

**On 12 January 2011, Mr Javed appealed against the Tribunal's decision on findings. The appeal was dismissed by Mr Justice Nicol. Javed v Solicitors Regulation Authority [2012] EWHC 114 (Admin.)**

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MUHAMMED ALI JAVED, (The Respondent)

Upon the application of Katrina Elizabeth Wingfield  
on behalf of the Solicitors Regulation Authority

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Miss T. Cullen (in the chair)  
Mr. E. Nally  
Mrs V. Murray-Chandra

Date of Hearing: 20th July and 1<sup>st</sup> September 2010

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## **FINDINGS & DECISION**

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### **Appearances**

Katrina Wingfield, solicitor and a member in the firm of Penningtons Solicitors LLP, Abacus House, 33, Gutter Lane, London, EC2V 8AR was the Applicant.

The Respondent, who was represented by Mrs O'Riordan from Denning Solicitors, was present.

The application to the Tribunal, on behalf of the SRA, was made on 23<sup>rd</sup> September 2009 with a Supplementary Statement made on 21<sup>st</sup> January 2010.

### **Allegations**

The allegations against the Respondent were that he had:-

- (1) Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 (SCC);

- (2) Behaved in a way which was likely to diminish the trust the public places in the legal profession in breach of Rule 1.06 SCC, in that he had been involved in fraudulent mortgage transactions;
- (3) Failed to fulfil an undertaking in breach of Rule 10.05;
- (4) Acted in breach of Rule 20.01/20.02 between 17<sup>th</sup> December 2008 and 27<sup>th</sup> February 2009 in that he had practised as a solicitor without having in force a practising certificate.

The additional allegations against the Respondent are that he:

- (5) Failed to make appropriate arrangements to close his practice, Conifer and Pines, in a proper manner in breach of Rules 1.04, 1.05 and 1.06 SCC.
- (6) From 22<sup>nd</sup> October to 9<sup>th</sup> December 2009, failed to make arrangements for the effective management of his firm contrary to Rule 5.01 of the SCC.
- (7) Failed to respond in an open, prompt and co-operative way to correspondence from the SRA, in breach of Rule 20.05 of the SCC.

### **Factual Background**

1. The Respondent, born in 1973, was admitted as a solicitor in 2005. As at the date of the hearing, his name remained on the Roll of Solicitors.
2. The Respondent had obtained a waiver and had set up the practice of Conifer and Pines on 16<sup>th</sup> April 2007. Initially he had practised on his own account but had practised in partnership with Barjinder Kumar Sharma between 11<sup>th</sup> May and 26<sup>th</sup> July 2007. From 27<sup>th</sup> November 2007 to 12<sup>th</sup> August 2009 he had practised in partnership with Azhar Naveed, a Registered Foreign Lawyer.
3. An investigation of the books of account and records of the practice of the Respondent and Mr Naveed, Conifer and Pines (“the firm”), had been commenced on 16<sup>th</sup> March 2009 by Mr Chambers, an Investigation Officer of the SRA.
4. Mr Chambers had not interviewed Mr Naveed during the course of the investigation. The books of account had been in compliance with the Solicitors’ Accounts rules in all material respects, however, a number of other serious matters, including fraudulent property transactions, had been identified and set out in the subsequent report dated 23<sup>rd</sup> June 2009.

### 14 C Avenue

5. In the report Mr Chambers set out his findings in relation to a conveyancing transaction undertaken by the firm, namely the sale of a property 14 C Avenue, on behalf of a Mr and Mrs S. Mr Chambers had examined the client file. The Respondent had informed Mr Chambers that an unadmitted clerk, a Mr Ali Shah, who was no longer employed by the firm, had had the conduct of the matter.

