SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10906-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JAMES CAMPBELL KILPATRICK Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Mr S. Tinkler
Mrs L. McMahon-Hathway

Date of Hearing: 6th June 2012

Appearances

Mr Mohammed Afzal, solicitor of HMA Law Solicitors, 5 Tenby Street, Birmingham, B1 3EL for the Applicant.

The Respondent appeared and was represented by Mr Gareth Edwards, solicitor of Crangle Edwards Solicitors, 159 Councillor Lane, Cheadle, Cheshire, SK8 2JE.

JUDGMENT

Allegations

1. The allegation against the Respondent was that in breach of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 (the "Code"), the Respondent repeatedly and systematically misled his client to believe that court proceedings had been issued and conducted on his behalf, whereas no such proceedings had at any time been instigated.

   In respect of this allegation, the Applicant contended that the Respondent had been dishonest although, for the avoidance of any doubt, it was not necessary to establish dishonesty for this allegation to be proved.

Documents

2. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 16 December 2011 with exhibit;
- Applicant's costs statement dated 1 June 2012

Respondent:

- Report of Professor Douglas Turkington, Consultant Psychiatrist dated 15 May 2012;
- Bundle of testimonials;
- Tribunal findings in case number 9225/2005 Wilson dated 28 October 2005;
- Tribunal findings in case number 10168/2009 Lindsey dated 26 January 2010;
- Judgement of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)

Preliminary matter

3. On behalf of the Applicant, Mr Afzal sought the approval of the Tribunal to amend paragraph 5 of the Rule 5 Statement to change the nationality of the client in question from "Lithuanian" to "Turkish". The Tribunal agreed.

Factual background

4. The Respondent was born in 1955 and admitted as a solicitor in 1980. At the material time, the Respondent was employed as an assistant solicitor by the firm of Singleton Winn Saunders ("the firm") of Newcastle-upon-Tyne. He was currently employed as an assistant solicitor by the firm of Crowe Humble Wesencraft of Newcastle-upon-Tyne.

5. The allegations arose from an investigation by the Applicant of a referral made by Mark Saunders of the firm dated 16 June 2011 as to the professional conduct of his former employee, the Respondent.

6. In May 2010, the firm acted for a client, Mr YK in relation to a criminal investigation against him. When YK, who was estranged from his partner, was released from police custody, and wanted access to their son, the Respondent was asked to act for him as he dealt with matters relating to children at the firm. On 14 May and 28 May 2010, the Respondent wrote to YK's partner seeking contact for YK with his son. On 1 June 2010 the Respondent received a telephone call from the partner in the course of which he recorded that he advised her to seek legal advice. According to the notes of an internal disciplinary meeting at the firm involving the Respondent the client's partner initially indicated that she would agree to supervised contact. This communication came just before the Respondent left for his holidays. According to the Respondent he also obtained YK's signature on application forms for public funding. However, no application was submitted because there was an apparent inconsistency in the information available and the Respondent was concerned as to the accuracy of the information given by YK as to his income. The Respondent did not raise these concerns with his client.

7. By the time of the Respondent's return from holiday, no response had been received from YK's partner or her solicitors H & K. A letter was eventually received from H & K on 26 July 2010 (mis-dated 25 June2010). An offer of supervised contact was made but then withdrawn a few days later by letter from H & K dated 30 July based on allegations of harassment by YK. On 28 September the Respondent wrote to H & K again seeking contact for the client.

8. By October or November 2010, YK had become convinced that his child was abroad with his mother in her home country. He instructed the Respondent that he had received threats that the child could be put up for adoption there, as well as demands for money in return for the prospect of contact.

9. The Respondent contacted the local police by letter of 16 December 2010 to discuss what measures could be taken to prevent the child's abduction. He said that he also contacted a barrister about the applicable law in this area. The police sent a substantive reply in 4 January 2011 stating that they could not provide any information to assist.

10. As YK had become agitated, the Respondent obtained his signature on application forms seeking a contact order and informed YK that the application would be lodged with the court. The Respondent did not lodge the application and did not inform his client that he had not done so.

