SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10661-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HOWARD ROBERT GILLESPIE YOUNG Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss N. Lucking
Mr P. Wyatt

Date of Hearing: 14th March 2013

Appearances

David Barton, Solicitor Advocate, of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent contained in a Rule 5 Statement and Rule 7 Supplementary Statement were that he had:

1.1 Acted in breach of Rules 1(a), (c), and (d) of the Solicitors' Practice Rules 1990 ("SPR"). The Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to prove dishonesty for any of these allegations to be established. The dishonesty element applied to the Respondent's dealings with his former client, Mr H, as specified below;

1.2 Acted contrary to each and all of Rules 1.01, 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC"). The Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to prove dishonesty for any of these allegations to be established. The dishonesty element applied to the Respondent's dealings with his former client Mr H, as specified below;

1.3 Contrary to Rule 20.05 SCC he failed to deal with the Legal Complaints Service and/or the Authority in an open, prompt and cooperative way;

1.4 Failed to deliver an Accountant's Report for the period ended 30 April 2010, due by 30 October 2010;

1.5 Between 12 June 2010 and 10 September 2010 he practised in breach of conditions on his practising certificate, contrary to Rule 20.10 SCC;

1.6 Failed to pay the premium due for indemnity insurance for the indemnity year to 30 September 2010 to Capita (which manages the Assigned Risks Pool (ARP) on behalf of the Authority) within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors' Indemnity Rules 2009 ("SIR");

1.7 Practised as a solicitor after 9 February 2011 without a practising certificate, in breach of Rule 20.02 SCC;

1.8 In breach of Rule 20.05 SCC he had failed to deal with the Authority in an open, prompt and cooperative manner;

1.9 Failed to act with integrity, in the best interests of clients and had acted in a way that was likely to diminish the trust placed in him or the profession in breach of Rules 1.02, 1.04 and 1.06 of the said SCC (or either of them) in the following respects:

1.9.1 He vacated his office at 94 Chorley New Road, Bolton, Lancashire and abandoned client matter files;

1.9.2 In proceedings brought against him by the Legal Ombudsman in the Queen's Bench Division of the High Court under Section 147 of the Legal Services Act 2007, the Court found him to have been in default and he was fined £5,000 with costs of £15,550;

1.9.3 He failed to respond to communications from his clients Mr and Mrs W and/or the Ombudsman seeking Mr and Mrs W's papers.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant, which included:

- Application and Rule 5 Statement dated 16 November 2010 and Exhibits "DEB1 - DEB4";
- Rule 7 Supplementary Statement dated 18 December 2012 and Exhibit "DEB5";
- The Bolton News and The Lancashire Telegraph newspapers dated 10 January 2013, containing advertisements placed by the Applicant;
- Applicant's Schedule of Costs dated 14 March 2013.

The Respondent did not submit any documents.

Preliminary Matter

3. The Respondent had not engaged with the proceedings. Letters sent to the Respondent's last known address in Bolton, Lancashire had been returned undelivered. On 8 February 2012, the Tribunal directed that notice of the substantive hearing date should be published by the Applicant placing an advertisement in The Law Society Gazette and in a newspaper local to the Respondent's last known address. Following a submission by Mr Barton for the Applicant that the Respondent's whereabouts were still unknown, on 27 September 2012 the Tribunal made a general order for substituted service by advertisement in a newspaper local to the Respondent's last known address and/or in the Lancashire area. The existence of these proceedings, including notice of this substantive hearing date, was duly advertised in The Bolton News and The Lancashire Telegraph on 10 January 2013. The Respondent did not contact the Tribunal or Mr Barton in response to the advertisements.

4. Mr Barton informed the Tribunal that the Respondent had previously worked for Stirling Law. The Solicitors Regulation Authority ("SRA") wrote to him at that firm on 30 November 2010. This date immediately followed service of the Application and Rule 5 Statement by the Tribunal on the Respondent. A member of the firm telephoned the SRA's legal department to ask questions about the letter. During the conversation the person at Stirling Law remarked that the Respondent appeared not to have received the proceedings. Mr Barton was asked by the SRA's legal department to send a copy direct to Stirling Law which he did by letter dated 30 November 2010. Those papers were not returned undelivered. Mr Barton also telephoned Stirling Law to speak to the Respondent at 4:28pm on 10 January 2011. He left a message for the Respondent because he was told that he would be in the office later. Mr Barton sent an e-mail to the Respondent at Stirling Law confirming that he had left a message and inviting him to get in touch. There was no response.

5. Mr Barton submitted that the Applicant had duly served notice of the proceedings and the hearing in accordance with the Rules and invited the Tribunal to proceed in the

Respondent's absence. For the record he had written to the Respondent at Stirling Law on 29 November 2010 with a Civil Evidence Act Notice in respect of the documents exhibited to the Rule 5 Statement.

Tribunal's Decision

6. On 27 September 2012 the Tribunal directed that the proceedings and notice of substantive hearing should be served on the Respondent by means of substituted service as set out at paragraph 3 above. Rule 10(6) Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") provided that, if the Tribunal required the advertisement of proceedings under the Rules, it may regard the advertisement as service for the purposes of the Rules. The Tribunal had seen original newspapers containing the advertisements and was satisfied that the proceedings and notice of substantive hearing had been brought to the Respondent's attention and properly served in accordance with its Orders. The Respondent had not engaged with the Tribunal at any stage during the proceedings. Under Rule 16(2) SDPR the Tribunal had power to hear and determine an application notwithstanding that the Respondent failed to attend in person and was not represented at the hearing. There was an obligation on the Tribunal to ensure that cases were heard with reasonable expedition so that the interests of the public as well as the profession could be protected. The Tribunal would proceed to hear and determine the application in the Respondent's absence.

Factual Background

7. The Respondent was born on 23 October 1970 and admitted as a solicitor on 1 November 1995. His name remained on the Roll of Solicitors but he did not hold a current practising certificate. At all material times the Respondent practised as a sole practitioner as CMG Law ("the Firm") from offices at 94 Chorley New Road, Bolton, Lancashire BL1 4DH.

