SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11700-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

PHILIP JAMES SAUNDERS — Respondent

Before:

Mr E. Nally (in the chair)
Mr P. Lewis
Mrs N. Chavda

Date of Hearing: 30 April 2018

Appearances

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

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent Philip James Saunders were that on 31 January 2017 he was tried and convicted upon indictment of assault occasioning actual bodily harm and thereby failed to:

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

1.2 act with integrity in breach of Principle 2 of the 2011 Principles; and/or

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

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 15 August 2017 with exhibit JRL1
- Civil Evidence Act notice dated 22 December 2017
- Witness statement of CP dated 15 December 2017 with exhibit CP1
- Reply to Response to Rule 5 Statement (Answer) dated 2 October 2017 with exhibit JRL1
- Judgment in Wingate and Evans v SRA, SRA v Malins [2018] EWCA Civ 366
- Applicant's Statement of Costs for hearing on 30 April 2018 dated 20 April 2018 with Statement of Costs as at date of issue attached

Respondent

- Response to Rule 5 Statement dated 18 September 2017
- Tribunal judgment in case number 11768-2017 Hall
- Extended Civil Restraint Order dated 6 November 2017 from High Court of Justice Chancery Division against Mr G
- Letter from the Respondent's former solicitors Lewis Nedas Law dated 12 February 2018 attaching unsigned undated statement of DR
- Short Form Pre-Sentence Report by National Probation Service
- Character references from individuals and charities
- Report from Law Society Gazette – City Lawyer suspended after assault conviction
- Video footage of the incident the subject of the application accessed via the internet
- Respondent's Statement of Means dated 21 December 2017

Factual Background

3. The Respondent was admitted to the Roll on 1 February 1974. His date of birth was in May 1947. He no longer held a practising certificate.

4. The certified certificate of conviction provided by the Inner London Crown Court stated that after a trial the Respondent was convicted on 31 January 2017 upon indictment of "Assault [of] a person thereby occasioning them actual bodily harm." It also stated that on 10 March 2017 the Respondent was sentenced to:

   - 18 months imprisonment suspended for 24 months;
   - undertake 200 hours of unpaid work before 9 March 2018;
   - remain at his home address between the hours of 8 p.m. and 6 a.m. for 4 months;
   - be subject to a restraining order (Protection from Harassment Act 1997, s.5) not to contact directly or indirectly Mr G [the victim of the assault] save through solicitors;
   - pay a victim surcharge of £140.00.

5. The Applicant wrote to the Respondent on 31 March 2017 seeking his response to the allegations of breach of Principles 1, 2 and 6 of the 2011 Principles. The Respondent replied through his solicitors and counsel on 5 May 2017. The Response exhibited the Respondent's original report of his conviction to the Applicant, the transcript of the sentencing hearing and documentation relating to the Respondent's intention to come off the Roll of Solicitors.

6. The Respondent's substantive response explained that the Respondent self-reported his conviction and highlighted statements from the sentencing Judge that the Respondent sought to rely on. In his response, the Respondent maintained that his action was wholly out of character and a result of "persistent provocation" which caused a "momentary loss of self-control". The Response also stated that the Respondent now accepted the verdict of the Jury and the sentence of the Judge, which had a substantial effect on his reputation, with the Respondent deciding that as a result of his conviction the appropriate course to take was to apply to be removed from the Roll of Solicitors.

Witnesses

7. There were no witnesses. The Respondent gave evidence and was cross-examined.

Findings of Fact and Law

8. 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.

9. **Allegation 1 - The allegations against the Respondent Philip James Saunders were that on 31 January 2017 he was tried and convicted upon indictment of assault occasioning actual bodily harm and thereby failed to:**

Allegation 1.1 - uphold the rule of law and the proper administration of justice in breach of Principle 1 of the 2011 Principles; and/or

Allegation 1.2 - act with integrity in breach of Principle 2 of the 2011 Principles; and/or

Allegation 1.3 - behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the 2011 Principles.

