SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11031-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID MICHAEL LAYARD HORSFALL Respondent

Before:

Mr R. Hegarty (in the chair)
Mrs J. Martineau
Mrs L. Barnett

Date of Hearing: 13th February 2013

Appearances

Sara Dickerson, Counsel of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared and represented himself.

JUDGMENT

Allegation

1. The allegation against the Respondent David Michael Layard Horsfall, was that contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he has behaved in a way that is likely to diminish the trust of the public in him and in the reputation of the solicitor's profession following conduct which led to his conviction on 5 October 2011 at Southwark Crown Court for Fraud by False Representation contrary to s 1(2) of the Fraud Act 2006.

Documents

2. The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 19 July 2012 with exhibit
- Letter dated 21 August 2012 from tracing agents to Ms Dickerson with enclosed report and attachments
- Tracing agents' invoice dated 21 August 2012
- Statement of Robert Keith Stowell dated 22 August 2012
- Schedule of costs dated 17 January 2013

Respondent:

- Respondent's witness statement dated 22 January 2013 with exhibit
- Letter from the Respondent to Ms Dickerson dated 7 February 2013
- Respondent's skeleton dated 11 February 2013 with attachments
- Respondent's witness statement dated 8 February 2013

Preliminary issue

3. The Respondent raised an issue about the impact of sanction. The Respondent's statement dated 8 February 2013 set out that he was informed by the Applicant that he was entitled to issue invoices for unbilled work done prior to the intervention in his firm for costs due to the firm and that he was entitled to issue proceedings for such fees. Any fees recovered would go to the Applicant as statutory Trustee to deal with in respect of the intervention and any claims on the Compensation Fund. The Respondent's statement referred to two matters he had pending in the Administrative Court in relation to fees which he anticipated would be heard by the end of 2013. The statement continued, omitting the numbering:

> "There is a claim for £5000 from [WPT] in the Croydon County Court which has been stayed by the District Judge pending this hearing outcome; the District Judge intends to strike out the claim if I am removed from the Roll. This might enable a counterclaim to succeed in the amount of c £6000. I am anticipating the trial will take place in 12 months.

> There is a claim against [AM] in which a judgment has been obtained against him for £1830 and is pending enforcement, with £6670 due and owing in addition."

The District Judge in the WPT case ordered on 7 February 2013 that the claim be stayed until such time as her directions had been complied with as follows:

> "The Claimant [the Respondent] shall provide the Court with evidence from the SRA [the Applicant]: confirming that they support the ongoing litigation by LH Law Ltd] and whether or not they are prepared to provide security for costs for the claim in this and other causes, such evidence to be provided by a proper officer of the SRA and bearing a statement of truth such evidence to be provided within two months of today's date.
>
> [The Respondent] shall file and serve evidence detailing why he says he has a right to bring this action for the recovery of solicitors costs when he is a director of LH Law Ltd but has had his practising certificate suspended and there is a pending application to strike him off the roll of solicitors, such evidence to be filed within 2 months."

The Respondent was not sure what had been meant by the District Judge's reference to the possibility of the Applicant supporting the claim.

