

IN THE MATTER OF MAHMOOD AKRAM KHAN MIRZA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. E. Richards (in the chair)
Miss T. Cullen
Mrs S. Gordon

Date of Hearing: 13th October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Michael Robin Havard of Morgan Cole Solicitors, Bradley Court, Park Place, Cardiff CF10 3DT on 27th April 2009 that Mahmood Akram Khan Mirza, a solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:

1. He has failed to maintain properly written up books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998.
2. He has conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1 (a) of the Solicitors' Practice Rules 1990 and/or, where such conduct relates to a period after 1st July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007.
3. He has conducted himself in a manner which was likely to compromise or impair his duty to act in the best interests of his clients contrary to Rule 1 (c) of the Solicitors'

Practice Rules 1990 and/or, where such conduct relates to a period after 1st July 2007, Rule 1.04 of the Solicitors' Code of Conduct 2007.

4. He conducted himself in a manner which was likely to compromise or impairs the good repute of the solicitors' profession contrary to Rule 1 (d) of the Solicitors' Practice Rules 1990 and/or, where such conduct relates to a period after 1st July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.
5. He has withdrawn funds, or permitted funds to be drawn, from client account otherwise than in accordance with Rule 22 of the Solicitors' Accounts Rules 1998 leading to a cash shortage.
6. He has effected loans from one client to another client other than in accordance with, and thereby in breach of, Rule 30(2) of the Solicitors' Accounts Rules 1998.
7. He allowed Muddasar Iqbal, a Registered Foreign Lawyer, to act on behalf of clients of the firm in conveyancing transactions when not entitled to do so.
8. He has failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions which was material to all lenders' business.
9. He has failed to take sufficient notice, or adhere to, the "Blue Warning Card" on money laundering.
10. He has failed to ensure that evidence of identification was produced by clients at the outset of receiving instructions in conveyancing transactions.
11. He has failed to maintain and/or implement an identification procedure which ensured the production of satisfactory evidence or identity in conveyancing transactions in breach of Regulation 4 of the Money Laundering Regulations 2003.
12. He has failed to take sufficient notice, or adhere to, the "Green Card" warning on property fraud.
13. He has sent correspondence to other firms of solicitors and/or third parties, the content of which he knew, or should have known, was misleading.
14. He has acted dishonestly and/or recklessly.
15. He has abandoned his practice.
16. He has failed to maintain qualifying insurance in breach of the Solicitors' Indemnity Insurance Rules 2008.

On 4th September 2009 a supplementary statement pursuant to Rule 7 was issued by the Applicant containing the further allegations against the Respondent being that:

17. He has misappropriated client money.

18. He has completed documentation and submitted them to clients knowing the content of those documents to be untrue.

19. He has acted dishonestly.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13th October 2009 when Michael Robin Havard appeared as the Applicant and the Respondent did not appear and was not represented.

Preliminary Matter

The Applicant indicated that the Respondent had abandoned his practice and could not be found. At a directions hearing on 25th June 2009 the Applicant had applied for substituted service by advertising in a UK national newspaper and the equivalent in a certain area of Pakistan where the Respondent was thought to be residing. The Tribunal had agreed that this would constitute effective service.

The Applicant indicated to the Tribunal that since the date of that directions hearing a supplementary statement pursuant to Rule 7 had been issued on 4th September 2009. Advertisements had been placed in the Times and the International Times on 20th August 2009 which were effective substituted service in relation to the first set of allegations. However, the Tribunal was invited by the Applicant to consider that the Respondent would not be prejudiced by including the later allegations within the case before them today as if he was aggrieved he could then apply for a rehearing under Rule 19 of the Solicitors (Disciplinary Proceedings) Rules 2007.

Having considered the matter and having heard what the Applicant had to say the Tribunal were satisfied that there had been effective substituted service in regard to the first set of allegations and that there would be no prejudice involved in hearing the second set of allegations as a part of the total case. They were therefore satisfied that the Tribunal could deal with the matter as a whole.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 and 7 statements of the Applicant, together with accompanying bundle which included Forensic Investigation reports dated 28th July 2008 and 21st October 2008.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the respondent, Mahmood Akram Khan Mirza, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,522.22.

