

IN THE MATTER OF SIMON JAMES BROWNER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr N Pearson (in the chair)  
Mr R B Bamford  
Mr M G Taylor CBE DL

Date of Hearing: 28th May 2009

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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 Solicitors Regulation Authority by David Elwyn Barton of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX on 14<sup>th</sup> July 2008 that Simon James Browner of 1 Chollacott Close, Tavistock, Devon, PL19 9BW, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:

1. He raised bills and authorised transfers of money from client to office account in circumstances where he knew they could not be justified. It was further alleged that in doing so he was dishonest;
2. He made false claims for travel expenses and was thereby dishonest;
3. He dishonestly failed to account for money received by him in respect of costs.

By a supplementary statement dated 22<sup>nd</sup> December 2008, there was a further allegation against the Respondent that:

4. He compromised or impaired his independence or integrity, his good repute and that of the solicitors' profession, and his duty to act in the best interests of his client in

each case contrary to Rule 1 of the Solicitors Practice Rules 1990. It was further alleged that the Respondent was dishonest.

By a second supplementary statement dated 23<sup>rd</sup> April 2009, there was a further allegation against the Respondent that:

5. He practised as a solicitor in breach of conditions on his practising certificate. It was also alleged that the Respondent was dishonest.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 28<sup>th</sup> May 2009 when David Elwyn Barton appeared as the Applicant, the Respondent appeared and was represented by Miss Alexandra Felix of Counsel.

The evidence before the Tribunal included the admissions of the Respondent to allegations 4 and 5 but not to the allegation of dishonesty. The Tribunal had before it a reference on behalf of the Respondent and a number of other documents produced by the Respondent.

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

The Tribunal Orders that the Respondent, Simon James Browner of 1 Chollacott Close, Tavistock, Devon PL19 9BW (formerly of 12 Beechwood Drive, Wolverhampton, WV6 8NN), solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,151.47.

**The facts are set out in paragraphs 1 – 24 hereunder:**

1. The Respondent, born in 1955, was admitted as a solicitor on 1<sup>st</sup> July 1980 and his name remained upon the Roll of Solicitors.
2. At all material times the Respondent was a self employed consultant working with Evans Harvey Limited, solicitors, of 34 and 39 Morshead Road, Crownhill, Plymouth, Devon, PL6 5AH.
3. On 6<sup>th</sup> July 2007 Evans Harvey Ltd Solicitors (“Evans Harvey”), suspended the Respondent on the ground that he had submitted inflated claims for travel and other non-professional disbursements. They also reported the matter to the Solicitors Regulation Authority (“SRA”).
4. On 18<sup>th</sup> July 2007 the SRA commenced an inspection of the books of account and other documents of Evans Harvey. The Respondent had joined Evans Harvey as a full-time self employed consultant on 5<sup>th</sup> August 2002. He was remunerated by payment of 30% of his net billing. A copy of the Forensic Investigation Report dated 29<sup>th</sup> November 2007 together with correspondence between the SRA and Evans Harvey were before the Tribunal.

### Allegation 1

5. The investigation revealed four instances in which the Respondent had delivered bills to clients of the firm in order to "square off" the client ledger. This was an expression he used when asked by the Investigation Officers ("IOs") to explain himself. In the first three instances the Respondent rendered a bill which was not delivered to the client but which resulted in the credit balances on client account being transferred to office account. In the last case he failed to account for the failure by Counsel to present a client account cheque which had as a consequence been recredited to client account. In each case it was alleged that the Respondent knew that the bills could not be justified.
  
6. In the case of Mr H, which concerned a road traffic accident claim, Mr H had received £1,500.59 from his employers and had agreed to return some or all of this depending on whether his claim was successful. The Respondent was aware of this agreement. After settling the claim and receiving a cheque for the agreed costs and disbursements, the Respondent wrote to Mr H on 22<sup>nd</sup> March 2007 stating the sum of £1,500.59 would be deducted from Mr H's damages (£6,300) to repay his employers. He also confirmed the firm's fees and disbursements had been paid in full. On 27<sup>th</sup> April 2007, a further bill was raised in the sum of £1,500.59 and on 30<sup>th</sup> April 2007 this amount was transferred from client to office account. There was no evidence on the file that this bill had been sent to the client. There was still a credit remaining on the ledger of £55.26 which was actually £50 for a disbursement not recorded on the ledger and £5.26 which had been an overpayment of damages by the other side. When the Respondent was asked about this, he dictated a memo on 12<sup>th</sup> July 2007 stating he thought this amount was to be paid to Mr H's employers. He told the IO that the bill for £1,500.59 should not have been raised and that he had assumed it was the balance outstanding. He agreed that £1,500.59 was due to Mr H's employers and that there was a client account shortage of this amount.
  
7. In the case of Mrs G, after her case had settled, and agreed damages, costs and disbursements has been paid, there was a credit of £350 remaining in client account. This was actually for a disbursement which Mrs G had paid herself and which should have been reimbursed to her. On 18<sup>th</sup> January 2005, a further bill was raised for £350 and this was transferred from client to office account. There was no evidence that the bill had been sent to Mrs G. The Respondent told the IO that he had billed the matter because he was "squaring off" and had assumed the £350 was due in costs. He agreed there was a cash shortage of £350 on this matter.
  
8. In the case of Miss B, which was an infant settlement, on 18<sup>th</sup> June 2004, the court approved general damages at £3,500 and special damages of £120. The special damages of £120 had already been paid to Miss B as an interim payment and the court authorised a further £1,500 be paid to Miss B from the £3,500 general damages with the rest to be invested by the court. The agreed costs and disbursements were paid on 7<sup>th</sup> June 2004. On 6<sup>th</sup> July 2004, the sum of £1,500 was paid into client account and on 12<sup>th</sup> July 2004, Miss B was paid £1,380. This left a balance of £120 in client account. On 27<sup>th</sup> July 2004, the Respondent wrote to Miss B confirming the £1,500 ordered by the court included the £120 she had already received and he confirmed the firm's fees had been paid in full. On 29<sup>th</sup> July 2004, a bill was raised for £120 and subsequently transferred from client to office account. The Respondent told the IO

that he was “squaring off the ledger” and assumed the client had received her damages. He admitted there was a client shortage of this amount.

