

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11267-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GUY RICHARD CHARLES BAILEY

Respondent

Before:

Mr A. N. Spooner (in the chair)

Mr A. Ghosh

Lady Bonham Carter

Date of Hearing: 7 January 2015

Appearances

Mr Mark Barnett, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Guy Richard Charles Bailey, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Guy Richard Charles Bailey, in a Rule 5 Statement dated 6 August 2014 were as follows:
 - 1.1 He acted in breach of the SRA Accounts Rules 2011 (“AR 2011”) and, to the extent that the relevant conduct took place before 6 October 2011, the Solicitors Accounts Rules 1998 (“SAR 1998”) in the following particulars:
 - 1.1.1 he failed to establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the accounts rules, in breach of Rule 1(e) SAR 1998 and/or Rule 1.2(e) AR 2011;
 - 1.1.2 he failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in breach of Rule 1(f) SAR 1998 and/or Rule 1.2(f) AR 2011;
 - 1.1.3 he failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him, and office money relating to client matters, in breach of Rule 32(1) SAR 1998 and/or Rule 29.1 AR 2011;
 - 1.1.4 he failed to record appropriately all dealings with client money in (a) a client cash account or in a record of sums transferred from one client ledger account to another and (b) on the client side of a separate client ledger account for each client, in breach of Rule 32(2) SAR 1998 and/or Rule 29.2 AR 2011;
 - 1.1.5 he failed to carry out reconciliations of his client account as required by Rule 32(7) SAR 1998 and/or Rule 29.12 AR 2011;
 - 1.1.6 he failed to ensure compliance with the accounts rules by himself and by everyone employed in his practice, in breach of Rule 6 SAR 1998 and/or Rule 6 AR 2011;
 - 1.1.7 he failed to remedy breaches of the accounts rules promptly upon discovery, in breach of Rule 7 SAR 1998 and/or Rule 7 AR 2011; and
 - 1.1.8 by virtue of the foregoing, he has acted contrary to all or any of Principles 6, 7, 8 and 10 SRA Principles 2011 (“the Principles”).
 - 1.2 He failed to deliver to the SRA promptly or at all accountants’ reports for the periods ending 8 February 2013 and 8 August 2013, in breach of Rule 32 AR 2011.
 - 1.3 He acted contrary to all or any of Principles 2, 6 and 7 of the Principles by failing to comply with a condition imposed on his practising certificate for the year 2012/13.
 - 1.4 He failed to comply with Rule 8.5 SRA Authorisation Rules 2011 (“the Authorisation Rules”) by not having an individual in his practice who was designated and approved by the SRA as its Compliance Officer for Legal Practice (“COLP”) and Compliance Officer for Finance and Administration (“COFA”).

- 1.5 He acted contrary to all or any of Principles 2, 6, 7, 8 and 10 by abandoning his practice.
- 1.6 He acted contrary to all or any of Principles 1, 2, 4, 5 and 6 by not attending court on 7 August 2013 to represent a client at a substantive hearing.

Documents

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

Applicant:-

- Application dated 6 August 2014
- Rule 5 Statement, with exhibit “MB/1”, dated 26 March 2014
- Statement of Keith Parsons, process server, dated 8 October 2014
- Statement of costs dated 22 December 2014

Respondent:-

- No documents were submitted by or on behalf of the Respondent.

Preliminary Matter (1) – Proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was not present or represented and so as a preliminary issue had to consider whether to proceed with the hearing.
4. Mr Barnett for the Applicant submitted that the Respondent had been properly served and was aware of the proceedings and of this hearing. At a Case Management Hearing (“CMH”) on 17 December 2014 the Tribunal had been satisfied that the Respondent had been served. It had noted the witness statement of a process server which stated that the Respondent had been personally served with the Application and Rule 5 Statement, and other relevant papers in the case, on 7 October 2014. Significantly, the papers served included the Tribunal’s standard directions order, dated 1 October 2014, which included notification that the case was listed for substantive hearing on 7 January 2015 at 10am.
5. Mr Barnett referred to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the Rules”) which provides:

“If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the respondent fails to attend in person or is not represented at the hearing.”
6. Mr Barnett submitted that this discretion to proceed in the Respondent’s absence should be exercised with care; the Tribunal should take into account all relevant matters. Mr Barnett referred the Tribunal to the case of R v Jones [2002] UKHL 5 (“Jones”) which approved a list of some factors to consider as set out in R v Hayward [2001] EWCA Crim 168 (“Hayward”). Mr Barnett submitted that the Respondent

had chosen not to be present; such voluntary absence showed that he had waived his right to attend. The Respondent had not indicated that he wanted to obtain legal representation. These, it was submitted, were the most relevant factors.