The facts are set out in paragraphs 1 – 105 hereunder

1. The Respondent Mahmood Akram Khan Mirza, was born in January 1954 and was admitted to the Roll on 17th July 2000. At all material times, the Respondent was a partner practising under the style of Mahmood Mirza Solicitors, of 371 Staniforth

Road, Sheffield, South Yorkshire S9 3FP where he practised in partnership with Mudassar Iqbal, a salaried partner who resigned on 1st February 2008. From that date, the Respondent was sole principal of the firm.

2. Evidence was collated in the course of investigations that took place over a substantial period commencing in November 2007. It has led to the production of two Forensic Investigation Reports dated 28th July 2008 and 21st October 2008.

The evidence is set out in paragraphs 3 – 105 hereunder:

Forensic Investigation Report (“FIR”) of 28th July 2008

3. Having obtained authorisation, on 26th November 2007 and various dates thereafter, a Forensic Investigation Officer (FIO) of the SRA, Mr Lewis and, from time to time, an Investigation Manager, Mr Duerden, attended the offices of the Respondent’s firm in order to carry out an investigation.

Books of Account

Allegation 1

4. The books of account were not in compliance with the Solicitors’ Accounts Rules 1998 (“SAR”) for a range of reasons including inaccurate ledger entries and failure to rectify errors promptly.
5. At the initial meeting on 26th November 2007, the Respondent indicated that client ledger cards were in the possession of a Mr A who acted as the firm’s bookkeeper, although the Respondent stated that there was a difference of £5,000 between client liabilities and client monies held at the date of the last reconciliation.
6. However, when Mr Lewis returned to the firm on 5th December 2007, he discovered that the last client account reconciliation was dated 2nd November 2007 which showed a cash shortage of £7,406.20.
7. Whilst the Respondent endeavoured to provide an explanation, it was complicated by the fact that, for example, in relation to unrepresented cheques, they were not identified either by cheque numbers or ledger references.
8. As a result of the various shortcomings outlined, it was not possible for Mr Lewis to express an opinion as to whether there were sufficient funds held in client bank accounts to meet liabilities to clients as at 2nd November 2007.
9. As at the investigation date, Mr Lewis identified a minimum cash shortage of £16,627.80.

Cash ShortageAllegations 2-5

10. The minimum cash shortage was caused by either incorrect payments from client account or incorrect transfers. An example of an incorrect payment is found on Mr K's file.

Mr K – Purchase of G Crescent - £5,585

11. On 25th October 2007, a cheque in the sum of £8,550 was drawn in respect of Stamp Duty and was charged to the client ledger account of Mr K which led to a debit balance of £5,365 although the client ledger account shows this payment as being for £2,850.
12. A letter to Mr K from the Respondent dated 15th November 2007 said that “the total Stamp Duty payable to the Inland Revenue is £8,550....now we have paid the sum of £32,815 (sic) to the Inland Revenue on your behalf and the sum of £5,735 is outstanding.”
13. There is then a further letter sent to Mr K dated 17th December 2007 in which the Respondent calls for payment of the balance outstanding from Mr K, and threatens court proceedings if he fails to do so.
14. This contrasts with the reconciliation dated 2nd November 2007 showing £370 as being held to the credit of Mr K.
15. Despite requests being made by Mr Lewis, no explanation from the Respondent has been forthcoming.

Incorrect Transfer – Mr I - £9,192.80

16. An inter-ledger transfer of £10,500 was made on 18th June 2007 from Mr I's account to that of Ms K leaving a nil balance.
17. Whilst Mr Lewis believed that £1,307.20 of that sum had been replaced, the firm should still be holding the balance of £9,192.84 for the benefit of their client, Mr I.

