SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11378-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTHONY ALABI Respondent

Before:

Mr D. Glass (in the chair)
Mr A. Ghosh
Mr M. C. Baughan

Date of Hearing: 5 January 2016

Appearances

Ms Nimi Bruce, barrister employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR, for the Applicant.

The Respondent, Mr Anthony Alabi, did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Anthony Alabi, in a Rule 5 Statement dated 31 March 2015, were that he, while in practice as the sole principal of Advocates Solicitors ("the Firm"):

1.1 Failed to notify the SRA within the prescribed time limits that the Firm had entered into the Extended Indemnity Period ("EIP"), as required by Rule 17(3)(a) of the SRA Indemnity Insurance Rules 2013 ("the SIIR 2013"), and in doing so:

1.1.1 Breached Principles 6 and/or 7 and/or 8 of the SRA Principles 2011 ("the Principles"); and further or alternatively

1.1.2 Failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.2 Failed to notify the SRA within the prescribed time limits of the Firm's entry into the Cessation Period ("CP") within the meaning of the SIIR 2013 as required by Rule 17(3)(b) of the SIIR 2013, and in so doing:

1.2.1 Breached Principles 6 and/or 7 and/or 8 of the Principles; and further or alternatively

1.2.2 Failed to achieve Outcome 10.3 of the 2011 Code.

1.3 Failed to take steps to ensure an orderly and transparent wind-down of activities and/or closure of his practice, having entered into a CP under the SIIR 2013, in that after 29 December 2013 the Firm continued to hold two client files in respect of which funds were being held and/or the Respondent continued to act on behalf of at least one client, and in doing so:

1.3.1 Breached Principles 5 and/or 7 and/or 10 of the Principles; and further or alternatively

1.3.2 Failed to achieve Outcomes 7.4 and/or 10.13 of the 2011 Code.

1.4 Failed to comply with undertaking(s) given to the SRA in a Compliance Plan dated 12 December 2013 ("the Plan") in that he failed to provide weekly updates to the SRA on client monies held and failed to account to clients for money due and historic client balances and in so doing:

1.4.1 Breached Principle 7 of the Principles; and further or alternatively

1.4.2 Failed to achieve Outcomes 10.3 and/or 11.2 of the 2011 Code.

1.5 Failed to ensure that the Firm, having failed to obtain qualifying insurance prior to the expiration of the EIP, and each principal or employee of the Firm, did no undertake activities in connection with private legal practice and/or did not accept instructions in respect of such activities during the CP, save as to the extent permitted by Rule 5.2 of

the SIIR 2013, and in doing so breached Principles 6 and/or 7 and/or 8 of the Principles.

1.6 On 26 February 2014, provided false and/or misleading and/or incomplete information to the SRA in respect of an application to the Office of the Immigration Services Commissioner ("OISC") and in doing so breached both or alternatively either of Principles 2 and 6 of the Principles.

1.7 Continued to practise after 29 December 2013, having given an undertaking to cease practice by no later than 29 December 2013, and without having professional indemnity insurance ("PII") in place, and in doing so:

1.7.1 Breached Rule 4 and/or Rule 5 of the SIIR 2013; and or alternatively

1.7.2 Breached Principles 2 and/or 5 and/or 6 and/or 7 of the Principles; and or alternatively

1.7.3 Failed to achieve Outcomes 1.8 and/or 10.3 of the 2011 Code.

1.8 Continued to practise as a sole practitioner in breach of conditions imposed on his practising certificate and sole practitioner recognition on or after 14 April 2014, contrary to Rule 19 of the SRA Practice Framework 2011 and in so doing:

1.8.1 Breached all or alternatively any of Principles 2, 6, 7 and/or 8 of the Principles; and further or alternatively

1.8.2 Failed to achieve Outcome 1.3 of the 2011 Code.

1.9 Failed to respond promptly or at all to communications sent to him by the SRA and in doing so:

1.9.1 Breached Principle 7 of the Principles; and further or alternatively

1.9.2 Failed to achieve Outcome 10.6 of the 2011 Code.

1.10 Failed to return client money promptly following the date on which the practice was required to close, being 29 December 2013, and failed to inform clients in writing of the amount retained and the reason for that retention, in that funds being held in the Firm's client account after 29 December 2013, and in doing so:

1.10.1 Breached Rules 14.3 and 14.4 of the SRA Accounts Rules 2011; and further or alternatively

1.10.2 Breached Principles 4 and 10 of the Principles.

1.11 Failed promptly to pay compensation to a former client in compliance with a recommendation of the Legal Ombudsman and in doing so:

1.11.1 Breached Principles 6 and/or 7 of the Principles; and further or alternatively

1.11.2 Failed to achieve Outcome 1.5 of the 2011 Code.

1.12 Failed to deal with the Legal Ombudsman in an open, timely and co-operative manner, and in doing so:

1.12.1 breached Principles 6 and 7 of the SRA Principles 2011 and further or alternatively

1.12.2 Failed to achieve Outcome 10.6 of the 2011 Code.

1.13 Failed to comply with notices served by the SRA pursuant to s44B of the Solicitors Act 1974 ("s44B Notices") dated 16 April and 5 June 2014, and in doing so:

1.13.1 Breached Principle 7 of the Principles; and further or alternatively

1.13.2 Failed to achieve Outcome 10.8 of the 2011 Code.

Documents

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

Applicant:-

- Application dated 31 March 2015
- Rule 5 Statement, with exhibit "DWRP1", dated 31 March 2015
- Service bundle
- Copy instructions to tracing agent and report
- Copy letter Applicant to Respondent dated 14 April 2014 and copy condition on Practising Certificate

Respondent:-

- Letter sent by email to Capsticks, copied to Tribunal, dated 4 January 2016

Preliminary Matter – Proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was neither present nor represented at the hearing. It also noted that the Respondent had failed to comply with the directions given on issue of proceedings and at a Case Management Hearing ("CMH") which took place on 21 May 2015 (at which the Respondent was neither present nor represented).

4. The Tribunal noted a letter received from the Respondent by email at approximately 7.35pm on Monday 4 January 2016; that letter, which was addressed to the Applicant's solicitors and copied to the Tribunal was read by the Tribunal before the start of the hearing. The letter read:

"**Re: Proceedings before the Solicitors Disciplinary Tribunal, case number 11378/2015**
Hearing dated 5/6th January 2016
Stay of action request

I am the Respondent in the above indicated proceedings and have only recently come across your email of the 22nd December 2015 pertaining to costs issues.

Besieged by misfortunes following my mother's death in August 2013, including the loss of my business at the end of that year, loss of family, property and health, I left the UK over a year ago to be cared for abroad in Nigeria.

Hence I have not practised for a number of years, as confirmed by the non-renewal of my practising certificate for several years now and why I have been incapacitated from dealing with these proceedings at all; I remain unwell and unemployed.

I would, however, appreciate the opportunity to attend to any allegations made against me when I am fit, well and able to, hopefully in about 6 months' time.

Please note that I do not have a fixed address as I have been away for over a year, that I am estranged from my wife with whom there are ongoing divorce proceedings and that I do not reside at the address you have mentioned.

Needless to say, you possess ample evidence that I have never received your correspondence to me.

I am reachable via my email address but I do not have regular or prompt access to it due to the situation with internet access here.

Accordingly, I am unable to attend the scheduled hearing for the reasons expressed and request a stay of action pending when I am able to attend to the allegations made against me."

(Letter amended to correct some grammatical and punctuation errors)

5. The Tribunal noted that the email to which the letter was attached was sent from an email address which had been used previously in communications to the Respondent from the Applicant.

6. The Tribunal gave careful consideration to the Respondent's application made in his letter of 4th January 2016. The Tribunal construed the words in the letter "request a stay of action" as an application for an adjournment of the hearing. Before determining that application, the Tribunal considered whether the Respondent had been properly served with the proceedings and notice of the hearing in accordance with the requirement of rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"). If the Respondent had not been so served, it would be wholly inappropriate to proceed with the hearing as to proceed in such circumstances would

be a clear contravention of Article 6.3(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Applicant's Submissions

7. Ms Bruce, for the Applicant, referred the Tribunal to the service bundle, which included correspondence from the Applicant and/or the Tribunal to the Respondent in the period to 22 December 2015.

8. After the issue of proceedings, the Tribunal issued standard directions on 10 April 2015, which provided for a CMH to take place on 21 May 2015 and directed the Respondent to file and serve his Answer to the allegations by 12 May 2015. At the CMH, it was recorded that the Applicant had not been able to establish contact with the Respondent since May 2014, despite the efforts outlined in a service bundle produced for that hearing. The Memorandum of the CMH recorded that the Tribunal was satisfied that the Respondent knew of the proceedings and went on to make directions for the further conduct of the case.

9. The Tribunal noted within the service bundle there was an email to the Respondent from the Applicant's solicitors dated 29 April 2015, sent to the email address used on 4 January 2016, which (amongst other matters) asked the Respondent for confirmation that his address for service was a stated address in Romford, which was the last known address for the Respondent on the Applicant's records. That email also attached a witness statement. It was recorded that the Applicant's solicitors had not received a bounce-back/delivery failure notification.

10. On 13 May 2015 Capsticks wrote to the Respondent at the address in Romford by Special Delivery. The envelope which had enclosed that letter was returned marked "Refused – states gone away".

