SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11845-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ADAM KEMENY Respondent

Before:

Ms T. Cullen (in the chair)
Mr M. N. Millin
Dr S. Bown

Date of Hearing: 10 December 2018

Appearances

Inderjit Johal, Counsel, employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Jeremy Barnett, Counsel of St Paul's Chambers, Park Row House, 19-20 Park Row, Leeds LS1 5JF instructed by Lewis Nedas Law, Devonshire House, 1 Mayfair Place, London W1J 8AJ for the Respondent

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JUDGMENT

Allegations

1. The allegation against the Respondent Adam Kemeny made by the Solicitors Regulation Authority was that by deliberately failing to pay rail fares worth a total of approximately £650 for certain rail journeys he travelled in the period 7 July 2017 and 17 October 2017 (inclusive) he breached either or both of Principles 2 and 6 of the SRA Principles 2011 ("Principles").

2. It was also alleged that by acting as described at paragraph 1 above the Respondent acted dishonestly, (though dishonesty was not an essential ingredient to prove the allegation set out at paragraph 1 above.)

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 9 July 2018 with exhibit JQ1
- Correspondence between the parties
- Applicant's Statement of Costs at date of issue
- Applicant's Statement of Costs at 7 December 2018
- Authorities

Respondent

- Respondent's Answer to the Rule 5 Statement (signed 10 December 2018)
- Personal Statement of the Respondent exhibit ACK1 to the Answer
- Respondent's witness statement dated 16 November 2018 (signed 10 December 2018)
- Respondent's Statement of Means and exhibits (signed 10 December 2018)

Factual Background

4. The Respondent was born in 1985 and admitted to the Roll of Solicitors in 2016.

5. The Respondent held a practising certificate for the year 2017-2018 which was free from conditions.

6. By an email dated 31 October 2017, the Respondent self-reported his conduct to the Applicant. Specifically, the Respondent explained that he was under investigation by Govia Thameslink Railway ("Govia") for the non-payment of rail fares in respect of certain journeys he undertook between 7 July 2017 and 17 October 2017.

7. In his email, the Respondent also confirmed that he had been summarily dismissed by his then employer M Solicitors LLP ("M Solicitors"). A letter dated 31 October 2017 given to the Respondent by M Solicitors showed that his employment had been terminated on the following grounds, following the numbering of the letter:

"1. You admitted regularly evading paying the full train fare on your journey to work since around July 2017, and the only reason that you have stopped this behaviour is that you were caught in the week beginning 16th October 2017.

2. This is a criminal offence.

3. It is also a breach of the SRA's Code of Conduct to:

a) Uphold the rule of law;
b) Act with integrity; and
c) Behave in a way that maintains the trust the public places in you and in the provision of legal services.

4. Your behaviour is in breach of our Disciplinary Policy where it states that gross misconduct includes behaviours such as fraud and dishonesty, and bringing the Company's name into disrepute. It is also in breach of one of the firm's core values of integrity."

8. The Respondent attached to his email a number of documents and copy correspondence exchanged with Govia as part of its investigation as follows:

- Correspondence dated 24 October 2017 from the Respondent's representative to Govia enclosing the same documents as attached to the Respondent's email to the Applicant;
- A history of his contactless payments for rail fares in the period 15 January 2017 up to and including 15 October 2017, as prepared by Transport For London;
- Copies of his bank statements for the period 12 January 2017 up to and including 17 September 2017. The Respondent subsequently provided the Applicant with copies of his bank statements up to and including 17 October 2017;
- The Respondent's own summary of the rail journeys he took in the period 16 January 2017 up to and including 17 October 2017, indicating which journeys he paid for and the method of payment;
- Four character references;
- A timeline prepared by the Respondent detailing events up to 17 October 2017 ("Timeline"); and
- Two emails exchanged between Govia and the Respondent's representative dated 24 October 2017, one attaching a copy of the Respondent's travel card.

9. In the Timeline, the Respondent explained to Govia how he came to avoid paying for certain rail fares. In particular:

- The Respondent stated that he was unemployed for four months from 15 September 2016, which placed a significant strain on his finances.

- He found employment with M Solicitors from 16 January 2017 and was based in the Redhill office. His commute would typically take him from Shoreditch High Street overground station to Redhill, via New Cross Gate.

- The morning journey would cost around £10.90 and the return journey in the evenings would cost around £5.90. The Respondent would pay for these tickets by using a mixture of travel cards, oyster cards and "pay as you go" by using one of two direct debit cards at the ticket barriers.

