SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10717-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BERNARD RODNEY BRANDON Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr. S. Tinkler
Mrs S. Gordon

Date of Hearing: 13th September 2012

Appearances

Jonathan Greensmith, solicitor of Russell Jones & Walker, 50-52 Chancery Lane, London, WC2A 1HL for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent (in the Rule 5 Statement) were that he:

1.1 Failed to comply with professional undertakings, contrary to Rule 10.05 of the Solicitors Code of Conduct 2007 ("SCC");

1.2 Failed to deal with the SRA in an open, prompt and co-operative manner, contrary to Rule 20.05 SCC;

1.3 Behaved in a way likely to diminish the trust the public places in him or in the legal profession contrary to Rule 1.06 SCC.

2. The further allegations against the Respondent (in the Rule 7 Statement) were that he:

2.1. Failed to adhere to agreements to pay costs and in so doing failed to act with integrity, contrary to Rule 1.02 SCC;

2.2 Acted in a manner likely to diminish the confidence the public places in the profession, contrary to Rule 1.06 SCC;

2.3 Failed to deal with the SRA in an open, prompt and co-operative manner, contrary to Rule 20.05 SCC;

2.4 Failed to uphold the rule of law and the proper administration of justice, contrary to Rule 1.01 SCC.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 3 March 2011
- Rule 5 Statement, with exhibit, dated 3 March 2011
- Rule 7 Statement, with exhibit, dated 7 September 2011
- Bundle of documents for the hearing on 13 December 2011, including:
  - (1) Copy letter Russell Jones and Walker to Respondent 9 December 2011
  - (2) Transcript of hearing 11 May 2011
  - (3) Transcript of hearing 8 September 2011
  - (4) Case report – Camacho v Law Society [2004] EWHC 1675 (Admin) ("the Camacho case")
  - (5) Case report – Benham v United Kingdom (1996) 22 EHRR 293 ("the Benham case")
  - (6) Case report – Pine v Solicitors' Disciplinary Tribunal [2001] All ER (D) 359 (Oct) ("the Pine" case)

(7) Case report – Virdi v Law Society [2009] EWHC 918 (Admin) ("the Virdi case")

(8) Respondent's requests for orders, disclosure and information dated 28 July 2011

- Statement of costs dated 11 September 2012
- Case report – Law Society v Waddingham and others [2012] EWHC 1519 (Admin) Respondent
- Defence served on 30 November 2011
- Bundle of documents received at the Tribunal and showing time sent by email between approximately 4.10pm on 12 September and 12.50am on 13 September 2012, comprising:

(1) Email from Respondent, sent at 16.12 on 12 September, re financial position, attaching bank account statement and Part One of submissions (see further below)

(2) Email from Respondent, sent at 00.37 on 13 September, attaching Second Part of submissions and other documents (see further below)

(3) Email from Respondent, sent at 00.39 on 13 September, attaching further documents (see further below)

(4) Email from Respondent, sent at 00.42 on 13 September, attaching further documents (see further below)

(5) Email from Respondent, sent at 00.49 on 13 September, attaching further documents (see further below)

(6) Respondent's submissions, Part One, 12 September 2012, comprising 10 pages

(7) Respondent's submissions Part Two, comprising 10 initial pages and exhibiting/commenting on emails as set out at items (8) to (15) below and further items as listed below

(8) Email Just Lawyers LLP to Nick Brown 14 July 2008

(9) "Post script"

(10) Email Just Lawyers LLP to Michael Smith 14 July 2008

(11) Various emails between Just Lawyers LLP and Michael Smith, June 2008

(12) Email Just Lawyers LLP to Michael Smith, 10 April 2008

(13) Extract of judgment in Tribunal matter number 9673/2007

(14) Email Michael Smith to Respondent 5 February 2008 and copy email from "Liz", undated

(15) Email Michael Smith to Just Lawyers LLP and response, 5 February 2008

(16) Witness statement of Respondent dated 1 April 2012 in Bath County Court matter 0395 of 2011, with email exchange re service of documents

(17) Letter/compromise agreement Respondent to Mr and Mrs Rosenfeld, 3 December 2007

(18) Transcript Law Society v Brandon, matter 0008283 of 2009 (High Court)

(19) Letter SRA to Mr Rosenfeld, 11 August 2006 with copy recommendations

(20) Case report Lazarus Estates Ltd v Beasley CA 1956 (1 QB pages 702-722)

(21) "Find a solicitor" search

(22) Further copy letter at item (19) above

(23) Current appointments report for Just Lawyers LLP 6 February 2008

(24) Letter correspondence between Respondent and Michael Smith, June 2008

(25) Email exchanges, Respondent/Michael Smith February 2008

(26) Copy instructions to counsel from Just Lawyers LLP/Respondent re Central London County Court matter CHY 08038, 13 February 2008

(27) Letter Respondent to Moeran Oughtred & Co 13 February 2008

(28) Statement of Michael Rosenfeld 22 November 2007

(29) Letter Respondent to Michael Smith 7 January 2008

(30) Letter Respondent to Michael Rosenfeld 6 February 2008

(31) Copy letter SRA to Michael Rosenfeld 19 November 2007 with provisional decision

(32) Letter Respondent to SRA 2 January 2008

(33) Statement of Respondent in Central London County Court matter CHY 08038

(34) Letter SRA to Respondent 22 January 2008

(35) Further copy letter Respondent to SRA 7 January 2008.

(Note: The documents are listed above in the order in which they appear in the Clerk's copy of the bundle, which is the order in which they were presented to the Tribunal members).

Preliminary Matter (1) – proceeding in the Respondent's absence

4. The Tribunal noted that the Respondent was not present, but had forwarded to the Tribunal a substantial bundle of documents by email in the twenty-four hours before the hearing was due to begin. The Tribunal further noted that in the Respondent's submissions document, Part One, he stated at the first paragraph,

> "I cannot attend the hearing this week as previously mentioned because I am still ill with Cancer and Diabetes and unable to travel".

Further, at the third paragraph, the Respondent stated,

> "I would hope that this letter and its exhibits will be read out in Court in my absence; if not I trust that each Tribunal member will be given copies and time to read and reflect before a decision is reached".

At the sixth paragraph, the Respondent stated,

> "So, in view of the fact that I am ill and unable to attend in person I propose to submit this written piece as my pleas of not guilty on all counts and my

submission that this whole case should be thrown out, dismissed and certified as not proven".

5. The Tribunal considered as a preliminary issue whether the case should be heard in the Respondent's absence.

6. The Tribunal determined that there was no doubt the Respondent had been served with the proceedings and the notice of hearing. He had indicated that he would be unable to attend, but had not made any application for adjournment. The issue of adjournment (or stay) on the grounds of ill-health had been considered at the hearing on 27 March 2012 and the matters raised were recorded in the Memorandum of that hearing. In particular, it was noted that the Respondent was aware of the need for any application for adjournment on the grounds of ill-health to be supported by a medical report, in accordance with the Tribunal's Practice Note on Adjournments. The Respondent clearly intended the documents he had submitted to be read and considered in his absence. In all of the circumstances of this case, it was appropriate and right that the hearing should proceed in the Respondent's absence.

Preliminary Matter (2) – review of disclosure of documents and other applications

7. The Tribunal noted that it did not appear from the Respondent's recent documents that he intended to make any further applications for disclosure i.e. in addition to the applications made and considered on previous occasions. Mr Greensmith told the Tribunal that in response to the previous application(s), the SRA had provided a substantial amount of information to the Respondent, but had not provided everything he had requested. The SRA had considered that disclosure of documents on certain issues would add nothing to the case other than cost. There did not appear to be any further applications made in specific terms, although the Respondent had referred to an application to strike out the proceedings.

8. The Tribunal determined that it did not need to deal with any disclosure issues, these having been previously considered at preliminary hearings. Further, the Respondent's application to strike out the proceedings, heard on 13 December 2011, had been unsuccessful. The Tribunal would consider the allegations and whether they had been made out; it did not appear to the Tribunal necessary to consider separately whether all or any of the allegations should be struck out or dismissed before hearing the case.

Preliminary Matter (3) – Burden and standard of proof

9. The burden of proving the case rested on the SRA as the prosecutor. The Tribunal would apply the criminal standard of proof in determining which, if any, of the allegations had been proved. In the absence of the Respondent the Tribunal would be especially vigilant to ensure that all matters were fully and properly considered.

Preliminary Matter (4) – documents and time allowed for the hearing

10. As noted above, the Respondent had provided the Tribunal with a number of documents shortly before the hearing. These were copied for the Tribunal such that each member and the Clerk had a bundle in the same order as the bundle available to Mr Greensmith. The various emails from the Respondent were copied as part of the

bundle, so that the attachments could (if required) be cross-referenced to the documents printed and any inadvertent omissions from the copying could be spotted easily.

