

IN THE MATTER OF MARIE BERNADETTE SMITH ROBINSON, solicitor  
HUMAIRA RASHEED, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss T. Cullen (in the chair)  
Miss J. Devonish  
Ms A. Arya

Date of Hearing: 13th July 2007

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Hertfordshire SG14 1BY on 26<sup>th</sup> October 2006 that Marie Bernadette Smith Robinson (now of Cobham, Surrey) might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

An application was duly made on behalf of The Law Society by the said Stephen John Battersby that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Humaira Rasheed (now of Sutton, Surrey) a person who was or had been a clerk to a solicitor or that such other Order might be made as the Tribunal should think right.

The allegations against Ms Robinson ("The First Respondent") were that she had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

1. That she did fail to keep books of account properly written up
2. That she did permit an arrangement to be in place whereby a trainee solicitor was able to operate a solicitor's client account and/or to retain possession of clients' monies.
3. That she did fail to exercise adequate supervision over a trainee solicitor and her office.
4. That she did fail to give adequate training to a trainee solicitor.

The allegation against Ms Rasheed ("The Second Respondent") was:-

That she, having been employed by a solicitor but not being a solicitor, had, in the opinion of The Law Society, occasioned or been a party to, with or without the connivance of the solicitor by whom she was employed, an act or default in relation to the solicitor's practice. That act or default involved conduct on her part of such a nature, that in the opinion of the Society, it would be undesirable for her to be employed or remunerated by a Solicitor or Registered Foreign Lawyer in connection with his or her practice or by an Incorporated Solicitors Practice. In particular, she was party to an arrangement whereby she practised, within the practice of a solicitor, without effective supervision or control by a solicitor.

The applications were heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13<sup>th</sup> July 2007 when Stephen John Battersby appeared as the Applicant. The First Respondent was represented by Nicholas Trevette, partner in the firm of Murdochs solicitors, 45 High Street, Wanstead, London E11 2AA and the Second Respondent was represented by David Morgan, solicitor and consultant in the firm of Radcliffes LeBrasseur, 5 Great College Street, London SW1P 3SJ.

The evidence before the Tribunal included the admissions of the First Respondent. The Respondents and Ms Pauline Anning, the First Respondent's sister, gave oral evidence. A copy of a letter dated 12<sup>th</sup> July 2007 written by Ms Anning in support of the First Respondent and a copy of a witness statement of the Second Respondent in civil proceedings between herself and the First Respondent were handed to the Tribunal during the hearing on behalf of the First Respondent. A bundle of CHAPS documents signed by the First Respondent was handed to the Tribunal during the hearing on behalf of the Second Respondent.

**At the conclusion of the hearing the Tribunal made the following Orders:**

The Tribunal ORDER that the Respondent, MARIE BERNADETTE SMITH ROBINSON of Cobham, Surrey, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 13th day of July 2007 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,983.64.

The Tribunal ORDER that as from 13th day of July 2007 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice HUMAIRA RASHEED of Sutton, Surrey, a person who

is or was a clerk to a solicitor and the Tribunal further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,991.82.

