SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11242-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARK JOHN LINFIELD Respondent

Before:

Mr A. Ghosh (in the chair)
Mr S. Tinkler
Mr M. R. Hallam

Date of Hearing: 21 October 2014

Appearances

Ms Katrina Wingfield, solicitor advocate, of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, for the Applicant.

The Respondent, Mr Mark John Linfield did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Mark John Linfield, in a Rule 5 Statement dated 12 May 2014, were that:

1.1 Following the closure of his former firm, Ashton Rowe Solicitors, on 30 September 2011, he failed to return client money contrary to Rule 14.3 of the SRA Accounts Rules 2011 ("AR 2011"). It was further alleged that this conduct breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles");

1.2 He failed to deliver accountants' reports for the Firm within the prescribed deadlines, contrary to Rule 32.1 and 32.2 of the AR 2011. It is further alleged that this conduct breached Principles 6 and 7 of the Principles;

1.3 He failed to comply with his legal and regulatory obligations and deal with his regulator and ombudsman in an open, timely and co-operative manner in that he failed to:

1.3.1 Respond adequately or at all to correspondence from the Legal Ombudsman ("LeO") and the SRA; and

1.3.2 Provide information and documents requested by LeO and the SRA, including in particular information and documents requested in notices pursuant to (i) s44B of the Solicitors Act 1974 ("the Act") and (ii) Schedule 1 of the Act

in breach of Principles 6 and 7. It was further alleged that the Respondent thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the SRA Code of Conduct 2011 ("the Code");

1.4 He failed to effect an orderly and transparent wind-down of Ashton Rowe Solicitors' activities, including failing to inform the SRA before the Firm closed, in breach of Principles 4, 6 and 7. It was further alleged that the Respondent thereby failed to achieve Outcome O(10.13) of the Code.

Documents

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

Applicant:-

- Application dated 12 May 2014
- Rule 5 Statement, with exhibit "KEW1", dated 12 May 2014
- Statement of process server dated 10 September 2014
- Statement of costs dated 13 October 2014

Respondent:-

The Respondent did not submit any documents.

Preliminary Matter – proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was not present. Enquiries of the Tribunal office indicated that there had been no communication from the Respondent. The Tribunal therefore considered as a preliminary issue whether the hearing should proceed in the Respondent's absence.

4. Ms Wingfield submitted that it would be appropriate to proceed in the circumstances of this case.

5. The proceedings had been issued in May 2014. The Applicant was aware that the Respondent was out of the country by the time the proceedings started, due to earlier communications with him; there had been some suggestion he might move to Singapore. However, it was later understood that he may be in Dubai. The Respondent had asked on 23 April 2013 for all further communications to be by email and the Applicant had been using an email address provided by the Respondent since then ("the current email address"). The last email from the Respondent from that address was on 6 January 2014 and prior to that the Respondent had intermittently responded to communications from the Applicant. The Respondent did not provide any alternative email address and had not provided a postal address. The Respondent had an address in the Windsor area ("the Windsor address") but that property was unoccupied. The Applicant had sought the permission of the Tribunal to serve the proceedings by email. That permission had been granted, and the proceedings were served in May 2014.

6. Ms Wingfield told the Tribunal that the Respondent had not engaged with the proceedings at all. Due to his failure to engage, and to ensure that the proceedings had been properly served, the Applicant had made attempts to trace the Respondent. The Windsor address was registered in the name of the Respondent and his wife. Enquiries in the local area indicated that the Respondent may be in Abu Dhabi/United Arab Emirates. Enquiry agents instructed by the Applicant had traced the Respondent to an employer in Abu Dhabi. An agent had then made enquiries of the Respondent's employer and had delivered a bundle of the papers in this case to the head of the team in which the Respondent worked on 10 September 2014. That gentleman had signed a receipt for the papers and a copy of his business card had been appended to the process server's witness statement.

7. Ms Wingfield submitted that given the history of the Applicant's contact with the Respondent from the current email address, and the Applicant's delivery of the papers to the Respondent's present place of work, it could be concluded that the Respondent was fully aware of these proceedings and the date of hearing but had chosen not to engage with the proceedings.

8. Ms Wingfield submitted that the Tribunal should have regard to the principles set out in R v Hayward, Jones and Purvis [2001] EWCA Crim 168 ("Jones"), as approved by the House of Lords in R v Jones [2002] UKHL 5 and applied to the regulatory arena in the judgement of the Privy Council in Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 ("Tait"). She submitted that, whilst the case law made it clear that there was a general right for an individual to be present and/or represented at the hearing of a case against the individual, that right could be waived if the Respondent

deliberately absented himself from the proceedings. The case law indicated that the discretion to proceed in the absence of a Respondent should be exercised with caution. Factors to be considered, as set out in the Court of Appeal's judgement in the Jones case at paragraph 22, included: the nature and circumstances of the defendant's behaviour in absenting himself from the trial and in particular whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; whether an adjournment might result in the defendant attending voluntarily; the likely length of the adjournment; the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; and the general public interest that a trial should take place within a reasonable time of the events to which it relates. The Tait case also referred to considering the seriousness of the case. Ms Wingfield submitted that it was unlikely that the Respondent would attend any adjourned hearing, as he had failed to engage with the proceedings so far. Service had been effected and, it was submitted, the Respondent had made a decision not to be present.

9. The Tribunal had regard to the dicta of Lord Bingham of Cornhill in R v Jones at paragraph 13, that the discretion to proceed in the absence of a defendant "should be exercised with the utmost care and caution" and by reference to the checklist of matters in paragraph 22 of the judgement of the Court of Appeal in the case. The Tribunal was satisfied that the Respondent had been served with the proceedings by email and a copy of the proceedings had been delivered to his place of work in Abu Dhabi on 10 September 2014. The Tribunal was satisfied, in the light of the Tribunal's earlier direction for service by email, that proper service had been effected on the Respondent. Further, the Tribunal noted that this hearing date had been notified to the parties in the Memorandum (dated 4 August 2014) of a Case Management Hearing on 31 July 2014. This document was specifically stated to have been enclosed in the bundle delivered to the Respondent's workplace on 10 September 2014, as well as being sent by email to the current email address of the Respondent. The Tribunal was satisfied that the Respondent was aware of these proceedings and the hearing date.

