SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11285-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GAIL EVANS Respondent

Before:

Miss N. Lucking (in the chair)
Mr K. W. Duncan
Mr P. Wyatt

Date of Hearing: 8 September 2015

Appearances

Mr Shaun O'Malley, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN, for the Applicant.

The Respondent, Ms Gail Evans, was present and represented herself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Ms Gail Evans, made in a Rule 5 Statement dated 29 September 2014, and amended with the permission of the Tribunal on 8 September 2015, were that:

1.1 She was convicted of Driving with Excess Alcohol on 29 March 2011 and thereby failed to:

1.1.1 uphold the rule of law and the proper administration of justice, contrary to Rule 1.01 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.2 behave in a way that was likely to diminish the trust the public places in her or the legal profession, contrary to Rule 1.06 of the 2007 Code.

1.2 She failed to disclose a conviction from 29 March 2011 for Driving with Excess Alcohol to the Solicitors Regulation Authority ("the SRA") in breach of Rule 20.06 of the 2007 Code and/or thereby failed to act with integrity contrary to Rule 1.02 of the 2007 Code.

1.3 She was convicted on 27 June 2013 of Driving with Excess Alcohol, Driving whilst Disqualified and No Insurance and thereby failed to:

1.3.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the 2011 Principles");

1.3.2 act with integrity, in breach of Principle 2 of the 2011 Principles;

1.3.3 behave in a way that maintains the trust the public places in her and the provision of legal services, in breach of Principle 6 of the 2011 Principles.

Documents

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

Applicant:-

- Application dated 29 September 2014
- Rule 5 Statement, with exhibit "SOM/1", dated 29 September 2014
- Statement of costs at time of issue, dated 29 September 2014
- Statement of costs at final hearing, dated 19 August 2015
- Copy authorities:
  a) Bolton v Law Society [1994] 2 All ER 486 ("Bolton");
  b) Law Society v Salsbury [2008] EWCA Civ 1285 ("Salsbury");
  c) Afolbai v SRA [2012] EWHC 3502 (Admin) ("Afolabi");
  d) Hoodless and Blackwell v Financial Services Authority Financial Services Authority [2003] UKFTT FSM007 (3 October 2003) ("Hoodless and Blackwell")

Respondent:-

- Answer to allegations, dated 4 November 2014
- Statement of means dated 4 September 2015

Preliminary Matter – Amendments to allegations and Rule 5 Statement

3. Mr O'Malley applied to amend the Rule 5 Statement to make certain deletions and correct one matter.

4. It was noted that allegation 1.1.2 required the deletion of the word "not" at the beginning of paragraph 1.1.2. Mr O'Malley asked to amend paragraphs 17 and 26 of the Rule 5 Statement to delete references to an appeal and to amend a period referred to in paragraph 28 of the Rule 5 to 16 years, rather than 6 years. The Tribunal noted that the need for amendments had been raised when directions were given by the Tribunal on 23 January 2015. The Respondent confirmed that she had no objections to the proposed amendments.

5. The Tribunal determined that there was no prejudice to the Respondent in permitting the proposed amendments, which had been raised with her well in advance of the hearing and agreed the proposed changes.

Factual Background

6. The Respondent was born in 1961 and was admitted as a solicitor in 2002. The Respondent's name remained on the Roll of Solicitors at the date of the hearing.

29 March 2011 conviction

7. On 29 March 2011, in the Woolwich Magistrates' Court, the Respondent pleaded guilty and was convicted of one charge of driving a motor vehicle with excess alcohol, contrary to Section 5(1)(a) of the Road Traffic Act 1988 ("the RT Act") and Schedule 2 to the Road Traffic Offenders Act 1988 ("the RTO Act"). A copy of the Certificate of Conviction was within the exhibits to the Rule 5 Statement.

8. On 15 April 2011, the Respondent received: an 8 week custodial sentence, wholly suspended for 12 months, with a supervision requirement; was disqualified from driving for 3 years; had her driving licence endorsed; and was ordered to pay £85 costs.

20 June 2013 conviction

9. On 20 June 2013, in the Cardiff and Vale of Glamorgan Magistrates' Court, the Respondent pleaded guilty and was convicted of:

9.1 Driving a motor vehicle with excess alcohol, contrary to Section 5(1)(a) of the RT Act and Schedule 2 to the RTO Act;

9.2 Driving whilst disqualified, contrary to Section 103(1)(b) of the RT Act and Schedule 2 to the RTO Act;

9.3 No insurance, contrary to Section 143 of the RT Act and Schedule 2 to the RTO Act. A copy of the certified Memorandum of Conviction was within the exhibits to the Rule 5 Statement.

10. On 26 June 2013, the Respondent was sentenced to:

10.1 A 4 month custodial sentence, wholly suspended for 24 months;

10.2 An Alcohol Treatment requirement for 12 months;

10.3 A curfew requirement for 8 weeks from 27 June 2013 to 23 August 2013 from 7pm to 7am;

10.4 Attend probation appointments for 24 months;

10.5 Undertake 150 hours unpaid work in the subsequent 12 months;

10.6 Pay a victim surcharge of £80;

10.7 Pay costs of £85;

10.8 Be disqualified from driving for 46 months.

Earlier convictions

11. In addition to the two convictions noted above, the Respondent had also been convicted of:

11.1 Driving with excess alcohol, August 1997. The sentence was a fine and disqualification for 18 months;

11.2 Driving with excess alcohol, September 2000. The sentence was a fine and a statutory three year driving ban.

12. These two convictions were disclosed to the Law Society prior to the Respondent's admission as a solicitor in 2002. They were not relied on by the Applicant in support of the allegations, but it was submitted they were relevant to the Tribunal's assessment of the risk which the Respondent may present in the future.

