

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11489-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MOHAMMED ZAHIR UDDIN

Respondent

Before:

Mr A. G. Gibson (in the chair)

Mr P. Jones

Mr S. Marquez

Date of Hearing: 22 November 2016

Appearances

Shaun Moran, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:
 - 1.1 The Respondent abandoned his practice known as Your Right Solicitors Ltd on or about 24 November 2015 and in doing so, he breached any or all of Principles 2, 6, 7, 8 and 10 of the SRA Principles 2011.
 - 1.2 Between 1 January 2015 and 30 September 2015, the Respondent made 39 round sum transfers from client account to office account totalling £58,900, without proper explanation or justification in breach of any or all of:
 - 1.2.1 Principles 2, 7, 8 and 10 of the SRA Principles 2011;
 - 1.2.2 Rules 17.2, 17.3, 17.7 and 20.1(a) of the SRA Accounts Rules 2011 (“SAR 2011”)
 - 1.3 The Respondent failed to have specific accounting records as required by the SAR 2011 in that he:
 - Failed to produce or retain client ledgers for the period 2013/2014 and 2014/2015
 - Failed to carry out client account reconciliation exercises and failed to produce or retain Client Account Reconciliations statements;
 - Failed to produce or retain a central record of bills

in breach of Rules 29.2, 29.4, 29.9, 29.13, 29.15, 29.17 and 31.1 of the SAR 2011 and in breach of Principle 7 of the SRA Principles 2011.
 - 1.4 The Respondent retained office money in client account in breach of Rules 14.2, 17.9, 20.3 and 20.5 of the SAR 2011.
 - 1.5 The Respondent failed to remedy his SAR 2011 accounts rules breaches promptly upon discovery in breach of Rule 7.1 of the SAR 2011.

The further allegations against the Respondent contained within a Rule 7 Supplementary Statement dated 17 August 2016 were that:

 - 1.6 The Respondent made improper payments from the firm’s client account number 27****60 to his personal bank account with Sonali Bank Limited in Dhaka, Bangladesh in the sum of £20,000 on 19 November 2015 contrary to all, or alternatively any of Principles 1, 2, 6 and 10 of the SRA Principles 2011 and/or Rule 20.1 of the SAR 2011. It was alleged the Respondent had acted dishonestly.
 - 1.7 The Respondent provided misleading information to the SRA when informing the Investigation Officer that he had left his client invoices and ledgers for the year 2014/2015 with his former secretary Ms B and stating he had been unable to make contact with her, neither of which were correct or true, contrary to all, or alternatively

any of Principles 2, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011.

- 1.8 The Respondent advised Ms B to ignore the SRA's request to make contact with it, contrary to all, or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 and 10.7 of the SRA Code of Conduct 2011.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 26 February 2016 together with attached Rule 5 Statement and all exhibits
- Rule 7 Supplementary Statement dated 17 August 2016 together with all exhibits
- Advertisement in the Law Society's Gazette dated 3 October 2016
- Advertisement in The Mercury dated 21 September 2016
- Report from SIRS Europe dated 26 May 2016
- Applicant's Statement of Costs dated 21 November 2016

Service

3. The Respondent was not present and nor was he represented. He had not engaged with the disciplinary proceedings at all. At a Case Management Hearing on 8 June 2016 the Tribunal had been provided with a report from an enquiry agent, SIRS Europe, dated 26 May 2016 which indicated there had been unsuccessful attempts to try and trace the Respondent, who was now likely to be abroad. On that occasion that division of the Tribunal directed there be an Order for substituted service by way of an advertisement placed in the Law Society Gazette and a newspaper local to the Respondent's last known address.
4. The Tribunal had been provided with a copy of each of the advertisements in the Gazette dated 3 October 2016 and in a newspaper called The Mercury which was local to the Respondent's last known address dated 21 September 2016,. These advertisements complied with the requirements of Rules 10(1), 10(6) and Rule 12(1) of the Solicitors (Disciplinary Proceedings) Rules 2007. In light of this the Tribunal was satisfied that substituted service had been effective.

Proceeding in Absence

5. Mr Moran submitted there had been no contact from the Respondent and although the enquiry agents had traced an address given by him in Bangladesh, it had transpired on further enquiry that the address in Bangladesh was false. It was therefore not known

where the Respondent was and Mr Moran submitted the hearing should proceed in the Respondent's absence.

6. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had not engaged with these proceedings at all, indeed, it was not known where he was currently located. Enquiry agents had been appointed but had been unable to trace the Respondent. Whilst they had found an address for him in Bangladesh, when making enquiries with sources in Bangladesh, that address could not be identified. The report from the enquiry agent dated 26 May 2016 indicated the Respondent had used numerous addresses in the UK, few of which appeared to be genuine and that he had left a trail of bad debts behind him. The address in Bangladesh was not accurate and the Respondent could not be found. The Respondent had a duty to keep his regulator informed of any change of address but had failed to do so. In such circumstances, the Tribunal was satisfied the regulator had taken all reasonable steps to try and locate the Respondent but had been unable to do so. Proceedings had been served by substituted service and therefore the Respondent was deemed to be aware of the final hearing taking place. It was unlikely the Respondent would attend at a future postponed hearing.
7. These were serious allegations and the Tribunal was satisfied it was in the public interest to proceed with the hearing in the Respondent's absence so that matters could be concluded without any further delay.