10. The Tribunal was further satisfied that the Respondent had failed to engage with the proceedings. He had not contacted the Applicant, its solicitors, or the Tribunal e.g. to request an adjournment or indicate he needed time to prepare his case. The Tribunal was satisfied that in this case the Respondent had chosen deliberately to absent himself and had therefore waived his right to be present at the hearing.

11. The Tribunal considered that it would not be in the public interest for the matter to be adjourned. The Tribunal was satisfied that it was just, proportionate and in the interests of justice to proceed with the hearing.

Factual Background

12. The Respondent was born in 1967 and was admitted to the Roll of Solicitors in 2000. He did not hold a current Practising Certificate ("PC") at the date of the hearing. As noted above. It was understood that the Respondent was living and/or working in Abu Dhabi at the time of the hearing.

13. At the material times, the Respondent practised on his own account under the style of Ashton Rowe Solicitors ("the Firm") from 128 Northfields Avenue, Ealing, London W13 9RT.

14. On 13 October 2011, the Respondent informed the Applicant that he had closed the Firm with effect from 30 September 2011. The Respondent did not provide a current postal address, but an email address was used for correspondence.

15. On 15 October 2013 the Applicant sent a letter to the Respondent by email seeking his comments on allegations and enclosing a notice to produce documents and information pursuant to s44B of the Act. The Respondent did not reply to that letter, or comply with the s44B notice.

16. On 19 December 2013 the Applicant sent the Respondent a letter by email, stating that a casenote was sent with that letter. This included a recommendation to intervene into the Firm which was being sent to a Committee of the Adjudication Panel for consideration. The Respondent responded to that letter on 6 January 2014.

17. On 15 January 2014 a decision was made to intervene into the Firm and to refer the Respondent's conduct to the Tribunal. On 30 April 2014 a decision was made by an Authorised Officer of the Applicant to refer the Respondent's conduct following the intervention to the Tribunal.

Alleged failure to co-operate with the Legal Ombudsman (allegation 1.3)

18. On 29 September 2011 clients of the Respondent, Mr and Mrs S, complained to LeO about the Respondent's handling of their late daughter's estate.

19. On 27 October 2011, LeO sent an email to the Respondent seeking information regarding this matter and asking for his response by 3 November 2011; that email was sent to two email addresses used by the Respondent in connection with the Firm.

20. The Respondent did not reply and on 9 November 2011 LeO sent a further email, to the same email addresses, asking for the requested information within 7 days, failing which the matter would be referred for a formal decision by the Ombudsman based on the information provided by Mr and Mrs S. LeO also sent a letter to the Firm's address on 10 November 2011.

21. On 17 November 2011 the Respondent replied, from the currently used email address, following which LeO prepared a recommendation which was sent to Mr and Mrs S and the Respondent on 10 January 2012. The recommendation included: transferring Mr and Mrs S's file to their new solicitor, Everys; and paying compensation of £250 to Mr and Mrs S.

22. The Respondent replied by email on 10 January 2012 to say that he accepted LeO's recommendation "in order to resolve this matter". However, Mr and Mrs S did not agree the recommendation and the matter was referred to the Ombudsman for a final decision. On 23 January 2012, LeO informed the Respondent of this development and asked that, while the Ombudsman's decision was pending, Mr and Mrs S's file be transferred to Everys, as the Respondent had previously agreed.

23. On 1 February 2012, Everys wrote to LeO to complain that Mr and Mrs S's file had not yet been transferred, and that they had tried to contact the Respondent by email without success.

24. On 15 March 2012, the Ombudsman's formal decision was reported to Mr and Mrs S and the Respondent. The decision required the Respondent to: transfer Mr and Mrs S's file to Everys; provide any bill of costs he had raised or intended raising in respect of the matter to Everys, so that its reasonableness could be assessed; and pay £400 in compensation to Mr & Mrs S. Everys subsequently confirmed that they received the file on 7 February 2012.

25. Mr and Mrs S accepted the Ombudsman's decision. On 5 April 2012 LeO wrote to the Respondent at the current email address to say that he should confirm in writing no later than 23 April 2012 that he had complied with the Ombudsman's decision. The Respondent did not provide such confirmation and on 24 April 2012 LeO sent him a further letter to the current email address, saying that if he did not comply as a matter of urgency the matter would be referred to the LeO Enforcement Team.

26. The Respondent did not respond and the matter was then referred to the Applicant. The Applicant wrote to the Respondent about these matters in 26 November 2012.

Alleged failure to co-operate with the Applicant – allegation 1.3

27. On 13 October 2011 the Respondent wrote to the Applicant to inform it that he had ceased trading on 30 September 2011.

The 25 November 2011 letter

28. On 25 November 2011 the Applicant wrote to the Respondent at the Firm's address to obtain further information about the closure of the Firm. The Applicant asked the Respondent to provide the following information within 14 days:

- Where any live client files had been transferred;
- Where closed client files were to be stored;
- The Respondent's forwarding address; and
- The reason for the Firm's closure.

29. The letter also noted that the Applicant would expect accountants' reports to be filed for as long as the Respondent continued to hold client money.

30. No reply was received to that letter, and there was no record by the Applicant of that letter having been returned.

31. On 23 December 2011 the Applicant sent a further letter to the Respondent at the Windsor address (which was understood to be the Respondent's home address), in substantially the same form as the 25 November 2011 letter. Again, no reply was received to that letter and there was no record of it having been returned.

The 26 November 2012 letter

32. On 26 November 2012 Ms Bhagwan, a Supervisor with the Applicant, wrote to the Respondent at the Windsor address. The letter asked the Respondent to explain why he had failed to comply with LeO's decision of 15 March 2012.

33. The letter also addressed the ongoing unresolved issues regarding the closure of the practice. In addition to the matters at paragraph 28 above, the Respondent was asked to confirm:

- Whether he continued to hold client monies, or the date he ceased to hold client monies; and
- What arrangements were in place so that the files of former clients could be returned to them if requested.

The letter also noted that an accountants' report for the period ending 30 April 2012 had been due by 31 October 2012 and was outstanding. That statement was not strictly accurate as the Respondent's PC required the delivery of quarterly accountants' reports, which were to be delivered within 6 weeks of the end of the relevant accounting period. The letter requested a response by 11 December 2012; no response was received.