**The facts are set out in paragraphs 1 to 21 hereunder:**

1. The First Respondent born in 1959 was admitted as a solicitor in 1984 and her name remained on the roll of solicitors. At the material time she was practising as a sole principal under the style of Robinson & Co at 39 Claremont House, 47 Worcester Road, Sutton, Surrey (correspondence address) with the practice address being 15 Waldron Road, London SW18 3TB.
2. The Second Respondent was born in 1973 and at the material time was a trainee solicitor under contract to the First Respondent.
3. On 15<sup>th</sup> June 2005 an inspection of the First Respondent's books of accounts and other documents was commenced by a Law Society Investigation Officer. The resulting report dated 16<sup>th</sup> August 2005 was before the Tribunal.
4. The inspection revealed that the books of account had not been properly written up and in particular:
  - that neither the client nor the office side of client ledgers had been properly maintained.
  - that there was no paper record detailing all movements of client funds
  - that proper reconciliations of liabilities to clients and funds available to meet them had not been carried out.
5. The report noted that the client account of the firm was capable of being operated by the Second Respondent alone in breach of Rule 23 of the Solicitors Accounts Rules 1998. Soon after this breach was drawn to the attention of the First Respondent she remedied it by removing the Second Respondent from the mandate.
6. The Investigation Officer interviewed the Respondents regarding the history of the practice. The First Respondent stated that she had met the Second Respondent whilst the latter was a trainee solicitor at C and Co, a firm which the First Respondent had retained to deal with her own matrimonial affairs. At that time the First Respondent was not on the Roll having voluntarily removed herself owing to a mental breakdown.
7. In July 2004 the First Respondent was readmitted to the Roll with an unrestricted practicing certificate. She set up the firm of A Grant & Co and the Second Respondent's training contract was transferred to this firm with the First Respondent as principal.
8. The intention was that the firm trade from premises at Balham High Road and that there would also be another trainee, Mrs G. The First Respondent stated that it was Mrs G's decision to call the firm A Grant & Co and that she had been unaware of the name until a sign was erected at the proposed premises at Balham High Road. The

First Respondent stated that she did not attend those premises until September 2004 and that between July and September Mrs G and the Second Respondent prepared the premises for trading.

9. A copy of A Grant & Co's application for professional indemnity insurance was before the Tribunal. The correspondence address stated on the application forms was the Second Respondent's home address at 39 Claremont House. The firm's accompanying letter of 19<sup>th</sup> July 2004 stated that Mrs G and the Second Respondent would be paying the insurance. A Grant & Co's indemnity insurance was dated 21<sup>st</sup> July 2004.
10. The Investigation Officer noted that the client account cash books recorded credits being made to the client bank account in August 2004. The Investigation Officer asked the First Respondent in the presence of the Second Respondent to explain why client credits appeared in the cash book if the First Respondent had not attended the premises until September 2004 and the firm did not trade until November 2004.
11. The Second Respondent stated that "whilst decorating, clients came in and [we] accepted payments on account...and took instructions on 24<sup>th</sup> August 2004". The Second Respondent stated that she took the file back to Claremont House to work on the file and that the First Respondent was attending Claremont House every day when not attending Court on her own matter.
12. It was revealed from the accounting records that the client, Mr L, had paid £300 cash on account of costs to the Second Respondent who had asked Mrs G to pay the money into her personal bank account at Halifax plc. The Second Respondent stated that she was an authorised signatory on this account.
13. The First Respondent stated that at the time she was unaware that the Second Respondent and Mrs G had dealt with clients and client funds in this way.
14. Mrs G left the firm in September 2004. In October 2004 the Second Respondent issued proceedings against Mrs G in the County Court for monies that she had contributed to funding the practice which she alleged were deposited in the Halifax account and later withdrawn by Mrs G after she left the firm in September 2004. Included in the claim was the £300 paid by Mr L. The First Respondent was later joined in the proceedings as a co-defendant.
15. The First Respondent said that it was in October 2004 when she received a Court Summons in respect of these proceedings that she was first made aware of the £300 paid on account by Mr L. She said that she had previously been aware of the existence of the Halifax account but said that it was to provide all of the necessary equipment to allow the practice to trade.
16. The First Respondent applied to The Law Society to have the firm's name changed to Robinson & Co solicitors and The Law Society records show that the name was changed on 10<sup>th</sup> October 2004. In November 2004 the firm began practising under its new name and from the Second Respondent's home address.