Other Solicitors' Accounts Rule BreachesAllegations 2-6 and 14

18. This relates to a series of incidents where in effect, loans were being made by one client to another without the prior written authority of both clients having been obtained. There were also instances where transfers were made in certain amounts where there were insufficient funds available.

19. It appears that such movement of funds from one client account to another, without the prior written authority of both clients, was put into effect to enable property transactions to be completed.
20. In respect of each of the five cases exemplified within the FIR, mortgages have been obtained but there is no evidence that the mortgage companies have been informed of the use being made by the Respondent of other clients' monies, nor of instances where the mortgage advance in respect of one property had been utilised to fund the purchase of another.
21. Furthermore, there is no written evidence to support the Respondent's assertion that, on each occasion, clients, whether in the role of lender or borrower, were fully aware of, or consented to, the transfer of funds.

Mr M – Purchase of W Close, London

22. The Respondent states that Mudassar Iqbal, a Registered Foreign Lawyer and salaried partner of the Respondent, acted on behalf of Mr M under the supervision of the Respondent in the purchase of this property. The firm also acted on behalf of the mortgagee, Preferred Mortgages, in advance of £211,500 on a purchase price of £235,000.
23. Whilst the certificate of title should have been sent to Preferred Mortgages no later than three working days before the anticipated date of completion, the certificate was sent by fax on 11th December 2006, by which time the advance monies had not been received from PM.
24. In order to complete, £208,729 was transferred from ledger 492 which relates to another client, Mr A, and the sale of his property as C Road, London. The mortgage advance was credited to Mr M's ledger on 13th December 2006 i.e. the day after completion, and £208,729 of that mortgage advance was paid back into the client account of Mr A.
25. Whilst the Respondent stated that it was his idea to use the funds in this way, and that Messrs M and A were aware of the position, there was a letter of complaint from Mr M which suggests that Mr M was wholly unaware of not only the inter-ledger transfers but of progress being made in the conveyancing transaction generally.
26. There is also no evidence that Preferred Mortgages were kept informed of the methods, and funds, used in order to complete Mr M's purchase.

Ms P – Purchase of N Road, Slough

27. There were multiple inter-client transfers of client funds in order to complete Ms P's purchase.
28. An extract from Ms P's ledger illustrates the fact that funds belonging to other clients are transferred to Ms P's account.

29. Whilst the mortgagees, GMAC RFC, advanced £185,125 in respect of Ms P's purchase for £194,500 in order to have sufficient funds to complete the purchase, the Respondent transferred from the client account of Ms L, Mr S and Mr C the sum of £10,281.65.
30. On 1st September 2006, the sum of £10,000 was transferred to the client account of Ms L, Mr S and Mr C.
31. GMAC RFC, by letter of 15th November 2006, requested the Title Deeds for the property, to be told in a letter from the Respondent of 21st November 2006 that the Respondent's firm were having difficulty in obtaining a Stamp Duty Certificate from the Inland Revenue.
32. It can be seen from the client ledger that a cheque for the Stamp Duty Land Tax was only raised on 22nd December 2006. Furthermore, this was only made possible by utilising other clients' monies, namely that of Mr SH, from whose account £2,077.50 was transferred.
33. Again, whilst the Respondent was able to produce a written authority from Mr SH there was neither a written authority from Ms P, nor is there any evidence that GMAC RFC were made aware that funds other than those belonging to Ms P had been utilised in order to complete the purchase and to pay the SDLT which would enable title to be registered.

Mr SH – Purchase of L Close

34. The Respondent acted for Mr SH in the purchase of L Close for £229,950 with the assistance of a GMAC RFC mortgage advance of £206,880.
35. On 23rd February 2007, a further sum of £6,335 was transferred from Mr SH's account to that of Mr L on whose behalf the Respondent was acting in the purchase of T Avenue, Slough. No written authorities for this transfer, either from Mr SH or Mr L, were found.
36. Completion of this purchase took place on 12th April 2007. Completion monies required amounted to £229,950. Consequently, a balance of £23,070 was needed together with sums in respect of SDLT, Land Registry fees, and the Respondent's costs.
37. As at 23rd February 2007, following transfers of the various sums out of Mr SH's account to those of Ms P, Mr GS and Mr L only £14,807 remained on client account.
38. On 13th March 2007, £11,212.50 was transferred from the client account of Ms SK relating to the purchase of P Lane, Sheffield. Whilst there was no written authority found on Mr SH's file, there was an authority on Ms SK's file.