Factual Background

8. The Respondent, born in July 1971, was admitted to the Roll of Solicitors on 15 May 2009, having undertaken the Qualified Lawyers Transfer Test on 2 October 2006. He did not hold a current practising certificate.
9. The Respondent was the owner and sole director of Your Right Solicitors Ltd of 1st Floor, 167 Cannon Street Road, London, E1 2LX ("the firm") which was intervened into on 26 November 2015.
10. An Investigation Officer ("IO") of the Solicitors Regulation Authority ("SRA") commenced a forensic investigation into the Respondent's firm on 14 October 2015 due to concerns in respect of business management and produced a Forensic Investigation Report dated 20 November 2015 ("the Report").

Allegation 1.1

11. On 23 November 2015, Mr R, a previous member of staff at the firm made a report to the SRA that the Respondent had gone missing. The SRA Supervisor made several calls to try and contact the Respondent. The calls to his primary number went straight to a mobile voicemail or the line was unclear. The Supervisor also attempted to contact the Respondent on the number the SRA held on record for him without any success.

12. The Supervisor then called the firm's Head Office and asked to speak to the Respondent. She spoke to the firm's trainee solicitor who informed her that the Respondent was missing, and that his laptop and firm's chequebook were also missing. The trainee solicitor confirmed nobody was supervising the firm in the Respondent's absence. The Respondent was the Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA") at the firm and the sole signatory to the client account.
13. Another Forensic Investigation Officer attended the firm's Head Office on 24 November 2015 and spoke to two members of staff who confirmed the Respondent had not been seen since the previous week. She found the office in some disarray and could not find the client account statements. She was told that clients had attended the firm seeking their files because there had been an issue with the Respondent.
14. On 25 November 2015, a SRA Adjudication Panel made a decision to intervene into the Respondent's firm. The intervention took place on 26 November 2015.

Allegation 1.2

15. The firm's bank statements showed that the Respondent made 39 round sum transfers from client to office bank account totalling £58,900 during the period 1 January 2015 to 30 September 2015. Examples of these were:
 - A client account to office account transfer of £2,000 on 26 June 2015 which followed the return of an unpaid cheque for £1,290.60 on the previous day (and consequent unauthorised overdraft on office bank account of £711.76).
 - A client to office transfer of £2,000 on 3 July 2015 which followed the return to office account of an unpaid direct debit to the Land Registry the previous day (and consequent unauthorised overdraft of £77.76).
 - A client to office account transfer of £7,000 on 8 July 2015 followed an office account balance of £57.38 and enabled payment of, inter alia, payments to the Land Registry, TalkTalk and bank charges for returned items and unpaid direct debits.
16. During an interview with the IO on 30 October 2015, the Respondent informed the IO that he initiated the client to office transfers himself either online or in person. He stated:

“..... I do the bill and I transfer.”
17. The Respondent informed the IO that he adopted a procedure whereby he retained surplus office monies in the client account and effected round sum transfers in accordance with the firm's cash flow requirements. The IO enquired about the £7,000 transferred on 8 July 2015. The Respondent initially confirmed this related to costs for June but afterwards stated it also related to costs for May.

18. The IO questioned the Respondent about whether the firm's profit costs would total exactly £7,000 to which the Respondent confirmed he kept extra money in client account and that:

"I do the around figure [sic], I do always round figure."

19. The Respondent indicated to the IO that he did not retain the written calculations of the total of his invoiced costs and stated that he rounded the costs down. He was unable to satisfy the IO that the amounts transferred were appropriate and justified. He stated he relied on mental record keeping and could not provide any documents to the IO to corroborate his method. When asked by the IO if he did reconciliations mentally, the Respondent stated:

"yeah, yeah, I can do that. I know exact [sic] how much money I have in client account."

20. The Report indicated there were four transfers in the total sum of £9,500 in May 2015, three totalling £6,000 in June 2015 and nine totalling £15,300 in July 2015. The IO asked the Respondent to explain in detail how he calculated the amounts to be transferred. The Respondent was asked if he kept a record of the 'spare' profit costs he held in the firm's client account. The Respondent's response was:

"how much holding there [sic]. It is – I have in mind how much I did, how much is laying down there and that I know already."

21. The Respondent was asked to explain how he was able to record and reconcile a continuous basis of the profit costs due to him but held in client account against the profit costs already transferred to the office account as follows:

".... effectively what's, what's demanded by that cognitively is to carry out a constant reconciliation of all your bills delivered to date which aren't necessarily round sums and reconcile that ongoing figure with the latest position in terms of how many client to office transfers you've made at any point, and you can do that in your head as a mental operation?"

22. The Respondent replied:

"yeah, yeah, I can do that. I know exactly how much money I have in client account. How much is in the client (sic)".

