

IN THE MATTER OF JOHN UWUBAME ENI-UWUBAME and
[RESPONDENT 2], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D Potts (in the chair)
Mr D Glass
Mr J Jackson

Date of Hearing: 15th December 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Michael Robin Havard a solicitor in the firm of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff, CF10 3DP on 21st November 2008 that John Uwubame Eni-Uwubame, solicitor, of Croydon, and [Respondent 2], solicitor, also of Croydon, might be required to answer the allegations contained in the statement which accompanied the application and that such Order be made as the Tribunal should think right.

The allegations against both Respondents were:-

1. They have 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.
2. They have conducted themselves in a manner which was like to compromise or impair their duty to act in the best interests of their clients contrary to Rule 1(c) of the Solicitors' Practice Rules 1990.

3. They have conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990.
4. They acted in, and/or were parties to, transactions relating to banking instrument and investment schemes in the course of which they either failed to be alert or deliberately closed their eyes to the suspicious features of those transactions.
5. They became involved in dubious and/or fraudulent transactions notwithstanding such transactions were of such a nature that, as solicitors, they should not properly involve themselves whether or not they actually knew they were fraudulent.
6. They have acted dishonestly or, in the alternative, recklessly.
7. They have falsely represented fees as disbursements on client matters in the form of bank charges and/or contributions to professional indemnity insurance thereby generating a secret profit.

The allegations against the First Respondent alone were:-

8. He has acted in property transactions for the buyer and lender where there existed a conflict of interest or the potential for a conflict of interest.
9. He has failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions which was material to the lender's business.
10. He has failed to take sufficient notice or adhere to the "Green Card" warning on property fraud.
11. He has withdrawn monies from client account for the benefit of a client to whom such monies did not belong contrary to Rule 22 of the Solicitors' Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 15th December 2009 when Michael Robin Havard appeared as the Applicant and [*Respondent 2*] appeared in person. Mr Eni-Uwubame did not appear and was not represented.

Preliminary Matter

The matter had come before the Tribunal on two earlier occasions namely on 18th June and 11th August 2009. The Tribunal had prepared written memoranda relating to the adjournment of the hearings. In August 2009 the Tribunal noted that Mr Eni-Uwubame had invited the Tribunal to grant just one further adjournment and stated that in the event that he was unable to return to the United Kingdom as he planned he would send written depositions. The Tribunal had agreed to the adjournment sought and directed that in the event that Mr Eni-Uwubame was unable to return to the UK as he planned he was to send to the parties and to the Tribunal written depositions and such other evidence upon which he sought to rely no later than 14 days before the new hearing date. In making that direction the Tribunal had given due regard to Mr Eni-Uwubame's own suggestion that it should proceed in his absence if he did not attend the substantive hearing.

Mr Havard indicated to the Tribunal that nothing has been heard from Mr Eni-Uwubame. The Tribunal had received no communication from him. *[Respondent 2]* had heard nothing.

Mr Havard was ready to proceed. *[Respondent 2]* wished to have the matter concluded, pointing out that it had been hanging over his head for a long time.

The Tribunal ruled that Mr Eni-Uwubame had deliberately absented himself from the hearing and that the matter proceed to the substantive hearing.

The evidence before the Tribunal included the oral evidence of Mr Ferrari, the Solicitors Regulation Authority (“SRA”) Investigation Officer and the oral evidence of *[Respondent 2]* (“the Second Respondent”). The Appellant handed up a number of authorities including the judgment in the case of *Twinsectra v Yardley*, extracts from the Solicitors Handbook and a Bankruptcy Order made in respect of Mr Eni-Uwubame (“The First Respondent”).

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Order that the Respondent, JOHN UWUBAME ENI-UWUBAME of Maryland, Lagos, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00 (inclusive) on a several basis.

The Tribunal Order that the Respondent, *[Respondent 2]*, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00 (inclusive) on a several basis.