9.1 Principle 1 requires a solicitor to uphold the rule of law and the proper administration of justice. Principle 2 requires a solicitor to act with integrity. Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in him and in the provision of legal services. For the Applicant, Mr Moran informed the Tribunal that the Respondent admitted allegations 1.1 and 1.3 but denied allegation 1.2. He referred the Tribunal to the Certificate of Conviction dated 23 March 2017 and the Sentencing Remarks of Mr Recorder Gasztowicz QC made on 10 March 2017. The facts were set out in the Rule 5 Statement. The background to the conviction was that the Respondent (with others) was involved in ongoing litigation with Mr G. On the day of the assault, 7 April 2016, there was a hearing at the Rolls Building of the High Court after which the Respondent met Mr G in a public area of that building. The transcript of the Sentencing Remarks noted that the Respondent began an altercation which resulted in an exchange between himself and Mr G. The assault arose in this exchange when the Respondent:

> "leaned backwards and deliberately head-butted [Mr G]… a deliberate and serious assault, albeit on the spur of the moment…resulting in Mr G suffering a fractured nose and bruising to his face".

The Judge stated in the Sentencing Remarks that there were "serious aggravating features", including that the offence was committed in a High Court building and that it was committed by a solicitor, who is "trusted to act properly in such buildings, albeit that [the Respondent] happened to be there on this particular occasion as a litigant", with such factors said to "take the matter up significantly in seriousness". The conviction of the Respondent and his position as a solicitor received substantial media coverage in at least 12 publications. Some of the articles included video footage captured on the Court CCTV system of the Respondent's assault on Mr G.

9.2 Mr Moran submitted that Principle 2 applied even where the conduct arose outside of a solicitor's practice. The Respondent was not undertaking the duties of a solicitor at the material time. Mr Moran drew the attention of the Tribunal to the case law on integrity in respect of the disputed allegation 1.2 and breach of Principle 2 particularly the recent judgment in the case of Wingate and Evans v SRA, SRA v Malins [2018] EWCA Civ 366 ("Wingate"). The judgment referred to other relevant cases Scott v SRA [2016] EWHC 12256 (Admin) and Hoodless v Financial Services Authority [2003] UKFSM FSM007, where in the latter judgment it was said:

> "In our view "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code."

He also referred to SRA v Chan [2015] EWHC 2659 (Admin) in which it was said that lack of integrity could be identified from the facts of a particular case. Integrity was considered extensively in the Wingate hearing. The judgment stated:

> "In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members…
>
> The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless have met with general approbation.
>
> Integrity connotes adherence to the ethical standards of one's own profession…"

The judgment went on to give examples of what constituted acting without integrity but they were not directly applicable to this case. Later the judgment stated:

> "A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity…"

Mr Moran submitted that it was clear that the Respondent's actions were spur of the moment which was referenced in the Sentencing Remarks and not contested. However steady adherence to an ethical code could involve a spur of the moment action. Mr Moran emphasised that there was no suggestion of dishonesty in this case and lack of integrity was not synonymous with dishonesty. Allegation 1.2 was put on the basis of lack of integrity alone. Mr Moran clarified for the Tribunal in response to a question from the Tribunal Chair that the Applicant did not assert that every criminal offence not linked to dishonesty inevitably demonstrated lack of integrity; it had to be looked at case by case. Here lack of integrity was alleged because of the seriousness of what had occurred as evidenced by the Judge in the Sentencing Remarks. Society expected higher standards from professional people as set out in Wingate and the Tribunal was best placed to determine whether conduct fell below that standard. The Applicant would not plead lack of integrity in all cases based on a criminal conviction whether the conduct complained of took place within or outside of practice.

9.3 The Tribunal raised the issue of provocation. The Judge had stated in respect of the exchange between the Respondent and Mr G:

> "What exactly was said I cannot say but it seems likely from the evidence to have included a derogatory reference to your religion and certainly something was said which seriously provoked you."

