

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10931-2012

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ZIA LATIF

Respondent

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Before:

Mr A. N. Spooner (in the chair)

Mr R. Nicholas

Mr P. Wyatt

Date of Hearing: 21 October 2014

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## Appearances

Geoffrey Williams QC, Solicitor of The Mews, 38 Cathedral Road, Cardiff, CF11 9LL for the Applicant.

The Respondent appeared and was represented by Tim Storrie, barrister, of Lincoln House Chambers, Tower 12, The Avenue North, Spinningfields, 18-22 Bridge Street, Manchester, M3 3BZ

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## JUDGMENT

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## **Allegations**

1. The Allegations against the Respondent were:
  - 1.1 The Respondent failed to maintain properly written up books of account contrary to Rule 32 Solicitors Accounts Rules 1998 (“SAR”).
  - 1.2 The Respondent caused or permitted monies to be withdrawn from client bank account otherwise than in accordance with Rule 22 SAR.
  - 1.3 [Withdrawn].
  - 1.4 [Withdrawn].
  - 1.5 In the alternative to allegations 1.3 and 1.4, the Respondent gave false and misleading explanations to a representative of the Forensic Investigation Unit of the Solicitors Regulation Authority contrary to Rule 1.02 of The Solicitors Code of Conduct 2007 (“the Code”). It was alleged the Respondent had acted dishonestly.
  - 1.6 [Withdrawn].
  - 1.7 The Respondent practised as a solicitor without compliant professional indemnity insurance cover being in place contrary to The Solicitors Indemnity Insurance Rules 2008.
  - 1.8 The Respondent failed to deliver an Accountant’s Report contrary to section 34 Solicitors Act 1974 and the Rules made thereunder.

The Respondent admitted allegations 1.1, 1.2, 1.5, 1.7 and 1.8.

## **Documents**

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 20 February 2012 together with attached Rule 5 Statement and all exhibits
- Statement of Offence from The Crown Court at Birmingham
- Letter dated 16 October 2014 from the Applicant to the Respondent together with Office Copy Entry of a property at B Road
- Schedule of Costs of the Applicant dated 14 October 2014

Respondent:

- Response dated 17 October 2014
- A number of character references
- Letter dated 3 October 2014 from the Respondent to the Applicant attaching details of his income and expenditure

### **Application to Withdraw Allegations**

3. At the beginning of the hearing Mr Williams QC, on behalf of the Applicant, made an application to withdraw Allegations 1.3, 1.4 and 1.6. He confirmed the Respondent admitted Allegations 1.1, 1.2, 1.5, 1.7 and 1.8. Mr Williams confirmed that the SRA were now satisfied that the matters referred to in Allegations 1.3 and 1.4 had not resulted from the Respondent's conduct and now sought to withdraw those allegations. Furthermore, Allegation 1.5 had been pleaded in the alternative to Allegations 1.3 and 1.4, and Allegation 1.6 had been pleaded in the alternative to Allegation 1.5. As Allegation 1.5 was now admitted by the Respondent, it was not necessary to pursue Allegations 1.3, 1.4 or 1.6 against him. There was no objection from the Respondent to this application.
4. The Tribunal had considered carefully the documents provided and the submissions of the Applicant. In view of the admissions made by the Respondent, the Tribunal granted the application to withdraw Allegations 1.3, 1.4 and 1.6.

### **Factual Background**

5. The Respondent, born on 19 June 1968, was admitted as a solicitor on 15 January 2004. The Respondent currently held a practising certificate subject to conditions.
6. At all material times the Respondent carried on practice as a solicitor in partnership at AKZ Solicitors, 712 Alum Rock Road, Saltley, Birmingham, B8 3PP ("the firm"). The firm closed on or about 18 March 2009.
7. On 29 May 2008, a Senior Investigation Officer ("SIO") of the SRA commenced an inspection of the firm's books of accounts and other documents and produced a Forensic Investigation Report dated 24 March 2010 which identified a number of concerns.

