SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10645-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KENNETH HUNT First Respondent

And

BARBARA GAYTON Second Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr J. Astle
Mr S. Marquez

Date of Hearing: 2nd October 2012

Appearances

Jonathan Goodwin, Solicitor of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT for the Applicant.

Andrew Lockley, Solicitor of Irwin Mitchell, Solicitors, Riverside East, 2 Millsands, Sheffield S3 8DT for the First Respondent

The Second Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. In a Rule 5 Statement dated 15 October 2010, the allegations against the First and Second Respondents were that:

1.1 contrary to Rule 6 of the Solicitors Accounts Rules 1998 (”SARs”), they failed to ensure compliance with the Rules.

1.2 contrary to Rule 7 of the SARs they failed to remedy breaches promptly upon discovery.

1.3 they withdrew and/or transferred monies from client bank account other than as permitted by Rule 22(1) and (3) of the SARs.

1.4 they utilised clients' funds for their own benefit.

1.5 they misappropriated clients' funds.

1.6 by reason of the matters set out in “Report 1” and “Report 2”, the Respondents have acted contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”).

Dishonesty was alleged in respect of allegations 1.3, 1.4, 1.5 and 1.6 but it was submitted that dishonesty was not an essential ingredient of any one of the allegations.

2. In a Rule 7 Statement dated 17 August 2012, the further allegation against the First Respondent was that:

2.1 contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 he was on 10 February 2012, upon his own admission, convicted of fraud by abuse of position, and on 18 May 2012 was sentenced to four years imprisonment.

3. In a Rule 7 Statement dated 17 August 2012, the further allegation against the Second Respondent was that:

3.1 contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 she was on 31 January 2012, upon her own admission, convicted of fraud by abuse of position, and on 18 May 2012 was sentenced to two years imprisonment.

Both the First and Second Respondents admitted all the allegations including that of dishonesty.

Documents

4. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

Applicant

- Rule 5 Statement dated 15 October 2010 with exhibit;

- Rule 7 Statement dated 17 August 2012 with exhibit;

First Respondent

- Statement of the First Respondent;
- S17 response on behalf of the First Respondent dated 18 July 2012 to the confiscation statement.

Second Respondent

- Letter dated 22 May 2012 from Russell Jones & Walker solicitors;
- Letter from the Second Respondent dated 12 September 2012 to Mr Goodwin;
- Letter from the Second Respondent dated 21 September 2012 to Mr Goodwin;
- Bundle of documents beginning with the Second Respondent's Defence Submissions and Basis of Plea in the criminal proceedings dated 30 January 2012.

Preliminary Issues

5. The Chairman indicated that Mr Lockley for the First Respondent had raised an issue in that the Chairman was a member of a firm of solicitors which practised in Newcastle upon Tyne, the same city as the firm in which the First and Second Respondents had practised. The Chairman stated that he had practised as a solicitor in Newcastle upon Tyne for around 40 years and the conveyancing department of the Chairman's firm, and the Respondents' firm had dealt with each other frequently (as the Respondents had with many firms of solicitors in that city). The Chairman thought that it was possible that he might have spoken to either of the Respondents on the telephone regarding conveyancing matters but he did not know them personally. The Chairman did not have any feelings of antagonism or in favour towards the Respondents and therefore did not feel it necessary to recuse himself from the hearing. Mr Lockley emphasised that he had not put it so high as to raise a concern about the continued involvement of the Chairman in the proceedings, but had mentioned it. He was grateful to the Chairman for what he had said. He was not in receipt of instructions from his client on the point but did not object to the matter proceeding.

6. The Second Respondent was not present and was not represented. The Tribunal had received a letter dated 22 May 2012 from the solicitors who represented the Second Respondent in the criminal proceedings. They did not have instructions to represent her in proceedings before the Tribunal but in their letter had confirmed that the Second Respondent would not attend the Tribunal hearing and did not seek to remain on the Roll of Solicitors. The Second Respondent had herself written to Mr Goodwin on 12 and 21 September 2012. In the first letter she had admitted the allegations and in the second letter made representations concerning her financial position. In these circumstances the Tribunal was satisfied that the Second Respondent had been properly served with notice of the hearing and exercised its power under Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 and decided to determine the

application notwithstanding that the Second Respondent was not present and was not represented at the hearing.