6. The sale of the property had been at an “agreed sale price” of £950,000 to a Mr M D S K who had been represented by Phil Solicitors. They had also been acting for the Bank of Scotland Plc in connection with a mortgage advance to be provided to the said Mr K, in the sum of £665,000.
7. An official copy of the register of title, dated 6<sup>th</sup> June 2008, had confirmed that the registered proprietors of the property were J C R S and Sally C S of 14 C. Avenue and that there had been no charge on the property.
8. Exchange of contracts and completion had taken place simultaneously on 24<sup>th</sup> June 2008 when the firm had received £950,000 from Phil Solicitors.
9. The client matter file included a number of faxes dated 24<sup>th</sup> and 26<sup>th</sup> June and 1<sup>st</sup> and 31<sup>st</sup> July 2008, containing instructions from the purported Mr & Mrs S regarding the sale proceeds. Those had borne the address of 60 N Road, Ilford. Payments had been made by the firm as requested. The final payment had been made on 30<sup>th</sup> October 2008 to Messrs Walker Morris Solicitors who had by then been instructed by the Bank of Scotland Plc. A cheque had been paid to the purported Mrs S in the sum of £4,000 and one to the purported Mr S in the sum of £8,000, both dated 30<sup>th</sup> June 2008.
10. On 7<sup>th</sup> July 2008, by which time all the payments had been made apart from the £60,000 remaining, a fax had been received from Phil Solicitors, indicating that they believed the transaction to be fraudulent. In addition, Phil Solicitors had forwarded a copy of a fax that they had received from HM Land Registry attaching a letter from the real Mr and Mrs S confirming they had not sold their house.
11. The firm had received a letter from Walker Morris on 17<sup>th</sup> July 2008 indicating that they had been instructed to investigate and referring to a similar fraudulent transaction in which the firm had acted, involving a property 190 L Road, Birmingham. A further letter dated 8<sup>th</sup> October 2008 had been sent to the firm following which the sum of £60,000 had been forwarded to Walker Morris. The firm had provided a response to Walker Morris dated 14<sup>th</sup> November 2008.
12. The Respondent had signed a Notification of Claim/Circumstance form on 12<sup>th</sup> November 2008 in the sum of £694,443.72 and forwarded it to his insurers.
13. On 9<sup>th</sup> February 2009 Walker Morris had issued proceedings against the firm on behalf of Bank of Scotland Plc claiming that the firm had been in breach of “warranty of authority” and showing a loss of £660,145.43. On 9<sup>th</sup> March 2009 the firm had written to their insurers providing a “summary of facts”.
14. Mr Chambers had interviewed the Respondent raising a number of concerns following his examination of the matter file. The Respondent had indicated that he believed he had taken all reasonable steps to confirm the true identity of the purported Mr & Mrs S. The Respondent had indicated that Mr & Mrs S had been referred by a mortgage broker, a Mr Khalid, from whom the firm had not previously accepted referrals, and whom the Respondent had met “once for about an hour”. The Respondent had been unable to provide any contact details.