Investigation/failure to disclose conviction

13. On 5 July 2013, the Respondent's employer wrote to the SRA to inform them that the Respondent had entered guilty pleas on 20 June 2013 to the three charges set out at paragraph 9 above, and had subsequently been sentenced, as described above.

14. On 11 July 2013, the Respondent also wrote to the SRA to inform them of her conviction in June 2013.

15. On 28 October 2013, the Respondent sent an email to the SRA, in response to an email from the SRA of 24 October 2013, in which she referred to the conviction in March 2011, together with two other offences of driving with excess alcohol, in August 1997 and September 2000. The 1997 and 2000 convictions had been disclosed to the Law Society prior to the Respondent's admission to the Roll of Solicitors. The March 2011 conviction was not notified to the SRA until the Respondent's email of 28 October 2013.

16. On 7 May 2014, the Applicant wrote to the Respondent seeking her response to allegations that, by virtue of the June 2013 conviction, she had failed both to behave in a way that maintained the trust the public placed in her and in the provision of legal services and to act with integrity. It was further alleged that the Respondent had failed to act with integrity in failing to disclose her March 2011 conviction.

17. The Respondent submitted a response by email on 29 May 2014 and subsequently provided supporting documentation. The Respondent admitted the offences but denied any breaches of the 2007 Code and/or the Principles. The Respondent also set out mitigating factors, which included personal health issues and family circumstances. The Respondent provided to the Applicant the references which had been submitted to the Cardiff Magistrates' Court in June 2013 and further references in connection with the Applicant's investigation. The Respondent included reports from her Integrated Intervention Service Keyworker and Probation, dated 30 May 2014.

18. On 10 July 2014, an authorised officer of the Applicant decided to refer the Respondent's conduct to the Tribunal.

Witnesses

19. The Applicant proceeded on the papers, and did not call any witnesses.

Ms Laura Williams

20. Ms Williams gave evidence to the Tribunal by video-link. At the request of the Respondent, and with the consent of the Tribunal and the Applicant, this evidence was given before the Respondent gave her own evidence.

21. Ms Williams had been the Respondent's Integrated Offender Intervention Service ("IOIS") keyworker, and had begun dealing with the Respondent after the June 2013 conviction. The Tribunal had available an (undated) letter from Ms Williams within the Rule 5 bundle and a further letter, dated 6 November 2014. Those documents, which Ms Williams confirmed to be true to the best of her knowledge and belief, set out Ms Williams' engagement with the Respondent, in particular with regard to the Respondent's Alcohol Treatment Requirement ("ATR"), which was part of the sentence for the June 2013 conviction.

22. Ms Williams told the Tribunal that her first appointment with the Respondent was on 26 July 2013. The ATR order was to last 12 months, but the Respondent continued attending appointments until about March 2015 on a voluntary basis. Ms Williams described the benefits the Respondent had gained from the sessions in addressing her

alcohol misuse. Ms Williams told the Tribunal that the Respondent had been distressed, when the sessions first began, that a diagnostic tool used as part of the ATR indicated that she was possibly alcohol dependent.

23. Ms Williams told the Tribunal that during the treatment sessions, the Respondent had come to realise the extent to which she used alcohol to anaesthetise her emotions. It had been noted by the probation service that emotions were a key trigger to the Respondent's alcohol misuse. Ms Williams told the Tribunal that the Respondent had been open and honest in reporting her misuse, and that she was motivated to address the problem and change her circumstances. During the sessions, the Respondent had discussed a personal, distressing incident in 1976 and reported that the Respondent had made significant progress after the burden of that matter was lifted.

24. Ms Williams told the Tribunal that the risk of the Respondent reoffending through alcohol misuse was significantly reduced. The Respondent had been able to use coping strategies, and had not relapsed to her previous level of drinking during more recent stresses and family problems. Ms Williams confirmed that the Respondent had always attended sessions on time, and had been polite; there had been no need to breathalyse her at the start of any session. Ms Williams told the Tribunal that she had done some victim awareness work with the Respondent and believed that the Respondent's engagement with the ATR (and later sessions) had reduced the risk of further offending.

25. Ms Williams described some family issues which affected the Respondent. Ms Williams told the Tribunal that when someone attended sessions voluntarily, i.e. after the court order had come to an end, there was sometimes a relapse in behaviour but this had not happened with the Respondent.

26. Ms Williams told the Tribunal about her academic and professional qualifications and experience. In response to a question from Mr O'Malley, Ms Williams told the Tribunal that the Respondent wanted to control and reduce her alcohol use and the sessions had assisted with this.

The Respondent

27. The Respondent told the Tribunal that her career as a criminal defence solicitor was a second career for her; she had worked for a bank from 1980 to 1995, and the Respondent described her progress through the bank and the promotions she had achieved. The Respondent told the Tribunal that she had had no complaints of any kind concerning her work in the banking sector. The Respondent told the Tribunal of the circumstances in which a complaint had been made against her in her role as a criminal defence solicitor, in about 2007/8. That matter had been thoroughly investigated by the SRA and she had been exonerated.