9. Lastly, on one client matter, counsel had been sent a cheque on 6<sup>th</sup> January 2005 for £440.63. This was not cashed and on 11<sup>th</sup> July 2005, the bookkeeper cancelled the cheque and recredited client account. On 29<sup>th</sup> July 2005 a bill was raised for £840.63 and the client was asked, on 19<sup>th</sup> September 2005, to pay the balance of £500 on 13<sup>th</sup> October 2005, and on 14<sup>th</sup> October 2005 the sum of £840.63 was transferred from client to office account. On 14<sup>th</sup> May 2007, counsel’s clerk returned the cheque that had not been cashed. There was an attendance note on the file dated 23<sup>rd</sup> May 2007 stating the Respondent had advised counsel’s clerk that the firm could not now contact the client asking for payment of £440.63 but suggesting the firm would pay half as a gesture. The Respondent told the IO that the bill came to £840.63 as he was “squaring off”. On 7<sup>th</sup> August 2007, the firm paid counsel’s fees of £440.63 from office account to address the client account as agreed by the Respondent.
10. In relation to Mr H, the Respondent accepted in a letter to the SRA dated 16<sup>th</sup> March 2008, that the transfer of costs was wrong. He said in his letter that:
 

".. for whatever reason I took the view, in hindsight quite wrongly, that there was a balance of costs on this file"
11. There were a number of common features to the costs transfers, namely bills for the exact amount standing to the credit of the client ledger, a bill raised but not delivered to the client, and the Respondent taking a view that the sum represented costs due to the firm. The Respondent stated during the investigation that he acknowledged there was a pattern but in his view this indicated sloppy practice and carelessness, rather than deliberate conduct.

#### Allegation 2

12. The Respondent submitted false claims for travel and other disbursements totalling £131.60. On the file of Mrs L, the Respondent submitted a claim for £43.20 for travel to a conference with Counsel, however there was no evidence of a meeting with Counsel on or about the date given. Mr Browner said during the investigation that the claim may have been made in anticipation but was unable to explain how he could claim for parking in advance other than he had attended Tribunals which had been cancelled on arrival. In the case of Mrs L, the Respondent himself had cancelled the hearing prior to his travel claim. The Respondent agreed the defendant’s insurers should not have been billed for travel and parking totalling £131.60.

#### Allegation 3

13. The Respondent was personally paid the sum of £1,149.63 by his client's partner. It had been agreed that the Respondent would reimburse the firm when the cheque cleared due to problems of obtaining payment from the client. The cheque was given to him in April 2007 and he stated to the IO that he thought the cheque cleared in mid to late April. However, he did not account for this until 3<sup>rd</sup> August 2007 and not before the client's partner sent further payments to the firm in respect of the same bill. This created a cash shortage and the firm had to repay the client.

Allegation 4

14. Contrary to Regulation 64 of the Civil Legal Aid (General) Regulations 1989 he received or was party to the making of a payment of £9,635 for work done in proceedings where a public funding certificate had been issued to his client LP. He asked LP for her permission to use part of her personal injury settlement to pay a privately drawn bill, when he knew that she was legally aided. He then utilised the said sum for this purpose.

Allegation 5

15. On 13<sup>th</sup> June 2008 the SRA imposed the following relevant conditions on the Respondent's practising certificate.
- (i) he may act as a solicitor only in employment which had been first approved by the Authority;
  - (ii) he shall immediately inform any actual or prospective employer of the conditions and the reason for their imposition.
16. On 25<sup>th</sup> September 2008 an Appeals Panel considered the Respondent's appeal against the decision to impose conditions, and an additional condition was imposed which gave the Respondent some flexibility to undertake short term temporary work as a locum without having to obtain prior approval from the Authority every time, provided certain conditions were satisfied. The further condition was as follows:
- "Mr Browner may act as a locum for any one practice/employer without the prior approval of the Solicitors Regulation Authority for a period of not more than one month in any two month period provided that he is supervised by a principal in the practice. In the event he is employed as a locum, Mr Browner must notify the Solicitors Regulation Authority of the place and duration of the locum appointment."
17. Accordingly the Respondent was required to obtain the SRA's prior consent to be employed as a solicitor unless he was employed as a locum for less than one month in any two, and he was supervised by a principal in the practice. If he was to work for a longer period or otherwise than as a locum, he was required to obtain prior approval. In either case he was required to notify his employer that his practising certificate was subject to conditions and to explain the reasons for their imposition. He was also required to notify the Authority of the place and duration of the employment.
18. The Respondent was employed as a consultant by Browner Milne-Davidson Solicitors, at First Floor, 13 Duke Street, Tavistock, Devon, PL19 OBA. The principals were Anne Christine Browner, the Respondent's wife, and Alexandra Milne-Davidson. On 27<sup>th</sup> February a Senior Investigation Officer ("SIO") employed by the SRA commenced an inspection of the books of account and other documents of the firm. A copy of the SIO's Report dated 17<sup>th</sup> April 2009 was before the Tribunal.

19. Mrs Browner and Miss Milne-Davidson said that the Respondent had worked for them since March 2008. The Respondent did not inform the SRA of his employment in accordance with the condition requiring him to do so until 12<sup>th</sup> November 2008.
20. The SIO asked Mrs Browner and Miss Milne-Davidson if they were aware of the conditions on the Respondent's practising certificate. They denied any knowledge of the conditions. The Respondent accordingly breached the condition requiring him to inform the firm of the existence of conditions. Mrs Browner stated that when the Respondent told her he was going to London on 11<sup>th</sup> February 2009 he was doing so for a hearing about a case he had worked on for another firm of solicitors. This was false because the Respondent in fact appeared at the Tribunal that day to apply for an adjournment in these proceedings.
21. On 12<sup>th</sup> November 2008 the Respondent stated to the Authority in his email that "I am of course conscious of the present conditions on my Certificate". The email was written in response to a series of requests for information from the Respondent about his place of work. The Respondent had been employed by the firm for some three months by the time the conditions were first imposed in June 2008. His obligation was to immediately disclose them in June 2008. He failed to disclose them for a period of eight months (June 2008 until February 2009 when the SIO disclosed them).
22. The Respondent was employed by the firm for a period of more than one month. He was accordingly obliged to obtain the SRA's approval in accordance with the conditions set out. He did not do so.
23. The Respondent was employed by the firm as a consultant. The SIO noted the Respondent had his own office at the firm with a nameplate on the office door and that he was on the firm's indemnity insurance policy as a part-time consultant for 2008 to 2009. The Respondent was not employed as a locum and was obliged to obtain approval for his employment as a consultant.
24. The Respondent breached his practising certificate conditions because he did not immediately (or indeed ever) inform his employers of their existence, he did not inform the SRA of his employment nor did he obtain approval for his employment.