The evidence before the Tribunal is set out in paragraphs 1-44 hereunder:-

1. The First Respondent, born in 1966, was admitted to the Roll of Solicitors in 2004. The Second Respondent, born in 1959, was admitted to the Roll in 2005. At all material times the Respondents practised in partnership under the style of Berkeleys Solicitors at Croydon (“the firm”).
2. It was the Second Respondent’s evidence that the Respondents had been colleagues practising as barristers and solicitors in Nigeria for a period in excess of 10 years. The First Respondent had been granted dispensation by the Law Society to practise as a supervisor of the firm even though he had not achieved three years post qualification experience. The firm had been established upon the understanding that the First Respondent would act as the supervising principal which function he maintained during the existence of the partnership.
3. The Second Respondent explained that he had undertaken immigration, employment and litigation work at the firm. He confirmed that he and the First Respondent were equal partners in the firm. The First Respondent had been responsible for conveyancing matters and all financial matters and the Second Respondent relied upon experience and expertise in these practice areas. Further a number of the allegations had arisen from the conduct of conveyancing transactions.

4. An Investigation Officer of the SRA began an investigation at the firm at Croydon on 11th April 2007. The IO produced a report dated 29th November 2007 which was before the Tribunal. The IO recorded his concern about the following matters.

Mrs H Od's purchase of six apartments at Lytham St Annes.

5. The First Respondent acted for Mrs Od who had agreed to take assignments of OPI Limited's contracts to purchase the apartments from Ms LZ - four at the price of £150,000 and two at the price of £175,000. The assignments contained clauses referring to a 20% incentive to be given on completion.
6. The firm was also instructed to act for CHL Limited in its provision of mortgage finance totalling £781,173.00 to Mrs Od.
7. Two purchases were completed on 31st May 2006, two on 1st June 2006 and two on 5th June 2006. Payments were made to CBA Law (solicitors who acted for OPI Limited) of £325,000, £300,000 and £325,000 respectively.
8. CHL Limited had not been advised that Mrs Od's purchases had been by an assignment of contracts to purchase and that she had not contracted direct with the owner of the properties.
9. The balance of the completion monies for these purchases, £181,021.00, was received in tranches of £53,754.00, £49,754.00 and £77,513.00 between 31st May 2006 and 2nd June 2006. These funds did not come from Mrs Od. The funds were deposited into the firm's client bank account at a branch of B Bank in Harrogate. The First Respondent had indicated to the IO that the money had come from Mr Od, Mrs Od's brother-in-law.
10. CHL Limited had not been advised that the balance of completion monies had not been provided by their borrower, Mrs Od, in accordance with the mortgage conditions.
11. The cheque for the final tranche of £77,513, deposited on 2nd June 2006, was returned unpaid on 7th June 2006, when a payment to CBA Law of £325,000 had already been made on 5th June 2006. The cheque was re-presented on 7th June 2006, but again returned unpaid on 12th June 2006. On 9th June 2006 a receipt of £79,372 from CBA Law, was credited to Mrs Od's ledger account for these matters. The narrative on the bank statement indicated that these funds came from KH Limited, a British Virgin Islands company connected to Mr Od.
12. The First Respondent had told the IO that funds had been received from the assignor's solicitors and CBA Law were acting for Mr Od or his company in another matter and he had instructed them to forward the funds direct to the firm, Mrs Od having been informed of the dishonoured cheque.
13. The bills and completion statements prepared for Mrs Od included a charge of £30.00 for completion of the SDLT form. The SDLT forms submitted to HMR&C stated that these transactions were not linked and SDLT was paid at 1% on each property

transaction, totalling £9,500. If the transactions had been linked the total SDLT charge (calculated at 4%) would have been £38,000.

14. The IO recorded the failures to inform mortgage lenders of material facts.

Mr J - Purchase of apartments 3 - 6 V, at Southport.

