SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10996-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BARRY RALPH HELLEWELL Respondent

Before:

Mrs K. Todner (in the chair)
Mr P. Housego
Mr S. Marquez

Date of Hearing: 22nd July 2013

Appearances

Mr Jonathan Goodwin, Solicitor Advocate of Jonathan Goodwin Solicitor Advocate Limited, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

Mr Peter Cadman, Solicitor of Russell-Cooke Solicitors LLP, 8 Bedford Row, London WC1R 4BX for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Contrary to Rule 1 (c) and (e) of the Solicitors' Practice Rules 1990 (prior to July 2007) and Rules 1.04 and 1.05 of the Solicitors' Code of Conduct 2007 (since July 2007):

1.1.1 he failed to act in the best interests of his client;

1.1.2 he failed to provide his client with a proper standard of work;

1.2. Contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 he failed to act with integrity in that:

1.2.1 he twice used client monies to pay his personal credit card;

1.2.2 to conceal one of those payments, he created two false letters and placed them on the file;

1.2.3 dishonesty was further alleged in relation to allegation 2.2. Nevertheless, dishonesty was not an essential ingredient of that allegation. The issue of dishonesty was for the Tribunal to decide and it was open to the Tribunal to find both or either of the allegations absent of dishonesty.

1.3. Contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007 he behaved in a way that was likely to have diminished the trust the public placed in him or the legal profession;

1.4. Contrary to Rule 10.05(2) of the Solicitors' Code of Conduct 2007 he failed to complete an undertaking within a reasonable time;

1.5. Contrary to Rule 1(d) of the Solicitors' Accounts Rules 1998 [14 July 2008 version] and Rule 1(c) of the Solicitors' Accounts Rules 1998 [31 March 2009 version] he failed to use each client's money for that client's matter only;

1.6. Contrary to Rule 19(2) of the Solicitors' Accounts Rules 1998 he failed to provide written notification of costs;

1.7. Contrary to Rule 22(1) of the Solicitors' Accounts Rules 1998 he made improper withdrawals from client accounts.

Documents

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

Applicant

- Application dated 16 May 2012;

- Rule 5 Statement and exhibit "ATBR/1" dated 16 May 2012;
- Statement of Costs and bill of costs dated 19 July 2013

Respondent

- Statement of the Respondent dated 16 July 2013;
- Second Statement of the Respondent dated 18 July 2013;
- Report of Dr David Somekh dated 7 November 2012;
- Character reference of Mr Jeffrey Lewis dated 22 July 2013;

Factual Background

3. The Respondent was admitted as a solicitor on 15 April 1978 and his name remained on the Roll of Solicitors.

4. At all material times the Respondent practised in partnership as a partner of David Barney & Co Solicitors ("the firm") in Stevenage, Hertfordshire until 11 February 2010. The Respondent was currently employed as a Consultant with Lewis Nedas Law Solicitors in Camden, London and held a practising certificate free from conditions.

5. On 25 May 2011 an inspection commenced at the offices of the firm. The Applicant's Investigation Officers ("IOs") held a formal interview with the Respondent on 14 June 2011. At the conclusion of the investigation, the IOs produced a Forensic Investigation Report ("the FI Report") dated 13 July 2011. The FI Report identified the matters being the subject matter of the allegations against the Respondent.

6. On 13 July 2011 the Respondent was asked to comment on the various matters identified within the FI Report and his reply was prepared by Mr Peter Cadman of Russell Cooke LLP dated 8 September 2011. The Respondent made no representations but conceded that the matter would be referred to the Tribunal.

7. The Respondent subsequently made certain admissions and denials in his Statement dated 16 July 2013; he denied allegations 1.1, 1.1.1 and 1.1.2, 1.2.3, 1.3, 1.4 and 1.6 and he admitted allegations 1.2, 1.2.1 and 1.2.2, 1.5 and 1.7.

Witnesses

8. The Respondent, Dr Somekh and Mr Lewis gave evidence.

<u>The Respondent</u>

9. The Respondent affirmed and confirmed the truth of his two statements.

10. He told the Tribunal that he recalled having been contacted in April 2011 by one of his former partners, Mr B Amos who had asked him whether he had taken money from client account. He said that he had telephoned Mr Amos and agreed to meet him

at the office. He told him at that meeting that he had taken client money and referred to the £4,970.27 but Mr Amos had said that was not what he was talking about and it was the other matter [Mrs JS] and the withdrawal of £1,106.92 from that client ledger. The Respondent said that he had not been able to recall that.

11. The Respondent told the Tribunal that he did not dispute that monies had been taken by him to pay personal debt. He said that he had thought of little else during the last two years but he could not recall the second matter at all. He said that he had been aware of the first matter [Mr HF] and whilst he could not recall the detail, he knew that he had done it.

12. The Respondent said that the letters in the Mr HF matter had been drawn to his attention and the letter purportedly from Ms RF requesting monies. He said that he must have created the letter to make the file appear normal. He could not recall what had been going on in his mind but said that had to be the conclusion.

13. The Respondent confirmed that he had subsequently seen Dr Somekh but that at the time of the events he had not sought medical help and had last seen his GP in approximately 1979. He had seen Dr Somekh in October 2012 but had not been seen by anyone on behalf of the Applicant nor had he been requested to do so.

14. The Respondent said that he had an impeccable and lengthy career prior to this and his only explanation was that he had not known at the material time what he was doing. He said that he had not been aware that he was unwell and he had acted out of character. He said that he had always been seen as someone in control but that had clearly not been the case and comments had subsequently been made to him to that effect such as he was "not right" and asking him "what was going on". The Respondent told the Tribunal that he had always ignored problems and had buried his head in the sand.

15. The Respondent said that he had been able to repay the monies for both matters and had done so after meeting with his former partner. He said that he had used an old credit card and had incurred further debt to make the repayment.

16. In relation to the remaining allegations, the Respondent said that he had discovered that the Will of Mrs HE had not been correctly executed and he had contacted her family and advised them to seek independent legal advice. He agreed that in December 2006 he had agreed to pay the costs of Sibley & Co but that he had not been chased for payment until September 2007 at which point he had paid them albeit from client account and not the firm's office account.

17. In cross-examination Mr Goodwin referred the Respondent to the interview with the IOs in June 2011, which stated:

"…

BH …I suppose I'd got myself into financial difficulties…

…

BH …but at the time with my only credit card up to its limit and having to live by myself and still paying for everything at home, I couldn't cope financially and that's why I did what I did, but the partners will tell you, Mark Feely in particular because he remembered it, that I was intending to use my pension monies to pay back what they didn't know about…".