8. The facts underlying the allegations in the Rule 5 Statement and Rule 7 Supplementary Statement follow below.

9. The Respondent's Dealings with Mr B of LAW, the Legal Complaints Service and the Solicitors Regulation Authority

9.1 On 22 June 2009 Mr B wrote to the SRA. Mr B and a number of other potential litigants had met the Respondent at a hotel in Manchester to discuss possible litigation against an insurance company. The Respondent chaired the meeting and promoted the services of the Firm as being "skilled in insurance litigation". On 17 December 2008 Mr B sent the Respondent a cheque for £3,000 as a contribution to and on account of costs, which was cashed on 22 December 2008. By 26 February 2009 the relationship had broken down, and Mr B sent an e-mail to the Respondent stating that he was disappointed not to have heard anything from him since making the payment on account and indicating that his services were no longer required. He requested the return of the money as soon as possible. There was no reply, so on 12 May 2009 Mr B sent another e-mail to the Respondent requesting the return of the money with interest. There was no reply and on 21 May 2009 Mr B sent a further e-mail to the Respondent, who again did not reply. On 2 June 2009 Mr B sent another e-mail to the

Respondent, requesting the return of the money and threatening to report the Respondent to the SRA. There was no response. On 22 June 2009 Mr B reported the matter to the SRA.

9.2 The only explanation from the Respondent was contained in his response to a letter from the Legal Complaints Service ("LCS") dated 28 September 2009. He acknowledged that he had received £3,000 from Mr B as part of a fighting fund. The Respondent suggested that he was entitled to make a charge for work done. The Firm's ledger showed a credit into office account of £3,000 on 18 December 2008 and a debit of £2,957 on 22 December 2008 with reference to a bill.

9.3 On 27 November 2009 the LCS sent the Respondent a Notice under Section 44B of the Solicitors Act 1974 (as amended) ("the Act") requiring him to produce the file. On 6 April 2010 the SRA wrote to the Respondent, the matter having been referred to it by the LCS because he had not responded to the Section 44B Notice and/or produced the file. The SRA's letter recorded as a matter of fact that he had failed to reply to letters from the LCS dated 27 August, 15 September, 26 October, and 20 and 27 November 2009 (which included the Section 44B Notice). The Respondent did not reply. On 9 June 2010 the Respondent was informed that an Adjudicator had referred his conduct in respect of his failure to reply to correspondence from the SRA to the Tribunal.

9.4 On 4 March 2010 the Adjudicator decided that the Respondent had provided an inadequate professional service to Mr B. He directed the Respondent to pay to Mr B £129.56 in compensation and to account for the sum of £3,000 paid on account of costs. The Adjudicator further directed that the Firm's costs be limited to nil, (a reduction of £5,180 plus VAT), and that the appropriate refunds be made, with the directions to be carried out within 7 days. The decision was sent to the Respondent on 11 March 2010. He failed to respond. On 19 March 2010, the LCS telephoned the Respondent on two occasions, speaking to him on one occasion. The LCS wrote to the Respondent on 14 April 2010 informing him that he had not complied with the Adjudicator's decision. On 9 and 26 July 2010 the SRA wrote to the Respondent, again without response. The letter of 26 July specifically drew the Respondent's attention to his obligation to cooperate with his regulatory body. The Respondent did not reply to a further letter from the SRA dated 19 August 2010. Failure to comply with the Adjudicator's decision continued to date.

10. <u>High Court Orders and Complaint by Wilkins Beaumont Suckling</u>

10.1 The Respondent was the Defendant in proceedings in the High Court of Justice, Chancery Division, commenced by Wilkins Beaumont Suckling solicitors on behalf of ten named claimants. During the course of those proceedings seven High Court Orders were made against the Respondent, dated 16 October 2009, 14 January 2010, 29 March 2010, 4 May 2010, 10 June 2010, 30 July 2010 and 11 October 2010.

10.2 Wilkins Beaumont Suckling wrote to Mr Barton on 27 August 2010 summarising the procedural position as at that date. Attached to the letter was a copy of the Order dated 30 July 2010 endorsed with a Penal Notice which had been personally served on the Respondent. The Respondent had not taken the steps required of him by that

Order and was in contempt of court. The letter confirmed that this was the sixth court Order with which the Respondent had failed to comply.

10.3 The Claimants' counsel provided the Court with a Skeleton Argument dated 7 October 2010 for a hearing on 8 October 2010 which summarised the procedural steps taken by that date. Wilkins Beaumont Suckling wrote to the SRA on 22 October 2010 stating that the Respondent had failed to attend the hearing on 8 October 2010, a bench warrant was issued for his arrest and duly executed, resulting in the Respondent being brought before the Court on 11 October 2010 when he was given a suspended term of imprisonment.

10.4 Mr Barton had spoken to the relevant fee earner at Wilkins Beaumont Suckling on the morning of the hearing, who confirmed that they had had no dealings with the Respondent since August 2011. He had paid the majority of the outstanding costs orders against him.

11. Complaint by Dickinson Dees

11.1 On 25 March 2010 Dickinson Dees complained to the LCS on behalf of their client Mr H concerning conduct by the Firm, and in particular the Respondent, which pre- and post-dated the SCC 2007. On 10 July 2008 Dickinson Dees were instructed by Mr H because he was "highly dissatisfied by the service provided by CMG Law". The background to the matter was set out in detail in the letter. The following points were relevant:

- In a letter to Mr H dated 30 April 2005, the Respondent stated "I note that you wish to proceed as quickly as possible". On 24 June 2005 a freezing injunction was obtained and on 29 June 2005 the Firm issued proceedings. On 12 September 2005 the Respondent wrote to Mr H indicating that the Firm would proceed to seek an order for summary judgment. The Respondent appeared confident that there was no defence to the claim, but a review of the Firm's files tended to indicate that there had been very little activity after 12 September 2005;
- Between September 2005 and June 2006, Mr H made numerous telephone calls to the Respondent seeking a progress report. There were no file notes confirming the fact and the result of those communications. It was asserted that Mr H encountered "severe difficulties" in contacting the Respondent and telephone calls were not returned;
- In June 2006 Mr H attended a meeting with the Respondent to discuss the lack of progress. Following that meeting the Respondent wrote to Mr H stating "I see no reason why we cannot bring this case to a conclusion by end 2006 and at the outside by March 2007.";
- On 25 June 2007 Mr H spoke to the Respondent on the telephone. The Respondent explained in that conversation that he had obtained a Court Order which ordered the Defendant to pay Mr H a sum of money within 56 days of the date of the Court Order. Mr H asked the Respondent to provide him with a copy of the Court Order. At the end of the 56 day period Mr H had not received payment. He attempted to contact the Respondent by telephone and text without response;