15. The firm (initially Ms A and then the First Respondent) was instructed to act for Mr J in his purchase of four apartments, two at the price of £170,000 each and the others at the price of £230,000 and £220,000 respectively.
16. Mr J's purchases were by way of assignment of contracts to purchase by OPI Limited, who had contracted to purchase the properties from G Ltd.
17. The firm was also instructed by Mr J's mortgagees, D Building Society, NR plc, WB Building Society and P F Limited.
18. The four purchases were completed on 23rd May 2006.
19. The mortgage advances from D Building Society (£144,470) and NR Plc (£187,000) had been credited to the client account on 28th April 2006. The mortgage advance from WB Building Society (£144,465) was credited on 3rd May 2006. £340,000 was paid to CBA Law, OPI Limited's solicitors, on 12th and 15th May 2006, prior to exchange of contracts which took place on 22nd May 2006. Prior to completion, no funds had been received from Mr J.
20. The IO set out the following entries recorded on Mr J's ledger:-

<u>Date</u>	<u>Detail</u>	<u>Debit</u>	<u>Credit</u>	<u>Balance</u>
28.04.06	Mortgage advance D Building Society		£144,470.00	£144,470.00
28.04.06	Mortgage advance NR Plc		187,000.00	331,470.00
03.05.06	Mortgage advance WB Building Society		144,465.00	475,935.00
11.05.06	Mortgage advance PF Limited		195,455.00	671,390.00
12.05.06	Transfer to CBA Law	240,000.00		431,390.00
15.05.06	Transfer to CBA Law	100,000.00		331,390.00
15.05.06	Transfer from Overend		28,783.50	360,173.50
15.05.06	Transfer from Overend		28,788.50	388,962.00
18.05.06	Deposit Harrogate		57,760.00	446,722.00
18.05.06	Transfer to CBA Law	234,250.00		212,472.00
19.05.06	Transfer to CBA Law	230,650.00		-18,178.00
19.05.06	Deposit Harrogate		30,000.00	11,822.00

21. On 15th May 2006 two inter ledger transfers of £28,783.50 and £28,788.50 were credited. The funds came from Mr C and Mrs H Od's re-mortgage of various properties in Harrogate. Mr and Mrs Od authorised the transfer by letter dated 17th May 2006, after the transfer of funds. The file recorded no contact with Mr J about this receipt of funds.

22. The remaining balance of completion funds was received into client bank account on 18th and 19th May 2006, in sums of £57,760 and £30,000 respectively. These funds had been deposited at B Bank plc in Harrogate. The First Respondent told the IO that he was not sure where these monies came from.
23. The mortgage lenders had not been informed that the balance of the purchase moneys had not been received from Mr J.
24. The assignments of the purchase contracts contained clauses making provision for the payment of an incentive to the assignee on completion. The incentives included the provision of a deposit payment of stamp duty and solicitors' fees, and a subsidy so that the true price for each of the two properties priced at £170,000 was £140,150; in the case of the property priced at £230,000 the true price was £188,550 and for that priced at £220,000 the true price was £180,150. The non-discounted purchase prices were paid to CBA Law and the SDLT was calculated on that non-discounted figure. The First Respondent had not offered an explanation.
25. The four lender clients had not been notified that the purchases proceeded by way of assignment of the purchase contracts or that incentives, (amounting to between 17 - 18% of the stated purchase prices) were included in the contract. The First Respondent told the IO that as the gross price had been paid there had been no need to inform the mortgagees of incentives.
26. The firm's costs for these matters, together with SDLT and registration fees, were paid out of the monies received from the mortgage lenders and Mr and Mrs Od. No funds were received from Mr J.
27. Mr J was charged a fee of £30 plus VAT for completion of the SDLT form. The transactions were not declared to be linked. SDLT was paid at 1% on each property, a total of £7,900. Had 4% been paid on the aggregated price there would have been a tax liability of £31,600.00.

