SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10721-2011

BETWEEN:

SIMON EDMUND JOHN KABERRY Applicant

and

SOLICITORS REGULATION AUTHORITY Respondent

Before:

Mr K W Duncan (in the chair)
Mr P Housego
Mr M R Hallam

Date of Hearing: 11th January 2012

Appearances

The Applicant Mr Simon Kaberry appeared in person.

Mr Inderjit Johal solicitor appeared for the Respondent, the Solicitors Regulation Authority.

APPLICATION FOR RESTORATION TO THE ROLL

Documents

1. The Tribunal reviewed all the documents including;

Applicant:

- Application to be restored to the Roll dated 3 March 2011 with supporting affidavit dated 2 March 2011;
- Letter from the Applicant dated 18 April 2011 to the Tribunal office;
- Letter of 18 April 2011 to Mr Johal;
- Applicant's reply to the Law Society's submissions dated 18 April 2011;
- E-mail dated 4 May 2011 from Mr Johal to the Applicant;
- Letter from the Applicant dated 2 August 2011 to the Tribunal office with enclosed note;
- Letter from the Applicant dated 24 August 2011 to the Tribunal office;
- Answer dated 28 August 2011;
- Report of Professor Malcolm Lader dated 9 June 2000 with attachments;
- Committee on Safety of Medicines, UK Government Bulletin to Prescribing Doctors January 1988
- Witness statement of Carole Robson dated 3 March 2011
- Witness statement of John Briggs Patchett dated 21 February 2011
- Witness statement of Petrina Massouras dated 15 June 2011
- Schedule of [C] Mortgages
- Skeleton arguments dated 30 August 2011;
- Book written by the Applicant entitled "Easy Touch";
- Copy advertisements from the Law Society's Gazette dated 15 December 2011 and from the Yorkshire Post dated 21 December 2011;
- Applicant's bundle entitled Miscellaneous Exhibits dated 11 January 2012;
- Bundle of testimonials.

Respondent:

- Outline submissions on behalf the Respondent dated 6 April 2011 with exhibits.
- Letter from the Respondent dated 18 August 2011 with enclosed printouts of Compensation Fund payments.

Preliminary matters

2. The Applicant asked the Tribunal that Professor Lader be permitted to sit in on the hearing before giving his sworn evidence. Mr Johal made no objection on behalf of

the Respondent and the Tribunal agreed that Professor Lader should be permitted to be in the courtroom.

Background

3. The Applicant was born in 1948 and admitted in 1974. He practised on his own account as Simon Kaberry & Co from 1986 until March 1994 when his firm was intervened into by the Law Society.

4. The Applicant had appeared before the Tribunal on two occasions, first on 14 March 1991 when the Tribunal found that he had been guilty of conduct unbefitting a solicitor in that he had:

   (a) failed to maintain proper written accounts contrary to Rule 11 of the Solicitors Accounts Rules 1986;

   (b) contrary to Rule 8 of the Solicitors Accounts Rules 1986 he drew money out of client account other than as permitted by Rule 7 of the said Rules;

   (c) failed to deliver accountant's reports notwithstanding the provisions of Section 34 of the Solicitors Act 1974 and the Rules made there under; and

   (d) failed to comply with the decision of the Adjudication Committee.

   On that occasion the Tribunal said that there was no doubt that it was of fundamental importance for a solicitor to keep records of clients' money held by him properly and up-to-date. It was said that the Respondent himself recognised that the maintenance of proper accounts records was vital. The delivery of Accountant's Reports was equally vital. It was essential that The Law Society should be in a position to know that a solicitor's practice had complied properly with the Solicitors Accounts Rules and that no client's money had been placed in jeopardy. The Tribunal went on to say on that occasion that the Respondent was not to continue with what appeared to be an inappropriate attitude to his responsibilities. He had to ensure the correct keeping of clients' accounts. The Tribunal then ordered that the Respondent pay a fine of £2,500 with costs.

5. The Applicant's second appearance before the Tribunal took place on 27 July 1995 when he faced nine allegations of conduct unbefitting a solicitor, as follows, that he had:

   (a) drawn monies out of client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1986 contrary to Rule 8 of the said Rules;

   (b) paid his own money into client account contrary to Rule 6 of the Solicitors Accounts Rules 1986;

   (c) failed to produce books of accounts for inspection when properly required to do so contrary to Rule 27 of the Solicitors Accounts Rules 1991;

   (d) drew monies out of client account contrary to Rule 8 of the said Rules;

(e) failed to deliver accountants reports notwithstanding the terms of Section 34 of the Solicitors Act 1974 and the Rules made thereunder;

(f) practised as a solicitor whilst in breach of a condition imposed upon his Practising Certificate;

(g) practised as a solicitor without a Practising Certificate;

(h) failed promptly to redeem mortgages; and

(i) deceived clients as to his failure at allegation (h) above.

6. In finding those allegations to have been substantiated the Tribunal said in September 1995:

> "If the respondent's responsibility for clients money had not been apparent prior to the former disciplinary hearing then it must be more than apparent afterwards. The respondent appears to have gone from bad to worse. The Tribunal is in no doubt that the respondent's behaviour was dishonest. He utilised clients' money for improper purposes, attempted to disguise what he had done by, for instance, making monthly payments to lenders in respect of mortgages which he had led the clients to believe to have been redeemed and which ought to have been redeemed. In correspondence the respondent had given assurances that he had not spent missing moneys on "high living", but huge sums of money have gone missing. Clients monies have been placed in jeopardy and, indeed, have disappeared. Clients would have suffered substantial losses if it had not been for the Law Society's Compensation Fund which meant that the rest of the solicitors' profession had to pay out large sums of money to ensure that the respondent's own clients had not been prejudiced by his actions. Such behaviour on the part of a solicitor is reprehensible and intolerable. The Tribunal ordered that the respondent Simon Edmund John Kaberry, be Struck off The Roll of Solicitors and they further ordered he should pay the costs of and incidental to the application and enquiry in the total fixed sum of £11,221.13p inclusive."

The Applicant had not attended the hearing in 1995. The Tribunal had received a letter dated 19 July 1995 from his solicitors seeking a general adjournment of the proceedings. The letter disclosed, inter-alia, that West Yorkshire police were conducting an investigation into his affairs, however no charges had then been laid. The Applicant himself had written to the Tribunal dated 26 July 1995 but asked on the day prior to the hearing that if matters were to be aired in public then his letters were to be withdrawn. The Tribunal accepted he had concerns about letters written in support of his application for an adjournment as to a certain extent this might have disclosed his defence to any criminal charges that might be brought. The Tribunal considered the Applicant's application for an adjournment but refused it and the hearing took place without him.