- In or around late August/early September 2007, Mr H travelled to the Firm's office to try to obtain a copy of the Court Order. He was informed by the receptionist that the Respondent was out of the office. He explained that the purpose of the visit was to obtain a copy of the Court Order granted recently in relation to his dispute. After a long delay, he was handed a piece of paper and informed by the Respondent's secretary that it was a copy of the Court Order;
- Mr H contacted the Court to speak with the Master assigned to the case, Master Eyre, about the Order. He spoke to the Master's clerk who confirmed that there had been no activity in relation to the case since 13 December 2005 when a directions hearing had taken place. The clerk confirmed that the case number on the Order provided by the Firm to Mr H related to another case involving a Mr W. Mr H attempted to contact the Respondent without response;
- On 1 April 2008 the Respondent met with Mr H, Mr H's wife and Mr WB, a friend of Mr H. The Respondent agreed that his conduct of the matter had been unprofessional and did not meet the standard of a competent solicitor. He promised to rectify this and informed Mr H that the matter would be concluded within six months. Mr WB wrote to the Respondent on 24 April 2008 requesting written confirmation of that advice. The Respondent did not respond;
- Dickinson Dees wrote to the Firm and telephoned the Respondent numerous times between 10 July 2008 and 5 August 2008 in order to obtain the papers, without response. They wrote to the Respondent on 5 August 2008 enclosing a draft letter to the LCS asking the LCS to intervene. They obtained the files in early September 2008.

11.2 Mr H provided a signed statement without a Statement of Truth dated 27 July 2010 to the SRA via Dickinson Dees. He confirmed the information provided by Dickinson Dees and included additional detail concerning his attendance at the Firm's office in August/September 2007 (Mr H said that he could not establish the exact date after going through his diary). He spoke to the Respondent and said that he was planning to come to his office later that day to discuss the case and to obtain a copy of the Court Order that he [the Respondent] had obtained in June 2007. The Respondent said that he might not be in the office but that he "would leave a copy of the Order with one of his colleagues at the office." When Mr H arrived he was told that the Respondent was out of the office. He explained that he wanted a copy of the Court Order and was then handed a copy of the Order by a lady whom he assumed was the Respondent's secretary. He did not find out her name and she simply handed the Order to him and did not speak to him.

11.3 Master Eyre wrote to the SRA by e-mail on 17 August 2010 commenting on the Order given to Mr H in which he stated as follows:

> "1. The supposed order is at most no more than a draft that might have been attached to an application, since (1) it includes the phrase "or such other sum," and (2) it uses parlance that I at any rate never use. (For that reason, nothing is likely to turn on the fact that the incorrect action-number is shown.)

2. Moreover, I keep a written record of every hearing and of every order made without a hearing, but I have had no success in tracing such an order.

3. However, the action came before me as recently as 21 May 2009, when I gave directions to bring the action to trial in December 2009… That order was sealed on the 3rd June 2009…"

11.4 On 27 August 2010 the SRA wrote to the Respondent to request his explanation. He did not reply. A further letter was sent to him on 15 September 2010, which also remained unanswered.

12. Complaint by GSS

The LCS investigated a complaint made by the Respondent's client GSS. On 17 May 2010 the LCS wrote to the Respondent setting out the basis of the complaint. Directions were made on 28 January 2010 and 4 June 2010 requiring the Respondent to produce documents. The Respondent never produced the ledger sheet required under the 4 June direction and never replied to the correspondence or communications sent to him chasing compliance.

13. The allegations in the Rule 7 Supplementary Statement arose from an investigation of the Firm's books of account by Mr Freeman, Senior Investigation Officer ("IO") appointed by the SRA which commenced on 4 November 2010. The investigation resulted in the preparation by the IO of a Forensic Investigation Report ("FIR") dated 11 March 2011. The IO met with the Respondent on 5 November 2010. He confirmed that he set up CMG Law on 1 December 2005, subsequently joined in partnership with Mr T until the latter left in June 2010, and closed the Firm on or about 10 September 2010 when he joined BYL Law. The Respondent joined Stirling Law on 27 October 2010 as a consultant. That arrangement was terminated on 17 March 2011.

14. The Respondent's Accountant's Report ("the Report") for the year ended 30 April 2010 was due for delivery by 30 October 2010. The Respondent told the IO on 7 March 2011 that the Report had not been delivered but that he was aware that it was overdue and had instructed his accountant to prepare the same. The Report remained outstanding.

15. On 12 February 2010, when considering the Respondent's application for a practising certificate for the year 2009/2010, the Adjudicator decided to grant a certificate subject to conditions. Conditions 1 and 2 effectively prohibited the Respondent from practising as a sole practitioner. On 25 June 2010 Mr T, the Respondent's former partner, notified the SRA that he had left the Firm with effect from 11 or 12 June 2010 to work elsewhere. When talking to the IO, the Respondent accepted that between 12 June 2010 and 10 September 2010 he practised as a sole principal in breach of the conditions on his practising certificate.

16. Professional indemnity insurance for the year to 30 September 2010 was provided by the ARP. The premium for the year was £162,874.64 inclusive of IPT. As at 12 November 2010 the premium had not been paid. The Respondent initially suggested

that approximately £30,000 had been paid towards the premium, but this was incorrect. The SRA wrote to the Respondent on 13 May 2011 and again on 1 June 2011 to request an explanation, without response.

17. On 18 January 2011, the IO discussed with the Respondent his application for a practising certificate for the year 2010/2011. The Respondent said that he had applied for a certificate towards the end of August 2010 and that during the week commencing 22 November 2010 he had resubmitted the application, having by then learned from the IO that his original application had not been received. On 7 March 2011 the Respondent informed the IO that the payment for the practising certificate fee had not been taken from his bank account. In fact, the Respondent's practising certificate was terminated by the SRA on 9 February 2011. When this was put to the Respondent on 7 March 2011, he said that, whilst he had not received notification of termination, he would immediately contact the SRA. The Respondent confirmed that he was still holding client money of between £25,000/£30,000 and that he had appeared in court as a solicitor after 9 February 2011, including on that same day, 7 March 2011. Further, in early March 2011 the Respondent instructed Counsel to advise in conference, which he did on 4 and 29 March 2011.

18. On 6 July 2011 the SRA wrote to the Respondent requesting an explanation, without response.

19. The SRA wrote to the Respondent on 2 and 23 August 2010 without response. The Respondent sent an e-mail to the SRA dated 13 October 2010 stating that the Firm had ceased trading. The SRA's Ms Lea wrote to the Respondent on 13 October 2010 to request information demonstrating proper closure of the Firm. On 15 October 2010, immediately after the delivery of that letter, two SRA Intervention Officers attended at the Firm's offices at 94 Chorley New Road, Bolton. They prepared an attendance note of their meeting with the Respondent, during which he was informed of the importance of responding fully to the SRA's letters.