11. The Tribunal noted that two days had been allowed for the hearing, so the proceedings would not be rushed and proper consideration would be given to the matters raised, including the documents produced by the Respondent. The hearing had begun almost an hour after the scheduled start time, and the Tribunal members had had approximately one and a half hours to read the Respondent's papers, which would be further considered during the hearing as required. The Tribunal noted that many of the Respondent's documents did not appear to address directly the factual matters or allegations raised in the Rule 5 or Rule 7 Statements, but the relevance or otherwise of the documents would be reviewed as the hearing progressed and in particular whilst the allegations were considered.

Preliminary Matter (5) – application to amend Rule 7 Statement

12. Mr Greensmith sought the Tribunal's permission to amend allegations 1.2 and 2.4 to refer to Rule 20.03 of the SCC, rather than Rule 20.05. Mr Greensmith informed the Tribunal that there was no amendment required to the narrative of the allegations, but that the Rule reference should be changed to ensure that it referred to the Rule as it had been at the material time.

13. The Tribunal noted that the Respondent was not present to take issue with the proposed amendment, which was being proposed a considerable time after the allegations were made. In the circumstances, the Tribunal would retire to consider the application.

14. On retiring, the Tribunal noted that the reference to Rule 20.05 appeared to be correct, according to the copy of the SCC which was to hand. It appeared that there may be an issue concerning when the alleged conduct occurred in relation to the changes which had been made to the SCC. However, it was not apparent that an amendment to either allegation was required.

15. On resuming, the Tribunal informed Mr Greensmith of its initial observations and Mr Greensmith agreed to check the relevant dates during a further retirement.

16. On further resuming, Mr Greensmith told the Tribunal that he had checked the position and it was correct that no amendment was required as the alleged conduct had all occurred after the relevant amendments to the SCC had come into force. The application to amend allegations 1.2 and 2.4 was therefore withdrawn.

Preliminary Matter (6) – history of the proceedings

17. The Tribunal noted that the Rule 5 Statement was dated 3 March 2011. On 11 May 2011 there had been a hearing in lieu of the pre-listing day as the Respondent had indicated he had some preliminary applications to make. The Tribunal had seen the Memorandum of that hearing and the transcript. At that hearing, Mr Greensmith informed the Tribunal that he had instructions in relation to further allegations against the Respondent.

18. The Tribunal had seen a Memorandum of a further hearing, on 8 September 2011, and the transcript of that hearing. The Respondent had applied to strike out the application and Rule 5 Statement (and/or the Rule 7 Statement which had been filed but not certified or served as at the date of the hearing). The Tribunal had refused that application and had directed the Respondent to answer the Rule 5 Statement by 31 October 2011, with a further directions hearing to be listed after 31 October. By consent of the parties, and order of the Clerk, an extension of time for filing and serving the answer had been granted. The Respondent had filed and served a Defence document on 30 November 2011. Mr Greensmith told the Tribunal that this document did not address the allegations.

19. At a hearing on 13 December 2011, the Respondent had applied for an order that the Law Society should be ordered to pay his costs of obtaining representation in these proceedings. That application had been refused, as noted in the Memorandum of that hearing, and the Respondent had been directed to respond to the Rule 5 and Rule 7 Statements by 31 January 2012: he had not done so.

20. On 27 March 2012 the Tribunal heard the Respondent's application for a stay of proceedings on medical grounds. For the reasons recorded in the Memorandum of that hearing, the application was refused and the Respondent had been directed to provide a response to the allegations by 24 April 2012.

21. Mr Greensmith told the Tribunal that he wrote to the Respondent on 9 May 2012 to ask if the Respondent would respond to the allegations. On 18 May 2012 the Respondent wrote to Mr Greensmith to say that he could not because of his illness. Mr Greensmith told the Tribunal that he had instructions that on 30 April 2012 the Respondent had represented himself at a three hour hearing at Bath County Court in civil proceedings.

22. Mr Greensmith told the Tribunal that as no substantive response had been received to the allegations, the case had been prepared on the basis that the allegations were not admitted by the Respondent. In paragraph 6 of his first submission document, received at the Tribunal office on 12 September, the Respondent had confirmed that he pleaded "not guilty" to all of the allegations.

23. In the course of the proceedings, the Applicant had corresponded with the Respondent at an address in Bath. In correspondence with the SRA on other matters, the Respondent had indicated that he would no longer use that address, as a result of which the Applicant had instructed enquiry agents to find an effective address for the Respondent. An address had been found, which was noted for the file, and a copy of the enquiry agent's report was provided for the Tribunal's file (but was not shown to the Tribunal members). Although the Respondent had indicated that all correspondence with him should be by email, an address was required in the event that any order was made and for the purposes of delivering any such order.

24. Mr Greensmith told the Tribunal that Civil Evidence Act notices had been served on 1 December 2011, but no response had been made. The Tribunal was therefore invited to proceed on the basis of the Rule 5 and Rule 7 Statements and the documents exhibited to those statements.

25. The Tribunal noted that in his recent submissions, the Respondent had complained of delay in bringing these proceedings against him and had submitted that the delays were unacceptable. The Tribunal noted this submission, but also noted that it had been considered at the preliminary hearings. The proceedings had begun in March 2011, with the further allegations being brought in September 2011 and the allegations related to matters in the period 2009 to 2011. Given the SRA procedures for considering whether to refer allegations to the Tribunal it did not appear to the Tribunal that there had been any significant delay in bringing the allegations or in reaching the final hearing. Further, any delay in reaching the final hearing had been contributed to by the Respondent.

Preliminary Matter (7) – further application

26. The Tribunal noted that the Applicant sought an order for enforcement of certain Directions of SRA Adjudicators as if they were orders of the High Court. This issue would fall to be considered if and when any decision on sanction had to be made.

Factual Background

27. The Respondent was born in 1944 and was admitted to the Roll of Solicitors in 1971. The Respondent remained on the Roll of Solicitors, but had not held a practising certificate since the expiry of a Certificate on 31 October 2010. At all material times referred to in the Rule 5 Statement, the Respondent had been a principal of Wentworth Solicitors, Sunninghill Office, at 2 Crossways, London Road, Ascot, Berkshire SL5 0PL ("the Firm"). The Respondent was registered as a Director of the Firm from 1 April 2009. At certain material times referred to in the Rule 7 Statement, the Respondent had been a principal of Just Lawyers LLP, KBC Harrow Exchange, 2 Gayton Road, Harrow, Middlesex HA1 2XU ("Just Lawyers").

<u>Matters in the Rule 5 Statement</u>

28. Whilst the Respondent was a Director the Firm, the Firm acted for JP in granting a commercial lease of premises in, Ascot to SR Ltd. SR Ltd was represented by Fraser Brown Solicitors ("FBS"). During a routine search of the Land Registry, FBS discovered an existing registered leasehold title in respect of the property. In order to protect their client's interest FBS asked the Firm to remove this title. A further priority search on 26 November 2009 showed that the lease had not been surrendered.

29. On 27 November 2009 the Firm wrote to FBS, in a letter bearing the reference "BRB", which was that of the Respondent. The letter was signed "BR Brandon" and "Wentworth" and bore the Respondent's email address at the Firm. A handwritten amendment to the letter was initialled "BRB". The relevant parts of the letter read,

> "Please accept (t)his letter as our undertaking to approach the Land Registry with the best evidence we can provide...
>
> We will copy you in to the application we make (within the next 7 days) and to the outcome or to any resulting requisitions as may be raised by the land Registry. We also undertake to continue to make our best efforts to

> accomplish the removal and extinction of this former title and to keep you fully advised at all times".

Note: the words shown in brackets above were the words hand-written and initialled "BRB".

30. On the same date, the Respondent emailed FBS and stated:

> "I will and do now give a formal undertaking to have the old lease removed or if you prefer to supply all the documentation the LR may need: I already have a properly signed Deed of Surrender and I can still do my own Statement of Truth to support it and really any other documentation the land registry may require that I can control or command".

31. In reliance on the letter and email containing the undertakings, FBS proceeded to complete the Lease. On 15 December 2009 FBS wrote to the Respondent chasing the documents. The Respondent replied on 17 December referring to staff losses and stating,

> "...your email has only just come to my attention. I did not realise this had been left in the air..."

The Respondent further stated an intention to get the documents to FBS by DX that day, 17 December 2009.

32. FBS sent further letters concerning the surrender of the former lease on 21 December 2009 and 4 and 7 January 2010.

33. Late on 13 January 2010 the Respondent responded by email stating,

> "...I will report to you before 12 noon today Thursday 14th January 2010".

