

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10950-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID PHILLIP O'NEILL

Respondent

Before:

Miss N. Lucking (in the chair)

Mr A. G. Gibson

Mrs S. Gordon

Date of Hearing: 29th May 2013

Appearances

Robin Havard, solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant.

The Respondent appeared and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, David Phillip O'Neill, were that:-
 - 1.1 He has:
 - 1.1.1 failed to act with integrity;
 - 1.1.2 allowed his independence to be compromised;
 - 1.1.3 failed to act in the best interests of clients; and
 - 1.1.4 behaved in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rules 1.02, 1.03, 1.04, and 1.06 of the Solicitors' Code of Conduct 2007.
 - 1.2 He has failed to manage effectively or at all the activities of Cartwright Adams Solicitors Limited contrary to Rule 5 of the Solicitors' Code of Conduct 2007.
 - 1.3 He has failed to maintain proper books of account in breach of Rule 32 of the Solicitors' Accounts Rules 1998.
 - 1.4 He has withdrawn, or permitted to be withdrawn, from client account, monies belonging to a client which were not properly required for a payment on behalf of that client contrary to Rule 22 (1) (a) of the Solicitors' Accounts Rules 1998.
 - 1.5 He permitted withdrawals to be made from client account without the necessary authorisation contrary to Rule 23 (1) (a) of the Solicitors' Accounts Rules 1998.
 - 1.6 He has made, or permitted to be made, misleading entries and/or statements in the records of Cartwright Adams Solicitors Limited.
 - 1.7 He has made, or permitted to be made, improper transfers of monies from client account to office account in respect of the Firm's costs without rendering to the client a bill nor providing written confirmation of such charges to the client contrary to Rule 19 (2) of the Solicitors' Accounts Rules 1998.
 - 1.8 He has employed and/or remunerated a solicitor whom he knew to have been struck off the Roll contrary to Section 41 of the Solicitors' Act 1974.
 - 1.9 He permitted an unauthorised person, namely a struck off solicitor, to exercise undue control and influence over the activities of Cartwright Adam Solicitors Limited.
 - 1.10 He acted dishonestly.

Documents

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

Applicant:

- Application dated 7 March 2012;
- Rule 5 Statement dated 7 March 2012 and Applicant's bundle of documentation;
- Certificate of Service dated 6 February 2013 and certified copies of Notices advertised on 23 January 2013 in The Times and 25 January 2013 in the Chronicle;
- Applicant's Schedule of Costs.

Respondent:

- Witness statement of the Respondent dated 7 May 2013;
- Caseworker notes from Lawcare;
- Respondent's patient notes from GP;
- Statement of affairs;
- Bundle of bank statements and letters relating to the Respondent's mortgage account.

Tribunal:

- Memorandum of Application for Substituted Service on 18 December 2012.

Factual Background

3. The Respondent was born in October 1969 and was admitted as a Solicitor in May 2004. At all material times the Respondent practised at Cartwright Adams Solicitors Limited ("Cartwright Adams" or "the Firm") initially at 16 Old Bond Street, London W1S 4PS and thereafter at Liberty House, 222 Regent Street, London W1B 5TR.
4. Investigation Officers ("the IOs") from the SRA commenced an investigation of Cartwright Adams by attending its offices at Liberty House on 21 July 2011. At the conclusion of their investigation one of the IOs produced an interim forensic investigation report ("the Interim FIR") dated 29 July 2011, together with appendices. On the basis of the Interim FIR, the decision was taken to intervene into Cartwright Adams. Subsequently, a Final FIR was produced dated 29 September 2011, together with appendices.
5. On 4 March 2009, Mr Inderjit Singh Pal Nijher, most commonly known as Robert Singh ("Mr Singh") appeared before the Solicitors' Disciplinary Tribunal and was struck off the Roll of Solicitors as a result of his dishonesty.
6. The Respondent was successful after interview when he replied to an advert placed by Mr Singh seeking a solicitor. On his appointment, Cartwright Adams was incorporated on 10 July 2008. The Firm commenced business on 19 August 2008. The incorporation of Cartwright Adams, the appointment by Mr Singh of the Respondent

as a director, and the commencement of activities of Cartwright Adams all post-dated the institution of disciplinary proceedings against Mr Singh which commenced on 16 June 2008.