Mr Moran asked the Tribunal not to go behind the Sentencing Remarks and the circumstances in which the assault was committed as opposed to any evidence given that contradicted or embellished it. (The Respondent had submitted a statement from a witness to the assault.)

9.4 Mr Moran referred to the Tribunal case number 11768-2017 Hall which the Respondent had produced. He submitted that it was not a precedent; it was said in Scott:

> "I should add that decisions in this jurisdiction are of course fact sensitive, and I have not found the reference to the facts of other cases where lesser or different penalties were imposed to be of any assistance. As was observed in Law Society (SRA) v Emeana and ors, [2013] EWHC 2130 (Admin) sentences imposed in this jurisdiction are not designed as precedents…"

9.5 The Respondent gave sworn evidence. For the last 30 years until it closed, he had practised in partnership at Bearman Saunders which undertook exclusively property work. He had been instructed in a transaction in respect of which Mr G made a claim regarding an interest in a property which his clients had bought and sold. The matter had started when a caution had been placed on the title which the Respondent had removed. The matter developed into a dispute with Mr G. Two reports had been made to the Law Society about the Respondent's conduct which had not been upheld. The proceedings were started in the last month or so before the claim would have been statute barred. By the end of 2014, the claim had been struck out as being without any foundation whatsoever. Mr G then made a number of applications and challenges. On 7 April 2016, the Respondent had been in court all day in regard to an application by Mr G for a Judge to be recused on grounds of alleged bias. Allegations of fraud and dishonesty had also been made against the Respondent which had no substance.

9.6 The Respondent stated that he had confronted Mr G by chance. The court hearing had finished when they met face-to-face in a narrow corridor. Granted the Respondent should not have said anything at the time but he stated that he was upset by comments made by Mr G against him in the proceedings. The Respondent stated that he had said that he hoped that Mr G had enough money to pay all costs which were around £750,000. Mr G was a litigant in person. That statement caused the altercation. The Respondent stated it came to a point where he lost all self-control. The Tribunal had heard the sentencing remarks made by the Judge at his criminal trial which referred to a comment which the Judge considered it likely had been made and which the Respondent stated was of a vile anti-Semitic nature. The Respondent was aged 69 years at the time of the incident. He was an observant religious Jew and he had a high moral standard. The Respondent stated that he was bitterly ashamed that he had lost his temper. He was not seeking to justify what he had done but to put it into perspective.

9.7 The Respondent believed that he did not behave with lack of integrity. Integrity related to honesty and strong moral principles and he could not see how his behaviour on that day; a total loss of control arising out of a raw anti-Semitic insult negated the way he behaved and had behaved since. What happened had a profound effect on the Respondent. Immediately afterwards he ceased to act as a solicitor. He applied to try and come off the Roll but was unable to do so. He was invited to renew his practising

certificate but did not. He had not held himself out as a solicitor. The Respondent stated that he did not wish to be struck off; he accepted entirely that his behaviour was wrong. He accepted that he had breached Principles 1 and 6 but he did not believe that there was any risk of repetition. He could not bring himself to accept that a momentary loss of self-control which was entirely out of character should negate all the principles that he had lived by and that he should accept the ignominy of being struck off. The Respondent submitted that suspension for a significant time was the correct approach. The Respondent also referred in evidence about the media coverage of his criminal trial which he felt had been orchestrated against him. The Respondent believed it was part of a campaign to vilify him and to achieve the most effect. He asserted that Mr G had written to the Judge to urge him to pass a custodial sentence. The Respondent was bitterly ashamed and urged the Tribunal to read the references which he had provided. He was respected in his society and in his profession and was deeply sorry.