7. Mr Barnett submitted that all reasonable steps had been taken to ensure that the Respondent was aware of these proceedings. The directions issued by the Tribunal had required the Respondent to file and serve an Answer to the allegations by 3 November 2014. He had not done so in circumstances where it was clear that he had been served with the proceedings.
8. Mr Barnett told the Tribunal that the Applicant had become aware that the Respondent had sold his house. In the light of a direction made by the Tribunal at a CMH on 20 November 2014, the Applicant had sent various notices including under the Civil Evidence Act notices to the Respondent's last known address, under cover of letters dated 26 November 2014. A later letter, with the Applicant's Certificate of Readiness, was returned in the post. As a result a further CMH was held on 17 December 2014. By that time, the Applicant had made contact with the solicitors who acted for the Respondent on the sale of his home. That firm had an email address for the Respondent, but not a postal address, and did not have the permission of the Respondent to disclose the email address to the Applicant. However, the solicitors had agreed to send documents to the Respondent by email and to seek instructions as to disclosure of the Respondent's email address. All of the correspondence and documents since service of the proceedings had been sent by email by the Respondent's conveyancing solicitors; this included the Applicant's statement of costs.
9. The Tribunal considered carefully whether to proceed in the Respondent's absence. It was satisfied that he had been served with notice of the hearing, and all relevant papers. The Respondent had not communicated with the Applicant or the Tribunal. The Tribunal considered the relevant legal tests, as set out in Jones and Hayward and was satisfied that the Respondent had chosen not to attend and so had waived his right to attend the hearing. The Tribunal was satisfied that in the circumstances of this case it was just and proportionate to proceed with the hearing.

Preliminary Matter (2) – declaration

10. The Chair of the division declared for the record that he knew DJ Davies, referred to in these proceedings, in his capacity as the Chair's mentor under the Deputy District Judge appraisal and mentoring scheme. In that context, the Chair would meet with DJ Davies before and after appraisals and would see him informally in the course of sitting at the County Court in Birmingham. Notice of the Chair's knowledge of DJ Davies had been sent to the Respondent in a letter passed on by the conveyancing solicitors; no objection had been raised by the Applicant or Respondent to the Chair sitting on this matter. The Chair confirmed that he did not consider there was any reason to recuse himself from dealing with this case.

Factual Background

11. The Respondent was born in 1968 and was admitted as a solicitor in 1993. His name remained on the Roll of Solicitors at the date of hearing but he did not hold a Practising Certificate.
12. At all material times the Respondent was the sole director of Reward Litigation Limited whose last office address was Cornwall Buildings, 45 Newhall Street, Birmingham B3 3QR (“the Firm”).
13. The Firm began trading on or around 9 February 2010. By a decision dated 6 September 2013 the Applicant resolved to intervene into the Firm; the intervention was effected on 10 September 2013. The Respondent’s Practising Certificate for 2012/13 was suspended on the intervention and was terminated on 26 February 2014.

Allegation 1.1

14. On 17 January 2013 an inspection of the books of account and other documents of the Firm was commenced by an Investigation Officer (“IO”) of the Applicant, Mr Dhanda. The forensic investigation report (“FIR”) produced as a result of that inspection was dated 26 March 2013.
15. The FIR reported that the books of account were not in compliance with the SAR 1998/AR 2011. The Respondent had not maintained a client account cashbook since commencing trading in February 2010. The Respondent had never prepared a list of all the balances shown by the client ledger accounts of the liabilities to clients. As a result, the Respondent could not and had not performed reconciliations as required by Rule 32(7) SAR 1998 and/or Rule 29.12 AR 2011.
16. As a result of these matters, the IO could not form an opinion on whether the Firm held sufficient funds in client bank account to meet total liabilities to clients.
17. The Respondent admitted his non-compliance with the accounts rules to the IO. The Respondent told the IO that the vast majority of funds paid into the Firm’s client bank account were in respect of his fees in litigation matters, which were then transferred across to the Firm’s office account; the Firm did not hold large sums of money in client bank account.
18. During the inspection the Respondent produced a file of client ledgers, a sample of which were appended to the FIR. The ledger in the matter of S Pensions Ltd indicated that the Firm held £1.1 million in client account for a period of 3 days in January 2013 but it was acknowledged by the Applicant that this was unusual.
19. The Respondent told the IO that he would employ a bookkeeper to write up the books since the Firm began trading.