4. The Respondent submitted that he had been hampered by a restraint order and the imposition of a custodial sentence in bringing these matters to a conclusion. It had taken a long time to be in a position where fees were due and capable of being recovered. It was three years since the intervention. The Respondent was entitled to claim those fees but this presented difficulties for the District Judge in Croydon County Court who questioned whether, if he was not a solicitor, although he could act in person, he would be able to claim a solicitor's fees. The Respondent submitted that the first question to be dealt with was whether the firm could act in person in litigation and proposed that it could, in certain circumstances. It was entitled to act through an employee with the permission of the Judge and a District Judge would invariably give permission to an employee or director of a company to act in person. The Respondent confirmed that he was still a director of the company. The second question was whether an individual could claim a solicitor's fees when they were a non-solicitor. This was not a matter of the individual claiming costs as a litigant in person. In spite of the existence of the intervening solicitor, the Respondent submitted that he was the only person entitled to issue invoices and recover fees for the firm. The Applicant would not do it except in exceptional circumstances by reason of funding, manpower or capability and it would be very rare for a solicitor to have the Applicant to take over such a case. The Applicant had been unable to answer the question about the Respondent's standing because there was no specific law on the matter. The only relevant case was Dooley v The Law Society November 2001 (unreported) in which Mr Justice Lightman had made clear that the solicitor could recover his costs and that there was no legal obligation on the Law Society to do so. The Respondent submitted that there was no ruling about a solicitor who had been struck off and whether he could pursue his costs. He further submitted that the pursuit of costs was not a reserved activity and that he did not need a practising certificate to undertake it. However Dooley only said that a solicitor could pursue costs and the Respondent

submitted that the Dooley case would not apply if he was not on the Roll. The Respondent had spoken to the Applicant but they had been unable to confirm the position. It was possible that if he were struck off at this hearing he would lose the right to pursue the costs. In his statement, the Respondent submitted that striking out the claims would have adverse cost consequences and cause considerable financial hardship. The costs pursued would be lost and there would also be adverse cost implications from the actions themselves. In relation to his two actions in the High Court, he would be subject to heavy costs sanctions. The Respondent wished the Tribunal to allow him to continue to prosecute his actions for fees to their final conclusion. He submitted that it seemed sensible to allow the firm to complete these claims before any sanction was imposed on him. The Respondent emphasised that he was not suggesting that the sanction of strike off should not be imposed; his submission related to timing. The Respondent wished the Tribunal to take these matters into account and make any practicable provision in imposing sanction.

5. For the Applicant, Ms Dickerson submitted that the Respondent could still pursue claims in his own name although he needed permission from the Judge in each case. Ms Dickerson also submitted that the Tribunal could give the Respondent permission to pursue these cases as a solicitor and that was what the Respondent wished. She had carried out quite a lot of research but while it seemed to make perfect sense that a former solicitor could pursue costs there was no authority on the point. Ms Dickerson submitted that the key point was that the costs had been incurred when the Respondent was working as a solicitor and she submitted that if he could prove that they had been legitimately incurred at that time, she could not see why it mattered if he were not a solicitor later on.

6. The Tribunal could not authorise the Respondent to continue proceedings in pursuit of his firm's fees incurred while a solicitor, if his right to practice were removed at this hearing; it was not within the Tribunal's power. The Tribunal would consider the submissions for the Applicant, and by the Respondent in respect of the timing of any sanction before imposing it.

Factual background

7. The Respondent was born in 1955 and was admitted in 1981.

8. At all material times the Respondent practised as a solicitor at Layard Horsfall Limited ("the firm") in Surrey. The firm was intervened into on 22 December 2009.

9. On 5 October 2011, the Respondent appeared at Southwark Crown Court where upon his confession he was convicted. The Respondent pleaded guilty to count 5 on the indictment. The particulars of offence were:

> "David Horsfall, on or before 26 February 2009, dishonestly and intending to make a gain for himself or another, made a representation which was, and which he knew was or might be untrue and misleading, namely that Layard Horsfall had transacted loan agreements on various projects and disbursed loan monies on behalf of [G] Ltd."

10. The basis of plea document stated:

> "[The Respondent] pleads guilty to S.1 Fraud Act 2006 on the following basis, [omitting cross references to other documents];
>
> 1. The prosecution acknowledge that this was a single fraudulent transaction confidence fraud not targeting a vulnerable victim. It was committed in the context of the "Factual Summary" document prepared by the Crown.
>
> 2. [The Respondent] created the "comfort letter" in doing so he acted dishonestly.
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> 3. When contacted by [MW] in an unexpected telephone call the defendant did not provide any additional comfort as can be seen from [W's] observation that [the Respondent] had been "reticent in giving me information and had not been fulsome in his praise of [G]"
>
> 4. The prosecution acknowledge that this is not a lifestyle offence.
>
> 5. The potential heads of benefit are as set out in the prosecution factual summary."