18. The Respondent told the Tribunal that he had left the family home and had rented a flat but that his income had not changed and the family account was still being used to run the family home. He said that he still had to pay for his flat and his outgoings and there was not enough money so that he was in debt including on his MBNA credit card. The Respondent confirmed that he had used the client monies because of his financial difficulties.

19. The Respondent confirmed that he had not sought medical help and had last seen his GP some thirty years ago. He said that he had last seen Dr Somekh in October 2012 but had not seen his GP or sought medical help since. He said that he hoped that with the support of his family he would get better. The Respondent said that he relied upon the contents of Dr Somekh's Report in all respects.

20. The Respondent accepted that in interview with the IOs he had agreed that the file of Mr HF had been identified by him for use of the client monies as being money available and which the client knew nothing about. He said that he knew it was wrong to write the cheque but he had proceeded to do so regardless. He also accepted that he had created the false letters to conceal the withdrawal of the £4,970.27 and that there had been a thought process in doing so. The Respondent agreed that he had taken a decision to create the letter purportedly from Ms RF and that he had signed it in her name.

21. The Respondent accepted that he had lacked integrity by virtue of his conduct with regard to the two cheques and his creation of the two letters. He agreed that by the standards of reasonable and honest people writing the cheques and creating the letters was dishonest and that he had proceeded knowing that his conduct was wrong and dishonest.

22. In relation to the matter of Mrs JS Deceased the Respondent said that he could not initially recall the detail of that matter but once he had seen the relevant documents he had recalled creating the cheque and signing it. He said that he must have done it again because the money was available and the client would not have known that.

23. In relation to the remaining allegations the Respondent said that he accepted that the instructions for execution of Mrs HE's Will had been incorrect. He accepted that it had been his responsibility to ensure that they were correct but that he was not sure if he had been present when the letter enclosing the Will had been sent to the client. Mr Goodwin confirmed that that letter had not been produced.

24. The Respondent said that he had been on holiday when the Will had been returned and it had already been received back in the office and placed in the Wills cabinet. He

said that he would generally not see Wills when received back in the office unless he was present when the post came in. He said that he had not checked all post which had come in while he had been away from the office.

25. The Respondent accepted that he had agreed to pay the costs of Sibley & Co and that he had undertaken to do so. He accepted that there had been a delay of nine months from receipt of the invoice to payment and he agreed that that was an unreasonable period of time within which to comply with an undertaking.

26. The Respondent agreed that in relation to allegation 1.6 he had raised an invoice for £2,300 for the firm's costs and that he had transferred that sum from client to office account without the invoice having been sent to the person entitled to receive it. Whilst there was no evidence that it had not been sent he acknowledged that if it had not, that was a breach of the SAR 1998.

27. Mr Goodwin referred to the Respondent's statement of means. The Respondent confirmed that his monthly income was £1,250 as a part time consultant for Lewis Nedas Law Solicitors in Camden. He said that he had been employed as such since November 2012 and prior to that had been employed there as an assistant solicitor earning £45,000 per annum gross. He said that he was also receiving a pension of approximately £100 per month.

28. The Respondent confirmed that he had a further pension which he said would not be available until approximately March 2014 although he did not know the exact value. He said that the last statement he had received had estimated the total value to be £90,000 to £110,000 from which he thought he would be able to draw a lump sum of 25%.

29. The Respondent confirmed that he jointly owned the matrimonial home with his wife and there was an interest only mortgage and equity in the property. He said that he owned no other property.

30. In response to a question from the Tribunal Mr Cadman said that whether nine months was an unreasonable period of time for the Respondent to have complied with the undertaking was a matter for the Tribunal. With regard to the Will, he said that that had been an error on the part of the Respondent.

31. In response to a question from the Tribunal the Respondent said that he had had no responsibility for the firm's accounts' department. He confirmed that he had had approximately 700 files although these had not all been "live" files, because he was not good at finishing off files. He told the Tribunal that he would receive print outs of client balances and had seen from those what monies were held on which client ledgers.

Dr David Somekh

32. Dr Somekh was sworn in and confirmed the truth of his Report dated 7 November 2012. He told the Tribunal that he was a Fellow of the Royal College of Psychiatrists and had very extensive experience of giving evidence including at the Court of Appeal, to Parole Boards and Mental Health Tribunals. He said that, inter alia, from

1982 onwards he had been a Consultant in Forensic Psychiatry at Kings College Hospital in Bromley, a Clinical Director of Psychiatry and had worked in the private sector as a Chief Executive. He said that he had returned to the NHS in approximately 2001/2002 and had retired early at the age of 56. He had worked at Broadmoor and had been employed as a visiting Psychotherapist for four years.

33. Dr Somekh told the Tribunal that he had seen the Respondent on one occasion on 24 October 2012. He said that it was consistent with his conclusions that the Respondent had not sought to engage with his GP.

34. Having heard the Respondent's evidence Dr Somekh said that nothing said by the Respondent had been different to the impression he had gained of the Respondent at their interview on 24 October 2012.

35. In cross-examination Dr Somekh told the Tribunal that this was his second appearance before this type of Tribunal. He confirmed that he had heard no new information during the course of his attendance.

36. Dr Somekh confirmed that he had been aware of the allegations of dishonesty against the Respondent but he said that he had not gone into detail in his Report regarding the allegations. He said that he had referred to the alleged breaches at paragraph 22 of his Report and that he had seen the Rule 5 Statement and exhibit bundle and was fully aware of the allegations against the Respondent.

37. Dr Somekh said that it was his understanding that these matters were not contested and they had therefore not been the substance of his conversation with the Respondent. He said that instead it had been his understanding of what had happened which he had relied upon in order to enable him to make a judgment as to the Respondent's mental state at the material time.

38. Mr Goodwin referred to the Report of Dr Somekh, which stated:

> "…
>
> 26. …However, the key issue here is that undoubtedly there was dishonesty in that two portions of client money were used to pay off credit card debts in the period 2007-2009, clearly a serious breach of the professional standards expected of a solicitor…"

39. Dr Somekh acknowledged that the Respondent had acted dishonestly which he said was a matter of common sense and was not disputed.

