

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11125-2013

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

TOPER HASSAN

Respondent

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Before:

Mr J. Astle (in the chair)  
Mr P. Housego  
Mrs L. McMahon-Hathway

Date of Hearing: 15 October 2013

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## Appearances

Mr Andrew Bullock, barrister, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Toper Hassan, was not present or represented.

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## JUDGMENT

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## **Allegations**

1. The allegations made against the Respondent in a Rule 5 Statement dated 29 January 2013 were that:
  - 1.1 (In relation to the period from 1 July to 6 October 2011) he failed to make arrangements for the safekeeping of documents entrusted to the firm of Topper Hassan & Co, namely 166 client matters stored with Endex Archives Limited, in breach of Rule 5.01(1)(g) of the Solicitors Code of Conduct 2007;
  - 1.2 (In relation to the period from 6 October 2011 onwards) he continued to fail to protect client assets, namely those same client matter files, in breach of Principle 10 of the SRA Principles 2011;
  - 1.3 He failed to respond to correspondence from the SRA and has thereby breached Principle 7 of the SRA Principles 2011 and he also failed to achieve Outcome 10.6 specified within the SRA Code of Conduct 2011.

## **Documents**

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

### **Applicant:-**

- Application dated 29 January 2013
- Rule 5 Statement, with exhibit "AJB1", dated 29 January 2013
- Statement of costs
- Bundle of documents concerning service of proceedings

### **Respondent:-**

No documents submitted

## **Preliminary Matter - – Proceeding in the absence of the Respondent**

3. The Respondent was not present or represented. There had been no communication from the Respondent to either the Applicant or the Tribunal indicating an intention to attend.
4. The Tribunal was referred to the Memorandum of an application determined without hearing on 29 May 2013. The Memorandum, dated 3 June 2013, recorded that the Tribunal had considered the written submissions of the Applicant concerning difficulties in effecting service on the Respondent and that the Tribunal had directed that service should be effected by way of advertisement in The Law Society Gazette together with advertisements in local papers in the London SW16 and London N15 areas.
5. The Tribunal was referred to a copy extract from The Law Society Gazette of 29 July 2013 in which these proceedings and the date of hearing were advertised. The Tribunal was also referred to a copy extract from the Haringey Independent newspaper dated 2 August 2013 in which the same advertisement appeared. The

Tribunal was also shown a circulation certificate for the Haringey Independent which confirmed that it was distributed in the London N15 area. The Tribunal was referred to a copy extract from the Wandsworth Gazette dated 1 August 2013 in which the same advertisement of proceedings and the hearing date appeared. The Tribunal was also shown a circulation certificate for the Wandsworth Gazette which confirmed that it was distributed in the London SW16 area. The Tribunal was invited to find that service had been effected and to proceed with the hearing in the Respondent's absence.

6. The Tribunal considered all of the evidence presented as to service. The Tribunal was satisfied that service had been effected on the Respondent. The Respondent had not indicated any intention to take part in the proceedings. The Tribunal was satisfied that it was fair, appropriate and proportionate to proceed to hear the case in the Respondent's absence.

### **Factual Background**

7. The Respondent was born in 1966 and was admitted to the Roll of Solicitors in 1997.
8. From 1 July 1999 until 12 April 2006 the Respondent carried on practice on his own account as a solicitor under the style of Toper Hassan & Co ("the Firm") from an office at 1A, Turnpike Lane, Green Lanes, London N15 3LA. The Firm closed on 12 April 2006.
9. On closure of the Firm, the Respondent arranged for the storage of a quantity of client matter files to be stored with Endex Archives Limited ("EA Ltd"), who would invoice him quarterly in advance for these services. The quantity of material stored was not clear; in the Rule 5 Statement it was pleaded that there were 166 boxes containing client matter files but in other papers it appeared that there could be papers relating to 166 client matters. The client papers included documents which came into existence in the course of the retainer and in any event those papers belonged in each case to the client.
10. The Respondent paid the storage charges until 31 May 2011. EA Ltd raised invoices dated 31 May, 31 August and 30 November 2011 respectively in the total sum of £683.97 in respect of storage charges for the client files for the period 1 July 2011 until 31 March 2012. The Respondent failed to pay this sum promptly or at all.
11. On 27 January 2012 EA Ltd contacted the Applicant to report the failure to pay the storage charges and it was stated to the SRA caseworker that if the SRA "...were not doing anything about this then they would destroy the files".
12. On 20 February 2012 a caseworker of the SRA wrote to the Respondent and asked him to "... please confirm what arrangements are made for the discharge of the outstanding storage charges and/or safe keeping of the papers currently held by EA Ltd by 27 February 2012". The time limit for the Respondent to reply to that letter was subsequently extended to 15 March 2012. No response was received to that letter by 15 March 2012 or at all.

