No. 10338-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF [RESPONDENT 1] (First Respondent) – NAME REDACTED
and MAHIN CHANDIKA WIJESEKERA (Second Respondent)

Upon the application of Margaret Bromley
on behalf of the Solicitors Regulation Authority (SRA)

Mr R B Bamford (in the chair)
Mr J P Davies
Mr R Slack

Date of Hearing: 5th August 2010

FINDINGS & DECISION

Appearances

Margaret Eleanor Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ was the Applicant.

The First Respondent, who was present, was represented by Mr Kodagoda of Counsel. The Second Respondent did not appear and was not represented.

The application to the Tribunal, on behalf of the SRA, was made on 25th September 2009. A Supplemental Statement was made on 17th March 2010.

Allegations

The allegations against both Respondents were that they had:-

1. Made improper withdrawals from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 ("the SARs").

2. Failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7 of the SARS.

3. Failed to carry out client account reconciliations at least once every five weeks in breach of Rule 32 (7) of the SARs.

4. Failed to deliver an accountant's report for the year ending 31st March 2008 within the time required in breach of Section 34 of the Solicitors Act 1974.

5. Failed to fulfil and/or delayed in fulfilling undertakings given by their firm in breach of Rule 10.05 of the Solicitors Code of Conduct 2007 (the Code) namely:-

   (a) on 18th September 2008 to Van-Arkadie & Co.

   (b) on 19th September 2008 to Callaghan & Co.

   (c) on 20th January 2009 to Whitefields Solicitors.

   (d) in a certificate of title to Kensington Mortgages in respect of 36 M Road.

   (e) in certificates of title to Abbey National plc in respect of 40 F Drive East and 47 D Q, Uxbridge.

   (f) on about 29th August 2008 to Suriya & Douglas in Requisitions on Title.

   (g) on about 30th September 2008 to Van-Arkadie & Co in Requisitions on Title. in respect of the property 25 C Close.

   (h) on about 29th September 2008 to Van-Arkadie & Co in Requisitions on Title in respect of the property 23 B Grove.

6. Failed to comply, within the time stipulated, with a Decision of an Adjudicator dated 25th August 2009 that the former partners of Peiris Solicitors pay compensation totalling £6,606.00 to Mr TJ and costs of £1,080.00 to the LCS in breach of Rule 1.6 of the Code of Conduct. (An Order pursuant to paragraph 5(2) of the Solicitors Act 1974 was sought).

The allegations made against the Second Respondent alone on behalf of the SRA were that he had:-

7. Whilst acting for lenders and/or buyers in conveyancing transactions he:

   (a) compromised his duty to act in the best interests of his clients and/or;

   (b) compromised or impaired his integrity and/or;

   (c) compromised his independence and/or;

   (d) failed to provide a good standard of service to his clients and/or;

   (e) compromised the good repute of the solicitors' profession.

8. That he had made statements which he knew or ought to have known had been untrue in breach of Rule 1 of the Code in particular:-

   (a) On 25th September 2008 he had sent a statement of account to Mr J which had represented that the mortgage to Halifax had been or would be redeemed when it had not been.

   (b) On 16th December 2008 to TJ in response to an enquiry as to whether he had received confirmation of registration and a request for the Official Copy of the Register he had implied that registration had been completed when it had not been.

   (c) On 5th January 2009 to TJ he had stated that the application for registration in respect of 27 B Avenue had been lodged at the Land Registry in October when it had not been.

   (d) On 13th February 2009 he had informed Mr P that he had arranged the transfer of funds in respect of 201 S Avenue from the mortgage lender to his firm on or before 9th May 2007 when he had not.

   (e) On 7th January 2009 in a letter to Suriya & Douglas when he stated that arrears on the mortgage account had "now been settled and we would comply with you (sic) request to submit the DS1" when the mortgage account had not been settled.

   (f) In a text message to Suriya & Douglas on 19th January 2009 in which he indicated "discharge document for 14 Island Road posted from our Wood Green office on Saturday as [RESPONDENT 1] had not been in the office on Thursday and Friday You will get it today or tomorrow". When this was untrue.

   (g) On 22nd January 2009 in a text message to Suriya & Douglas when he indicated that he had a copy of the discharge when this was untrue.

9. That he had failed to deal promptly with correspondence from the SRA in breach of Rule 20.05 of the Code.

Preliminary Matters

The Applicant confirmed to the Tribunal that allegations 1, 7 & 8 had been made on the basis that the Second Respondent's involvement had been dishonest and/or reckless.

The Applicant explained to the Tribunal that the Second Respondent had confirmed his receipt of the Rule 5 Statement and exhibits in his e-mail of 14th October 2009 to the Applicant. The Supplemental Statement had been served by Special Delivery, as had notice of the date of the hearing, to the same last known address of the Second Respondent and neither had been returned.

In the circumstances, the Tribunal indicated that it was satisfied that the Second Respondent was aware of the proceedings. In the absence of any request from the Second Respondent for

an adjournment, the Tribunal noted that the Second Respondent appeared to have decided not to attend the hearing and directed that it should proceed in his absence.

Factual Background

1. The First Respondent, born in 1957, was admitted as a solicitor in 1991. Her name remains on the Roll of Solicitors.

2. The Second Respondent, born in 1974, was admitted in 2005. As at the date of the hearing, his name remained on the Roll.

3. At all material times the First Respondent and the Second Respondent had practised in partnership under the style of Peiris Solicitors. The First Respondent had practised at 89A High Road, London N22 6BB and from March 2008 the Second Respondent had practised at 19 London Street, Chertsey, Surrey KT16 8AA.

4. On 5th February 2009 an inspection of the books of account and other records of Peiris Solicitors had been commenced by Mr Page, Forensic Investigation Officer of the SRA leading to a report dated 20th February 2009.

5. On 20th March 2009 the adjudication panel of the SRA had resolved to intervene into Peiris Solicitors.

6. During the forensic investigation at Peiris Solicitors Mr Page had identified a minimum shortage on the client account of £586,116.62. It had subsequently been determined that the shortfall had arisen as a result of at least three conveyancing transactions in which the firm, and in particular the Second Respondent, had been involved.

7. On 5th February 2009, Mr Page had attended Peiris Solicitors' London office to conduct the forensic investigation, where he had been met by a Mr G, an unpaid receptionist. Mr G had explained to Mr Page that there were no files held at the London office as they were all dealt with by the Second Respondent at the Chertsey Office.

8. Mr G had explained that the First Respondent rarely came into the London office as she had been suffering from health problems since the birth of her first child but that her husband had attended on a daily basis to collect her correspondence so that she could deal with the matters from her home. It had been established that all of the books of account had been held at the Chertsey office.

9. After unsuccessful attempts to meet with the Second Respondent, Mr Page had eventually arranged to meet him at the Chertsey office on 9th February 2009. A second officer from the SRA, Mr Chambers, had also been in attendance. The interview had been contemporaneously recorded by Mr Page in the form of handwritten notes (signed and dated by the Second Respondent).

10. At the meeting, the Second Respondent had informed Mr Page that he had established the partnership in 2006. The First Respondent had acted as supervising partner until the Second Respondent had moved to the Chertsey office in 2008 to conduct

unsupervised conveyancing work whilst the First Respondent had conducted immigration work. That arrangement had remained in place, with any correspondence received at the London office being faxed to the Second Respondent at the Chertsey office. The Second Respondent had employed one full time member of support staff.

11. The Second Respondent had informed Mr Page about problems that he had been experiencing with another firm of solicitors, Cranbrooks Solicitors Limited ("Cranbrooks") of 79 Cranbrook Road, Ilford, Essex IG1 4PG.

12. The Second Respondent had explained to Mr Page that as Cranbrooks had not had mortgage lender panel status they had referred purchases on to Peiris Solicitors (with the authority of Cranbrooks' clients) so that Peiris Solicitors could act for the respective mortgage lenders.

13. The Second Respondent had explained that he had received between 50-60 referrals from Cranbrooks and that the person who had referred the clients was a Mr Robert Offord, an unadmitted legal assistant who had worked there. The Second Respondent had informed Mr Page that he had offered Mr Offord a position at Peiris Solicitors but that had never materialised, despite Mr Offord originally accepting a position there.