The 15 April 2013 letter

34. On 15 April 2013, Ms Bhagwan sent a further letter to the Respondent (at the Windsor address) asking for a response to the 26 November 2012 letter. The letter reminded the Respondent of his obligation to co-operate with the Applicant, and requested his reply by 23 April 2013.

35. On 23 April 2013 the Respondent emailed the Applicant from the current email address. The email stated:

> "I am no longer living in the UK and so I do not receive any UK post. However, I understand that you have been trying to contact me. Please can you send any correspondence via email."

36. On the same day, Ms Bhagwan replied to that email. This attached a copy of the 15 April 2013 letter and asked the Respondent again to provide an up to date postal address. A response was requested by 3 May 2013; the Respondent replied on 7 May 2013.

The Respondent's email of 7 May 2013

37. The Respondent's email of 7 May 2013 was brief. He stated that he had transferred Mr and Mrs S's file to Everys "when first requested" and that he was not aware that the £400 compensation had not been paid. The Respondent asked for Everys' bank details so that he could arrange a bank transfer.

38. With regard to the outstanding accountants' report for the period ending 30 April 2012, the Respondent stated: "My accountants were instructed to prepare accounts including the solicitors' accounts last year. They have invoiced me over £4k for this work so I will check why the deadline was missed."

39. With regard to whether he continued to hold client funds, the Respondent confirmed that he still held client funds but had been unable to identify either the owners of the funds, or bank accounts or valid addresses for those clients. He stated that he would need further assistance in relation to how to deal with the funds.

40. In relation to where live client files had been transferred, the Respondent confirmed that all live matters had transferred to Vickers & Co of Ealing, London. In response to the Applicant's questions regarding where closed files were to be stored and what arrangements were in place to return files to clients if requested the Respondent stated that closed files "are all stored in the UK."

41. The Respondent's accountants' report for the period ending 30 April 2013, filed on behalf of the Respondent in December 2013, stated: "We were unable to inspect a sample of matter files to inspect paperwork against bank records and computerised ledgers as [the Respondent] has taken these with him overseas to close matters."

42. The Respondent did not provide an up to date postal address; Ms Bhagwan had made a further request that he do so.

<u>The 16 May 2013 email</u>

43. On 16 May 2013, Ms Bhagwan sent an email to the Respondent in which she:

- Suggested that he contact Everys directly in order to arrange the £400 payment to Mr and Mrs S. Ms Bhagwan provided contact details for Everys and asked the Respondent to confirm when the payment had been made;

- Noted that the outstanding accountants' report had not been filed, and asked the Respondent to confirm the contact details for his accountants and explain the up to date position regarding when the report would be delivered;

- Asked the Respondent to provide a recent bank statement for his client account and confirmation of the sums he was holding for each client;

- Asked for the address of the storage facility where the closed files were being stored, as well as contact details and confirmation of the numbers of files being stored; and

- Asked what arrangements were in place for clients to obtain copies of their files.

44. The Applicant received an email from a former client of the Respondent, Mr JR, on 15 June 2012 which stated: "Our estate agent confirms that [the Respondent] has disappeared, with some of our documents".

45. Ms Bhagwan requested a reply to her email of 16 May 2013 by 31 May 2013 but the Respondent did not reply. A follow up email was sent on 9 September 2013, but no response was received to that letter either.

Letter of 15 October 2013

46. On 15 October 2013 Ms Bhagwan sent a letter by email to the Respondent stating that she was commencing a formal investigation into his conduct. She enclosed with that letter a notice pursuant to s44 B of the Solicitors Act 1974 requiring the Respondent to provide documents and information to the Applicant for inspection. Both the letter and the s44B notice required the Respondent to reply by 30 October 2013. The Respondent did not respond.

Letter of 19 December 2013

47. On 19 December 2013 Ms Underwood, a Regulatory Supervisor of the Applicant, wrote to the Respondent to say that the matter was being referred for a formal decision. Her letter enclosed a casenote which included a recommendation to intervene into the Respondent's practice. The Respondent was informed that any representation he wished to make in relation to the casenote should be received by 5pm on Friday 3 January 2014.

48. On 6 January 2014 the Respondent emailed Ms Underwood to say that he disagreed with the recommendation to intervene, noting that it would only serve to increase irrecoverable costs, and would do nothing to help repay the outstanding sums to clients. The Respondent did not address any of the outstanding matters raised previously in correspondence by the Applicant, including the matters in the 15 October 2013 letter, or the s44B notice enclosed with it. On 15 January 2014 a decision was made to intervene into the Firm.

Alleged failure to co-operate post-intervention

49. On 16 January 2014 the Applicant's Interventions Manager sent a letter to the Respondent at the current email address enclosing a copy of the intervention decision. The letter noted that, pursuant to its powers under Schedule 1 of the Solicitors Act 1974 ("the Schedule") the Respondent was being given notice to produce or deliver all documents described in paragraph 9 of Schedule 1 i.e., broadly, all documents relating to the Firm. The Respondent did not reply to that letter.

50. On 29 January 2014 an Intervention Officer of the Applicant sent an email to the current email address asking the Respondent to contact the writer as a matter of urgency so that the archived files of the practice could be located and uplifted. The Respondent did not reply to that email. On 7 February 2014 a further chaser email was sent to the Respondent; the Respondent did not respond.

Alleged failure to return client funds and file accountants' reports

Alleged failure to return client funds – allegation 1.1

51. The Firm ceased trading on 30 September 2011. In the letter of 26 November 2012 the Applicant asked the Respondent to confirm whether he continued to hold client monies, but he did not reply to that letter.

52. On 7 May 2013, in a reply to a letter from the Applicant dated 15 April 2013 (which was itself a chasing letter, enclosing a copy of the 26 November 2012 letter), the Respondent stated:

> "I still hold client funds, I have been unable to identify either the owners of the funds or more commonly bank accounts or valid addresses for the clients. I will need further assistance on how to deal with these as I can not (sic) hold onto them indefinitely".

53. On 16 May 2013 the Applicant emailed the Respondent asking for a copy of a recent bank statement for his client account and confirmation of the sums he was still holding for each client. The Applicant's email included a link to a note on the Applicant's website on closing down a solicitor's practice, including guidance on how to deal with client money following such a closure. No reply was received to that email or a chasing email sent on 9 September 2013.

54. On 8 July 2013, Barclays Bank wrote to the Applicant to report a dormant client account in the name of the Firm. It noted that the branch had not been able to contact the Respondent for about a year, and asked whether the Applicant knew whether the Respondent had made any arrangements to deal with the dispersal of the money held on those accounts.