Allegations 1.1 and 1.2

7. The Respondent was the sole signatory in relation to cheques issued on both client and office bank accounts, however the Firm was also registered for internet banking for each of the accounts and Mr Singh possessed the password to operate the online accounts and routinely made internet payments, including from client account. Mr Singh was described by the bank as the Service Administrator for the Firm's Lloydlink online banking facility, and had unlimited authority independently to operate the Firm's bank accounts. The Respondent had no control over Mr Singh's activities in relation to the Firm's bank accounts, including the periods before and after the Respondent alleged that he became aware that Mr Singh had been struck off i.e. in November 2009.

Allegations 1.1, 1.2 and 1.3

8. Despite being a director of the Firm, the Respondent told the IOs that any financial documents that may exist were in the possession of Mr Singh and confirmed that, to his knowledge, the Firm's accounting records and client account reconciliations had not been maintained since May 2011.
9. At the time of the IOs' meeting with him on 21 July 2011, the Respondent was requested to produce all relevant accounting information in the week commencing 25 July 2011 but such records were not made available which meant that it was not possible to determine the extent of the Firm's liabilities to clients and whether sufficient monies were held in the client bank account to cover such liabilities. However, it was established that there had been cash shortages in respect of one client matter.

Allegations 1.1, 1.2, 1.4 and 1.5

10. The irregularities detected by the IOs arose out of the Firm acting on behalf of "MR" Solicitors Limited in its acquisition of a commercial lease in London WC3 which completed on 16 February 2011 on payment of £30,630.86. Of particular concern was that on 20 January 2011 a payment for £22,000 was made to HMRC and on 21 January 2011 a payment for £13,773.64 was made to Mr "MW". The subsequent production of bank statements suggested that these payments were made online.
11. The IOs found 5 telephone attendance notes which suggested that the client had authorised these payments. The reference to the fee earner who is alleged to have held the telephone conversations, ASM, was however to someone who had left the Firm in December 2010. The representative of the Firm's client, MR, stated that at no stage had he authorised such payments nor had he ever heard of a person named MW.
12. The Respondent said that he was unaware of the circumstances surrounding these payments, saying that he did not "... have control on that premise. I don't have

control over conveyancing”. These events occurred over a year after he became aware that Mr Singh had been struck off the Roll.

Allegations 1.1 and 1.6

13. The relevant client account ledger for MR’s transaction showed that two amounts, £10,000 and £19,000 had been paid into the account on 21 January 2011 and 31 January 2011 marked “payment on account”; the corresponding telephone attendance notes stated that these amounts had come from MR; in fact MR made no such payments. These payments had been designed to part-repay the cash shortage which had developed as a result of the two unauthorised payments and had in fact been made by the Respondent at the direction of Mr Singh, £19,000 having been borrowed from the Respondent’s sister. It did not appear that the Respondent had any clear idea why such a sum was required.

Allegations 1.1 and 1.7

14. In the matter of the acquisition of the commercial lease for MR, money was being transferred from client account to office account without bills being rendered to the client or the client being notified of such monies being taken in respect of costs. The client stated not only that he had been requesting accounts to be sent to him but also that the sum taken was substantially in excess of what had been agreed.

Allegations 1.1, 1.2, 1.8, 1.9 and 1.10

15. At the time he advertised the position of a solicitor, Mr Singh would have known that he had been referred to the Solicitors’ Disciplinary Tribunal. The Respondent suggested that it was only in November 2009 that he became aware that Mr Singh had been struck off. Despite that knowledge, the Respondent failed to notify the SRA and permitted Mr Singh, who the Respondent knew to operate under various aliases, to continue to exercise control and influence over all activities within the Firm including:
- the operation of the client and office accounts;
 - making payments to himself out of office account in amounts of his choosing without any evidence that this was related to the financial performance of the Firm;
 - dictating to the Respondent the extent to which he was able to derive an income from the Firm, if any;
 - controlling recruitment of staff; and
 - supervising staff and undertaking legal work in his own right.
16. Mr Singh was remunerated by the Firm of which the Respondent was, at the time, the sole director. The staff at the Firm considered Mr Singh to be their “boss” and made reference to Mr Singh’s involvement with the supervision, or conduct, of legal work within the Firm.

