On 26 October 2012, Mr Slater appealed against the Tribunal's decision on sanction. The appeal was dismissed with costs by Lord Justice Elias and Mr Justice Singh. Slater v Solicitors Regulation Authority [2012] EWHC 3256 (Admin.) Mr Slater sought permission to appeal to the Court of Appeal which was refused by Sir Stanley Burnton on 9 December 2013. Slater v Solicitors Regulation Authority [2013] EWCA Civ 1883

No. 10464-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF *[RESPONDENT 1]*, solicitor (First Respondent)

- and –

BRYAN HILTON SLOTOPOLSKY SLATER solicitor (Second Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr A N.Spooner (in the chair)
Miss N Lucking
Mr G Fisher

Date of Hearing: 3rd and 30th November 2010

FINDINGS & DECISION

Appearances

Mr George Marriott, solicitor and partner of Russell Jones & Walker, 50-52 Chancery Lane, London, WC2A 1HL appeared for the Applicant on 3 November 2010. Mr Jonathan Goodwin, solicitor advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT appeared on behalf of Mr Marriott for the Applicant on 30 November 2010.

The First Respondent, [RESPONDENT 1], appeared and was represented by Mr Alaric Watson of Counsel.

The Second Respondent, Bryan Hilton Slotopolsky Slater, appeared and on 3 November 2010 was represented by Mark Smith, Counsel of 11 Stone Buildings, Lincoln's Inn, London, WC2A 3 TG. The Second Respondent represented himself on 30 November 2010.

The application was dated 24 February 2010.

Allegations

Against the First Respondent, [RESPONDENT 1] only

1. The First Respondent failed to keep accounting records properly written up contrary to Rule 32 of the Solicitors Accounts Rules ("SAR") 1998;

2. The First Respondent permitted client monies to be paid to the Second Respondent contrary to Rule 15 SAR 1998;

3. The First Respondent acquiesced in the Second Respondent receiving and thereby being responsible for client monies contrary to a condition on the Second Respondent's Practising Certificate contrary to Rules 1.04 and 1.06 Solicitors Code of Conduct 2007;

4. The First Respondent failed to ensure compliance with the Rules contrary to Rule 6 SAR;

5. The First Respondent failed to remedy the breaches of the Rules promptly upon discovery contrary to Rule 7 SAR.

Against the Second Respondent, Bryan Hilton Slotopolsky Slater, only

6. The Second Respondent breached a condition on his Practising Certificate by receiving into his personal account, client monies contrary to Rule 1.02, 1.04 and 1.06 Solicitors Code of Conduct 2007;

7. The Second Respondent failed to ensure that client monies were paid promptly into client account contrary to Rule 15 SAR 1998.

The Respondents both admitted the allegations, however, there was a factual dispute concerning whether the First Respondent had knowledge of only £3,000 being paid directly by a client to the Second Respondent, or whether he had knowledge that the Second Respondent had received a total of £26,500 from clients.

Factual Background

1. The First Respondent [RESPONDENT 1] born in 1960, was admitted as a solicitor on 1 November 1994 and his name remained on the Roll. The First Respondent was a sole practitioner practising as [NAME AND ADDRESS OF FIRM REDACTED].

2. The Second Respondent (Mr Slater), born in 1952, was admitted as a solicitor on 1 July 1980 and his name remained on the Roll. He was currently an employee of Bury Van Hire Ltd, Limefield House, Limefield Brow, Bury, Lancashire, BL9 6QS.

3. On 29 March 2007 Mr Slater received a practising certificate for the year 2006/2007. One of the conditions attached to it was that he was not to be responsible for receiving or paying client monies. On 24 July Mr Slater's prospective employment with [RESPONDENT 1] as an Assistant/Consultant Solicitor was approved on terms which included the following condition:

> "i. that he is not to be responsible for any client monies."

4. Mr Slater accepted the condition. [RESPONDENT 1] was notified of the decision and the conditions on the same date. For the subsequent practice year of 2007/2008 the same conditions were imposed by the SRA.

5. Mr Slater became employed by [RESPONDENT 1], as a self-employed Consultant in July 2007 under an arrangement whereby Mr Slater was to receive 60% of the monies earned and received by the First Respondent's firm in respect of fees generated by Mr Slater.

