SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11055-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHARLES ELWES DUNBAR Respondent

Before:

Mr J. Astle (in the chair)
Mr L. N. Gilford
Mr S. Marquez

Date of Hearing: 5th March 2013

Appearances

Mr Geoffrey Hudson, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

The Respondent, Mr Dunbar, did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he acted in breach of the following rules and/or outcomes in the following respects:

1.1 He withdrew client money from a client account when it was not properly required for payment to or on behalf of a client, in breach of Rule 21(1) of the SRA Accounts Rules 2011 ("SRA AR");

1.2 Money withdrawn in relation to a particular client from a general client account exceeded the money held on behalf of that client in all the firm's general client accounts, in breach of Rule 22(5) of the Solicitors Account Rules 1998 ("SAR") and Rule 20.6 of the SRA AR;

1.3 He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in breach of SRA AR Rule 1.2(f);

1.4 He failed to keep accounts records properly written up to show his dealings with client money, in breach of SRA AR Rule 29.1;

1.5 He failed to promptly remedy breaches of the SAR and the SRA AR in breach of:

(a) SAR Rule 7; and

(b) SRA AR Rule 7.

1.6 He failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC") and, insofar as the relevant conduct occurred after 5 October 2011, Principle 2 of the SRA Principles 2011 ("Principles");

1.7 He failed to act in his client's best interests, in breach of SCC Rule 1.04;

1.8 He failed to provide a good standard of service to his client, in breach of SCC Rule 1.05;

1.9 He failed to keep the affairs of his client confidential, in breach of SCC Rule 4.01;

1.10 He failed to fulfil an undertaking given in the course of practice, in breach of SCC Rule 10.05(1). Insofar as that breach continued after 5 October 2011, it was also a breach of Principles 6 and 7. Further or alternatively, the Respondent thereby failed to achieve Outcome O(11.2) of the SRA Code of Conduct 2011 ("SRA CC");

1.11 He failed to notify his compulsory professional indemnity insurer of acts or omissions which could give rise to claims, in breach of:

(a) SCC Rule 20.09(2) (Rule 20.07 prior to 1 April 2009); and

(b) all or alternatively any of Principles 2,6,7 and 8. Further or alternatively, the Respondent thereby failed to achieve Outcome O(1.8) of the SRA CC.

Documents

2. The Tribunal reviewed all of the documents submitted by the parties which included:

Applicant:-

- Application dated 12 September 2012
- Rule 5 Statement, with exhibit "GRFH1", dated 12 September 2012
- Submissions on behalf of the SRA dated 4 March 2013
- Schedule of costs dated 27 February 2013

Respondent:-

- Copy letter Respondent to Applicant dated 27 February 2013

Preliminary Matter

3. The Tribunal noted that the Respondent was not present or represented and so considered as a preliminary issue whether the hearing should proceed in his absence.

4. Mr Hudson told the Tribunal that the application, Rule 5 Statement and Notice of Hearing had been served on the Respondent. The Respondent had written to Mr Hudson on 27 February 2013. In that letter, the Respondent stated, amongst other matters, that he would not be attending the Tribunal hearing. He meant no disrespect to the Tribunal but the cost of travelling to London or seeking representation or advice was prohibitive.

5. The Tribunal was satisfied that the proceedings had been served and that the Respondent was aware of the hearing date. The Tribunal was further satisfied that the Respondent did not intend to attend the hearing, for reasons which he had explained in his letter of 27 February 2013. The Respondent had explained in his letter some of the circumstances surrounding the allegations and that he did not dispute the allegations. The Tribunal noted also that in his response to the pre-listing questionnaire, the Respondent had indicated that he admitted the allegations. In all of those circumstances, the Tribunal was satisfied that it was appropriate and just to proceed with the hearing.

Factual Background

6. The Respondent was born in 1955 and was admitted to the Roll of Solicitors in 1983. At the time of the hearing the Respondent's name remained on the Roll but he did not hold a practising certificate.

7. At the material times, the Respondent practised on his own account as Rees Jones Solicitors at 8-10 Bagnall Street, Henley, Stoke-on- Trent, Staffordshire ST1 1AQ ("the Firm").