### **The Respondent's Application to adjourn**

25. Miss Felix on behalf of the Respondent made an application to adjourn the substantive hearing. Allegations 1, 2 and 3 were denied and allegations 4 and 5 were accepted by the Respondent save that he did not accept that he had acted dishonestly.
26. The allegations were very serious and amounted to an allegation of a systematic course of conduct. Miss Felix submitted it was necessary to fully examine the files in question and indeed, to look at other files the Respondent had been working on to be able to ascertain whether there was persistent dishonesty. If there had only been four instances out of 500 files, then that would clearly be relevant to the Respondent's submissions. The Respondent had not been given the opportunity to review a random sample of the files he had worked on nor had the FIO.

27. There was a considerable amount of work that was needed and the Respondent was not properly prepared to proceed today. He understood the Tribunal's need to hear cases quickly, but invited the Tribunal to adjourn today's hearing in order to allow him to have a fair hearing involving the proper preparation required to challenge the allegations. In the absence of such preparation, any hearing would be tainted and probably unfair.
28. In relation to the hearing that took place on 11<sup>th</sup> February 2009 when the matter had been adjourned, that adjournment had been granted on different grounds as notices had not been properly served on the Respondent and he had also suffered a personal bereavement at that time.
29. The Respondent had been to see a psychologist for medical treatment but unfortunately did not have any medical evidence available before the Tribunal as he had not had time to obtain it. He had been knocked sideways such that he had not been able to give proper instructions to his solicitors but the Tribunal was asked to bear in mind that he had not behaved as a rational person should. It was submitted that justice and fairness could not be served if the substantive hearing proceeded today when the Respondent was not adequately prepared. He now had legal representation in place and no further adjournments would need to be granted after today. The Respondent had instructed solicitors to deal with an appeal against the practising conditions that were imposed on his certificate. It was not fair to say that the Respondent had not taken any action since February 2009, although it was accepted that in the absence of medical evidence, it was difficult to explain why it appeared to be the case that nothing had been done since February 2009. The Respondent had not worked since that date and had been to see a Consultant Psychologist.
30. The Respondent accepted that it was in the public interest for proceedings to conclude as quickly as possible but the Tribunal must also balance this with the Respondent's need to meet what were very serious allegations. The Respondent submitted that public interest would not be jeopardised by an adjournment today.

The submissions of the Applicant on the application to adjourn

31. The Applicant confirmed that none of the directions made by the Tribunal on 11<sup>th</sup> February 2009 had been complied with. Since the date of that hearing until Thursday 21<sup>st</sup> May 2009, the Applicant had received no communication from the Respondent at all. On that date he received an email from the Respondent confirming the Respondent had instructed solicitors to act on his behalf. The Applicant had spoken to those solicitors on Tuesday 26<sup>th</sup> May 2009 and had been advised they were instructed a month ago.
32. On 11<sup>th</sup> February 2009, the Tribunal had listed the matter for a substantive hearing today with the agreement of both parties and it now appeared that the Respondent had done nothing since that date to prepare for today's hearing.
33. The Applicant had prepared on the basis that all allegations were denied and stressed that he had not received any requests from the Respondent for access to files he had

worked on and, indeed, there had been no response to any notices served upon him. He had not replied to any correspondence or emails.

34. This was not a case of persistent dishonesty, the FIO had picked out particular matters which were the basis of the allegations. The Applicant submitted that sample files would be irrelevant as the evidence before the Tribunal would either stand or fail. The Applicant had complied with all directions and whilst he accepted the Respondent must have a fair hearing, he submitted that there was also a public interest element. The application had been issued in July 2008 and given the time that had passed, the Applicant submitted that the hearing should proceed today. The Applicant understood that the Respondent had been touring New Zealand with his family and the Tribunal had been given no real reason why he had done nothing since February 2009. This was a case where the public interest outweighed other factors and the application to adjourn should be refused.

#### The decision of the Tribunal on the application to adjourn

35. The Tribunal had listened carefully to the submissions of the parties. This matter had come before the Tribunal on 11<sup>th</sup> February 2009 for a substantive hearing and on that occasion the Respondent had been granted an adjournment. On that date the Tribunal made a number of directions relating to the filing of evidence and also listed the matter for a substantive hearing with the consent of both parties for today. The Respondent had appeared today requesting another adjournment which was opposed by the Applicant.
36. The Tribunal noted that all documents and statements had been served in a timely manner by the Applicant and there had been no response from the Respondent at all until the last few days. The Tribunal had taken into account the reasons submitted by the Respondent for an adjournment but was also mindful of the public interest to proceed and conclude the matter as soon as possible. There was no medical evidence before the Tribunal although the Tribunal was informed that the Respondent has not practised since February 2009. The Tribunal was also aware that there were conditions on the Respondent's practising certificate which meant that he could have practised if he chose to do so.
37. Taking into account all the circumstances and the nature of the allegations together with the public interest element, the application to adjourn was refused. The Tribunal gave the Respondent a brief adjournment of one hour to enable his Counsel to take further instructions from him, given that she had only met him that morning.

### **The Substantive Hearing**

#### **The submissions of the Applicant**

38. The Applicant referred the Tribunal to the witness statements of Graham Harvey dated 15<sup>th</sup> April 2009 and 13<sup>th</sup> May 2009 and the statement of Barbara Prout dated 13<sup>th</sup> May 2009. The Applicant called Gillian Ruth Seager to give evidence.

