On 27 November 2012, the appeal by the Solicitors Regulation Authority and the cross-appeal by Mr Rahman against the Tribunal's decision were withdrawn by consent.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 10049-2008

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

JOHN WARNER SMITH — First Respondent

and

[RESPONDENT 2] — Second Respondent

and

[RESPONDENT 3] — Third Respondent

and

MUHIBUR RAHMAN — Fourth Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss J. Devonish
Mr M. Palayiwa

Date of Hearing: 17th March 2011

Appearances

Robin Havard, solicitor (Morgan Cole LLP of Bradley Court, Park Place, Cardiff, CF10 3DP) for the Applicant.

David Morgan, solicitor (RadcliffesLeBrasseur, 5 Great College Street, Westminster, London, SW1P 3SJ) appeared for all four Respondents, who were present.

JUDGMENT

Allegations

1. The following allegations were made against the First Respondent Mr Smith, the Second Respondent [RESPONDENT 2] and Third Respondent [RESPONDENT 3]:

1.1 They improperly withdrew monies from client account when there were insufficient monies held leading to a cash shortage, contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("SAR");

1.2 Having discovered the shortage on client account, they delayed taking steps to remedy the resultant cash shortage contrary to Rule 7 of the SAR;

1.3 They failed to maintain the books of account of their practice in accordance with Rule 32 of the SAR;

1.4 They allowed an unadmitted clerk, the Fourth Respondent Mr M Rahman, to operate a client account contrary to Rule 23 of the SAR;

1.5 They transferred client funds from one client account to another when they were not authorised or permitted to do so contrary to Rule 30 of the SAR;

1.6 The Respondents, in their standard Terms of Business, attempted to contract out of paying interest to clients on monies held contrary to Rule 24 of the SAR;

1.7 They conducted themselves in a manner that was likely to compromise their independence and/or integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 ("SPR");

1.8 They conducted themselves in a manner which was likely to compromise or impair their duty to act in the best interests of the client contrary to Rule 1(c) of the SPR;

1.9 They conducted themselves in a manner which impaired the proper standard of work reasonably to be expected of a solicitor contrary to Rule 1(e) of the SPR;

2. The following allegations were made against the First Respondent Mr Smith and Second Respondent [RESPONDENT 2]:

2.1 Mr Smith and/or [RESPONDENT 2] failed to supervise the Fourth Respondent Mr Muhibur Rahman adequately or at all contrary to Rule 13 of the SPR;

2.2 Mr Smith and/or [RESPONDENT 2] failed to provide to their lender clients in a series of conveyancing transactions information that was material to their business;

2.3 Mr Smith and/or [RESPONDENT 2] failed to adhere to, or comply with, various provisions of The Law Society's Green Card Warning on property fraud;

2.4 Mr Smith and/or [RESPONDENT 2] failed to adhere to provisions contained within Parts 1 and 2 of the Council of Mortgage Lenders' Handbook ("CMLH");

2.5 Mr Smith and/or [RESPONDENT 2] failed to pay the correct amount of Stamp Duty Land Tax ("SDLT") on a number of conveyancing transactions when acting for the purchaser;

2.6 Mr Smith and/or [RESPONDENT 2] have acted dishonestly or, in the alternative, recklessly.

3. In respect of the Fourth Respondent Muhibur Rahman, the allegation against him was that, having been employed or remunerated by solicitors but not being a solicitor, he had in the opinion of the SRA occasioned or been party to, with our without the connivance of the solicitors by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors' practice which involved conduct on his part of such a nature that in the opinion of the SRA, it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

4. An Order was sought against the Fourth Respondent Muhibur Rahman, pursuant to s.43(1)(b) and (2) of the Solicitors Act 1974 as amended.

Documents

5. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

Applicant:

- Form 1 Application dated 18 July 2008;
- Application under s.43 of the Solicitors Act 1974 dated 18 July 2008;
- Rule 5 Statement dated 18 July 2008 with Appendices;
- CMLH dated 6 May 2005 and 13 October 2003.
- Copy Money Laundering Warning Card ("Blue Card") and Property Fraud Warning Card 2 ("Green Card") from The Law Society's Conveyancing Handbook 14th Edition;
- Schedule of Costs;
- Copy cases Twinsectra Limited v Yardley & Others [2002] UKHL 12;
- Gregory v The Law Society [2007] EWHC 1724 (Admin);
- Ojelade v The Law Society [2006] EWHC 2210 (Admin);
- Copy emails Morgan Cole LLP/RadcliffesLeBrasseur dated 11 and 16 March 2011.

First Respondent Mr Smith:

- Witness Statement 15 December 2010;
- Supplementary Witness Statement March 2011;
- Extract of Medical Records.

Second Respondent [RESPONDENT 2]:

- Witness Statement (undated);
- Four Testimonials;
- Financial Statement dated 18 March 2011.

Third Respondent [RESPONDENT 3]:

- Witness Statement (undated);
- Financial Statement.

Fourth Respondent Mr M Rahman:

- Witness Statement (undated).

Preliminary Matter (1)

6. The Tribunal noted that [RESPONDENT 2], named in the proceedings as [RESPONDENT 2] was also known as [RESPONDENT 2].

Preliminary Matter (2)

7. The Tribunal had reviewed all of the documents noted above in advance of the hearing save that:

   (a) The Twinsectra, Gregory and Ojelade cases were referred to in the course of the hearing;

   (b) [RESPONDENT 2]'s references were handed in and read before the Tribunal made its determinations;

   (c) [RESPONDENT 2]'s medical records were presented on the first day of the hearing;

   (d) The Blue Card, Green Card and CMLH documents were handed in during the course of the hearing;

   (e) The financial statements of [RESPONDENT 2] and [RESPONDENT 3] were not available until the issue of costs was to be determined.

Preliminary Matter (3)

8. The Tribunal noted that in October 2010 an issue had been raised before a different Division of the Tribunal concerning a possible conflict of interest in that Mr Morgan was representing all four Respondents. The Tribunal noted that the Division on that occasion had had some concerns. Mr Havard told the Tribunal that he did not intend to cause any difficulties for the Tribunal but he considered he had an obligation to raise the issue again. It was a matter for Mr Morgan to satisfy himself concerning his

professional obligations. However, the overriding objective in dealing with Tribunal proceedings required that the issue should be raised.

9. At the hearing in October Mr Smith had been directed to serve a statement. For some reason that statement had not been seen by Mr Havard until recently. The statement contained various remarks by Mr Smith concerning Mr M Rahman, in particular with regard to that latter's character. The statement also referred to reassurances given by [RESPONDENT 2] and [RESPONDENT 3] to Mr Smith. Mr Havard had raised concerns with Mr Morgan about whether there was a conflict in the light of what was said in the statement. For example, it could be argued by Mr Smith that any failure to supervise Mr M Rahman was mitigated by Mr M Rahman being difficult to work with. Such an assertion could be highly damaging to Mr M Rahman.

10. Mr Smith had now prepared a supplementary statement which "watered down" some of his earlier comments. It was understood that neither Mr Smith nor [RESPONDENT 2] would be giving evidence so it would not be possible to explore these issues further.

11. Mr Havard drew the Tribunal's attention to Rule 3 of the Solicitors Code of Conduct ("SCC") and in particular the guidance section on acting for co-defendants. The Tribunal was invited to note Mr Havard's concerns. The Tribunal noted that whilst Mr Havard would be able to put to Mr M Rahman items in Mr Smith's statements, it would not be possible to clarify any issues through live evidence from Mr Smith.

12. Mr Morgan told the Tribunal that he had taken great care in taking instructions. This issue had been raised previously, and carefully considered. Mr Morgan had asked his clients if they considered there was any conflict. The Respondents approached the case from slightly different positions but overall their position on admissions/denials was the same.

13. The Tribunal was told that Mr Smith had considerable problems with ill health, including some difficulties with his memory. The Supplementary Statement which had recently been produced was intended to assist. Mr Morgan appreciated that if the statements were not supported by live evidence, the Tribunal would afford them less weight than where live evidence was given, and both Mr Smith and [RESPONDENT 2] were aware of this.

14. Mr Morgan informed the Tribunal that Mr Smith had been advised by his doctor to avoid stress. It was clear that he had a number of health difficulties. Giving evidence would not be advisable because of his health. [RESPONDENT 2] was also receiving medical treatment and had suffered palpitations during the previous night and would also not be in a position to give evidence.

15. Mr Morgan had considered the issue carefully, as had his clients. Three of his clients were solicitors and although Mr M Rahman was unadmitted, he understood the potential concern about conflict of interest. Neither the Respondents nor Mr Morgan considered that their statements conflicted. Mr Havard would not be able to challenge Mr Smith's or [RESPONDENT 2]'s evidence but would be able to cross-examine [RESPONDENT 3] and/or Mr M Rahman.

The Tribunal's Decision

16. The Tribunal considered carefully what had been said by both Mr Havard and Mr Morgan and referred to Rule 3 of the SCC.

