

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10340-2009

Case No. 10760-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MOHAMMED SHARIFUL ISLAM

First Respondent

and

[RESPONDENT 2]

Second Respondent

Before:

Mrs J Martineau (in the chair)

Mrs E Stanley

Mr J Jackson

Date of Hearing: 29th and 30th November 2011

Appearances

Jonathan Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

The First Respondent did not attend and was not represented.

Timothy Nesbitt, Counsel, instructed by Ambrose Appelbe, 7 New Square, London, WC2A 3RA for the Second Respondent

JUDGMENT

Allegations

1. The allegations against the First Respondent, were that:-

Contained in a Rule 5 Statement dated 29 September 2009:

1.1 He breached Section 34 of the Solicitors Act 1974 (as amended), as he had failed to deliver promptly, or at all, an accountant's report for the year ending 31 March 2008.

Contained in a Rule 7 Statement dated 3 June 2011:

1.2 He failed to deliver promptly or at all, an accountant's report for the year ending 31 March 2009, contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made hereunder;

1.3 Contrary to Rule 1(c) of the Solicitors Practice Rules 1990 ("SPR") he failed to ensure that he was fully conversant with the requirements of the Council of Mortgage Lenders Handbook ("CMLH") and/or his lender client(s) instructions;

1.4 He failed to disclose material information to lender clients;

1.5 He failed to act in his lender clients best interests;

1.6 He failed and/or delayed in complying with undertakings given in Certificates of Title.

1.7 Contrary to Rule 15 of the Solicitors Accounts Rules 1998 ("SAR") and the notes thereto, he facilitated, permitted or acquiesced in client bank account being utilised as a banking facility.

1.8 He improperly paid away funds held on behalf of lender client(s) and/or failed to utilise such funds towards the purchase of properties for which the funds were intended.

1.9 He acted contrary to Rule 1(a)(d) and (e) of the "SPR", by virtue of his acting in transactions that were suspicious and bearing the hallmarks of Money Laundering and/or Mortgage Fraud.

1.10 He failed to exercise any or adequate supervision of staff.

It was contended that in respect of the conduct represented by the allegations made above, the First Respondent had so behaved as to justify the imposition of a sanction by the Tribunal. Dishonesty was not an essential ingredient of any one of the allegations.

However, the case was put against the First Respondent that he acted dishonestly, or in the alternative recklessly in relation to his involvement in the transactions particularised in the Report, and/or his utilisation of mortgage monies received into the firm's client bank account, and used by the First Respondent for purposes other than the purchase of the properties in respect of which the funds were advanced by the lender(s).

The issue of dishonesty was a matter for the Tribunal to decide and it would be open to the Tribunal to find the allegations proved absent a finding of dishonesty.

2. The allegations against the Second Respondent were that:-

Contained in a Rule 5 Statement dated 3 June 2011

- 2.1 Contrary to Rule 1 (c) of the Solicitors Practice Rules 1990 (“SPR”), she signed Certificates of Title without having fully familiarised herself with the transactions, the subject of the Certificate of Title;
- 2.2 She failed to disclose material information to lender clients;
- 2.3 She failed to act in her lender clients best interests;
- 2.4 She failed and/or delayed in complying with undertakings contained within Certificates of Title;
- 2.5 Contrary to Rule 15 of the Solicitors Accounts Rules 1998 (“SAR”) and the notes thereto, she facilitated, permitted or acquiesced in the client bank account being utilised as a banking facility;
- 2.6 She withdrew money from client account contrary to Rule 22 of the SAR.

Documents

3. The Tribunal reviewed all of the documents submitted by the Applicant and the Respondents that included:

Applicant:

- Application dated 29 September 2009;
- Rule 5 Statement dated 29 September 2009 and exhibit “LPT1”;
- Rule 5 Statement dated 3 June 2011 and exhibit “JRG1”
- Rule 7 Statement dated 3 June 2011 and exhibit “JRG1”;
- Bundle of correspondence;
- Bundle of Authorities;
- Statement of Costs dated 24 November 2011.

First Respondent:

- E-mail correspondence with the Tribunal 22-25 November 2011

Second Respondent:

- Statement dated 12 September 2011 and exhibit “SR1”;

- Statement of Means 28 March 2011 and exhibit “SR2”;
- Position Statement dated 25 November 2011.