20. Notwithstanding the matters noted above (at paragraphs 15 to 17), the IO noted that the accountants' reports for the Firm for the periods ending 8 February 2011 and 8 February 2012, which were both signed by a Mr Lee Noble, FCA, were submitted without qualification.

Allegations 1.2 and 1.3

21. The Firm's accountants' report for the period ending 8 February 2011 was due to be delivered to the Applicant on or before 8 August 2011. It was delivered late, on 23 April 2012.
22. On 30 April 2012 an Adjudicator of the Applicant considered the matter and determined, using the civil standard of proof, that the Respondent had failed to deliver his accountants' report within the period required by the AR 2011. The Adjudicator decided to warn the Respondent that if, in future, an Adjudicator or Adjudication Panel were to consider his conduct, her finding that the Respondent had failed to comply with Rule 32 AR 2011 would be disclosed and may be taken into account when deciding what action to take. The Respondent was informed that there was no right of appeal against this decision. A copy of the decision was sent to the Respondent under cover of a letter dated 9 May 2012.
23. The Firm's accountants' report for the period ending 8 February 2012 was due to be delivered to the Applicant on or before 8 August 2012. It was delivered late, on 15 August 2012.
24. On 13 June 2012 an Authorised Officer of the Applicant considered the Respondent's application for a Practising Certificate for the year 2012/13 under Regulations 3 and 7 of the SRA Practising Regulations 2011. The Authorised Officer noted that the Respondent was subject to Regulation 3.1(c) (failure to deliver accountants' reports on time) and Regulation 3.1(n) (subject to a judgment involving the payment of money). The Authorised Officer also noted the contents of the FIR and that the Respondent had not made any representations on the FIR which had by then been sent to him for comment.
25. The Authorised Officer decided to grant the Respondent a Practising Certificate for the year 2012/13 subject to the following conditions:
 - 25.1 The Respondent should deliver half yearly accountants' reports, such reports and any cease to hold reports to be delivered within two months from the end of the period to which they related; and
 - 25.2 The Respondent shall undertake courses accredited by the SRA on AR 2011 and SRA Handbook (each course to be a minimum of 3 hours CPD) within 3 months of the date of notification of the decision, and provided confirmation of completion of the courses (in the form of a certificate or letter of attendance from the course provider) when he next applies for a Practising Certificate.

26. The Respondent was notified of this decision by letter date 13 June 2013, which included information on the routes of appeal if he were dissatisfied with the decision. The Respondent did not appeal the decision.
27. The Respondent was obliged by this decision and the AR 2011 to deliver the following accountants' reports:
- For the period ending 8 February 2013 on or before 8 August 2013; and
 - For the period ending 8 August 2013 on or before 8 October 2013.

The Applicant did not receive any accountants' report for the Firm beyond that for the period ending 8 February 2012 (which was delivered on 15 August 2012).

Allegation 1.4

28. The 2011 Authorisation Rules at paragraph 8.5 states:

“Subject to Rule 8.5(h), an authorised body must at all times have an individual:

- (i) Who is a manager or employee of an authorised body;
- (ii) Who is designated as its COLP [and] who is designated as its COFA;
- (iii) Who is of sufficient seniority and in a position of sufficient responsibility to fulfil the role; and
- (iv) Whose designation is approved by the SRA”.

29. The Respondent nominated himself for the roles of COLP and COFA. On 31 January 2013 a First Instance decision made by an officer of the SRA refused the application for approval of that nomination. The Respondent submitted an appeal against that decision, with supporting information, on 9 May 2013. The appeal was considered on 23 July 2013 and was refused. The Adjudicator determined that the Respondent was an individual who met the criteria in Rule 8.5 of the Authorisation Rules but was not satisfied that the Respondent was a suitable person to carry out the duties of COLP and COFA, or that the Firm had adequate arrangements in place to ensure that the duties of COLP or COFA would be discharged. The Adjudicator's decision referred to the FIR, which was said to demonstrate that the Respondent could not be relied on to discharge his regulatory duties as a solicitor and authorised office holder and to concerns about whether the Respondent was able to manage his financial affairs properly. The Adjudicator's decision stated that he could find no evidence of “exceptional circumstances” relating to the matters raised in the FIR. The Adjudicator further stated that the Respondent had “made no attempt” to refute the allegations of regulatory breaches contained in the FIR and concluded,

“This raises a serious risk that [the Respondent] would not, if nominated as COLP or COFA, carry out his duties in accordance with the rules”.