17. Mr Morgan had sought to deal with the issue of any potential conflict through provision of a supplementary statement by Mr Smith. He had discussed the issue with his clients, three of whom were qualified solicitors and one who although unadmitted, had eight years legal experience. Mr Morgan had considered his own position. He had clearly disagreed with Mr Havard about whether there was a conflict. The fact that two experienced advocates did not agree was not unknown.

18. The Tribunal was now seized of the issue and was suitably alerted to any issues which might arise when considering the evidence of the parties. Mr Havard had drawn attention to the overriding objectives which the Tribunal had to consider. One of those objectives was that matters should be dealt with expeditiously. It was not desirable for this matter to be further adjourned and the Tribunal would proceed to hear the case.

Preliminary Matter (4)

19. These proceedings were listed to be heard with matter 10273/2009 (SRA v John Warner Smith and Alick Arlington Voliere) and 10431/2010 (SRA v John Warner Smith, Alick Arlington Voliere and Folaranmi Awoye Dawodu) with a total time estimate of two days. The Tribunal noted that Mr Smith was the common link between the three cases. The Tribunal heard representations about the order in which the proceedings should be considered and, in particular, when the issue of sanction ought to be determined.

20. It was submitted on behalf of the Respondents that this case could be heard in its entirety and sanction determined concerning all four Respondents before determination of the other two cases. Alternatively, the Tribunal was invited to consider sanction for the [RESPONDENT 2], [RESPONDENT 3] and Mr M Rahman whilst leaving determination of any sanction against Mr Smith until conclusion of the three cases against him.

The Tribunal's Decision

21. After consideration it was determined that the Tribunal would hear this case and make findings on the various allegations. The Tribunal would hear mitigation then hear the other two cases, make findings as appropriate and, if necessary, hear any further mitigation on behalf of Mr Smith. The Tribunal would then deal with sanction against all Respondents. This may cause some inconvenience for [RESPONDENT 2], [RESPONDENT 3] and Mr M Rahman, but it should be possible to release them for a period and ask them to return for part of the second day of the two scheduled days.

Factual Background

22. The First Respondent, John Warner Smith, was born in 1942 and was admitted to the

Roll of Solicitors in 1967.

23. The Second Respondent, [RESPONDENT 2] (also known as [RESPONDENT 2]) was born in 1967 and was admitted to the Roll of Solicitors in 2003.

24. The Third Respondent, [RESPONDENT 3], was born in 1976 and was admitted to the Roll of Solicitors in 2005.

25. The Fourth Respondent, Muhibur Rahman, was born in 1976. He was at all material times an unadmitted clerk employed by Cavell Solicitors LLP.

26. Between 28 October 2003 and 24 November 2004 Mr Smith and [RESPONDENT 2] had been members of a firm which practised under the style of Omar Sharif Rahman LLP and [RESPONDENT 3] and Mr M Rahman were employed by that firm. On 24 November 2005 the name of the firm changed to Cavell Solicitors LLP ("Cavells"). [RESPONDENT 3] became a member of Cavells on 1 December 2005.

27. At the time of the hearing Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] held practising certificates. [RESPONDENT 3] worked as a locum solicitor but neither Mr Smith nor [RESPONDENT 2] were employed or otherwise engaged in practice as a solicitor.

28. Having obtained authorisation, on 28 April 2005 and various dates thereafter an Investigation Officer of the SRA, Mr Clemo, attended the offices of Cavells in order to carry out an inspection. A Forensic Investigation Report ("FIR") dated 29 June 2007 was produced and was relied on by the Applicant. The allegations in this matter were based on concerns noted in the FIR. The allegations fell into two categories:

    (a) accounting irregularities; and

    (b) irregularities arising from a series of property transactions.

29. In the course of his inspection the Investigation Officer discovered that:

    (a) the latest reconciliation between liabilities to clients and cash available was for the period up to 30 June 2004 (i.e. approximately ten months before the inspection);

    (b) the manually maintained client ledgers had only been written up to 30 November 2004;

    (c) the client account cashbook was only written up to 28 February 2005 and included a number of receipts and payments for which the relevant client matters had not been identified;

    (d) as at 10 May 2005 the client cashbook had been written up to 31 March 2005 and the clients' ledger had been written up to 31 December 2004 but a considerable number of entries did not identify the relevant client matter;

    (e) as at 10 May 2005 various credit entries had been made to certain client ledger

accounts which by 4 July 2006 had been transferred to unrelated ledger accounts;

(f) at the date of the first visit to the firm the Respondents were not able to supply the Investigation Officer with sufficient information for him to understand the true position of the books of account and thereby the financial status of the firm;

(g) the firm's bank accounts could be operated by all Respondents, including Mr M Rahman who was an unqualified clerk;

(h) the firm's Terms of Business contained a clause in which the Respondents endeavoured to contract out of paying their clients sums in lieu of interest.

30. Further, it was found that a cash shortage of £14,556.38 existed as at 31 December 2004. This was not eliminated until 9 May 2005. This cash shortage was caused by overpayments being made in varying amounts between 5 March 2004 and 29 December 2004. The largest overpayment in this period occurred in relation to a property transaction and the cash shortage in that matter existed between 3 August 2004 and 4 February 2005, a period six months.

31. As at 31 December 2005 there existed a cash shortage of £74,165.12. This cash shortage had developed through overpayments, unallocated client bank account payments and an amount debited to client bank account in error by the firm's bank. It was not alleged that the latter was the fault of the Respondents but it was alleged by the Applicant that all the other causes of the cash shortage were as a result of inappropriate actions on the part of the Respondents.

32. The overpayments amounted to £39,165.12 and were made on a range of matters during 2005. Further, a payment of £20,000 was made to "One Search Direct" in respect of search fees on 28 April 2005. This sum was shown in the list of client ledger balances with the narration "no reference" and as at 31 December 2005 it remained unallocated to any account in the clients' ledger.

33. On 19 July 2006, 22 files relating to conveyancing transactions on which the Respondents' firm had acted for the purchaser were obtained following service of a Notice under s.44B of the Solicitors Act 1974. Having considered the content of the files, and having sought a review of the transactions from Morgan Cole Solicitors, primarily relating to the issue of the proper calculation and payment of SDLT on completion of the purchase of the properties, numerous issues of concern became apparent.

34. Of the 22 files, 15 involved two clients, Messrs McG and P, three involved one client, Mr N, and four involved other clients. In each of the transactions the Respondents' firm acted not only for the purchasers but also for the lenders. Mr M Rahman had conduct of the conveyancing transactions. Mr Smith had a responsibility to supervise Mr M Rahman, as did [RESPONDENT 2] who signed most of the Certificates of Title in connection with these transactions.

35. In 18 of the transactions the contracts were initially for the grant of a lease from the

property developer to intermediary companies who would then agree to assign the contracts to the clients of the Respondents' firm at significant increases on the original purchase price agreed with the developer. Copy leases on the files detailed different purchase prices from those indicated to the lending institutions on ten of the transactions. In 15 of the transactions the payment of SDLT and submission of SDLT returns was administered by the clients' accountants, QED Tax Consulting LLP ("QED"), rather than the Respondent's firm. No evidence was found on the files of confirmation from QED that SDLT had been paid, nor was there any basis on which the Respondents were able to confirm to their lender clients that they held sufficient monies to meet the clients' responsibility for SDLT on completion. As a consequence it was alleged that there was no adherence to the requirement contained in the CMLH that before advance monies were utilised there should be sufficient funds to take the required steps to complete and register good title.

36. In the seven transactions for which the Respondents' firm assumed responsibility for payment of SDLT, underpayments of SDLT of £47,078 were made to HMRC, as the SDLT was calculated on a sum that was less than the full purchase price.

37. The Respondents' lender clients were not informed that the Respondents' firm would not hold the entirety of the purchase monies in order to complete the purchases together with sufficient funds to pay SDLT, register the lender's advance as first charge, and secure good title to the premises. In 14 of the transactions amounts totalling £1,470,000.09 did not pass through Cavell's client account. This was in contravention of Parts 1 and 2 of the CMLH and the mortgage instructions from the lenders.

38. Three of the transactions were exemplified.

<u>Purchase of Unit 37 DD, London, E14</u>

39. The purchase price paid by the Respondent's client was shown on the mortgage offer, the Certificate of Title, the Transfer and the HM Land Registry form as £600,000. The mortgage advance from NBS was £500,000. The file contained no details of the provision of the balance of £100,000, together with funds in respect of payment of SDLT, Land Registry fees, etc. There was no evidence on the file that appropriate searches had been undertaken in accordance with the lender's instructions.

40. The mortgage advance of £500,000 was credited to the firm's client bank account on 22 August 2005 and was sent to solicitors instructed to act for CP Limited. The lease dated 22 August 2005 was between F Limited and Mr M Rahman's client. There was no evidence that Cavells had at any time held the balance of £100,000, or proof that the appropriate amount of SDLT would be paid with a view to good title being obtained by the purchaser. There was no evidence on the file that the lender had been informed that this was a "back-to-back" transaction which included an increase in the purchase price paid by the Respondents' client to CP Limited of £134,000 above the price paid by CP Limited to F Limited.

