

IN THE MATTER OF MOHAMMAD RANA KHALIL URRAHMAN
and [*RESPONDENT 2*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr A Gaynor-Smith
Lady Bonham Carter

Date of Hearing: 26th & 27th November 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 (the “SRA”) by Katrina Wingfield of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR on 10th July 2009 that Mohammed Rana Khalil Urrahman (First Respondent) of Ilford, Essex and [*Respondent 2*] (Second Respondent) of Chigwell, Essex, solicitors, 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 consider appropriate.

The allegations against both Respondents were that they had:-

1. Acted in breach of Rule 1 of the Solicitors Code of Conduct 2007 (the “Code”); in particular Rules 1.02, 1.03, 1.04, 1.05 and 1.06 when acting in conveyancing matters relating to the Burgess House development;
2. Acted in breach of Rules 22 (1) and 32 of the Solicitors Accounts Rules 1998 (“SAR”);

In relation to the First Respondent only that he had:-

3. Acted in breach of Principle 18.02 in relation to an undertaking given to Miles Solicitors on 15th/16th May 2007;
4. Acted in breach of Rule 1 of the Code; in particular Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in relation to conveyancing matters where there had been signs of mortgage fraud;
5. Allegation withdrawn.

The application was heard at The Court Room, Gate House, 1 Farringdon Street, London EC4M 7NS when Katrina Wingfield appeared on behalf of the Applicant. The First Respondent who was present was represented by Mrs Hamid of Counsel and the Second Respondent appeared in person.

The evidence before the Tribunal included a witness statement from the First Respondent dated 25th November 2009 and a witness statement from the Second Respondent undated but handed to the Tribunal on 26th November 2009.

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

The Tribunal Orders that the Respondent, [*Respondent 2*] of Chigwell, Essex, solicitor, do pay a fine of £500, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.

The Tribunal Orders that the Respondent, Mohammad Rana Khalil Urrahman of Ilford, Essex, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 27th day of November 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry (save for the sum of £500 to be paid by [*Respondent 2*]) to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society, such Order not to be enforced without the leave of the Tribunal.

The facts are set out in paragraphs 1- 86 hereunder:

1. The First Respondent, born in 1954, was admitted to the Roll of Solicitors in 2004. He was previously a Pakistan advocate. He undertook the qualified lawyers transfer test which was granted in June 2004.
2. The Second Respondent, born in 1972, was admitted to the Roll of Solicitors in 2005.
3. From 7th November 2005 the First and Second Respondents had been in partnership together practising under the style of Essex Solicitors, 170 Cranbrook Road, Ilford, Essex. The Second Respondent had resigned from the practice on 15th November 2007 after the commencement of the first investigation. The First Respondent had been the sole principal of the practice from that date until 30th September 2008. The Second Respondent had been a partner at 1A Solicitors, 85A Watford Way, London NW4 4RS and had been registered as such from 5th May 2006 until 22nd September 2008.

First Inspection

4. On 5th November 2007 an Investigation Officer (IO), Mr Smith, had attended at the firm's offices to carry out an investigation of the books of account and other documents. That inspection had resulted in a Forensic Investigation Report, dated 9th January 2008.
5. When Mr Smith had attended the offices of Essex Solicitors on 5th November 2007, he had been told by the receptionist that both partners were absent from the office. Mr Smith had asked who was supervising the firm in the partners' absence. The receptionist had told him that Mr Muhammad Ali Javed of Conifer & Pines Solicitors was "covering" for the partners. His offices were at 102-104 Cranbrook Road. (Mr Javed had a waiver to supervise generally, having only been admitted on 5th November 2005). Mr Smith had met with Mr Javed that day. Mr Javed had informed Mr Smith that the First Respondent was absent from the office because he had recently suffered a heart attack and that the Second Respondent was abroad, in Pakistan. Mr Javed had told Mr Smith that when the First and Second Respondents were absent from the office, he undertook supervision of Essex Solicitors.
6. Mr Smith had met with Mr Javed again on 14th November 2007. In that meeting Mr Javed had told Mr Smith that he had an oral agreement with the First Respondent regarding the level of supervision he would supply namely that he would open post, manage staff and deal with queries arising on client matters. Mr Javed had told Mr Smith that he did not sign any cheques or sign certificates of title in respect of any conveyancing transactions.

Solicitors Accounts Rules

7. Mr Smith had met with the First Respondent on 6th November 2007. The First Respondent had told Mr Smith at the meeting that the firm had engaged Mr F to maintain the books of account. The First Respondent had provided Mr Smith with an untotaled list of client ledger balances which had shown a number of debit (overdrawn) client ledger balances as at 31st August 2007. The First Respondent had also provided Mr Smith with a copy of the relevant client bank statements as at 31st August 2007, showing funds available in the account of £489,708.15. Mr Smith had calculated a cash shortage as at 31st August 2007 of £175,685.79, on comparison of the client funds available and the list of client ledger balances. As a result of the calculated cash shortage, Mr Smith had requested to meet with Mr F, which he had done later that day at the offices of Essex Solicitors. Mr F had commented on the books of account that he had maintained indicating that:
 - (i) He had not maintained a cashbook;
 - (ii) He had only recorded transactions appearing on the client bank account statements;
 - (iii) The client bank account substituted as a client cashbook, which meant that it did not include items where there were timing differences;