Mr S, Mr C and Mr Og – Purchase of three plots at Whitstable

28. The First Respondent acted for these clients in their individual purchases of the three properties. Mr S's purchase price was £184,950, Mr C's purchase price was £190,000 and Mr Og's purchase price was £217,950. The mortgage lender, P Limited, made mortgage advances of £166,410 and £170,955 to Mr S and Mr C respectively. K Mortgages made a mortgage advance of £196,120 to Mr Og. The firm was instructed by both lenders.
29. The balance of completion monies for all three purchases came from A Finance on 7th December 2006 in a single payment of £65,219, apportioned between the three client ledger accounts as to £20,344 for Mr S, £20,900 for Mr C and £23,974.50 for Mr Og. The First Respondent told the IO that he had received a fax from Mr S, Mr C and Mr Og informing him that they had funds on account with A Finance and confirming that the funds were not a loan, an accommodation or an advance. He said the deposits did not qualify as "additional borrowings" which had to be reported to the lenders.

30. The IO also expressed concern about a Swiss Investment in which the Respondents' firm had been involved. In his oral evidence the Second Respondent said that he had had no involvement in conveyancing transactions. The First Respondent had conducted the firm's conveyancing matters. The Second Respondent said that he was entitled to rely on the First Respondent's skill and expertise in conveyancing.
31. On 27th February 2007 a transfer of £67,000 had been made to an account at the IBI Bank in Zurich. It was the First Respondent's explanation that the transfer had been in respect of an overseas investment on behalf of a client, Mr Od, but he was not aware of the nature or details of the investment. At the IO's request Mr Od provided details which, in summary, were that GHP Limited, a British Virgin Island registered company, paid an initial fee of 800,000 Euros to release a 200 million Euro Bank of B Bank Guarantee. This guarantee was then to be sold to a Mr TPS for 65% discount of the face value. The remainder (130 million Euros) would then be placed in a "Trading Program" involving the sale of bank guarantees, the returns from which were to go to a GHP account. Mr Od indicated that the proceeds of the trading programme were expected to come through within four weeks of the initial investment and that the proceeds would be paid into the firm's client bank account.
32. Both Respondents had indicated an awareness of the Law Society's Warning Card on Banking Instrument Fraud. The First Respondent did not accept that the Swiss investment transaction was fraudulent.
33. The IO noted that the funds sent to IBI Bank in Zurich did not come from Mr Od. The First Respondent had explained that Mr Od was experiencing serious difficulties in raising the required finance and that there was a deadline for making the investment (the end of February 2007). The money had come from a bridging finance company (£30,000), a loan from a client of the firm Mr Ph (£20,000) and a loan from the firm (£17,000).
34. In his oral evidence the Second Respondent said that the £17,000 had been held in the firm's VAT account. The First Respondent had not consulted him about the use of this money for a loan. The Second Respondent had trusted the First Respondent, who was entrusted with the firm's financial affairs. The Second Respondent's approval or consent was not necessary. He knew nothing of this matter until it was drawn to his attention by the IO.
35. The £30,000 loan had been from LWP Limited. The terms of the loan were that in respect of the loan of £30,000 for the period 26th February 2007 to 31st March 2007, the agreed interest payable was £47,000 (156% interest for a loan of 34 days). The loan was to be secured by way of a charge over a property at Harrogate owned by Mrs Od. As additional security, a Mr GB stood surety and agreed to a notice being placed on the charges register of his property at Harrogate.
36. The First Respondent had put Mr Od in contact with LWP Limited, which he described as "a construction of a group of people who have some spare monies together and they put them together and they look for opportunities so to turn around these monies quickly and I actually came to know them because, how would I put it? We attend the same church". The IO reported that LWP stood for the name of a

church. The credit advice form on file, from B Bank plc, indicated that the £30,000 had come from an account in the name of that church.