7. The Applicant had 14 days in which to appeal the Tribunal's decision but he did not do so. As he had not been present it was also open to him to seek a rehearing but he did not do that either. He did not he seek judicial review. Following his criminal trial and

acquittal he did not immediately seek leave to appeal the Tribunal decision out of time which the Respondent had indicated it would not oppose while not consenting to it.

8. In due course the Applicant stood trial on 14 counts, including counts of theft, false accounting and the procuring of the execution of a valuable security by deception. At the end of April 1997 he was acquitted by a jury on all counts. The matters for which he was tried arose from the problems in his practice that caused him to be struck off.

9. The Applicant brought proceedings in the Divisional Court which were heard on 11 April 2000, having been issued in 1999. He sought an extension of his time for appealing against the decision of the Tribunal to strike him off. The Lord Chief Justice Lord Bingham considered the Tribunal's decision to refuse an adjournment of the hearing in July 1995 to be "a strong decision but not one which can be held to be wrong on the position as it appeared to the Tribunal". He commented:

> "It is open to Mr Kaberry to apply for restoration to the Roll. Whether he decides to make such an application is a matter for him. If he does decide to make such an application the granting of such application or its refusal is a matter for the Tribunal in the first instance. It would be quite wrong for this court to attempt to influence that decision. If he were to make such an application, however, it would be open to Mr Kaberry on that application to deploy the medical and biochemical evidence which he deems relevant to explain why he acted at the time as he did…"

10. The Applicant made an application for restoration to the Roll which was heard before the Tribunal on 9 August 2001. At the opening of the hearing the Applicant sought an adjournment. He wished to call a medical expert who he advised the Tribunal had become unavailable a short time before the hearing and who had agreed to give evidence on a pro bono basis. The Respondent, the Solicitors Regulation Authority, resisted the application. The Tribunal took the view that it had before it a wealth of documentation, including medical opinion, as to the effects of certain drugs which had been prescribed to the Applicant and which, it was understood, would be the nub of the oral evidence which he wished to call. The Tribunal further noted that it was his own application. He had been notified of the substantive date well in advance of the hearing and it was up to him to be ready on that date. It was correct that both the Respondent and the Tribunal would be inconvenienced by an adjournment. In all of the circumstances, the Tribunal considered it right that the Applicant should proceed with the substantive hearing of his application.

11. In its findings the Tribunal said:

> "The Members of the Tribunal have borne in the forefront of their minds the judgment of Sir Thomas Bingham (as he then was) in the decision of Bolton in the Court of Appeal.
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> It was well established that an application for restoration to the Roll was not to be an appeal against the Tribunal's striking off order. The tenor of Mr Kaberry's application for restoration was that of an appeal against the Tribunal's earlier decision. That was not appropriate.

In 1995 Tribunal had made a finding that Mr Kaberry had been dishonest. That finding had not been overturned.

A successful applicant for Restoration to the Roll must satisfy the Tribunal that he is personally fit to be restored to the Roll. The Tribunal note that Mr Kaberry has not demonstrated personal rehabilitation. He has indicated that he has recovered to some extent from the effects of drugs prescribed to him but he himself says that he has "lost days" and to that extent he could not be said to have fully recovered from the effects of the drugs at the time at the hearing. He had not been employed and did not have the support of other members of solicitors' profession or indeed from anyone else. The Tribunal had most importantly to bear in mind the apparent fitness of the applicant that was the fitness of the applicant to be restored to the Roll of Solicitors in the eyes of a member of the public.

The applicant had to satisfy the Tribunal that the public would consider that any profession would be proud to have the Applicant as a member and that public confidence in the profession, as a whole, would not be damaged by the restoration of Mr Kaberry to the Roll. It was recognised in the light of comments made in the Court of Appeal in the Bolton case that it would be extremely unlikely that any solicitor struck off the Roll for dishonesty would be able to satisfy that test. The Tribunal reminded Mr Kaberry had been found to be dishonest at the time when the Tribunal had ordered his name to be struck off the Roll.

It was also well established that Restoration to the Roll was an exceptional course and it would be necessary to demonstrate that the original offences occurred in exceptional circumstances. It was hard to imagine any circumstances that were so exceptional that it would excuse the misappropriation of very large sums of clients' money and the deliberate misleading of clients. The Tribunal is reminded of one incidence where Mr Kaberry had been placed in funds to redeem a client’s mortgage. He did not redeem that mortgage but had written to clients indicating that he had done so and had escaped discovery for some time by making monthly instalment payments.

That appeared to be a well thought out plan to deceive the clients into thinking that their mortgage had been paid off and deceiving the mortgage lender that the borrowers continued to service the mortgage. The Tribunal did not consider that there were any exceptional circumstances available to Mr Kaberry to explain that course of action, not even the effect of prescribed drugs.

The Tribunal was aware that there have been calls upon The Law Society’s Compensation Fund. Mr Kaberry had not made any attempt to repay those debts.

Bearing in mind all those factors, the Tribunal concluded that it would not be right to order that Mr Kaberry's name be restored to the Roll of Solicitors. The Tribunal ordered that the application of Mr Kaberry for Restoration to the Roll of Solicitors be refused and they further ordered him to pay the costs of the

> response of The Law Society to the application to be subject to detailed assessment unless agreed between the parties."

12. Mr Kaberry appealed the Tribunal's decision and judgment was given on 5 February 2002 by the Master of the Rolls Lord Phillips. He had sight of a report by Professor Malcolm Lader which had not been before the Tribunal. His judgment concluded:

> "Mr Kaberry's submissions to me have amounted to a further appeal against the conclusion reached by the Disciplinary Tribunal, and by Lord Bingham when considering the matter in the Divisional Court, that he must bear some responsibility for the events which led to him being struck off the Roll. It does not seem to me that it is appropriate for me to retry that issue. I have to consider whether there is any basis upon which it can be said that the matter has not been fairly dealt with by the Disciplinary Tribunal. There is, I fear, no such basis. Their reasoning, in my judgment, is proper, appropriate and adequate. The offending in question was not a momentary aberration, it was a lengthy series of transactions. Having regard to the total amount of money that went astray, I cannot possibly find that the Tribunal has been perverse in concluding that this case falls into the category of case where a solicitor has been struck off for dishonesty. Very rarely will there be circumstances that justify readmitting such a person to the Roll. Those circumstances have not been made out.…"