30. The Respondent was notified of the refusal of his appeal by letter dated 30 July 2013, which further informed the Respondent that there was no further right of appeal. The letter stated, under the heading “Next steps”,

“You need to take immediate action as a consequence of this decision.

As the nomination for [COFA] and [COLP] has been refused, your firm is now in breach of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011.

You will need to re-nominate another individual, who falls within the definition of “employee” as set out in the SRA Glossary, to undertake the role of COFA and COLP. If there is no one else at your firm that falls within the definition of employee, or there is no one else at your firm suitable to undertake the role, you have the following options:

- (a) Take on a suitable individual at your firm that falls within the definition of “employee” and apply for them to be approved as suitable by the SRA to be your firm’s nominated Compliance Officers;
- (b) Take on a new manager who is suitable to undertake the roles and apply for them to be approved as suitable by the SRA to be your firm’s nominated Compliance Officer;
- (c) Make arrangements to close your practice.

You have fourteen days in which to complete a re-nomination for your COLP/COFA candidate. If you do not nominate another individual to undertake the role of CPFA and COLP within that deadline, you must make arrangements to close down your firm immediately.”

- 31. The Respondent did not re-nominate for the COLP and/or COFA as required, nor did he close the Firm; the Firm was intervened on 10 September 2013, some six weeks after notification of refusal of the appeal.

Allegation 1.5

- 32. By letter dated 13 August 2013, the Respondent was given notice that a further inspection of the books of account and other documents of the Firm was to take place. The letter enclosed a Notice pursuant to Section 44B of the Solicitors Act 1974 requiring production of certain documents and information as set out in an Appendix to the letter.
- 33. An Investigation Officer of the SRA, Ms Bridges, attended at the Firm’s office address on 22 August 2013. The Respondent was not present, so the Ms Bridges was not able to commence her investigation.
- 34. Ms Bridges’ actions were recorded in a “Time Report”. This indicated that Ms Bridges attended the Firm’s offices, which were in a serviced office block, and spoke to the receptionist who informed her that the Respondent worked alone and that there was no-one else present at the Firm. Ms Bridges attempted to contact the Respondent by email and telephone throughout the day; her calls were answered by the receptionist, who was unable to give her any further information. Ms Bridges attended at the Respondent’s home address and hand delivered a letter. She made

further attempts to contact the Respondent at the Firm but was told he was not there and no one had heard from him.

35. On 30 August 2013 another Investigation Officer, Mr Shields, conducted a “walk by” inspection of the Firm’s office address and attended at the Respondent’s home address. The “Time Report” recorded Mr Shields’ actions and conversations. This document recorded that Mr Shields spoke to the receptionist of the offices who informed him that the Firm had had its services suspended by the landlord in the previous week due to outstanding debts. The receptionist was recorded as reporting that the Firm was not open, but her colleague had seen the Respondent attending at the office in the evenings; various clients and others had been trying to contact the Respondent. Mr Shields’ report recorded that he had attended the Respondent’s home address, where the door was not answered. Mr Shields recorded his conclusion that, “It would therefore appear that [the Respondent] has abandoned the practice and has failed to respond to the SRA’s attempts to make contact with him”.

Allegations 1.5 and 1.6

36. On 7 August 2013 the Applicant received an email from District Judge Tony Davies (“DJ Davies”), a Nominated Judge of the Court of Protection. DJ Davies complained that the Respondent had failed to attend a hearing at Birmingham County Court on behalf of a client. The Firm was on record as acting for the Defendant in certain proceedings and the case was listed for hearing on 7 August 2013. DJ Davies stated in his email that the Respondent failed to attend at court, had not arranged for alternative representation and did not provide his client, the court or the other party with any form of explanation for his failure to attend. The Respondent’s client had attended court and told DJ Davies that she had been unable to speak to the Respondent, despite leaving messages for him to call her back. The other party indicated they had not heard from the Respondent since a hearing on 13 March 2013. DJ Davies informed the Applicant that he had adjourned the hearing and removed the Firm from the court record as acting for the Defendant. The Judge’s email concluded,

“My complaint as a judge is that he has breached his professional obligations to the court and to his client by effectively abandoning conduct of the litigation, without informing his client that he was unable or unwilling to act, and without making an application to come off the record. I make this complaint on my own behalf, not on behalf of his client, who may or may not make her own complaint”.