- In early July 2017, he forgot to get a railcard and on alighting at Redhill he noticed a number of other passengers exiting the rear of the station without "tapping out" (or swiping their travel card/oyster card at the barrier accurately to record their journey). The Respondent stated to Govia:

  > "in a lapse of judgement I opportunistically took chose to follow their lead [sic]."

- He "realised this rear exit would be an avenue to avoid the large morning commute price" and so he continued to avoid tapping out, and therefore to avoid paying his morning fare, on a more frequent basis.

- He justified this decision by always paying for the cheaper return journey. By mid-September 2017, however, the Respondent had started to avoid paying for some of the return fares as well.

- On the morning of 17 October 2017 the Respondent was stopped by a Govia ticket inspector who checked the Respondent's oyster card and noticed he did not have sufficient funds on it to complete his journey. On examining the oyster card history the inspector noticed that the Respondent had not been tapping out on a frequent basis.

- The Respondent expressed deep regret for his actions and acknowledged that any prosecution for his failure to pay the fares "would have a catastrophic effect on my career and ability to earn in the future".

10. On 2 November 2017, the Respondent confirmed to the Applicant that he had reached a settlement with Govia in the sum of £849.90 and that their investigation had closed. He provided a letter from Govia dated 1 November 2017 confirming this. The settlement sum comprised the outstanding fares, calculated by Govia to be £649.90, plus the Govia costs of £200. Govia did not refer the matter to the Police.

The Applicant's Investigation

11. The Applicant took the following steps to investigate the allegations which it made against the Respondent:

- The Investigation Officer with conduct of the investigation wrote to the Respondent on 18 January 2018 to put certain allegations to him arising out of his report to the Applicant about his own conduct.

- The allegations put to the Respondent were:

  - That by failing to pay rail fares during the period 7 July 2017 to around 17 October 2017 the Respondent breached Principles 2 and 6 of the Principles; and

  - That the Respondent acted dishonestly.

  - By way of its letter dated 5 February 2018, the Respondent's representative submitted the Respondent's response to the Applicant's letter on his behalf.

  - In response the Respondent accepted that he failed to act with integrity and that his actions had diminished the trust the public places in him as a solicitor. The Respondent also accepted that he was dishonest.

  - The Respondent stated that he was "deeply ashamed of and remorseful for this total lapse in judgment" on his part. He apologised for his actions. The Respondent also reiterated the points made in the Timeline.

12. On 14 March 2018, an Authorised Officer made the decision to refer the conduct of the Respondent to the Tribunal.

Witnesses

13. There were no witness.

Findings of Fact and Law

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

(The submissions below reflect those in the Rule 5 Statement and those made orally.)

15. **Allegation 1 - By deliberately failing to pay rail fares worth a total of approximately £650 for certain rail journeys he [the Respondent] travelled in the period 7 July 2017 and 17 October 2017 (inclusive) he breached either or both of Principles 2 and 6 of the SRA Principles 2011 ("Principles").**

Allegation 2 - It was also alleged that by acting as described at Paragraph 1 above the Respondent acted dishonestly.

15.1 The SRA principles cited in the allegation were as follows:-

- Principle 2 "You must…act with integrity."

- Principle 6 "You must…behave in a way that maintains the trust the public places in you and in the provision of legal services".

15.2 For the Applicant, Mr Johal submitted that there was one allegation to which an allegation of dishonesty attached. The Respondent admitted the allegation and that he had been dishonest. The material facts were by and large admitted. At the material time the Respondent lived in Shoreditch and he worked in M Solicitors' office in Redhill. Mr Johal relied on the facts and admissions set out in the background to this judgment. He submitted that the Respondent paid for both his outward and return journeys as anyone would do, until 7 July 2017 when, on alighting at Redhill, he noticed people exiting the station without tapping or swiping out. He saw this as an opportunity to avoid paying for his morning journey and so he went out via the back exit that day. Mr Johal submitted that the Respondent realised that day that he could avoid the majority of his morning fare and realised that he could do the same in respect of the return journey. He was caught by a Govia ticket inspector on 17 October 2017. In a letter to Govia and to the Applicant the Respondent stated that doing so became a habit that he could not stop. The Applicant's case was that it became almost a daily habit which the Respondent followed, often for weeks at a time, for example from 17 to 21 July 2017.