15. An attendance note, dated 5<sup>th</sup> June 2008, had recorded that the purported Mr & Mrs S had attended the firm's offices and had provided certified copies of Italian passports and utility bills bearing an address at 60 N Road, Ilford, not the address of the property being sold which, according to the office copy title, had been the address of the owners. A subsequent Land Registry search of 60 N Road shows the property to have been owned by a M Y of 32 C Road, Ilford, since 2002. The documents had been certified as true copies on the same day by a Ms Ranjit Kaur of a firm of solicitors, Abbisons & Co, whose offices were 400 yards away. The attendance note indicated that the individuals had their original passports with them and had left their ID as Mr Javed had been ill and not in the office. The attendance note was initialled "AS" but the Respondent had stated that it had not been Mr Ali Shah who had met the purported Mr & Mrs S.
16. A signed client care letter had been on the file, bearing signatures of the purported Mr & Mrs S, under which the names had been written in capitals. The name "Saly" had been misspelt. The Respondent had indicated that he had assumed that to have been written by the "clients", but had not noticed the difference. He indicated it would not have concerned him as different people have slightly different variations of their names. Mr Chambers had noted variations in the signatures of the purported Mrs S on documents. The Respondent's opinion had been that there was little difference.
17. A total of £286,580 had been paid to Elixir Traders Ltd. A company search on the matter file had shown that individuals named as J C R S and Sally C S had been appointed directors of the company on 2<sup>nd</sup> February 2008, however notification of that fact had only been received at Companies House on 3<sup>rd</sup> June 2008. The documentation had shown that the company had been incorporated on 21<sup>st</sup> May 2007 and initially had one director, a Mr M S, who had still been shown as being in office on 24<sup>th</sup> June 2008. The Respondent had confirmed that information had not been noticed and would have been of concern.
18. The payment instruction of 24<sup>th</sup> June 2008 had included a payment to Mr I A in the sum of £315,000. The instruction dated 26<sup>th</sup> June 2008 had stated that this had been an error and the firm had successfully recalled that sum.
19. Also found within the matter file had been a copy of a UK passport in the name of Mr E A. The Respondent had informed Mr Chambers that it had been provided by the purported Mr & Mrs S to confirm the identity of one of the beneficiaries contained within the payment instructions, namely the Mr I A referred to above. The Respondent had stated that the names had been spelt differently but that Mr E A and Mr I A had been one and the same person. There had been no information on file to confirm Mr P-F's identity, he being another beneficiary. He had been sent £255,000 on 1<sup>st</sup> July 2008 although the letter of instruction was actually dated 31<sup>st</sup> July 2008.
20. The Respondent had informed Mr Chambers that the purported Mr & Mrs S had been purchasing a property known as Plot 160, H, Edgbaston Estate and that the £250,000 transferred to solicitors Alex Boshier had been deposit monies. A further sum of £85,000 had been paid to CJD Invest. From subsequent events documented in the file it had emerged that the total sum of £335,000 had been in respect of bridging finance facilities arranged with a company known as Expedited Ltd. According to a company search the company secretary of Expedited Ltd was a Charles Julian Deacon. A

Charles Julian Deacon of the same address had been struck off the Roll of Solicitors on 1<sup>st</sup> July 1999.

21. A meeting had apparently taken place at the firm's offices on 20<sup>th</sup> June 2008 between Mr Shah, the purported Mr & Mrs S and the purported purchaser Mr Khan. There had been no attendance notes of that meeting, but a fax had been sent from the firm to Expedited Ltd that afternoon being an "application form" signed by the purchaser Mr Khan requesting a deposit of £325,000. Those events were further described in the letter from Walker Morris of 8<sup>th</sup> October 2008. There was a draft "irrevocable letter of authority" to be signed by the vendors, which had provided for the sum of £360,000, to be paid "in the manner specified by Expedited Ltd" from the proceeds of sale. The firm's response to the letter of Walker Morris had indicated that they had dealt with Expedited Ltd in the past and had understood that they provided short term loans/finance. The firm had indicated that Mr & Mrs S had informed them "that they would like a short term loan to complete the sale of their property" and "that the loan will be used to partly make up the selling price of their property...".
22. Although the Respondent had informed Mr Chambers that the fee earner had been a Mr A S, the client care letter had indicated that the Respondent would do most of the work and the insurance claim form submitted to Quinn Insurance Ltd on 21<sup>st</sup> November 2008 had identified the Respondent as the fee earner.

### 132 P Gardens

23. Mr Chambers had also examined a matter file in connection with an aborted sale of 132 P Gardens. The vendor had been a Mr S G K. An Office Copy of the register of title dated 12<sup>th</sup> June 2008 had shown the registered proprietor as S G K of 132 P Gardens, with a registered charge to the Bank of Scotland Plc (Halifax Division), dated 27<sup>th</sup> February 2006. The sale price had appeared to be £205,000. Messrs Solomons Solicitors, also of Cranbrook Road, had been acting for the purported purchaser, a Mr P K. There had been no correspondence between the firm and Solomons on the file until after "completion" monies had been received. £205,000 had been received from Solomons on 24<sup>th</sup> July 2008. The following day the same sum had been transferred back to Solomons. There had been a letter on the matter file addressed to Mr S G K at the 132 P Gardens address dated 18<sup>th</sup> July 2008 indicating that the firm could not complete that day and requesting that he attended the firm's offices with documents.
24. The matter had apparently been dealt with by Mr Naveed who had concerns about the true identity of Mr S G K as a result of which he had refused to complete the transaction.
25. The client had apparently been introduced to the Respondent by a Mr I L, a conveyancer at Solomons. Solomons had apparently been acting for both parties initially and an internal referral form on the matter file had shown that Mr S G K had been referred to them by a mortgage broker firm called D K F Management Ltd. The firm spelt the client's name incorrectly and had given the wrong postcode for the address.

