

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF THOMAS OFORDIRE EGOLE (First Respondent)
and ELIZABETH RUHUZA (Second Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr D Green (in the chair)
Mrs E Stanley
Mr D Gilbertson

Date of Hearing: 7th and 8th October 2010

FINDINGS & DECISION

Appearances

George Marriott, Solicitor Advocate of Russell Jones & Walker, 50-52 Chancery Lane, London WC2A 1HL, formerly of Gorvins Solicitors, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL, the Applicant, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondent appeared in person and was not represented.

The application was dated 11th July 2008. These proceedings were against the First Respondent only. The proceedings against the Second Respondent had been severed and dealt with previously, by a different division at the Tribunal.

Allegations

The allegations against the First Respondent (“the Respondent”) were that he:-

1. Failed to provide the SRA with records, papers financial accounts and documentation relating to funds received from the Legal Services Commission, contrary to Rule 34(1) Solicitors’ Accounts Rules 1998 (“SAR”).

2. Failed to keep the books of account properly written up in the period to 31st May 2007, contrary to Rule 32(1) SAR.
3. Failed to supervise his practice, contrary to Rule 13 Solicitors' Practice Rules 1990 ("SPR") and Rule 5.01 Solicitors' Code of Conduct 2007 ("The Code").
4. Not applicable to the Respondent (Second Respondent only).
5. Failed to keep the books of account properly written up in the period from 1st June 2007, contrary to Rule 32(1) SAR.
6. Held a surplus of funds in client account, contrary to Rule 32(7) SAR.
7. Failed to remedy SAR breaches identified by the SRA promptly upon discovery, contrary to Rule 7 SAR.
8. Failed to provide accurate costs information to clients, contrary to Rule 1(c) SPR and the Solicitors' Costs Information and Client Care Code for the period prior to 30th June 2007 and contrary to Rules 1.04, 2.02 and 2.03 of The Code in the period from 1st July 2007.
9. Made secret profits.

In a Supplementary Statement Pursuant to Rule 7 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 12th February 2009 further allegations were cited against the Respondent that he:-

10. Certified photocopies of a passport as true copies of the original when they were not, contrary to Rule 1 SPR.
11. Attempted to mislead solicitors, contrary to Rule 1 SPR.
12. Failed to comply with a restriction upon the Proprietorship Register of the Office Copy entries retained on his file to ensure satisfactory identification of the person executing documents submitted for registration as disponent as being the same person as the proprietor, contrary to Rule 1 SPR.
13. Failed to ensure that the Legal Charge executed in a transaction was properly witnessed, contrary to Rule 1 SPR.
14. Permitted his client account to be used as a banking facility, contrary to note (ix) to Rule 15 SAR.
15. Failed to honour an undertaking.
16. Failed to provide details of his professional indemnity insurer upon request by solicitors for the mortgagee asserting a claim against him, contrary to Rule 46 Solicitors Indemnity Insurance Rules 2005.

17. Failed to deal with the SRA in an open, prompt and cooperative way during the investigation of a complaint, contrary to Rule 20.03 Solicitors Code of Conduct 2007 (“SCC”).
18. Created false client care documentation, contrary to Rule 1 SCC.

In a Second Supplementary Statement Pursuant to Rule 7 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 5th August 2009 further allegations were cited against the Respondent that he:-

19. Acted as sole principal of his firm contrary to the conditions on his Practising Certificate for the year 2007-2008 until 17th December 2008 and thereafter when he did not hold a Practising Certificate.
20. Failed to deliver an accountant’s report for the year ending 5th April 2008, contrary to Rule 35 SAR.
21. Failed to cooperate with and misled the SRA, contrary to Rule 34(1) SAR and contrary to Rules 1, 20.03(1) and 20.06(1) SCC.
22. Failed to hold indemnity insurance for the year 2008-2009 at the start of the indemnity year on 1st October 2008 and failed to pay the premium to enter the Assigned Risks Pool, contrary to Part 3 Rule 10.1 of the Solicitors Indemnity Insurance Rules 2008.
23. Abandoned his practice and in so doing failed to protect the interests of all former and current clients, contrary to Rules 1.04, 1.05 and 1.06 SCC.

The Applicant stressed that whilst dishonesty was not an essential ingredient of any one of the allegations, dishonesty was alleged in respect of allegations 10, 11, 12, 13 and 18.

In respect of the allegations where dishonesty was alleged, not only must they be established to the higher standard of proof but also satisfy both limbs of the test laid down in *Twinsectra v Yardley* [2002] UKHL 12. The Chairman explained to the Respondent who was acting in person the higher standard of proof and how the test for dishonesty was applied. The Respondent’s plea with regard to each allegation was established with him by the Chairman during the proceedings. Allegations 1 - 3 and 5 - 7 were admitted. Allegations 8 and 9 were denied. Allegations 10 - 19 were denied. Allegation 20 was admitted. Allegations 21 – 23 were denied.

The allegations fell into three areas: 1 - 3 and 5 - 9 covering accounting issues; 10 - 18 arising out of a conveyancing transaction and 19 - 23 relating to the Respondent’s area of practice and the winding up of his practice.