55. In a further email to the Applicant on 8 December 2013 the bank confirmed that the following balances were held on the Respondent's accounts:

- £65,743.69 on client account;
- £4,147.13 on office account; and
- £1,100.28 on a cash reserve account.

The bank further confirmed that it had had no contact with the Respondent.

56. Pursuant to the s44 B notice of 15 October 2013 the Respondent was required to provide a copy of the Firm's client account bank account statement for September 2013 and a complete list of all the monies held for former clients, together with the names, addresses and contact details of those clients. The Respondent did not respond to that notice.

Failure to file accountants' reports – allegation 1.2

57. The Respondent's last PC was for the year 2010/11. This was held over until it was revoked on 11 March 2013. The PC was subject to a condition that the Respondent deliver quarterly accountants' reports within 6 weeks of the end of the accounting period to which they related.

58. The Applicant alleged that the Respondent did not comply with this condition in that he delivered annual rather than quarterly accountants' reports and those annual reports were delivered late.

59. The 25 November 2011 letter noted that the Applicant would expect accountants' reports to be filed for as long as the Respondent held client money. The 26 November 2012 letter noted that the report for the period ending 30 April 2012 was overdue – although, as set out at paragraph 33 above, this was not strictly correct. Further, the 16 May 2013 email contained a reminder that the accountants' report mentioned above was still overdue.

60. On 30 September 2013 Ms Bhagwan of the Applicant telephoned the Respondent's accountant, Mr PC. Mr PC confirmed that he was still instructed by the Respondent but needed to speak to the Respondent and had been having trouble contacting him.

61. Accountants' reports were filed on 3 December 2013, which comprised: a report for the year ending 30 April 2012, which should have been delivered by 30 October 2012 (at the latest); and the report for the year ending 30 April 2013, which should have been delivered by 30 October 2013 (at the latest). Both reports were qualified.

Witnesses

62. No witnesses were called and the matter proceeded on the documents.

Findings of Fact and Law

63. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Respondent had not taken any part in the proceedings. The Tribunal therefore proceeded on the basis that he had made no admissions and that each and every allegation had to be proved to the required standard. It also took particular care to test the case put forward by the Applicant.

64. The Tribunal considered carefully the documents presented, and the chronology of events and accepted that the facts set out at paragraphs 12 to 61 above had been proved to the required standard. However, the Tribunal was concerned that due to the absence of certain documentation, the context may not have been fully and accurately explained. In particular, it emerged from the submissions made by Ms Wingfield that there had been contact with the Respondent during 2011 concerning the potential closure of his Firm. On reading the papers, it might appear that the first contact concerning closure of the Firm was after it happened, on 13 October 2011, as set out at paragraphs 14 and 27 above. The Tribunal found that whilst this was the first formal notification of closure, the Applicant was aware that the Firm might well close – due to difficulties in obtaining insurance cover – for some months prior to the closure.

65. Further, the Tribunal heard that on 18 October 2011, shortly after the closure of the Firm, there had been a meeting between members of the Applicant's forensic investigation team ("FI team") and the Respondent. The Tribunal also heard that there had been communication between the FI team and the Respondent in October and November 2011 and, indeed, until about March 2012. There were no documents before the Tribunal which set out the nature of those discussions and what information, if any, the Respondent provided to the Applicant about client matters, client monies and the arrangements for storage of or access to client files. The Tribunal was told that in the period to about March 2012, the Respondent had appeared to be attempting to deal with the client balances held on the Firm's client bank account. It was not known what steps the Respondent had taken by that stage and what assistance, if any, the Applicant had given him in winding up the Firm in an orderly way. The Tribunal was concerned that there may have been material discussions, of which it was unaware, in the autumn of 2011 and spring of 2012. It therefore ensured that the Respondent was given the benefit of any doubt concerning events in that period.

66. The Tribunal was satisfied that the letter of 25 November 2011 (and the chasing letter of 23 December 2011) came to the attention of the Respondent. The first letter was sent to the Firm's address and the chasing letter to the Respondent's home address. The Tribunal could not be sure, however, that the Respondent had not responded to that correspondence in some form e.g. in the course of discussions with members of the FI Team or another division of the Applicant, given that it had heard he had been in contact but no notes of discussions or copies of correspondence had been provided.

67. The Tribunal was concerned that on the Applicant's case there had been no substantive follow-up to the 25 November 2011 letter until 26 November 2012 i.e. a year later. If any aspect of the requests made in the 25 November 2011 letter had not been dealt with by the Respondent within a reasonable time, the profession would assume that the regulator would follow up those points promptly in order to protect the public interest. This had not happened. Whilst the Tribunal was prepared to give the Respondent the benefit of the doubt in that it could not be sure he had completely failed to respond to the requests in the 25 November 2011 letter, it was satisfied that he had not responded in writing. In those circumstances, it was regrettable, to say the least, that the Applicant had not pursued the matter more vigorously at an earlier stage. It appeared that some organisational changes within the Applicant, together with the introduction of outcomes-focussed regulation may have contributed to the delay. Whatever the reason, it appeared the matter was only revived when the complaint by Mr and Mrs S was referred to the Tribunal by LeO in 2012. The profession and public would be concerned that the regulator had not taken promptly all reasonable and practicable steps to find out where the client files were located and hence try to identify to whom money was owed. In reaching this view, the Tribunal was unaware of the Respondent's previous appearance at the Tribunal – see paragraph 73 below. When it learned that the Respondent had engaged in previous proceedings – and had attended the hearing in June 2012 – it seemed incredible that either a) nothing had been done to obtain information from the Respondent on that occasion or b) if he was asked for information, there was no note of his response.

68. The Tribunal's findings in relation to each allegation took into account the concerns noted above with regard to whether important information was missing from the papers. The Tribunal noted that no oral evidence had been called by the Applicant but accepted that this was a matter in which the documents which were seen were reliable and enough documentation had been provided for the Tribunal to be sure of its findings. Whilst the Applicant had failed to be proactive, and it had taken three years for this matter to reach a Tribunal hearing, this was not in itself an issue which was determinative of any facts or allegations.