14. The Second Respondent had explained that following receipt of the funds from the lender, he would transfer the funds (minus costs and CHAPS fees) to Mr Offord at Cranbrooks so that Mr Offord would attend to the registration formalities. In the interview with Mr Page he had explained the procedure, stating:-

> "Instruction from Cranbrooks out on behalf of a lender. I contact client, get necessary instruction from Cranbrooks then submit certificate of title. If lender requires any further info I contact Cranbrooks. The purchase proceeds to completion of Cranbrook alone with S Duty [stamp duty] and send application for title, regn [registration] ... [illegible]."

15. The Second Respondent had told Mr Page that he had never informed the lenders about the above arrangement with Cranbrooks and the steps that had been undertaken by the two firms in respect of the mortgage monies received.

16. The Second Respondent had brought to the attention of Mr Page the fact that although the arrangement with Cranbrooks had worked well initially, over time a number of the registration formalities had become delayed. Those delays had sometimes resulted in the lender's agents being instructed to recover the files from the Second Respondent. The Second Respondent had informed Mr Page that although he would refer the agents to Cranbrooks, having informed them that they were in fact dealing with the registration formalities, as he had been instructed to act for the respective lenders, it had meant that he had been responsible for paying the file recovery costs, amounting to £10,460.00.

17. On 11th March 2008 HBOS had written to Peiris Solicitors listing 16 cases where completion had taken place last year and their charge had not been registered. They had requested a report within 7 days. On 6th May HBOS had written again stating that in the absence of a report on the outstanding cases since 3rd April, the Second

Respondent was no longer authorised to deal with any cases where mortgage instructions had already been issued.

18. In 2008 Abbey National had commenced proceedings against Peiris Solicitors for delivery up of files of papers relating to 40 F Drive East and 47 D Q, Uxbridge. On 29th December 2008 Claire Siddall, a litigation executive employed by Optima Legal Services Ltd, solicitors for Abbey National plc had made a witness statement in the course of those proceedings. She had stated that the firm was instructed to act on behalf of the Borrowers and Abbey National; that the advances were completed on 14th May 2008 and 1st October 2007 respectively but that as at the date of her statement the Borrowers' and the Abbey's interests remained unregistered. The firm had refused to hand over the files of papers.

19. The Second Respondent had informed Mr Page that he had visited Cranbrooks on a number of occasions in order to sort out the registration problems that had arisen. The Second Respondent had written a series of letters to Cranbrooks in which he had demanded payment of fees incurred as a result of Cranbrooks' failure to deal with registrations.

20. The Second Respondent had then brought to the attention of Mr Page a client transaction in which he had been involved. He had informed Mr Page that the transaction had contributed to the shortfall on the client account.

<u>36A M Road, London</u>

21. In about July 2007 the Second Respondent had acted for a HK in respect of the sale of 36 M Road to SM.

22. 36 M Road had subsequently been split into two flats. On or around March 2008 Ms M, a relative of SM had agreed to buy Flat 36A with the assistance of a mortgage from Kensington Mortgages. Following a referral from Cranbrooks, the Second Respondent had been instructed to act for Kensington Mortgages in respect of the loan to Ms M.

23. Cranbrooks had been acting for Mr M, the vendor and Ms M the buyer. Mr M had a mortgage on the whole property with Birmingham Midshires. Cranbrooks had also been acting in respect of the purchase of the other leasehold property, 36B M Road. The Second Respondent had confirmed that he had initially been unaware that Cranbrooks had been acting for the vendor and purchasers of the properties.

24. On 22nd May 2008 the Second Respondent had sent the completed certificate of title to Kensington Mortgages. In signing the certificate of title, the Second Respondent had given the undertakings set out in the annex to Rule 3 of the Code including that "within the period of protection afforded by the searches referred to in paragraph (b) above...(ii) to arrange for the issue of a Stamp Duty Land Tax Certificate if appropriate; (iii) deliver to the Land Registry the documents necessary to register the mortgage in your favour and any relevant prior dealings and (iv) effect any other registrations necessary to protect your interests as mortgagee". In completing the certificate of title he had also certified that he had investigated the title to the property and that "after completion of the mortgage both you and the mortgagor will have a

good and marketable title to the property and to appurtenant rights free from prior mortgages or charges...".

25. The Second Respondent had confirmed that Kensington Mortgages had released the mortgage monies to him. The Second Respondent had then forwarded, to Mr Offord at Cranbrooks, the mortgage monies so that he could deal with the completion and registration formalities. There was no evidence that the Second Respondent had obtained an undertaking from Mr Offord to redeem the existing mortgage on the freehold.

26. Some time after the matter had completed, the Second Respondent had been contacted by Kensington Mortgages' agents, Optima Legal Services, for production of the file relating to 36A, as the registration had not been completed. The Second Respondent had chased Cranbrooks to find out what was happening to no avail and had subsequently been threatened with legal action against him by Optima Legal Services.

27. At the end of October 2008, Ms M's father had attended the Chertsey office stating that the title to his daughter's property had not been registered because the mortgage on the freehold property had not been redeemed. The Second Respondent informed Mr M that that had been the responsibility of Cranbrooks, who had been acting for the vendor, and referred Mr M to Cranbrooks to resolve the matter.

28. Cranbrooks had failed to resolve the matter and the Second Respondent had informed Mr Page that on 28th or 29th November 2008 Mr M had telephoned him to say that Cranbrooks Solicitors had had the redemption monies for some time and were about to redeem the mortgage on the freehold. Mr M had requested that the Second Respondent redeem the mortgage on the whole of the property and, notwithstanding the assertion that Cranbrooks were about to undertake the task themselves, the Second Respondent had stated that he would transfer the sums as he wanted the title to the property to be registered and he had understood that the property was about to be re-possessed by the mortgage lender.

29. On 18th November 2008 the Second Respondent had remitted £213,275.78 from client account to Birmingham Midshires to redeem the mortgage on the freehold. At that date there had been insufficient money standing to the credit of Ms M in the client account and he had therefore used money belonging to other clients.

30. The Second Respondent had informed Mr Page that he had requested a letter of undertaking from Mr Offord that funds would be transferred to Peiris Solicitors' client bank account in reimbursement of the amount sent by him to Birmingham Midshires. The Second Respondent had stated:-

> "This is where I made a mistake, I got the details from the client over the phone who instructed me to redeem the mortgage. I gave the bank instructions to pay the redemption to BM Solutions. Mr M gave me £28,000 towards this."

31. The monies had never been reimbursed by Cranbrooks, leaving a shortfall of £184,447.84 on the client bank account (after receipt of £28,927.81 from Mr M).

32. On 1st February 2009, the Second Respondent had written to the Legal Complaints Service ("the LCS") regarding the actions of Cranbrooks, stating that Peiris Solicitors had insufficient funds to complete on another purchase in respect of another client, Mr K at 437 B G Road. He had explained that although he had been holding funds for Mr K from the sale of his previous property, when they had been due to complete on a subsequent purchase, there had been insufficient funds in the client bank account. In the letter the Second Respondent had stated:-

> "I am unable to handle this situation and I am requesting you to intervene immediately to settle my clients.
>
> In addition to matter Cranbrooks have also a number of other registrations for which we acted on their behalf for the lender have been unresolved as the matters have not been registered for a long period of time. I wish to move away from Peiris Solicitors but I am unable to do this as all these matters remain outstanding solely due to the attitude of Cranbrooks. This has resulted in my Firm having to pay over £10,460 to third party Solicitors to effect the registrations.
>
> I am kindly requesting you to intervene on the above matter immediately with a view of settling our client's funds which due to the above situation cannot be fulfilled. I am taking action to legally sue Messrs Cranbrooks and officers involved with Cranbrooks who are party to this but wish The Legal Complaints Service to resolve the matter in relation to the outstanding amount due to us."

33. The Second Respondent had informed Mr Page that he had not retained a letter of undertaking given by Mr Offord in respect of the transfer of the funds and stated that he had been unable to access an electronic copy because on 29th January 2009 the computers had been damaged in a confrontation at his office with Mr K and a Mr S, clients demanding recompense of their funds.

34. The Second Respondent had also alleged that on 29th January 2009 Mr K and Mr S had attended his office in company with Mr Offord, who had been assaulted. The Second Respondent had stated that Mr K and Mr S had forced Mr Offord to sign a handwritten note dated 29th January 2009 confirming that £196,215 was owed to Peiris Solicitors in respect of Mr M's matter and that the funds would be remitted back to Peiris Solicitors on 30th January 2009. The note had included a signed explanation from Mr Offord which stated that the original funds held for Mr M which should have been used for the redemption of the freehold mortgage on the whole of 36 M Road, had instead been used in another purchase conducted by Cranbrooks.