15.3 Following a review of the evidence supplied by the Respondent, the Applicant produced a spreadsheet setting out all dates falling between 7 July 2017 and 17 October 2017. It had been prepared after the Respondent submitted one of his own covering the period 1 January 2017 to 17 October 2017. Using the documents supplied by the Respondent, against each of those dates the Applicant identified whether the Respondent travelled by rail to and from the Redhill office and whether either or both of those journeys were unpaid. This spreadsheet therefore identified the total number of unpaid journeys in the period. During the period covered by the allegation, the Applicant calculated that the Respondent failed to pay for 82% of his journeys to and from work. Mr Johal took the Tribunal through the detail of the calculation. As could be seen from the spreadsheet, the Respondent failed to pay for either or both of his journeys on 64 out of the 65 days in this period, a total of 105 occasions out of the 128 when he travelled to the Redhill office by rail. Mr Johal submitted that the Respondent did not dispute the calculation. The Respondent self-reported to the Applicant on 31 October 2017 after being dismissed by M Solicitors.

15.4 It was the Applicant's case that by deliberately failing to pay rail fares amounting to approximately £650 in circumstances where the Respondent knew he ought to have paid those fares he failed to meet the higher standards that society expects from the profession and that the profession expects from its members. As a result, he lacked integrity (Principle 2).

15.5 It was also the Applicant's case that the public would expect a solicitor on the Roll to be an individual of impeccable good character and not someone who would seek to avoid paying for goods or services they had already received. By so doing, the Respondent failed to meet these expectations and inevitably diminished the trust the public places in him and the provision of legal services (Principle 6).

Allegation 2 - Dishonesty

15.6 Mr Johal submitted that the Respondent's actions were dishonest in accordance with the test for dishonesty laid down by the Supreme Court in

Ivey (Appellant) v Genting Casinos UK t/a Crockfords (Respondent) [2017] UKSC 67, which applied to all forms of legal proceedings:

> "The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest…"

As to the facts known to the Respondent at the relevant time, the Respondent had lived in London on and off for the past 10 years. He was familiar with the London transport system. The Respondent was evidently aware of the need to pay when using the rail network and indeed did so for some journeys in the period 7 July 2017 to 17 October 2017. Further, the Respondent's actions in not paying for certain journeys were motivated, in particular, by a desire to avoid paying the higher cost of morning fares. The Respondent knew he had to pay a rail fare but on certain occasions he consciously chose not to. It was the Applicant's case that ordinary and decent people would pay for the rail fares they incurred, whether or not they had an opportunity to avoid doing so. By failing to pay his rail fares the Respondent transgressed those standards. The Respondent had been repeatedly dishonest over a three month period; he had made a conscious decision not to pay when he should have done so on 105 occasions and he had been fortunate to avoid criminal prosecution for fare evasion. Mr Johal added that there was a point which he anticipated would be raised in mitigation; that the Respondent was in financial difficulties. Mr Johal referred the Tribunal to the Respondent's Answer where he said:

> "The non-payment was committed at a time of great financial hardship, as I had been made redundant in September 2016 and was unemployed which placed a significant strain on my resources. However I fully accept that this is not an excuse for my actions."

And

> "The non-payment was committed at a time of great financial hardship."

Mr Johal submitted that at the time when the Respondent did not pay fares he was earning £38,000 per year as a solicitor; receiving around £2,300 to £2,400 net a month and it was clear from his bank statements that for a large part of that period his current account was in credit. On 25 August 2017, he received a salary payment of £2,350.27 and on 29 August 2017 he received a payment of £10,000 from "CF [A]" which he used in various ways over the next few months. On 27 September 2017 he had a balance of just over £10,000 and on 28 September when he was not paying fares he

made an internet transfer of £5,000. It was not clear to whom it was paid. His account was in credit to the tune of thousands of pounds and did not fall below £4,000 until 17 October 2017. Mr Johal submitted that the Respondent referred to loans from family and friends but he was clearly not short of cash during the majority of the period that he did not pay his rail fares. Mitigation carries less weight in this jurisdiction than in others but Mr Johal submitted that the Respondent's mitigation in this respect was worth little or nothing.

15.7 Mr Johal submitted that based on the evidence and the admissions the Tribunal could find the allegations proved to the required standard.