11. Mr Bruce submitted that as the Applicant was aware of the need to ensure the proceedings were served and drawn to the Respondent's attention, enquiries were made of the Insolvency Service, as it was known that the Respondent had been made bankrupt. The Individual Insolvency Register recorded that the Respondent was declared bankrupt on 26 September 2014; the address noted on the Register was the Romford address. As Capsticks were aware that the trustee in bankruptcy may pursue a sale of the Respondent's property a "Zoopla" enquiry was made which showed that the estimated value of the property was over £369,000 and that it had been listed for sale on 21 November 2014 for a guide price of £320,000. Thereafter, Capsticks instructed a tracing agent. In the meantime, the Tribunal had continued to write to the Respondent at the Romford address; a letter notifying the Respondent of the present hearing dates was sent on 9 June 2015 but was returned to the Tribunal on or by 15 June, with the envelope marked, "Addressee gone away". Notification of the hearing date was then sent to the Respondent by email, to the address used on 4 January 2016; the Tribunal at the same time requested a postal address for future correspondence.

12. On 15 October 2015, the tracing agents instructed by Capsticks reported that the Respondent was residing at an address in Southampton; the Tribunal's records were updated with that information.

13. Thereafter, the address in Southampton was used for correspondence from Capsticks to the Respondent on 30 October. Neither item of correspondence sent that day by Special Delivery was delivered to/collected by the Respondent.

14. On 18 November 2015 Capsticks sent to the Respondent at the Southampton address a letter with enclosures including a further copy of the Rule 5 Statement by overnight courier. In accordance with Capsticks' instructions, the courier left the package at the address.

15. On 20 November 2015, Capsticks sent to the Respondent by email a number of documents, and referred to documents having been sent to the Southampton address. On 9 December 2015 Capsticks sent a copy of the Applicant's Certificate of Readiness to the Respondent's email address. Both of these emails included reference in the heading to the substantive hearing dates.

16. On 22 December 2015 Capsticks sent an email to the Respondent's email address which referred to the hearing dates and enclosed a financial information form for completion by the Respondent with regard to the question of any costs order which might be made by the Tribunal. A further email of the same date attached the Applicant's statement of costs.

17. Ms Bruce submitted that there was no doubt that either or both of the emails of 22 December 2015 had reached the Respondent, given the terms in which he had written to Capsticks on 4 January 2016.

18. The Clerk informed the Tribunal that a letter from the Tribunal to the Respondent at the Southampton address, dated 25 November 2015, had been returned through the postal service; the envelope was marked to the effect that the Respondent was not at that address.

19. Ms Bruce submitted that the Applicant had not been complacent with regard to service and had taken all reasonable steps to contact the Respondent. The Respondent's email of 4 January 2016 would give the Tribunal confidence that he knew of the proceedings and the hearing date. Ms Bruce submitted that an application to adjourn, made at such a late stage in the proceedings, was not appropriate and should not be granted. There was an obligation on the Respondent to provide his regulator with a valid address, and to co-operate with the regulator by responding to correspondence. The duty to deal fairly applied to the Respondent as well as to the Applicant. Ms Bruce invited the Tribunal to proceed with the hearing, under the discretion given by Rule 16(2) of the Rules.

20. It was noted that the Respondent referred in his letter to medical problems. The Tribunal's Practice Note on Adjournments required there to be a reasoned opinion of an appropriate medical practitioner to support an application to adjourn. No medical evidence had been provided.

21. Ms Bruce submitted that it was in the public interest to proceed with the hearing on this occasion. The Respondent had had full opportunity to participate in the proceedings but had not done so; rather, he had voluntarily disengaged from taking any part in the case. Ms Bruce submitted that there were serious matters to be heard.

In view of the history of the matter the Tribunal could not be confident that the Respondent would appear on a later occasion, if the hearing were adjourned for 6 months or so.

22. In response to questions from the Tribunal, Ms Bruce acknowledged that there was some risk the enquiry agent believed the Southampton address was the Respondent's address because the Respondent's wife lived there, but further enquiries would be needed to check this. Ms Bruce submitted that there was no requirement on the Applicant to prove that the Respondent had actually received any given document; service could be effected without such proof. Ms Bruce submitted that the Applicant had done all that it reasonably could to effect service, having used the Respondent's last known address in Romford, an address identified by tracing agents and an email address which was clearly effective. Further, several different delivery methods had been used: post, email and courier. In response to a question from the Tribunal, Ms Bruce confirmed that personal service had not been attempted, as it was hard to ascertain the Respondent's whereabouts at any given time. Ms Bruce submitted that the Applicant had done all that it could, given the history of this matter, to ensure that the Respondent was aware of the proceedings and the hearing.

The Tribunal's Decision

23. The Tribunal considered carefully whether it was satisfied that service had been effected. It accepted that the Applicant did not have to prove actual receipt of papers concerning the case in order to prove service; it was sufficient to show that all reasonable steps had been taken to draw the proceedings and the hearing date to the Respondent's attention.

24. The Tribunal had sent correspondence to the Respondent at the address in Romford, which was the last address notified to the Applicant, and thereafter to the address in Southampton provided by the Applicant. It appeared that letters sent to both addresses had been returned, usually with markings to the effect that the Respondent was not at the address.

25. The Applicant's solicitors had sent correspondence to the last notified address of the Respondent and thereafter to the Southampton address. It was noted that the tracing agent's report did not specify the reasons for being certain that the Southampton address was where the Respondent was residing. However, the Respondent had taken no steps to inform the Applicant or the Tribunal of an effective postal address, in the event that the Southampton address was not correct. From the history of the case, the Tribunal was satisfied that the Respondent was aware that proceedings were to be taken against him; he should have ensured that the Applicant had an effective way to communicate with him.

26. It was clear that a bundle of documents, including a further copy of the Rule 5 Statement and correspondence referring to the substantive hearing dates, had been delivered by courier on or about 20 November 2015 to the Southampton address. There was no doubt that at least one of the emails sent by Capsticks on 22 December 2015, which again referred to the hearing date, had been received by the Respondent.

27. There was no doubt that the email address which had been in use since at least 2014 remained an effective address. The Tribunal was satisfied to the highest standard that the Respondent had been sent, and had received, all the necessary papers by email. In support of that finding, the Tribunal noted that the email of 4 January 2016 expressed no surprise about the existence of the proceedings or the date of hearing. The Respondent did not suggest that he had received no papers in the case. His reference to their being "ample evidence that I have never received your correspondence to me" in fact reinforced the view that he was aware of the earlier correspondence.

28. The Tribunal then considered the Respondent's application to adjourn the hearing. This application was made at the very last minute in order to try to postpone the proceedings. The grounds given for seeking an adjournment did not include any suggestion of a lack of time to prepare for the hearing; such a ground might be expected if someone only learned of proceedings a short time before the hearing. Rather, the Respondent referred to being unwell and unemployed. Unemployment or financial circumstances were not usually good grounds for adjournment and the Respondent had not explained why his position in this regard was in any way unusual. Being ill could be a good ground to adjourn a hearing, but the Tribunal's Practice Note on Adjournments made clear that ill health would not normally give rise to adjournment unless the claimed medical condition was supported by appropriate evidence. The Respondent had produced no medical evidence to suggest that he was unfit to take part in the proceedings. For completeness, the Tribunal noted that there were two medical certificates within the hearing bundle, in April and May 2014, which referred to the Respondent's family bereavement.

29. The Tribunal was not satisfied that there was any good reason to adjourn the hearing, either due to the claimed ill-health or the Respondent's unemployment. The Tribunal further noted that the application was not supported by a statement of truth; a solicitor making any application to the Tribunal should comply with the Tribunal's requirements for applications, and in any event should be prepared to confirm the truth of what was stated.

30. The Tribunal then went on to consider whether it was appropriate to proceed with the hearing in the absence of the Respondent. Judicial guidance on the factors to be considered when deciding whether or not to proceed was set out in R v Hayward and others [2001] EWCA Crim 168 ("Hayward"), as approved on appeal by the House of Lords (under the name R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 ("Jones"). This decision had been applied to disciplinary proceedings in the matter of Tait v Royal College of Veterinary Surgeons [2003] UKPC 34. At paragraph 22 of the Hayward decision, which concerned a criminal matter, it was made clear that in general a defendant had a right to be present at his trial. This right could be waived. The trial judge had a discretion as to whether a trial should take place or continue in the absence of a defendant but,

> "That discretion 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."

The judgment then set out 11 factors which should be considered.

31. The Tribunal noted that not all of the 11 factors were relevant in this case – some of them referred specifically to criminal cases. The most relevant were (using the numbering in the Hayward case):

> (i) The nature and circumstances of the defendant's behaviour in absenting himself from the trial… and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be legally represented at the trial or has, by his conduct, waived his right to be represented;
> (v) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vii) the risk of the jury (or Tribunal) reaching an improper conclusion about the absence of the defendant;
> (viii) the seriousness of the offence, which affects defendant, victim and public;
> (ix) the general public interest… that a trial should take place within a reasonable time of the events to which it relates.

32. The Tribunal noted that the Respondent had not engaged with the proceedings at all, until his email of 4 January 2016. The Tribunal further noted that the documents in the case indicated that the Respondent had, throughout the investigation, absented himself for periods of time, only engaging from time to time. The Respondent had given no indication that he wished to be legally represented. Taking into account all of the circumstances, the Tribunal concluded that the Respondent had voluntarily absented himself and could proceed to hear the case. The allegations in this case were serious, when taken cumulatively, and there was a clear public interest in determining the case as promptly as reasonable possible. An adjournment of 6 months was undesirable and in any event the Respondent had given no indication why he might be able to attend in 6 months' time when he was (on his account) unable to attend this hearing. There was a disadvantage to any Respondent in not being present in order to present their defence. However, in this case the Respondent had not troubled to indicate whether he admitted or denied the allegations, either during the investigation or subsequently. The only document from the Respondent which appeared to indicate his position with regard to any of the matters raised was an email of 30 April 2014.

