SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11445-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAJESH BABAJEE Respondent

Before:

Mr D. Glass (in the chair)
Mr P. Housego
Mr G. Fisher

Date of Hearing: 20 April 2016

Appearances

Mr Jonathan Goodwin, solicitor advocate, of Jonathan Goodwin Solicitor Advocate Ltd, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT, for the Applicant.

The Respondent, Mr Rajesh Babajee, was neither present nor represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Rajesh Babajee, made in a Rule 5 Statement dated 12 November 2015, were that he:

1.1 Misappropriated clients' monies, contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.2 Failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998");

1.3 Failed to remedy the accounts breaches promptly upon discovery, contrary to Rule 7.1 of the SRA Accounts Rules 2011 ("AR 2011");

1.4 Failed to open and maintain a client account, contrary to Rule 14 of the SAR 1998;

1.5 Failed to pay client money into a client bank account, contrary to Rule 15 of the SAR 1998;

1.6 Failed to produce records and documents to the SRA, contrary to Rule 34 of the SAR 1998;

1.7 Failed to safeguard records and documents relating to his practice, contrary to:

1.7.1 in the period up to 5 October 2011, Rules 1.04 and 1.06 of the 2007 Code;

1.7.2 in the period from 6 October 2011, any or Principles 4, 6 and 8 of the SRA Principles 2011 ("the Principles");

1.8 Failed to deliver an Accountants' Report within the required time period, contrary to Rule 32 of the AR 2011;

1.9 Failed to adequately supervise an unadmitted employee, contrary to Rules 1.04, 1.06 and 5.01(a), 5.03(1) and 5.03(3) of the 2007 Code;

1.10 Failed to comply with a Judgment of the County Court dated 2 December 2009, contrary to Rules 1.01 and 1.06 of the 2007 Code;

1.11 Purported to carry on practice as a solicitor when he was not entitled to do so, contrary to any of Principles 2, 4, 6 and 7 of the Principles and Rule 1 of the SRA Practice Framework Rules 2011 ("the Framework Rules");

1.12 Failed to fulfil obligations to a third party, in that he failed to deliver an executed Transfer Deed ("Form TF1"), contrary to Rules 1.02, 1.05 and 1.06 of the 2007 Code.

2. Dishonesty was alleged in respect of allegation 1.1, but dishonesty was not an essential ingredient of the allegation.

Documents

3. The Tribunal reviewed all of the documents submitted by the Applicant, and noted that no documents had been submitted by the Respondent.

4. The documents provided by the Applicant were:

- Application dated 12 November 2015
- Rule 5 Statement, with exhibit "JRG1", dated 12 November 2015
- Application for substituted service, with exhibits including enquiry agent report of 12 October 2015, made on 12 November 2015
- Statement of Amy McGowan-Docherty, with exhibits, dated 17 March 2016
- Statement of Julie Woodfield, with exhibits, dated 7 April 2016
- Copy advertisements in The Times (8 January 2016), The Law Society Gazette (11 January 2016) and La Sentinelle (7 April 2016)
- Statement of costs dated 13 April 2016

Preliminary Matter – Substituted service, and proceeding in the absence of the Respondent

5. The Tribunal noted that the Respondent was not present or represented and had sent no correspondence or messages to the Tribunal. The Tribunal was therefore required to consider whether the Respondent had been served with the proceedings and whether it was appropriate to proceed with the case in his absence.

6. Mr Goodwin for the Applicant referred the Tribunal to the application for substituted service which had been made when the proceedings were sent to the Tribunal in November 2015 for certification. That application appended an enquiry agent's report. The Respondent's last known address was in Ilford, Essex. However, the enquiry agent's enquiries indicated that the Respondent may well be overseas, possibly in Mauritius, where it appeared he had worked as a teacher/lecturer in law. As there was no established address for the Respondent, the Applicant had sought permission from the Tribunal to serve the proceedings by placing appropriate advertisements in The Times, The Law Society Gazette and, if possible, a suitable publication in Mauritius.

7. Mr Goodwin informed the Tribunal that on 17 November 2015 the proceedings had been certified as showing a case to answer and the Tribunal had given permission for the proceedings to be served by the methods suggested.

8. Mr Goodwin referred the Tribunal to the advertisements which had been placed in The Times and The Law Society Gazette in early January 2016. Mr Goodwin told the Tribunal that there had been difficulties in identifying a suitable publication in Mauritius in which to place an advertisement. These difficulties were set out in the witness statement of Amy McGowan-Docherty. However, in due course the Applicant had identified a French language newspaper in Mauritius which would be willing to print a legal notice in English and the advertisement appeared in La Sentinelle newspaper on 7 April 2016.

9. Mr Goodwin informed the Tribunal that there had been no contact by the Respondent with him or with the Applicant. The Clerk confirmed that there was no record of any communication by the Respondent with the Tribunal. Mr Goodwin acknowledged that the advertisement had appeared in the newspaper in Mauritius rather closer to the hearing than ideal, but it had appeared before the hearing; it would have been possible for the Respondent to contact the Tribunal, Mr Goodwin or the Applicant before the hearing if he wished to do so, if he saw the advertisement.

The Tribunal's decision on service

10. The Tribunal considered whether it could be satisfied that the proceedings had been properly served.

11. The Tribunal had made an Order, when the proceedings were issued, which permitted service of the proceedings by placing appropriate advertisements in two publications in England and, if possible, one in Mauritius. The Tribunal was satisfied that the advertisements, in proper form, had been placed and that service had been effected in compliance with the Tribunal's order. There had been difficulties, for understandable reasons, in locating a suitable publication in Mauritius in which the advertisement could be placed but the Applicant had complied with the Tribunal's directions as to service.

12. The Tribunal then had to consider whether it was appropriate to proceed with the hearing in the Respondent's absence.

Submissions on proceeding in the Respondent's absence

13. Mr Goodwin submitted that if the Tribunal was satisfied that the Respondent had been served, it could exercise its discretion to proceed in the absence of the Respondent, under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules").

14. Mr Goodwin told the Tribunal that he had attempted to contact the Respondent at the email address referred to in the enquiry agent's report but had received no response. The Respondent had failed to respond to any attempts to contact him since he left Lambeth Solicitors in July 2012. The last correspondence from the Respondent was a letter dated 13 July 2012, which appeared in the Rule 5 bundle. The Respondent had been in contact at that point with the Applicant's investigation officer and so was aware that there were issues of some significance which had been raised by his professional body, and which had not been resolved by the time he had ceased contact with the Applicant.