40. Dr Somekh confirmed that his Report had been based on the one interview with the Respondent and that he had not seen the Respondent's GP notes as he had not felt that they were relevant, knowing that the Respondent had not sought help from his GP. He said that he was aware that the Respondent's wife was a Psychotherapist and whether she had noticed any change in him or had sought to persuade him to seek help. She had suggested that he see a counsellor. Dr Somekh referred to his Report which stated:

> "1. …Apart from these papers given the short period of time available to me I had no opportunity to verify independently any of the personal information provided by Mr Hellewell. In ideal circumstances I would have got his permission to interview his wife at length but this was not possible…
>
> …
>
> 3. …my normal practice would be to attempt to verify, as far as possible, the facts of the account he [the Respondent] gave me independently from reliable sources but the time frame did not make this possible…"

41. Mr Goodwin referred Dr Somekh to paragraph 19 of his Report, which stated:

> "…
>
> 19. …My assessment in retrospect as far as one is able to make such assessments again with only the individual's account of what was going on, is that Mr Hellewell was in fact clinically depressed during this period and would have benefitted greatly from antidepressant medication. Had the condition also been properly identified at the time it would have led to perhaps appraisal of his work by the partners and the possibility that some of the professional errors made by him might have been avoided".

42. Dr Somekh acknowledged that his assessment had been based entirely on the Respondent's account without more information. He said that this was the most he could say in the circumstances and that he could only speculate. Dr Somekh said that the focus of his Report had been on the basis of his examination of the Respondent, to provide a retrospective view of his mental condition at the time he had carried out the acts he was alleged to have carried out, and the question of his culpability and that he had addressed that in the opinion section of his Report.

43. Mr Goodwin referred to paragraph 27 of the Report, which stated:

> "…
>
> 27. The question this raises for me as a forensic psychiatrist is that there is no evidence whatsoever prior to 2007 that Mr Hellewell was a dishonest person, he has no criminal record, he was highly regarded by a number of his clients and had apparently discharged his duties as a solicitor in an appropriate manner for a period of 20 or more years…".

44. Dr Somekh acknowledged that it was true that everyone was honest until they acted dishonestly but he said that he had also been looking at whether the Respondent had acted out of character to try and understand what had happened in this case. He accepted that anyone could act out of character for any number of reasons and did not have to be suffering from a mental illness. He agreed that there was no question that the Respondent had been in financial difficulties.

45. In re-examination Dr Somekh confirmed that he had met the Respondent in the offices of Russell-Cooke and had been given the documents to prepare his Report. He

said that there had been one incident which had been concealed by the Respondent and one which had not but of which the Respondent had been unaware and that both had been to pay private debts. Dr Somekh said that it had been of concern that the Respondent had shown a loss of memory with regard to certain matters.

46. Dr Somekh told the Tribunal that when he had met with the Respondent it had been at short notice because at the time, the substantive hearing had been due to take place approximately ten days thereafter.

47. In response to a question from the Tribunal, Dr Somekh said that a case of untreated depression would not mean that such depression would cause someone not to understand dishonesty. He said that was referred to in his opinion in the Report and that it was not a question of someone not knowing the difference between right and wrong but that their judgment might have been impaired. The Respondent had intended to rectify his actions and had not thought through the seriousness of the breaches. Dr Somekh said this suggested that Mr Hellewell had been in an unusual state of mind at the material time.

48. Dr Somekh acknowledged that the Respondent had not sought further treatment and he said that he had not recommended that but his view was that the Respondent's condition had substantially been resolved and had improved. He said that it was now some four/five years later and that the crucial issue was the question of prevention. He had offered to see the Respondent and his wife together.

Mr Jeffrey Lewis

49. Prior to Mr Lewis being called, Mrs Todner, the Tribunal Chair indicated that she knew him both professionally and socially and had not been aware that he was being called.

50. Mr Goodwin on behalf of the Applicant advised that he had no objection to that since Mr Lewis was being called as a character reference only. Mr Cadman confirmed that he was purely a character reference and his testimony was not related to the case itself at all.

51. Mr Lewis affirmed and confirmed that he had written the letter dated 22 July 2013 addressed to the Tribunal and by way of character reference on behalf of the Respondent.

52. Mr Lewis told the Tribunal that he was one of two directors at Lewis Nedas Law Solicitors. He confirmed that his firm had underwritten the fees of Dr Somekh.

53. Mr Lewis confirmed that when his firm had employed the Respondent as a locum that arrangement had worked very successfully. He said that the Respondent had told him and his co-director of the proceedings before the Tribunal and he had disclosed fully the allegations and background to the case. Mr Lewis said that he had discussed the matter with his co-director and they had decided that based on the Respondent's performance and that he had fully disclosed the Tribunal proceedings, he would continue to be employed by them under supervision and that had continued to the present time.

54. Mr Lewis said that subject to the Tribunal's sanction, his firm would wish to continue to employ the Respondent.

Findings of Fact and Law

55. The Applicant was required to prove the allegations 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.

56. **The allegations against the Respondent were that:**

Allegation 1.1 **Contrary to Rule 1 (c) and (e) of the Solicitors' Practice Rules 1990 (prior to July 2007) and Rules 1.04 and 1.05 of the Solicitors' Code of Conduct 2007 (since July 2007):**

1.1.1 **he failed to act in the best interests of his client;**

1.1.2 **he failed to provide his client with a proper standard of work;**

Allegation 1.2 **Contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 he failed to act with integrity in that:**

1.2.1 **he twice used client monies to pay his personal credit card;**

1.2.2 **to conceal one of those payments, he created two false letters and placed them on the file;**

1.2.3 **dishonesty was further alleged in relation to allegation 2.2. Nevertheless, dishonesty was not an essential ingredient of that allegation. The issue of dishonesty was for the Tribunal to decide and it was open to the Tribunal to find both or either of the allegations absent of dishonesty.**

Allegation 1.3 **Contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007 he behaved in a way that was likely to have diminished the trust the public placed in him or the legal profession;**

Allegation 1.4 **Contrary to Rule 10.05(2) of the Solicitors' Code of Conduct 2007 he failed to complete an undertaking within a reasonable time;**

Allegation 1.5 **Contrary to Rule 1(d) of the Solicitors' Accounts Rules 1998 [14 July 2008 version] and Rule 1(c) of the Solicitors' Accounts Rules 1998 [31 March 2009 version] he failed to use each client's money for that client's matter only;**

Allegation 1.6 Contrary to Rule 19(2) of the Solicitors' Accounts Rules 1998 he failed to provide written notification of costs;

Allegation 1.7 Contrary to Rule 22(1) of the Solicitors' Accounts Rules 1998 he made improper withdrawals from client accounts.

