

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11404-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW THOMAS BENSON

Respondent

Before:

Mr D. Glass (in the chair)
Mr J. A. Astle
Mrs L. McMahon-Hathway

Date of Hearing: 12 February 2016

Appearances

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

The Respondent appeared and was represented by Peter Cadman, solicitor of Russell-Cooke Solicitors, 8 Bedford Row, London, WC1R 4BX.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 Between October 2010 and December 2013 the Respondent conducted fictitious litigation in respect of his client, Mr M, in breach of any or alternatively all of Rules 1.01, 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 and, in respect of conduct after 6 October 2011, in breach of any or alternatively all of Principles 1, 2, 4 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.
 - 1.2 The Respondent caused three withdrawals to be made totalling £112,908.18 from the client bank account in respect of Mr M and E that were not properly required in breach of Rules 22(1)(a) of the SRA Accounts Rules 2011, in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.
 - 1.3 The Respondent falsified documents and correspondence in respect of his client, E, in breach of all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.
 - 1.4 The Respondent misled the SRA Forensic Investigation Officer in an interview that took place on 17 March 2014 in breach of Principles 2 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

The Respondent admitted all the allegations, including dishonesty.

Documents

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

Applicant:

- Application dated 23 June 2015 together with attached exhibits
- Applicant's Schedule of Costs dated 2 February 2016

Respondent:

- Respondent's Answer dated 30 September 2015
- Statement of Andrew Thomas Benson dated 2 February 2016
- Email from the Respondent's solicitors to the Tribunal dated 4 January 2016
- Letter dated 3 February 2016 from the Respondent's solicitors to the Tribunal
- Medical Report dated 15 July 2015

- Various testimonials
- The Respondent's Personal Financial Statement together with supporting documents

Factual Background

3. The Respondent was born in June 1969 and was admitted to the Roll of Solicitors on 2 December 1996.
4. At the material time he practised as a partner at Byrne & Partners until 31 March 2010 and thereafter practised as a member in the firm of Byrne and Partners LLP ("the firm") until he was expelled on 26 March 2014. He did not currently hold a practising certificate.

Allegation 1.1

5. On 10 January 2014, the Solicitors Regulation Authority ("SRA") received a complaint from S Solicitors that the Respondent had invented an entire piece of litigation from about October 2010 to December 2013 in connection with instructions he had received on behalf of Mr M ("M"). S Solicitors were instructed by M's parents to assist as M was abroad. This complaint prompted the SRA to carry out an investigation which culminated in a Forensic Investigation Report dated 24 October 2014 ("the Report").
6. The Report found that the purported litigation did not occur, that the Respondent had created and sent to M and/or S Solicitors falsified litigation documents including court orders, judgments, transcripts and third party correspondence. Members of the Judiciary provided evidence to the SRA which confirmed court hearings did not take place. Leading Counsel provided evidence to the SRA to confirm he was not instructed and the Claimant's solicitors provided evidence which confirmed no litigation had occurred since October 2010.
7. The Report also identified that the Respondent had misled the SRA Forensic Investigation Officer ("FI Officer") in an interview held on 17 March 2014, in that amongst other things, he denied he had undertaken any work for M since October 2010 and that he was surprised by S Solicitors' allegations.
8. The Report found the Respondent had also caused improper withdrawals on client accounts of M and another client, E. He had also fabricated a letter and a Statutory Demand that he had sent to E.
9. On 26 March 2014, the Respondent was expelled from the firm with immediate effect. The letter from the firm to the Respondent dated 26 March 2014 expelling him stated:

"We have conducted an initial review of the [M] files and emails that we have retrieved from your hard-drive and the servers. It appears to us that the following has occurred:

1. You have “fabricated” litigation from a period shortly after October 2010 to date including false correspondence, false court orders and transcripts of hearings;
2. You attempted to mislead the client into believing that you were conducting that litigation properly and had in fact instructed two leading counsel during that period which to our knowledge was not the case;.....”

