

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF TIMOTHY ROBIN SOUTHERN, solicitor (Respondent)

Upon the application of Sara Dickerson  
on behalf of the Solicitors Regulation Authority

---

Ms A Banks (in the chair)  
Mr J Astle  
Mrs S Gordon

Date of Hearing: 25th May 2010

---

**FINDINGS & DECISION**

---

**Appearances**

Ms Sara Dickerson, barrister, of the Solicitors Regulation Authority of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CB32 5AE.

The Respondent did not appear and was not represented.

Application date

2<sup>nd</sup> September 2009 with a supplementary statement under Rule 7 on 8<sup>th</sup> March 2010

**Allegations**

The allegations against the Respondent are that he:

1. Failed to comply with an undertaking dated 6<sup>th</sup> February 2008 to pay the sum of £100 plus VAT;
2. Failed to deal promptly, openly or co-operatively with the SRA.

And by the supplementary Rule 7 Statement:

3. Failed to deliver promptly, or at all, an Accountant's Report for Ebury House Solicitors from 1<sup>st</sup> February 2007 to 31<sup>st</sup> January 2008, by the due date of 31<sup>st</sup> July 2008, in breach of Section 34 (2) of the Solicitors Act 1974 (as amended);

4. He failed to deliver promptly, or at all, an Accountant's Report for Ebury House Solicitors from 1<sup>st</sup> February 2008 to 31<sup>st</sup> January 2009, by the due date of 31<sup>st</sup> July 2009, in breach of Section 34 (2) of the Solicitors Act 1974 (as amended).

### **Factual Background**

1. The Respondent was the sole practitioner of Ebury House Solicitors, 17 Grosvenor Street, London W1K 4QG. In December 2008 the SRA were notified that the practice was closed on 25<sup>th</sup> September 2008.
2. In relation to a transaction regarding a leasehold property a letter was sent to the Respondent from HSC, property management, regarding the payment of their invoice. Following an e-mail request to do so, the Respondent gave an undertaking to Ms JD at HSC. The undertaking was in an e-mail dated 6<sup>th</sup> February 2008 and was on the following terms "...we will pay you £100 plus VAT (I undertake to pay this)".
3. No monies were received so Ms JD reported the matter to the SRA on 17<sup>th</sup> September 2008.
4. A copy of the Report was provided by the SRA to the Respondent at his work address on 22<sup>nd</sup> October 2008 and he was informed that the report would be investigated further. An introductory letter was sent to the Respondent on 23<sup>rd</sup> October 2008 asking for a response by 6<sup>th</sup> November 2008.
5. No response was received so another letter was sent on 10<sup>th</sup> November 2008 asking for a reply by 18<sup>th</sup> November 2008. No response was received.
6. On 17<sup>th</sup> December 2008 a letter was sent to the Respondent's home address (by recorded delivery) informing him that the matter was now going before an Adjudicator and he would be given 28 days to put in a response that could accompany the case note before the Adjudication.
7. Another letter dated 19<sup>th</sup> January 2009 was sent to the Respondent at his home address regarding the prepared case note for adjudication.
8. The Adjudicator decision dated 22<sup>nd</sup> January 2009 with a supplemental decision on the same date regarding costs was sent to the Respondent.
9. On 28<sup>th</sup> January 2009 an e-mail was received from the Respondent. The Respondent referred to the letter dated 19<sup>th</sup> January regarding adjudication and stated that he no longer lived at the home address but had moved to an address in Guernsey.
10. On 30<sup>th</sup> January 2009 a letter was sent to the Respondent to his Guernsey address (as well as by email) informing him that if he wished to appeal the Adjudicator decision, it must be in writing within 14 days from the date of the letter giving notice of appeal and providing reasoned arguments in challenging the decision. The Respondent was also notified that should he not appeal and complied with the undertaking within the time specified, the file would be closed and only the outstanding costs direction would remain.
11. The same day the Respondent replied by email.