He further stated he did not write figures down and explained:

"... no well we've got the invoices so that we've got a record. As you can see that it shows how much money transfers on my - it shows my office account (sic)."

Allegation 1.3

23. The Respondent failed to produce client ledgers to the IO. During the interview on 30 October 2015, he informed the IO that the client ledgers for the year 1 October 2013 to 30 September 2014 were hand delivered to his Reporting Accountant. Later in the interview, the Respondent confirmed that his accounting records including ledgers and invoices for 2013/2014 were with his Reporting Accountants.
24. In an email dated 4 November 2015 to the IO, Mr H from the Reporting Accountants firm stated he did not hold any accounting records for the firm and that he had not conducted any work. He stated:

“Mr M Z Uddin appointed me to act his auditor (sic) on 16 June 2016. He did not appointed (sic) me as his Accountant.....

As I have not given (sic) any document (sic) to carry out work on client account reconciliation and also do not hold any client account record from Mr Uddin.”
25. In a further email dated 8 November 2015 to the IO, Mr H reiterated he did not hold any accounting records for the firm.
26. In relation to the ledgers for 1 October 2014 to 30 September 2015, the Respondent informed the IO that a folder containing the client ledgers and invoices for 2014/2015 had been left with a part-time secretary, Ms B, on the morning of 1 October 2015 prior to his departure on holiday, to be hand delivered to the Reporting Accountants. The Respondent stated he had not taken photocopies of the documents because he was in a rush and therefore the documents in the folder were the only copies. He explained to the IO that he became aware they had not been delivered to the Reporting Accountants on telephoning them on 15 October 2015. The Respondent stated he had searched his offices and could not find the folder he had left with Ms B.
27. In a letter to the IO dated 19 October 2015, the Respondent stated his secretary, Ms B, had left her job on 8 October 2015 without giving notice while he was away on holiday. However, during the interview on 30 October 2015, the Respondent also stated he had terminated Ms B's employment.
28. The Respondent also informed the IO that he had telephoned Ms B the day after learning the Reporting Accountants had not received the file he had left with Ms B but she had not answered her phone so he had sent her a text. When the IO asked the Respondent to show him the text message, the Respondent stated he did not think he had sent Ms B a text message but that he had tried to call her three or four times. The IO asked the Respondent to show him the calls he made to Ms B. The Respondent checked his mobile phone for some time and then informed the IO that the calls were not there, and that he had used another mobile telephone to make the telephone calls to Ms B. The Respondent agreed to send the IO screenshots of the telephone calls made to Ms B, but did not do so.

29. An SRA Investigation Manager who accompanied the IO to the meeting on 30 October 2015 asked the Respondent why he had not taken direct action to obtain Ms B's explanation about the missing accounting records. The Respondent replied Ms B had not cooperated. He said he had spent two or three days reproducing the client ledgers as he had a strict timetable to produce the documents.
30. The Investigation Manager also asked the Respondent why he had not put the issue of the missing file in writing to Ms B. The Respondent stated his priority was his clients. He also stated Ms B had left a message with his office, although he could not say on what date, stating she would be attending on 1 November 2015. The Respondent informed the IO in an email dated 3 November 2015 that Ms B had not attended.
31. The Respondent had asked for six weeks from 19 October 2015 to reproduce his client ledgers. During the interview on 30 October 2015 he stated he planned to reproduce the client ledgers from his paying in books, cheque-book, bank statements, client register and by speaking to fee earners.
32. However, the IO found the client ledgers partially reproduced by the Respondent did not conform to the requirements of the SAR 2011 in that some did not contain any detail to identify the client name or matter, and some showed a payment out with no corresponding credits and transactions. The Respondent subsequently accepted his ledgers were incomplete.
33. In his letter dated 19 October 2015 the Respondent enclosed what he described as the last three months reconciliation for the client account. However, the IO noted these were not client account reconciliations as required by Rule 29.12 of the SAR 2011 as they were simply a schedule of bank transactions using exactly the same information as was shown on the bank statements. There were no identifying details other than the information contained on the bank statements.
34. During the interview on 30 October 2015, the Respondent stated he carried out client reconciliations on a monthly basis however, he did not acknowledge the documents he had sent on 19 October 2015 did not comply with the rules.
35. During the interview on 30 October 2015 the Respondent confirmed he saved invoices to clients electronically by overwriting the previous invoice. This meant he did not maintain permanent electronic records. He explained his hard copy invoices for the financial year 2013/2014 were delivered by him to his Reporting Accountants together with his client ledgers for the same period in June 2015. However, Mr H from the Reporting Accountants denied receiving any such documents from the Respondent.
36. In relation to the invoices for 2014/2015, the Respondent stated these formed part of the missing folder which had been left with his secretary, Ms B. He informed the IO that he intended to reconstruct his invoices to clients but failed to do so.