20. On 22 October 2010 the SRA received an e-mail from BYL Law, as a result of which on 29 October 2010 Ms Lea telephoned the Respondent at Stirling Law where he was working. She asked him why he had not replied to her letter dated 13 October 2010. A discussion took place during which the Respondent said that he would reply to the letter on the following Monday. He did not do so.

21. On 11 March 2011 the SRA wrote to the Respondent to his work and home addresses and also by e-mail enclosing the FIR. The Respondent was asked to respond by 18 March 2011, but did not do so.

22. Solicitors notified the SRA by e-mail dated 10 March 2011 that the Respondent's offices at 94 Chorley New Road had been repossessed following his departure. Client files had been left behind as evidenced by photographs attached to the FIR. By 21 March 2011 the Respondent had not communicated with anyone concerning their removal. On 8 April 2011 the SRA resolved to intervene into the Firm to protect clients' interests.

23. On 14 November 2011 Mr Justice Lindblom handed down his Judgment in proceedings brought against the Respondent by the Legal Ombudsman ("the

Ombudsman") in order to obtain papers relating to the matter of Mr and Mrs W, the Respondent's former clients so that their complaints against the Respondent could be investigated. This was the first application of its kind by the Ombudsman to the High Court. In the course of those proceedings the Deputy Chief Legal Ombudsman prepared an affidavit dated 31 March 2011 setting out the facts giving rise to the Ombudsman's involvement. Further, the Solicitor and General Counsel to The Office for Legal Complaints of The Legal Ombudsman swore an affidavit on 25 May 2011 in support of the application to the Court in which he set out in evidence the Respondent's failures to deal with requests for information and documents. When the case first came before the Court on 10 May 2011 the Respondent was neither present nor represented. By then Mr and Mrs W had lost the opportunity to pursue an appeal in respect of one of their claims. Lindblom J decided then that the right course to take was not to proceed in the absence of the Respondent but to issue a bench warrant, not backed for bail, so that the Respondent would be brought before the Court and given the opportunity to respond to the application in person. On 13 May 2011, having by then become aware of the warrant, but before it was executed, the Respondent came to Court. Following that hearing he swore an affidavit dated 23 May 2011 in which he explained the work he had done for Mr and Mrs W. A further hearing took place on 27 May 2011 and the Respondent gave the Court three undertakings in relation to production of documents and notification of his whereabouts. The matter came back before Lindblom J on 7 October 2011. On that occasion the Respondent pointed to several undisputed mitigating factors to explain his default. The Judge noted that once the Respondent engaged with the investigation he did what he reasonably could to cooperate. He apologised for his default which he did not try to minimise or excuse. The Judge found that his apology was sincere, having been first offered at the hearing on 27 May and repeated at the hearing on 7 October. The Judge was satisfied that the Respondent at no stage tried to harm his clients' interests. The documents came to light and the investigation went ahead with the result that the Ombudsman concluded that Mr and Mrs W had suffered no significant loss. In the Judgment it was recorded that the Respondent accepted that he had been in default for a period of nearly 3 months, having failed to deal properly with the Ombudsman during that time. The Judge made a number of adverse findings of fact against the Respondent, stating:

> "Mr Young consciously persisted in his default for about two and a half months, apparently ignoring the Ombudsman's process entirely. For Mr and Mrs W the delay in their documents being found must have been frustrating to say the least. Mr Young's default was the more serious in the light of his unfortunate disciplinary history, in which a pattern of ignoring correspondence and requests for information is plain".

24. Based on all the evidence and submissions received, including the Respondent's mitigation, the Judge was able to conclude that imprisonment was not called for but that a financial penalty was justified. In fixing the level of the fine at £5,000 the Judge had in mind that the Respondent was also facing a substantial award of costs against him, ultimately ordered at £15,550. In view of what the Respondent told him about his means, the Judge was satisfied that the Respondent would be able to pay both the fine and the costs by the deadlines set. The Respondent had not paid either the fine or the costs to date.

Witnesses

25. None.

Findings of Fact and Law

26. The Respondent had not responded to the allegations, which were therefore treated as being denied. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal reminded itself of the obiter comments of the President of the Queen's Bench Division in Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin.) (per paras. 25, 26), now enshrined in the Tribunal's Practice Direction No. 5. In the words of the President, "ordinarily the public would expect a professional man to give an account of his actions". This Tribunal was entitled to draw inferences from the position that the Respondent had chosen to adopt, namely complete lack of engagement with the Tribunal proceedings, culminating in lack of attendance at the substantive hearing.

27. It was convenient to consider allegations 1.1 and 1.2 together as they arose from the same underlying facts. The SCC 2007 came into effect on 1 July 2007 and repealed the SPR 1990. Rule 1 SPR provided as follows:

> "A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
>
> Rule 1(a): the solicitor's independence or integrity;
>
> …
>
> Rule 1(c): the solicitor's duty to act in the best interests of the client;
>
> Rule 1(d): the good repute of the solicitor or of the solicitors profession;
> …"

Rule 1 SCC provided as follows:

> "Rule 1.01: You must uphold the rule of law and the proper administration of justice.
>
> Rule 1.02: You must act with integrity.
>
> Rule 1.04: You must act in the best interests of each client.
>
> Rule 1.05: You must provide a good standard of service to your clients.
>
> Rule 1.06: You must not behave in a way that was likely to diminish the trust the public places in you or the legal profession."

28. **Allegation 1.1 - Acted in breach of Rules 1(a), (c), and (d) SPR. The Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to prove dishonesty for any of these allegations to be established. The dishonesty element applied to the Respondent's dealings with his former client, Mr H, as specified.**

Allegation 1.2 – Acted contrary to each and all of Rules 1.01, 1.02, 1.04 and 1.06 SCC. The Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to prove dishonesty for any of these allegations to be established. The dishonesty element applied to the Respondent's dealings with his former client Mr H, as specified

28.1 Mr Barton made submissions primarily directed to the allegation of dishonesty. He submitted that the Respondent had provided false information to Mr H about proceedings and had provided him with a false document, namely the Court Order. As a matter of law the Tribunal had to be satisfied that viewed objectively the conduct was dishonest and that subjectively the Respondent knew it to have been dishonest. The Respondent was not present at the hearing to provide an explanation and he had not provided an explanation at any stage. A conclusion that the Respondent had been dishonest was irresistible on the facts.