9.8 In cross examination, the Respondent was asked how he regarded Principle 2 and Mr Moran emphasised that there was no connotation of dishonesty in the allegation of lack of integrity. The Respondent agreed that he had displayed a complete lack of self-control and that the authorities cited referred to the higher standards which were required of professionals. Mr Moran emphasised that the allegation was not a slight on the Respondent's wider character before and after the offence and the Respondent was asked if he could not see Principle 2 applied in relation solely to this matter. The Respondent repeated that this would mean everything being negated by a split-second loss of control where there was no premeditation. In the other Tribunal cases he had adduced there had been an assault over a period of time but this was on the spur of the moment in direct response to a vile anti-Semitic comment.

9.9 The Tribunal asked the Respondent to develop his evidence about how the incident had occurred. Effectively the Respondent had spent the whole day listening to Mr G's allegations that the Judge had behaved in a biased way. The Judge had to deal with that allegation before determining other matters. The Respondent clarified that at that point he did not know if the application for recusal had succeeded or not. The hearing had finished but the decision was not made until three months later. He agreed that he had been involved in the case and heard the evidence unfold and was aware of his surroundings. As to whether he reflected on that at the time he started to engage with Mr G, the Respondent stated that he had only asked a simple question which he felt did not justify the actions which Mr G took. The Respondent stated that he could not go against his conviction but felt there had been a physical attack on him first. He had defended his criminal trial on the basis of self-defence but the jury decided that he had used disproportionate force. He had completed the 200 hours of unpaid work and finished a period of curfew which had been imposed. He was now nine months away from completing the period of suspension of his sentence which would expire in March 2019. He invited the Tribunal to view the video footage in retirement when it came to consider its decision. Mr Moran indicated he had no objection to this if the Tribunal so decided

9.10 The Tribunal had regard to the evidence and the submissions for the Applicant and by the Respondent. The Tribunal also had regard to Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

The Tribunal noted the contents of the unsigned undated witness statement provided by the Respondent from Mr DR who had witnessed the incident and the Tribunal had heard the Respondent's evidence about the altercation but it was neither necessary or appropriate for it to take a view of the Respondent's assertions about the behaviour of Mr G; it would not go behind the facts of the proven offence there being no exceptional circumstances that would lead it to do so and the Respondent had accepted the criminal court's decision. The Tribunal had particular regard to the sentencing remarks where the Judge said:

> "You unwisely began the altercation which followed by commenting to him [Mr G] that you hoped he had the money to pay the costs of the litigation. This resulted in an exchange between you and Mr G, in which he, swung his pilot case towards you and was aggressive, and used offensive comments towards you. What exactly was said I cannot say but it seems likely from the evidence to have included a derogatory reference to your religion and certainly something was said which seriously provoked you.
>
> You completely lost your self-control, you leant backwards and quite deliberately head-butted him. The jury rejected your contention that this was done in self-defence and it is clear from the CCTV footage and other evidence, that you could have left his presence without doing anything like that. It was a deliberate and serious assault, albeit on the spur of the moment, under a heavy degree of provocation, resulting in Mr [G] suffering a fractured nose and bruising to his face..."

The Tribunal noted that the Judge made no order for victim compensation.

9.11 In respect of allegation 1.1 and Principle 1, the Tribunal considered that the location of the assault was an aggravating feature taking place within the precincts of a High Court building amidst complicated litigation in which the Respondent was involved as a participant. The Tribunal had heard that the Respondent had appeared as a witness in other high profile litigation and at the time in this instance he was not acting as a solicitor for a client, but in a personal capacity as a party to extant litigation. Nonetheless, the Respondent was an officer of the court and, at the material time, within the precincts of a court building. He was a senior practitioner who understood that he had to respect the dignity of that building. The application for recusal was not finally determined when he engaged with an opponent. The Respondent acted provocatively towards Mr G in circumstances where the Respondent knew that there was already bad feeling between them. He set in train the altercation that led to the assault for which he was subsequently convicted. What he did caused disruption to the court building and its processes and would have impacted on people involved in other proceedings. The Tribunal found proved on the evidence to the required standard that the Respondent had breached Principle 1 by failing to

uphold the rule of law and the proper administration of justice and that allegation 1.1 was therefore proved; indeed it was properly admitted.