Evidence of the Respondent

15.8 The Respondent gave evidence. He explained that he was currently employed by an outsourcing company which undertook discovery and document review for ongoing litigation mainly in corruption cases. He was not acting as a solicitor during that employment. However he had to be qualified to obtain the post and had shown his employer his practising certificate and had explained to them about the Tribunal proceedings. He was not sure if he needed to have a practising certificate to continue with the work. The Respondent stated that he had informed one of the senior members of M Solicitors the day he was stopped by the ticket inspector and had informed the firm of what had happened, the status of his negotiations with Govia and about these proceedings. He had self-reported to the Applicant. He had immediately admitted to Govia what he had done and provided them with all the documents they needed. The firm still dismissed him. Whenever he contacted a recruiter he told them of the proceedings and at interviews he had declared the matter as fully and frankly as he could. He had provided documents to the Applicant; he wanted to do as much as he could to assist. The Respondent stated that he had acted so far below his own moral standard that he wanted there to be nothing in question moving forward to rebuild his reputation; part of that was being as open as possible even if it meant he would not get a job. He knew that in declaring the matter in interview he was doing what was right. He wanted to be as fair and honest as possible about this matter about which he was so embarrassed. The Respondent stated that he always disclosed these proceedings to recruiters, law firms and other involved in his seeking work so that any relationship was open.

15.9 The Respondent confirmed that he was working full time but in temporary employment. He had been in financial difficulty and had to borrow from friends and family but he could not say that the money he had saved in rail fares would have got him out of his financial difficulty. He felt that he had taken his eye off the ball; in his personal and professional life he would have done the right thing, for example if he found a wallet he would take it to the police. He worked for a children's charity. He did not say that financial difficulty made him do what he did. He was not offering that as an excuse; it was more about his frame of mind. When he became unemployed he had borrowed from his mother to stay out of debt and so he could look for work as effectively and intensively as he wanted, he did not take side jobs. He lived with his landlord who had suggested he did not pay rent until he obtained work and so he was in debt to his landlord and had to take another loan from his mother to pay him back.

15.10 As to the distance he lived from his work in Redhill, he Respondent stated that he thought he would move nearer there after some time. He had a commute of around four to five hours a day, usually on the train. He would have headphones in and entirely switched himself off. He said the voice which would have told him "Don't do something wrong" was switched off.

15.11 The Respondent confirmed that a family member was managing director of a small company CFA which he had worked for in the past. Part of it was in administration. It only had three employees and he had taken a second job there to get on top of his finances. He had received an advance payment for a year's work. The sum of £5,000 shown as transferred out of his bank account was his transferring the money into an ISA to keep it away from his living expenses so that once he was on top of his finances he could transfer the money to his mother.

15.12 The Respondent acknowledged that what he had done amounted to a criminal offence but stated that he had paid some of his rail fares because he still had to buy a London travel card. As to his knowing every time he left Redhill Station that he was being dishonest, the Respondent stated that he had stopped being aware, he acted automatically during his long commute. The Respondent was referred to the Timeline document he had provided to Govia in which he stated:

> "I then realised that this rear exit would be an avenue to avoid the large morning commute price, the cost of which was starting to ensure that [I] was not saving any money despite working a full time job. Whilst being on a "peak time train", these trains, being against the flow of a standard commute were never full. I justified this decision by ensuring that I still paid the return journey after work…"

It was put to him that initially he was concerned to save money. The Respondent stated that he had made the statement days after he was caught; he was shocked, in a haze and wanted to get a statement to Govia as soon as possible. Reflecting on the man he was and wanted to be he did not think he acted to save money. He confirmed that he was not saying that he could not afford to pay and that this was not an excuse. He agreed he had thousands of pounds in the bank at the time. He agreed that he had been advanced rather more than £10,000 in August 2017 by CFA, as it was subject to tax, at a time when he was not paying his fares but repeated that he acted automatically. The moment he was stopped by the ticket inspector it all crystallised and came crashing down. It was as of someone snapped him out of a trance. He had co-operated fully. The gate seemed faceless and victimless; there was no human interaction with anyone at the gate. As to whether he would have carried on using this easy approach if he not been caught, the Respondent stated that he would not have done it for much longer, he was looking to transfer to the Wimbledon office of the firm or to move closer to Redhill and so the period for which he would have continued would have been brief.