15. Mr Goodwin referred the Tribunal to the recent case of GMC v Adeogba [2016] EWCA Civ 162 ("Adeogba"), in which the decision of the Court of Appeal was given on 18 March 2016. This case dealt, amongst other matters, with proceeding in the absence of a Respondent in disciplinary proceedings. At paragraphs 17 to 23 of the Court of Appeal Judgment there was a review of the existing authorities, including R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 ("Jones"). In the Adeogba case, at paragraph 18 it was noted that whereas a defendant in a criminal case could be arrested and brought before a court, there was no such remedy available to a

professional regulator. There was a need to be fair to the prosecutor/regulator as well as to the regulated professional. The needs of regulation, in the public interest, meant that cases should proceed unless there was good reason not to do so. The Court of Appeal further stated that there was an obligation on professionals to engage with the regulator, which may include ensuring that the regulator had an effective address for the regulated person.

16. Mr Goodwin submitted that, in the event the Respondent had not seen or had drawn to his attention the advertisements concerning these proceedings, he may have a remedy under Rule 19 of the Rules, in that he could request a re-hearing.

The Tribunal's Decision

17. The Tribunal noted that, as stated in R v Hayward and others [2001] EWCA Crim 168 ("Hayward"), as (substantially) approved on appeal by the House of Lords in the Jones matter, its discretion to continue with a hearing in the absence of a Respondent/defendant

> "…must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if a defendant is unrepresented.
>
> In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must take into account all of the circumstances of the case."

18. The Tribunal noted that this was not a case in which the usual test, of whether a Respondent had voluntarily absented himself from the hearing and thus waived the right to appear, could be applied. Whilst the Tribunal was satisfied that service had been effected as directed by the Tribunal, it could not be sure that the Respondent had, in fact, received notice of the proceedings and of the hearing date.

19. However, there could be no doubt that the Respondent was well aware that there were serious matters under investigation, and which had not been resolved, by the time he had ceased his engagement with the Applicant. The Tribunal was satisfied that a Respondent in such a position should make enquiries and maintain contact with the regulator, as part of a solicitor's duty to co-operate with the regulator. The Tribunal noted that in the Adeogba case, this point had been stressed by the Court of Appeal. At paragraph 20 of that Judgment, it was stated:

> "… there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."

20. The Tribunal noted that the methods of tracing and contacting a Respondent were developing rapidly, in this era of social media such as LinkedIn and Facebook. It may be that in appropriate cases in the future the Tribunal would permit service of proceedings e.g. by text message. The methods approved by the Tribunal in the

present case remained effective and appropriate and the Tribunal noted that even if the Respondent did not personally see the advertisements, they may well have been seen by his friends and acquaintances who could have drawn them to his attention.

21. The Tribunal had seen nothing from the Respondent which indicated that if the hearing were adjourned he would attend or arrange representation. There was nothing to suggest the Respondent was unwell and there was no application to adjourn the hearing. The Tribunal recognised the public interest in proceeding with reasonable expedition, particularly given that the allegations in this case were serious.

22. In all of the circumstances of this case, and particularly given the exhortation in the recent case of Adeogba to proceed unless there was good reason not to do so, and having considered carefully the proper exercise of its discretion, the Tribunal was satisfied that it was fair and proportionate to proceed with the hearing in the absence of the Respondent. The Tribunal noted that it was stated in the Hayward case:

> "If the judge decided that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits…"

Factual Background

23. The Respondent was born in 1970 and was admitted to the Roll of Solicitors in 2006. The Respondent's last known address in the UK was in Ilford, Essex, but it was understood that he was now living overseas.

24. The Respondent practised on his own account at Benn Cameron Solicitors, from offices at 8 Glenburnie Road, Tooting, London SW1 7PJ ("BC Solicitors") and subsequently as Lambeth Solicitors from offices at 102 Acker Lane, Brixton, London SW2 5QN ("Lambeth Solicitors").

25. On 11 January 2012 and 16 February 2012 respectively, the Forensic Investigation Department of the SRA commenced an investigation of each of those firms, and produced a report dated 2 August 2012, with appendices ("the Report"). The Investigation Officer ("IO") met with the Respondent on 16 February 2012 and 2 May 2012. A copy of the transcript of the meeting on 2 May 2012 was exhibited to the Report.

26. The Applicant's records showed that BC Solicitors commenced trading on 17 August 2008 and closed on 30 September 2009. Lambeth Solicitors commenced trading on 27 September 2010 with the Respondent practising on his own account until 19 June 2012, when the firm changed to a partnership. It was understood that the Respondent left Lambeth Solicitors on or about 17 July 2012.

Allegations 1.1 to 1.5

27. As the sole principal of BC Solicitors and, in the relevant period, as the sole principal of Lambeth Solicitors, the Respondent was obliged to ensure compliance with the SAR 1998 and subsequently AR 2011. The Report identified a number of breaches of the relevant Accounts Rules, set out in the Report.

28. The Respondent opened two office bank accounts after BC Solicitors closed, one with Lloyds TSB and one with Santander UK. The Lloyds TSB account was in the name "Benn Cameron Solicitors" and was noted as a "Business Extra" account. The Santander account was in the name "Benn Cameron Solicitors". Neither included the words "client account", or any other indication that the accounts may contain client money, in their title.

29. In or around November 2009, just over a month after BC Solicitors closed, the Respondent began acting for the seller in a conveyancing transaction. The BC Solicitors Lloyds TSB account statements contained only transactions which related to that particular conveyancing matter. The Respondent told the IO that he opened this account specifically for the conveyancing matter, as he had already closed the BC Solicitors account with NatWest. In the interview with the IO on 2 May 2012, the Respondent accepted that he had operated the Santander account as both an office and client account, and that it had held client money.

30. On 30 November 2009, the Respondent received the sum of £15,500 in respect of the deposit from the purchaser's solicitors into the Lloyds TSB account. Subsequently, on 14 December 2009, the sum of £139,500 was received into the account in respect of the balance of the purchase price.