26. Copy ID documents had been on file. The drivers licence had given an address of 28 The C. The client care letter had been signed and dated and from which it appeared that two attempts had been made at signing. That also appeared to have been the position on the firm's sale instruction form. The purported Mr S G K had also spelt his first name differently, namely "Steven" rather than "Stephene" and his home address as 38 R Close. Another address had been crossed out.
27. Mr Chambers had noted that in addition to there being no correspondence with Solomons on the file until after completion monies had been received, there had been no evidence that the firm itself had contacted the Halifax for a redemption figure. There had been two redemption statements on file which appeared to have been sent to B E Estate Agents. He had also noted, from an attendance not on file, that the mortgage broker, whose name had been on the referral form, had been reluctant to provide his business number.

### B S Ltd – undertaking

28. Mr Chambers had also examined a matter file for a client B S Ltd. The Respondent had informed him that Mr A S had conduct of the matter which was "a series of international transactions". There had been no evidence on the file of any legal service being provided. There had been correspondence between the firm, a firm of solicitors called Aqsa Law Chambers LLP, B S Ltd and the SRA in connection with an alleged breach of undertaking by the firm to repay Aqsa a loan of £275,000 plus interest.
29. The sum of £275,000 had been remitted to the firm by Aqsa on 19<sup>th</sup> September 2008 being a loan from their client, Mr A, for the benefit of B S Ltd. By a letter also dated 19<sup>th</sup> September 2008 the firm had provided an undertaking to repay the said sum plus interest of £22,000 on Thursday 25<sup>th</sup> September 2008. On 10<sup>th</sup> October the Respondent had provided a further written undertaking to repay Aqsa, the sum of £313,911.25 on 13<sup>th</sup> October 2008. The matter had then been reported to the SRA on 6<sup>th</sup> November 2008.
30. The Respondent had informed Mr Chambers that the loan from Mr A had been made to enable repayment by B S Ltd of a previous loan of £200,000 by I Ltd. On receipt of the monies from Aqsa the sum of £238,000 had been paid to I Ltd. A further £36,000 had been paid to V which the Respondent had described as associated with I Ltd.
31. The Respondent had stated that the firm had been unable to comply with their undertakings because their client B S Ltd had agreed alternative repayment terms direct with Mr A. The file had contained copies of letters dated November 2008 and January 2009 direct between the clients. The Respondent had confirmed to Mr Chambers on 30<sup>th</sup> March 2009 that B S Ltd had still not made repayment.
32. Further documents had been provided to Mr Chambers subsequently, including a signed client care letter indicating that the Respondent would do most of the work personally, copies of the directors' passports and a copy agreement dated 21<sup>st</sup> August 2008 which indicated that B S Ltd had contracted to sell 300,000 metric tonnes of cement at a price of USD 25,800,00 to the B N Cement Company.