35. The Second Respondent had confirmed that he did not have the funds to reimburse the shortage on the client account. He had accepted that he had breached the SARs having misused client funds.

<u>201 S Avenue</u>

36. On 13th February 2009 the Second Respondent had informed Mr Page that there had been two further conveyancing matters that he wanted to tell Mr Page about, both of

which had related to misuse of client funds and subsequently the shortfall on the client account.

37. In 2007 the Second Respondent had acted for Mrs M in respect of a transfer of 201 S Avenue from her husband, Mr M, to her. Messrs Bala & Co, solicitors of 101 Wakefield Street, East ham, had acted for Mr M, upon the recommendation of the Second Respondent. Peiris also acted for the lender SPML.

38. The purchase had been funded with the assistance of a mortgage of £218,500.00. The Second Respondent had informed Mr Page that the transaction had become delayed after the purchaser had changed lenders from GMAC to SPML. Mrs M had received her mortgage offer from SPML on 12th February 2007.

39. On 9th May 2007 £213,500 had been sent, via CHAPS, to Bala & Co by the First Respondent, although contracts had not been exchanged and completion had not taken place. By that date the report on title had not been sent to SPML and therefore no funds had been received from them. Therefore funds belonging to another client had been used.

40. The contract showed that the matter had simultaneously exchanged and completed on

11th May 2007. On that date, Bala & Co had written to the Second Respondent enclosing the executed transfer and their client's part of the contract.

41. The certificate of title was signed by the Second Respondent and dated 2nd June 2007.

42. The mortgage deed and transfer on the file, whilst they appeared to have been signed by Mrs M were not dated.

43. On 14th June 2007 SPML had sent a fax to Peiris Solicitors stating:-

> "Thank you for your Report on Title on the above matter. We note that advance funds are required on 15 June 2007; however the following items await satisfaction before we may proceed to completion..."

A list of 8 matters requiring attention had been set out.

44. On 27th June 2007 SPML had sent a fax to Peiris Solicitors setting out a further matter which needed to be dealt with prior to completion. "An Audit valuation has been requested for this case and will be required by SPML prior to completion of the loan. This has been ordered and has been chased. The valuer has left several messages for the applicants to get in touch with them in order that an appointment can be made but they have so far not received a reply from the applicant."

45. The Second Respondent had subsequently tried to contact the husband through a variety of methods but to no avail. He had explained that he had also written to Mrs M who had not responded to his letters. There was one letter on the file to Mrs M, dated 13th November 2007, chasing the missing monies.

46. The Second Respondent had subsequently placed an OS1 on the property in favour of Peiris Solicitors. He had later been contacted by Jeya & Co, a firm of solicitors who acted for the husband, who it seemed had attempted to sell the property to his brother.

47. An office copy entry showed a charge in favour of Kensington Mortgages on the property. The Second Respondent had confirmed that he had not submitted anything to the Land Registry and had continued to protect his interest with an OS1 against the property.

48. The Second Respondent had explained to Mr Page that he had been coming under pressure from Mrs M and her husband to complete the transaction. He had stated:-

> "On the 9 May 2007 I faxed the instruction over to the bank to send over funds to Messrs Bala & Co (vendor's solicitors) and I gave the CHAPS transfer form to [RESPONDENT 1] and carried on working with the other work that I had. From recollection I didn't ask [RESPONDENT 1] to check to see if the funds had been received from SPML. I assumed they would be transferred as arranged with SPML. Subsequently the following day I realised that the funds were not sent and by the time I called Bala & Co (Mr M's solicitors) to see if they had redeemed the account, they confirmed that they had redeemed the account and paid the husband the balance of the proceeds. I called SPML and asked what the problem was and they informed me that everything was in place to release the funds but that the underwriters wanted to conduct an audit inspection. This was in fact a second inspection of the property and I was assured by SPML that there was no problem with the clients."

49. In fact the Second Respondent had not arranged for the transfer of funds from SPML prior to 9th May as the certificate of title had not been sent until 2nd June with a specified completion date of 15th June. SPML had not received the certificate of title and it had been on 27th June 2007 that SPML had advised that an audit valuation was required.

50. The Second Respondent had confirmed that he did not have the funds to reimburse the shortage on the client account.

<u>5 B Close</u>

51. In about May 2007, the Second Respondent acted for Mrs SS in her purchase of 5 B Close. The property was being purchased with a loan from Birmingham Midshires of £189,965. The Second Respondent had also been instructed by Birmingham Midshires. Pictons Solicitors LLP had been acting for the vendors, Dr and Mrs K.

52. Contracts had been exchanged on 11th June 2007 with a completion date of 26th June 2007. On that date the Second Respondent had sent £210,000 to Pictons Solicitors, to complete the purchase although he had not requested funds from Birmingham Midshires. He had therefore used funds belonging to another client.

53. The Second Respondent had explained to Mr Page:-

> "I was expecting £189,965 from the Birmingham Midshires on 26th June, and mistakenly thought that I had requested the funds from the mortgage lender but I had not. Registration was effected on the 13 March 2008. I sent the title to Birmingham Midshires on the 17 March, at this time I was still at the Wood Green branch. Birmingham Midshires then sent me a letter to the Wood Green office stating that they could not locate the customer because the title deed section could not locate the account. On the 23 March I moved into my Chertsey office, for about two weeks I did not go to the Wood Green office. This was at the same time that [RESPONDENT 1] had her baby and no one was attending the Wood Green office. Subsequently in April 2008 I found the letter at the Wood Green office. I called Birmingham Midshires and queried the account numbers given by me and that they should have a record of this account. I started checking the documents and I realised that the certificate of title had not been submitted so therefore funds had not been called for. At this time I was experiencing problems with delayed completions on most of the HBOS matters that originated from Cranbrooks Solicitors, HBOS then suspended my panel status. I tried to contact Birmingham Midshires, but because my panel status was suspended they said that without the authority of the client they would not talk to me. They insisted on a written authority from the client before communicating with me. This situation remains to date. I have attempted to contact the client to resolve but there has been no contact."

54. There was no certificate of title on the file. On 17th January 2008, eight months after completion, the Second Respondent had written to Mrs S requesting the signed mortgage deed.

55. On the file there was an undated document from Birmingham Midshires returning correspondence as they "are unable to locate the customer/s on our records." Enclosed behind the document was a letter, dated 17th March 2008, from Peiris Solicitors to Birmingham Midshires enclosing the title deeds. A signed deed, dated 26th June 2007, was enclosed. The official copy showed that the title had been transferred into Mrs S's name and registered on 13th March 2009.

<u>Mr J - 27 B Avenue</u>

56. In about August 2008, the Second Respondent had been instructed by Mr J in respect of the transfer of 27 B Avenue from himself and his brother-in-law to himself and his daughter. The property had been subject to a mortgage in favour of the Halifax. Mr J and his daughter had obtained a mortgage from Birmingham Midshires in the sum of £189,965 to buy out his brother-in-law, pay off the Halifax mortgage and obtain finances to carry out works to the property.

57. Van-Arkadie & Co had been instructed to act for Birmingham Midshires. Callaghan and Co had acted for Mr J's brother-in-law.

58. On 18th September 2008, Peiris Solicitors had written to Van-Arkadie & Co stating:-

> "We hereby give you our firm's undertaking that we will register the title in the Land Registry and forward you a certified copy of the Title Information Document in due course."

59. On 19th September 2008, Van Arkadie & Co had transferred £189,694.75 to Peiris Solicitors by telegraphic transfer. On the same day the Second Respondent had written to Callaghan and Co confirming he was in funds and was transferring £96,645.71.

60. On the same day the matter had completed and Callaghan & Co had written to Peiris Solicitors, stating:-

> "We refer to our subsequent telephone conversation when you gave your undertaking to immediately discharge the mortgage in favour of Halifax Plc dated 11 July 1989 and forward us evidence of discharge thereafter."

61. Halifax had sent to Peiris Solicitors a redemption statement showing the amount owing on the mortgage to be £77,514.42.

62. On 25th September 2008, Peiris Solicitors had written to Mr J enclosing a statement of account, showing the payment of monies to Halifax. The letter had stated:-

> "We are now enclosing the statement of Account and the letter from Mr J contents self-explanatory.
> We would proceed to register the matter and forward to you the title deeds in due course."