28. The Respondent told the Tribunal that her first two convictions were before her admission as a solicitor. The second was shortly after she began her training contract with a firm of solicitors in Swansea and both convictions were disclosed to her employer and the Law Society. The Respondent told the Tribunal that the 2000 offence occurred on a Tuesday evening and she informed her employer on the Wednesday morning. The Respondent's employer had allowed her to resign, but had

attended the Magistrates' Court hearing and had allowed her to return, as he had been impressed by the work ethic she had shown since starting with the firm in July 2000, albeit not on a training contract. The Respondent told the Tribunal that she had worked hard and in about March 2001 her employer had agreed to sign her training contract.

29. The Respondent told the Tribunal that she had attended a long interview with the Law Society where she understood the concern was whether there was a risk the Respondent might misuse client money because of her problems. The Respondent was able to allay the concerns of the Law Society and she was admitted in 2002.

30. The Respondent told the Tribunal that her alcohol use did not affect her working life, and she told the Tribunal of a particular matter with which she had assisted in 2001 in an intense environment, involving long days and working at weekends. The Respondent told the Tribunal that she wanted to demonstrate that her conviction would not affect her professional career. The Respondent told the Tribunal that in her first 12 months after qualification she had conducted 14 criminal trials and "lost" only 4. The Respondent told the Tribunal that she had kept a record of her "wins" and that she had a 74% acquittal rate, as against the usual conviction rate of 98%.

31. The Respondent told the Tribunal that becoming a solicitor was the best thing she had ever done and she was proud of this. The Respondent referred to a number of references in the Rule 5 bundle (which had been produced to the Magistrates' Court at the time of the June 2013 conviction). There were three professional references which the Respondent told the Tribunal demonstrated her commitment to the profession and her integrity as a solicitor.

32. The Respondent told the Tribunal that she moved to London in 2004, partly to give support to a family member. The Respondent told the Tribunal that there had been a period of emotional stability as she was away from closer family members, with whom her relationships were difficult. The Respondent told the Tribunal that she had had a number of professional successes in London. However, from early 2010 she began to feel that her emotions were getting the better of her. The Respondent told the Tribunal that she had become emotionally involved in two particular matters in which she was instructed; on one occasion, she had left court in floods of tears.

33. The Respondent told the Tribunal that in early 2011 her father became ill and went into hospital and the Respondent started abusing alcohol again. The Respondent told the Tribunal that in February 2011 she had taken an overdose of strong painkillers, but had recovered. The Respondent told the Tribunal that in March 2011 she was convicted of driving with excess alcohol; her reading on that occasion was particularly high. The District Judge who dealt with her case was very compassionate.

34. The Respondent told the Tribunal that the day after the court appearance, she had drafted a letter to the SRA to report the conviction but had then received a call to say that her father was very ill; the Respondent left London to return to South Wales and her father died early the next day. The Respondent told the Tribunal that another family member had died shortly afterwards. The Respondent told the Tribunal that she had been sentenced for the 2011 conviction on 15 April 2011.

35. The Respondent told the Tribunal that thereafter she had returned to South Wales every weekend to support her mother and that she genuinely forgot to send the letter reporting the conviction to the SRA.

36. The Respondent told the Tribunal that she accepted that there came a point when she realised that she should have sent the letter to the SRA, but by then she was suffering with depression. The Respondent described the difficulties she faced when suffering with depression and told the Tribunal that the only salvation was her job, whilst she could not face dealing with anything in her personal life. The Respondent told the Tribunal that with the help of Ms Williams she had recovered from depression and had stopped taking medication for it; the Respondent told the Tribunal that she was also now able to deal with the mountain of debt which had built up.

37. The Respondent told the Tribunal that each of her convictions for driving with excess alcohol had occurred when she was dealing with severe family difficulties. The Respondent went on to tell the Tribunal about an incident in 1976, when she was only 15 years old, which had been very distressing for her and had caused or contributed to her later problems. The Respondent told the Tribunal that, as shown in a letter from her GP, she had been referred to a psychiatrist in 1992. The Respondent told the Tribunal that her relationship with her parents deteriorated and although she had been at times "an emotional wreck", her emotions did not affect her work.

38. The Respondent told the Tribunal about family problems following her father's death, in particular during 2013. The Respondent told the Tribunal that she had reported the 1976 incident and no longer had any demons with which to deal, and so she no longer abused alcohol. The Respondent told the Tribunal that in July 2015 she had had a full health check, which showed that her physical health was good.

39. The Respondent told the Tribunal that with regard to the convictions, she had acted recklessly. The Respondent was grateful that no allegation of dishonesty had been raised. The Respondent told the Tribunal that she believed she was a good lawyer. She referred to the personal character references within the Rule 5 bundle, which had been provided to the Magistrates' Court in 2013. The Respondent hoped that these references would demonstrate that she was a decent person. The Respondent also referred to client satisfaction survey documents from 2014 which were annexed to her Answer.

40. The Respondent was then cross examined by Mr O'Malley.

41. The Respondent accepted that she had acted recklessly; the convictions spoke for themselves. The Respondent told the Tribunal that she was aware of the need to report her convictions, but in about November/December 2011 panic had set in when she realised that she had not reported the 2011 conviction. The Respondent told the Tribunal that she had reported the 2013 conviction. She accepted that she had revealed the four convictions in October 2013, in response to a direct question from the SRA. The Respondent accepted that she could have reported the 2011 conviction in about July 2013, when she reported the June 2013 conviction. The Respondent told the Tribunal that there had been a delay between realising that she should notify the SRA of the 2011 conviction, in about October 2011, and October 2013. The Respondent told the Tribunal that she was depressed and had panicked; she had been

unable to deal with letters or phone calls about any personal matters, including concerning the debts she had built up from 2010.

