No. 10311-2009

On 12 October 2012, Mr Faniyi appealed against the Tribunal's decision to refuse a rehearing and on findings. The appeal was dismissed by Lord Justice Pitchford and Mr Justice Foskett. On 26 March 2013, the Court of Appeal refused Mr Faniyi's application for permission to appeal to the Court of Appeal. Faniyi v Solicitors Regulation Authority [2012] EWHC 2965 (Admin.) and Faniyi v Solicitors Regulation Authority [2013] EWCA Civ 596

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF NATHANIEL AKINDELE FANIYI, solicitor (The Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Mr D Green (in the chair)
Mr M Sibley
Mr D Gilbertson

Date of Hearing: 2nd December 2010

FINDINGS & DECISION

Appearances

Michael McLaren QC of 5 Fountain Court, Temple, London, EC4Y 9DH, instructed by Russell Jones & Walker, Solicitors, of 50-52 Chancery Lane, London WC2A 1HL, appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented.

Allegations

The allegations against the Respondent were that he:-

1. Provided misleading statements to prospective professional indemnity insurers in circumstances where he knew that such statements were incorrect and inaccurate;

2. Failed to adequately supervise fee earners;

3. Failed to provide client care letters and cost information to clients;

4. Failed to deliver promptly clients' papers on termination of the retainer;

5. Misled a client;

6. Misled the LCS.

Further allegations against the Respondent were that he:-

7. Attempted to mislead his Regulator, and in doing so failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC");

8. Attempted to mislead Mr and Mrs T and in doing so failed to act with integrity contrary to Rule 1.02 of the SCC;

9. Failed to comply with the Law Society's Guidance on Property Fraud and in doing so failed to act with integrity and acted in a manner likely to diminish public confidence in the profession, contrary to Rule 1.02 and 1.06 SCC.

Dishonesty was alleged with respect to allegation 1, 7 and 8. In respect of allegation 1 the case was put on the basis that dishonesty was not an essential ingredient and it would be open to the Tribunal to find any or all of the allegations proved without any element of dishonesty. In respect of allegations 7 and 8 again dishonesty was not an essential ingredient but the case was put on the basis of dishonesty with, in the alternative an allegation that if it was not proved, then his conduct was reckless and that he took a blinkered approach to his professional duties as a solicitor.

Preliminary Matter

Leading Counsel informed the Tribunal that the Respondent had not contacted the SRA since his letter of 18 May 2010. The SRA was not aware whether he was currently represented. He had not served statements of any witnesses whom he might intend to call and was now out of time to do so. He had not made any application to adjourn these proceedings. In the absence of the Respondent, the Tribunal was satisfied that he had been properly served and given notice of the hearing but the Chairman asked the Applicant through his instructing solicitors to make a telephone call to the Respondent's practising address in respect of the hearing. The Tribunal retired while this took place. Upon resuming the Tribunal was informed that in response to the call, his instructing solicitors had been advised that the Respondent was not available, would not be back in his office until the following Monday and that it was not possible to get a message to him. The Clerk was provided with a copy of a letter from Russell Jones & Walker to the Tribunal dated 6 July 2010 which the firm had copied to the Respondent. It included the hearing date. This had been followed up by a letter of 21 July 2010 inviting the Respondent to attend their offices to inspect documents.

In regard to the fact that in correspondence with the Applicant, the Respondent had indicated that he required each and every document to be proved authentic, the Tribunal considered the position under rule 14.2 of the Solicitors (Disciplinary Proceedings) Rules 2007 and decided that statements having been properly filed, the Tribunal would exercise its discretion pursuant to Rule 14(1) and act upon evidence given by statement.

The Tribunal then proceeded to consider Rule 16 which dealt with hearing a matter in the absence of the Respondent. Having been satisfied that notice of the hearing had been properly served on the Respondent, the Tribunal determined that it would hear the application notwithstanding that the Respondent had failed to attend in person and was not represented. In arriving at this decision the Tribunal bore in mind that this was the second occasion on which the matter had come on for a substantive hearing. On the first occasion the Respondent had produced a note from his doctor leading to an adjournment.