Preliminary Matter 1

4. The First Respondent did not appear and was not represented. The Tribunal was told by Mr Goodwin, on behalf of the Applicant, that the First Respondent had taken no part in the proceedings until 22 November 2011 when he had made an application to the Tribunal to adjourn the substantive hearing. Mr Goodwin gave the Tribunal details of the history of the proceedings to date and confirmed that a copy of the application and accompanying statements had been sent to the First Respondent at his last known address. In addition, Mr Goodwin had been in correspondence with Bark & Co Solicitors who were in contact with the First Respondent.
5. Mr Goodwin stated that he had advised Bark & Co Solicitors of his intention to make an application for substituted service. On 26 June 2011, Bark & Co had told Mr Goodwin that they were authorised to accept service of the proceedings on behalf of the First Respondent and so Mr Goodwin had not proceeded with an application for substituted service. Mr Goodwin told the Tribunal that he had then received an email from the First Respondent on 6 October 2011 in which the First Respondent had confirmed that he had received all the correspondence that had been sent by the Applicant and that he was fully aware of the proceedings and the hearing date. Mr Goodwin submitted that the Tribunal could therefore be satisfied that the First Respondent had received all the papers. In addition, the First Respondent had stated that there was an ongoing police criminal investigation that had yet to be concluded and he had told Mr Goodwin that he would not like to jeopardise any possible defence in a criminal trial by making representations at the Tribunal hearing.
6. Mr Goodwin told the Tribunal that he had suggested to the First Respondent that he seek legal advice and had asked for an update as to the current position regarding the ongoing criminal investigation. The First Respondent had advised Mr Goodwin in an e-mail dated 18 October 2011, that he was still waiting to hear of any further developments and he requested an adjournment of the Tribunal proceedings in order to allow him to deal with the criminal investigation. Mr Goodwin had subsequently reminded the First Respondent that any request for an adjournment needed to be made to the Tribunal.
7. The Tribunal was told by Mr Goodwin, that on 8 November 2011, the First Respondent had stated that it was likely that he would be charged and had repeated his request for an adjournment. Mr Goodwin had then received e-mail correspondence on 10 November 2011 from Bark & Co solicitors who had made a further request for an adjournment of the proceedings. Mr Goodwin had told Bark & Co that any request for an adjournment needed to be addressed to the Tribunal.
8. On 22 November 2011, the First Respondent had made an application to the Tribunal by e-mail to adjourn the substantive hearing on the basis that he was likely to be charged by the police within weeks. Mr Goodwin had confirmed to the Tribunal that he was instructed by the Applicant to oppose the application on the basis that the First Respondent had not yet been charged with any offence. The Tribunal had refused to adjourn the hearing until it had heard oral argument on the matter. The First

Respondent had then contacted the Tribunal again on 24 November 2011 stating that he had “been battling with depression, financial ruins and a criminal investigation”. He had stated that he was waiting to be charged and had not been given any definite dates. He also stated that he had been advised not to engage with the Tribunal proceedings as this may prejudice any criminal trial. He claimed that he had not been in control of his practice due to ill-health.

9. Mr Goodwin reminded the Tribunal that the First Respondent had not been charged with any offence and that he had been unable to say when he would be charged. Mr Goodwin stated that any criminal trial was likely to be some considerable time away and so the Tribunal proceedings would not “muddy the waters of justice” in relation to any criminal proceedings. He also pointed out that the First Respondent had not produced any medical evidence to the Tribunal.
10. Mr Goodwin invited the Tribunal to consider its own Practice Note in relation to adjournments and to be assisted by the guidance provided in the case of R v The Solicitors Disciplinary Tribunal ex parte Gallagher (1991). He reminded the Tribunal that the existence of other proceedings was not generally regarded as providing justification for an adjournment unless the proceedings related to the same or substantially the same underlying facts as formed the basis of the Tribunal proceedings and there was a genuine risk that the Tribunal proceedings may “muddy the waters of justice” in relation to the other proceedings. Mr Goodwin pointed out that the First Respondent was not facing a criminal trial. He had not even been charged.
11. Mr Goodwin stated that the observations set out in the case of Gallagher would assist the Tribunal and he referred the Tribunal to various extracts from the Judgment. He reminded the Tribunal that, in this case, there was no pending criminal trial and the First Respondent had not been charged. He stated that any criminal trial would be some time away. He told the Tribunal that the current allegations against the First Respondent were of the most serious type and, in view of the public interest and the need to protect the reputation of the profession, he asked the Tribunal to proceed with the matter. He also reminded the Tribunal that it was necessary to consider the interests of the Second Respondent in the case.
12. Mr Nesbitt, on behalf of the Second Respondent, told the Tribunal that the Second Respondent was anxious to proceed with the case.
13. The Tribunal carefully considered the matter and noted that the First Respondent had made it clear that he was aware of the proceedings but had chosen not to attend. The Tribunal reminded itself that Rule 16 (2) of The Solicitors (Disciplinary Proceedings) Rules 2007, allowed it to hear and determine the application notwithstanding that the First Respondent had failed to attend in person and was not represented at the hearing. The Tribunal accepted that there was no evidence that the current proceedings were likely to “muddy the waters of justice” in relation to any eventual criminal trial. The Tribunal also had to consider the Second Respondent’s position and decided that it was in the public interest to hear the matter. The Tribunal therefore refused the First Respondent’s application to adjourn the proceedings.

Preliminary Matter 2

14. Mr Nesbitt made an application on behalf of the Second Respondent for the hearing to be conducted in private on the grounds of exceptional hardship and exceptional prejudice. He conceded that it was the first time that this matter had been raised and agreed with the Chair that it would have been preferable for the issue to have been considered when the decision was taken to consolidate the proceedings with those relating to the First Respondent. Mr Nesbitt set out the substance of his application to the Tribunal. Mr Goodwin, on behalf of the Applicant, opposed the application and reminded the Tribunal that it was usual for proceedings to be heard in public.
15. The Tribunal carefully considered the matter but decided to refuse the application. It would only be in the most exceptional circumstances that the Tribunal would allow proceedings to be held in private and the Tribunal did not consider that those criteria had been met in this case.

Factual Background

16. The First Respondent was born on 1 March 1976 and admitted as a solicitor on 15 August 2000. His name remained on the Roll of Solicitors. The Second Respondent was born on 9 November 1956 and was admitted as a solicitor on 1 December 2004. Her name remained on the Roll of Solicitors. At all material times the Respondents carried on practice under the style of O'Sullivan Law Solicitors at 9 - 13 Osborne Street, London, E1 6TD ("the firm"). The SRA records showed that the firm commenced on 20 February 2006 and ceased on 30 September 2007. The Second Respondent was a salaried partner at the firm between 20 February 2006 and 18 June 2007.