9.12 In respect of allegation 1.2, the Respondent denied breach of Principle 2. The Tribunal had regard to the authorities in respect of the meaning of integrity as reviewed in the case of Wingate. The Tribunal considered carefully what the behaviour of the Respondent demonstrated, on that unhappy day, and it accepted the submissions of both parties that a single act might constitute a lack of integrity. The Tribunal also noted that it was not asserted that every criminal conviction necessarily involved lack of integrity; the Tribunal had to look at the particular facts and then apply an objective test. What happened resulted from an unfortunate coincidence that the Respondent met Mr G in a public area of the court building. It was the Respondent who unwisely precipitated the altercation by engaging with Mr G about the costs. As the Judge said in his Sentencing Remarks, the Respondent could have left Mr G's presence without doing anything like the assault. It was impossible for the Tribunal to ignore the surrounding circumstances. The Respondent goaded an opponent in litigation in which some matters were outstanding and where incidentally it was arguable he should not have been talking to Mr G at all and then perpetrated a criminal assault upon him. It did not matter that the Respondent did not actively have regard to his professional obligations at the time; a solicitor could not step away from adherence to his professional standards even for a short time. A solicitor who is convicted of a criminal offence must recognise the high probability that they will also face sanction by their professional body. Solicitors are bound to adhere to a code of ethical conduct consistent with the high standards which the public expects of solicitors While fully understanding the explanation the Respondent had offered, the Tribunal must not conflate mitigation with fact. The Tribunal was satisfied that when the assault was viewed objectively, the Respondent had failed to demonstrate adherence to the ethical standards of his own profession. The Tribunal found proved that the Respondent had been in breach of Principle 2 and therefore allegation 1.2 was proved on the evidence to the required standard.

9.13 In respect of allegation 1.3 and Principle 6, the Tribunal considered this sort of behaviour to be astonishing and unforgivable. The video of the incident (which the Tribunal did view in the retiring room as requested by the Respondent) found its way onto the internet and into the press where it was noted that the conduct had taken place, as set out in one of the extracts before the Tribunal "INSIDE Royal Courts of Justice". This attendant adverse publicity, however generated, had a damaging effect on the reputation of the Respondent, the legal profession and the provision of legal services generally. This was a very unattractive and damaging episode; the public would not find it acceptable for a solicitor who was a party to litigation to head-butt his opponent thereby committing an assault leading to a criminal conviction. The Tribunal found proved on the evidence to the required standard that the Respondent had breached Principle 6 by failing to behave in a way that maintains the trust the public places in him and the provision of legal services. The Tribunal therefore found allegation 1.3 proved on the evidence to the required standard; indeed it was properly admitted.

Previous Disciplinary Matters

10. The Tribunal was informed at the hearing by its clerk that there were no previous disciplinary matters based on the information available to the clerk during the hearing. (See below for the correct position.)