Factual Background

1. The Respondent was born in 1950 and admitted as a solicitor in 1997. His name remained on the Roll. At the material time he had been a principal of Nathaniel & Co Solicitors of 422 Kingsland Road, Dalston, London E8 4AA.

2. Between April and November 2007 the SRA made three visits to the firm. As a result the SRA produced a report which was sent to the Respondent on 6 February 2009.

Allegation 1

3. The Respondent had appeared before the Tribunal on 23 January 2003. The Respondent accepted that he had been reprimanded and ordered to pay costs of £2,200. He subsequently completed proposal forms for professional indemnity insurance which contained false negative answers to questions about penalties and costs; these were submitted to DM & Co, the form was signed on 20 August 2004, to A where the form was signed on 24 August 2005, to P the form being signed on 24 August 2005, and again to A where the signature was dated 20 July 2006. By contrast on an indemnity form submitted to H signed by the Respondent on 24 August 2005, he correctly answered "yes" to the question whether he had been the subject of a costs order or been reprimanded by the Tribunal.

4. The alleged failure to disclose the reprimand and the costs order was put to the Respondent in the investigation report. His response sought to blame the insurance brokers, although he did not address the issue directly; in particular he claimed to have been told by the brokers that he need not answer all questions. Each proposal form had a formal declaration of truth signed by the Respondent. There were also discrepancies between the various forms relating to the Respondent's firm's current and anticipated earnings. On three proposal forms completed on the same day, 24 August 2005, for prospective professional indemnity insurers, the Respondent gave inconsistent figures for estimated and future earnings.

Allegation 2

5. There were five separate instances alleged of failure to supervise, relating to the failings of other fee earners within the practice. There was no evidence that the Respondent was aware of these incidents as they occurred.

6. In a response faxed to the SRA on 23 February 2009 the Respondent accepted that he had failed properly to supervise fee earners and advanced various reasons why that situation had come about. These included the following:-

> "The entire report has enabled me to re-appraise the entire Practice Management Procedures. It has also brought home to me for the first time the fact that some staff deliberate [sic] misbehaviours and misconduct could be integral part of running a practice..... therefore I am letting you know that the buck stops at me and I am accepting full responsibilities for all the shortcomings in all areas as contained in your report."

The response contained a paragraph headed "Supervision of Fee Earners" which included:-

> "The firm was not being run as contained in our Office Manual due to lack of funding to run the firm effectively at this time. Our staffing level was reduced from 23 to 6 who were working irregularly, thereby making it impossible to co-ordinate their activities, log their times or maintain any meaningful control over them. ....the situation was aggravated when Ms O gave false information to the police that led to the searches and raid of our office.... the police broke the doors of our office, disorganised the files and cabinets, thereby making file location and transfer extremely difficult.... it is also instructive to know that because staff were not adequately remunerated it was impossible to carry out adequate supervision as stated in our Office Manual and Staff Handbook. Nevertheless the report is positive and I am not disputing the allegations."

He stated that the predicament of the firm was worsened by the unexpected resignation of a partner on Christmas Day 2006 which he did not become aware of until an SRA visit on 23 April 2007. The partner worked in separate premises. The Respondent explained that when the partner left, Ms O a member of staff had taken over the office without the Respondent's knowledge.

7. In that separate office Ms O had opened a parallel business account and a Mr A, not an employee or an admitted solicitor, was permitted to use Nathaniel & Co's notepaper. These facts were also relevant to Allegations 5 and 6.

Allegation 3

8. The SRA observed that in a number of matters no client care letters were present on file. No cost information was provided to clients and where cost estimates were given and exceeded there was no evidence that clients had been given advice to this effect, or provided with revised estimates. In his response to the SRA of 23 February 2009 under the heading 'Client Costs Information' the Respondent had stated at paragraph 25:-

> "Similarly, as stated above, we were not able to carry out his [sic] function adequately because of the drastic reduction of staff and funding".

In respect of Ms O he stated:-

> "It was discovered that she was in breach of her professional obligations and inevitably the firm's procedures for staff supervision, client care and other professional rules for quality service to a client as stated in this report. The standard Client Care letters together with Costs information for the Firm were

jettisoned and replaced with Ms O's version of standard letters in all cases highlighted in the report."