Witnesses

13. Professor Malcolm Lader OBE, Professor of Clinical Psychopharmacology, gave evidence as an expert witness. His report dated 9 June 2000 with attachments was before the Tribunal. The CV attached to that report had changed only in that more recently he had been awarded LLB. The witness testified that he had been researching the benzodiazepines since 1960. Dalmane was listed as a sleeping pill but was inappropriate for that purpose unless the patient needed daytime sedation. It was very long acting and if taken at night would still be working on the patient the next day. If taken night after night it would build up and become toxic. It had, he explained, a long "half life" so that it decayed in the body slowly, and if taken daily that meant that the patient would always be greatly affected by the drug. In examination in chief he agreed that Professor H had given evidence at the criminal trial as to its general effects and the jury had had to relate them to individual circumstances. The witness had seen the Applicant in 1996 in another context and then interviewed him in 2000. He had also had the benefit of 12 witness statements. He agreed that the Applicant's behaviour was consistent with adverse effects of Dalmane. There would be fluctuations in the degree of confusion but no lucid moments. The problems relating to his professional conduct, and the feelings and emotions that the Applicant had described were consistent with an adverse toxic effect. In respect of the Applicant having said that it took him about a year to recover once he had finally ceased taking Dalmane and that his sleeping patterns had never recovered, the witness testified that the direct effect of Dalmane lasted for two to four weeks but there could be sudden residual effects of a psychological nature. Dalmane acted in a similar way to alcohol on particular receptors in the brain and in the same way as alcohol could lead to brain damage, only part of which was reversible but these would be minimal minor effects. The witness testified that Dalmane could lead to confusion, disjunction and inability to

plan and carry out plans. The late Pam Armstrong, Director of the Council for Involuntary Tranquilliser Addiction (CITA), a witness at the Applicant's trial and referred to in his submissions, had a lot of practical experience of dealing with people affected by drugs and severe withdrawal. She had observed that as a direct effect they were seen to be intoxicated, unable to motivate themselves and form proper judgments. The witness testified that an individual's psychological processes and ability to help themselves were affected. The result of taking the drug was nothing like drug induced automatism. It could be a case of being conscious of what was going on but being unable to comprehend it; having lack of insight or not be fully aware of what was going on. In respect of what Lord Phillips had said in his judgment regarding the witness's report, the witness testified that he had relied on other people's accounts of the Applicant's behaviour [at the time] that he was not the person he had been in the 1980s and not able to function in the same way, demonstrating a degree of recklessness. Lord Phillips had said

> "The nub of that report is to this effect:
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> In my opinion, the problems with first, the Law Society, and the Police, from 1990 onwards, were a direct consequence of the use of Dalmane. Mr Kaberry was aware that what he was doing was irregular and chaotic, possibly suspected it could be construed as dishonest but was beyond caring. He would not attribute his inability to cope to the Dalmane. The effects of this class of drugs are so insidious that the individual cannot maintain insight into his impaired performance. Thus, Mr Kaberry would not be aware that he was behaving either erratically or ineffectively. The long-acting attributes of Dalmane are such that it would only be after discontinuation of several days that any clearing of the mind would occur. An occasional missed dose would not result in lucid moments."

The report itself said at paragraph 41:

> "Mr Kaberry had two periods when I judge him to be affected adversely personally and professionally by the Dalmane. The first was in the late 1970s when his career marked time; the second in 1989-1994 when his major problems arose. On each occasion, friends noted a personality change, together with professional incompetence. Relationships disintegrated. Together with some alcohol effects (see below) Mr Kaberry's day-to-day life became disorganised; he became first listless and lackadaisical, then reckless and careless of the consequence of his actions. In my opinion, the problems with first, the Law Society and then the Police, from 1990 onwards, were a direct consequence of the use of Dalmane. Mr Kaberry was aware that what he was doing was irregular and chaotic, possibly suspected it could be construed as dishonest but was beyond caring. He would not attribute his inability to cope to the Dalmane. The effect of his alcohol intake was to multiply the effects of both the Dalmane and the alcohol. He would become more intoxicated much more quickly with alcohol. This interaction is a well-known property of Dalmane as a benzodiazepine…"

14. The witness was unable to comment on any issue of professional wrongdoing but he could say that individuals under the influence of Dalmane would have an awareness

that things were not going correctly and that they were not behaving as they normally would but they could not care less about it. In terms of Lord Phillips having commented that the Applicant must take a share of the blame for what had happened, Professor Lader said that one of the effects of the drug was on insight. In his experience the Applicant presented a fairly extreme example of the effect of the drug. He felt that he could only take a share of the blame if he was aware of everything going wrong and his inability to work properly. The drug limited an individual's ability to monitor their own performance and their own mental processes. A person would be much more vulnerable to being taken advantage of. The effects were similar to the truth drug; an individual taking this drug in the way that Mr Kaberry had would become highly suggestible.

15. On the balance of probabilities the witness considered that there was an 80% probability that the Applicant's behaviour was attributable to the adverse toxic effects of Dalmane. He could not comment on the Applicant's rehabilitation as he had not carried out a full assessment. When he had seen the Applicant in 2000 he considered that the Applicant had been fit to resume some professional work; with the passage of time he had not practised and he felt he would need quite a bit of supervision; the witness drew a parallel with the General Medical Council's assessment of fitness to practice; he had felt that the Applicant would not just be out of practice but would need support in order not to develop psychological problems. The Applicant had been through a lot.

16. In cross examination the witness agreed that his report was now 11 years old. In compiling it he had relied on the Applicant's account, that of witnesses and the account of the criminal proceedings. His views regarding causation of the events in the early 1990s had not changed since he had written the report.

17. It was put to the witness that in his report in 2000 he had said "He was, in short, completely psychiatrically normal..." The witness responded that he felt that was so, but he had learned that the bounds of what was normal were quite wide. If the Applicant had been free of Dalmane since 2000 then there was no reason why he should deteriorate otherwise than by reason of age. Although not able to give an opinion based on an [up-to-date] assessment, the witness said that from his brief experience of the Applicant before today's hearing, he did not think that he was suffering from mental problems. It was the witness's opinion that the Applicant had been adversely affected by Dalmane in the early 1970s and 1990s. This was his opinion expressed at paragraph 41 of his report which had been referred to by Lord Phillips. The witness testified that full possession of one's faculties was not possible when taking the drug regularly. The Applicant could be lucid during the week if he was only taking it at weekends, but if he was taking it regularly he would be confused in varying degrees. In response to a question from the Tribunal about whether the effects could cause someone to act as an automaton who could not appreciate the nature and consequences of their actions, the witness testified that there was a continuum of effect and someone could be an automaton if the level was high enough and he couldn't function at all. In cross examination the witness testified that the effect of the drug and its toxicity ranged at the lower level from sedation and slight confusion about what one was doing but as it built up it could get to a stage where any individual was disinhibited, aggressive, had totally lost insight, suffered from fatigue, double vision and staggered about. This was parallel with the effects of alcohol, but

with Dalmane there was a sustained effect. A hangover [from alcohol] could be recovered from over 24 hours and there was no build up.