Witnesses

37. Mr Dhanda, the Investigation Officer, gave evidence on behalf of the Applicant.
38. Mr Dhanda confirmed that his FIR was true and accurate to the best of his knowledge and belief.
39. Mr Dhanda told the Tribunal that the Respondent had admitted to him that he had not maintained a cashbook, had not carried out any client bank account reconciliations since the Firm began trading and had not produced a list of all the balances shown by the client ledger accounts. Mr Dhanda told the Tribunal that the Respondent had not

provided him with the information required under the AR 2011; he had told Mr Dhanda that he had not maintained the books of account. Mr Dhanda told the Tribunal that he would have expected to see a list of client balances and reconciliation statements.

40. Mr Dhanda told the Tribunal that the client ledgers which were produced were not fully compliant with the SAR 2011 as they did not have separate debit and credit columns or a running total.
41. Mr Dhanda told the Tribunal that with regard to the matter of S Pensions Ltd on which £1.1 million was held on client account for three days, he would be prepared to give the Respondent the benefit of the doubt and accept that most of the money on client account was for comparatively small sums and was in respect of the Respondent's costs.
42. Mr Dhanda told the Tribunal that there were no authorities available for the transfers from client to office account. Mr Dhanda told the Tribunal that he did not know if the Respondent had employed a bookkeeper after the inspection, as the Respondent had indicated he would.
43. In response to a question from the Tribunal, Mr Dhanda told the Tribunal that the Respondent had been a consultant at another firm, AEW Litigation Ltd until 21 January 2013. Mr Dhanda further told the Tribunal that the Respondent had had a trainee solicitor at the time of the inspection; he had briefly met the trainee but had not had any conversation with him. Mr Dhanda told the Tribunal that there had been correspondence with the accountant who had prepared the unqualified reports for 2011 and 2012; that correspondence was not before the Tribunal.

Findings of Fact and Law

44. 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.
45. The Respondent had not provided any Answer to the allegations. The Tribunal proceeded on the basis that the allegations were denied, and the Applicant was required to prove the case. The Tribunal noted that the Applicant had served notices pursuant to the Tribunal's Rule 13 and to the Civil Evidence Act. The Respondent had not served any counter-notices or indicated that he challenged any aspect of the Applicant's case, or the documents submitted in support of that case.
46. **Allegation 1.1 - He acted in breach of the SRA Accounts Rules 2011 ("AR 2011") and, to the extent that the relevant conduct took place before 6 October 2011, the Solicitors Accounts Rules 1998 ("SAR 1998") in the following particulars:**
 - 1.1.1 **He failed to establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the accounts rules, in breach of Rule 1(e) SAR 1998 and/or Rule 1.2(e) AR 2011;**

- 1.1.2 He failed to keep proper accounting records to show accurately the position with regard to the money held for each client, in breach of Rule 1(f) SAR 1998 and/or Rule 1.2(f) AR 2011;**
 - 1.1.3 He failed at all times to keep accounting records properly written up to show his dealings with client money received, held or paid by him, and office money relating to client matters, in breach of Rule 32(1) SAR 1998 and/or Rule 29.1 AR 2011;**
 - 1.1.4 He failed to record appropriately all dealings with client money in (a) a client cash account or in a record of sums transferred from one client ledger account to another and (b) on the client side of a separate client ledger account for each client, in breach of Rule 32(2) SAR 1998 and/or Rule 29.2 AR 2011;**
 - 1.1.5 He failed to carry out reconciliations of his client account as required by Rule 32(7) SAR 1998 and/or Rule 29.12 AR 2011;**
 - 1.1.6 He failed to ensure compliance with the accounts rules by himself and by everyone employed in his practice, in breach of Rule 6 SAR 1998 and/or Rule 6 AR 2011;**
 - 1.1.7 He failed to remedy breaches of the accounts rules promptly upon discovery, in breach of Rule 7 SAR 1998 and/or Rule 7 AR 2011;**
 - 1.1.8 By virtue of the foregoing, he has acted contrary to all or any of Principles 6, 7, 8 and 10 SRA Principles 2011 (“the Principles”).**
- 46.1 The factual background to this allegation is set out at paragraphs 14 to 20 above.
- 46.2 The Applicant submitted that at the time of the inspection the Firm had been trading for nearly three years. The Respondent was the sole principal of the Firm and was required to comply with the provisions of the accounts rules in force from time to time. It was submitted that by failing to maintain books of account, as alleged and as admitted in the course of the investigation, the Respondent was in breach of the accounts rules.
- 46.3 It was further submitted that the breaches of the accounts rules in this instance also showed the Respondent had acted in breach of Principles 6, 7 and 10 of the 2011 Principles. With regard to Principle 7, the Applicant’s case was that the breach related to the Respondent’s failure to comply with his legal and regulatory obligations; it was not asserted that he had failed to co-operate with the Applicant. The alleged breach of Principle 8 related to the Respondent’s failure to run his business effectively and carry out his role in running his business, as shown by the failure to keep accounting records since the inception of the Firm. It was further submitted that the failure to keep records meant that the Respondent had failed to protect client money and assets.