33. Having considered carefully the factors set out in the Hayward and Jones cases, the Tribunal was satisfied that the Respondent had voluntarily absented himself, and had waived his right to appear. The Tribunal determined to exercise its power under rule 16(2) of the Rules and to proceed with the hearing in the absence of the Respondent. The Tribunal was mindful of the need to take particular care to put the prosecution case to the test as the Respondent was not present to do this on his own behalf.

34. The Tribunal's decision was made in the public interest and in the overall interests of justice. The Tribunal noted that the Respondent had the protection of Rule 19 of the Rules if he could show that it was in the interests of justice for there to be a re-hearing; the Respondent's rights were thus fully protected.

Factual Background

35. The Respondent was admitted as a solicitor in 2002.

36. On 1 December 2005 the Respondent became the sole principal trading under the style of Advocates Solicitors. At all material times the Respondent was the sole principal of Advocates Solicitors at 6 Connaught Road, Ilford, Essex IG1 1QT ("the Firm"). The Respondent held a practising certificate for the practice year 2013/14, subject to conditions from 14 April 2014 that he was not to be a sole practitioner or a sole director of a recognised, licensed or legal services body. On 4 August 2014 the Respondent's practising certificate was suspended and the Applicant resolved to intervene into the Respondent's practice on 6 August 2014. The Respondent's name remained on the Roll of Solicitors at the date of hearing.

37. The Applicant's investigation into the Firm arose from the Firm's entry into the EIP in October 2013 under the SIIR 2013. The SIIR 2013 required firms to obtain and maintain professional indemnity insurance ("PII") with participating insurers. Version 8 of the SIIR 2013 applied at the time of the Firm's entry into the EIP and its subsequent closure. Version 9 of the SIIR 2013 came into force on 1 April 2014. References to the SIIR 2013 are to Version 8, but the SIIR 2013 remained unchanged in the aspects material to the Respondent's conduct.

The Insurance/Regulatory Background

38. The SIIR 2013 required firms to obtain and maintain PII with participating insurers. Changes to the SRA Indemnity Insurance Rules 2012 meant that the Assigned Risks Pool ("ARP") was closed and would no longer provide insurance to firms unable to secure insurance on the open market after 1 October 2013. The changes brought into effect by the SIIR 2013 meant that if a firm's existing PII insurer (as at 30 September 2013) was not going to renew insurance for the firm (and the firm did not secure cover from another insurer) the 2012/13 insurer was required to provide the firm with extended cover for a further 90 days beyond the end of the indemnity period. This period was known as the Extended Policy Period ("EPP").

39. The EPP was comprised of a 30 day Extended Indemnity Period ("EIP") from 1 October to 30 October 2013, and a 60 Cessation Period ("CP") from 31 October to 29 December 2013.

40. Prior to the commencement of the EIP and during that period, the Applicant provided the following guidance to solicitors/firms:

40.1 Updates and reminders on the SRA website on: 3, 11, 17 and 23 September 2013; 1, 8, 31 October 2013; 11, 25 November 2013; 11, 18 December 2013; 7, 17 January 2014; and 4 March 2014;

40.2 SRA Updates, to all registered email addresses of solicitors with MySRA account, in July, September, October and December 2013 and January 2014;

40.3 Articles in the Law Gazette dated 16 and 30 September 2013 focussing on the changes;

40.4 The COLP/COFA Conference of 5 November 2013 – slides were available on the SRA website;

40.5 The Law Society article in its June 2013 edition of Insurance Matters.

41. Rule 17(3)(a) of the SIIR 2013 required any firm entering the EIP to notify the Applicant in writing as soon as reasonably practicable and in any event no later than five business days after the date on which the firm entered the EIP. Participating insurers were also obliged to notify the Applicant of the provision of EIP to a firm, and had until 10 October 2013 to do so. If the firm's existing PII insurer as at 30 September 2013 was not going to renew the insurance and the firm was not able to secure other insurance, the existing PII insurer was required to provide the firm with a further 90 days beyond the end of the indemnity period.

42. During the EIP, a firm could continue to trade as normal, including taking on new clients, and there was no obligation on firms to wind down their practice. If a firm was able to obtain insurance during the EIP, that cover was backdated to the original renewal date of 1 October 2013.

43. During the CP, under SIIR Rule 17(3)(b), there were reporting conditions on firms and insurers to notify the Applicant if a firm moved into the CP. A firm was required to notify the Applicant as soon as reasonably practicable and no later than five business days after the date on which the firm entered the CP. Firms could continue to look for insurance during the CP and, if obtained, that would be backdated by the new insurer to 1 October 2013. During the CP, firms were required to put in place plans for the orderly wind down of the practice and in accordance with Rule 5.2 SIIR 2013, firms could not take on any new instructions and could only finish existing work.

44. Rule 16.1(b) of the SIIR 2013 provided that it was a disciplinary offence for any firm or any person who was at the relevant time a principal in a firm to undertake any activities in connection with private legal practice in breach of Rule 5.2. Under Rule 5.2, each firm that was unable to obtain a policy of qualifying insurance prior to the expiration of the EIP, and any person who was a principal of such a firm, must ensure that the firm, and each principal or employee of such a firm, undertook no activities in connection with private legal practice and accepted no instructions in respect of such activities during the CP, save to the extent that the activity in connection with private legal practice was undertaken to discharge its obligations within the scope of the firm's existing instructions or was necessary in connection with the discharge of such obligations.

45. The commentary to those rules emphasised that, "disciplinary action will be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the cessation period."

Allegation 1.1

46. The Respondent failed to obtain renewal of his existing PII cover after 30 September 2013 or to secure alternative insurance by that date. In accordance with the SIIR 2013, as set out above, the Respondent was required to notify the Applicant within 5 business days i.e. by 8 October 2013 if his firm entered the EIP. No such notification was received by the Applicant by that date.

47. The Applicant became aware that the Respondent had entered the EIP because providers of qualifying insurance were required by the Applicant to issue lists to the Applicant detailing the firms which had renewed their insurance for 2013/14; the Firm did not appear on those lists.

48. In an email of 30 April 2014, responding to allegations put to him by letter of 20 March 2014, the Respondent stated:

> "I abided by the requirements of Rule 17(3)(a) of the [SIIR 2013] as I notified the SRA of my obligations on or around the 5th October 2013".

Allegation 1.2

49. The Firm was unable to renew or obtain insurance before the end of the EIP and therefore entered the 60 day CP on 31 October 2013. The Respondent was required to notify the Applicant of his Firm's entry into the CP no later than five business days after 31 October 2013. No such notification was received by the Applicant.

50. The Applicant wrote to the Respondent by email on 5 November 2013, informing him of the consequences of entry into the CP and that he must notify the Applicant and his insurers of the Firm's entry into the CP. No reply was received from the Respondent. The Respondent did not contact the Applicant until 13 December 2013, in relation to the Compliance Plan ("the Plan") as set out below in relation to allegations 1.3 and 1.4.

51. The Respondent failed to notify the Applicant of his entry into the CP; the Applicant became aware of this as the Firm appeared on a list of firms without indemnity insurance and there had been no communication from the Respondent to say that he had obtained PII cover.

52. In his email of 30 April 2014, the Respondent stated:

> "I acknowledge that [the Firm] delayed in notifying [the Applicant] of its entry into the cessation period but I believe this was occasioned by a plausible cause as your records would reveal that I notified [the Applicant] of the death of my mother during this period, resulting in my need to travel abroad for her burial".

Allegations 1.3 and 1.4

53. On 22 November 2013 the Applicant wrote to the Respondent, reminding him that the EPP of 90 days would expire on 29 December 2013, by which point the Firm was required to close if it had not obtained qualifying insurance for the 2013/14 indemnity insurance year.

54. The Applicant attempted to contact the Respondent by telephone on 4 and 5 December 2013. This was followed by an email from the Applicant to the Respondent on 9 December 2013, requesting that he make contact by noon the following day. The Respondent did not reply to that email.

55. On 10 December 2013, the Applicant sent a further email to the Respondent attaching a Compliance Plan ("the Plan") and Data Collection Schedule ("the Schedule") for his completion and return by 11 December 2013.

56. On 13 December 2013 the Respondent provided a completed Plan, signed and dated 12 December 2013, which stated that the Firm held two live immigration files and two client accounts, in respect of which the Firm was holding £19.17 and £9.70, being a total of £28.87. In completing the Plan on 12 December 2013, the Respondent undertook to ensure the orderly wind-down and closure of the Firm by 29 December 2013, and under the Schedule agreed to provide the Applicant with updated figures in respect of live client files and money (amongst other information requested) to enable the Applicant to monitor the orderly wind-down of the Firm.

57. The Plan included the following provision:

> "2. The managers of [the Firm] confirm that the data provided to [the Applicant] as detailed in the Schedule attached to this Compliance Plan was correct as of the date stated in the Schedule.
>
> 3. The managers of [the Firm] undertake that they will:
>
> a) Contact Supervision via (email address) by close of play each Monday to provide updated figures for the data in the attached Schedule as they stood at close of business on Friday;
> b) Dealt with all live client matters on or before 29 December 2013, such that retainers are concluded or matters transferred to another firm;
> c) Account to clients for all monies due in accordance with the SRA Accounts Rules 2011;
> d) Cease to practice on or before 29 December 2013 and notify [the Applicant] when they have ceased to practice;
> e) Effect an orderly wind-down of the firm in accordance with their obligations under the Principles, Outcomes, Rules and Regulations contained in the SRA Handbook 2011…"

58. On acknowledging receipt, the Applicant requested clarification as to the live client files held by the Firm, and as to where computer data would be stored. No response

was received. The Applicant attempted to telephone the Respondent on 17 December 2013; a message was left and an email was sent.

