Respondent.
13. The Respondent had replied by letter of 6 September 2005 and there were then further exchanges of correspondence between the Respondent, Mr Coleman, Mr Coleman's former solicitors, Lovell Chohan and Ms Q's solicitors, CEB, in relation to resolution of the issue of costs. Ultimately Mr Coleman had written to the Legal Complaints Service ("LSC") on 15 October 2007 and to the SRA on 26 November 2007 complaining about the manner in which the Respondent had conducted his case.
14. On 19 December 2007 the LCS had written to the Respondent asking him to respond to the complaint that had been made by Mr Coleman.
15. The Respondent had provided such a response in his letters of 4 January 2008, 16 January 2008 and 22 January 2008. However, by letter of 29 January 2008, the LCS had requested further information.

16. By letter of 31 January 2008 the Respondent, on the grounds set out, had indicated that he did not intend to "...tolerate any interference..." from the LCS.
17. By letter of 10 February 2008 Mr Coleman had provided his observations on the letter from the Respondent to the LCS on 16 January 2008. Further correspondence had ensued between the Respondent and Mr Coleman, the LCS and CEB culminating in the letters from CEB to the Respondent of 2 June 2008.

Allegations 1.1 - 1.4: Misleading Letter

18. Mr Coleman had written a letter of complaint to the LCS on 15 October 2007 on the basis that he had concluded that little or no progress was being made in bringing the matter to a conclusion and for him to receive payment in respect of costs in the agreed sum of £20,000.
19. Whilst there were attendance notes dated 18 - 20 February 2008 and 26 February 2008 which appeared to indicate that settlement (of the costs disputed between the parties) on a global basis of £30,000 had been achieved of which Mr Coleman would receive £20,000, all subsequent correspondence between Mr Coleman and the Respondent had made no mention of the global settlement of £30,000 and had simply referred to the sum of £20,000 being payable to Mr Coleman (letter from Respondent dated 26 February 2008; letter from Mr Coleman dated 9 March 2008; letter from Respondent dated 21 March 2008; Settlement Agreement drafted by Respondent; letter from Respondent dated 22 April 2008; letter from Mr Coleman dated 28 April 2008; letter from Respondent dated 7 May 2008).
20. The correspondence and documents exchanged between the Respondent and CEB had confirmed settlement of costs at £30,000. The letter from CEB to the Respondent dated 2 June 2008 had confirmed settlement in the agreed sum of £30,000 payable by two tranches, the first tranche of £15,000 to be paid within 28 days following the removal of a restriction on Ms Q's property, the second tranche of £15,000 to be paid within three months of 28 February 2008. In the penultimate paragraph, the solicitors stated that those payments could be made direct to Mr Coleman if banking details were provided.
21. On 8 June 2008, the Respondent had sent an email to Ms Heather Mansfield of the LCS to which he had attached what he had held out to be the letter of 2 June 2008 from CEB to the Respondent. That attached letter had been substantially altered from the terms of the letter that was sent by CEB to the Respondent. That had been discovered when Ms Mansfield had spoken with Mr Duncan Brown of CEB on 10 June 2008. The figure of £30,000 had been changed manually to £20,000 and the second sentence of the second paragraph, relating to the payments of two tranches of £15,000, had been deleted.
22. The Respondent had stated in his email to the LCS of 8 June 2008 that the costs settlement was in the sum of £20,000. Consequently, so far as the LCS and Mr Coleman had been concerned, Mr Coleman also having received the amended letter of 2 June 2008, the total settlement had amounted to £20,000.