7. For the First Respondent, Mr Lockley explained that his statement which had been submitted to the Tribunal by letter dated 25 September 2012 unsigned and undated, had been approved and signed by his client but was presently within the prison system awaiting dispatch.

Factual Background

8. The First Respondent was born in 1946 and admitted in 1970. His name remained on the Roll of Solicitors.

9. Second Respondent was born in 1958 and was admitted in 1983. Her name remained on the Roll of Solicitors.

10. At all relevant times, the Respondents carried on practice in partnership under the style of Hunt Kidd Law Firm LLP ("the firm") from offices in Newcastle upon Tyne.

11. On 5 November 2009 an Adjudication Committee resolved to intervene in the Respondents' firm and to refer their conduct to the Tribunal.

12. The Forensic Investigation Department of the Applicant carried out an inspection of the firm's books of accounts commencing on 27 October 2009 and produced a report dated 2 November 2009 ("Report 1"). A supplementary report had been prepared dated 16 August 2010 ("Report 2").

13. The books of accounts were not in compliance with the SARs. Upon his arrival at the firm, the Senior Investigation Officer ("SIO") was provided by the Respondents and their solicitor Mr B, with information showing that the cash shortage on client account totalled £1,049,103.66 as at 27 October 2009. The Respondents and their solicitor provided the SIO with further details as regards the proposed disposal of the firm and their intention relating to repayment of the cash shortage. On 28 October 2009, the SIO conducted a digitally recorded interview with the Respondents, extracts of which were set out within Report 1. A further meeting took place on 23 February 2010, extracts of which were particularised in Report 2.

14. The SIO identified a cash shortage in the sum of £1,031,095.49 as at 30 September 2009.

15. It was also calculated that further unallocated transfers totalling £18,008.17 had been made from client to office bank account between 1 October 2008 and 27 October 2009, thus increasing the cash shortage as at 27 October 2009 to the sum of £1,049,103.66.

16. The cash shortage was caused by improper transfers from client to office bank account, and improper payments from client bank account authorised by the Respondents.

17. The Respondents provided the SIO with a schedule entitled "Unreconciled Bank Transactions" which listed 125 unallocated transfers totalling £819,451.63 made from client to office bank account between 3 October 2008 and 20 October 2009. The schedule also particularised four unallocated payments totalling £229,652.03 made from client bank account in the same period.

18. The SIO discussed the schedule with the firm's cashier who confirmed that on the instructions of the Respondents, round sum transfers of costs were made from client to office bank account in excess of those properly due to the firm in order to meet the firm's immediate liabilities, and/or to ensure that the overdraft facility was not exceeded.

19. During the meetings held on 27 and 28 October 2009, the Respondents indicated there had been a dramatic decline in the level of conveyancing work as a consequence of the recession in 2008. They explained the financial circumstances in which they found themselves and indicated that by autumn 2008 the firm was unable to meet its ongoing liabilities. In or around October 2008, the First Respondent deposited the sum of £35,000 into client bank account which was intended to be used to pay the outstanding staff salaries that month. However, the cheque was dishonoured and the First Respondent was unable to replace the monies. He indicated that the transfers from client to office bank account were always intended to be a short-term measure, and that he enjoyed substantial personal wealth from other sources which he intended to utilise to repay the shortage and secure the firm's future.

20. When asked by the SIO why they had allowed the cash shortage to exceed £1 million in a period of just over one year, the First Respondent indicated that they wanted to keep the firm afloat and ensure the staff retained their jobs as they were confident that the problems could be resolved by negotiations with the banks, and the realisation of the First Respondent's personal investments.

21. The Respondents both conceded that they were aware of the firm's financial problems and the consequences of their misuse of clients' funds, albeit Mr B on behalf of the Respondents, suggested that there was a distinction between the two of them as the First Respondent had been trying to resolve the matter and reassured the Second Respondent that matters would be resolved satisfactorily.