31. It was recorded in the Report that the Respondent informed the IO that he had been told by Lloyds TSB that the account had to be closed and for that reason he opened the account with Santander. A bank draft in the total sum of £144,040 was obtained on 7 January 2010 from Lloyds TSB and the account was noted as closed on 14 January 2010. On 18 February 2010 the sum of £144,040 was paid into the Santander account, this being the opening transaction on the account. The Santander account was closed on 4 October 2011.

Sale of 122 C Street, London

32. As indicated above, the Respondent had conduct of a conveyancing transaction in relation to the sale of 122 C Street, London, after the closure of BC Solicitors (and before Lambeth Solicitors began trading).

33. The Respondent received the total sum of £155,000, being the proceeds of sale of the property; £15,500 of the sum was in respect of the deposit. £144,040 of those total funds were transferred out of the Santander account in various amounts and on various dates, including payments made when the Respondent was aware that the purchaser's solicitors had not received an executed Deed of Transfer in form TR1. The payment out of the £144,040 created a minimum cash shortage in that sum, which shortage existed as at 31 December 2011.

34. By letter dated 2 July 2012 the IO asked the Respondent for his comments in relation to the cash shortage. In his letter to the IO of 13 July 2012 the Respondent did not agree that there was a shortage but did not address the circumstances in which funds had been released from the account. The Respondent further stated that he no longer had the file relating to this matter as it had been destroyed by his former office landlord. The Respondent further stated that the firm's books and records had been destroyed. As a result, the only available records to show how the £144,040 had been disbursed were bank statements, which were obtained from the bank.

35. From the documents obtained from the bank, the IO prepared a spreadsheet showing the payments out from the accounts. With the exception of two lodgements, in the sums of £2,870 and £370, the withdrawals from the Santander account were drawn from the proceeds of sale of 122 C Street. The withdrawals set out on the spreadsheet, based on the bank statements, showed that withdrawals were made from the Lloyds TSB account from the deposit amount of £15,500 from 8 to 18 December 2009. Withdrawals from the Santander account were made in the period 1 to 30 March 2010, in varying amounts.

36. In the interview with the IO on 2 May 2012 the Respondent conceded that some of the payments were for personal expenses and some were cash withdrawals for his personal use. The Respondent told the IO that he had agreed with his client, Mr C, that he would charge £28,000 for the conveyancing matter; the implication was that he believed he was entitled to £28,000 of the sum received for the purchase. There was no record of a bill in that sum being delivered to Mr C.

37. The IO recorded that there were a total of 55 cash withdrawals from the Santander account, totalling £2,399.78 and 49 card payments totalling £3,663.20. The Respondent acknowledged to the IO that he had benefitted from the cash withdrawals and card payments (which totalled £6,062.98). It was not possible for the IO to determine the total sum from the sale proceeds that the Respondent used for his personal benefit.

38. The Respondent told the IO that some payments from the Santander account were made to Mr C or on his instruction. These sums were: (i) £3,875 to estate agents; (ii) £100,000 to Mr C on 30 March 2010; (iii) £8,000 to Ms M on 15 December 2009 and (iv) £20,000 to Ms M on 18 March 2010. Mr C subsequently confirmed that he had received the sum of £110,000 from the Respondent; it was not known when the additional £10,000 (above the sum paid at (ii) above) had been paid. It had not been possible to trace the actual recipients of the funds at (iii) and (iv) above.

Allegations 1.6 and 1.7

39. The Report recorded that the IO asked the Respondent, on 16 February 2012 (at the commencement of the investigation), to produce five client files and the books and records of BC Solicitors. That request was followed up with a letter dated 17 February 2012.

40. In an email to the IO dated 28 February 2012, in response to that request, the Respondent wrote:

> "I would like to inform you that all records for [BC Solicitors] including the files were kept at the Sameday Office Ltd ("Sameday"), Olympic House in Ilford. We had an agreement with Sameday for which we were paying rent. Please find attached evidence of the same.
>
> Unfortunately, Sameday have cleared the office without our consent and without giving notice. Consequently, all the records and files for [BC Solicitors] have been destroyed by Sameday. We were not aware that this will occur. Please find attached the email that we received from Sameday which I have forwarded to you separately. At present we are contemplating taking legal action against Sameday for their unreasonable conduct.
>
> In addition, [BC Solicitors] account records have all been disposed by Sameday as they were kept together. However, in order to facilitate you expediting this matter, we would be happy to forward to you the records held by the accountant for [BC Solicitors]…"

41. A receipt for £564.76 from Mr BD for an office at Olympic House, dated 27 September 2010, indicated that Sameday Office Space Ltd provided serviced office accommodation. A letter from the owner/manager of Sameday, Mr RG, to the Respondent dated 17 February 2012, read:

> "… Regarding files, a person from the solicitors you were associated with came, sifted through them, took whatever he considered relevant. After 12 months, as is our policy, remaining papers were disposed of as was anything else in the office.
>
> Our accountant is off today, but from my checking of the records it would seem the amount outstanding is £635.39…"

42. The Report recorded that the IO's discussion with Sameday confirmed that the company provided serviced offices, not storage facilities. Records of Sameday shown to the IO indicated that the Respondent, under the trading name "Wedgewood Lawson", which was subsequently changed to Lambeth Solicitors, occupied suite 313 of Olympic House from 1 June 2010 and had "left without notice" on 30 September 2010. Sameday confirmed that they had disposed of items left in suite 313 as the company was not in a position to store goods and needed to clear the office for other tenants. The Respondent insisted to the IO that he had abandoned the office and that Sameday had destroyed his files and records without his authority.

Allegation 1.8

43. By letter dated 31 October 2012 the then partners of Lambeth Solicitors (Mr BA and Mr RY) wrote to the SRA seeking a three month extension of time to deliver the Accountants Report for the period 1 May 2011 to 30 April 2012 relating to Lambeth Solicitors. The letter stated that Lambeth Solicitors, which had previously been a sole practice run by the Respondent, had become a partnership on 20 June 2012; at that date Mr BA became a partner with Mr RY joining the partnership on 5 July 2012. The Respondent ceased to be a partner of Lambeth Solicitors on 17 July 2012 and had ceased to have contact with the partners of the firm. The firm had instructed

accountants to prepare the firm's accounts in early October 2012 and to enquire when the report was due. The letter from Lambeth Solicitors stated that on 30 October 2012 they had been informed by the accountants, B Co, that the due date for the accountant's report was 31 October 2012 and that they would be unable to prepare the report by that date as the consent of the Respondent was required.