34. On 15 January 2010 the Respondent emailed FBS, stating,

> "There is quite a drama going on here now but I think I can resolve it.
>
> To explain I now attach the Office Copy Entries I took off the Land Registry only the other evening: note the date and time.
>
> As you may infer I am now seeking urgent contact with the Trustee.
>
> I will report to you very shortly and on going: my approach is wholly positive and I feel very confident that I can resolve the issue and be able to present the Clear Title to you that your clients will require!"

35. No further reports were received from the Respondent and FBS complained to the SRA on 18 January 2010. On 8 March 2010 Gordons LLP ("Gordons"), acting on behalf of the SRA, wrote to the Respondent requiring his explanation of the failure to comply with the undertaking and requested a response by 22 March 2010; no response was received to this letter.

36. On 25 March 2010 Gordons wrote a further letter to the Respondent, noting the failure to respond and enclosing a further copy of the 8 March 2010 letter. The letter reminded the Respondent of his obligation to cooperate with the SRA and requested a response by 6 April 2010.

37. The Respondent replied by letter of 7 April 2010 and explained his position, including the following points:

    (a) The delay in responding had been due to the pressures of work, including staff losses;

    (b) It was accepted that the undertaking had been given by the firm but it had not been given by the Respondent personally;

    (c) At the time the undertaking was given it was not appreciated, by either party, that it could not be fulfilled in the way the parties intended;

    (d) Both parties had understood that the Land Registry would require only a Statement of Truth to remove the title as it was not known that an Official Receiver had been appointed who would need to agree to the Notice being removed;

    (e) As a matter of law where there was a mutual mistake a contract is not enforceable and in this case the undertaking was the contract;

    (f) Alternatively, the undertaking was frustrated by supervening events;

    (g) However, "we" i.e. the Firm considered it was bound by "the spirit of the undertaking and its principle, namely that we had to clear the title";

    (h) The Firm was entitled to payment on an interim bill before they were obliged to proceed further on the matter.

38. On 8 April 2010 the SRA wrote to the Respondent confirming that failure to fulfil the undertaking was being raised against him personally as the person with conduct of the file, the giver of the undertaking and as a representative of the recognised body. The letter asked the Respondent to provide further information and evidence of steps taken to fulfil the outstanding undertaking.

39. On 22 April 2010 the SRA sent an email to the Respondent reminding him of the requirement to respond. The Respondent responded, stating that he had not realised there was a deadline and that he would reply before the close of business the next day, Friday 23 April 2010.

40. On 26 April 2010 the SRA again wrote to the Respondent as they had not received his reply and insisted that they receive a response by noon that day.

41. At 12.18 on 26 April 2010 the Respondent replied by email stating,

> "I can now respond but could I ask you to be so kind as to reconsider this matter and say if after this you still need any further response from me?

I can now bring you up to date as to what has happened since Fraser Brown first complained.

Essentially they have taken the conduct of the case away from my firm and sent documents direct to our client asking her to sign them. This is in itself as you would know a breach of ethics and etiquette but they have done it and my client has apparently responded. If they were to succeed and cut my firm out then my client would have even less incentive to pay Wentworths proper legal fees.

As it happens there is still more paper work to resolve and the new tenants will not be able to register as they wish at the Land Registry.

Meanwhile as I say my client does not now want to pay any fees to Wentworths at all.

However as a concession I have offered to complete all the outstanding work on both 25 and 27 High Street without any further charges provided my firm's account is paid in full before Thursday of this week.

So depending on the response of Fraser Brown maybe this can all be resolved? If WSL is paid we will be able to resume working on the file next week all being well".

42. By email response on 26 April 2010 the SRA stated that they still required the Respondent's full reply, with supporting evidence, as requested in the letter of 8 April 2010. The SRA stated that irrespective of whether FBS were now trying to resolve the matter directly, the Respondent would need to explain his conduct in respect of the undertaking he gave and invited him to make his own report if he had concerns about FBS's conduct. The Respondent was given until 30 April to respond.

43. On 5 May 2010, the SRA wrote further to the Respondent noting his failure to respond, enclosing a further copy of the 8 April 2010 letter and requesting his response by 13 May 2010.

44. On 30 June 2010 the SRA carried out a further search of the Land Registry, which showed the previous lease and bankruptcy notice still appeared on the title documents. At some point before the hearing the lease to SR Ltd had been registered.

45. A casenote was sent to the Respondent by the SRA on 12 July 2010, with a request for his comment. On 6 August 2010 the Respondent replied making a number of points including:

(a) The Firm never belonged to the Respondent; 100% of the company shares were held by a third party, AL;

(b) He had not been the fee earner in the JP matter, apart from a few weeks when he had conduct of the matter;

(c) He had never given a personal undertaking in this or any other matter;

(d) The fee earner at FBS had confirmed that she did not intend anyone to end up before the SDT;

(e) He was, "very concerned about the focus on (him) personally and the implied threat in the report that I have in some way undefined been guilty of misconduct. This has at all times since it started in 2008 been a matter conducted by (the Firm) and never by myself personally".

46. On 10 November 2009 a SRA Adjudicator's decision ordered the Respondent to pay the SRA fixed costs in the sum of £1,875 in connection with a professional misconduct issue. The order stated that the costs payable by the Respondent were "a contribution to the total costs, which would otherwise be met in full by the profession".

47. The Respondent set up a payment plan with the SRA to satisfy the financial part of the order, and made one payment of over £900. However, no further payments were made. The amount paid, date paid and amount outstanding were not confirmed but the amount still due was understood to be approximately £936. As a result of the outstanding balance remaining unpaid Law Society Services Limited, the subsidiary company responsible for the collection of monies owed to the Law Society complained to the SRA.

48. On 11 October 2010 the SRA wrote to the Respondent requesting his response to the allegation that in failing to satisfy the costs order made by the regulator he had acted in a way likely to diminish the trust placed in him or the profession by the public and requested a response by 26 October 2010. Further letters were sent to the Respondent about this matter on 2 November and 16 December 2010; no response was received.

49. On 22 November 2010 a SRA Adjudicator ordered that the Respondent be responsible jointly and severally with the Firm to pay the Legal Complaints Service ("LCS") fixed costs in the sum of £772.59 in connection with a complaint as to service. The order stated that the costs were payable as they were incurred by the LCS in the investigation and adjudication of the matter, the more serious complaints had been upheld and the solicitors involved had not sought to make any conciliatory offers. An invoice was sent to the Respondent.

50. On 24 February 2011 the SRA wrote to the Respondent informing him that he had failed to comply with the Adjudicator's order that he pay £729.59 to the LCS. The letter stated that the caseworker was closing her file as the matter was being considered for inclusion with matters for which the Respondent had already been referred to the Tribunal. The Respondent's reply the same day did not comment on the sums due to the LCS.

<u>Matters in the Rule 7 Statement</u>

51. On 10 July 2008 the Respondent appeared before the Master of the Rolls ("MR") appealing a decision of the SRA to place conditions on his practising certificate for the practice year 2007/8. The MR dismissed the Respondent's appeal and made a costs order in favour of the Law Society fixed in the sum of £5,000.

52. The SRA wrote to the Respondent twice requesting satisfaction of the costs order and inviting proposals for payment by instalments. On 14 November 2008 the SRA accepted the Respondent's offer to pay the costs at the rate of £100 per month on the first of each month, with the first payment due on 1 December 2008. The agreement was for a period of six months, after which it would be reviewed. The SRA officer's email confirmed the arrangement and stated:

> "Should any payments be missed or not honoured then I reserve the right of the SRA to commence enforcement proceedings without further reference. I trust this course of action will not be necessary and look forward to receiving the payments".

53. The Respondent wrote to the SRA on 28 November 2008 under the heading, "Master of the Rolls hearing July 2008 Cost Payment 1 of 6", enclosing a cheque for £100. The next instalment was due on 1 January 2009, but was not paid.

54. On 22 January 2009 a SRA Adjudicator considered the Respondent's application for a practising certificate for the practice year 2008/9 and decided to grant the Respondent a certificate free from conditions.

55. On 29 January 2009 the SRA wrote to the Respondent referring to the fact it had not received the payment due on 1 January 2009 and requesting a cheque for £200 for the January and February instalments. A payment of £200 was sent by the Respondent and received by the SRA on 9 February 2009.

56. The Respondent informed the SRA of his intention to make an application to the MR to revoke the costs order of 10 July 2008 and asked the SRA to write off the remaining costs (which were then £4,700). The SRA declined to do so. The SRA wrote to the Respondent on 1 April 2009 to inform him that until the costs order was revoked or the SRA decided to write off the liability, the SRA's agreement with the Respondent was effective and the Respondent was obliged to continue making payments at £100 per month. No further payments were made.