17. The First Respondent said that the £300 was offset against a later bill. A copy of the bill raised in respect of Mr L's matter did not show a breakdown of the monies paid on account. The First Respondent later confirmed that she had not supervised this matter or endorsed the invoice.
18. It was noted in the report that during the firm's existence it had only dealt with some thirteen client matters, a large number of which involved immigration work a field in which the First Respondent had little or no experience. Asked if she had supervised any of the immigration files the First Respondent replied "no, I have looked through them but I can't comment on the legal side". The report noted that the Second Respondent had not kept a proper training diary and that the First Respondent had not in any event seen the Second Respondent's training diary. No appraisals of the Second Respondent had been carried out by the First Respondent. The investigation officer queried whether the limited number of matters would provide sufficient breadth and depth of experience for the Second Respondent.
19. The report noted that between the time the firm was set up and the inspection in June 2005 the First Respondent had taken no drawings at all and the Second Respondent had received £5,400.00. As a trainee the Second Respondent should have been paid a minimum of £15,900 per annum.
20. An explanation was sought by The Law Society from both Respondents. That of the First Respondent was provided in a letter from her solicitors, Messrs Murdochs, of 17<sup>th</sup> October 2005. It was conceded that the accounts had not been properly kept because the First Respondent had only had restricted access to the necessary papers. The First Respondent had caused the Second Respondent's name to be removed from the bank mandate, shortly after the initial visit by the Investigating Officers. She had not authorised the Second Respondent or Mrs G to deal with client money and had no knowledge of the payment of £300.00 in the L case into Mrs G's personal account. It was denied on behalf of the First Respondent that she had failed in her duties of supervising and training the Second Respondent. She had seen no harm in allowing the Second Respondent to undertake immigration work as she had undertaken similar work with her previous employers.
21. The response on behalf of the Second Respondent came from her solicitor, Mr David Morgan, in a letter of 24<sup>th</sup> November 2005. It was denied that the First Respondent was unable to gain access to the client ledgers as she had taken all the files with her before returning them to the accountant. The Second Respondent claimed that the firm was not a sham arrangement, as The Law Society suspected, the firm was run by the First Respondent albeit with assistance from the Second Respondent.

### **The Submissions of the Applicant**

22. The First Respondent had admitted the allegations. The Second Respondent had disputed that an Order under Section 43 of the Solicitors Act to control her future employment was necessary. Much of the factual background was not disputed by either Respondent.
23. The Law Society's case was that the employment of the Second Respondent was something of a sham. The First Respondent could not and did not provide proper

supervision of training. The firm had been set up by the Second Respondent and Mrs G. The work done by the Second Respondent was not work with which the First Respondent was familiar. The caseworker in each of the firm's matters was the Second Respondent.

24. The second statement of the First Respondent reinforced The Law Society's contention that the work of setting up the firm had been carried out by the Second Respondent. The Applicant submitted that the practice had been set up at the instigation of the Second Respondent to secure her a training contract. She knew the First Respondent's situation from acting for her in matrimonial proceedings.

### **Oral Evidence of the First Respondent**

25. The First Respondent confirmed the truth of her statements.
26. The First Respondent had known nothing of the application in her name for a practicing certificate or for professional indemnity insurance. In her mind no practice would have started until the premises were in place and consultancy arrangements set up. She accepted that such applications would have had to have been made but not at that time. The letter dated 9<sup>th</sup> July 2004 to The Law Society enclosing the applications was not the First Respondent's letter nor her signature. The form KR4 for restoration to the Roll had the name Marie Bernadette Smith Robinson which was not a name the Respondent had ever used. Her professional name was her maiden name of Smith.
27. The First Respondent had not authorised anyone to send the applications. At this time the First Respondent had met with the Second Respondent and Mrs G twice before, once at Mrs G's and once for lunch.
28. When the First Respondent had practised previously block applications were made for practicing certificates and the certificates were held centrally. The First Respondent had had no occasion to know her Law Society number.
29. Subsequently the Second Respondent had produced client cheques to the First Respondent from clients she had never heard of or met. The First Respondent had checked on The Law Society website regarding the practising statement. The Second Respondent had told her that professional indemnity insurance had been arranged. The First Respondent had had no choice but to accept the position because of the client cheques. She had been told by the Second Respondent that insurance had been arranged with Zurich. She had checked with the Second Respondent that the premiums had been paid. She relied on the Second Respondent to tell her the truth.
30. The Second Respondent had done all the applications without any reference to the First Respondent.
31. In relation to appraisals of the Second Respondent the First Respondent accepted that she had signed a performance and development review dated 20<sup>th</sup> July 2004 but had not signed it on that date. It had been signed after the Inspection Officer's visit.