- 46.4 The Tribunal considered the allegation both generally and in the particulars set out at 1.1.1 to 1.1.8 inclusive. The Tribunal had heard from the Investigation Officer in evidence and accepted that the contents of the FIR were true. The FIR clearly showed that the Respondent had failed to keep any proper accounting records, and in particular his recording of dealings with client account were inadequate, from the inception of the Firm. It was surprising, in these circumstances, that the accountants' reports for the periods ending 8 February 2011 and 8 February 2012 had been unqualified. The Tribunal noted the admissions made by the Respondent in the course of the investigation and accepted the evidence that those admissions had been made.
- 46.5 The Tribunal noted with regard to point 1.1.6 that the word "everyone" in the allegation appeared to relate to an unnamed trainee solicitor. The Tribunal noted that there was no allegation that the trainee was in breach of any rule, but simply that the Respondent had failed to ensure compliance with the accounts rules; the fact that the Respondent was in breach and that his Firm had inadequate accounts systems was sufficient to prove this aspect of the allegation. The Tribunal was satisfied to the required standard that the allegation had been proved to the required standard with regard to all of the particulars a 1.1.1 to 1.1.7.
- 46.6 The Tribunal further considered whether the breaches of the accounts rules, on the facts of this case, also proved that the Respondent had acted contrary to certain core Principles. The Tribunal was satisfied to the highest standard that the extensive failures to maintain accounts, and thus to be able to account properly for client money, was conduct which would diminish, rather than maintain, the trust the public would place in the Respondent and in the provision of legal services. The Tribunal was also satisfied that the Respondent had failed to comply with his legal and regulatory obligations and had failed to run his business effectively and on sound risk management principles. In addition, the Tribunal was satisfied the poor accounts records and systems were such that the Respondent had put client money at risk, rather than protecting that money.
- 46.7 The Tribunal was satisfied to the highest standard that all aspects of this allegation had been proved.
47. **Allegation 1.2: He failed to deliver to the SRA promptly or at all accountants' reports for the periods ending 8 February 2013 and 8 August 2013, in breach of Rule 32 AR 2011**
- 47.1 The factual background to this allegation is set out at paragraphs 21 to 27 above.
- 47.2 The Tribunal noted that the documents considered by the Authorised Officer were stated to include information that there were a number of County Court judgments registered against the Respondent. There was no evidence in the Applicant's records to show whether or not those judgments had been satisfied. Mr Barnett submitted that this information was part of the circumstances which were considered by the Authorised Officer and was relevant as the Respondent was the sole director of an authorised body; his financial circumstances would be relevant to the Firm's operation. The Tribunal noted this submission and accepted that in the circumstances

the Authorised Officer's decision to impose conditions on the Respondent's Practising Certificate for the year 2012/13 was reasonable.

47.3 The evidence was clear that the Respondent had failed to deliver his accountants' reports for the periods ending 8 February 2013 and 8 August 2013 on time or at all in breach of Rule 32 AR 2011. This allegation was proved to the required standard.

48. **Allegation 1.3 - He acted contrary to all or any of Principles 2, 6 and 7 of the Principles by failing to comply with a condition imposed on his practising certificate for the year 2012/13**

48.1 The factual background to the allegation is as set out at paragraphs 21 to 27 above.

48.2 The evidence was clear that the Respondent had failed to submit his accountants' reports when due, in accordance with the conditions on his Practising Certificate. It was submitted for the Applicant that the Respondent had acted contrary to Principles 2, 6 and 7 of the 2011 Principles by not complying with the condition that he deliver half yearly accountants' reports.