11. The Respondent was sentenced on 11 November 2011 at Southwark Crown Court to 17 months imprisonment; six days on remand and 135 days on qualifying tagged curfew to count towards sentence (total 141 days). The Respondent was one of six defendants dealt with across two successive trials, the Respondent appearing in the second of them.

12. In his sentencing remarks, His Honour Judge Higgins stated in respect of the Respondent:

> "I turn now to you, Horsfall. I must deal with you separately because you are not before the court for the offence of conspiracy to defraud.
>
> You have pleaded guilty to fraud by false representation, but it must be clothed with some facts in order to understand its true seriousness and it does not, of course, exist in isolation.
>
> In summary, you are a solicitor of the Supreme Court who through your small conveyancing firm called Layard Horsfall Solicitors acted for [D] for a very long time as you put it in interview. It is important of course, not to confuse your wrong doing with that of the conspirators and I shall not do so. But equally, it must be understood that your wrongdoing took place in the context of the conspiracy.
>
> Taking the matter in the round it is clear to me [D], in respect of whom you used the soubriquet "Fast Eddie" which itself is of course suggestive of a recognition possibly of moral turpitude, only employed you and your firm

because he was confident, a confidence not displaced unfortunately, that you would do whatever he asked of you including the commission of crime.

Thus, whilst you are not to be sentenced as a conspirator, it would be to abandon all contact with reality not to recognise that your specific criminal act must have been undertaken to your certain knowledge in the context of wider criminality on the part of others known to you. Were it otherwise, you and your firm frankly, would have had no part to play in this case.

Had there been any truth whatever in what was said to the victims, then I am not in the least doubt but that reputable firms with relevant expertise would have been employed and not someone with your professional background.

With regard to your specific criminal act, in essence you wrote a dishonest and untrue letter dated 26 February 2009 on behalf of [G] Limited, the vehicle for the conspiracy which was distributed to four potential borrowers and therefore, four potential victims.

You maintained the known lies, at least to some degree and with whatever lack of enthusiasm, up to June 2009. In light of the evidence overall, the only sensible explanation of your conduct put at its minimum, is that dishonestly you were trying to preserve the life of [G] Limited which again, to your certain knowledge was in great financial difficulty. You knew this because you were acting in the winding-up proceedings and also to your certain knowledge, the results would be inevitable harm to others.

I am wholly satisfied on the evidence that between February 2009 and the 14 October 2009 when [G] Limited was eventually wound up, at least two payments of 50,000 euros and £25,426 were made by victims to [G] Limited which would not have been made but for your dishonesty amounting to criminal wrongdoing.

In the same period, your firm received approximately £65,000 from your connection with [D]. There is not before the court detailed evidence of precisely what you were receiving and why, but such evidence is unnecessary for present purposes because it is plain that you had an unhealthily close and to some extent a financially dependent relationship with [D], in consequence of which, you were ready to stoop to serious criminal wrongdoing to further his interests and those of the conspirators. This is the only sensible explanation of your involvement in this case.

In such circumstances it is perhaps of less importance than it might otherwise have been that you are not yourself before the court as a conspirator, and nor is the court in a position to make any relevant and detailed findings as to your behaviour in respect of the winding-up proceedings of [G] Limited and also your behaviour in the round, in respect of [D] and the other conspirators.