The oral evidence of Gillian Ruth Seager

39. Ms Seager was sworn in and confirmed that she was employed as a Senior Investigation Officer with the SRA. She confirmed that the Report before the Tribunal dated 29<sup>th</sup> November 2007 had been prepared by her and was true and accurate to the best of her belief.
40. On cross-examination, Ms Seager confirmed the purpose of the investigation had been to investigate the Respondent and to briefly review the accounts position of the firm. Matters had already been reported to the SRA and her job was to look into those matters. She confirmed she did not look at every single file but she had checked to see if expenses had been incurred. She accepted that even if the documents did not substantiate the expenses, that did not mean they had not been incurred.
41. There had been 9 files that had been regarded as problematic and had been exemplified in the report. This meant that the Respondent had been asked questions about these files and his responses were in the report. A total of 53 files were referred to in the Accountant's Report to the SRA and from those 53 files, Ms Seager had examined 18 files in total and had selected 9 where there was more concern, for example a higher claim for travel.
42. Ms Seager confirmed that she had not examined the remaining files as it was not proportionate and would have taken weeks to go through them all. She had been provided with an Accountant's Report which was not complete and was a working document and she had also had a brief discussion with the accountant who was at the premises on the first day of her investigation and selected files after that discussion. The accountant had looked at all the files and Ms Seager admitted that there were 35 files that she had not reviewed at all.
43. Ms Seager confirmed that she had not reviewed any other fee earners' files and was unable to say how other fee earners dealt with matters. She had checked reconciliation statements but had not looked at unposted items.
44. Ms Seager considered the Respondent's files were average in terms of administration. They did not stand out as poor or exceptional. Ms Seager confirmed that she had not examined other files to check if there had been evidence of bills being delivered to clients and was unable to say if this happened on other matters. She had contacted one client, Mr R, to check if he had received a bill but not other clients.
45. Ms Seager was referred to a memorandum dated 12<sup>th</sup> July 2007 which had been dictated by the Respondent after his suspension from the firm concerning a query on the balance held on Mr H's client ledger account of £55.26. On checking her file, Ms Seager confirmed that the memo of 12<sup>th</sup> July 2007 had been dictated on 3<sup>rd</sup>/4<sup>th</sup> July 2007 and typed on 12<sup>th</sup> July 2007. The Respondent had been suspended on 6<sup>th</sup> July 2007 and therefore had not dictated this note after his suspension. Ms Seager accepted that the sentence in her Report stating the memo had been dictated after the Respondent's suspension from the firm was incorrect. Ms Seager confirmed that she was unable to say what date that had been dictated but had been told by the Respondent notes had been dictated after he left the firm. He had dictated a tape following his suspension.

46. In relation to the travel expenses, Ms Seager confirmed she had not contacted Counsel in relation to the case of Mrs L to check whether there had been a conference. She also confirmed that she did not contact the Tribunal to check whether the Respondent had attended.
47. Concerning allegation 3, Ms Seager had spoken to the client in question but indicated she would not record the entire conversation in her report.
48. Ms Seager confirmed the files were in the room and available for the Respondent to examine if he wished to do so. Most of the time he did not look at the files as he remembered the cases. She was unable to recall whether the Respondent had been given prior notice of the interview and the nature of it and did not know if he was aware of the extent of the allegations made by his firm. The notes from the interview would not normally be offered to the Respondent and he had not seen the contemporaneous notes made during the interview.
49. Ms Seager confirmed that Mr Becconsall, an Investigation Manager with the SRA, had also been present during the meetings with the Respondent and his job was to take notes and ask appropriate questions. It was put to Ms Seager that the Respondent had not used the term "squaring off" to which she replied, "No, Respondent did". It was put to Ms Seager that in fact she had used the term and she indicated that she needed to check her notes.
50. Ms Seager was unable to say whether she had taken all 9 files which she had examined away from the solicitor's office but thought that she did. She had copied relevant pages and documents for her own purposes. The Respondent had been shown key documents and the files were available to him if he wanted to examine them.
51. In relation to the minimum cash shortages, Ms Seager said she asked the Respondent whether he agreed the figure should not have been transferred and he either agreed or said "Maybe I shouldn't have done it that way". Ms Seager had calculated the minimum cash shortage figures from reviewing the files.
52. Ms Seager stated in her report that the Respondent had the assistance of two people when working at Evans Harvey. It was put to Ms Seager that she was wrong about this to which she replied that she needed to check her notes. Ms Seager confirmed that she could not write precisely every word verbatim said by the Respondent and her report had been compiled from her own and her colleague's notes.

#### The oral evidence of Graham Adrian Harvey

53. Mr Harvey was sworn in and confirmed his witness statements dated 15<sup>th</sup> April 2009 and 13<sup>th</sup> May 2009 were correct to the best of his knowledge and belief, save that one date needed to be changed. Mr Harvey confirmed he was a director of Evans Harvey Limited Solicitors and that the Respondent had worked there for about five years.
54. On cross-examination Mr Harvey confirmed the Respondent had joined the practice to build up the litigation department and had a secretary, Ms Linda Price, to assist

him. He also confirmed Ms Barbara Prout was the bookkeeper of the practice. There had been no concern that the Respondent was not dealing with files adequately but there was concern that he had left matters to the last moment. There had been one case where the Respondent had missed a limitation date and the firm had to settle with the client. Mr Harvey confirmed that if there had been concerns about the Respondent, they would have been raised at the time. He had been invited to become a director of Evans Harvey Limited Solicitors and indeed, they had discussed terms and agreed terms that he would become a director in 2007. They had discussed a cash injection from the Respondent of about £60,000-£65,000 and he had been happy with that.

55. Mr Harvey confirmed he did not know how many files the Respondent had conducted and that a random selection had been made. There had been a file where Mr Harvey had been persuaded that there was no evidence for claiming travel expenses. Mr Harvey was 'hopping mad' as there was no explanation on a file for taking the money and if the file did not reflect why the money had been claimed, that would be a glaring fault. If it was subsequently discovered that the claim was not justified, that made the situation even worse.
56. Mr Harvey confirmed that he had shown his anger to the Respondent and the Respondent had an inability to explain. He said he would look at the files if other matters were found but he did not ask to look at the files nor did he give any explanation even though he was given an opportunity to explain. Mr Harvey confirmed that his file note had not been shown to the Respondent at the time to agree it was an accurate record of their conversation.
57. Mr Harvey was asked whether the case of LP had been a high profile case reported on television and a success for the firm. Mr Harvey did not think it was a high profile case and indeed LP had complained about the delay by the Respondent in dealing with the costs part of the case. He felt the case had been a disaster as this had been a legally aided client that the Respondent had billed privately and then taken costs from her damages which the firm refunded to her. LP's boyfriend had reported the matter to one of the firm's referrers and the firm had lost work as a result.
58. It was put to Mr Harvey that the Respondent had discussed with him taking fees from LP's settlement and reimbursing her from the legal aid bill. Mr Harvey did not accept this. The case had settled and could easily have been dealt with by billing the matter. The thrust of the claim was that damages had been kept from the client for 3 to 4 years while the costs position was sorted out. The client had been billed £1,000 which she should not have been and as soon as Mr Harvey became aware of the situation, he had reimbursed the client.