18. It was put to the witness that the Applicant had not been an automaton based on the witness's 2000 opinion. The witness stated that the Applicant would be aware of some things that he was doing, there would be other things which he would be aware of but could not correct and yet others of which he would not be aware to any notable extent and every time he took the drug there would be a further effect. When asked whether the Applicant might appreciate that he was doing something wrong, the witness replied that he might appreciate something was going wrong, for example he might give up a lucrative opportunity but not be aware of why he was not willing to take on those types of cases. [The Applicant said that he had given up a particularly lucrative case to another solicitor because he was unable to deal with it.] His impairments would have been different to those of someone doing a repetitive job. [i.e. they would be greater for the Applicant.]

19. While not being prepared to comment on the earlier Tribunal's findings, the witness said that the drug had been a complicating, perhaps causative factor of the Applicant's conduct. The effects of Dalmane would have made him reckless at the time that he was alleged to have been dishonest. It was questionable whether Dalmane would have induced dishonesty but his state of mind in reviewing those events and not caring what he was doing as a result, was a feature of intoxication by Dalmane.

20. The witness clarified for the Tribunal that he never used Dalmane on patients. He did not consider that it should have been introduced as a sleeping drug. He had been involved in drawing up guidelines which said that Dalmane should not be used for more than four weeks. He felt that it had no place in therapy. Dalmane was now only available on private prescription and in his view this implied a degree of disapproval on the part of the NHS. There had been court cases concerning Valium and it was equally long acting. While Dalmane and Valium were chemically different their effects were very similar but most people might acquire some tolerance. The effect was a dulling of the senses, the colour and enjoyment went out of life; people ceased to look forward to something they otherwise would have done. The witness confirmed that when Dalmane was taken with alcohol there was a powerful interaction. [The Applicant said that he had taken alcohol with Dalmane.] The effect of alcohol was not additional but a magnification of the effect. Judgment and insights were impaired. Judgment was one of the first things that went. An individual could think they had performed well when they had performed abysmally. Complex motor performance was also impaired. When asked whether an individual's suggestibility would increase and would the individual's basic moral code be affected the witness replied very much so. The witness testified that there were accounts of people on Rohypnol [a related drug] experiencing greater suggestibility and lack of insight into their suggestibility. The witness testified that while there could be some tolerance to the drug some people did not reach a plateau of partial impairment but suffered a slow and inexorable effect which especially in the elderly could exhibit as pseudo-dementia, which they could recover from it they ceased taking the drug. The effect of the drug was dose-related, the more you took the worse the effect was. In terms of insight, an individual would be aware of what the possible outcome of their action might be but wouldn't care. They might know what honesty was and not care if they were behaving dishonestly. The suggestibility that was also a feature of Dalmane meant someone taking the drug was

highly susceptible to manipulation. The witness clarified for the Tribunal that, based on his experience, someone taking the drug for four, five or six days could show inexplicable aggression, or engage in shoplifting where forgetfulness was a factor. Testamentary capacity might be impaired. There might be driving offences. The witness gave examples. In respect of suicidal behaviour the witness testified that the drug did not cause a lowering of mood but given to a depressed individual it would lessen their anxiety and disinhibit them. If they had suicidal ideas these might come to the fore. [The Applicant had testified that he had on occasion attempted suicide through an overdose of Dalmane.] Class actions against pharmaceutical companies in respect of the drugs had failed but actions were being brought against GPs in respect of prescribing.

Submissions on behalf the Applicant

21. The Applicant relied on the grounds set out in his application and additional submissions which he had made. He chose not to give evidence on oath. In his statement in support of his application the Applicant relied on what he submitted were the exceptional circumstances surrounding his striking off. He referred to a witness statement from Mr John Briggs Patchett dated 21 February 2011 with whom he had shared accommodation while training and whom he had known ever since. Mr Patchett described inter alia his having said to the Applicant in early 1994 that he the Applicant was "utterly puddled". The Applicant also relied on the evidence of Professor Lader.

22. The Applicant described in his statement and in his oral submissions, his experiences with prescription drugs. He had been prescribed Ritalin while a student in common, he submitted, with many other students. He had taken Dalmane on prescription in 1974 to 1975 having complained to his doctor of sleeping problems. He had not realised that it was utterly addictive after two or three weeks with painful withdrawal symptoms if the dose was discontinued. Another doctor advised him to cease taking the drug and he began to recover. The effects of the drug led to his resigning from the firm in which he worked in the late 1970s because he did not wish to continue working in a firm where he had been seen in a poor state.

23. In the early 1980s he only used Dalmane occasionally at weekends. In 1988, as a result of jetlag following a long holiday, he had suffered disturbed sleep patterns and stresses in his private life which had led him to seeking medical help. In 1989 a different GP again prescribed Dalmane in spite of his medical records saying that he should not be prescribed it. The symptoms returned and as a result in 1990 his cohabitee left him. It was at this point that he was fined by the Tribunal and ordered to file accounts every six months because none had been filed with the Law Society.

24. At his criminal trial Professor H had given expert evidence to the court upon the effects of Dalmane and the benzodiazepines. [His evidence was referred to in the judge's summing up included in the Applicant's bundle.] His evidence had been that the dosage that the Applicant was taking would have led to [almost] total incapacity. The Applicant referred the Tribunal to a report produced by the Committee on Safety of Medicines which he submitted, advised that such drugs should not be prescribed as daytime sedatives and should not be taken at night time for more than two weeks and that patients needed to be weaned off them. The Applicant referred the Tribunal to a

medical report dated 30 September 1990, which had been produced for the purpose of renewing an insurance which recorded that he took three times 15 mg of Dalmane at night. His medical records were not complete because the drug had been obtained on private prescription but there were witnesses who had gone to collect prescriptions for him. The Applicant referred the Tribunal to the experiences of other individuals which had been similar to his own and which had been covered in evidence at his criminal trial. Pamela Armstrong had given evidence that you can't counsel someone who is taking benzodiazepines because short-term memory goes. There was confusion, it was chaos. They could not cope with rational thinking; they could not take rational help.