28.2 The Tribunal carefully considered each matter about which complaint was made.

28.3 In relation to the Respondent's dealings with Mr B of LAW, it was not alleged that the Respondent had failed to present the bill for costs dated 22 December 2008 to Mr B or that he had overcharged for work done. As a consequence that aspect was not considered by the Tribunal. The thrust of the evidence and the attention of the Tribunal was drawn to the fact that there was a complete absence of response from the Respondent to Mr B's request for the return of the £3,000 paid on account of costs. A client was entitled to expect to be informed of the use to which his money had been put and to have it returned to him promptly on demand or at the very least given an explanation as to why it had not been returned. The Tribunal found the underlying facts as set out in the documents at "DEB 1" proved. The Respondent's conduct was in clear breach of Rules 1.04 and 1.06 SCC. He had not acted in the best interests of Mr B as he repeatedly failed to reply to his request for the return of the money. Failure to answer correspondence from a client inevitably diminished the trust that the individual client placed in the solicitor and, potentially, in the profession. The fact that Mr B had to take the step of complaining to the SRA in spite of his obvious reluctance to do so provided evidence of the diminution in the trust that he had previously held for the Respondent. However the Tribunal was not satisfied beyond reasonable doubt that the Respondent's conduct breached Rules 1.01 and 1.02 SCC. It had not been provided with evidence that the Respondent had failed to uphold the rule of law and proper administration of justice. In this instance the Tribunal did not consider that the Respondent's conduct had gone as far as demonstrating a failure to act with integrity.

28.4 In relation to the High Court Orders and complaint by Wilkins Beaumont Suckling, the Tribunal had been provided with details of the various Court Orders with which the Respondent had repeatedly failed to comply. Ultimately he had received a

suspended sentence of imprisonment from the Judge for his contempt of court. The Tribunal had no difficulty in finding that the Respondent's conduct was in breach of Rules 1.01, 1.02, 1.04 and 1.06. His behaviour had been shameful.

28.5 The facts relating to Mr H's case involved conduct both pre- and post-dating the introduction of the SCC.

28.6 It was also alleged that the Respondent was dishonest. Applying the test for dishonesty set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12, the Tribunal had to be satisfied beyond reasonable doubt that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

28.7 The Tribunal carefully considered Mr H's signed statement dated 27 July 2010 sent to the SRA by his solicitors under cover of a letter dated 28 July 2010 in support of the complaint made by them on his behalf. The statement did not include a Statement of Truth. Nevertheless it was served on the Respondent by Mr Barton under cover of a Civil Evidence Act Notice to which the Respondent had raised no objection or challenge.

28.8 According to the statement, Mr H was informed by the Respondent that a court hearing was due to take place on 25 June 2007. He telephoned the Respondent on that day and was told by him that the hearing had gone ahead and that the Respondent had obtained a Court Order ordering the Defendant to pay Mr H a sum of £330,000 within 56 days of the date of the Order. Mr H was advised by the Respondent that there was nothing to be done in the interim but wait and see whether the Defendant complied with the Order. Mr H asked for a copy of the Order and the Respondent said that he would arrange for a copy to be sent to him. No copy was received. The 56 day period ended around 16 August 2007. No payment was made so Mr H contacted the Respondent three or four times a day, but his telephone calls and text messages were not returned.

28.9 In late August/early September 2007 (Mr H could not establish the exact date) he contacted the Respondent by telephone and explained that he was planning to come to the Respondent's office later that day to discuss the case and to obtain a copy of the Court Order. The Respondent said that he might not be in the office but that "he would leave a copy of the Order with one of his colleagues at the office". When Mr H arrived at the office he was informed by the receptionist that the Respondent was out. He explained that he wanted a copy of the Court Order. He was then handed a copy of the Order by a lady whom he assumed to be the Respondent's secretary. Mr H said that she simply handed the Order to him and did not speak to him. The following day Mr H telephoned the Royal Courts of Justice and spoke with Master Eyre's clerk. The Tribunal was referred by Mr Barton to the e-mail from Master Eyre. The Court Order appeared as an exhibit to "DEB 3". It bore Mr H's name as the Claimant and the name of the Defendant to the proceedings brought by him. At paragraph 1 the Order provided for the Defendant to make an interim payment to the Claimant of £330,000 or such other sum as the court deemed fit in 56 days. The Order included directions for trial. Paragraph 1 largely accorded with Mr H's recollection of what he had been told by the Respondent on the telephone. However the case number at the top of the

Order concluded …1843 and the case number in Mr H's proceedings concluded …1842, an obvious discrepancy to a trained eye, but not perhaps to a client.

28.10 The Tribunal was satisfied beyond reasonable doubt that the Respondent falsely informed Mr H on the telephone on 25 June 2007 that a court hearing had taken place that day when a Court Order requiring the Defendant to pay £330,000 within 56 days had been made. It was the content of this telephone call that started the chain of events. The Tribunal accepted the written evidence from Mr H as set out in his signed statement and unchallenged by the Respondent, that he was handed the Court Order when he attended at the Respondent's offices in accordance with an arrangement made with the Respondent earlier the same day. The Tribunal was satisfied beyond reasonable doubt that the Respondent created this document and that the document was false. The document purported to be a Court Order relating to Mr H's case when it was not (there was no doubt that the document purported to be an Order as it said so in its heading). The evidence to support this conclusion came not only from Mr H's statement, but also from the e-mail to the SRA from Master Eyre. The Order did not bear the court seal or a date, it referred to an interim payment of £330,000 "or such other sum as the Court deems fit" which Master Eyre confirmed was not language that he would have used, and the date of the hearing on which the Order purported to have been made was left blank. These were essential requirements as the interim payment was to be made in 56 days, but on the face of this document there was no starting point from which the number of days could be calculated and the amount of the payment was unclear to the Defendant. Master Eyre kept a written record of every hearing and Order made without a hearing but had no success in tracing this Order. The action had last come before him on 21 May 2009 when he gave directions for a trial in December 2009 and the Order in that case was sealed on 3 June 2009 and directions given as to service.

28.11 The Respondent had provided no explanation to the SRA or to the Tribunal as to what information had been given to Mr H about the Order and how the document came to be created and/or handed to Mr H. Mr H's written statement was clear that the Respondent had told him that he, the Respondent, would leave a copy of the Order with one of his colleagues in the office. There could therefore be no suggestion on the basis of the evidence before the Tribunal that one of his colleagues had created the copy Order either with or without the Respondent's knowledge.