Allegation 1.4

37. During the interview on 30 October 2015 the Respondent informed the IO that he retained an amount of what he regarded as his profit costs in client account. However, he could not provide accurate information as to how much office money he held in client account. The IO was unable to verify this as he could not verify the firm's liabilities to clients. The Respondent failed to provide any lists of his liabilities to clients to the IO although in a letter dated 19 October 2015, he stated he held £9,979.30 as spare profit costs. In the same letter he stated his bank balance as at that date was £64,579.30. The IO found that the exact money held on client account on the bank statements produced by the Respondent was actually £64,549.38.

Allegation 1.5

38. The Respondent became aware of the breaches of the rules as they were raised with him during his first meeting with the IO on 14 October 2015. He failed to remedy any of those breaches as he did not produce client ledgers, client reconciliation statements or client invoices. Furthermore, he abandoned his practice on or about 24 November 2015.

Allegation 1.6

39. The SRA intervened into the firm on 26 November 2015. The Intervention Agent provided a report to the SRA dated 26 November 2015 which was based on information appearing from documents, computers and comments from the individuals interviewed while conducting the intervention.
40. The Intervention Agent found evidence that the Respondent had transferred the sum of £20,000 from the firm's client account at Lloyds Bank to his own personal bank account at the Sonali Bank Dhaka, Bangladesh on 19 November 2015. The transfer was made online by the Respondent at 22.51pm. The Intervention Agent also found documentation from Lloyds Bank dated 23 November 2015 confirming the transfer.

Allegations 1.7 and 1.8

41. As set out in the report dated 20 November 2015, the Respondent had provided the IO officer with various explanations concerning the location of his firm's accounting records for 2014/2015 which he had been unable to produce to the IO. He had indicated his 2014/2015 client accounting records were left with his former secretary, Ms B, to deliver to the Reporting Accountants and that he had been unable to make contact with her to establish where the records were. He also stated he had not retained copies and that on his return from holiday Ms B had left the firm's employment. He stated the accounting records he had given her had gone missing and he had been unable to contact her.
42. On 6 November 2015 the IO wrote to Ms B asking her to contact him, which she did. She confirmed the explanations provided by the Respondent were not correct and provided a witness statement dated 17 March 2016. In her statement Ms B confirmed the Respondent had not given her any accounting records or otherwise, and that she had been in direct contact with the Respondent including attending the firm to collect

her P45 and return the keys to him when he came back from his holiday. Ms B stated the Respondent had made no reference to her as to any missing accounting documents.

43. Ms B also stated the Respondent had given the IO an incorrect mobile number to contact her and that he had told her to ignore the IO's requests to make contact with him.

Witnesses

44. No witnesses gave evidence.

Findings of Fact and Law

45. The Tribunal had carefully considered all the documents provided and the submissions of the Applicant. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

46. **Allegation 1.1: The Respondent abandoned his practice known as Your Right Solicitors Ltd on or about 24 November 2015 and in doing so, he breached any or all of Principles 2, 6, 7, 8 and 10 of the SRA Principles 2011.**

- 46.1 Principles 2, 6, 7, 8 and 10 of the SRA Principles stated as follows:

“You must: ...

2. act with integrity;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner;
8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial risk management principles;
10. protect client money and assets.”

- 46.2 Mr Moran, on behalf of the Applicant submitted the Respondent could not be contacted on or after 23 November 2015 and that his staff had confirmed the Respondent had not been seen since the previous week. He had therefore clearly abandoned his practice.

- 46.3 The Applicant had not called any live witnesses to give evidence. Although the Applicant had prepared a Civil Evidence Act Notice on 17 August 2016 and a Notice to Admit on 18 October 2016 in anticipation of these being served on the Respondent when and if the enquiry agent ascertained his location, these documents could not be

served on the Respondent as the enquiry agent was unable to locate him. The Respondent had failed to provide the SRA with an up to date address. Mr Moran submitted the Tribunal could exercise its discretion under Rule 13(10) and Rule 21 of the Solicitors (Disciplinary Proceedings) Rules 2007 which provided that the strict rules of evidence should not apply at a hearing before the Tribunal and the Tribunal might regulate its own procedure and could dispense with any requirements of the rules in respect of notices, statements and witnesses where it appeared to the Tribunal to be just so to do.