### Allegations 1.1 and 1.2

8. The Respondent was solely authorised to operate the firm's bank accounts. The SIO found that the firm's books of account had not been properly written up as at 30 May 2008. The client ledgers and cashbook had not been maintained, partners had not carried out client bank account reconciliations and interest earned on the client account was incorrectly retained in that account.
9. At a meeting with the Respondent on 30 May 2008, the Respondent agreed he had not maintained the client ledgers, or a client bank account cashbook or carried out client bank account reconciliations since 10 March 2008. He stated the firm was established on this date having acquired another practice. The firm was using the same premises as that practice. The Respondent stated he was in the process of putting office procedures in place and due to personal issues, he had been unable to give his full attention to this. The SIO agreed to provide the Respondent with an extension of time to bring the books of account up to date.

10. The SIO returned to the firm on 13 November 2008 by which time the books of account had been prepared, but only to 30 August 2008. The SIO found that there was a cash shortage on the client bank account in the sum of £22,505.27 as at 30 August 2008. This was replaced by the Respondent on 14 September 2008 by the introduction of loan funds.
11. The cash shortage had been caused as a result of a number of issues. Bank charges of £378.29 had been deducted from the client account. There were debit balances of £2,928.74, which were caused by a combination of overpayments and transfers ranging from £12.00 to £582.75. On one client file, the Respondent had transferred the sum of £582.75 in relation to a bill without realising insufficient money was held for that client. On another client matter, a payment of £220 was made in respect of a Land Registry fee when there were no funds held for that client. It was not practical for the SIO to investigate the remaining book difference of £19,198.24.

#### Allegation 1.5

12. The firm was involved in five conveyancing transactions which exhibited the hallmarks of potential property fraud. During the SIO's investigation, the Respondent did not deny that he acted in these five transactions. During his interview with the SIO in 2008, he referred to the clients as his clients. He did not deny making various inter-ledger transfers on the client files involved, although he stated that he had not known the reason for payments and transfers but they were made on his clients' instructions. The Respondent stated he was unaware of his obligation to inform a mortgagee of payments made directly between the seller and purchaser, and stated he was inexperienced in conveyancing and not alert to transactions following an unusual pattern.
13. However, when the Forensic Investigation Report was sent to the Respondent on 18 June 2010 for his comments, the Respondent replied on 16 July 2010 and gave different explanations. He stated the following:
  - In January 2008 he had been offered, and had agreed to enter into, a partnership with Mr M who stated he had a practice in Birmingham.
  - After further reflection the Respondent changed his mind and did not attend the practice in Birmingham during the period February 2008 to May 2008. He stated he received no correspondence or telephone calls from Mr M during this time. The Respondent believed that inaction on his part was the end of the matter and that, by implication, he had nothing to do with the practice in Birmingham.
  - The Respondent stated Mr M had not informed the Respondent that Mr M had any problems with the Solicitors Disciplinary Tribunal, or the police, and nor did he inform the Respondent that he wanted to set up a successor practice in the name of the firm, AKZ Solicitors.
  - The Respondent had not been aware that his name was used as a partner in the firm. He stated he only became aware on 29 May 2008 when he was informed

about the arrival of the SIO at the firm by a member of staff from the office. The Respondent went to see the SIO on the same day.

- When the Respondent eventually found out that Mr M had been suspended from practising, he asked Mr M to leave the firm on a number of occasions but was informed by Mr M that the SRA had authorised Mr M to stay with the firm in order to rectify issues he had had with the first practice.
- The Respondent stated that after several days at the firm, he was threatened by “Others” who told him in no uncertain terms to continue working at the practice and not to ask any questions pertaining to Mr M. Accordingly, the Respondent, believing the threats towards himself and his family to be real, carried on the “pretence” and gave the impression that he was in charge of the firm whereas “in reality Mr [M] was in total charge of the firm”.
- The Respondent stated the client account was in Mr M’s name and operated by Mr M. The Respondent did not have much of a role or responsibility at the firm and Mr M was in control. The conveyancing transactions in question had all been dealt with by Mr M and the Respondent had never signed any documents relating to them. The Respondent stated he had not dealt with any of these cases.

