

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BARRIE NIGEL BARKER, solicitor (The Respondent)

Upon the application of Jonathan Goodwin  
on behalf of the Solicitors Regulation Authority

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Mr J N Barnecutt (in the chair)  
Mr R Prigg  
Mr P Wyatt

Date of Hearing: 30th November 2010

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## **FINDINGS & DECISION**

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### **Appearances**

Jonathan Goodwin, Solicitor Advocate, of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT was the Applicant.

Neither the Respondent nor his representative was present at the hearing.

The application to the Tribunal, on behalf of the Solicitors Regulation Authority ("SRA"), was made on 26 April 2009 with a Supplemental Statement dated 22 October 2010.

### **Allegations**

The initial allegations against the Respondent were that he had:-

1. Contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("1998 Rules") failed to ensure compliance with the Rules.
2. Contrary to Rule 7 of the 1998 Rules, failed to rectify breaches promptly or at all.
3. Transferred money from client account, contrary to Rule 19(2) and/or (3) and Rule 22 (3)(b) of the 1998 Rules.
4. Withdrawn money from client account, contrary to Rule 22 of the 1998 Rules.

5. Failed to follow the guidelines for accounting procedure and systems as required by Rule 29 and Appendix 3 of the 1998 Rules.
6. Failed to carry out the required reconciliations, contrary to Rule 32 (7) of the 1998 Rules.
7. Failed to provide all relevant information to clients upon receipt of referrals, to include the amount payable for the referral and that the same had been deducted from the clients funding loan, contrary to Rule 3 of the Solicitors Practice Rules 1990 ("SPR") and Section 2A of the Solicitors Introduction and Referral Code 1990 ("SIRC").
8. Contrary to Rule 1 of the SPR failed to act in the clients' best interests in that he had failed to advise how the interest on the funding loan would be dealt with.

The further allegations against the Respondent were that he had:-

9. Contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC") failed and/or delayed in complying with an order dated 5 October 2007 as regards repayment of monies to the Department of Energy and Climate Change ("DECC").
10. Contrary to Rule 1.06 of the SCC failed and/or delayed in complying with a Judgment dated 10 February 2009.

### **Preliminary Matters**

The Tribunal was satisfied that the Respondent was aware of the hearing and all of the allegations as his legal representative, Andrew Hopper QC, had confirmed the same in his email to the Tribunal dated 3 July 2010.

Mr Hopper QC had explained to the Tribunal, in his email, that while the Respondent did not indicate any discourtesy to the Tribunal, the Applicant or the SRA, he did not intend to defend or to take any further part in the proceedings in order both to save costs and to avoid any unnecessary contention.

### **Factual Background**

1. The Respondent, born in 1943, was admitted as a solicitor on 1 July 1965. As at the date of the hearing, his name remained on the Roll of Solicitors.
2. The Respondent had carried on practice on his own account under the style of Barkers from offices at The Reading House, 11 Alexandra Road, Clevedon, North Somerset, BS21 7WF. It was understood that the Respondent had closed his practice on 7 April 2009 and had taken up employment at Seddons Solicitors on 20 April 2009, although he was no longer at that firm.

### Summary of relevant facts

3. The Forensic Investigation Department of the SRA had carried out an inspection commencing on 20 January 2009 and had produced a Report dated 11 June 2009 together with Appendices.

4. The books of account had not been in compliance with the Solicitors Accounts Rules.
5. It had not been considered practicable for the Investigation Officer (“IO”) to compute the Respondent’s total liability to clients as at 31 December 2008 and whilst no reliance could be placed on the overall integrity of the computerised accounting records, the IO had been able to use the available computerised records, paying in books, cheque stubs and bank statements to determine that a minimum client shortage of £43,376.95 had existed as at 31 December 2008.
6. Initially the Respondent had not accepted the minimum shortage identified by the IO indicating that “they don’t accurately reflect the transactions that have taken place”, and that he found it, “difficult to accept that the client account was in deficit to that extent” without him knowing about it.
7. The Respondent had been given the opportunity to challenge the correctness of the calculated minimum shortage but he had failed to contact the IO in that regard.
8. Whilst it had not been possible to determine the exact cause of the shortage, the IO had identified certain matters that were considered to be contributory factors as follows:-

Overdrawn client ledger accounts	£45,417.02
Credit balances on office account	£125,313.91
Unallocated transfers from client to office account	£21,468.81
Unallocated payments out of client account	£3,202.00

9. Notwithstanding that the Respondent had indicated during the initial interview that there had been no debit balances to the best of his knowledge, the firm’s list of client matter balances as at 31 December 2008 had revealed 19 overdrawn ledger accounts totalling £45,417.02, ranging in amounts between £391.31 - £10,524.20.
10. Given no reliance could be placed on the accuracy of the firm’s accounting records, the two largest matters had been investigated in detail and exemplified in the Report with client JC with a shortage of £10,524.20 and client JW with a shortage of £6,489.51.
11. The IO had noted that the Respondent’s reporting accountants had reported shortages as at 30 March 2007, 31 July 2007, 31 January 2008 and 31 July 2008.
12. During interview the Respondent had been asked what action he had taken to correct the matters identified in his reporting accountants reports to which he had replied “nothing as far as I can see”.

Credit balances on office account - £125,313.91

13. During the initial interview the Respondent had been asked whether there were any credit balances on office account, to which he replied “hopefully not”.
14. However, the firm’s list of client balances as at 31 December 2008 had revealed 71 credits on office account totalling £125,313.19, ranging in amounts from £0.01 to £15,557.38.