Background

1. The Respondent was born in 1967 and admitted as a solicitor in 1996. He carried on practice as solicitor and principal in the firm of Egole & Co, solicitors at 283 Hornsey Road, London N19 4HN until the SRA intervened. His Practising Certificate for 2007/2008 was terminated on 17th December 2008.

2. Allegations 1-3 and 5-9 were set out in the Rule 5 Statement dated 11th July 2008, allegations 10-18, in a Supplementary Statement dated 12th February 2009 and allegations 19-23 in a Second Supplementary Statement dated 5th August 2009.

Allegations 1 - 3 and 5 - 9

3. The SRA began an inspection of Egole & Co in which the Respondent was principal on 30th May 2007. The Respondent was unable to provide accounts records because they were held by his auditors with whom he was in dispute. The investigation was suspended for a period in order for him to resolve the dispute. The investigation continued from 15th October 2007, following which investigation the SRA produced a report.

Allegations 1, 2 and 5 – accounting failures

4. The only accounting records that were available and which the SRA had seen were a number of handwritten client ledgers and bank statements for the period December 2006 to May 2007 which were incomplete and contained many errors. No accurate listing of client balances was available. The Respondent did not maintain a client cashbook and told the SRA that he relied upon his external auditors to write up the books of account. The SRA had seen no evidence that reconciliations were carried out on a regular basis. The Respondent could not provide records to show monies received from the Legal Services Commission in respect of their franchised work, in breach of Rule 19 (2) and Rule 19 (3) SAR.
5. The Respondent's dispute with his auditors was over the non-payment of their fees and they were exercising a lien over his books of account and bank statements. He refused the SRA permission to examine the records at the auditor's offices. A letter from the auditors to the Respondent of 3rd May 2007 advised that they would bring the accounts up-to-date as at 5th April 2007 and would not continue to accept instructions from the Respondent. In May/June 2007 the Respondent told the SRA that he was engaging a new accountant to bring the books up to date. By the time the SRA investigation recommenced on 15th October 2007, the books of account to 5th April 2007 had still not been completed and a new accountant had still not been engaged. On 16th October 2007 the auditors confirmed to the SRA that the books of account to 5th April 2007 were complete. Copies of all of the accounting records which were maintained for the Respondent were faxed to the SRA by the auditor's principal consisting of a client cashbook and bank reconciliation statements for the period April 2006 – April 2007. The reconciliations prepared by the auditors were not in accordance with SAR.
6. The auditors confirmed that no accounting work had been completed for the Respondent since the period ending 5th April 2007. The Respondent was unable to provide the SRA with an accurate client listing.

Allegation 6

7. As at 7th September 2007 the client account contained a surplus of £88,810.95. The Respondent disputed the calculation. He did not give any explanation for the surplus.

Failure to remedy breaches – Allegation 7

8. The SRA wrote to the Respondent on 7th March 2008 requesting confirmation that the books of account were up-to-date and that the cash surplus identified in client account be rectified as well as asking the reason for the accumulation. The Respondent replied by letter of 15th March 2008 in which he outlined the continuing dispute with the auditors which he claimed prevented him from remedying the breaches. On 25th March 2008 the Respondent's new accountants wrote to the SRA expressing their concern at the state of the books of account and stating that they were unable to determine whether accounting records were being maintained.

Allegation 3 – Failure to Supervise

9. The SRA identified a number of issues relating to conveyancing transactions. The Second Respondent was the head of the conveyancing department at the material time. She had less than three years post-qualification experience and was not qualified to supervise alone. The Respondent, as principal, had a clear supervisory role over the conveyancing department and over the Second Respondent.

Allegation 8 - Failure to provide adequate costs information

10. The SRA noted and the Respondent confirmed that it was the firm's practice to charge clients £50 in respect of bank transfer fees; £35 plus VAT for "care and conduct" and £150 plus VAT for contributions towards the firm's indemnity premium.
11. The Respondent told the SRA that all fees charged were set out in the client care letters, a copy of which was retained on each file. Despite this assurance, the SRA noted from a review of client matter files that client care letters did not always contain this information. The Respondent had since told the SRA that the Telegraphic Transfer (TT) fee was discussed with clients at their first meeting.

Allegation 9 - Secret profits

12. The completion statement in the purchase transaction of D recorded a disbursement of £100 in respect of "bank transmission charges". The handwritten client ledger for the transaction recorded "bank transmissions x 2" and a debit of £100 which was later transferred to office account.
13. From its review of the bank statement, the SRA established that the deposit of £11,000 had been paid by cheque. The mortgage advance was received net of bank charges. The balance of funds to complete in the sum of £201,900 had been paid by CHAPS transfer for which the bank had charged an amount of £21.00. Accordingly, there was only one TT fee in the sum of £21.00 and not two in the sum of £50.00 each.
14. In December 2006 the firm was charged a total of £67 by its bank in respect of telegraphic transfer fees. The firm charged clients a total of £300 in respect of these TT fees.