14. In a further letter to the SRA dated 18 November 2010, the Respondent stated the following:

- He did not know if the firm was holding client money and that he presumed when the firm was closed in February 2009, it ceased to hold client money at that time. Since the firm had closed the Respondent had had nothing to do with it.
- At the time, he had believed Mr M was in fact the partner of the firm and he had naïvely helped him, not realising what being a partner in a firm would actually entail.
- The Respondent had attended the firm from June 2008 until February 2009 and Mr M had been present on most if not all of the occasions the Respondent had attended. However, the Respondent had no documentary evidence that Mr M had been at the firm.
- The Respondent could not recall the names of those who had threatened him and nor did he inform the police of the threats.
- The Respondent stated he had been naïve, putting too much trust in Mr M and, in hindsight, he should have informed the SIO of the truth. The Respondent stated he wanted to tell the truth now because he did not want to admit to something he had not done.

Allegation 1.7

15. The firm practised without professional indemnity insurance cover between 1 October 2008 and 8 November 2008.

Allegation 1.8

16. The firm's Accountant's Report for the year ending 31 March 2009 was due to be delivered by 30 September 2009. No such report had been delivered.

**Witnesses**

17. No witnesses gave evidence.

**Findings of Fact and Law**

18. The Tribunal had carefully considered all the documents provided, and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
19. **Allegation 1.1: The Respondent failed to maintain properly written up books of account contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR").**

**Allegation 1.2: The Respondent caused or permitted monies to be withdrawn from client bank account otherwise than in accordance with Rule 22 SAR.**

**Allegation 1.5: In the alternative to allegations 1.3 and 1.4, the Respondent gave false and misleading explanations to a representative of the Forensic Investigation Unit of the Solicitors Regulation Authority contrary to Rule 1.02 of The Solicitors Code of Conduct 2007 ("the Code"). It was alleged the Respondent had acted dishonestly.**

**Allegation 1.7: The Respondent practised as a solicitor without compliant professional indemnity insurance cover being in place contrary to The Solicitors Indemnity Insurance Rules 2008.**

**Allegation 1.8: The Respondent failed to deliver an Accountant's Report contrary to section 34 Solicitors Act 1974 and the Rules made thereunder.**

- 19.1 The Respondent admitted Allegations 1.1, 1.2, 1.5 (including the allegation of dishonesty), 1.7 and 1.8. Accordingly, the Tribunal found all those allegations proved.