57. In May 2009 the SRA instructed solicitors, Wright Son and Pepper ("WSP") to begin enforcement proceedings against the Respondent. A statutory demand was served on the Respondent on 20 July 2009 by substituted service at the Respondent's professional address at Just Lawyers. The Respondent did not respond to the statutory demand and a bankruptcy petition was prepared and endorsed by the court with a hearing date of 12 November 2009. On 8 October 2009 the Respondent informed the process server instructed to effect service that he had applied to the MR to have the order of 10 July 2008 varied or revoked. WSP delayed service of the petition until the outcome of the Respondent's application to the MR was known.

58. On 5 November 2009, the MR refused the Respondent's application to re-open the case on the issue of costs. The Respondent did not re-commence payments, nor did he negotiate other terms for payment.

59. At the hearing on 12 November 2009 the bankruptcy petition was adjourned until 15 January 2010. WSP obtained an order for substituted service of the petition by posting it to the Just Lawyers address and posted the petition on 25 November 2009.

60. On 15 January 2010 the Respondent was declared bankrupt on the Law Society's petition. The Respondent did not attend the hearing. Later in January 2010 the Respondent contacted WSP and offered to pay the bankruptcy debt and costs in return for having the bankruptcy annulled. WSP wrote to the Respondent on 29 January 2010 and informed him that the total sum required to satisfy the bankruptcy debt, interest and legal costs was £6,980.58.

61. On 7 February 2010 the Respondent wrote to the Insolvency Service, copied to WSP, setting out his grounds for having the bankruptcy order set aside. On 9 February 2010 the SRA wrote to the Respondent to confirm that as a result of the bankruptcy order the Respondent's practising certificate had been suspended. The letter referred to a telephone conversation earlier that day in which the Respondent had said that he was not aware he was the subject of a bankruptcy order.

62. On 15 February 2010 the Respondent wrote to WSP and offered the sum of £4,700 in satisfaction of the debt and stated that he did not believe the costs in bringing the petition should be borne by him.

63. On or around 17 February 2010 the Respondent paid £6,980.58 to WSP in respect of the debt as at 29 January 2010. The Law Society had incurred further costs since that date in trying to secure payment from the Respondent.

64. On 1 March 2010 the Respondent applied to have the bankruptcy order annulled, on the grounds that the order ought not to have been made. On 16 March 2010 the Respondent made an offer to settle matters on various terms which were not accepted by the Law Society.

65. The application to annul the bankruptcy was due to be heard on 13 May 2010. On the day of the hearing an agreement was reached, and was signed by counsel instructed by the Respondent, whereby the SRA agreed not to oppose the annulment application following satisfaction of the bankruptcy debt, and on the Respondent's agreement to pay the costs of the bankruptcy agreed at £3,750 at a rate of £500 per month from 1 June 2010. The bankruptcy order was annulled by the court.

66. On 2 June 2010 WSP wrote to the Respondent to ask if the first payment of £500 had been made. The Respondent replied the same day, stating that he considered the agreement of 13 May 2010 was "void" and "unenforceable", that he was considering applying to court to have the costs agreement revoked, and that solicitors had exerted duress to obtain the agreement. The Respondent further stated that the Law Society owed him £1,950.

67. On 9 June 2010 WSP wrote to the Respondent requesting details of the alleged duress, given that the Respondent had been represented by counsel. No response was received and on 13 July 2010 WSP wrote a further letter, asking the Respondent for details of the money the Respondent said he was owed by the Law Society.

68. On 14 July 2010 the Respondent did not give details of the money owed, but raised a number of complaints about the Law Society/SRA and stated,

> "...I do not trust or believe in the authority of the Law Society or the SRA... I do not believe the Courts make just decisions for solicitors fighting the Regulator: I know that it is all policy for the judges who prefer "not to get involved"".

The Respondent set out that the only deal available to him on 13 May had been the one offered by WSP; that his suspension from practice had forced him to employ a locum at great expense and that the pressures of practice were such that the SRA knew he would be forced to accept the deal. The Respondent stated,

> "...I am not paying these further costs of yours not ever".

The Respondent indicated that there had been no judicial approval of the agreement and that he would defend any steps taken to enforce the agreement.

69. On 30 September 2010 WSP wrote to the Respondent requesting further information about the money the Respondent claimed he was owed by the Law Society. On 12 January 2011 the Respondent provided details of an amount of £6,500 he claimed to be owed by the Law Society, including WSP's legal fees of which he sought a refund on the basis that the bankruptcy order had been wrongly obtained.

70. On 28 January 2011 the SRA responded to the Respondent's claim, agreeing that the Respondent was due a refund of certain practising certificate fees totalling £1,510. This refund was paid to the Respondent on 8 April 2011.

71. On 16 May 2011 the Respondent wrote to the SRA and made an offer, stated to be under "serious duress and protest" to pay the sum of £3,750 in a lump sum and that he expected that the relevant part of any disciplinary proceedings would be withdrawn. The Respondent stated that he was also willing to pay £1,500 in respect of SRA costs in the expectation that such a payment would reduce the allegations against him within the Tribunal proceedings.

72. On 12 January 2011 the SRA received a complaint from a Mrs R, together with a copy of a court order dated 7 May 2010 made at Central London County Court. This order arose from proceedings in which the Respondent and Just Lawyers had issued a claim against Mr and Mrs R. On 3 March 2010 Mr and Mrs R applied to the court for summary judgment against both claimants, the hearing of the application being on 7 May 2010. The Respondent did not appear but the court order referred to an email received from the Respondent dated 5 May 2010, which the court considered did not contain a proper reason for the Respondent not appearing. The court ordered judgment in favour of Mr and Mrs R. The court further ordered the Respondent and Just Lawyers to pay the Defendants' costs of the claim on the indemnity basis, to be assessed if not agreed and ordered an interim payment of costs of £14,000 by 21 May 2010. The letter to the SRA in January 2011 stated that the Respondent had failed to make payment in accordance with the order.

73. On 9 March 2011 the SRA wrote to the Respondent enclosing a copy of the order of 7 May 2010. On 8 April 2011 the Respondent wrote to the SRA, stating that he knew nothing about the order of May 2010. The Respondent further stated that when the order was served on him he would apply to have it rescinded. The SRA had no

information that the Respondent had applied to rescind the order, or had taken steps to pay costs, as at the date of this hearing.

Witnesses

74. None. The Tribunal proceeded on the documents exhibited to the Rule 5 and Rule 7 Statements as the Respondent had not responded to the Applicant's Civil Evidence Act Notices.

Findings of Fact and Law

75. **Allegation 1.1: Failed to comply with professional undertakings, contrary to Rule 10.05 of the Solicitors Code of Conduct 2007 ("SCC")**

75.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents and so considered the correspondence from the Respondent with the SRA during 2010 about the undertaking: this appeared to be the best available account of the Respondent's defence and explanation of events. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

75.2 This allegation related to the undertaking(s) given in November 2009 in relation to "clearing" the title of a leasehold property. The words relied on by the SRA are set out at paragraphs 28 and 29 above. The SRA further relied on the facts that the Respondent had not kept FBS informed and that as at 30 June 2010, about 7 months after the undertaking was given, a Land Registry search showed that the previous lease and bankruptcy notice still appeared on the title.

75.3 The Tribunal noted the obligation under Rule 10.05 of the SCC to comply with professional undertakings. In order to determine if this allegation had been proved, the Tribunal considered carefully both whether it was a personal obligation of the Respondent and also the precise terms of the undertakings given.

75.4 In his letter to Gordons on 7 April 2010 the Respondent had stated:

> "...we agree these undertakings were given by this firm; we would deny that the undertakings were given by Bernard Brandon personally".

The Tribunal therefore considered this issue which had been raised in the Respondent's defence.

75.5 Firstly, the Tribunal considered whether the Respondent had given the undertaking. From all of the circumstances, there could be no doubt about this. The email of 27 November 2009 was from the Respondent's email address; the letter of 27 November bore the Respondent's reference and his email address; his name was printed below the signature; the signature "BR Brandon" appeared; the handwritten amendments to the letter appeared to have been initialled "BRB". Whilst not purporting to make a finding based on hand-writing, the Tribunal noted that the

signature on the letter was similar to that on a document which was clearly that of the Respondent, being the application to annul the bankruptcy order made on 1 March 2010 and this factor could be considered as part of the overall circumstances. Further, and conclusively, the Respondent's emails to FBS dated 27 November 2009 referred in the email timed at 11am to "my undertakings" and in the email timed at 8.34 am stated, "I will and do now give a formal undertaking..." There could be no doubt at all that the undertakings were given by the Respondent.