15. The Respondent had subsequently suggested that a £50 'disbursement' where the actual cost to the firm was less than that amount, was in fact a mis-described profit cost.
16. The Respondent's firm was charged an annual premium of £1,425 by its professional indemnity insurer. Clients were charged £150 plus VAT for contributions towards this premium. The SRA estimated that at least 20 conveyancing transactions were carried out during the course of each financial year, representing an income in respect of indemnity insurance of at least £3,000 per annum.

Witnesses

17. Mr David Bailey, a Senior Investigation Officer employed by the SRA gave sworn evidence relying on his witness statement of 7th April 2010.
18. In cross examination the Respondent challenged Mr Bailey's estimate that the firm had completed no less than 20 conveyancing transactions during the course of each financial year representing an income of at least £3,000 per annum and therefore well in excess of the annual insurance premium. A document was handed up from the SRA file headed "client file reviews S1". The Respondent put it to Mr Bailey that the annotation "no action" which appeared against 14 of the conveyancing files on the schedule meant that in fact the witness had been satisfied that nothing untoward had occurred on these files. Mr Bailey explained that it only meant that there were no matters other than secret profit in respect of telegraphic transfer fees which he felt merited further investigation on the files. The Respondent also put to the witness that in a conveyancing transaction there are usually two instances of charges for telegraphic transfers, one occurring when the money was received into the solicitor's account from the lender and a second charge when the money was paid out to the vendor. Mr Bailey confirmed that in his experience, monies deducted by the bank for telegraphic transfer fees when money is paid to solicitors result in a net payment going into the account.
19. Mr Bailey also refuted the Respondent's suggestion that in respect of papers obtained from the Respondent's auditors with whom he was in dispute, the SRA had obtained the papers direct thus denying the Respondent the opportunity to comment. Mr Bailey explained that he had in fact asked the auditors to fax the papers to the Respondent's premises where he had collected 22 pages including bank statements. The Applicant pointed out this was evidenced by a letter from the Respondent's firm dated 19th October 2007 which stated "we have today collected 22 pages of papers from Chessons accountants which will follow the hard copy of this letter."

Background to allegations 10 – 18, all of which were denied and in respect of which allegations 10, 11, 12, 13 and 18 dishonesty was alleged.

Allegation 10

20. A complaint had been raised against the Respondent by Mr K through his solicitors S & Co. The allegations related to the Respondent's involvement in a remortgage of a property owned by Mr K. Through S & Co Mr K told the SRA that he had had difficulties with his estranged wife. He claimed that she had a history of approaching

lenders and attempting to obtain loans in Mr K's name. As a precautionary measure he had had a restriction entered on the Charges Register of the property by S & Co. It provided for Mr K to be notified at two alternative addresses to his home address (which he continued to share with his estranged wife) and via S & Co of any dealings related to the property.

21. The Respondent purported to represent Mr K in the remortgage of his property which was registered in his sole name at 49 S Lane. The Respondent was instructed by Mrs K in the remortgage. An application for a loan was made in the names of Mr and Mrs K to a lender VC on 21st April 2006 through S A S, Mrs K's accountants. A financing agreement with an intermediary company, RF, was signed in the names of Mr and Mrs K on 15th May 2006. On 16th May solicitors representing VC wrote to the Respondent setting out its lending requirements which included that the Respondent provide "certified copies of the guarantors' passports and two utility bills" together with a letter "confirming money laundering checks had been undertaken and are considered satisfactory".
22. The Respondent obtained Office Copy Entries for the property on 26th May 2006. It noted a restriction that "no dispositions of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that he is satisfied that the person who executed the documents submitted for registration as disponent is the same person as the proprietor." The Respondent obtained an official search in the name of VC on 26th May 2006. A file note recorded that Mrs K delivered documents which had been signed by Mr K to the Respondent's offices on 1st June 2006. These documents which were amongst those required by VC to complete the loan.
23. A further file note recorded that Mr and Mrs K met the Respondent on 2nd June 2006 and gave instructions, inter alia, that the Respondent should certify his passport. The note also suggested that Mr K requested that his wife dealt with the transaction and that he would make efforts to remove the restriction in the Proprietorship Register. The Respondent certified a copy of Mr and Mrs K's passports as being true copies of the original documents on 2nd June 2006. He also certified a copy of a utility bill on the same day. Evidence was later provided by S & Co in the form of a letter from DLA P to the SRA which it was submitted demonstrated that the passport which the Respondent had certified in respect of Mr K could not have been a copy of the passport belonging to Mr K at the time of certification as that passport bore an endorsement of emergency contact details. A certified copy of that passport had been provided to DLA P in April 2006 in respect of a mortgage transaction. The copy which the Respondent had certified in June 2006 did not bear that endorsement. Evidence from the passport office confirmed that the passport certified by the Respondent could not have been a replacement for the original as a replacement would have had a different number. There were contradictions in the Respondent's responses to the SRA about how long he had known Mr and Mrs K.