8. On 24 October 2011 an inspection of the books of account and other documents of the Firm commenced. On 2 December 2011 the SRA intervened into the Firm. The Report of the SRA Investigation Officer ("IO") was dated 30 April 2012 ("the FI

Report") and was relied on by the Applicant. In a letter to the FI dated 15 May 2012 the Respondent confirmed that the allegations in the FI Report were admitted.

Client account shortfall of £85,347.06

9. The Respondent acted for Mrs B and Mr D in connection with their proposed purchase of a property for £800,000. It was intended to be a cash purchase.

10. A cheque for £85,000 was sent by Mrs B to the Firm and on 15 April 2011 that sum was credited to Mrs B and Mr D's client ledger. On the same date the Respondent exchanged contracts for the purchase and the following Monday, 18 April 2011, he sent a cheque for £80,000 drawn on the Firm's client bank account to the vendor's solicitors in respect of the deposit.

11. On 15 April 2011 the sum of £3,247.06 was transferred from the Firm's client to office bank account in settlement of an interim bill from the balance of £5,000 thought to be remaining of the original payment of £85,000 (following the payment out of £80,000).

12. On 20 April 2011 Mrs B's cheque for £85,000 was returned unpaid by the Firm's bank. As a result the client account ledger for this matter was overdrawn by £83,247.03 and there was a shortfall on the Firm's client bank account or £3,247.06.

13. Upon receiving the news that the cheque had not been honoured, the Respondent telephoned Mrs B who told him that she had stopped her cheque because Mr D would be sending the £85,000 to the Firm. The Respondent told Mrs B that the funds would need to reach the Firm that day (i.e. 21 April 2011), otherwise he would have to stop the Firm's cheque for £80,000 sent in respect of the deposit. The funds were not received from Mr D and the Firm's cheque in respect of the deposit was not stopped. It cleared on 27 April 2011, six days later, leaving a shortfall on the Firm's client bank account of £83,247.06.

14. Two further cheques from Mrs B, for £90,000 and £540,000 respectively (the latter credited to a different client ledger re "purchase of 2 Riverbank") were paid into the Firm's client bank account on 27 April and 3 May 2011 but these also failed to clear.

15. On 28 April 2011, following receipt of Mrs B's cheque for £90,000 a further £2,100 was transferred from the Firm's client to office bank account in respect of the Firm's fees. When that cheque failed to clear, the client account ledger for this matter was overdrawn by £85,347.06 and there was a corresponding shortfall on the Firm's general client bank account.

16. The Respondent did not replace the funds wrongly paid out the Firm's client account and did not obtain any further funds from his clients until 25/26 September 2011, when £600 was received in two payments. On 9 August 2011 the vendor's solicitors informed the Respondent that, due to the failure of the Respondent's clients to complete the purchase, the £80,000 deposit was forfeit.

17. In an interview with the IO on 24 October 2011 ("the October interview") the Respondent admitted that, at the time he had paid out the £80,000 deposit monies,

there were no cleared funds from which to make that payment and, consequently, when Mrs B's cheque was returned unpaid a cash shortage had been created. The Respondent also stated that Mrs B was intending to fund the purchase with funds from a significant inheritance in India but that the transfer of those funds had been delayed by an investigation by the Serious Organised Crime Agency ("SOCA"). Mrs B had assured him that the investigation was complete and that funds would be released "any day". The Respondent further stated that he had seen and heard enough to satisfy himself that her claims were bona fide but he was unable to produce any documentary evidence to support Mrs B's expectations.

18. In an interview with the IO on 16 November 2011 ("the November interview") the Respondent admitted that the two transfers totalling £5,347.06 from client to office account in respect of the Firm's fees were also made when no cleared funds were available. When asked why he did not reverse the transfers of £5,347.06 to reduce the cash shortage the Respondent admitted that "with hindsight" he should have done so. The Respondent confirmed that he had not notified the Firm's professional indemnity insurers of the circumstances described above. The Respondent said he had not done so because he expected it was only a matter of time before Mrs B would be in a position to replace the cash shortage but that he would look at the position again. As at the date of the FI Report, the IO had received no further information in this regard from the Respondent.