63. In about November 2008 TJ, Mr J's daughter, began to send emails to the Second Respondent on behalf of her father asking if the property had been registered in her father's and her sister's names.

64. The SDLT form had been completed and signed by Mr J and his daughter well in advance of completion on 19th September 2008. The Land Transaction Return Certificate showed the date of issue being 9th December 2008, almost three months after the date of completion.

65. On about 16th December, TJ had asked "Have you had the confirmation of registration and can we have a copy of the registered title please. It has been a while since we completed and we still have not received this." The Second Respondent had replied on 16th December 2008 stating "hi im out of the office till Thursday when i get back ill send it accross [sic]".

66. In replying in those terms the Second Respondent had implied that registration had been completed and that he would be sending over a copy of the registered title. However, registration had not been completed.

67. On 5th January 2009 the Second Respondent, responding to a further query about registration from TJ had stated:-

> "the application was lodged in oct [sic] but there was a requisition which had to be address [sic] in relation to the transfer and the SDLT because of the purchase price paid and the consideration this has come back over the Christmas period and would be dealt with tomorrow [sic] and we would have the registration complted [sic] by friday."

68. TJ had replied stating "Ok thank you Mahin. The Land Registry had informed me that no application had been lodged other than a priority search on the 3rd December in favour of the bank. Please check with the Land Registry." She had also asked for details of the requisitions raised and whether there was anything she could do to help.

69. On 12th January 2009 Peiris solicitors had written to HM Land Registry enclosing the AP1 form, dated 12th January 2009.

70. On 13th January 2009 the Second Respondent stated in an email to TJ:-

> "the application is in the land reg we should get it either today or tomorrow please bear with me till we get it."

71. A letter from the Land Registry stated that the application had been received on 14th January 2009. On that date a requisition had been sent by Swansea Land Registry to Peiris Solicitors making it clear that the registration could not be completed until the END, in respect of the charge dated 11th July 1989, had been received.

72. The Second Respondent had responded on 15th January 2009, stating that the END1 from Halifax would be lodged directly.

73. On 20th January 2009 the Second Respondent had written to Halifax enclosing form END1.

74. On an unknown date, Peiris Solicitors had written to Halifax stating:

> "Further to the telephone conversation we had with you we enclose the cheque in the sum of £79,139.60 being the full amount to redeem the above account."

75. Although the letter was dated 2nd October 2008, the cheque was dated 15th January 2009 and it was clear that the letter had only been sent on about January 2009.

76. On 20th January 2008 Halifax had written to Peiris Solicitors returning their cheque for £79,139.60 as they could not accept payments by cheque.

77. On or around 28th January 2009, TJ had sent the Second Respondent an email stating:-

> "Can you please tell us what is going on? You are not returning our calls. Your mobile is switched off. Office phone is also switched off and out of order message being presented. We are worried that the monies have not been sent to Halifax to redeem the mortgage, as Halifax have said that they have not received it. Can you please ring or email us and tell us what is going on."

78. On 30th January 2009 the Second Respondent had written to TJ promising that the matter would be sorted out by Monday.

79. On 30th January 2009 Mr J had written to the Second Respondent and the Complaints Handling Partner at Peiris Solicitors stating:-

> "You have on a number of occasions stated that the mortgage had been redeemed when in fact it had not been. You have also on a number of occasions stated and given assurances that you will proceed to redemption of the mortgage and have subsequently proceeded not to do so. The mortgage still exists and Halifax has written to me a number of times stating that the mortgage repayments are now in arrears and that interest has been added to the amount due. I have provided you with all the monies required for the redemption of the mortgage as at the 19th September 2008, this being the date of completion. The onus is and was on you to redeem the mortgage on that date, but you had failed to do so. Halifax has been informed that the default is with you and that any arrears and interest shall be sought from you. I have also received confirmation from the Inland Revenue today that you have not yet paid the penalty charge of £100 incurred as a result of your late submission of my SDLT form. Further penalties will be incurred if this is not paid immediately.
>
> Your actions as a solicitor are totally unacceptable and I am completely dissatisfied with the level of service that you have provided. This matter has also caused me immense distress and worry.
>
> I strongly urge you to resolve this matter with immediate effect and I note your latest assurance that the mortgage would be redeemed by no later than Monday 2 February 2009."

80. On 4th February, Peiris Solicitors had sent a CHAPs payment to Halifax for £50,000. It had not been sufficient to redeem the mortgage.

81. On 16th February 2009, Mr J had complained to the Legal Complaints Service.

82. On 13th March 2009, the Land Registry had written to Peiris Solicitors to inform them that the application had been cancelled due to their failure to reply to their requisition regarding the discharge of the charge.

83. On 28th April 2009, a Conduct Investigation Unit caseworker had written to the Second Respondent seeking his comments on an allegation that he had failed to act with integrity and had behaved in a way likely to diminish the trust the public places in him or the profession for the following reasons:-

    (a) Failure to redeem the mortgage to Halifax on completion, or subsequently;

    (b) Failure to register Title with the Land Registry;

    (c) Failure to submit the Stamp Duty Land Transaction Form on time;

    (d) Misleading the client by informing the client that the mortgage to Halifax had been redeemed when it had not.

84. The Second Respondent had not replied and, on 13th May 2009, the caseworker had sent a further letter to him requesting a response to the letter of 28th April 2009.

85. On 18th May 2009 the Second Respondent had responded by email, stating:-

> "I do not defend any of the the [sic] allegations bearing the fact that the allegation of mortgage fraud alleged by the client. The situation was created by me being cheated by certain clients on other matters which the SRA is aware. I would thnak [sic] you to take any decision to [sic] may propose to do but reiterate the fact that I am not a fraudster as alleged by the client."

86. A redemption statement sent to Mr J and his brother-in-law on 17th June 2009 showed the total sum owing as £29,619.74. Halifax had confirmed that no payments had been received since the payment on 4th February 2009.

Whitefields Solicitors – Flat1, 5 TR.

87. In about January 2009, the Second Respondent acted for Mr K B in his leasehold purchase of Flat 1, 5 TR. Whitefields Solicitors had acted on behalf of the vendors, Mr and Mrs H.

88. On 20th January 2009 contracts had been exchanged pursuant to the Law Society's formula B. Each solicitor had therefore undertaken to the other thenceforth to hold the signed part of the contract to the others' order. Each solicitor had further undertaken that by first class post, or, where the other solicitor was a member of a document exchange by delivery to that or any other affiliated exchange, or by hand delivery to that solicitor's office, to send his signed part of the contract to the other together, in the case of a purchaser's solicitor, with a bankers draft or solicitor's client account cheque for the deposit. Completion had been agreed for 3rd February 2009.

89. In breach of the undertaking the Second Respondent had not sent the deposit and contract to Whitefields Solicitors on 20th January or subsequently. Completion had not taken place on 3rd February 2009. Whitefields Solicitors had served a notice to complete on 4th February 2009, with an expiry date of 19th February 2009.

90. On 6th February the Second Respondent telephoned Whitefields Solicitors and had explained that he had been ill and would arrange for the deposit to be transferred. On 10th February 2009 a courier had delivered to Whitefields an envelope containing a cheque for £25,000 drawn on Peiris Solicitor's client account. The cheque had been without a covering letter but Whitefields Solicitors had taken the view that as they had been expecting payment then the cheque could be banked.

91. On 11th February 2009, Whitefields Solicitors had written back to Peiris Solicitors thanking them for forwarding the deposit cheque of £25,000. In the letter they had stated:-

> "We understand it has been mutually agreed between the parties that your client is to forfeit the deposit and terminate the contract as of immediate effect. In reply our client will take no further action against your client for losses suffered including interest and legal fees.
>
> We should be grateful if you could revert to us by return of fax with your confirmation whereupon we shall deem the contract as being terminated."

92. On 13th February 2009 the bank had written to Whitefields Solicitors and had explained that the payment of £25,000 had not been authorised.

93. The SRA had referred the matter to Gordons Solicitors to deal with on their behalf and on 17th March 2009 Gordons had written to the Second Respondent seeking his comments on an allegation that he had:-

    (a) Breached the undertaking given pursuant to Formula B exchange of contracts on 20th January 2009 in relation to Flat 1, 5 TR.

    (b) Acted without integrity and in a way that is likely to diminish the trust the public places in you or the profession by providing a client account cheque to Whitefields in the sum of £25,000 on 10th February 2009 which subsequently failed to clear.