25. The Applicant drew to the Tribunal's attention references in the trial judge's summing up in 1997 to Dalmane.

> "... You are going to have to assess the evidence that you have heard in respect of this particular drug. You are going to have to consider the extent to which the Defendant was taking it. You are going to have to consider the effect it had, if any, on the Defendant and on his attitude, on his perception of things at the relevant time…"

The Applicant submitted that he had become withdrawn and ceased to attend social events. He had lost interest in life and started behaving strangely. When he was required to file accounts every six months it had all gone over his head and no more accounts have been filed. He submitted that at his criminal trial the judge had asked the Law Society representative what on earth had been going on, were alarm bells not ringing? An external accountant had come into his practice and on analysing files had pointed out to the Applicant that in one instance a payment of about £20,000 had been made twice to the same building society. This was an example of his memory difficulties.

26. It was from autumn 1992 that the Applicant submitted that three businessmen - A and "mortgage brokers" B and C - took advantage of his damaged mind and "cleaned me out steadily". The Applicant described to the Tribunal his relationship with A. He had known him a long time and acted in the sale of his father's business on behalf of his mother. A had started a number of businesses which had failed. As a result of the drug the Applicant had started becoming fearful of people. He had been asked for his credit card by A who took it to Jersey and having promised the Applicant that he would not use it save as security, charged holiday costs of £2,000 to it. The Applicant was letting people walk all over him. He had lost all confidence. The individual A had made him a trustee of a company which he knew nothing about. He had also induced him to give him client account cheques and the Applicant did not know how much he had given him. Those stubs in the cheque book were blank. The Applicant had been involved by these people in attending social events relating to what he was told was a charity activity but which he later found out was some sort of scam. He had lent money totalling £22,000 to another of the individuals and had not been repaid.

27. The Applicant told the Tribunal that he had become incompetent. His behaviour was characterised by being unable to sit down and work things out. His staff found that if they put phone calls through to him when he was dictating he would become angry and throw the phone across the room because if he was interrupted he would lose his way. He could only do one thing at a time. He gave examples of cases over which he

had lost control in circumstances where he was competent to do the work but could not do it. The Applicant had come to such a poor state that over Christmas 1993 he had worked as a table clearer in a restaurant owned by A. By then he was running round in circles. The other two individuals – B and C - had been involved in breaking into his office in January 1994 and had stolen files. They had been caught on CCTV emptying his Lloyds bank account and then going back for more. By early 1994 the Applicant testified that he had no money and had become suicidal.

28. As evidence of his suggestibility the Applicant referred the Tribunal to another case where he had been accused of sitting on a client's money. This was because the client had instructed him to do so as the client had problems. The client had then asked him to write saying that it was all the Applicant's fault and he had done so.

29. The individuals who had robbed him had him write letters in one case saying that A was guilty of nothing. He alleged that B and C took him to a small hotel they had bought near Yarmouth and had him write out that he had taken funds to the Grand National and that they had done no wrong but it was his case that they had forged his signature to cheques and deceived him and banks of substantial sums of money by fraud. He had also written an earlier letter but B and C had not found it acceptable. The Applicant submitted that between July 1995 and April 1997 the CPS and the police looked in vain for evidence that he had received any money but found none. He was acquitted at trial. The jury foreman wished him well in rebuilding his life. He referred to the witness statement of Ms Carole Robson in support of what the jury had said to him after the hearing.

30. The Applicant had been made bankrupt as a result of his signature being forged on a guarantee for a loan. He described himself as having been completely wiped out by the events, but he was strong willed.

31. The Applicant's skeleton also described the history of his applications to the High Court in respect of the Tribunal proceedings. He had been unable to go to the High Court sooner after the Tribunal's 1995 decision because he did not wish to prejudice the police investigation against others. In his submissions at the hearing the Applicant informed the Tribunal that he had not had the opportunity to place the facts of this case before Lord Bingham because his Counsel had advised against it at the time but the jury had had the factual evidence. Lord Bingham had said that he could place his medical evidence before the Tribunal if he applied for restoration. The Applicant submitted that he was not seeking to go behind the findings of the original Tribunal but seeking to put a fuller picture to this Tribunal. He submitted that if the wrongdoers and their dishonesty were removed from the picture the Tribunal was left with a lawyer who after 20 years' unblemished career, for no reason and no motive was said to have removed £1 million from client account. He submitted that it was an exceptional circumstance and, as a result of the drugs he had taken, he was in a sedated state when the money had been taken. He submitted that while physical problems were easy to understand people were less alert to mental problems which could not be seen. Until 1995 he had been unaware of the issues around the benzodiazepines but had undertaken considerable research since then and been in touch with pressure groups including those working with members of Parliament. Campaigning was continuing.

32. The Applicant referred the Tribunal to the Divisional Court case R -v- Ministry of Defence, ex parte Murray 1997. In that case the court ruled that professional man should not lose his career when there was a medical explanation for temporary professional failings. Murray was a soldier of 20 years unblemished service who reacted adversely to the anti-malaria drug Lariam and struck an officer. The Applicant also referred the Tribunal to press reports concerning a South African lawyer later a High Court judge in South Africa who had suffered similarly to the Applicant allegedly as a result of taking another of the benzodiazepines.

33. The Applicant submitted that it was difficult to show rehabilitation in circumstances where he had done nothing wrong but been robbed and deceived. It was also his view that he had never been told what he had done wrong. The Applicant submitted that he had sought permission to work in a solicitor's practice but the Respondent had refused that solicitor's application. The solicitor who had applied was someone with whom he had been partnership in the early 1980s and who had wanted him to join their three-partner firm as a general litigator and to bring his client pool with him. No one would employ him now as a struck off solicitor. The Applicant said in his statement in support of his application;

> "I have continued to work pro bono for many people. I enjoy work. Between 2006 – September 2010 I worked, *gratis* as company secretary within the [M] Group dealing largely with those in alcohol and drug treatments and those in care. Unpaid does not matter – it is having something to do that helps. I refer to the letter from the Group Chairman, and director."

The Applicant described for the Tribunal the legal work he had been doing. For M Group he had worked two days a week at two of their treatment centres doing work such as writing contracts of employment for their staff. The chairman of M Group was the husband of the Applicant's former fiancée with whom the Applicant had remained on good terms. It was the chairman of M Group who had paid for the advertisements required in order to make this application. The Applicant had assisted the writer of one of the other testimonials on business matters. He was managing director of a company and in his testimonial said that he had had considerable assistance from the Applicant in legal issues associated with his business and also in connection with his divorce although of course the Applicant could not act for him. The Applicant informed the Tribunal that his work came to him through word-of-mouth and he worked three days a week on average. He had tried to keep up with the law by reading The Times Law Reports. He was not up-to-date with commercial law or with online conveyancing but he did not intend to undertake the latter and might not work as a lawyer. He would still undertake pro bono work. He had worked in litigation and as a commercial lawyer and would hope to undertake larger scale work than conveyancing. Were he to be restored to the Roll he thought that he would gain employment with the M Group which wanted to expand. The chairman wish to be assisted by someone like himself but as a struck off solicitor he did not have the credibility to fill that role at present. If the Applicant gained such employment he doubted that he would be handling money although he considered himself safe to do so. He appreciated that the way that the legal profession was regulated had changed.