Genuine Litigation

10. M was one of two directors of a Bahamian company, SG, which in 1999 obtained a loan from the Islamic Investment Company of the Gulf (“IICG”) for US\$15 million. The loan was secured by a bank and personal guarantees were given by the directors of SG. The guarantees were subject to English law and English jurisdiction. By 2000, IICG had obtained repayment of US\$7.5 million under the bank guarantee but SG defaulted on the balance. IICG commenced proceedings in the English courts against SG in 2001 and, in October 2001 obtained a judgement in default of US\$10.25 million as well as a worldwide freezing injunction against M and his family members. Pursuant to the provisions of the freezing order, the directors of SG made declarations about their assets.
11. The IICG litigation in the English courts was associated with litigation in other jurisdictions involving IICG and M’s family. From 2001 until 2007 IICG bought no further proceedings against the directors in the English courts. In 2007 IICG recommenced litigation in the English courts, the thrust of which was to pursue M individually for the summary judgement debt of US\$10.25 million. The proceedings largely related to M’s alleged failure to make full and proper disclosure of his assets.
12. IICG commenced oral examination proceedings in the High Court against M in January 2007 and within those proceedings, Master Miller made an Order on 17 January 2007 that M provide information about his means and produce various documents relating to his means. The Respondent’s conduct of the proceedings on behalf of M began in June 2007 and involved extensive litigation and hearings relating to M’s compliance with Master Miller’s Order and subsequent orders made in the proceedings. NRF acted for IICG.
13. M’s failure to comply with the Orders led to committal proceedings in which a suspended Committal Order was made in July 2009 by Mr Justice Steel. On 4 October 2010 Mr Justice Steel lifted the suspension of the committal and issued a bench warrant for M’s arrest. Proceedings were brought by M to set aside the Committal Orders after the Respondent’s misconduct was discovered.

Fictitious Litigation

14. From October 2010 to December 2013 the Respondent was involved in conducting false litigation. He gave M the impression that he was still acting for him in seeking to appeal Mr Justice Steel’s Order of 4 October 2010. He did so by fabricating and sending false documents to M and to S Solicitors. The fabricated and false documents included the following:

- Sealed court orders and judgments
 - Court hearing transcripts
 - A signed witness statement made by a solicitor employed by NRF
 - Various other litigation documents
 - Correspondence between the Respondent, the Court, Counsel and NRF
15. The Respondent held out to M and to S Solicitors that at least 14 Court hearings had taken place in the High Court (Queen's Bench Division) and the Court of Appeal. None of the hearings had actually taken place. The various false court orders and judgments purported to show the suspension and setting aside of the Committal Order and the bench warrant issued by Mr Justice Steel on 4 October 2010 and Orders permitting further opportunities for M to show his compliance with his disclosure obligations. The falsified litigation became protracted because of delays and procedural irregularities.
16. The falsified litigation effectively came full circle on 28 May 2013 when, according to the Respondent, Mr Justice Popplewell found M to be in contempt and handed down a bench warrant for his arrest and an appeal against the findings was unsuccessful at a hearing on 30 August 2013.

Falsified Documents

17. S solicitors provided the SRA with 6 lever arch files relating to the falsified litigation, and the firm provided the FI Officer with 18 lever arch files ("the M files"). The M files contained extensive email correspondence between the Respondent, M, and S Solicitors during the falsified litigation period, which amongst other things made ongoing references to purported litigation in M's case. The FI Officer concluded that the entirety of the M files was either falsified by the Respondent or it related to misleading and untrue correspondence which the Respondent had engaged in with M and with S Solicitors.
18. The FI Officer found 29 documents on the M files which purported to be issued by the English courts. They were dated between 16 March 2011 to 30 August 2013 and consisted of the following:
- 9 'sealed' court orders issued by the Queen's Bench Division
 - 5 'sealed' court orders issued by the Court of Appeal
 - 4 'approved' judgements issued by the Queen's Bench Division or Court of Appeal
 - 2 'transcripts' of Queen's Bench Division hearings
 - 9 items of 'correspondence' being emails and letters issued by the Courts