75.6 The undertakings were given by the Respondent, a solicitor, in his professional capacity and in the course of professional work. In these circumstances, the Respondent was personally responsible for complying with the undertaking he had given. Further, the Respondent was a principal of the Firm and as such was responsible for ensuring compliance with undertakings given by the Firm. The Tribunal noted the arguments advanced by the Respondent, for example in a letter of 7 April 2009 and an email on 6 August 2010 that under company law the Firm was a separate legal entity and it was that entity which had given the undertaking and should comply with it. The Tribunal was satisfied beyond any doubt that the Respondent was the person responsible for complying with the undertakings. The Respondent was personally responsible for the undertakings he gave as a solicitor and could not escape that responsibility by claiming the Firm, which no longer exists, bore the responsibility.

75.7 The Tribunal noted that the Respondent had not denied that undertakings were given and it did not appear from the documents reviewed that he had ever asserted that he had complied with the undertakings. He had, however, asserted in a letter to Gordons on 7 April 2010 that the undertakings were unenforceable and/or had been frustrated by supervening events.

75.8 The Tribunal went on to consider in detail what exactly was required by the undertakings before considering the Respondent's submission on enforceability.

75.9 The first undertaking in time was contained in the email at 8.34am on 27 November 2009 and read:

> "I will and do now give a formal undertaking to have the old lease removed or if you prefer to supply all the documentation the LR may need: I already have a properly signed Deed of Surrender and I can still do my own Statement of Truth to support it and really any other documentation the land registry may required that I can control or command".

The first part of the undertaking, to have the old lease removed, was unconditional and had not been complied with by the Respondent; although it was clear that at some point the necessary action had been taken, such that the SR Ltd lease had been registered, this had not been done by the Respondent and had certainly not been done promptly or within a reasonable time. The Tribunal found that the second part of the undertaking, referring to "any other documentation... that I can control or command" was clearly conditional. There would be a limit on the documentation which was within the Respondent's control or command. However, there was no evidence that he had supplied all of the documents he was able to control or command. The Tribunal noted in particular that the first clear reference to any action taken by the

Respondent – obtaining Office Copy Entries – was not until 15 January 2010. The Respondent's email to FBS on 17 December 2009 showed that he had taken no action to supply the documents he could control or command as he stated, "I did not realise this had been left in the air". The Tribunal therefore found that the Respondent had failed to comply with the undertaking set out in the email on the morning of 27 November 2009.

75.10 The Tribunal considered the subsequent undertaking, contained in the letter of 27 November 2009. This letter had not made clear whether it was intended to replace in its entirety the undertaking in the email so the best analysis was that both were operative, given that they were not incompatible or contradictory in any way.

75.11 The first part of the undertaking in the letter, "to approach the Land Registry with the best evidence we can provide" was qualified or conditional. It did not specify what the "best evidence" or documentation would be, although the first sentence of the undertaking went on to suggest what form that evidence might take. What was clearly required was that there would be an approach to the Land Registry. The correspondence and emails reviewed by the Tribunal showed that there had been no approach to the Land Registry by 15 January 2010: at that point, the Respondent told FBS he had obtained Office Copy Entries "only the other evening" and did not refer to any other steps to contact the Land Registry. It was clear that the purpose of any such approach was to confirm that a pre-existing lease had been surrendered and/or would be removed from the title.

75.12 The undertaking went on to state:

> "We will copy you in to the application we make within the next 7 days and to the outcome or to any resulting requisitions as may be raised by the Land Registry".

In fact, no application was made (and certainly was not made within 7 days) so there was nothing the Respondent could copy to FBS. The SRA's case was that "the application" related to the submission of evidence to the Land Registry so the Respondent was obliged to submit the best evidence he could to the Land Registry within 7 days, i.e. by 4 December 2009. The Tribunal accepted this interpretation and found that the Respondent had failed to submit anything to the Land Registry in the required time. Indeed, his own email of 15 January 2010 suggested he had only just become aware there was a problem in relation to this matter. Even if the Respondent had tried to submit documents, he had certainly failed to copy anything to FBS.

75.13 The undertaking went on to state:

> "We also undertake to continue to make our best efforts to accomplish the removal and extinction of this former title and to keep you fully advised at all times".

The fact that nothing had been done by the Respondent by mid-January 2010 showed beyond doubt that he had not made "best efforts". Indeed, by that point he had only just begun to realise that there may be difficulties in accomplishing the intended outcome. This was despite chasing letters from FBS on 4 and 7 January 2010, and a

telephone call to the Respondent's office on 6 January. Further, the Respondent had clearly failed to keep FBS fully advised. He had not informed them of any difficulties, or of any steps he had taken to comply with the undertaking.

75.14 The Respondent had contended that the undertakings had been frustrated or rendered unenforceable because they had been based on a misunderstanding about the circumstances and what would be required to clear the previous lease from the title. The Tribunal did not accept this contention. The obligation to use his best efforts to submit the best available evidence to the Land Registry had not been complied with. Had it become apparent, having taken all the steps he could, that problems remained with removing the lease the Respondent could and should have explained the position to FBS and sought to agree with them an appropriate variation of the undertaking. He had not done so. The Tribunal further noted that the Respondent had at one point sought to suggest that he would take necessary steps after payment of his costs. The Tribunal could not accept that compliance with undertakings was in anyway linked to payment of costs: indeed, solicitors were expected to comply with professional undertakings they had given even where it might cause them personal expense or inconvenience.

75.15 For the reasons set out above, the Tribunal was satisfied beyond reasonable doubt that the Respondent had given undertakings in one matter, with which he was obliged professionally to comply, and that he had not complied with those undertakings. The Tribunal was satisfied that this allegation had been proved beyond reasonable doubt.

76. **Allegation 1.2: Failed to deal with the SRA in an open, prompt and co-operative manner, contrary to Rule 20.05 SCC**

76.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the Respondent's recent response documents. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation. However, the Tribunal noted the Respondent's many expressions of concern in various letters and emails about the conduct of the SRA. Accordingly, the Tribunal considered as part of the process of considering this allegation the proposition that the Respondent had dealt with the SRA, but perhaps in such a way that the SRA simply did not like his responses.

76.2 The Tribunal considered the full course of correspondence between the SRA and its representatives (such as Gordons) and the Respondent. That course is set out in the "Factual Background" section above (paragraphs 34-49). It was clear that the Respondent had replied to some correspondence although in some cases the reply was sent or received beyond the deadline specified by the SRA.

76.3 The Tribunal noted that on several occasions, the Respondent had raised issues in correspondence to which the SRA/its representatives had not responded. For example, in his letter to Gordons of 7 April 2010 the Respondent had stated that the undertaking had been given by the Firm and not by him personally, that it had been founded on a mutual mistake by the Firm and FBS and was unenforceable. It did not appear that Gordons or the SRA had directly answered these points and for this reason

the Tribunal considered whether or not the allegation was based simply on the Respondent's replies not being what the SRA wanted to see.

76.4 Against this proposition, the Tribunal noted that the Respondent had at no point given a clear response to the letter of 8 March 2010, which set out concisely the issues (which were within the Respondent's own knowledge) on which the Respondent's comments were required.

76.5 The Tribunal noted the terms of Rule 20.05 of the SCC, which requires solicitors to "deal" in an "open, prompt and cooperative" manner with the SRA. The Respondent had not replied in all cases promptly. Further, the terms in which the Respondent had replied to the SRA were not "open". In particular, the Tribunal noted that in his letter of 7 April 2010 the Respondent had denied that the undertakings were given by him personally. As noted in paragraph 75.5 above, this was clearly not correct, and the Respondent knew it was not correct. Further, the SRA's letter of 8 April 2010 listed a number of clear questions. The Respondent's reply of 26 April 2010 did not answer those questions. The Tribunal noted that in his email of 6 August 2010 the Respondent had denied that he was the fee earner in the JP matter: this was clearly not the case by the time the undertakings were given and the Respondent remained at the Firm in the following months, by which time the undertakings should have been fulfilled.

76.6 On reviewing all of the correspondence within the Rule 5 bundle, and after considering whether the Respondent had dealt with the SRA appropriately, albeit not in a way the SRA liked, the Tribunal concluded that the Respondent had not dealt with his professional regulator as required. The Tribunal was satisfied beyond reasonable doubt that he had not dealt openly with the SRA, in particular in denying he had given the undertaking personally, and had not usually dealt with the SRA promptly. Accordingly, this allegation had been proved to the highest standard.

77. **Allegation 1.3: Behaved in a way likely to diminish the trust the public places in him or in the legal profession contrary to Rule 1.06 SCC.**

77.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

77.2 The SRA case was that as the Respondent had failed to comply with two orders of SRA Adjudicators, made in November 2009 and November 2010, he had acted in a way likely to diminish the trust the public places in him or the profession. The first order, to pay costs totalling £1,875 had been partially complied with: the SRA had not been able to confirm by reference to any documents the sum now due, but it appeared that the figure of £975 which appeared in the Rule 5 Statement may not be correct. In any event, it appeared that the Respondent had paid approximately half of the sum due in or before August 2010. The further order, for costs of £772.59, had been made in November 2010. No payments had been made towards the sum due.