Allegations 1.1, 1.5, 1.6 and 1.7: Failing to follow client's instructions; signing Land Registry Form RX3 without authority

23. In order to protect his interest in the property owned by Ms Q, the Respondent's client, Mr Coleman, had registered a restriction on the property's title thus providing Mr Coleman with a level of protection regarding his interest in the equity of the property.
24. It had been argued by the solicitors for Ms Q, CEB, that in order for Ms Q to obtain a mortgage on the property to enable her to pay any settlement monies to Mr Coleman, it would firstly be necessary for the restriction to be removed.
25. The form that must be submitted to HM Land Registry relating to an application to cancel the restriction is Form RX3. It was necessary for either Mr Coleman to sign Form RX3 or the Respondent on his behalf.
26. In their letter of 12 October 2006 Ms Q's solicitors, CEB, had requested the return of Form RX3, failing which they would make an application to Court.
27. The attendance note of conversations between the Respondent and Mr Coleman between 18 and 20 February 2008 suggested that Mr Coleman had confirmed that he would execute Form RX3. An attendance note of 26 February 2008 had suggested that Mr Coleman would return Form RX3 signed when received.
28. Under cover of his letter of 26 February 2008, the Respondent had sent to Mr Coleman Form RX3 for his signature and return. On the same day, the Respondent had written to CEB indicating that Mr Coleman "...waives his restriction against the property..."
29. By letter of 6 March 2008 CEB had indicated that the Land Registry would not remove the restriction until they were in receipt of the completed Form RX3.
30. By letter of 9 March 2008 Mr Coleman had instructed the Respondent that the charge over the property of Ms Q would remain until all cost issues were resolved and agreed costs paid.
31. In an attendance note of 20/21 March 2008 with Mr Coleman the Respondent had indicated that Form RX3 should now be returned "as agreed by him".
32. By letter of 21 March 2008 to Mr Coleman again the Respondent had requested the return of Form RX3 duly signed.
33. In an exchange of correspondence on 26 March 2008 between CEB and the Respondent, the Respondent had confirmed that Mr Coleman had advised that he wished to execute Form RX3 himself.
34. On 27 March 2008, CEB had written to the Respondent indicating that if Form RX3 was not received within seven days, they would make a formal application to Court.

35. An attendance note dated 29/30 March 2008 referred to a conversation taking place between the Respondent and Mr Coleman in which Mr Coleman was told that "... we would deal with RX3". Mr Coleman had said that he had no recollection of such a conversation and contended that at no stage did he instruct the Respondent to sign Form RX3 to enable the restriction to be removed.
36. On 30 March 2008 the Respondent had sent to CEB Form RX3 duly signed by himself.
37. On 22 April 2008 the Respondent had written to Mr Coleman and on 28 April 2008 Mr Coleman had written to the Respondent confirming his instruction that he was not prepared to sign Form RX3 until he had received the amount of £20,000 and referring to a relevant clause contained within the Court Order of 26 January 2005 setting out that the charge should remain in place until all financial obligations were complied with.
38. In his response of 2 May 2008 to Mr Coleman the Respondent had made no reference to the fact that he had signed Form RX3 on 30 March 2008. A subsequent attendance note of 7 May 2008 with Mr Coleman recorded that the Respondent had advised Mr Coleman that he had addressed Form RX3.

Allegations 1.1, 1.6, 1.7 and 1.8: Failure to provide adequate information regarding costs

39. When the Respondent took over conduct of the matter, two client care letters had been sent dated 18 November 2004 and 22 November 2004. They were different to the extent that in the first letter the Respondent had stated that he would carry out the majority of the work at £275 per hour. In the second letter, it was proposed that Ms CC, a trainee solicitor, would carry out much of the work at £85 per hour. Neither letter had provided an estimate of what Mr Coleman's liability to costs might be. Mr Coleman stated that he only received the letter dated 22 November 2004.
40. There was no evidence to suggest that Mr Coleman had been kept informed as to the level of costs being incurred. Mr Coleman had paid £8,971.14 in respect of Counsel's fees. In his letter to the Respondent of 29 August 2005, Mr Coleman had set out very clearly his concern about information as to the level of costs; some seven months after the case had settled.
41. The Respondent had responded by letter of 6 September 2005 but had provided no clear indication of Mr Coleman's liability to costs other than that his file was in the process of being costed.
42. A copy interim VAT invoice dated 12 October 2005 referred to costs of £12,500 but there was no indication that the bill had been sent to Mr Coleman. In his letter of 6 September 2005 the Respondent had stated that "... we are considering taking part or indeed all of the next settlement tranche in respect of our fees...".
43. In his letter of complaint to the LCS of 15 October 2007 Mr Coleman had confirmed that he had never received a bill of costs from the Respondent despite requests.