First Respondent

Allegation 1.1

17. On 10 November 2008, the Solicitors Regulation Authority ("SRA") wrote to the First Respondent regarding the accountant's report for the firm. The report for the period ending 31 March 2008 was due to be delivered by 30 September 2008. The First Respondent was asked to forward the report without further delay. The accountant's report was not received and on 30 January 2009, a caseworker wrote to the First Respondent requesting an explanation for his failure to deliver the accountant's report by the due date. The letters were sent to the First Respondent's addresses in India and the United Kingdom.
18. On 3 March 2009, the SRA received a letter from the First Respondent's former partner who provided a letter received from the firm's accountant. The firm's accountant attached a copy of a letter that the First Respondent had sent regarding the change in partnership. The First Respondent also confirmed, in that letter, that the accountants were no longer instructed on behalf of the firm in relation to any further accounts preparation. No reply was received from the First Respondent to the SRA's letter and the matter was referred to an Adjudicator.

19. On 5 May 2009, the Adjudicator found that the First Respondent had breached Section 34 of the Solicitors Act 1974 and expected the First Respondent to deliver the outstanding accountant's report within 28 days of the date of the letter notifying him of the decision, failing which his conduct would be referred without further notice to the Solicitors Disciplinary Tribunal. The Adjudicator also stated, that if the First Respondent complied with the decision, he would be reprimanded for the late delivery of the accountant's report.
20. The First Respondent was notified of the Adjudicator's decision by way of a letter dated 8 May 2009. The letters were sent to the First Respondent's addresses in India and the United Kingdom. The First Respondent's conduct was referred to the Solicitors Disciplinary Tribunal as he failed to file the report within 28 days of the date of the letter notifying him of the decision. The Report remained outstanding.

Allegation 1.2

21. By way of a letter dated 2 December 2009, the SRA wrote to the First Respondent regarding the firm's accountant's report for the period ending 31 March 2009 which was due to be delivered on or before 30 September 2009. The Respondent did not reply or provide an explanation.
22. In a letter dated 22 April 2010, the SRA wrote to the First Respondent in relation to the outstanding report. The First Respondent failed to reply or provide an explanation. By letter dated 19 May 2010 the SRA wrote to a different address in relation to the outstanding report. The Respondent failed to reply or provide an explanation. The report remained outstanding.

Allegations 1.3 to 1.10

23. The Forensic Investigation Department of the SRA carried out an inspection at the firm which started on 17 May 2007 and which resulted in the preparation of a Report dated 27 May 2010 ("the Report").
24. The First Respondent acted for a number of lenders, to include Barclays Wealth ("Barclays") and Alliance & Leicester plc ("Alliance and Leicester") in relation to their interests as mortgage lenders in a number of conveyancing transactions. The First Respondent indicated to the Forensic Investigators ("FI") that he had been visited by officials from Barclays and their solicitors who had requested and been provided with certain documentation to enable titles and charges in respect of which Barclays had provided finance, as lender, for the purchase of properties to be perfected. The First Respondent provided a schedule to the FI in relation to those transactions where the bank and their advisors had taken documentation.
25. Following an initial fact-finding interview on 24 May 2007, the FI conducted a recorded interview with the First Respondent and his former partner [Respondent 2] on 19 June 2007. The First Respondent explained during the interview that the firm was originally set up to undertake immigration work but that it subsequently found itself in demand to undertake large amounts of residential and commercial conveyancing. The First Respondent conceded during the interview that, for various reasons, the firm had failed to deal with post completion work to the satisfaction of

lender clients and that, in a number of transactions, lenders' charges had not been registered on a timely basis and that the required searches to enable the lenders' interests to be protected had not been continued following their expiration. A further recorded interview took place with the First Respondent on 29 November 2007.

26. The Report set out the guidance to the profession in relation to the warning cards on Mortgage Fraud and Money Laundering (the "Green" and "Blue" cards respectively) as well as relevant parts of the Council of Mortgage Lenders Handbook ("CMLH"). The First Respondent conceded during interview that he had very little knowledge of the CMLH. The Report particularised a number of transactions carried out by the First Respondent and his firm in which purchaser clients were assisted by loans from Barclays and Alliance & Leicester.

Barclays Transactions

27. The FI examined nine files where Barclays provided finance to purchaser clients. The relevant files and other documentation showed substantial differences between the purported purchase prices advised to the lender and the amount actually paid in the transaction(s). The Rule 5 Statement and the Report contained details of all of the Barclays transactions. During the hearing, Mr Goodwin referred to the following transactions:-

CM Ltd and Mr A- Flats 1-8 Phoenix Court

28. The firm (Mr M) acted for CM Ltd in relation to its purchase of Flats 1-8 Phoenix Court for £1,700,000 from Mr K. The purchase price of the property was £1,700,000 as shown on the completion statement. The First Respondent signed and submitted a Report on Title to Barclays dated 11 January 2007 confirming the purchase price stated in the transfer to be £3,170,000.
29. The Report on Title contained an undertaking; "e. that we will apply all monies received from you towards the purchase of the property...". Barclays provided finance of £2,377,500 to CM Ltd based, in part, on a personal guarantee given by Mr A. The matter completed on 12 February 2007 and was registered at H M Land Registry on 22 March 2007. During interview on 29 November 2007, the FI questioned the veracity of Mr A's signature. The First Respondent maintained that he had met Mr A in person.
30. On 17 January 2007, a payment of £1,682,468.64 was made from the First Respondent's client bank account to LM Solicitors, who acted for the seller, in accordance with the completion statement. The relevant client ledger account was credited on the same date with finance provided by Barclays in the sum of £2,352,310. The property was purchased for £1,700,000, utilising the £2,352,310 provided by Barclays that resulted in a surplus not applied to the purchase of the property in the sum of £652, 310.
31. The FI noted that unexplained payments totalling £192, 274.50 were made out of the surplus funds between 19 January 2007 and 16 May 2007. The client ledger account recorded that at 19 January 2007, the sum of £504,071.58 of the mortgage advance remained in the client bank account. During interview on 29 November 2007, the