Purchase of 16 D Grove

19. The Respondent acted for Ms T in connection with her purchase of 16 D Grove for £91,500 as well as for the Abbey National ("Abbey") in connection with their loan to Ms T, which was to be secured by way of first charge over the property.

20. Completion took place on 23 January 2008. On 27 August 2008 the Land Registry cancelled the Firm's application to register the transfer of the property to Ms T on the basis that the Firm had failed to address earlier queries regarding the discharge of existing charges.

21. As at 27 July 2011, more than three and a half years after completion, the Land Registry title for 16 D Grove continued to show the vendor as the registered proprietor and there were three charges against the property, two of which were registered after 23 January 2008 i.e. after Ms T had purchased the property. All of the charges related to debts owed by the vendor of the property.

22. In the November interview the Respondent agreed that he had failed to maintain priority for Abbey's charge against the property, thereby allowing two banks (Barclays and Bank of Scotland) to register charges against the property which took priority over Abbey's security. The Respondent further admitted that he was solely responsible and noted that whilst there had initially been delays on the part of the vendor's solicitors in dealing with the redemption of the existing charge, he himself had subsequently overlooked the file.

Payment from client account of £143,098.62

23. On 10 October 2011 £143,098.62 was sent to Drydens Solicitors of Bradford by way of telegraphic transfer. The payment was allocated to a ledger account unconnected with Ms T's matter, namely "Mrs B – purchase of 2 Riverbank" on which there were no funds available. Consequently, a debit balance of £143,098.62 arose on the client ledger account for this matter and there was a corresponding shortfall on the Firm's general client account.

24. In the October interview the Respondent admitted that there had been no money from which to make this payment, that the payment was in breach of the SAR and that the payment had created a cash shortage of £143,098.62 which he (the Respondent) was unable to replace.

25. In the October interview the Respondent told the IO that he had discovered, in July 2011, that one of the charge-holders (Bank of Scotland) was seeking possession of the property due to the default of the previous owner of the property. The Respondent told Mrs B of his difficulties and she offered to lend him funds from her inheritance, once she had received them. In expectation of receiving these funds, on 30 September 2011 the Respondent had undertaken to pay the sum of £141,043.31 plus costs to Drydens, Bank of Scotland's solicitors, before close of business that day. The promised funds from Mrs B had not arrived and in order to prevent repossession of the property, on 10 October 2011 the Respondent had paid £143,098.62 to Drydens from the Firm's client bank account.

26. The Respondent stated that in this regard, "I gambled and it didn't work" and accepted full responsibility for what had occurred. The Respondent also accepted that the payment should not have been allocated to Mrs B's ledger.

27. In the November interview the Respondent confirmed that after paying the £143,098.62 to Bank of Scotland the two remaining charges had not yet been dealt with and Barclays and the Funding Corporation required approximately £13,600 and £4,900 respectively to redeem their charges.

Failure to notify professional indemnity insurers

28. In the November interview the Respondent confirmed to the IO that he had informed the Firm's professional indemnity insurers about his failure to deal with the post-completion formalities on Ms T's purchase. However, the Firm's insurance proposal form dated 4 September 2011 confirmed that there had been no "claims and circumstances" notified to insurers in the preceding 5 years, i.e. since October 2006.

29. On 9 January 2009 the Firm's insurers, Zurich, had sent a letter to the Respondent chasing the return of a notification form dated 6 October 2008 in respect of Ms T's matter. On 21 April 2009 Zurich sent a further letter saying that, as it had not heard from the Respondent since the previous September, their file was now being closed. It therefore appeared that the Respondent had failed to progress the notification, after having made enquiries with Zurich, with the result that no notification in fact took place.

The Firm's accounts

30. The IO identified a cash shortage of £227,845 arising from the improper payments out of client account described at paragraphs 9 to 29 above, consisting of £85,347.06 shortfall on Mrs B and Mr D's matter (less the £600 received from Mrs B in September 2011) plus the £143,098.62 improperly paid out in respect of Ms T's matter.

31. As at the date of the intervention, 2 December 2011, the IO had seen no evidence that any sums had been paid in by the Respondent to make good the shortage.

Correspondence with the Respondent

32. On 27 October 2011 the SRA sought the Respondent's comments on an interim forensic investigation report of the IO, dated 25 October 2011. The Respondent replied on 2 November 2011.