11. The Respondent informed YK that a first hearing of the purported proceedings was due to take place in January or February 2011, shortly before the Respondent was due to go on holiday for one week. YK accordingly attended court, accompanied by his cousin and the Respondent. The Respondent informed YK that the District Judge had transferred the purported case back to a particular Family Proceedings Court so that it would be listed for a final hearing quickly, and that directions had been given. There had in fact been no such hearing that day and no such directions given. He informed YK that the next hearing would be in March 2011.

12. The Respondent then informed YK that the hearing of the purported proceedings had been delayed until 31 March 2011 in order to enable the Children and Family Court Advisory and Support Service (CAFCASS) to carry out police checks. There was in

fact no such hearing scheduled for that day. On the day, the Respondent attended court with YK to find that the court building was closed because the court had been relocated to another building.

13. The Respondent informed YK that the next hearing would take place on 13 April 2011. There was in fact no such hearing that day. YK duly attended court on that day and waited in the public waiting area while the Respondent purported to appear before the Judge. The Respondent then stated to YK that the judge had heard the case, had ordered YK's partner to attend a further hearing and directed the Respondent to arrange contact at a contact centre.

14. The Respondent then sought advice from one of his employees (RS) as to local contact centres, informing her that the information was required for his own wife.

15. The Respondent then informed YK that the first contact visit had been arranged at a contact centre on 4 May 2011. There had in fact been no such contact visit arranged. The Respondent advised YK a few days before the purported visit was due to take place that it had been cancelled because the child's mother had instructed new solicitors and would not make the child available.

16. Around this time YK's partner alleged that YK had breached a non-molestation order made by the court. YK was arrested and subsequently bailed by the police. YK believed that the arrest was a consequence of the issue of the application for contact, although no such application had in fact been or was ever, issued by the Respondent.

17. While reporting to the police station under the terms of his bail, YK informed the Respondent that he had been contacted by friends of his partner who had made blackmail threats to the effect that, if the Respondent did not pay money, he would be prevented from having contact with his child. YK reported this to the police and his mobile phone was taken by the police for examination.

18. The Respondent then stated to YK that a further hearing had been listed for 20 May 2011 and that, although the Respondent would be on holiday on that date he would come back from his holiday to attend the hearing. There had in fact been no such hearing listed.

19. On 19 May 2011, the Respondent sent a text message to his employer Mark Saunders in which he stated:

> "This is a professional suicide note. I've left a time bomb ticking away. YK thinks he's at [court name] tmrw for a contact hrg, but there's no case, no file, no hrg, just lies to a client. To cut down collateral damage to the firm i suggest u phone him, stop him going to court tmrw and finding out there and kicking off in public. Leave all the blame with me where it belongs and point him to other sols and the SRA. The rest will wait until i'm back and we speak tho probably not in the office. Not a joke, I'm sober and more or less sane. Just very sorry to have ended my career and our relationship so stupidly. If you need more i'll try to respond asap. Jim." [sic]

20. The Respondent was subsequently dismissed by his firm for gross misconduct following a disciplinary hearing on 1 June 2011. The Respondent's explanation as to his conduct was set out in his letter to the Applicant's agents on 25 July 2011.