Findings of Fact and Law

42. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

43. The Tribunal took care in preparing this written Judgment not to set out in too much detail the family circumstances and issues to which the Respondent had referred in the hearing. These were personal matters, which affected other members of her family, who had not had the opportunity to comment. The Tribunal noted that these various circumstances may explain the Respondent's emotional difficulties and episodes of depression and could therefore help to explain her misuse of alcohol, which had clearly been a problem for her at least since 1997, when she had her first conviction for driving with excess alcohol.

44. The Tribunal noted that the facts of the convictions were admitted, and the failure to report the 2011 offence until 2013 was admitted to be a breach of Rule 20.06. However, the Respondent denied that her conduct showed a lack of integrity and/or would diminish the trust the public would place in her or the provision of legal services.

45. The Tribunal found that the Respondent was credible and open in her evidence on oath, and it accepted what she said concerning her family circumstances and the considerable emotional and personal problems she had faced. However, it noted that there was limited medical evidence; only a letter from a GP, dated 18 June 2013 and prepared for the 2013 Magistrates' Court case set out any professional medical opinion.

46. The evidence of Ms Williams was clear and credible. The Tribunal accepted that the Respondent had engaged with the ATR and had continued with the programme on a voluntary basis, as a result of which she had made good progress. The Tribunal noted, and found, that Ms Williams had stated that the risk of the Respondent reoffending in a similar way had been reduced. However, there was no evidence that the risk was negligible.

47. The Tribunal was satisfied that in the Respondent's working life, she was a competent solicitor, who did a good and valuable job. This was supported by the references within the papers and, indeed, the Tribunal noted that the way in which she had presented her case was clear and professional, albeit she had become emotional at certain points in the hearing. The Tribunal also noted that there was no dishonesty alleged in this case.

48. **Allegation 1.1 - She was convicted of Driving with Excess Alcohol on 29 March 2011 and thereby failed to:**

1.1.1 uphold the rule of law and the proper administration of justice, contrary to Rule 1.01 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.2 behave in a way that was likely to diminish the trust the public places in her or the legal profession, contrary to Rule 1.06 of the 2007 Code.

48.1 The Respondent admitted that she had been convicted as alleged and that by virtue of the conviction, she had failed to uphold the rule of law and the proper administration of justice, contrary to Rule 1.01 of the 2007 Code. The Respondent denied that her conduct was in breach of Rule 1.06 of the 2007 Code.

48.2 The certified memorandum of conviction for the register of 15 April 2011 for Woolwich Magistrates' Court set out the details of the offence as follows:

> "On 19/3/2011 at Welland Street, London SE10 drove a motor vehicle, namely a mini cooper, index G15 RCM, on a road, namely Welland Street, London DE10, after consuming so much alcohol that the proportion of it in your breath, namely 118 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988".

48.3 The Respondent accepted that she had committed the offence; she had entered a guilty plea. The Memorandum of conviction was sufficient evidence of guilt, under Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules").

48.4 The Applicant's position was that conviction for this offence, particularly in the context of two earlier convictions for the same offence, amounted to a failure to uphold the rule of law and the proper administration of justice. The Respondent did not deny this, and the Tribunal was satisfied on the facts and on the admission that her actions were in breach of Rule 1.01 of the 2007 Code.

48.5 With regard to the alleged breach of Rule 1.06 of the 2007 Code, the Applicant submitted that where the Respondent had two previous convictions for driving with excess alcohol, the public would expect the Respondent, as a solicitor, to be particularly cautious not to commit the same offence again. The trust of the public would be diminished in that she had been convicted again, after two previous periods of disqualification from driving and the imposition of fines.

48.6 Mr O'Malley referred the Tribunal to the Respondent's contention that the offences had occurred in her private life and did not affect her ability or integrity as a solicitor. Mr O'Malley submitted that the case of Salsbury related to events which occurred in Mr Salsbury's personal capacity. He further submitted that the Tribunal should note that in the Afolabi case Moore-Bick LJ stated:

> "… It is for that reason that I am also unable to accept Mr Krolick's submission that the conduct which led to the appellant's conviction and sentence was of less significance because it was not committed in the context of her practice as a solicitor. The fact is that conduct of any kind that tends to undermine a person's integrity and trustworthiness also undermines confidence in him and the profession as a whole."

48.7 Mr O'Malley referred the Tribunal to paragraph 20 of the judgment in the Moseley case, where after referring to Bolton, Lewis J held:

> "But in my judgment, if the conduct is unconnected with professional duties but is still conduct which involves a lack of integrity and undermines public confident in the profession, the observations of the Master of the Rolls in Bolton still apply."

48.8 Mr O'Malley submitted that the Guidance to the 2007 Code, in relation to Rule 1.06, stated,

> "Members of the public must be able to place their trust in you. Any behaviour within or outside your professional practice which undermines this trust damages not only you but the ability of the profession as a whole to serve society".

48.9 The Respondent submitted that the Bolton case was still the leading case and supported her contention that it was the discharge of a solicitor's professional duties which were of concern when considering integrity or the reputation of the profession. The Respondent referred in particular to the passages in the then Master of the Rolls judgment in which it was stated:

> "It is required of lawyers practising in this country that they should discharge their *professional duties* with integrity, probity and complete trustworthiness… Any solicitor who is shown to have *discharged his professional duties* with anything less than complete integrity, probity and trustworthiness must expect severe sanctions." (Emphasis added)

It was submitted that the Bolton case involved a solicitor acting in a mortgage transaction, in which he had made a monetary gain.