19. Some of these documents were shown to be signed by Judges and contained court stamps which varied in size, resolution and orientation. None of the documents were genuine. Some documents contained irregularities on the face of them such as dating and typographical errors. Many of the Judges confirmed they did not make the Orders that were in their names or sit on the hearings that gave rise to those Orders. Examples were:
- A 'sealed' High Court Order of Mr Justice Popplewell dated 5 March 2013 which was in effect an 'Unless Order'
 - Two 'sealed' Orders of the High Court dated 28 May 2013 signed by Mr Justice Popplewell certifying that M had not complied with the suspensory terms of the Committal Order because he had failed to produce all the documents required, and the issue of a bench warrant
 - A five page judgment of the High Court hearing on 28 May 2013 presided over by Mr Justice Popplewell in which he found that M had been in wilful disobedience of the Order of Master Miller made in January 2007. The judgement indicated NRF were represented by Anthony Trace QC and M was represented by Edward Fitzgerald QC
 - A transcript of the hearing on 28 May 2013 in the High Court presided over by a 'Mr Justice David Popplewell'
20. Mr Justice Popplewell was provided with a copy of all these documents and confirmed in an email dated 8 August 2014 that none of them were genuine, and none reflected judgments/Orders he had made or hearings he had conducted. Mr Justice Popplewell pointed out:
- He was on vacation on 28 May 2013 and 21 August 2013;
 - The transcript of the court hearing on 28 May 2013 contained a number of anomalies, namely the incomplete date of the hearing, that it was headed 'draft proceedings' and the Judge's name on the transcript was given as 'Mr Justice David Popplewell' whereas his correct first name was Andrew;
 - The language used in the transcript was characteristic of his style and may have been taken in part from another hearing he had conducted;
 - He was sitting on another trial on 5 March 2013 and was not one of the commercial Judges dealing with paper applications.
21. The Private Secretary to the President of the Queens Bench Division of the High Court was provided with a copy of the 29 documents by the FI Officer. He produced a witness statement exhibiting written confirmation from Judges (including Mr Justice Popplewell), clerks and court staff confirming the 12 Court documents were not genuine. A senior partner at the firm provided the FI Officer with an affidavit dated 7 April 2014 confirming no hearings had taken place on M's case since 4 October 2010.

22. The FI Officer identified 14 documents from the M files dated 28 September 2011 to 30 August 2013 that made direct reference to Mr Fitzgerald QC's instructions in M's case. These included emails between the Respondent and Mr Fitzgerald QC's Chambers, a signed undated letter from Mr Fitzgerald QC to The Lord Chief Justice and 4 court judgements. The FI Officer also identified 55 false emails between the Respondent, M, and S Solicitors which made reference to telephone conferences involving Mr Fitzgerald QC, the Respondent, S Solicitors and M.
23. Mr Fitzgerald QC provided a witness statement dated 14 October 2014 in which he confirmed:
- He was not instructed on M's case and had never received any instructions from the Respondent or his Firm;
 - He did not appear in any hearings in which he was purported to have been acting;
 - The emails that purported to show correspondence between the Respondent and Mr Fitzgerald's clerk/practice manager were not genuine;
 - The letter to the Lord Chief Justice was not genuine;
 - The references made in the 55 emails sent by the Respondent to S Solicitors and to M referring to Mr Fitzgerald's involvement were wrong.

Falsified Documents NRF

24. The M files contained 25 documents making direct reference to the involvement of NRF in the falsified litigation period. The FI Officer found 33 documents on the M files, 8 of which related to genuine litigation. The other 25 documents included emails sent by NRF, a signed witness statement of an associate solicitor at NRF, a skeleton argument prepared by Mr Trace QC for the Claimants (IICG) and various court judgements. There were also 31 falsified emails between the Respondent, M and/or S Solicitors which made a direct reference to NRF.
25. A partner at NRF, Mr H, was provided with a copy of a schedule of the 33 documents, and after carrying out enquiries he produced a witness statement dated 20 October 2014 which confirmed that 25 of the documents were not genuine. The last genuine document was on 20 October 2011. Mr H confirmed that:
- There was no trace of the various emails that were purportedly sent by NRF, or emails in which they were copied in. The footers on the emails purportedly sent by NRF were wrong;
 - There was no trace of letters that were sent to NRF or those that they were copied into;
 - The witness statement of the associate solicitor at NRF was fictitious. The signature was not that of the associate solicitor and he had no recollection of any of the Orders of Mr Justice Popplewell;

- There was no trace of the skeleton argument which was fictitious. Indeed Counsel for the claimants, Mr Trace QC and his junior, had returned their files to NRF two weeks before the date of the skeleton argument;
- There was no trace of the judgments on NRF's files and they had no recollection of such proceedings.