Allegation 4

9. A number of complaints were made to the SRA and the Legal Complaints Service (LCS) regarding the Respondent's failure to deliver papers or delays in delivering papers on the termination of the client's retainer. The delays were between five weeks and eleven months. The Respondent explained during the SRA's investigation that with regard to the delays in delivering papers the issue related to files where the fee earners with conduct to the particular files had left the firm. He also stated that there were "many many" files at the firm's second set of premises. These premises had been closed by the Respondent. In the case of Mr S whose file took five weeks to transfer, he was in fact removed to Ghana before his file was released to his new solicitors.

Allegations 5 and 6

10. The Respondent received a complaint from TB in relation to Mr A. TB stated that Mr A had held himself out as a solicitor and visited her in hospital to collect monies in relation to legal aid work. Mr A presented TB with a client care letter on notepaper belonging to the firm. TB stated that in total she had paid Mr A £2,060 of which she had recovered £500. Since then she had been unable to contact Mr A. The SRA obtained letters written in relation to TB's immigration application. One of them dated 23 September 2006 stated:-

> "When contacting our office please ask for (Mr A), and ensure that you quote our reference number.... in all correspondence and communications."

The Respondent wrote to TB on 16 April 2007 and stated:-

> "(Mr A) is not our caseworker but he promised to refer his cases to us because he is relocating to another country. It is surprising that (Mr A) collected money from you.... I must state that (Mr A) did not transfer your file or any file to us. (Mr A) has no right to collect any money from you when he is not on our staff."

11. The Respondent wrote further to TB on 8 May 2007 and 15 May stating that her file of papers had been forwarded to her solicitors. However, it was unclear what papers were forwarded to her solicitors in the light of the Respondent's previous statement that Mr A had not forwarded any files to the firm. The letter of 8 May also explained that the Respondent had sent an enquiry agent to Nigeria to track down Mr A regarding the allegations.

12. The Respondent told the SRA that he had not in fact instructed an enquiry agent in Nigeria but had made enquiries with people in his community.

13. The LCS received a complaint from AA regarding Mr A, who was seeking residency for himself and his family. AA stated that he had three separate meetings with Mr A at the firm's offices, correspondence was sent to the firm's address and on each occasion in the offices AA saw Mr A collecting his post from the receptionist and messages left for Mr A at the firm reached him. On 10 February 2008 the Respondent wrote to the LCS regarding AA's complaint. He stated "I write to confirm that (Mr A) was not and is not a fee earner at (the firm)."

Allegations 7 and 8

14. On 2 February 2009 the SRA received a complaint from Mr & Mrs T concerning the Respondent's role in a conveyancing transaction. Mrs OS was facing repossession of a property by her lender. It appeared that Mr & Mrs T had exchanged contracts with Mrs OS in connection with their purchase of the property on 12 October 2007. Mr & Mrs T were forced to commence proceedings against her for specific performance after she had refused to complete. Mrs OS argued that she had exchanged contracts with Mr OL on 5 July 2007 in relation to the property and since his contract was earlier it took priority. The Respondent had acted for Mrs OS in her dealings with Mr OL. However, another firm acted for Mrs OS in her dealings with Mr & Mrs T.

15. As a result of the complaint to the SRA the Respondent was provided with a notice under section 44B Solicitors Act 1974 which required him to produce "all documents in possession, or in the possession of his firm (including ledger sheets) in connection with the conveyance of the property". On 5 May 2009 the Respondent forwarded to the SRA "the original documents including ledger sheets in our possession in connection with the conveyance of (the property) on behalf of Mrs OS". The file contained a note documenting the Respondent's initial attendance with Mrs OS dated 19 February 2007.

16. The file contained a copy of a contract dated 5 July 2007 between Mrs OS and Mr OL and a photocopied note which stated "Exchanged at 2.30 pm on 5/7/07. Completion on or before 18/7/07". Completion did not in fact take place on or before 18 July 2007.