First Respondent was unable to say what the unrelated payments were for. He agreed that there was no financial or accounting necessity for the payments having been made. The First Respondent confirmed that he signed the Report on Title and the higher figure was included because that is what he was told to do.

32. In relation to the payments that appeared to be unconnected to the transaction, the First Respondent said; “I don't know what has happened. I think another things obviously, what's happened is you know following the transaction money should have been given to the client it seems that what's happened is we followed clients instructions which we shouldn't have, we acted a bit like bankers...”.
33. The First Respondent indicated that he had been relying on assurances by a Barclays manager and that; “... I think I would have been a lot more, lot more cautious because primarily because I didn't have much experience of that level of transaction the fear element would have been there, okay not having much experience with this kind of transactions offshore lending and what not, just do it a bit more carefully, that fear element would have been there and that would have pre-empted me to do a bit more cautious way of doing things...”

CM Ltd, purchase of Flats 1-12, 92 Campbell Road

34. The firm (Mr M) acted for CM Ltd in the purchase of Flats 1 – 12, 92 Campbell Road for the sum of £3,015,000 from MC Ltd. The copy contract showed that the transaction was between MC Ltd and Mr A with a memorandum of proposed sale showing the initial purchaser as RE Ltd. The property was ultimately completed in the name of CM Ltd. The client received a mortgage offer of £3,633,750 on 25 January 2007 from Barclays supported by a personal guarantee from Mr A.
35. The First Respondent signed and submitted a Report on Title dated 6 February 2007 confirming the combined purchase price of the flats as £4,845,000. The Report on Title contained an undertaking; “e. that we will apply all monies received from you towards the purchase of the property...”
36. On 9 February 2007, Barclays provided the mortgage funds in the sum of £3,357,585. On 12 February 2007, the sum of £3,015,000 was paid from the First Respondent's client bank account to L&Co Solicitors who were acting for MC Ltd. The transaction completed on 12 February 2007 but had not been registered at the Land Registry by the First Respondent when an Office Copy Entry was obtained on 25 May 2007.
37. During interview on 29 November 2007, the First Respondent indicated that he believed the post-completion work had not been undertaken on the transaction. The TR1 form dated 12 February 2007 showed the consideration as being “not for money or anything which has a monetary value”. The property was valued at £3,845,000. It was purchased for £3,015,000 with finance provided of at least £3,357,585 with the result that a substantial surplus was generated. During interview on 29 November 2007, the First Respondent admitted that there were “major fiddles”.
38. A note was found on the matter file addressed to “SB” which the First Respondent agreed in interview to be himself and which read;

“We are being chased by the lenders or client, please instruct post completion. I suggest the following:-

- (1) Register D with no value and SDLT 60, wait for that to come back (I have forged D’s signature)
- (2) Then grant leases from D to buyers”.

39. The First Respondent said he was unable to identify the author of the note and that he had not seen the note prior to being shown it during the meeting with the FI on 29 November 2007.
40. There were a number of unexplained payments made out of the surplus funds generated by the mortgage application that amounted to at least £342,585. The payments on 10 April 2007 in the sum of £10,000 to HRE Ltd and £3,700 to DB on 30 April 2007 were not entered on the client ledger account.

SP Ltd, purchase of flats at 75 Acre Lane

41. The First Respondent acted for SP Ltd in the purchase of Flats 1, 3, 4, 5, 9, 10, 11, 12, 13, 15 and 19 of 75 Acre Lane from T Ltd. The transaction was completed around March 2007 and SP Ltd had not been the original intended purchaser.
42. Finance was provided by Barclays. No loan documentation and correspondence to or from Barclays was found on the file that contained a manuscript note on its front which read "MASTER 1". The unsigned client care letter dated 22 November 2005 indicated that the original instructions were received from MP Ltd. The First Respondent confirmed during interview on 29 November 2007 that MP Ltd and Mr A were both at the same address and that they were one and the same.
43. A letter from D solicitors, dated 28 November 2005, to the First Respondent showed their client as being T Ltd and the First Respondent's client as being VC. There was no documentation to verify the identity or address of VC on the matter file. The file contained an exchanged contract dated 29 November 2005 between T Ltd and CS Ltd and a covering letter to the contract from D solicitors appeared to link VC with CS Ltd. There were no other details on the client file concerning CS Ltd.
44. The contract recorded that units 1 – 15, 17 and 19 together with parking spaces, were to be purchased for £4,585,000. Notice to Complete the purchase of the original 16 units and parking spaces addressed to CS Ltd was issued by D solicitors on 14 June 2006. Completion did not occur within the required time scale and the file contained a letter from C Homes dated 18 July 2006 that recorded the sale was revised to include the additional three units and an additional sale price of £100,000 to give the revised total sale price as £5,045,000.
45. The correspondence on the file showed that the purchase by CS Ltd was changed to a sale by T Ltd to MPS for £5,300, 000. A Notice to Complete was issued to MPSS Ltd on 1 December 2006. The purchase was not completed by that company. In a letter dated 26 February 2007 from the firm to D solicitors, it was identified that the buyers

were now SP Ltd. No agreement involving that company was found on the file reviewed by the FI.