44. A letter from Lambeth Solicitors to the Respondent dated 1 November 2012 recorded that the partners had tried to contact the Respondent by telephone but had not been able to reach him. The letter asked the Respondent to contact Mr B of B Co to arrange to sign the necessary documents. On 10 December 2012 Lambeth Solicitors sent an email to the Respondent asking him urgently to contact the accountants to give the necessary authority. A further email on 13 December 2012 reiterated that the matter was urgent.

45. On 12 April 2013 the Applicant wrote to the Respondent at the address in Ilford, which was his last known address, stating that Lambeth Solicitors had been in contact with the Applicant and asking the Respondent to contact the Applicant to discuss the position.

46. The Respondent did not take the necessary steps to authorise the report, thus leaving the partners in Lambeth Solicitors in difficulties. The report was not submitted within the required period.

Allegation 1.9

47. The Respondent employed Mr RBD (otherwise Mr BD) as a caseworker at BC Solicitors in 2009; as a caseworker, Mr RBD was under the supervision of the Respondent.

48. On 21 October 2013 Mr RBD was convicted at Southwark Crown Court on two counts of providing immigration advice when not qualified to do so.

Allegation 1.10

49. On 2 December 2009 a County Court Judgment was entered against the Respondent at Wandsworth County Court in the sum of £3,817 plus Court fees of £143.

50. In a letter from the Applicant to the Respondent on 24 April 2015, the Applicant recorded that the Respondent had failed to pay. There had been no response to that letter.

Allegation 1.11

51. The Respondent represented a Mr SS or TMP Ltd in a civil matter in or around July/August 2012 until November 2012, i.e. including the time after the Respondent had left Lambeth Solicitors.

52. Mr SS signed a client's form of authority on 6 August 2012 which purported to instruct Lambeth Solicitors to represent him in the civil proceedings. The authority read:

> "I confirm that I have instructed [the Respondent] of Lambeth Solicitors to deal with any authorities for the good conduct of my matter and to obtain documents relevant to my case."

53. On 17 September 2012 the Respondent raised what appeared to be an invoice, headed "For work to date; professional services of [the Respondent] (Solicitor)" and referring to the matter of Mr SS against D Ltd and others. The invoice was for the total sum of £4,750 of which £3,500 had been paid to date by the client and noted that payment was to be made by cheque payable to the Respondent by BACs transfer to an account in his name.

54. On 14 September 2012 an email was sent by K Solicitors to the Applicant's "red alert" email address stating,

> "[The Respondent] continues to write letters to my firm for a purported client of his.
> He does not work from a firm and uses his residential address…"

55. The Applicant was supplied with a letter dated 11 September 2012 to K Solicitors about the litigation and referring to an application for an injunction. The letter was in the name of the Respondent and gave the address in Ilford as the correspondence address. The Applicant was also supplied with a copy of an application notice dated 10 September 2012. On this application notice, the Respondent signed the statement of truth giving as his position or office held "Solicitor" and giving the address in Ilford as the address for service.

Allegation 1.12

56. This allegation was related to the matter of 122 C Street, as set out at paragraphs 32 to 38 above.

57. As the Respondent indicated to the IO that the file had been destroyed, the IO obtained and reviewed the purchaser's solicitor's file.

58. RWFC LLP acted for the purchaser in the transaction, Mr S. Their file contained a Memorandum of Sale, dated 4 November 2009, which showed that a sale had been agreed between Mr C and Mr S for the property at 122 C Street for the sum of £155,000.

59. RWFC's file contained six items of correspondence from the correspondence dating from 19 November to 9 December 2009 i.e. after the firm of BC Solicitors had closed. These items were on the headed paper of BC Solicitors.

60. The Respondent informed the IO that he had handled the transaction under the style of BC Solicitors because the matter had commenced prior to the closure of the firm, and that he had consulted his insurers who confirmed he had indemnity cover; he had therefore been happy to continue.

61. The transaction completed on 14 December 2009. On that date, RWFC wrote to the Respondent stating, amongst other things,

> "The balance of completion monies are being remit (sic) to you by way of telegraphic transfer but these are sent on the basis that Form TR1 duly executed will be handed over at completion."

62. In a discussion with the IO on 6 March 2012, a solicitor at RWFC stated that he had not received an executed Transfer Deed from the Respondent. Correspondence between December 2009 and January 2010 showed the attempts made by RWFC to obtain the executed Transfer Deed. This included letters on 4, 7 and 25 January 2010. By letter dated 9 February 2010, RWFC contacted the Applicant in relation to the Respondent's failure to deliver up the Transfer Deed. The matter was passed to solicitors, who entered into correspondence with the Respondent at Lambeth Solicitors and via his email address. Proceedings were issued against Mr C and the Respondent by Mr S; it was understood that the Claim was issued on or about 9 March 2012. A Defence signed by Mr C, dated 21 April 2012, contained a statement that Mr C had received £110,000 from the Respondent. It was understood that the Respondent did not file an Acknowledgement of Service form, or a Defence to the Claim. The Particulars of Claim stated that the contracts for the sale had been exchanged on 23 November 2009, using the Law Society's Formula B. It was not known on what basis the deposit was held by the Respondent i.e. whether as agent or as stakeholder.

63. In response to enquiries by the IO about the steps taken by the Respondent to provide an executed Transfer Deed, the Respondent stated in his letter of 13 July 2012, amongst other things:

> "From memory, I do note that we originally received a TR1 from Mr C, as this was communicated to me [Ms M]. On hearing that [RWFC] did not receive a copy, [Ms M] and I tried contacting Mr C by phone and text. He was not responding to either call and I assume that he was trying to avoid my calls, particularly as he received the proceeds of sale. [Ms M] did return to Mauritius, I believe, in December 2009 and made attempts to contact him but he was never in at this address I was told.
>
> Up until March 2010, we tried contacting him either by phone and letters. [Ms M] was unable to reach him even when she was in Mauritius. I believe also I met the buyer [Mr S] on two occasions. One was in late March 2010, where he came to my office and he told me he is planning to go to Mauritius to see Mr C to get another TR1. I gave him a blank TR1 so that he could speak to Mr C to sign it.
>
> I spoke to [Mr S] again in late September 2010, I believe, and advised him legal action was the best way forward. I and [Ms M] did the best we could to get another TR1 but Mr C was simply ignoring my request."