17. Documents sent to the SRA accompanying the complaint from Mr & Mrs T included papers which were not included in the file provided by the Respondent under Section 44B. These included a letter from Mr OL's first firm of solicitors to Nathaniel & Co dated 12 July 2007, one week after the apparent July exchange date. It enclosed copies of the draft TR1 for approval and requisitions on title. It concluded:-

> "We shall revert again shortly with a proposed date(s) for exchange and completion."

There followed a chain of correspondence between Nathaniel & Co and ES, Mr OL's second firm which included references to arrangements for simultaneous exchange and completion and amending the purchase price up to £187,000. The contract document on the Respondent's file dated 5 July 2007 included an amendment to reflect an increased purchase price from £183,000 to £187,000. In an explanation to the SRA the Respondent stated that the increase in purchase price was to reflect the delay between the exchange of contracts and completion. No delay was apparent in

July. A letter dated 12 November 2007 from Nathaniel & Co to ES stated:-

> "Further to our telephone conversation on the exchange of Contract we enclose herewith our client's [sic] part of the Contract. We look forward to receiving the deposit and completion on or before 14/11/2007."

Notwithstanding the correspondence referring to 14 November as the completion date the matter ledger finally recorded the receipt of completion monies (£187,000) on 12 February 2008, over seven months after the alleged exchange took place.

18. The SRA checked the file obtained from ES and confirmed that there was no contract dated 5 July 2007 on that file. There was a letter from ES dated 8 December 2008 to Nathaniel & Co which included the words:-

> "The contract you refer to was exchanged between yourselves and Austin & Jed Solicitors [Mr OL's first solicitors] who transferred the file to us for completion upon the request of our client."

This appeared to have been written in response to a letter from Nathaniel & Co dated 5 December 2008 which began:-

> "We refer to the above matter in respect of which exchange of contracts took place between our respective firms on 5 July 2007 at an agreed purchase price of £187,000."

Mr and Mrs T's action against Mrs OS for specific performance would effectively determine the facts about the date upon which contracts had been exchanged between Mr and Mrs T and Mrs OS. At the time of the Tribunal hearing that litigation had not been concluded.

<u>Allegation 9</u>

19. This allegation related to an apparent sale by Mr OL to Mr OJ of the property in question, in a back to back transaction. On 14 November 2007 ES, acting for Mr OL, wrote to the Respondent requesting an undertaking to discharge a charge on the property held by ME. The Respondent replied on 15 November 2007 and stated that he would use his best endeavours to redeem the mortgage. However, he did undertake to send a signed transfer on completion. On the same day ES wrote again to Nathaniel & Co and stated that an undertaking had to be given directly to A & Co that they would redeem the charge on the property in favour of ME. It further stated:-

> "You will give (A & Co) a further undertaking that you will get your client to sign a Transfer between your client and their client for the sale and purchase of the property and that on completion of the Transaction, you will forward to them the duly executed Transfer".

The Respondent appeared to have questioned A & Co's involvement in the transaction. A file note recorded that A & Co did not have any clients by the name of OL or OJ. Furthermore A & Co stated that they were unaware of the transaction and the letter from ES must have been wrong. Notwithstanding the result of this

telephone conversation between the Respondent and A & Co, the file contained signed instructions from Mrs OS which authorised Nathaniel & Co to give an undertaking to A & Co that they would redeem the mortgage on completion and provide them with a DS1. In his response to the SRA the Respondent provided further paperwork which had not been included under the Section 44B notice. These papers included a mortgage offer from KM to SC LLP in respect of Mr OJ and his purchase of the property. It therefore appeared that Mr OJ had come to an agreement with Mr OL to purchase the property from him. The mortgage was to be in the sum of £215,995 based on a purchase price of £239,995.

20. Further paperwork also included a number of undated, draft TR1 forms. Some were handwritten and accurately reflected the transaction. However, a number of the forms referred to Mrs OS as the transferor and Mr OJ as the transferee of the property, and each referred to the purchase price of £239,995. The incorrect forms would therefore have limited Mr OL's role in the transaction to simply taking whatever profit was made from his sale. He would never have been registered as the proprietor with the Land Registry and therefore would not have been able to pass good title on to Mr OJ. Many of the incorrect TR1 forms had been amended to accurately reflect the transaction details. However, there were also forms which had not been amended and were signed by the Respondent. The Respondent explained that he had received assurances from ES that if he signed the TR1 form they would make the necessary amendments.