41. It was not in dispute that Cavells had not informed the lender that the person selling to the borrower was not the owner or registered proprietor or that the transaction was not "arm's length" terms.

Purchase of Unit 7, CH, B Street, London, SE1

42. In or about December 2005 Mr M Rahman was instructed to act on behalf of Mr N in the purchase of the above property from VAM Limited. By a lease of 21 December 2005 between the landlord, the intermediate landlord, VAM Limited and the client, Mr N, it was agreed that a consideration of a total of £446,250 would be paid, £308,125 of which would be paid to head landlord and £138,125 to VAM Limited. A company search revealed that VAM Limited was wholly owned by I Limited, which company was wholly owned by Mr N. Cavells did not inform the lender client, NBS, that there was a "back-to-back" transaction and that Mr N was purchasing the property from a company which he controlled for £138,125 more than the amount his company paid to the Landlord. The registered office for VAM Limited was the same as Mr N's home address. Mr M Rahman received mortgage instructions from NBS on 6 December 2005 which recorded the purchase price as £446,250 with a mortgage advance of £379,312. The ledger card for the transaction showed that only £365,924.50 was sent to the solicitors for VAM Limited. The stamp duty paid on the transaction was £9,244 which was calculated at 3 per cent of £308,125. Cavells did not have control of all of the purchase monies.

Plot 239 BA, London, E16

43. Mr M Rahman acted for Mr RD in connection with his purchase of this property from TSPI Limited for £529,640, Barratt Homes Limited selling the property to TSPI Limited for £409,995. Mr RD had obtained two mortgage advances which were paid to Cavells. An advance from NRBS on 16 June 2005 was for £344,796; the second was from BIHM Limited on 1 July 2005 for £364,971. The purchase price was £529,640.

44. After utilisation of £323,964.60 in respect of the transaction a credit balance remained on the ledger account as at 30 December 2005 of £385,804.40.

45. The investigation showed no evidence of how the balance of the purchase monies of £226,293.98 was paid to TSPI Limited. Mr RD was a director of TSPI Limited and in his capacity as a director had signed an assignment dated 1 July 2005 on behalf of that company. That information was not passed to the firm's lender clients. Although the purchase price was shown as £529,640 SDLT was paid at three per cent of the sum transferred to the vendor's solicitors, namely £312,727.85. Certificates of Title in connection with both mortgages were signed by [RESPONDENT 2].

46. The credit balance on the ledger account as at 30 December 2005 was used when sums were transferred to 16 client ledger accounts, all of which had overdrawn balances at that time.

47. Following the investigation correspondence took place between the SRA and the Respondents, who were represented by RadcliffesLeBrasseur. By a decision of the Adjudicator dated 29 January 2008 the Respondents were referred to the Tribunal.

Witnesses

48. [RESPONDENT 3] and Mr M Rahman gave oral evidence.

Findings of Fact and Law

49. **Allegation 1.1: They improperly withdrew monies from client account when there were insufficient monies held leading to a cash shortage, contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("SAR").**

49.1 This allegation was admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] and the Tribunal found it to have been proved on the facts and on the papers. The allegation was admitted and proved against [RESPONDENT 3] solely in respect of matters which occurred after he became a partner in Cavells, i.e. 1 December 2005.

49.2 The Tribunal was satisfied that as at 31 December 2004 there had been a minimum cash shortage of £14,556.38. This cash shortage had arisen because of overpayments made in varying amounts between 5 March and 29 December 2004, and hence occurred before [RESPONDENT 3] became a partner. The largest single overpayment occurred on the matter of Mr A and was in the sum of £7,548.67. On 3 August 2004 the relevant account in the clients' ledger was charged with a client bank account payment of £210,830.25 when only £204,941.50 stood to the credit of the account. This gave rise to a debit balance of £5,888.75. This was increased by a transfer to office bank account of £423.50 on 17 August 2004 and by a payment of £2,200 on 1 October 2004 and thus stood at £8,512.25. The debit balance was reduced to £7,548.67 by offsetting credit balances totalling £963.58 on other matters in respect of Mr A in the clients' ledger as at 31 December 2004. The remaining shortage was eliminated by the introduction of funds from the client into client bank account on 4 February 2005. The shortage in this particular matter had existed for a period of approximately six months.

49.3 The Tribunal was satisfied that a further cash shortage of a minimum of £74,165.12 existed as at 31 December 2005, by which point [RESPONDENT 2] was a partner in the practice. This cash shortage, which occurred after the SRA's investigation had begun, arose from three factors. A debit to client bank account in error by the bank of £15,000 was not the fault of the Respondents, but the other causes of the shortage were within their control. In the period between 7 January and 30 December 2005 overpayments varying in amount between £1.92 and £12,482.32 and totalling £39,165.12 had arisen. For example, in the matter of DM the firm acted in a property transaction. On 30 December 2005 the relevant account in the clients' ledger was charged with a payment of £83,803.97 when only £71,321.65 stood to the credit of the account, thereby giving rise to a debit balance of £12,482.32. This remained the position until the shortage was replaced by the lodgement in client bank account of a cheque for £14,548.50 from solicitors acting for the assignor of the contracts in this and another matter. By way of further example, the firm acted for GU and RB in a property transaction. On 23 November 2005 the relevant account in the clients' ledger was charged with a payment of £89,615.93 when only £79,921.62 stood to the credit of the account. This gave rise to a debit balance of £9,694.31. This was reduced by a receipt of £154.02 on 12 December 2005, was increased by a payment of £50 on 21 December 2005 and a transfer to office bank account of £623 on 22 December 2005. The shortage of £10,213.29 remained until replaced by the lodgement in client bank account of £15,000 from the clients on 27 January 2006. The explanation given by the Respondents was that a duplicate payment of £15,000 had been made to the clients on 22 November 2005.

49.4 Further, the Tribunal noted and was satisfied that on 28 April 2005 a client account payment of £20,000 was made to "One Search Direct" in respect of search fees. As at 31 December 2005 this amount remained unallocated to any account in the clients' ledger and was shown in the list of client ledger balances with the narration "no reference". A statement dated 4 April 2005 from One Search Direct contained 392 billed amounts dated between 15 December 2003 and 30 March 2005 totalling £22,775.22. The Respondents allocated the £20,000 received, but not until after 31 December 2005.

49.5 Although the shortage was exacerbated by a bank error which had caused £15,000 to be debited to the client bank account on 29 September 2005, and this transaction was not the fault of the Respondents, the Tribunal was concerned that the error was not rectified until 9 February 2006.

49.6 The Tribunal was satisfied to the highest standard that the matters set out above illustrated that the Respondents had withdrawn money from client account when there were insufficient monies held and that had led to cash shortages, including a substantial shortage which had arisen during the course of the SRA investigation. The Tribunal also noted that the cash shortage as at 31 December 2005 would have been greater had it not been for a series of transfers which took place in December 2005 and which are dealt with under allegation 1.5 below.

50. Allegation 1.2. Having discovered the shortage on client account, they delayed taking steps to remedy the resultant cash shortage contrary to Rule 7 of the SAR;

50.1 This allegation was admitted by all three Respondents and the Tribunal found it to have been proved. Again, with regard to [RESPONDENT 3] the admission/finding related to the period after 1 December 2005.

50.2 It was clear to the Tribunal, and the Tribunal found, that the cash shortage of £14,556.38, which existed at 31 December 2004 was not replaced in full until 9 May 2005. Further, the cash shortage of £74,165.12 which existed at 31 December 2005 was not replaced in full until approximately 16 February 2006.

50.3 Solicitors are required by Rule 7 of the SAR to remedy cash shortages promptly. This will generally mean that the shortage should be replaced within days, rather than weeks and certainly a delay of months is unacceptable. Accordingly, the Tribunal was satisfied that this allegation had been proved.

51. Allegation 1.3. They failed to maintain the books of account of their practice in accordance with Rule 32 of the SAR.

51.1 This allegation had been admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] and was found to be proved. Again, the default admitted by [RESPONDENT 3] and found proved against him related to the period after 1 December 2005.

51.2 The Tribunal was satisfied that the Findings in the FIR were correct. At the time of the inspection, which commenced in April 2005, no reconciliations between liabilities

to clients and cash available had been done since the period ended 30 June 2004. The manually maintained client ledgers had not been written up beyond 30 November 2004. The client account cash book had not been written up beyond 28 February 2005 and included a number of receipts and payments for which the relevant client matters had not been identified. After the investigation began attempts had been made to bring the books up to date. However, as at 10 May 2005 the client cash book had only been written up to 31 March 2005 and the clients' ledger to 31 December 2004. A considerable number of entries did not identify the relevant client matter. As at 10 May 2005 various credit entries had been made to certain client ledger accounts which, by 4 July 2006, had been transferred to unrelated ledger accounts.

51.3 The SAR imposes on principals in a firm a duty to ensure that their books of account are properly written up at all times. This enables the true financial position of the firm to be seen and is essential in order to protect clients' money. The Respondents had failed to comply with Rule 32 of the SAR.