Mr L (File 559) – Purchase of T Avenue, Slough

39. The Respondent acted for Mr L in the purchase of the property for £323,000 with the assistance of the mortgage advance of £274,151 from Birmingham Midshires for whom the Respondent also acted.
40. This matter is linked with Mr SH's purchase of L Close in that on 23rd February 2007, £6,335 was transferred from Mr SH's account and it was only as a result of this transfer that completion on the same day, namely 23rd February 2007, could take place.
41. There are no written authorities from either Mr SH or Mr L in respect of this inter-ledger transfer.
42. On 17th July 2007, £1,800 is credited to Mr L's client account although the source of this amount is not clear. Furthermore, the sum of £8,052 is credited to client account and is described as "mortgage advance" although the source of such funds is not clear. It cannot relate to the mortgage advance from Birmingham Midshires as this amounted to £274,151 and was credited to the client account on 22nd February 2007.
43. Such finds were necessary to enable payment of SDLT to be made and for title to be registered.
44. There is no indication on the file that the Respondent's mortgagee client, Birmingham Midshires, was aware of any of the financial events that took place in this transaction.

Ms AK – Re-mortgage of E Road, Slough

45. This involved the Respondent acting for Ms AK in the re-mortgage of her property for £237,965 with Birmingham Midshires for whom the firm also acted. The sum required to redeem a mortgage with the Bank of Scotland amounted to £149,506.52.
46. On 8th December 2006, the sum of £36,530 was transferred to client account 448 which related to Ms NK's purchase of C, Slough. Whilst a written authority was found on Ms AK's file, there was no such authority on the file of Ms NK.
47. On 8th December 2006, £138,000 was paid from client account to the Bank of Scotland but by letter of 24th January 2007, the Bank of Scotland confirmed the shortfall of £11,506.52 that existed to enable redemption of the mortgage.
48. By letter of 5th February 2007, at a time when there was only £1,032 on client account, the Respondent wrote to the Bank of Scotland indicating that they hoped to redeem the account "by the end of the week" i.e. 16th February 2007.
49. By letter of 12th June 2007 i.e. some four months later, the Respondent wrote to Ms AK indicating that they had not been able to complete the registration due to the failure to repay the outstanding balance in the sum of £11,500.
50. The client ledger shows that, on 18th June 2007, the sum of £10,500 was credited to Ms AK's account as a result of an inter-ledger transfer from client ledger 657 (the client being Mr I).

51. On 27th June 2007, £11,532 was paid to the Bank of Scotland thereby redeeming the mortgage.
52. There was no written authority on either Ms AK's file or Mr I's file to confirm that both were aware of, and authorised, the transfer.
53. A subsequent redemption of the Birmingham Midshires mortgage was only possible as a result of a further inter-ledger transfer from ledger 696 (client Mr LA) to Ms AK's account of £7,279 for which no written authorities were found on either file.

Allowing Muddasar Iqbal, a Registered European Lawyer, to act on behalf of clients in conveyancing transactions when not entitled to do so

Allegation 7

54. There is evidence to suggest that Mr Iqbal was regularly acting on behalf of clients and conveyancing transactions. It was accepted by the Respondent that Mr Iqbal should not have been conducting conveyancing work, although he stated he was unaware of the rules and restrictions that applied.

