No. 10208-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ALAN MATTHEW AVETOOM (the First Respondent) and [SECOND RESPONDENT] (the Second Respondent), solicitors
[NAME REDACTED]
Upon the application of Ms Jayne Willetts
on behalf of the Solicitors Regulation Authority

Mr J C Chesterton (in the chair)
Mr K W Duncan
Mrs N Chavda

Date of Hearing: 27th and 28th May 2010

FINDINGS & DECISION

Appearances

Ms Jayne Willetts, Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP appeared for the Applicant.

The First Respondent, Alan Matthew Avetoom, appeared in person.

The Second Respondent, did not appear and was not represented.

The application was dated 6th March 2009.

Allegations

Against the First Respondent only

1. He failed to act in the best interests of his client Allied Irish Bank by failing to register a lease at the Land Registry in breach of Rule 1(c) and (e) of the Solicitors Practice Rules 1990.

2. He failed to respond to correspondence from his client, Allied Irish Bank in breach of Rule 1(c) and (d) of the Solicitors Practice Rules 1990 and in breach of Principle 12.10 of the Guide to the Professional Conduct of Solicitors (8th edition) 1999 ("the Guide").

3. He failed to respond to correspondence from the Legal Complaints Service ("LCS") during its investigation into issues of inadequate professional service in breach of Principle 30.04 of the Guide and Rule 20.03 of the Solicitors Code of Conduct 2007.

4. He failed to provide a substantive response to allegations of professional misconduct raised with him by the SRA in breach of Rule 20.03 of the Solicitors Code of Conduct 2007.

Against the First and Second Respondents

5. Accounting records and documents were not produced to The Law Society in breach of Rule 34 of the Solicitors Accounts Rules 1998 ("SARs").

6. Accounting records were not kept properly written up to show dealings with client money and office money relating to client matters in breach of Rule 32(1) of the SARs.

Against the First Respondent only

7. Monies were withdrawn from client account in March 2007 on behalf of a client, Mr RA in excess of the monies held on behalf of that client in breach of Rule 22(5) of the SARs.

8. He practised as a solicitor on his own account without there being in force a practising certificate from 13th December 2007.

9. He provided inaccurate information regarding his practice to the SRA by letter dated 18th February 2008 contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

10. He failed to disclose material facts to his lender clients in property transactions and thereby failed to act in their best interests contrary to Rule 1.04 of the Solicitors Code of Conduct 2007.

By a supplementary statement dated 22nd September 2009 the further allegations made against the First Respondent were that:

11. He failed to produce accounting records and documents to the SRA Investigation Officer on request in breach of Rule 34 of the SARs.

12. He failed to keep the accounting records for Avetoom & Co properly written up in breach of Rule 32 of the SARs.

13. He failed to disclose to the SRA the existence of a second client account at the time of the first inspection into Avetoom & Co in February 2008 in breach of Rules 1.02, 1.06 and 20.03 of the Solicitors Code of Conduct 2007.

14. He provided an inaccurate statement to the SRA by letter dated 9th July 2008 that the books of account were up to date as at 30th June 2008 in breach of Rules 1.02, 1.06 and 20.03 of the Solicitors Code of Conduct 2007.

15. He failed to comply with an undertaking dated 11th September 2008 to pay £26,731.25 to Levi Solicitors LLP within 28 days in breach of Rules 1.06 and 10.05 of the Solicitors Code of Conduct 2007.

16. He failed to comply within a reasonable time with an undertaking given by a member of his staff in writing to Howard Kennedy Solicitors on 15th March 2008 in breach of Rules 1.06 and 10.05 of the Solicitors Code of Conduct 2007.

17. He failed to apply to the Assigned Risks Pool ("ARP") for professional indemnity insurance before the start of the indemnity year (1st October 2008) in breach of Part 3 Rule 10 of the Solicitors Indemnity Insurance Rules 2008.

18. He failed to deliver the Accountant's Report for Avetoom & Co for the six month period ending 30th September 2008 by 30th November 2008 in breach of Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998 and as a result practised in breach of the condition on his practising certificate for the practice year 2007/2008.

19. He failed to comply with a Court Order dated 11th December 2008 or in the alternative failed to provide an explanation for his non-compliance with the said Order in breach of Rules 1.01 and 1.06 of the Solicitors Code of Conduct 2007.

By a second supplementary statement dated 15th January 2010 the further allegations against the First Respondent were that:

20. Monies withdrawn from client account in relation to a particular client exceeded the money held on behalf of that client in breach of Rule 22(5) of the Solicitors Accounts Rules 1998.

21. [withdrawn]

The First Respondent admitted allegations 3, 4, 5, 6, 7, 8, 9, 17 and 18.

The Tribunal was referred to a letter dated 10th May 2010 from the Second Respondent to the SRA, which contained his mitigation, and confirmed that he would not be attending before the Tribunal as he was now living in Thailand.