21. The SRA wrote to the Respondent on a number of occasions requesting further information, clarification and explanations for the manner in which this transaction proceeded. The Respondent made various responses to the SRA which were not always consistent.

22. The Tribunal reviewed the documents submitted by the Applicant including:

    (i) Rule 5 Statement dated 21 August 2009 with exhibits;

    (ii) Rule 7 Statement dated 6 May 2010;

    (iii) Outline opening statement on behalf of the Applicant prepared by Michael McLaren QC dated 1 December 2010;

    (iv) Judgment in Lipman Bray (a firm) -v- Robert Francis Hillhouse, Wendy Jacob 1987 WL 492130 (Court of Appeal);

    (v) Statement of Applicant's costs dated 30 November 2010;

    (vi) Copy letter dated 30 November 2009 from George M Marriott (formerly the Applicant) to the Respondent being a notice to admit documents exhibited to the Rule 5 Statement;

    (vii) Copy letter dated 17 May 2010 from Russell Jones & Walker to the Applicant, being a notice to admit documents exhibited to the Rule 7 Statement.

23. The Respondent had not submitted any documents for consideration by the Tribunal.

Witnesses

24. There were no witnesses.

Findings as to Fact and Law

Allegation 1

25. Allegation 1 involved an alleged breach of Rule 1(a) and (d) of the Solicitors Practice Rules 1990. It concerned the provision of misleading statements to prospective professional indemnity insurers in circumstances where the Respondent knew that such statements were incorrect and inaccurate. Dishonesty was alleged but not as an essential feature. The SRA submitted that the Respondent had provided misleading statements and invited the Tribunal to draw the inference that the statements and substantial discrepancies in the estimated firm's fees must have been perpetrated to secure more advantageous premia. The Applicant also submitted that there was a substantial difference between not answering questions and providing an inaccurate answer. It was further submitted that the Respondent knowingly gave false answers.

26. In respect of the Respondent's completion of insurance proposal forms in which he failed to disclose that he had appeared before the Tribunal and suffered a reprimand, the Tribunal found this allegation to have been proved to the higher standard. It constituted dishonesty seen both from an objective and a subjective point of view. It was clear from the fact that the Respondent completed one proposal form disclosing his Tribunal conviction and signed declarations of truth in respect of all the proposal forms, that he knew he should have disclosed the conviction. A professional indemnity insurance proposal form is a very important document. The Respondent had stated that he had completed it in "utmost good faith" but this was clearly not the case. The Tribunal did not consider, however, that the Applicant had proved on the evidence that the Respondent's statements as to future earnings were incorrect and inaccurate. These were estimates and might legitimately vary.

Allegation 2

27. This allegation related to failure to adequately supervise fee earners. The Tribunal found this to have been proved on the papers. There were several and serious examples of the failure and the Tribunal noted particularly that the Respondent had been unaware that a partner had resigned for some four months after the event took place. The Respondent had admitted the allegation in his response to the SRA of 23 February 2009.

Allegation 3

28. The allegation related to alleged breaches of Rule 15 of the Solicitors Practice Rules and Principle 13.02 of the Guide to the Professional Conduct of Solicitors 1999, concerning failure to provide client care letters and cost information to clients. The Tribunal found this allegation to have been proved on the papers. The Respondent had admitted the allegation in his response to the SRA of 23 February 2009.

Allegation 4

29. This allegation related to a breach of Principle 12.13 of the Guide to the Professional Conduct of Solicitors 1999 and Rule 1 of the Solicitors Practice Rules and rule 2.02 and 5.01(g) of the Code involving failure to deliver promptly clients' papers on termination of the retainer. Again the Respondent had admitted this allegation to the SRA in his response, and the Tribunal found it to have been proved on the papers.