#### The oral evidence of Barbara Margaret Prout

59. Barbara Margaret Prout was sworn in and confirmed her statement dated 13<sup>th</sup> May 2009 was true to the best of her knowledge and belief. She had been a legal cashier with Evans Harvey Limited Solicitors since 2003.
60. Ms Prout confirmed that the procedure at the firm was that when cheques were received, whoever opened the post would write the cheque into a book and the cheque

would then be distributed to the relevant fee earner. The fee earner would fill out a blue slip and Ms Prout would then highlight in the book to show that she had received the cheque. As a result of this procedure she would know when to accept a paying-in slip and a cheque.

61. The Respondent had called Ms Prout and asked if he could endorse a cheque on the back and pay it into the firm's bank account. Ms Prout told him that he needed to get the cheque replaced as it was made out to him in his personal name and confirmed that she had not agreed with him that he could pay the cheque into his personal bank account.
62. On cross-examination, Ms Prout confirmed that the book was kept in her office and would only be removed when the post was opened for entries to be made and then would be returned to her office after the post had been opened. The cheque would normally be given to her by the fee earner's secretary or when the fee earner visited her office. She confirmed that the entry against the cheque in the sum of £1,149.63 referred to in allegation 3, had written against it "wrong payee - not banked" and that she had written this as she knew the cheque had been made payable to the Respondent. She recalled there had been a conversation with the Respondent but she had told him not to bank the cheque. She was not aware he would bank the cheque and if she had been aware, she would have marked her electronic diary daily to chase up the cheque from him.
63. Ms Prout confirmed that they regularly accepted post dated monthly cheques from clients and therefore she did not consider it unusual to receive three post dated cheques from the client.

#### **Further submissions of the Applicant**

64. In relation to allegation 1 the Applicant submitted that if costs had been properly due, bills would have been delivered to clients and there would have been no reason to withhold them. There had been a number of occasions where conscious decisions had been taken to raise bills and the Respondent had billed the exact credit balance. This displayed a pattern of behaviour and the Respondent had not offered an adequate explanation.
65. Concerning allegation 5, it was submitted that the Respondent's failure to disclose his practising conditions to his employer was deliberate and therefore dishonest. He knew there were conditions on his practising certificate and indeed, Mrs Browner had not known anything of the Tribunal proceedings as the Respondent had given her a false explanation for his absence on 11<sup>th</sup> February 2009 when he had appeared before the Tribunal on the last occasion.

#### **The submissions of the Respondent**

##### The oral evidence of Simon James Browner

66. The Respondent was sworn in and confirmed that he had dealt with many files during his time with Evan Harvey Limited Solicitors. When he had left the firm he still had 300 files which were ongoing and throughout his time had found he was extremely

busy to the extent that he was fire fighting. As a result of this, he admitted he was probably not as careful with the administration side of things as he should have been.

67. In relation to allegation 1, he confirmed that he had made transfers from client to office as he thought clients' entitlement had been paid, disbursements had been paid and the amounts outstanding were for costs. He was referred to a file note dated 12<sup>th</sup> July 2007 relating to the case of H, which was a memorandum from the Respondent to Nick Churchwood stating:

".....the balance monies held on account may have to be paid to DML. A bill was done Cashiers reminded me that there was a balance outstanding, al [sic] Disbursements have been paid and the final bill was then prepared."

This note had been prepared in response to a note from Mr Churchwood who had spotted an incorrect transfer and that money was due to DML. In the Respondent's note he had explained why he believed DML was not due any further money. The Respondent confirmed this note was written prior to his suspension and that he had not removed any files after his suspension. The Respondent denied acting dishonestly when arranging any of the transfers from client to office.

68. Concerning the allegation relating to travel expenses, the Respondent confirmed he had claimed travel expenses relating to the matter of L but could not say without looking at the file whether these were substantiated. He had been shown part of the file by Ms Seager. The Respondent confirmed that he had not claimed any travel expenses dishonestly.
69. In relation to allegation 3, the Respondent confirmed that he had received a cheque made out to him personally and this had been in relation to a client from whom it had been very difficult to obtain payment. The client had moved house and did not inform the firm and accordingly the Respondent had spoken to Ms Prout and had agreed with her that due to the difficulty in getting payment from the client, the cheque would be paid into the Respondent's account and he would subsequently account to the firm. The Respondent had informed Ms Prout, his secretary, Linda Price and had put a note on the file recording the agreement. The Respondent confirmed that he was not in any financial difficulties at the time and had a credit of several thousands of pounds in his account. The only reason the cheque had not been repaid immediately was that he had overlooked the matter as he was extremely busy. The Respondent stated that he would not have left a note for his secretary or on his file if he intended to act dishonestly in any way. The monies were repaid in August after the Respondent was suspended.
70. In relation to allegation 4, the Respondent confirmed the case of LP had been a high profile case and he had been approached by the media. The case involved issuing proceedings against the environmental agency as the client was involved in a car accident due to flooding in the road. The Respondent had been interviewed by the BBC. The case had been a difficult case but the client had been pleased with the outcome. The Respondent knew the client was publicly funded and stated that he had billed costs privately because money had been received from the defendants and after a discussion with the client's father, the client had offered to pay the costs. The Respondent thought he had spoken to Mr Harvey about the situation and they had

agreed to take accelerated costs. The Respondent confirmed he was not aware of Regulation 64 of the Civil Legal Aid (General) Regulations 1989 and he had thought it was acceptable to bill a client privately if the client agreed. The Respondent asserted he had not acted dishonestly.