12. On 10<sup>th</sup> February 2009, the caseworker sent copies of the complaint letter from Ms JD, the email correspondence between Ms JD and the Respondent and the invoice. A prompt response was received from the Respondent.
13. On 18<sup>th</sup> February 2009 another letter was sent to the Respondent by post and e-mail. No response was received.
14. On 6<sup>th</sup> March 2009, Ms JD confirmed by telephone that she had not received the payment pursuant to the undertaking.
15. On 9<sup>th</sup> March a letter was sent by the SRA to the Respondent by e-mail informing him that the case was now being sent to the Legal Department for disciplinary proceedings. No response was received.
16. A decision was made by the SRA to allow the Respondent a further opportunity to comply due to his move to Guernsey and the fact that some correspondence had been sent to an old address.
17. A letter dated 22<sup>nd</sup> July 2009 with full enclosures was sent to the Respondent requiring a response by 5<sup>th</sup> August 2009.
18. On 12<sup>th</sup> August 2009 a reply dated 7<sup>th</sup> August 2009 was received by the SRA from the Respondent from a different address to that held by the SRA. The Respondent suggested that he will contact Ms JD and stated that he had enclosed a cheque. No cheque was enclosed.
19. On 18<sup>th</sup> August 2009, Ms JD confirmed by telephone that she had not heard from the Respondent nor received any money from him.
20. A letter dated 25<sup>th</sup> August 2009 was sent by the SRA to the Respondent to both addresses in Guernsey regarding instigating disciplinary proceedings before the Tribunal.
21. On 27<sup>th</sup> August 2009, a letter was sent by the SRA by first class post to the Respondent's latest address. Despite an e-mail address and direct dial number being given, no response was received from the Respondent.
22. By letter dated 22<sup>nd</sup> August 2008, an SRA caseworker wrote to the Respondent informing him that his Accountant's Report for the period ending 31<sup>st</sup> January 2008 to be delivered by 31<sup>st</sup> July 2008 had not been received. However, letters dated 10<sup>th</sup> November 2008 and 28<sup>th</sup> November were sent to the Ebury House Solicitors address, which had ceased trading in September 2008.
23. The matter went before an Adjudicator and on 14<sup>th</sup> January 2009 and the Respondent was given an internal sanction as well as discretion vested in respect of his next practising certificate.
24. While letters sent to Ebury House were not returned to the SRA a decision was taken to write to the Respondent at his business address in Guernsey and a letter was sent

out dated 6<sup>th</sup> April 2009 about both outstanding Accountant's Reports as well as a final cease to hold report. No reply was received from the Respondent.

25. A further letter was sent dated 30<sup>th</sup> July 2009 enclosing all relevant copy paper work.
26. The Respondent replied by e-mail on 8<sup>th</sup> August 2009.
27. The matter was placed before an Adjudicator for reconsideration on 14<sup>th</sup> September 2009 who made a referral to the Tribunal.
28. The Adjudicator decision was sent to the Respondent on 17<sup>th</sup> September 2009.
29. The Respondent replied by e-mail on 21<sup>st</sup> September 2009.
30. An e-mail was sent to the Respondent dated 12<sup>th</sup> November 2009 to which the Respondent replied promptly.
31. The Tribunal reviewed all of the documents before it including the Rule 5 statement of the Applicant dated 2<sup>nd</sup> September 2009 with accompanying bundle, the Rule 7 statement of the Applicant dated 8<sup>th</sup> March 2010 with accompanying bundle and a letter written to the Tribunal dated 28<sup>th</sup> May from the Respondent.

### **Findings as to Fact and Law**

#### **Allegation 1 - that the Respondent failed to comply with an undertaking dated 6<sup>th</sup> February 2008 to pay the sum of £100 plus VAT**

32. This allegation related to an undertaking given by the Respondent in an e-mail dated 6<sup>th</sup> February 2008 to pay £100 plus VAT to an estate agent as a result of a property transaction.
33. The Respondent admitted the allegation and the Tribunal found it to have been substantiated on the facts.

#### **Allegation 2 - that the Respondent failed to deal promptly, openly or cooperatively with the SRA**

34. The Respondent failed to respond or gave a delayed response to a number of communications from the SRA even after communications were sent to him at new addresses provided by him.
35. The Respondent's response to this allegation was equivocal but the Tribunal found this allegation to have been substantiated on the facts presented to it.