33. On 22 February 2012 and Authorised Officer referred the Respondent's conduct to the Tribunal. On 30 April 2012 a copy of the FI Report was sent to the Respondent, who responded by letter dated 15 May 2012.

Witnesses

34. None. The Tribunal proceeded on the documents.

Findings of Fact and Law

35. **Allegation 1.1: He withdrew client money from a client account when it was not properly required for payment to or on behalf of a client, in breach of Rule 21(1) of the SRA Accounts Rules 2011 ("SRA AR")**

35.1 This allegation was admitted by the Respondent.

35.2 The factual background to the allegation is set out at paragraphs 23 to 27 above. The sum of £143,098.62 was paid out on 10 October 2011 (i.e. shortly after the SRA AR had come into force) to Drydens from a client ledger on which there were no funds, causing a shortfall on the Firm's general client account. The monies paid out on Ms T's behalf were not properly required to be paid to or on behalf of any of the clients to whom those monies belonged.

35.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

36. **Allegation 1.2: Money withdrawn in relation to a particular client from a general client account exceeded the money held on behalf of that client in all the firm's general client accounts, in breach of Rule 22(5) of the Solicitors Account Rules 1998 ("SAR") and Rule 20.6 of the SRA AR**

36.1 This allegation was admitted by the Respondent.

36.2 The factual background to the allegation is set out at paragraphs 9 to 18 and 23 to 27 above. The £80,000 sent to the vendor's solicitors exceeded the money held on behalf of Mrs B and Mr D in the Firm's general client account. Until 5 October 2011 this was a breach of SAR Rule 22(5) and from 6 October 2011 this was a breach of the SRA AR Rule 20.6. The £143,098.62 sent on 10 October 2011, ostensibly on behalf of Ms T, exceeded the money held on behalf of Ms T and was sent in breach of SRA AR Rule 20.6.

36.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

37. **Allegation 1.3: He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in breach of SRA AR Rule 1.2(f)**

37.1 This allegation was admitted by the Respondent.

37.2 The factual background to this allegation is set out at paragraphs 23 to 27 above. In using £143,098.62 on behalf of Ms T but debiting the sum to Mrs B's ledger in circumstances where there were no client funds on the ledger in question out of which to make the transfer the Respondent failed to keep proper accounting records which showed accurately the position with regard to the money held for each client. The Respondent was thereby in breach of SRA AR Rule 1.2(f).

37.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

38. **Allegation 1.4: He failed to keep accounts records properly written up to show his dealings with client money, in breach of SRA AR Rule 29.1**

38.1 This allegation was admitted by the Respondent.

38.2 The factual background to this allegation is set out at paragraphs 23 to 27 above. In using £143,098.62 on behalf of Ms T but debiting the sum to Mrs B's ledger in circumstances where there were no client funds on the ledger in question out of which to make the transfer the Respondent failed to keep proper accounting records which showed his dealings with client money, in breach of SRA AR Rule 29.1.

38.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

39. **Allegation 1.5: He failed to promptly remedy breaches of the SAR and the SRA AR in breach of:**

(a) SAR Rule 7; and

(b) SRA AR Rule 7.

39.1 This allegation was admitted by the Respondent.

39.2 The factual background to this allegation is set out at paragraphs 9 to 27 and 30 to 31 above. By failing to remedy the breaches subject to allegations 1.1 to 1.4 inclusive, the Respondent was until 5 October 2011 in breach of SAR Rule 7 and thereafter was in breach of SRA AR Rule 7.

39.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

40. **Allegation 1.6: He failed to act with integrity, in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC") and, insofar as the relevant conduct occurred after 5 October 2011, Principle 2 of the SRA Principles 2011 ("Principles")**

40.1 This allegation was admitted by the Respondent.

40.2 The factual background to this allegation is set out at paragraphs 9 to 29 above. The Respondent failed to make good the client account shortfall caused by his payment of £80,000 in the matter of Mrs B and Mr D. Further, he failed to reverse costs of £3,247.06 after he knew Mrs B's cheque for £85,000 had not been honoured and then took additional costs of £2,100 on Mrs B's matter when there was still a significant shortfall on client account arising from that matter. In addition the Respondent had, on his own admission, "gambled" with funds held on general client account by transferring £143,098.62 where he was relying on Mrs B to make good the shortfall at an unspecified and uncertain future date. In all of these respects, the Tribunal was satisfied that the Respondent had failed to act with integrity. He knew what he was doing at all times but chose to take steps which he knew were not in the interests of the general body of the Firm's clients, whose money he was using. Further, he was prepared to use that money rather than replace the shortfall himself in order to get himself out of difficulties which he had created.