Factual Background

1. The First Respondent, born in 1973, was admitted as a solicitor on 1st November 1999. He practised on his own account as Avetoom & Co Solicitors, 11 Cotswold

Close, Kingston Hill, Surrey, KT2 7JN. A decision to intervene in the practice of Avetoom & Co was made on 22nd January 2009.

2. The Second Respondent, born in 1946, was admitted as a solicitor on 15th December 1973. He became a partner in the firm of Avetoom & Co in August 2007. The First Respondent notified the SRA by letter dated 30th August 2007 that the Second Respondent was joining him as a partner and attached a copy of an email dated 30th August 2007 from the Second Respondent confirming this. By letter dated 14th July 2008 the First Respondent confirmed to the SRA that the partnership with the Second Respondent was dissolved with immediate effect.

Allegations 1 and 2

3. On 10th May 2007 Allied Irish Bank complained to the LCS about the failure of the First Respondent to reply to correspondence. The First Respondent had been instructed to act on behalf of the bank in connection with a charge on commercial property in London. Completion of the charge had taken place on 9th February 2005 and the charge had been registered but the lease in favour of the customer had not been registered at the Land Registry. Allied Irish Bank had tried to contact the First Respondent during the period February 2005 to May 2007 concerning this.

Allegation 3

4. The LCS wrote to the First Respondent on 21st June 2007. The First Respondent telephoned the LCS and agreed an extension of time to 11th July 2007. The caseworker telephoned the First Respondent on 11th and 12th July seeking a response and left messages. The LCS wrote to the First Respondent on 13th July regarding the failure to reply.

5. The First Respondent telephoned on 19th July stating that he had totally forgotten about the response because he had been out of the office. He again responded on 23rd July by email stating that he had been overseas on urgent business. The caseworker wrote to the First Respondent on 27th July regarding his failure to reply and informed him that the LCS would be exercising their powers to collect the file relating to the matter from him. The First Respondent delivered up the original file to the LCS by letter dated 3rd August.

6. The LCS forwarded the original file to Allied Irish Bank on 16th August. The file was considered by Allied Irish Bank but they could not locate on the file either the lease or the mortgage document.

7. On 22nd August the LCS wrote to the First Respondent and requested an explanation as to the whereabouts of the lease and the mortgage document. The First Respondent failed to provide the missing documents nor did he provide an explanation to the LCS.

8. The matter was referred for adjudication and a formal decision made on 8th November, a copy of which was sent to the First Respondent on 15th November. There was no response.

Allegation 4

9. The file was referred to the SRA who wrote to the First Respondent on 19th December 2007 requiring a reply by 11th January 2008. The First Respondent replied on 24th January 2008 stating that Allied Irish Bank had been repaid in full and that the lease over which the Bank held a charge no longer existed. The First Respondent offered to make a contribution to a charity rather than making any payment to the bank because he stated that the bank had not suffered any loss or damages.

10. A further letter was sent to the First Respondent on 19th February 2008. No response was received. The matter was then referred for adjudication. Letters were sent to the First Respondent on 13th March, 7th and 21st April. No response was received.

11. The First Respondent wrote to the SRA on 5th June confirming that there was a delay in the registration that was subsequently completed. Allied Irish Bank confirmed by letter dated 24th June 2008 that it was relying upon the charge as monies were still outstanding under the charge. By letter dated 7th November 2008 Allied Irish Bank confirmed that the bank had been repaid in full.

Allegations 5 and 6 against the First and Second Respondents

12. An inspection was commenced at the Respondents' practice and a Forensic Investigation Report ("FI Report") dated 1st April 2008 was prepared.

13. The First Respondent was unable to produce to the Investigating Officers ("IOs") the accounting records as he stated that they were all with his bookkeeper. The IO also identified that the books of account had not been written up beyond 31st March 2007. The First and Second Respondent were partners in the firm of Avetoom & Co at the material time.

Allegation 7 against the First Respondent only

14. The accounting records to 31st March 2007 showed a cash shortage of £18,947.47. The cash shortage had arisen due to an overpayment from client account in March 2007 on behalf of a client, Mr RA. The First Respondent stated that the overpayment had arisen due to an error and in part due to his accounting records not being up to date. The cash shortage was replaced in full by the First Respondent on 17th March 2008 when it was drawn to his attention by his accountant.

Allegations 8 and 9

15. The First Respondent's practising certificate for 2006-2007 was terminated on 13th December 2007 as he had not applied for a new certificate as at that date. In response to a letter dated 31st January 2008 from the SRA, the First Respondent confirmed by letter dated 18th February 2008 that he had not conducted any legal work such as litigation, conveyancing or probate nor had he held himself out as a solicitor.

16. During the inspection the IOs identified a number of client files where the First Respondent had carried out such work since 13th December 2007. These included acting for a client who was arrested for alleged rape, instructing Counsel, exchanging

contracts on a conveyancing matter, preparing a Statement of Costs and lodging a Notice of Change of Solicitor at the High Court.