Witness

21. Mr John Wesencraft gave evidence. He had been a solicitor for almost 20 years. When the Respondent had been dismissed there had been a shock wave through the tightly knit community of local criminal solicitors. The witness knew following the dismissal roughly what the situation involving the Respondent was. He had met with his partners and discussed whether they could find a role for the Respondent because of what they thought of him as an advocate and as a person. It had been decided that he should be interviewed. The Respondent had been very open about the proceedings he was facing and provided them with correspondence and so the witness was aware of the "suicide note" and the charges laid by the Applicant and of the Respondent's response. When they interviewed the Respondent they discussed with him the proceedings that he was facing, the nature of what he was alleged to have done and his response. The witness was fully aware of the matter save for minor details about the proceedings. In anticipation they had already consulted their insurers and informed the Legal Services Commission because 99% of their funding was derived from legal aid. The witness's firm had offered the Respondent a position, and had done so with their eyes open. It was his view that the Respondent was in the proper sense a "gentleman". The witness had no qualms at all about his firm offering him a job. Because of the way that the witness's firm worked the Respondent could not find himself in such a situation again. The witness had known the Respondent throughout the time the witness had been in the profession. He had actually met him as a student when the Respondent was a friend of his father. The Respondent must have made an impression on him because when they met again some years later the witness knew who he was. The witness said that his firm did not have a policy as such for employing those with a professional history but they would be very careful and would want to know the full facts, which they did. It was the general view of the solicitors with whom the witness practised in the area that the Respondent was well regarded and was an extremely competent advocate and that he was extremely good with clients, indeed impressively so. The firm for which the Respondent had worked was 50 to 70 yards from the witness's firm. There were contacts between the clients of the two firms. The witness could speak at first hand of the Respondent's performance in court. His general view was that the Respondent was a man of entire integrity and what he had done was quite astonishing to the witness and his colleagues.

Findings of fact and law

22. Allegation 1 - The allegation against the Respondent was that in breach of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 (the "Code"), the Respondent repeatedly and systematically misled his client to believe that court proceedings had been issued and conducted on his behalf, whereas no such proceedings had at any time been instigated.

In respect of this allegation, the Applicant contended that the Respondent had been dishonest although, for the avoidance of any doubt, it was not necessary to establish dishonesty for this allegation to be proved.

22.1 On behalf of the Applicant, Mr Afzal referred the Tribunal to the background facts. The client had been convicted of "putting a person in fear of violence by harassment" and received a three-year restraining order and a 12 month community order. The client had been on remand for several months. His relationship with his partner had been volatile. His application for legal aid had not been submitted by the Respondent because the Respondent had doubts about the accuracy of the information provided. This was set out in the minutes of the disciplinary meeting of 1 June 2011. Mr Afzal submitted that after the exchanges of correspondence between the Respondent and H & K and the reply from the local police that they could not assist with information, the Respondent failed in his duty from then on. The client was led to believe that an application for contact had been made after he completed the application forms. During the course of the disciplinary hearing, the Respondent admitted that he informed the client that a first hearing was to take place in January/February 2011. Mr Afzal referred the Tribunal to the course of events which followed and how the Respondent misled the client about subsequent purported hearings and a contact appointment. When the client was arrested by the police following an allegation by his partner that he had breached the terms of a non-molestation order, he believed that his arrest was in direct response to the court proceedings. The Respondent's first admission that the proceedings had not been issued was in the text to his employer sent on 19 May 2011. When investigated by the Applicant, the Respondent had given an explanation and very candidly explained his failings. His letter of explanation dated 25 July 2011 to the Applicant's agents was very apologetic; referring to a difficult and demanding client whom the Respondent could not confront; that he could not come clean with the partners at the firm about the difficulties he was having. Mr Afzal submitted that the Respondent had committed clear breaches of his core duties; especially that he had done enormous damage to the solicitors' profession by his actions in respect of a client who was seeking to obtain access to his son, particularly in a situation where he believed his son could be sent abroad. The client's hopes had been raised in relation to proceedings which had not been issued. Mr Afzal referred the Tribunal to the case of Bolton v Law Society [1994] 2 All ER 486 and the requirement that a solicitor should maintain the reputation of the solicitors' profession, which had not happened here. There was also an issue as to dishonesty. Mr Afzal referred the Tribunal to the case of Twinsectra v Yardley [2002] UKHL 12 with its twin limbed test; the objective test as to whether the conduct was dishonest by the standards of a reasonable person and the subjective test about whether the individual knew that his conduct was dishonest. He reminded the Tribunal that the Respondent was not able to set his own standard of honesty. Mr Afzal submitted that both limbs of the test had been met. The most important thing was that the conduct had not occurred in a moment of madness; there had been a course of dishonest conduct over several months until the Respondent had confessed to what he had not done for the client. If the history of the matter was analysed it seemed that there were separate and distinct aspects; the failure to pursue proceedings in December 2010 in spite of telling the client that he had done so; the purported hearing in February 2010; the Respondent informing the client that the hearing in early March had been adjourned; the incident which occurred on 31 March when the Respondent and the client arrived at the court premises and they were closed; the Respondent telling the client that his partner had been told to attend court on 13 April 2011 and telling the client that a contact appointment had been made and cancelled because his client's partner had changed solicitors. Mr Afzal submitted that these were separate and distinct acts of dishonesty. He further submitted that the Respondent must have known that his actions would be regarded as dishonest by reasonable and honest people. In respect of Professor