69. **Allegation 1.1 - Following the closure of his former firm, Ashton Rowe Solicitors, on 30 September 2011, he failed to return client money contrary to Rule 14.3 of the SRA Accounts Rules 2011 ("AR 2011"). It was further alleged that this conduct breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles")**

69.1 This allegation was considered by the Tribunal as if it were denied by the Respondent.

69.2 The Tribunal found beyond any doubt that the Respondent had failed to return client money after the closure of his Firm. The Tribunal found in particular that as at 8 December 2013 there remained £65,743.69 on client account; this was the sum held at the time of the intervention. This was some two years after the closure of the Firm. It was not known how much had been held as at 30 September 2011 and thus how much had been returned to clients after the closure of the Firm. Due to client files being unavailable, as set out in more detail in relation to allegation 1.4 below, it was not possible for the intervention agents to establish to whom the client funds belonged. It was not alleged that the Respondent had misused any client funds, but in the absence of the files and proper records it was not possible to be sure that the sum held matched the sums owed to clients.

69.3 The Tribunal was satisfied to the required standard that in failing to return client money to those to whom it belonged in the two year period prior to the intervention the Respondent had breached Rule 14.3 AR 2011.

69.4 The Tribunal went on to consider whether this conduct also amounted to breaches of any of the Principles, as alleged. There could be no doubt that failing to account to clients promptly and return to them their funds amounted to a failure to act in the best interests of each client and to provide a proper standard of service to those clients. Further, a solicitor who retained client funds when there was no reason to do so was acting in a way which would diminish the trust the public would place in him or the provision of legal services. The allegation had therefore been proved in relation to Principles 4, 5 and 6.

69.5 The Tribunal considered in some detail the allegation that the Respondent had acted in breach of Principle 2, i.e. that he had not acted with integrity. This was the most serious allegation which could be made against a solicitor, save for an allegation of dishonesty. The Tribunal noted that the Rule 5 Statement referred to this Principle but did not specifically state that lack of integrity was alleged. The Tribunal also noted that in a letter to the Respondent dated 15 October 2013 the Applicant had set out the matters alleged against the Respondent and had set out several of the Principles, but not Principle 2. The allegation of lack of integrity may not have been

very clear on the face of the Rule 5 Statement. However, members of the profession would appreciate that any alleged breach of a core Principle was a serious matter. Further, a solicitor whose integrity was challenged would normally take whatever steps were possible to explain what had happened in order to protect and defend his reputation. The Tribunal noted that the Respondent had not put forward any explanation of his actions in the course of these proceedings. In accordance with the Tribunal's Practice Direction Number 5, the Tribunal could take into account the position that the Respondent had adopted in not giving evidence. The Tribunal noted the obiter dicta of the President of the Queen's Bench Division in Iqbal v SRA [2012] EWHC 3251 (Admin) that "ordinarily, the public would expect a professional man to give an account of his actions".

69.6 Over £65,000 remained in a dormant client account and had remained there for a considerable time. Even if the Tribunal could not be satisfied the Respondent had failed in his duties prior to about March 2012, when his contact with the Applicant about the closure of the Firm had apparently ceased, it was clear from an email to the Applicant from Barclays Bank, dated 8 July 2013, that the account had by that time been dormant for about a year (as the Bank had not been able to contact the Respondent for that period). The Tribunal could therefore be satisfied to the required standard that the Respondent had taken no active or effective steps to return client monies from about the summer of 2012 until the intervention in January 2014. He had given no explanation to the Tribunal for his failure to return the monies.

69.7 The Tribunal took into account what the Respondent was known to have said to the Applicant concerning client monies. The Applicant asked the Respondent to confirm whether he continued to hold client monies in the letter of 26 November 2012; there was no response to that letter. The Applicant chased for a response on 15 April 2013 and on 7 May 2013 the Respondent sent an email in which he stated,

> "I still hold client funds. I have been unable to identify either the owners of the funds or more commonly bank accounts or valid addresses for the clients. I will need further assistance on how to deal with these funds as I can not (sic) hold onto them indefinitely".

This suggested that the Respondent had at least some information about who the clients might be, even if he did not have up to date addresses or bank details. The Tribunal noted that in the same email, in relation to storage of client files, the Respondent stated,

> "… these are all stored in the UK".

69.8 The Tribunal noted that the Applicant had asked on 16 May 2013 for a recent bank statement for the client account and confirmation of the sums held for each client, and that the Applicant had sent a link to its note on closure of a practice. The Tribunal was satisfied that there was no further contact from the Respondent until 6 January 2014, when the Respondent emailed the Applicant with regard to the proposed intervention into the Firm. This email read,

> "I completely disagree with the recommendation to intervene the remnants of my practice. This will serve only to incur additional unrecoverable costs and

will do nothing to help repay the outstanding sums to the clients. The bulk of the 69K is made up of 39K for one client. All the amounts and circumstances surrounding these sums have been communicated to the SRA and they are fully aware of them. They have, however, not assisted in any way to try to resolve or suggest any solution to the difficulties I have had in returning this money.

There is no risk to the clients. The only issue is trying to find the client bank account details or client location to be able to return the funds. If you intervene it will simply just transfer the funds held in the client account to your client account and the same issues will remain. It will actually benefit me as I will not be required to file accounts".

69.9 The Tribunal noted the assertion by the Respondent that he had provided information to the Applicant about the client monies. However, he had not indicated at that stage, or later, to whom he had allegedly provided this information. It was clear from the Applicant's correspondence that it required information from the Respondent, which he had failed to provide to the authors of that correspondence. The Tribunal also noted that the Respondent had referred to a sum of "69K" on client account, whereas the information from the Bank suggested the figure was a little under £66,000; this created some concern that the Respondent did not in fact know what monies were held or for whom.

69.10 It was undoubtedly the case that in the period after about March 2012 until the intervention in January 2014 the Respondent had failed to return client monies. He was aware that those funds were held and that they belonged to clients, not to him. He had failed to take any effective steps to return nearly £66,000 to clients. Further, the Respondent had failed to respond to requests for information from the Applicant about the money held and his clients or former clients. In particular, in response to a query about the whereabouts of the files, the Respondent had stated (in May 2013) that they were "stored in the UK". The Tribunal noted that the qualifications to the accountants' reports (referred to in more detail in relation to allegation 1.2 below) included the statement,

> "We were unable to inspect a sample of matter files to inspect paperwork against bank records and computerised ledgers as [the Respondent] has taken these with him overseas to close matters".