44. By a Decision dated 3 June 2009 the Respondent had been referred to the Tribunal.

Witnesses

45. Mr Coleman relied on his Statement of 27 April 2010. He confirmed that the capital sum of £60,000 had been paid in three tranches. From the first payment of £35,000, he had been asked by the Respondent to settle Counsel's fees of £8,971.14 and he had done so. The Respondent had kept the second payment of £12,500 on account of costs and Mr Coleman had received the third payment of £12,500.
46. Mr Coleman insisted that he had never been told that there was to be a global settlement of £30,000 in respect of his costs and that he had never received a bill of costs from the Respondent.
47. In cross-examination, inter alia, Mr Coleman denied that the dismissal of his partner from the Respondent's firm had been the cause of the breakdown of his professional relationship with the Respondent. He denied that he had provided inconsistent instructions and insisted that because of his past dealings with Ms Q, he had been unwilling to take anything said by her in respect to payment on trust. Mr Coleman said that he had no recollection of the attendance recorded as having taken place on 29 - 30 March 2008. He insisted that he had not given the Respondent instructions to deal with Form RX3.
48. In response to a question from the Tribunal, Mr Coleman explained that he had met the Respondent only twice; once in November 2004 and again in August 2005 after the case had settled. His contact at the firm had been with the trainee solicitor who had dealt with his case throughout. The Respondent had told Mr Coleman that he would only get about £20,000 in costs and he had never been made aware of a figure of £30,000.

Findings as to Fact and Law

49. **Allegation 1.1. That the Respondent had conducted himself in such a manner which was likely to compromise his integrity**

Allegation 1.2. That the Respondent either amended, or authorised or allowed the amendment of, a letter from another firm of solicitors with the intention to deceive

Allegation 1.3. That the Respondent sent a letter to the Legal Complaints Service and/or his client when he knew, or should have known, that its content was false

Allegation 1.4. That the Respondent had acted dishonestly

- 49.1 Having given careful consideration to both the written and the oral evidence and to the submissions, the Tribunal dealt firstly with the related allegations 1.1-1.4.
- 49.2 The Applicant had submitted that the Respondent had known that the version of the letter of 2 June 2008 from CEB to the Respondent, sent to both Mr Coleman and to

the Legal Complaints Service, had been false. The Applicant had referred to the letters from the Respondent to Mr Coleman indicating his intention, and thereafter his success, in achieving a settlement of costs at £20,000. The Applicant had also noted the Respondent's email to the Legal Complaints Service dated 8 June 2008 which had also referred to a settlement of £20,000 and had failed to mention the Tomlin Order relating to a settlement of £30,000 in respect of costs.