What is clear beyond argument, however, is that you used your position as an officer of the Supreme Court, knowingly to tell lies in order to further your clients' financial interests, in the full knowledge that because of your position

> and your knowledge of the true state of affairs, what you said would be accepted, acted upon and become the source of great harm to those who did so. It must also follow that yours is the highest form of culpability, representing as it does, the grossest breach of trust.
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> You have brought your profession and again, I do not shrink from saying this, to which I add you are undoubtedly a disgrace, into the gravest disrepute. This undermines public confidence in the very profession to which they look for protection and I take it as read, that the appropriate professional body will be considering what should be done once these proceedings have been concluded.
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> …
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> You all knew of your guilt throughout and chose to deny it, rendering, of course, any suggestion of remorse entirely fanciful…"

13. Later in his remarks, the Judge dealt with mitigation:

> "I turn now to you, Horsfall. The pre-sentence report is helpful to the court but not in the manner for which no doubt you hoped. It condemns you out of your own mouth because it demonstrates on your part a complete lack of remorse. No doubt you regret being caught, but nothing more. In short, you seek to go behind your plea by effectively an abuse of language when apparently you refer to the letter of 26 February as an "error of judgement" or "misleading"; read (sic) of a sense of duty to your client in respect of an otherwise legitimate request. It was, of course, nothing of the sort and nor could you have ever thought otherwise. It was a request to tell lies, the consequence of which could only be to the financial interest, indirect or otherwise of you and your client, at least in the short term and to the great financial disadvantage of those to whom the lies were peddled.
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> That you knew that this was the intention is, on the evidence, an irresistible proposition and that being so, it matters not to what extent you were or were not aware of the detailed use of the lies, which gained their authority exclusively because of your agreement to the use of your name and the authority and privity which would therefore be given to the lies because of your position as an officer of the Supreme Court.
>
> Your attempt subsequently to distance yourself from your grave criminality, either by way of what you said to the probation officer or for what you have said this court at this hearing, through the written and oral submissions of your counsel, make no difference to that.
>
> The request itself and your response to it, necessarily mean that you knew that you were dealing with criminals and that you, yourself, freely decided to become one for financial gain. Your attempts to avoid this simple truth do you no favours and of course, the suggestion that you yourself felt to be a victim, is nothing more than a deep insult to the true victims of your decision to become a criminal.

You gave a knowingly untruthful reference in respect of which the negotiations themselves are damning, to be used by the recipient as he saw fit. Necessarily, its only purpose was to disadvantage in one way or another, those dealing with [G] Limited and advantage those behind [G] Limited.

The difficulties which you personally now face, and more importantly, the great distress caused to your immediate family, I do not doubt for one moment. But the same can be and is said on behalf of many criminals, but the response to them and now to you is that the responsibility for that is yours and yours alone. About that, there must be no doubt whatever.

With regard to your counsel's submissions in whatever form, they are in my view for material purposes and in large measure unsound. Intricacies in respect of the indictments or the approach of the Crown are nothing to the point and nor in itself is the conduct of others. It would have been a simple matter to admit your wrongdoing from the outset in respect of an advance fee fraud, but to make plain that it was of more limited compass than the other defendants. No doubt the mitigation would then in various ways have become much more compelling. As it is, the pre-sentence report reveals that you are still not really facing up to the egregious conduct of which you were guilty.

On the evidence, only naivety of epic proportions would fail to recognise criminal cause and criminal effect in the way of the lies leading to financial rewards in one form or another for you, and financial loss to others, and to that extent I reject your counsel's submissions.

Furthermore, your counsel's emphasis for reasons which I fully understand because your conduct has left him with little to work, on the guidance of the re-named Sentencing Council in respect of advanced fee fraud, actually undermines your position. Like most cases, this case does not, of course, fit precisely into any of the categories, but the reference to the guidelines brings into stark relief at least three matters.

Firstly, even if one accepts that this is not a lifestyle offence, and that the letter of 26 February 2009 is in itself a single fraudulent transaction not targeted at a vulnerable victim, which of course for present purposes I do, the transaction was intended for multiple use, as the recipient saw fit. You yourself were guilty of fraudulent conduct on more than one occasion. The reference to "single" being a term of art for this purpose.