32. The firm had only had thirteen files. The Second Respondent was always aware of the limited work. The First Respondent was and always had been a tax lawyer. The First Respondent had signed and back dated the performance review at the Second Respondent's request to assist her as she had done some work. She had back dated the document to cover the period that it should have covered.
33. She had signed a further appraisal dated 5<sup>th</sup> July 2005 which was the correct date and was more formal.
34. In August 2004 the First Respondent had gone to the Balham High Road premises. The landlord had allowed access for refurbishment. The First Respondent had had no involvement in the premises and had not been aware of a practice at that time. She had seen a sign over the door saying A Grant & Co although it did not refer to solicitors. The Second Respondent and Mrs G had wanted to go into business long before the First Respondent was involved.
35. There had been a meeting on 4<sup>th</sup> September 2004 in which the First Respondent had been sent out for 45 minutes while Mrs G and the Second Respondent reached agreement regarding the premises. The First Respondent said that if it was her practice it had to be called Robinson & Co. The practice was to be dependent on the delivery of the premises. The premises were a commercial venture for the Second Respondent and Mrs G.
36. The approach to the First Respondent by Mrs G and the Second Respondent was to head up the firm as a solicitor if the First Respondent was interested. It had never gone further than that. The First Respondent had only met the Second Respondent on four occasions previously at C & Co. She had not been contacted by Mrs G directly. A meeting at Mrs G's house had been arranged by the Second Respondent who was present.
37. At C & Co the First Respondent had not been aware of the Second Respondent's status. She had never met the principal of that firm Mr C. She had not (as asserted by the Second Respondent) gone through his office to reach the Second Respondent's office nor had she been introduced to the Second Respondent by Mr C.
38. The First Respondent had signed a certificate for part completion of training contract dated 20<sup>th</sup> October 2004. She had not completed the rest of the form and might well have signed it in blank. This was not something however which she would have done with bank documents.
39. Shown blank CHAPS documents with her signature the First Respondent said that these had not been in place prior to the investigation visit. They had been prepared to regularise the position. They were to be completed and put back on the files to match the bank transfers. She agreed that her signature appeared on several such forms.
40. The Second Respondent had been unaware of the £300 paid by Mr L until the dispute between the Second Respondent and Mrs G. She had not been aware that anything had been happening at the premises except fitting up. She denied having been at the premises in August 2004 when Mr L came in.

41. The First Respondent accepted that she should have done things differently when she found out what was going on. She had never made a decision regarding the practice and had wanted to be a consultant. She had become aware how shambolic things were. She had not opened the correspondence.

### **The Oral Evidence of Ms Pauline Anning**

42. Ms Anning, a solicitor and the First Respondent's sister, referred the Tribunal to her letter dated 13<sup>th</sup> July 2007.
43. She spoke of the First Respondent's very promising early career.
44. Following the birth of her second child the First Respondent had suffered from severe post natal depression but had been alone with her children for long periods as her husband worked abroad. The First Respondent had been very unhappy and had turned to drink.
45. A further traumatic period had followed a fall by their mother who had been in hospital in Liverpool. There had been issues about her hospital care. The First Respondent had been hit hard by her mother's death. During this period her second husband had left her.
46. The First Respondent's divorce from her first husband had been difficult and contested especially regarding custody. Her former husband would only approve supervised access with people who lived remotely. The First Respondent had entered a downward spiral but her second marriage had also been unhappy.
47. After their mother's death the First Respondent had had counselling in relation to both grief and alcohol use.
48. Ms Anning knew the First Respondent very well and considered her to be very honest.