71. In relation to allegation 5, the Respondent confirmed that he was aware of the conditions on his practising certificate but had misinterpreted them. The misunderstanding had arisen as a result of a conversation with the SRA. The Respondent had thought he was working within the time scales required by the conditions and whilst he had accepted he should have confided in his wife and partner, he did not. Her mother had been ill and died in late January 2009, they had been visiting her 200 miles away regularly and they were both under a great deal of pressure, especially as a close friend of the Respondent's had also committed suicide. The Respondent accepted he was wrong but stated that he had not acted dishonestly.
72. On cross-examination, the Respondent confirmed that after his suspension he returned to the office on 12<sup>th</sup> July and handed in a tape of dictation relating to his ongoing work. This had been arranged with the directors and the tape had been dictated between 6<sup>th</sup> July and 12<sup>th</sup> July. The Respondent had offered to do the tape as he thought it was unprofessional to just leave the practice without any notes on the files.
73. The Respondent confirmed that he was not sure whether he had agreed there had been minimum cash shortage figures and that he had not been given access to the books to check. He could not say whether he was aware of an undertaking given to refund monies to DML in the case of H. He accepted that a bill should not have been raised in the case of H. He could not say whether he had looked at the file when he had raised the bill but it did not strike him that the outstanding monies were for anything other than costs. He had made a mistake.
74. The Respondent was asked what checks he made when preparing client bills. He replied, knowledge of the client and knowledge of the file. The money had been transferred in error as he had believed Evans Harvey was entitled to it. The matter had only come to light as Nick Churchwood had reviewed the file and the Respondent had simply overlooked the money that was due to DML. It had been a mistake. The Respondent confirmed he did not have a time ledger and he could not say whether the file showed little or no work had been done. He was doing what he thought needed to be done and it was a ledger clearing process. When asked to explain what a ledger clearing process was, the Respondent said "finishing off matters appropriately" and that there could be money due back to the client. The Respondent did not recall saying to Ms Seager in relation to the fact that the amount of the bill was the same as the sum due to DML that "clearly coincides and when I did it, I did not think I can't do it".
75. The Respondent denied using the term "squaring off" ledgers and said this was a term that had been used by Mr Becconsall. The Respondent did not recall saying there had been a cash shortage. He was referred to the matter of Miss B where a balance of £120 had been left on the client ledger account and the Respondent had raised a bill for this amount. The Respondent confirmed the client had received the correct sum of money due to her and whilst he accepted he had told the client on 27<sup>th</sup> July 2004 that his firm's costs and fees had been paid, he had raised a bill on 29<sup>th</sup> July 2004 from

monies which were due to the client. This had been an error and he had not been dishonest. He accepted he should have checked the file and that he had thought the firm was entitled to the money.

76. The Respondent was unable to say that his actions were wrong without seeing the file. He had made it clear in his letter of 16<sup>th</sup> March 2008 to the SRA that he had not seen the file and he had expected disclosure to be made. He had not known that he needed to make a formal application for disclosure.
77. In relation to another matter, the Respondent did not recall being notified by the bookkeeper that Counsel had failed to cash a cheque in the sum of £440.63. He had not been aware that the cheque was not presented and had assumed it had been cashed. He confirmed that until he was informed by Counsel two years later, he had assumed Counsel had been paid. He had a long standing relationship with these chambers and if Counsel's clerk had sent a receipted fee note, he had assumed the cheque had been banked. He agreed that it subsequently appeared to be the case that the money was due to Counsel as Counsel had not cashed his cheque.
78. Concerning the travel expenses in relation to Mrs L, the Respondent accepted he had written to the Tribunal on 16<sup>th</sup> November 2005 to vacate a hearing due to the unavailability of witnesses. He did attend the Tribunal frequently as many of his cases were conducted there and often papers would be delivered to the Tribunal and Counsel. He submitted all journeys had been validly made and that a slip had been completed on 18<sup>th</sup> November 2005 by his secretary, Ms Price claiming travel expenses and therefore he assumed he must have attended on the case. Even where hearings were re-scheduled, tribunals still expected a solicitor to attend and would give directions for the progress of the case. The Respondent submitted he must have gone to the Tribunal as he claimed for those expenses. Even if the hearing was vacated late in the day, the Tribunal would still expect somebody to attend in order to explain the position.
79. The same applied in relation to another claim for travel expenses that was put to the Respondent in that he must have attended the Employment Tribunal on 13<sup>th</sup> February 2005 to explain why the case had been settled at short notice. He recalled the other side had asked him to attend on behalf of both parties and to the best of his knowledge and belief, he had attended the Tribunal. He was unable to comment as to whether there were file notes confirming these attendances on the file. The Respondent admitted his file management was poor and he had a considerable workload which meant he was fire fighting and often dictating in his car. The car parking expenses that had been claimed were a fixed amount as the Respondent used the same car park regularly. He did not recall saying that he could not explain how he could claim for car parking in advance.
80. In relation to allegation 3, the Respondent had spoken to the bookkeeper to ask if he could endorse the cheque so that it could be paid into client account. His recollection was that it had been agreed he would pay the cheque into his own personal account and reimburse the firm. He denied this was not agreed and confirmed that he had discussed the matter with Ms Prout as well as his secretary Ms Price. The Tribunal were referred to a statement from Linda Price dated 10<sup>th</sup> February 2009 which confirmed this version of events. It confirmed the Respondent had discussed the

matter with Ms Price, and she was aware of the agreement with Ms Prout. The Respondent did not agree with Ms Prout's evidence and thought she was mistaken. They had been concerned to get money from this client as it had taken so long in the past. The Respondent had overlooked repayment to the firm as his son had been involved in a bad accident and it was only later that he realised the money needed to be repaid. The Respondent confirmed a note had been placed on the file, Nick Churchwood had been aware of the situation and nothing had been hidden.