Allegation 11

24. On 2nd June 2006 the Respondent wrote to VC's solicitors informing them that he had investigated the legal title to the property and received "all appropriate searches and enquiries". The environmental search and the local authority search were dated after

2nd June. VC withdrew their mortgage offer because of concerns relating to the status of Mr K. A mortgage offer was then obtained from L. The Respondent obtained a Land Registry search for L showing the previous search in favour of VC. The Respondent advised L's solicitors that there had been an error with the search and obtained a further search which did not show the earlier search in favour of VC

Allegation 12

25. This allegation related to the Respondent's obligation to ensure satisfactory identification of the person executing the documents as Mr K. The Respondent's firm had given an undertaking relating to the restriction on the proprietorship register. The Respondent admitted having attended personally upon Mr K and certifying copies of Mr K's passport. The warning from S & Co which was communicated to the Respondent via his solicitors led to the Respondent swearing a Statutory Declaration for the Land Registry about how he had verified Mr K's identity. It contained references to Mr K having attended his office on a number of occasions, having given him instructions from 15th June 2006, his having certified Mr K's passport copy subsequent to Mr and Mrs K's attendances at his office. In a subsequent letter to the Land Registry on 19th December the Respondent confirmed that the person who attended his office resembled the person seen in the passport photograph and that the signatures on subsequent documents seemed to be the same as that on the passport but contradicted his previous statement and wrote that he had only known and acted for Mr K in relation to this transaction. There were also contradictions about when he had certified the passport copy. In the Statutory Declaration he stated that he had so certified subsequent to the borrowers' attendances at his office but the certification had taken place on 2nd June 2006 prior to the date stated in the Statutory Declaration as being that upon which instructions had been given, 15th June 2006.
26. The Respondent then made attempts to persuade the Land Registry to withhold the case from its adjudicator to allow Mrs K to redeem L's mortgage.

Allegation 13

27. The SRA examined certain documents within the client matter file and noted that the file contained a copy of the Legal Charge which had been signed but not witnessed. It was not included in the client matter file delivered under S44B. The Charge documents submitted to his solicitors had original witness signature and details. It appeared to have been passed through a fax machine and the witness signature and details added. On the basis of this and other documents submitted by the Respondent and in reliance upon the Respondent's undertaking to provide a certificate in relation to the restriction and evidence of the discharge of the mortgage to an earlier mortgagee, K, L's solicitors transferred £365,503.12 to the Respondent's client account on 14th July 2006.

Allegation 14

28. Upon receipt of the re-mortgage monies the Respondent made a number of payments to third parties at the request of Mrs K, including to SAS "in respect of consultancy and general discussion for business development projects and financial arrangements including company formation and bank accounts". The payments did not have any

clear relationship to the conveyancing transaction. There was no record of Mr K providing any authority for any of the payments.

Allegation 15

29. The Respondent's firm gave L's solicitors an undertaking to provide a signed certificate in respect of the restriction on the title upon completion of the loan. The matter completed on 14th July 2006. The Respondent provided the certificate on 5th October, a delay of 12 weeks following completion. He requested that it be held to his order for a further two weeks and then for a further three and a half weeks to 12th November 2006 to allow Mrs K to discharge L's mortgage. That did not happen.

Allegation 16

30. In anticipation that their client would suffer losses as a result of the Respondent's anticipated failure to fulfil its undertaking L's solicitors requested his indemnity insurance details by letter of 22nd January 2007. Not receiving them they again requested the details by return on 7th February 2007. The Respondent replied on 9th February with his insurance policy number but not naming the insurer. He also questioned the need for the details as he stated that he had provided "all that is necessary to help you to obtain the Second Charge on Mr K's property." There were further requests and eventually L's solicitors obtained the Respondent's indemnity insurance details from the SRA. The Respondent later told the SRA that he did not have to provide his indemnity insurance details because he was not acting for the lender L in the transaction. He also alleged that the SRA had breached the Data Protection Act by providing the details.

Allegation 17

31. The SRA wrote a letter of enquiry to the Respondent on 3rd January 2007 asking him to confirm each step that he had taken in relation to the confirmation and verification of the identity of Mr K, that Mr K had instructed his firm and of the instructions given by Mr K. The Respondent replied on 17th January 2007. The SRA challenged various assertions in the response. The Respondent made a second response on 23rd February from which a number of contradictions emerged. The SRA nonetheless closed its investigation of Mr K's complaint, taking note of the Respondent's submission that there was no evidence to contradict his assertion that the endorsement of the passport might have occurred after June 2006. In September 2007 the SRA received independent evidence that the passport had been endorsed prior to June 2006 and the investigation was re-opened and a letter of enquiry sent to the Respondent on 29th November 2007. In his reply of 3rd December 2007 the Respondent stated that as he did "not intend to add to what we have already said until the matter is concluded in the [Land] Tribunal" and that as he had "incurred unpaid cost dealing with issues raised" during the earlier part of the SRA investigation he was "not prepared to do again". The SRA wrote to him on 3rd January 2008, reminders were sent on 21st and 31st January 2008. The Respondent telephoned the SRA on 4th February and requested copies of the documents which he had previously submitted to them during the investigation. The SRA sent these documents to the Respondent the same day. The Respondent replied to the SRA's letter of enquiry on 7th February 2008. The SRA issued a notice under Section 44B of the Solicitors Act 1974 for the Respondent to

deliver up all original documents in his possession in connection with the transaction of 11th June 2008. The Respondent notified the SRA that the file was in the possession of Beachcroft LLP who were instructed by his indemnity insurers. In a letter from Egole & Co of 12th September 2008 bearing the reference T it was stated “Please note that if the Lenders, their Solicitors, Mr and Mrs K and S and Co had decided to embark on this type of raising funds it is a matter for them and nothing to do with this firm”.