- (iv) The partners had maintained separate handwritten ledgers for internal purposes;
 - (v) He had not usually prepared a monthly client account listing and therefore there had been no detailed comparison of client liabilities to client monies held in client bank account.
8. At the same meeting, Mr F provided Mr Smith with another untotaled list of client ledger balances, which he had said was a summary of the client liabilities as at 30th September 2007. Again, Mr Smith had identified the existence of debit (overdrawn) balances on that list. Mr Smith had compared the list of client ledger balances with the client bank account balance as at that date. A cash shortage of £70,203.96 had been identified.
 9. Mr Smith had met with Mr F again on 7th November 2007. Mr F had said at that meeting that he would review the papers before meeting again with Mr Smith, in order to attempt to provide an explanation for the cash shortage. The First Respondent had asked to meet with Mr Smith on 8th November 2007 in order to discuss the shortage. At the meeting, the First Respondent had indicated to Mr Smith that neither he nor the Second Respondent had done anything wrong and that there were no client funds missing. Mr F had subsequently joined the meeting, having reviewed the clients' ledger. He had told Mr Smith that he had rewritten three client ledger accounts which related to three conveyancing transactions which had been dealt with by the First Respondent. Mr F had agreed that each of those client ledger accounts had showed an overdrawn position as at 30th September 2007. The three client ledger accounts were for the clients WC, TK and RA. The revised overdrawn balances of the three client ledger accounts had been greater than the balances initially notified by Mr F to Mr Smith on 6th November 2007.
 10. When asked by Mr Smith why he had rewritten the ledgers, Mr F had indicated that the partners had not wanted him to show Mr Smith the correct position. He had denied misleading Mr Smith but had confirmed altering the figures "to protect them".
 11. The First Respondent had agreed with Mr Smith the revised overdrawn balances of the three client matters and had indicated that the partners were not in a position to replace the shortages. He had said also that one of the reasons that the Second Respondent had gone to Pakistan was to try to borrow some funds in order to rectify the noted deficiencies in the client bank account. The First Respondent had indicated to Mr Smith earlier at the meeting that no client funds were missing.
 12. At a meeting on 28th November 2007 the Respondents had agreed that Mr F had provided conflicting listings of client ledger balances but had denied that they had instructed Mr F to withhold information.
 13. At the meeting on 28th November 2007 the Respondents had agreed a revised listing as at 30th September 2007 including overdrawn client ledger balances totalling £74,183.57.
 14. The Respondents had agreed a cash shortage of £73,203.96 as at 30th September 2007. At the 28th November meeting they had indicated that £5,000 had been replaced

during the inspection and that steps were being taken to address the balance. The First Respondent had subsequently informed Mr Smith that he was travelling to Pakistan and had sold a property there and had used the proceeds to replace the shortage.

15. In relation to WC and his sale of a property at 121A for £135,000, Mr Smith had established that WC had been overpaid the sum of £6,750, by the firm, on 18th May 2007, the date of completion, giving rise to an overdrawn balance of £6,671.25. The firm had been informed by WC by fax on 10th May 2007 that he had been paid the sum of £6,750 direct, representing a 5% deposit. The First Respondent had then informed the purchaser's solicitors (Miles Solicitors), that WC had received, "5% of the purchase price directly from the purchasers". Miles Solicitors had requested confirmation that the firm held the sum of £6,750 and had requested an undertaking that the money would be used as the deposit. In letters dated 15th and 16th May 2007, the First Respondent had confirmed to Miles Solicitors that they were holding £6,750 as the deposit for the purchase and giving the requested undertaking. On reviewing the bank account, however, Mr Smith had not been able to identify that the sum of £6,750 had been paid by WC. At the meeting with the First Respondent on 28th November 2007, the First Respondent had accepted that he had not in reality received the sum from WC. The conveyancing transaction had been completed on 18th May 2007. It transpired that the sum of £38,881.73 which had been paid to WC had taken into account the payment which had already been paid direct by the purchaser to WC, in the sum of £6,750 i.e. the 5% deposit. The completion statement, prepared by the First Respondent, had shown that the firm had received two amounts of money from WC, the first being £150 on 18th April 2007 and the second being £6,750 on 16th May 2007. At the meeting on 28th November 2007, the First Respondent had agreed with Mr Smith that the completion statement had been incorrect and that it had included the sum of £6,750 which WC had not in fact remitted to the firm and that, as a consequence of this inclusion, the First Respondent had overpaid WC by this amount.
16. Mr Smith had noted from the file that instructions had initially been received from a firm of estate agents and that their address had been the same as that of WC.
17. A hand written client ledger account from the file had shown a receipt in the sum of £6,750 on 15th May and a payment in the same sum dated 21st May 2007.
18. The firm had been instructed in the purchase by TK of 6AN from his brother AK who had been represented by Harvey Law. The purchase price had been £410,000 and the agreed deposit on exchange had been 15% i.e. £61,500.
19. On reviewing the file, Mr Smith had observed that the firm had overpaid AK the sum of £61,500 on 31st January 2007, which had given rise to the overdrawn balance of £58,993.66 as at 30th September 2007.
20. The First and Second Respondents had told Mr Smith that they had not been aware of the overpayment until about seven or eight months after the event. They had said that instead of replacing the monies they had been trying to recover the sum of £61,500 from AK.

21. Mr Smith had identified on the file an unsigned client care letter addressed to TK dated 4th January 2007. Mr Smith had also found on the file a letter dated 14th December 2006 from Birmingham Midshires Building Society appointing the firm to act on their behalf, in their granting of a net mortgage advance of £348,465 to TK. Under the terms of the mortgage TK had been entitled to a loan of no more than 85% of the purchase price. The remaining monies had therefore to come in the form of the deposit. Also on the file Mr Smith had identified a document marked “receipt” signed by AK and dated 15th December 2006. That document had noted the receipt from TK of the sum of £61,500. Mr Smith had also found a document on the file signed by AK and dated 10th January 2007 which had stated:

“on 15th December 2006 I transferred by way of a gift to Mr TM K the sum of £61,500 (the gift) to assist in the purchase of the property.....”.

An “agreement” signed by TK found on the file had indicated that the sum was “HTO” which the First Respondent had indicated meant “Held to Order”.