17. The SRA wrote to the First Respondent on 31st January 2008 reminding him that his practising certificate was terminated, that he was uncertificated and seeking further information. The First Respondent replied on 18th February 2008 stating that he had not been practising. It was apparent from a review of the client files that the reply provided by the First Respondent was inaccurate as he had been holding himself out as a solicitor and conducting legal work from 13th December 2007 to 5th February 2008.

Allegation 10

18. The IOs identified property transactions that involved the sale of a property by way of a sub-sale or an assignment of a contract, with a significant increase in the selling price. The files relating to three of these transactions were considered in detail but the accounting information was limited.

19. All transactions were sub-sales or back to back transactions. There was a misrepresentation of the purchase price in that the true cash price actually paid was not as stated in the transfer and was not identical to the price shown in the mortgage instructions. In addition there was a part of the purchase price said to be paid direct to the seller.

20. The First Respondent acted for Mrs L, wife of Mr L, in connection with the purchase of a property for £2,400,000. The transaction proceeded by way of a sub-sale to Mr L at an increased price of £3,500,000. The First Respondent was also acting for Mr L. Further, the First Respondent was acting on behalf of Mr L's mortgagee bank who had agreed to loan £2,450,000 to Mr L.

21. The completion statement showed that the only monies received by the firm in respect of this purchase were the mortgage advance of £2,450,000 and the deposit monies of £100,000. The transfer document showed the consideration for the transaction to be £3,500,000 of which £2,400,000 was paid to the vendor by Mr L and a further £1,100,000 was stated to have been paid by Mr L to his wife Mrs L.

22. The certificate of title signed by the First Respondent and dated 11th December 2007 showed a purchase price of £3,500,000. There was no evidence on the file or produced by the First Respondent that the mortgagee had been advised that the transaction was proceeding by way of a sub-sale.

23. The First Respondent acted for Mr C in connection with the purchase of a property for £2,450,000. The transaction proceeded by way of a sub-sale to Mr M at an increased price of £3,250,000. The First Respondent was also acting for Mr M. Further, the First Respondent was acting on behalf of Mr M's mortgagee H Bank who had agreed to loan £2,400,000 to Mr M.

24. The completion statement showed that the only monies received by the firm in respect of this purchase were the mortgage advance of £2,400,000 and the deposit monies of £150,000. The transfer document showed the consideration for the transaction to be

£3,250,000 of which £2,450,000 was paid to the vendor by Mr C and a further £800,000 was stated to have been paid by Mr M to Mr C.

25. There was no evidence on the file or produced by the First Respondent that the mortgagee had been advised that the transaction was proceeding by way of a sub-sale.

26. The First Respondent acted for Miss W in connection with her purchase of a property for £250,000. He also acted for Miss W's mortgagee KMC Limited who had agreed to loan £224,000 to Miss W. The transaction proceeded by way of two sub-sales. The first seller was Mr H who sold to Mr P for £215,000 who sold to Miss W for £250,000.

27. The completion statement showed that the only monies received by the firm in respect of this purchase were the mortgage advance of £223,965. The transfer document showed the consideration for the transaction to be £250,000 of which £215,000 was paid to the vendor by Miss W. A further £35,000 was stated to have been paid by Miss W to Mr P.

28. The certificate of title stated that the purchase price was £249,995 and that "the seller has owned or been the registered owner of the property for not less than six months".

29. There was no evidence on the file or produced by the Respondent that the mortgagee had been advised that the transaction was proceeding by way of a sub-sale. Further, there was no evidence on the file or produced by the Respondent that the mortgagee had been advised that the seller (Mr P) had not owned or been the registered proprietor of the property for six months.

Allegations 11 to 14

30. An IO commenced a second inspection at the First Respondent's practice and prepared a second FI Report dated 4th September 2008.

31. During the second inspection on 7th August 2008, the IO was shown client account reconciliations and lists of client balances written up to 31st March 2008. The First Respondent stated that the more recent accounting records were with the practice bookkeeper. Subsequent enquiries with the bookkeeper revealed that the accounting records were not up to date. The bookkeeper confirmed to the IO that the books of account were not up to date as they did not incorporate the second client account.

32. In relation to the second client account [client number 2 account] the First Respondent failed to disclose the existence of this account when the IO carried out the first inspection on 25th February 2008. The IO asked the First Respondent at the first inspection to disclose all practice accounts. The First Respondent failed to do so or to provide any bank statements for this account.

33. During the second inspection the First Respondent disclosed the existence of the second client account. Bank statements were provided by the bookkeeper and the first bank statement identified a transaction through the account on 22nd February 2008. The client account was therefore already open and in use at the date when the first inspection commenced on 25th February 2008.

34. The First Respondent had previously confirmed by letter dated 9th July 2008 to the SRA that his books of account were fully written up to date and reconciled to 30th June 2008. However the First Respondent was only able to produce accounting records written up to 31st March 2008 during the second inspection. He did not produce records subsequent to 31st March 2008.