15.13 The Respondent was asked about his transfer of £5,000 of the £10,000 received from CFA to an ISA. He agreed he had made the transfer and said he was holding the money mainly because he was unsure of the tax position. He obtained tax advice and he held the money before he was looking to transfer it back to his family. The Respondent did not wish to rely on his statement where it referred to getting into

financial difficulty but he was also in debt thousands of pounds to his family. It was not his money; he was holding it in order to pay it back to somebody. Once he was back on his feet he would repay the loans.

15.14 In response to questions from the Tribunal, the Respondent agreed that he chose not to pay the fares; it was not that he could not afford to. His current employer knew that he was at the Tribunal. He was asked why in that case he had not discussed with his employer whether his job would remain open if he had no practising certificate. The Respondent stated that the moment he had the Tribunal's findings he would pass them to his employer which would pass them onto the client for whom he was working. He had not worked since the Friday of the previous week and would not work until the client's decision was received. He confirmed that he had been open with his mother and wider family. He was incredibly embarrassed. They still had faith in him and knew how much he loved being a solicitor.

15.15 The Respondent stated that he had worked for several document review companies. He was working to stay in touch and to continue the work he started as a solicitor. The Respondent said in his statement:

> "I would like to add that since being dismissed by [M] Solicitors LLP on 31 October 2017 I have held several full-time positions of employment. This includes being In-House Legal Counsel at [CE] Limited and being an e-discovery document reviewer through a number of agencies with the end client being large multinationals and government agencies..."

The Tribunal asked about the reference to CE. The Respondent stated that his role at CE had been maternity cover from December 2017 to April 2018. While there he felt he was starting to rebuild his life as a solicitor and his sense of self and reputation. The company was involved in an area of the world where bribery and corruption was an issue and his job involved advising others about how to behave. From April 2018 onwards he had been "moonlighting" for CFA and working on discovery related to judicial review from June to August. Then he went to his most recent employer. The Tribunal asked why the Respondent had not mentioned the name of his recent employer in the witness statement dated 16 November 2018 which he had filed earlier but only signed on the day of the hearing. The Respondent apologised. He stated that he had worked with them since August 2018. The Respondent referred to the paragraph quoted above which referred to being "an e-discovery document reviewer through a number of agencies" which he said included that employer. Mr Barnett submitted that the Respondent's Statement of Means covered the income received from his recent employment (although not by name of the employer). The Respondent also explained how he taken eight years to qualify as a solicitor by self-funding and helped by an inheritance. It included working as a paralegal and taking two unpaid internships. He took any job to achieve his goal of becoming a solicitor and helping people. The Respondent stated that he wished to apologise to the Applicant and to the Tribunal. He was embarrassed and devastated that he had done what he did and hoped this would not be a reflection on the rest of his life.

15.16 The Tribunal had regard to the evidence and to the admissions of the Respondent and found that the Respondent's conduct amounted to a failure to act with integrity and failure to behave in a way that maintains the trust the public places in him and in the

provision of legal services (breaches of Principles 2 and 6 respectively). Accordingly the Tribunal found allegation 1 proved to the required standard and also found that the Respondent knew what he was doing, evading payment of fares and by the objective standards of ordinary decent people that was dishonest (Allegation 2). The Tribunal therefore found the associated allegation of dishonesty was proved to that standard based on the test in the case of Ivey.

Previous Disciplinary Matters

16. None

Mitigation

17. For the Respondent, Mr Barnett submitted that the Respondent was a very young solicitor indeed. What he had done did not relate to his practice as a solicitor. He asked the Tribunal to have regard to that and to proportionality regarding the amount of money involved. He referred the Tribunal to the case of Bolton v The Law Society [1993] EWCA Civ 32, a summary of which judgment was in the hearing bundle. The case related to a solicitor who had been dishonest in his professional practice in respect of a client. Here the solicitor had acted outside his professional practice but the Tribunal had jurisdiction. In all his actions a solicitor had to have his professional obligations in mind. Mr Barnett submitted that this was not the worst case of its type. The Respondent had made full admissions and repaid the money and Govia's costs. He had lost his job but managed to find other employment. He was a broken man who was determined, if he was given the opportunity, to act properly as a solicitor in the future. He knew that he had thrown everything away. He threw himself on the mercy of the Tribunal by giving evidence. Mr Barnett invited the Tribunal to say that in all the circumstances these allegations could be marked by a substantial period of suspension.

18. Mr Johal submitted that it was set out in the Guidance Note on Sanctions that:

> "The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin))."