Conveyancing and Lender Clients

Allegations 2-4, 8 and 12

55. On a number of occasions the Respondent failed to comply with instructions from lender clients and failed to provide lender clients with information that would be relevant to them when considering whether or not to grant a mortgage particularly with regard to the use of the funds advanced or the source of the difference between the mortgage advance and purchase price.
56. There are instances where the difference between the mortgage advance and the purchase price is made up either wholly or in part by funds contributed by third parties and not the purchaser client. In some circumstances, this amounts to a substantial proportion of the purchase price and would have been highly material information to be conveyed to the Respondent's lender clients for them to consider whether the person applying for the mortgage was able to meet the financial commitment.

Mr H – Purchase of C Gardens, Sheffield

57. One case relates to the purchase of C Gardens, Sheffield by the Respondent's client, Mr H, with the aid of a mortgage advance from GMAC RFC of £128,175, the Respondent also acting for the lender.
58. Completion took place on 3rd August 2007 with the assistance of £7,200 from Mr AK. There is no indication of the status of Mr AK or that the lenders were told of his contribution. Further, on 26th November 2007, the Respondent indicated that he had not registered title at the Land Registry thus protecting the interests of both lender client and Mr H.

59. The cause of the Respondent being unable to register title related to a restriction being registered against the property by Sheffield City Council which led to a claim being pursued against the Respondent's firm.

Law Society's "Blue Card Warning" and Money Laundering Regulations 2003

Allegations 2-4, 9-11 and 14

60. In advance of a meeting on 11th April 2008, Mr Lewis had sent to the Respondent a schedule containing a summary of 19 files where proof of identification of clients was either inadequate or non-existent.

Purchase and Sale of 180 CK Road, Sheffield by Mr MA and Mr MWA

61. In January 2005, the Respondent acted for Messrs A in the purchase of this property for £185,000 with the assistance of a mortgage advance of £104,824 from the Halifax Building Society for whom the Respondent also acted. The source of the balance of the purchase monies, namely £80,176, was not known.
62. In August 2005, some seven months later, Messrs A sold the property to Mr and Mrs L for £165,000 and, whilst an explanation is provided, the "Blue Card Warning" highlights loss making transactions as being of potential concern.

Re – mortgage of E Road, Slough by Ms AK

63. Whilst the re-mortgage was completed on 8th December 2006, on 2nd August 2007, £50,000 was received from a bank account in the name of Mr QK although there is no information regarding Mr QK.
64. On the file is a letter from Ms AK dated 3rd August 2007 requesting that the £50,000 be paid towards part-redemption of the Birmingham Midshires mortgage.
65. On 7th August 2007, £8,000 was credited to client bank account although the source of the funds was not known. On 17th August 2007 a further £34,500 was received into client account and credited to the client ledger, the source being from a Barclays Bank account in the name of Mr OK but again there is no information about Mr OK.
66. On 17th August 2007 an inter ledger transfer of £7,279 was received. On the same day, £48,471.80 was sent to Birmingham Midshires. On the following day, the Respondent confirmed by letter the total amount of £98,471.80 paid to Birmingham Midshires.

Sale of W Road, Sheffield by Mr AA

Allegations 2-4, 12 and 14

67. There was no clear evidence from the file that Mr AA attended at the offices of the Respondent in the course of the transaction, most of the contact being with a person purporting to be his brother, namely Mr CA.

68. Mr CA brought in identification documents relating to Mr AA to include what purported to be a copy of Mr AA's passport.
69. The passport, purported to have been handed to the Respondent by Mr CA on 17th May 2005, was endorsed with Bangladesh immigration stamps dated 4th January 2005 (stamped "Arrival") and 27th June 2005 (stamped "Departure").
70. There were no written instructions from Mr AA throughout.
71. Correspondence with the purchaser's solicitors dealing with enquiries raised prior to exchange of contract and enclosing replies to requisitions on title were supplied by the Respondent without there being any evidence of taking client's instructions.
72. On the file was a letter from Mr AA confirming receipt direct from Mr M of the sum of £27,050 by way of part payment of the purchase.
73. The client ledger account shows a payment of £36,112.90 being paid to the purchaser on 4th July 2005.
74. There was substantial uncertainty surrounding the genuineness of the Form of Authority purported to be signed by Mr AA giving authority to the proceeds of sale to be payable to Mr MA.
75. Whilst the Respondent stated to Mr Lewis that the sale proceeds being paid to the purchaser, was in respect of a loan and Mr AA wanted to return the money, there was no evidence to that effect on the file.
76. Mr AA said that he had not signed the transfer form and the property had been transferred without his consent which led to a complaint to the police.
77. By letter of 9th November 2005, the Respondent wrote to A & C with an authority from Mr A for another firm of solicitors to transfer their file of papers to the Respondent despite the allegation of fraud that had been made.

