

IN THE MATTER OF ROBERT BASIL SOUTHCOMBE, solicitor AND
HUMAIRA SHAH, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W. M. Hartley (in the chair)
Mrs E Stanley
Mrs V. Murray-Chandra

Date of Hearing: 21st July 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 (SRA) by David Elwyn Barton of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX, on 25th November 2008 that Robert Basil Southcombe, solicitor, 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 and

That an Order under section 43 of the Solicitors Act 1974 (as amended) be made by the Tribunal directing that as from a date to be specified in such Order, no solicitor, recognised body or Registered European Lawyer shall employ or remunerate Humaira Shah who is or was employed or remunerated by Robert Basil Southcombe except in accordance with permission in writing granted by the Law Society or that such Order might be made as the Tribunal should think right.

The allegations against the First Respondent Robert Basil Southcombe are that:-

- (1) He paid money into his office account in breach of Rule 19 of the Solicitors Accounts Rules 1998.

- (2) In breach of Rule 22 of the said Rules he withdrew money from client account in circumstances other than permitted by the said Rule. The First Respondent had been dishonest, or in the alternative grossly reckless.
- (3) In breach of Rule 32(1) of the said Rules he failed to keep accounting records properly written up.
- (4) In breach of Rule 32(2) of the said Rules he failed to record dealings with client money.
- (5) In breach of Rule 32(5) of the said Rules the current balance on each client ledger was not shown or was not readily ascertainable.
- (6) In breach of Rule 32(7) of the said Rules he failed to reconcile his client account as required.
- (7) In breach of Rule 32(8) of the said Rules he failed to keep a central record of all bills and written notification of costs.
- (8) In breach of Rule 1 of the Solicitors Practice Rules 1990 he compromised or impaired each or both of the following:-
 - (a) his independence or integrity
 - (b) his good repute or that of the Solicitors' profession

In addition he was dishonest or alternatively was grossly reckless.

- (9) In breach of Rule 1 of the Solicitors Code of Conduct 2007 he:-
 - (a) failed to act with integrity
 - (b) allowed his independence to be compromised
 - (c) behaved in a way that was likely to diminish the trust the public placed in him or the profession

In addition he was dishonest or alternatively he was grossly reckless.

The allegation against the Second Respondent, Humaira Shah was that:-

- (10) Having been employed or remunerated by a solicitor, she had in the opinion of the Authority occasioned or been a party to an act of default which involved conduct on her part of such a nature that it would be undesirable for her to be employed or remunerated by a solicitor in connection with his/her practice. The particulars were that:-
 - (a) she utilised client money for her own benefit and in so doing was dishonest.

- (b) she gave a false and misleading explanation to the Authority concerning the removal of money from client account and was thereby dishonest.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 21st July 2009 when David Elwyn Barton appeared as the Applicant and the First Respondent appeared and was represented by James Leabeater of Counsel, the Second Respondent did not appear but was represented by Ben Walker-Nolan of Counsel on her application for an adjournment.

The evidence before the Tribunal included the admissions of Mr Southcombe to allegations 1, 2 (but not dishonesty or recklessness), 3, 4, 5, 6, and 7. The Tribunal also had before it a number of documents provided by the Second Respondent Ms Shah.

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

The Tribunal Order that the Respondent, Robert Basil Southcombe, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 21st day of July 2009.

The Tribunal Order that as from 21st day of July 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Humaira Shah, a person who is or was a clerk to a solicitor.

The Tribunal further Order that the Respondents do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,627.46, apportioned as Robert Basil Southcombe do pay £7,427.46 and Humaira Shah do pay £18,200.00, both Respondents be severally liable.

The facts are set out in paragraphs 1 – 20 hereunder:-

1. The First Respondent, Robert Basil Southcombe was born in 1933 and admitted as a solicitor on 16th July 1979. His name remained on the Roll of Solicitors.
2. The Second Respondent, Humaira Shah (who was not and is not a solicitor) was at all material times employed or remunerated by the First Respondent who, at all material times was carrying on practice as S & S Solicitors, First Floor, 27 Cardiff Road, Luton, Bedfordshire, LU1 1PP.
3. On 26th February 2008 Mr David Bailey, an Investigation Officer ("IO") employed by the Authority, commenced an inspection of the books of account and other documents of S & S Solicitors. His report dated 10th June 2008 was before the Tribunal.
4. The Respondents gave Mr Bailey details of the firm's history. In addition, the Second Respondent stated that she was the proprietor of an immigration consultancy business named Huma Law Associates which occupied the lower floor of 27 Cardiff Road, Luton. S & S Solicitors operated a client account and two office accounts at Barclays Bank. Both the First and the Second Respondent were able to operate these accounts.