Witnesses

64. Mr Michael Shields, investigation team manager at the SRA, confirmed that the contents of the forensic investigation report dated 2 August 2012 was true to the best of his knowledge, information and belief. The report had been prepared by a forensic investigation officer, Ms Kathleen Beenham, who had left the employment of the

SRA over two years ago. Mr Shields told the Tribunal that he had been Ms Beenham's manager at all relevant times. He had read the report and the background material and having reviewed the papers believed the report to be true.

Findings of Fact and Law

65. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal noted that as the Respondent had not made any admissions, all the allegations should be treated as denied. The Tribunal further noted that in considering each allegation it should be careful to note any weaknesses in the prosecution case.

66. **Allegation 1.1 - Misappropriated clients' monies, contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code")**

66.1 It was submitted by the Applicant that this allegation was the most serious made in this case. The factual background to this allegation is set out at paragraphs 30 to 38 above.

66.2 This allegation related to the Respondent's use of the monies paid to him in the period November and December 2009, after the closure of BC Solicitors, in respect of the sale by Mr C of 122 C Street. The monies were received in two tranches; £15,500 on 30 November 2009 by way of deposit and a further £139,500 on 14 December 2009, being the balance of the sale price of £155,000.

66.3 The Tribunal had no information about whether the deposit was held as agent for the vendor or as stakeholder; if the former, the Respondent may have had authority from the vendor, Mr C, to disburse all or part of the monies. The Tribunal noted and found that £1,250 of the deposit monies were withdrawn from the Lloyds TSB account in two tranches, on 8 and 11 December 2009. Thereafter, the deposit monies were, in effect, mixed with the completion monies. However, the Tribunal could not be satisfied that with regard to the sum of £15,500 the Respondent had misappropriated that sum and/or utilised it in a way which was not permitted. It was clearly the case that in the course of the civil litigation brought by Mr S against Mr C and the Respondent, Mr C had indicated that the Respondent had acted outside the scope of his authority but there was insufficient cogent evidence to rule out the possibility that up to £15,500 may have been used with the authority and/or on the instructions of Mr C.

66.4 The Tribunal accepted that £110,000 had been sent to Mr C by the Respondent, although the precise mechanism by which the full £110,000 was transferred was unclear; the bank records showed £100,000 was transferred on 30 March 2010. The bank statements showed transfers to Ms M totalling £28,000; it was not clear if the further £10,000 to Mr C was taken from this sum. The concerns about whether the Respondent should have sent any funds to Mr C when he was aware there was no executed TR1 are addressed below, in relation to allegation 1.12.

66.5 The Tribunal had no particular concerns about the payment to the estate agents of £3,875. This was a normal disbursement in a conveyancing transaction and the amount paid matched the amount on the estate agent's invoice. Of course, there were concerns about whether the Respondent should have carried out this transaction at all, but those concerns are dealt with in relation to allegation 1.11 below.

66.6 Of the total sum of £155,000, the Tribunal was most concerned (in the context of this allegation) with what had become of the balance of £41, 125.

66.7 The Tribunal noted that the Respondent had asserted that he had agreed costs with Mr C in the sum of £28,000. Again, the question of whether he was entitled to act in the transaction and bill for it is addressed below in allegation 1.11. Even if the Respondent had agreed such costs, the Respondent was not entitled to access that sum unless and until he had delivered a bill of costs or other notification of costs to his client. There was nothing within the papers, including the transcript of the Respondent's interview with the IO, to indicate that he had sent a bill of costs to Mr C at any point; indeed, he had not asserted that he had done so.

66.8 In any event, the Tribunal was satisfied that costs of £28,000 were incredible and unrealistic for a conveyancing transaction for a property which was sold for £155,000. The Respondent had asserted that the transaction was complex for the following reasons:

66.8.1 a squatter had been living in the property for twelve years;
66.8.2 the property had an illegal flat conversion;
66.8.3 the sitting tenant paid a nominal rent; and
66.8.4 the sitting tenant did not allow anyone into the property.

The Respondent asserted that as a result of these factors, the flat was nearly impossible to sell. However, a letter on BC Solicitors notepaper to RWFC dated 19 November 2009 indicated that there was a "contract race" and stated, "This will proceed as a first come first serve exchange. The first who will legally exchange the contract shall have the property." In any event, there was nothing to suggest that even if the property had been difficult to market there were sufficiently complex legal issues which would justify costs as large as £28,000.

66.9 There was no doubt, therefore, that the Respondent had no entitlement to the sum of £28,000 in relation to his costs. Indeed, as there was nothing to suggest a proper bill of costs had been delivered, the Respondent was not entitled to use any of the funds for his own benefit.

66.10 The Tribunal noted that it had not been possible for the IO to identify exactly what some of the payments had been for. However, it was clear that there had been a total of 49 card payments, totalling £3,663.20, in the period from 2 March to 22 March 2010. A number of these appeared to be to high street retailers e.g. Primark, Sainsbury, Tesco and Waterstones. In addition, there had been 55 cash withdrawals, in the period from 1 March to 25 March 2010, totalling £2,399.20. The Respondent had accepted in interview with the IO that he had used these withdrawals for his own benefit.

66.11 The Tribunal was satisfied that all of the proceeds of sale, save for the sum remitted to Mr C, (i.e. a total of £45,000) had been misappropriated and utilised improperly. It appeared from the spreadsheet prepared by the IO that apart from the funds sent to Mr C (on 30 March 2010), funds had been used to pay bills, a number of which appeared to be in relation to individuals e.g. Ms HZ received £1,500 on 10 March and £500 on 22 March 2010, both of which were described as "bill payment".

66.12 The Tribunal was satisfied that the allegation of misappropriation of client funds had been proved. Such conduct was clearly lacking in integrity, as the Respondent had no reasonable ground to believe he was entitled to use the money as he did. Further, the use of money which was due to Mr C (in respect of the sale of the property, and subject to the provision of the TR1) was not in the best interests of Mr C. The Respondent's conduct was such as would tend to diminish, rather than maintain, the trust the public placed in him and the profession. The Tribunal was satisfied to the required standard that this allegation had been proved in its entirety.