81. The Respondent could not say why the client continued paying cheques when he had already paid the costs. He did not recall seeing the further cheques and had not seen the cheque receipt book before. The first time he had heard of this system was today. Whenever he received cheques these were sent to Ms Prout with a paying-in slip and she would deal with them. The Respondent had thought the money had been paid and that was the end of the file. He had not had further contact with the clients although he now accepted that a cash shortage had been created.
82. The Respondent confirmed that he travelled a lot to see personal injury clients at home in order to be able to compete with claims management companies and he tended to drive everywhere. He had a large number of clients and travel expenses were regularly incurred. He could not recall telling the IO that there may have been occasions when he had travelled but the claim may have been made on the wrong client ledger. He thought there may have been a bookkeeping error and confirmed he would not charge travel expenses unless he was entitled to them. His wife was starting up her own business so the family resources had been used in that but he did not have any financial difficulties at the time,.
83. In relation to the case of LP, the Respondent now accepted the bill should not have been done. Mr Harvey had been very pleased with the outcome of the case, the firm had received useful publicity and he had been aware that the client had agreed that part of her damages could be used to pay the costs. He had put the proposition to Mr Harvey to do an interim bill. The Respondent confirmed that he had spoken to LP's father on the telephone and that he had regularly had conversations with both LP and her father where one of them would be in the background. He had known the clients a long time and therefore it was not extraordinary to him that they had offered to pay costs. Her father had authority to deal with matters on her behalf but he had wanted her to be fully involved. In view of the overall costs that had been incurred, the client was aware that the amount of the interim bill was reasonable. The Respondent had thought that as the client had agreed to make the payment, it was acceptable. This practice had been done at his previous firm.
84. The Respondent denied admitting to Mr Harvey that he had made claims for petty cash when he had not done the journeys.
85. In relation to the conditions relating to the Respondent's practising certificate, the Respondent had thought that if he was working two weeks out of four, he needed to notify the SRA. He now accepted that he should have notified his wife and partner and that he had acted illogically at the time. His wife was having a bad time and so was he, she did not know about the Tribunal proceedings and the Respondent had been foolish not to tell her. He had not acted dishonestly but had simply had poor judgement. He had intended to tell his wife but her mother was taken ill and his wife

was spending a lot of time at her mother's bedside and had a lot on her plate. The Respondent confirmed he had not been deceitful; he had just been naive and had not told her.

86. As he was working self-employed, he was not certain that he needed to inform the SRA and had asked them if he needed to report two and a half days of work per week. He had been wrongly advised that he did not need to do so. At the time, the Respondent had been working for such a limited period of time, he believed he did not have to inform the SRA or his employer. His income reflected the limited time he was working and the Respondent said he had been wrong but not dishonest. He only realised he had been wrong when the SRA had asked him to report to them.
87. The Respondent confirmed that he had not been working regularly at his wife's office but had used a room for internet trading which was a means of supplementing his income. He had not told his wife about the conditions as he had been ashamed and shocked that after so many years he was facing disciplinary proceedings.

#### Further applications by the Respondent

88. Miss Felix on behalf of the Respondent applied to the Tribunal to adduce in evidence an email from Ms Price, the Respondent's secretary at Evans Harvey dated 26<sup>th</sup> May 2009. She submitted Ms Price was resident in South Africa and was not readily available to attend the Tribunal but her email confirmed the position. The Applicant objected to the Tribunal seeing the email as it had not been disclosed in accordance with the directions made in February 2009. Furthermore, Miss Felix had only just disclosed it to him despite having had it in her possession since the morning. The Tribunal agreed to hear Miss Felix's submissions.
89. Miss Felix submitted that allegation 3 related to a cheque which had been written in the Respondent's personal name and there had been an issue as to who knew what he was doing. This was relevant to the Respondent's submissions. If he had not hidden anything, then that affected whether he had acted dishonestly. Miss Felix had an email from Ms Price which confirmed the Respondent had spoken to Ms Prout. Both Ms Price and the Respondent had been surprised that the cheque had been payable to the Respondent and Ms Price had discussed the matter with Ms Prout as well. Miss Felix submitted this evidence was crucial to the Respondent's case and whilst he acknowledged he had not complied with the Tribunal's directions, in circumstances where he was facing such serious allegations, she submitted the Tribunal should exercise discretion in the Respondent's favour regardless of where fault may lie.
90. The second document that the Respondent sought to adduce in evidence was a reference regarding the Respondent's character. This was not signed but Miss Felix submitted the Tribunal could lend it appropriate weight.
91. The Tribunal confirmed appropriate weight would be attached if the reference were to be taken into account. The Tribunal reserved its position concerning the email.

**Further submissions of the Respondent**

92. Miss Felix reminded the Tribunal that the case had been prepared at short notice and the Respondent had thought that all the files would be available today. Indeed, the Tribunal may have been assisted if the files were available for consideration as the case turned on the conduct of those files. Miss Felix submitted this was not a case of dishonesty but a reflection of poor administrative practices. There was a very high standard of proof to be met, the criminal standard, and the Tribunal had to be satisfied beyond reasonable doubt that the Respondent had been dishonest. The files were very important as without them the Tribunal did not have an opportunity to consider whether the allegations had been made out. This burden was on the Applicant and the case before the Tribunal related only to four files where transfers had been done. It was submitted that the Tribunal needed to see those files to decide whether they were chaotic or whether they were in good administrative order. This would show whether the Respondent was capable of administering files and the Tribunal was asked to bear in mind that the Respondent had not been granted access to the files since his suspension.
93. The four transfers referred to amounted to a total of approximately £700 of which the Respondent would receive 30%. Given that the Respondent had been practising as a solicitor for 30 years, it did not make sense that he would risk his entire career for such a small amount.
94. Miss Seager had confirmed in her evidence that she had looked at 18 files and only four of those had been referred to. In the context of hundreds of files, this was not consistent with dishonesty. A person who acted dishonestly would not do so only on four files and for only £700, especially when he had thousands of pounds in his own bank account. There was no evidence of dishonesty and no evidence of a dishonest motivation on behalf of the Respondent.
95. The matter of Mr H demonstrated that the Respondent had not acted dishonestly. He had prepared a file note to Mr Churchwood before he was suspended from the practice explaining the position. This had been an error that was picked up by someone else and pointed out to him.
96. In relation to the matter of Mrs L and the travel expenses, it was odd that the Respondent would only claim such travel expenses on one file in many thousands. This was not consistent with dishonest conduct.
97. In relation to the cheque in the sum of £1,149.63 made payable to Mr Browner personally, it was submitted that Ms Prout was wrong in her recollection.
98. Miss Felix submitted that if the Tribunal acceded to her application and accepted Ms Price's email, it must be the case that Ms Prout was mistaken given the passage of time. If the Respondent had acted dishonestly, why would he tell other people what he was going to do, particularly in circumstances where he was not wanting for money.
99. In the case of LP, the Respondent now accepted that he was prohibited from doing what he did and the only issue that the Tribunal needed to determine was whether he

had been dishonest. His evidence had been clear. He was not dishonest. He had intended to credit the account and there was no evidence to show he had acted dishonestly.