46. The Report on Title dated 26 February 2007 was signed by the First Respondent confirming a completion date of 1 March 2006 and a combined purchase price of £7,242,000. The Report on Title contained the undertaking that; "e. That we will apply monies received from you towards the purchase of the property...". The client ledger account was credited with numerous client bank account receipts and payments between 15 June 2006 and 28 March 2007. On 9 March 2007 it was credited with monies received from Barclays amounting to £5,417,855. The purchase was completed by SP Ltd.
47. There were a number of unexplained receipts to the client ledger account prior to the finance with Barclays being secured. The sum of £980, 352.50 was paid to D solicitors on 22 November 2006. The client ledger account was charged with a number of unexplained payments, which save where otherwise stated, were authorised by VC.
48. During interview on 29 November 2007, the First Respondent commented that the unexplained payments appeared to be a use of the client account as a general bank account in that, the transactions appeared to be unrelated, one to another, and to the purchase of the property in question.
49. One 9 March 2007, the sum of £3,897,820 was paid to D solicitors. Between 12 March 2007 and 10 May 2007, there were a number of unexplained payments authorised by Mr R made out of the surplus funds generated by the mortgage application. Included in the unexplained payments was a payment of £693,500 to Feroza Housing Ltd on 28 March 2007.
50. Feroza Housing Ltd was incorporated on 7 November 2006 with the First Respondent as the sole Director, his wife as Company Secretary and his home address as the registered office of the company. During interview, the First Respondent stated that this had been done in error and that the company had been set up by a fee-earner for the benefit of Mr A.

B Ltd, Purchase of 8 Palace Gate

51. The firm (Mr M) acted for B Ltd which was a company registered in the British Virgin Islands in its purchase of 8 Palace Gate for £19,500,000. A search of the Land Registry at 5 March 2007 identified that the seller had paid £8,250,000 for the property on 18 July 2006.
52. On the matter file was an unsigned client care letter dated 7 March 2007 addressed to B Ltd together with an agreement for sale dated 14 March 2007 stating the purchase price of £19,500,000. The client received a mortgage offer of £14,625,000 dated 5 March 2007 from Barclays, to be supported by personal guarantees from Mr BS and FP (Two) Ltd each for £14, 625, 000.
53. The First Respondent signed a Report on Title dated 13 March 2007 that showed a purchase price of £19,500,000 as did the TR1 dated 14 March 2007. The Report on

Title contained an undertaking; “e. That we will apply all monies received from you towards the purchase of the property...”

54. The front page of another form TR1 found on the matter file dated 14 March 2007 showed the purchase price as being £10,225,000. On 14 March 2007, the net mortgage advance of £14,478,525 was received from Barclays. On the same date, a payment of £10,225,000 was made to complete the transaction from the First Respondent's client bank account to PS solicitors who were acting for the seller. The surplus funds, following receipt of the mortgage advance, amounted to £4,253,525 out of which there were unexplained payments. Included in the unexplained payments was the sum of £935, 000.00 paid to Feroza Housing Ltd on 27 March 2007.
55. The matter was registered with the Land Registry on 22 March 2007 in the name of B Ltd, the business of which was understood to be that of a fish restaurant. By letter dated 18 May 2007, the firm wrote to The Birkenhead District Land Registry, enclosing an amended transfer and indicating that the original application contained errors in that:-
 - the registration was to a UK, rather than a BVI, company
 - the price stated was one of non-monetary value, whereas a purchase price of £19,500,000 was paid.
56. The re-submission was incorrect because the actual consideration paid was no more than £10,225,000.

SP Ltd 2, Purchase of Harborne Bell Tower

57. The firm (Mr M) acted for SP Ltd 2 in its purchase of Harborne Tower for £2 million from JRG. The firm received instructions from Barclays to act on its behalf dated 21 March 2007. The instructions read, inter alia, that: “These specific instructions must be read in conjunction with our General Instructions as detailed in our General Instructions to Solicitors and Licensed Conveyancers (edition January 2005)”. The General Instructions were included on the matter file.
58. The First Respondent signed a Report on Title dated 27 March 2007 that confirmed the purchase price of the property to be £3,500,000. The Report on Title contained an undertaking: “e. That we will apply all monies received from you towards the purchase of the property...”
59. The sale agreement dated 5 April 2007, showed a purchase price of £2 million. On 5 April 2007, a net mortgage advance of £2,598,525 was received from Barclays. On the same day, a payment of £2 million was made to complete the transaction from the First Respondent's client bank account to MA& Co who were acting for the seller.
60. There were a number of TR1 documents found on the file. There was a front page of a TR1 showing the actual purchase price of £2 million with another showing the price of £3,500,000 but amended to record that the transaction was not for money, and a third, recording that the consideration was; “was not for money or anything which has a monetary value”.

61. The surplus funds generated by the mortgage application amounted to £598,525 out of which there were unexplained payments on 10 April 2006. The file contained a purported loan agreement between SP Ltd 2 and Mr C that showed a loan of £850,000 from Mr C to the company. The loan was never received from Mr C in the First Respondent's books but on 10 April 2006, the sum of £242,030 was paid to him out of the surplus funds generated by the mortgage application. An e-mail dated 16 March 2007 contained on the file from Mr FK's address of "makingbillions@yahoo.com" showed that Mr FK had been an interested party in the transaction from the start and to whom the sum of £180,000 was paid on 10 April 2006 out of the surplus funds generated by the mortgage application.