52. Allegation 1.4. They allowed an unadmitted clerk, the Fourth Respondent Mr M Rahman, to operate a client account contrary to Rule 23 of the SAR.

52.1 This allegation was admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] and was found to have been proved.

52.2 Mr M Rahman had stated in evidence that he had been the Company Secretary of the LLP whilst the firm was operated by a previous senior partner. He had understood that it was in order for him to be a signatory on client account and carry out various accounts functions. That arrangement had apparently continued after there had been a change in membership of the LLP.

52.3 Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] accepted that Mr M Rahman, as an unadmitted clerk, should not have been permitted to operate a client account but that he had in fact been able to do so.

53. Allegation 1.5. They transferred client funds from one client account to another when they were not authorised or permitted to do so contrary to Rule 30 of the SAR.

53.1 This allegation was admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] and the Tribunal found it to have been proved.

53.2 The Tribunal had had the advantage of hearing oral evidence from [RESPONDENT 3] and Mr M Rahman, which had dealt with this allegation.

53.3 The transactions which were relevant to this allegation had occurred after [RESPONDENT 3] became a partner in Cavells. He, Mr Smith and [RESPONDENT 2] had acknowledged that a series of internal transfers between client ledgers had not been proper. The solicitor Respondents had, correctly, accepted that transfers of money to unrelated ledgers should not have occurred.

53.4 Mr M Rahman had stated in evidence that the transactions, set out below, had arisen through mispostings. He had been unable to explain the transactions and had stated

that he had had no dealings with the accounts sides of the various client matters. He had told the Tribunal that he had not been aware of the postings, although they related to matters with which he had dealt.

53.5 The Tribunal found that in relation to the purchase of Plot 239 BA, London E16, two mortgage advances had been received. £344,796 was received from NRBS on 16 June 2005 and £364,971 from BIHM Ltd on 1 July 2005. After payment of £323,964.60 in connection with the purchase, a credit balance was left on the ledger account as at 30 December 2005 of £385,804.40. Indeed, that sum had been retained for a period of some six months after the purchase of the property and NRBS had not been refunded the amount they had advanced.

53.6 The Tribunal was shown a series of ledger cards in relation to 16 clients. In each of these matters, there had existed a shortage on client account as at 30 December 2005. Sums transferred from the account of Mr RD, the purchaser of Plot 239 BA, were used to eliminate the cash shortage. By way of example only, the Tribunal noted that on the matter of LM a shortage of £1,091 was apparently eliminated by a transfer on 31 December 2005 from Mr RD's ledger. On the matter of H a shortage of just under £10,500 was apparently eliminated on the same date by a transfer from Mr RD's account. On the matter of PH a deficit of £1,028.15 which had existed for approximately six weeks was apparently eliminated, again by a transfer from the funds shown on the ledger of Mr RD.

53.7 There was no evidence of any authorisation by Mr RD concerning these transfers. More fundamentally, however, the money which was used in this way had been provided by a lender client for the purchase of a property. The money had not been used in that way and had not been returned to the lender client. The firm could not have had any authorisation or permission to use the lender clients' money in this way. The allegation had been proved.

54. Allegation 1.6. The Respondents, in their standard Terms of Business, attempted to contract out of paying interest to clients on monies held contrary to Rule 24 of the SAR.

54.1 This allegation was admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3], and the Tribunal found it to have been proved.

54.2 In the firm's standard terms of business which were in force at the time of the SRA inspection there was a clause which purported to contract out of the solicitor's duty to pay their clients sums in lieu of interest. The relevant provision stated, "Unless agreed otherwise with our clients, we do not pay interest on amounts held on client account..." [RESPONDENT 3] had given evidence that the firm had used a precedent based on a client care letter which had been used by the firm for which he and Mr M Rahman had previously worked. [RESPONDENT 3] had admitted that it was he who had introduced the standard terms of business letter to the practice. However, all of the partners were responsible for the firm's terms of business. It was not permitted for solicitors to attempt to contract out of a duty to pay sums in respect of interest. The breach may not have been intentional, but had occurred

55. Allegation 1.7. They conducted themselves in a manner that was likely to compromise their independence and/or integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 ("SPR").

55.1 This allegation was denied by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3].

55.2 The Tribunal considered this allegation in the light of the findings and admissions in allegations 1.1 to 1.6 in order to determine whether, in respect of each of Mr Smith, [RESPONDENT 2] and [RESPONDENT 3], any of the conduct was such as to be likely to compromise the independence and/or integrity of a solicitor.

55.3 So far as Mr Smith was concerned, he had been a member of the LLP at all relevant times. Although it appeared from Mr Smith's witness statement that he had played little active part in the management of the firm, in particular the accounts functions, he had a responsibility in common with any other principal to ensure that the firm operated in accordance with the SAR.

55.4 Whilst he was a partner there had been improper withdrawals of money from client account when there were insufficient monies held, which had led to cash shortages (as set out in allegation 1.1 above). The fact that these transactions had taken place whilst Mr Smith was a principal amounted to conduct which was likely to compromise his integrity, if not his independence. Accordingly this allegation had been made out in the context of the facts and matters relied on under allegation 1.1 above.

55.5 Further, in failing to take steps promptly to remedy the various cash shortages which had arisen, Mr Smith's conduct was such as was likely to compromise his independence and/or integrity as there was a failure to exercise proper stewardship of clients' money. Accordingly, this allegation was made out in the context of allegation 1.2 above.

55.6 It was clear to the Tribunal that the firm had not maintained its books of account in accordance with the SAR. Such failure, combined with the fact that shortages had occurred which had not been rectified promptly was such as to satisfy the Tribunal that Mr Smith's integrity was likely to be compromised in the circumstances which formed the basis of allegation 1.3.

55.7 The Tribunal was not satisfied on the evidence that Mr Smith had known that Mr M Rahman had been able to operate a client account. Thus, whilst Mr Smith was strictly liable for the fact that there had been a breach of Rule 23 of SAR, he had not shown any lack of integrity or independence with regard to this point.

55.8 The transfers from the client ledger of one client to the ledgers of other clients in order to "eliminate" the shortages on those client ledgers was a serious matter. Whilst the Tribunal noted that Mr Smith had had limited active involvement in the management of the firm and its accounts, this could not excuse his failings. Substantial transfers had taken place in circumstances where such transfers were improper. Further, the transfers were made using funds provided by a lender client to facilitate a purchase. The money was thus improperly used. Accordingly, and given

that Mr Smith was a principal, the Tribunal was satisfied that with regard to allegation 1.5 Mr Smith had compromised his independence and/or integrity.

55.9 The Tribunal accepted the evidence of [RESPONDENT 3] that the practice had based their terms and conditions on those used at another firm. The condition with regard to not paying interest was unacceptable. However, the Tribunal was not satisfied that Mr Smith had acted with any lack of integrity or independence in adopting those terms of business.

55.10 Overall, therefore, the Tribunal was satisfied that this allegation had been proved with regard to the matters set out in allegations 1.1, 1.2, 1.3 and 1.5 but not with regard to the allegations set out in 1.4 and 1.6.

55.11 With regard to [RESPONDENT 2], the Tribunal considered that he had had a greater role in the management of the firm, including its accounts functions. With regard to the allegation that his conduct was likely to compromise his independence and/or integrity, the Tribunal found [RESPONDENT 2] culpable in the same way as Mr Smith as they had been partners at all relevant times. [RESPONDENT 2] had behaved in a way that was likely to compromise his independence and/or integrity with regard to the matters set out in allegations 1.1, 1.2, 1.3 and 1.5 but not with regard to allegations 1.4 and 1.6.

55.12 The Tribunal considered carefully whether [RESPONDENT 3]'s conduct was likely to compromise his independence and/or integrity. Having heard [RESPONDENT 3] in evidence, the Tribunal was satisfied that he had come into the partnership in December 2005 and had tried to rectify the problems with the firm's accounts, and the breaches of the SAR. From the evidence heard it appeared to the Tribunal that [RESPONDENT 3] may not have carried out appropriate due diligence before he joined the partnership. He had been employed there for about two years, having previously been employed by another firm. He had qualified in 2005 and had known [RESPONDENT 2] since about 1999.

55.13 The Tribunal was satisfied that although [RESPONDENT 3] was liable for the various breaches of the SAR set out at allegations 1.1 to 1.6 inclusive, none of his conduct in relation to those matters had been such as was likely to compromise his independence and/or integrity.

55.14 Accordingly, this allegation was found proved against Mr Smith and [RESPONDENT 2] but not against [RESPONDENT 3].

56. Allegation 1.8. They conducted themselves in a manner which was likely to compromise or impair their duty to act in the best interests of the client contrary to Rule 1(c) of the SPR.

56.1 This allegation was denied by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3].

56.2 The Tribunal considered whether the conduct and matters proved under allegations 1.1 to 1.6 amounted to conduct which was likely to compromise or impair the duty of any of the Respondents to act in the best interests of their clients.