Allegation 15

35. By letter dated 11th September 2008 the First Respondent provided an undertaking to Levi Solicitors LLP ("L Solicitors") as follows:

> "We hereby irrevocably undertake to pay to your firm the sum of £26,731. 25 within the next 28 days in settlement of the aforesaid rent arrears. Please confirm that your client will not take any steps to forfeit the lease for the premise pro temp."

36. L Solicitors responded on 12th September 2008 confirming that, in consideration of the undertaking, their client, the landlord of the premises, would refrain from initiating the lease's forfeiture provisions.

37. The First Respondent failed to make payment on or before 9th October 2008 in accordance with the undertaking. L Solicitors wrote to the First Respondent on 13th, 14th and 23rd October regarding the outstanding undertaking. No response was received. L Solicitors complained to the SRA.

38. On 4th December 2008 the First Respondent wrote to L Solicitors stating that as his clients had been using the premises for illegal purposes he regarded his undertaking as null and void and that he had been "duped" into giving it. L Solicitors wrote to the SRA on 9th December 2008 stating that they did not agree with the First Respondent's contention that the undertaking was void.

Allegation 16

39. In March 2008 Howard Kennedy Solicitors ("HK") were instructed to act for a bank in connection with a loan of £21,000,000 to Avetoom & Co's client. By letter dated 15th March 2008 MS, a paralegal employed by Avetoom & Co provided an undertaking to HK Solicitors as follows:

> "As per your letter dated 13th March 2008 Avetoom & Co is undertaking to cover [HK] fees for the sum of £15,000 plus VAT and disbursements regardless of whether or not this matter proceeds to completion."

40. The bank decided to withdraw their offer of a loan to Avetoom & Co's client so that the transaction did not proceed. HK Solicitors forwarded to Avetoom & Co an invoice for their costs of £17,625 by letter dated 4th April 2008. HK Solicitors telephoned Avetoom & Co to enquire as to payment and spoke to the First Respondent and MS. Payment was promised and bank account details provided by email dated 29th May 2008. Payment was still not forthcoming so HK Solicitors reported the matter by letter dated 6th June 2008.

41. The SRA wrote to the First Respondent on 11th July 2008 seeking his explanation. The First Respondent replied by letter dated 23rd July 2008 stating inter alia that the costs had already been met and that the undertaking was given without his knowledge or consent. HK Solicitors confirmed by email dated 24th July 2008 that payment in accordance with the undertaking had not been made. He also forwarded to the SRA an exchange of emails with his client indicating that the First Respondent knew of the transaction.

42. The SRA wrote again to the First Respondent on 25th July 2008 and he replied by letter dated 19th August 2006 (should read 2008) stating that as the undertaking was not time specific a reasonable time for compliance had not expired. He also stated that he would meet the fees from his own pocket.

43. By letter dated 21st August 2008 HK Solicitors confirmed that they had issued proceedings for the outstanding fees, that the First Respondent had filed a defence in those proceedings but had also stated that he would be settling the fees in full within 14 days. The First Respondent subsequently settled the outstanding fees due to HK Solicitors in September 2008.

Allegation 17

44. The First Respondent failed to apply to the Assigned Risks Pool for indemnity insurance prior to 1st October 2008. His proposal form was not received by the SRA until 27th October 2008.

Allegation 18

45. An Accountant's Report was delivered to the SRA on 28th January 2008 by the First Respondent for the period 30th November 2005 to 31st March 2007. A six monthly reporting condition was imposed on 3rd March 2008 upon the First Respondent's practising certificate for the year 2007/2008. The Accountant's Report due immediately after the imposition of the condition was to cover the six monthly period, 1st April 2008 to 30th September 2008 due to be delivered by 30th November 2008. The First Respondent failed to deliver this Report and thereby failed to comply with the condition imposed upon his practising certificate.

46. It is also relevant that the last Report delivered to the SRA was for the period 30th November 2005 to 31st March 2007. A Report was due to be delivered for the period, 1st April 2007 to 31st March 2008 but nothing was received by the SRA. In addition a Report was due for the period 1st October 2008 to 29th January 2009 being the date of the intervention but again nothing was received.

Allegation 19

47. On 11th December 2008 W & Co Solicitors acting on behalf of BS plc obtained an Order against the First Respondent in the Chancery Division, Birmingham District Registry. The Order required the First Respondent to provide by 6th January 2009 copies of financial and other documents from his conveyancing files in relation to his client, Ms JP. The First Respondent failed to deliver the said documents or to write to

W & Co providing an explanation as to why he could not provide the said documents in accordance with the Court Order.

48. On 9th February 2009 W & Co made a complaint to the SRA regarding the First Respondent's failure to comply with the Order. On 1st June 2009 the SRA wrote to the First Respondent seeking his explanation. He replied by email dated 8th June 2009 stating that he only acted for Ms P in two of the three conveyancing transactions that were the subject of the Court Order; that his client had removed the conveyancing files from his office in June 2008 and that his bookkeeper had retained all of his financial records.