22. The SIO asked the Respondents whether they had benefited personally from the misuse of clients' funds to which they said that they had only taken what they needed to survive and that this was less than the amounts which they had personally invested.

23. The SIO noted from a review of the office bank statements from 1 May 2009 to 30 September 2009 that numerous payments were made to the Respondents, associated third parties and businesses.

24. It was calculated that the Respondents and associated third parties had received amounts totalling £89,978.14 in the five-month period reviewed, an average of almost £18,000 per month between them.

25. The Second Respondent provided a breakdown of the personal payments within that period which totalled £69,697.59.

26. The SIO was provided with a "Statement of Means" relating to the First Respondent which showed that he had "net means" of £2.365 million.

27. A review of the office bank account statements for the period 1 October 2008 to 30 April 2009 established that the Respondents, their associated businesses and other third parties had received amounts totalling £115,182.77.

28. The Second Respondent provided to the SIO a breakdown of the personal payments in the period 1 October 2008 30 April 2009 which showed that the Respondents, their associated businesses and third parties had received amounts totalling £114,339.74.

29. The Second Respondent informed the SIO that the Respondents had made payments which were proper expenses of firm with their credit cards and then reimbursed by the firm.

30. The SIO noted that payments totalling £95,835.80 were made from the office bank account in the period 2 July 2008 to 2 July 2009 to two firms of solicitors; DD and S Solicitors. The First Respondent indicated that these payments were in respect of litigation regarding a lease on a property. The office bank account statement showed that on 6 March 2009, a client to office bank account transfer of £40,000 was made, and on the same date a payment of £40,000 was made from office bank account to S Solicitors to cover part of their costs, to be paid as part of the litigation. From a review of the firm's unreconciled bank transactions, an amount of £3,471.01 should have been transferred from the client to office bank account, and not £40,000. An amount of £36,528.99 was transferred from client to office account to cover the payment to S Solicitors.

31. It was noted that at the time of the transfer on 6 March 2009, the office bank account had an overdraft limit of £250,000 and that on 5 March 2009, the firm's office account overdraft was in the sum of £249,084.87 just short of the limit.

32. From a review of the unreconciled bank transactions, the SIO noted that a client to office transfer in the sum of £9,500 was made on 7 October 2009 when no monies were due to be transferred on that date, resulting in an over transfer in the same amount.

33. It was ascertained that the sum of £3,000 was paid to an account in the name of Cg, and £4,478.82 was used to pay a loan that the firm had with Bank of Scotland.

34. From a review of the unreconciled bank transactions, it was noted that a client to office transfer of £26,000 was made on 25 June 2009. The correct amount to have been transferred was £1,331.27, resulting in an over transfer £24,668.73. From a review of the office bank account statements it was noted that an amount of £23,000 was then used to pay staff salaries.

35. The First Respondent indicated that the various companies using the Cg and V names were not connected companies, but that he was a Director and shareholder in the companies which specialised in commercial property portfolios. The Second Respondent said that she had no involvement in the companies, and had not carried out any legal work for them.

36. The SIO analysed the firm's office bank account statements covering the period October 2008 to May 2009 which showed that the firm had paid Cg Projects Ltd, an associated company of Cg, sums totalling £60,912.98.

37. In response to a question from the SIO, the First Respondent confirmed that Cg had loaned the firm money. The First Respondent subsequently provided to the SIO a report on "Inter-company transactions between Hunt Kidd and [CG/V] companies" dated June 2010 which showed that the firm owed CG/V £56,000 as a result of the companies settling some of the firm's liabilities.

38. The SIO noted that amount of £9,500 was transferred from client to office bank account on 6 April 2009, but that that transfer should only have been £2,572.46, resulting in an over transfer of £6,926.54. On the same day, the sum of £8,000 was paid from the firm's office bank account to the account of Cg Project Ltd. The First Respondent indicated that he would provide a statement detailing the payments to Cg, but as at the date of Report 2 he had not provided any further information.

39. On 10 February 2012 at Newcastle upon Tyne Crown Court, the First Respondent was on his own admission convicted of fraud by abuse of position.