### **The Submissions on behalf of the First Respondent**

49. On any view the First Respondent's circumstances were tragic. The Tribunal had heard from her sister and had read the First Respondent's statement. At times the First Respondent had been a very successful lawyer but the past 10 to 12 years had been a catalogue of tragic events. The Tribunal was referred to the letter from Ms R, a former solicitor of the First Respondent describing the First Respondent's state of mind at the time she had acted for her. The First Respondent's legal representatives before the Tribunal had also had very serious concerns about her health and indeed even two weeks ago it had not been clear whether the First Respondent would be able to attend the hearing.
50. The First Respondent did not accept that she had made the applications for a practising certificate and professional indemnity insurance. The practice of Robinson & Co had been bizarre. The First Respondent had taken no drawings and the practice had no benefit for her.



51. In September/October 2004 when she discovered the firm had been formed and that she had a trainee she should have done something about it but sadly and unfortunately she had not done so. She recognised her failings.
52. The First Respondent was not a dishonest or deceitful person but had been trying to face up to the realities of her health. She had a severe problem with alcohol and recognised the need to deal with it.
53. The First Respondent was currently enjoying working in a local charity shop. She had in the past been a good solicitor but did not know what the future held. She realised that it would be difficult for her to be a solicitor in future. She recognised that the integrity of the profession was paramount and the safety of clients was very important. If she was to practise in the future she would need to satisfy the Tribunal that she was rehabilitated and under medical care. She could only work in the future under a supervised regime. The First Respondent had not expected to give oral evidence today but had been tendered for cross examination because of the late service of her statement. She had dealt bravely with having to give evidence.

#### **Oral evidence of the Second Respondent**

54. The Second Respondent confirmed the truth of her statement dated 28<sup>th</sup> June 2007. The Second Respondent's statement had been prepared before she had received the First Respondent's statement.
55. The appraisal dated 20<sup>th</sup> July 2004 had been dictated by the First Respondent and typed by the Second Respondent. It had been signed and backdated after the visit of the Investigation Officers as one of the issues raised by the Investigation Officers was the lack of appraisal forms. The First Respondent was trying to rectify the damage. The second appraisal form dated 5<sup>th</sup> July 2005 was also dictated by the First Respondent and typed by the Second Respondent but was correctly dated.
56. The Second Respondent had met the First Respondent at C & Co when she came in as a client of the firm. All appointments were made by Mr C the Principal who would assess whether the firm could take on a matter and agree the fee with the client. Clients had to pass through Mr C's room to get to the Second Respondent's room.
57. The client care letter exhibited to the First Respondent's statement showed in its reference the initials of Mr C and then the Second Respondent. It had been signed by the Second Respondent after being checked by Mr C.
58. The Second Respondent had met Mrs G a long time ago during work experience in a solicitor's firm. Mrs G at the Second Respondent's request did a short period of work experience at Mr C's firm and it was there that she had met the First Respondent.
59. Mrs G had approached the First Respondent directly subsequently and it was only when the Second Respondent's training contract terminated at C & Co that the Second Respondent was told that the First Respondent was opening a firm and she was offered a training contract. The Second Respondent had thought that the firm had been arranged between Mrs G and the First Respondent.