56.3 With regard to Mr Smith and [RESPONDENT 2], the Tribunal was satisfied so that it was sure that the improper withdrawals from client account which led to the creation of cash shortages was likely to compromise and/or impair their duty contrary to Rule 1(c) of SPR. Further, delay in remedying the resultant cash shortage in these circumstances inevitably meant that the best interests of the client were not met. Failure to keep books of account properly written up meant that client funds were at risk. Again, this would inevitably compromise or impair their duty to act in the best interests of their clients. Allowing an unqualified clerk to operate a client account in breach of the SAR again must impair their duty to act in the best interests of their client by failing to ensure proper stewardship in accordance with the SAR of client money.

56.4 The improper transfers from the client ledger of Mr RD to a variety of other clients in order to "eliminate" shortages which existed on those ledgers must have compromised and/or impaired the Respondents' duty to act in the best interests of their client. In particular, the interests of the lender clients were not met: the funds had been provided in order to facilitate a purchase. They were not used for that purpose, nor were they returned to the client, but rather were retained for approximately six months and then transferred without any justification to the accounts of other clients.

56.5 Further, in providing for the firm to retain interest which should otherwise be payable to clients, Mr Smith and [RESPONDENT 2] must have acted in a way which was likely to compromise or impair their duty under Rule 1(c) of the SPR.

56.6 Accordingly, the Tribunal was satisfied with regard to Mr Smith and [RESPONDENT 2], that this allegation had been proved in relation to each and every one of allegations 1.1 to 1.6.

56.7 So far as [RESPONDENT 3] was concerned, the Tribunal took into account his evidence. He was liable as a partner in the firm for the breaches of the SAR set out under 1.1 to 1.6. However, the Tribunal was satisfied that his conduct, after becoming a partner on 1 December 2005, had not breached Rule 1(c) of the SPR. He had had no role in the improper transfers on 31 December 2005 and had worked to rectify the SAR breaches which had occurred.

57. Allegation 1.9. They conducted themselves in a manner which impaired the proper standard of work reasonably to be expected of a solicitor contrary to Rule1(e) of the SPR.

57.1 Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] denied this allegation.

57.2 Mr Smith and [RESPONDENT 2] had been partners in the firm at all relevant times. [RESPONDENT 3] had become a principal in the firm from 1 December 2005.

57.3 Again, the Tribunal considered whether the conduct which had been admitted and proved in relation to allegations 1.1 to 1.6 could amount to a breach of Rule 1(e) of the SPR.

57.4 Mr Smith and [RESPONDENT 2] had impaired the proper standard of work which should reasonably expected of a solicitor in all of the circumstances found in

allegations 1.1 to 1.6 inclusive. Their conduct of the accounts of the firm and in particular allowing the existence of cash shortages and improper transfers from the account of one client to the accounts of other clients, fell well below the standard of work reasonably to be expected. A principal in a firm must ensure that the books of account of the firm and all the transactions carried out are proper and in accordance with the SAR. Where they do not do so, there must inevitably be an impairment of the proper standard of work to be expected. The ability to monitor clients' matters and act appropriately is impaired. Accordingly, this allegation was made out with regard to Mr Smith and [RESPONDENT 2].

57.5 Again, the Tribunal considered that the position of [RESPONDENT 3] was different. They had heard evidence from him and accepted that he had tried to act properly. He was, as a partner in the firm at the relevant times, responsible for the breaches of SAR which had occurred after 1 December 2005. However, the Tribunal was satisfied that he had no direct knowledge of or involvement in the improper transfers. There was not sufficient evidence to satisfy the Tribunal that this allegation had been proved so far as [RESPONDENT 3] was concerned.

58. Allegation 2.1. Mr Smith and/or [RESPONDENT 2] **failed to supervise the Fourth Respondent Mr Muhibur Rahman adequately or at all contrary to Rule 13 of the SPR.**

58.1 This allegation was admitted by Mr Smith and denied by [RESPONDENT 2].

58.2 It was the SRA's case that both Mr Smith and [RESPONDENT 2] had a duty to supervise Mr M Rahman. As set out further below, Mr M Rahman's conduct in relation to a number of property transactions had fallen well below the standard required. Mr M Rahman was an unadmitted clerk and should have been supervised properly by the principals in the firm.

58.3 Mr Smith had admitted in his statements that he had failed properly to supervise Mr M Rahman. Mr Smith had admitted some laxity on his part but had suggested that Mr M Rahman had an "extremely aggressive and difficult nature". This view had been modified in Mr Smith's supplementary witness statement where it was stated "...his attitude never interfered with my ability to supervise him".

58.4 In evidence Mr M Rahman had stated that Mr Smith was his supervisor and [RESPONDENT 2] would supervise if Mr Smith was not in the office. The evidence heard was to the effect that Mr M Rahman would see Mr Smith most days and would go to him with files for Mr Smith to check his letters and the work being done. The evidence heard was to the effect that Mr M Rahman would go to the Mr Smith if there were problems.

58.5 The evidence was very clear that Mr Smith must have failed to supervise Mr M Rahman. The latter had had conduct of some 22 property transactions which had caused concern to the Investigation Officer. The failures of the Respondents' firm related to payment of Stamp Duty, failure to report to lender clients material information and failure to adhere to or comply with various provisions on the "green card" warning and/or the CMLH. Mr Smith was right to have admitted that his supervision had been inadequate.

58.6 So far as [RESPONDENT 2] was concerned, the Tribunal found that as a principal in the firm he must have had some responsibility to supervise employees, including Mr M Rahman. More particularly, however, the Tribunal found that [RESPONDENT 2] had signed the Certificates of Title on all but two of the 22 property matters which had given rise to a number of the allegations. The Certificate of Title is a vital part of the conveyancing process. The Certificates were signed in circumstances where for example, there was no evidence on file that SDLT would be paid on completion or where the source of the balance between the mortgage advance and the purchase price would come from. [RESPONDENT 2] had, for example, signed two Certificates of Title in respect of the two advances made to fund Mr RD's purchase of Plot 239 BA when only one advance was required.

58.7 Whilst the Tribunal could not say that there had been a complete failure to supervise Mr M Rahman, the circumstances of the property transactions conducted by Mr M Rahman were such that it was very clear supervision by both the Mr Smith and/or [RESPONDENT 2] was wholly inadequate. Accordingly, this allegation, which had been admitted by Mr Smith, was found proved against both Respondents.

59. Allegation 2.2. Mr Smith and/or [RESPONDENT 2] **failed to provide to their lender clients in a series of conveyancing transactions information that was material to their business.**

59.1 This allegation was admitted by Mr Smith and denied by [RESPONDENT 2].

59.2 The Tribunal had been referred to the FIR and its supporting documents.

59.3 In 18 of the 22 conveyancing transactions which had been considered, the Respondents' firm acted for the end purchaser in a "back to back" transaction. In those matters there was a significant increase between the original purchase price paid to the developer and the price paid by the Respondents' client to the intermediate purchaser. The lender client should have been told in each case of the nature of the transaction and of the "mark-up". Whether passing on such information would have affected the lender's decision to lend was immaterial: the principle point was that the lender had not been given any information to enable it to reassess the risk or the viability of the transaction.

59.4 The Tribunal found that the "mark-up" was in some cases very significant. In the matter of Unit 7 CH, for example, the Respondents' client paid £138,125 more than the intermediate purchaser paid on the same day. In the matter of Plot 239 BA the Respondents' client Mr RD paid approximately £120,000 more than was paid by the intermediate purchasers to the developer, again on the same date.

59.5 Further, the Tribunal was satisfied that in at least two matters the transactions were not at arm's length. Unit 7 CH was purchased by Mr N from an intermediate purchaser which company was wholly owned by him. Mr RD was a director of the intermediate purchaser in the matter of Plot 239 BA. In both instances, this information was material and should have been reported to the lender clients.

59.6 The Tribunal was further satisfied that in 14 transactions amounts totalling approximately £1,470,000 did not pass through Cavells' client account. The lender

clients were given no information about where the balance of the purchase monies was to come from and, indeed, there was no evidence on the firm's files to show that the balance of the purchase price had in fact been paid. In most of these transactions the only sums utilised in the purchase were from the lenders. In all these situations the information given to the lender was that they would be providing a proportion, but not the whole of, the purchase price.

59.7 In addition, the lender clients were not told in these transactions that payment of SDLT was to be dealt with by a firm of accountants and that the Respondents' firm had no evidence to show that the necessary funds were in hand and/or had in due course been paid.

59.8 In evidence Mr M Rahman had admitted that the only money which had passed through the client ledger in these transactions was the mortgage advance. He had asserted that there had been evidence of payment of the balance and/or that SDLT would be paid. Even if this were the case, the issue the Tribunal had to consider was whether material information had been given clearly and in writing to the lender clients. No information had been given in the matters referred to in the FIR concerning the nature of the transaction, any issues around whether the transaction was at arm's length, explaining that the balance of the purchase monies would not pass through the Respondents' firm's account and/or explaining the arrangements concerning payment of SDLT.