Allegation 18

32. The SRA obtained the Respondent’s client matter file after giving notice under Section 44B Solicitors Act 1974. The original client matter file did not contain any client care documentation. With a response to a letter of enquiry from the SRA, the Respondent provided a copy of a client care letter addressed to Mr and Mrs K and dated 15th June 2006. The letter stated that Mr and Mrs K had used the services of SAS and RF to obtain a loan with L to be secured over their joint property. The letter was not signed by Mr and Mrs K. The initial instruction was actually in May rather than June at which time the proposed loan was with VC and not L. L did not issue a loan offer under 22nd June 2006 a week after the client care letter was purportedly written. The Respondent wrote to VC’s solicitors on the same day that the letter was purportedly written, asking for their confirmation that the VC loan could complete yet the section headed “your matter” of the client care letter makes reference to previous discussion of the loan from L.
33. The letter also contained other errors. The ownership of the property was described as “joint” although the property was registered to Mr K alone.

Background to allegations 19 – 23 of which allegation 20 was admitted

34. The Respondent’s practising certificate for the year 2007-2008 contained conditions that after 30th September 2008 he could act as a solicitor only in circumstances, the arrangements for which had first been approved by the SRA.
35. The Respondent requested approval of a partnership with a Mr N on 29th September 2008. The proposal was approved by the SRA although the partnership did not go ahead. The Respondent continued to practise as a sole principal of Egole & Co.
36. The Respondent’s 2007-2008 practising certificate was terminated on 17th December 2008 as the Respondent did not deliver a completed application for a practising certificate for the year 2008-2009 to the SRA.
37. The SRA commenced a further investigation of the books of account and other documents in the Respondent’s firm on 9th January 2009. Various attempts were made to carry out work but the Investigation Officer (IO) was unable to complete the inspection.
38. On 9th January 2009, the IO was informed that the Respondent was travelling and would not return until early in February.

39. On 20th February 2009, at the firm's premises, the IO was told by a man named 'Tom' that the Respondent was not available but would be attending the office later that day. It later transpired that 'Tom' was in fact the Respondent when 'Tom' identified himself as the Respondent at a meeting with the SRA in March 2009.
40. The IO spoke with the First Respondent by telephone later on 20th February 2009 and a meeting was scheduled for 27th February 2009. A letter was sent by the SRA confirming the appointment. The Respondent later told the SRA that he could no longer keep the appointment and a further meeting was scheduled for 27th March 2009.
41. The Respondent met the IO at the Law Society, Chancery Lane, on 27th March but he failed to provide the accounting records requested by the IO and instead referred the IO to his accountant.
42. Efforts to obtain the records from the accountant failed and the SRA wrote to the Respondent on 6th April 2009 requiring copies of the firm's bank statements for the period 1st October 2008 to 31st March 2009. The Respondent failed to provide these documents.
43. The Respondent had since claimed that electronic copies of these and other records which would assist the IO were amongst those stolen together with a lap top computer on 9th February 2009.
44. The Respondent had not submitted an accountant's report to the SRA covering a period later than 5th April 2007. The Respondent's accountant's report for the year ending 5th April 2008 was due to be delivered to the SRA by 5th October 2008 but had not been received.
45. By letter of 20th March 2009, handed to the IO on 27th March 2009, the Respondent told the SRA that he had closed his practice on 30th September 2008 and that all queries about accounts should be directed to his partner, Mr N. However Mr N had not entered into partnership with the Respondent. Further, and contrary to what he told the SRA, the Respondent has since represented to the Legal Complaints Service ("LCS") that he closed his practice in November 2008.
46. In their letter of complaint to the SRA, HMCS, writing on behalf of His Honour Judge St. John-Stevens, recorded that they had not been able to make contact with the Respondent's firm. The LCS has also received letters from clients suggesting that they had not been able to make contact with the firm including a letter from P Ltd, a mortgage lender, whose correspondence addressed to the firm's offices had been returned marked "address inaccessible" and whose calls to the firm's telephone number had been unsuccessful as the number was no longer in operation.
47. Although the Respondent had completed a proposal form to join the Assigned Risks Pool for indemnity run-off cover on 19th January 2009, the Respondent had failed to pay the premium, the policy documents were returned to the ARP marked "address inaccessible" and attempts at telephone and email contact with the Respondent were unsuccessful.

48. The SRA wrote to the Respondent on 20th June 2009 requiring his explanation for the matters raised by the FIR and by the complaint received from HMCS that his firm continued to represent clients before the Court as at 8th April 2009.
49. The Respondent failed to provide a response. In his letter to the SRA of 20th March 2009, the Respondent stated, in terms, that he no longer recognised the SRA as his regulatory body since he did not hold a current practising certificate.