Allegation 20

49. The SRA resolved to intervene into the practice of Avetoom & Co on 22nd January 2009 and appointed an Intervention Agent. The Intervention Agent conducted a review of the accounting records in order to prepare a reconciliation of the accounts. As a result of this exercise by the Intervention Agent breaches of the Solicitors Accounts Rules 1998 were identified.

50. The Intervention Agent identified that the accounting records on the computer software package had not been maintained after 31st March 2008. In particular, no reconciliations had been carried out for a period of ten months from April 2008 until January 2009. It was further ascertained that the client account was overdrawn by £30,000 as at 31st March 2008 in respect of a client ("L"). The ledger recorded two credit entries of £30,000. One credit entry was from a firm of solicitors which was reconciled with the bank statement and there was a second payment from "SL" which did not appear on the bank statements. There was subsequently a debit and credit of £30,000 from the account but this did not affect the fact that £60,000 was recorded as having been received on the client ledger but only £30,000 was paid into the client account. Both client bank accounts were checked. There was no receipt into either account for this missing sum of £30,000 recorded on the ledger as having been received from "SL". It was also noted that earlier entries on the ledger made the ledger overdrawn.

The Tribunal reviewed all the documents submitted by the Applicant which included:

(i) Rule 5 Statement together with all enclosures;

(ii) First Supplementary Statement dated 22nd September 2009 together with all enclosures;

(iii) Second Supplementary Statement dated 15th January 2010 together with all enclosures;

(iv) Applicant's schedule of costs dated 13th May 2010;

(v) Letter dated 5th March 2008 from the SRA to the First Respondent;

(vi) Emails from Ms Willets to the SRA dated 14th and 24th May 2010.

The Tribunal reviewed all the documents submitted by the First Respondent which included:

(i) The First Respondent's bundle of documents which contained the First Respondent's witness statements dated 17th December 2009 and 17th May 2010;

(ii) The First Respondent's third witness statement dated 28th May 2010.

The Tribunal reviewed all the documents submitted by the Second Respondent which included:

(i) A letter from the Second Respondent to the SRA dated 10th May 2010 together with enclosures;

(ii) A letter dated 12th May 2010 from Michael Shelton to the SRA.

Witnesses

The following persons gave oral evidence:

(i) Ms Lisa Bridges, Forensic Investigation Officer with the SRA;

(ii) Barry Spencer Grossman, formerly employed by Russell-Cooke Solicitors, the Intervention Agents.

(iii) The First Respondent, Alan Matthew Avetoom

Findings as to Fact and Law

51. The Tribunal had considered carefully all the documents and the submissions of the parties.

52. There were only two allegations against the Second Respondent, which were allegations 5 and 6. It appeared from the Second Respondent's letter dated 10th May 2010 that the Second Respondent accepted those allegations as he referred to his letter as "in mitigation of the two offences". In any event, it was clear to the Tribunal that the books of account had not been written up beyond 31st March 2007 and the First Respondent had admitted the accounting records and documents were not produced to The Law Society when requested. The Second Respondent was a partner in the practice at the material time, albeit legally rather than physically, and therefore was liable as a partner of the practice for these breaches. Accordingly, the Tribunal found allegations 5 and 6 were proved against the Second Respondent.

53. Dealing with the First Respondent, the Tribunal found allegations 3, 4, 5, 6, 7, 8, 9, 17 and 18 to be proved, indeed these had all been admitted by the First Respondent.

Allegations 1 and 2

54. The First Respondent denied these allegations, however, he had admitted in his evidence that he did not register the lease and that at some stage he had lost the mortgage deed. The Tribunal was satisfied that by failing to register the lease and

losing the mortgage deed, the First Respondent had failed to act in the best interests of his clients and indeed had placed the lender at risk. Fortunately the lender had been repaid but the consequences could have been much worse.

55. It was clear from the documents before the Tribunal that the First Respondent had failed to reply to correspondence from his client, Allied Irish Bank over a lengthy period of time. The Tribunal found both allegations 1 and 2 substantiated.

Allegation 10

56. The First Respondent had stated that the agent involved in these property transactions had a close relationship with the bank and he had inferred that she would inform the bank of the sub-sales. The First Respondent accepted he was naive in not writing to the bank but he had believed that the bank knew exactly what was going on. In relation to the transaction concerning Mr M, the senior underwriter from the bank had attended the property and chatted for 45 minutes with the client. The First Respondent accepted that the Certificate of Title which had been sent to the bank did not refer to a sub-sale but submitted he had derived no personal benefit and had nothing to hide.

57. In relation to the transaction concerning Miss W, the vendor was a mortgage broker who had obtained a mortgage for Miss W so the First Respondent had submitted that the bank must have known of the circumstances.

58. Under the Council of Mortgage Lenders' Handbook, the First Respondent had an obligation to ensure the lender was provided with all material facts. This was to protect the client, the bank and the solicitor himself. The First Respondent accepted he had not disclosed material information to the lender and had relied on third parties who he believed had provided the material information. This was not acting in the best interests of his lender client, particularly when the First Respondent had obligations to the lender client. By failing to fulfil those obligations, the First Respondent had exposed the lender to risk and had failed to act in the lender's best interests. The Tribunal found this allegation proved.