34. In terms of maintaining public confidence in the legal profession, the Applicant submitted that to readmit him to the Roll in what he submitted were his exceptional circumstances, would enhance the reputation of the legal profession.

35. The Applicant informed the Tribunal in the context of making his submissions at the hearing that he did have some ongoing problems with immediate memory as a result of having taken Dalmane.

36. In respect of refunding the money stolen from him it was the Applicant's submission that he had repeatedly tried to get the Respondent to try to recover the funds without success. The Applicant referred the Tribunal to letters dated 12 October 1994 and 16 February 1995 to the Compensation Fund to that effect. He submitted that he had been ridiculed and officials had refused to see him. It was his view that no payment should have been made from the Compensation Fund. The Applicant submitted that at his trial the police had had to admit that there was no evidence that he had received any money into his bank accounts. There was "a ton" of evidence that he had not. The Applicant referred the Tribunal to references to the evidence of a police officer referred to in the trial judge's summing up which included:

> "…I have had the Defendant's bank accounts and I accept that the Defendant had nothing in his bank accounts. He couldn't explain his own actions, and he said that his conduct was irrational but he said he wasn't stealing and he had an intention to repay."

37. The Applicant disputed the reference to an intention to repay as it was his case that he had not taken the money. He denied that he had deceived clients. He asked the Tribunal to bear in mind that the police had picked the best cases to bring against him and still could not find that he had any money.

38. The Applicant explained to the Tribunal why he had decided to make this application now. He was putting himself through this ordeal because he was now recovered from his experiences which he described as the suburbs of hell. He had been ruined personally, socially and economically and financially. As part of the pro bono work that he had been doing he had been involved in a divorce matter and had been asked by one of the parties to represent them in court. He was of course unable to do this and so he made the application in the hope that the Respondent would nod it through and he could then do the work. The Respondent had opposed his application. He was under the impression that if he were restored to the Roll there was a good job for him and so he had decided to make the application anyway.

Submissions of the Respondent

39. Mr Johal relied on his outline submissions. He informed the Tribunal that the Respondent did not accept that the Applicant had not personally profited from his actions. The Respondent could not comment on that. In his outline submissions Mr Johal referred to the fact that the Applicant's attempt to appeal the original Tribunal decision striking him off was filed almost four years out of time. He submitted that in rejecting his application for leave to appeal out of time the Divisional Court held that the Tribunal could not properly regard the Applicant as a proper person to remain on the Roll of Solicitors. He referred the Tribunal to the words of Lord Bingham:

> "The main plank of Lord Thomas' submissions rests on Mr Kaberry's acquittal in the Crown Court when medical evidence was called on what he says were the same issues. I do not accept that the issues were the same. In the indictment there were 10 counts of theft which accused Mr Kaberry of stealing other people's money. There were three counts of false accounting which charged him with dishonestly falsifying documents with a view to gain for himself or causing loss to another. There was one count of deception which charged him with the dishonest procurement of the execution of a document with a view to gain. These accounts depended on proof of dishonesty in a very colloquial sense at the heart of the case. It seems likely that the medical evidence which the jury heard caused them to doubt whether Mr Kaberry had been dishonest in that sense."

> "The allegations made against Mr Kaberry in the disciplinary proceedings alleged very serious misconduct and certainly involved dishonesty in the sense described in Royal Brunei Airlines -v- Tan [1995] 2 AC 378, but did not allege theft or dishonest conduct with a view to personal gain. It was in evidence that Mr Kaberry practised alone with a staff of two. He carried on practice until his practice was closed down in March 1994. He was handling clients' affairs, including mortgages and remortgages; he wrote to a client to say that a mortgage had been redeemed when it had not; he wrote to the same client to explain how he had concealed his non-payment of the redemption monies to the building society. If the Tribunal had heard the medical evidence which the jury heard they might have accepted that the overdosage of certain drugs had adversely affected Mr Kaberry's professional judgment and caused him to act in a way which he would not otherwise have done. But the Tribunal would not and in my view could not have taken the view on all the facts that Mr Kaberry at the material time was acting like a man in a dream or in a trance. The Tribunal might have thought his responsibility was reduced but could not properly have regarded it as extinguished. He was effectively accepting that the facts alleged against him were correct. On those facts, and in the light of authority over the last decade or so, the Tribunal could not properly have regarded Mr Kaberry as a proper person to remain on the Roll of Solicitors. If a solicitor can act in this way and escape the ultimate sanction, public confidence in the profession would be gravely undermined and that is a crucial matter for the Tribunal to bear in mind."

40. In his submissions Mr Johal went on to say in respect of Lord Bingham referring to a potential application for restoration, that Mr Kaberry was entitled to ask that the application be considered on the basis of what was alleged and proved against him in the disciplinary proceedings. Mr Johal referred the Tribunal to the comments of the earlier Tribunal which had refused Mr Kaberry's first application for restoration. He also referred to Lord Phillips' conclusions in dismissing the Applicant's appeal against that Tribunal's refusal to restore him to the Roll. He also asked the Tribunal to consider its own decisions in Geoffrey Stuart Black (29 July 2003 [8764/2003] and 18 January 2007 [9603/2006]). In Black, the Respondent misappropriated approximately £50,000 of clients' money over a period of some three years. As a result of that he was convicted of dishonesty offences and sentenced to a term of imprisonment. The Tribunal twice refused Mr Black's application for his restoration to the Roll, in 2007, despite in the latter case of there being a lapse of some 25 years from the Tribunal's

original decision to strike his name from the Roll. The Tribunal acknowledged that Mr Black had achieved remarkable personal rehabilitation (he had worked within the profession with the consent of the Law Society for some seven years prior to his first application) and that he was not likely to pose a danger to profession or the public should his name be restored. However, the matter to which the Tribunal had to give the most serious thought was the perception of the public. The Tribunal had concluded that the public would think less of the solicitors' profession if the Tribunal restored to the Roll a solicitor who had in the past, even in the distant past, stolen clients' money and had gone to prison for doing so. It reached its decision because the good reputation of the profession had to be regarded as being more important than the fortune of an individual member of it. Relevant to that decision had been Lord Donaldson's judgment in Re a solicitor No. 5 of 1990. In that case Lord Donaldson indicated that an exceptional circumstance which might enable a solicitor to be restored to the Roll was that he had acted in a way which amounted to a momentary aberration owing to some pressure. In the Tribunal's 2007 decision, the Tribunal set out the test to be considered by them as the following:-

> "would any reasonable minded member of the public knowing the facts say 'really any profession should be proud to readmit him as a member?'"