5. The books of account were not in compliance with the Solicitor's Accounts Rules 1998. A number of discrepancies were referred to in the IO's report.
6. The absence of adequate bookkeeping made it impossible for the IO to calculate anything other than a minimum cash shortage, and his calculation revealed a minimum cash shortage as at the 31st January 2008 of £5,265.67. The report disclosed the existence of further cash shortages totalling £169,000.
7. A letter was received by the Authority from S W Solicitors stating that a client account cheque sent to them by S & S Solicitors for £500.00 had been dishonoured. The Respondents had told S W Solicitors in a letter dated 29th April 2008 that there had been a burglary on 15th April. The letter stated "Our accounts have been cleared out and we have been left with a nil balance".
8. The Second Respondent stated to the IO on 2nd May 2008 that there had been a series of burglaries at their offices and that about £80,000 had been stolen. She stated that someone had hacked into their client account and had removed all available client money. No evidence had been provided to corroborate this.
9. The IO then inspected copies of the firm's bank statements and he was able to establish that two mortgage advances had been received into the client account of S & S Solicitors during February 2008. They totalled £337,935.00.
10. The statement and transfer documents also revealed that during the period 26th February 2008 and 12th March 2008, £144,000 had been transferred from S & S's client account to the current account of Huma Law Associates. A further £25,000.00 was similarly transferred on 21st April 2008. The latter transfer post-dated the alleged burglary. Some of the funds had been deposited into the Second Respondent's personal account. An analysis of the bank statements showed that prior to the receipt of the first such mortgage payment of £167, 965 on 25th February, the account was in credit by only £4,625.57. On 26th, 27th and 28th February round sum withdrawals were made from the advance reducing the credit balance to £1,090.57.
11. On 29th February the balance was £171,060.57 following the receipt of the second advance and again there were a number of round sum withdrawals. The pattern was repeated and during the period covered by the statements every debit to client account with the exception of the payment of £44,688.97 on 21st April 2008 was for a round sum and none had been explained satisfactorily, or at all.
12. Client money self evidently went into the Second Respondent's personal account and both Respondents participated in the transfers by co-signing the written instructions to the bank. This was misappropriation of client money.
13. The First Respondent permitted the Second Respondent to operate the firm as she chose and she was given unfettered freedom to do so. He failed to operate any proper supervision over his office and failed to protect client money under his stewardship.
14. The IO took the matter up with the First Respondent and met with him on 7th May 2008. Although the First Respondent was the sole principal of the firm (according to

the Second Respondent), the IO had observed that he was seldom in attendance. He appeared to have little knowledge of how the business was being conducted. He had no observations on the manner in which the books of account were being kept, was not able to locate client files, or comment on them.

15. To the outside world the solicitors' practice of S & S Solicitors was that of a sole principal, (the First Respondent), controlled and operated by him and regulated by the Authority in the public interest. The regulatory details of the firm held by the Law Society and the Authority recorded him as being the sole principal. The IO found the following:-
 - (a) That the signboard at the entrance to the premises stated the name of the firm as "S & S Solicitors", but that underneath the name the words "Shah and Southcombe" appeared with the name "Shah" having been removed but still just visible.
 - (b) The firm's bank accounts described the account holder as "Mrs Shah and Mr Southcombe trading as S & S Solicitors."
 - (c) The initial capital to establish the firm came from a loan of £10,000 for which the Second Respondent had alone stood as surety and the Second Respondent had provided further capital of £20,000.
 - (d) The Second Respondent had provided to the IO a curriculum vitae in which she described herself as an "Equity Partner" in S & S Solicitors.
 - (e) On 28th February 2008 the Second Respondent stated to the IO that she considered herself to be an equity partner in the firm and asked him if there had been any changes in the law with regard to partnerships with persons who are not solicitors.
 - (f) On 29th February 2008 the First Respondent stated to the IO that he had no equity in the firm.
16. These facts were consistent with the Second Respondent owning, whether wholly or in part, and controlling the firm. The First Respondent permitted this state of affairs to exist over a period for time. It was an impermissible arrangement and the First Respondent breached Rule 1 of the Solicitors' Practice Rules 1990 in compromising his independence (as well as otherwise alleged) and he also breached Rule 1 of the Code of Conduct 2007 as alleged above.
17. The Second Respondent stated she worked on a commission basis. During the meeting on 7th May 2008 the First Respondent telephoned the bank in the IO's presence and was apparently informed that banking facilities had been terminated.
18. A week later on 14th May the Second Respondent telephoned the IO and stated to him that the firm's books of account were not up to date and that she did not have bank statements. She was questioned about the two mortgage advances with specific reference to the transfer of money into the bank account of Huma Law Associates. The Second Respondent stated that the transfers had been made on the instructions of her

client. However she could not remember the name of the client, the matter files were not produced and no authority was produced from the clients for the withdrawals of the stated sums. The monies belonged to the two lender clients.