### Practising uncertificated

33. Mr Chambers had identified that between 30<sup>th</sup> December 2008 and 22<sup>nd</sup> January 2009 there had been two withdrawals, totalling £500, from client bank account. The Respondent had been the sole signatory on client bank account.
34. On 27<sup>th</sup> July 2009 the SRA had written to the Respondent requesting an explanation of the matters raised by the report. No reply had been received. The matters had been referred to the Tribunal by an authorised officer on 20<sup>th</sup> August 2009.
35. Until August 2009, Mr Javed and a Mr Azhar Naveed had been partners in the firm, Conifer and Pines Solicitors. On 12<sup>th</sup> August 2009 Mr Azhar Naveed had ceased to be a partner of the firm and it therefore had ceased as a recognised partnership on that date.
36. The Respondent had applied for Temporary Emergency Recognition as a sole practitioner of the firm, which had been granted for the period between 12<sup>th</sup> August 2009 and 15<sup>th</sup> August 2009. On 3<sup>rd</sup> September 2009 the Respondent had submitted an application for recognition as a sole practitioner.
37. Prior to consideration of that application the Respondent had emailed the Operations Department of the SRA on 23<sup>rd</sup> October 2009, explaining that Conifer and Pines Solicitors had been closed down on 22<sup>nd</sup> October 2009. He had requested that any future correspondence be sent to him at his home address.
38. On 18<sup>th</sup> November 2009 the caseworker had written to the Respondent at his home address, and also to his email account, asking him what steps he had taken in closing his firm. On 20<sup>th</sup> November 2009 the caseworker had telephoned the Respondent and left a message on his answer phone asking him to respond as a matter of urgency. She had also emailed him on this date, informing him that she had tried to call and that the matter was urgent. On 27<sup>th</sup> November the caseworker had again called the Respondent and had noted that the answer phone service was no longer available. As at the end of January 2010, the Respondent had not contacted the SRA since his email of 23<sup>rd</sup> October 2009.
39. On 8<sup>th</sup> December 2009 the Committee had resolved that it was necessary to intervene into the practice in order to protect the interests of the clients (or former clients) and to refer to the conduct of Mr Javed to the Solicitors Disciplinary Tribunal.
40. Intervention had been effected on 9<sup>th</sup> December 2009 when the intervening agents had gained access to the former offices of Conifer and Pines and had taken possession of some 40 files. No banking or accounting records had been available.

### **Documentary Evidence before the Tribunal**

41. The Tribunal reviewed the Rule 5(2) and the Supplementary Statements together with their documentary exhibits. The Tribunal also had the benefit of a statement from the Respondent, written statements from Guy Osborn and Jonathan Chambers and the Applicant's written Opening Submissions.

### Submissions of the Applicant

42. The Applicant referred the Tribunal to her written Opening Submissions and took the Tribunal through the allegations and the background facts. She explained that Civil Evidence Notices had been served in respect of the written statements from Guy Osborn and Jonathan Chambers and there had been no Counter-Notices.
43. In relation to the sale of 14 C Avenue, the Applicant noted that the Respondent had confirmed both in the client care letter and upon notification to his professional indemnity insurers that he had been dealing with the matter. The Applicant submitted that from the beginning the property transaction relating to 14 C Avenue had borne the hallmarks of fraud as identified in guidance to the profession. Moreover, in and around November 2007, the Respondent had been involved in a previous matter bearing the hallmarks of mortgage fraud also involving a payment from Expedited Ltd and a bridging finance application.
44. In relation to both allegations one and two the Applicant submitted that the Respondent had been dishonest. The Applicant referred to the Respondent's conduct of the sale of 14 C Avenue and his failures in ignoring the hallmarks of mortgage fraud and referred the Tribunal to the relevant test for dishonesty referred to in both Twinsectra v Yardley [2002] UKHL 12 and in Bultitude v The Law Society [2004] EWCA Civ 1853.

### Witnesses

45. Mr Chambers, a forensic investigation officer with the SRA, gave evidence relating to his investigation and the subsequent report. He explained that when examining the file relating to 14 C Avenue, a property transaction in which it appeared that a fraud had been perpetrated on the Bank of Scotland plc, he had noted hallmarks of fraud that had been identified in guidance to the profession by means of version 2 of a warning card dated July 2002.
46. Mr Chambers said that the firm had been instructed by Mr & Mrs S in the purported sale of their property for £950,000.00. He noted that the clients had been introduced to the firm by way of a referral from a mortgage broker, Mr Khalid, whom the firm had not previously known and for whom the Respondent had had no contact details at all. Moreover, there had been apparent differences in the signatures of Mr & Mrs S and a mis-spelling of "Sally" as "Saly", and the vendors address had not been that of the property purportedly being sold by them. In addition, Mr Chambers had noted that the identity documents, namely, certified copies of Italian passports and two utility bills bearing an address not that of the property being sold, had been certified by a firm of solicitors some 400 yards away from the firm.
47. Mr Chambers said that a further hallmark had been the four written instructions received from the purported vendors to make payments from the sale proceeds of £950,000.00 to third parties including two payments totalling £286,580.00 to a company in which the filing of their appointments as directors had been made one day before the purported Mr & Mrs S had attended the firm's offices.