The Tribunal could not determine where the files were but it appeared that, for some reason, the accountants believed the files were overseas whereas the Respondent had told the Applicant they were stored in the UK.

69.11 The Tribunal determined that a solicitor acting with integrity, as required by Principle 2, would have taken more active steps to identify to whom the money belonged and arrange to transfer the funds to those entities. There was no suggestion by the Respondent that he had been unable to deal with matters due to ill-health. The Respondent should, as a bare minimum, have given the Applicant full access to the files and as much information about the clients and their matters as possible so that they could be traced. In failing to do so, and instead simply saying the files were stored in the UK, the Respondent had failed to act with integrity. This was

compounded by the fact he had not engaged with these proceedings and explained to the Tribunal and the Applicant as much as possible about the circumstances so that funds could be returned to those entitled.

69.12 For the reasons set out above, the Tribunal was satisfied to the highest standard that this allegation had been proved in its entirety.

70. **Allegation 1.2 - He failed to deliver accountants' reports for the Firm within the prescribed deadlines, contrary to Rule 32.1 and 32.2 of the AR 2011. It is further alleged that this conduct breached Principles 6 and 7 of the Principles**

70.1 This allegation was considered by the Tribunal as if it were denied by the Respondent.

70.2 The Tribunal noted that there had been conditions on the Respondent's PC which required him to file quarterly accountants' reports. However, in this case the Applicant had relied in particular on the failure to file reports for the financial years ending 30 April 2012 (which should have been delivered by 31 October 2012 at the latest) and 30 April 2013 (which should have been delivered by 31 October 2013 at the latest). The Tribunal was satisfied that accountants' reports were required for both of these periods. The Firm had closed during the financial year ending 30 April 2012 and continued to hold client money during the financial year ending 30 April 2013. The Tribunal was further satisfied that the reports for these periods were not filed until 3 December 2013 and it noted that both reports were qualified. The Tribunal was satisfied to the highest standard that the Respondent was in breach of Rules 32.1 and 32.2 of the AR 2011.

70.3 The report for the year ending 30 April 2012 was qualified. The note from the accountants referred to a "suspense account" representing "unknown amounts" in the sum of £2,215.89 and went on to state, "We are unable to inspect a sample of matter files to inspect paperwork against bank records and computerised ledgers as [the Respondent] has taken these with him overseas to close matters". The report for the year ending 30 April 2013 was qualified in the same terms,

70.4 In considering whether the failure to file accountants' reports when due was in breach of Principles 6 and/or 7, the Tribunal took into account the purpose of the AR 2011 (and the earlier Accounts Rules). The Accounts Rules were in place primarily to protect client money, and hence the clients of solicitors and the reputation of the profession. Filing accountants' reports was traditionally a very important part of the process of public protection, as failure to file reports or the existence of a qualified report would give rise to concerns which the regulator could then investigate.

70.5 The Tribunal considered the Respondent's communications on the subject of accountants' reports. The last information on this the Tribunal could see was the Respondent's email of 7 May 2013 which included the statement,

> "My accountants were instructed to prepare accounts including the solicitors' accounts last year. They have invoiced me over £4k for this work so I will check why the deadline was missed".

The Respondent had not then provided any information on why the deadline had been missed, and the reports were not in fact received until December 2013.

70.6 There could be no doubt that the Respondent had failed to comply with an important regulatory requirement, and was thereby in breach of Principle 7. Further, his failure to ensure that accountants' reports were filed as required meant that he had not acted in a way which would maintain the trust the public would place in him and the provision of legal services, as he had not taken appropriate steps to show that client money was being dealt with or held appropriately. The Tribunal was satisfied to the required standard that this allegation had been proved in its entirety.

71. **Allegation 1.3 - He failed to comply with his legal and regulatory obligations and deal with his regulator and ombudsman in an open, timely and co-operative manner in that he failed to:**

1.3.1 Respond adequately or at all to correspondence from the Legal Ombudsman ("LeO") and the SRA; and

1.3.2 Provide information and documents requested by LeO and the SRA, including in particular information and documents requested in notices pursuant to (i) s44B of the Solicitors Act 1974 ("the Act") and (ii) Schedule 1 of the Act

in breach of Principles 6 and 7. It was further alleged that the Respondent thereby failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the SRA Code of Conduct 2011 ("the Code")

71.1 This allegation was considered by the Tribunal as if it were denied by the Respondent.

71.2 The Tribunal considered the two aspects of this allegation separately. First of all, it considered the Respondent's dealings with LeO, arising from the complaint made by Mr and Mrs S, as set out at paragraphs 18 to 26 above. The Tribunal found that the correspondence and contact between the Respondent and LeO was as set out. The Tribunal noted that the complaint arose from circumstances in which the Respondent had failed properly to administer the estate of Mr and Mrs S's daughter, who had died in traumatic circumstances, and in particular had failed to keep Mr and Mrs S informed of key matters. So, by the time of the complaint in September 2011 the Respondent had already failed to keep in contact with Mr and Mrs S to the extent they had expected. The Respondent failed to respond to the letter from LeO of 27 October 2011, which was sent to email addresses used by the Firm; this was in the period immediately after the closure of the Firm. The Respondent replied to the letter from LeO dated 9 November 2011 from the current email address. The Respondent indicated that he accepted LeO's decision of 10 January 2012, which would have entailed payment of £250 in compensation and transferring the file to Everys. Despite a request by LeO on 23 January 2012 to transfer the file to Everys whilst the matter was further considered by the Ombudsman, the file was not received by Everys until 7 February 2012. The Ombudsman's formal decision was made on 15 March 2012 and required the Respondent to pay £400 in compensation and provide information about billing, so that the reasonableness of his costs could be assessed.

71.3 The Tribunal was concerned that there was no information available on the papers to confirm whether or not the compensation had been paid. At the Tribunal's request, Ms Wingfield made some enquiries of Everys. No conclusive answer was received in the time available, as the relevant person was not available, but Everys confirmed that the compensation had not passed through its account. It was not known if payment had been made by some other means. The Tribunal noted that the Respondent had not positively asserted that he had paid the compensation but that in his email of 7 May 2013 he stated,

> "I was not aware that the £400 had not been paid. If you send me Everys bank details I can arrange a bank transfer."