40. On 31 January 2012 at Newcastle upon Tyne Crown Court, the Second Respondent was upon her own admission convicted of fraud by abuse of position.

41. On 18 May 2012 the First Respondent was sentenced to 4 years imprisonment and on the same day, the Second Respondent was sentenced to 2 years imprisonment.

42. His Honour Judge Whitburn QC with the following remarks when passing sentence:

> "In both your cases, that which you did between October 2008 and October 2009 has completely destroyed, in your case, Mrs Gayton, you financially, and of course has ruined you both professionally…
>
> It is abundantly clear to me that you, Kenneth Hunt, instigated this fraud. That is a submission which I accept and is perfectly clear from the evidence that I have read. You did so in the hope, and unrealistic hope, but one shared by many who found themselves in your position post the crash in 2007 and 2008 that you would perhaps be able to repay. And the idea was to keep the firm going, the continued employment of the reduced staff that you had by that time. Sadly, it was not to be, and the matter escalated until at the time when the Solicitors Regulatory (sic) Authority intervened, you had built up a debt in effect to the client's account in excess of £1 million.
>
> Your culpability, Barbara Gayton, is that although you did not instigate it, you thought that Mr Hunt, whom you clearly respected and who had given you your first chance, in effect, as a solicitor in this city, was a man of substance, as he undoubtedly was before 2007, and you thought he would be able to repay. And it is quite clear that the fraud was continued by you and assisted by you, but, and I accept, you did not initiate it. What you should have done, and I'm sure you have thought about this time and time again, is you should have blown the whistle and said, "This cannot be tolerated. I must report this", but

you did not. And the reason that you did not I suspect, is misguided loyalty, and again the hope that Mr Hunt could make good the depredations that were being made in the course of that year.

The aggravating features of this matter are abundantly clear. The abuse of trust which was involved; the financial liabilities which built up, which of course the respective indemnity funds have had to meet so far.

… I have also got to consider the public interest. And it is right that those who are in a position of trust should be punished when they are in such flagrant breach of it.

Taking all the factors into account in your cases, Kenneth Hunt, you will serve a prison sentence of four years. In your case, Barbara Gayton, bearing in mind all the matters that I have mentioned and those that I have read about you, the sentence of this court is that you serve a sentence of two years' imprisonment."

Witnesses

43. There were none.

Findings of fact and law

44. **Allegation 1.1: contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SARs"), they failed to ensure compliance with the Rules.**

Allegation 1.2: contrary to Rule 7 of the SARs they failed to remedy breaches promptly upon discovery.

Allegation 1.3: they withdrew and/or transferred monies from client bank account other than as permitted by Rule 22(1) and (3) of the SARs.

Allegation 1.4: they utilised clients' funds for their own benefit.

Allegation 1.5: they misappropriated clients' funds.

Allegation 1.6: by reason of the matters set out in "Report 1" and "Report 2", the Respondents have acted contrary to Rule 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC").

(These allegations were dealt with together as they arose out of the same facts.)

44.1 For the Applicant, Mr Goodwin submitted that the Respondents had made improper transfers from client bank account to meet the firm's liabilities, to ensure that its overdraft limit was not exceeded, to pay staff salaries and for the benefit of associated businesses and third parties. The First Respondent was a solicitor of many years standing and qualification. He referred the Tribunal to the amount of cash shortage and the Respondents' explanation to the SIO for it. He submitted that the Respondents accepted that they were aware of the firm's difficulties and that they had taken the

money. Mr Goodwin submitted that the matters detailed in Report 1 and Report 2 were serious and demonstrated serious breaches of the SARs, the misuse of client funds and constituted dishonest conduct. It was to the credit of the Respondents that they admitted what they had done but even if they had denied it, Mr Goodwin submitted that their conduct would have satisfied the two limbed test for dishonesty as set out in the case of Twinsectra Ltd v Yardley 2002 UKHL 12.

44.2 Through his solicitor and in his statement which was before the Tribunal, the First Respondent had admitted all the allegations as set out in the Rule 5 Statement.