59. On 18 December 2013 the Respondent emailed the Applicant, seeking further clarification of what was required from him. He wrote:

> "I am however oblivious of an updated schedule required of me…"

60. On 19 December 2013 the Respondent stated that there was no change to the information he had provided. On 20 December 2013 and officer of the Applicant spoke with the Respondent, who said that the two immigration matters had been closed and that the sums held related to professional fees. The Applicant informed the Respondent in that telephone conversation that the clients concerned must receive written confirmation before those funds were transferred to office account. The note of the telephone conversation recorded that the Respondent agreed to write to the clients and update the Applicant again on 23 December 2013.

61. In an email on 23 December 2013 the Applicant reminded the Respondent that the Firm was required to close by 29 December 2013. On 3 January 2014, the Applicant wrote to the Respondent again, requesting updates to the Schedule, which had been due on 23 and 30 December 2013. On the same date, the Respondent sent an email to the Applicant which stated,

> "Kindly be referred to my email of 19th December 2013 when I indicated that there is no updated figure to be provided for the data previously given."

62. On 6 January 2014, an officer of the Applicant left a telephone message for the Respondent; there was no response to that message.

Allegation 1.5

63. The Respondent was at all relevant times the sole principal of the Firm. The Applicant referred to and relied on the Respondent's activities on client matters referred to at paragraphs 67 to 85 below amounted to activities in connection with private legal practice and/or acceptance of instructions in respect of such activities during the CP and after 29 December 2013.

Allegation 1.6

64. On 17 February 2014 the Applicant received a telephone call from a person claiming to be a client of the Firm, who asserted that the Respondent was still practising. On contacting the Firm thereafter, a Supervisor of the Applicant was informed that the Respondent was out of the office and that the Firm was not a law firm, but provided immigration advice and was regulated by the Office of the Immigration Services Commissioner ("OISC"). The Supervisor attempted to contact the Respondent on numerous occasions and on each occasion the Respondent was not available. On 26 February 2014, the Respondent contacted the Supervisor by telephone, confirming that he had applied to the OISC in order that he was able to provide regulated immigration services, notwithstanding the closure of his practice.

65. A witness statement of Ms SAW, a Complaints Investigator at the OISC, dated 15 July 2014, set out the role of the OISC in regulating persons and organisations, other than those already regulated by designated professional bodies, who wished to provide immigration advice and services. Ms SAW's statement, after dealing with various formalities, including the request by the Applicant for information about whether the Respondent was regulated by OISC, stated:

> "…I have caused a search of the records held by the OISC to be undertaken, and I am able to state that [the Respondent] is not currently regulated by the OISC to provide immigration advice and services. There are no records of any application for regulation currently pending from this individual."

It was the Applicant's case that in these circumstances, the Respondent's statement to the Applicant on 26 February 2014, that he had submitted an application to OISC, was false and/or misleading.

Allegations 1.7 and 1.8

66. The CP signed by the Respondent on 12 December 2013 included an undertaking to wind-down the Firm in an orderly way by 29 December 2013. As at 6 January 2014 the Respondent had provided no confirmation to the Applicant that he had ceased practice.

Client T

67. A former client of the Respondent, Mr T, instructed the Respondent in November 2012 to submit an application to the Home Office, on Mr T's behalf, for permanent residence in the UK. Copies of documents provided to the Applicant by Miss WB, on behalf of Mr T, under cover of an email dated 11 March 2014 and copies of documents obtained by the intervention agents were relied on by the Applicant.

68. On 22 November 2012 Mr T paid £700 on account of his application and the Firm's fees. On the same day, the Respondent applied for a residence card on behalf of Mr T. The Home Office acknowledged receipt of the application on 18 December 2012.

69. Mr T made a further payment of £200 to the Firm on 3 January 2013. On 19 March 2013, the Home Office wrote to the Respondent requesting further information in order to assess Mr T's application. On 8 April 2013, Mr T made a further payment of £200 to the Firm. On 15 October 2013, the Home Office rejected Mr T's application.

70. On 22 October 2013 (i.e. after entry into the EIP), Mr T and Miss WB met with the Respondent at the Firm to discuss an appeal to the Tribunals Service, and provided a further £140 in respect of the appeal fee.

71. On 6 November 2013 (i.e. after the Firm had entered the CP), the Tribunals Service acknowledged receipt of the appeal, but informed Mr T that no fee had been received. The fee was required by 22 November 2013. Miss WB wrote to the Respondent on 18 November 2013, prompting him to pay the appeal fee. Miss WB transferred an additional £500 to the Respondent's account. After a request by the Respondent on

18 November 2013, Miss WB provided confirmation of the payment into £500 into the Firm's account in respect of outstanding professional fees, £100 of which was payment on account for the Respondent's fees to represent Mr T at the appeal hearing.

72. The Respondent transferred £140 to the Tribunals Service account on 25 November 2013. On 16 and 24 December 2013 the Tribunals Service wrote to Mr T reiterating that the fee of £140 was required by 22 November 2013 and, as no fee had been received by that date, the appeal had been closed.

73. The Respondent wrote to the Tribunals Service on 12 February 2014 on the Firm's letterhead, stating that the Firm "act for the above named appellant…" and apparently enclosing a cheque for £140 in respect of the Tribunals fees. The letter enclosed Grounds of Appeal, and went on to "submit the establishment of special circumstances in [Mr T's] particular case as to why it should be deemed an in time appeal and for the re-opening of his appeal." An automatic response email from the Tribunals Service and a cheque for 14 February 2014, signed on behalf of the Firm, appeared on the client file for Mr T.

74. A letter addressed to "Advocates Solicitors" dated 20 February 2014 from the Tribunals Service informed the Respondent that an oral hearing had been requested and a further fee of £140 was required in order for the appeal to proceed.

75. On 24 February 2014 the Respondent contacted Mr T by telephone. Following that conversation, Miss WB on behalf of Mr T sent an email to the Respondent disinstructing the Respondent and made a request for the return of client papers. Ms WB also stated that the Respondent still held £100 on account.

Client MAO

76. The Respondent acted for client Mr MAO in respect of an immigration matter concerning Mr MAO's spouse, Mrs MOO. Documents were provided to the Applicant by Mr MAO.

77. The written decision of Judge Boyes of the First-Tier Tribunal, dated 21 February 2014 and setting out the decision made after a hearing Mrs MOO's appeal on 8 January 2014 listed the representative for the appellant as the Respondent, of "Advocates Solicitors".

78. Documentation obtained from the Tribunals Service included a letter dated 21 March 2014 addressed to the Clerk to the First-Tier Tribunal, which was on the Firm's letterhead, stated, "We act for the above named client in connection with her appeal matters", and asked the Tribunal's Service to return the client's original documents, following the appeal hearing on 8 January 2014.

79. On 6 May 2014, the Respondent sent an invoice to Mr MAO for £300 in respect of "professional charges in relation to acting for you in respect of your family's immigration appeal hearing as indicated above", with reference to an appeal hearing on 9 May 2014. The Respondent also sent an email to Mr MAO on 2 July 2014, attaching Mrs MOO's grounds of appeal. The email contained a footer which stated,

"Advocates Solicitors is authorised and regulated by the Solicitors Regulation Authority No: 439132".

Client MAB

80. Copy documentation obtained from the Tribunals Service indicated that the Respondent was acting for Ms MAB in relation to an immigration matter after expiry of the CP. By letter dated 29 December 2013, faxed on 31 December 2013 (i.e. after the expiry of the CP) the Respondent wrote to the Clerk to the First Tier Tribunal enclosing Ms MAB's grounds of appeal. A letter from the Tribunals Service dated 28 January 2014, addressed to the Firm in respect of Ms MAB, indicated that the appeal was to be heard on 20 August 2014.

Client AM

81. Client Mr AM instructed the Firm to act in respect of an application for a residence card. On 6 August 2012 the Respondent confirmed his instruction by Mr AM in a letter to the UK Border Agency. By letter dated 24 December 2013, five days before the expiry of the CP, to the First Tier Tribunal the Respondent appealed the decision on behalf of Mr AM. The letter stated that the Firm was, "instructed by the above named client in connection with his immigration matters". A copy of that letter was sent from the Firm by fax on 31 December 2013, after expiry of the CP.

82. The Tribunals Service acknowledged receipt of the appeal by letter dated 12 February 2014, addressed to Mr AM, care of the Firm. The Tribunals Service later wrote to Mr AM, care of the Firm, on 13 June 2014 providing notice that the appeal would be heard on 21 January 2015.

Client MM

83. The Respondent acted in an appeal to the First Tier Tribunal in relation to an immigration matter for client Mr MM. Documents concerning this matter were obtained by the Applicant from the Respondent's file from the intervention agents. Under cover of a letter dated 8 January 2014, signed by "Advocates Solicitors", (i.e. after expiry of the CP), the Respondent apparently provided grounds of appeal to the First Tier Tribunal on behalf of Mr MM. A copy of the letter was sent to the First Tier Tribunal by the Respondent by fax on 10 and 13 January 2014.

84. A notice of hearing addressed to the Firm indicated that the matter was to be heard on 25 September 2014. A record of the proceedings on 25 September 2014 obtained by the Applicant from the Tribunals Service indicated that the Respondent represented Mr MM at that hearing.

85. Further, the client's details and case sheet dated 10 January 2014 noted that £240 had been "paid today", with a "£150 balance payable".