19. On 23rd June 2008 the Authority wrote to the Respondents to seek their explanations. The First Respondent stated in his reply that there appeared to be transfers coming to £139,000.00 not made by him and he did not know how they were done. His explanations did not adequately address the breaches alleged. The Second Respondent in her reply stated that she did not make the transfers and did not know how they were done.
20. The instructions to the bank were signed by both the Respondents. On 30th July 2009 the Authority resolved to intervene into the practice.

Application to adjourn by Second Respondent

21. Mr Walker-Nolan on behalf of the Second Respondent, Ms Shah, made an application to adjourn the hearing. The Tribunal were referred to his skeleton argument and were also provided with an inpatient letter from Luton and Dunstable Hospital confirming the Second Respondent had been admitted to hospital on 9th July 2009 for treatment for severe abdominal pain and discharged on 15th July 2009. The Tribunal was also provided with a Sickness Certificate for the purposes of social security and statutory sick pay from the Second Respondent's GP confirming she should refrain from work for one week from 15th July 2009 due to severe abdominal pain investigations and treatment.
22. Mr Walker-Nolan confirmed the application was made on the basis that these proceedings should await the outcome of criminal proceedings. These were allegations of misappropriation of money involving mortgage transfers from S & S Solicitors to improper accounts and claims of mortgages being obtained fraudulently, one by Ms Shah's daughter and one on Ms Shah's home address.
23. Mr Walker-Nolan confirmed that in May 2008 the Second Respondent was arrested and interviewed, and was re-interviewed in May 2009. At that time she had different solicitors representing her and they advised her to exercise her right to remain silent. She had not been charged yet and was due to attend on bail in September 2009.
24. Ms Shah was concerned about these proceedings being dealt with before any criminal proceedings and this was reflected in the Tribunal's Memorandum of Adjournment and Directions dated 17th April 2009. She had attended before the Tribunal on that date and explained the position.
25. The evidence was such that it was inevitable the Second Respondent would be charged and the Tribunal were asked to exercise their discretion and adjourn these proceedings until the criminal investigation was concluded. The allegations before the Tribunal concerned precisely the same subject matter as the criminal proceedings and if the Second Respondent were to give evidence before the Tribunal, she would be at risk of prejudicing herself in relation to the criminal case against her, as such evidence would be cross-admissible in criminal proceedings the nature of which had not been

determined. Any such evidence could also be admissible against the Second Respondent's daughter.

26. At the previous hearing before the Tribunal on 17th April 2009, the Tribunal were of the view that any proceedings instituted by the police would be concluded and the Second Respondent was given the expectation that until criminal proceedings were concluded it would be unfair and unjust to proceed.
27. The Second Respondent was neutral in relation to the First Respondent's application to sever his case and she did not wish to delay his case but simply wished to protect herself. The Tribunal was asked to order a general adjournment and was reminded that the Second Respondent was unable to participate in the proceedings before the Tribunal today due to her medical condition details of which were given in the document before the Tribunal.
28. The Applicant had suggested the hearing could take place in private as permitted by the Rules but unfortunately Mr Walker-Nolan had not been able to take instructions on that point. If the substantive hearing could be adjourned today based on medical evidence, Mr Walker-Nolan could take instructions on a hearing to take place in private which would cause far less prejudice to the Second Respondent. However, if the application to adjourn were rejected, it was submitted that in any event given the medical evidence, it would not be fair to proceed in the Second Respondent's absence.
29. Huma Law Associates was still operating and the Second Respondent was working although not for a solicitor. There had been a recent finding against the Second Respondent by the Ilex Tribunal and she had been excluded from being a member of Ilex for one year. However, she intended to appeal that decision and it was likely that she would be in practice for a limited time in any event.