17. The SRA sent the Interim FIR to the Respondent asking for his observations on 8 August 2011 and by email of 23 August 2011 the Respondent sent a copy of a psychiatric report dated 1 August 2011 to the SRA. On 2 September 2011 the Respondent wrote to the SRA making his observations on the FIR and provided an outline of events. The decision to refer the Respondent to the Solicitors' Disciplinary Tribunal was taken on 16 September 2011.
18. The Final FIR was sent to the Respondent who provided a response on 13 October 2011.

Witnesses

19. Mr Chambers, an Investigation Officer of the SRA gave sworn oral evidence. In his evidence Mr Chambers confirmed that he had been one of the IOs who had carried out the forensic investigation at the Firm and that the Interim FIR dated 29 July 2011 bore his signature, as did the Final FIR dated 29 September 2011. He confirmed that there was nothing he wished to add or amend in either of the FIRs.
20. The Respondent also gave sworn evidence. In his evidence he told the Tribunal that he had found Mr Singh's advertisement in a reputable publication and Mr Singh himself had come across as being charismatic. It had never crossed his mind that he would advertise in a reputable journal a matter of only two months after disciplinary proceedings involving serious allegations had been commenced against him. In hindsight he realised that he should have stopped Mr Singh and did not know how he had let matters continue. The matter had culminated in him having no control over his entire life and he had become homeless when Mr Singh had moved other people into his home.
21. The Respondent told the Tribunal about his shame over what had occurred. He felt that he had been controlled by Mr Singh and he had no support from elsewhere. He was extremely grateful to Mr Chambers and wished the SRA visit had happened a lot sooner. He had co-operated as best he could but found it hard to articulate exactly what had happened.
22. In cross-examination by Mr Havard, the Respondent said that the facts put forward by the Applicant were correct. He had not thought it odd that he had been appointed as a sole director of Cartwright Adams, as Mr Singh had had other business interests. The Respondent said that he had wanted to build up his career and saw this as an opportunity. The fact that Mr Singh would fund the business whilst he would not have to put in any capital was part of the attraction of the proposition. He had realised that Mr Singh went by various aliases shortly after the initial interview when he and his flatmate had looked him up on the internet. When Mr Havard suggested to the Respondent that it was inappropriate for him to have taken on the role as sole director of the Firm when he had no previous experience of running a firm, he said that he had wanted the opportunity to move forward in his career. Ultimately however he had not been able to control Mr Singh.
23. His focus had been on trying to build up the legal side of the business and he accepted that he should also have controlled the financial side. He accepted that he had become aware in November 2009 that Mr Singh was a struck off solicitor but it was only

subsequently that he became aware of why he had been struck off. In questioning by Mr Havard, the Respondent said that he accepted that it was objectively dishonest of him to consent to Mr Singh's continued control of the Firm. He had known that Mr Singh was misappropriating monies from the Firm but he did not know the extent as he did not have control of the Firm. Mr Havard put it to him that his statement in interview, that he had found out in November 2009 that Mr Singh had been struck off, but he had carried on anyway as everything was in his name, suggested that he was deliberately concealing Mr Singh's involvement with the Firm. The Respondent replied that he had known it was completely wrong but he was trying to turn matters around; he had recognised the risk but could not cope with it.