Allegation 5

30. This allegation related to the Respondent having misled a client. The SRA submitted that TB was clearly a client of Nathaniel & Co and that there were two respects in which the Respondent had misled TB. His statement in correspondence that an enquiry agent had been sent to Nigeria to track down Mr A was untrue by his own admission. There had been no response by the Respondent to this allegation that he misled TB. Secondly the Respondent's contention that Mr A was not a caseworker was rebutted by the evidence that he had received £5,129.27 on or before 31 March 2006 and was described on the ledger as "freelance fe" which was taken to stand for "freelance fee earner". The Respondent's explanation was that the fees related to Mr A's historic work for the firm on "freelance legal aid clerking" but not as a caseworker prior to him moving elsewhere, and that these fees were not paid until 2005 and not reflected in the ledger until 2006. It was submitted that even on that basis Mr A had conducted legal aid work for the firm and was connected with it. The finding in respect of allegation 5 is set out together with that for allegation 6 in paragraph 32 below.

Allegation 6

31. As for the allegation of misleading the LCS that arose from the same contention by the Respondent that Mr A was not a fee earner at the firm, it was submitted that this was untrue and therefore misleading and a breach of the Solicitors Code of Conduct 2007 rules 1.02 and 1.06.

Findings regarding Allegations 5 and 6

32. The Tribunal found that allegations 5 and 6 had been proved. It rejected the Respondent's reliance on the description of Mr A as a freelance fee earner and noted that many employees of the firm were described in that way in the ledgers. The Tribunal also considered that the Respondent had been reckless in his representations to both the client and the LCS.

Allegations 7 and 8

33. These allegations related to a conveyancing transaction in which there were two potential purchasers and a dispute about the date upon which contracts had been exchanged with the first of them in time. Allegation 7 related to misleading the regulator and Allegation 8 to an attempt to mislead Mr and Mrs T. It was submitted that upon Mr OL (the first potential purchaser) failing to purchase for £183,000, a sale at £182,000 to Mr and Mrs T (or their company) was envisaged and according to Mr and Mrs T, contracts were exchanged. When Mr OL re-emerged and was prepared to

offer £187,000 this would have represented an additional profit of £5,000 to Mrs OS if she were able to escape from the contract with Mr and Mrs T. It was submitted that the Respondent had supported her in her efforts to do so.

34. The Applicant submitted that the Respondent had failed to put forward credible explanations and that the only evidence which referred to 5 July 2007 was an exchange of correspondence between ES Solicitors and the Respondent's firm in early December 2008 but this did not substantiate an exchange on 5 July 2007 in respect of which ES would have had no knowledge from the file inherited from Mr OL's first firm of solicitors, as it did not contain the contract.

35. The Applicant further submitted that as the Respondent acted for the vendor in relation to the alleged exchange of contracts, he would have had personal knowledge of whether exchange did in fact occur so that if the Tribunal were to find that exchange of contracts did not occur on 5 July 2007 it was an inescapable conclusion that the Respondent must have been acting dishonestly in asserting otherwise. The Tribunal's attention was drawn to the Respondent's failure to disclose various documents on his own files in relation to the conveyance, notwithstanding the terms of the Section 44B request. It was submitted that his defence that he had not felt obliged to disclose his other files because he viewed the SRA's request as being limited to the conveyancing file, did not withstand scrutiny

36. The Applicant submitted that the contract was not exchanged on 5 July 2007 as stated by the Respondent. That contract was amended to include an increase in purchase price from £183,000 to £187,000. However the only other reference to that higher sum was in ES's letter of 30 October 2007. The Applicant submitted that if the contracts had been exchanged on 5 July it would have recorded the purchase price at £183,000 and not £187,000, and that the Respondent's explanation for this did not bear scrutiny. It was submitted that in dealing with the Regulator, the Respondent deliberately chose not to disclose documents inconsistent with his contention that exchange had occurred on 5 July 2007.

37. The Tribunal's attention was directed to the case of Lipman Bray in support of the proposition that the Tribunal could proceed to make a finding of fact about the alleged exchange of contracts in July notwithstanding that proceedings involving the same issue of fact remained unresolved elsewhere.