Witness – regarding allegations 19 - 23

50. Mr Michael Davies, a Senior Investigation Officer employed by the SRA was sworn and gave evidence relying on his witness statement of 7th April 2010. The witness positively identified the Respondent as the person whom he had spoken to on 20th February 2009 who identified himself as “Tom” outside the Respondent’s office and who had said he was a friend of the Respondent.
51. Under cross examination it was put to Mr Davies that he had been aware of other correspondence between the Respondent’s firm and the SRA. Mr Davies explained that he was tasked only with the matters relating to the accounting issues arising out of the Respondent’s conduct of his practice. The witness was unable to remember to what extent he had been aware of particular documents or letters issued by other officials of the SRA. The witness worked for the Forensic Investigation Department of the SRA and the correspondence referred to emanated from other departments.

The Applicant’s submissions in respect of the allegations

Allegations 1 - 3 and 5 - 9

52. The Applicant disputed the Respondent’s suggestion that the mere reporting of his accountants to their professional body in any way discharged his duty to remedy the accounting anomalies. His approach to supervision of conveyancing matters was reactive rather than proactive.
53. The Respondent had sought to blame members of staff for the shortcomings of the client care letter in respect of costs information but as the firm’s principal he had an obligation to ensure that the letter provided accurate information to clients.
54. In respect of secret profits the Respondent had initially conceded that the additional TT charge constituted a secret profit. It was not fundamentally wrong to charge a contribution to the indemnity premium provided that what the client paid was directly referable to the premium. The problem arose when clients were billed beyond the amount required.

Allegations 10 – 18

55. It was submitted that the unusual entries in the proprietorship register inserted in January 2006 should have alerted the Respondent to the importance of properly identifying Mr K. Also Mr K’s request that his wife deal with the transaction and his suggestion that he would make efforts to remove the restrictions should have put the Respondent on notice that the man was not Mr K.

56. It was submitted that notwithstanding that the Respondent claimed that he had no knowledge or involvement in conveyancing, his reference “T” had appeared on all key correspondence, he had sworn the Statutory Declaration for the Land Registry and allowed his firm to give an undertaking regarding the restriction on the proprietorship register, all of which pointed to dishonesty.

Allegations 19 – 23

57. It was submitted that the Respondent had acted as a sole principal in breach of the conditions on his practising certificate and had abandoned his practice and his clients. This was particularly serious in the case of a criminal defendant left in custody, unrepresented.

Submissions on behalf of the Respondent

58. The Respondent relied on Reply to witness statement of George Marriott, dated 14th December 2009, reply to supplementary (sic) witness statement of George Marriott dated 5th August 2009 which reply was itself dated 15th December 2009 and a second reply to supplementary (sic) witness statement of George Marriot of the same date, 15th December 2009.

Allegations 1 - 3 and 5 - 9

59. The Respondent had admitted allegations 1 – 3 and 5 – 7 but contested allegations 8 and 9. In respect of the allegations relating to failure to keep proper accounts the Respondent referred to his difficulties with his auditors and his attempts to resolve them by complaining to their professional body, the ACCA. He interpreted secret profits as being charges which he had not explained to clients that they would be charged.

Allegation 10 - 18

60. The Respondent submitted that the correspondence in the conveyancing file was not his. He always signed “Thomas” Egole rather than “Tom”. His reference “T” was shown on all the letters but this did not mean that he had dealt with the file. It was his practice to see clients the first time they attended but then he passed them on to the relevant fee earner. He specifically denied having signed the client care letter. He had not been in the country at the time the undertaking had been given.
61. The Respondent submitted that he was not in the office when the Charge document was executed. He had given advice that Mr and Mrs K’s signatures needed to be witnessed.
62. The Respondent submitted that the lenders had been satisfied regarding Mr K before he became a client of the firm in this transaction. He also placed importance on what he regarded as the fact that Mr K had been at the property when valuers had attended in respect of the remortgage and yet no complaint had been made to the SRA until well after the mortgage monies had been received and distributed. He had been very impressed by Mrs K’s title of Baroness and had accorded Mr and Mrs K considerable

respect on that account. He had believed the transaction to be genuine. He believed that the issues arose out of a family situation which would be resolved.

63. In respect of the passports, copies of which he had certified, the Respondent submitted that too much emphasis was placed on the evidence from the Passport Office that replacement passports bear a different number from the passport being replaced. He considered it more likely that the passport he had seen was a forgery in which case it would have borne the same number as the original. He had not been aware of the endorsement on the genuine passport until it had been brought to this attention which was after the remortgage money had been received by the client. He submitted that he had no idea that something like this could occur.
64. Generally the Respondent submitted that the SRA had not returned to him all the documents he had provided to them. This hampered his ability to respond to allegations. The Applicant stated that all documents had been returned to the Respondent.

Allegations 19 - 23

65. The Respondent handed up a bundle of original documents including a business plan and various applications for indemnity insurance which bore N's name. He relied on the fact that he was no longer in charge of the firm from October 2009. He blamed the Law Society for having made it impossible for him to do anything by attaching conditions to his practising certificate.