Allegation 1.9

86. The Applicant wrote to the Respondent on 20 March 2014, requesting his explanation regarding the Firm's entry into the EIP and then the CP, compliance with the undertakings in the Plan, his apparent continued practice and his reasons for the delays in reporting to the Applicant.

87. The Applicant received no response to that correspondence and on 16 April 2014 commenced a forensic investigation into the Firm. The forensic investigation officer ("FI Officer") attended the Respondent's office that day. The FI Officer's record of the visit was contained in a forensic investigation report dated 18 June 2014 ("the Report"). It was reported that the Firm's signage was still visible to the public and that there was no answer when he knocked on the door. The FI Officer reported that he then telephoned the Firm's office; the Respondent answered, informing the FI Officer that the call had been transferred to his mobile phone. The Respondent stated that he was unwell and that he had a medical appointment that morning. The FI Officer informed the Respondent that the notification letter would be posted through the Firm's letterbox. The FI Officer then posted notice of the investigation through the Firm's front door; the notification letter included a request for information to be provided to the FI Officer under s44B of the Solicitors Act 1974 in relation to business transacted within the previous 6 months. The FI Officer and the Respondent agreed to meet the at the Firm's offices on 17 April 2014.

88. The FI Officer reported that the Respondent telephoned him later that day to say that he was too unwell to attend the appointment on 17 April 2014 and confirmed that he would email a medical certificate to the FI Officer the same evening. The Respondent also suggested that the investigation should start two weeks later, stated that the Firm had closed in December 2013 and that it held no bank accounts.

89. The Respondent did not provide a medical certificate that evening. The FI Officer emailed the Respondent on 17 April 2014, requesting a copy of the certificate and documentation regarding the client Mr T (see paragraphs 67 to 75 above), and matters still being conducted by the Firm. The FI Officer also requested confirmation of the status of the Respondent's application to the OISC, together with a copy of his application and any response received from the OISC regarding the application.

90. A medical certificate for the Respondent was received on 23 April 2014, which covered the period 17 April to 1 May 2014. The FI Officer sent an email to the Respondent on 24 April 2014, asking the Respondent to meet him at the Firm's offices on 2 May 2014.

91. The Respondent wrote to the Applicant by email on 30 April 2014, providing some answers to the questions set out in the Applicant's letter of 20 March 2014. As noted at paragraphs 48 and 52 above, the Respondent admitted that he had delayed in informing the Applicant of his entry into the CP; he denied any other regulatory breach. The Respondent did not refer in the email to the proposed meeting on 2 May 2014.

92. On 1 May 2014 the FI Officer sent an email to the Respondent referring to the proposed meeting on 2 May 2014 and noting that he had not received a response to confirm if the appointment was acceptable; the FI Officer indicated that he would attend the Firm's office on 2 May 2014 unless he heard otherwise. The Respondent sent an email to the FI Officer stating, "I regret to inform you that owing to my ongoing ill-health that I am unavailable for the appointment."

93. The Applicant's Supervision department attempted to contact the Respondent on 8, 15 and 16 May 2014 by email. On 16 May 2014 the Respondent replied, attaching a doctor's notice for the period 16 to 23 May 2014, which stated that the Respondent's fitness to work need not be assessed again following the expiration of that period. No further correspondence was received from the Respondent. The Applicant contacted the Respondent on 19 and 20 May 2014 to remind him to arrange a meeting with the FI Officer, and informing him of advice and support services he may wish to utilise.

94. A further s44B Notice was posted through the Firm's letterbox on 6 June 2014.

95. Having received no further communications from the Respondent, the FI Officer prepared the Report. The Report was sent to the Respondent under cover of a letter dated 21 July 2014. The Respondent did not reply to that letter and the Applicant resolved to intervene into the Respondent's practice on 6 August 2014.

Allegations 1.10, 1.11 and 1.12

96. Miss WB complained to the Legal Ombudsman ("LeO") in February 2014 in respect of the Respondent's work on behalf of Mr T. In addition to procedural failures in the work undertaken, Miss WB complained that the Respondent had not released the relevant client papers. The matter was considered by an Investigator of the LeO, who wrote to the Respondent on 25 February, 5 and 19 March 2014, requesting various documents relating to Mr T's instruction and an explanation as to the poor service which Miss WB alleged the Respondent had provided. No response was received.

97. The matter was considered by an Investigator at the LeO, who wrote to Miss WB on 7 April 2014 enclosing her Recommendation Report dated 7 April 2014 ("the LeO Report"). The LeO Report concluded that the Respondent had given a "poor service" to Mr T and that the Respondent should refund fees paid in the sum of £1,600, an appeal fee of £140, and that the Respondent pay £350 to Mr T to reflect "the impact the failings in the Firm's service" had on Mr T. The Investigator further recommended the return to Mr T of papers held by the Respondent. The Investigator's letter of 7 April 2014 stated that, "if you don't respond, or if you don't indicate any disagreement with the recommendation in the report by 21 April 2014 we will treat the complaint as closed."

98. No response was received from the Respondent. An Ombudsman considered the complaint and upheld the Investigator's Recommendations, save that by that time it appeared that the Respondent had released the relevant client files to the complainant's newly instructed solicitors. The Respondent was notified of the LeO's decision by letter dated 15 May 2014, enclosing the decision letter to the Respondent of the same date. The complainant accepted the Recommendation on 17 May 2014.

99. On 11 May 2014 Miss WB notified the Applicant that Mr T had not received the payments recommended by the Ombudsman.

Allegation 1.13

100. The Respondent did not comply with the s44B Notices dated 16 April and 5 June 2014, referred to at paragraphs 87 and 94 above.

Witnesses

101. No witnesses were called to give evidence and the matter proceeded on the papers, in respect of which Civil Evidence Act Notices had been served.

Findings of Fact and Law

102. 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.

103. As the Respondent had not indicated his position in respect of the allegations, the Tribunal proceeded on the basis that the allegations were all denied. The only document before the Tribunal in which the Respondent had commented on any allegations made by the Applicant was an email dated 30 April 2014, which contained partial admissions. However, this was not a formally pleaded document and the Tribunal did not take anything contained in that email to be a formal admission.

104. The Tribunal noted and found that the regulatory background to the allegations concerning insurance was as set out above at paragraphs 37 to 43 above.

105. **Allegation 1.1 - Failed to notify the SRA within the prescribed time limits that the Firm had entered into the Extended Indemnity Period ("EIP"), as required by Rule 17(3)(a) of the SRA Indemnity Insurance Rules 2013 ("the SIIR 2013"), and in doing so:**

1.1.1 Breached Principles 6 and/or 7 and/or 8 of the SRA Principles 2011 ("the Principles"); and further or alternatively

1.1.2 Failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code").

105.1 The factual background to this allegation is set out at paragraphs 46 to 48 above.

105.2 The Tribunal noted and found that the Respondent had entered the EIP and he was required to notify the Applicant of this no later than 8 October 2013, being five working days after commencement of the EIP.

105.3 The Tribunal noted that the Applicant had taken a number of steps during 2013 to inform the profession about the new insurance scheme, and the requirements of the scheme, including the duty to notify the Applicant of entry into the EIP and/or the CP.

105.4 The Tribunal noted that in his email of 30 April 2014, the Respondent had stated that he had notified the Applicant "on or around 5th October 2013". Against this, the Applicant's evidence was that no written notification had been received, either by email or letter. The Tribunal noted that it was for the Applicant to prove the allegation. However, the Respondent's vague assertion that he had notified the Applicant "on or about 5th October 2013" was not sufficient to create any reasonable doubt. The Respondent had not suggested in what form he had given the notice, whether in writing or by email, and had not indicated that he had any record of sending an email or writing a letter. The Tribunal was satisfied, to the required standard, that the Respondent had not given notification as required. There was no doubt that the Respondent was in breach of Rule 17(3)(a) of the SIIR 2013.

105.5 Given the importance of compliance with the regulatory rules concerning insurance, the Tribunal was also satisfied that the failure to give notice was conduct which would fail to maintain the trust the public would place in the Respondent and in the provision of legal services, was a breach of his regulatory obligations and, as the sole principal of the Firm, the Respondent had failed to run his Firm in accordance with proper governance and sound financial and risk management principles. The Respondent had failed to notify the Applicant promptly of a material change concerning the Firm, namely its failure to secure insurance by the start of the insurance year. The Tribunal was therefore satisfied to the required standard that the Respondent's conduct was in breach of Principles 6, 7 and 8 and that he had failed to achieve Outcome 10.3 of the 2011 Code.

106. **Allegation 1.2 - Failed to notify the SRA within the prescribed time limits of the Firm's entry into the Cessation Period ("CP") within the meaning of the SIIR 2013 as required by Rule 17(3)(b) of the SIIR 2013, and in so doing:**

1.2.1 Breached Principles 6 and/or 7 and/or 8 of the Principles; and further or alternatively

1.2.2 Failed to achieve Outcome 10.3 of the 2011 Code.

106.1 The factual background to this allegation is set out at paragraphs 49 to 52 above.

106.2 Again, the Tribunal noted and found that the Applicant had taken steps to notify the profession about the new insurance regime in 2013 and the requirements of the new scheme.

106.3 The Tribunal was satisfied that the Respondent had not given notice to the Applicant of the Firm's entry into the CP. He was therefore in breach of Rule 17(3)(b) of the SIIR 2013.

106.4 The Tribunal noted that the Respondent's email of 30 April 2014 referred to his mother's death being "during this period", presumably the EIP or CP (in autumn 2013), yet the letter of 4 January 2016 referred to her death being in August 2013. The Tribunal noted and accepted that a family bereavement, with the consequent need to attend to appropriate funeral formalities, would be both upsetting and distracting. However, the requirement on the principal of a firm to comply with regulatory duties such as with regard to insurance was a matter of strict liability. The Respondent had

not notified the Applicant during autumn 2013 of any difficulties he may have been experiencing which had an impact on his ability to work or comply with his duties.