48. Mr Chambers explained that a very unusual aspect of the transaction had been payments from the purchase price totalling £335,000.00 made in respect of the repayment of bridging finance facilities arranged with a company called Expedited Ltd involving the purported vendors in a loan for the sale of their property.
49. Mr Chambers also detailed the unusual features on the file of the aborted sale of 132 P Gardens
50. In cross-examination, inter alia, Mr Chambers agreed that all the various signatures would not have been viewed at the same time but maintained that there were discernable variations in the signatures of the purported Mrs S. He confirmed that he had not checked the date settings on the firm's fax machine. Mr Chambers referred to the client care letter sent to the purported Mr & Mrs S and agreed that while it referred to a team it clearly indicated that the Respondent would be responsible for and have daily conduct and control of the matter. He agreed that the Respondent had told him that Mr Shah had had conduct of the matter but from his examination of the file Mr Chambers said he had not accepted that to have been the case.

### **Application for an Adjournment**

51. Mrs O'Riordan thanked the Tribunal for accommodating the various short breaks during the hearing necessary because the Respondent had been feeling unwell. She explained that unfortunately he no longer felt able to continue and in the circumstances she requested an adjournment.
52. While the Tribunal expressed its concern about matters being part-heard, it could see that the Respondent was unwell and noted the letter from his GP dated 19<sup>th</sup> November 2010. The Tribunal granted the application and re-listed the matter part-heard to 1<sup>st</sup> September 2010.

### **Witnesses**

53. The Respondent gave evidence relying on his statement. In relation to allegation 5 & 6, the Respondent insisted that acting in the best interests of his clients, he had made appropriate arrangements to close his practice in that he had informed all his clients and returned all the files that he could. He had not had money for file storage or for an accountants' report. He stressed that his firm had not been holding any clients' monies and that he had told the SRA that he was closing his firm on 23<sup>rd</sup> October 2009 (the day after he had been suspended) and had provided a contact address but that he had lost his home and had no telephone.
54. The Respondent told the Tribunal that he had set up his firm in April 2007 but that from May 2007 to date he had been dealing with the SRA. From May to July 2007, the Respondent explained that he had practised in partnership with Mr Sharma, in that they had been partners in each other's firms, but he had not known how to check Mr Sharma's status before entering into partnership and it had cost him his business life and £20,000.
55. In relation to allegation 4, the Respondent detailed the relevant chronology and stressed that when he had received his PC at the end of February 2009 although it had

an issue date of 27<sup>th</sup> February 2009 it did not say from when it was effective and he had assumed that it had been effective from 17<sup>th</sup> December 2008.