94. The Second Respondent had not replied and Gordons had written again on 31st March and 9th April 2009 requesting a response to their letter of 17th March 2009.

95. On 15th April 2009, the Second Respondent had responded via email stating:-

> "This matter has been referred to our insurers.
>
> On the issue of issuing a cheque that bounced, the correct position is that I refrained from issuing the cheque and informed the client and the client was aware that the funds from Cranbrooks had to come over to our account to settle the £25,000 deposit paid into our account due to reasons set out to the SRA concerning the shortfall caused by the failure of Cranbrooks to remit the monies. Mr MK of Whitefield Solicitors was infromed [sic] of this position and it is my undersanding [sic] that he had made attepmts [sic] to contact Cranbrooks regarding the transfer of the £25,000. This matter was exchanged on a £25,000.00 deposit and on the instructions of our client Mr B who was raising the balance funds through the sale of another property where a different firm of solicitors was acting. That sale had fallen through and even if the deposit was paid there was no way our client would have completed on the contrctual [sic] completion date or even before the expiration of the notice period. The client was advised on this issue before exchanging contracts and we only proceeded to exchanger on his advise [sic] and this is in no way disputed by our client. Hence any claim for breach of contract on the failure to complete should not fall on Peiris Solicitors."

96. Gordons had written back to the Second Respondent on the same day requesting that he provide an explanation in relation to the alleged breach of undertaking and requesting an explanation in respect of Cranbrooks but had heard nothing further from him.

97. On 13th May 2009 Gordons had written to the First Respondent seeking an explanation in relation to the allegations. She had replied on 25th May 2009 stating:-

> "[Mr Wijesekera] was a Partner operating from the offices at 19 London Street, Chertsey, KT16 8AP in Surrey, and he was directly responsible for the file in question and the undertaking given to Whitefields was given by him."

Failure to carry out client account reconciliations – Allegation 3

98. The Second Respondent had informed Mr Page that he had not conducted client bank account reconciliations since March 2007 as a result of the ongoing problems with late registrations and the shortage in his client account owing to the conveyancing transactions. At the date of the investigation by the SRA it was understood that there were twelve to thirteen properties where registration of title had remained outstanding.

Failure to remedy breaches of the Rules promptly on discovery

99. The payments from client account in breach of the rules dated back to 9th May 2007 (201 S Avenue), 11 June 2007 (5 B Close) and November 2008 (36 M Road).

100. The Second Respondent had known about the breaches at the time they occurred or shortly thereafter. The First Respondent had known about the breaches when they had been brought to her attention by Mr Page on 10th February 2009.

101. Both Respondents have confirmed that they are not in a position to replace the shortfall.

Accountant's Report – Allegation 4

102. On 19th November 2008 an Administrative Officer at the SRA had written to the First and Second Respondents stating:-

> "It would appear that we have not received your accountant's report for the period ending 31 March 2008...Section 34 (2) of the Solicitors Act 1974 required this report to be delivered by 30 September 2008. Please forward this report without delay."

103. On 24th November 2008 Parvez & Co, Peiris Solicitors' accountants, had written back to the SRA explaining that the completion of the report had been delayed due to the change of accountants. They had requested a 3 week extension to complete the work.

104. On 13th January 2009 the SRA wrote again to the First and Second Respondents informing them that receipt of the report remained outstanding. The SRA requested an explanation within 14 days.

105. On 21st January 2009 the Second Respondent had written to the caseworker at the SRA stating:-

> "The accountant hs [sic] confrimed [sic] he has finalised their audit an [sic] the report would be forwarded to the SRA with the reasons for the delay. As stated in our conversation, the new accountant had to obtain the file from our previous Accountant and had to request all information needed from our

bankers addressed to themselves which was the cause of the delay. I am extremely appologetic [sic] for this situation and assure you that this would not be repeated in the future."

106. On 27th January 2009 the First Respondent had telephoned the caseworker at the SRA to inform him that she had just spoken with her accountant who had advised that he needed another couple of weeks to finalise the report. The caseworker had informed the First Respondent that, according to the Second Respondent, the report had been finalised. The First Respondent had stated she was not aware of this. It had been agreed that the First Respondent would contact the accountants and revert back to the caseworker.

107. The following day, on 28th January 2009, the accountant had called to say that the report was being finalised and would be delivered to the SRA by 5th February 2009 at the latest.

108. On 29th January 2009 the Second Respondent had written to the caseworker stating that the report would be submitted by 4th February at the latest.

109. On 26th February 2009 the report still had not been received by the SRA. The caseworker therefore had written to both parties informing them that the matter was being referred for formal adjudication in respect of their failure to deliver an accountant's report. Neither the First nor Second Respondent had responded to the letter.

110. On 30th March 2009 the Adjudicator had made a decision that both the First and Second Respondent had failed to comply with Section 34 of the Solicitors Act 1974.

First Respondent's explanation

111. On 10th February 2009 the First Respondent had been interviewed by Mr Page. She had stated that the Second Respondent had taken responsibility for the books of account and that in September 2008 she had told him that the firm's annual Accountant's Report was due, and that she had telephoned the firm's accountant who had informed her that he had completed his part and had returned the books of account to the Second Respondent. The First Respondent informed Mr Page that she had never seen a copy of the Accountant's Report and that the only accounting material she had was the bank statements which had been delivered to her home address. In late January 2009 the Second Respondent had confirmed by telephone to the First Respondent that they were dealing with the late Accountant's Report.

112. The First Respondent had said she had been aware of the Second Respondent's dealings with Mr Offord in respect of the conveyancing transactions and that Mr Offord had come to the London office on a couple of occasions to collect mail but that mainly she had only ever seen Mr Offord at the Chertsey office once it had opened.

113. The First Respondent, when shown the letter to the Legal Complaints Service written by the Second Respondent and also when shown the note written by Mr Offord, had stated that she had never seen either letter and had been unaware of the goings on. She had also informed Mr Page that she had been unaware of a shortage on the client

account or of the involvement of Mr M and Cranbrooks in the matter relating to M Road. She had informed Mr Page that she had seen a number of letters from mortgage lenders' agent which dealt with the late registration of title but that those letters had been faxed to the Second Respondent who had reassured her that the registrations would be sorted out. She had also informed Mr Page that the Second Respondent had intended to have Mr Offord work with him at the Chertsey Office.

114. During the interview the First Respondent had acknowledged that there had been a breach of the Solicitors Accounts Rules but she had maintained that she had been totally unaware of it until it had been brought to her attention by Mr Page and that she had no idea about the shortfall on the client account.

115. On 16th March 2009 [RESPONDENT 1] had written in response to the letter from the SRA dated 11th March 2009 and asserted, and the Second Respondent had confirmed, that she had been totally unaware of the shortfall on the client account and the conveyancing matters which had caused the shortfall. She had further stated that the Second Respondent had informed her that "everything was in order" and that as he had been a qualified solicitor, she had not expected him to "hide any important matters" from her. She had gone on to state that she had found the Second Respondent to have been "totally uncontrollable".

Second Respondent's explanation

116. The Second Respondent admitted that a cash shortage had existed on the client bank account at 4th February 2009 due to the various conveyancing transactions and had informed Mr Page that he did not have sufficient funds available to replace the shortage.

117. The Second Respondent had accepted that he had breached the Solicitors Accounts Rules, having misused client funds.

118. The Second Respondent, in his interview with Mr Page, had stated:-

> "I would like to say that in this and my previous statement there was never any element of dishonesty on my behalf. The shortage in my client [account] which amounts to £586,912.84 is purely down to my negligence. I would like to say that [RESPONDENT 1] is not responsible for my actions. The shortage is made up of the following;- £213,500 from S Avenue, £188,965 from 5 B Close, £184,447.84 from 36 M Road, this is £213,375.75 minus £28,927.91 which was received from the client on a CHAPS transfer and credited to the account. I am aware of the Solicitors' Accounts Rules and in particular Rule 22(5) which provides that money withdrawn in relation to a particular client account must not exceed the money held on behalf of the client. I fully accept that I have breached this rule on these three occasions."

119. The Second Respondent, in response to EWW communications from the SRA had sent an email dated 18th May 2009 to the SRA stating:-

> "As I had told Mr Page, I do not intend to challenge the decisions of the SRA. The propblems [sic] were created due to us being cheated by certain clients

> and a firm of solicitors who are now closed. I am pursuing said clients and would take steps to sue the firm of solicitors to recover the costs incurred by me due to their actions.
>
> Kindly let the firm dealing with the SDT matter known [sic] that I do not intend to defend any allegation. However, I reserve my right to make representations regarding any defences brough [sic] forward by [RESPONDENT 1]".