37. When the loan was agreed the firm gave a written undertaking, dated 26th February 2007, to LWP Limited, to register a second (in fact a third) charge over Mrs Od's property. Such charge was registered on 8th June 2007. The First Respondent said that he had relied on assurances by his client that monies would be paid in and when this did not happen, he finally registered the charge.
38. There was no formal loan agreement between the firm and Mr Od for the £17,000. The First Respondent indicated that if repayment had been made 12 to 16 weeks from the end of February 2007 no interest would have been charged. At a meeting with the IO the First Respondent confirmed that the loan had not been repaid.
39. It was the Second Respondent's evidence that he did not act in and was not a party to the banking instrument or investment scheme. He had understood that the firm was to secure no financial advantage from this matter.

Telegraphic transfer charges

40. The IO observed from bills of costs and bank statements that the firm had charged clients a fee described as "bank transfer fee" or "charge" of £30 per transfer. This was described in the firm's client care letters as a disbursement. The firm was charged £20 by its bank for a telegraphic transfer. The £30 was a profit cost and VAT should have been charged on it. This incorrect disbursement charge had led to the firm making £690 over and above what its bank charged from 10th October 2006 to 20th March 2007.
41. In his oral evidence the Second Respondent explained that he undertook immigration work and was not responsible for the conduct of conveyancing. He had not made this charge and had been unaware of it.

Contribution to Professional Indemnity Insurance

42. The firm's client care letter included, "Our fees for dealing with this matter exclude other disbursements and charges details of which are as follows: [list including] Contribution to Indemnity insurance".
43. The contribution ranged between £30 and £150.
44. The firm's indemnity insurance premium for the 2006/2007 year was £2,100. The contributions collected between 10th October 2006 and 26th March 2007 totalled £6,870. One client alone had contributed £3,000 towards the firm's indemnity insurance.

The Submissions of the Applicant

45. The allegations centred around the fact that mortgagee clients of the firm had not been informed of material facts to include variations in purchase price and the source of funds necessary to complete property transactions. There had been an involvement in an investment scheme which bore the hallmarks of bank instrument fraud.
46. It was also alleged that the Respondents had derived a secret profit in making a disbursement charge for telegraphic transfers in excess of the charge made to the firm by its bank and in connection with variable contributions to the firm's indemnity insurance premium in particular where the contributions collected exceeded the actual premium paid in the same period.
47. The IO had set out the property transactions involving Mrs Od and her loans from CHL and that on 5th June 2006 the First Respondent had utilised other clients' funds totalling £65,319 between the period 5th and 9th June 2006 in order to effect completion at a time when the cheque from the company owned by Mr Od had not cleared. It had, of course, subsequently been dishonoured.
48. Further concerns had arisen in connection with property transactions where the First Respondent acted for Mr J. The First Respondent had not taken appropriate steps to safeguard the interests of his institutional lending clients. He had not provided material information which might have affected their decisions to lend to his purchaser clients. The inter-ledger transfers had been made in advance of authorisation by the transferring clients and it appeared that there had been no discussion with Mr J about such transfers.
49. With regard to the matters of Mr S, Mr C and Mr Og, there had been no indication of the basis on which A Finance provided funding. The minimum requirement expected of the First Respondent was that he should notify his lender clients of the fact that his purchaser clients were not providing the balance of the purchase price themselves. This may well have led the lender clients to a line of enquiry which might have resulted in a reconsideration of the appropriateness of granting a mortgage advance to the First Respondent's purchasing clients.
50. With regard to the Swiss investment scheme the loan to finance the £67,000 investment had come from LWP Limited in respect of £30,000. The rate of interest for that loan over a short period of time was extraordinary. The client who lent £20,000 had been identified as Mr PH although his name did not appear on the ledger nor on the file. It was not known whether the client obtained advice from the Respondent or whether he was told to seek independent legal and/or financial advice on the merits of the investment or the security of the loan.
51. The trading programme contained many complex sounding phrases but made little sense. The Respondents should immediately have been put on their guard. The Respondents had no understanding of what was involved, but despite their lack of understanding they not only coordinated the obtaining of a loan from another client but they also invested their own money in the transaction. The Respondents had provided no advice at any stage in relation to the investment and their client account had been used simply as a facility. The Respondents should not have advised or recommend Mr Od to seek a loan from LWP Limited on the terms proposed.