Submissions on behalf of the Applicant

56.1 Mr Goodwin told the Tribunal that with regard to the dishonesty allegation [1.2.3], this related to the two payments by the Respondent to his MBNA credit card but the narrative in the Rule 5 Statement also referred to a payment to Sibley & Co Solicitors and he said that that was not part of the dishonesty allegation and would not be referred to as part of that allegation. Mr Goodwin said that allegation 1.2.3 was limited to the two cheques paid to MBNA and the creation of the two false letters by the Respondent, which he had admitted.

56.2 Mr Goodwin referred the Tribunal to the case of Twinsectra Limited v Yardley and Others [2002] UKHL 12 with regard to the allegation of dishonesty and that the Tribunal had to be satisfied so that it was sure that the combined test as set out in Twinsectra had been met; that the Respondent's conduct had been dishonest by the ordinary standards of reasonable and honest people and that he realised that by those standards his conduct had been dishonest.

56.3 Mr Goodwin also referred the Tribunal to its own Guidance Note on Sanctions and the observations of Sir Thomas Bingham, who stated in his Judgment in Bolton v The Law Society [1994] 1 WLR 512:

> "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" and "…the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth…"

56.4 Whilst dishonesty was not an essential ingredient of allegation 1.2, Mr Goodwin said that allegations 1.2.1 and 1.2.2 had been admitted by the Respondent bar dishonesty.

Allegation 1.2

56.5 Mr Goodwin referred the Tribunal to the Rule 5 Statement. He said that allegation 1.2 and 1.2.1 and 1.2.2 related to the Respondent's utilisation of client monies on two separate occasions to pay his personal credit card bills to MBNA. The clients involved were Mr HF Deceased and Mrs JS Deceased.

56.6 Mr Goodwin said that in the case of Mr HF Deceased, following the death of Mr HF on 14 August 1990, the Respondent had been instructed to act for the executors of the estate to apply for the Grant of Probate and thereafter to administer the estate. The executors were Ms HF, the deceased's mother and Ms RF, the deceased's sister. The Grant of Probate was issued on 11 July 1991.

56.7 Mr Goodwin said that as at 21 February 1992 there had been a credit balance on the client ledger of the £4,312.67. Under the terms of the Will the balance represented monies to which the deceased's sister was entitled. Mr Goodwin said that between 29 June 1994 and 18 February 2000 the balance was transferred into a national deposit bank account before being transferred back to the general client bank account where it remained until December 2008.

56.8 Mr Goodwin told the Tribunal that during that time the Respondent had made no attempt to pay these monies to Ms RF.

56.9 Mr Goodwin said that on or around 8 December 2008 the Respondent had utilised the monies held in this client account to his own benefit, without the knowledge or authority of his clients, to make a payment in the sum of £4,970.27 by cheque made payable to "MBNA Europe Bank Ltd" to pay his personal credit card. Mr Goodwin referred the Tribunal to the copy cheque. Mr Goodwin told the Tribunal that the Respondent had accepted that his conduct was inappropriate and he had admitted in interview with the IOs on 14 June 2011 that he had done this as he had been in financial difficulty.

56.10 Mr Goodwin submitted that the Respondent had by his actions misappropriated client money dishonestly on the objective standard and that he had realised by that standard that his conduct was dishonest on the subjective standard.

56.11 Mr Goodwin said that this was serious and had been aggravated by the Respondent's attempts to conceal what he had done by the creation of two false letters. The first letter was dated 10 November 2008 and stated:

> "Dear Mr Hellewell
>
> Please would you send the cheque for £4,100. to (sic) pay MBNA (sic) as I asked you. What was the interest money and what is your (sic) account.
>
> Yours faithfully
>
> RF".

56.12 Mr Goodwin said that the second letter created by the Respondent was his purported response dated 8 December 2008, which stated:

> "Dear R [Ms RF]
>
> …
>
> …therefore have pleasure in enclosing a cheque in your favour for £4,970.27…"

56.13 Mr Goodwin told the Tribunal that both letters were not genuine and had been created by the Respondent. Mr Goodwin submitted that thereby, the Respondent had acted dishonestly on the objective standard and that the Respondent knew by that standard that his conduct was dishonest on the subjective standard.

56.14 Mr Goodwin referred the Tribunal to the Respondent's interview with the IOs on 14 June 2011, which stated:

"…

RW	Ok. So going back to this letter then, you accept that
BH	I accept
RW	That you prepared that letter
BH	Yes, I accept it

…

ASB	So you manufactured that letter
BH	I did
ASB	What at home or in the office?
BH	I did it in the office
ASB	And did you sign it as well?
BH	No, that's – yes, I signed it yeah and then DT signed the letter when it came in
ASB	Right and what was the intention for you creating that letter?
BH	If the file was looked at by an auditor
ASB	Mmh
BH	Or anybody else if I wasn't there for any reason. Whether you believe me or not, my intention was and always has been to pay it back, but I appreciate that it was entirely wrong of me to do that and I have no excuses. I could have told you I was feeling fine, I could have told you that, I could have told you anything but I wasn't feeling fine and I guess whether that means I didn't know what I was doing, I don't think it did mean that, I did know what I was doing, but I had intended to pay it back and I have done
RW	And likewise with the letter that's gone out on David Barney & Co's letterhead of 8th December, I assume that letter has never gone out?
BH	No…"

56.15 Mr Goodwin submitted that the Respondent's stated intention to repay the money was irrelevant with regard to the allegation of dishonesty and he referred the Tribunal to the case of Bultitude v The Law Society [2004] EWCA Civ 1853 wherein the Respondent was found to have been dishonest even though there had been an intention to repay client monies taken.

56.16 Mr Goodwin submitted that the two letters had been created so that anyone looking at the file would have had the impression that Ms RF had been sent a cheque by the Respondent in the given sum and that she had requested it.

56.17 Mr Goodwin said that the Respondent had been asked by one of the IOs in interview what the monies had been used for:

"…

ASB	So what was the money used for?
BH	To pay back my credit card
ASB	Ok so it was client money taken to pay back your own
BH	Yes
ASB	credit card, okay, and presumably you will accept that that's inappropriate or?
BH	Of course I do
ASB	and would you say at the time that was the actions of an honest solicitor?
BH	No
ASB	and you say you paid it back, but is it not the firm who have paid it back?
BH	No, I've paid it back. I've given the firm the money to pay it back

…

BH	and I went in on a Saturday morning to see him and he said "Barry have you taken client money" and I said yes I have, what's the file and I told him and that wasn't the one he mentioned and, as I said before, I did not recall at all the other one, I have no knowledge of that at all. I don't know what was going on in my mind at the time

…

ASB	And do you know why you chose this particular file, the F [Mr HF] matter to make the payment to your credit card?
BH	Err I suppose because the money was there

…

ASB	So you thought you would get away with it at the time when you made that payment because the client wasn't aware the money was there
BH	Yeah, that must be an obvious conclusion there's no point saying otherwise is there?"