56. In relation to allegation 3, the Respondent conceded that he had failed to fulfil his undertaking but referred to his explanations to the SRA. He stressed that he had given his undertaking in the best interests of his clients to secure a loan to save their business. The Respondent said that he had been misled by the solicitor for the other party who had not informed him about the loan based on a promissory note and that therefore his undertaking was void.
57. In relation to allegation 2, the Respondent confirmed that he had acted for the purported Mr & Mrs S and that he had been aware of the green card warnings. He said that he had been referred to the broker, Mr Khalid, by an established client, although subsequently he had not been able to trace Mr Khalid.
58. The Respondent acknowledged the unusual features of the transaction but insisted that as organised fraudsters, Mr & Mrs B had provided plausible answers to all his questions. When he had queried the spelling of "Saly", Mr B had said something like "you know these women". The Respondent explained that he had not been in the office when Mr & Mrs S had attended with their original documentation but they had been seen by two members of his staff Mr I A and Ms S B hence the attendance note dated 5<sup>th</sup> June 2008 and marked "A.S". However, the Respondent agreed that at the time of his interview on 30<sup>th</sup> March 2009 he had not known who had met with Mr & Mrs S. The Respondent said that his clients had told him that the payments of the purported sale proceeds of £950,000.00 to third parties had been in respect of investments. He stressed that he had been the victim of a fraud and had not gained any personal reward. Referring to the aborted sale of 132 P Gardens, the Respondent said that on 18<sup>th</sup> July 2008 the firm had written to the purported vendor because Mr Naveed had been concerned about his identity.
59. In cross-examination, the Respondent explained that the 41 files left in his premises had been closed immigration matters. He agreed that the matter in which he had given the undertaking had been a new field of work for him - corporate work; and that he had made a complaint about the solicitor to whom he had given the undertaking although he did not know its outcome.
60. In relation to questions about an earlier fraudulent matter; 190 L Road, the Respondent did not agree that it had had similar hallmarks but did agree that he had been informed about the details of that fraud in May 2008 by Walker Morris, who had also been instructed by the lender The Bank of Scotland in the matter of Mr & Mrs S. He also agreed that he had discussed the earlier matter with Mr Davies of the SRA, again, before the matter of Mr & Mrs S. The Respondent also agreed that Expedited Ltd had been involved in both matters.
61. The Respondent said that Mr & Mrs S had explained their different address by saying that they were re-furbishing their property but he had not made a note of that conversation on the file. He said that the fact that Mr & Mrs S had been directors in Elixir Traders Ltd had given him confidence in relation to the payment out of some £286,000.00 and he had not noticed the 4<sup>th</sup> June 2008 date of filing.

62. The Respondent agreed that although he had said in his statement that no non-bank lenders had been involved in the transaction, there had been a repayment to two third parties amounting to some £335,000.00 being the amount of the Expedited Ltd loan. However, the Respondent did not accept that it had been in respect of bridging facilities arranged with Expedited Ltd.
63. Although a letter from his firm to Walker Morris, dated 14<sup>th</sup> November 2008, had given details of a meeting on 20<sup>th</sup> June 2008, attended by the purported vendors and purchaser, and of the sending of a faxed application to Expedited Ltd signed by, the borrower and purported purchaser, Mr Khan, the Respondent denied knowing anything about the meeting or about the fax in his file. The Respondent explained that his former partner, who was now in Pakistan, had drafted and sent the letter of 14<sup>th</sup> November 2008. However, the Respondent agreed that in a letter dated 6<sup>th</sup> March 2009 from his firm to the indemnity insurers, he had referred to Mr S producing a completed loan application form requesting £325,000.00 for a deposit from Expedited Ltd on 20<sup>th</sup> June 2008 which his firm had faxed.
64. The Respondent insisted that he had never seen the draft promissory note dated 20<sup>th</sup> June 2008 for the sum of £360,000.00 less £25,000 associated costs referring to Expedited Ltd. He said that he had not been aware of the letter from his firm dated 23<sup>rd</sup> June 2008, the day before the completion of the matter, to Expedited Ltd agreeing to transfer a sum of £335,000.00 upon the completion of the sale. The Respondent insisted that although all payments out of client account had been made with his knowledge the letter had been sent without his authority.
65. In response to a question from the Tribunal, the Respondent explained that the words “Our Client: Mr S. A. Khan” in the Completion Statement for 14 C Avenue had just been a clerical mistake and was not linked with the purported purchaser, Mr Khan, who had visited his office.

### **Submissions on behalf of the Respondent**

66. Mrs O’Riordan referred the Tribunal to the medical evidence from the Respondent’s GP and submitted that given his mental state the Respondent had believed that he had made appropriate arrangements for the closure of his practice. Moreover, she explained that he had been unaware of the intervention and that knowing the firm’s premises to be unoccupied he had intended to deal with the outstanding files.
67. Mrs O’Riordan submitted that the Respondent had given his undertaking on the basis of misrepresentations and that the matter had yet to be concluded. As to the mortgage fraud, she submitted that Mr A S had had conduct of the matter, that the vendors’ instructions had not been unusual and that in the light of the warnings, the Respondent had asked appropriate questions and had received satisfactory answers.