59.9 There was a duty on Mr M Rahman to pass on this information, as he had conduct of the conveyancing transactions. However, the Tribunal had no hesitation in finding that both the Mr Smith and [RESPONDENT 2] had a duty to their client to ensure that relevant information was given. The Tribunal noted that Mr Smith had been [RESPONDENT 3]'s designated supervisor and that [RESPONDENT 2] had both a general responsibility to supervise and had in practice signed most of the Certificates of Title in respect of these transactions. There is a duty on solicitors signing a Certificate of Title to ensure that it is correct and that all of the relevant provisions of the CMLH and the lender clients' instructions have been complied with: clearly this was not done here. Accordingly, this allegation had been proved against both Mr Smith and [RESPONDENT 2].

60. Allegation 2.3. Mr Smith and/or [RESPONDENT 2] **failed to adhere to, or comply with, various provisions of The Law Society's Green Card Warning on property fraud.**

60.1 This allegation was admitted by Mr Smith and denied by [RESPONDENT 2].

60.2 Again, this allegation related to the 22 property transactions investigated as part of the Forensic Investigation.

60.3 The Tribunal was referred to the property fraud warning card ("Green Card") in force at the relevant time. That warning card draws to the attention of solicitors and their employees the need to be vigilant to protect their clients and themselves. The suspicious circumstances to which attention is drawn include a situation where a deposit or any part of the purchase price is paid directly, or at least not via the solicitor's account.

60.4 The Tribunal accepted that there could be situations where a "back to back" transaction is entirely legitimate. However, the firm in this instance had conduct of a number of matters in which there was substantial inflation of the price. This, combined with the fact that the Respondents' firm would not have control over all of the purchase monies should have meant that Mr Smith and/or [RESPONDENT 2] ought to have been alerted to the possibility of a property fraud.

60.5 Neither Mr Smith nor [RESPONDENT 2] had noted any of the suspicious circumstances concerning these transactions, or if they had done so they had failed to act appropriately. Accordingly, this allegation, which was admitted by Mr Smith, was found proved against both Respondents.

61. Allegation 2.4. Mr Smith and/or [RESPONDENT 2] **failed to adhere to provisions contained within Parts 1 and 2 of the Council of Mortgage Lenders' Handbook ("CMLH").**

61.1 This allegation was admitted by Mr Smith and denied by [RESPONDENT 2].

61.2 The Tribunal considered the relevant provisions of the CMLH which had applied at the time of the transactions in issue.

61.3 The CMLH requires solicitors to report to the lender if the owner or registered proprietor has been registered for less than six months, or the person selling to the borrower was not the owner or registered proprietor, save in certain limited circumstances. In 20 of the 22 matters reviewed by the Tribunal, the letters to the lending institutions detailed assignments of leases but did not advise that the intermediate purchasers had owned the properties for less than six months.

61.4 Further, provision 5.1.2 of the CMLH provided that the solicitor should disclose information which the solicitor, "...should reasonably expect us (the lender) to consider important in deciding whether or not to lend to the borrower" or should cease to act if the solicitor was unable to disclose that information. The Tribunal was satisfied that the Respondents' firm had failed to explain the relationships between the purchasers and vendors in the matter of Unit 7 CH and Plot 239 BA. Mr M Rahman, and therefore Mr Smith and [RESPONDENT 2], should have been aware that Mr RD was a director of TSPI Ltd and that Mr N was the owner of a company which controlled VAM Ltd, the intermediate purchaser in his matter. The lenders were not informed of these relationships.

61.5 The CMLH further provides at 5.2.1 that the solicitors should carry out all the usual and necessary searches and enquiries. The FIR showed that although the firm's costs quotations showed search fees, the client ledger accounts did not show that searches had been made.

61.6 Provision 6.3.2 of the CMLH requires a firm to report if it will not have control over the payment of all of the purchase money. In all 22 matters examined, the lending institutions were not informed that deposits were purported to have been paid directly. Indeed, a total of approximately £1.47 million required to complete the various purchases did not pass through Cavells' account. Provision 10.3 of the CMLH provides that a firm should only release the loan when it held sufficient funds to

complete the purchase of the property and pay all stamp duties and registration fees in order to perfect the security as a first legal mortgage. In the transactions considered, the only money available to the Respondents' firm was the mortgage advance. There was no evidence that sufficient funds were available to deal with post completion matters and registration of the title and the mortgage.

61.7 As principals of the firm, Mr Smith and [RESPONDENT 2] were both responsible for adherence to the provisions of the CMLH. It was clear on the evidence read and heard that in carrying out the transactions Mr M Rahman had not adhered to those provisions and Mr Smith and [RESPONDENT 2] were accordingly in breach of these provisions.

62. Allegation 2.5. Mr Smith and/or [RESPONDENT 2] **failed to pay the correct amount of Stamp Duty Land Tax on a number of conveyancing transactions when acting for the purchaser.**

62.1 This allegation was admitted by Mr Smith and [RESPONDENT 2] and the Tribunal found it to have been proved. The Tribunal noted and accepted the evidence on the documents that in a number of transactions SDLT had been incorrectly calculated. For example, in the matter of Unit 7 CH the purchase price was stated to be £446,250 and yet SDLT of only £9,244 was paid, which sum was calculated at 3% of £308,125. This was the price paid by VAM Ltd to the developer rather than the sum the firm's client, Mr N, was alleged to have paid. Again, in the matter of Plot 239 BA the purported purchase price was £529,640 yet the SDLT was only paid at 3% of £312,727.85. Overall, there was a shortfall of £47,078 in respect of SDLT due in respect of seven transactions. In addition, of course, there were approximately 15 matters in which dealings with SDLT had apparently been delegated or contracted to a firm of accountants in circumstances where there was no evidence on the Respondents' files that the correct SDLT had been calculated and paid.

62.2 In all of the circumstances the Tribunal was satisfied that the allegation, admitted by both Mr Smith and [RESPONDENT 2], had been proved.

63. Allegation 2.6. Mr Smith and/or [RESPONDENT 2] **have acted dishonestly or, in the alternative, recklessly.**

63.1 This allegation was denied by Mr Smith and [RESPONDENT 2].

63.2 It was the Applicant's case that there had clearly been a course of dishonest conduct by Mr Smith and [RESPONDENT 2]. The improper activities which had been alleged, and found proved, were such that the firm had fallen short of meeting its obligations concerning the SAR. It was submitted that Mr Smith and [RESPONDENT 2] had been dishonest or reckless with regard to carrying out their responsibilities to lender clients. In particular, it was submitted that the improper transfers from Mr RD's account to a number of other client ledgers in order to "eliminate" or "conceal" shortages on those accounts was dishonest. The Tribunal was asked to consider the whole course of conduct, however, in determining this issue. On behalf of Mr Smith and [RESPONDENT 2] it was submitted that there had been no evidence of dishonest intent. It was Mr Smith's and [RESPONDENT 2]'s case that there had been no overall shortage on client account although there had been

on some ledgers. Although the money on Mr RD's ledger account had been used improperly, it had not left the firm but had been transferred internally.

63.3 The Tribunal was referred to the "combined test" set out in the Twinsectra case, in particular as set out at paragraph 27 of that Judgment. The Tribunal was well aware that in order to make a finding of dishonesty it would have to determine that either, or both, Mr Smith and [RESPONDENT 2] had conducted himself in a way which was dishonest by the ordinary standards of reasonable and honest people. Further, to make a finding of dishonesty the Tribunal would have to be satisfied that either or both Mr Smith and [RESPONDENT 2] realised that by those standards his/their conduct was dishonest. The Tribunal was further aware that in order to make a finding that either or both Respondent had been dishonest it would have to be satisfied to the highest standard that dishonesty had been proved.

63.4 The Applicant had conceded in submissions that it was difficult to know which, if either, Mr Smith or [RESPONDENT 2] had carried out the improper transfers from Mr RD's account.

63.5 The Tribunal found that there had been a course of conduct within Cavells which had been dishonest. This course of conduct related to the transfers from Mr RD's ledger, which dealings were unauthorised by the lender client and which had the effect of concealing shortages on the clients' ledgers relating to a number of clients. Further, the way in which the firm had operated its accounts and had acted in a number of property transactions which bore some of the hallmarks of property fraud were strongly suggestive of dishonesty.

63.6 However, the Tribunal could not be satisfied that either Mr Smith or [RESPONDENT 2] had been dishonest as the evidence about who was responsible for the dishonest course of conduct was not sufficiently strong. As the Tribunal could not determine who was responsible it could not find that either Mr Smith or [RESPONDENT 2] had been dishonest.

63.7 The Tribunal considered whether either Mr Smith or [RESPONDENT 2] had been reckless. The Tribunal was not satisfied that the conduct in issue was capable of being described as recklessness. Rather, the conduct was dishonest because the Tribunal found it was deliberate. All that was clear on the evidence was that [RESPONDENT 3] was not involved in the dishonest conduct. The Tribunal found that he had tried to do his duty as a solicitor, although he had fallen short in a number of respects. Dishonesty and/or recklessness had not been pleaded specifically against [RESPONDENT 3] or Mr M Rahman. So far as Mr Smith and [RESPONDENT 2] were concerned, this allegation was not proved for the reasons stated.