48.10 The Respondent submitted that the Salsbury case involved doctoring a cheque, whilst Mr Salsbury was working as a Clerk to a Governing Body. She disputed the Applicant's submission that Mr Salsbury had been working in a personal capacity and submitted that he had also been carrying out legal work for the Governing Body. Mr O'Malley referred the Tribunal to paragraph 6 of the judgment in that case in which it was stated,

> "… Mr Salsbury undertook such work outside normal office hours and not in his capacity as a partner in the firm of solicitors".

48.11 The Respondent submitted that the matter of Afolabi concerned offences of money laundering; clearly, the involvement of a solicitor in such an activity, whether in the course of their professional work or otherwise was disgraceful and it would show a lack of integrity. The Respondent submitted that the case of Moseley did not involve a solicitor acting in the course of his professional duties, but a failure to disclose assets in bankruptcy; there had been dishonesty in that case.

48.12 The Respondent submitted that the cases referred to illustrated that the integrity of the solicitor and whether the conduct in question would diminish trust in the solicitor or the profession related to conduct in legal practice. The Respondent submitted that what she had done had nothing to do with her clients or her professional duties. The Respondent submitted that she had been "stupid", but had now dealt with the underlying issues. The Respondent submitted that the public should be able to trust solicitors with money, for example, but it would not reduce that trust because a solicitor had the convictions the Respondent had. The Respondent submitted that the 2007 Code and 2011 Principles were geared to a solicitor's professional integrity and standards. The Respondent submitted that her convictions had not affected her professional life.

48.13 The Tribunal considered carefully the submissions of the parties and the evidence in the case. It noted in particular the Respondent's submissions that the conviction had occurred in the context of her personal rather than professional life. It also took account of the fact that the proportion of alcohol in the Respondent's breath was high, such that a custodial sentence was imposed (although that part of the sentence was suspended).

48.14 The Tribunal was careful in its consideration of the two earlier convictions for similar offences; those convictions did not form any part of the allegations, and the Respondent had been admitted as a solicitor notwithstanding those convictions. However, the Tribunal accepted that those convictions could not be wholly disregarded in considering whether the Respondent's conduct which caused her conviction in March 2011 was conduct which was likely to diminish the trust the public would place in her or the legal profession.

48.15 It was not inevitable that a conviction, even for an offence as serious as driving with excess alcohol, would lead to a finding that a solicitor had damaged the trust the public would place in that solicitor or the profession. Each case had to be considered on its own facts.

48.16 The Tribunal noted that the Respondent had experienced difficult family and personal circumstances and that she had misused alcohol in the context of those difficulties. These circumstances could be regarded as sad and unfortunate. However, the misuse of alcohol was distinct from the act of driving after consuming excess alcohol; a solicitor who drank but did not drive or cause a public nuisance in any way, and who remained capable of doing their job, may require help but was unlikely to diminish public trust. In such circumstances, the misuse of alcohol was a private matter which was unlikely to require investigation or disciplinary action by the SRA.

48.17 The Tribunal took into account that driving with excess alcohol was an offence which the public, rightly, regarded as serious. It carried with it the risk of causing death or injury to others. The offence had taken place in public. Whilst it could not be said that the offence had taken place in the course of the Respondent's professional duties, it was not conduct wholly within her personal life. The Respondent had told the Tribunal of her emotional difficulties in 2011, but there was no specific medical evidence to suggest that her judgement had been impaired at the time of the offence. There was nothing known about the circumstances of the offence in March 2011 which suggested it was exceptional or that there was any potentially good reason the Respondent had chosen to drive when she should not have done so. The Respondent had been approximately three times over the relevant limit – 118 microgrammes of alcohol in 100 millilitres of breath, when the limit was 35 microgrammes. The District Judge who had dealt with the matter had been, in the Respondent's words, "compassionate" and had taken into account the various references and her personal difficulties. Nevertheless, the offence was so serious that a custodial sentence was imposed. Whilst not a decisive factor, the Tribunal was conscious that the Respondent was a criminal law practitioner and so would have been even more aware than other members of the profession of the impact of criminal acts on society. Further, the Tribunal noted that there was a risk that her personal reputation as a criminal law practitioner could be damaged, in that she may find herself representing defendants in the very court in which she had been convicted.

48.18 The Tribunal further took into account that the guidance to Rule 1.06 of the 2007 Code read,

> "Members of the public must be able to place their trust in you. Any behaviour within or outside your professional practice which undermines this trust damages not only you but the ability of the profession as a whole to serve society".

Whilst the professional conduct rules related primarily to the way a solicitor behaved in the course of working as a solicitor, it was clear that conduct outside professional practice could be conduct which would undermine trust in the individual and the profession.

48.19 The Tribunal noted that the most of the cases to which it had been referred related to activities within the course of professional duties. However, criminal activities within or outside the course of practice could be conduct which would diminish trust in an individual and/or the profession.

48.20 The Tribunal considered that in the circumstances of this case, and in particular given the factors noted at paragraph 48.17 above, the conviction in March 2013 was such as would be likely to diminish the trust the public would place in the Respondent and the profession.

48.21 The Tribunal was satisfied, for the reasons set out above, that allegation 1.1.1 had been proved on the facts and on the admission, and allegation 1.1.2 had been proved to the required standard.

49. **Allegation 1.2 - She failed to disclose a conviction from 29 March 2011 for Driving with Excess Alcohol to the Solicitors Regulation Authority ("the SRA") in breach of Rule 20.06 of the 2007 Code and/or thereby failed to act with integrity contrary to Rule 1.02 of the 2007 Code.**

49.1 The Respondent admitted that she failed to disclose the March 2011 conviction, in breach of Rule 20.06 of the 2007 Code but denied that she had failed to act with integrity.