6. In February 2008, [RESPONDENT 1] allowed Mr Slater to receive directly from a client £3,000 which were monies due to [RESPONDENT 1]'s firm on account of costs as an advance under his arrangement with Mr Slater. Subsequently [RESPONDENT 1] discovered that Mr Slater had received a total of £26,500 from clients. [RESPONDENT 1] denied all knowledge of any payments other than the first £3,000.

7. By an email dated 6 May 2008 Mr Slater scheduled all the payments he had received directly and which totalled £26,500 for the purposes of preparing an account between himself and [RESPONDENT 1]. Mr Slater wished to deal with VAT, tax and NI himself and stated:

> "I think it's just possible to argue with the Law Society that while I am paid Schedule D I have an employment contract with you."

8. [RESPONDENT 1] stated to the SRA that once he became aware of what had happened he corrected client account by accounting for all the monies paid by or on behalf of clients to Mr Slater, and as a result Mr Slater owed him £10,000 after taking into account their arrangement to share fees.

9. After an abortive attempt to recover these outstanding monies from Mr Slater via a Statutory Demand, [RESPONDENT 1] issued proceedings against Mr Slater and was successful.

10. In February 2008 Mr Slater was facing possession proceedings in respect of his home unless he paid arrears to his mortgagee of approximately £8,000. [RESPONDENT 1] had already loaned Mr Slater £5,000 but unknown to him Mr Slater had not banked it. In an exchange of emails between 11 February 2008 and 24 February 2008, Mr Slater sought the £5,000 and a further £3,000 which he stated he would only seek from the First Respondent if a client Professor Lingam paid that sum. He stated; "One way or another I have to get the money."

11. [RESPONDENT 1] agreed that if the £3,000 came in from Professor Lingam then he would pay it over to Mr Slater. He also paid over the £5,000. Mr Slater notified [RESPONDENT 1] that the £3,000 had in fact been paid into Mr Slater's own account rather than the firm's, by email dated 27 February 2008 and wished to regularise the position with [RESPONDENT 1]. It does not appear that this was regularised by [RESPONDENT 1] until after Mr Slater notified him by email of 6 May 2008 that £3,000 formed part of the client monies Mr Slater had received. However [RESPONDENT 1] did not include that figure of £3,000 in the schedule that he supplied to the SRA, which made no reference to £3,000 being received in February 2008. Further, the only invoice supplied by [RESPONDENT 1] in respect of Professor Lingam was dated 25 September 2008.

12. Besides receiving into his personal bank account the £3,000 direct payment from Profesor Lingam on 15 February 2008, Mr Slater also received a payment of £6,000 from client H and A on 18 February 2008 and £5,000 from [RESPONDENT 1] on 19 February 2008. The £6,000 formed part of the schedule of payments which Mr Slater supplied to [RESPONDENT 1] on 6 May 2008 and which Mr Slater conceded he had received directly from clients totalling £26,500.

13. Following the report made by [RESPONDENT 1] to the Legal Complaints Services ("LCS") on 18 November 2008, the SRA wrote to Mr Slater on 19 February 2009 seeking his explanation. Mr Slater stated in a witness statement that Professor Lingam agreed that he could take the money directly and that in fact the money came from Mr Lingam's sister and was an interest free loan from her. Professor Lingam's statement stated that [RESPONDENT 1] knew about the arrangement. He also stated that Mr Slater requested that the monies be described as a loan from his sister and not on account of costs. No mention of this arrangement was made in Mr Slater's email of 6 May 2008 where he referred to the monies as being from Professor Lingam, not from Professor Lingam's sister or as a loan.

14. An invoice was not delivered to Professor Lingam until September 2008 and the monies should have remained in client account until this date. Payment to Mr Slater was in breach of the conditions on his practising certificate.

15. With regard to the monies from client H and A totalling £6,000 Mr Slater exhibited a letter from a director of the company dated 4 March 2009 which also stated that all monies owed to [RESPONDENT 1]'s firm were to be paid directly to Mr Slater as an interest free loan, that the course of action had been agreed with [RESPONDENT 1], and that once Mr Slater had cleared his indebtedness with [RESPONDENT 1],, those monies would be credited to his client account and clear any indebtedness from H and A to [RESPONDENT 1]'s firm.