106.5 The Tribunal was satisfied that the Respondent's conduct in failing to notify the Applicant of his Firm's entry into the CP amounted to a breach of Principles 6, 7 and 8 of the Principles and failed to achieve Outcome 10.3.

107. **Allegation 1.3 - Failed to take steps to ensure an orderly and transparent wind-down of activities and/or closure of his practice, having entered into a CP under the SIIR 2013, in that after 29 December 2013 the Firm continued to hold two client files in respect of which funds were being held and/or the Respondent continued to act on behalf of at least one client, and in doing so:**

1.3.1 Breached Principles 5 and/or 7 and/or 10 of the Principles; and further or alternatively

1.3.2 Failed to achieve Outcomes 7.4 and/or 10.13 of the 2011 Code.

1.4 Failed to comply with undertaking(s) given to the SRA in a Compliance Plan dated 12 December 2013 ("the Plan") in that he failed to provide weekly updates to the SRA on client monies held and failed to account to clients for money due and historic client balances and in so doing:

1.4.1 Breached Principle 7 of the Principles; and further or alternatively

1.4.2 Failed to achieve Outcomes 10.3 and/or 11.2 of the 2011 Code.

107.1 The factual background to these allegations is set out at paragraphs 53 to 62.

107.2 The Tribunal noted that the Plan agreed by the Respondent was in a standard form. The Applicant's position was that the Plan was intended to ensure that clients' interests were protected. The request for weekly information about client balances was to make sure that progress was being made in returning money to clients or informing clients about costs and transferring money to office account.

107.3 The Tribunal noted and found that as at the date of the Plan (12 December 2013), the Respondent held a little under £30 of client money, which he indicated to the Applicant represented legal costs. On 18 December 2013 the Respondent had indicated that he was "oblivious" of the need to provide an updated Schedule; this was just 6 days after he signed the Plan. The Applicant informed the Respondent of the need to write to clients (and/or issue bills) in order to transfer the sums held from client to office account. On 19 December 2013 there had been no change in the position, according to the Respondent's email of that date.

107.4 The Respondent's email to the Applicant of 3 January 2014, in which he stated that there was no updated figure to be provided, indicated that the Respondent had not taken any steps to return monies to clients or to bill that money and notify the clients of this.

107.5 The Applicant's position was that the Plan required the Respondent to wind up the Firm in an orderly and transparent way, and to provide confirmation that it had been wound up. As at 29 December 2013, the Respondent held client money of just under £30; there had been no information provided by the Respondent to show that that money had been dealt with or that the clients had been contacted. The Respondent had failed to provide updated Schedules as required by the Plan and had failed to account to his clients for the money he held for them.

107.6 The Tribunal was satisfied on the evidence presented that the Respondent had continued to hold client money in respect of two client matters after 29 December 2013. The sums involved were small, but the money in question belonged to clients and should have been dealt with appropriately and promptly. The Tribunal was satisfied that in failing to return client monies – and in continuing to act for clients after 29 December 2013, about which more is said below – the Respondent failed to provide a proper standard of service to his clients. Further, in failing to close the Firm as required, he was in breach of his regulatory requirements and had failed to protect client money. The Respondent was therefore in breach of Principles 5, 7 and 10 in relation to allegation 1.3.

107.7 The Tribunal noted that Outcome 7.4 set out an obligation to maintain systems and controls for monitoring the financial stability of a firm and risks to money and assets entrusted to the solicitor by clients and others, and take steps to address issues identified. The Tribunal had seen no evidence concerning the systems operated by the Respondent and so could not be satisfied to the required standard that he had failed to maintain appropriate systems. Outcome 10.13 required solicitors, once aware that their firm would cease to practise, to effect an orderly wind-down of activities, including informing the Applicant before and after the firm closed. The Tribunal was satisfied that this part of the allegation had been proved to the required standard.

107.8 It was clear on the evidence that the Respondent had not provided weekly updates to the Applicant, as required by the terms of the Plan, and that he did not return client money or give any notification of costs such that he could transfer the client balances to his office account. The Tribunal was satisfied that in these respects the Respondent was in breach of his regulatory obligations. He had failed to notify the Applicant of appropriate matters concerning the Firm. Outcome 11.2 of the 2011 Code provided that solicitors must comply with undertakings within an agreed timescale or within a reasonable time.

107.9 The Tribunal was satisfied to the highest standard that allegation 1.3 had been proved, save with regard to Outcome 7.4, and allegation 1.4 had been proved in its entirety.

108. **Allegation 1.5 - Failed to ensure that the Firm, having failed to obtain qualifying insurance prior to the expiration of the EIP, and each principal or employee of the Firm, did not undertake activities in connection with private legal practice and/or did not accept instructions in respect of such activities during the CP, save as to the extent permitted by Rule 5.2 of the SIIR 2013, and in doing so breached Principles 6 and/or 7 and/or 8 of the Principles.**

108.1 The factual background to this allegation is set out at paragraph 63 and paragraphs 67 to 85, which relate to the Respondent's activities concerning clients Mr T, Mr MAO, Ms MB, Mr AM and Mr MM.

108.2 The Tribunal was satisfied to the required standard that the Respondent had continued to undertake activities in connection with private legal practice and had accepted instructions in respect of such activities during the CP. The Tribunal noted that the documents provided in respect of clients MAO and MM post-dated the CP. In the matter of Mr T, as set out at paragraphs 71 to 73 above, the Respondent had received client money and corresponded with the Tribunals Service about an appeal when he knew the Firm was required to close. In the matter of client MAB, the Respondent had prepared a letter dated 29 December 2013, but sent after the CP ended, in which it was stated he acted for MAB. The appeal in the matter of client MAB appeared to be started by the Respondent on 24 December 2013, just five days before the end of the CP.

108.3 The Tribunal was satisfied that during the CP the Respondent had acted beyond the scope of the work permitted by Rule 5.2 of the SIIR 2013. Given the importance to the public and to the reputation of the profession of solicitors holding insurance when carrying out legal work, the Tribunal was satisfied that in acting as he did when the Firm was due to close due to lack of insurance, the Respondent's conduct would tend to reduce the trust the public would place in him and in the provision of legal services. He was in breach of his regulatory obligations and during the CP failed to run the Firm in accordance with sound governance and risk management principles. The Tribunal was satisfied that the Respondent was in breach of Principles 6, 7 and 8, and this allegation had been proved in full.

109. **Allegation 1.6 - On 26 February 2014, provided false and/or misleading and/or incomplete information to the SRA in respect of an application to the Office of the Immigration Services Commissioner ("OISC") and in doing so breached both or alternatively either of Principles 2 and 6 of the Principles.**

109.1 The factual background to this allegation is set out at paragraphs 64 and 65 above.

109.2 The Tribunal accepted and found that in a telephone conversation on 26 February 2014 the Respondent had stated that the Firm had submitted an application to OISC to carry out immigration work and was waiting for the result of that application. There was no evidence or information from the Respondent to gainsay that evidence.

109.3 The Tribunal also accepted the evidence in the witness statement of Ms SAW of the OISC; again, there was nothing from any source to cast any doubt on that evidence.

109.4 However, the statement from Ms SAW was dated 15 July 2014. The Tribunal accepted that at that date the Respondent was not regulated by OISC and that there was no "pending" application from the Respondent for regulation. However, the statement did not contain any comment on whether there may have been an application in or about February 2014 which had been rejected or withdrawn.

109.5 The Tribunal could not be satisfied to the required standard that the Respondent had given misleading and/or incomplete information to the Applicant on 26 February 2014; this allegation was not proved.

110. **Allegation 1.7 - Continued to practise after 29 December 2013, having given an undertaking to cease practice by no later than 29 December 2013, and without having professional indemnity insurance ("PII") in place, and in doing so:**

1.7.1 Breached Rule 4 and/or Rule 5 of the SIIR 2013; and or alternatively

1.7.2 Breached Principles 2 and/or 5 and/or 6 and/or 7 of the Principles; and or alternatively

1.7.3 Failed to achieve Outcomes 1.8 and/or 10.3 of the 2011 Code.

1.8 Continued to practise as a sole practitioner in breach of conditions imposed on his practising certificate and sole practitioner recognition on or after 14 April 2014, contrary to Rule 19 of the SRA Practice Framework 2011 and in so doing:

1.8.1 Breached all or alternatively any or Principles 2, 6, 7 and/or 8 of the Principles; and further or alternatively

1.8.2 Failed to achieve Outcome 1.3 of the 2011 Code.

110.1 The factual background to these allegations is set out at paragraphs 66 to 85 above.

110.2 The Applicant submitted that the exercise of rights before the First Tier Tribunal (Immigration and Asylum Chamber) is a reserved activity under Schedule 2 of the Legal Services Act 2007. Under Rule 48 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, which applied from 4 April 2005 until 20 October 2014, a party may be represented by any person not prohibited from representing by s84 of the Immigration and Asylum Act 1999. As the Respondent was not registered with the OISC he would have been authorised to represent a party only as a practising solicitor.

110.3 The Applicant's case was that by continuing to practise after 29 December 2013, the Respondent had breached his regulatory obligation to cease practice and effect an orderly wind-down of the Firm, having undertaken to do so in the Compliance Plan. It was further alleged that he failed to conduct himself in a way that maintained the trust the public placed in him and in those who provide legal service. Additionally, or alternatively such disregard of those obligations was indicative of a failure to act with integrity.