Turkington's report, Mr Afzal submitted that the most significant part was where it stated:

> "It is my opinion that this gentleman was not suffering from mental illness or personality disorder nor any form of addiction or dependence at the time to which this charge relates."

22.2 Mr Afzal submitted that the Professor was conceding that by the objective test the Respondent had been dishonest. In respect of the subjective test, Mr Afzal referred the Tribunal to the statement by the Professor:

> "It is possible therefore that this gentleman may not at all times have appreciated that he was acting dishonestly."

22.3 He submitted that the Professor's report did not deal with the second limb of the test; there was no medical explanation for the Respondent's actions. The Applicant accepted in principle that there could be circumstances such as a Respondent suffering from bipolar disorder or depression or where a Respondent's actions were caused by a depressed mental state at the time and they did not act dishonestly. The report did not say that. It just said why the Respondent found it difficult to confront what appeared to be a violent client; that did not establish that the Respondent did not know that his actions would be regarded as dishonest. Mr Afzal also reminded the Tribunal that character references could only be of limited use when the Tribunal was considering dishonesty and whether the test had been met. They were clearly helpful as to general character but they did not provide evidence as to the actual circumstances surrounding the particular events.

22.4 On behalf of the Respondent, Mr Edwards submitted that the Respondent had admitted the substance of the allegation from the outset of the proceedings. Mr Edwards asked that he be given full credit for his timely admission and the candid way he had admitted it at the appropriate point of the proceedings. It was a sad fact that solicitors could not pick and choose their clients and sometimes clients crossed their threshold who were not to their liking. This client had come to the firm as a criminal client represented in proceedings including allegations of threats to kill. Once those proceedings had been concluded he had asked for a family law matter to be dealt with and the partner representing him had asked the Respondent to do it. The Respondent was experienced in public law children matters and was a member of the Law Society Childrens Panel. He was not experienced in private law matters of contact. This was a crucial consideration, his experience did not extend to it. In an ideal world he would have said that others could do it better or as required by the Code on the basis of a clash of personality and attitude with the client, he could have said that because of a breakdown in communications he could not act in the client's best interests. It was accepted that the situation was entirely avoidable. The Respondent was a quiet professional person. The client was someone whose coming to the office was dreaded because of his use of foul language and his effect on the support staff. The client had a limited command of English and the Respondent could not communicate with him as openly as he would have liked and even for an experienced solicitor this would have caused his stress levels to rise. The prospect of confrontation with the client and the fact that he was not familiar with this particular area of law added to the Respondent's stress levels. It was not a case of work not being done throughout; letters had quite properly been written to the police and others. The client was not fobbed off or shown