The Applicant sent the Respondent Everys contact details in an email of 16 May 2013. Even if the Respondent had then arranged payment of the compensation – and there was no information whether he had done so or not – well over a year had passed since the Ombudsman's decision and he had failed to comply with it.

71.4 The Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to respond adequately or at all to correspondence from LeO, had failed to provide the file to Everys promptly as required by LeO and had failed to provide the billing information required. The Respondent had clearly failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the 2011 Code of Conduct. It was also beyond any doubt that the Respondent had failed to comply with his legal and regulatory obligations, and deal with the ombudsman in an open, timely and co-operative manner and so was in breach of Principle 7. Further, failure to co-operate with LeO's investigation fully, and then to comply promptly with the Ombudsman's decision was conduct which would diminish the trust the public would place in him and the provision of legal services. Here, Mr and Mrs S had not received the service they ought to have received and then had been let down further by the Respondent's failure to deal properly and promptly with their concerns and to pay the compensation required promptly after the decision was made. The Respondent was clearly, therefore, in breach of Principle 6.

71.5 With regard to the Respondent's dealings with the Applicant, the Tribunal noted that it had been told there was contact between the Respondent and one division of the Applicant during October and November 2011 i.e. in the period shortly after the closure of the Firm. The Tribunal had also heard that some contact continued until about March 2012. As the Tribunal had not seen any details of the communications in that period – and these items had not been referred to in the Rule 5 Statement or supporting documents – the Tribunal could not be sure there had been any failure to co-operate with the Applicant prior to March 2012.

71.6 The Tribunal noted that the next attempted contact by the Applicant was in November 2012. As the Tribunal was subsequently aware, that was some five months after the Respondent's attendance at the Tribunal in relation to other matters; it was unclear why the issues in the November 2012 letter could not have been put to him in correspondence (or in person) by representatives of the Applicant at about that time. The November 2012 letter was sent to the Windsor address, not to an email address. The follow-up letter was over four months later (on 15 April 2013) and was again sent to the Windsor address.

71.7 On 23 April 2013 the Respondent sent an email to the Applicant in which he stated,

> "I am no longer living in the UK and so do not receive any UK post. However, I understand that you have been trying to contact me. Please can you send any correspondence via email."

Whilst it was possible that the Respondent had received the November 2012 letter by post, the Tribunal could not be sure of this. The Tribunal was satisfied he received it, and the 15 April 2013 letter, by email on or shortly after 23 April 2013. The Tribunal found that the Respondent had replied to that correspondence on 7 May 2013, but also found that the response sent was not full and that it failed to address a number of issues raised in the November 2012 letter.

71.8 Thereafter, the Respondent failed to respond to correspondence from the Applicant, sent by email as he requested, dated 16 May, 9 September and 15 October 2013. The latter enclosed a s44B notice requiring the Respondent to produce documents and information by 30 October 2013. The Respondent failed to comply, or respond in any way. The Respondent next contacted the Applicant on 6 January 2014, which stated he disagreed with the recommendation that his Firm should be intervened, which recommendation had been communicated to him on 19 December 2013. After the intervention, the Respondent failed to respond at all to correspondence from the Applicant on 16 January, 29 January and 7 February 2014.

71.9 The Tribunal was satisfied on the evidence presented that the Respondent had failed to respond adequately to correspondence from the Applicant from April 2013; it could not be sure that he had received the rather sporadic correspondence from the Applicant before then. As set out above, the Respondent had failed to respond at all to some items of correspondence, and in particular had failed to provide information and to comply with the s44B notices.

71.10 The Applicant's handling of this matter had been far from ideal; it appeared to the Tribunal that no-one had properly got to grips with the issues arising from the closure of the Firm and the action taken had been slow and ineffective. However, this did not release the Respondent from his obligation to co-operate with his professional regulator and to respond fully and properly to those communications which reached him. The Tribunal was satisfied to the required standard that the Respondent had failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the 2011 Code. It was further satisfied that he was in breach of Principle 7, in failing to comply with his regulatory obligations and to deal with his regulator appropriately, from April 2013. This conduct would be likely to diminish the trust the public would place in the Respondent and in the provision of legal services, as the Respondent had not shown he was willing to comply with his obligations; those obligations being in force to protect the public.

71.11 For the reasons set out above, the Tribunal was satisfied that this allegation had been proved in its entirety, save that in relation to the Respondent's dealings with the Applicant it was only satisfied he was in breach of his obligations from May 2013.

72. **Allegation 1.4 - He failed to effect an orderly and transparent wind-down of Ashton Rowe Solicitors' activities, including failing to inform the SRA before the Firm closed, in breach of Principles 4, 6 and 7. It was further alleged that the Respondent thereby failed to achieve Outcome O(10.13) of the Code.**

72.1 This allegation was considered by the Tribunal as if it were denied by the Respondent.

72.2 The Tribunal reviewed all of the evidence. It appeared from the submissions of the Applicant, albeit not from the documents presented, that in the period prior to closure of the Firm there had been some contact between the Respondent and the Applicant concerning the possible closure of the Firm, due to difficulties in obtaining insurance cover. Although the Respondent did not formally inform the Applicant that the Firm had closed until about two weeks after the closure, this news could not have been a surprise to the Applicant. The Tribunal was not satisfied to the required standard that the Respondent had failed to inform the Applicant before the Firm closed.

72.3 It appeared from information given to the Tribunal during the hearing that in the period October/November 2011 there had been contact between the Respondent and members of the Applicant's FI team about the closure, including a meeting on 18 October 2011. It further appeared that there had been some further contact in the period to March 2012. The history of the later contact between the Respondent and the Applicant is set out above.

72.4 Whatever could be said about the Applicant's failure properly to follow up the closure of the Firm, the responsibility for effecting an orderly and transparent wind-down rested with the Respondent, as the sole principal of the Firm. The Respondent had failed to distribute client monies to those entitled – as set out more fully in relation to allegation 1.1 above – and had failed to ensure that old client files were available to either the clients or the Applicant. Simply stating that the closed files were "all stored in the UK" was unacceptable. The Respondent should have ensured that the Applicant and former clients were aware of the location of the files and could gain access to them. His failure to provide even this basic information meant that it was not possible for the Applicant to identify clients and return to them the money owed to them. The Respondent may have encountered some difficulties in winding-down his Firm, but he was the only person in possession of the relevant information and it was his responsibility to do all that was necessary and possible.