15. The Respondent had not provided evidence as to rectification of those credits on office account.
16. Given the inadequacy of the accounting records the IO had investigated in detail the largest two matters, IH control ledger account £15,297.38 and WL office credit of £11,918.00 and client shortage of £8,000.00.

#### Evidence on accountants' reports

17. It had been ascertained that the firm's reporting accountants had identified numerous credit balances on office account for the period 6 April 2006 – 31 July 2007 and 1 February 2008 – 31 July 2008. The Respondent had taken no steps to rectify the position.

#### Unallocated transfers from client to office account - £21,468.81

18. The firm's client account reconciliation as at 31 December 2008 had identified unallocated transfers from client to office account totalling £21,468.81 as reconciling items, with unallocated transfers taking place between 1 May 2008 and 29 September 2008.
19. The IO had verified the various amounts as actually being transferred from the firm's client bank to the office bank account by reference to the firm's office and client bank statements. The Respondent had provided no explanation or evidence of rectification of the unallocated transfers.

#### Unallocated payment out of client account - £3,202.00

20. It had been ascertained that the firm's client account reconciliation identified an unallocated payment out of client account in the sum of £3,202.00 such payment being made on 6 November 2008 by way of banker's draft. The IO had verified the payment by reference to the firm's client bank account statement.

#### Client account reconciliations

21. It had been ascertained that the firm's client account reconciliation as at 31 December 2008 had not complied with the Solicitors Accounts Rules. During interview on 27 March 2009 the Respondent had told the IO that his client account had not been reconciled since 31 December 2008 "Because there is nowhere to start", as a result of all the differences.

#### Loan funding and referral issues

22. The firm had represented Mr T in his claim for compensation in respect of noise induced deafness and vibration white finger. The client care letter sent to the client dated 21 August 2006 had failed to make clear as to how the interest on the funding loan would be dealt with. In respect of the vibration white finger case, the firm had received the full loan amount, less the loan arrangement fee. The Respondent had failed to disclose to Mr T that the firm had paid a referral fee of £464.13 in respect of matters introduced by a referrer.

23. Further, the client had not been informed that he would suffer the interest charged by impact on such amount (16.9%) for the duration of the loan.
24. As at the date of the inspection, the balance of £3,891.25 had remained to the credit of the client.
25. The Respondent had agreed that the introduction fee, paid in respect of matters introduced by a referrer in the sum of £464.13 had been a referral fee.
26. Such fee had been deducted from the funding loan and paid to a company related by shared ownership to the introducer, with the client suffering interest at 16.9% on that amount for the duration of the loan.
27. Whilst the Respondent had suggested that the client would have been made aware of the fee from the document signed by him/her he had accepted that he had a duty to explain the referral fee to the client but that, "the client genuinely won't understand it."

#### The Respondent's explanation

28. By letter dated 7 July 2009 the SRA had written to the Respondent seeking an explanation. The Respondent had failed to reply. However, Mr Andrew Hopper QC had responded on behalf of the Respondent by emails dated 11 August 2009, 18 August 2009, by telephone call on 24 September 2009 and by email dated 15 October 2009.
29. By letter dated 30 October 2009 the DECC had written to the SRA in respect of the Respondent's failure to repay a debt in full and in respect of his failure to comply with a judgement debt against him.
30. The amount to be repaid by the Respondent had originally stood at £22,057.45, with the balance outstanding as at the date of the letter being the sum of £9,824.10.
31. As a consequence of the Respondent's failure to comply with the agreement as regards repayment to the DECC, judgement had been entered against him on 10 February 2009 in the sum of £13,622.11.

#### **Documentary Evidence before the Tribunal**

32. The Tribunal reviewed the Rule 5(2) Statement, dated 26 April 2010, together with its documentary exhibits and the Supplemental Statement dated 22 October 2010 and its exhibits. The Tribunal also had the benefit of a detailed and very helpful email from Andrew Hopper QC setting out the position of the Respondent.

#### **The Tribunal's Findings as to Fact and Law**

33. The Tribunal found all of the ten allegations against the Respondent fully substantiated on the facts as presented by the Applicant.

#### **Application for Costs**

34. The Applicant sought an order for costs totalling £35,800.

35. The Tribunal noted that from Mr Hopper's email of 3 July 2010, it appeared that the Respondent was bankrupt and not employed as a solicitor.

### **Sanction and Reasons**

36. While the Tribunal took account of the fact that there had been no allegation of dishonesty on the part of the Respondent, it considered the breaches of the Accounts Rules to have been very serious. The Tribunal was concerned that there appeared to have been a total abdication of responsibility by the Respondent in that even when he had been alerted to problems by his accountants, he had failed to take any appropriate steps. The Tribunal noted that the breaches had been both substantial and prolonged and that the Respondent had received clear warnings of problems that he had failed to address over some years.
37. In all the circumstances the Tribunal considered that it had been totally inappropriate for a solicitor to conduct his clients' accounts in such a way and that the appropriate penalty was that the Respondent be struck off the Roll of Solicitors and it so ordered.

### **Decision as to Costs**

38. The Tribunal was satisfied that an order for costs should be made and assessed costs in the sum of £35,800.00. However, taking into consideration the financial circumstances of the Respondent, namely his bankruptcy, it ordered that the order for costs should not be enforced without its leave.

### **Orders**

39. The Tribunal Ordered that the Respondent, BARRIE NIGEL BARKER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,800.00, such costs not to be enforced without leave of the Tribunal.

Dated this 25<sup>th</sup> day of January 2011  
On behalf of the Tribunal

J N Barnecutt  
Chairman