40.3 Insofar as the events set out above occurred before 6 October 2011 the Respondent was in breach of SCC Rule 1.02. Insofar as the misconduct occurred after 6 October 2011, the Respondent was in breach of Principle 2 of the Principles.

40.4 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

41. **Allegation 1.7: He failed to act in his client's best interests, in breach of SCC Rule 1.04**

41.1 This allegation was admitted by the Respondent.

41.2 The factual background to this allegation is set out at paragraphs 19 to 29 above. By failing to register Ms T's interest in 16 D Grove and to protect Abbey's interest over the same property the Respondent failed to act in the best interests of both clients, in breach of SCC Rule 1.04.

41.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

42. **Allegation 1.8: He failed to provide a good standard of service to his client, in breach of SCC Rule 1.05**

42.1 This allegation was admitted by the Respondent.

42.2 The factual background to this allegation is set out at paragraphs 19 to 29 above. By failing to register Ms T's interest in 16 D Grove and to protect Abbey's interest over the same property the Respondent failed to provide a good standard of service to both of those clients, in breach of SCC Rule 1.05.

42.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

43. **Allegation 1.9: He failed to keep the affairs of his client confidential, in breach of SCC Rule 4.01**

43.1 This allegation was admitted by the Respondent.

43.2 The factual background to this allegation is set out at paragraph 25 above. In telling Mrs B about the problems he was experiencing concerning Ms T's matter, the Respondent failed to keep the affairs of his client Ms T confidential, in breach of SCC Rule 4.01.

43.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

44. **Allegation 1.10: He failed to fulfil an undertaking given in the course of practice, in breach of SCC Rule 10.05(1). Insofar as that breach continued after 5 October 2011, it was also a breach of Principles 6 and 7. Further or alternatively, the Respondent thereby failed to achieve Outcome O (11.2) of the SRA Code of Conduct 2011 ("SRA CC")**

44.1 This allegation was admitted by the Respondent.

44.2 The factual background to this allegation is set out at paragraphs 23 to 27 above. The Respondent undertook to remit £141,043.31 to Drydens solicitors on 30 September 2011 and failed to do so. The immediate failure to fulfil the undertaking occurred before 6 October 2011 and was in breach of SCC Rule 10.05. The failure to fulfil the undertaking continued after 6 October 2011 and the Respondent was thus in breach of Principles 6 and 7 of the Principles and, further, he failed to achieve Outcome O (11.2) of the SRA CC.

44.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

45. **Allegation 1.11: He failed to notify his compulsory professional indemnity insurer of acts or omissions which could give rise to claims, in breach of:**

(a) SCC Rule 20.09(2) (Rule 20.07 prior to 1 April 2009); and

(b) all or alternatively any of Principles 2,6,7 and 8. Further or alternatively, the Respondent thereby failed to achieve Outcome O (1.8) of the SRA CC.

45.1 This allegation was admitted by the Respondent.

45.2 The factual background to this allegation is set out at paragraphs 28 to 29 above. By failing to notify his professional indemnity insurers of his acts or omissions in respect of Ms T's conveyancing transaction, which could give rise to claims on that insurance, the Respondent was in breach of SCC Rule 20.09(2) (Rule 20.07 prior to 1 April 2009). Insofar as the misconduct occurred after 6 October 2011, the Respondent was further in breach of Principles 2,6, 7 and 8 of the Principles and he failed to achieve Outcome O (1.8) of the SRA CC.

45.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

Previous Disciplinary Matters

46. Findings had been made against the Respondent in matter 10306/2009, heard on 8 December 2009 (Findings dated 7 April 2010). On that occasion the Respondent had been fined £2,500 and ordered to pay costs of £13,000 on a joint and several basis with another solicitor.