48.3 The Tribunal was satisfied to the required standard that the Respondent had been aware of the conditions on his Practising Certificate and had failed to comply. Those conditions had been imposed to protect the public. The Tribunal was satisfied that failing to ensure his accountants' reports were filed as required demonstrated a lack of integrity, would tend to diminish the trust the public would place in the Respondent and in the provision of legal services and was a breach of his regulatory obligations. Accordingly, the Tribunal was satisfied that all aspects of this allegation had been proved, to the required standard.

49. **Allegation 1.4: He failed to comply with Rule 8.5 SRA Authorisation Rules 2011 ("the Authorisation Rules") by not having an individual in his practice who was designated and approved by the SRA as its Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA")**

49.1 The factual background to this allegation is set out at paragraphs 28 to 31 above.

49.2 It was submitted for the Applicant that during the period from notification of the refusal of the appeal on 30 July 2013 the Firm was an authorised body operating in breach of Rule 8.5 of the Authorisation Rules. The Respondent was solely responsible for the operation of the Firm and for the breach. The intervention into the Firm was necessary as the Respondent had neither nominated a suitable individual to be COLP and/or COFA, nor had he closed the Firm.

49.3 The Tribunal noted that it would have been helpful to have a brief statement from an appropriate officer of the Applicant to confirm that the Respondent had failed to re-nominate for the positions of COLP and/or COFA within the period specified. Nevertheless, it was clearly the case that the Firm did not have anyone approved to hold those positions by the time the Firm was intervened, as required by the relevant rules. In these circumstances, the Tribunal was satisfied that in the period of up to six weeks between notification of the refusal of the appeal and the intervention, the

Respondent operated his Firm in breach of the relevant rules; this allegation had been proved to the required standard.

50. **Allegation 1.5: He acted contrary to all or any of Principles 2, 6, 7, 8 and 10 by abandoning his practice**

50.1 The factual background to this allegation is set out at paragraphs 32 to 35 above.

50.2 The Tribunal was satisfied that the Respondent had abandoned his practice by about 22 August 2013 and probably before that date, in the light of the information concerning allegation 1.6. The Respondent had failed to make contact with the Applicant in response to the letter of 13 August 2013 or in response to the subsequent efforts of the Investigation Officers to contact him. The office was unattended and there was clear evidence that the Respondent was failing to contact clients and others who tried to speak to him.

50.3 Abandoning a practice caused difficulties for clients, other solicitors, the court and others who needed to contact the Respondent. It was a particularly serious matter for clients, whose matters were left in abeyance. The Tribunal was satisfied that in abandoning his practice and failing to make any proper arrangements for the transfer of client matters the Respondent had acted without integrity; a solicitor acting with integrity would have ensured that client matters were handled properly and that relevant parties knew how to contact him. The Tribunal was further satisfied that abandoning his practice was conduct which would diminish the trust the public would place in the Respondent and the provision of legal services, was in breach of his legal and regulatory obligations, demonstrated that he failed to run his practice properly and that he had failed to protect client money and assets. The Tribunal was satisfied to the highest standard that this allegation had been proved in all of its aspects.

51. **Allegation 1.6: He acted contrary to all or any of Principles 1, 2, 4, 5 and 6 by not attending court on 7 August 2013 to represent a client at a substantive hearing.**

51.1 The factual background to this allegation is set out at paragraphs 32 to 35 and 36 above.

51.2 As already noted, the Respondent had abandoned his practice by some point in August 2013. The evidence that he had failed to attend court to represent a client, whilst the Firm remained on the court record as acting for that client, was clear. In failing to attend, with no prior warning to his client, the court or the other party and with no explanation for this conduct, the Respondent had failed to uphold the proper administration of justice; his conduct had caused a case to be adjourned. Further, the Respondent had acted without integrity in failing to attend or arrange representation for his client, or give any explanation for his failure. This conduct clearly was not in the best interests of his client and he had failed to provide a proper standard of service. The Respondent's conduct would diminish rather than maintain the trust the public would place in him and the provision of legal services. The Tribunal was satisfied to the required standard that all aspects of this allegation had been proved.