Mr Johal understood that the Respondent did not seek to advance an argument that the circumstances in his case were exceptional. For the Respondent, Mr Barnett confirmed that but submitted that the Tribunal's discretion had come to have a restrictive meaning related for example particularly to stress but the Tribunal could look at the facts which did not have to be exceptional for it to depart from striking off the Respondent. Mr Johal responded that there had to be exceptional circumstances for the Tribunal to depart from striking off. In saying that he relied on the authorities including Sharma, SRA v Imran [2015] EWHC 2572 (Admin) and most recently SRA v James and Others [2018] EWHC 3058 (Admin) all of which were included in the hearing bundle.

Sanction

19. The Tribunal had regard to its Guidance Note on Sanctions (December 2016), to the mitigation offered for the Respondent and to the testimonials. The Tribunal assessed the seriousness of the Respondent's misconduct. The Respondent was wholly culpable for what occurred. After the first occasion of fare evasion what he had done was not spontaneous; it continued for several months. As to motive he referred to but did not rely on his financial circumstances and so his motive was unclear although at the material time he was concerned that fares would eat into his savings. While the Respondent had debts he also had money in the bank but he chose not to pay. He took a varying approach to how much he paid according to whether the train was fully occupied or not. The Respondent had direct responsibility for what happened. The Respondent had repaid the money but there was harm to the reputation of the profession. The Respondent had taken some time to qualify and had only been admitted in September 2016 less than a year before he began evading payment of fares but a solicitor had to display honesty whatever his level of experience. It was said in Bolton that one of the two purposes of sanction and the most fundamental of all was "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth." Indeed the Respondent's inexperience in practice might have been more relevant if what he had done had occurred within his practice.

20. There were aggravating factors in the case; dishonesty, had been alleged and proved. The misconduct involved the commission of a criminal offence although no charges had been brought. The misconduct was deliberate and calculated or repeated. It continued over a period of time. It was misconduct where the Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

21. As to mitigating factors, the Respondent had not previously appeared before the Tribunal. He had made good the loss to the train operator albeit after he had been caught. The Tribunal was not impressed by his statement that the misconduct would otherwise only have continued for a short period because of his personal plans rather than because he thought what he was doing was wrong. The Respondent voluntarily notified the Regulator of the facts and circumstances giving rise to misconduct after he was caught. The Tribunal did not consider that the Respondent had shown much insight into what he had done; he seemed to think that because he had plans to transfer to an office nearer home or to move nearer to the Redhill office this made his dishonesty less serious. The fact remained the misconduct only ceased when he was caught by the Govia Inspector. The Tribunal also found the logic behind some of his evidence hard to follow and considered that he had been somewhat evasive in his responses to cross examination and to the Tribunal's questions; he gave some unsatisfactory answers to its questions for example he was equivocal about whether he needed a practising certificate to continue working and about the current status of his relationship with his employer.

22. The Tribunal accepted that he had made open and frank admissions at an early stage and cooperated with the Applicant and before that with Govia but only after he had been caught.

23. As to sanction, dishonesty had been admitted and found proved and the Tribunal therefore considered that it would be inappropriate to make no order, or to impose a reprimand or a fine. The Guidance Note made clear that strike off in cases of dishonesty would be the appropriate sanction absent exceptional circumstances. No case was advanced for exceptional circumstances in this matter and the Tribunal could find none. Mr Barnett submitted that aside from that the Tribunal had a discretion not to strike the Respondent off. The Tribunal rejected that argument as being inconsistent with the authorities. Even if it had such a discretion, the Tribunal did not consider that the other mitigation advanced; proportionality, that the misconduct did not occur in the course of the Respondent's employment and that this was not the worst case of dishonesty carried any weight. This was a very clear case of dishonesty repeated over a period of time. In Bolton it was said:

> "Often he [the solicitor] will say, convincingly, that he has learned his lesson and will not offend again....All these matters are relevant and should be considered. But 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. Membership of a profession brings many benefits, but that is part of the price."

The Tribunal therefore determined that the only appropriate sanction in this matter was strike off.

Costs

24. For the Applicant, Mr Johal applied for costs in the amount of £3,082.26. The Respondent agreed those costs but referred the Tribunal to his Statement of Means. The Tribunal did not consider that his financial position was such that even if he had not contested the amount there should be any reduction. The costs sought were modest.

Statement of Full Order

25. The Tribunal Ordered that the Respondent, ADAM KEMENY 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 £3,082.26.

Dated this 8th day of January 2019
On behalf of the Tribunal

T. Cullen
Chair