16. [RESPONDENT 1] raised an invoice for this exact sum dated 21 October 2008. The consequence of this was that the funds placed into Mr Slater's personal account by H and A remained client monies and therefore had to be paid into [RESPONDENT 1]'s client account and remain there until the delivery of the invoice. Payment to Mr Slater was in breach of the conditions on his practising certificate.

17. The Tribunal reviewed all the documents submitted by the Applicant which included:

(i) Rule 5 Statement together with all enclosures;

(ii) Applicant's Statement of Costs dated 29 October 2010;

18. The Tribunal reviewed all the documents submitted by the First Respondent, [RESPONDENT 1], which included:

(i) Witness statement of [RESPONDENT 1] dated 28 May 2010 together with attached exhibits;

(ii) Second witness Statement of [RESPONDENT 1] dated 25 October 2010 together with attached exhibits;

(iii) Third witness Statement of [RESPONDENT 1] dated 1 November 2010 together with attached exhibits;

(iv) Character reference from Neil Clifford dated 29 October 2010;

(v) Email dated 2 November 2010 from [RESPONDENT 1] to Mr Slater together with attached Costs Schedule;

(vi) Letter dated 25 November 2010 from [NAME OF FIRM REDACTED].to the Tribunal.

19. The Tribunal reviewed all the documents submitted by the Second Respondent, Bryan Hilton Slotopolsky Slater, which included:

(i) Witness statement of Bryan Hilton Slotopolsky Slater called "Establishing the Facts" dated 13 October 2010 together with attached exhibits;

(ii) Witness statement of Bryan Hilton Slotopolsky Slater called "Mitigation" dated 13 October 2010 together with exhibits;

(iii) Third witness Statement of Mr Bryan Hilton Slotopolsky Slater dated 22nd October 2010 together with enclosures;

(iv) Bundle of documents provided by Mr Bryan Hilton Slotopolsky Slater including various assorted documents;

(v) Character reference from Mr Kieran Henry dated 28 October 2010;

(vi) Email messages between Mr Mark Smith and Mr Alaric Watson dated 2 November 2010;

(vii) Email message from Mr Mark Smith to Mr Slater dated 22 November 2010;

(viii) Witness Statement from Mr Brian Hilton Slotopolsky Slater called "Post Hearing Mitigation" dated 21 November 2010;

(ix) Witness Statement of Mr Mark Smith dated 25 November 2010;

(x) Letter dated 29 November 2010 from Mr Kieran Henry to the Tribunal.

Witnesses

The following persons gave oral evidence:

(a) [RESPONDENT 1], (the First Respondent);

(b) Bryan Hilton Slotopolsky Slater, (the Second Respondent);

(c) Professor Sam Lingam.

Findings as to Fact and Law

20. The Tribunal had considered carefully the submissions of all parties and all the documents provided. [RESPONDENT 1] had admitted allegations 1, 2, 3, 4 and 5 and Mr Salter admitted allegations 6 and 7, and accordingly the Tribunal found all these allegations were proved. However, there was a dispute regarding [RESPONDENT 1]'s knowledge of the amount of payments received by Mr Slater from clients and the Tribunal was required to make a finding of fact on this issue.

21. The Tribunal found that [RESPONDENT 1] gave his evidence in an honest and straightforward way, but by contrast Mr Slater was evasive, unreliable and clearly an individual who was prepared to try and work around the rules and condition on his Practising Certificate for his own ends.

22. Mr Slater said in evidence that there was a discussion by a photocopier at some point when an agreement was reached that he could take monies direct from clients. In evidence under cross-examination from Mr Watson, Mr Slater said he thought [RESPONDENT 1] understood the position but that it was done quickly and was "flimsy" but he thought he had the "green light".

23. The Tribunal heard that Mr Slater's financial position was difficult and that he needed money to pay off his mortgage quickly and had other demands on him e.g. for school fees. So far as the mortgage was concerned, [RESPONDENT 1] helped him out with this with a loan in the sum of £5,000.

24. The Tribunal found that the purported loan agreement with Professor Lingam or his sister, was an odd one at best and if it was put in place, it was simply designed to circumvent the rules and the condition on Mr Salter's Practising Certificate. The Tribunal found the evidence of Professor Lingam unconvincing. He was unclear about the date of his meeting with [RESPONDENT 1] when discussions were alleged to have taken place about payments being made direct to Mr Slater without going through the firm of [NAME OF FIRM REDACTED].. It became clear in his

evidence that there had been a falling out regarding fees and the outcome of a hearing that the firm was handling, and his evidence in support of Mr Slater against [RESPONDENT 1] was coloured by this.