Previous Disciplinary Matters

52. There were no previous matters in which findings had been made against the Respondent.

Mitigation

53. The Respondent was not present and had not submitted any mitigation.

Sanction

54. The Tribunal had regard to its Guidance Note on Sanction (December 2014 edition) and to all of the facts of the case.
55. This was clearly a serious case. The Respondent was responsible for many and serious breaches of the accounts rules. Those rules were in place to protect the public and in particular to ensure that clients' money was dealt with properly. The Respondent had failed to comply with conditions on his Practising Certificate which were imposed to protect the public and his clients. The Respondent's abandonment of his practice meant that clients had been let down, in particular the client affected by the Respondent's failure to represent her in court in August 2013. The Respondent's misconduct involved breaches of the core Principles of behaviour which govern the actions of all solicitors and were damaging to the reputation of the profession. He had failed to engage with these proceedings or with the Applicant and had not provided any explanation for his misconduct.
56. The Tribunal considered the full range of sanctions available to it, and in particular considered striking the Respondent off the Roll as his misconduct was serious. However, the Tribunal noted that the Respondent had no previous record of misconduct and there had been no allegation of dishonesty.
57. In all of the circumstances of this case, the reasonable and proportionate sanction was that the Respondent should be suspended indefinitely. The Tribunal considered that this was necessary in order to protect the public until such time as the Respondent could satisfy the Tribunal that he was fit and ready to return to the profession.
58. Whilst this division of the Tribunal could not bind any future division which dealt with an application to determine the suspension, it wished to indicate to the Respondent some of this division's expectations with regard to any such application. First of all, it would expect the Respondent to explain the misconduct which had occurred, and demonstrate insight into that misconduct and the harm caused to clients and the reputation of the profession. Further, the Tribunal would need to consider whether to impose conditions on the Respondent's ability to practise and in particular might consider it important to forbid the Respondent from being the principal of a firm or handling client money. It may also wish to ensure that the Respondent would be adequately supervised.

Costs

59. Mr Barnett submitted a schedule of costs and asked the Tribunal to make an order that the Respondent should pay the Applicant's costs, as summarily assessed by the Tribunal.
60. The Tribunal noted that the schedule totalled £8,881, including forensic investigation costs of £3,803.29.
61. Mr Barnett submitted that the hearing costs as estimated on the schedule should be reduced, as the hearing had not taken as long as estimated. Mr Barnett told the Tribunal that he could not comment particularly on the costs of the investigation; a schedule of the time spent was provided to the Tribunal. Mr Barnett told the Tribunal that the case had involved the collation of a number of disparate files within the SRA. The Respondent had generated a number of different files and investigations due to the various episodes of non-compliance. Mr Barnett told the Tribunal that there had been a lot of work in collating and extracting the essential documents in order to compile the Rule 5 bundle. Mr Barnett told the Tribunal that time had been spent in attendance on colleagues within the SRA but only his time, and not that of his colleagues, had been charged; work done by those colleagues had not been claimed in the schedule of costs. Mr Barnett told the Tribunal that he had prepared the case on the assumption that the Respondent would not attend, which would mean that as advocate for the Applicant he would have a particular duty to ensure the hearing was fair.
62. The Tribunal noted that the costs of the forensic investigation seemed high, given that the FIR had only about 4 substantive pages and only about 20 pages of exhibits. The Tribunal understood that in this case there had been a need to locate and collate a number of different files concerning the Respondent, and this would account for some of what appeared to be quite high preparation and drafting time. There had been necessary disbursements in tracing and serving the Respondent with the proceedings. It was clearly right that the costs estimated for the hearing itself should be reduced; three and a half hours had been estimated, but in fact the hearing would conclude in about two hours (plus the lunch adjournment, during which the Tribunal deliberated on the findings).
63. The Tribunal determined that the amount allowed for the forensic investigation should be reduced to £2,500 and the legal costs/disbursements should be allowed in the sum of £4,500. The Tribunal summarily assessed the reasonable and proportionate costs of the proceedings at £7,000.
64. The Tribunal had been provided with no information concerning the Respondent's means. In those circumstances, there was no reason to reduce the costs further on the basis of the Respondent's ability to pay, nor was there any reason to defer the payment of those costs. The Respondent should pay the Applicant's costs assessed at £7,000.

Statement of Full Order

65. The Tribunal Ordered that the Respondent, GUY RICHARD CHARLES BAILEY, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 7th day of January 2015 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00.

DATED this 13th day of February 2015
On behalf of the Tribunal

A. N. Spooner
Chairman