R Ltd, Purchase of Gladstone House

62. The firm (Mr M) acted for R Ltd in its purchase of Gladstone House for £3,125,000 from HD Ltd. A Mr FK was shown as the purchaser on the estate agents memorandum of sale with the purchase price being shown as £3,125,000. The unsigned client care letter dated 3 March 2006 was addressed to Mr FK, in which the fee earner was shown to be Mr M and the First Respondent as the supervising partner.
63. The purchase price was shown in the client care letter as £3,125,000 and Stamp Duty Land Tax was shown as £200,000 that, at 4%, would be the amount payable on a purchase price of £5 million. A Mr EAED was introduced to the transaction and a letter on the First Respondent's letterhead dated 16 May 2006 recorded that he was the business partner of Mr FK and that Mr FK remained the beneficial owner of R Ltd. The letter said that "Dr EED" would be funding the company from his private resources and borrowing from Barclays.
64. On the file, a CV for Mr EAED showed that his date of birth was 18 September 1954. The date of birth shown on a copy of his passport certified by the First Respondent as being a true copy was 23 February 1955. A further copy of a passport on the matter file showed his date of birth as 18 September 1955.
65. An email from Mr FK dated 9 May 2006 from his email address of "makingbillions@yahoo.com" showed that he provided the contents of the letter to be written by the First Respondent to the A Trustees.
66. The exchanged sale agreement dated 5 May 2006 showed the purchase price to be £3,125,000. The First Respondent signed a Report on Title dated 22 May 2006 which he submitted to Barclays showing the purchase price to be £5 million. The Report on Title contained an undertaking; "e. That we apply all monies received from you towards the purchase of the property...".
67. The completion statement from RC Solicitors, who acted for the sellers, showed the purchase price to be £3,125,000. Prior to the receipt of the mortgage advance from Barclays, unexplained receipts were received into the client ledger account.
68. On 26 May 2006, a net mortgage advance of £3,395,000 was received from Barclays via R Ltd and, on the same date, a payment of £3,109,663.67 was made to complete the transaction from the First Respondent's bank account to MA & Co Solicitors who were acting for the seller.

69. The ledger account identified further unexplained receipts into client bank account. A surplus of £285, 336.43 was generated by the mortgage application out of which there were unexplained payments made between 26 May 2006 and 26 June 2006.

W Ltd, Purchase of Oakwood

70. The firm (Mr M) acted for W Ltd in its purchase of Oakwood for £1,610,000 by way of share sale from C Ltd. Mr FK was shown as the purchaser on the estate agents notification of sale with the purchase price shown in the memorandum of sale as being £1,610,000. The unsigned and unaddressed client care letter dated 18 August 2006 was marked to Mr FK in which the fee earner was shown to be Mr M and the First Respondent as the supervising partner.
71. An unsigned valuation from S&R dated 11 September 2006 showed a valuation for the property of £3 million. A mortgage offer was received by the client in the sum of £2 million on the 20 October 2006 from Barclays. On the 27 October 2006, the First Respondent signed and delivered a Report on Title showing the purchase price to be £3 million in which there was an undertaking; "e. That we will apply all monies received from you towards the purchase of the property..." The completion statement on the file showed the purchase price to be £1, 610,000.
72. On the 30 October 2006, a net mortgage advance of £2 million was received from Barclays. On 2 November 2006 a payment of £1,610,000 was made to complete the transaction to M Solicitors LLP who were acting for the seller. The surplus funds generated by the mortgage application amounted to £390,000 out of which they were a number of unexplained payments.

Alliance and Leicester transactions

73. The FI considered 34 property transactions where Alliance & Leicester had provided finance for the purchase of properties. The total amount of money advanced by Alliance and Leicester in the 19 transactions totalled £4,109,949. The transactions were examined by the FI subsequent to the interviews conducted with the First Respondent and so were not discussed with him. The Report exemplified 5 of the 19 transactions.

Mr H Purchase of Plot 282, The Orion Building

74. The firm (Mr I) acted for Mr H in the purchase of the above property from RE UK Ltd and Alliance and Leicester instructed the firm to act on its behalf on 28 November 2006 in accordance with the provisions set out in the CMLH for England & Wales.
75. In the client care letter dated 8 December 2006 which was unsigned, the purchase price was stated to be £192,500 with the First Respondent being identified as the supervising partner. On 12 December 2006, the client received a mortgage offer of £186,996 from Alliance and Leicester. On 12 December 2006 the First Respondent signed and submitted a Certificate on Title that confirmed the purchase price to be £192,950.

76. On 14 December 2006, Alliance and Leicester submitted to the firm the net mortgage advance of £183,273 and, on the same date, a payment of £192,950 was made from the First Respondent's client bank accounts to S solicitors, who acted for the seller. The property was, in fact, purchased from C Homes (Special Projects) Ltd by RE UK Ltd at the same time as being sold by RE UK Ltd to Mr H. There was no evidence on the file to show that the First Respondent had reported this fact to his lender clients. The lease dated 15 December 2006 indicated that the premium paid by RE UK Ltd to C Homes was £158,219. There was no evidence on the matter file to show that the First Respondent had reported that fact to his lender client.