- 46.4 The Respondent had failed to engage with these proceedings and accordingly, the Tribunal had been provided with no explanation from him. The Tribunal had already concluded the regulator had taken all reasonable steps to try and locate the Respondent but had been unable to do so. As he could not be traced, this clearly caused an issue in relation to serving Notices and witness statements. In such circumstances, the Tribunal exercised its discretion to dispense with the requirements of the rules in respect of notices and witness statements and would allow the Applicant to rely on the documentary evidence produced. This would not only save costs but was also a proportionate way in which to deal with this case where there had been no engagement from the Respondent.
- 46.5 The Tribunal having considered the telephone attendance notes from the SRA's Supervisor dated 23 November 2015, together with the email dated 24 November 2015 from the Forensic Investigation Officer who attended the firm's offices on that day, was satisfied the Respondent had abandoned his firm on or about 24 November 2015. He had disappeared and his current location was not known. The Tribunal was satisfied he had abandoned his practice and left members of his staff to deal with matters in his absence without any instructions, supervision or direction from him. He had made no proper arrangements for client matters to be properly dealt with and had clearly failed to discharge his duties to his clients.
- 46.6 The Respondent was the sole director of the firm, he was the sole signatory to the client account and the firm's COLP and COFA. As such he was responsible for running the firm effectively and protecting client money and assets. The Tribunal was satisfied that by abandoning his practice, the Respondent had failed to run his business effectively and in accordance with sound financial and risk management principles, and he had failed to protect client money and assets. His conduct showed that he had acted with a lack of integrity by leaving his staff to cope with matters without proper direction and supervision, and he had acted in a way that undermined the trust the public placed in him and in the provision of legal services as staff/clients did not know where he was or how to contact him. He had also failed to comply with his legal and regulatory obligations and had failed to deal with the regulator in an open, timely and co-operative way by disappearing shortly after an investigation into his firm. The Tribunal found Allegation 1.1 proved.
47. **Allegation 1.2: Between 1 January 2015 and 30 September 2015, the Respondent made 39 round sum transfers from client account to office account totalling £58,900, without proper explanation or justification in breach of any or all of:**

1.2.1: Principles 2, 7, 8 and 10 of the SRA Principles 2011;

1.2.2: Rules 17.2, 17.3, 17.7 and 20.1(a) of the SRA Accounts Rules 2011 (“SAR 2011”)

47.1 Rule 17.2, 17.3, 17.7 and 20.1(a) of the SRA Accounts Rules 2011 stated:

“17.2: If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred to the client or the paying party.

17.3: Once you have complied with rule 17.2 above, the money earmarked for costs becomes office money and must be transferred out of a client account within 14 days.

17.7: Costs transferred out of a client account in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs are a breach of the rules.

20.1: Client money may only be withdrawn from a client account when it is:

- (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held)...

47.2 Mr Moran referred the Tribunal to the Forensic Investigation Report dated 20 November 2015 which contained details of the 39 round sum transfers made from client account to office account totalling £58,900 during the period 1 January 2015 to 30 September 2015. He submitted the Respondent had made round sum transfers and failed to provide any explanation or justification for the transfers, which was clearly in breach of the rules.

47.3 The Tribunal considered carefully the Report dated 20 November 2015, and particularly the Respondent’s comments to the IO during his interview on 30 October 2015. The Respondent had accepted during the course of the interview that he had made the transfers from client account to office account himself, either in person at the bank or online. He confirmed he had made round sum transfers and had not provided evidence of written notification of the costs to clients. He also stated that he kept surplus office funds in client account and effected transfers as required for the firm’s cash flow. This was clearly in breach of Rules 17.3 and 17.7.

47.4 The Respondent also confirmed during the course of the interview that he did not keep written calculations of the total of his invoiced costs and that he relied on mental record keeping stating:

“I know exactly how much money I have in client account.”

He was unable to produce any invoices of the costs to clients when asked to do so. In the absence of any supporting client invoices, there was no evidence that the sums had been properly transferred in accordance with the rules, or that the clients had been

notified of the transfers. This was a breach of Rules 17.2 and 20.1(a). The Tribunal was satisfied Allegation 1.2 was proved.

48. **Allegation 1.3: The Respondent failed to have specific accounting records as required by the SAR 2011 in that he:**

- **Failed to produce or retain client ledgers for the period 2013/2014 and 2014/2015**
- **Failed to carry out client account reconciliation exercises and failed to produce or retain Client Account Reconciliations statements;**
- **Failed to produce or retain a central record of bills**

in breach of Rules 29.2, 29.4, 29.9, 29.13, 29.15, 29.17 and 31.1 of the SAR 2011 and in breach of Principle 7 of the SRA Principles 2011.

48.1 Rules 29.2, 29.4, 29.9, 29.13, 29.15, 29.17 and 31.1 of the SAR 2011 stated:

“29.2: All dealings with client money must be appropriately recorded;

(a) in 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....

29.4: All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

29.9: The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept in accordance with rule 29.2 and 29.3 above.

29.13: Reconciliations must be carried out as they fall due, or at the latest by the due date for the next reconciliation.....

29.15: You must keep readily accessible a central record or file of copies of:

(a) all bills given or sent by you.....; and

(b) all other written notifications of costs given or sent by you ...

29.17 You must retain for at least six years from the date of the last entry:

(a) all documents or other records required by rule 29.1 to 29.10, 29.12, and 29.15 to 29.16 above.....