25. The Tribunal found as a fact that having made good the £26,500 [RESPONDENT 1] after consulting with Counsel and realising the seriousness of the breach of the Rules, self-reported the circumstances to the SRA and it was to his credit that he did so.

26. Having heard the evidence of both Respondents, the Tribunal found that [RESPONDENT 1] would not have misled the SRA over such a serious matter. If he had known of the £26,500 as Mr Slater described it, he would have made this clear to the SRA. The Tribunal therefore found that [RESPONDENT 1]'s version of events that he only knew about, and allowed Mr Slater to accept, the sum of £3,000 against future monies was the correct version of events.

Mitigation of the First Respondent, [RESPONDENT 1]

27. Mr Watson on behalf of [RESPONDENT 1] confirmed [RESPONDENT 1] was a sole practitioner employing six people who all depended upon him for work. The Tribunal was referred to the character reference from Neil Clifford and reminded that these issues had arisen in 2008 and had caused [RESPONDENT 1] a great deal of stress. He had attended courses required by the Authority and had lost out financially. He wanted to apply to become a Notary Public and a Deputy Insolvency Judge and requested the Tribunal to deal with him with some degree of leniency. He had learnt a bitter lesson and assured the Tribunal this would never happen again. He accepted an Order for part of the costs would be made against him but submitted it would not be unreasonable for the Tribunal not to apply any other formal sanction. [RESPONDENT 1] had admitted all the allegations which related to the same incident, one occasion where he had allowed £3,000 to be paid into a non-client account. [RESPONDENT 1] accepted he had not remedied the situation as quickly as he should have done but this was simply because he had indulged an old friend. He accepted that this was not the correct way to do things and would ensure there would be no repetition.

Mitigation of the Second Respondent, Bryan Hilton Slotopolsky Slater

28. The Tribunal was referred to the various witness statements submitted by Mr Slater which also dealt with previous appearances before the Tribunal.

29. Mr Slater accepted that the monies he received were client monies but these were due to be disbursed as costs and, as such, were payable to the firm. Both of the lay clients involved were commercial and sophisticated clients and had attended the Tribunal to support Mr Slater.

30. It was submitted that no client monies had been involved and no dishonesty had been alleged. Mr Slater had been driven by financial needs and he had approached clients who were friends as well as clients. He had not previously breached any conditions on his practising certificate and took compliance very seriously. On this occasion he had got it wrong but he had not enriched himself at the firm's or at the client's

expense. He had wanted to receive the money sooner than he would normally have done.

31. Mr Slater was currently working in-house for a number of companies who were all aware of the Tribunal proceedings. Indeed, one of his current employers had attended the Tribunal to support Mr Slater. The Tribunal was referred to the character reference provided by Kieran Henry. Mr Slater had four children and was currently living with his former wife. It was inconceivable that he would not comply with the conditions on his practising certificate in future and he accepted that he had been badly mistaken but did the best that he could at the time.

32. In relation to Mr Slater's two previous appearances, these had been due to circumstances beyond his control and had been explained in his witness statements.

Application made by the Second Respondent, Bryan Hilton Slotopolsky Slater on 30 November 2010 to adduce additional evidence

33. At the hearing on 30 November 2010, Mr Slater sought to adduce further evidence which consisted of a witness statement from Mr Slater dated 21 November 2010 headed "Post Hearing Mitigation", an email from Mr Mark Smith to Mr Slater dated 22 November 2010, a witness statement from Mark Smith dated 25 November 2010 and a letter from Kieran Henry dated 29 November 2010 to the Tribunal. Mr Slater submitted that he believed the additional statements would go a substantial way to explaining why the Tribunal made the decision in relation to the Findings of Fact on 3 November 2010. He accepted that this was an unusual situation and confirmed he did not seek a re-trial and nor did he ask the Tribunal to "backtrack". He wanted to explain why the Tribunal had found his evidence to be "evasive". He had never given evidence before even though he had been an advocate for 30 years and was shocked that the Tribunal had found him to be evasive.