Secondly, the negotiations and your subsequent reticence as to the terms of the letter display premeditation, planning and a ready understanding by those involved, including you, of the crime the commission of which you were then contemplating and which you went on to execute.

In broad terms, you knew what [G] purported to do, and what you agreed to do can only have occurred in the context of what is generically known as advance fee fraud. You are not to be sentenced as a conspirator, but a state of immaculate ignorance you cannot legitimately claim.

> Thirdly, the financial categories which the Sentencing Council employ are in the context of this case, highly artificial. Certain figures are before the court but your criminality was not in anyway circumscribed by a particular or limited financial ambition. Whether directly or indirectly, you gave a knowingly untruthful reference to be used as necessary and with what ever consequence and this you also knew perfectly well.
>
> In short, the various submissions made on your behalf recognise and perhaps they had to, that you were engaged albeit originally by a single act, in the release of your letter of the 26 February on an advance fee fraud, the consequences of which as a matter of common sense, you knew were unlimited thereafter, both as to number and financial consequence. That this was your intention, however enthusiastic or otherwise you were about it at different times, is something about which I have no doubt at all.
>
> …
>
> It was a single fraudulent transaction, but characterised by a degree of planning and intended for multiple use."
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> …
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> "Moreover, there is in my judgement no personal mitigation; I appreciate that your criminal wrongdoing may have wider repercussions than for many who appear in these courts, but this is merely a function of your profession and position in society, both of which you have voluntarily chosen to throw away. You do not have the mitigation often available to those less fortunate than yourself, and any suggestion that in some way your basic sentence should somehow be reduced because in effect, you have further to fall is nothing short, in my judgement, of offensive."

14. The Judge further stated in respect of sentence:

> "As to you, Horsfall, the learned judge's observations are less relevant because he was only addressing the conspiracy and not the offence unique to you which was only added after he sentenced the leading conspirators. That is not to say that in relation to you I should ignore what he said, nor that your offending should be addressed in isolation. It does, of course, carry the same maximum sentence as the offence to which your immediate co-defendants have pleaded guilty.
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> Nevertheless, you are not to be sentenced as a conspirator, but as a solicitor who in the course of the practice of his profession, was prepared to and did, stoop to serious criminal wrongdoing on (sic) order to further the financial interests of an important client and thereby serve your own financial interests in the way of present and future fees which as a matter of common sense, I am fully satisfied would be disproportionately high as compared with your fee income overall.
>
> I have already referred to a figure of £65,000 and even in the absence of evidence permitting greater precision, it is inescapable that your criminal wrongdoing had been or was to be the author of substantial financial reward,

> however that reward was structured and whenever it was to be received. Even on the limited evidence before the court it is suggested in fact on your behalf, that this sum represented something approaching twenty per cent or even thirty per cent or more, of your turnover for 2009, and that you were in financial difficulty with an overdraft of £60,000. A more obvious incentive to crime it is difficult to imagine, if one suffers from your moral turpitude."

As to the sentence to be imposed, the Judge stated:

> "As to you, Horsfall, the sentence before the ten per cent discount is two years imprisonment, producing a sentence of say twenty one months after the application of the ten per cent discount, reduced by a further four months; the net sentence therefore if one allows after ten per cent for a twenty one month sentence, the next sentence then become seventeen months."

The Judge then went on to explain that half the time would be spent in custody and the Respondent would then be released on licence.

Witnesses

15. There were no witnesses.

Findings of fact and law

16. 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.