**Previous Disciplinary Matters**

20. None.

## Mitigation

21. Mr Storrie, on behalf of the Respondent, submitted that although there was an admission of dishonesty in this case, the facts when properly understood, would not lead to the Respondent's culpability being such that he should be struck off the Roll of Solicitors. The Tribunal was provided with details of the Respondent's career history, family background and personal circumstances.
22. The Respondent had qualified as a solicitor in 2004, having funded himself by working part-time. He had been offered partnership in 2008. Mr Storrie submitted solicitors too frequently misunderstood that the implications of ascending quickly in career also involved obligations that were onerous. The Respondent had been confronted with the opportunity and possibility of becoming a partner which would give him a chance to succeed and meet his aspirations. In this case the Respondent had been trusting and naive. The scale of the fraud undertaken by Mr M had led to convictions and lengthy prison sentences. The length of the sentences reflected that there had been calculated fraud to obtain large sums of money. The firm had been used as a vehicle to effect fraudulent transactions successfully and this had affected all those involved, including the Respondent. The fraud had involved careful planning and had been orchestrated and directly controlled by Mr M, who was more experienced than the Respondent, who had only been qualified for four years.
23. The Respondent's motive in giving the responses to the SIO as he did were due to the threats he had received from others, several days after he had been at the firm. He had panicked and acted under coercion. Clearly those people were seeking to obtain and conceal large sums of money and protect themselves, whilst making it clear to those involved in the firm as to where their immediate and better interests lay. The Respondent had been inexperienced and ill equipped to deal with the most challenging situation and calling the police, or the SRA, or the Ethics Department were further dilemmas for him.
24. The Respondent had corrected his position in July 2010 and the reason for the delay was because the police were involved as well as the SRA. Criminal proceedings had ensued, although these were discontinued against the Respondent. The Respondent had provided the police with an account and it was only as a result of the freedom given to him by the police that he was able to write to the SRA in July 2010. The police proceedings had to take precedence. The Respondent could not deal with the SRA until the threat of police action had been removed.
25. The real harm in this case was caused to the Respondent himself. Mr Storrie submitted that there had been no suggestion that the reputation of the profession had been damaged. It was accepted that solicitors should respond to their regulator truthfully but in this case, it was submitted that the damage to the reputation of the profession was marginal taking into account all the facts.
26. Whilst the Respondent did not seek to undermine the gravity of the situation, Mr Storrie submitted that there must be consideration for those who found themselves subject to manipulation, fear and being taken advantage of. It was accepted that this case was in the higher category of seriousness and consideration of the more severe sanctions was necessary. However, there had not been any criminal conviction, and

whilst the Respondent had concealed wrongdoing, this was the consequence of him not knowing what to do for the best. The firm had closed down, and the Respondent had shown candour in his letters to the SRA. The Respondent would never ever allow this to happen again and had tried to correct his wrongdoing as soon as he was able, once the police investigation concluded.

27. The Respondent accepted no Accountant's Report had been filed but he had no access to the accounts or to the firm's business information, as he had become more and more distant from the firm. He accepted that he should have filed an Accountant's Report. The Respondent had already suffered a form of suspension as he had not worked as a solicitor since these events. He had lost his job, ambition and all the opportunities that came with it. His self-esteem had been damaged and his future career in law was in peril.
28. Mr Storrie referred the Tribunal to the case of The Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) and reminded the Tribunal that each case must be dealt with on its own facts. The Tribunal was required to consider relevant facts including the nature, scope and extent of the dishonesty itself. In this case the Respondent's malfeasance was shaped before he joined the firm by others around him. However, despite him being arrested and charged, criminal proceedings had been discontinued and there was therefore the powerful inference that the circumstances were those as set out by the Respondent in his letters to the SRA. The dishonesty had taken place over a few months and the extent was such that the Respondent had become another piece of the wreckage that had resulted from the criminal activity of others.
29. The Respondent was not beyond redemption and the Tribunal was referred to a number of character references provided. On questioning from the Tribunal, Mr Storrie confirmed that not all the referees were aware of the details of the allegations. Although the Respondent expected a severe sanction to be imposed, it was submitted that this was an exceptional case in that the Respondent had not gained any advantage and had in fact been used by others.

### **Sanction**

30. The Tribunal had considered carefully the Respondent's submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
31. Mr Williams QC, on behalf of the Applicant, had presented this case on the basis that it was one of exceptional seriousness as it involved dishonesty between the Respondent and his regulator. In his submissions, Mr Williams had taken the Tribunal through the Forensic Investigation Report in detail and highlighted the many instances of the false and misleading statements made by the Respondent to the SIO, which centred on the Respondent's involvement with various conveyancing transactions that he claimed to have been involved with, when this was not in fact the case. It had been submitted that this case was at the top end of the scale, as false



representations had been made to the SRA in 2008 which were not corrected until July 2010.