24. The Respondent went on to say that he had felt like an employee and not an equal of Mr Singh. He accepted it was stupid behaviour to have entered into a partnership deed with Mr Singh relating to another firm in December 2009, given that he knew Mr Singh had been struck off for dishonesty. On the basis of the guidance given in Twinsectra he could see why it might be thought that he had been dishonest in this regard but it was not his intention to be dishonest. He could however see that he had been reckless.
25. In further questioning from Mr Havard concerning the medical evidence put before the Tribunal and why he had not sought medical help until the Spring of 2011, the Respondent said that he had not sought medical help at the time as he had the business to run; he simply could not take time off work to see a doctor. The trigger for his seeking medical help had come in December 2010 when he became homeless because tenants had been moved into his home.
26. In questioning from the Tribunal, the Respondent was asked how Mr Singh had put it to him that the Firm needed an injection of cash when the £29,000 was required. He replied that Mr Singh had said that there were debts and stamp duty to pay and that it was about time that he put some money into the Firm. Mr Singh had known that the Respondent had had to borrow £19,000 from his sister. The Respondent had obtained the bank account details and given them to his sister and the money may have been paid into client account, he could not recall. In regard to the money needed for payment of stamp duty, the Respondent said that he had understood that Mr Singh had not used the money available for stamp duty for that purpose and so the Firm was liable. It had become his problem which he was trying to rectify. He realised that there must have been misappropriation when he borrowed the money from his sister.
27. He also said that it was not his signature at page 143 of the exhibit bundle, which was an application for online cash management on Lloydslink. He had not seen the form before and his surname was spelt incorrectly on the application.
28. The Respondent said that he had spoken to Mr Singh when he had found out that he had been struck off and Mr Singh had said he was the victim and had taken the responsibility for other people. The Respondent regretted that he had not taken independent steps to find out the circumstances surrounding Mr Singh's strike off.
29. The Respondent said that he had now found work in training and stress management and was trying to rebuild his self-esteem. Mr Singh had been interested in the

financial side of the practice whilst he had been interested in the welfare of the staff and had done volunteering work at weekends.

Findings of Fact and Law

30. The burden was on the Applicant to prove each allegation beyond reasonable doubt. The Tribunal 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. **Allegation 1.1: He has:**

1.1.1 failed to act with integrity;

1.1.2 allowed his independence to be compromised;

1.1.3 failed to act in the best interests of clients; and

1.1.4 behaved in a way that was likely to diminish the trust the public placed in him and the legal profession contrary to Rules 1.02, 1.03, 1.04, and 1.06 of the Solicitors' Code of Conduct 2007.

Allegation 1.2: He has failed to manage effectively or at all the activities of Cartwright Adams Solicitors Limited contrary to Rule 5 of the Solicitors' Code of Conduct 2007.

Allegation 1.3: He has failed to maintain proper books of account in breach of Rule 32 of the Solicitors' Accounts Rules 1998.

Allegation 1.4: He has withdrawn, or permitted to be withdrawn, from client account, monies belonging to a client which were not properly required for a payment on behalf of that client contrary to Rule 22 (1) (a) of the Solicitors' Accounts Rules 1998.

Allegation 1.5: He permitted withdrawals to be made from client account without the necessary authorisation contrary to Rule 23 (1) (a) of the Solicitors' Accounts Rules 1998.

Allegation 1.6: He has made, or permitted to be made, misleading entries and/or statements in the records of Cartwright Adams Solicitors' Limited.

Allegation 1.7: He has made, or permitted to be made, improper transfers of monies from client account to office account in respect of the Firm's costs without rendering to the client a bill nor providing written confirmation of such charges to the client contrary to Rule 19 (2) of the Solicitors' Accounts Rules 1998.

Allegation 1.8: He has employed and/or remunerated a solicitor he knew to have been struck off the Roll contrary to Section 41 of the Solicitors' Act 1974.

Allegation 1.9: He permitted an unauthorised person, namely a struck off solicitor, to exercise undue control and influence over the activities of Cartwright Adams Solicitors Limited.

Allegation 1.10 He acted dishonestly.