34. Mr Slater referred the Tribunal to the case of Henderson v Henderson [1843-60] All ER Rep. 378 and also to the case of Barrow v Bankside Members Agency Ltd & Anor [1996] 1 All ER 981 which dealt with the issue of fresh evidence being adduced. In the case of Barrow v Bankside, it was held the rule that parties to litigation were required to bring their whole case before the Court at the outset and that, in the absence of special circumstances, they could not return to Court to advance arguments, claims or defences which they had failed to put forward for decision on the first occasion, applied only to matters that could and should have been dealt with on that occasion, the purpose of the rule being to avoid a multiplicity of proceedings and abuse of process and bring a certain end to litigation. Mr Slater submitted that in the case of Barrow v Bankside Members Agency Ltd & Anor, the parties were trying to bring a separate action but this was not the position with Mr Slater who was simply seeking to adduce additional mitigation.

35. It was further held in Barrowside v Bankside Members Agency Ltd & Anor that:

> "...if the facts did fall within that mischief, given the special setting of the Lloyd's litigation and the fact that the first defendant could not point to any prejudice that it had suffered, the case fell within the exception to the rule based on special circumstances...."

Mr Slater accepted that the case confirmed if a party could and should have put their argument at the first hearing, then that should have been done. However, Sir Thomas Bingham MR had also stated in that case:

> "The rule in Henderson v Henderson is, as Stuart Smith LJ observed in Talbot v Berkshire CC [1993] 4 All ER 9 at 15, [1994] QB 290 at 297, a salutary rule, and its application should not in my view be circumscribed by unnecessarily restrictive rules.
>
> .... It is plain from both cases that negligence, inadvertence and even accident will not excuse non-compliance with the rule..."

36. In the case of Barrow v Bankside Members Agency Ltd & Anor, Saville LJJ had concluded:

> "In his closing submissions, Mr Simon suggested that if the new action were allowed to proceed, then the court would be replacing the rule in Henderson v Henderson with a new rule, namely that parties are entitled to wait and see the outcome of one claim before deciding whether or not to pursue another. This is not the case. The rule remains that where a matter could and should have been litigated first time round, then in the absence of special circumstances a party will not be allowed to start subsequent proceedings raising that matter, because that would be an abuse of the process of the court. As I have tried to explain, in the circumstances of the present case the matter now raised could not and should not have been litigated first time round."

37. Mr Slater submitted that at the hearing on 3 November 2010, neither party had expected to give evidence but both Respondents ended up giving evidence. Mr Slater had an exchange of emails between him and his barrister, Mr Smith on his Blackberry which would make it clear to the Tribunal that Mr Slater did not expect to give evidence on 3 November 2010 and had anticipated that only mitigation would be dealt with.

38. At the hearing on 3 November 2010 Mr Slater had asked his Counsel to inform the Tribunal of this but he refused to do so even though Mr Slater waived client privilege. Mr Slater submitted that he could not give this evidence at the last hearing and that his own Counsel had ignored discussions that had taken place between them. His Counsel had come to an agreement with Mr Watson, Counsel for [RESPONDENT 1], and Mr Slater had been told that he would not be required to give evidence. During the course of the hearing, Mr Smith had told Mr Slater that if Mr Slater terminated his instructions with Mr Smith then Mr Smith would be able to give evidence at the hearing. Mr Slater submitted that these were special circumstances which satisfied the test in Henderson v Henderson and that he could not provide this evidence at the last hearing on 3 November 2010. He submitted it was important for the Tribunal to look at that evidence in the framework of what Mr Smith now confirmed happened at the last hearing. Mr Slater submitted this was a very difficult matter for him and that Mr Smith had refused to attend before the Tribunal on 30 November 2010 as a result of what had happened on 3 November 2010. Mr Slater also submitted that there had

been pressure on his Counsel to limit the evidence he called and that Mr Slater had only been allowed to call Professor Lingam to give evidence on one discrete point.