44.3 In her letter of 21 September 2012 the Second Respondent had said:

> "For the avoidance of doubt my admission of dishonesty relates to the allegation in the Rule 5 Statement."

44.4 The Tribunal considered the evidence including the certificates of conviction in relation to the facts which also formed the basis of these allegations and found allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 to have been proved to the required standard that is beyond reasonable doubt.

44.5 The Tribunal considered that in respect of allegations 1.3, 1.4, 1.5 and 1.6 what the First and Second Respondents had done would be considered to be dishonest by the standards of reasonable and honest people and that they themselves realised that by those standards their conduct was dishonest. Accordingly both the objective and subjective tests in the case of Twinsectra had been satisfied and the Tribunal found the allegation of dishonesty proved beyond reasonable doubt in respect of both Respondents.

45. **Allegation 2.1: contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 he [the First Respondent] was on 10 February 2012, upon his own admission, convicted of fraud by abuse of position, and on 18 May 2012 was sentenced to four years imprisonment.**

Allegation 3.1: contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 she [the Second Respondent] was on 31 January 2012, upon her own admission, convicted of fraud by abuse of position, and on 18 May 2012 was sentenced to two years imprisonment.

45.1 For the Applicant, Mr Goodwin referred the Tribunal to the extracts from the SRA Principles 2011 set out in the Rule 7 Statement:

> "SRA principles
> These are mandatory Principles which apply to all.
> You must:
> 1. uphold the rule of law and the proper administration of justice;
> 2. act with integrity;
> ...
> 6. behave in a way that maintains the trust the public places in you and in the provision of legal services."

45.2 Mr Goodwin submitted that the Respondents' convictions were at the very serious end of misconduct and could only have an adverse effect on the Respondents' reputation and that of the profession. He referred the Tribunal to the copy certificates of conviction which were exhibited to the Rule 7 Statement and to the sentencing remarks of His Honour Judge Whitburn QC. The Respondents had taken decisions to act as they did and Mr Goodwin submitted that it was no excuse to say that they could be justified because their conduct was designed to keep the firm going and the staff employed. The integrity of client account must be maintained. As the Second Respondent was not represented, Mr Goodwin referred the Tribunal to the bundle of material which she had submitted which set out her position. Mr Goodwin referred the Tribunal to its recently issued Guidance Note on Sanctions and particularly the section relating to the purpose of sanctions with its quotation from Sir Thomas Bingham in the case of Bolton v The Law Society [1994] 1 WLR 512 and to the section relating to dishonesty where it was stated that a finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. Mr Goodwin also reminded the Tribunal that its Guidance referred to the case of Weston v The Law Society [1998] Times, 15 July and what Lord Bingham had said about the importance attached to affording the public maximum protection against the improper and unauthorised use of their money and that because of the importance attached to affording protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed. (The guidance also set out that the dishonest misappropriation of client funds would invariably lead to strike off.) Mr Goodwin also referred to the case of Sharma [2010] EWHC 2022 (Admin). He submitted that very serious allegations of dishonesty had been made and admitted and subsequently the Respondents had been convicted for serious criminal offences and imprisoned.

45.3 Through Mr Lockley and in his statement which was before the Tribunal, the First Respondent had admitted all the allegations set out in the Rule 7 Statement.

45.4 In her letter to the Tribunal dated 12 September 2012, the Second Respondent said:

> "As requested, please be advised that I do not dispute the facts contained in the supplemental statement. In particular this includes an admission of the dishonesty allegation."

45.5 The Tribunal considered the evidence including the certificate of conviction in relation to the facts which also formed the basis of this allegation against the First Respondent and found allegation 2.1 to have been proved to the required standard that is beyond reasonable doubt as the facts of the First Respondent's misconduct and his subsequent criminal conviction would certainly have breached the SRA Principles 1, 2 and/or 6.

45.6 The Tribunal considered the evidence including the certificate of conviction in relation to the facts which also formed the basis of this allegation against the Second Respondent and found allegation 3.1 to have been proved to the required standard that is beyond reasonable doubt as the facts of the Second Respondent's misconduct and her subsequent criminal conviction would certainly have breached the SRA Principles 1, 2 and/or 6.