22. Initially completion had been due to take place on 22nd January 2007 and the First Respondent had signed the certificate of title on 17th January 2007. On 18th January 2007 the First Respondent had written to TK requesting £74,797 as the balance of the purchase monies and “identity details”. Following completion the First Respondent had written to his client enclosing a completion statement which had recorded a balance to complete of £13,757.88 and that the sum had been received from the vendor. There had been no evidence that it had in fact been received. Nor had there been any evidence that the lender client had been informed of the source of additional funds utilised in the purchase. In addition, the First Respondent had prepared a completion statement in respect of the sale showing a sum due to the vendor of £82,812 reduced by the sum of £13,757.88 paid to TK but not by the deposit paid.
23. Although AK had been independently represented by Harvey Law, Mr Smith had found correspondence on the file, appearing to predate 29th January 2007, the date of completion, indicating that the firm had been taking instructions from AK, the vendor, in relation to obtaining a redemption figure and in relation to the disposal of monies from the sale proceeds.
24. The client bank account statement had shown a payment to MK of £69,054.12 which had led to the overdrawn client ledger account. The First Respondent had confirmed that it had been a payment to AK.
25. The firm had been instructed by Miss RA in respect of her remortgage of the property 37 M Road, with Mortgage Express in the sum of £175,000. At his meeting with the Respondents on 28th November 2007, Mr Smith had agreed with them that they had overpaid Miss RA the sum of £5,000 on 12th July 2007, giving rise to the overdrawn balance of £4,985.28 identified by Mr Smith. The partners had told Mr Smith that they had not become aware of the overpayment until some four to six weeks after the event. That they had not replaced it themselves but that they had been able to recover the money from the client. Mr Smith had identified that this had come about when Mortgage Express had withheld completion monies of £5,000 to Miss RA, pending her undertaking certain repairs and had, therefore advanced to her only the sum of £170,000 rather than £175,000 on 11th July 2007. When the First Respondent had

written to Miss RA, he had enclosed a cheque for £20,505.66 when he should have deducted the £5,000 and sent her £15,515.66 as noted in the completion statement.

Other matters

26. In the course of his investigation Mr Smith had become aware of other concerns relating to conveyancing transactions. He had become aware of a file containing outstanding mortgage instructions to the firm from various lending institutions. The First Respondent had informed Mr Smith that that would occur as a result of brokers informing the lender clients that Essex Solicitors had been instructed by the purchasers. The First Respondent had explained that those instructions had not proceeded.
27. In addition, Mr Smith had identified that the firm had received a number of referrals from Mansion House Property Finance limited (Mansion House) in respect of property transactions relating to a development Burgess House in Leicester. The First Respondent had been acting for end purchasers in a series of back to back transactions where the developer had been Metropolitan Housing Trust limited and an intermediary purchaser had been Charles & David Asset Management Limited, who had been represented by Mr Javed of Conifer & Pines.
28. A number of documents had been analysed by Mr Smith. It had appeared from a schedule that 20 plots at Burgess House were being sold by the intermediary to the end buyers. Simultaneous exchange and completion was to have taken place on 3rd September 2007. A letter from Conifer & Pines had referred to 19 plots and had indicated that enquiries should be addressed to them. In addition there had been an attendance note by Ms A of Essex Solicitors confirming a conversation with Mr H from the intermediary client, regarding the completion date and requesting money on account of costs for dealing with matters relating to Burgess House. That had also indicated that only two mortgage offers had been processed.
29. The issues had been raised with the First Respondent and Ms A on 28th November 2007. At that time they had confirmed, inter alia, that the firm had accepted retainers to act in 20 transactions but that some were on hold; no monies were held on account by the firm; prospective clients had been interviewed by Ms A, although there were no attendance notes, they had copied ID documentation; they had received some draft contracts from Conifer & Pines; the intermediary was underwriting any shortfall in funds and was paying the firm's legal costs. Mr Smith had discussed with them the two matters which had been proceeding and a further 10 matters for which he had found documents.
30. Mr Smith in his report exemplified a transaction in relation to plot BH179 and a transaction relating to plot BH178.
31. The First Respondent had acted for a Mr M in the purchase of plot BH179 for the purchase price of £185,000 and for GMAC RFC in connection with their advance of £166,425.
32. Mr Smith had inspected the handwritten client ledger on the file which had shown no transactions and had noted no client ledger balance on the schedule provided by Mr F.

He had also examined the client file on which he had found a client care letter and various copy documents relating to identification. From those documents the following points had arisen:

- (i) The client's address was in London;
 - (ii) The client had a student visa for the period 25th January 2005 to 30th September 2006
 - (iii) The client had a residence permit giving limited leave to remain in the United Kingdom from 27th July 2006 to 30th November 2007
 - (iv) The client had "no recourse to public funds" and was "able to work as authorised by the Secretary of State"
33. At the meeting on 28th November 2007 Mr Smith had asked the First Respondent whether he had checked whether the client had authority to work and whether he had notified his lender client of the position. The First Respondent had indicated that he had not been involved in the mortgage application as this had been dealt with by Mansion House.
34. The client care letter had been dated 22nd August 2007 and formal instructions had been received from GMAC RFC on 4th September 2007.
35. The Second Respondent had signed a certificate of title on 4th September 2007. The lender client had not been informed that the intermediary had agreed to underwrite any shortfall of funds nor that the firm had not received any monies as at that date or of the residential status of the borrower.
36. A letter had been on file from GMAC RFC dated 6th September 2007 which had requested clarification regarding Mr M's identity. That letter had been faxed to Mansion House on 12th September 2007. When questioned the First Respondent had indicated that he had not replied to the letter as Mansion House had been dealing with matters relating to Mr M's identity and that they had had a client contact. He had indicated that the role of Essex Solicitors had been merely to undertake the conveyancing transaction.
37. The First Respondent had signed a further certificate of title on 13th September 2007.
38. A "draft completion statement" had been on file dated 13th September 2007. The figures on that document did not add up. There was reference to a receipt of £300 on the document but that was not recorded on either the hand written client ledger or on Mr F's schedule. The Mortgage offer had in fact been withdrawn.
39. The First Respondent had acted for Mrs Y in relation to the purchase of plot BH178 for £185,000 and for GMACR FC in respect of a mortgage advance of £166,425.
40. The hand written client ledger had shown receipt of the mortgage advance on 18th September 2007 and the return of that sum on 3rd October 2007. No other financial

transactions had been noted on the document. The schedule provided by Mr F had shown the balance of £166,425 as at 30th September 2007.