the door. Unfortunately the Respondent did not speak to his colleagues about the matter and he was offered no support. Muddle, confusion and the general unhappiness of the circumstances had led the Respondent to slide from the required standards. He did not make this admission lightly and it was a matter of shame and regret to him. Mr Edwards submitted that someone expressing shame and regret was not displaying the hallmarks of a dishonest person. The Tribunal might find that significant. As to damage to the legal profession, Mr Edwards conceded on the Respondent's behalf that that was a fair observation at first blush. In many cases which came before the Tribunal there was a vast difference in public perception of the individual solicitor and the informed opinion of the public. It was submitted that this perception of damage to the solicitor's profession would be different if the public had heard Mr Afzal's summary and all the facts. Dishonesty manifested itself in many ways and usually involved gain, such as going to client account or lying about time spent working with a client's affairs. There had been little gain to the Respondent. He had solid experience although he was not a partner which was by choice and therefore he had no financial interest in the case. He should have told the client that he could not work with him. As to the professional "suicide note", the Respondent had confessed in that form, rather than in a deniable conversation, that he had misled the client for a period. A dishonest man would have let events unfold and done little or nothing until confronted and he could do no more. The Respondent had confessed. He did not attempt to shift the blame, make excuses or carry on lying to justify himself. It was submitted that the words of his text were odd words if they were taken to be those of someone who was dishonest and unfit to be a member of the profession. Once the matter was in the open the Respondent did not attempt to make excuses. Mr Edwards also referred the Tribunal to the report of Professor Turkington who was a respected and eminent authority in the North East of England in matters such as this. He had been referred to Mr Edwards by another client in the North East who was unaware of the Respondent's case. Mr Afzal had referred to the thrust of the report as being that there was no mental illness but it did tell of the therapy which the Respondent underwent and was continuing. It drew assumptions based on the gentle and genial personality of the Respondent. It did not say he was insane or thoroughly dishonest but reported the facts and left it to the Tribunal to draw its own conclusions. Having regard to the test in the case of Twinsectra, it would be futile and unfair to pretend that the evidence did not support the objective test. The only qualification which Mr Edwards would make would be to refer to the "informed member" of the public. He submitted that the second limb of the test was not so straightforward. Did the Respondent realise that what he did was dishonest at all material times? Mr Edwards asked the Tribunal to look at the totality of what the Respondent said and whether it amounted to proof beyond reasonable doubt. Mr Edwards referred the Tribunal to the bundle of testimonials submitted on behalf of the Respondent and to evidence of Mr Wesencraft, the senior partner of the Respondent's current firm. The testimonials were submitted by worthy and decent people who had taken the trouble to write to assist the Tribunal in coming to a decision. A lot of them referred to the Respondent's integrity and his reputation. He was a subtle man, polite, friendly and disarmingly honest. The Tribunal was asked to imagine the impact that this client had had on him.

22.5 The Tribunal had considered the submissions on behalf of the Applicant and the Respondent, the testimony of the character witness and read the testimonials. The Respondent had admitted the underlying facts, and had admitted allegation 1 but denied dishonesty. The Tribunal found that the Respondent had repeatedly and systematically misled his client as alleged and that in doing so he had failed to act with

integrity (Rule 1.02), he had failed to act in the best interests of the client (Rule 1.04), he had failed to provide a good standard of service to the client (Rule 1.05) and that he had behaved in a way that was likely to diminish the trust the public placed in him or the profession (Rule 1.06) and thereby allegation 1 was found to have been proved beyond reasonable doubt. As to dishonesty, the Tribunal considered that by the objective test, the standard of reasonable and honest people, what the Respondent had done was dishonest. As to the subjective test, the Tribunal considered that the Respondent had known what he was doing was dishonest. On several occasions and over a period of several months he had told the client specific and different lies including telling the client that he had been before the judge and fabricating the judge's decision. He had got himself deeper and deeper into the situation, and his lies including telling a member of staff that he needed particular information about CAFCASS for his own wife and inventing a change of solicitor by the client. The Tribunal had paid careful attention to the psychiatric report. The report recorded that the Respondent found himself in a situation where he knew that his professional conduct was not appropriate but he could not ring alarm bells. There was no indication that the Respondent did not know what he was doing. The report only indicated that it was possible that he may not at all times have appreciated that he was acting dishonestly and that it might well be that in the early parts of the case he did not appreciate that. However, the report did not in any way suggest that the Respondent was unaware of his dishonesty at all times, and indeed it specifically acknowledged that generally he was so aware albeit unable to bring his situation to the attention of others. The report also stated that it was for the Tribunal to decide whether at all times the Respondent knew that he was acting dishonestly. It was Professor Turkington's view that his personality structure partly explained the initial development of the charge and its ongoing perpetuation. The report also indicated that it appeared that during the latter parts of the case the Respondent was aware that he was "digging holes" but he could not ask for help due to various aspects within his personality. The Tribunal had taken into account that the client had found the client volatile and loud and that he was worried about what the client might do to his partner. It had also noted the contents of the testimonials but while they attested to the Respondent's general integrity they were not directly helpful as to the particular circumstances. The Tribunal found that while the Respondent may not at all times have known that what he was doing was dishonest, he had told a number of untruths to the client and he had continued to do so over a period of months and that in misleading the client he had known during most, if not all, of the period involved that what he was doing was dishonest. The second limb of the test in the case of Twinsectra was satisfied and the Tribunal found it proved beyond reasonable doubt that the Respondent had behaved dishonestly.