100. Concerning the conditions on his practising certificate, again the Respondent accepted he had breached the conditions but he did not do so dishonestly. Indeed there was no reason for him to act dishonestly. He was working in his wife's practice and had been ashamed of his position. He had not acted dishonestly and whilst the Respondent's conduct may have been poor, and it may have been sloppy, it was not dishonest.

### **The decision of the Tribunal**

101. The Tribunal had listened carefully to the submissions of the parties, the oral evidence given and had considered all the documentary evidence before it. The Tribunal considered carefully the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in relation to the test on dishonesty. The Tribunal considered whether the Respondent's conduct would be regarded as dishonest by a reasonable, ordinary and honest member of the public and further whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal considered each of the allegations as follows.

#### Allegation 1

102. The Tribunal found this allegation to have been proved but did not find the Respondent had been dishonest. Whilst an ordinary honest and reasonable person may have regarded the Respondent's conduct as dishonest, the Tribunal was of the view that at the time the bills had been drawn, the Respondent had not realised they were not justified although with hindsight he now accepted they should not have been raised. The Tribunal was of the view that the Respondent had been reckless in failing to check the files and ledgers properly and that he had acted without thought. However the Tribunal was satisfied that the Respondent had not consciously and deliberately intended to improperly take clients' money.

#### Allegation 2

103. The Tribunal found allegation 2 not to have been substantiated. The Respondent believed that the travel expenses were justified and the Tribunal was not satisfied that, on the evidence before it, the Applicant had proved to the high standard of proof required that the Respondent had made false claims for travel expenses.

#### Allegation 3

104. The Applicant's case was that the Respondent had paid a cheque made out personally in his name into his own account and had failed to account for this until after the Inspection. Ms Prout's evidence on behalf of the Applicant was that she had told the Respondent not to pay the cheque into his personal account and that he should obtain a further cheque made payable to the firm from the client. The Respondent's evidence was that he had discussed the matter both with Ms Prout and his secretary, Ms Price and that Ms Prout had agreed that due to problems with obtaining monies from the client, the cheque should be paid into the Respondent's own account and he would

subsequently reimburse the firm. The Respondent stated that as well as discussing the matter with Ms Prout and Ms Price, he had placed a note on the file confirming the position. The Tribunal had been referred to a statement from Linda Price dated 10<sup>th</sup> February 2009 in which she had stated "Mr Browner discussed the matter with Barbara, the practice bookkeeper, and it was decided that he would bank the cheque and reimburse the company accordingly." The Tribunal had also been given two file notes both dated 3<sup>rd</sup> April 2007 which confirmed the Respondent's version of events. The Tribunal accepted the Respondent's evidence and found allegation 3 not to have been proved.

#### Allegation 4

105. The Tribunal was satisfied that this allegation, save for the allegation of dishonesty, had been substantiated. Indeed the Respondent had admitted the allegation save for the issue of dishonesty.
106. The Tribunal accepted the Respondent's evidence that he had genuinely believed costs could be charged privately to a client who was legally aided and he had not been aware of Regulation 64 of the Civil Legal Aid (General) Regulations 1989. The Respondent's evidence was that he had discussed the matter with both the client and her father and they were fully aware of the situation. Indeed, the Tribunal noted a letter sent to the client in October 2004 stating "you kindly agreed to a release of part of your damages, in order to meet my firm's interim account of fees, a copy of which is attached." Accordingly, the Tribunal did not find that dishonesty had been established.

#### Allegation 5

107. The Tribunal found allegation 5, save for the allegation of dishonesty, to have been substantiated. Indeed the Respondent had admitted the allegation but not that he had acted dishonestly.
108. The Tribunal accepted the Respondent's evidence that he had made enquiries from the SRA about whether he needed to report working for two and a half days a week to them and it appeared that he had been given wrong advice by the SRA which he did not take any further from them.
109. The Tribunal found overall that the Respondent had acted in arrogant disregard of the Rules and stressed the allegations proved were very serious allegations.

#### **Mitigation and costs**

110. The Applicant provided the Tribunal with a costs schedule and requested an Order for his costs in the total sum of £25,151.47.
111. Miss Felix on behalf of the Respondent acknowledged that the proven allegations were indeed serious; but reminded the Tribunal that it was significant that there had been no finding of dishonesty which changed the nature of the allegations. This was a case where the Respondent had suffered financially and whilst the Tribunal had been of the view that his conduct had shown an arrogant disregard of the Rules, this was

not dishonest. He had learnt a lesson and it was submitted that this was not a case where his ability to practice should be interfered with.

112. In relation to the question of costs, it was submitted that the costs claimed were too high. An extraordinary amount of time had been spent reviewing 18 files and the number of hours spent on travel would not have been necessary if investigation officers had been used in the West Country close to where the Respondent was based.

### **The decision of the Tribunal**

113. Whilst this was the Respondent's first appearance before the Tribunal, the Tribunal was satisfied that the Respondent's conduct had brought the profession into disrepute and that he had shown an arrogant recklessness in the manner in which he had conducted himself on the matters before the Tribunal. However, the Tribunal was mindful that there had been no complaints by any client, no client had suffered financially and monies had been repaid where they had been due to clients. The Tribunal did recommend that the conditions on the Respondent's practising certificate should remain and having heard the Respondent's evidence today, it was clear that he would not be under any misunderstanding in the future as to how those conditions applied. The Tribunal considered that in this case the appropriate sanction was to fine the Respondent £15,000.
114. In relation to the question of costs, the Tribunal was satisfied that the case had been properly brought as the files did not appear to have proper records on them and the Respondent himself had accepted that he had dealt with matters under a great deal of pressure and often found himself to be fire fighting. Furthermore, the Tribunal had taken into account the Respondent's failure to comply with the Tribunal's directions given on 11<sup>th</sup> February 2009 and as a result of this the issues between the parties had not been narrowed in any way. In the circumstances, the Tribunal considered the Respondent should pay the costs in full and made an Order that he should pay the costs of £25,151.47.
115. The Tribunal Ordered that the Respondent, Simon James Browner of 1 Chollacott Close, Tavistock, Devon PL19 9BW (formerly of 12 Beechwood Drive, Wolverhampton, WV6 8NN), solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,151.47.

Dated this 12<sup>th</sup> day of January 2010  
on behalf of the Tribunal

N Pearson  
Chairman