41. Mr Smith had examined the client file and had found a client care letter dated 22nd August 2007 together with identification documents, including a copy passport which had been due to expire on 3rd December 2007.
42. Formal instructions had been received from GMAC RFC on 1st September 2007. The Second Respondent had signed a certificate of title on 4th September 2007. There had been again no indication that the firm had notified the lender client that the intermediary agreed to underwrite any shortfall nor that the firm had not been in receipt of any funds. Again a letter dated 6th September had been received from GMAC RFC requesting further details regarding the clients' identity and income status. There had been no evidence of a response. When asked the First Respondent had indicated that he had merely referred such requests to Mansion House.
43. Again a further certificate of title had been signed by the First Respondent on 13th September and forwarded to the lender client who had released the funds on 14th September. On 18th September the firm had received a copy mortgage fee agreement from Mansion House indicating that a 1% fee was payable. The First Respondent had written to the purchaser client requesting authority to deduct that sum from the mortgage advance held. No other monies had been held.
44. At 28th November meeting the First Respondent had confirmed that that mortgage offer had also been withdrawn hence the return of the funds on 3rd October 2007.
45. Mr Smith had examined other documents from which it had appeared that the First Respondent had been instructed by a further 10 clients in respect of conveyancing transaction associated with Burgess House, to whom client care letters had been sent, eight having been signed and some identification documents obtained. In 3 matters the individuals had only been resident in the United Kingdom for a limited period:
 - (i) Mr K – Student visa valid for period 8th September 2006 to 30th September 2008;
 - (ii) Mr KH – Student visa valid for period 21st July 2004 to 30th December 2007;
 - (iii) Mr M – Residence permit valid for period 28th July 2006 to 30th September 2007.
46. When questioned the First Respondent had confirmed to Mr Smith that he had agreed to act and had not undertaken any checks as to whether the clients had authorisation to work but had referred all such matters to Mansion House.
47. Mr Smith's report dated 9th January 2008 had been forwarded to both the First and Second Respondents under cover of letters dated 5th February 2008. A response had been requested within ten days. The First Respondent had requested an extension of time for both due to his poor health and had forwarded a medical certificate. The Second Respondent had contacted the case workers by telephone on 13th February 2008.

48. A response dated 15th February had been forwarded by the First Respondent together with various appendices. The response had dealt with, inter alia, the source of £68,000 received by Essex Solicitors utilised towards repayment of the shortage on client account and had provided his explanation as to how the shortages had arisen. He had denied a misuse of client monies.
49. A separate response had been forwarded by the Second Respondent also dated 15th February 2008.
50. Further documents had been forwarded by the First Respondent under cover of a letter dated 19th February 2008.
51. On 10th March 2008 the matter had been referred to an Adjudicator. Further representations had been submitted on behalf of the Respondents by Messrs Murdochs on 4th April 2008. On 5th June 2008 an Adjudication Panel had considered the matter and had resolved to refer the Respondent's to the Tribunal. In addition the Adjudication Panel had imposed conditions on the Respondents practising certificates.

Second Inspection

52. Mr Smith had undertaken a further investigation of the books of account and other documents of the firm Essex Solicitors, commencing on 11th April 2008 at the firm's offices at 170 Cranbrook Road. At that time the First Respondent had confirmed that since 15th November 2007 he had practised alone. Proper books of account had not been presented and following meetings with the First Respondent and Mr F the inspection had been suspended to enable the books to be regularised.
53. Mr Smith had met the First Respondent on 14th October 2008 when he had been informed that the books of account had been reconciled up to 30th September. He had also been informed that the practice had been sold on that date to a Ms RK, who also practised as a sole principal at Abbisons Solicitors at 195 Cranbrook Road. Mr Smith then had several meetings with Ms RK.
54. The First Respondent had informed Mr Smith that he had sold his practice to Ms RK (Abbisons) and that Essex Solicitors would be incorporated in Abbisons. He had confirmed that Professional Indemnity Insurance cover for Essex Solicitors had ceased on 30th September 2008 and would be undertaken by Ms RK from 1st October in the name of Abbisons. Client bank account reconciliations had been provided and files were to be transferred on 17th October 2008. The First Respondent had informed Mr Smith that despite the sale he was still the sole signatory for both client and office accounts of Essex Solicitors. He had also indicated an intention to set up a new practice, from 170 Cranbrook Road, on his return from a trip to Pakistan.
55. Ms RK had not accepted that Essex had been incorporated by Abbisons and had said that she would re negotiate the agreement accordingly. She had indicated that the two firms would be operated separately from 195 (Abbisons) and 46A (Essex) Cranbrook Road and that she would personally supervise both firms. She had confirmed that she was not a signatory on the Essex bank accounts.