77.3 Given that there were sums properly due to the SRA under the Adjudicator's decisions, the Tribunal was prepared to agree that the SRA should be able to enforce those orders as if they were orders of the High Court. The Tribunal noted the decisions in Merrick v The Law Society [2007] EWHC 2997 (Admin) ("the Merrick case") and D'Souza v The Law Society [2009] EWHC 2193 (Admin) ("the D'Souza case"). However, the Tribunal had been persuaded that making the orders permitting enforcement were an administrative step and did not mean that the orders would in fact be enforced. The Tribunal would expect the SRA to be able to confirm the amounts due and to act proportionately and reasonably in seeking to obtain payment in the light of the information provided by the Respondent about his financial circumstances.

77.4 To prove this allegation, it was not sufficient to show that the Respondent had failed to pay monies properly due to the regulator. The Tribunal had to consider whether in failing to pay the Respondent had breached one of the core duties and in particular whether he had acted in a way likely to diminish trust. In considering the allegation, the Tribunal was able to take into account the overall circumstances, as set out in documents relied on by the SRA in the Rule 7 Statement as well as the documents submitted by the Respondent.

77.5 At the time the November 2009 order was made, the Respondent was working at the Firm. He already owed money to the Law Society under the costs order made by the Master of the Rolls in July 2008 and he was being pursued for payment. Indeed, the Law Society obtained an order for bankruptcy against him on 15 January 2010, which was annulled in May 2010. The Respondent had been dealing with closing the Firm and the Tribunal understood it had been closed in April/May 2010. At the same time, the SRA owed some money to the Respondent, with the sum of £1,510 being agreed by the SRA and paid in April 2011. The Respondent was receiving correspondence from the SRA very regularly, from a variety of case workers and on a variety of matters. Whilst this situation had arisen because of the Respondent's own actions or defaults, the Tribunal could understand that the Respondent had felt upset: he was being pursued for money without there being full consideration of whether or not he could afford to pay. Indeed, the Law Society had petitioned successfully for his bankruptcy. It was perhaps understandable that the Respondent had been confused about whether he was being pursued by the SRA or Law Society and may have thought the two were the same; at one point he had apparently thought the costs order referred to in allegation 2.1 had been made in favour of the Tribunal, which was clearly not the case.

77.6 The allegation did not arise from orders to pay compensation to clients or otherwise make recompense to a member of the public. Indeed, to the public it could appear the issue was simply about whether the profession as a whole or one member of it should bear certain costs, or how those costs should be apportioned. Whilst it was possible to envisage that in some circumstances failure to comply with Adjudicators' orders could amount to a breach of Rule 1.06 SCC, the particular circumstances of this case were such that the allegation had not been made out to the highest standard. Failure to pay was not enough. In this case, it was clear that the Respondent had been under financial pressure and other pressures e.g. in closing the Firm so the Tribunal was not satisfied in all of the circumstances that he had acted in a way likely to diminish the

trust the public placed in him or the profession. Accordingly, this allegation had not been proved.

78. **Allegation 2.1: Failed to adhere to agreements to pay costs and in so doing failed to act with integrity, contrary to Rule 1.02 SCC**

78.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

78.2 The facts relied on by the SRA in support of this allegation overlapped with the facts relied on in allegations 2.2 and 2.3. In brief, the Respondent had in July 2008 been ordered to pay the Law Society's costs in connection with his unsuccessful appeal to the MR about conditions imposed on his 2007/8 practising certificate. After hearing from the parties, the MR assessed the costs payable by the Respondent at £5,000. The Respondent agreed to make payments at the rate of £100 per month from 1 December 2008 and paid a total of £300, albeit two instalments were late. In January 2009 the Respondent indicated that he did not think he should pay the costs as an Adjudicator had decided not to impose conditions on his 2008/9 certificate. The SRA had confirmed that they would not write off the costs, as the decision concerning the 2008/9 certificate was unrelated to the issues concerning the 2007/8 certificate. The Respondent had asked the MR to re-open the costs order but on 5 November 2009 the MR's office wrote to the Respondent with the MR's decision not to reopen the July 2008 decision. Thereafter, the Respondent refused to reinstate payments.

78.3 The Law Society had petitioned for and obtained an order for bankruptcy against the Respondent, based on this debt, in January 2010. The Respondent had raised in his submissions and documents a number of complaints about the circumstances in which the bankruptcy order had been obtained. It was not a matter for this Tribunal to determine whether the order had been properly granted and in any event it did not appear on the papers that there had been any material irregularity in the process. Thereafter, the Respondent had applied to annul the bankruptcy and the Law Society had agreed not to oppose the application. This was because the Respondent had paid the principal debt and costs to 29 January 2010 and on the day of the hearing agreed, through counsel instructed by him, to pay the additional costs to that date, agreed at £3,750 by instalments of £500 per month.

78.4 As noted above, failure to pay costs due to the Law Society or SRA is not in itself sufficient to show a breach of any of the core duties. However, the circumstances may allow such a finding.

78.5 In this case, the Respondent was liable under a costs order made by the MR to pay certain costs, and that liability remained unless and until the order was varied or the SRA agreed to write off the costs. The Respondent in this case was fully aware of the order and his liability to pay. He had sought to re-open the order, and it could be argued that pending determination of that application there could be some doubt about whether the Respondent would remain liable. However, by November 2009 it was clear that the order would not be re-opened and that it would remain in force. Even if

there had been no lack of integrity in failing to pay the costs whilst the application was being considered, refusal to pay thereafter – when there could be no possible other course of challenge to the order – showed a lack of integrity. The Respondent had chosen to use the court's procedures when it suited him – to attempt to overturn the costs order – but had chosen to disregard a clear and valid court order. He had initially agreed to pay the costs by instalments but had then failed and refused to do so. The Respondent had not at that point argued he was unable to pay. Indeed, after being made bankrupt the Respondent paid the principal debt.

78.6 The Respondent had subsequently made an agreement to pay certain additional costs, totalling £3,750 and it was on the basis of that agreement the Law Society had agreed not to oppose the Respondent's application to annul the bankruptcy order. The Respondent had failed and refused to pay, alleging that he had made the agreement under duress. This contention was not accepted by the Tribunal. The Respondent had been represented by counsel at the hearing. Whilst any litigant may feel under pressure in the context of court proceedings, it could not be contended that the Respondent had entered the agreement under duress. This argument was spurious. The Tribunal noted that in the Respondent's witness statement in Bath County Court matter 0395 of 2011, made on 2 April 2012 the Respondent had raised this issue (and others) whilst acknowledging at paragraph 35 that he was "supposed" to make the payments of £500 per month.

78.7 The Tribunal further noted that the Respondent had sought to make a deal with the SRA on 22 May 2011 whereby he would pay various sums due in the expectation that the disciplinary proceedings against him would be dropped or at least reduced.

78.8 In all of these circumstances, the Tribunal found that the Respondent had shown a lack of integrity, contrary to Rule 1.02 of the SCC. He had sought to use court proceedings when it suited him and failed to accept the authority of the court when it did not. The Respondent had made an agreement to pay the costs ordered by the MR and had then reneged on the agreement without proper reason. It could be suggested that his delay in paying the costs was perhaps excusable up to the point when all avenues of appeal had been closed, but the Tribunal found that his conduct clearly showed a lack of integrity thereafter. The Respondent's entry into an agreement with the Law Society concerning the bankruptcy costs, on which he reneged further showed a lack of integrity. His subsequent attempt to escape from disciplinary proceedings by offering payment of costs which were lawfully due demonstrated a further lack of integrity. Accordingly, the Tribunal found this allegation proved to the highest standard.

79. **Allegation 2.2: Acted in a manner likely to diminish the confidence the public places in the profession, contrary to Rule 1.06 SCC**

79.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

79.2 The facts and circumstances relied on in support of this allegation were as set out under allegation 2.1 above and are not repeated. The Respondent had sought to use court proceedings when it suited his purpose. He had consented to the agreement to pay costs in May 2010 in order to have his bankruptcy annulled and had then tried to argue that the agreement was not enforceable. He had sought to reduce the disciplinary action he faced by offering payment of costs which were properly due. Solicitors who enter agreements with their professional body should abide by those agreements and where they fail to do so, without good reason, the public would rightly be concerned at whether the solicitor could be trusted. The Tribunal found it proved beyond reasonable doubt that in making agreements with the profession's regulators and reneging on those agreements without proper reason the Respondent had acted in a manner likely to diminish the trust the public placed in him or the profession. Further, in using court proceedings for his own purposes and ignoring the authority of the court when it did not suit his purposes, the Respondent as an officer of the court had fallen below the high standards expected of the profession. This allegation had been proved to the highest standard.