Mitigation

47. The Respondent was not present to offer any mitigation. However, the Tribunal read carefully the responses he had given in the course of the investigation and subsequently, including his letter of 27 February 2013. The Tribunal noted that the Respondent had relied on his client, Mrs B, to provide him with funds which had not materialised. The Tribunal noted that in the letter of 27 February 2013 the Respondent stated that after the closure of his Firm he learned that his client's funds had been released following the conclusion of the SOCA investigation. He further stated that the client had been willing and able to pay all monies due to the Firm (totalling in excess of £230,000) but had been advised to deal only with the SRA. The Respondent stated that he was unaware of any action by the SRA to pursue this.

48. The Tribunal noted that the Respondent had been declared bankrupt on 9 October 2012. The Tribunal noted the Respondent's co-operation with the SRA investigation, his admissions and his apology to the Tribunal. The Respondent had confirmed in his letter of 27 February 2013 that he had no intention of practising as a solicitor again.

Sanction

49. The Tribunal had regard to its Guidance Note on Sanctions (August 2012). The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

50. The Tribunal noted that the fundamental principle and purpose of imposition of sanctions by the Tribunal is set out in Bolton v Law Society [1994] 1 WLR 512 ("the Bolton case") where it is stated that:

> "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".

It is further made clear in that case that the purposes of sanctions include punishment, deterrence, to ensure there is no opportunity to repeat the offence and, fundamentally, 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.

51. In this case, the Respondent had used substantial sums of money belonging to clients generally for the benefit of a particular client. Client monies should be regarded as sacrosanct and it was not acceptable to deal with them as the Respondent had done. The Respondent had continued to rely on assurances from his client, Mrs B, after she had stopped a cheque and failed promptly to replace it. Indeed, he had continued to rely on her assurances through several months in 2011 such that he had first given an undertaking and then paid out over £140,000 of money belonging to clients of the Firm in respect of Ms T's matter when there was no assurance he would be able to comply with the undertaking. This payment increased the shortage on client account to a little under £230,000 (when combined with the shortfall in respect of Mrs B's conveyancing matter). The Respondent had conducted Ms T's conveyancing matter badly, such that neither she nor her lender had their respective interests in the property registered and others were able to register charges which took priority over Abbey. Having created a situation in which a claim on his professional indemnity insurance could properly be made, the Respondent failed to notify his insurers. The Respondent had shown a lack of integrity in dealing with his clients' money as he had, and had put at risk substantial sums. The Tribunal noted that the matter had come to light not through self-reporting but because a former colleague of the Respondent had instructed a solicitor to write to the SRA to raise concerns.

52. The Tribunal regarded this case as at the highest level of seriousness. The Respondent's actions would diminish the trust the public would place in the profession and to maintain the reputation of the profession as one in which the public could trust all members to the ends of the earth, the sanction had to be severe. In all of the circumstances, nothing less than striking the Respondent off the Roll would be appropriate in order to protect the public and the reputation of the profession. There were no mitigating or exceptional circumstances to suggest that any lesser sanction would be sufficient.

Costs

53. Mr Hudson sought a costs order against the Respondent and submitted a schedule of costs totalling £18,541.63. Mr Hudson submitted to the Tribunal that any costs order would not be covered by the Respondent's bankruptcy order and there had been no submission by the Respondent that he would be unable to pay. The SRA would make

appropriate enquiries concerning the Respondent's means to help determine whether and how a costs order could be paid.

54. Mr Hudson also noted that the costs schedule had been prepared in the expectation that the hearing would last longer than it had done.

55. The Tribunal determined that it was appropriate to order the Respondent to pay the reasonable costs of the proceedings and enquiry. There was no information concerning his means – other than the statement that he was bankrupt – which could be taken into account to remove or reduce any obligation to pay costs. The proceedings had been properly brought and the costs claimed were, broadly, appropriate. However, some reduction in costs was required as the time taken for the hearing was less than estimated and the forensic investigation costs seemed a little high. Accordingly, the appropriate and reasonable amount of costs which the Respondent would be ordered to pay was £16,000 (all inclusive).

Statement of Full Order

56. The Tribunal Ordered that the Respondent, Charles Elwes Dunbar, 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 £16,000.00.

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

J. Astle
Chairman