Mr Johal went on to quote a passage from an unreported decision of Lord Donaldson, a former Master of the Rolls (No. 11 of 1990):

> "Since dealing with that case (No. 5 of 1990, unreported) I have begun to wonder seriously whether Parliament ever did contemplate restoration in the case of fraud. It may be that in a very exceptional case it did - something which really could be described as momentary aberration under quite exceptional strain, the sort of strain that not everybody meets with but some people do meet in the course of their everyday lives."

41. Mr Johal submitted that the Applicant's application had the tenor of an appeal. He continued to deny that he behaved dishonestly. It was submitted that the Tribunal should have regard to rehabilitation as only being able to begin once an individual had accepted misconduct. The Applicant had failed to heed Lord Bingham's observations in dealing with his appeal that he should ask the Tribunal to consider his application for restoration on the basis of what was alleged and proved against him in the disciplinary proceedings. To that end the Tribunal might be entitled to disregard the new facts and evidence relied on by the Applicant insofar as he sought to utilise them to undermine the Tribunal's findings and decision. It was submitted that much if not all of the Applicant's case had been aired at the previous Tribunal in his first application for restoration and many of his issues had also been dealt with in the appeals from the Tribunal's decisions both of which were dismissed.

42. Mr Johal reminded the Tribunal that in Bolton v the Law Society [1994] 2 All ER, Lord Bingham had said:

> "Only infrequently, particularly in recent years, has it (the SDT) been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty has been established, even after a passage of years, and even when

> the solicitor has made every effort to re-establish himself and redeem his reputation."

Since being struck off the Applicant had been unable to redeem his reputation and re-establish himself. Applications made by solicitors to employ him had been refused by the Law Society because of the dishonesty finding. It was submitted that his application did not have support from the profession, nor did he have a willing solicitor employer. It appeared that he had been working as an investigator and company secretary for the M Group between 2006 and 2010 and had produced a testimonial from the chairman which, although not entirely balanced, the Tribunal might want to give some consideration to. It was, however, submitted that the Applicant had failed to establish that he had been sufficiently rehabilitated and that he was fit in the "eyes of a member of the public" to be readmitted as a solicitor. It was submitted that he had not demonstrated that the original offences occurred in exceptional circumstances and they could not be described as aberrational. There had been a lengthy series of transactions conducted over several months.

43. It was submitted that the report of Professor Lader was over 10 years old and prepared for other proceedings involving the Applicant. It had not been placed before the previous Tribunal but was before Lord Phillips in the Applicant's appeal. The Tribunal was reminded that on his first application for restoration, the suggestion that the Applicant's conduct could be so exclusively attributed to the effect of medicinal drugs, as to excuse what occurred so that the circumstances were so exceptional that he could be restored to the Roll, was rejected. Mr Johal agreed that Professor Lader had given evidence that the effects of the drug were cumulative and that in fact the Applicant would not have had lucid periods and while he might realised that things were not going as they should, he would not have been able, because of the influence of the drug, to do anything about it. The previous Tribunal also had before it a considerable body of evidence about the effects of drugs.

44. The Tribunal was asked to bear in mind that the essential issues were the protection of the public and the maintenance of the good reputation of the solicitor's profession. It was clear from the judgment in Bolton that the public was entitled to have confidence that any solicitor they instructed would be a person of unquestionable integrity, probity and trustworthiness. The Applicant could not be trusted by clients because he had misappropriated very large sums of clients' monies and deliberately misled clients. It was submitted that his restoration to the Roll in those circumstances would undermine confidence in the profession.

45. Mr Johal submitted that as this was not an appeal it was not necessary for the Tribunal to revisit the question of dishonesty. He agreed that it was a fact that the Applicant's hearing in 2002 had been dealt with some four or five weeks before the case of Twinsectra Ltd –v- Yardley and Others [2002] UKHL 12 had been decided. Mr Johal referred to the case of Thobani –v- Solicitors Regulation Authority [2011] All ER (D) determined in December 2011. In that case there had been debate about what a Tribunal in 2001 would have done if it had had the benefit of the Twinsectra decision. The judgment included that the question of whether it would have analysed the material differently if the test in Twinsectra had been applied was a matter of speculation. It was held that the findings made by the Tribunal in 2001 made it likely that finding of dishonesty would follow even if the Twinsectra test had been engaged.

Mr Johal agreed that had the Twinsectra test been applied, potentially the Tribunal determining the Applicant's case would have come to a completely different conclusion. That was speculation. He agreed that it was a legitimate matter for the Tribunal to explore as part of its consideration of whether exceptional circumstances applied in this case. He submitted however by reference to the part of Professor Lader's report to which Lord Phillips had referred, that the Applicant might still have known that what he did was dishonest and continued irresponsibly. He submitted that the Applicant had behaved recklessly and that applying the Twinsectra test, the original Tribunal might still have found him to be dishonest on the basis of the medical evidence. Mr Johal reminded the Tribunal that the Applicant needed to overcome a very high hurdle to establish exceptional circumstances. At this hearing Professor Lader had elaborated on what he meant in paragraph 41 of his report but Mr Johal submitted that what he had said during this hearing was not inconsistent with his original report. He also submitted that the Applicant's misconduct was so serious and so protracted that any explanation short of automatism throughout the period would not suffice. Mr Johal did not challenge that Professor Lader was an appropriate person to give medical evidence in this case.

46. Mr Johal agreed that in the case of Thobani the Tribunal's decision based on dishonesty had been made before Twinsectra was decided but the Administrative Court had taken the view that had Twinsectra applied or had the case been determined after Twinsectra it would not have made a difference to the outcome. Mr Johal agreed that the Tribunal could and should take into account what would happen if the Applicant's original case had been heard now in that it went to exceptional circumstances but he also submitted that this was just one limb of the test which the Tribunal had to apply. The Tribunal also had to have regard to questions of rehabilitation and the good reputation of the profession and he maintained that the Applicant had failed to meet the necessary criteria. Mr Johal relied in the main on questions of the good reputation of the profession and public perceptions. He submitted that the readmission of the Applicant would undermine public confidence in the profession even if it were the Twinsectra test that had applied and under that test the Applicant had not been found to be dishonest. Mr Johal reminded the Tribunal that the Applicant had been found dishonest under the test used at the time.