49.2 The Respondent accepted that she had not disclosed the conviction until October 2013, and had done so in the context of a direct question from the SRA concerning her previous convictions. The Respondent accepted that the conviction was not disclosed promptly or within a reasonable time.

49.3 Mr O'Malley referred the Tribunal to the Financial Service and Markets Tribunal case of Hoodless and Blackwell in which it was noted that:

> "In our view, "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate).

49.4 The Tribunal noted that Mr O'Malley intended also to refer to a financial services case of Mark Anthony Financial Management and another v Financial Services Authority, ("Mark Anthony") but did not have available copies of the correct case; the Tribunal therefore did not take that matter into account.

49.5 The Respondent submitted that the Mark Anthony case concerned financial advisers, not solicitors, and involved both dishonesty and financial gain; clearly, there were no such elements in her case. The Respondent submitted that whilst the Applicant relied on the Hoodless and Blackwell case for a definition of "integrity", that case was before a Tribunal and not the High Court. The definition referred to by the Applicant involved a concept of moral soundness, but noted that there could be "genuinely grey areas", in which a finding of lack of integrity would not be appropriate.

49.6 The Respondent submitted that her failure to disclose the 2011 conviction until 2013 was an omission; she had not lied or covered up the matter. The SRA had been told of the conviction, albeit not promptly or within a reasonable time. The Respondent submitted that this was the only occasion on which she had failed to report a conviction, having reported two convictions prior to admission and the 2013 conviction.

49.7 The Tribunal noted the Respondent's evidence concerning the period after the conviction. The Respondent told the Tribunal that she was aware of the need to report the conviction, and had prepared a letter to the SRA. Immediately thereafter, family problems and illness meant that she had to travel from London to South Wales regularly; as a result of these difficulties and pressures, she had genuinely forgotten to send the letter. The Respondent told the Tribunal that thereafter she had suffered with

depression and been unable to deal with any personal matters, although she had continued to work effectively.

49.8 The Tribunal noted that in her response to the SRA in May 2014, the Respondent had stated,

> "I convinced myself that I would lose my job and that my world would come to an end. For these reasons I did not inform the SRA as I should have done, and I am extremely remorseful for it, but at the time everything seemed to overwhelm me so that I could not cope with any further problems."

In her oral evidence to the Tribunal, the Respondent stated that it was in about November/December 2011 that she realised she had not reported the conviction to the SRA and "panic set in." The Respondent told the Tribunal that it was in this period that she had been unable to deal with opening letters, answering the phone or otherwise dealing with her personal problems, including the debt she had incurred since 2010.

49.9 Whilst the Tribunal found the Respondent to be frank in her evidence, she had not produced any supporting evidence concerning the degree of impairment she had experienced during 2011 to 2013. The Respondent, as a criminal law practitioner, was well aware of the need to produce medical evidence where relevant. There was no medical or other independent evidence which showed a good reason why the Respondent had failed to report the offence for such a long period. The Tribunal accepted that in the period immediately after the conviction there had been particular and urgent matters with which she had to deal, and this could well have distracted her from reporting to the SRA. However, on her own evidence she realised by October/November 2011 that she had not yet reported the conviction. She was aware of the need to do so.

49.10 The Respondent had submitted that she had shown no lack of integrity in failing to report the conviction. In considering this submission, the Tribunal was not greatly helped by the "definition" of integrity in the Hoodless and Blackwell case. What was material was that the Respondent knew that she had a duty to report but, by default, had chosen not to do so. Her reason, as given in her response to the SRA in May 2014, was that she feared she would lose her job. Whilst this was an understandable reaction in many ways, it also illustrated that the Respondent appreciated the importance of reporting the matter; she was aware that doing so could have serious consequences, which she did not wish to face. Further, the Tribunal noted that in stating that she had "convinced herself" about the consequences of reporting the matter, the Respondent must have made a conscious decision on that point.

49.11 Although not specifically addressed in the evidence, it appeared that the Respondent had not reported the matter to her employer; had she done so, the employer would have been obliged to make a report to the SRA. This meant that the Respondent was in the position of potentially representing defendants at the court at which she had been convicted, with the possibility that police officers or the CPS would be aware of her conviction but her clients and employer were not. There was no evidence that there had actually been any professional embarrassment caused, but failing to report it was a risk the Respondent had run.

49.12 In the absence of any proper medical or other independent evidence to help explain the two year delay between realising she had not reported and actually reporting this conviction, the Tribunal could only conclude that the Respondent was aware during that period that she should report and yet she chose not to do so. The Tribunal appreciated that it would be difficult for most people to face the consequences of having to admit to having a conviction for a serious offence. However, a solicitor acting with integrity would have realised that reporting was essential, whatever the consequences may be. The Respondent had made a decision not to tell anyone of the conviction and she would have got away with it if she had not committed a further offence in 2013. Further, even if it were the case that the Respondent had been unable to face dealing with personal matters at all relevant times from 2011 to 2013, reporting a matter to one's regulator was a professional duty and not a personal matter. She had failed to carry out this part of her professional duties.

49.13 The Tribunal found, so that it was sure, that in failing to report the 2011 conviction until prompted to do so in October 2013, the Respondent was not only in breach of Rule 20.06 of the 2007 Code but she had also acted without integrity. The allegation was proved.