The Applicant's Submissions on the Second Respondent's Application to Adjourn

30. The Applicant reminded the Tribunal that he was requesting an Order pursuant to Section 43 of the Solicitors Act 1974. The Tribunal simply needed to be satisfied that the Second Respondent had been party to the conduct complained of. There was a significant public interest element in this case and indeed, the application had been made in November 2008. There had been an exchange of correspondence between the Applicant and the Second Respondent to try and move the case on but it was notable that the Second Respondent had not complied with any of the Tribunal's directions which were given on 17th April 2009. She had not served any witness statement and although her letters to the SRA gave some explanations, these related to misappropriation of client money due to burglary or theft.
31. The Applicant had suggested the possibility of the Second Respondent giving evidence in private in order to avoid the risk of prejudice in any criminal proceedings but the Second Respondent had chosen not to attend today.
32. These were serious conduct issues and the Tribunal must consider the protection of the public. It was not necessary for the Tribunal to find the Second Respondent had been dishonest in order to make a Section 43 Order and in any event, the Second Respondent's application to adjourn was being made very late in the day. She had not

informed the Tribunal what she has been charged with, if anything, and indeed, the Tribunal did not know when or even if she would be charged. There was no evidence from the solicitors who were representing the Second Respondent in her criminal proceedings and the Applicant submitted exercising her right to remain silent in criminal proceedings was not a good enough reason, as the Second Respondent could participate in these proceedings and give no evidence in any event.

33. The Applicant submitted there was an overwhelming issue of public interest and taken with the passage of time, the Second Respondent's failure to comply with the Tribunal's order of 17th April 2009, and her lack of communication as to exactly what was going on, the Tribunal should refuse her application to adjourn and hear the case in her absence as she had clearly chosen not to attend today.

The First Respondent's Submissions on the Second Respondent's Application to Adjourn

34. Given that the Second Respondent had confirmed that she would not oppose the First Respondent's application to sever the proceedings, the First Respondent did not have any comment to make on the Second Respondent's application.
35. Mr Southcombe wanted to proceed with the case today, he was not in good health and it was very stressful for him to have it hanging over him. He was represented by Mr Leabeater today but if the matter were to be adjourned, he was unable to say whether he would be able to obtain legal representation for any future hearing. It was submitted that an adjournment would cause Mr Southcombe real prejudice and would not be fair to him.

The Tribunal's decision on the Second Respondent's application to adjourn

36. The Tribunal had listened carefully to the submissions of the parties and had considered the relevant documents. The Second Respondent's application to adjourn the hearing was rejected for the following reasons:-
- (1) It was in the public interest that the matter should be dealt with particularly given that the Rule 5 Statement was dated 25th November 2008.
 - (2) It would be unfair to Mr Southcombe to have this case hanging over him any longer, particularly when he had complied with the Tribunal's directions and was represented today.
 - (3) Ms Shah had provided little evidence that criminal proceedings would actually be launched, indeed she had not yet been charged. In any event, even if criminal proceedings were pursued, any judge would be able to instruct the jury appropriately as to what evidence they should ignore.
37. In relation to the medical evidence provided to the Tribunal, this was in the form of an inpatient letter and a Sickness Certificate for social security and statutory sick pay purposes only dated 15th July 2009 stating Ms Shah should refrain from work for one week. The Solicitors Disciplinary Tribunal practice note dated 4th October 2002 made it clear that any request for an adjournment on the grounds of ill health must be

supported by reasoned opinion from an appropriate medical advisor. The practice note made it clear that a Doctor's certificate issued for social security and statutory sick pay purposes only or other merely indicating that the person was unable to attend for work was unlikely to be sufficient. Accordingly, the Tribunal did not accept Ms Shah's Sickness Certificate as sufficient grounds for an adjournment.

38. The Tribunal were mindful of Ms Shah's concerns and indeed, as this case had been listed for a two day hearing, Ms Shah had the opportunity to attend before the Tribunal on the second day of the hearing, being 22nd July 2009. Furthermore, if Ms Shah wished to attend before the Tribunal on 22nd July 2009, she could then make an application for the matter to be heard in private and Mr Walker-Nolan was asked to obtain instructions from Ms Shah as to whether or not she intended to attend before the Tribunal, in which case the Tribunal would be prepared to hear her submissions at 10.00 am on 22nd July 2009.
39. Mr Walker-Nolan confirmed he had no further instructions other than to withdraw from the case at this stage. He indicated that if he was unable to obtain Ms Shah's instructions, he would urge Ms Shah's representatives to contact the Tribunal today to let them know whether Ms Shah intended to attend before the Tribunal on 22nd July 2009.