- 31.1 The Respondent told the Tribunal that he admitted each of the allegations with the exception of allegation 1.10. He admitted all of the facts surrounding the matter but not that he had been dishonest or that he had stolen or used any client monies himself.
- 31.2 Mr Havard took the Tribunal through the facts of the case, which he said revolved around the involvement of Inderjit Singh Pal Nijher in the Firm.
- 31.3 In relation to the operation of the bank accounts, it could be seen that the Respondent had admitted to the IOs that he had known Mr Singh was a struck off solicitor during his interview with them on 21 July 2011. He had also confirmed that Cartwright Adams was Mr Singh's business, and that Mr Singh controlled the finances and the business development. He went on to say, when asked about whether the staff reported to Mr Singh or to him, that "they report to [Mr Singh] in terms of disciplinary matters." and later in the interview that "I don't have control over the finances and the way the Firm's going". In that same interview, he was asked about CHAPS payments and said "I do the CHAPS payments according to what the instructions are" and agreed that those instructions may come from Mr Singh. When asked as to whether he could provide authorities for the IOs to approach the Firm's bankers, he replied that he could do so but that he could not access the client and office bank accounts online as the password generator was kept by Mr Singh. He could not even log on to see the balances although he used to be able to do so. He also confirmed that Mr Singh had access to everyone's email account.
- 31.4 In Mr Havard's submission the Respondent had failed to manage effectively or at all the activities of the Firm and was thereby in breach of his core duties.
- 31.5 It could be seen from the Interim FIR that the Respondent had no access to the financial documents of the Firm and that they were all kept by Mr Singh. Mr Havard took the Tribunal to that part of the Respondent's interview with the IOs where he was asked whether he had any knowledge of what the real financial situation was at the Firm and whether he had, for instance, the VAT records. His response was that the VAT records were in the control of someone else. He said:-
- "... but it all comes back to me though doesn't it because that's the big thing now in terms of you know you've set in motion a paper trail, there is no paper trail, and he'll deny everything and then that's me."
- 31.6 In Mr Havard's further submission concerning the books of account, the Respondent had failed to maintain proper books of account, failed to manage the Firm effectively or at all and was therefore in breach of his core duties. There had been a significant risk to the public caused by the way in which the Respondent allowed Mr Singh to run the practice.

- 31.7 Mr Havard then took the Tribunal to those documents relating to the cash shortage and the unauthorised payments and in particular to the client ledgers and the attendance notes which purported to legitimise the payments. In his interview with the IOs, the Respondent had said in this regard "... My issue on this is that I feel completely out of my depth". The Tribunal was also taken to the interview with the representative of MR where he denied having authorised the payment of stamp duty or that he knew who MW was; he said that his transactions had nothing to do with a debt matter.
- 31.8 Mr Havard told the Tribunal that he was not alleging that the Respondent knowingly participated in wrongdoing but he did say that he was the person solely responsible for client monies of £35,773.64 being withdrawn from client bank account which was not properly required for payment on behalf of the client. In his submission the systems at the Firm were such that Mr Singh had had a free rein. In allowing withdrawals from client account without the consent of MR he had been in breach of rule 22 of the Solicitors' accounts rules. As he had not authorised the two payments, it followed that the withdrawals were not properly authorised in breach of Rule 23 (1) of the Solicitors' Accounts Rules. He was therefore in breach of his core duties and he continued to fail to manage effectively or at all the activities of the Firm.
- 31.9 Mr Havard then took the Tribunal to the client ledger for MR which showed the "payment on account" on 31 January 2011 of £19,000. The Respondent had told the IOs in interview that he had borrowed this money from his sister and that he had made both payments at the instigation of Mr Singh. In Mr Havard's submission it was clear that the Respondent had no true idea of the financial status of the Firm. He had been asked by Mr Singh for an injection of cash and he had paid it. The ledger was on its face a misleading document.
- 31.10 At paragraph 62 of the Interim FIR it could be seen that the client ledger account for MR also showed that nine transactions totalling £8,760.39 were made from client to office bank account for amounts purporting to be in respect of seven bills of costs. However, the client matter file did not contain copies of any of the seven bills, or any other written notifications of the charges incurred. The client matter file contained a draft version of a client care letter which made reference to the Firm's "standard costs" totalling £2,600 plus VAT. While Mr Havard was not suggesting that the Respondent was a participant in the creation of these documents, it was alleged that he was in breach of rule 19 Solicitors' Accounts Rules 1998 and also in breach of his core duties. The Respondent was ultimately responsible for the fact that MR did not receive bills from the Firm.
- 31.11 Mr Havard said it was alleged that Mr Singh deliberately and cynically invited the Respondent to join him in business to utilise his practising certificate. The Respondent had admitted in interview with the IOs that he was aware that Mr Singh was a struck off solicitor. When asked whether he had found out that Mr Singh had been struck off he replied "... well I heard definitely it would be November 2009 and I just didn't know what to do, I thought "well".” Mr Havard said that there was no evidence that the Respondent had known of Mr Singh's status before November 2009. In Mr Havard's submission the Respondent was in breach of Section 41 of the Solicitors Act 1974 from November 2009. Following that date the position had deteriorated and the level of control exercised by Mr Singh had increased. The Respondent failed to

notify the SRA. His behaviour in this matter went to the heart of his obligations and responsibilities as a solicitor. He had allowed Mr Singh to exercise full control and to pay himself out of office account with no real check being made upon him. Mr Singh was also dictating to the Respondent how much money he was permitted to take from the practice.