Misleading Correspondence

Allegations 2-4 and 13

Sale of E Road, Slough by Mr RK

78. Despite there being no evidence on the Respondent's file of proof of identification of Mr RK nor that either Mr AK, purporting to be acting as Mr RK's attorney, or Mr RK had attended the firm's office, in response to a specific request from the purchaser's solicitors, the Respondent replied in a letter of 6th August 2007 confirming that "...we have satisfied ourselves as to both the identity of the seller and the attorney". The Respondent's explanation was that he had known both Mr AK and Mr RK for a number of years.

Mr I – Sale of G Road, Slough

79. Despite writing to the purchaser's solicitors on 7th August 2007 stating that he had been chasing the Halifax for a document in relation to the mortgage, it was evident from the correspondence and the chronology that this was not true.

Correspondence with Respondent relating to the FIR of 28th July 2008

80. By letter of 26th September 2008 the SRA sent a copy of the FIR to the Respondent raising a number of enquiries, requesting a response within 14 days.
81. By letter of 6th October 2008 the Respondent requested an extension of time in which to respond and an additional 14 days was granted. No substantive response had been received from the Respondent.

Forensic Investigation Report dated 21st October 2008

82. The IO, Mr Lewis, visited the Respondent's office on 9th October 2008 and requested sight of a file relating to the purchase of a property at 5 N Road, Sutton Coldfield, in which the Respondent was acting for Mr JC.
83. Mr Lewis experienced substantial difficulty gaining access to the file and he never did gain sight of the file. However, even though the Respondent indicated that he was also unable to produce either the client ledger or, indeed, any other documents relating to the financial status of the firm, in his absence, Mr Lewis was able to locate both the client ledger and may other client ledgers and bank statements at the bottom of a cupboard within the Respondent's office. Despite attempts to contact the Respondent, Mr Lewis failed to speak with him during the remainder of the day.
84. On Friday, 10th October, Mr Lewis returned to the office and, whilst the Respondent was not present, Mr Lewis noticed that the files he had observed had been moved.
85. Despite visiting the Respondent's home address on 10th and 13th October 2008 and attempting to contact the Respondent by telephone up to and including 14th October 2008, as at the date of the Report, namely 21st October 2008, Mr Lewis had had no contact with the Respondent since 9th October 2008.

Minimum Cash Shortage at 30th September 2008 - £363,000

Allegations 2-5 and 14

Purchase of N Road, Sutton Coldfield – Mr JC

86. Whilst the client ledger shows the receipt of £363,250 on 5th August 2008 it also shows a payment of £363,000 on 9th September 2008 but the destination of those funds is not known.
87. There was no evidence of any deposit monies nor payment of disbursements such as searches, Stamp Duty Land Tax of Land Registry fees.
88. As at the time of Mr Lewis's enquiry on 14th October 2008, the property had not been sold and was still being marketed for sale with Hunters Estate Agents.

89. At the date of the Report, with Mr Lewis having been unable to speak with the Respondent regarding the whereabouts of the sum of £363,000, the position was that neither the vendors, nor their solicitors, had received any monies in connection with the sale of the property.
90. Following intervention into the practice where the solicitors, Gordons LLP, were appointed as the intervention agents, Mr JC made contact with them on 4th November 2008. A file note of that date together with an email of the same date from Gordons LLP to the SRA, suggests that Mr JC had decided not to proceed with the purchase and the next that he heard was in or about September/October 2008 when his Bank indicated that the Nationwide Building Society were endeavouring to take a mortgage payment from his account.
91. There is also reference to the sum of £363,000 being paid into an account named "FCD YSS", the details and status of which are not known but there is no suggestion that it has any connection with the vendors, or Mr JC or the Nationwide Building Society.