28.12 In accordance with its Practice Direction No. 5 the Tribunal was entitled to draw an adverse inference from the Respondent's lack of explanation. The Tribunal did so and accepted without reservation the unchallenged written evidence of Mr H and the e-mail from Master Eyre. That evidence was entirely consistent. Mr H believed and expected that 56 days after 25 June 2007 he would receive an interim payment of £330,000, having been told so by the Respondent. He contacted the Respondent when he did not receive the payment and/or a copy of the Court Order. When he finally obtained the Court Order it said what Mr H expected it to say. Further corroboration came from the letter from Mr WB, Mr H's friend, to the Respondent dated 24 April 2008 referring to a meeting at Mr WB's offices on 31 March 2008. Reference was made to the difficulties that Mr H had encountered in making telephone contact with the Respondent and asserted that Mr H had been told by the Respondent that hearings had been cancelled or postponed and that in one case a hearing was to take place on a

public holiday. This additional information assisted the Tribunal in reaching its Finding.

28.13 The Tribunal found the underlying facts and the breaches of Rules 1(a), (c), and (d) SPR (pre-SCC 2007 conduct only) and Rules 1.01, 1.02, 1.04 and 1.06 SCC 2007 proved beyond reasonable doubt on the documents at Exhibit "DEB 3".

28.14 The Tribunal further found beyond reasonable doubt that by giving misleading information about the existence of the Court Order to Mr H on the telephone on 25 June 2007 and on a date in late August/September 2007 and by creating and providing to Mr H a document which purported to be, but which was not, a Court Order, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people, and further found beyond reasonable doubt that the Respondent realised that by those standards his conduct was dishonest.

28.15 The Tribunal considered the case of Mr GSS. The Respondent was required by the LCS to produce papers under cover of letters dated 28 January 2010 and 4 June 2010. He provided some papers relating to Mr GSS to the SRA on 25 March 2010. The SRA forwarded those papers to the LCS who wrote to him on 17 May 2010 setting out details of the nature of the complaint and requiring him to produce the client ledger. He did not do so. The LCS wrote to him again on 28 May 2010, warning him of the consequences of failure to respond. On 4 June 2010 the Respondent was sent a Section 44B Solicitors Act 1974 Notice requiring production of all ledger sheets relating to the complaint. He did not respond to the Notice or any subsequent correspondence.

28.16 The Tribunal found beyond reasonable doubt that the Respondent's conduct breached Rules 1.04 and 1.06 SCC. However it did not find beyond reasonable doubt that he had breached Rules 1.01 and 1.02.

28.17 The Tribunal found allegations 1.1 and 1.2, including the allegation of dishonesty in relation to the Respondent's dealings with Mr H as specified, to have been proved on the facts and documents beyond reasonable doubt, save where indicated specifically above.

29. **Allegation 1.3 - Contrary to Rule 20.05 SCC he failed to deal with the Legal Complaints Service and/or the Authority in an open, prompt and cooperative way**

29.1 In relation to Mr B's, Mr H's and Mr GSS's matters, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to deal with the LCS and the SRA in an open, prompt and cooperative way. Both bodies had repeatedly had to write to the Respondent requesting an explanation for the various pleaded matters without response. There was evidence that the Respondent wrote to the LCS on 28 September 2009 in respect of Mr B's matter and there were one or two occasions when individuals at the SRA were able to speak to him on the telephone. However the Tribunal was left with the overwhelming impression that the Respondent "stuck his head in the sand" and refused to cooperate. He had failed to provide any explanation for his conduct, falling far below the standard which the public and the

profession were entitled to expect from a professional man of the Respondent's experience.

29.2 The Tribunal was not satisfied beyond reasonable doubt that the Respondent had failed to deal with the LCS and/or the SRA in an open, prompt and cooperative way in relation to the Wilkins Beaumont Suckling matter. The Tribunal had not been presented with any evidence by the Applicant that the Respondent had failed to answer correspondence or deal with other communications from those bodies in this particular instance.

29.3 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt, save where indicated specifically above.

30. **Allegation 1.4 - Failed to deliver an Accountant's Report for the period ended 30 April 2010, due by 30 October 2010**

30.1 The Respondent was served with the FIR dated 11 March 2011 under cover of a letter from the SRA of even date addressed to Stirling Law and to his home address. The Respondent did not reply to the letter and provided no explanation for his conduct. He did not challenge the contents of the FIR in which at paragraph 13 it was recorded that on 7 March 2011 the Respondent confirmed to the IO that his Accountant's Report to 30 April 2010 had not been delivered to the Law Society. He said that he was aware that the Report was overdue and that he had instructed his accountant with a view to having it prepared. As at the date of the hearing the Report remained outstanding.

30.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

31. **Allegation 1.5 - Between 12 June 2010 and 10 September 2010 he practised in breach of conditions on his practising certificate, contrary to Rule 20.10 SCC**

31.1 On 12 February 2010 conditions were imposed by the SRA on the Respondent's practising certificate prohibiting him from practising as a sole practitioner (amongst other things). On 25 June 2010 the Respondent's former partner Mr T notified the SRA that he had left the Firm from 11 or 12 June 2010 to work elsewhere. When talking to the IO, the Respondent accepted that following his former partner's departure until he joined BYL Law on 10 September 2010 he had practised as a sole practitioner in contravention of the conditions on his practising certificate. He accepted that he was in breach of his conditions.

31.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

32. **Allegation 1.6 - Failed to pay the premium due for indemnity insurance for the indemnity year to 30 September 2010 to Capita (which manages the ARP on behalf of the Authority) within the prescribed period for payment and was in policy default in breach of Rule 16.2 SIR**

32.1 The premium for professional indemnity insurance for the year to 30 September 2010 payable to the ARP was £162,874.64. It remained outstanding. The SRA had not received an explanation from the Respondent for why the payment had not been made.

32.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

33. **Allegation 1.7 - Practised as a solicitor after 9 February 2011 without a practising certificate, in breach of Rule 20.02 SCC**

33.1 On 18 January 2011 the Respondent told the IO that he had submitted an application for his 2010/2011 practising certificate "towards the end of August 2010". He was to check to see if his cheque for the fee had been cashed. On 7 March 2011 the Respondent told the IO that he had resubmitted his application during the week commencing 22 November 2010 when he had first been made aware by the IO that the original application had not been received. He confirmed to the IO that the payment for the fee had not cleared his bank account. The IO reported to the Respondent that his practising certificate had been terminated on 9 February 2011 and that he had been sent letters to that effect. The Respondent said that he had not received notification of the termination and would contact the SRA. He told the IO that as at 7 March 2011 he was still holding client money which he estimated at £25,000/£30,000. The Respondent admitted that he had appeared at court as a solicitor after 9 February 2011, and that he had been in court earlier that day, 7 March 2011. The Tribunal had also seen documentary evidence that the Respondent had instructed counsel to advise in conference on two occasions in March 2011.