The Tribunal's Findings as to Fact and Law

66. The Tribunal had considered all the evidence submitted and that of the witnesses who had appeared before it. It had taken into account the submissions and documents handed up during the proceedings and found as follows:-

Allegations 1 - 3 and 5 - 7

67. The Tribunal found these allegations proved, indeed they had been admitted.

Allegation 8

68. The Tribunal found that the Respondent had failed to provide accurate costs information to clients. This was exemplified in the purchase undertaken on behalf of client D where the client care letter failed to specify any fee for the completion of the Stamp Duty and Land Transaction return and for indemnity insurance but the completion statement included charges in respect of both. This allegation was found proven.

Allegation 9

69. The Tribunal rejected the Respondent's interpretation of secret profits and in any event it was clear that in respect of the indemnity premium contribution the firm was collecting monies in excess of the total amount of the premium. Having regard to fees levied for telegraphic transfers the Tribunal found the evidence of Mr Bailey

compelling, even if it was only in the case of 13 files that additional fees had been levied over and above those shown by the bank statements. Again this was exemplified by the client care letter to client D which was couched in terms that the monies collected would equate to those charged by the bank and it was clear on the papers that they did not. Moreover there was no reference in the client care letter to the call back system and charges levied in respect of it. As the Respondent was principal of the firm he was responsible for the terms of the letter even if he had not personally signed it. This allegation was found proven.

Allegation 10

70. The Tribunal had carefully considered the evidence and determined that it was impossible to ascertain exactly what had transpired on the day when the Respondent admitted he had certified copies of the passports of Mr and Mrs K. Various possible versions of events had been presented but the Tribunal had no evidence upon which to determine which, if any of them, had occurred. It had no evidence on the question of whether the passport was a forgery. Neither was it able to determine the Respondent's state of knowledge. The Tribunal was being asked to make a finding of dishonesty and even in the absence of dishonesty had to be satisfied to the higher standard of proof, i.e., beyond reasonable doubt. The allegation was found not proven.

Allegation 11

71. Proving this allegation depended on the personal involvement of the Respondent in an attempt to mislead solicitors. The Tribunal was satisfied that there had been such an attempt by someone but it was not satisfied, to the necessary standard, that the key documents had been signed personally by the Respondent; indeed some of those documents were without any signature. This allegation was found not proven.

Allegation 12

72. This allegation was linked to allegation 10 regarding certification of Mr K's passport. The Respondent had admitted that he had written the attendance note of 2nd June 2006 which fixed him with knowledge of the restriction on the proprietorship register and the need to remove it. It had been suggested that the Respondent should have contacted S and Co to investigate further but it was noted that their name was not shown against the restriction. In the absence of evidence to the required higher standard of proof that the Respondent did not believe Mr K to be genuine, the Tribunal could not be satisfied that he had failed to comply with the restriction. The Tribunal found the allegation not proven.

Allegation 13

73. There were two versions of the relevant Legal Charge document in the conveyancing file. Neither would have been acceptable to the Land Registry. The Tribunal found that the document which had been witnessed had not been properly witnessed but it had not been proved to the required standard that it had been part of a dishonest act. Furthermore the Respondent had submitted that he had not signed the letter dated 10th July 2006 from his firm to the solicitors acting for the lender L. This was the letter which referred to the "duly witnessed legal charge" as an enclosure. The Tribunal was

not satisfied that either of the Charge documents before it had been executed in the course of a transaction and accordingly found the allegation not proven.

Allegation 14

74. The Respondent admitted signing one of the cheques by which money was disbursed from the remortgage amount in payments unrelated to the conveyancing transaction. There was no evidence of receipt of any instructions from Mr. K to make the payments nor was there any underlying bill before the Tribunal. The Tribunal did not regard it as a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether clients of the firm or not (Wood and Burdett - case No. 8669-2002). Accordingly the Tribunal found the allegation that the Respondent had permitted his client account to be used as a banking facility as proven.

Allegation 15

75. The Tribunal was satisfied that as principal of the firm the Respondent was responsible for the undertaking which had been given. He was accused of failing to honour the undertaking but it had ultimately been complied with, and notwithstanding that there had been some delay which was not attributable to the Respondent the allegation was not made out. Accordingly this allegation was not proven.

Allegation 16

76. The Respondent was obliged to provide details of his professional indemnity insurer upon request and had failed to do so in spite of repeated requests. The Tribunal found this allegation proven.

Allegation 17

77. In terms of his dealings with the SRA the Tribunal found that overall the Respondent had been responsive albeit that some elements of his responses may have been wanting. It considered that he had engaged with the SRA although not to their satisfaction. It did not find his timescales for replying to be unreasonable. The Tribunal found the allegation not proven.