120. The Second Respondent had stated that the First Respondent had known about the arrangement with Cranbrooks and had been supportive of an offer he had made to Mr Offord to join Peiris Solicitors to assist him. The Second Respondent had also confirmed that the lease on the Chertsey Office was a joint tenancy between himself and Mr Offord from Cranbrooks. Furthermore, Mr Offord had keys to both the Chertsey and London offices.

14 I Road, Mitcham

121. On 20th August 2008 Peiris Solicitors had written to Suriya & Douglas confirming that they had been instructed by Mr K, the seller of 14 I Road, Mitcham. Suriya & Douglas had been instructed by the buyer. On 21st August the Second Respondent had written to Mr K confirming his instructions.

122. On 28th August 2008 Suriya & Douglas had sent Requisitions on Title to Peiris Solicitors. Those had been completed and returned on 29th August 2008. In response to question 4 "Please specify those mortgages or charges which will be discharged on or before completion?" Peiris Solicitors had put "Redeem charge with Future Mortgages Limited dated 22nd August 2005." That had constituted an undertaking on behalf of the firm to discharge that charge on or before completion.

123. Exchange and completion had taken place simultaneously on 3rd September 2008.

124. A Statement of Account, completed by Peiris Solicitors on that date, had included a sum for the redemption of Future Mortgages' charge of £203,128.22.

125. The client bank account statements of Suriya & Douglas showed payment of £250,000 in respect of 14 I Road to Peiris Solicitors on 4th September. The client bank account statements of Peiris Solicitors showed receipt of the sum of £250,000 in respect of 14 I Road on the same day.

126. On 4th September 2008 Peiris Solicitors had written to Future Mortgages requesting a redemption statement as at 5th September 2008. That had been received showing a figure required for redemption as at 30th September of £205,958.58.

127. On 17th September the Second Respondent had sent the signed contract and transfer to Suriya & Douglas.

128. On 29th September 2008 Suriya & Douglas had written to Peiris Solicitors indicating that they had not yet received the Form of Discharge relating to the Future Mortgages

charge and had requested it as soon as possible. Peiris Solicitors had replied on 30th September 2008 saying that they would chase up the lender.

129. On 30th September 2008 the Land Registry had raised a Requisition in respect of the application for registration of the buyer's title in which they had requested that a form of discharge be lodged in respect of the charge in favour of Future Mortgages. Suriya & Douglas had sent a copy to Peiris Solicitors on 1st October requesting the discharge as soon as possible.

130. Peiris Solicitors appeared to have written to Future Mortgages on 2nd October 2008 requesting a further redemption statement as at 10th October 2008. On 16th October Suriya & Douglas had written again chasing for the form of discharge and advising that they expected to receive notice of cancellation shortly.

131. On 20th October 2008 Peiris Solicitors had written to Future Mortgages saying that the account had been closed after paying the redemption figure. This had not been correct as no payments had been made to Future Mortgages.

132. On the file of Peiris Solicitors there was an undated note addressed to Ramesh which stated "I am faxing the new redemption statement I received from Future Mortgages which was faxed now. I'll put in the balance of £4,377.51 from the O/A."

133. On 23rd October Suriya & Douglas had written again to Peiris Solicitors chasing for the Form of Discharge and advising that they had received warning of cancellation.

134. Peiris Solicitors had written to Suriya & Douglas on 24th November 2008 stating "We write to confirm that we have been informed by the landlord that the discharge documents have been send [sic] to us on Friday".

135. On 2nd December 2008 Peiris Solicitors had written again to Future Mortgages saying that they were now ready to redeem the account and requesting a redemption figure as at 4 December 2008.

136. On 29th December 2008 the buyer's application to register his title had been cancelled by the Land Registry and Suriya & Douglas had informed Peiris Solicitors of that on 6th January 2009.

137. On 7th January 2009 Peiris Solicitors had written to Suriya & Douglas saying that they had been advised that the discharge documents would be with them within the next 48 hours. They had concluded by saying that the arrears "has now been settled and we would comply with you [sic] request to submit the DS1." That had been untrue as no payments had been made in respect of the mortgage.

138. On 17th February 2009 Suriya & Douglas had complained to the Legal Complaints Service. The letter had referred to a text message which had been received from Peiris Solicitors on 19th January 2009 indicating that the discharge document had been posted on Saturday and a further text on 22nd January 2009 indicating that they had a copy of the discharge and would call in in the morning. Neither of those could have been true as the charge had not been redeemed.

139. On 14th February 2009 Future Mortgages had written to the seller at the property indicating that the arrears on the mortgage amounted to £2,221.46.

140. In April 2009 Suriya & Douglas had contacted Travellers Professional Insurance Limited who was the indemnity insurers for Peiris Solicitors. Travellers Insurance had replied by email on 21st May 2009 indicating that they had not heard from the Second Respondent in relation to the matter.

141. On 15th June 2009 a caseworker in the Conduct Investigation Unit of the SRA had written separately to the Respondents raising questions arising from the transaction and requesting a response by 29th June 2009.

142. The Second Respondent acknowledged receipt on 17th June 2009 and had said he would get back with his comments before the end of the week. The First Respondent replied on 26th June 2009 and had stated that she had not been involved at all with the matter and it had been handled entirely by the Second Respondent from the Chertsey Office. She had stated that "no letters or discharge documents were received or posted from Wood Green office on Saturday or any other day by me as the matter was handled by Mr Wijesekera from the Chertsey office and there was no need to send the documents to Wood Green to be posted."

143. A substantive reply had not been received from the Second Respondent and the caseworker had written again on 3rd July 2009 raising with him the issue of failing to reply to the SRA. The Second Respondent had not replied.

144. The redemption statement for July 2009 showed a final redemption figure of £211,623.44.

145. The buyer's title had eventually been registered on 9th September 2009.

<u>25 C Close</u>

146. In about September 2008 Mr and Mrs S had instructed Peiris Solicitors to act for them in the sale of their property, 25 C Close, Nuneaton. Van-Arkadie & Co (Van-Arkadie) had acted for the buyer Mrs R. The property had been subject to a mortgage in favour of JP Morgan Chase.

147. On 30th September 2008 the Second Respondent had sent completed Requisitions on Title to Van-Arkadie. In those requisitions, in answer to question 6.1, he had given an undertaking to redeem, on or before completion, the mortgage in favour of JP Morgan Chase Bank dated 1st September 2006.

148. On the same day Van-Arkadie had instructed their bank to send the purchase monies of £165,000 to Peiris Solicitors. Contracts had been exchanged and the sale completed on that date.

149. The firm's client account bank statements showed receipt of £165,000 in respect of Mr and Mrs S on 30th September 2008.

150. The mortgage had not been redeemed on 30th September. On 9th October JP Morgan Chase had sent Peiris Solicitors a redemption statement showing the amount required to redeem on 31st October as £168,594.48.

151. On 19th November 2008 the Second Respondent had written to Mr S explaining that the reason for the mortgage not being redeemed was that "the mortgage company had put in an early repayment clause for not requesting a redemption statement one month prior to redemption of the account." He had gone on to state "We assure you that the matter would be resolved by Friday 21st November 2008."

152. On 6th April 2009 Van-Arkadie had written to JP Morgan Chase confirming that the responsibility to redeem the charge lay with Peiris Solicitors and that they had not discharged their undertaking given to Van-Arkadie. JP Morgan Chase had replied on 9th April confirming that their charge remained in place.

153. On 22nd April 2009 Mr and Mrs S had complained to the Law Society. They had said that they had received a letter from JP Morgan Chase saying that the mortgage had not been redeemed; that they had contacted Peiris Solicitors and been told that they had made a mistake and would pay it off soon.

154. On 20th May 2009 JP Morgan Chase had written again to Van-Arkadie indicating that they were on the point of enforcement.

155. On 17th June 2009 the Legal Complaints Service had informed Mr and Mrs S that they would close their file pending redemption of the mortgage as it would not be until that stage that it was clear what additional costs had been incurred by Mr and Mrs S. On the same day the file had been transferred to the Conduct Investigation Unit and the caseworker had written to the Respondents on 7th July 2009 requesting their explanation. The First Respondent had replied on 20th July 2009 saying that the Second Respondent had been directly responsible for the matter. No reply had been received from the Second Respondent and the SRA had written again on 23rd July 2009 reminding him of his obligation to deal promptly with correspondence from the SRA. No reply had been received to that letter.