39. Mr Slater reiterated that he did not make any attack on the findings of the Tribunal or on what had been said about him and he accepted he could not ask the Tribunal to recount from those findings. He did not seek to challenge or dissuade the Tribunal in relation to their decision on [RESPONDENT 1] and the additional statements provided were simply mitigation to enable the Tribunal to take a view on Mr Slater. Mr Slater simply requested the Tribunal to read those statements and to consider a further letter dated 29 November 2010 provided by one of his current employers, Mr Henry. Mr Slater submitted that it was important for the Tribunal to read the witness statement of his Counsel, Mr Smith as this would explain that Mr Slater had been affected by the circumstances on 3 November 2010. He had not expected a trial and indeed had been informed that he would not be required to give any evidence but on attending the Tribunal, he found himself facing a trial. Mr Slater submitted these were exceptional circumstances and whilst he did not attack the Tribunal, he submitted the Tribunal could not have had Mr Smith's statement at the last hearing as Mr Smith refused to give any evidence. This passed the test laid down in the cases of Henderson v Henderson and Barrow v Bankside Members Agency Ltd & Anor.

Submissions of the First Respondent, [RESPONDENT 1] on Mr Slater's Application

40. Mr Watson, Counsel for [RESPONDENT 1], submitted that this case was not a case which fell within the Henderson v Henderson situation. It was not a case where a person had brought a claim and then was trying to bring another claim. [RESPONDENT 1] objected to the additional evidence being adduced by Mr Slater on procedural and substantive grounds and reminded the Tribunal that he had made admissions at the outset, he had had reported the circumstances to the Authority and there was one narrow point made by Mr Slater against [RESPONDENT 1] at the last hearing which, in fact, had not formed any part of the Authority's case. Mr Slater was now seeking to show why the Tribunal came to the decision it did about him, but Mr Watson submitted this was not a matter for him and it was not appropriate for him to try and explain how he thought that evidence should have been seen. Furthermore, Mr Watson submitted that this would have the effect of softening the Tribunal's views on Mr Slater's evidence and could colour the view the Tribunal came to on [RESPONDENT 1]. He objected to the additional evidence as he submitted it was not for the parties to seek to influence the Tribunal after the decision had been made.

41. Mr Watson submitted that whilst Mr Slater said he believed that no evidence would be given at the hearing on 3 November 2010, this did not explain why Mr Slater had brought witnesses with him to that hearing or why the Applicant had told Mr Watson that Mr Slater would be giving evidence at that hearing. Mr Watson submitted that the additional evidence Mr Slater now sought to adduce simply reopened the position and did not deal with mitigation. Mr Slater wanted the Tribunal to find that he was not as evasive as the Tribunal had found and [RESPONDENT 1] objected very strongly to that evidence as it may affect the way the Tribunal approached its sentence on him. The issues raised by Mr Slater were points of appeal and the additional evidence should not be entertained by the Tribunal at all. Should the Tribunal be minded to allow Mr Slater's additional evidence, then Mr Watson requested the

Tribunal, in the interests of fairness to pass sentence on [RESPONDENT 1] before considering any further mitigation on behalf of Mr Slater.

The Submissions of the Applicant on Mr Slater's Application

42. Mr Goodwin on behalf of the Applicant, confirmed he agreed with Mr Watson's analysis of the case of Henderson v Henderson and the need for exceptional circumstances. This was a matter for the Tribunal's discretion and the Tribunal should bear in mind that Mr Slater accepted evidence had been given at the last hearing, he accepted mitigation had been dealt with on 3 November 2010 and he also accepted that he was in an unusual position. Mr Goodwin submitted the Tribunal should consider the following factors when deciding whether to allow further evidence:

    (a) Mr Slater was a solicitor of over 30 years experience;

    (b) Mr Slater was legally represented by Counsel on 3 November 2010;

    (c) Mr Slater had made admissions to the allegations;

    (d) Mr Slater had given evidence to the Tribunal that he deemed to be right and true on 3 November 2010.

43. Mr Goodwin submitted that Mr Slater accepted that he could not have a second bite at the cherry and that he could not reopen the case, or call evidence to correct what he believed was poor evidence on 3 November 2010.

44. The Authorities were against Mr Slater, he had the opportunity to present his case on 3 November 2010 and he could not now adduce further evidence. However, Mr Slater was entitled to address the Tribunal on his personal circumstances and as the Tribunal had not yet determined penalty, it may wish to hear further submissions from Mr Slater on mitigation only.

The Decision of the Tribunal on Mr Slater's Application to Adduce Further Evidence

45. The Tribunal had heard submissions from all the parties as to whether the Tribunal should consider and take account of the fourth witness statement from Mr Slater and the witness statement of Mr Smith. The Tribunal had heard at length what both parties had said and had considered the case of Barrow v Bankside Members Agency Ltd & Anor which in turn referred to the case of Henderson v Henderson.