Previous disciplinary matters

46. There were no previous disciplinary matters in respect of either the First or Second Respondent.

Mitigation

47. Mr Lockley informed the Tribunal that he had no instructions to address the issue of sanction. The First Respondent accepted that he would be deprived of the right to practise. He was not able to be present at the hearing. Mr Lockley made submissions in respect of the First Respondent's financial position in respect of his liability for costs (see below). Mr Lockley had submitted a statement on behalf of the First Respondent in which he explained the circumstances in which the misconduct had arisen. Mr Lockley explained that the First Respondent wished the difficult circumstances in which he had made the decision to continue with the firm to be understood and the Tribunal was asked to take it into account. Also in the statement the First Respondent said inter-alia:

> "Since we had kept full records of all transactions through the period in which client account funds were being misused, we were able to make full disclosure voluntarily, when the SRA forensic investigators came in. Their job was made considerably easier and they accepted the records as correct. In turn, those records were used by the CPS as the basis of the criminal prosecution…
>
> In summary, we told the truth throughout. There was no internal fraud and the decision made to use client account funds was not for personal gain."

48. The Second Respondent had submitted a bundle of documents which included an unsigned and undated response to the Rule 5 Statement, apparently drafted after she had admitted the criminal offences with which she was charged. In her response she stated that she had invested £133,000 during the period from March 2008 to December 2008. She quantified the extent of the personal benefit that she had received by way of personal net drawings throughout the "relevant period" (October 2008 to October 2009) at £48,324.98 and emphasised that monies reimbursed to her separately by the firm in the sum of £65,891.35 for expenses that she incurred on her personal credit card on its behalf, did not constitute a personal benefit. She also referred to a psychiatric report prepared for the criminal proceedings. The Second Respondent also stated that she no longer sought to remain on the Roll of Solicitors and accepted that she would be disqualified from acting as a solicitor. The Second Respondent made submissions in respect of her financial position in respect of her liability for costs in her letter to Mr Goodwin dated 21 September 2012 (see below).

Sanction

49. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

50. Both the First and Second Respondents had been convicted of offences of dishonesty and sentenced to terms of imprisonment. The Tribunal noted that in the view of the trial judge the First Respondent was the more culpable of the two Respondents in respect of the criminal charges. However both Respondents had been found dishonest

by the Tribunal in respect of dealing with client monies in a sustained course of conduct which resulted in their criminal conviction. Their actions constituted very serious misconduct and the Tribunal determined that they should both be struck off the Roll of Solicitors.

Costs

51. Mr Goodwin informed Tribunal that a schedule of costs had been provided. It had been sent to the Second Respondent on 27 September 2012. There had been no response but Mr Goodwin referred the Tribunal to the Second Respondent's letter of 21 September 2012. Mr Lockley for the First Respondent and Mr Goodwin had agreed the quantum of costs at a total figure of £25,000 including the costs of the investigation and Mr Goodwin submitted that it would be appropriate for the Tribunal to make an order for costs against the Respondents in that amount without any conditions attached. The Applicant was reasonable and would have regard to financial circumstances in determining what enforcement action if any would be taken. However if the Tribunal was not of that mind, Mr Goodwin invited it to make a costs order against both Respondents not to be enforced without leave of the Tribunal which would protect the Applicant's position and if there were any change in the Respondents' circumstances the Applicant could come back to seek leave to enforce the order. Mr Goodwin submitted that it would be inappropriate for no order for costs to be made in respect of the First Respondent. He drew attention to the First Respondent's assets of £2 million referred to in the documentation. It was possible that following the confiscation proceedings, those assets had been reduced but Mr Goodwin referred the Tribunal to the ongoing litigation in which the First Respondent was involved against a major bank and to the fact that in his sentencing remarks His Honour Judge Whitburn QC had referred to the First Respondent's desperate financial position "at present". Mr Goodwin questioned whether the First Respondent might be seeking that no order should be made because he anticipated an improvement in his financial position. He also submitted that the costs of these proceedings were quite separate and distinct from the other costs for which the First Respondent was liable to the Applicant. He submitted that for the Tribunal to make no order would also send the wrong message. He referred the Tribunal to its own Guidance Note on Sanctions which referred to the case of Bolton and suggested that in respect of a penalty being visited on a solicitor in order to punish him and to deter others, the sanction should be seen in the round including the award of costs. The proceedings had resulted from the First Respondent's own conduct and he submitted that nothing which had been said on behalf of the First Respondent should allow the Tribunal to depart from its usual approach to the award of costs to the Applicant.