Allegations 11 and 12

59. These allegations related to the First Respondent's failure to produce accounting records and documents to the SRA and also his failure to keep accounting records properly written up. The allegations were denied by the First Respondent who submitted that having been arrested and taken away by the police he was not in any position to supply records and documents to the SRA. However, on cross-examination the First Respondent confirmed he had responsibility to observe the Solicitors Accounts Rules and that he had been detained by the police for approximately eighteen hours and even after being released, he did not take steps to provide the records that were available as he was in a state of shock.

60. The First Respondent claimed the accounts were up to date as at 30th June 2008 and that his bookkeeper had written to the SRA on 14th July 2008 confirming the accounting records had been written up to 27th June 2008. The First Respondent had relied upon him. It was clear to the Tribunal from the documents provided that the

accounting records were not properly written up, indeed, they did not incorporate the second client account. The Tribunal found both allegations 11 and 12 substantiated.

Allegation 13

61. The First Respondent denied this allegation which related to his failure to disclose the existence of a second client account to the Authority at the time of the first inspection in February 2008. The First Respondent had submitted in evidence that the second client account had been disclosed to his bookkeeper, who had disclosed details of it to the FIO, Lisa Bridges. However, Lisa Bridges gave evidence confirming that the first inspection had started on 25th February 2008 and at that time she was not informed about the second client account. When she subsequently spoke to the bookkeeper on 12th August 2008 about why the accounts were not written up to 30th June 2008, he had informed her that he was not up to date as he had just been made aware of the second client account. Ms Bridges stated that she expected the First Respondent to inform her that a second client account was open even if there were no statements available for that.

62. The Tribunal noted that the first bank statement relating to the second client account identified a transaction on 22nd February 2008 which was a few days before the first inspection on 25th February 2008. Accordingly, the Tribunal found this allegation proved.

Allegation 14

63. The First Respondent had referred the Tribunal to a letter dated 14th July 2008 sent by his bookkeeper to the SRA which confirmed the accounting records of Avetoom & Co, Solicitors, had been written up to 27th June 2008. However the Tribunal also heard evidence from Barry Grossman who stated the accounts were up to date to 31st March 2008. The Tribunal noted that the First Respondent had given evidence that he did not inform his bookkeeper of the second client account until August 2008 and accordingly, it was not possible for the firm's accounts to be up to date as at 27th June 2008 when the bookkeeper was not aware of the second client account at that time, and so could not have incorporated it. Accordingly, the Tribunal found this allegation proved.

Allegation 15

64. The First Respondent denied this allegation which related to his failure to comply with an undertaking given to L Solicitors. The First Respondent had submitted that whilst he admitted giving the undertaking, the contract was void due to the fraud of his client. He had not been aware at the time of giving the undertaking that the undertaking related to the payment of rent for premises which being used for the growing of cannabis by his client. The First Respondent submitted that his undertaking had automatically rescinded once the fraud became apparent and that illegal activity could not be pursued under a contract. The First Respondent further submitted that L Solicitors had not pursued repayment of the undertaking in any event. The First Respondent had referred the Tribunal to Volume 1 of Chitty on Contracts [13th edition] where it was stated that the right to rescind for fraudulent misrepresentation was unimpaired by the Misrepresentation Act 1967.

65. On cross-examination the First Respondent accepted L Solicitors had not been complicit in the illegal activity. The Tribunal had considered Chitty on Contracts but was of the view that the right to rescind for fraudulent misrepresentation would only be relevant if the solicitors themselves, or the landlord of the property, had been complicit to the fraudulent representations made which induced the solicitor to give the undertaking. The First Respondent had provided no evidence of this and indeed had confirmed in his evidence that he did not say the landlord was aware that cannabis was being grown at his property.

66. It was absolutely crucial that one solicitor should be able to rely upon an undertaking given by another solicitor and regardless of the circumstances under which the First Respondent had given the undertaking, he had still failed to comply with it and accordingly the Tribunal found this allegation proved.

Allegation 16

67. This related to another undertaking which had been given to HK Solicitors by a paralegal employed by the First Respondent. The First Respondent had submitted he had not known the paralegal had given the undertaking. He had also referred the Tribunal to Cordery on Solicitors which stated an undertaking "should be fulfilled in a reasonable time depending on the circumstances". The First Respondent had stated the undertaking did not specify a time for payment and that he needed more time to pay. The First Respondent's case was that he adopted the undertaking at some point but in his view he should have challenged it as it was given without his knowledge.

68. The Tribunal noted that payment of the undertaking was made in September 2008, some six months after the undertaking had been given. This was not a reasonable period of time within which to comply with an undertaking that another solicitor had relied upon. Although the undertaking was not time specific, the First Respondent had accepted in evidence that he did not keep HK Solicitors informed of the delay or the reason for the delay and indeed, he had filed a defence when HK Solicitors issued proceedings.