Previous appearances

23. None

Mitigation

24. On behalf of the Respondent, Mr Edwards acknowledged that in the majority of Tribunal cases where dishonesty was found, the ultimate sanction of strike off the Roll of solicitors usually followed. He submitted that this Respondent fell within the very small number of residual cases referred to in the case of Law Society v Salsbury EWCA Civ 1285 where striking off would be disproportionate in all the

circumstances. Mr Edwards also referred the Tribunal to the case of SRA v Sharma [2010] EWHC 2022 (Admin) where the Court had said that:

> "In deciding whether or not a particular case falls into that category, relevant factors will include the nature and scope of the dishonesty itself; whether it was momentary, such as Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others."

Also

> "It seems to me that it is the nature, scope and extent of the dishonesty itself that matters. Questions as to financial loss may however be relevant in considering whether a particular case falls within or outside the exceptional category to which the authorities refer."

25. Mr Edwards also referred the Tribunal to two of its earlier judgements in Wilson case number 9255/2005 and Lindsey case number 10168/2009. Mr Edwards appreciated that these decisions were not binding and that each case turned on its own facts but he thought that they might be helpful and persuasive. They were both cases where dishonesty was found or admitted at the outset. The incidences or acts of dishonesty were far more serious. The ultimate sanction was not applied and Mr Edwards submitted that it should not be applied here. In the case of Lindsey there had been aberrational behaviour and that Respondent had shown no propensity to offend; the Tribunal was dealing with a man who was found to be honest, decent and good; there had been no gain to the Respondent. The Tribunal had said that whilst thoroughly dishonest people would commit acts of dishonesty for their own gain there was no question of that in the Lindsey case. The Respondent had made no attempt to cover his tracks. That had also been a case where acts had taken place whilst the Respondent had been sick. Mr Edwards submitted that all these points were relevant to this matter although he placed less emphasis on the final point. In the case of Wilson, dishonesty had been admitted and there had been a criminal conviction. The Respondent in this matter had never been the subject of a criminal prosecution and had not been convicted of any crime. The dishonesty which had been found against him had been professional rather than financial dishonesty. Mr Edwards submitted that a period of suspension, the second most serious sanction, had been considered appropriate in both the cases of Lindsey and Wilson. Mr Edwards submitted that the Respondent here had made one serious mistake in an otherwise unblemished career; that he was no risk to the public in future and he asked the Tribunal to have regard to the evidence of Mr Wesencraft as to how he had re-established himself through honest work. A financial penalty might well meet the needs of justice, the public interest and the Tribunal's professional duty. Mr Edwards reminded the Tribunal of his earlier remarks about the view of an informed public as opposed to the public per se. If apprised of all the facts would the public really consider it appropriate for a man in these circumstances to be struck off the Roll of solicitors or would it understand if a lesser penalty were imposed by way of reminder. Mr Edwards referred the Tribunal to the Respondent's earlier career where he had managed to obtain articles in a local authority, had learned a great deal, had developed expertise and become a member of the very exclusive Childrens Panel of the Law Society to which many were called but few chosen. He had acted for Guardians for many years and developed criminal (defence) skills helping alienated members of society. He was a married man looking