56. At a meeting on 28th October 2008 Ms RK had provided Mr Smith with an amended agreement, headed notepaper and details of Professional Indemnity Insurance.
57. Following the first meeting in April 2008 the First Respondent had provided Mr Smith with a reconciliation of the client account as at 31st March 2008, together with a listing of client ledger balances which had indicated a cash surplus of £14,717.04. Mr F had been unable to provide an explanation. On 17th October 2008 when reconciliations as at 30th September 2008 had been provided, there had been a cash surplus of some £0.02p but Mr Smith had been unable to examine the reconciliation as the records had been boxed up for transfer to Ms RK. A reconciliation as at 16th October 2008 had balanced.
58. During the course of the second Investigation Mr Smith had identified other concerns in connection with conveyancing transactions when it had appeared that there had been indications of fraud relating to identifications. Five transactions had been reviewed:
- (i) M - Sale of 190 L Road
 - (ii) K - Remortgage of 62 R Avenue
 - (iii) B - Remortgage of 81 S Avenue
 - (iv) R&K - Remortgage of 99 L Way
 - (v) N - Remortgage of 580 GW Road

The first two files had been uplifted under Section 44B Notices

M Matter

59. The First Respondent had purportedly been acting for a Mrs BJM in the sale of her property in Birmingham for £740,000 to a Mr H for whom Messrs Conifer & Pines had acted.
60. There had been no evidence to show that the firm had previously acted for the client, nor that she had attended their offices. Identification documents on the file had included a part copy of a passport, a copy of an Abbey Instant Plus account and a copy of a water bill both giving a different Birmingham address to that of the property being sold. All had apparently been certified by a firm of Birmingham solicitors Elliot & Co. The First Respondent had checked Elliot & Co on The Law Society's database.
61. The First Respondent had written to Mrs M by fax at the second Birmingham address, rather than at the address of the property being sold, sending two client care letters. Page 4 of one of those letters had been returned signed but from a different fax number.
62. Office copy entries as at 12th November 2007 on the file had shown that the title had been registered in the name of Mrs M in 1976 and yet the copy passport had recorded a date of birth of 1973.

63. In addition the files had contained a form of instruction dated 12th November 2007, sent from the second fax number, purportedly signed by Mrs M authorising the payment of £180,560 to a company Expedited Limited. That had been confirmed by a fax the following day. On that same day, 13th November 2007 the First Respondent had written to Expedited Limited stating, inter alia, that “we confirm that upon receipt we shall forward to you by CHAPs the sum of £180,560 (Rebate) as instructed by our client”. No information had been available on the file to determine the nature of the “Rebate” albeit there had been a document relating to bridging finance for Mr H.
64. A faxed letter, dated 18th November, from the same fax number had purported to give instructions to transfer the sum of £559,440 to Wall Street Forex Limited to a London branch account no of Natwest Plc.
65. Exchange and completion had taken place on 19th November 2007 when £740,000 had been received from Conifer & Pines. The completion statement had shown that the transfer of £558,680 had been made to Wall Street Forex Limited which had been reflected on the client bank account (plus bank charges) together with a payment of £180,560 (plus bank charges) to Expedited Limited.
66. The client file had shown that there had been subsequent difficulties in registering title in the name of Mr H as a restriction had been lodged by the “real” Mrs M. Three months after completion, the First Respondent had written to his “client” confirming completion and forwarding the completion statement and a bill of costs dated 26th February 2008 for £600.
67. Subsequent correspondence on this file from Walker Morris solicitors for the Mortgage Business Plc who had provided an advance of £592,000 to Mr H had suggested that an identity fraud had been committed.

K Matter

68. An examination of the file had shown that the First Respondent had acted for Mr and Mrs K in relation to the remortgage of a property W cottage for £469,965 net and that the firm had acted for the lenders Birmingham Midshires.
69. There had been no evidence on the file that either Mr or Mrs K had attended the offices of Essex Solicitors, nor had there been any attendance notes prior to completion. Identification documents had consisted of part copy passports plus utility bills from Thames Water and British Gas dated December 2007. Those had appeared to show a bank stamp showing that the bills had been paid at Barclays Bank in Bishop Stortford. That stamp appeared to show a date in October 2006.
70. The First Respondent had been instructed by Birmingham Midshires on 10th December 2007. He had issued a client care letter to Mr and Mrs K at the relevant address on 14th December, a copy of which had been signed and dated also on 14th December. In addition, Mr and Mrs K had signed a letter of authority instructing the firm to release the net balance from the mortgage to Harrow Investments Limited (£239,000) and Bloomsbury Trustee Account (£239,515)

71. The First Respondent had signed and submitted a certificate of title to the Bank of Scotland Plc on 14th December requesting the mortgage advance of £480,000 with completion on 17th December. In fact completion appeared to have taken place on 18th December 2007 on which date transfers had taken place in accordance with the client's instructions. No mortgage had been redeemed.
72. Completion of a legal charge had been registered on 10th January 2008. An attendance note on file, dated 18th February 2008, had indicated that a call had been received by the firm which had indicated that there had been a fraud against the "real" Mr K. Despite this, on 21st February 2008, the First Respondent had written to his clients confirming completion, sending a completion statement and bill of costs for £720. Subsequently, the First Respondent had been involved in correspondence with Quist Solicitors regarding the alleged fraud.

B Matter

73. According to the file, the First Respondent had acted for Mr and Mrs B and Bristol and West Mortgages who had been lending £240,000 by way of remortgage on 81 S Avenue.
74. There had been no evidence on file that the First Respondent had met the clients. There had been, however, identification evidence in the form of copy driving licences and utility bills from BT and Southern Electric. The BT bill had appeared to show payment having been made at Barclays, Bishop Stortford again.
75. A client care letter, dated 10th April 2008, had been signed and dated 13th April 2008 as had an authority to the firm to deal with the redemption of an existing mortgage. On 17th April the First Respondent had signed and submitted a certificate of title to Bristol & West requesting the mortgage advance of £240,000 for completion on 22nd April 2008.
76. Completion had taken place on 22nd April 2008 when £158,347.08 had been transferred to World Rover Exchange Limited and the First Respondent had written to the clients to confirm that, enclosing a completion statement. Mr and Mrs B had signed a document authorising the transfer of £158,347.08 to World Rover Exchange Limited.
77. Mr and Mrs B's title had been registered since April 1980. On 21st May 2008 a restriction had been lodged. However a charge had already been registered in the name of Bristol & West mortgages on 25th April 2008. In July, a director of World Rover Exchange Limited had written to the First Respondent requesting clarification to which the First Respondent had replied on 18th July 2008 confirming his instructions.

R & A Matter

78. The First Respondent had acted for Mr MR and Mrs YA in relation to the remortgage of 99 L Way in the sum of £322,500 gross to Bristol & West mortgages for whom the First Respondent had also acted.