69. The guidance to Rule 10.05(2) of the Solicitors Code of Conduct required that where an undertaking did not specify a time for fulfilment, a solicitor must fulfil an undertaking within a reasonable time, and must keep the recipient informed of the likely timetable of compliance and any likely delays. The First Respondent had failed to do this and accordingly, the Tribunal found this allegation was proved.

Allegation 19

70. The First Respondent denied this allegation which related to his failure to comply with a Court Order dated 11th December 2008. The First Respondent had stated in his evidence that the Court Order did not name him as a party to the proceedings and that he could not recall whether the proceedings had been served upon him personally. His client, Ms JP had taken her files and accordingly, the First Respondent submitted he could not provide the information to W & Co Solicitors even if he had wanted to.

71. The Tribunal noted that the Order of the Birmingham District Registry had been sealed on 23rd December 2008. The Respondent's practice had been intervened on 22nd January 2009 and given the Respondent was unable to recall whether he had been served with the Order, the Tribunal was not satisfied that this allegation had been proved. Furthermore, the Tribunal noted in passing that the Order did not confirm what the First Respondent should do if the documents he was required to produce were no longer available.

Allegation 20

72. The First Respondent denied this allegation which related to monies withdrawn from client account in relation to a particular client exceeding the money held on behalf of that client. This allegation was based on the fact that £60,000 was recorded in the First Respondent's accounts as received on behalf of a client, Mr L but that only £30,000 was actually paid into the client bank account. The Tribunal had heard evidence from Mr Grossman who accepted in his evidence that only £30,000 was ever received into the client bank account. If that was right, the allegation as put could not stand. The Tribunal found this allegation not proved.

73. Any allegation must be sufficiently clear and properly pleaded so that it was clear to the Respondent what allegation he was called to meet. The Tribunal accepted the First Respondent's evidence that the three ledgers referred to had all been attributed to the L ledger which had been an error. Mr Grossman's evidence was that he was trying to reconcile the client bank account from a "safe" position and that he used the 31st March 2008 as the "safe" starting point. However, he could not say if the reconciliation statements as at 31st March 2008 were accurate as he had not audited the accounts and he was simply looking to try and allocate which money should be paid to which client. The Tribunal spent a great deal of time deliberating this matter but concluded the allegation was not proved.

Mitigation of the First Respondent

74. The First Respondent provided the Tribunal with details of his medical problems, a statement detailing his income, assets and liabilities and mitigation concerning each of the allegations. He had been let down by his bookkeeper. He had been under a great deal of pressure, both due to his medical position and the police investigation and he had been trying to run a practice. In relation to allegation 7 the shortfall of almost £19,000 had been replaced from his own funds. Concerning allegation 8, the First Respondent submitted his practising certificate had been terminated unilaterally and there had been no reason for him not to receive a certificate. He did put in an application for a new practising certificate and was granted a new certificate on 3rd March 2008. He submitted that during the intervening period when he had been practising he had not been negligent and had successfully acted on behalf of his clients on both a major tax appeal and in ensuring rape charges were dropped.

75. The First Respondent conceded he should have disclosed information concerning his second client account during the first investigation and submitted this information had not been provided as he was under a lot of pressure at the time and had made an innocent mistake. He accepted his bookkeeper only became aware of the second client account on 12th August 2008.

76. In relation to allegation 17, the First Respondent had been informed in October that his previous insurer, Zurich had declined cover and the First Respondent then approached a broker to try and obtain professional indemnity insurance elsewhere. His broker was unable to assist him and the First Respondent had applied to the Assigned Risks Pool ("ARP") as an insurer of last resort. The First Respondent accepted he should have gone to the ARP as soon as he had been declined by Zurich and confirmed that the ARP did backdate his insurance to the 1st October 2008 so there had been no real consequence as a result of the breach. That year had been a very difficult year for the insurance market.

77. Regarding allegation 18, the First Respondent submitted that by the time the SRA had written to him about his failure to deliver Accountant's Reports, his firm had already been intervened and after the end of January 2009, there was no way he could remedy the breaches as all the documents had been seized. His bookkeeper had declined to deal with his accounts after August 2008.

78. In relation to the Second Respondent, the First Respondent wished to stress the Second Respondent had been a token partner and had been in Thailand at all material times. The First Respondent had operated all the bank accounts and took full responsibility for all the breaches. He reminded the Tribunal that the Second Respondent was in ill health and unlikely to be able to requalify in any other field due to his age. The First Respondent asked the Tribunal to take these matters into account.

79. The First Respondent provided the Tribunal with a general history of his professional and personal background. He accepted he was better suited to practising as an employed solicitor. The allegations all spanned the period from 2007 to 2008 and were due to his personal difficulties. He had not run away when he realised his practice would be intervened and had tried to deal with matters as best he could. He accepted he had derogated from his duties as a solicitor but asked the Tribunal to consider his breaches in the context of the other circumstances in his life. He asked the Tribunal not to impose the most serious sanction and submitted the public could be protected by a suspension. He would agree not to carry out any conveyancing work in the future. The First Respondent had not worked since January 2009. He had been frank with the Tribunal and submitted he was not the same person as he had been two years ago.