52. There had been no evidence to suggest that the Respondents provided advice to Mr and Mrs Od or to Mr B or to Mr PH with regard to their participation in the scheme nor did they advise those gentlemen to seek independent advice.
53. The trading scheme was outside the Respondents' ordinary line of business and the transactions involved overseas countries and huge sums of money. Both Respondents confirmed to the IO that they were aware of the Law Society's Warning Card on bank instrument fraud and yet they had not apparently identified the hallmarks of such fraud that the scheme manifested.
54. Taking account of these indicators of bank instrument fraud and the fact that the Respondents proceeded with the transaction as they did, it was the Applicant's case that they had acted dishonestly. If the Tribunal found that they had not acted dishonestly then at best they had acted recklessly.
55. Where the Respondents had wrongly described the charges for telegraphic transfers and contribution to the firm's indemnity insurance as disbursements they had in reality made a secret profit. The charge for the telegraphic transfer was not a disbursement although it was treated as such. The professional indemnity insurance premium ought to have been part of the firm's overheads and a contribution should not have been sought from clients. If the contributions came to more than the actual premium and where the firm retained such "contribution" it made a secret profit. There had been no indication that the sum recovered over and above the amount of the premium actually payable was to be refunded to the clients of the firm.
56. The First Respondent had responded to enquiries raised of him by the SRA on behalf of both Respondents when his observations on the IO's report had been made.

The Submissions of the First Respondent

57. The First Respondent had not made formal submissions but the Tribunal had noted the explanations which he had made in correspondence passing between him and the SRA in particular his letter addressed to an Investigation Officer at the SRA dated 13th February 2008.
58. The First Respondent had confirmed that the Second Respondent dealt mainly with immigration and civil litigation matters and was not involved with conveyancing.
59. With regard to the conveyancing transactions that caused concern to the IO the First Respondent said that it was his considered opinion that the client had the responsibility to ensure that information on an SDLT form was correct. The client had provided the relevant information and was charged a fee to cover the firm's administrative cost of completing and submitting the form. The firm had not been asked to and did not advise on any tax implication of the transactions. Where three flats were sold at different prices the transactions could not be considered to be linked. It was incorrect to opine on account of a seller selling four separate properties to a particular purchaser that for purposes of stamp duty the transactions would be regarded as a "series of transactions."

60. Signs for spotting property fraud highlighted in the Law Society's Green Warning Card had been considered. The professional valuation of the properties by the lender's valuer would be the best indication of the actual value of properties.
61. Where there was an assignment of a contract to purchase the vendor was the registered proprietor of the properties.
62. Where Mrs Od was buying properties it was correct that the funds had come from Mr Od but it was not accepted that in those circumstances the funds came from a third party. Prior to acceptance of those monies confirmation from the client had been received that those monies were not loans from Mr Od but a repayment of money due.
63. When a drawing was made on an uncleared cheque for £77,513 the action had not been deliberate. At the time payment was made the Respondents had been under the mistaken impression that the sum had been paid into the firm's account by way of a bank transfer. When the error came to light two days later they took urgent steps to remedy the situation. Two days later Mr Od instructed his solicitors to transfer funds to the firm to remedy the shortfall created. The funds had come from KH Limited, a company owned by Mr Od. The Respondents were comforted by the fact that the funds were coming from CBA Law, a solicitors' firm.
64. Where deposits were paid on behalf of Mr J by Mr and Mrs Od the firm had been informed that the deposits were not loans from Mr and Mrs Od and it was not considered necessary to report this matter as the moneys did not constitute additional lending. It was understood that Mr and Mrs Od were friends of Mr J. The written authority of Mr and Mrs Od to transfer funds to Mr J's client ledger was a confirmation of their earlier oral instruction given prior to the transfer of funds. Cheque payments of £57,760 and £30,000 respectively were paid in by Mr Od on behalf of Mr J. The firm was aware of its money laundering responsibilities and the First Respondent was its money laundering officer.
65. With regard to the Swiss investment programme it was true that the Respondents did not know the nature of the investment at the time. Mr Od had approached the firm when he had been its client for some time. The Respondents had no opportunity of cross checking the scheme as prior to their agreement to transfer the funds Mr Od had given them oral assurances that the transaction was above board but they did not have details of the investment. When Mr Od eventually provided the details of the investment trading programme the Respondents realised that the transaction had some characteristics of bank fraud which the Law Society's Warning Card identified. The Respondents had advised Mr Od to seek independent legal advice and he confirmed that he had done so before the loan was advanced to him. The sum of £20,000 had come from Mr PH for whom the Respondents had acted in conveyancing transactions several months earlier. At the time the money was transferred to Mr Od Mr PH was no longer a client of the firm. There was no evidence to indicate that the sum transferred was a loan.
66. Mr Od had been advised that the interest on the loan was excessive but he assured the Respondents that he would be in a position to pay due to the enormous returns he was expecting to make from the Swiss investment trading programme. No advice was