- 31.1 You must at the time and place fixed by the SRA produce to any person appointed by the SRA any records, papers, client and trust matter files, financial accounts and other documents, and any other information, necessary to enable preparation of a report on compliance with the rules.”
- 48.2 Mr Moran submitted the Respondent had not kept readily accessible a central record of his invoices to clients for 2013/2014 and 2014/2015, or client ledgers for 2013/2014 and 2014/2015, or proper client account reconciliation statements.
- 48.3 The Tribunal noted that the Respondent had failed to produce any of these documents to the IO. He initially stated during his interview on 30 October 2015 that client ledgers and invoices for 2013/2014 were hand delivered to his Reporting Accountant. However, his Reporting Accountants confirmed in an email dated 4 November 2015 that they did not hold any records for the firm and had not conducted any work.
- 48.4 In relation to the ledgers and invoices for 2014/2015, the Respondent claimed these had been left with Ms B, his former secretary, on 1 October 2015 for delivery to the Reporting Accountants and that no copies had been retained by the Respondent. He also stated he had been unable to contact Ms B subsequently but could not produce any evidence to confirm his attempts to contact her. The Tribunal had a witness statement from Ms B dated 17 March 2016 in which she confirmed the Respondent had not given her any documents to give to the accountants.
- 48.5 The Respondent was given an opportunity to reproduce his client ledgers for the six weeks from 19 October 2015 however, the documents produced did not conform with the rules and in many cases the client’s name or matter was not identified, and payments out were shown with no corresponding credits or transactions.
- 48.6 The Respondent claimed to produce some client account reconciliation statements but these were simply a schedule of bank transactions using the same information that was on the bank statements. This was in breach of Rule 29.12.
- 48.7 It was also the Respondent’s practice electronically to overwrite existing client invoices which meant that he did not maintain permanent electronic records.
- 48.8 The Respondent had failed to produce a central record of his invoices to clients, as required by Rules 29.15 and 29.17 and therefore he had breached those rules. He also failed to produce client ledgers for 2013/2014 and 2014/2015 and thereby breached Rules 29.2, 29.4, 29.9, 29.12, 29.17 and 31.1. The Respondent failed to produce proper client account reconciliations and thereby breached Rules 29.12, 29.13, 29.17 and 31.1. The Tribunal was therefore satisfied that Allegation 1.3 was proved.
49. **Allegation 1.4: The Respondent retained office money in client account in breach of Rules 14.2, 17.9, 20.3 and 20.5 of the SAR 2011.**
- 49.1 Rules 14.2, 17.9, 20.3 and 20.5 stated as follows:

“14.2: Only client money may be paid into or held in a client account, except;

.....

... and except when the rules provide to the contrary.

17.9: Undrawn costs one must not remain in a client account as a “cushion” against any future errors which could result in a shortage on that account, and cannot be regarded as available to set off against any general shortage on client account.

20.3: Office money may only be withdrawn from a client account when it is:

(a) money properly paid into the account to open or maintain it under rule 14.2 (a);

(b) properly required for payment of your costs under rule 17.2 and 17.3;

(c) the whole or part of a payment into a client account under rule 17.1(c);

(d) part of a mixed payment placed in a client account under rule 18.2(b); or

(e) money which has been paid into a client account in breach of the rules

20.5: Money which has been paid into a client account in breach of the rules must be withdrawn from the client account promptly upon discovery.”

49.2 Mr Moran submitted that as the Respondent had regularly retained some profit costs in his client account, he had breached the rules.

49.3 The Tribunal noted that during the interview with the IO, the Respondent stated he had retained some profit costs in client account, which appeared to be a rolling variable amount. He stated he knew exactly how much money he had in client account but yet, he could not provide accurate information to the IO as to how much office money he had held in client account. In a letter dated 19 October 2015, the Respondent stated he held profit costs in the sum of £9,979.30 in his client account which he stated had a balance as at that date of £64,579.30. However, the Respondent did not provide any documents which would enable the IO to calculate the firm’s liabilities to clients and thereby clarify how much of the money in client account did not belong to clients. The Tribunal could not identify any exceptions contained within Rule 14.2 which would allow the Respondent to leave office money, consisting of profit costs, in client account. The Tribunal was satisfied that as the Respondent had retained office money in client account, he had breached Rules 14.2, 17.9, 20.3 and 20.5 of the SAR 2011. The Tribunal found Allegation 1.4 proved.

50. **Allegation 1.5: The Respondent failed to remedy his SAR 2011 accounts rules breaches promptly upon discovery in breach of Rule 7.1 of the SAR 2011.**

50.1 Rule 7.1 of the SAR 2011 stated:

“Any breach of the rules must be remedied promptly upon discovery.....”

50.2 Mr Moran submitted that as the Respondent had abandoned his practice on or about 24 November 2015, he had failed to remedy the breaches raised with him by the IO.

50.3 The Tribunal was satisfied that as the Respondent had failed to produce client ledgers, proper client reconciliation statements or client invoices as required by the IO on 14 October 2015, and as he had subsequently abandoned his practice on or about 24 November 2015, he had clearly breached Rule 7.1. The Tribunal was satisfied Allegation 1.5 was proved.

51. **Allegation 1.6: The Respondent made improper payments from the firm’s client account number 27****60 to his personal bank account with Sonali Bank Limited in Dhaka, Bangladesh in the sum of £20,000 on 19 November 2015 contrary to all, or alternatively any of Principles 1, 2, 6 and 10 of the SRA Principles 2011 and/or Rule 20.1 of the SAR 2011. It was alleged the Respondent had acted dishonestly.**

51.1 Principle 1 of the SRA Principles 2011 stated:

“You must uphold the rule of law and the proper administration of justice.”