The Respondent has abandoned his practice

Allegations 2-4, 14 and 15

92. By a decision of 17th October 2008, it was concluded that there were sufficient grounds for an intervention into the Respondent's practice.
93. A neighbour of the Respondent confirmed his understanding that the Respondent was due to leave the country to return to Pakistan on or before 16th October 2008 but had left as a result of an emergency on 12th or 13th October 2008.
94. A letter of 26th November 2008 from Gordons LLP to the SRA confirms that they are unaware of the current whereabouts of the Respondent.
95. By letter of 31st October 2008 the SRA wrote to the Respondent enclosing a copy of the FIR of 21st October 2008 requesting a response. The Respondent did not reply.

Solicitors' Indemnity Insurance Rules 2008

Allegations 2-4 and 16

96. The SRA's records indicated that the Respondent's firm did not hold qualifying insurance for the indemnity year 2008/2009 to cover the period 1st October 2008 to 21st October 2008.
97. A letter of 14th November 2008 from the SRA to the Respondent asked for him to respond and to confirm that, if he did hold indemnity insurance for that period, to provide a copy of the certificate of insurance. The Respondent did not reply to that letter nor a further letter written to him on 3rd December 2008.

Purchase of Flat 19, B Rd, London

98. The circumstances giving rise to the supplementary statement relate to a property transaction. The Respondent was instructed to act on behalf of Mr E in the purchase of Flat 19, B Road, London.
99. The purchase price was £220,000 and Mr E was seeking a mortgage advance from the Chelsea Building Society of £176,000. The Respondent also acted on behalf of the lender.
100. By a letter dated 29th July 2008, the Respondent sent to the Chelsea Building Society the certificate of title signed by the Respondent and dated 28th July 2008. Relying on the certificate of title submitted by the Respondent, the lender client released the mortgage funds of £176,000 to the Respondent, completion of the mortgage advance taking place on 31st July 2008.
101. By a letter dated 6th October 2008, the Respondent wrote to his lender client, enclosing a copy of a letter from another firm of solicitors, purporting to set out the reason for the Respondent's inability to complete registration of the lender's charge.
102. A letter dated 15th January 2009 from the Chelsea Building Society to the SRA indicates that the Respondent neither registered title nor the charge in its favour. It is understood that the Chelsea Building Society were first made aware of this failure in October 2008 and subsequently discovered that HM Land Registry had rejected the application for registration on the basis of alleged forgery. It became apparent that, some two weeks before the date on which Mr E was due to exchange contracts and complete, he withdrew from the transaction.
103. The Respondent received the mortgage advance into client account and then paid it out to an unknown destination.
104. Mr E does not have title to the property nor is the mortgage with the Chelsea Building Society registered with a first charge.
105. Shortly after he wrote to the Chelsea Building Society on 6th October 2008 the Respondent abandoned his practice and it is understood that he left the country returning to Pakistan.

The submissions of the Applicant

106. The Applicant told the Tribunal that he relied upon the evidence contained within the Forensic Investigation Reports dated 28th July 2008 and the 21st October 2008 and the evidence relating to the purported purchase of Flat 19, B Road, London by a Mr E.
107. The Applicant submitted that the evidence established that:
 - (1) The Respondent failed to obtain a written authorities from clients who were either lending funds to, or receiving funds from, other clients;