110.4 With regard to client Mr T, the Tribunal noted and found that the Respondent had continued to deal with the client and with the Tribunals Service until disinstructed in February 2014. The Tribunal also noted and found that the client's file was not transferred to other solicitors until about 12 March 2014. The Tribunal found in

particular that on 12 February 2014 the Respondent had written to the Tribunals Service about this matter, stating that the Firm acted for the appellant, Mr T.

110.5 It was the Applicant's case that the Respondent was conducting litigation and functions ancillary to the conduct of litigation, a reserved activity, whilst acting for client Mr MAO under the auspices of the Firm and subsequently under his own name, following the expiry of the CP.

110.6 The Tribunal found in relation to Mr MAO that it was clearly the case that the Respondent had continued to conduct litigation and to appear in court on behalf of clients after 29 December 2013, by which date the Firm should have closed. The Immigration Tribunal decision concerning the appeal hearing on 8 January 2014 showed clearly that the Respondent, who appeared for the appellant and gave the name of the Firm, was the clearest possible evidence of this.

110.7 With regard to client Ms MAB, the Tribunal found that the Respondent had sent a fax relating to the client's grounds of appeal to the Tribunals Service on 31 December 2013, after the end of the CP. The Respondent received a letter from the Tribunals Service dated 28 January 2014 concerning this matter; this indicated that the Respondent had not informed the Tribunals Service that he was no longer acting in the matter.

110.8 In relation to client Mr AM, the Respondent had again sent a fax regarding the client's immigration matter to the Tribunal's Service after the end of the CP, namely on 31 December 2013. The client's appeal was a new matter. In the letter with the appeal documents it was stated that the Firm was instructed by the client in connection with his immigration matters. The Tribunals Service then corresponded with the Respondent in February and June 2014, which indicated that the Tribunals Service understood that the Respondent continued to act for Mr AM.

110.9 Client Mr MM's appeal – which was another new instruction – was sent to the Tribunals Service by the Respondent on 8 January 2014 (and again on 10 and 13 January 2014). The Respondent had accepted money from the client in January 2014 towards his costs.

110.10 The Tribunal was satisfied that with regard to all of the above-named clients the Respondent had continued to practise after 29 December 2013, in breach of his undertaking to cease practice by that date, and at a time when he did not have in place any qualifying insurance. This was a clear breach of his obligations under Rules 4 and 5 of the SIIR 2013. The Tribunal was satisfied to the required standard that in acting in this way, the Respondent had failed to provide a proper standard of service. The Respondent was well aware of the requirement to close his Firm, yet continued to act for clients, including in new matters, when he was aware that he was uninsured. This conduct showed a lack of integrity, would damage the trust the public would place in the Respondent and in the provision of legal services and was a breach of the Respondent's regulatory obligations. Further, in acting in this way the Respondent denied client's the protection of the compulsory PII cover and he failed to inform the Applicant that he was acting in breach of his professional obligations.

110.11 The Tribunal was satisfied to the required standard in relation to the above mentioned clients that allegation 1.7 had been proved in full.

110.12 The Tribunal noted and found that from 14 April 2014 there was a condition on the Respondent's Practising Certificate such that he was not permitted to practise as a sole practitioner or sole director of a recognised, licensed or legal services body. The Tribunal found that the Respondent was notified of those conditions by letter dated 14 April 2014 and was satisfied that he would have been aware of the conditions within a few days of that letter.

110.13 The Tribunal noted that in the matter of Mr MAO, the Respondent issued a bill to the client dated 6 May 2014, which referred to an appeal hearing to take place on 9 May 2014. The invoice appeared on the Firm's stationery. A letter to the Applicant from Mr MAO concerning the Respondent referred to the hearing on 9 May 2014, at which it appeared from the letter that the Respondent had arranged for a barrister to attend on behalf of Mr MAO. The Tribunal's decision relating to that hearing, referred to the barrister being instructed by "Messrs Advocates Solicitors". In the matter of Mr AM, the Tribunal noted a letter from the Tribunals Service dated 13 June 2014 which referred to an appeal hearing to take place in January 2015.

110.14 These were the only two matters in respect of which there was evidence that the Respondent had continued to practise after 14 April 2014 and in particular after he would have been aware of the conditions on his Practising Certificate. The clearest evidence was the bill issued, in the name of the Firm, on 6 May 2014 and the reference to counsel being instructed by the Firm for the hearing on 9 May 2014. There could be no doubt that the Respondent had continued to practise under the auspices of the Firm when he was not permitted to be a sole practitioner.

110.15 In these circumstances, where the Respondent was acting where he was not entitled to do so, he had displayed a lack of integrity or any adherence to the proper expectations of clients and the profession. His conduct would tend to diminish rather than maintain the trust the public would place in him and the provision of legal services. There could be no doubt that the Respondent had acted in breach of his regulatory obligations. In continuing to run his Firm when he should not have done, the Respondent was failing to run the Firm in accordance with sound governance and risk management principles. He had not complied with the Code in deciding to act for Mr MAO and Mr AM after 14 April 2014.

110.16 The Tribunal was satisfied to the required standard that allegation 1.8 had been proved in full.

111. **Allegation 1.9 - Failed to respond promptly or at all to communications sent to him by the SRA and in doing so:**

1.9.1 Breached Principle 7 of the Principles; and further or alternatively
1.9.2 Failed to achieve Outcome 10.6 of the 2011 Code.

111.1 The factual background to this allegation is set out at paragraphs 86 to 95 above.

111.2 The Tribunal found the facts alleged by the Applicant to be proved. On a significant number of occasions in the period March to July 2014 the Applicant had contacted the Respondent in relation to its concerns about his Firm. Whilst the Respondent had produced doctor's certificates for two two-week periods, both of which referred to a family bereavement as the condition in respect of which the certificate was issued, he had offered no explanation for his failure to respond promptly and/or at all to the Applicant's correspondence. He had failed to co-operate with the reasonable requests of the FI Officer to enable an investigation to be carried out.

111.3 In these circumstances, the Tribunal was satisfied to the required standard that the Respondent had failed to deal with the Applicant in an open, timely and co-operative manner and had failed to co-operate with the Applicant. The Tribunal was satisfied that this allegation had been proved in full.

112. **Allegation 1.10 - Failed to return client money promptly following the date on which the practice was required to close, being 29 December 2013, and failed to inform clients in writing of the amount retained and the reason for that retention, in that fund being held in the Firm's client account after 29 December 2013, and in doing so:**

1.10.1 Breached Rules 14.3 and 14.4 of the SRA Accounts Rules 2011; and further or alternatively
1.10.2 Breached Principles 4 and 10 of the Principles.

1.11. Failed promptly to pay compensation to a former client in compliance with a recommendation of the Legal Ombudsman and in doing so:

1.11.1 Breached Principles 6 and/or 7 of the Principles; and further or alternatively

1.11.2 Failed to achieve Outcome 1.5 of the 2011 Code.

1.12 Failed to deal with the Legal Ombudsman in an open, timely and co-operative manner, and in doing so:

1.12.1 and further or alternatively
1.12.2 Failed to achieve Outcome 10.6 of the 2011 Code.

112.1 The factual background to these allegations is set out at paragraphs 96 to 99 above.

112.2 The Tribunal found on the evidence presented that the Respondent had retained client monies after 29 December 2013 without good reason and without notifying the relevant clients. The sums involved were not large, but the Respondent's conduct (including in relation to client money) had given rise to a complaint to LeO by Ms WB on behalf of Mr T. The Respondent had failed to correspond with or otherwise co-operate with the LeO's investigation and failed to pay the compensation to Mr T which was recommended by the LeO.

112.3 The Tribunal was satisfied that the Respondent had by virtue of these matters breached Rules 14.3 and 14.4 of the Accounts Rules, had failed to act in the best interests of clients and had failed to protect client money. Failing to pay the compensation recommended would tend to reduce the trust the public would place in the Respondent and in the provision of legal services. He had failed to co-operate with the LeO's investigation or to comply with the recommendation, in breach of his duty to co-operate. The Respondent had failed to provide a competent service to Mr T.

112.4 The Tribunal was satisfied to the required standard that allegations 1.10, 1.11 and 1.12 had been proved in full.

113. **Allegation 1.13 - Failed to comply with notices served by the SRA pursuant to s44B of the Solicitors Act 1974 ("s44B Notices") dated 16 April and 5 June 2014, and in doing so:**

1.13.1 Breached Principle 7 of the Principles; and further or alternatively

1.13.2 Failed to achieve Outcome 10.8 of the 2011 Code.

113.1 The factual background to this allegation is set out at paragraph 100 above.

113.2 The Applicant alleged that in failing to co-operate with the Applicant in an open, prompt and co-operative manner, across a prolonged period and despite the Applicant's attempts to elicit responses from him, the Respondent prevented the Applicant from exercising its proper regulatory function. It was alleged that the Respondent remained in breach of Principle 7.

113.3 There was no doubt that the Respondent had failed to comply with notices served under s44B of the Solicitors Act 1974 on 16 April and 5 June 2014 and was in breach of Principle 7 of the Principles and had failed to achieve Outcome 10.8 of the Code. This allegation had been proved in full.

Other Issues

114. Within the Rule 5 Statement, it was alleged that by reason of the various matters in this case the Respondent had failed to act with integrity or in a way which would maintain public trust. Allegations of breaches of Principle 2 were made in relation to allegations 1.6, 1.7 and 1.8. Allegation 1.6 had not been proved. Breaches of Principle 6 were alleged and proved in relation to allegations 1.1, 1.2, 1.5, 1.7, 1.8, 1.11 and 1.12.