46. The Tribunal accepted what was said by Mr Goodwin of the SRA, that what Mr Slater said did not fall within the Henderson exception in that Mr Slater was an experienced solicitor, he was represented by a barrister, he made admissions to the allegations against him on 3 November 2010 and he gave lengthy evidence before the Tribunal on that date including mitigation at the conclusion. However the Tribunal also took note of what Mr Goodwin said about allowing the Tribunal to consider all matters of mitigation before deciding on sanction.

47. Having heard the submissions of all parties, and in fairness to Mr Slater, the Tribunal decided it would be appropriate for the Tribunal to read and consider the additional statements of Mr Slater and Mr Smith as mitigation alone and the Tribunal would also consider the letter of 29 November 2010 from Mr Henry who was Mr Slater's employer as this also related to mitigation.

Costs

48. At the hearing on 3 November 2010, Mr Marriott had requested an Order for his costs in the sum of £11,575.25 and sought an Order that the costs be payable on a joint and several liability basis.

49. At the hearing on 30 November 2010, the total costs of both hearings had been agreed with both Respondents in the sum of £12,000. Mr Goodwin again requested an Order that the costs be payable on a joint and several liability basis.

50. Mr Watson, Counsel for [RESPONDENT 1], confirmed the figure of £12,000 had been agreed. However he submitted it was appropriate for the costs to be apportioned between the Respondents and that [RESPONDENT 1] should only be liable for a modest amount in view of the findings of the Tribunal. The majority of the costs had been incurred by Mr Slater and indeed, on 3 November 2010 the Tribunal had found in favour of [RESPONDENT 1] and had found he was a credible and honest witness. If Mr Slater had accepted that [RESPONDENT 1] was not aware of the payments other than £3,000 until 6 May 2008, the hearing on 3 November 2010 would have been much shorter. Mr Watson submitted that [RESPONDENT 1] should only be required to pay between 10-20% of the Applicant's costs.

51. Mr Watson also provided the Tribunal with Schedules of Costs giving details of [RESPONDENT 1]'s costs and requested the Tribunal make an Order that Mr Slater should pay [RESPONDENT 1]'s costs. He submitted that the costs of 30 November 2010 had been necessitated by the length of the hearing on 3 November 2010 and the Tribunal had found in favour of [RESPONDENT 1] on that date.

52. Mr Slater confirmed that the Applicant's costs had been agreed in the sum of £12,000. He requested the Tribunal to apportion the costs between the two Respondents so they were each liable for their own share. He submitted [RESPONDENT 1] was much wealthier than he was and that had [RESPONDENT 1] accepted the additional evidence related to mitigation, the hearing on 30 November 2010 would have been shorter.

Previous sanctions before the Tribunal

53. Mr Bryan Hilton Slotopolsky Slater had appeared before the Tribunal previously on 17 June 1999 and 19 June 2007.

Sanction and Reasons

54. The Tribunal had considered carefully the submissions of all parties and all the documents provided. The Tribunal first made a decision on [RESPONDENT 1] and then subsequently dealt with Mr Slater.

The First Respondent, [RESPONDENT 1]

55. The Tribunal accepted the submissions of the SRA that the allegations against [RESPONDENT 1] were serious and all of these were admitted by him.

56. There were two areas of particular concern and these were that although the Tribunal found [RESPONDENT 1]'s version of events regarding the alleged agreement between him and Mr Slater as to the sums received from clients was the correct one, [RESPONDENT 1] knowingly countenanced the payment of £3,000 to Mr Slater and did not report this breach of the Solicitors Accounts Rules to the Authority for approximately six months. For this reason the Tribunal had considered whether a period of suspension was the appropriate sanction, however the Tribunal took note of the following matters:

    (a) this was [RESPONDENT 1]'s first appearance before the Tribunal;

    (b) [RESPONDENT 1] was not aware of Mr Slater's arrangements with Professer Lingam and other clients involving payments of about £26,500 until Mr Slater finally told him;

    (c) Despite the delay in reporting the matter to the SRA, the Tribunal gave [RESPONDENT 1] credit for the fact that he did self report the matter.