<u>23 B Grove, Milton Keynes</u>

156. In about September 2008 Peiris Solicitors had been instructed to act by the seller of 23 B Grove. Van-Arkadie had been instructed to act for the buyer. On 29th September 2008 Peiris Solicitors had completed Requisitions on Title. In response to question 6.1 "Please list the mortgages or charges secured on the property which you undertake to redeem or discharge to the extent that they relate to the property on or before completion?" Peiris Solicitors had put "Charge dated 9th September 2005 with the Governor and Bank of Ireland." The requisitions had contained a warning "A reply to this requisition is treated as an undertaking. Great care must be taken when answering this requisition."

157. Exchange of contracts and completion had taken place on 30th September 2008. On the same day Van-Arkadie had given instructions to their bank to send £210,000 to the client bank account of Peiris Solicitors.

158. Peiris Solicitors had failed to redeem the mortgage.

159. In August 2009 the sellers had instructed Pictons Solicitors and on 14th August Pictons had written to Van-Arkadie confirming they have been instructed "to resolve the issues arising from the fact that our client's mortgage with Bristol & West has not been redeemed by the conveyancing solicitors Peiris Solicitors."

160. Office copy entries dated 14th August 2009 confirmed that as at that date the charge to Bristol & West/Bank of Ireland had still not been redeemed.

161. By a letter dated 26th October 2009, the SRA had raised with the Respondents issues arising from the undertaking given in the Requisitions on Title and had requested an explanation.

162. The First Respondent had replied on 5th November 2009 saying that the matter had been entirely dealt with by the Second Respondent.

163. The Second Respondent had not responded and the SRA had written again on 23rd November 2009 informing him that the matter had been transferred to the Legal Department.

Failure to comply with the direction of the Adjudicator – Allegation 6

164. Mr J had made a complaint to the Legal Complaints Service about the Respondents' conduct in respect of the transfer of 27 B Avenue.

165. On 25th August 2009 an Adjudicator had considered the quality of the professional services provided by Peiris Solicitors. The Adjudicator had made a finding that the services provided by the solicitors had been inadequate and had made the following directions:-

> "I therefore direct Mr M C Wijesekera and Ms K D Peiris, former partners of Peiris Solicitors to pay compensation for the financial effects flowing from the inadequacies to Mr TJ of £106.
>
> I further direct that Mr M C Wijesekera and Ms K D Peiris to pay compensation for distress and inconvenience to Mr TJ of £6,500."

166. The direction was to have been carried out within 7 days of the sending of the letter enclosing the Decision and non compliance would result in the matter being referred to the SRA.

167. The Adjudicator had also directed that the Respondents pay to the Legal Complaints Service fixed costs of £1080 in connection with its investigation and adjudication of the service complaints. Copies of the Decisions had been sent separately to the Respondents on 27th August 2009.

168. The Respondents had not made payment of either the compensation or the costs and the matter had been transferred to the SRA. On 23rd September 2009, the Conduct Investigation Unit had written separately to each of the Respondents raising with them

an allegation of misconduct arising from their failure to comply with the Adjudicator's Decision.

169. The First Respondent replied on 6th October 2009. She had stated that the matter had been handled entirely by the Second Respondent and that she had known nothing about it. She had stated that she was unable to make the required compensatory payment as she did not have funds. She was unemployed and was suffering from multiple sclerosis and would not be able to work again.

170. The Second Respondent had not responded and the SRA had written to him again on 14th October 2009. He has not replied to that letter.

Failure to deal promptly with correspondence from the SRA – Allegation 9

171. As set out above the Second Respondent had failed to reply substantively to the letters from the SRA dated 15th June and 3rd July 2009 in respect of 14 I Road.

172. As set out above the Second Respondent did not reply to the correspondence from the SRA relating to 25 C Close.

173. As set out above the Second Respondent did not reply to the correspondence from the SRA relating to 23 B Grove.

174. As set out above the Second Respondent did not reply to the correspondence from the SRA relating to the Direction of the Adjudicator.

Documentary Evidence before the Tribunal

175. The Tribunal reviewed the Rule 5(2) Statement and the Supplementary Statement together with the documentary exhibits attached to those Statements. It also had the benefit of a witness statement, from the First Respondent, dated 24th July 2010, with exhibits.

Submissions of the Applicant

176. On the basis of the Notices to Admit Facts served on both Respondents, the Applicant confirmed that the facts in the Statements had not been challenged by either Respondent. Moreover, the Applicant reminded the Tribunal that both Respondents were strictly liable for any breaches under the Solicitors' Accounts Rules. In addition, as partners in the firm of Peiris Solicitors, both Respondents were liable for breaches of any undertakings given by the firm. However, as there were no admissions before the Tribunal, on the part of the Second Respondent, that post-dated the Rule 5 Statement, the allegations, as against him, should be treated as denied. The First Respondent was making partial admissions on the basis of her Witness Statement.

177. The Applicant took the Tribunal through the nine allegations and the facts in support of those allegations. In particular, she explained that allegation one, breaches of Rule 22 of the SARs, referred to improper withdrawals made from client account in the matters of 36, M. Road, 201, S. Avenue and 5. B. Close. Although, the Applicant

submitted, both Respondents were liable for the improper withdrawals in those matters, she submitted that the Second Respondent had also been dishonest in relation to those withdrawals in that he had acted with conscious impropriety.

178. The Applicant explained that the Second Respondent had made withdrawals from client account in all three matters when he had been fully aware, sometimes because he had not drawn down the funds from the lender, that there had been insufficient funds, standing to the credit of the respective clients, to meet those withdrawals with the result that monies belonging to other clients had been used.

179. Turning to allegation seven, against the Second Respondent only, the Applicant submitted that the Second Respondent had also acted dishonestly in the various factual situations amounting to breaches of Rule 1 of the Solicitors' Practice Rules 1990 or, after 1st July 2007, in breach of Rule 1 of the Code.

180. The Applicant explained that allegation seven had been put on the basis that the Second Respondent had:-

(a) Failed to register the charges of HBOS in the 16 cases listed in their letter of 11th March 2008.

(b) Failed to keep HBOS informed and to provide the report requested in their letter of 11th March 2008.

(c) Failed to register the charges of Abbey National over 40 F Drive East and 47 DQ.

(d) Failed to deliver up his file of papers to Abbey National.

(e) Delayed in redeeming the mortgage on 36M Road and in registering the charge of Kensington Mortgages.

(f) Paid £213,275.78 from his client account to redeem the Birmingham Midshires mortgage on 36A M Road when there was insufficient money standing to the credit of Ms M to fund that payment.

(g) Used funds belonging to another client to make the payment of £213,500 in respect of the purchase of 201 S Avenue.

(h) Used money belonging to other clients to pay the £210,000 in respect of the purchase of 5 B Close.

(i) Failed to get the mortgage deed signed in respect of 5 B Close until January 2008.

(j) Failed to register Mrs S's title to 5 B Close until March 2008, nine months after completion.

(k) In respect of 27 B Avenue, failed to redeem the charge in favour of Halifax Plc.

(l) Misused sums transferred to him in respect of 27 B Avenue for purposes other than the redemption of the charge in favour of Halifax Plc.

(m) Failed to lodge the SDLT Form in respect of 27 B Avenue until 9 December 2008, three months after completion.

(n) Failed to register the title of Mr J and his daughter to 27 B Avenue.

(o) Made statements which he knew or ought to have known were untrue.

(p) Provided a client account cheque to Whitefields Solicitors in respect of Flat 1, 5 TR which subsequently failed to clear.

(q) Not used the money received from Suriya & Douglas in respect of the sale of 14 I Road to redeem the charge over that property.

(r) Failed to redeem the charge over 14 I Road.

(s) Not used the money received from Van-Arkadie in respect of the sale of 25 C Close to redeem the charge over the property.

(t) Failed to redeem the mortgage on 25 C Close.

(u) Not used the money received from Van-Arkadie in respect of the sale of 23 B Grove to redeem the charge over that property.

(v) Failed to redeem the mortgage on 23 B Grove.

(w) Made statements which he knew or ought to have known were untrue.