115. The particular facts and matters which indicated a lack of integrity and/or amounted to conduct which would tend to reduce the trust the public would place in the Respondent and in the provision of legal services included the following matters:

115.1 The Respondent's failure properly to engage with the SRA, his professional regulator, during or after the EIP or CP, notwithstanding the fact that by no later than 13 December 2013 he was aware of his obligations, including an obligation to cease practice by no later than 29 December 2013;

115.2 He knowingly continued to deliver legal services to clients, holding himself out as doing so under the Firm's name, after the expiry of the CP, and in the knowledge that clients were not protected by PII;

115.3 He continued to hold client monies after the expiry of the CP;

115.4 He conducted reserved activities (in particular with regard to appearances at the Immigration and Asylum Tribunal) in the knowledge he was not entitled to do so;

115.5 He knowingly failed to comply with a recommendation of the LeO;

115.6 He knowingly continued to deliver legal services to clients as a sole practitioner in breach of conditions imposed on his Practising Certificate and sole practitioner recognition, on or after 14 April 2014.

116. The matters set out at paragraph 115 were findings of fact and did not constitute an additional allegation. These findings of fact were relevant to the question of sanction.

117. In considering questions of lack of integrity, the Tribunal noted that the Applicant referred to the case of Hoodless and Blackwell v Financial Services Authority Financial Services Authority [2003] UKFTT FSM007 (3 October 2003) ("Hoodless and Blackwell"), in which it was stated:

> "In our view, "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate)"

The Tribunal did not consider this to be entirely clear as to the meaning of integrity or the lack of it.

118. The Tribunal also noted the case of SRA v Chan, Ali and Abode Solicitors Limited [2015] EWHC 2659 (Admin), in which Davis LJ stated at paragraph 48:

> "As to want of "integrity", there have been a number of decisions commenting on the import of this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case".

119. In this case, the Tribunal was satisfied that in relation to the matters found proved in allegations 1.7 and 1.8, the Respondent had displayed a want of integrity and in particular with regard to the matters mentioned at paragraphs 115.2, 115.3, 115.4 and 115.6 above.

Previous Disciplinary Matters

120. There was one previous matter in which findings had been made against the Respondent. In case number 10406/2009, heard on 23 June 2010, an allegation that the Respondent had failed to reply to correspondence received from the SRA and was thereby in breach of Rule 20.5 of the Solicitors Code of Conduct 2007 had been found proved. The Respondent had been fined £1,000 and was ordered to pay the SRA's costs in the sum of £2,001.40.

Mitigation

121. No mitigation was offered as the Respondent was not present or represented.

Sanction

122. The Tribunal had regard to its Guidance Note on Sanctions (December 2015) and to all of the facts of the case.

123. The Tribunal noted that all of the allegations had been proved, save for allegation 1.6 and part of allegation 1.3. The proved allegations included a number of matters in which breaches of core duties and Principles had been proved; such breaches would almost inevitably be regarded as serious breaches of a solicitor's duties. The Tribunal noted that the primary purpose of sanction in the Tribunal 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 (see Bolton v Law Society [1994] 1 WLR 512).

124. The Tribunal assessed the seriousness of the conduct which had been found proved, and in doing so considered the Respondent's culpability for the misconduct, the harm caused and the presence of any aggravating and/or mitigating factors.

125. The Respondent was solely culpable for what had occurred; no-one else was involved. He had direct control over his own actions. The Respondent's motivation for the misconduct was not known, but the context was that he was unable to secure affordable PII cover and so was required to close his practice. All of the evidence before the Tribunal indicated that the Respondent had chosen to try to continue, without insurance. The course of conduct was planned rather than spontaneous; the Respondent had chosen to continue to represent clients when he should not have done so and knew he should not do so. Although the sums of money involved were quite small, the Respondent had breached the trust of his clients by failing to account to them promptly for the money he held on their behalf. The Respondent had been a solicitor for over 10 years at the time of the relevant events and had run his own Firm for about 8 years at the relevant time; he was therefore quite experienced as a solicitor and as a manager of a legal practice.

126. The specific harm to the Respondent's clients was hard to assess as it was not known if any of them had suffered particular loss and/or made any claims against the Respondent. What was very clear was that the Respondent had put his clients at significant risk in continuing to act when he was uninsured. Further, there had been a finding by the LeO that the service provided by the Respondent had been inadequate.

He had failed to comply with the recommendation which had been made. The Tribunal had no doubt that in addition to harm to particular clients, the Respondent's conduct would harm the reputation of the profession.

127. There was no dishonesty alleged in this case and no criminal offence had been committed. However, the Respondent's conduct was deliberate, calculated and had continued over a period of months. No vulnerable client had been taken advantage of, albeit the Respondent had continued to act for clients in circumstances where their matters were of great personal importance to those clients when he should not have acted. The Respondent had concealed his wrongdoing by not informing his clients that the Firm had closed and in failing to co-operate fully with the Applicant. The Respondent ought to have known that acting as he did was a significant breach of his professional obligations, which obligations were in place to protect the public and the reputation of the profession. The Tribunal considered it an aggravating factor that there had been previous findings of misconduct against the Respondent. The previous findings related to a failure to co-operate with the Applicant; he had repeated that misconduct in his more recent conduct.

128. The Tribunal considered whether any of the mitigating factors listed in the Guidance Note (for example, whether the Respondent had made prompt admissions or shown insight into the misconduct), but could not find that any of those factors applied in this case.

129. The Tribunal noted and took account of the Respondent's assertion in his letter of 4 January 2016 that he suffered with ill-health, but there had been no evidence of this. The Tribunal noted that the Respondent had been adjudged bankrupt in 2014; there was no evidence about whether the bankruptcy had been discharged, but in the normal course of events that order would have been discharged a year after the order was made. The Respondent had provided no evidence of his means. In addition, the Tribunal noted that matters of purely personal mitigation would not be relevant in determining the seriousness of the misconduct, although it could be relevant in determining the fair and proportionate sanction.

130. The Tribunal assessed the Respondent's conduct as very serious. It was clearly not a case in which it was appropriate to make "no order", to reprimand the Respondent or to fine him; such sanctions would not be sufficient to safeguard the reputation of the profession. The Tribunal therefore considered whether suspending the Respondent or striking him off the Roll would be appropriate and proportionate.

131. Despite the fact that there was no dishonesty in this case, the Respondent represented a real risk to the public in the way he had conducted himself and in his cavalier attitude to regulation; indeed, the Respondent had shown that he had little regard for his professional duties, including his duties to his clients.

132. In these circumstances, a suspension order was not sufficient; only an order to strike off the Respondent would meet the gravity of this case where there had been repeated misconduct over a period of time. The lack of integrity which had been proved was significant and was in itself serious. In the circumstances of this case, having carefully considered all the facts and the matters in the Guidance Note, the Tribunal

determined that the only proportionate a proper sanction in this case was a striking off order.

Costs

133. Ms Bruce made an application for an order for the Respondent to pay the Applicant's costs of the proceedings, and referred to a schedule of costs dated 22 December 2015. That schedule set out total costs claimed of £27,707.16, including the Applicant's case working and forensic investigation costs of £1,884 together with Capsticks' fees at £160 per hour plus VAT and disbursements.

134. Ms Bruce submitted that the schedule was prepared on the basis that the hearing would last for two days, whereas it would finish on the first day; there should be a reduction in costs to reflect the shorter hearing. Ms Bruce asked for an order for the Respondent to pay the Applicant's costs, without the need for the Applicant to seek the Tribunal's permission to enforce that order.

135. The Tribunal noted that the costs in the case had increased substantially since the proceedings were issued, and queried why this was so given that the Respondent had not replied to correspondence or submitted documents. Ms Bruce told the Tribunal that there had been work in instructing the tracing agent as well as in preparation for the hearing. In response to a comment from the Tribunal about the time spent on this case, Ms Bruce submitted that the Tribunal should award such costs as it considered proportionate.

136. The Tribunal noted that the Respondent had not submitted details of his financial position, save that he had stated in the letter of 4 January 2016 that he was unemployed, and it was known that he was bankrupt from September 2014; it was assumed he was automatically discharged in September 2015 in the absence of any information to the contrary. The Tribunal further noted that the directions made on 21 May 2015 had directed the Respondent to file details of his means, with documents in support, if he wanted to rely on his financial position with regard to sanction and/or costs. The Tribunal had no information before it concerning the Respondent's finances which would cause it either to reduce the costs otherwise payable or to defer payment of those costs. The Tribunal would, of course, expect the Applicant to proceed proportionately and reasonably in seeking to enforce the costs order.

137. The Tribunal was satisfied that the hourly rate charged by Capsticks was reasonable. It was appropriate to reduce the costs as the hearing would conclude on the first day of the two which had been allowed; a total of £1,240 plus VAT would be deducted from the amount claimed for attendance at the hearing.

138. The Tribunal considered that the time spent in preparation of the Rule 5 Statement and work on documents was excessive for a case of this type. One fee-earner had recorded over 62 hours in dealing with documents (perusal, consideration and drafting); this appeared to be about twice the time which should reasonably have been spent. The costs should therefore be reduced by about £5,000 plus VAT on this basis.

139. The Tribunal noted that the Applicant had failed to prove one of the thirteen allegations. For that reason, the Tribunal would further "round down" the costs it was otherwise prepared to allow. Overall, the Tribunal assessed the reasonable and proportionate costs to be paid by the Respondent at £20,000 inclusive of VAT and disbursements.

Statement of Full Order

140. The Tribunal Ordered that the Respondent, ANTHONY ALABI, 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 £20,000.00.

DATED this 9th day of February 2016
On behalf of the Tribunal

D. Glass
Chairman