47. Mr Johal had no information about why the Applicant had not been permitted to work in a solicitors practice while in the cases of Black and Thobani, in both of which the solicitor had been found to be dishonest, they were allowed to work under supervision. He could not answer that without revisiting the decision of the adjudicator, who must not have been satisfied that it was appropriate in the Applicant's case.

Findings of the Tribunal

48. The Tribunal wished to make it clear that it was not undertaking a retrial of the issues which had led to the Applicant being struck off the Roll of Solicitors. The Applicant was of the view that information which had been placed before previous Tribunal hearings had been misleading. The Tribunal found no evidence in the papers to support this assertion and Lord Bingham had rejected it. Those assertions played no part in the Tribunal's decision making on this application. It had considered his application as set out in its own guidance. The first factor to consider was whether the application was premature having regard to the time that has elapsed since the original

order striking the Applicant's name of the Roll was made in 1995. The Applicant had applied for Restoration in 2001 and failed. It was open to him to do as he did and make this further application. The timescales involved were therefore no bar to the application.

49. The Applicant could not appeal against the order of the original Tribunal and if he was to be restored to the Roll he must establish exceptional circumstances. The Tribunal had heard the evidence of Professor Lader, and as the Respondent agreed, the Professor was clearly an appropriate person to give the expert evidence which he gave and the Tribunal had found him to be candid and impartial. The Tribunal itself had put a number of questions to Professor Lader to make sure that it had fully understood his evidence. The gist of his evidence was that the Applicant's actions throughout the material period were heavily influenced by the toxic effects of the drug which he had been inappropriately prescribed by his GP. The effect of the drug was cumulative and persistent with the result that the Applicant did not have lucid moments and that to the extent that he might on occasion have realised that what he was doing was wrong, the drug would have precluded him from knowing or caring that his actions were improper and from being able to do anything about them. The Tribunal accepted Professor Lader's evidence in its entirety. It had noted that in the context of his expert opinion, delivered in a most measured fashion, he had expressed strong views on the toxic effects of the drug based on his considerable experience. Professor Lader was a highly impressive and compelling witness. This area (drugs such as Dalmane) has been a great interest of his throughout his lengthy career, and he is an eminent authority in his field.

50. The original strike off order was made at a hearing when the Applicant was not present, and it was made without the benefit of the medical evidence. The Tribunal found that these factors, combined with the evidence of Professor Lader given to the Tribunal at this hearing, did amount to exceptional circumstances which entitled the Tribunal to consider whether the Applicant should be restored to the Roll.

51. Further and/or additionally, whilst the Tribunal did not question the original Tribunal decision it considered that the combination of three factors also amounted to an exceptional circumstance; the legal test for dishonesty having changed, the Tribunal having not originally had the benefit of Professor Lader's evidence and the acquittal of the Applicant of all 14 criminal charges arising from the same factual matrix.

52. The Applicant had explained the work he had been doing over the past six years, all of which had been pro bono and which had on average taken up three days each week. The Tribunal was aware that the Applicant had not been employed with any law firm. It was concerned to learn that when a law firm had applied for permission to employ the Applicant that application was refused. The Respondent's representative had been unable to explain why it was refused, which had concerned the Tribunal because in the two other cases which it had considered during the hearing (Black and Thobani) the solicitor had been given permission to work in a law firm. The Tribunal was satisfied that the work that the Applicant had done was as much as he could do to satisfy the rehabilitation test and that it was sufficient.

53. The Tribunal had given careful thought to how the public would perceive the Applicant being restored to the Roll. Here again, it was satisfied from what he had

told the Tribunal that he had made no personal gain as a result of his actions, a fact which was reinforced by the transcript indicating that the Police could find no evidence of any personal gain and by the jury acquitting the Applicant on all 14 charges arising from the same facts that led to the Tribunal hearing. The public's perception of those who fall under the influence of prescription drugs had moved on over the years and the Tribunal was satisfied that the appropriately informed member of the public would not view the Applicant's restoration to the Roll as being amiss. The Tribunal did not consider that it would be contrary to the interests of public for the Applicant to be restored to the Roll.

54. The Tribunal appreciated that the Applicant had made no reimbursement to the Compensation Fund but in the particular circumstances it was not felt appropriate or practical to expect him to do so, given the state of his past present and likely future finances and the fact that he did not himself receive any of the missing money. The Tribunal had noted that the Applicant had referred to some ongoing effect on his short term memory in respect of his presenting his case at the hearing. Having had the benefit of seeing the Applicant make his submissions and hearing the evidence of Professor Lader to the effect that there should be no current adverse effect from the drugs on the Applicant, the Tribunal did not consider that an up to date medical report was necessary.

55. In these circumstances the Tribunal had concluded that the Applicant should be restored to the Roll of Solicitors but subject to conditions including that he should first undergo 16 hours of CPD training to be approved by the Respondent and he should work only in an employed capacity. In arriving at the conditions the Tribunal had been mindful that the Applicant had been denied the opportunity to acquire recent experience working in a law firm, and such a condition ensured that it was clear to the public that the Applicant would be up to date with the law if he resumed practice. The perception of the public is an important consideration for the Tribunal. As there was a substantial loss of client money the Tribunal decided that although, having heard the evidence, it concluded that there would be no risk to the public if the Applicant were to hold client funds , it would impose a condition that the Applicant can work only in employment, for then members of the public can have no concern, even misplaced concern, that there is any financial risk from the Applicant as a solicitor.

Costs

56. The Applicant asked the Tribunal to award him the amount of £800 which had been the cost expended by the chairman of M Group in respect of the advertisements required as part of the process of applying for restoration to the Roll. The Tribunal did not consider it appropriate to award these costs to the Applicant as the advertisements were a necessary part of the process of the application which he had made. The Respondent did not make any application for costs and no order for costs was made.

Statement of Full Order

57. The Tribunal made the following Order:

    1. The Tribunal Ordered that the application of Simon Edmund John Kaberry for restoration to the Roll of Solicitors be **GRANTED.**

2. The Applicant may not practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS).

3. For the avoidance of doubt the Applicant may only work as a solicitor in employment.

4. The Applicant may not handle client money or become a signatory to any client or office account.

5. The Applicant shall before obtaining a Practising Certificate undertake 16 hours of Continuing Professional Development approved by the Solicitors Regulation Authority.

6. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraphs 2 - 5 above.

Dated this 22nd day of February 2012
On behalf of the Tribunal

K W Duncan
Chairman