### **The Tribunal’s Findings as to Fact and Law**

68. Having considered all evidence, both written and oral, the Tribunal was satisfied, so that it was sure, that all the allegations, except for allegation four, had been proved to the higher standard. Moreover, the Tribunal was satisfied that in conducting the sale of 14 C Avenue in total disregard of all the various hallmarks of mortgage fraud, the

Respondent was aware that his conduct had been dishonest by the standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest.

69. The Tribunal did not find the Respondent to be a credible witness in that his evidence was confusing, unconvincing and inconsistent. Moreover, the Tribunal was extremely concerned about the differences in the version of events given in oral evidence by the Respondent and those set out in his firm's correspondence following the discovery of the fraud, both with the solicitors for the Bank of Scotland and with the firm's indemnity insurers.
70. The Tribunal did not accept that the Respondent had taken proper notice of the various hallmarks of mortgage fraud or that he had made appropriate investigations following what he had claimed to be satisfactory answers to his questions. In cross-examination, the Respondent had confirmed that the sale of 14 C Avenue had been the first transaction for almost £1,000,000 that his firm had ever handled. The Tribunal did not accept that the Respondent had left various steps in such a matter to various and sometimes unknown members of staff.
71. The Tribunal did not accept that the Respondent did not know who had written the attendance note of the initial visit of the purported Mr & Mrs S to his firm. It noted that Conifer & Pines had been a small firm and that it was clear from the firm's letters that Respondent had had conduct of the matter. Further, the Tribunal did not accept the Respondent's evidence that he had not been aware of all of the details of the various documents in the sale file including, inter alia, the completion statement, the faxed application form and the letter to Expedited Ltd. Moreover, the Tribunal did not accept that the Respondent had not been aware of the details of all the post-completion correspondence particularly the letters to and from Walker Morris. The Tribunal found that the Respondent had had previous dealings with Expedited Ltd and that he had been aware of its involvement in the purchase of 14C. Avenue. The Tribunal did not accept the Respondent's statement that the transaction had not involved any non-Bank lending.

### **Mitigation**

72. Mrs O'Riordan referred to the medical evidence before the Tribunal and reminded the Tribunal that the Respondent had been suffering from stress since the middle of 2007, shortly after setting up his practice. She detailed the Respondent's professional history and explained that he did not believe that he had been acting dishonestly but had, albeit naively, trusted his staff.

### **Application for Costs**

73. The Applicant handed a Schedule of Costs to the Tribunal totalling £19,389.46 and asked for an order for assessed costs.
74. Mrs O'Riordan referred the Tribunal to the details of financial position of the Respondent.

### **Previous disciplinary sanctions before the Tribunal**

75. The Respondent had previously appeared before the Tribunal on 20<sup>th</sup>, 21<sup>st</sup> & 22<sup>nd</sup> October 2009.

### **Sanction and Reasons**

76. Having fully considered the submissions on behalf of the Respondent, the Tribunal was of the view that given its findings of dishonesty in relation to the first and second allegation, the appropriate penalty, in the particular circumstances, was that the Respondent be struck off the Roll of Solicitors and it so Ordered .

### **Decision as to Costs**

77. The Tribunal was satisfied that an order for costs should be made and assessed costs in the sum of £19,389.46. However, taking into consideration the financial circumstances of the Respondent, it ordered that its order for costs should not be enforced without its leave.

### **The Orders of the Tribunal**

78. The Tribunal Ordered that the respondent, Muhammed Ali Javed of 194 Hillyfields, Loughton, Essex, IG10 2PZ, 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 £19,389.46, such costs not to be enforced without leave of the Tribunal.

Dated this 29<sup>th</sup> day of October 2010

On behalf of the Tribunal

Miss T Cullen  
Chairman