Mr Justice Hamblen's Judgment dated 19 November 2014

26. Mr Justice Hamblen allowed M's application and set aside the Order of Mr Justice Steel dated 4 October 2010 which had activated the suspended Committal Order and issued a bench warrant for M's arrest. In his Judgment Mr Justice Hamblen concluded:

“104. The deception practised by Mr Benson over a period of more than three years, as summarised above, is rightly described as breathtaking.....

123. [M]'s submissions are based on the documents and the evidence of [S Solicitors]. I have not received any evidence or representations from Mr Benson or Byrne and Partners. It also appears that [M] may not have been provided with the full files of Byrne and Partners. Any findings I make on the evidence currently before the court for the purpose of the present application must be understood in the light of those limitations.....

141. In an ordinary case there would be strong grounds for imposing conditions on the exercise of any discretion in favour of [M], as indeed has been done in the past. However, by definition this case is “out of the ordinary”. Indeed it is at the extreme limits of what is “out of the ordinary”. It is a case which raises serious concerns about the circumstances in which the ACO was made and in relation to which it has been shown there is good reason to believe that [M]'s own solicitor, a man who has been shown to be dishonest, was acting against his interests. It is axiomatic that justice must be seen to be done. In the circumstances of the present case in my judgement that requires the setting aside of the ACO unconditionally.”

Allegations 1.2 and 1.3

Withdrawals Relating to M

27. The Respondent raised a bill on M's matters for £28,295.95 on 11 January 2012. This bill represented time that the Respondent had charged for the fictitious litigation that he undertook. The Respondent caused transfers in the amount of £17,908.18 from monies held on account of costs in part payment of the bill.
28. M paid £25,000 to the firm in compliance with a fabricated court order dated 4 July 2011. The Respondent caused the monies to be used in part payment of bills raised on 18 January 2012 (£7,905.94) and 28 March 2011 (£30,000). The bill related to Counsel's fees that had been properly incurred in the genuine litigation.

29. The firm sent a letter to M dated 13 May 2014 explaining the cause of the shortage and the replacement of it.

Withdrawals and Falsified Documents Relating to E

30. The Respondent acted in a claim for E in the drawback of excise duty from HMRC in the sum of £1.2-£1.4 million. E was initially successful in the First Tier Tax Tribunal on 28 September 2011. However, HMRC successfully overturned the decision in the Upper Tax Tribunal on 9 May 2013. The Respondent lodged an appeal application to the Court of Appeal but that was dismissed on 14 October 2013.
31. On 21 March 2012 the Respondent requested £70,000 from E as a security fee to be paid into court in return for the tax owed, which was by then subject to an appeal. The Respondent subsequently instructed the accounts department on 21 March 2012 to transfer the monies into office account as payment for an unpaid bill.
32. On 23 February 2013, E sent an email to the Respondent referring to a telephone conversation the previous day and making a demand that the Court Funds Office repay the monies of £70,000. The email instructed the Respondent to issue a Statutory Demand for the return of the money.
33. Following E chasing the Respondent for progress, he forwarded to them copies of documentation on 12 March 2013 purporting to show he had issued a letter to the Registrar at the Royal Courts of Justice and a Statutory Demand against the Ministry of Defence for £70,000 being the “return of security deposit”. There was no further correspondence on the firm’s client file beyond the date of the Statutory Demand.
34. On 13 May 2014 the firm wrote to E confirming the firm had refunded the £70,000 plus interest back to their client account.
35. The firm instructed KM, as a solicitor and chartered accountant, to undertake a review of the Respondent’s 23 open client files. KM concluded that on two of the files, M and E, there was evidence of documents which had been fabricated and inappropriate use of client funds. He also concluded that bills had been raised on these two files where work had not been undertaken. He further concluded that the transfers of £17,908.18 and £25,000 needed to be reversed in relation to M, and the transfer of £70,000 needed to be reversed in relation to E.

Allegation 1.4

36. The Respondent was interviewed by the FI Officer and a SRA colleague on 17 March 2014. During that interview the Respondent misled the FI Officer by providing misleading and inaccurate information in relation to his involvement in M’s case since October 2010. The Respondent stated:
- He had not conducted any work on M’s case since about 2010, other than some discussions with M with a view to reopening his case and concerning outstanding costs;
 - That he had no knowledge of what he described as the “mythical” court orders;

- He had been surprised by S Solicitors' allegations that the litigation had been fabricated.