57. Notwithstanding this however, the breaches were serious breaches of the rules and regulations which were in place to ensure clients were properly protected and to enable the Authority to carry out its regulatory functions. In all the circumstances, the Tribunal Ordered the First Respondent, [RESPONDENT 1] should pay a fine of £20,000.

The Second Respondent, Bryan Hilton Slotopolsky Slater

58. Mr Slater had appeared before the Tribunal on two previous occasions when allegations concerning breaches of the Solicitors Accounts Rules were found against him. On those occasions he was fined £4,000 and £3,000 respectively. The breaches that had been admitted by Mr Slater in this case were somewhat different to those in the previous cases but were again serious and categorised as such by the SRA. The breaches occurred at the end of 2007 and in the first part of 2008, and significantly post-dated Mr Slater's two previous appearances before this Tribunal.

59. Regrettably, it appeared that Mr Slater had not learnt from his previous appearances before the Tribunal. Indeed, the Tribunal found his conduct in this case was both blatant and calculated. It was done for his own self-interest and to circumvent a condition on his Practising Certificate, and in acting this way Mr Slater had shown a conscious and cavalier disregard for the Solicitors Accounts Rules.

60. The Tribunal had taken into account the fourth witness statement of Mr Slater dated 21 November 2010, the statement of Mark Smith dated 25 November 2010 and the letter dated 29 November 2010 from Kieran Henry of Henrys Solicitors, and the fact that at the hearing on 3 November 2010 it was said in mitigation that the clients who had paid Mr Slater money direct were sophisticated businessmen. However, that did not excuse Mr Slater's conduct. Indeed, in the case of Professor Lingam, it was not just Professor Lingam who was affected but also his sister who had provided the funds to enable her brother to pay Mr Slater.

61. Whilst the Tribunal took note of the fact that no dishonesty was alleged by the SRA, having heard Mr Slater's evidence, the Tribunal found that this was evasive and unreliable. The Tribunal noted that Mr Slater, while disappointed by this, did not seek to attack this finding or what the Tribunal had said about him. The Tribunal made this finding specifically with regard to Mr Slater's attempts to persuade the Tribunal that there was an agreement between him and [RESPONDENT 1] that sums should be paid by clients to Mr Slater over and above the £3,000 that [RESPONDENT 1] had admitted.

62. As already indicated, the Tribunal found that the allegations admitted by Mr Slater were very serious. They included breaches of the Solicitors Code of Conduct 2007 in that he failed to act with integrity, he failed to act in the best interests of clients and that he acted in a way that was likely to diminish the trust the public placed in him or in the profession.

63. Taking all of this into account and the fact that this was Mr Slater's third appearance before the Tribunal, the Tribunal Ordered the Second Respondent, Bryan Hilton Slotopolsky Slater be Struck Off the Roll of Solicitors.

Decision as to Costs

64. So far as costs were concerned, the Tribunal heard that the costs of the SRA had been agreed between the parties at £12,000. The Tribunal apportioned those costs between the two Respondents and Ordered the First Respondent, [RESPONDENT 1] should pay £2,000 of the Applicant's costs and the Second Respondent, Bryan Hilton Slotopolsky Slater should pay £10,000 of the Applicant's costs.

65. The Tribunal had also taken note of the financial position of Mr Slater as outlined in his mitigation statement dated 13 October 2010. The Tribunal took into account the cases of Merrick v the Law Society [2007] EWHC 2997 (Admin) and the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin). As a result of the Tribunal's Order on sanction, Mr Slater had now been deprived of his livelihood and appeared to have limited income available to him. Accordingly, the Tribunal Ordered that the Order for costs against Mr Slater was not to be enforced without leave of the Tribunal.

66. So far as the application of the First Respondent, [RESPONDENT 1], for Mr Slater to pay his costs, the Tribunal made no Order in this regard.

Orders

67. The Tribunal Ordered that the Respondent [RESPONDENT 1] of [NAME AND ADDRESS OF FIRM REDACTED], Manchester M2, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.

68. The Tribunal Ordered that the Respondent Bryan Hilton Slotopolsky Slater of 1 The Meadows, Old Hall Lane, Whitefield, Manchester M45 7RZ, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000 not to be enforced without leave of the Tribunal.

Dated this 4th day of March 2011
On behalf of the Tribunal

A N Spooner
Chairman