32. Mr Williams had drawn the Tribunal's attention to the cases of Bolton v The Law Society [1994] 1 WLR 512, The Solicitors Regulation Authority v Millard Decal Spence [2012] EWHC 2977 (Admin) and also The Solicitors Regulation Authority v Sharma.
33. Mr Storrie, on behalf of the Respondent, had argued that there were exceptional circumstances and that the Respondent should not be struck off for a number of reasons. He stated the Respondent had made strenuous efforts to qualify as a solicitor over many years, overcoming difficult hurdles along the way. Mr Storrie referred to the Respondent and his family having been threatened. However, although there was reference to this in the documents, the Tribunal noted no evidence was produced to support these assertions.
34. Mr Storrie sought to differentiate the position between the Respondent and Mr M in terms of the reputational damage to the profession, categorising Mr M's role as being more serious. Mr Storrie outlined the impact that this matter had had on the Respondent personally and on his family.
35. The Tribunal firstly considered the aggravating circumstances in this case. There had clearly been dishonesty over a long period of time from 2008 until 2010. As a result of the misrepresentations made by the Respondent to the SIO, the SRA had been misled into believing he had dealt with a number of conveyancing transactions when he had not. The SRA had therefore been misled in its investigations. The problems involving Mr M in the practice could have been discovered at an earlier stage had the Respondent told the SRA the truth about the transactions. Although the Applicant was unable to indicate what the ramifications of these misrepresentations were, it was clear to the Tribunal that the SIO's investigations would undoubtedly have taken a different course had the SRA known about Mr M's true position within the firm. The Respondent's conduct had been deliberate, to some extent calculated and he had concealed wrongdoing. The Respondent ought reasonably to have known that making the representations he did were in material breach of his obligations to protect the public and the reputation of the profession.
36. The Tribunal then considered the mitigating factors. The Respondent had repaid the shortfall of £22,505.27 by borrowing money in September 2008. He had eventually informed the SRA of the correct position and he now appeared to have insight into his errors. He also had a previously unblemished record.
37. The Respondent had made admissions to a number of allegations, the most serious of which was clearly that he had given false and misleading explanations to the SIO and had done so dishonestly. He had also admitted breaching the Solicitors Accounts Rules, practising without professional indemnity insurance being in place and failing to deliver an Accountant's Report.

38. The Tribunal was particularly mindful of all the case law to which it had been referred. In the case of Bolton v The Law Society Sir Thomas Bingham MR stated:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal...”

39. In the case of The Solicitors Regulation Authority v Sharma, Mr Justice Coulson had stated:

“13. .... (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. This is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will be the disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent 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.....

..... 34. Their first finding was that “there was no harm to the public”. I assume that by this the Tribunal meant that no client suffered financial loss. It seems to me that this is a very narrow way of looking at dishonesty, and wholly fails to recognise the wider issues involved. In my judgment there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

40. The Tribunal also considered carefully the case of The Solicitors Regulation Authority v Millard Decal Spence. In that case, Mr Justice Foskett stated the following:

“22..... In my judgment the most serious aspect of the dishonesty found against, and ultimately accepted by, the respondent was his decision deliberately to mislead the investigators over a period of at least a couple of months, or so, at the same time as not taking steps to put his practice in order, including not putting the insurance position on the correct and proper footing.

23.....However, whilst personal mitigation is important, it is equally important for the Tribunal to stand back and decide whether what was actually done was truly excusable as effectively a momentary lapse in an otherwise unblemished career, or whether it was something that has to be marked by a striking off order. The message given generally by the penalty must also be considered; the message being the message both to the profession and to the public.....

24..... it was calculated dishonesty over the kind of period I have indicated and, in my judgment, it was conduct that required what the Tribunal called the ultimate sanction. The investigators on behalf of the SRA are entitled to expect honest responses from solicitors they are investigating, and, in my judgment, it would send entirely the wrong message if striking off was not the normal order, save in the most exceptional circumstances, in this kind of situation.....

27.....It would, in addition, be deeply misleading for practitioners to think that lying to their regulator was somehow not as culpable a form of professional misconduct as the misapplication of client's funds....”