- 31.12 A statement had been provided dated 22 July 2011 by one of the paralegals at Cartwright Adams, Liliana Coelho, which started at page 156 of the exhibit bundle. It could be seen from the statement that she had been employed by Mr Singh and not the Respondent; this was four to five months after the Respondent became aware that Mr Singh was a struck off solicitor. She also indicated that any queries that the staff had could be taken to either Mr Singh or the Respondent. It could also be seen from her statement that Mr Singh was involved in legal work. Another statement, also dated 22 July 2011, had been provided to the SRA by the trainee solicitor at the Firm. In that statement it was said of Mr Singh that “He is our boss”. In Mr Havard’s submission, it was apparent from these two statements that Mr Singh was recruiting, supervising and paying staff as well as being involved in legal affairs. All of the improper activities relating to the client MR occurred over a year after the Respondent became aware that Mr Singh had been struck off. The Respondent’s approach after he became aware was summarised in his interview with the IOs. When he was asked how he found out that Mr Singh had been struck off he said:

“... Someone told me that it was some articles in newspapers, in the Gazette but I thought “well”... Things weren’t too bad, we’d not received any complaints and I thought you know it’s always been the case that because everything is in my name...”

- 31.13 In Mr Havard’s submission it was relevant that the Respondent had entered into a partnership deed to set up another firm with Mr Singh on 15 December 2009, less than one month after he had discovered that he had been struck off.
- 31.14 Mr Havard said that in order to establish dishonesty everything should be taken into account. He alleged that the Respondent’s behaviour was the behaviour of a person acting dishonestly. He knew Mr Singh had been struck off but notwithstanding that he had said to himself that no one would associate Mr Singh with the Firm, that there had been no complaints and that he could press on. Mr Havard reminded the Tribunal of the dual test for dishonesty as set out in the case of Twinsectra Limited v Yardley and Others [2002] UKHL 12. In Mr Havard’s submission both of the limbs in Twinsectra were satisfied. Anyone with the knowledge that the Respondent had must have known that the situation was unacceptable, yet he had done nothing about it. He referred the Tribunal to paragraphs 27 and 36 of the judgment in Twinsectra and said that he relied upon them. His primary case was one of dishonesty but whilst it was not pleaded in his Rule 5 Statement, if the Tribunal was not with him on that, then he invited it to consider whether the Respondent’s conduct had been reckless as defined in Halsbury’s Laws of England and the case of R v G [2003] UKHL 50. Mr Havard said that taking account of all of the facts the Respondent must have known that to carry on allowing Mr Singh to run the practice gave rise to risk. Whilst he acknowledged that the Respondent had presented a considerable amount of material in relation to his medical condition, he asked the Tribunal to take into account that the

entirety of the medical evidence was from 2011 onwards whereas the activities giving rise to the dishonest conduct were in 2009 onwards.

- 31.15 The Tribunal found allegations 1.1 to 1.9 to have been proved beyond reasonable doubt on the facts and documents before them. Indeed these allegations had been admitted by the Respondent.
- 31.16 The Tribunal had considered very carefully whether the Respondent's behaviour in regard to Mr Singh and his involvement with the Firm had been dishonest by reference to the documents before them and had listened assiduously to everything that had been said both by Mr Havard and by the Respondent. The Tribunal had taken particular note of what the Respondent had said in evidence. The Tribunal had considered the objective test as set out in Twinsectra and found that the Respondent's conduct in regard to these matters would be regarded as dishonest by the ordinary standards of reasonable and honest people. In deciding upon the subjective part of the test, as to whether the Respondent had himself realised that by those same standards his conduct was dishonest, the Tribunal looked at all of the surrounding circumstances and concluded that whilst it might be said that the Respondent had been naive and blind to the obligations of professional behaviour, the high burden of proof on the Applicant had not been met in this regard.
- 31.17 In these circumstances the Tribunal concluded that it did not find beyond a reasonable doubt that the Respondent had realised that his conduct, in remunerating Mr Singh in the Firm and continuing in that relationship after he realised that he was a struck off solicitor, was dishonest. However, the definition of "Recklessness" in Halsbury's Laws of England was "the taking of an unreasonable risk of which the risk-taker is aware" and the Tribunal did find that the Respondent had been grossly reckless in that regard and when Mr Havard had asked him whether he had known that he was taking "a big risk", he had responded "yes".