79. There had been no evidence on file to show that the First Respondent had met the clients. Identification documents on file had included copy driving licenses and copy utility bills from BT and Southern Electric. Mr Smith had noted that the driving license for Mr MR appeared to be false in that it did not accurately include his date of birth.
80. A client care letter issued on 9th April had been signed and dated 10th April 2008. On 17th April 2008 the First Respondent had signed and submitted a certificate of title to Bristol & West Mortgages requesting a mortgage advance of £322,500 for completion on 22nd April 2008. According to the file completion had taken place on 22nd April 2008 when £281,035.56 had been paid to DS9 Limited. There had been no letter on the file confirming completion. A letter of authority signed by the clients on the same date had authorised the said payment but there had been no other documents in connection therewith.
81. Title to the property had originally been registered in November 1990 and a restriction placed on the title on 27th May 2008. No charge had been registered in favour of Bristol & West mortgages.

N Matter

82. In this matter the First Respondent had been acting for Miss SN in relation to the remortgage of 580 GW Road for £322,500 and the lender Bristol & West Mortgages. As with the R and A and B matters it appeared that the N Matter had been referred by City Mortgage Services. A review of the file had indicated that the First Respondent had ceased acting in the matter.
83. There had been no evidence that the First Respondent had met the client. Identification documents had included a copy part passport and two utility bills from Thames Water and Southern Electric. The Thames Water bill again bore a bank stamp purportedly showing that the bill had been paid at Barclays Plc in Bishop Stortford. The stamp was again dated October 2006 whereas the bill was dated March 2008.
84. A client care letter had been issued on 15th April and signed on 17th April 2008. On 25th April 2008 the First Respondent had written to Bristol & West Mortgages advising they would no longer be acting as they suspected a fraud.
85. A case worker at the SRA had written to the First Respondent on 11th February 2009 requesting an explanation. The First Respondent had been granted an extension until 2nd March 2009. A response had been received on 4th March dated 2nd March denying the allegations.
86. The matters had been authorised for inclusion in the existing proceedings by a decision dated 5th March 2009.

The submissions of the Applicant

87. The Applicant referred the Tribunal to her written opening submissions and details of the four allegations against the First Respondent and the two allegations against the

Second Respondent together with the relevant facts in support of those allegations. She stressed that the matters were extremely serious. Moreover, the Applicant explained that the allegation against the First Respondent was that he had acted dishonestly in the various conveyancing transactions or alternatively that he had acted recklessly.

88. The Applicant sought the Tribunal's permission to withdraw allegation 5 against the First Respondent. The Tribunal agreed that allegation 5 which was against the First Respondent only should be withdrawn.
89. Referring to the matters of Mr M and Mrs Y and purchases at Burgess House, the Applicant submitted that there was evidence that the Respondents had failed to act in the best interests of lender clients by not notifying material facts regarding the provision of the balance of the purchase price and breaches of the undertakings contained in a certificate of title. The Applicant further submitted that failure to respond to queries from a client was a failure to provide a good standard of service. Moreover, such actions showed a lack of integrity and independence and led to a diminution in public confidence in the profession.
90. Turning to the fourth allegation against the First Respondent only, the Applicant referred to the five specific transactions that had been investigated by Mr Smith; Mrs M, Mr and Mrs K, Mr and Mrs B, R and A and N. The Applicant submitted that in each of those cases there had been indicators of fraud. Three of the matters (Mr and Mrs B, R and A and N) appeared to have been referred to the First Respondent by City Mortgage Services. In each case involving a mortgage the First Respondent had been acting for the lender as well as for the client and save in the case of N which did not complete, had given a full certificate of title including all the relevant undertakings as set out in the Annex to Rule 3 of the Solicitors Code of Conduct 2007.
91. The Applicant submitted that the First Respondent had failed to heed the terms of the Green Card Warning. She submitted that the Applicant had been dishonest within the terms of the combined test as set out in Twinsectra Limited -v- Yardley and Others [2000] UKHL 12 in that his conduct had been dishonest by the ordinary standards of reasonable and honest people and that he himself had realised that by those standards his conduct had been dishonest.

Evidence on behalf of the Applicant

92. Adrian Smith, previously a Forensic Investigation Officer with the SRA and now a Practice Standards Adviser, gave evidence about his first and second inspections at the firm and about the contents of the first Forensic Investigation Report dated 9th January 2008 and also of the second Forensic Investigation Report dated 16th January 2009.
93. Mr Smith explained that at the commencement of his first inspection in November 2007 both Respondents had been absent from the office. The First Respondent had suffered a heart attack and the Second Respondent had been in Pakistan. Supervision was apparently being provided by Mr Javed of Conifer & Pines, a firm close by.