41. The Tribunal having taken into account all the circumstances and the case law to which it had been referred concluded that there were no exceptional circumstances in this case. Whilst the Tribunal acknowledged the hurdles the Respondent had overcome in order to qualify as a solicitor, it could not overlook the fact that the Respondent had lied to his Regulator on many occasions during the course of his interview. Although the Respondent stated he had been threatened, there was no other evidence of this. This was very serious misconduct at the highest level. The Respondent's dishonest conduct had caused damage to the reputation of the profession and had most probably hindered the SRA's investigation. The Tribunal was satisfied that the Respondent had failed to act with integrity, probity and trustworthiness. The appropriate and proportionate sanction in this case was to strike the Respondent's name from the Roll of Solicitors. This was necessary in order to maintain public confidence in the profession.

### **Costs**

42. Mr Williams requested an Order for the Applicant's costs in the total sum of £28,050 and referred the Tribunal to his Schedule of Costs. Mr Williams submitted that although some allegations had been withdrawn, the costs should still be awarded in full as those withdrawn allegations had related to conveyancing transactions that the Respondent claimed he had conducted when he hadn't. Mr Williams submitted the SRA had no option but to investigate further and it was only after criminal proceedings were issued that the truth became known. Mr Williams submitted that it had been appropriate for the SRA to bring the case and in fact the admissions from the Respondent had only been made within the week before the final hearing. The allegations that had been withdrawn were only withdrawn because of those admissions, and had those submissions not been forthcoming, the Applicant would have proceeded on the withdrawn allegations.
43. Mr Williams stated that this case had originally been listed for two days and although it would now be concluded within one day, this would not affect his brief fee which had been agreed for the hearing. The hearing could well have lasted two days. In any event, a refresher fee had not been charged for the second day. This had been a complex case which had required a great deal of time to be spent on it. Mr Williams stated that it was now accepted the Respondent did not have any interest in a property at B Road. Mr Williams also assured the Tribunal that the SRA could be trusted to agree instalment provisions with the Respondent if he had difficulty in meeting any costs order.

44. Mr Storrie on behalf of the Respondent submitted the Applicant's costs should be reduced to take into account the allegations which had been withdrawn. The Respondent requested a summary assessment and the Tribunal was referred to details of the Respondent's income and expenditure from which it was clear that the Respondent had very little monthly disposable income. The Respondent requested a deferment of payment of any costs order.
45. The Tribunal had considered carefully the matter of costs and noted both parties had requested a summary assessment. It did appear that the Applicant's costs were excessive and the time spent on the matter was high. The Tribunal reminded the parties that the costs of proceedings which a respondent may be ordered to pay must be proportionate. Whilst the regulatory authority bringing proceedings could instruct a person or firm who could command high fees in the current state of the legal market which that regulatory authority was willing to pay, this did not mean that it was proportionate to make an order for costs in that same amount. The Tribunal assessed what was proportionate, taking into account all the material circumstances. The Tribunal considered the brief fee to be high and reduced this to £5,000. The Tribunal also made a further reduction to the amount of time spent on the matter and assessed the overall costs at £22,500. Accordingly, the Respondent was Ordered to pay the Applicant's costs in the total sum of £22,500.
46. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a statement of means with supporting evidence. The Tribunal took into account the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the Applicant's costs. Although the Respondent had little disposable monthly income, the Tribunal was mindful that the Respondent had now been deprived of his career. It would not be proportionate or reasonable to expect the Respondent to meet the costs figure in the amount awarded in view of his low disposable income. The Tribunal therefore Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

### **Statement of Full Order**

47. The Tribunal Ordered that the Respondent, ZIA LATIF, 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 £22,500 such costs not to be enforced without leave of the Tribunal

DATED this 3<sup>rd</sup> day of December 2014  
On behalf of the Tribunal

A. N. Spooner  
Chairman