Mitigation

11. The Respondent submitted that the case involving Mr G had been concluded when the incident occurred; there was a judgment striking out his claim and awarding costs on an indemnity basis. The Respondent acknowledged that he was indeed unwise to make a comment in the first place; it was totally out of character, temporary insanity on the spur of the moment. The Respondent referred the Tribunal to his testimonials; two were from doctors, three from former clients and one from his rabbi; they urged the Tribunal not to strike him off. The Respondent asked the Tribunal to suspend him from practice instead. He referred to two other recent Tribunal cases where a solicitor sound guilty of assault had been suspended 11768-2017 Hall and 11618-2017 Main, in both cases there had been a finding of lack of integrity. He pointed out that the assault in Main was over a period during one evening and involved racially insulting behaviour and the victim being pursued into the women's toilets. The Respondent asserted that was not a spontaneous lack of self-control. In Hall the solicitor had assaulted his mother. The Judge was quoted in the Tribunal judgment as saying: "It was a persistent attack upon her." The Respondent submitted that it would be manifestly unfair for him to be struck off after his long career. He suggested that a suspension of a couple of years would be appropriate; suspension would be right and proper. He was very sorry. The Respondent assured the Tribunal that nothing like this would ever happen again. The Respondent also drew the Tribunal's attention to the Extended Civil Restraint Order which had been made by the High Court of Justice Chancery Division dated 6 November 2017 against Mr G which recorded that the Court "has found that the above named person has persistently issued claims or made applications which are totally without merit." The Respondent submitted that on six occasions matters had been struck out including on one occasion since the last order was made and such a Civil Restraint order only required three such applications and in his view the dispute between the parties was not over.

Sanction

12. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered by the Respondent including the Short Form Pre-Sentence report and the references provided for the Respondent. The Tribunal had found three allegations of breach of principle found proved against the Respondent all of which were linked to one event. The Tribunal assessed the seriousness of the misconduct. In terms of culpability, the Respondent's motivation was to react in temper to comments made by Mr G. It appeared that these comments brought to the surface the Respondent's displeasure at an opponent at a time when feelings were running very high between these two individuals against the background of heavily contested litigation. The assault was a spur of the moment act. The Respondent was totally in control of the circumstances; he precipitated them. At the material time, the Respondent was a 69 year old solicitor with more than 40 years' experience and standing with a substantial

practice in property related transactions. As to the harm caused, Mr G suffered physical injury a broken nose and bruising, which required hospital treatment under general anaesthetic. There was also the consequential negative impact on the reputation of the profession at large and of the Respondent from the resulting adverse publicity. There had also been inconvenience to the court and other litigants as the incident would have had a disrupted normal business that day. All of this was reasonably foreseeable as a result of the Respondent's misconduct. There were also aggravating factors; a criminal offence was found to have been committed; in a court building; the Jury determined that the head-butt was deliberate. Mr G suffered physical injury and was hospitalised. To the extent that he thought about it at all, the Respondent ought to have known that his conduct was in material breach of obligations to protect the public and the reputation of the legal profession.

13. Previous disciplinary findings before the Tribunal could also constitute an aggravating factor. The Panel was advised during the hearing that there had been no previous disciplinary matters before the Tribunal based on the information available. The Respondent had however been involved in two previous sets of proceedings; the more recent being case number 10972-2012. The existence of those matters was only brought to the Panel's attention after the conclusion of the proceedings. Accordingly they had no bearing on the Tribunal's decision on sanction. The Tribunal considered that if the fact of the previous disciplinary findings had been brought to its attention during the hearing they would not have made any difference to the outcome on sanction in the particular circumstances of this case.

14. In terms of mitigation, the references were very positive and complimentary giving golden opinions of the Respondent's professional and personal qualities showing a decent man with a generally very good track record in his community and his career. The Judge had noted that the Respondent acted under a heavy degree of provocation, which was probably related to his religion. The Respondent had been subject to trying litigation which, subsequent to the incident, resulted in an Extended Civil Restraint Order being made against the opponent. The Tribunal accepted that the Respondent snapped in the teeth of long and almost savage engagement with his opponent. The Respondent notified the Applicant of his conviction immediately on 31 January 2017 and started to take preparatory steps to come off the Roll. He also decided not to renew his practising certificate. What happened was a single episode of very brief duration. As to genuine insight, the Respondent defended himself unsuccessfully in the criminal court but it was a defence which it was open to him to present. He accepted the Jury's verdict and expressed shame and remorse to the Tribunal. He made open and frank admissions to allegations 1.1 and 1.3. The Respondent gave evidence in a straightforward and measured way and avoided being accusatorial about the incident. He had now performed his unpaid work and his period of curfew had expired. He was abiding by the suspended sentence which had some time to run. He said himself that he should not be in practice and had ceased to practise. The Respondent asked not to be struck off but rather to be subject to a suspension. On careful consideration the Tribunal determined that the Respondent's misconduct in sparking an avoidable altercation which included him carrying out an assault within the precincts of the court of which he was an officer and which was serious enough to merit a suspended custodial sentence was misconduct of the highest level of gravity such that only suspension or strike off would be appropriate. The Tribunal took into account that the Respondent had no predilection for violence and there was a low risk