33.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

34. **Allegation 1.8 - In breach of Rule 20.05 SCC he had failed to deal with the Authority in an open, prompt and cooperative manner**

34.1 The Tribunal reviewed the numerous letters sent to the Respondent to which he had failed to respond exhibited to the Rule 7 Supplementary Statement. For example, on 2 and 23 August 2010, the SRA wrote to the Respondent requesting an explanation for a number of matters, without response. On 13 October 2010 the Respondent notified the SRA by e-mail that the Firm had ceased trading. It wrote to him on that day requesting further information, again without response. SRA Intervention Officers attended at the Firm's offices on 15 October 2010 where they were met by the Respondent. He was informed of the importance of responding to the SRA's letters. On 29 October 2010 an employee of the SRA spoke to the Respondent. She asked why he had not replied to her letter dated 13 October 2010. After giving an explanation he said that he would reply by the following Monday, but did not do so. On 11 March 2011 the SRA wrote to the Respondent by post to his work and home addresses and by e-mail concerning his practice, providing a copy of the FIR, and requiring a response by 18 March 2011. He did not reply. The SRA wrote to the Respondent on 13 May 2011 and 1 June 2011 in respect of non-payment of the premium to the ARP without reply. It wrote on 6 July 2011 requesting an explanation in respect of the Respondent's lack of practising certificate, again without reply. The

Tribunal therefore had no difficulty in finding that the Respondent had failed to deal with the SRA in an open, prompt and cooperative manner.

34.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

35. **Allegation 1.9 - Failed to act with integrity, in the best interests of clients and had acted in a way that was likely to diminish the trust placed in him or the profession in breach of Rules 1.02, 1.04 and 1.06 of the said SCC (or either of them) in the following respects:**

1.9.1 He vacated his office at 94 Chorley New Road, Bolton, Lancashire and abandoned client matter files;

1.9.2 In proceedings brought against him by the Legal Ombudsman in the Queen's Bench Division of the High Court under Section 147 of the Legal Services Act 2007, the Court found him to have been in default and he was fined £5,000 with costs of £15,550;

1.9.3 He failed to respond to communications from his clients Mr and Mrs W and/or the Ombudsman seeking Mr and Mrs W's papers.

35.1 The Tribunal was satisfied beyond reasonable doubt that the Respondent had vacated his office at 94 Chorley New Road, Bolton, Lancashire and had abandoned client matter files. This was conduct in breach of Rules 1.04 and 1.06 SCC, namely a failure to act in the best interests of the clients to whom those files belonged and behaving in a way that was likely to diminish the trust the public placed in the Respondent or the legal profession. Client files should always be treated with care and respect. However the Tribunal was not satisfied beyond reasonable doubt that in this instance the Respondent had failed to act with integrity contrary to Rule 1.02 as alleged.

35.2 In relation to the facts set out at paragraph 1.9.2, the Tribunal noted that it had been necessary for the Ombudsman to take High Court proceedings against the Respondent in order to get him to deliver up papers relating to his clients Mr and Mrs W who had made a complaint. The Judge in those proceedings made a number of adverse findings of fact against the Respondent, who accepted that he had been in default for a period of nearly 3 months. The Tribunal was told by Mr Barton that neither the fine nor the costs had been paid. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in breach of Rule 1.06, namely behaving in a way that was likely to diminish the trust the public placed in him or the legal profession. The Tribunal was not satisfied to the same standard that the Respondent had acted without integrity (Rule 1.02) in the particular circumstances of this allegation. The Tribunal's assessment of the papers was that the Respondent had adopted a "head in the sand" attitude to the repeated requests by the Ombudsman for delivery of the papers and the subsequent court proceedings. Any question by him as to his integrity had not, in the opinion of the Tribunal entered his mind. The Tribunal was troubled by the pleaded allegation that there had been a breach of Rule 1.04 (failure to act in the best interests of each client). The Respondent had been fined £5,000 and ordered to pay costs of £15,550 by the High Court in respect of his conduct arising out of the same set of

facts. The Tribunal was being invited to revisit the same issue as that presented to the High Court by the Legal Ombudsman at considerable expense and where the High Court had made a determination to the Respondent's financial detriment and where, if he had not been as contrite as the Judge found, a custodial sentence was in prospect. This presented an element of "double jeopardy" which was in the Tribunal's view contrary to Common Law. Whilst the allegation under Rule 1.04 had in the opinion of the Tribunal been dealt with by Mr Justice Lindblom in the High Court, the allegations on the same set of facts under Rule 1.02 and 1.06 remained to be dealt with and were determined by The Tribunal as set out above.

35.3 In respect of allegation 1.9.3, the Respondent had failed to respond to communications from Mr and Mrs W and the Ombudsman in respect of the delivery up of the papers. The Tribunal found beyond reasonable doubt that the Respondent had acted in breach of Rules 1.04 and 1.06 but was not satisfied to the same standard that he had acted in breach of Rule 1.02 on the particular facts of this case for the same reason as in relation to 1.9.2 above.

35.4 Overall the Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt, save where indicated specifically above.

Previous Disciplinary Matters

36. The Respondent had appeared before the Tribunal on two previous occasions. On 2 June 2009 the Tribunal had found proved five allegations, four of which were admitted by the Respondent. These included an allegation that the Respondent had failed to respond promptly or substantively and/or at all to correspondence, including correspondence from the SRA, and that he had practised for a very brief period without a valid practising certificate. The Respondent was ordered to pay a fine of £5,000 and costs of £7,500. On 16 February 2010 the Tribunal found proved three allegations, including two allegations of failure to deal with the SRA in an open, prompt and cooperative way. The Respondent was fined £20,000 and ordered to pay costs of £1,955. The Tribunal stated in its Findings that it had given consideration to the imposition of a period of suspension. The Tribunal noted that a number of the allegations before it, but certainly not all, predated the publication of one or both the Findings they were invited to consider and took that into account in its deliberations.