provided to Mrs Od as she was not a client of the firm. The loan agreement stated clearly that she should seek advice before signing the document.

67. The Respondents did not advise LWP Limited on the level of security that a third charge on the Ods' property would offer. They only introduced LWP Limited to Mr Od and that was the limited extent of their involvement.
68. With regard to the charging for telegraphic transfers and contribution to indemnity premiums all was made apparent to clients in the client care letters and each client had paid what he or she expected to pay. The suggestion that the Respondents had made a secret profit was rejected. When the IO drew his concerns to the Respondents' attention, the firm's client care letters were amended accordingly. Each contribution to the indemnity insurance premium should be considered as being independent from every other contribution. There could be no justification for considering the contributions collectively as opposed to individually. If this were otherwise it would lead to an anomalous situation where some clients would be levied and others would not when the threshold for the premium had been attained. In view of the IO's concerns steps had been taken to reclassify the contribution as "fees" in the firm's client care letters. An offer had been made to inform the clients of the misdescription and give them the opportunity to request a refund of any sum charged as a contribution.

The Submissions of the Second Respondent

69. *[Respondent 2]*'s position was that he had relied on his supervising partner and had no knowledge of conveyancing matters as he himself did not handle any conveyancing. He had not therefore been involved in billing for telegraphic transfers and he himself had not included a contribution towards the firm's indemnity premium when he billed his immigration and litigation clients. Further he had had no involvement in the Swiss investment scheme and had been unaware of it until it had been drawn to his attention during the course of the SRA's consideration of the matters which had come before the Tribunal.

The Tribunal's Findings of Fact

70. The Tribunal found that the First Respondent had conduct of the conveyancing matters with regard to which the IO had expressed a number of concerns. The Tribunal found that the Second Respondent who did not undertake conveyancing had no knowledge of these matters.
71. The Tribunal found as fact that the First Respondent had conduct of the Swiss investment programme and that the Second Respondent had no knowledge of this matter and that the Second Respondent had no knowledge that £17,000 retained by the firm to meet its VAT liability had been lent to Mr Od.
72. The Tribunal found that the Second Respondent had been unaware of the telegraphic transfer fees being charged as a disbursement and had been unaware that contributions to the firm's indemnity premium had been charged as a disbursement and the Tribunal accepted the Second Respondent's evidence that he himself had not made such a charge in bills. The Tribunal noted, indeed, that it had no evidence before it that the

Second Respondent had been involved in any of these matters and it accepted his evidence that he was not.