- 49.3 The Applicant had referred the Tribunal to the evidence of Mr Coleman to the effect that he had never been sent a copy of the Tomlin Order dated 29 February 2008 and that despite the attendance note of 26 February 2008, he had never been told that a costs settlement had been achieved on his behalf at £30,000.
- 49.4 The Applicant had submitted that in order to conceal the actual terms of the settlement for £30,000, the figure of £30,000 had been manually changed, in the letter of 2 June 2008 from CEB to the Respondent, and to further ensure the concealment of the higher figure, the sentence in the original letter, relating to the payment of two tranches of £15,000, had been removed.
- 49.5 In relation to the medical evidence put forward on behalf of the Respondent; that he had been unable to concentrate or think in a coherent way following time spent in hospital receiving chemotherapy, while also questioning the reliability of that medical evidence, the Applicant had submitted that the letter dated 8 June 2008, written by the Respondent to Mr Coleman and enclosing the altered letter of 2 June 2008 from CEB, had not been a letter drafted by someone in a confused state but on the contrary had been properly and competently structured. As to the Respondent's explanation of the sending being by way of an administrative error, the Applicant had submitted that in view of the history of the matter such an explanation was not credible.
- 49.6 The Respondent had decided not to give oral evidence but had relied on his Statement of 13th September 2010 and upon the submissions of his solicitor, Mr Greensmith.
- 49.7 In referring the Tribunal to specific paragraphs of that Statement, Mr Greensmith had told the Tribunal that there had been a breakdown in the solicitor/client relationship between the Respondent and Mr Coleman caused in part by the dismissal by the Respondent of Mr Coleman's partner.
- 49.8 Mr Greensmith had submitted that the attendances on Mr Coleman on 18 - 20 February 2008 and 26 February 2008 had taken place as recorded by the Respondent and that Mr Coleman had been fully aware of the proposed global costs settlement of £30,000.
- 49.9 Mr Greensmith had referred the Tribunal to the Respondent's explanation of what had happened in relation to CEB's letter of 2 June 2008; that the Respondent had known that Mr Coleman would not have liked the way that letter had been worded and had been seeking to organise its amendment by CEB to reflect the proper nature of the £20,000 costs payment when, mistakenly believing that to have been done, the amended draft had, in error, been despatched both to Mr Coleman and to the Legal Complaints Service.

- 49.10 Mr Greensmith had told the Tribunal that once the Respondent had become aware of his error, he had tried to contact the caseworker, dealing with Mr Coleman's complaint, at the Legal Complaints Service and had submitted that such was not the action of someone who had set out to deceive.
- 49.11 Turning to the medical evidence, Mr Greensmith had submitted that whatever diagnosis had been made, at the critical time the Respondent had not been operating efficiently. He submitted that the impairment to the Respondent's abilities had possibly, on the basis of the medical evidence, been caused by heavy metal poisoning arising from his treatment with Chinese traditional medicines.
- 49.12 The Tribunal was satisfied so that it was sure that allegations 1.1, 1.2, 1.3 and 1.4 were proved to the higher standard. The Tribunal did not accept the Respondent's explanation, given in his written statement, that he had believed that the letter dated 2 June 2008, sent both to Mr Coleman and to the Legal Complaints Service, had been a version of the original letter amended by CEB solicitors.
- 49.13 The Tribunal was satisfied so that it was sure that the Respondent had been aware that the letter of 2 June 2008 had been amended with the intention of deceiving and that its contents were false. The Tribunal found his conduct to have compromised his integrity.
- 49.14 Moreover, the Tribunal considered the test as laid down in Twinsectra v Yardley [2002] UKHL 12 and was satisfied so that it was sure that the Respondent's conduct in relation to the amended letter of 2 June 2008 was dishonest by the standards of reasonable and honest people and that the Respondent himself realised that by those same standards his conduct was dishonest.
- 49.15 The Tribunal did not find the medical evidence as to the Respondent's health on or around 8 June 2008 convincing. The Tribunal did not find the letter dated 23 July 2010 from Dr O'Riordan to Dr Qureshi or the letter dated 10 September 2010 from Dr Bakshi very helpful when considering the Respondent's condition in June 2008.
- 49.16 The initial report of Dr A P Thompson, dated 9 September 2010, stated a number of matters as facts, which in his subsequent report of 10 February 2011, prepared, inter alia, to respond to a series of questions formulated by the Applicant, had turned out not to have been within his knowledge and to have been incorrect. The Respondent had told Dr Thompson, who was not his GP, during a consultation on 30 May 2008 that he had been diagnosed with a brain tumour and had been taking chemotherapy in tablet form that had been giving him some unremitting side effects.
- 49.17 Dr Thompson's report of 9 September 2010 said that the Respondent "was in receipt of chemotherapy treatment for lesions and suspected lesions in the head, chest and stomach." His report proceeded to detail possible side-effects affecting the Respondent and resulting from chemotherapy.
- 49.18 The Respondent's Statement of 13 September 2010 stated "At the time of these events I was in and out of hospital having chemotherapy".