The Submissions of the Applicant

40. The Applicant confirmed the First Respondent admitted allegations 1, 2, (but not dishonesty or recklessness), 3, 4, 5, 6 and 7.
41. Both Respondents were co-signatories on the firm's bank accounts and the Tribunal were referred to a statement from Paulette Fuidge who was an employee of the Bank of Ireland, dated 19th June 2009. In that statement, which had not been challenged, a mortgage advance had been made to Ms Shah's daughter and S & S Solicitors had dealt with the transaction. The mortgage advance was for the purpose of purchasing a property at 100c Avenue, which was in fact never completed despite an undertaking being given in a Certificate of Title dated 27th February 2008. The Tribunal were given details of payments made from the mortgage advance a few days later, which were clearly to pay the Second Respondent's personal expenditure. It was submitted that the Second Respondent had clearly used client money for her own benefit and had been dishonest. The Tribunal were given another example of a re-mortgage on Ms Shah's own property. A Certificate of Title had been provided, monies had been advanced by the lender but the lender's Charge had never been registered even though the property was in Ms Shah's name. The lender's solicitors lodged a unilateral notice to protect their position. The Tribunal were referred to a schedule of payments from that mortgage advance which showed payments had been made to Huma Law Associates. There was a clear money movement and it was submitted the Tribunal could be satisfied from the documents provided that the proceeds had been used for Ms Shah's benefit. This was clear evidence of dishonesty.
42. Ms Shah had asserted to the SRA that the office had been burgled and the client account had been cleared out. However, this was not borne out by the paper trail before the Tribunal.

43. In relation to the First Respondent, he had denied allegations 8 and 9 which related to the manner in which he had allowed Ms Shah to act as she did within the practice. It was submitted that at the lowest level Mr Southcombe was grossly reckless in relation to his duties to supervise the practice. He was primarily responsible for the proper care and stewardship of client money and that money had been misappropriated on his watch.
44. The Tribunal were referred in particular to a fax from S & S Solicitors to the bank, which had been signed by Mr Southcombe, and indeed by Ms Shah, requesting the sum of £25,000.00 be transferred from S & S Solicitor's client account to Huma Law Associates account. This was dated 21st April 2008 yet Ms Shah claimed the burglary had taken place on 15th April 2008.
45. A further fax had been sent to the bank on same day requesting another large transfer signed by both Respondents but this was not actioned by the bank.
46. It was submitted that if Mr Southcombe did not know what he had signed, then clearly he had been grossly reckless and had allowed client money to be paid into Ms Shah's personal account.
47. The Applicant called Mr David Bailey and Mr Puddephatt to give evidence.

The Oral Evidence of Mr David Bailey

48. David Ernest Bailey was sworn in and confirmed he was a Forensic Investigation Officer employed by the SRA. He confirmed his report dated 10th June 2008 was correct and true to the best of his knowledge and belief.
49. On cross examination he confirmed it appeared to him that the Respondents were operating as a partnership. Mr Southcombe had accepted he was liable for all the debts of the firm and Ms Shah had said she was an equity partner who had put £32,000.00 into the practice. She had also said that Huma Law Associates were paying the debts of S & S Solicitors. Mr Bailey confirmed he saw no evidence of personal gain to Mr Southcombe from the sums transferred out of client account and that the only benefit he had received was from the fees he had billed on his own matters. Mr Southcombe did not have a good knowledge of the practice and appeared to have little knowledge of what Ms Shah was doing.
50. Mr Bailey accepted that the transfers from S & S Solicitors client account to Huma Law Associates had taken place through five individual transfers.

The Oral Evidence of Ian Puddephatt

51. Ian Frederick Puddephatt was sworn in and confirmed he was the Head of Corporate Fraud Investigations at the Financial Crime Unit at Barclays Bank. He confirmed his statements dated 30th April 2009 and 2nd July 2009 were true and accurate to the best of his knowledge and belief.
52. On cross-examination he confirmed that the Bank Manager of S & S Solicitors' local branch dealt with the Respondents. He confirmed that in relation to the transfer of

£25,000.00 on 21st April 2008, there had been five withdrawals of £5,000.00 simply because when the request was made to the bank, it was processed by a junior member of staff who was not authorised to make a single transfer of £25,000.00. The request to transfer this money had been made by Ms Shah on the telephone and then followed by a fax. Mr Puddephatt confirmed he had been advised by the local branch that they had never spoken to Mr Southcombe, other than when he opened the account at the outset.