60. Mrs G and the Second Respondent dealt with the landlord of the premises. Mrs G and the First Respondent agreed that once the premises were set up the First Respondent would set up her firm. The First Respondent came to the premises initially in July or August before the visit to which the First Respondent had referred.
61. In August the First Respondent came and saw the name Grant & Co. On that occasion clients came in and the First Respondent sat down and took instructions. As no bank account was opened the First Respondent gave £300 from Mr L to Mrs G to bank.
62. The Second Respondent signed the letter to The Law Society of 9<sup>th</sup> July 2004 enclosing the applications. The First Respondent had told the Second Respondent to sign as her hands were shaking. The First Respondent had a problem with her hands shaking. The First Respondent had said that the Second Respondent should not worry as there would only be a problem about the Second Respondent signing for her if the First Respondent disputed it. The First Respondent had been present. The Second Respondent did not know why sometimes the First Respondent signed blank papers and other times did not sign things herself.
63. The form RF3 application for a practising certificate had been signed and dated by the Second Respondent in the presence of the First Respondent. The Second Respondent had completed the paragraph of the main practising details but not the personal details. The Second Respondent had not completed the directory information or the languages information. She had not known what languages the First Respondent knew. The Second Respondent had completed the insurance information on the basis of information provided to her by the First Respondent.
64. In the letter from her solicitor to The Law Society dated 14<sup>th</sup> February 2006 it had been stated that:-  
     "Ms Rasheed never pretended to be Mrs Robinson to anyone, let alone The Law Society. In particular, she never signed any forms on behalf of Mrs Robinson, as she has always signed all the documentation herself".
- The Second Respondent denied that her evidence was untrue. She said that she might have forgotten at the time that letter was written.
65. The application for a practising certificate referred to the firm as "A Grant & Co". This was a matter which the First Respondent had discussed with Mrs G. The First Respondent had been present when that was written. The Second Respondent assumed that it had not registered with her when the forms were completed in July as the First Respondent had become upset when she saw the name on the sign at the premises in August.
66. The email address on form RF3 was that of the Second Respondent. This had been given because the First Respondent had said she did not always check her emails and was selling her house. The Second Respondent did not know whose mobile number was on the form. It could have been Mrs G's.
67. In relation to form KR4, the application for restoration to the Roll, the Second Respondent confirmed that it was completed in her handwriting. She had added the

name Robinson to the typed name of Marie Bernadette Smith. The typing had presumably been pre-printed by The Law Society. The First Respondent had asked the Second Respondent to complete the form and had given her the information. It had been signed in the First Respondent's presence.

68. The First Respondent had included her marriage certificate in the covering letter to The Law Society to show her name. This was something to which the Second Respondent would not have had access. C & Co had only dealt with financial matters on behalf of the First Respondent not her marriage. The First Respondent knew all the requirements for practising certificates. The Second Respondent had not known these. The Second Respondent had signed the form KR4 in the First Respondent's name.

69. In the letter to The Law Society dated 24<sup>th</sup> November 2005 sent on behalf of the Second Respondent by her solicitors it was stated:-

"It is not true that the firm A Grant & Co and Robinson & Co were a sham. The firm was set up by Mrs Robinson to carry out her legal practice".

The Second Respondent had not had much knowledge of the First Respondent's previous legal background.

70. All the firm's matters showed the Second Respondent as caseworker because the First Respondent had made her do all the work so that she could get the training. The Second Respondent had worked under the supervision of the First Respondent. The Second Respondent had only received part of the salary which she was due.

71. The Second Respondent said that she had not "pp'd" letters on behalf of the First Respondent as she had not been familiar with this notation until she joined her next firm.

72. The Second Respondent was referred to her witness statement as claimant (handed to the Tribunal on behalf of the First Respondent) in civil proceedings brought by herself against Mrs G in which the First Respondent had been joined as co-defendant. In that statement the Second Respondent had written:-

"I confirm that I did all the paper work and prepared all the applications regarding the registration of the firm, applying for the indemnity insurance etc. I also undertook and did the legal work with respect to the approval and amendments of the lease of 295 Balham High Road".

The Second Respondent said that this was correct. The First Respondent had been present. The First Respondent had asked her to do everything and had said that there would be no dispute. The Second Respondent was familiar with the First Respondent's house and even babysat her children.