Allegation 18

78. The Tribunal was satisfied that the client care letter dated 15th June 2006 had been created after the event. It made reference to the transaction with the lender L which did not make a mortgage offer until 22nd June. The Tribunal accepted the SRA's assertion that the letter was produced retrospectively and was misleading. It accepted the reasons asserted by the SRA as having been proved on the papers. The Tribunal was satisfied that the Respondent had sent the client care letter to the SRA in response to their personal enquiries of him regarding the complaint submitted by S and Co on Mr K's behalf. The Respondent had not qualified the letter in any way or expressed any reservations about it to the SRA. It found that the Respondent had been dishonest in submitting it and had known his action to be dishonest. The Tribunal did not consider it to be critical to its findings whether the letter had actually been signed by the Respondent or by another member of the firm as he did not dispute that he had

sent the letter to the SRA. Accordingly the Tribunal found this allegation proved to the requisite standard and as demonstrating dishonesty in satisfaction of the two arms of the test in the case of Twinsectra.

Allegation 19

79. The Tribunal was satisfied that the Respondent had practised in breach of the conditions on his Practising Certificate. It was clear from the papers that he had acted in a criminal matter and failed to take his name off the court record notwithstanding the representations he had made about closing the firm. The Tribunal found this allegation proven.

Allegation 20

80. This allegation, regarding failure to file accounts for the year ended 5th April 2008, had been admitted and the Tribunal found it proven.

Allegation 21

81. Mr Davies, an employee of the SRA, had given sworn evidence that the Respondent had failed to identify himself when Mr Davies and others attended at his premises. Instead he identified himself as Tom, a friend of the Respondent. The Tribunal had found Mr Davies to be a reliable witness. The Tribunal found this allegation proven.

Allegation 22

82. The Respondent had produced a bundle of documentation relating to indemnity insurance but the Tribunal was not satisfied that the documents had been generated at the relevant time. It was noted that various of the documents were originals which it was unlikely the Respondent would have had in his possession. Accordingly the Tribunal found that the Respondent had failed to hold indemnity insurance for the year 2008/2009 at the start of the indemnity year 1st October 2008 and failed to pay the premium to enter the Assigned Risks Pool of which there was evidence in terms of an exchange of emails between the SRA and the ARP. The Tribunal found this allegation proven.

Allegation 23

83. The Tribunal was satisfied by the evidence of the letters from Maidstone Crown Court and from a lender client that the Respondent had abandoned his practice and in doing so failed to protect the interests of all former and current clients. This was particularly serious in the case of the prisoner in custody who had been left unrepresented. The Tribunal found this allegation proven.

Previous Disciplinary Sanctions before the Tribunal

84. The Respondent had appeared before the Tribunal on 14th March 2000, and had been subject to a disciplinary sanction.

Mitigation

85. The Respondent relied on the submissions he had made in respect of the allegations. He also referred to domestic issues experienced at the relevant time. He had become separated from his wife in 2005 and divorced in 2006. He had been diagnosed with a kidney problem in 2006 and 2007. He had attempted to comply with the conditions on his Practising Certificate by seeking a partner. That individual had required him to leave the firm which left him with the alternatives of either acting in breach of those conditions or causing the creation of the new firm to fail. Obtaining indemnity insurance for the proposed new venture had proved impossible. The Respondent also relied on what he regarded as the failure of the Law Society to help him in its role as his professional body. The Respondent also described himself as vulnerable and suffering from depression at the relevant time. He stated that he had recently been discharged from hospital.
86. The Tribunal explored the Respondent's financial circumstances, and were told that he owned his former practice address and a flat above it which he estimated as being worth between £250,000 and £280,000 respectively. He was making mortgage payments of £1,450 per month on a loan of £150,000. He had no other assets. He presently had no income as he was not working.
87. The Respondent handed up medical reports for consideration by the Tribunal.

Costs

88. The Applicant had provided a statement of costs and recognised that not all of the allegations had been proved. He conceded that the figure might seem rather high but this was the third time the hearing had been prepared for. On the first occasion the Respondent had claimed to be ill. On the second occasion he had had to attend the Bankruptcy Court and it was thought that there would be insufficient time after that hearing for the disciplinary hearing to proceed. The present hearing had been lengthy and the costs claim submitted did not reflect that. The Chairman pointed out that at the second hearing, in respect of which he had been a panel member, the Respondent had not had documentation. The Applicant contested this saying that strenuous arrangements had been made to get the documents to him including arranging for the Respondent to collect them. An order for substituted service had been made but it was apparent that the Respondent did have the documents as he had brought them for the current hearing.

Sanction and Reasons

89. The Tribunal had found some, but not all, of the allegations proved on the evidence presented to it. Given the finding of dishonesty in respect of allegation 18, the Tribunal concluded that in order to protect the public and to safeguard the reputation of the profession the Respondent could not be allowed to continue to practise. Accordingly the Tribunal ordered that he be struck off the Roll of Solicitors.

Decision as to Costs

90. The Tribunal, having taken into account the Respondent's financial position and the

history of the matter ordered that costs be awarded in the fixed sum of £50,000, payment not to be enforced without the leave of the Tribunal.

Order

91. The Tribunal Ordered that the Respondent, THOMAS OFORDIRE EGOLE, 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 £50,000.00, such costs not to be enforced without the permission of the Tribunal.

Dated this 15th day of December 2010

On behalf of the Tribunal

D Green
Chairman