Mr K, Purchase of Plot 185, The Post Box

77. The firm (Mr I) acted for Mr K in his purchase of Plot 185 for the sum of £228,175 and Alliance & Leicester instructed the firm on 22 September 2006 to act on its behalf in accordance with the provisions set out in the CMLH. In the client care letter dated 9 October 2006, the fee earner was identified as being Mr I, with the First Respondent as the supervising partner.
78. On the 20 October 2006, Alliance & Leicester provided funds in the sum of £216,766 to the firm. The contract was dated, exchanged and completed on 23 October 2006 and payment of £228,175 was made on 24 October 2006 from the First Respondent's client bank account to S Solicitors who acted for the seller. The contract was headed "E UK Ltd, contract for sale (Leasehold)" and the property was purchased from E (UK) by T (UK) Ltd at the same time as being sold by T (UK) Ltd to Mr K. There was no evidence on the matter file to show that the First Respondent had reported that fact to his lender client. The stamp office was informed of a late change to the Seller. The seller was amended to E (UK) Ltd. As at 19 April 2007, E LLP who were acting for E (UK) Ltd believed that their client was selling to T (UK) Ltd.

Mr H2, Purchase of plot 340 Southside

79. The firm (Mr I) acted for Mr H2 in his purported purchase from T UK of Plot 340 Southside. On 6 October 2006, Alliance & Leicester instructed the firm to act on its behalf in accordance with the provisions set out in the CMLH. The client care letter dated 9 October 2006 was unsigned.
80. On 6 October 2006, Alliance & Leicester provided the client with the mortgage offer of £208,474. On 10 September 2006 the First Respondent signed and submitted a Certificate on Title confirming the purchase price to be £215,000. On 18 October 2006, Alliance & Leicester provided funds in the sum of £204,222 to the firm and a payment of £215,000 was made on that date from the First Respondent's client bank account to S Solicitors who acted for the seller. The property was, in fact, purchased from C Homes (Special Projects) Ltd by T UK Ltd at the same time as being sold by T UK Ltd to the First Respondent's client. There was no evidence on the matter file to show that the First Respondent had reported that fact to his lender client. The lease, dated 18 October 2006, indicated that the premium paid by T UK Ltd to C Homes was £180,600. There was no evidence on the matter file to show that the First Respondent had reported that fact to his lender client. The Stamp Office was informed of the late change to the Seller on the 14 and 27 March 2007.

Mr A - Assignment of a lease of 21 Kingswood Place

81. The First Respondent acted for the client in the purported assignment of the lease from D Living Ltd in relation to 21 Kingswood Place. Alliance & Leicester instructed the firm to act on its behalf by instructions dated 12 December 2005 and in accordance with the provisions set out in the CMLH.
82. A confirmation of reservation showed a reservation date of 8 August 2005 and recorded a purchase price of £169,995 but with an agreed cash back of 15% amounting to £25,349. By letter dated 16 January 2006 from DL Solicitors, who acted for the assignors to the firm, they said; "We have spoken to Mr K of (P) Homes Legal Department who informs us that it will be possible for the price in the lease to be the gross figure provided that you confirm as solicitors for the lender, that the lenders have been notified of the discount and have approved the discount". There was no evidence on the matter file to show that the First Respondent had reported that fact to his lender client. There was no evidence on the file to show that Mr A was sent a client care letter to replace that originally sent to a Mr J.
83. The client received a mortgage offer of £164,000.75 dated 12 December 2005 from Alliance & Leicester. The First Respondent signed and submitted a Certificate of Title dated 9 January 2006, confirming the purchase price of the property to be £170,000. The purchase price shown on the completion statement was £169,995.
84. On 12 January 2006, Alliance & Leicester forwarded to the firm the mortgage advance in the sum of £160,975. The sale agreement was dated, exchanged and completed on 25 January 2006. On 24 January 2006, the sum of £144,374.19 was made from the First Respondent's client bank account to P Homes. The property was, in fact, purchased from P Homes by D Living Ltd at the same time as being sold by D Living Ltd to Mr A. There was no evidence to show that the First Respondent had reported that fact to his lender client.
85. On 9 January 2006, Mr A instructed the firm to "send the residual balance for the above property to the following account, Habib Bank AG Zurich, Whitechapel High Street, London, E1, 7BE. Provided details of the account". Pursuant to a letter of instruction to the First Respondent's bank, incorrectly dated 27 January 2005 (instead of 2006) the sum of £14,086.81 was paid from the First Respondent's client bank account to Habib Bank as per Mr A's instructions.

Mr H3, Transfer of Flat 33 Chicksand House

86. The firm acted for Mr H3 in the transfer of Flat 33 from his parents J and A N, purportedly for £238,000. The Seller's solicitors were M2 Solicitors. On 20 June 2006, the firm was instructed by Alliance & Leicester to act on its behalf in accordance with the provisions set out in the CMLH. The client care letter dated 28 July 2006 was unsigned, and stated the purchase price to be £240,000, naming the First Respondent as supervising partner.
87. The client received a mortgage offer of £202,300 dated 20 June 2006 from Alliance and Leicester. On 12 October 2006, the First Respondent signed and submitted a Certificate on Title which showed the purchase price to be £238,000.

88. On 18 October 2006, Alliance & Leicester provided the net mortgage advance of £201,771 to the firm. On 16 November 2006, the sum of £202,000 was paid from the First Respondent's client bank account to a Barclays bank account for the benefit of the sellers. There was no evidence on the matter file to show that the First Respondent had reported the fact of the discount to the lender client. (The purchase price shown on the completion statement was amended from £240,000 – £238,000 with a discount of £36,000 to give a net price of £202,000).