50. **Allegation 1.3 - She was convicted on 27 June 2013 of Driving with Excess Alcohol, Driving whilst Disqualified and No Insurance and thereby failed to:**

1.3.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the 2011 Principles");

1.3.2 act with integrity, in breach of Principle 2 of the 2011 Principles;

1.3.3 behave in a way that maintains the trust the public places in her and the provision of legal services, in breach of Principle 6 of the 2011 Principles.

50.1 The Respondent admitted that she was convicted, as set out, and that in committing those offences she was in breach of Principle 1 of the Principles. The Respondent denied that her conduct was in breach of Principle 2 and/or Principle 6.

50.2 The Respondent submitted that her criminal convictions would not affect her trustworthiness in providing legal services. The Applicant's and Respondent's submissions on integrity and diminution of trust in the Respondent/the provision of legal services set out under paragraphs 48 and 49 above were considered by the Tribunal, but are not repeated.

50.3 As noted above, the mere fact of a conviction would not in itself imply there was a lack of integrity and/or that the conduct would diminish the trust the public would place in the Respondent and in the provision of legal services. All of the circumstances had to be considered. There could be no doubt that the fact of the conviction in June 2013 was a failure to uphold the rule of law and the proper administration of justice, as admitted by the Respondent.

50.4 The Respondent's position, and evidence, was that no client was affected by her conviction and it had no direct impact on her ability to act as a criminal law solicitor. The Tribunal could accept that was the case. However, the Tribunal had to consider

not just whether the conviction was a purely private matter but also whether it demonstrated a lack of integrity and/or would diminish trust in the Respondent and the provision of legal services.

50.5 The Tribunal found that a conviction would not necessarily amount to a breach of the professional conduct rules and Principles, but all of the facts and circumstances had to be considered. It could not be said that a conviction for a matter which took place outside of a solicitor's practice could not be the basis for a professional disciplinary matter.

50.6 The conviction in June 2013 was particularly serious. It not only involved driving with excess alcohol, but also driving whilst disqualified; this aggravated matters substantially. The Respondent was well aware that she had been disqualified. Within the bundle of papers the Tribunal noted a letter written by the Respondent to Bromley Magistrates' Court, dated 24 May 2013, making an application (apparently for the third time) to have the disqualification lifted. The reason given for the application related to the Respondent's need to care for her mother, facilitate hospital appointments and the like. That letter was just one week before the offence, which occurred on 31 May 2013 and led to the conviction on 20 June 2013.

50.7 The Tribunal noted that the offence did not occur in the context of any sort of emergency or need to care for the Respondent's mother; rather, the Respondent had used her mother's car to drive home from a public house, at about 10.30pm. There was no reason for the Respondent to have chosen to drive when: a) she was above the legal drink-drive limit; b) she was aware she was disqualified from driving and c) she knew that she was not insured to drive. Indeed, the Respondent had not explained her decision to drive on that occasion.

50.8 The Tribunal had no doubt that this fourth conviction for driving with excess alcohol, which was exacerbated by the fact that it was during a period of disqualification from driving,amounted to lack of integrity on the part of the Respondent. She had fallen short of the standards of probity to be expected of members of the profession. Her decision to drive on 31 May 2013 was not only a poor decision but was one which put at risk the life and health of others; in doing so, she had failed to behave in an upright manner. The Respondent may have been an "emotional drink driver", as she was reported to have told the police, but there was a distinction between misusing alcohol to escape from personal problems and choosing to drive after misusing alcohol. The Tribunal was satisfied that the fact of this conviction, in the circumstances in which it had occurred, was sufficient to establish that the Respondent had acted without integrity.

50.9 For the reasons noted above in relation to allegation 1.1, the Respondent's conduct was not wholly within the private sphere; it could and did have an impact on her reputation. Where a solicitor was convicted for the second time in just over two years of the serious offence of driving with excess alcohol, the public would consider that the reputation of that solicitor was damaged. It was not a situation in which there was a one-off error of judgement. The public would, rightly, expect that a solicitor would be careful to avoid committing further offences; the Respondent had failed to do so and, indeed, the offence was aggravated by her breach of a court imposed order banning her from driving. The public's view of whether the Respondent could be

trusted would be affected by the fact that this was, in fact, the fourth offence of a similar kind. Whilst there had been a period of over 10 years between the 2000 and 2011 offences, the fact that a solicitor had repeated the offences could only damage the reputation of the solicitor and the trust the public would have in the provision of legal services.

50.10 The Tribunal was satisfied to the required standard on the facts and the admission that allegation 1.3.1 had been proved and was satisfied on the facts and the evidence that allegations 1.3.2 and 1.3.3 had been proved.

Previous Disciplinary Matters

51. There were no previous matters before the Tribunal in which findings had been made against the Respondent.

Mitigation

52. The Respondent told the Tribunal that it had heard her mitigation as part of her evidence and submissions on the allegations and there was nothing to add.

Sanction

53. The Tribunal had regard to its Guidance Note on Sanction (December 2014) and in particular the most fundamental purpose of sanction in the Tribunal, that is the maintenance of the reputation of the solicitors' profession.

54. The Tribunal had no reason to doubt the Respondent's assertion that she was a good solicitor, in particular in the field of criminal law. There were references within the case papers which supported that. Further, the Tribunal noted that the Respondent had presented her case and evidence in a professional manner, albeit she had become emotional from time to time during the hearing.

55. This was not a case in which the appropriate sanction was immediately clear and the Tribunal considered very carefully the factors set out in the Guidance Note, and all of the circumstances, in determining what was appropriate in this instance.