56.18 Mr Goodwin referred the Tribunal to the second matter of Mrs JS Deceased. He said that in or around January 2003 the Respondent had been instructed by Mrs ST to act for her in connection with the administration of the estate of Mrs JS, her late foster mother.

56.19 According to the estate account, Mr Goodwin said that the amount of the estate was £15,232.19. Of that sum, £13,539.72 had been distributed to Mrs ST on or around 27 October 2004, leaving a balance of £1,692.47 held in reserve for the remaining two beneficiaries who had not been located.

56.20 On or around 21 March 2009 Mr Goodwin said that the Respondent had utilised the monies held in this client account for his own benefit by making a payment from client account in the sum of £1,106.92 by cheque payable to "MBNA Europe Ltd" to pay his personal credit card. The cheque was signed by the Respondent.

56.21 Mr Goodwin told the Tribunal that in interview with the IOs on 14 June 2011 the Respondent had initially had no recollection of this matter but when shown the client ledger and the copy cheque he had provided his observations:

"…

RW	You can't remember that, okay. If you carry on flicking over from the information there then you'll see that we've obtained a copy cheque
BH	I know, B showed me that
RW	That was payable to the MBNA, Europe Bank
BH	Yeah
RW	Does that bear your signature?
BH	It does
RW	Is that your writing on the cheque?
BH	It is
RW	Mmh is that to pay off your personal credit card?
BH	It is
RW	as before?
BH	It is

…

ASB	And that's a credit card just in your sole name?
BH	It is

…

RW	Right. Ok. So if you needed to pay any monies off or you had used monies, client monies, on other matters which you can't remember, it would have been to pay off the MBNA
BH	It would have been, yeah

…

ASB	No. This one's slightly different I suppose because you can't remember the details, but would you agree that you picked this particular file for the same reason that you
BH	Yes
ASB	picked the last one because the money was available
BH	Yes
ASB	and the client possibly wouldn't have been aware
BH	Yes

ASB	that that money was sitting there and for both occasions it was to pay off your own
BH	Yes
ASB	credit card, okay, that's fine, thanks
…	
ASB	No. I would just in summary I suppose say obviously there's two serious matters here where you've used client money for your own purposes
BH	I'm entirely aware of that…"

56.22 Mr Goodwin submitted that the Respondent's use of client monies to pay his MBNA credit card had not been an error of judgment or a momentary lapse. He said that there had been a gap of approximately five months between the two payments and that the Respondent's conduct had required a rational and considered approach by him and a thought process in creating the two false letters.

Allegations 1.1, 1.3, 1.4, 1.5, 1.6 and 1.7

56.23 Mr Goodwin referred the Tribunal to allegation 1.1 and 1.1.1 and 1.1.2. He said that this related to the estate of Mrs HE Deceased and that in or around September 2006 the Respondent had been instructed by Mrs HE to prepare her Will which he did. After her death on 28 September 2006 Mr Goodwin said that it had become apparent that the Will prepared by the Respondent had not been properly executed in that Mrs HE's signature had only been witnessed by one witness and not two witnesses as required and it had not been dated. The Will was therefore invalid and could not be admitted to Probate.

56.24 In interview on 14 June 2011, the Respondent had accepted that the Will was invalid but not that he was responsible for the mistake. Mr Goodwin said that he had explained that his secretary had sent out the Will with incorrect instructions and it had been executed as if it was a deed with one witness rather than two witnesses as required for a Will. The Respondent also stated that he had been on holiday when the Will was returned to the office and had been placed in the Wills safe unchecked.

56.25 Mr Goodwin submitted that as the solicitor responsible for preparation of the Will it had been the Respondent's responsibility to ensure that the Will was properly executed and the proper instructions accorded with. He said that the Respondent should have checked the Will when he returned from holiday to ensure that it had been validly executed but he had failed to do so.

56.26 Mr Goodwin told the Tribunal that Mrs HE's children had subsequently instructed separate solicitors, Sibley & Co, to represent them and to look after their interests as beneficiaries. Mr Goodwin referred the Tribunal to an exchange of letters between the Respondent and Sibley & Co. Sibley & Co wrote to the Respondent by letter dated 13 November 2006, which stated:

"…

We would expect that should entering into a Deed of Variation be agreed that David Barney & Company do not charge for any of the work undertaken to date that relates to determining the legal position of the estate, liaising with the beneficiaries and ourselves. Further, that David Barney & Company will not charge the estate for any work done on the preparation and completion of the Deed of Variation. This is simply work that is required in order to put the estate back in a position it should have been were it not for your firm's mistake".

56.27 Mr Goodwin said that the Respondent had replied by letter dated 17 November 2006:

"…

…Naturally there would be no charge in connection with the preparation of such a Deed or its completion…"

56.28 Sibley & Co then replied by letter dated 21 November 2006:

"Thank you for your letter dated 17 November 2006…

As previously stated our clients are agreed that this matter should be resolved by way of Deed of Variation and we are grateful for your confirmation that David Barney & Company will undertake the work to correct their previous error for no charge.

…

In addition, our clients have incurred legal fees instructing this firm to independently advise them in respect of their standing as beneficiaries to the estate and regarding resolution of this matter. Our clients therefore request that your firm agree to pay a contribution towards their legal fees and those of their father who you have indicated should also seek independent legal advice on the proposals made.

Yours faithfully"

56.29 The Respondent replied by letter dated 21 November 2006 and stated:

"…

…We entirely accept what you say in the last paragraph of your letter…"

56.30 Mr Goodwin said that on or around 23 February 2007 the Respondent had received a payment of £6,303.67 on behalf of Mrs HE's estate and the payment was credited to the client ledger on 19 March 2007, approximately one month later.

56.31 Mr Goodwin referred the Tribunal to the FI Report and to the Rule 5 Statement regarding Sibley & Co's invoice dated 29 December 2006 in the sum of £2,808.25.

He said that Sibley & Co had then written to the Respondent on 18 September 2007 and stated:

> "We enclose a copy of our client's invoice which remains unpaid. We also enclose a copy of our billing guide in respect of this invoice.
>
> We hope you will not renege on your undertaking to pay our client's costs in respect of the above matter and look forward to receiving payment by no later than the end of September 2007".

56.32 Mr Goodwin said that the Respondent on or around 28 September 2007 withdrew the sum of £2,808.25 from client account and paid Sibley & Co's invoice. He said however that their fees should have been borne by the firm and paid from the firm's office account and that the Respondent had had no authority from the beneficiaries to make payment from client account.