of his re-offending. However the Judge stated that the assault was a "category 1 offence" that is the most serious category for this type of offence although as the Rule 5 Statement set out, the mitigating factors identified ("due to the presence of a "realistic prospect of rehabilitation and strong personal mitigation") placed it lower in that category than it would otherwise have been. The Tribunal had to consider whether that was consistent with the Respondent remaining on the Roll of Solicitors. The Tribunal's purpose in imposing sanction was not primarily to punish the Respondent; that had been carried out by the criminal court, but to protect the public and maintain the reputation of the profession. The Tribunal did not consider the public to be at risk. The Tribunal reviewed the cases of Main and Hall but these could not be regarded as precedents. As the context of the assaults in each of those cases was different the Tribunal did not find comparing them to this case helpful and Main was in any event subject to appeal. The Respondent had set in train a series of events which led to his own downfall. All solicitors encountered opponents with whom they found it extremely difficult to deal but they had to rise above it. In considering whether the Tribunal should accede to the Respondent's request that he be suspended rather than struck off, the Tribunal had to weigh the personal tragedy this event had caused to the Respondent against the need for the Tribunal to protect the reputation of the profession in the eyes of the public. There were elements of this case which mirrored the case of Bolton v The Law Society [1994] 1 WLR 512 with its guidance about the purposes of sanction:

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

and

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again…All these matters are relevant and should be considered. None of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness...The reputation of the profession is more important than the fortunes of any individual member…"

The Tribunal was mindful of the circumstances and how they unfolded and how the Respondent precipitated the situation with an inappropriate and unnecessary altercation with Mr G. He had invited the Tribunal to view the video of the incident and it was deeply unattractive. This was a sad case bringing an undignified close to the Respondent's professional career. The Tribunal considered that the Respondent's case fell within the guidance in Bolton. To allow him to stay on the Roll would be to give priority to his personal tragedy over the reputation of the profession. The

Tribunal had weighed all the factors in account and determined that a lesser sanction than strike off would be inappropriate; a solicitor who had perpetrated such a violent act in the precincts of the High Court of Justice albeit in a moment of madness could not remain on the Roll of Solicitors. The Tribunal therefore had no option but to administer the ultimate sanction and determined that the Respondent should be struck off.

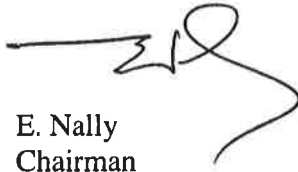
Costs

15. For the Applicant Mr Moran applied for costs in the amount of £4,611.00. The Respondent submitted that the Tribunal should exclude the Applicant's costs of 14 February 2018 when the case was scheduled to be heard but the Tribunal had not reached it. Mr Moran informed the Tribunal that those costs had been excluded from the latest schedule. The Respondent confirmed that the Statement of Means which he had submitted for 14 February 2018 had not changed. The Tribunal considered the cost claimed to be reasonable. It noted from the Respondent's statement of means that he had an ample income although he declared no other assets. The Tribunal would therefore make an immediately enforceable order.

Statement of Full Order

16. The Tribunal Ordered that the Respondent, Philip James Saunders, 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 £4,611.00.

Dated this 10th day of May 2018
On behalf of the Tribunal



E. Nally
Chairman

Judgment filed
with the Law Society
on 11 MAY 2018