73. The Second Respondent was referred to her solicitor's letter of 24<sup>th</sup> November 2005 to The Law Society in which it was said:-

"All she wanted to do was to show her ex husband that she is a responsible parent who could be trusted with their children. However, she still refused to acknowledge her problem with alcohol"

The Second Respondent denied that she had been aware that the First Respondent had had a problem with alcohol at the time. The First Respondent had wanted her children and had said that she had not had a problem with alcohol for a long time. She had reports to say she had recovered. The Second Respondent said that her former employer Mr C had had an alcohol problem but was a "dry alcoholic". The Second Respondent denied that when the First Respondent had been her client she had been a chronic alcoholic and incoherent. The First Respondent had been fine until the Investigation Officers came. One day the First Respondent had looked ill and the Second Respondent had taken her to the GP who had told the Second Respondent that the First Respondent had alcohol problems. On one occasion in February 2005 the First Respondent had been asked to leave an advice centre as she was drunk but the Second Respondent had not been in the same room and had not seen her on that occasion.

### **The Submissions on behalf of the Second Respondent**

74. The Tribunal was referred to the Second Respondent's statement which addressed the various issues raised by the Applicant and the First Respondent.
75. The onus had to be on the principal of a firm to see that people in their employment were carrying out their work properly. That was the purpose of a training contract and the appraisal forms.
76. Where there was a conflict of evidence the Tribunal was asked to prefer that of the Second Respondent who had been consistent throughout. The Second Respondent had confirmed that she had completed some of the forms. The difference between the Respondents was whether the Second Respondent had had the First Respondent's authority. It was submitted that that had to be the case. The Tribunal was invited to consider how the First Respondent thought that she could set up in practice without being restored to the Roll and obtaining a practising certificate and professional indemnity insurance.
77. The Second Respondent had not been familiar with the requirements. The letter of 9<sup>th</sup> July 2004 had enclosed a copy of a marriage certificate to which the Second Respondent would not have had access without the cooperation of the First Respondent.
78. While it was accepted that the Second Respondent had been stupid at times she should not suffer for her lack of knowledge. This was the purpose of a training contract.
79. There was a conflict of evidence regarding when the Second Respondent knew of the First Respondent's alcohol problem. It was possible that the Second Respondent had been in denial as the First Respondent was her employer. There was no evidence that the Second Respondent had taken advantage of the First Respondent who must have intended to make a living from her legal practice.

80. The Second Respondent had been as much a victim of circumstances as a perpetrator. The Tribunal was asked not to make an order under Section 43. The Second Respondent was unemployed awaiting the outcome of the hearing. The Second Respondent needed closure of the matter which was why she had not sought an adjournment despite the late service of statements by the First Respondent. Only the pending proceedings before the Tribunal had stopped the Second Respondent's admission to the Roll. The proceedings had impacted on her for some time.
81. After the Tribunal had reached its findings on liability submissions were made as to costs.
82. On behalf of the First Respondent the costs were not disputed but she would need time to pay. She had undertaken to complete an Accountant's Report. The First Respondent accepted liability for at least half the costs.
83. On behalf of the Second Respondent it was said that the First Respondent was a qualified solicitor and an intelligent woman who should have known better. The Second Respondent was unemployed and impecunious. It was also observed although without being taken as a point that the costs included 50 hours of work by the Investigation Officer when the firm had only thirteen matters.