56.33 Mr Goodwin said that in interview on 14 June 2011 the Respondent had admitted that he was wrong to have paid Sibley and Co's fees from client account and stated that he had done so intentionally as there had been insufficient funds in office account to do so.

56.34 Mr Goodwin said that subsequently on or around 3 December 2008 the Respondent had raised an invoice in the sum of £2,300 in respect of the firm's costs and had on the same date transferred that sum from client account to the firm's office account in payment of the invoice. Mr Goodwin said that at no time prior to making the transfer had the Respondent notified either Mr AE or Ms ME or Sibley & Co of the firm's costs or sought their agreement to them as he was required to do.

56.35 Mr Goodwin submitted that in allowing the period of nine months to elapse before paying Sibley and Co's invoice he had failed to comply with his undertaking within a reasonable period of time and had paid the invoice from client account and not office account in error.

56.36 Mr Goodwin referred the Tribunal to Rule 10.05 of the SCC 2007 which stated:

> "10.05 Undertakings
>
> …
>
> (2) You must fulfil an undertaking within a reasonable time".

56.37 Mr Goodwin also referred to the guidance notes to Rule 10.05 which stated:

> "…
>
> 24. An undertaking is any statement, made by you or your firm, that you or your firm will do something or cause something to be done, or refrain from doing something, given to someone who reasonably relies upon it…It can be given orally or in writing and need not include the word "undertake"…

…

28. It is important that there be a time frame within which an undertaking should be fulfilled. In the event that no specific time is referred to when the undertaking is given, fulfilment "within a reasonable time" will be expected. What amounts to a "reasonable time" will depend on the circumstances but the onus is on the giver to ensure that the recipient is kept informed of the likely timescale and any delays to it".

56.38 Mr Goodwin said that it was clear from the exchange of correspondence between the Respondent and Sibley & Co that the Respondent had undertaken to pay their costs and it was the Applicant's case that nine months to do so had not been within a "reasonable time".

56.39 In relation to allegation 1.5 Mr Goodwin said that related to a breach of the SAR by virtue of the two payments to MBNA to pay the Respondent's personal credit card and that in so doing, the Respondent had failed to use each client's money for that client's matter only.

56.40 In relation to allegations 1.6 and 1.7, Mr Goodwin said that there were also breaches of the SAR 1998 with regard to the Respondent's failure to send the bill or written notification of costs in the case of Mrs HE Deceased and that he had transferred the £2,300 to the firm's office account without notifying the clients. Allegation 1.7 related to the improper transfers made by the Respondent in the cases of Mr HF Deceased, Mrs HE Deceased and Mrs JS Deceased.

56.41 Mr Goodwin invited the Tribunal to conclude that both limbs of the test in Twinsectra had been met with regard to the two payments made to MBNA from client monies by the Respondent and the creation of the two false letters in the matter of Mr HF Deceased. He submitted that it was a matter for the Tribunal to consider sanction in the round, taking into account all of the facts, allegations and the overall conduct of the Respondent.

Submissions on behalf of the Respondent

56.42 Mr Cadman told the Tribunal that the case had taken two years to reach substantive hearing.

56.43 In relation to the Will matter Mr Cadman said that there was no evidence who had sent the covering letter or who had received the Will back at the firm. He submitted that there was no evidence before the Tribunal that the Will had been sent out by the Respondent and all that was known was that the Will had not been correctly attested. Mr Cadman submitted that allegation 1.1 and 1.1.1 and 1.1.2 with regard to the Will was not made out.

56.44 Mr Cadman said that with regard to the undertaking, there had been an agreement between the Respondent and Sibley & Co for payment of their fees but that there had been no chasing up by Sibley & Co until nine months after they had sent the Respondent their invoice and he had sent a cheque shortly thereafter. Whilst the costs

had been paid from the client account, Mr Cadman said that there was no allegation of dishonesty in that regard.

56.45 With regard to the remaining allegations Mr Cadman said that the initial interview at the firm between the Respondent and his former partner, Mr Amos, had been an oddity in that he had admitted the "hidden problem" being the matter of Mr HF and the two false letters but it had been the matter of Mrs JS which he had been called in to discuss. Mr Cadman said that he had no recollection of that matter which was of itself odd and a fact.

56.46 Mr Cadman said that the Respondent had seen Dr Somekh, which had been funded by his employer and he asked the Tribunal to look at the Report taking into account Dr Somekh's expertise and that the doctor's task was ex post facto to re-build the matter. The Applicant had not requested that the Respondent be examined by its own expert and had only recently sought the Respondent's GP records which evidenced that the Respondent had not seen his GP for approximately 30 years.

56.47 Mr Cadman referred the Tribunal to the Report of Dr Somekh which stated:

> "…
>
> 19. …in retrospect as far as one is able to make such assessments again with only the individual's account of what was going on is that Mr Hellewell was in fact clinically depressed during this period…
>
> 20. …the phenomenon of so-called 'smiling depression' which describes a situation where people may have all the symptoms of distress and the somatic features of depressive illness, but do not show them externally…The combination of somatic symptoms, early morning waking, weight loss, loss of libido and somatic symptoms of anxiety such as pulse racing and so on, together with some suggestion of memory difficulties, is absolutely characteristic of moderate grade clinical depressive illness…
>
> 21. …although he acknowledged as he had done with the Investigating Officer from the SRA that this was a time of emotional turbulence or him, he had not notion of the fact that he might have been mentally ill at the time nor had he attempted to offer this as some kind of mitigation for his behaviour. It was only really through expert direct questioning regarding the particular areas of his functioning that I was able to elicit the crucial symptoms which help identify the condition and which goes far beyond simply a sense of being under pressure, fed up or unhappy".

56.48 Mr Cadman told the Tribunal that the Respondent had needed to be pushed to see Dr Somekh and he had not sought openly to raise issues with regard to his health.

56.49 Mr Cadman said that objective dishonesty was accepted by the Respondent but there was a second issue namely what he had been aware of at the material time. He said that the Respondent's evidence had been consistent in what he had said in interview, to his former firm and in his oral evidence in which he had been very frank. Whatever had happened at the material time Mr Cadman submitted that the Respondent had

been suffering from moderate grade clinical depression. Dr Somekh's opinion was an expert opinion that the Respondent had been unaware of his condition and had not sought medical help.

56.50 Mr Cadman said that the Respondent had admitted immediately the matter of Mr HF and had not recalled the matter of Mrs JS. He submitted that there was no reason for the Respondent to have lied in that regard.