13. On 18 July 2012 the Panel of Adjudicators Sub-Committee of the SRA resolved to intervene into the Firm on the grounds that the Respondent had failed to comply with the SRA Principles 2011 and/or the SRA Code of Conduct 2011 and that it was necessary to exercise the powers of intervention to protect the interests of clients of the Respondent or his Firm. A decision was also made to refer the Respondent's conduct to the Tribunal.

### **Witnesses**

14. No oral evidence was required and the case proceeded on the documents submitted.

### **Findings of Fact and Law**

15. 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.
16. **Allegation 1.1 - (In relation to the period from 1 July to 6 October 2011) he failed to make arrangements for the safekeeping of documents entrusted to the firm of Toper Hassan & Co, namely 166 client matters stored with Endex Archives Limited, in breach of Rule 5.01(1)(g) of the Solicitors Code of Conduct 2007;**
  - 16.1 The Respondent had not responded to this allegation and so it was considered by the Tribunal as if it were denied.
  - 16.2 It was clearly the case, on all the facts, that the Respondent had arranged for storage of client files and papers with EA Ltd from the time his Firm closed in April 2006. What was not clear was whether clients had been informed how to find/recover their files. The number of files was also unclear and the Tribunal could not be satisfied on this point. The pleaded quantity of 166 boxes of client files sounded high for a sole practice of the kind operated by the Respondent, but of course much would depend on how the files were organised and the size of boxes. The Tribunal noted that the cost of storage as at 2011 was around £200 per quarter; this suggested rather fewer than 166 archive boxes. It was noted that the quantity of papers had been derived from correspondence between the SRA's case-worker and EA Ltd. There was a lack of certainty about the quantity of paperwork and no information was available about the number of clients whose interests were potentially affected. However, it was undoubtedly the case that from 2006 a number of client files had been stored with EA Ltd and the best information available suggested that up to 166 client matters had been so stored.
  - 16.3 Whatever the number, the Respondent had failed to ensure the safekeeping of those matters stored with EA Ltd as he had failed to pay the storage charges. This put those client papers at risk of destruction.
  - 16.4 The Tribunal was satisfied to the required standard that this allegation had been proved on the facts.

**17. Allegation 1.2 - (In relation to the period from 6 October 2011 onwards) he continued to fail to protect client assets, namely those same client matter files, in breach of Principle 10 of the SRA Principles 2011;**

17.1 The Respondent had not responded to this allegation and so it was considered by the Tribunal as if it were denied.

17.2 The facts and issues were as set out at paragraphs 16.2 and 16.3 above and for the same reasons and on the same facts the Tribunal was satisfied to the required standard that this allegation had been proved on the facts.

**18. Allegation 1.3 - He failed to respond to correspondence from the SRA and has thereby breached Principle 7 of the SRA Principles 2011 and he also failed to achieve Outcome 10.6 specified within the SRA Code of Conduct 2011.**

18.1 The Respondent had not responded to this allegation and so it was considered by the Tribunal as if it were denied.

18.2 The Tribunal was satisfied that the Respondent had failed to respond to correspondence from the Applicant, in particular the letter of 20 February 2012, and that the allegation had been proved to the highest standard.

### **Previous Disciplinary Matters**

19. Findings had been made against the Respondent in two previous matters.

20. In case 10226/2009, heard on 8 October 2009 (Findings dated 11 December 2009) the Tribunal found that the Respondent had failed to file accountants' reports for the years ending 31 July 2005, 12 April 2006 and 12 April 2007. The Respondent was reprimanded, and ordered to pay costs of £2,879.08.

21. In case 10702/2011, heard on 14 July 2011 (Judgment dated 30 August 2011) the Tribunal found the Respondent to be in breach of Rules 1.06 and 20.05 of the Solicitors Code of Conduct 2007 and that he had failed to comply with a direction of an Adjudicator of the Legal Complaints Service. The Respondent had been fined £5,000 and ordered to pay costs of £2,662.35.