The Submissions of the First Respondent

The Oral Evidence of the First Respondent, Robert Basil Southcombe

53. Robert Basil Southcombe was sworn in and confirmed his statement dated 2nd June 2009 was true. He also confirmed that the Medical Reports before the Tribunal dated 10th June 2009 from Dr Mandavilli and dated 1st July 2009 from Dr Khan were accurate.
54. On cross examination Mr Southcombe confirmed he had been in partnership in three separate firms, S & S Solicitors, Shah & Company Solicitors and Zenith Solicitors. S & S Solicitors had not been making money so he was trying to make a living. He was anxious to dispose of S & S Solicitors but could not pay the three years' roll over insurance. Of the three firms he had spent most of his time at Shah & Company Solicitors because it was closer to his home. He had found it tiring travelling to Luton and accordingly did not go to S & S Solicitors as often as he should have. He had spoken to the Law Society about this and they had informed him that provided there was a good system in place, there was no need for him to attend regularly. They had said that a Legal Executive of seven years experience would be more use than a recently qualified solicitor. Mr Southcombe confirmed he had been a partner in Shah & Company Solicitors for a long time but had only become a partner in Zenith Solicitors in 2007. Shah & Company Solicitors had been less demanding as there were other partners there at the time.
55. Mr Southcombe confirmed he had opened the firm's bank account and was a signatory. He understood the responsibility he had taken on and at the beginning he had regularly attended S & S Solicitors but had subsequently found it tiring when he had moved. He would attend the offices in Luton once a week doing mainly family cases and Ms Shah did mainly immigration work. There were a few conveyancing matters but they were handled by another fee earner who was the Manager and who was very punctilious. The day to day responsibility for accounts was with Ms Shah and the manager, and Mr Southcombe had thought everything was alright as their accountant would pop in frequently and spend time with Ms Shah.
56. Mr Southcombe understood the importance of keeping the books of account in order. He had been a solicitor for a long time and about 10 years ago had been a salaried partner. However not many salaried partners kept an eagle eye on accounts.
57. Mr Southcombe confirmed he had become involved in so many partnerships simply to earn money. The indemnity insurance application form for S & S Solicitors had been completed by Ms Shah, signed by her and accepted by the insurers. Despite promises of lots of work for the firm, Mr Southcombe confirmed that he was being plagued by creditors for the debts of the practice and indeed, he did not personally pay the

indemnity insurance premium, it was paid by Ms Shah. Mr Southcombe had no house, no security and Ms Shah agreed to put a charge on her property in order to put money into the firm. It was all done very informally and they did not discuss how she would report to Mr Southcombe. They were friends and Mr Southcombe knew Ms Shah as she had worked previously at Shah & Company Solicitors. They had not decided who would check the firm's bank statement and Mr Southcombe said that he felt very badly about it. He was in the office about once a week on average and often went to Court in Luton. At the time he did not think it was necessary to attend more often but, he did now. Mr Southcombe confirmed that he did not look at the books of accounts and felt very guilty about this. He was not asked to sign documents very frequently and indeed, the practice of Shah & Company was so honest that Mr Southcombe had got into the habit of accepting what he was told.

58. He had never been involved with the administrative side. He spent a lot of time in advocacy and indeed, when he had his own firm years ago, a qualified accountant had dealt with all of the accounts. Mr Southcombe accepted he should have read the documents and that some did slip through the net. Mr Southcombe said he was horrified when he found out that money from the firm's client account had been going into Ms Shah's personal account. There were a number of cases that had been handled by S & S Solicitors which were subsequently transferred to Huma Law Associates and Ms Shah had told Mr Southcombe that the transfers would stop the bank from taking all the fees that came in. Mr Southcombe had assumed the £25,000.00 transfer from client account would go to another firm of solicitors when the case was transferred to them. However, he confirmed he was not sure of this and indeed, he could not even remember signing that particular transfer. It could have been the case that he did not sign it and his signature was forged.
59. Mr Southcombe accepted he had left the firm under the control of Ms Shah. He had thought she was reliable, conscientious and keen to make the practice work and he accepted there were no mechanisms for checking. He had not made a conscious decision not to supervise Ms Shah. In relation to the burglary, he had been told by Ms Shah that there had been four burglaries, that a number of mobile telephones had been stolen in one of the burglaries and that the matter had been reported to the police. She said that two or three of those burglaries had been from her private home.

The Further Submissions of the First Respondent

60. The Tribunal were asked to take into account the First Respondent's medical evidence which indicated he had a history of forgetfulness and had received treatment for depression, poor concentration and difficulty with memory related to low mood. He had other personal problems details of which were given in the Medical Reports and was now living in sheltered accommodation.
61. This was a sad case for the First Respondent as well as for the victims of the fraud. He had been foolish, naive and had not run his practice in an acceptable or suitable manner. He accepted the Accounts Rules breaches and the Tribunal were reminded that despite his many years of practice in the Law, he had little experience of dealing with solicitors' accounts. This was relevant as to whether the First Respondent's behaviour had been intentional.