56.51 Mr Cadman referred the Tribunal to the Respondent's statements and asked the Tribunal to take them into account, having regard to the Respondent's evidence of pressure of work and his personal issues at the material time and also his financial circumstances.

56.52 Mr Cadman also referred the Tribunal to the character reference of Mr Lewis and his oral evidence on behalf of the Respondent which included that the Respondent had made full disclosure of the proceedings to him and Mr Lewis and his firm had continued to support the Respondent.

56.53 Mr Cadman submitted that the principal issue was honesty or dishonesty on the part of the Respondent and whether the Applicant had established that the Respondent's level of impairment was insufficient to rebut the assertion that he had behaved dishonestly to the objective and subjective standards. Mr Cadman said that there had been an element of duplication with regard to the allegations and the Rule 5 Statement had not been easy to navigate.

The Tribunal's Findings

57. The Tribunal had listened very carefully to the submissions on behalf of the Applicant and the Respondent.

58. In relation to allegation 1.1 and 1.1.1 and 1.1.2, the Tribunal noted that this was denied by the Respondent.

59. The Tribunal found that there was no proof in relation to the Will of Mrs HE as to who had sent out the Will or covering letter containing incorrect instructions for its execution or who had seen the Will when it was sent back to the firm. The Tribunal accepted that there was no reason why, if the Respondent had been away on holiday he would have requested to see the Will on his return when it had already been received and placed in the Wills cabinet. The Tribunal was not satisfied that the Respondent was responsible for the incorrect execution of the Will and found allegation 1.1, 1.1.1 and 1.1.2 not proved with regard to the Will.

60. In relation to the payment of Sibley & Co's costs, the Tribunal heard that the payment had been made from client account and not office account but noted that there was no allegation of dishonesty in that regard. It found that it was not possible to say beyond reasonable doubt that the Respondent had been responsible for the payment and it found allegation 1.1 and 1.1.1 not proved with regard to the payment of Sibley & Co's invoice.

61. In relation to the two payments by the Respondent of the MBNA credit card belonging to the Respondent and the creation of the false letters in the matter of Mr HF by the Respondent, the Tribunal found allegation 1.1 and 1.1.1 proved and that he had failed to act in the best interests of his clients Mr HF and Mrs JS; it could never be in a client's best interests to use their money to pay a solicitor's personal credit card bills.

62. In relation to allegation 1.2 and 1.2.1 and 1.2.2, the Tribunal noted that this was admitted by the Respondent and it found the allegation proved on the facts and on the documents. The Respondent had used client money on two separate occasions to pay his personal credit card and had created two false letters in the case of Mr HF in order to conceal what he had done.

63. The Tribunal had regard to allegation 1.2.3 which alleged dishonesty on the part of the Respondent in relation to the matters of Mr HF and Mrs JS. The Tribunal noted that there was no contest with regard to the objective limb of the test in Twinsectra, namely that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and which the Respondent had admitted.

64. The Tribunal had regard to the subjective limb and it noted that in his evidence the Respondent had accepted that he had used the clients' money due to his financial difficulties and that he had known it was wrong to write the cheques but had proceeded regardless. The Respondent had also admitted to having created the false letters to conceal the improper payment in the matter of Mr HF and that he had taken a conscious decision to create the false "Ms RF" letter.

65. The Tribunal had had regard to the Report and oral evidence of Dr Somekh. In his Report he had stated that "…the key issue here is that undoubtedly there was dishonesty…" and in his oral evidence he had stated that the Respondent's medical condition had not impacted on his ability to tell right from wrong but that he had possibly not thought through the consequences of his actions.

66. The Tribunal also had regard to Mr Cadman's submission on dishonesty and whether the Respondent's depression was a sufficient impairment to rebut the assertion of dishonesty. The Tribunal found that it was not sufficient to rebut the Applicant's allegation of dishonesty but that in any event, it was for the Tribunal to be satisfied beyond reasonable doubt that there had been sufficient impairment to rebut the allegation of dishonesty. The burden of proof rested with the Applicant. It was for the Respondent to raise a reasonable doubt and the Tribunal was not satisfied that the Respondent had successfully done so.

67. The Tribunal was satisfied so that it was sure that the Respondent knew by the ordinary standards of reasonable and honest people [objective] that his conduct was dishonest and that by those standards [subjective] he realised that his conduct was dishonest and it found proved 1.2.3 and that the Respondent had acted dishonestly with regard to allegation 1.2, 1.2.1 and 1.2.2.

68. In relation to allegation 1.3, the Tribunal noted that this was denied by the Respondent. The Tribunal found the allegation proved on the facts and on the documents. It was satisfied that by utilising clients' money to pay his credit card and

having created false documents he had behaved in a way which was likely to have diminished the trust the public placed in him and in the profession.

69. In relation to allegation 1.4, the Tribunal noted that this was denied by the Respondent. The Tribunal found this not proved beyond reasonable doubt. It noted an element of duplication in the allegations.

70. The Respondent accepted that he had undertaken to pay the costs in the Mrs HE matter but from receipt of the invoice, whilst a period of nine months had elapsed, he had only received one letter chasing the payment from Sibley & Co and he had then paid promptly. The Tribunal found that this had been an omission to pay an invoice when rendered and nothing more than that.

71. In relation to allegation 1.5, the Tribunal noted that this was admitted by the Respondent. It found the allegation proved on the facts and on the documents. The Respondent had failed to use each client's money for that client's matter only in relation to the matters of Mr HF and Mrs JS. It noted an element of duplication in the allegations.

72. In relation to allegations 1.6 and 1.7, the Tribunal noted that these were denied and admitted respectively by the Respondent. The Tribunal found both allegations proved on the facts and on the documents.

73. The Tribunal was satisfied that in the case of Mrs HE the Respondent had rendered a bill but had failed to send that or any written notification of costs to the client. In relation to the matters of Mr HF and Mrs JS, the Tribunal found that the Respondent had made improper withdrawals from client account. It also noted an element of duplication.

Previous Disciplinary Matters

74. None

Mitigation

75. Mr Cadman told the Tribunal that factual admissions by the Respondent had been made in April 2011 and to the Applicant in May 2011. He said that the Rule 5 Statement had not been prepared until May 2012.