Mitigation of the Second Respondent

80. The Second Respondent's mitigation was contained in his letter dated 10th May 2010 and the Tribunal also considered a reference provided by Mr Shelton. The Second Respondent had provided the Tribunal with his professional history and also referred the Tribunal to his health problems.

81. The partnership with the First Respondent had come about through a mutual friend and the intention was that the partnership would take effect when the firm moved into a new office. However, the Second Respondent had acceded to the First Respondent's request to bring the partnership into existence legally before it existed physically. The Second Respondent had been told the delay would be a matter of only a few weeks

but it turned out no office was ever opened. The Second Respondent stated in his witness statement "It is now clear that he never intended to open an office and that I was simply mislead."

Costs Application

82. The Applicant requested an Order for her costs and provided the Tribunal with a Schedule of Costs in the total sum of £50,992.15. She accepted there would be some reduction to those costs as the hearing had not lasted as long as anticipated.

83. The Second Respondent had submitted in his letter of 10th May 2010 that the costs should be paid by the First Respondent.

84. The First Respondent referred the Tribunal to his witness statement dated 28th May 2010. He could not pay the costs and it was unlikely he would be earning an income for some years to come.

Previous Disciplinary Sanctions before the Tribunal

85. None.

Sanction and Reasons

86. The Tribunal had considered all the documents and submissions made by both Respondents.

87. Dealing firstly with the Second Respondent, it appeared from his letter dated 10th May 2010 that he genuinely believed that an office would be opened for which he would be responsible. The Tribunal were mindful that the First Respondent had spoken highly of the Second Respondent and to his credit had asked for the Second Respondent not to be penalised. The Tribunal also took account of the reference provided.

88. It was becoming more common for the Tribunal to deal with euphemistic "sleeping partners" who found themselves in the position that the Second Respondent did, with a financial penalty or suspension. The Tribunal deprecated the practice of sleeping partners which was generally motivated by a desire to satisfy Mortgage Lender Panels. Normally in such circumstances, the Tribunal would levy a fine on the sleeping partner. However, in this case the Tribunal found the Second Respondent did not intend to be a sleeping partner and this was evidenced by him approaching clients and appearing to have done some work in August 2007. In addition, and to his credit, the First Respondent had sought to take the entire blame upon himself. Accordingly, the Tribunal Ordered that the Second Respondent be reprimanded.

89. The Tribunal was of the view that the First Respondent was reckless, not caring whether or not what he said was true or not true and stating the position to be whatever would remove the problem. This was evidenced by him stating he that he had not been practising as a solicitor when he clearly knew that he had, so that this would enable his practising certificate to be granted. It was also evidenced by him

stating that his accounts were up to date up to the 30th June 2008 when clearly they were not. He had also been reckless in his conduct relating to undertakings.

90. Eighteen allegations had been proved/admitted against the First Respondent although these did not involve dishonesty. However, most of the allegations were very serious and, whilst they did not involve dishonesty, they showed that the First Respondent had fallen below the required standards of integrity, probity and trustworthiness across a wide range of his practice. The Tribunal had considered the case of Bolton v The Law Society [1994] 1 WLR 512CA in which Sir Thomas Bingham MR had stated:

> "In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possible indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

91. The Tribunal had looked at the possibility of some form of suspension, given the First Respondent's youth, personal circumstances and previous good character. However, given what the Tribunal perceived to be the First Respondent's recklessness in dealing with his business, his clients, his professional colleagues and his regulatory authority, the Tribunal did not feel that a suspension even with conditions imposed on the First Respondent's practising certificate would afford sufficient protection for the public or the reputation of the profession.

92. The Tribunal looking at the proven and admitted allegations in the round arrived at the conclusion that the appropriate sanction was to remove the Respondent from the Roll of Solicitors.

Decision as to Costs

93. On the question of costs, the Tribunal felt it appropriate to reduce the amount claimed. In relation to the Second Respondent, he was Ordered to pay costs in the sum of £2,000.

94. In relation to the First Respondent, he was Ordered to pay costs in the sum of £35,500. However, the Tribunal was mindful of his witness statement dated 28th May 2010 and his financial position. The Tribunal considered the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin). It was clear to the Tribunal that the First Respondent did not have the means to pay the costs and was unlikely to be able to do so in the near future. Accordingly, the Tribunal Ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Orders

95. The Tribunal Ordered that the Respondent, Alan Matthew Avetoom of, London, SW15, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,500.00, such order for costs not to be enforced without leave of the Tribunal.

96. The Tribunal Ordered that the [SECOND RESPONDENT] of, Ratchasime, Thailand, solicitor, be Reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

97. The time for either party to appeal is extended to 14 days from the date of the filing of the Tribunal's Findings with the Law Society.

Dated this 22nd day of September 2010
On behalf of the Tribunal

J C Chesterton
Chairman