52. For the First Respondent, Mr Lockley submitted that the information in respect of his assets contained in the statement of means prepared for the Applicant's investigation in 2009/2010 was now out of date. He submitted that it was well established that in certain cases where the Tribunal determined that the Respondent should be deprived of his right to practise the Tribunal might exercise its discretion not to order costs for the Applicant. Mr Lockley referred the Tribunal to the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) and to that of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin). He submitted that the last case had assumed that there were circumstances in which no order might be appropriate and set

out the procedure to be followed. The Section 17 response filed on behalf of the First Respondent to the Confiscation Statements in the criminal proceedings dealt with the First Respondent's assets and liabilities and set out that he remained liable for the shortfall to the Compensation Fund in the sum of £903,105.50 and £323,000 of associated costs for the intervention. His assets from the confiscation proceedings would be passed to the Applicant including his Self Invested Personal Pension Policy. Mr Lockley informed the Tribunal that there were no other assets available to the First Respondent. He submitted that having regard to the First Respondent's age he was unlikely to be able to earn an income in future. There was no creditor other than the Applicant and Mr Lockley asked the Tribunal to draw a line under the amounts to be paid to the Applicant by making no order for costs. Mr Lockley accepted that the First Respondent's family company Cg had been engaged in long-running litigation with a major bank. Mr Lockley's firm was not instructed in the proceedings. The First Respondent's statement indicated that he had been pursuing this litigation since 2008 and that during the period 2007 to 2009 Cg had a credit balance on a current account of over £1 million which would have been available to be loaned to the firm to right the shortfall on the client account had Cg not got into dispute with the bank. It was noted however that in the Section 17 Statement it was stated that the same bank was owed approximately £35 million by the company arising out of a loan to develop a hotel and that shares in the company had no value as a result. Mr Lockley submitted that if the Tribunal was minded to make a costs order against the First Respondent then it should divide liability between the two Respondents bearing in mind that they had been dealt with separately in this way at the Crown Court in terms of levels of sentence and confiscation.

53. In her letter of 21 September 2012 the Second Respondent said:

> "I note your comments on the subject of costs. I do not have the means to meet any order for costs. All my available assets have been, or are in process of being sold to satisfy the POCA order which was made against me.… My bank accounts are all in overdraft, apart from a basic account… When I am released I will try to seek employment but do not anticipate that this will be any easier after release than it was before imprisonment…"

54. The Tribunal considered the total amount of costs including the costs of the investigation agreed between Mr Goodwin and Mr Lockley for the First Respondent in the sum of £25,000 to be reasonable. The Tribunal was not convinced by the arguments put forward for the First Respondent that no costs order should be made against him. His conduct and that of the Second Respondent had necessitated these proceedings and the Tribunal was satisfied having regard to the information as to their means which was before the Tribunal, that their financial circumstances could be dealt with by making costs orders which should not be enforced without leave of the Tribunal. The Tribunal also considered that the extent of culpability of the First and Second Respondents differed considerably and that this should be reflected in the proportion of costs for which each should be held liable. It considered that the First Respondent should be liable for four fifths of the costs, that is £20,000, and the Second Respondent for one fifth, that is £5,000.

Statement of full order

55. The Tribunal Ordered that the Respondent, Kenneth Hunt, 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 £20,000.00, such costs not to be enforced without leave of the Tribunal.

56. The Tribunal Ordered that the Respondent, Barbara Gayton, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 12th day of November 2012
On behalf of the Tribunal

A.G Gibson
Chairman