76. Mr Cadman acknowledged the gravity of the offences and that they were clearly serious involving dishonesty. He submitted that with regard to sanction, the issue was whether this should be a fixed or indefinite suspension. Mr Cadman said that the authorities made clear that there were exceptional cases where it would be proper not to strike off a Respondent. He submitted that this was such a case and that the two incidents of Mr HF and Mrs JS had been five months apart. He said that the Respondent's medical condition was before the Tribunal and that the Tribunal could look at the Respondent's conduct both before and afterwards; before it had been impeccable and afterwards he had continued to be employed by Mr Lewis and had no conditions on his practising certificate.

77. Mr Cadman submitted that it was for the Tribunal to consider what would be a proportionate penalty. He said that the Tribunal could view the Respondent's case as exceptional and afford him credit for his admissions and his previously impeccable character. He asked the Tribunal to take into account that at the material time the Respondent was suffering from clinical depression, he was of previous good character, the oddity of the full and frank admissions of one matter (unknown to others when challenged) and no recollection of the second matter and he submitted that as a result, it fell into the residual pool of exceptional cases.

78. Mr Goodwin asked the Tribunal to have regard to its own Guidance Note on Sanctions with regard to its finding of dishonesty. He also referred the Tribunal to the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). Mr Goodwin submitted that this was not a case of exceptional circumstances. He said that its features fell within Sharma; that it was not momentary, that there had been two misappropriations of client's money and the creation of false documents to the Respondent's benefit and that there had been an adverse effect on others/clients/beneficiaries by the Respondent's conduct.

79. Mr Goodwin submitted that whilst a matter for the Tribunal, the appropriate sanction in this case was an order to strike off the Respondent.

Sanction

80. The Tribunal had regard to its Guidance Note on Sanctions.

81. It had regard to the case of Bolton and also the case of Sharma. In Sharma Coulson J stated:

> "…
>
> [13] It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the roll, see Bolton and Salisbury. That 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 a 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 other (sic) 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".

82. The Tribunal noted from Bolton that the purposes of imposition of a sanction per Sir Thomas Bingham's Judgment stated "…the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth…a member of the public…is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question…".

83. The Tribunal had found proved dishonesty on the part of the Respondent and whilst it had had regard to the medical evidence produced on his behalf in personal mitigation, it was not satisfied that his condition at the material time had prevented him from distinguishing right from wrong with regard to his professional obligations.

84. The Tribunal had found proved breaches of the SAR 1998 and that there had been clear misappropriation of client's money used for the Respondent's own purposes.

85. The Tribunal did not accept that this case fell within the small residual category of exceptional cases referred to by Mr Cadman which would prevent the Respondent being struck off. It found that the nature, scope and extent of the Respondent's dishonesty went beyond that; the Respondent had admitted both his lack of integrity and dishonesty in taking client's money on two separate occasions which had benefitted him personally and had had an adverse effect on others, including clients.

86. The Tribunal attached no weight to the Respondent's assertion that it had always been his intention to repay the monies.

87. The Tribunal was satisfied that the seriousness of the misconduct was at the highest level and that the protection of the public and of the reputation of the profession required no lesser sanction that that the Respondent be struck off the Roll of Solicitors.

Costs

88. Mr Goodwin referred the Tribunal to the Applicant's Statement of Cost in the sum of £30,532.32 which he said included the FI costs and those of the previous legal representatives. He asked the Tribunal summarily to assess the costs and that the Applicant opposed an order for costs not to be enforced without leave. He said that the proceedings had been properly brought and serious allegations had been found proved. Mr Goodwin said that the previous substantive hearing had been vacated of the Tribunal's own motion in light of the Psychiatric Report having been received.

89. Mr Goodwin said that the Respondent's statement of means had made no reference to his second pension which had an estimated value of approximately £90,000-£100,000 from which a lump sum of 25% of that value could be secured in the near future and he submitted that there should be no restriction on a costs order in those circumstances. Mr Goodwin acknowledged that the hearing had not taken as long and his costs needed adjustment in that regard. He said that he had sought to avoid duplication with the previous legal representatives.

90. Mr Goodwin told the Tribunal that in the circumstances he accepted that there had been some element of duplication in the allegations and the Applicant was willing to agree a summary assessment of its costs in the sum of £25,000. He said that a summary assessment would ensure finality.

91. Mr Cadman said that the Applicant had changed legal representatives during the proceedings and that in the case of Mr Rider [of Field Fisher Waterhouse] there had been four different hourly rates. He said that the change of representative had occurred at the beginning of 2013 when the case would have been ready for hearing

as it had already been due for hearing in November 2012. The additional costs of Mr Goodwin amounted to £12,000 approximately in addition to Mr Rider's costs. Mr Cadman submitted that it was impossible to take an informed view as to the costs claimed.

92. Mr Cadman said that there must have been inevitable duplication and he submitted that summary assessment was not appropriate and he requested a detailed assessment of the costs.

93. Mr Cadman said that if the Tribunal were minded summarily to assess the costs, regard had to be had to the costs not being enforced without leave, since the Respondent had been struck off and would likely have no income. He said that Mr Lewis would apply to the Applicant to employ the Respondent but that was not guaranteed.

94. Mr Cadman said that there was the second pension which the Respondent might be entitled to in 2014 and the matrimonial home but that that was jointly owned by the Respondent with his wife and was not a readily available asset.

95. In the event that the Tribunal ordered costs Mr Cadman said that finality had also to include fairness.

96. The Tribunal had listened carefully to the submissions on costs. The Tribunal had read the Respondent's statement of means and heard his oral evidence with regard to costs.

97. The Tribunal noted that the Respondent was working as a part time consultant and had been working full time previously as a locum and as an assistant solicitor. It noted that his current employer would likely apply to employ him and seek approval from the Applicant to do so now that he had been struck off. He was not currently in receipt of any state benefits.

98. The Respondent had assets including his matrimonial home in which he had an interest and a second pension which he had disclosed in his evidence and which had an approximate value of £90,000 to £100,000 and would be accessible in March 2014.

99. The Tribunal noted that this had not been a particularly complicated or overly lengthy case. There had been some duplication in allegations which the Applicant had conceded although it noted not due to Mr Goodwin. Certain allegations had been found not proved although the Tribunal was satisfied that the proceedings had been properly brought and it noted that the Applicant offered a reduction to £25,000 for its costs. The Tribunal also noted that the Respondent had co-operated throughout and had made partial admissions.

100. The Tribunal summarily assessed the costs in the sum of £22,000 to be paid by the Respondent. It did not order that the costs not be enforced without leave of the Tribunal as it did not consider that this was a case to which Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) applied.

Statement of Full Order

101. The Tribunal Ordered that the Respondent, Barry Ralph Hellewell, 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 £22,000.00.

Dated this 15th day of August 2013
On behalf of the Tribunal

K Todner
Chairman