62. Matters had become very serious after money went missing from client account, all of which was actioned at Ms Shah's request. The only evidence connecting Mr Southcombe to the missing funds was his signature on the two documents dated 21st April 2009 requesting the bank to make transfers. Mr Puddephatt had confirmed that instructions for the transfers had been received by telephone from Ms Shah and then followed up by fax. Mr Southcombe did not remember signing the fax and indeed could not say it was his signature. The medical evidence before the Tribunal confirmed that he did not have a good memory and it was submitted that his signature on the fax was not evidence of dishonesty.
63. The Tribunal were referred to the case of Bryant and Bench v The Law Society [2007] EWHC 3043 and the test the Tribunal had to consider which was firstly whether reasonable, ordinary and honest people would regard Mr Southcombe's conduct as dishonest and secondly, whether Mr Southcombe himself was aware that his conduct was dishonest by those standards. It was submitted there was no evidence that Mr Southcombe was aware his conduct was dishonest indeed, his evidence had been transparently honest and he confirmed that he simply did not think about the possibility that it could all go wrong as he trusted Ms Shah. This was not enough to make a finding of dishonesty or gross recklessness against him.
64. The other basis upon which the First Respondent was alleged to have been dishonest/reckless was that he had left the practice in Ms Shah's sole hands. This was plainly an unacceptable way to run the practice but, again, Mr Southcombe had confirmed in his evidence that he had not thought about it. He trusted Ms Shah, he had asked the Law Society for guidance on how often he should attend the office and indeed, they had informed him that an experienced Legal Executive was better than an inexperienced solicitor.
65. It appeared to be the case that Ms Shah was dishonest and the transfers had been made over a short period of time between February to April 2008. Mr Southcombe could not use internet banking, he had no knowledge of the sums being transferred and he had thought that the transfers were being made to Huma Law Associates for cases that had been transferred to that practice.
66. There was no doubt that Mr Southcombe had been careless in the manner that he had run the practice but there was no significant evidence that he was dishonest. His main concern was that there should not be a finding of dishonesty against him. He did not expect to work as a partner in a firm and accepted he should not be allowed to be involved with the administration of a solicitors' practice. However, it was submitted that this was not a case for him to be removed from the Roll of Solicitors and that an indefinite suspension would be an appropriate sanction. This would satisfy the Tribunal's obligation to protect the public and would also reflect that Mr Southcombe was a victim of the demise of S & S Solicitors. He was now 76 years of age, he had many years of practice behind him and this was a sad way for him to end his career.

The Applicant's Further Submission in relation to Ms Shah

67. The Applicant confirmed he had spoken to Ms Shah's solicitors and that she was aware she could apply for the hearing to be heard in private on 22nd July 2009, being the

second day listed for this hearing. However, she had decided that she would not be attending the Tribunal and did not intend to give any evidence.

The Tribunal's Findings

68. The Tribunal had considered very carefully the submissions of both parties and all of the documentary evidence provided.
69. The Tribunal found allegations 1 – 7 (except dishonesty) to have been substantiated, indeed they were admitted by Mr Southcombe. In relation to allegations 8 and 9, the Tribunal were satisfied that both these allegations had been substantiated but were not satisfied that Mr Southcombe had acted dishonestly.
70. Mr Southcombe had trusted Ms Shah. He had not personally benefited in any way and, indeed, had no idea what was going on. The Tribunal were not satisfied that an ordinary, honest and reasonable member of the public would consider Mr Southcombe's conduct to be dishonest and were certainly not satisfied that he himself was aware that his conduct was dishonest. However, this was a case where substantial transfers of money had been made from the client account of a firm in which Mr Southcombe was a sole principal. It appeared he had signed a transfer form authorising the transfer of some of those monies and, indeed, in his own evidence he had accepted he should have attended the office more regularly and should have read documents far more carefully, enquiring about the transfers rather than relying upon Ms Shah. The Tribunal found that Mr Southcombe had acted grossly recklessly in relation to allegations 2, 8 and 9.
71. Concerning allegation 10, the Tribunal had considered all of the documentary evidence provided which clearly showed a paper trail of transfers being made from the client account of S & S Solicitors to Huma Law Associates, and then a subsequent use of those monies to pay Ms Shah's personal expenditure. There was no evidence from Ms Shah to explain the nature or purpose of those transfers and the transfers were made to her personal account from which her personal liabilities had been paid. Furthermore, Ms Shah had referred to a burglary at the practice which allegedly took place on 15th April 2008, which was well after some of the transfers had been made. The Tribunal found allegation 10 against the Second Respondent to have been substantiated.