67. **Allegation 1.2 - Failed to ensure compliance with the Accounts Rules, contrary to Rule 6 of the Solicitors Accounts Rules 1998 ("SAR 1998")**

67.1 The factual background to this allegation was as set out at paragraphs 27 to 38 above. Whilst the Respondent had not admitted this allegation, he had admitted some of the underlying facts in the course of the Applicant's investigation.

67.2 It was very clear on the evidence in the Report and its annexures that the Respondent had failed to ensure compliance with the relevant Accounts Rules. In particular, he had allowed client and office money to be mixed in the accounts opened and operated after the closure of BC Solicitors. The misappropriation of client funds which occurred, and which is set out at paragraph 66 above, was clearly a breach of the Accounts Rules. The Respondent was the only person operating the accounts with Lloyds TSB and/or Santander and was solely responsible for the breaches which occurred. It was his obligation to ensure compliance with the relevant Accounts Rules.

67.3 The Tribunal was satisfied to the required standard that this allegation had been proved to the required standard.

68. **Allegation 1.3 - Failed to remedy the accounts breaches promptly upon discovery, contrary to Rule 7.1 of the SRA Accounts Rules 2011 ("AR 2011")**

68.1 The factual background to this allegation is set out at paragraphs 27 to 38 above.

68.2 The Tribunal was satisfied on the evidence presented that a minimum cash shortage existed of £144,040 from at least 30 March 2010 and was not rectified by 31 December 2011, or later. The shortage had arisen as the Respondent had released £144,040 of the proceeds of sale after he was aware that the purchaser had not received the TR1.

68.3 There was no doubt that the Respondent had failed to rectify the shortage on client account within a reasonable time, or at all. This allegation had been proved to the required standard.

69. **Allegation 1.4 - Failed to open and maintain a client account, contrary to Rule 14 of the SAR 1998**

69.1 The factual background to this allegation was as set out at paragraphs 27 to 38 above.

69.2 It was clear from the documents, in particular the copy bank statements, that neither of the accounts operated by the Respondent from November 2009 to March 2010 were specified to be client accounts; neither had the title "client account" as part of the title. Further, the Respondent had accepted in interview with the IO, as reported in the Report, that he had operated the accounts as a combined office and client account. This was clearly in breach of Rule 14 SAR 1998 and this allegation had been proved to the required standard.

70. **Allegation 1.5 - Failed to pay client money into a client bank account, contrary to Rule 15 of the SAR 1998**

70.1 Again, the factual background to this allegation was as set out at paragraphs 27 to 38 above.

70.2 This allegation was closely linked to allegation 1.4. The sale proceeds of 122 C Street were client money and should have been paid into a client account. Instead, they were paid into an account which was not a client account and later transferred to another account which was neither named nor operated as a client account. This allegation had been proved to the required standard.

71. **Allegation 1.6 - Failed to produce records and documents to the SRA, contrary to Rule 23 of the SAR 1998**

71.1 This allegation, and allegation 1.7, were based on the factual matters set out at paragraphs 39 to 42 above. As the facts overlap, the Tribunal's main findings on the facts will be set out in this section, with additional matters concerning allegation 1.7 at paragraph 72 below.

71.2 The Tribunal was satisfied that during the investigation by the IO, there was a request to the Respondent to produce five specified files together with the accounts and other records of BC Solicitors, which firm had ceased trading on or about 30 September 2009. The Tribunal was satisfied on the documents and evidence presented that in the period from about 1 June 2010 to 30 September 2010 the Respondent had an arrangement with Sameday for the use of Suite 313, Olympic House, in Ilford, Essex. This had not been the address of BC Solicitors, nor was it used by Lambeth Solicitors.

71.3 The Tribunal was satisfied on the evidence that the Respondent had left the premises without notice to the landlord, Sameday, and at a time when he owed around £635. The Tribunal was also satisfied that Sameday provided serviced office accommodation, not storage facilities. It also noted that there was a receipt indicating that Mr BD had paid £564.76 to Sameday on 27 September 2010 and that there was evidence from Sameday that someone, possibly Mr BD, had attended the offices and removed certain papers. The letter to the Respondent from Sameday dated

17 February 2012, which the Respondent produced to the Applicant, stated that after 12 months the remaining papers and items had been disposed of.

71.4 The Tribunal noted that the Respondent had complained that Sameday had disposed of the papers without his authority and without his knowledge. However, the Tribunal was satisfied that the Respondent had responsibility for safeguarding the papers and records of BC Solicitors, a firm of which he had been the sole principal. It was clearly the case that the Respondent had left the papers in a serviced office, which had been left by him without formal notice to Sameday and at a time when he owed Sameday money. Whilst the precise dates were not clear, it appeared that the disposal by Sameday had not been precipitous; the letter from Sameday referred to a period of 12 months and the need to clear the premises for new tenants. In any event, the Respondent had not arranged for secure storage of the papers and records of BC Solicitors.

71.5 As set out below, the Tribunal found that the Respondent had failed to safeguard the records and documents relating to his practice. As a result of that, he had been unable to produce the documents requested by the IO. The Tribunal was not satisfied that it was appropriate to find this allegation proved to the required standard as it was impossible for the Respondent to comply with the request because of the failure found in relation to allegation 1.7. This allegation was not proved.

72. **Allegation 1.7 - Failed to safeguard records and documents relating to his practice, contrary to:**

1.7.1 in the period up to 5 October 2011, Rules 1.04 and 1.06 of the 2007 Code;

1.7.2 in the period from 6 October 2011, any or Principles 4, 6 and 8 of the SRA Principles 2011 ("the Principles")

72.1 This allegation was the other side of the coin to allegation 1.6.

72.2 As set out at paragraph 71, the Tribunal was satisfied that the Respondent had an obligation to safeguard the documents and records of his practice. The Respondent had failed to do so. He had left papers in serviced office accommodation which he had left in late September 2010. Someone else, possibly Mr BD, had been able to remove some papers.

72.3 The Respondent was required to safeguard all records, papers, client matter files and financial accounts and other documents relating to his practice. The Tribunal found that in leaving material at his former offices, and having left without notice, he failed to safeguard his records and documents, which resulted in the same being destroyed by his former landlord. The Respondent had not made arrangements for the secure storage of the documents relating to his practise. Whilst he had not authorised the removal or destruction of the records, he had failed to take any or any adequate steps to safeguard essential records.