49.19 However, Dr Thompson's report of 10 February 2011 explained that the Respondent had failed to tell him that the diagnosis of a brain tumour had been made by a traditional Chinese medicine practitioner. This doctor had provided medicine including oral medication described as chemotherapy.

49.20. The Tribunal was extremely concerned that much of the detail in Dr Thompson's reports had been based purely on what he had been told by the Respondent. The Tribunal was not provided with any evidence of the five day hospital visit referred to by the Respondent in his statement as follows:

“23. I left hospital on the 7th June 2008 which was a Saturday having spent five days receiving chemotherapy. I returned to the hospital on Sunday 8th to collect a prescription which was designed to counteract the side effects of the treatment.”

49.21 In the light of the contradictions and inconsistencies in the medical evidence and in the Respondent's Statement as to his health, the Tribunal was unable to place any great reliance on that evidence.

50. **Allegation 1.5: That the Respondent had failed to comply with his client's instructions**

50.1 The Applicant submitted that Mr Coleman's clear evidence was that at no stage had he instructed the Respondent to sign and submit Form RX3 to HM Land Registry. He referred to the correspondence from Mr Coleman to the Respondent in which he had always expressed the contrary. The Applicant submitted that whether or not Mr Coleman's instructions had been considered by the Respondent to be reasonable, Mr Coleman had not been instructing the Respondent to do anything improper. Although CEB had stated that if Form RX3 was not filed with HM Land Registry, an application would be made to the Court, the Applicant noted that there had been no indication that Mr Coleman had been told of or advised about the implications of that proposed application, by the Respondent.

50.2 The Applicant referred to Mr Coleman's letter to the Legal Complaints Service in which Mr Coleman had explained that he had been unaware that the restriction on title had been lifted until sometime around 17 June 2008 when he had contacted the Land Registry. The Applicant also pointed out that the original letter from CEB of 2 June 2008 had referred not only to two payments of £15,000, making £30,000 and not £20,000, but had also referred to the removal of the restriction.

50.3 Referring to Mr Coleman's letter to the Respondent dated 28 April 2008 in which he had stated that he was not prepared to sign the RX3, the Applicant noted that in his letter in response of 2 May 2008, the Respondent had failed to tell Mr Coleman that in fact he had already signed the RX3 on his behalf and had returned it to CEB.

50.4 Mr Greensmith submitted that attendance notes dated 29 - 30 March 2006 recorded that Mr Coleman had agreed to the lifting of the restriction and had given the Respondent authority to sign the RF3. He also referred the Tribunal to a letter of 12 October 2006 from Ms Q's solicitors (CEB) explaining that an application would be made to the Court if Mr Coleman did not remove the restriction as in their view the

Order of 26 January 2006 had not applied to the recovery of costs but only to the recovery of the capital debt of £60,000.

50.5 The Tribunal found allegation 1.5 proved to the higher standard. The Tribunal considered Mr Coleman to have been a credible witness. It accepted his evidence that he (Mr Coleman) had instructed the Respondent not to sign Form RF3 and that he had not subsequently authorised the Respondent to sign it as part of a global agreement or otherwise.

50.6 The Tribunal noted that the various attendance notes had not been put to Mr Coleman during his cross examination. The Tribunal accepted Mr Coleman's evidence that he had had no knowledge of a global agreement for the payment of his costs in the sum of £30,000 and that he had been unaware of and had never been sent a copy of the Tomlin Order. Again the Tribunal noted that Mr Coleman had not been challenged as to his denial of the receipt of a copy of the Tomlin Order.