181. The Applicant submitted that the conduct of the Second Respondent had been of the utmost seriousness in that he had sought to mislead clients, interested parties and other solicitors, both by his actions and by various statements that he had made knowing them to be untrue. The Applicant further submitted that serious damage had been done by the Second Respondent both to clients and to the reputation of the Profession.

182. In relation to the First Respondent, who had qualified in 1991, the Applicant submitted that she had abdicated all responsibility for their firm to the Second Respondent, who had handled all the bank accounts, bank reconciliations and all the transfers from client account. The Second Respondent had only qualified in June 2005, had become a partner with the First Respondent in January 2006 and had opened a branch office in March 2008. Moreover, the First Respondent had seen key letters dated 11th March 2008 and 6th May 2008 from HBOS setting out some 16 matters where charges had not been registered and complaining about her firm's failures to respond to letters. The Applicant submitted that such letters should have "set alarm bells ringing" and that it had not been sufficient for the First Respondent, as a partner, just to fax those letters to the Second Respondent at the branch office.

183. The Applicant informed the Tribunal that as at the date of the hearing some £703,503.24 had been paid out from the Compensation Fund with some

£1,456,256.73 in pending claims; the vast majority relating to conveyancing undertaken by the Second Respondent.

Submissions on behalf of the First Respondent

184. Counsel for the First Respondent referred the Tribunal to her Witness Statement and explained that his client's position was that she had been a naive victim of the Second Respondent. Counsel explained that the Second Respondent had accepted, in his interview with the SRA, that the First Respondent had not been responsible for his actions. Moreover, the Second Respondent had led the First Respondent to believe that he had the sanction of the SRA to set up a branch office in order to undertake all of the firm's conveyancing work. The First Respondent had no experience of conveyancing in that she was an immigration solicitor.

185. Counsel explained that the First Respondent had been unaware of the improper withdrawals from client account. She had only become aware of the shortfalls on 10th February 2009, by which time there had been nothing she could have done to remedy the situation and therefore she denied allegation 2. Counsel submitted that his client had been negligent but not dishonest and as a result she had made no financial gain but had lost her business, her reputation and her health.

186. As to allegations 3 and 4, the First Respondent accepted them partly but Counsel stressed that she had trusted the Second Respondent, who had taken full responsibility for the accounts and for the reconciliations. In relation to the breaches of undertakings (allegation 5) the First Respondent, again partly admitted the allegation, but believed that she could not be held responsible for all the undertakings given by the Second Respondent. Counsel submitted that as the Second Respondent had been the partner dealing with the conveyancing work in the course of which the undertakings had been given, he bore the bulk of the responsibility for those undertakings. Equally, in relation to allegation six, arising from her failure to comply with the adjudicator's decision, Counsel submitted that as those decisions arose from the Second Respondent's matters, he should be fully responsible for the compensation and costs, although as she had lent her name, the First Respondent did acknowledge some culpability.

187. In response to a question from the Tribunal, Counsel explained that when the First Respondent had entered into a partnership with the Second Respondent in January 2006, she had only known him for a few months, although she had references from a previous employer that said that he had done conveyancing work. The partnership had been formed because it had been necessary to facilitate the continuation of the Second Respondent's visa and work permit.

The Tribunal's Findings as to Fact and Law

188. Having considered all the evidence and the submissions from the Applicant and on behalf of the First Respondent, the Tribunal was satisfied that allegations 1 to 6 had been proved, to the higher standard, as against both Respondents and allegations 7 to 9, as against the Second Respondent only, had also been proved to the higher standard. The Tribunal noted that all partners are liable for breaches under the SARs and all partners are liable for undertakings given by their firm.

189. In relation to allegations 1, 7 and 8, the Tribunal was satisfied, so that it was sure, that when making improper withdrawals and in making untrue statements as detailed in the Rule 5 and in the Rule 7 Statements before the Tribunal, the Second Respondent had been aware that such withdrawals and such statements would be regarded as dishonest by the standards of reasonable and honest people and that he himself had realised, that by those standards, his conduct was dishonest. From the unchallenged and detailed evidence before the Tribunal, it was clear that the Second Respondent has been fully aware of the details of all of the relevant conveyancing transactions and the Tribunal so found.

Mitigation

190. Counsel for the First Respondent referred to his previous submissions. He stressed that his client had not been seeking to extricate herself completely from liability and accepted that she had failed to exercise sufficient supervision over her firm such as to enable her to be aware of what the Second Respondent had been doing. Counsel referred to the First Respondent's extremely poor health which had begun deteriorating in mid 2007 and he explained that it was his client's belief that the Second Respondent had taken advantage of her health problems. Counsel referred the Tribunal to the medical evidence.

191. Counsel also gave the Tribunal details of the First Respondent's personal and financial circumstances and referred the Tribunal to various previous Findings.

Application for Costs

192. The Applicant handed a Schedule of Costs to the Tribunal totalling £30,175.65. She explained that the investigation had involved the consideration and examination of large numbers of individual files recovered from the Intervention Agents.

193. Counsel for the First Respondent stressed that the majority of the costs had been incurred as a result of the actions of the Second Respondent. Both the Applicant and Counsel addressed the Tribunal on the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 629.

Sanction and Reasons

194. Having fully considered the submissions of Counsel for the First Respondent, the Tribunal considered that a period of suspension was the appropriate penalty in the particular circumstances. The Tribunal considered that the First Respondent had been extremely reckless as to her responsibilities as a partner in a firm by abrogating all her financial responsibilities to a relatively inexperienced and newly qualified solicitor/partner. She had failed to pick up and act upon evidence of problems in March 2008 and later. In effect, the Tribunal considered that she had "washed her hands" both of the accounts and of the conveyancing work in her firm, in each case regardless of the consequences of her actions.

195. The Tribunal accepted that the First Respondent had been naive but noted that such naivety was not acceptable in a partner as it could lead, as it had done, to a lack of

protection for the public and to significant damage to the reputation of the Profession. The Tribunal considered that undertakings by solicitors' firms were a key element in the integrity of conveyancing and of the trust placed in solicitors by both their lay and their professional clients.

196. While expressing sympathy for the First Respondent's ill-health, the Tribunal considered that she should be suspended for a period of two years and it so ordered. In addition, it recommended that should she decide to return to practice, the First Respondent should work in approved employment without the responsibilities of partnership and it looked to the SRA to ensure this was achieved.

197. The Tribunal also ordered that the Adjudicator's directions of 25th August 2009 be treated for the purposes of enforcement as if they were Orders of the High Court as those directions had been properly made against the First Respondent in her capacity as a partner.

198. Turning to the Second Respondent, the Tribunal, having found him to have been dishonest, and considering their responsibilities both to protect the Public and also to safeguard the reputation of the Profession, determined that the appropriate penalty was that he be struck off the Roll of Solicitors and it so ordered.

199. The Tribunal also ordered that the Adjudicator's directions of 25th August 2009 be treated for the purposes of enforcement as if they were Orders of the High Court as those directions had been properly made against the Second Respondent in his capacity as a partner.

Decision as to Costs

200. The Tribunal accepted that the majority of the costs had been incurred largely as a result of the actions of the Second Respondent and considered that he should be responsible for the greater share but it also found the First Respondent culpable and responsible for a lesser share. In the circumstances, the Tribunal Ordered the First Respondent to pay a contribution of £5,000 to the total costs of £30,175.65. However, mindful of her current financial position, the Tribunal also Ordered that such costs were not to be enforced without its leave.

201. Although the Tribunal had no information as to the means of the Second Respondent, it took into account the realistic approach of the SRA in their attempts to enforce orders for costs. In the circumstances, it determined that the Second Respondent should pay a contribution of £25,175.65 to the total costs of the proceedings and it so ordered.

The Orders of the Tribunal

202. The Tribunal Ordered that the Respondent, MAHIN CHANDIKA WIJESEKERA of, Addlestone, Surrey, KT15, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that the Adjudicator's directions of 25th August 2009 be treated for the purposes of enforcement as if they were an Order of the High Court and that he do pay a contribution to the costs in the sum of £25,175.65.

203. The Tribunal Ordered that the Respondent, [RESPONDENT 1] of Middlesex, HA8, solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the 5th day of August 2010 and it further Ordered that the Adjudicator's directions of 25th August 2009 be treated for the purposes of enforcement as if they were Orders of the High Court and that she do pay a contribution to the costs in the sum of £5,000.00 such Order not to be enforced without the leave of the Tribunal.

Dated this 17th day of September 2010
On behalf of the Tribunal

R B Bamford
Chairman