72.4 The Tribunal found that this failure was clearly not in the best interests of clients for their files and records to be lost or destroyed and allowing this state of affairs was conduct which would tend to diminish the trust the public would place in the

Respondent and the provision of legal services. Further, from 6 October 2011, the Respondent had failed to run his practice in accordance with proper risk and good governance principles.

72.5 The Tribunal was satisfied that this allegation had been proved to the required standard.

73. **Allegation 1.8 - Failed to deliver an Accountants' Report within the required time period, contrary to Rule 32 of the AR 2011**

73.1 The factual matters underlying this allegation are set out at paragraphs 43 to 46 above.

73.2 The Tribunal was satisfied on the evidence presented that the Respondent had failed to deliver an accountants' report for Lambeth Solicitors within the period required, or at all. Indeed, the Respondent had obstructed the partners of Lambeth Solicitors in their attempts to file the necessary report. The Respondent had failed to respond to communications from his former partners by telephone or correspondence from the firm or the Applicant seeking his co-operation. The report had not been delivered and the Tribunal was satisfied to the required standard that this allegation had been proved.

74. **Allegation 1.9 - Failed to adequately supervise an unadmitted employee, contrary to Rules 1.04, 1.06 and 5.01(a), 5.03(1) and 5.03(3) of the 2007 Code**

74.1 The factual background to this allegation is set out at paragraphs 47 to 48 above.

74.2 It was submitted on behalf of the Applicant that the Respondent failed to exercise adequate or appropriate supervision over Mr RBD and that this failure of supervision afforded Mr RBD the opportunity to provide immigration advice when he was not qualified to do so.

74.3 The Tribunal accepted that there was some evidence linking Mr RBD with the Respondent's practice. It also noted and accepted that Mr RBD had been convicted on 21 October 2013 of two offences of providing immigration advice when he was not qualified to do so. However, there was insufficient evidence before the Tribunal to support a finding that these offences had been committed whilst Mr RBD had been supervised by the Respondent. This allegation had not been proved.

75. **Allegation 1.10 - Failed to comply with a Judgment of the County Court dated 2 December 2009, contrary to Rules 1.01 and 1.06 of the 2007 Code**

75.1 The factual background to this allegation is set out at paragraphs 49 to 50 above.

75.2 The Tribunal noted that on 2 December 2009 Judgment had been given against the Respondent in the sum of £3,817 plus costs of £143 at Wandsworth County Court. The Judgment noted on its face that the Respondent had failed to comply with orders dated 13 October and 10 November 2009 and that the Respondent's counterclaim had been struck out.

75.3 Whilst there was correspondence from the Applicant which referred to the Judgment being unsatisfied, there was no evidence e.g. from the creditor or from the Register of County Court Judgments to prove to the required standard that the Judgment had not been paid. The Tribunal could not find to the higher standard of proof that this allegation had been proved, and accordingly it was found not proved.

76. **Allegation 1.11 - Purported to carry on practice as a solicitor when he was not entitled to do so, contrary to any of Principles 2, 4, 6 and 7 of the Principles and Rule 1 of the SRA Practice Framework Rules 2011 ("the Framework Rules")**

76.1 The factual background to this allegation is set out at paragraphs 51 to 55 above.

76.2 The Applicant submitted that although the Respondent may have had a Practising Certificate, he was not authorised to act as a sole practitioner and had left Lambeth Solicitors by the relevant time.

76.3 The form of authority signed by Mr SS was dated 6 August 2012, which was more than a week after the Respondent had left Lambeth Solicitors. He had issued an invoice on 17 September 2012 for the sum of £4,750 for work in connection with litigation, which is a reserved activity. On 11 September 2012 the Respondent had written to K Solicitors in connection with litigation, and an application for an injunction, on 11 September 2012 and on 10 September 2012 had signed an application for an injunction. This was clearly conducting litigation. The Respondent had given his home address in Ilford as the address for service and had signed the documentation as a solicitor.

76.4 The Tribunal was satisfied that the Respondent was not authorised to act as a sole practitioner as at August/September 2012 and he no longer worked with or for Lambeth Solicitors by that time. There could be no doubt that the Respondent had purported to act as a solicitor when he was not entitled to do so. Such conduct was in breach of the Framework Rules. It also amounted in these circumstances to conduct which showed a lack of integrity as the Respondent knew he had left Lambeth Solicitors yet obtained a form of authority purporting to be for that firm to act. This conduct was not in the best interests of his client, Mr SS, and was such as would tend to diminish rather than maintain the trust the public would place in him or the provision of legal services. Further, the Respondent had breached his legal and regulatory obligations.

76.5 The Tribunal was satisfied to the required standard that this allegation had been proved in full.

77. **Allegation 1.12 - Failed to fulfil obligations to a third party, in that he failed to deliver an executed Transfer Deed ("Form TF1"), contrary to Rules 1.02, 1.05 and 1.06 of the 2007 Code.**

77.1 The factual background to this allegation is set out at paragraphs 56 to 63 above.

77.2 The Tribunal noted and found that notwithstanding the Respondent's indication that the transaction commenced prior to the closure of BC Solicitors, the Memorandum of

Sale was dated 4 November 2009, just over a month after BC Solicitors closed on or about 30 September 2009.

77.3 The Tribunal noted that as the Respondent was no longer trading as BC Solicitors and had not yet established Lambeth Solicitors, his status to be able to undertake any conveyancing work (which was a reserved activity) in this period was unclear. However, it proceeded on the assumption that the Respondent had some insurance in place.

77.4 The Tribunal found that the Respondent had been obliged to deliver to the purchaser's solicitors a properly executed TR1 on completion. Completion took place on 14 December 2009. The Tribunal noted that it had been asserted on behalf of Mr S in the civil litigation proceedings against Mr C and the Respondent that contracts had been exchanged under the Law Society's Formula B. It also noted that Mr S's position was that the Respondent had completed and signed completion requisitions on title and that it was an express or implied term that he undertook to provide a signed Transfer Deed to the purchaser on completion. Further, the Tribunal noted and found that the letter from RWFC on 14 December 2009 stated that the balance of the completion monies were being sent on the basis that the TR1, duly executed, would be handed over on completion.