51.2 Mr Moran submitted that when the intervention took place on 26 November 2015, it became clear to the Intervention Agent that the Respondent had transferred £20,000 from the firm’s client account to his own personal bank account in Bangladesh on 19 November 2015. He submitted this had been dishonest conduct.

51.3 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent’s conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest

51.4 The Tribunal noted the transfer had been made by the Respondent on 19 November 2015 at 22.15pm, outside office hours. This was at a time after the IO had required him to produce a number of documents including client invoices, client ledgers and proper client reconciliation statements which he had failed to do. As a result of this, there was no evidence to explain why that transfer had been made or what it related to. This was in breach of Rule 20.1 of the SAR 2011 in that he had improperly withdrawn client money. The Tribunal was satisfied that transferring the sum of £20,000 from the firm’s client account to his own personal bank account in Bangladesh in the absence of any client invoice or other document to explain the reason for the transfer would be regarded as dishonest by the ordinary standards of reasonable and honest people in these circumstances.

- 51.5 Having transferred the sum of money, the Respondent abandoned his practice shortly after. On 24 November 2015, staff at his office had stated that the Respondent had not been seen since the previous week. When the IO attended the office that day, the client account statements and the cheque book were missing. The Tribunal was therefore satisfied that the Respondent must have known that his conduct was dishonest as he transferred the money and then disappeared, knowing that he had not provided any evidence to explain why the transfer had been made or what it related to. He was aware the SRA was investigating his firm and that there were concerns about the lack of adequate records and documentation. In such circumstances, it was clear that the Respondent was not entitled to transfer and retain the sum of £20,000 for his personal use in Bangladesh and had done so dishonestly.
- 51.6 The Respondent's conduct showed that he had failed to uphold the rule of law and the proper administration of justice by taking client funds without authorisation. He had acted with a lack of integrity in taking the money and then disappearing so he could not be questioned about it and he had behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services by depriving clients of those funds. He had clearly failed to protect client money and assets. The Tribunal found Allegation 1.6 proved including the allegation of dishonesty.
52. **Allegation 1.7: The Respondent provided misleading information to the SRA when informing the Investigation Officer that he had left his client invoices and ledgers for the year 2014/2015 with his former secretary Ms B and stating he had been unable to make contact with her, neither of which were correct or true, contrary to all, or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011.**

Allegation 1.8: The Respondent advised Ms B to ignore the SRA's request to make contact with it, contrary to all, or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 and 10.7 of the SRA Code of Conduct 2011.

- 52.1 Outcome 10.6 and 10.7 of the SRA Code of Conduct 2011 stated:

“You must achieve these outcomes: ...

10.6: you co-operate fully with the SRA and the Legal Ombudsman at all times

10.7: you do not attempt to prevent anyone from providing information to the SRA or the Legal Ombudsman.

- 52.2 Mr Moran referred the Tribunal to the witness statement from Ms B dated 17 March 2016 from which it was clear that the explanation given by the Respondent to the IO claiming to have left documents with Ms B to give to the firm's accountants was not true and that he had told Ms B not to make contact with the IO.
- 52.3 The Tribunal considered the Respondent's comments during his interview with the IO on 30 October 2015. The Respondent informed the IO that he had given a folder containing the client ledgers for 2014/2015 and invoices for 2014/2015 to his

part-time secretary, Ms B on 1 October 2015 before he went on holiday with instructions for her to hand deliver this to the firm's accountants. The Respondent also informed the IO that on his return from holiday, Ms B had left her job on 8 October 2015 without giving notice (although later during the interview the Respondent stated he had terminated Ms B's employment) and that he could not find the folder he had left with her. The Respondent stated to the IO that he had attempted to contact Ms B by telephone a number of times but that she had not answered her phone. He had stated Ms B had not attended the firm's office after she left employment.

- 52.4 The Tribunal considered carefully the witness statement provided by Ms B. In that statement she confirmed she had been employed as a part-time receptionist at the firm from 1 October 2014 to 9 October 2015. She stated she had not been given any files or documents by the Respondent at any time to take to the accountant. She also stated that before the Respondent went on holiday, she had discussed leaving the firm with him in the event that she was able to obtain alternative employment, and she stated he had not objected. Ms B stated that when the Respondent returned from holiday, she had contacted him herself to explain that she had left and she said he did not raise any issues about this. She said:

“After he came from Bangladesh I have always been in touch with him all the time.”

- 52.5 Ms B went on to say that she went into the office after the Respondent had come back from holiday to return the keys to him and collect her P45 at which time he did not mention anything to her about any documents to be given to the accountant.
- 52.6 Ms B stated in her witness statement that after she had received a letter from the IO asking her to contact him, she went to see the Respondent immediately and asked him why the SRA were contacting her. Ms B stated the Respondent told her she:

“...should ignore it as there was nothing to worry about.”

Ms B stated she asked the Respondent whether he had said anything to the SRA about her and he said he had not.