64. Allegation 3. In respect of the Fourth Respondent, Muhibur Rahman, the allegation against him was that, having been employed or remunerated by solicitors but not being a solicitor, he had in the opinion of the SRA occasioned or been party to, with our without the connivance of the solicitors by whom he was or had been employed or remunerated, acts or defaults in relation to the solicitors' practice which involved conduct on his part of such a nature that in the opinion of the SRA, it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

64.1 Mr M Rahman denied the allegations against him and/or submitted that an Order should not be made under s.43 of the Solicitors Act 1974 (as amended).

64.2 The Tribunal noted that so far as Mr M Rahman was concerned, the only issue it had to consider was whether an Order should be made under s.43. Consideration of the cases of Gregory and Ojelade showed that s.43 was a regulatory provision designed to afford safeguards and exercise control over those employed by solicitors when in any given case that was considered to be appropriate (Ojelade, paragraph 12). The key issue the Tribunal had to consider was the maintenance of the good reputation of the solicitors' profession, such that there could be confidence in solicitors and those employed by them.

64.3 The Tribunal had to consider whether Mr M Rahman had occasioned or been party to acts or defaults which would make it undesirable for him to be employed or remunerated by solicitors in connection with their practices. The allegations against him were not specific, as they had been in the case of Mr Smith, [RESPONDENT 2] and [RESPONDENT 3], but the acts and defaults in question arose from the facts and circumstances set out above.

64.4 Mr M Rahman was an unadmitted clerk who had, at the relevant time, approximately eight years' experience in immigration and conveyancing work. He had worked for a firm before he joined Cavells. Whilst there may have been failures in supervision, it was Mr M Rahman who had conduct of the 22 transactions which had given rise to allegations 2.2, 2.3, 2.4 and 2.5. In particular, whilst his principals were liable for breaches of the CMLH and failure to provide lender clients with material information, it was Mr M Rahman who had had day to day conduct of those matters. Mr M Rahman had given evidence that he did not deal with post-completion work, and that this was passed to another clerk. Nevertheless, it was clear that he had not ensured that there were sufficient funds available on completion to deal with payment of SDLT and/or Land Registry fees etc. Mr M Rahman had dealt with the matter of Mr RD on which two advances had been received. Mr M Rahman had said that it was in error that the first mortgage was not returned. This had clearly not been checked by Mr M Rahman. Mr M Rahman had accepted that he did not pass material information to his lender clients, in particular the information that not all of the purported purchase monies in a number of transactions would pass through the firm's account. Mr M Rahman had told the Tribunal that he had dealt with a lot of transactions and that it was up to the bookkeepers in the firm to notice any mistakes.

64.5 Mr M Rahman had accepted that all of the transfers from Mr RD's ledger on 31 December 2005 had been to the ledgers of clients with whom Mr M Rahman was dealing. Mr M Rahman had not accepted that there were actual shortages on those files, but rather there had been mispostings. Mr M Rahman had confirmed that he should have done company searches with regard to the companies with which Mr RD and Mr N were involved.

64.6 Having heard and read all of the evidence the Tribunal was satisfied that Mr M Rahman had fallen well below the standard which should have been expected in his conduct of a substantial number of conveyancing transactions. He had failed to inform lender clients of material information, failed to ensure that there were adequate funds on completion to pay SDLT and had failed to notice that the firm had retained

over £385,800 on client account on the matter of Mr RD for a period of over six months. That money had then been utilised to eliminate cash shortages on a number of Mr M Rahman's other files. Overall, therefore, the Tribunal was satisfied that Mr M Rahman's conduct of a number of conveyancing transactions was such that it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

Previous Disciplinary Matters

65. None.

Mitigation

66. Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] had made a number of admissions. It was admitted by Mr Smith, [RESPONDENT 2] and [RESPONDENT 3] that the breaches of the SAR and/or SPR were serious. However, there had been no finding of dishonesty and the conduct of all of the Respondents was described by Mr Morgan as showing more stupidity than intent. In particular, it was submitted that there had been no apparent gain to any of the Respondents.

First Respondent, Mr Smith

67. Mr Smith had been in practice for almost 44 years, and prior to the matters raised in these proceedings had an unblemished record. Mr Smith had become involved in Cavells as a kindness to help [RESPONDENT 2] and, subsequently, [RESPONDENT 3]. He had not been involved first hand in any of the breaches of the SAR. He had been ignorant of how the firm's bookkeeper was dealing with the accounts. It had to be admitted, therefore, that his supervision was too lax and he had not been as involved in the management of the firm as he should have been. Indeed, he had "stood back" from management.

68. Mr Smith had had a busy workload whilst at Cavells. He was an older man who had suffered ill health over a number of years and it was noted that he had had a brain haemorrhage about 15 years ago.

69. Apart from being the solicitor responsible for signing two of the Certificates of Title in the 22 property transactions which had been in issue, none of the allegations related directly to Mr Smith's work. He was, however, responsible as a partner in the firm for the various breaches which had occurred.

70. The Tribunal was told that Mr Smith is a married man. He is now retired and has no intention to return to practice. Mr Smith planned to move to a smaller home shortly.

Second Respondent, [RESPONDENT 2]

71. On behalf of [RESPONDENT 2] it was submitted that he had admitted breaches of the SAR. He had "inherited" a number of problems with the accounts from the former senior partner of the firm. It had been [RESPONDENT 2]'s case that the former senior partner had "fobbed him off" concerning the accounts, and it was only later that he had discovered that the firm's finances were not in a good position.

72. It was submitted that [RESPONDENT 2]'s only direct involvement in the transactions which had been in issue were that he signed the Certificates of Title in a number of the property transactions in issue. He had incorrectly believed that covering letters to the lender clients explained the nature of the transactions. He accepted that he had failed to check that all of the transactions complied with the requirements of the CMLH. [RESPONDENT 2] was not a conveyancer and had only limited experience of this area of work. [RESPONDENT 2] had not been the designated supervisor of Mr M Rahman but had signed a number of Certificates of Title when Mr Smith was not at the office.

73. [RESPONDENT 2], with Mr Smith and [RESPONDENT 3], had rectified the firm's accounts after the various problems were uncovered in the course of the investigation. The firm's accountant and the Forensic Investigation Officer had been satisfied that the problems had been rectified. [RESPONDENT 2] had had no personal benefit from any of the circumstances which had led to these proceedings.

74. It was submitted on behalf of [RESPONDENT 2] that the investigation and proceedings had been detrimental to [RESPONDENT 2]'s health.

75. [RESPONDENT 2] presently had some work as a self-employed consultant and there were conditions on his practising certificate.

Third Respondent, [RESPONDENT 3]

76. [RESPONDENT 3] had admitted all of the breaches of the SAR save for allegation 1.5. No findings had been made against him concerning breaches of the SPR.

77. [RESPONDENT 3] became a principal in Cavells on 1 December 2005 and became an equity partner about a year later. He had had no direct involvement in any of the transactions in issue. On becoming a member of the LLP he had tried to correct the ledgers. By that point the SRA was carrying out an investigation. All of the ledgers had been reconciled by June 2006.

78. [RESPONDENT 3]had trusted his partners. However, he was aware of and accepted his responsibilities as a partner for the various defaults after 1 December 2005.

79. [RESPONDENT 3] had been reprimanded by the SRA as Cavells' final accounts had been submitted late. There was a condition on [RESPONDENT 3]'s practising certificate that if he held client monies he must submit six-monthly accounts. The gravity of the charges against him had blighted his employment prospects. These proceedings had been on the table since 2008. [RESPONDENT 3] had attended CPD courses, eg concerning improving quality and reducing risk in conveyancing. [RESPONDENT 3] receives the Law Society's Money Laundering Letter and has been trying to learn from, and avoid, mistakes in his practice.

80. The Tribunal was given some outline information concerning [RESPONDENT 2]'s and [RESPONDENT 3]'s financial position, which information is covered in more detail in relation to costs.

Fourth Respondent, Mr M Rahman

81. On behalf of Mr M Rahman it was conceded that in the light of the authorities it would be difficult to persuade the Tribunal that it should not make an Order under s.43, it having made a finding that there were sufficient grounds to make an order.

82. Mr M Rahman was married with three children and was unemployed. Although making a s.43 Order would not prevent Mr M Rahman from working in a solicitor's practice, employers would tend to "shy away" from employing a Clerk against whom an Order had been made. Mr M Rahman had not been in any disciplinary trouble before the matters which gave rise to these proceedings, or since these allegations had been made. Mr M Rahman was a skilled and efficient caseworker who accepted that he had made mistakes. He had continued working as a conveyancing clerk after the allegations had been made, and there had been no subsequent complaint. However, he had been unemployed since 2009. Mr M Rahman wanted to reassure the Tribunal that he had learned a lesson from these proceedings.