56. In assessing the seriousness of the Respondent's misconduct, the Tribunal noted that with regard to culpability, the Respondent was wholly culpable for the misconduct; it related to her own actions, which were her responsibility. There had been no real motivation for committing the offences and they could not be said to have been planned. However, the failure to report the 2011 conviction included an element of deliberation, in that the Respondent avoided taking action she should have taken. There had been no specific abuse of a position of trust. Whilst the Respondent had referred to her personal and emotional problems, on which she blamed her misuse of alcohol, the Respondent had had control of the circumstances in which the offences occurred; she could have chosen not to drive. As a criminal lawyer, the Respondent was aware of the repercussions of driving with excess alcohol and/or driving whilst disqualified and uninsured; her experience was relevant to culpability to that extent.

57. The Tribunal further considered the harm caused by the Respondent's misconduct. There was a clear impact on the reputation of the profession; that reputation was damaged where a solicitor repeated a serious offence, as set out in the findings above. Whilst not in itself as big a blow to the reputation as cases which might involve dishonesty and financial loss to clients, the trust the public had in solicitors and the provision of legal services was eroded by cases in which solicitors were seen to have behaved badly, particularly if the public perceived that the errant solicitor had "got away with it" by receiving a nominal sanction. The Respondent's conduct in driving with excess alcohol was potentially very damaging; such conduct could lead to death, injury and/or the destruction of property. Although this had not occurred in the present case, there had been a serious risk of substantial harm through the Respondent's conduct.

58. The Tribunal considered whether there were any aggravating factors. Misconduct which included the commission of a criminal offence was an aggravating matter, and the Respondent's conduct was repeated. The Respondent's failure to report the 2011 conviction for over two years included an element of concealment. The Respondent's driving whilst disqualified and without insurance were further and very serious aggravating factors. The Respondent was aware that her misconduct was serious, and that repetition would be an aggravating matter.

59. The Tribunal also considered whether there were any mitigating factors present. The Respondent had made progress since 2013 in addressing her problems with alcohol, and there could be little doubt that Ms Williams had provided a valuable service and support to the Respondent (and no doubt others with whom she dealt). The Tribunal noted that the Respondent had admitted the offences themselves at an early stage and had co-operated with the SRA in the course of the investigation. However, it could not find that she had shown genuine insight into her misconduct as the Respondent did not recognise the harm which her misconduct would have on the public perception of her or the profession.

60. In the light of the seriousness of the misconduct, and taking account of the factors noted above and the Tribunal's duty in considering sanction to maintain the reputation of the profession, the Tribunal was able to rule out sanctions at the lower end of the scale. It was inappropriate to make either "no order" or to reprimand the Respondent. The Tribunal was conscious that the Respondent had been dealt with by the criminal justice system but recognised that it had a duty to deal with the Respondent in a professional disciplinary context.

61. The Tribunal determined, on weighing the factors noted above, that imposing a fine would not be sufficient to protect the reputation of the profession. The Tribunal noted that it could not protect the public from any tendency the Respondent had to misuse alcohol and drive thereafter; the Tribunal hoped that the Respondent would be able to continue to address these issues with support from appropriate agencies. The Tribunal did not consider that the public needed any protection from the Respondent in the way in which she practiced as there was nothing to suggest that her work had been below the expected standard. The Tribunal's main concern, therefore, was the protection of the reputation of the profession.

62. As there was no concern about the Respondent's abilities in practice, a restriction order (whether with or without some other sanction) was not appropriate.

63. The Tribunal considered carefully whether a suspension or strike off was most appropriate in the circumstances of this case, bearing in mind the factors set out in particular at paragraphs 56 to 59 above. This was a finely balanced decision, in which the Tribunal had to use its experience as an expert Tribunal. What was clear was that a sanction at the top end of the scale was appropriate and necessary to maintain public confidence. Given the seriousness of the Respondent's misconduct, the Tribunal assessed that the proportionate sanction was to strike the Respondent off the Roll of Solicitors. Any lesser sanction, such as suspension, would not be adequate in the particular circumstances of this case.

Costs

64. The Applicant made an application that the Respondent should pay the costs of the proceedings. The Applicant's statement of costs to the date of the hearing was in the total sum of £3,080.50 and the statement as at the date of issue showed that the costs at that point were calculated at £1,300. The costs claimed included travel costs from Birmingham and accommodation and the work done was calculated at the rate of £130 per hour.

65. Mr O'Malley told the Tribunal that he and the Respondent had agreed that the figure of £2,500 was the appropriate amount to order. The Respondent confirmed that she had agreed this sum with the Applicant.

66. The Respondent had submitted a comprehensive statement of her financial circumstances, including her debts. The Respondent was not currently employed and had limited assets.

67. The Tribunal considered the statement of costs and determined that the agreed sum of £2,500 was an appropriate and proportionate amount to order by way of costs.

68. The Tribunal noted that the Respondent was engaged in a family dispute concerning the Wills of the Respondent's late parents, so ownership of the house in which the Respondent lived was in dispute. The Respondent's means were very limited, although it was possible that she would obtain ownership of her home. The Tribunal determined that in the light of the Respondent's means, the order for costs should not be enforceable without further permission from the Tribunal, save that the Applicant could apply to register a charge over any property owned by the Respondent. It would be expected that the Respondent would inform the Applicant of the progress of the dispute and its outcome, so that the Applicant could determine whether or not it could apply to register a charge over a property.

Statement of Full Order

69. The Tribunal Ordered that the Respondent, Gail Evans solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00, such costs not to be

enforced without leave of the Tribunal, save that the Applicant may apply for a charging order over any property owned by the Respondent.

Dated this 1st day of October 2015
On behalf of the Tribunal

N. Lucking
Chairman