- 52.7 Ms B informed the Respondent that she would contact the IO as requested but stated the Respondent:

“...got aggressive with me and asked me to leave the office and never come back. I tried to contact [the IO] in front of him and he got aggressive with me and did not let me to [sic] contact you.

And the following day he disappeared and I only found out about it from the other staff.

I have become aware that [the IO] has unsuccessfully attempted to contact me on a telephone number – 0*****8 - which Mr Uddin had provided to [the IO] stating it as the contact number on which he (Mr Uddin) had telephoned me. I confirm that this is not my telephone number.”

- 52.8 The Tribunal accepted the witness statement provided by Ms B and, in the absence of any evidence or engagement with these proceedings from the Respondent, the Tribunal was satisfied that the Respondent had indeed been provided misleading information to the IO regarding leaving his client invoices and ledgers with Ms B, and that he had advised Ms B to ignore the IO's request to make contact with him.
- 52.9 The Tribunal found that the Respondent, by misleading the IO in relation to the location of his accounting records and his interactions with Ms B and by trying to prevent Ms B from contacting the IO, had failed to act with integrity, behaved in a way that did not maintain the trust the public placed in him and in the provision of legal services. He had also failed to comply with his legal and regulatory obligations and deal with his regulator in an open, timely and co-operative manner. He had failed to comply with Outcomes 10.6 and 10.7. The Tribunal found Allegations 1.7 and 1.8 proved.

Previous Disciplinary Matters

53. None.

Mitigation

54. There was no mitigation from the Respondent.

Sanction

55. There was little information from the Respondent for the Tribunal to consider although it did take into account his responses during the interview with the IO on 30 October 2015 and his correspondence with the SRA which was exhibited to the Rule 5 Statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.
56. The Tribunal considered the mitigating and aggravating factors in this case. The Respondent had acted dishonestly and it was likely that clients had suffered financial losses as a result of his conduct. The accounts breaches had taken place over a long period of time and the Respondent's conduct in misleading his regulator and attempting to prevent information being provided to the regulator was deliberate and calculated. He had abandoned the firm thereby placing clients and their funds at risk. He ought to have known that such conduct was in material breach of his obligations to protect the public and the reputation of the profession. These were all aggravating factors.
57. The only mitigating factor the Tribunal could identify was that the Respondent had a previously unblemished record.
58. These were very serious breaches of numerous Accounts Rules which were in place to ensure the protection of client funds. The Respondent had failed to produce proper records and documents to ensure there was an accurate record of all dealings with

client funds. Multiple round sum transfers had been made and there was no evidence that clients had been informed of costs taken from their funds. The Respondent had misled the IO and had attempted to prevent the IO from making contact with a former member of staff in relation to enquiries concerning accounting documents. He had dishonestly taken £20,000 of client funds which was transferred to his personal bank account abroad without any explanation. The Respondent had then subsequently disappeared abdicating all responsibility for his practice and abandoned the firm.

59. The Tribunal was of the view that this was utterly disgraceful conduct. This was not a case where it would be appropriate to order either a reprimand or a fine given the gravity of the conduct. Furthermore, the nature of the Respondent's conduct was such that a Restriction Order would not be sufficient to protect members of the public. The Tribunal considered whether a suspension should be imposed in this case but was satisfied that the conduct was too serious for such a sanction. The Respondent had failed to provide the accounting documents requested for the material time, he had attempted to mislead his regulator and he had acted dishonestly. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

60. The Tribunal was satisfied that there were no exceptional circumstances in this case. The Respondent was clearly a risk to the public who needed to be protected from him. Accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors and the Tribunal so Ordered.

Costs

61. Mr Moran, on behalf of the Applicant, requested an Order for the Applicant's costs in the total sum of £16,273.50 and provided the Tribunal with a Schedule containing a breakdown of those costs. He accepted that the hearing had taken less time than estimated on the Schedule and therefore some reduction would need to be made to the figure.
62. The Tribunal considered carefully the Applicant's Schedule of Costs and was of the view that the costs claimed were high. A reduction needed to be made not only for the time claimed for attending the hearing at seven hours, but also to the time spent for preparation and consideration of documents which were excessive at 42 hours in total. The Tribunal was not prepared to allow the cost of the Applicant's hotel accommodation which it considered to be unnecessary. Having made deductions for these various items, the Tribunal assessed the overall costs at £14,500 and made an Order for the Respondent to pay this amount.
63. There was no information at all from the Respondent in relation to his financial circumstances. Therefore the Tribunal did not consider any restriction should be made to the enforcement of costs notwithstanding the fact that the Tribunal's Order deprived the Respondent of his livelihood. The Respondent was relatively young, it was possible he had assets or savings and in any case, the Tribunal considered he

would be able to find some form of alternative employment which would enable him to meet the costs order.

Statement of Full Order

64. The Tribunal Ordered that the Respondent, MOHAMMED ZAHIR UDDIN, 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 £14,500.00.

Dated this 12th day of January 2017

On behalf of the Tribunal

A. G. Gibson
Chairman