Witnesses

37. The following witnesses gave evidence:

- James Sturman QC

Findings of Fact and Law

38. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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.

39. **Allegation 1.1: Between October 2010 and December 2013 the Respondent conducted fictitious litigation in respect of his client, Mr M, in breach of any or alternatively all of Rules 1.01, 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 and, in respect of conduct after 6 October 2011, in breach of any or alternatively all of Principles 1, 2, 4 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.**

Allegation 1.2: The Respondent caused three withdrawals to be made totalling £112,908.18 from the client bank account in respect of Mr M and E that were not properly required in breach of Rules 22(1)(a) of the SRA Accounts Rules 2011, in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

Allegation 1.3: The Respondent falsified documents and correspondence in respect of his client, E, in breach of all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

Allegation 1.4: The Respondent misled the SRA Forensic Investigation Officer in an interview that took place on 17 March 2014 in breach of Principles 2 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

39.1 The Respondent had admitted all the allegations including the allegations of dishonesty. In light of his admissions and of all the evidence, the Tribunal found all the allegations proved.

Previous Disciplinary Matters

40. None.

Mitigation

41. The Tribunal heard evidence from Mr James Sturman QC in which he described the Respondent's conduct as "utterly inexplicable". He spoke highly of the Respondent's judgment and competency and expressed his shock at the Respondent's actions. He gave details of a case that he had worked on with the Respondent during the period around January 2013 to February 2013 when he stated the Respondent had dealt with the case extremely well, although he had appeared very strained. Mr Sturman stated he had attended the Tribunal hearing to explain that the Respondent was highly regarded by many and "not a bad man".
42. Mr Cadman, on behalf of the Respondent, referred to this as an odd case. Events had been protracted over many months and many documents had been fabricated. Indeed, on one occasion, the Respondent had purported to be two people – himself and a QC, on a conference call with the client. He had not acted for personal benefit and indeed, had only earned a small proportion of the profits of the firm.
43. Mr Cadman confirmed that as soon as he had had his first meeting with the Respondent, he had referred the Respondent for medical treatment. Mr Cadman provided further details of his concerns in relation to the Respondent's health and referred the Tribunal to the medical report dated 15 July 2015. That report made reference to the Respondent's depression and stress and stated as follows:

"In my clinical opinion this combination of depression, heavy drinking and overwhelming stress is likely to have clouded Mr Benson's judgment to a very significant degree. He also found himself in a vicious circle in which his persistence in fabricating documents was itself a significant source of stress which further worsened his mental distress and further clouded his judgement

In conclusion, in my clinical opinion Mr Benson's mental health problems between 2010 and 2013 did not negate his free will but did impact very significantly on his decision making in respect of his conduct in the [M] case and the [E] matter."

44. Mr Cadman also referred the Tribunal to the various testimonials provided. He stated the Respondent accepted he was unfit to practise as a solicitor and that his long course of conduct had impacted on the reputation of his profession. It was very difficult for the Respondent to attend before the Tribunal and he accepted he would be struck off the Roll of Solicitors as a result of his actions. The Respondent had now obtained alternative employment working part-time in a local supermarket which enabled him to care for his children during the day and contribute to the family finances. The Tribunal was provided with details of the Respondent's financial position.

Sanction

45. The Tribunal had considered carefully the Respondent's submissions, his statements, the evidence of Mr Sturman, the testimonials provided and the documents in this case. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