forward to retirement but not so soon that he could not give a lot and he still had a lot to give. The Applicant could impose conditions on his practising certificate. The Tribunal could make highly persuasive recommendations about future practice. The Applicant had made no conditions so far and might be awaiting the outcome of this hearing. Mr Edwards submitted that the Respondent's client had suffered a delay but were he to go to another solicitor and apply for contact and the judge be appraised of what had happened, the delay would not be held against him. The Respondent's employers had not lost out on costs from a case that had not got off the ground. The firm's insurers had been told about the matter but no one was aware of any claim having been made against them by the client. Mr Edwards submitted that the only loser and victim to any significant degree was the Respondent and that would be the case for the rest of his career. He would pay a very heavy burden in respect of the remains of his professional standing and his own pride and basic decency. Mr Edwards submitted that the Respondent had done his best to put the matter right.

26. On behalf of the Applicant, Mr Afzal submitted that sanction was not a matter for the Applicant but wished the Tribunal to be aware of two recent Court of Appeal decisions regarding Tribunal cases involving dishonesty; Solicitors Regulation Authority v Clarke Dennison [2012] EWCA Civ 421 and Solicitors Regulation Authority v Rahman [2012]EWCA 1037 (Admin). In respect of these cases, Mr Edwards submitted that the case of the Law Society v Sharma [2010] EWHC 2022 (Admin) had not been over-ruled.

Sanction

27. The Tribunal had found dishonesty against the Respondent. He was involved in lying to his client over a period of months regarding the client's wish to achieve access to his son and the arrangements for court applications which the Respondent was making to achieve this objective. The Tribunal had been directed to a number of reported decisions which took into account such matters as the nature, scope and extent of the dishonesty which had been found proved when looking at the penalty to be imposed. In this case the Tribunal found that the client's objectives and interests were prejudiced by the lies told to him by the Respondent. The Respondent entered into a sustained period of misleading his client. This was not a single act and it did have an adverse effect on his client. The Tribunal was bound by the principles established in cases such as Bolton, Salsbury and Sharma as well as the more recent decisions such as the Court of Appeal's in the case of Dennison. The Tribunal had to have regard to the reputation of the profession and the lack of integrity displayed by the individual solicitor concerned. The Tribunal was satisfied that the Respondent had not acted for personal gain and it was also satisfied that all the evidence suggested that he was otherwise a man of integrity as well as a very competent advocate. It had read the very impressive testimonials submitted on his behalf and had heard very impressive evidence from Mr Wesencraft as to the Respondent's integrity and abilities. The Tribunal had some sympathy for the Respondent but had to have regard for the need of the public to be able to place their trust in solicitors. In this case a solicitor had fabricated an entire litigation case, during which time his client, contrary to his belief and instructions, had therefore taken no steps to obtain contact with his child, nor prevent his child being taken from the country. It had therefore reached the conclusion that these allegations and the dishonesty displayed did not fall into the minority of cases where striking off was inappropriate. The Tribunal had come to the

conclusion that the appropriate order to make in this case was that the Respondent should be struck off the Roll of solicitors.

Costs

28. Mr Afzal advised the Tribunal that a schedule of costs had been served in the amount of £10,378.66. Mr Afzal informed the Tribunal that the length of time for the hearing needed to be reduced from six hours to between two and two and a half and that a reduction needed to be made in the travel expenses from £115 to £95. An amount of £525 for the fixed costs of the Applicant for an internal investigation needed to be added but no forensic investigation costs had been involved. On behalf of the Respondent, Mr Edwards explained that through no one's fault the Respondent had not yet seen the schedule. He acknowledged that the proceedings had been properly brought and appreciated Mr Afzal's efforts to quantify costs. Apart from the issue of dishonesty which had been contested, issues had been fairly straightforward. The parties asked for summary assessment. The Tribunal assessed the costs at £10,000.

Statement of Full Order

29. The Tribunal Ordered that the Respondent, James Campbell Kilpatrick 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 £10,000.00.

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

J. N. Barnecutt
Chairman