17. **The allegation against the Respondent David Michael Layard Horsfall, was that contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he has behaved in a way that is likely to diminish the trust of the public in him and in the reputation of the solicitor's profession following conduct which led to his conviction on 5 October 2011 at Southwark Crown Court for Fraud by False Representation contrary to Section 1(2) of the Fraud Act 2006.**

17.1 For the Applicant, Ms Dickerson relied on the Rule 5 Statement and the Judge's sentencing remarks.

17.2 The Respondent submitted that this had been a long and complex case brought by the Serious Fraud Office ("SFO") and that he had initially been charged with five very serious offences relating to conspiracy to act in advance fee fraud, rent fraud and ramping fraud. There had also been two money-laundering charges which involved millions of pounds. These were offences so serious that they would have meant in the Respondent's view sentences of between 10 and 15 years and millions of pounds of compensation. After three years of discussion, the SF0 discontinued the proceedings in relation to four of the charges and elected to pursue only a charge of conspiracy for advance fee fraud. The Respondent informed the Tribunal that at the eleventh hour at the door of court the SFO said that they wished to undertake a plea-bargain and drop the conspiracy charge and bring a new charge which they said was for writing a

reference letter for [G] Limited; the agreement between the parties was that if the Respondent pleaded guilty to that charge there would be no confiscation and no custodial sentence because it related to a single act subject to a maximum of six weeks imprisonment and no order for costs. The matter proceeded on that basis and then at the last minute the SFO said that they had changed their minds and would pursue a confiscation order and although they would accept that the offence was a single act, they would refer to how the letter in question was used by the client. The Respondent submitted that this meant the whole tenor of the prosecution changed; the basis of the plea was a single act but the prosecution said that actually it was a multiple act which the Respondent submitted was a vital distinction and this point of the single/multiple act of fraud caused, in his submission, some confusion and led into the sentencing remarks of the Judge.

17.3 The Respondent stated that the circumstances in which the letter was issued were that D had started a new finance company and asked the Respondent to write a letter for the company. The Respondent explained that he could not do so because he had not acted for the new company and had no knowledge of its affairs. D then said that the Respondent could write a reference letter regarding the work that the Respondent had undertaken for [G] Limited and about property matters with which the Respondent had dealt. On that basis the Respondent submitted that he had written the letter and made it clear that he had acted as solicitor for [G] Limited which was separate from [G] Finance Limited (the new company); he had acted regarding substantial property transactions and transacted loans for the company and acted regarding certain guarantees which the company had given. The concern of the Court and the SFO was that although the reference letter made it clear that no financial responsibility was accepted for the reference by the firm, it was given in the context of [G] Limited being the subject of a winding up action. The Respondent submitted that the winding up was a public event known to all in the market and not hidden from anyone reading the letter. Everyone knew that [G] Limited was potentially in financial difficulties and the Respondent submitted that writing the letter at the time was in his view acceptable. The SFO took a very different view and said that any letter written by a solicitor in that context was dishonest. The Respondent could see that with hindsight; that people might have been misled when reading the letter but he had written it to assist a client. His view was that the letter was written recklessly and in that sense dishonestly. He thought he had written a letter which stayed within the "red lines" of what was acceptable. The subsequent events only became apparent to him when it was stated that in fact the letter was being used in a criminal conspiracy to defraud applicants. If he had known its use, he would not have written the letter. After three and a half years of litigation, the SFO had finally accepted that the Respondent had nothing to do with the conspiracy. The Respondent wished to emphasise what had not really been apparent to the criminal court, that the letter was specifically written to the director of [G] Limited and not to any named party. It was not aimed to be used. One of the crucial pieces of evidence that had persuaded the SFO that the Respondent was not involved in a conspiracy, was that when the others asked him to address the reference letter to one of their applicants, he refused. The Respondent also submitted that the Judge's sentencing remarks had been made without any evidence being taken about his case. There had only been a basis of plea document (which was before the Tribunal). The Respondent further submitted that his counsel in the criminal trial had not dealt in mitigation with the actual circumstances. He stood by what was said in the basis of plea document including the admission of dishonesty and accepted that he

had been convicted of an offence of dishonesty. The Respondent accepted as correct the copy certificate of conviction which was before the Tribunal.