94. Mr Smith explained that the firm's books of account had not complied with the Solicitors Accounts Rules. Initially he had calculated a cash shortage, as at 31st August 2007 of £175,685.79 and as at 30th September 2007 of £70,203.96. Mr Smith had calculated these on the basis of a list of client ledger balances provided by Mr F who maintained the firm's books of account. On 8th November 2007 the First Respondent had said that no client funds were missing on the basis of three client ledgers rewritten by Mr F. At a meeting on 28th November 2007 those Respondents had agreed that Mr F had provided conflicting listings and that the three matters were overdrawn. The Respondents had also agreed that a cash shortage existed at that date of £73,203.96 arising from the matters of WC (£6,671.25) K (£58,993.66) and A (£4,985.28). Mr Smith detailed the three individual transactions. In WC the First Respondent had confirmed that he had not in fact received the sum of £6,750 from the client and therefore the completion statement had been incorrect. In the K matter Mr Smith had found handwritten client ledgers for both brothers i.e. the vendor and the purchaser. The deposit of £61,500 (15% of the purchase price) had been a gift from one brother to the other but that fact had not been reported to the lender client. In the A matter the First Respondent had failed to deduct any retention of £5,000 on behalf of the lender client.
95. In response to cross-examination by Mrs Hamid of Counsel, Mr Smith confirmed that during his inspections he had made handwritten contemporaneous notes. He said that the accounting package used by Mr F for the firm had no provision for office accounting and that Mr F had used the bank statements as a cash book.
96. Mr Smith insisted that in the WC matter the First Respondent had not had cleared funds on 16th May 2007 in relation to the 5% deposit of £6,750.
97. In relation to the Burgess House matter, Mr Smith said that he had noted that the firm had received a number of referrals from Mansion House Property Finance Limited to act for end purchasers. The developer, Metropolitan Housing Trust Limited, had assigned contracts to an intermediary, Charles & David Asset Management Limited, who then assigned to the end purchasers. Mr Javed of Conifer & Pines had acted for the intermediary. Mr Smith explained that the First Respondent had made it clear to him that he had not considered it his role to get involved with the income status of the end purchasers. Mr Smith had referred the First Respondent to a number of facts which he had considered appear to have been material to the firm's lender clients but of which the First Respondent had not informed his lender clients. For example imminent expiry dates of student visas.

Oral Evidence from the First Respondent

98. The First Respondent referred to his witness statement dated 25th November 2009 together with its exhibits and his referral to the Serious Organised Crime Agency (SOCA) in the matter of his client M on 9th May 2008, as his evidence in chief. He also relied on the letter of 4th April 2008 to the SRA from his former solicitors Murdochs and the letter to the SRA from Mr F dated 4th April 2008 in which Mr F had stated that the debit balances had not been hidden purposely.
99. The First Respondent referred to a letter from his client WC in which WC had confirmed that he had paid his deposit on 16th May 2007 by way of a bankers draft.

The First Respondent insisted that on 16th May 2007 his firm had been in possession of cleared funds.

100. In relation to the matter of K and the debit balance of £61,500 the First Respondent referred the Tribunal to a letter from LB dated 4th April 2008. He explained that LB had been the case worker in the T matter, supervised by the First Respondent. In his letter LB had explained that in error he had failed to deduct the gift of £61,500 from the selling price. This had resulted in an overpayment of £61,500 to K. The First Respondent said that he had not known that in effect the caseworker LB had been acting for both the vendor and for the purchaser.
101. In relation to the Burgess House matters, the First Respondent said that he had seen the client M with his assistant who would open the file. The First Respondent could not explain the absence of an attendance note but had not appreciated that the client had been a student. The First Respondent explained that he had thought that lender clients would have satisfied themselves as to the status and finances of the purchaser client. He had thought that his duty was just to identify the client in front of him.
102. Again with the client Mrs W the First Respondent could not explain the absence of any attendance note on the file but he thought that maybe only his assistant had seen the client. The First Respondent had not thought of status because he had not considered it as part of his remit. The First Respondent stressed that had he known that it was his responsibility he would have reported on it to his lender clients.
103. The First Respondent explained that he admitted allegation 2 but stressed that the debit balances had not been deliberate but were the result of human errors in a busy small practice. He said that he had always delivered a high standard of service as a conveyancer and had never had any complaints.
104. In relation to allegation 3, the First Respondent denied that he had not had cleared funds on 16th May 2007 when he had written to the vendor's solicitors.
105. In relation to the five specific transactions investigated during Mr Smith's second visit, the First Respondent insisted that he had not noticed any problems or discrepancies. He had spoken to Mrs M by telephone. He had met Mr and Mrs B. It was only in the matter of client N that he had become suspicious following a telephone call from the insurance broker.
106. The First Respondent insisted that any breaches on his part had not been deliberate. He admitted his shortcomings, mistakes and bad bookkeeping, referring to the letter from his former solicitors, Murdochs, to the SRA on 4th April 2008, the First Respondent explained that he had not seen that letter before it had been sent and that in his view it had lacked details and explanations relating to his admissions. He asked the Tribunal to take into account his character references. The First Respondent stressed that, while he had been negligent in taking people at face value, he had not acted deliberately or recklessly.
107. In cross-examination, the First Respondent confirmed that he managed the firm, saw conveyancing clients, dealt with the identity checks and certificates of title. In these matters he had the assistance of case workers who he supervised. He accepted that he

had left the firm's accounts to his bookkeeper to maintain. Because of pressures of work he had not checked if there had been monthly reconciliations. The First Respondent accepted that there had been serious bookkeeping issues at the time of Mr Smith's first visit and that both Respondents had been concerned to pay monies back into client account. However, he insisted that no clients had ever suffered and no lender clients had suffered because of any deliberate acts of his. He had borrowed monies to clear the debit balance on client account.

108. The First Respondent agreed that the letter from WC failed to mention that he had later received the sum of £6,500 back from the firm in error. He explained that WC had only repaid £1,000 to the firm. Although WC had been given a check on 16th May he had agreed not to bank it until after completion although there had been no attendance note recording his agreement.
109. The First Respondent insisted that he had believed that it was the responsibility of the lender client and of the mortgage broker to investigate the state of the means of the borrower. He explained that it had been agreed with Mansion House Property Finance Limited that they would deal with any queries from his lender clients. The First Respondent said that it had only been his responsibility to respond to his lender client if he got the information from Mansion House. He explained that his assistant had seen most of the Burgess House clients. As to the identities of the persons or organisations to who he was instructed, by his clients, to send monies, he had not considered it necessary to question those instructions. Neither had he considered them strange. In the case of Mr and Mrs K, a remortgage for £479,965, he had not considered it strange that no mortgage had been redeemed or that he had been told to send the payments from the remortgage funds to recipients who appeared to have no links with his clients Mr and Mrs K.
110. The First Respondent had said that he had met Mr and Mrs B and was surprised that there were no notes of this meeting with them on the file. He had not found it strange to be instructed to send the balance of the remortgaged funds some £158,347.08 to a third party. However, he had been surprised when that third party had written asking him to confirm his client's instructions and to prepare a letter of explanation addressed to the HSBC bank account manager. The First Respondent had just confirmed his client's instructions. Again with his clients R and A the First Respondent had not considered the transaction or the payment of the remortgage balance of £281,035.56 to a third party unusual. The First Respondent agreed that he had failed to pick up on the warning signs.