Mitigation

37. The Tribunal received no mitigation from or on behalf of the Respondent.

Sanction

38. The Tribunal referred to its Guidance Note on Sanctions. The Tribunal had found proved nine allegations against the Respondent. Dishonesty had been alleged and found proved in respect of the allegations concerning Mr H. The Respondent had provided no explanation for his conduct or mitigation. He had failed to engage with the SRA and the Tribunal and had effectively "gone to ground". Referring to the Guidance at paragraph 38, the Tribunal reminded itself that a finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. Despite the Respondent's failure to engage with

the proceedings the Tribunal had carefully reviewed the documents supporting the facts underlying the allegations of dishonesty to determine whether it was possible to identify exceptional circumstances. The Tribunal was unable to find that there had been any exceptional circumstances in this case. The Tribunal's findings in relation to the provision of misleading information to Mr H on the telephone on two occasions and the creation and provision to Mr H of the false document, namely the Court Order, was misconduct at the highest level. The protection of the public and the protection of the reputation of the profession required that the Respondent's name be struck off the Roll of Solicitors in respect of the dishonesty allegations alone.

39. Further, the Tribunal had concluded that the Respondent's misconduct in failing to comply with the various High Court Orders, coupled with his cavalier approach to the correspondence from the SRA, the LCS and the Ombudsman, demonstrated a pattern of extremely serious misconduct in the context of protection of the public and the reputation of the profession. The Respondent had previously appeared before the Tribunal in relation to very similar allegations arising from a familiar chain of events. In 2010 the Tribunal had given serious consideration to a period of suspension, but held back and imposed a substantial fine instead. Having been dealt with by the Tribunal on 16 February 2010, the Tribunal's detailed Findings were provided to the Respondent on or about 26 April 2010. They stated at paragraph 31 that the Tribunal hoped that the Respondent had finally realised the importance of dealing with the SRA in an open, prompt and cooperative way. In spite of this observation the Respondent failed to respond to numerous letters from the SRA after that date. It was clear to the Tribunal that what had been said following the February 2010 hearing had had no impact on the Respondent's conduct. His behaviour made a mockery of the opportunity to review and improve his conduct given to him in good faith by the Tribunal. Any respondent who repeatedly and resolutely failed to cooperate with his regulator, whose duty it was to protect the public and the reputation of the profession by enforcing the rules and regulations with which all solicitors were required to comply as a privilege of membership of the profession, could expect to receive significant punishment from the Tribunal. The SRA relied on the open and prompt cooperation of the profession to enable it to carry out its duties so that it was an effective regulator. Actions, and inactions, such as those of the Respondent completely undermined the SRA's important work. It was particularly disappointing that when the regulator, the LCS and the Ombudsman attempted to engage with the Respondent on behalf of his former clients he refused to cooperate, leading to the Ombudsman's first High Court proceedings against a solicitor in such circumstances. Further, bench warrants had to be issued to secure the Respondent's attendance at the High Court on two occasions, namely 8 October 2010 in the Wilkins Beaumont Suckling proceedings (where on 11 October 2010 the Judge concluded that breach of the Court Orders was worthy of being marked by a suspended sentence of imprisonment as costs orders had not had the desired effect), and on 10 May 2011 in the Ombudsman's High Court proceedings. The general public was entitled to be dismayed by such shameful conduct, which would inevitably damage the reputation of the profession. Through no fault of their own, by reason of his failures, those who are called upon to regulate the Respondent may well have suffered damage to their reputation. If the Tribunal had not found that the Respondent had been dishonest in his dealings with Mr H, it would have imposed a sanction for the other proved findings at the top end of the range, which would have led to a striking off the Roll.

This solicitor had repeatedly proved incapable of complying with his professional and regulatory obligations and therefore should not remain in the profession.

Costs

40. Mr Barton applied for costs on behalf of the Applicant totalling £23,531.40, including SRA investigation costs of £13,524.95. He invited the Tribunal to assess costs summarily, having informed the Tribunal that there had been no mechanism by which he could draw the costs schedule to the Respondent's attention. The Chairman noted that the Tribunal had no information about the Respondent's means. Mr Barton confirmed that he did not have any up-to-date information other than that the Respondent had paid some costs in civil proceedings against him. In December 2012 the Ombudsman had attempted to trace the Respondent without success and the fine and costs had not been paid. There were difficulties in the Tribunal making an Order for costs not to be enforced without leave of the Tribunal. The Applicant would have to come back to the Tribunal to seek enforcement on a change of the Respondent's circumstances. However there was no known starting point from which to assess whether there had been a change. Mr Barton agreed with the Chairman that it was necessary in the interests of the public and the reputation of the profession for the Tribunal to make effective Orders for costs which the SRA could enforce. It had been necessary for the SRA to bring what had turned out to be substantive proceedings against the Respondent and significant costs had been incurred in doing so. Mr Barton submitted that the Respondent had not availed himself of the opportunity to attend the proceedings to provide information about his means to establish that he could not afford to meet an Order for costs so that a "not to be enforced" or reduced Order for costs could be properly made. He suggested that it was a matter of striking a balance between being fair to an absent Respondent without information about his means and recognising that the SRA does engage with respondents concerning their ability to pay costs.

41. After careful consideration, the Tribunal concluded that the amount for costs claimed by the Applicant was reasonable. The Tribunal had no information about the Respondent's financial situation. The Tribunal was conscious that if it made an Order for costs not be enforced without its leave, the SRA would have to bring the Respondent back (with an inevitable further increase in costs) if there was a change in his financial circumstances. However it was not possible to evidence a change in circumstances without details of the Respondent's means as at today's date.

42. The Tribunal considered the relevant case law where there was an absence of material on which to base a costs order, namely Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin.) and Agyeman v Solicitors Regulation Authority [2012] EWHC 3472 (Admin.). The Tribunal was seized of the fact that since the Agyeman decision the Tribunal's practice had been to give respondents clear notice that if they wished to make representations on their ability to meet financial penalty or costs they must ensure that full details of their capital/income/outgoings are available to the Tribunal at the substantive hearing together with documentary evidence in support. In this case in advance of the hearing the Tribunal's administrative office sent the letter containing the notice on costs to the Respondent at his last known address. It was not known whether the letter had been received by the Respondent.

43. The Tribunal owed a duty to both sides to be fair. To make an order for costs which would be well neigh impossible to enforce through the fault of the other party was unjust to the public, profession and SRA. The SRA say that they engage with Respondents as to ability to pay costs. The Tribunal accepted that that was so. Therefore in the particular circumstances of this case the Tribunal had concluded that the appropriate Order was to assess costs summarily at £23,531.40 as claimed and to make an Order in those terms.

Statement of Full Order

44. The Tribunal Ordered that the Respondent, Howard Robert Gillespie Young, 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 summarily assessed at £23,534.00.

Dated this 22nd day of April 2013
On behalf of the Tribunal

J. C. Chesterton
Chairman