Previous Disciplinary Matters

32. None.

Mitigation

33. The Respondent asked the Tribunal to take into account the medical evidence that he had put before them. He also said that he had been very grateful for the SRA support that had been offered to him and had he known such assistance was available he would have dealt with matters in a different way. However, what he had been through with the Firm had been very hard to face at the time and he had no aspirations to be in such a stressful position again. He was not comfortable being a solicitor at present and needed to feel comfortable with himself before he could contemplate a return to the law. He had learned a valuable lesson, which was to seek help when appropriate. His statement which was before the Tribunal had taken him months to write but he was happier now than he had been for five years.

Sanction

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

35. The Tribunal had found each of nine admitted allegations before it proved beyond reasonable doubt; it had not however found dishonesty by the Respondent, although it had found him to have been grossly reckless.
36. The Tribunal had taken into account the medical information supplied by the Respondent and the unusual facts of the case. The Tribunal was pleased to note that the Respondent's experience of his dealings with the SRA had been so positive. However, the Tribunal had determined that the matter was serious and certainly too serious for the imposition of a financial penalty. The Tribunal had carefully examined the Respondent's culpability for his misconduct and the harm caused by it. Importantly, in enabling a struck off solicitor to remain in practice he had exposed the profession and the public to an immense risk and had enabled that solicitor to defy the previous decision of the Tribunal. His actions had allowed a solicitor who had been struck off for dishonesty to control and manage a solicitors' practice which held client funds. He had been aware from November 2009 that Mr Singh had been struck off and yet did nothing to bring to an end his involvement with the Firm, leaving the clients of the Firm at risk, a risk which he himself had acknowledged during the course of the hearing. This amounted to a total dereliction of his duties as a solicitor. The Tribunal particularly noted that the course of conduct had continued over a lengthy period and was not spontaneous or a spur of the moment decision.
37. The accounts rules breaches before the Tribunal were serious, as were the breaches of his duties under the Code. The Tribunal accepted that the Respondent had made no personal gain from the matters the subject of the allegations, however, the Respondent himself admitted that he was vulnerable and in the Tribunal's view he was entirely unsuitable to carry on practice as a solicitor. The Tribunal therefore determined that the fair and proportionate penalty in this case was that the Respondent be Struck Off the Roll of Solicitors.

Costs

38. Mr Havard told the Tribunal that the Applicant's costs were in the sum of £17,451.43; the costs had been increased somewhat by difficulties with the service of the proceedings upon the Respondent. Substituted service of the proceedings by means of newspaper advertisement had therefore been ordered by the Tribunal. The Respondent said that he could not explain why he had not received the papers as he had been living at his home address at the time but admitted that a special delivery may have been missed and that he may not thereafter have collected that post.
39. The Respondent had put information concerning his finances before the Tribunal, including a statement of affairs, bank statements and correspondence concerning his mortgage.
40. The Tribunal had considered carefully the Costs Schedule provided by the Applicant and found that the allegations had been properly brought. The Tribunal would summarily assess costs in the sum requested by the Applicant. The financial information from the Respondent that was before the Tribunal showed that his assets and liabilities were approximately equal and his income met his outgoings. In this case, where the Respondent was a relatively young man with a lifetime of work before

him, the Tribunal determined that he should ultimately have the ability to pay the costs. The Tribunal would therefore order costs in the sum of £17,451.43.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, David Phillip O'Neill, 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 £17,451.43.

Dated this 18th day of July 2013
On behalf of the Tribunal

Ms N Lucking
Chair