- (2) Mortgagee clients were not informed of the use to which all or part of the advances by way of mortgage or remortgage were being made;
- (3) The Respondent moved monies belonging to one client to the accounts of other clients on a regular basis without the necessary authority to do so and there was little or no evidence of the clients being fully aware of what was taking place or whether it placed their monies, or the transactions for which those transfers were necessary, at risk;
- (4) There were occasions when monies advanced by mortgagee clients were utilised in ways which were not in their contemplation when sending those monies to the Respondent's firm;
- (5) Information which was material to the mortgagee's decision to provide clients with an advance was not made known to them by the Respondent;
- (6) In certain cases correspondence was sent to the mortgagees which was misleading and inaccurate;
- (7) In relation to (1) to (6) the Respondent has acted dishonestly and/or recklessly.
- (8) The Respondent's conduct in respect of certain transactions illustrated a failure to act in the best interests of both the lender client and the client;
- (9) Financial transactions had taken place which should have raised concerns on the part of the Respondent in relation to potential money laundering and in all the circumstances the Respondent's conduct was reckless;
- (10) Certain clients accounts were being used as a banking facility and the source of funds and payments by way of third party cheques were not verified;
- (11) There were substantial shortcomings on the part of the Respondent and adhering to the guidelines relating to ensure the identification of his client taking proper instructions, and ensuring the legitimacy of the transaction. In that respect the Respondent acted recklessly;
- (12) In relation to the minimum cash shortage at 30th September 2008 of £363,000, in all the circumstances the Respondent acted dishonestly;
- (13) The Respondent abandoned his practice and the manner in which he has done so is such that he acted dishonestly and or recklessly;
- (14) For the period between 1st October 2008 and 21st October 2008 the Respondent practised without qualifying insurance;
- (15) In relation to the circumstances in the supplementary statement concerning the purported purchase of Flat 19, 26 B Road, London E11 by Mr E that the Respondent misappropriated client money and acted dishonestly.

108. The Applicant sought the costs of and incidental to the application and enquiry, in the total sum of £38,522.22.

The Findings of the Tribunal

109. The Tribunal found that each and all of the allegations had been substantiated.

Previous Findings of the Tribunal

110. On 11th April 2006 the Respondent Mahmood Akram Khan Mirza admitted and was found guilty of conduct unbefitting a solicitor in each of the following particulars namely:-
- (1) That he failed to keep his books of account properly written up;
 - (2) That he failed to exercise adequate supervision over an un-admitted immigration case worker.
111. There had been no allegation that the Respondent had dishonestly or improperly used clients' money in this case. The Respondent was Ordered to pay a fine of £7,500 and costs of £3,493.56.

The Tribunals decision and its reasons

112. The Tribunal had listened most carefully to the evidence giving rise to the 19 allegations against the Respondent. Some of the allegations were extremely serious and the Respondent's conduct appeared to have moved from conducting his practice in an extremely muddled and unprofessional manner to conducting it in a reckless and dishonest fashion.
113. The Tribunal were satisfied that the dual tests in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 were met in relation to the allegations of dishonesty. The Tribunal found that, in regard to the purported purchases by Mr JC in Sutton Coldfield and Mr E in London, E11 in obtaining monies purportedly for mortgage advances but paying them out to destinations unrelated to the property transaction in question the Respondent's conduct was dishonest by the standards of reasonable and honest people and it was satisfied so that it was sure that the Respondent did not have an honest belief that he could appropriate the monies and therefore that he knew that what he was doing was dishonest by those same standards. The amount of monies fraudulently obtained from the Building Societies totalled £539,000 and the Respondent appeared to have fled the country once his dishonesty was discovered.
114. The Respondent's conduct taken as a whole was such as to bring the solicitors profession into disrepute and accordingly and in all the circumstances of the case the only sanction available to the Tribunal would be to Strike off the Respondent.
115. Whilst the costs of the application enquiry were very high the Tribunal found them to be reasonable given the amount of work that had been involved in this investigation. The Tribunal would therefore Order that the costs should be paid in full by the Respondent.

116. The Tribunal Orders that the respondent, Mahmood Akram Khan Mirza, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,522.22.

Dated this 23rd day of December 2009

On behalf of the Tribunal

Mr. E. Richards
Chairman