### **Mitigation**

22. The Respondent was not present and had offered neither submissions nor mitigation in writing.

### **Sanction**

23. The Tribunal had regard to its Guidance Note on Sanctions (September 2013 edition).

24. The Tribunal noted that the allegations in this matter viewed in isolation, though serious, did not appear to be the most serious. The Tribunal also noted that both previous proceedings in which findings had been made against the Respondent arose from substantially the same period; had those proceedings been handled differently,

all the previous allegations could have been heard together. The Tribunal specifically noted that it was not imposing any sanction in respect of the previous proceedings. Nevertheless, those previous findings had to be considered to determine the appropriate sanction in this case.

25. In this case, the Tribunal had found that the Respondent had failed to keep client files and papers safe, and that he had failed to co-operate with his professional regulator. The Tribunal was conscious that failure to safeguard files and ensure that they were available for clients whenever needed would impact on the reputation of the profession. Clients generally wanted to retrieve a file or refer to it in circumstances of some urgency or arising from a problem which had arisen. Clients and the public should be able to trust members of the profession to safeguard their papers and ensure that they were available when required. The Tribunal noted that with the passage of time a number of the files and papers would probably have become due for routine destruction; it was now over 7 years since the Firm had closed and it could be that many if not all of the files would have been, properly, destroyed after any relevant limitation periods had passed. The Tribunal also noted that the Respondent had paid storage charges for 5 years but had failed to do so for the final period. The Tribunal had no information on the types of client files in question or when those files had closed, so it was not clear whether and how many files could have been disposed of properly within the period for which the Respondent had paid the storage charges. In failing to keep in touch with the storage company, destroy files when appropriate and pay charges when due the Respondent had put client's papers at risk. There was nothing on the papers to show whether or not the Respondent had informed his clients where their papers were being stored and how to access them. Even if he had done so when the Firm closed, there came a point from July 2011 when he failed to safeguard those confidential client files.
26. The seriousness of the Respondent's conduct was compounded by his complete failure to keep in touch with and co-operate with his professional regulator. The Respondent's whereabouts were unknown – although there was some suggestion he was overseas - and he had not provided the Applicant with an effective address. He had failed to respond to any communications from the Applicant about this matter.
27. The Respondent had acted in a way which risked significant detriment to the public, in particular his former clients, and had damaged the reputation of the profession. The Tribunal was concerned that the Respondent had failed to respond to his regulator and his misconduct was aggravated by the fact he had thereby shown he was resistant to proper regulation. The Tribunal was concerned that there was risk the Respondent's misconduct would be repeated. The Tribunal took into account the Respondent's previous appearances. The misconduct dealt with in those proceedings had arisen from 2005 until the closure of the Firm. What was of particular concern was that the Respondent had in those proceedings, amongst other matters, been found to have failed to conform to the regulatory regime (in that he had failed to file accountants' reports when due) and had failed to co-operate with the regulator. The Respondent, both before and after his Firm closed, had shown himself to be someone who was difficult to control or regulate. Proper regulation was required for the protection of the public.

28. Having taken into account all relevant factors, the Tribunal determined that the seriousness of the Respondent's conduct was such that neither a reprimand nor a fine would be sufficient. It was necessary and proportionate to interfere with the Respondent's ability to practice. In order to protect the public and the reputation of the profession, it was appropriate to suspend the Respondent from practice indefinitely. If and when the Respondent could show that he was capable of making proper arrangements for the management of his professional practice and was willing to co-operate with his professional regulator, the Respondent could apply for determination of the suspension. It might be that a Tribunal considering such an application would at that point consider whether or not it was desirable to impose conditions on the Respondent's return to legal practice; this was not something the present division of the Tribunal could deal with as it was not known if or when the Respondent would apply to lift the indefinite suspension.

### **Costs**

29. Mr Bullock applied for an order that the Respondent should pay the Applicant's costs of the proceedings as set out in the schedule of costs, which totalled £2,786.51.
30. The Tribunal noted that the Respondent had provided no information about his means, nor made any submissions on the question of costs. The Tribunal considered carefully the costs schedule and determined that the costs claimed were reasonable and proportionate. The Tribunal noted that nearly £1,300.00 of the costs claimed were disbursements necessitated by the difficulties in tracing the Respondent and in placing advertisements in order to serve the proceedings on him. The Tribunal was satisfied that the Respondent should be ordered to pay the Applicant's costs in full.

### **Statement of Full Order**

31. The Tribunal ORDERED that the Respondent, TOPER HASSAN, solicitor, be suspended from practice as a solicitor for an indefinite period/ to commence on the 15<sup>th</sup> day of October 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £ 2,786.51.

Dated this 12<sup>th</sup> day of November 2013

On behalf of the Tribunal

J. Astle  
Chairman