83. On behalf of all of the Respondents it was noted that the proceedings had continued for some time, as a result of which the Respondents had suffered.

Sanction

84. The Tribunal considered carefully the appropriate sanction in respect of each of the four Respondents in the light of all of the evidence, the findings made and mitigation given.

First Respondent, Mr Smith

85. The Tribunal's decision with regard to Mr Smith was informed also by their findings in matters 10273-2009 and 10431-2010. The decision, therefore, should be read in conjunction with the findings in those matters.

86. Mr Smith had been a solicitor for almost 44 years. For the greater part of his time in practice he had an unblemished record. However, Mr Smith became ill and as a result of his illness he became vulnerable. The Tribunal noted that Mr Smith had suffered from a stroke, had severe eye problems and suffered from prostate cancer. He had had a brain haemorrhage approximately 15 years ago, as a result of which he was advised to avoid stress. Mr Smith's supplementary witness statement made in March 2011 had suggested that Mr Smith became confused quite easily, particularly if under pressure.

87. After becoming ill and vulnerable, Mr Smith had joined two firms in close succession. The first of these, Cavells, was relevant to the present proceedings. He had lent the firm his good name, experience and practising certificate to enable that firm to operate. The Tribunal was concerned that large amounts of money were put at risk through the actions and defaults of those involved in Cavells. Fortunately, but for reasons which were not entirely clear to the Tribunal, there had been no actual loss to the profession or public.

88. Mr Smith had then become involved in a second firm, Sovereign Chambers, after Cavells had closed. His involvement with that firm was a disaster. By once again lending his good name, experience and practising certificate to the firm, the public had been exposed to great loss, and the profession to great damage. Mr Smith was not a cause of those losses, but he gave others the opportunity to behave as they did. The Tribunal wanted it to be noted by the profession that solicitors who permit their name and their practising certificate to be exploited, run the risk of facing the most substantial penalty.

89. The Tribunal took into account the judgment of Sir Thomas Bingham MR in Bolton v Law Society, in particular the passage which reads:

> "If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well."

The Tribunal was also aware of the case of Weston v The Law Society, which makes clear a solicitor's duties of financial stewardship.

90. The Tribunal had considered with great care Mr Smith's position, but more importantly its duties to protect the public and to safeguard the reputation of the profession. The Tribunal came to the conclusion that in the circumstances, and notwithstanding any sympathy which may be felt for Mr Smith, it was both appropriate and proportionate that Mr Smith should be struck off the Roll.

Second Respondent, [RESPONDENT 2]

91. The Tribunal had given careful consideration to the mitigation put forward on behalf of [RESPONDENT 2] and the references provided.

92. The breaches of the SAR which had occurred were serious, as were the failure to report material information to lender clients, failure to comply with the CMLH and the property fraud warning card. There had been a number of serious failings over a period of time. Again, the Tribunal considered what was appropriate to protect the public and the reputation of the profession. Taking into account all of the circumstances, including the failure properly to safeguard clients' money, it was appropriate and proportionate that [RESPONDENT 2] should be suspended from practice for a period of two years.

Third Respondent, [RESPONDENT 3]

93. A number of findings had been made against [RESPONDENT 3] in his position as a principal in the firm of Cavells. The Tribunal had found that he had not acted with any loss of integrity, compromised or impaired his duty to act in the best interests of his clients or impaired the proper standard of work reasonably to be expected of a solicitor. He had to bear some responsibility for the breaches which he had admitted, and which had been found proved. In order to reflect the seriousness of those breaches it was appropriate that a fine should be imposed, and in weighing all of the

circumstances the Tribunal determined that the appropriate amount of the fine would be £3,500.

94. The Tribunal did not consider it appropriate to interfere in [RESPONDENT 3]'s ability to practice. Nevertheless, it considered it appropriate to recommend to the SRA that a condition should be imposed on [RESPONDENT 3]'s practising certificate for a period of at least five years, to the effect that [RESPONDENT 3] should only be employed in approved employment. The Tribunal did not seek to bind the SRA's hands and noted that the SRA would no doubt consider imposing conditions on the practising certificate of any solicitor against whom findings of this nature had been made.

Fourth Respondent, Mr M Rahman

95. The Tribunal had been satisfied that Mr M Rahman had been engaged in conduct in relation to a number of conveyancing transactions which would make it appropriate for a s.43 Order to be made. This Order was regulatory rather than intended to be a punishment. It was clear that Mr M Rahman required supervision and that he should only be employed within the practice of a solicitor with appropriate safeguards and permission from the SRA.

Costs

96. The Applicant submitted a claim for costs against the four Respondents totalling £32,811.65.

97. The Respondents had been invited at an earlier stage in the proceedings to prepare financial statements, with supporting evidence, if they intended to make any applications under the principles set out in Merrick v The Law Society [2007] EWHC 2997 (Admin) and/or D'Souza v The Law Society [2009] EWHC 2193 (Admin).

98. No such application was made on behalf of Mr Smith. With regard to [RESPONDENT 2], [RESPONDENT 3] and Mr M Rahman, Mr Morgan sought to persuade the Tribunal that any costs order should not be enforced without the permission of the Tribunal. Brief financial statements were submitted on behalf of [RESPONDENT 2] and [RESPONDENT 3] but no written information was provided with regard to Mr M Rahman.

99. [RESPONDENT 2]'s brief statement, which was not supported by any documentary evidence, showed that he had a total household income of approximately £3,725 per month, of which he received rental income of approximately £1,500; income from consultancy as a solicitor of £700, tax and child tax credit amounting to approximately £900. [RESPONDENT 2]'s wife earned approximately £625 per month. [RESPONDENT 2] has three dependent children aged 16, 9 and 2, and the 9-year-old son attends a private school. It was submitted that [RESPONDENT 2]'s household expenditure is a little over £4,000 per month. On behalf of [RESPONDENT 3] the brief financial statement, again unsupported by any documentary evidence, stated that [RESPONDENT 3] earns approximately £800 per month from work as a locum solicitor, receives tax credit of £400 per month and approximately £450 per month in rental income. [RESPONDENT 3] is married with

three children.

100. No written information was provided concerning Mr M Rahman but the Tribunal was told that he had been unemployed for approximately 18 months. He is married with three children.

101. The Tribunal considered whether the costs claimed by the Applicant were reasonable in all of the circumstances. The Tribunal firstly assessed the reasonable costs in this matter at £30,000. It then considered the submissions made in relation to Merrick and D'Souza.

102. The Tribunal had pointed out to the Respondents that in order to satisfy it that any order for costs should be made other than for the sum which appeared to the Tribunal to be reasonable and proportionate, it would have to be satisfied that sufficient financial evidence had been provided and that it was reasonable to depart from the usual Costs Order.

103. Although means forms of a sort had been provided with regard to two of the Respondents, the Tribunal did not find that the requirements with regard to provision of information had been met. It was not appropriate to make an order that any costs should not be payable unless otherwise agreed by the Tribunal. The SRA could negotiate with the Respondents concerning the method and timing of payment of any costs order which the Tribunal would make.

104. Of the total of £30,000 in overall costs in relation to this matter the Tribunal considered it appropriate to reflect the degree of culpability of the various parties in the order it made. The Tribunal determined to make several, rather than joint and several, orders. Mr Smith, [RESPONDENT 2] and Mr M Rahman would each be ordered to pay £9,000 in costs and [RESPONDENT 3] would be ordered to pay £3,000 in costs.

105. The Tribunal made further costs orders against Mr Smith in matters 10273-2009 and 10431-2010.

Statement of Full Order

106. The Tribunal Ordered that the Respondent, John Warner Smith of Letchworth, 5 Waterloo Place, Weymouth, Dorset, DT4 7NY, 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 sums of £9,000 in respect of case no. 10049-2008, £5,000 in respect of case no. 10273-2009 and £4,000 in respect of case no. 10431-2010.

107. The Tribunal Ordered that the Respondent, [RESPONDENT 2] (also known as [RESPONDENT 2]) of c/o Beehive and Turner LLP, Suite 134, Cavell Exchange Business Centre, 102 Cavell Street, London, E4 2JA, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 18th day of March 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.00.

108. The Tribunal Ordered that the Respondent, [RESPONDENT 3] of c/o Cavell Solicitors LLP, 10-12 Whitechapel Road, London, E1 1EW, solicitor, do pay a fine of £3,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.00

109. The Tribunal Ordered that as from 18th day of March 2011 except in accordance with Law Society permission:-
(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Muhibur Rahman of c/o Cavell Solicitors LLP, 10-12 Whitechapel Road, London, E1 1EW
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Muhibur Rahman
(iii) no recognised body shall employ or remunerate the said Muhibur Rahman
(iv) no manager or employee of a recognised body shall employ or remunerate the said Muhibur Rahman in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Muhibur Rahman to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Muhibur Rahman to have an interest in the body;

And the Tribunal further Ordered that the said Muhibur Rahman do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.00

Dated this 28th day of June 2011
On behalf of the Tribunal

J. C. Chesterton
Chairman