51. **Allegation 1.6: That the Respondent had failed to act in the best interests of his client**

Allegation 1.7: That the Respondent had failed to provide a good standard of service

Allegation 1.8: That the Respondent had failed to provide to his client the best information with regard to costs either at the outset or throughout the course of the retainer

51.1 Dealing with allegations 1.6 – 1.8, the Applicant submitted that the Respondent had failed to comply with Rule 15 of the Solicitors' Practice Rules 1990 and/or Rule 2.03 of the Solicitors' Code of Conduct 2007. He also submitted that the Respondent had failed to progress the matter with sufficient expedition and in so doing had failed to act in the best interests of his client, Mr Coleman.

51.2 While acknowledging that it appeared that the Respondent had achieved a favourable outcome for Mr Coleman to the extent that despite an initial offer of £20,000, which Mr Coleman had been advised by his former solicitors to accept, the Respondent had secured a payment of £60,000 in satisfaction of Mr Coleman's claim, the Applicant submitted that the Respondent had fallen far short of complying with his obligations as to the provision of costs information. The Applicant submitted that Mr Coleman had not been made aware that his liability in costs, including disbursements, had amounted to £42,515.36.

51.3 The Applicant submitted that the Respondent had failed to provide an initial estimate of Mr Coleman's likely costs, that the Respondent had subsequently failed to keep Mr Coleman informed as to the level of costs being incurred and that he had failed to deliver any bills of costs, interim or final, despite requests from Mr Coleman.

51.4 Dealing firstly with allegations 1.7 and 1.8, the Tribunal found the allegations substantiated on the facts, indeed they had both been admitted by the Respondent.

- 51.5 Turning to allegation 1.6, the Tribunal found the allegation proved to the higher standard. Mr Coleman had complained to the Respondent, by letter of 29 August 2005, about the delays in dealing with his matter and about the Respondent's intention to retain part of his settlement in the absence of any interim bill, invoice or information as to costs. Ultimately Mr Coleman had written on 15 October 2007 to the Legal Complaints Service.
- 51.6 The Tribunal was concerned not to see a letter from the Respondent telling Mr Coleman about the threat of an application to the Court relating to the restriction and detailing his advice on the matter. The Respondent may well have obtained a better capital settlement for his client than Mr Coleman's previous firm, but the Tribunal was satisfied that the Respondent had failed to act in his client's best interests subsequently in relation to keeping him fully informed as to the recovery of his costs. The Tribunal was concerned that in failing to provide full information about both the amount of his costs and about the negotiations relating to their recovery, the client had been required by the Respondent to make decisions with less than full information.

Previous Disciplinary Matters

52. None.

Mitigation

53. Mr Greensmith conveyed the Respondent's apologies to the Tribunal. He asked the Tribunal to take into consideration the 22 years that the Respondent had practised with an unblemished reputation and referred the Tribunal to the many references submitted on the Respondent's behalf.
54. Mr Greensmith referred to the difficulties encountered by the Respondent in terms of his past and on-going health problems and the flooding of his offices. He submitted that although the Respondent had been unable to engage with one particular client that did not mean that he was a danger to the public. Mr Greensmith referred the Tribunal to the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 in which Mr Justice Coulson had referred to some of the cases in which a finding of dishonesty had not led to striking off the Roll of Solicitors and submitted that a one-off, albeit very serious matter, should not lead to the removal from the Roll of the Respondent.

Sanction

55. The Tribunal considered the allegations proved against the Respondent as very serious including as they did a finding that he had been dishonest while practising as a solicitor. Having carefully considered both the mitigation and the references, nevertheless the Tribunal considered that in order to maintain the reputation of the Profession and to protect the Public, the appropriate penalty in all the circumstances was that the Respondent be struck off the Roll of Solicitors and it so ordered.

Costs

56. The Applicant applied for costs in the sum of £18,759.17. The Tribunal was subsequently informed that costs had been agreed in the sum of £17,000.00.

The Order of the Tribunal

57. The Tribunal Ordered that the Respondent, Kirit Chhagan Pankhania, 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 in the agreed inclusive sum of £17,000.00.

Dated this 23rd day of March 2011
On behalf of the Tribunal

J. N. Barnecutt
Chairman