17.4 The Respondent submitted that the only person who said that they had suffered as a result of receiving the reference letter was MW who put his loss at £25,000. The Respondent submitted that this was in effect the value of the crime and he had agreed with the SFO to pay £25,000 to MW and that money had been paid; so the Respondent had made good any loss arising from use of the letter. The figure of £82,000 given in the Respondent's statement of 22 January 2013 as having been confiscated by the SFO, was made up of an agreed figure of £57,000 and the £25,000 compensation to MW. The Respondent had agreed that figure in return for the SFO not pursuing prosecution costs. The Respondent submitted that strictly speaking, the fee of £600 received for writing the letter was the only proceeds of crime.

17.5 The Tribunal considered the evidence and the Respondent's submissions. Under Rule 15(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 a conviction for a criminal offence might be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of the conviction constituted evidence that the person in question was guilty of the offence. The Respondent accepted the certificate of conviction for an offence of dishonesty. It also noted the Respondent's admissions. The Tribunal found the allegation proved.

Previous disciplinary matters

18. The Respondent had been before the Tribunal on 17 April 2009 in case no. 10155/2008 in respect of five allegations relating to breaches of the Solicitors Accounts Rules 1998 all of which were admitted. The Respondent had been ordered to pay a fine of £3,000 and agreed costs in the sum of £9,927.39.

Mitigation

19. The Respondent relied on what he had said about the circumstances of his offence and the matter raised and set out in Preliminary Issue above. As to his financial situation, the Respondent had exhibited to his statement of 22 January 2013, information about his means in terms of what was set out in the Factual Summary used in the criminal proceedings. In his January 2013 statement the Respondent had described himself as penniless with net assets of £126,000, referred to the confiscation of £82,000 and a claim from the Legal Aid (Services) Commission for circa £500,000. He said that he would be unable to meet any order for costs from the Tribunal. He was unemployed and had no income and was wholly supported by his family. He stated that he was also the subject of a restraining order which prevented him paying any order for costs.

Sanction

20. The Tribunal had regard to its own Guidance Note on Sanctions and the submissions made by the Respondent. The Tribunal noted that the Respondent had not been found to be part of any conspiracy and had not been sentenced as a conspirator but he had been convicted of an offence of dishonesty. In its Guidance Note on Sanctions, the Tribunal had referred to the case of Bolton v The Law Society [1994] 1 WLR 512

which had dealt with the issue of personal mitigation. Bolton made it clear that the need "to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness" was more important than the impact on the Respondent of sanction. Having regard to the seriousness of the misconduct, the Tribunal determined that the appropriate sanction was for the Respondent to be struck off the Roll. The Tribunal had noted that it was possible that an immediate strike off might have an adverse impact on other litigation which was being conducted by the Respondent but this was not determinative in its decision as to the timing of sanction. Following Bolton, for the protection of the public and to maintain the reputation of the profession the Tribunal considered that the strike off must take immediate effect.

Costs

21. For the Applicant, Ms Dickerson applied for costs in the amount of £1,992.64. The Respondent submitted that the costs seemed extraordinarily high in respect of the fee of £486.84 for the services of an enquiry agent. Ms Dickerson reminded the Tribunal that the proceedings served by the Applicant had been returned and in order to effect service it was necessary to employ the services of the enquiry agent whose report was before the Tribunal. The Respondent stated that he did not remember how he had been served. The Tribunal assessed costs in the amount of £1,750. They agreed that the enquiry agent's bill was somewhat high. Having regard to the financial position of the Respondent and that he would no longer be able to practice as a solicitor as a consequence of its order, the Tribunal ordered that costs should not be enforced without leave of the Tribunal.

Statement of Full Order

22. The Tribunal Ordered that the Respondent David Michael Layard Horsfall 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 £1,750.00 such costs not to be enforced without leave of the Tribunal.

Dated this 3rd day of April 2013
On behalf of the Tribunal

R. Hegarty
Chairman