#### **The Findings of the Tribunal**

84. The First Respondent had admitted the allegations against her and the Tribunal found them to have been substantiated. The Second Respondent had disputed the need for an Order under Section 43.
85. There were areas of dispute between the two Respondents and a clear conflict of evidence although many of the background facts had been agreed. This was a case in which without further corroborating evidence it was not possible for the Tribunal to determine which Respondent's version of certain events was true. The Tribunal was however able to make findings and reach decisions on sanction in relation to the undisputed evidence.
86. The First Respondent had been a qualified solicitor who had accepted the Second Respondent as a trainee. She had decided to set up a practice. She would have been aware of the need to obtain professional indemnity insurance and a practising certificate and indeed to be restored to the Roll from which she had voluntarily removed herself previously. Her evidence was that she was not aware that the Second Respondent had completed the necessary documentation to arrange these matters. Even on the basis of that evidence however the First Respondent should have been concerned when she found that all these matters had been done without her knowledge as principal and should have checked exactly what had occurred. She had the option of closing the firm when she knew of these matters and also when she had discovered the payment into Mrs G's Halifax account of client costs of which on the First Respondent's evidence she had been unaware at the time it had occurred. The First Respondent had also backdated appraisal documents despite having limited knowledge of the area of work being undertaken by the Second Respondent her trainee. The First Respondent had also allowed the Second Respondent, a trainee, to be on the client account mandate although it was right to say that she had stopped this

when it had been brought to her attention as a breach by the Investigation Officer. These were serious matters of concern. The protection of the public was paramount. The Tribunal had given careful consideration to striking the First Respondent's name off the Roll. Although there was no medical evidence before the Tribunal, the Tribunal had before it evidence, including that of the First Respondent's sister, herself a solicitor, of a history of ill health and in particular of alcohol related problems in relation to the First Respondent. The First Respondent's legal representatives had also had concerns about her health. The Tribunal was satisfied that the First Respondent was not fit to practise at present. In the light of the available information however the Tribunal would not strike the Respondent off the Roll but would order that she be suspended indefinitely from practice.

87. In relation to the Second Respondent her evidence was that she had been a trainee and that the First Respondent had been aware of arrangements made for the practice and had been an active participant. She had said that she had not been aware at the time of the extent of the First Respondent's health problems. The Tribunal had however found some inconsistency in her evidence including the clear statement in her solicitor's letter of 14<sup>th</sup> February 2006 that she had never signed any forms on behalf of the First Respondent who had always signed documentation herself. Today she had said that she had signed important documentation to The Law Society on behalf of her principal not least because her principal's hands were shaking. Even if, as the Second Respondent asserted, the First Respondent was present the Second Respondent should not have signed documents in someone else's name. Although she was a trainee she had some experience in the law as she had accepted in her oral evidence.
88. Although the Second Respondent had said that at the material time she believed the First Respondent no longer had an alcohol problem her letter to the First Respondent's solicitor dated 13<sup>th</sup> October 2005 referred to the First Respondent having a serious alcohol problem and said that the Second Respondent had stopped her from drink driving on several occasions and referred to the incident at the legal advice centre. The Tribunal considered from the evidence before it that the Second Respondent was aware of some significant vulnerability in the First Respondent.
89. Considering carefully the totality of the evidence the Tribunal had concerns about the Second Respondent's conduct even on the basis of her own evidence. The Tribunal took careful note of the fact that the Second Respondent intended to qualify as a solicitor. The Tribunal's primary duty however was to protect the public and the Tribunal was satisfied that it was right to make the regulatory Section 43 Order to allow The Law Society to control the Second Respondent's future employment in the law.
90. The Tribunal considered carefully the submissions in relation to costs. Ability to pay was a matter for enforcement not for the Tribunal. It was right that Respondents pay the Applicant's costs. It was also right that the First Respondent as the qualified solicitor bear the larger proportion of those costs and the Tribunal would so order.

91. The Tribunal Ordered that:-

The Tribunal ORDERED that the Respondent, MARIE BERNADETTE SMITH ROBINSON of Cobham, Surrey, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 13th day of July 2007 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,983.64.

The Tribunal ORDERED that as from 13th day of July 2007 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice HUMAIRA RASHEED of Sutton, Surrey, a person who is or was a clerk to a solicitor and the Tribunal further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,991.82.

Dated this 15<sup>th</sup> day of November 2007  
On behalf of the Tribunal

Miss T. Cullen  
Chairman