The Tribunal's Findings on the allegations

73. The Tribunal found all of the allegations against the First Respondent to have been substantiated. The Tribunal found that the First Respondent had been dishonest.
74. In making its finding of dishonesty against the First Respondent the Tribunal had applied the two part test set out in the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12 and the Tribunal found that in acting as he did and in being involved in the Swiss investment trading programme when he had no understanding of what was involved and coordinated the obtaining of a loan for Mr Od from another client and in particular in recommending Mr Od to seek a loan from LWP on the terms proposed without advising anyone to seek independent advice at a time when such investment programme was outside his ordinary line of business and where the transactions involved overseas countries and huge sums of money, the First Respondent's conduct was dishonest by the standards of reasonable and honest people. Having considered the First Respondent's written explanation, which he appeared to give as an explanation for both Respondents (the Tribunal having heard and seen the Second Respondent the Tribunal did not accept that he spoke for both Respondents) the Tribunal was satisfied so that it was sure that the First Respondent neither knew nor cared whether the transaction was a legitimate one or that the parties concerned had been properly and fully advised and therefore he did not have an honest belief that the transaction was legitimate and that in proceeding neither knowing nor caring that the transaction might have been fraudulent he knew that what he was doing was dishonest by those same standards.
75. With regard to the Second Respondent the Tribunal, having found as a matter of fact that he was not personally involved in the conveyancing or the Swiss bank investment client matters, the allegations against him which relied upon his involvement were found not to have been substantiated. However as a partner in the firm the Second Respondent was liable for the false representation of fees as disbursements in connection with bank charges and contributions to the professional indemnity insurance premium which guaranteed a secret profit. The Tribunal therefore found allegation 7 to have been substantiated against him and as a result they also found allegations 1, 2 and 3 to have been substantiated against him. The Tribunal confirms that it has found allegations 4, 5 and 6 not to have been substantiated against the Second Respondent.

Costs

76. The Applicant sought the costs of and incidental to the application and enquiry. A schedule of his costs was passed to the Tribunal. The Second Respondent was presented with the schedule of costs at the same time. He had not had an opportunity to consider them in advance and he expressed concern about the substantial investigation costs.
77. In making any award of costs the Second Respondent invited the Tribunal to consider his level of culpability and his means.

78. The Second Respondent said that he was working as an assistant solicitor and his remuneration depended on the work he generated. He estimated that his income would be in the region of £1,500 per month although this varied. He had no other source of income. The investment that he had made into the firm had been lost when the firm was closed. He retained liability for the firm's debts, pointing out that his former partner was no longer in the jurisdiction and had been adjudicated bankrupt. The Second Respondent was bearing sole responsibility for the firm's debts. The Second Respondent did own a house but it was subject to a mortgage. He had no other capital.

The Tribunal's sanction

79. The Tribunal having made a finding of dishonesty against the First Respondent considered it both appropriate and proportionate in order to protect the public and the good reputation of the solicitors' profession to order that he be struck off the Roll.
80. With regard to the Second Respondent he had actually benefited to a modest degree from the "secret profit" made when the firm's fees were misdescribed as disbursements. To demonstrate both to the public and to the profession that such misdescription is unsatisfactory and that a partner in a firm must bear responsibility for such a matter it was right that the Second Respondent should pay a fine of £2,000.00.
81. With regard to the question of costs it was clear that the behaviour of the First Respondent had led to there being three hearings before the Tribunal. The Applicant had not succeeded in all of the allegations against the Second Respondent and had the allegations found substantiated against him been dealt with in isolation the matter would have been concluded in a short hearing.
82. In all of the circumstances it was appropriate that the Second Respondent should pay a modest contribution towards the costs. The Tribunal concluded that the costs sought by the Applicant were reasonable and fixed the costs in the sum of £29,000. It ordered that the Second Respondent should pay a contribution of £4,000 towards those costs and the balance should be met by the First Respondent. The Respondents' liability for those costs was to be on a several basis.

Dated this 24th day of February 2010

On behalf of the Tribunal

D Potts
Chairman