#### **Allegation 3 - that the Respondent failed to deliver promptly, or at all, an Accountant's Report for Ebury House Solicitors from 1<sup>st</sup> February 2007 to 31<sup>st</sup> January 2008, by the due date of 31<sup>st</sup> July 2008, in breach of Section 34 (2) of the Solicitors Act 1974 (as amended)**

#### **Allegation 4 - that the Respondent failed to deliver promptly, or at all, an Accountant's Report for Ebury House Solicitors from 1<sup>st</sup> February 2008 to 31<sup>st</sup> January 2009, by the**

**due date of 31<sup>st</sup> July 2009, in breach of Section 34 (2) of the Solicitors Act 1974 (as amended)**

36. The Applicant told the Tribunal that the SRA records showed that on 31<sup>st</sup> January 2007 Ebury House Solicitors held client monies of £419,918. In an e-mail of 21<sup>st</sup> September 2009 the Respondent had told the SRA that he had been making efforts to sort out the client account and had managed to pass on to the relevant client the last significant sum of around £35,000. However he still had a number of small amounts to pay. The Applicant said that the concern must be that without the final Accountant's Reports any amounts outstanding were unquantified. In her submission the Respondent had been given every opportunity to sort the matter out.
37. The Respondent admitted these allegations and the Tribunal found them to have been substantiated on the facts.

**Mitigation**

38. In his letter dated 20<sup>th</sup> May 2010 the Respondent told the Tribunal that he had never tried to deny that he gave the undertaking for £100 plus VAT and had always assured the SRA that he had no issue or problem with paying it. He also said that he believed on more than one occasion he had asked how he should deal with it bearing in mind that the legal process had commenced. He said that he had now paid the undertaking amount and apologised in writing and by telephone to the estate agents concerned.
39. The Respondent had spoken at length in his letter dated 20<sup>th</sup> May 2010 of his severe medical problems. He gave details as to how these had affected his practise as a solicitor and indeed his entire life. He had first become ill in January of 2006 and his condition had deteriorated until he could no longer work as a solicitor and he had moved to being an in-house legal counsel at a company of a client that he had known for most of his working life. However this new job soon also became unsustainable and his new employer offered him the opportunity of working in the company's new office in Guernsey in the Channel Islands. Despite all this he still found his job demanding and draining. His health had been slowly improving since he had been in Guernsey but he had had ups and downs and some setbacks.
40. In summary he had said that sending cash to the estate agent was simple but that he had needed to concentrate on it and get it done. The accounting issue was similar. He had always kept proper accounts with a software accounting package for solicitors but it was difficult to get together with his accountant who was based in London while he was living in Guernsey. He had already started the process of preparing final accounts for the practice and suspected that, as the practice had not been active since the last accounts were prepared, the final accounts could be done relatively quickly.
41. The Respondent also indicated in his letter that with reduced income he had had difficulty with his finances and would ask the Tribunal to bear in mind that if a financial penalty was imposed of a significant figure it may restrict his ability to progress the filing of accounts as he would still have to pay the auditor for his work.
42. In conclusion the Respondent said that he would like to reassure the Tribunal that he had always taken his professional responsibilities of being a solicitor very seriously. He had always considered it of primary importance for solicitors to behave in a

professional and proper manner with clients, other solicitors and third parties, it was a matter of great regret to him that his time as a solicitor ended with a disciplinary procedure. However he would keep his word on the timing of the submission of his final Accountant's Reports on or before the due date in July and would notify to the SRA that this had been done should he be asked to do so.

### **Costs application**

43. The Applicant applied for costs in the matter totalling £1,444.50.

### **Previously Disciplinary Sanctions before the Tribunal**

44. None

### **Sanction and Reasons**

45. The Tribunal found that the Respondent could have avoided these proceedings and indeed has had ample opportunity to do so. A failure to provide Accountant's Reports was a serious matter and part of the general procedures which protected clients' money. The Tribunal noted that both of the Accountant's Reports, the subjects of allegation 3 and 4, were still outstanding and that there was a cease to hold report due by July 2010. However, the Tribunal had taken note of the significant mitigation offered by the Respondent and found that in this case the appropriate penalty would be a fine of £5,000 payable only if the accounts, the subjects of allegation 3 and 4, were not submitted by 31<sup>st</sup> August 2010.

### **Decision as to Costs**

46. The Tribunal would grant the Applicant's costs in full in the sum of £1,444.50.

### **Order**

47. The Tribunal Ordered that the Respondent Timothy Robin Southern of Trois Haies, Rue Des Naftiaux, St Andrews, Guernsey, GY6 8RD, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, unless he delivers the outstanding Accountants Reports for the periods 1st February 2007 to 31st January 2008 and 1st February 2008 to 31st January 2009 to the Solicitors Regulation Authority by 31st August 2010, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1444.50.

Dated this 13<sup>th</sup> day of July 2010

On behalf of the Tribunal

Ms A Banks  
Chairman