46. In relation to the aggravating factors, the Respondent's dishonest course of conduct had been sophisticated and calculated. It had taken place over a lengthy period of time. The Tribunal found it almost unbelievable that the Respondent went to the bizarre lengths that he did to maintain the fictitious litigation. His deceptive conduct had indeed been "breathtaking" as described by Mr Justice Hamblen. The Respondent had concealed his failure to act properly from his client, M, to an extreme degree and had kept the charade going for a very long period of time. The Respondent had acted in gross breach of the trust placed in him by M, his parents' solicitors - S Solicitors, and E, as well as misleading the FI Officer. He knew or ought to have known this was in material breach of his obligations to protect the public and the reputation of the legal profession.
47. The Tribunal then considered the mitigating factors. The Respondent had a previously long unblemished record. He had shown genuine insight and remorse and had made candid admissions. He was clearly horrified by his conduct and ashamed of himself. The Tribunal also gave him credit for engaging with these proceedings. The Tribunal noted the funds had been repaid to the clients. The Respondent's behaviour in relation to the fictitious litigation and documents had been limited to two particular clients and his other cases had not been affected.
48. The Tribunal took into account the excellent references provided. The Tribunal particularly noted that Mr Sturman had made reference to other litigation which the Respondent had been engaged in during 2013 when the Respondent had acted scrupulously, properly representing another of his client's interests at that time. This was during the same period that concerned M and E. The Tribunal accepted the Respondent had health issues which would have undoubtedly made matters worse. However, the medical evidence indicated the Respondent's health "did not negate his free will".
49. The Tribunal considered this to be a sad case and could hardly imagine how difficult this hearing and the last 12 months had been for the Respondent. The Tribunal respected the fact that he had faced up to the consequences of his actions and had found the courage to appear before the Tribunal. There were other similar Respondents who faced dishonesty allegations who ignored the proceedings and chose not to appear. The Tribunal considered this to be an indication of the Respondent's character.
50. The Tribunal also respected the fact that the Respondent had sought and obtained alternative employment which could be seen as at a lowly level compared to his occupation as a solicitor. He had done this to contribute to his family finances and again this was not something all Respondents in such circumstances considered to be an appropriate thing to do. The Respondent had significant health problems which would take time for him to overcome and the Tribunal hoped he would find the strength to move forward in his life as he clearly had the ability to do so.
51. However, the Tribunal was mindful of the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:
- "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

Whilst this was a sad case, the Respondent had admitted he had acted dishonestly in relation to four separate allegations over a long period of time. The Tribunal was satisfied that there were no exceptional circumstances in this case. The misconduct was extremely serious and the appropriate sanction was to strike the Respondent off the Roll of Solicitors. Any lesser sanction would not protect the public or the reputation of the profession nor would it maintain public confidence in the profession. Accordingly the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

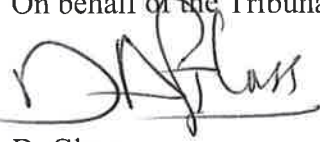
52. Mr Moran requested an Order for the Applicant's costs. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs amounting to a total of £39,321.40. The investigation had been significant involving a large amount of documents and the allegations of dishonesty had been denied up until September 2015. Many of the costs have been incurred prior to that date. Mr Moran indicated that the costs could be reduced slightly by £130 as the hearing had taken less time than estimated.
53. Mr Moran confirmed the Respondent's Statement of Means was not challenged. Whilst he did not oppose an Order for costs not to be enforced without leave of the Tribunal, he did seek leave to apply for a Charging Order on the Respondent's assets. It was clear the Respondent had an interest in a property and as no formal valuation had been undertaken, the SRA would like the opportunity to investigate this further.
54. Mr Cadman, on behalf of the Respondent confirmed the amount of costs claimed was not disputed. However, the Respondent's Statement of Means showed he did not have substantial income and nor did he have funds to arrange for a valuation of his interest in a property. The Respondent had no equity in his share of the property which was jointly owned with his wife. Mr Cadman stated that his understanding was that a Legal Charge could not be registered on the property but a Restriction Order could be placed upon it. Mr Cadman requested that the order for costs should not be enforced without leave of the Tribunal in any event.
55. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable, indeed these were not disputed by the Respondent. This was a case that had clearly involved a great deal of work by the FI Officer. Having made the reduction sought by Mr Moran, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £39,191.40.
56. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided detailed information about his means which was accepted by the Applicant. The Respondent was on a low income. He was working part-time and did not have the means to be able to meet the Order for costs.
57. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent did have an interest in a property and there was no reason why the SRA should not be able to apply for a Charging Order if this was available to them. It was a matter for the SRA to make the appropriate application. Therefore the Tribunal

Ordered that the Order for costs was not to be enforced without leave of the Tribunal save that the Applicant may apply for Charging Order in respect of any property owned by the Respondent.

Statement of Full Order

58. The Tribunal Ordered that the Respondent, ANDREW THOMAS BENSON, 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 £39,191.40, such costs not to be enforced without leave of the Tribunal save that the Applicant may apply for a Charging Order in respect of any property owned by the Respondent.

Dated this 14th day of April 2016
On behalf of the Tribunal



D. Glass
Chairman

Judgment filed
with the Law Society
on 18 APR 2016