Oral evidence from the Second Respondent

111. The Second Respondent referred to and relied upon his witness statement undated but handed to the Tribunal on 26th November 2009. He explained that his main area of work was immigration and that he had no dealings with conveyancing files. However, he had signed two certificates of title, in good faith, on the basis of information provided by the case worker and the file. He had signed the certificates when the First Respondent had been either busy or out of the office.
112. In cross-examination by the Applicant, the Second Respondent explained that his admissions were limited because he had believed that the firm's accounts were being

dealt with by an experienced person. As a partner, he acknowledged his responsibilities, but he denied any personal culpability. He had accepted that it had been his responsibility as a partner to replace the shortage on client account although he had not personally been involved in the files on which shortages had arisen. Moreover, he had signed the certificates of title on the basis that matters were in order as confirmed by his colleagues.

Submissions on behalf of the First Respondent

113. Counsel referred to the burden of proof to be established by the Applicant. She submitted that the First Respondent's evidence had been credible and that he had been a credible, truthful, sincere and honest witness who had admitted his mistakes and failings. Counsel referred to his various character references. She submitted that the First Respondent himself had been a victim of sophisticated frauds and that it was only when he had been acting for client N that he had realised that all was not as it should be. Counsel stressed that there was no evidence of gross impropriety or of wilful misconduct by the First Respondent but that he had inadvertently committed a number of mistakes and gross errors for which he was extremely sorry. Counsel asked the Tribunal to accept the evidence of the First Respondent and to accept that he had learnt from his mistakes. She submitted that there had been no deliberate act on his part such as to compromise his integrity one of the most important attributes of a solicitor.
114. Counsel submitted that the First Respondent had not been dishonest. There had been no conscious impropriety on his part. Neither had he been reckless i.e. acting without any consideration of the consequences. Counsel submitted that the Respondent had taken the view that there was nothing unusual in his instructions. He had conformed to the Green Card Guidance in relation to identity checks.
115. Counsel reviewed all the allegations and the responses of the First Respondent both in evidence and in letters before the Tribunal. Taking the case as a whole, Counsel submitted that allegations 1 and 4 had not been proved, the allegation 2 breaches had been admitted but those breaches had not been deliberate, and for allegation three there had been no breach because cleared funds had been available during the relevant period.

Submissions by the Second Respondent

116. While admitting allegation 2 as a partner of the firm the Second Respondent denied allegation one on the basis that his total involvement had been only to sign two certificates of title. He maintained that the attitude of the SRA in bringing the allegation relating to his involvement in irregular property transactions had caused him much suffering and humiliation.

Closing submissions by the Applicant

117. The Applicant accepted that the Tribunal was entitled to consider evidence as to good character when considering the credibility of a Respondent. However, she submitted that the references in respect of the First Respondent were not unusually impressive and not all of them had been addressed to the Tribunal. Accordingly, she urged the

Tribunal to be cautious as to the weight given to those character references. The Applicant provided the Tribunal with a schedule and sought an order for costs.

The decision of the Tribunal

118. Having considered all of the evidence, both oral and written and the helpful submissions of the Applicant and of Counsel, the Tribunal were satisfied, so that it was sure, that all the allegations had been proved as against the First Respondent. Moreover, in relation to allegation 4, the Tribunal were satisfied so that it was sure, that the First Respondent had been reckless, in that he had acted with blind disregard of the warnings contained in The Law Society's Green Card. The Respondent had said that he was aware of the contents of the Green Card but his actions in acting for both purchaser clients and lender clients relating to the Burgess House development had shown a lack of thought as to the consequences of those actions. However, the Tribunal was not satisfied that the First Respondent's conduct had been dishonest.
119. Having considered all of the evidence in relation to the Second Respondent, the Tribunal were satisfied, so that it was sure, that the first allegation against the Second Respondent had not been proved but that the second allegation had been both admitted and proved.

Mitigation on behalf of the First Respondent

120. Counsel gave the Tribunal details of the First Respondent's poor health, his current financial position and family circumstances. Evidence of his means was handed to the Tribunal. Counsel stressed that the First Respondent apologised unreservedly for his conduct and that eventually he had realised that he had been a victim of fraud. Counsel urged the Tribunal to consider a severe reprimand but not to consider the ultimate sanction.

Mitigation on behalf of the Second Respondent

121. The Second Respondent provided the Tribunal with details of his personal circumstances and his means.

The decision of the Tribunal as to penalty and costs

122. Dealing first with the Second Respondent, the Tribunal noted that he had not been involved in the second Forensic Investigation Report. Taking into account his admission and the level of his culpability for the breaches of the Solicitors Accounts Rules and his means, the Tribunal were satisfied that a fine of £500, together with an Order that he pay £500 as a contribution towards costs, was appropriate and it so Ordered.
123. The Tribunal was satisfied that the allegations it found proved as against the First Respondent were very serious. The Respondent had been extremely reckless in his practise of conveyancing. He had failed to appreciate his duties to lender clients and had acted in flagrant disregard of the Green Card Warnings. In order to protect the public and to maintain confidence in the Profession, the Tribunal determined that it was necessary to suspend the First Respondent from practise as a solicitor for an

indefinite period and it so Ordered. As to costs, while the Tribunal considered that the First Respondent should be responsible for all the costs (except for £500 to be paid by the Second Respondent) it had taken into account the First Respondent's means and Ordered that its Order for costs was not to be enforced as against the First Respondent without the Tribunal leave.

Dated this 14th day of April 2010
on behalf of the Tribunal

Mrs J Martineau
Chairman