72.5 By the time of the intervention, over two years after the Firm closed, almost £66,000 was held on the Firm's client account and had not been distributed to those entitled to that money. Further, whilst the Firm's "live" files appeared to have been transferred appropriately to another firm, the Respondent had failed to say where the old files were. He had stated to the Applicant that they were in the UK but, for some reason, his accountants were under the impression the files had been taken overseas for closure. There was a clear failure to wind-down the Firm effectively and in an orderly and transparent way. The Tribunal was satisfied to the required standard that the Respondent had failed to achieve Outcome O(10.13) of the 2011 Code. Further, the Respondent had failed to act in the best interests of clients – he had retained their money and failed to provide information on how to access their files. This conduct would be likely to diminish the trust the public would place in the Respondent and the provision of legal services. The Respondent was clearly in breach of his regulatory

duties and his duty to co-operate with the Applicant in relation to the winding-down of the Firm.

72.6 For the reasons set out above, whilst the Tribunal was not satisfied the Respondent had failed to inform the Applicant prior to the closure of the Firm, it was satisfied he had failed to effect a proper wind-down of the Firm and that this allegation had been proved to the required standard.

Previous Disciplinary Matters

73. There was one previous disciplinary matter recorded against the Respondent. In matter number 10900/2011, heard on 15 June 2012 the Respondent and another had appeared. The Respondent had admitted 19 allegations arising from breaches of the Solicitors Accounts Rules 1998, breaches of the Solicitors Practice Rules 1990 and Solicitors Code of Conduct 2007 and a failure to pay an indemnity insurance premium. On that occasion, the Respondent had been fined £7,500 and ordered to pay costs of £28,000, such costs not to be enforced without the leave of the Tribunal.

Mitigation

74. The Respondent had put forward no mitigation, having taken no part in these proceedings.

Sanction

75. The Tribunal had regard to its Guidance Note on Sanction (September 2013). The Tribunal also took into account the Respondent's previous appearance before the Tribunal.

76. The Tribunal noted that the proceedings heard in 2012 related to matters set out in a forensic investigation report dated 28 June 2010, following an inspection which began in August 2008. The Tribunal further noted that one of the admitted allegations in that case involved failure to return client money and another related to failure to co-operate with the Applicant. It appeared that in its dealings with the Respondent the Applicant had been somewhat tardy in the earlier proceedings; again, this was regrettable. However, the Tribunal had to take into account the fact that the Respondent had previous findings against him for matters which were, in some respects, similar to the current allegations.

77. The Tribunal was concerned that this Respondent had shown, on two occasions, that he was not willing or able to fulfil his professional responsibilities or be regulated. He had let down Mr and Mrs S, and had compounded that by failing to provide adequate redress promptly when ordered to do so. The Respondent had let down other clients in failing to return to them the money to which they were entitled; the Tribunal noted that in one email the Respondent had suggested that one particular client was due the sum of £39,000 or thereabouts. The Respondent had further let down clients by failing to make clear where they could obtain their files, if required. Whilst there was no dishonesty alleged in this case, the Respondent's misconduct was serious as it would have a significant adverse impact on the reputation of the

profession. This was one of the main issues the Tribunal had to consider in determining sanction.

78. The Respondent's behaviour was such that neither a reprimand nor a fine would properly reflect the harm done, particularly in view of the fact that the Respondent had previous findings made against him. Only a restriction on the Respondent's ability to practice within the profession could properly reflect the seriousness of these matters.

79. The Tribunal did not consider it necessary in this instance to strike the Respondent off the Roll. However, it was concerned that he had demonstrated that he was not willing or able to comply with the requirements of being a solicitor in that he had not looked after his clients properly and had not complied with his regulator's requirements. Taking into account all of the circumstances of the case, the appropriate, proportionate and just sanction was to suspend the Respondent indefinitely.

80. The Tribunal considered whether to impose a specific period within which the Respondent could not apply for the suspension to be determined but decided this was not necessary. Whilst this division of the Tribunal could not bind any other division which might, in future, hear an application to determine the suspension, this division would expect the Respondent to demonstrate at least the following when making such an application:

80.1 that he had provided full information to the Applicant to enable funds to be distributed to clients and that the funds had been properly returned wherever possible;

80.2 that he had provided his client files and/or access to them such that former clients could obtain their files if required; and

80.3 that he had shown he was willing and able to fulfil his duties to his clients and to his professional regulator.

The Tribunal would not expect the Respondent to return to the profession until he had at least met those requirements. It was essential that if the Respondent were to return to practice he should not be a risk to the public or to the reputation of the profession.

Costs

81. Ms Wingfield submitted a claim for costs on behalf of the Applicant. The costs set out in the statement of costs dated 13 October 2014 totalled £11,211.35. Ms Wingfield told the Tribunal that the costs had been calculated in the expectation that this hearing would last for a day, whereas it had been shorter.

82. Ms Wingfield answered questions from the Tribunal concerning the charge out rate and the contract between her firm and the Applicant. The Tribunal noted that in this matter a blended rate of £175 per hour had been used. The Tribunal clarified that the process server used was based in the Middle East, although the professional address used on the statement was in Surrey. The enquiry agent's fees totalled £1,738.85 including the initial work on tracing the Respondent and then serving the papers on him. The Applicant's internal investigation costs were claimed at £562.50.

83. The Tribunal noted that the Respondent had not submitted any information concerning his financial position, so there was no need to take into account his ability to pay when determining the appropriate costs order. The Tribunal noted that at the time of the hearing in June 2012 the Respondent had not been working and had provided information about his means; the Tribunal had on that occasion made a costs order which was not to be enforced without the permission of the Tribunal. The Tribunal noted that there was evidence that the Respondent was working, in the legal department of a company in Abu Dhabi, and that he and his wife still appeared to be the registered proprietors of a property in the Windsor area.

84. The Tribunal considered the costs schedule which was submitted. It was appropriate to reduce the costs as the hearing had been shorter than estimated. However, the rate claimed and the time spent were reasonable and proportionate. The Tribunal assessed the reasonable costs of the proceedings at £10,500, taking into account the length of hearing, and determined that the Respondent should be ordered to pay those costs.

Statement of Full Order

85. The Tribunal Ordered that the Respondent, MARK JOHN LINFIELD solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 21st day of October 2014 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,500.00.

DATED this 24th day of November 2014
On behalf of the Tribunal

A. Ghosh
Chairman