77.5 The Tribunal noted that in his letter to the Applicant of 13 July 2012 the Respondent had referred to recalling that there had been an executed TR1 on the file. However, even if the Respondent had believed that the TR1 had been sent to the purchaser's solicitors, it was clear from their letter of 4 January 2010 that it had not been received. As at that point, the Respondent still held £144,040 of the purchase price in his bank account.

77.6 Even giving the Respondent the benefit of the doubt, and accepting that he believed the TR1 had been despatched on or about 14 December 2009, there could be no doubt that by about 4 January 2010 (the letter of that date being noted as sent by fax) the Respondent knew that the TR1 had not arrived. No TR1 was in fact provided to the purchaser either at that time or subsequently. The Respondent had thus failed to fulfil his obligation to deliver an executed TR1.

77.7 The Tribunal noted the various steps the Respondent stated he had taken to obtain a fresh TR1 from Mr C. However, he had disbursed the sale proceeds, including sending £110,000 to Mr C on or before 30 March 2010 without first obtaining an executed TR1 from Mr C. The Tribunal was satisfied that the Respondent should not have disbursed any of the proceeds of sale after becoming aware the TR1 had not been received by the purchaser's solicitors.

77.8 In failing to deliver the executed Transfer Deed but in proceedings to disburse £144,040 when he was aware he had not delivered the Deed, the Respondent had shown a lack of integrity. He had failed to provide a good standard of service and his conduct would tend to 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 this allegation had been proved.

78. **Dishonesty was alleged in respect of allegation 1.1, but dishonesty was not an essential ingredient of the allegation.**

78.1 The factual background to this allegation is, as for allegation 1.1, set out at paragraphs 30 to 38 above.

78.2 In considering the allegation of dishonesty, the Tribunal had to consider the test for dishonesty set out in in Twinsectra v Yardley [2002] UKHL ("Twinsectra") and its findings in relation to allegation 1.1.

78.3 It was submitted for the Applicant that in withdrawing money from the bank account in the way described above, the Respondent utilised and misappropriated client funds for the benefit of himself and/or third parties and acted dishonestly by the ordinary standards of reasonable and honest people. Further, it was submitted that the Respondent knew that his conduct in utilising and misappropriating client funds was dishonest by the ordinary standards of reasonable and honest people.

78.4 The Tribunal was satisfied that the Respondent had caused withdrawals to be made from the sale proceeds of 122 C Street when a) he knew that the TR1 had not been provided to the purchaser's solicitors and b) he had misappropriated at least part of the proceeds for his own benefit. The Tribunal determined that all but the £110,000 sent to Mr C had been used improperly by or for the Respondent.

78.5 The Tribunal was satisfied to the required standard that in withdrawing money as described, the Respondent had used and misappropriated client funds he had acted dishonestly by the ordinary standards of reasonable and honest people. Further, the Tribunal was satisfied that the Respondent knew, after 4 January 2010 at the latest, that what he was doing was dishonest as he was using purchase funds when the TR1 had not been provided.

78.6 The Tribunal found this allegation of dishonesty proved to the highest standard.

Previous Disciplinary Matters

79. There were no previous disciplinary matters recorded against the Respondent.

Mitigation

80. The Respondent was not present and had not made any submissions with regard to the allegations or in mitigation.

Sanction

81. The Tribunal had regard to its Guidance Note on Sanction (December 2015), to all of the facts of the case and the submissions of the parties.

82. The Tribunal noted that its fundamental function in determining sanction, as set out in Bolton v The Law Society [1994] 1 WLR 512 was to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. The Tribunal also noted in

Weston v Law Society [1998] The Times, 15th July, it was stated that the Solicitors Accounts Rules existed to afford the public the maximum protection against the improper and unauthorised use of their money and that there was a corresponding onerous obligation on solicitors to ensure that those rules were observed.

83. The Tribunal also noted that the guidance given in the case law, in particular in the matter of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma") made it clear that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances.

84. The Tribunal determined that as it had made a finding of dishonesty, there was no need to consider the sanctions at the lower end of the range of sanctions available and that the usual sanction was striking off the Roll.

85. The Tribunal considered whether there were any exceptional circumstances in this case. None had been advanced by this Respondent, who had avoided engagement in the proceedings, and the Tribunal could not find any indication of exceptional circumstances within the case papers. Indeed, the overall catalogue of proven breaches amounted to a masterclass in failure to comply with the basic requirements of practise as a solicitor. The breaches of the Accounts Rules were in themselves so serious that even without the finding of dishonesty an order striking off the Respondent might well have been appropriate.

Costs

86. Mr Goodwin for the Applicant made an application for the Respondent to pay the costs of the proceedings and submitted a costs schedule in the total sum of £34,767.84. This included investigation costs of £17,280 and disbursements, including enquiry agent's fees and advertising costs, totalling £2,603.04. Mr Goodwin submitted that as there was some uncertainty about the Respondent's whereabouts, it may not in fact be possible to enforce any order for costs, but the Applicant should be given the opportunity to do so.

87. The Tribunal considered the application carefully. At first glance, the costs may appear high for a case of this type. However, the investigation had been more complex than in some comparable cases as the Respondent's books and records had been destroyed, such that papers had to be obtained from third parties. The fact that the Respondent had failed to provide the Applicant with an effective address, such that he had avoided engagement with the proceedings, had added significantly to the costs. The Applicant had been obliged to take reasonable steps to try to trace him and had incurred over £2,200 in expenses in placing advertisements in an effort to draw the proceedings and hearing date to the attention of the Respondent.

88. The Tribunal wished to record that the presentation of this case had been refreshingly clear; thorough, yet not repetitive. Mr Goodwin was to be commended for his efficient and effective presentation of the papers and his appropriate and measured submissions.

89. In all of the circumstances, the Tribunal was satisfied that the costs as claimed were reasonable and proportionate. Further, as the Respondent had not provided any information regarding his financial circumstances, there was no reason either to reduce the costs award on the basis of the Respondent's means and there was no need to postpone enforcement. Whether the Applicant would be able to recover costs in this case was unclear but as it appeared from the enquiry agent's report that the Respondent had worked as a law lecturer in Mauritius within the last year or so it may be possible to trace him and enforce the costs order. The Respondent should pay the Applicant's costs assessed at £34,767.84.

Statement of Full Order

90. The Tribunal Ordered that the Respondent, RAJESH BABAJEE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £34,767.84.

Dated this 9th day of May 2016
On behalf of the Tribunal

D. Glass
Chairman