80. **Allegation 2.3: Failed to deal with the SRA in an open, prompt and co-operative manner, contrary to Rule 20.05 SCC.**

80.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

80.2 The facts giving rise to this allegation are set out under allegation 2.1 above and are not repeated.

80.3 The Respondent had tried to buy his way out of these proceedings. He had dropped his offer to pay costs when it was clear that the SRA would not withdraw or reduce the allegations within the Tribunal proceedings. He had entered into an agreement to pay the costs ordered by the MR and had failed to abide by that agreement, without lawful excuse. He had made a further agreement concerning costs prior to the annulment of his bankruptcy then had breached the terms of the agreement. In doing so, the Respondent had failed to deal openly and co-operatively with the SRA. The Tribunal was satisfied so that it was sure that this allegation had been proved.

81. **Allegation 2.4: Failed to uphold the rule of law and the proper administration of justice, contrary to Rule 1.01 SCC.**

81.1 This allegation was denied by the Respondent. The Tribunal considered carefully the Respondent's response to the matters raised in these proceedings. However, the Tribunal could not find a specific and concise response to this allegation within the most recent response documents. The Tribunal noted that in his recent submissions and documents the Respondent had raised considerable complaints and allegations concerning Mr and Mrs R, who are mentioned below. Whilst the Tribunal noted these matters, the points raised by the Respondent did not appear to give any explicit answer to the allegation. There did not appear to be any substantive dispute on the core facts which had given rise to the allegation.

81.2 The Tribunal noted that the allegation arose from an order made at Central London County Court on 7 May 2010, with which the Respondent had not complied. In particular, he had not paid the interim costs award of £14,000. Following a complaint made by Mr and Mrs R, in whose favour the order had been made, the SRA wrote to the Respondent on 9 March 2011 enclosing a copy of the order. In his letter to the SRA of 8 April 2011 the Respondent stated that he knew nothing about the order. This was despite the recital in the order to the effect that the court had considered an email from the Respondent dated 5 May 2011 which the court did not consider contained a proper reason for him not attending. The Respondent stated that when the order was served on him he would apply to rescind it and that he was not liable to pay the costs ordered as he had not been served with the order. On the face of the order, it was clear that the Respondent was aware there was to be a hearing on 7 May 2010 but, apparently, he had done nothing to find out the outcome. There was no evidence that the Respondent had applied to have the order rescinded or varied in any way and it remained a valid court order with which he had not complied. The Tribunal noted the long and detailed allegations and complaints the Respondent made about Mr and Mrs R, but did not consider that these provided any proper reason for failing to comply with a court order.

81.3 It was not the function of the SRA to collect monies owed to members of the public under court orders, and the Tribunal was satisfied that in raising this matter the SRA was simply dealing with possible disciplinary matters rather than acting as "debt collectors".

81.4 Whilst the Tribunal was satisfied that the Respondent had failed to comply with the order, this was not sufficient to prove the very serious allegation of a breach of Rule 1.01 of the SCC. There was no evidence before the Tribunal of any steps taken by Mr and Mrs R to enforce the order and in particular there was nothing to show the Respondent had deliberately frustrated their attempts to enforce the order. The Respondent had asserted that the reason Mr and Mrs R had not sought to enforce the order themselves was that if they had done so the Respondent would have appealed and counter-claimed. There was no evidence presented to the Tribunal that was inconsistent with the Respondent's assertion on this point. Whilst the Tribunal considered that the Respondent had been disingenuous in claiming not to know about the order, it was also clear to the Tribunal on the basis of all the papers before it that the Respondent did not have the means to satisfy the costs order. To fix a solicitor with a breach of one of the core duties because he could not afford to comply with it would be a step too far. The Respondent's conduct could be criticised in many ways. However, the Tribunal was not satisfied to the required standard that the Respondent had failed to uphold the law and the proper administration of justice on the basis of the facts relied on by the Applicant. Accordingly, this allegation was not found to have been proved.

Previous Disciplinary Matters

82. In accordance with its practice, the Tribunal was not informed of any previous matters recorded against the Respondent until it had determined its findings on the allegations. The Respondent had chosen to refer in the documents he supplied to the Tribunal to previous matters, but the Tribunal members did not take into account the possibility of previous findings against the Respondent in determining its findings.

83. After announcing its findings in Court, the Tribunal was told that there were two previous matters in which allegations had been found to be substantiated against the Respondent. These were matters 5393/1988 (4291) heard on 27 October 1988 (Findings dated 20 December 1988) and 6119/1992 heard on 3 October and 9 December 1994 (Findings dated 31 January 1995). Copies of the Findings were provided to the Tribunal.

Mitigation

84. The Respondent had denied all of the allegations and so had not offered mitigation. However, the Tribunal took into account his various submissions. It also considered the surrounding circumstances, as revealed in the papers.

85. By reference to its Guidance Note on Sanctions (August 2012) the Tribunal could not identify any factors which would tend to reduce the seriousness of the conduct which had been proved. However, by way of personal mitigation the Tribunal noted that the Respondent had been at various points, particularly since early 2010, in receipt of a large volume of correspondence from the SRA and others about a number of complaints and issues, many of which had resulted in allegations before this Tribunal. This would have contributed to the Respondent's feeling that he was being pursued (when, in his view, others were not being pursued in the same way) and to the general pressures upon him. In early 2010 the Respondent had taken steps to close the Firm in an orderly way. The SRA had not alleged there were any outstanding claims arising from the closure of the Firm. The Respondent was in a poor financial position. Further, the Tribunal accepted that at the time the Respondent gave the undertaking referred to in allegation 1.1 he believed he could comply with it: he had not set out to deceive anyone.

Sanction

86. In considering sanction, the Tribunal considered and reviewed all of the matters which had been found proved, the mitigation noted above, the Tribunal's Guidance Note on Sanctions and all of the relevant circumstances including the previous Findings against the Respondent.

87. The Tribunal had found that the Respondent had: failed to comply with an undertaking; failed to deal with the SRA in an open, prompt and co-operative manner (two allegations); failed to act with integrity; and had acted in a manner likely to diminish the confidence the public places in the profession.

88. The Respondent was personally culpable for the misconduct which had been proved. He had sought to blame others for various matters, but the allegations concerned his conduct alone. The Respondent did not appear to have set out to cause harm but his conduct was such as would damage the reputation of the profession. In particular, he had been found to have failed to act with integrity and so had fallen below the high standards of conduct expected of solicitors. The Tribunal noted that no member of the public had been directly harmed. However, the Respondent had made an agreement, signed by counsel on his behalf, and had then alleged the agreement had been signed under duress. The Respondent had denied an undertaking was his, when clearly it had been given by him and was his responsibility. In his conduct of the

proceedings, and in the documents submitted, the Respondent had failed to grasp or address the issues. This showed a disturbing lack of insight on his part.

89. Dishonesty had not been alleged, but the breaches of the core duties of solicitors (expressed in Rule 1 of the SCC) were serious. The Respondent's misconduct had continued over a period of several years. The breach of undertaking was not in itself the most grave matter, although the conveyancing system depends on solicitors complying with their undertakings.

90. More serious was the complete pattern of failing to deal with the SRA appropriately. The Respondent may have had a number of disagreements with the regulator and/or the Law Society over the years, but his failure to deal with the SRA openly and co-operatively interfered materially with the SRA's ability to regulate the Respondent and the profession. The Tribunal was concerned to note that in an email to the SRA on 14 July 2010 the Respondent had stated,

> "...these days I do not trust or believe in the authority of the Law Society or the SRA..."

This, especially when read with the entirety of the correspondence and the facts of the case made clear that the Respondent was difficult to regulate, as he did not accept the authority of the regulator. Even if the SRA had not behaved perfectly – and its delay in recognising that the sum of £1,510 was owed to the Respondent was an example of the SRA's imperfection – solicitors were obliged to deal with the regulator appropriately.

91. The Tribunal was concerned to read the two previous matters recorded against the Respondent. In 1988 the Respondent findings had been made against the Respondent in 6 allegations, including failure to comply with a professional undertaking, failing to pay counsel's fees when due and failure to account for funds handled by him as liquidator of a company. The Respondent had been fined £1,500 on that occasion, which this Tribunal noted was a significant fine in 1988. The Tribunal in 1988 had noted in its Findings at paragraph 52 that it could not condone his "rather cavalier attitude to the accepted professional standards of a solicitor and the need to comply in every respect with the Rules governing that profession which have been laid down to protect the public".