Mitigation of Mr Southcombe

72. Mr Leabeater on behalf of Mr Southcombe submitted that the gross recklessness found by the Tribunal had arisen as a result of Mr Southcombe's age, infirmity and mental condition. Mr Southcombe had suffered difficult personal circumstances for many years, some of which entailed looking after his wife who had significant mental problems, and then suffering these problems himself. His financial situation was dire, he had no assets, the debts from S & S Solicitors were piling up and his insurers had not confirmed whether they would provide cover in relation to any civil cases pursued. If they refused to indemnify Mr Southcombe, his financial situation would be irrecoverable. He accepted the situation had arisen due to his own shortcomings but it was mainly due to Ms Shah's dishonesty.

73. Mr Southcombe had made no profit, but yet was bearing the financial burden of the firm's debts. He was particularly concerned that he should not suffer the personal indignity of being struck off especially as he was well known in the local community. He submitted the appropriate sanction was an indefinite suspension and reminded the Tribunal that he had made significant concessions in the process, having made admissions where it was appropriate and not wasted time. He had wanted to fight the dishonesty allegation and had been successful. In the circumstances the Tribunal were requested to order he should not pay any of the costs, particularly given his dire financial situation.

Costs

74. The Applicant requested an Order for his costs and provided the Tribunal with a schedule confirming his costs came to a total of £25,627.46. He confirmed that the majority of the costs had been incurred in establishing the audit trail which had led to the misuse of the mortgage advances. He estimated that approximately two thirds to three quarters of the costs would have been attributable to Ms Shah. He also confirmed that Mr Southcombe had co-operated throughout the proceedings.

The Tribunal's Decision

75. The Tribunal had considered carefully the further submissions of the parties. In relation to Ms Shah, the Tribunal were satisfied that her conduct had brought the profession into disrepute and was such that she could not be trusted and the public needed to be protected from her. Accordingly the Tribunal granted the Order sought by the Applicant namely that she should only be employed in a solicitors practice with the permission in writing of the Law Society for such period and subject to such conditions as the Society may think fit.
76. Regarding the First Respondent Mr Southcombe, the Tribunal were extremely concerned that he had appeared before the Tribunal previously on 24th March 1994 and again in September 1999 on similar allegations. In March 1994 the Tribunal had found he had been duped by a confidence trickster and as a result of this there had been accounts breaches. There had been a misuse of client funds, Mr Southcombe had admitted he had not given matters the degree of care and thought he should have done and had been deeply sorry in mistakes he had made in signing fraudulent cheques.
77. In the appearance before the Tribunal in September 1999, again there were similar allegations relating to breaches of Solicitors Accounts Rules and the Tribunal had ordered he be suspended from practice for an indefinite period of time unless he complied with outstanding regulatory matters before the date of the commencement of the suspension, in which case a financial penalty was to be imposed upon him.
78. Given the previous appearances before the Tribunal, the Tribunal very seriously considered removing Mr Southcombe from the Roll of Solicitors. It appeared to be the case that despite his previous appearances, he had not learnt his lesson and had allowed similar problems to be repeated.
79. In the case before the Tribunal today, third parties had suffered considerably as a result of Mr Southcombe's gross recklessness, and he had allowed an un admitted person to

run his practice in a manner which was fraudulent, dishonest and deceitful. His behaviour had brought the profession into disrepute and he had failed to comply with important regulatory requirements which were there specifically to ensure the proper stewardship of client money and to protect clients.

80. The Tribunal had taken into account Mr Southcombe's age, infirmity and mental health and also noted he had co-operated throughout the proceedings. In the circumstances, although the Tribunal had seriously considered removing Mr Southcombe from the Roll of Solicitors, the Tribunal decided the appropriate sanction in this case was to suspend Mr Southcombe indefinitely and recommended that no application be considered to lift the suspension within 10 years. It was certainly clear to the Tribunal from the medical evidence provided that Mr Southcombe was not sufficiently well enough to practise as a solicitor in any event and certainly his medical history indicated this had been the position for a considerable period of time.
81. In relation to the question of costs, it was quite clear to the Tribunal that Ms Shah would not have been able to act in the way that she had without the involvement of Mr Southcombe. She could not have had access to any client funds and although Mr Southcombe's trust was completely misplaced, this was not the first time he had found himself in this position and his previous appearances had exacerbated the Tribunal's view of his culpability.
82. The Tribunal had considered the case of Merrick – v – The Law Society [2007] EWHC 2997 on the question of costs and had given due consideration to Mr Southcombe's financial situation. However, bearing in mind Mr Southcombe's previous appearances before the Tribunal, the Tribunal did not consider any abatement was appropriate. Accordingly, the Tribunal ordered the costs to be paid in full in the sum of £25,627.46, apportioned as Mr Southcombe to pay £7,427.46 and Ms Shah to pay £18,200, both Respondents to be severally liable.

Dated the 24th day of February 2010
On behalf of the Tribunal

W M Hartley
Chairman