Findings regarding Allegations 7 and 8

38. The Tribunal considered allegation 7 and found the chronology provided by the Applicant most helpful. As to facts, the Tribunal was satisfied on the evidence, particularly the chronology of correspondence that contracts had not been exchanged with Mr OL on 5 July 2007. It was satisfied that this had been proved to the higher standard. The Tribunal was not, however, satisfied that the allegation in the Rule 7 statement that the Respondent had "fabricated his file and fabricated a contract in an attempt to mislead the SRA and third parties into believing that contracts were exchanged on 5 July 2007 when in fact this was not the case...." had been proved to the required higher standard. It was satisfied that contracts had not been exchanged on that day and it was satisfied that the Respondent had taken a selective approach in submitting papers to the SRA in response to the Section 44B notice. It did not

consider however that evidence of his intent linking these two facts was established. The Tribunal did however consider that in respect of his approach to the Regulator he had been reckless and that allegation 7 had been proved but that dishonesty had not.

39. In respect of allegation 8 the Tribunal was satisfied that the Respondent had attempted to mislead Mr & Mrs T and in so doing failed to act with integrity, contrary to Rule 1.02 of the SCC. It had made this finding to the higher standard on the same facts as in respect of allegation 7 and again found that he had acted recklessly but did not find that dishonesty had been proved. The Tribunal did not have evidence of the Respondent's intentions.

Allegation 9

40. This allegation related to failure to comply with the Law Society's guidance on property fraud and alleged that in doing so the Respondent had failed to act with integrity and acted in a manner likely to diminish public confidence in the profession contrary to Rules 1.02 and 1.06 of SCC. The Applicant's case as to the matters which should have been warning signs for the Respondent involved the unusual factors in the transaction. It was submitted that it was most surprising for the Respondent to have felt able to give an undertaking to the solicitors for a third party when those solicitors had expressly disavowed any knowledge of the arrangement and that it was likewise most surprising for the Respondent, against the background of having on his own version of events received numerous incorrect TR1s which he had to correct and return, to have felt able to sign an incorrect TR1 on the basis of an alleged oral assurance that the other solicitor would correct it. There was no evidence on the Respondent's file that he had considered any of those factors unusual in the context of the Law Society's Warning Card on Property Fraud. There had been various inconsistencies in his explanations, for example the Respondent stated that he was not aware that a lender had provided a mortgage in excess of the purchase price until the court proceedings brought by Mr & Mrs T. However, he produced papers from SC LLP who were representing Mr OJ. From these it was clear that the buyer was to receive a £17,800 cash back/remit from the seller following the completion of the matter. The Applicant submitted that a prudent solicitor would have questioned the purpose and legality of such a remit even in circumstances where he was not acting for the lender or either of the relevant buyers or sellers.

41. The Tribunal found allegation 9 to have been proved on the papers.

Mitigation

42. The Respondent had not submitted any mitigation.

Costs Application

43. The Applicant sought costs in the amount of £28,663.14. Leading Counsel explained that the investigation had been complex involving obtaining and perusing files from other firms of solicitors, and there was also a need to establish a detailed complex chronology.

Previous Disciplinary Sanctions by the Tribunal

44. The Respondent had been reprimanded by the Tribunal in 2003 in respect of his purported exercise of supervision of Nathaniel & Co when he was not entitled to do so, not being admitted for three years.

Sanction and Reasons

45. The Tribunal having found an allegation of dishonesty proved against the Respondent, and that the circumstances did not constitute an exceptional case, determined that the Respondent should be struck off the Roll of Solicitors. It had found that he had perpetrated a deliberate act of dishonesty in providing misleading statements to prospective professional indemnity insurers. This was a serious act of dishonesty. It had also taken into account the other allegations, all of which had been proved, and in respect of three of which the Tribunal had found the Respondent to have been reckless. It felt that he constituted a danger to the public who should, in the words of the Judgment in the Bolton case, be able to trust their solicitor to the ends of the earth. The Respondent's actions had been wholly unacceptable.

Costs Decision

46. The Tribunal awarded the Applicant costs as sought in the sum of £28,663.14 inclusive of VAT.

Order

47. The Tribunal Ordered that the Respondent, Nathaniel Akindele Faniyi of Nathaniel & Co, 422 Kingsland Road, Dalston, London, E8 4AA, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £28,663.14.

Dated this 7th day of February 2011
On behalf of the Tribunal

D Green
Chairman