92. At the hearing in 1994, the Tribunal had found four allegations proved against the Respondent. Those allegations were that the Respondent:

(i) had been guilty of conduct unbefitting a solicitor in that he practised as a solicitor whilst not holding a Practising Certificate;

(ii) had failed to comply with the Solicitors Accounts Rules 1986 in that he failed to keep his books of account properly written up;

(iii) had been guilty of conduct unbefitting a solicitor in that he had been responsible for unreasonable delay in the conduct of professional business;

(iv) had been guilty of conduct unbefitting a solicitor in that he failed within a reasonable time to comply with a professional undertaking.

The Tribunal in 1994 echoed (at paragraph 65 of its Findings) what had been said by the previous Tribunal on the matter of the Respondent's cavalier attitude to the professional standards required of a solicitor. In 1994 the Tribunal had suspended the Respondent from practice for a period and had expressed the hope that,

> "... he would review his attitudes to his profession and responses to stressful situations before again considering making an application to the Law Society for a Practising Certificate".

The Tribunal had further noted that,

> "The conduct of the respondent in the proceedings before the Tribunal have revealed at best the respondent's failure to grasp the nature and weight of the proceedings and to confine himself to relevant matters only. He displayed considerable discourtesy and lack of judgement. His attempts at filibustering and raising spurious points, though listened to by the Tribunal with considerable patience, raised serious doubts as to the respondent's competence..."

93. Whilst the Respondent had not attended this hearing and so could not be said to have been discourteous to the Tribunal, the Respondent's conduct of the proceedings on this occasion had been similar to that described in 1994. He had failed to address the allegations and had instead given the Tribunal considerable material which was not relevant to the case even if relevant to the circumstances which caused the Respondent to feel aggrieved. The Respondent had shown no insight into his conduct and why he had been brought before the Tribunal for a third time.

94. The Tribunal noted the fundamental principle and purposes of the imposition of sanctions at the Tribunal, as set out in Bolton v The Law Society [1994] 1 WLR 512 ("the Bolton case") where it is stated:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal"
>
> "... a penalty may be visited on a solicitor...in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way..."
>
> "...to be sure that the offender does not have the opportunity to repeat the offence; and..."
>
> "... the most fundamental of all; to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth... a member of the public... is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question... A profession's most valuable asset is its collective reputation and the confidence which that inspires."

It was clear that the protection of the public and the maintenance of the reputation of the profession were more important in determining sanction than the effect upon an individual solicitor.

95. The allegations which had been proved were serious, and the seriousness was aggravated by the Respondent's previous disciplinary record. It was correct that both previous appearances had been some years ago, with the suspension order being imposed in late 1994. However, it was clear that the Respondent had not rejoined the profession until the 2005/6 practising year. The judgment of the MR on 10 July 2008 at paragraph 13 records that the Respondent applied for practising certificates in a number of years from 1995 but the certificates, whilst granted subject to conditions, were not issued as the Respondent did not pay the issue fee. The Respondent had therefore rejoined the profession only a few years before the facts giving rise to allegations had arisen.

96. The Tribunal considered the range of sanctions available to it. This was clearly a case where a sanction should be imposed as the matters proved were serious. A reprimand was clearly not sufficient to protect the public and/or the reputation of the profession in the light of the Respondent's conduct. Neither a fine nor a restriction order would be appropriate as they would not adequately protect the public or the reputation of the profession.

97. The Tribunal was aware that at preliminary hearings, comments had been made to the effect that the allegations (in the Rule 5 Statement) were not the most serious and it was unlikely the proceedings would lead to any interference with the Respondent's ability to practice. However, such comments had been made without knowledge of the two previous findings against the Respondent and without full consideration of the evidence which, of course, happens only at a substantive hearing.

98. The Tribunal considered whether suspension from practice would be adequate, whether with the imposition of restrictions on the termination of suspension or not. The allegations as proved on this occasion were such that suspension from practice would be reasonable and proportionate. However, when considered with the previous findings, suspension would not be sufficient.

99. The Respondent had shown a lack of integrity and a lack of openness in dealing with the profession's regulator. He had demonstrated no insight into his conduct, nor had he made admissions as he should have done. Indeed, he had denied that he had given an undertaking when he was clearly the person who had given it and was responsible for fulfilling it. He had failed to use his best efforts to fulfil the undertaking. The Respondent's dealings with the SRA over a considerable period had shown that he would not submit to regulation. He was prepared to use the court system for his own purposes when it suited him, but when he disagreed with a court decision he would choose to ignore it. He entered into binding agreements with his regulator but then unilaterally chose to ignore them. There was a clear and consistent theme of the Respondent wishing to pick and choose those court and regulatory decisions and processes to which he was prepared to be subject and those which he wilfully ignored. He had not come to terms, despite two previous appearances at the Tribunal, with the obligations of being a solicitor: he had not learned from his experience and there was absolutely no evidence of any desire to learn from his experience and to be subject to

proper regulatory oversight, which is designed to ensure the public are protected, and seen to be protected. Whilst the Respondent had not been cavalier with members of the public, his attitude to the SRA had been cavalier and unprofessional.

100. Having weighed all relevant factors, considered the Tribunal's Guidance Note on Sanctions and exercised its discretion, the Tribunal determined that the reasonable and proportionate sanction in this case was that the Respondent should be struck off the Roll.

Costs

101. On behalf of the Applicant, Mr Greensmith applied for an order that the Respondent should pay the Applicant's costs of the proceedings. It was submitted that the proceedings had been properly brought and in accordance with the principles set out in Baxendale-Walker v The Law Society [2007] EWCA Civ 233 it was appropriate for the Respondent to be ordered to pay costs.

102. The Applicant's schedule of costs totalled over £45,000, including the costs of the forensic investigation. Mr Greensmith told the Tribunal that the schedule had been prepared in the expectation that the hearing would last for two days. It would be appropriate to reduce the costs to remove 9 hours of Mr Greensmith's time and 14 hours of time spent by his assistant.

103. The Tribunal noted that on another occasion, Mr Greensmith had characterised these proceedings as comparatively straightforward and it was queried why, in those circumstances and given that the Applicant's bundles of papers were not extensive, the time spent in preparation was so great. Mr Greensmith told the Tribunal that there had been substantial correspondence with the Respondent, who had raised and repeated a number of points in the course of the proceedings. Considerable time had been spent considering and dealing with the Respondent's request for disclosure in or around December 2011.

104. The Tribunal noted that it had seen information concerning the Respondent's financial position, as set out in one of his emails to the Tribunal on 12 September 2012, although there was a paucity of supporting documents. Mr Greensmith confirmed that he was not able to challenge the information given by the Respondent. He had informed the Respondent in a letter enclosing the costs schedule of the Tribunal's usual requirements when a Respondent wanted financial circumstances to be taken into account. These requirements included information on monthly income and outgoings, together with assets and liabilities and that this information should be supported by documentary evidence. Although the Respondent's information did not comply in full with the requirements, the SRA had to accept what was said.

105. The Tribunal considered carefully the application for costs. The proceedings had been properly brought, and five of the seven allegations had been proved to the highest standard. An order for costs against the Respondent was therefore appropriate. If no order were made, the full costs of the proceedings would fall on the profession.

106. The Tribunal considered carefully the schedule of costs. It was not satisfied that the costs as claimed should be ordered in full. In particular, it was not satisfied that the costs of attendance of Mr Greensmith's assistant should be allowed. The costs of the hearing should reflect the fact that only one full day had been spent on the hearing. The amount claimed for work on documents was excessive and would be substantially reduced, to 30 hours at £165 per hour, although the time claimed for attendances on the Respondent was allowed in full as it was clear that substantial time had been needed to deal with his correspondence.

107. The Tribunal had noted that the Respondent was of very limited means, and took into account in particular that he received the state pension credit which was means-tested. He had provided information which substantially complied with the requirements in SRA v Davis & McGlinchey [2011] EWHC 232 (Admin). The Tribunal applied the principles set out in D'Souza v The Law Society [2009] EWHC 2193 (Admin) and in Merrick v The Law Society [2007] EWHC 2997 (Admin) in determining the Respondent's liability for costs and determined that the appropriate amount to order against the Respondent was £16,464.22. It further determined that as the Respondent does not currently appear to have the means to pay costs, the payment of costs should not be enforced without further permission of the Tribunal.

108. The Tribunal stated that it expected the SRA to act proportionately in dealing with the Respondent, both as to the costs order and the order for enforcement of the decisions of the Adjudicators.

Statement of Full Order

109. The Tribunal Ordered that the Respondent, Bernard Rodney Brandon, 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 £16,464.22, such costs not to be enforced without leave of the Tribunal.

The Tribunal further Ordered that the Directions of the Adjudicators of the Solicitors Regulation Authority dated 10 November 2009 and 22 November 2010 be treated for the purposes of enforcement as if they were contained in Orders of the High Court pursuant to paragraph 5(2) of Schedule 1A Solicitors Act 1974.

Dated this 23rd day of October 2012
On behalf of the Tribunal

J. C. Chesterton
Chairman