Feroza Housing Ltd- Personal interests of the First Respondent and his wife

89. Feroza Housing Ltd was a company in which the First Respondent and his wife had personal interests. A company search carried out by the FI on 17 August 2007 showed that the First Respondent was sole director of Feroza Housing Ltd and that his wife was appointed as company secretary. The same address was shown for each of the company, the First Respondent and his wife.
90. The FI ascertained that client money, derived from two transactions in which the firm acted, were paid into a bank account held in the name of Feroza Housing Ltd. The account was held at Barclays bank in Moorgate, London.
91. A Mr C from Barclays informed the FI that the Feroza bank account was credited with the sum of £817, 519 in April 2007 from C – B Solicitors. The FI identified that the Feroza bank account was credited with funds as follows:-
- 27 March 2007 – £935,000
 - 28 March 2007 – £693,500
 - 19 April 2007 – £817,500

The total was £2,446,000.

92. The FI were also informed by Mr C that on 30 May 2007 a payment of £1,770,158.41 was made from the funds held in the Feroza account, to an HSBC account held at 241 London Road, Mitcham and that the payment showed the name "Mr M S Islam". It was ascertained that the Feroza bank account was closed on 31 May 2007 and that the sum of £70,250 had also been paid to an entity named A and R on 12 April 2007 and that the sum of £630,000 was paid to the First Respondent's firm on 9 May 2007. Copies of the two cheques in respect of the payments were provided to the FI on 3 July 2009. The signatures on both cheques appeared to be similar to signatures that appeared on a number of documents known or believed to have been signed by the First Respondent. By way of example, these included instructions to HSBC Bank to make payments and a Report on Title said to have been signed by a partner of the First Respondent's firm. The matter was discussed with the First Respondent during interview on 29 November 2007.
93. The FI carried out a further company search on 27 May 2010 which revealed that the company was dissolved on the 19 February 2008 with no accounts being filed.
94. On the 25 August 2010, the Applicant wrote to the First Respondent disclosing a copy of the report and seeking his explanation. The First Respondent failed to reply.

Second Respondent

95. The Second Respondent provided her Professional History Form to the FI which stated her area of work/speciality to be conveyancing. She was interviewed with the First Respondent on 19 June 2007 and interviewed again by the FI on 15 May 2009.
96. The transactions in which the Second Respondent was involved were particularised in the Report dated 27 May 2010 that was prepared following the investigation at the firm. The following transactions were referred to by Mr Goodwin at the hearing:

Ms D – Purchase of 86 Dorchester Court

97. The transaction completed on 6 December 2005 and was assisted by a mortgage of £269,965 from Kensington Mortgages. The purchase price shown in the transfer was £300,000.
98. The Second Respondent confirmed that she signed the Certificate of Title dated 24 November 2005 and which was submitted to the lender, confirming the price to be shown on the transfer as £300,000. A completion statement received under cover of a letter dated 23 November 2005 from H C Solicitors, who acted for the sellers, showed that the actual purchase price was £295,000 less an allowance of £53,100 to give a net sum of £241,900. There was no evidence on the client matter file to show that the lender client had been advised of the fact that the mortgage advance exceeded the amount required to purchase the property, or the discount.
99. A Statement of Account on the matter file showed payments of the excess mortgage advance monies. The itemised payments included:-
- Sourcer's fee of £5,000
 - Broker's fee of £2,700
100. Release of the balance of funds of £10,172.37 was requested in a letter dated 13 December 2005 to HSBC Bank plc, signed by the First Respondent and to be transferred to an account at HSBC in the name of Mr JG. The Second Respondent denied that she had seen a Sourcer's fee before on a completion statement.
101. The Second Respondent confirmed that she had witnessed the signature of Ms D on the mortgage deed dated 28 November 2005. She indicated that she was not the main fee earner on the file. She stated that she had dealt with the client's ID, signing the documents on behalf of the firm, and witnessing the client's signature. She said that she took the purchase price for the transfer and the Certificate of Title from the mortgage offer provided by Kensington Mortgages. The Second Respondent signed the Certificate of Title.

Mr MSK – Purchase of Plot 97, 63 Dorchester Court

102. The transaction completed on a date between 6 and 12 December 2005 and was assisted by a mortgage of £194,702 from Abbey National. The client care letter, which was unsigned but dated 1 December 2005 purported to have come from the

Second Respondent. It concluded; "I as a solicitor of this firm will ultimately be responsible for your matter and will carry out most of the work in this matter".

103. Having examined the document at interview, the Second Respondent commented that her name was spelt incorrectly in that the first name was spelt Sharin instead of Shirin. The letter of instruction dated 25 November 2005 to the firm indicated that the firm was to act in accordance with the CMLH and Part B of the Mortgage Offer. The mortgage offer was contained on the client matter file and Part B included the following:- "The conveyancer must report to us if the purchase price to be stated on the transfer/lease is not £204,950..."
104. The Second Respondent confirmed that she signed the Certificate of Title in which it was stated that the purchase price was £204,950 and which was submitted to the lender client. The completion statement received under cover of a letter dated 23 November 2005 from HC Solicitors who acted for the sellers showed that the true purchase price was £204,950 less an amount of £36,891, to give a net amount of £168,059. There was no evidence on the client matter file to show that the discount or that the mortgage advance was in excess of the amount required to purchase the property had been reported to the lender.
105. A completion statement on the matter file showed an amount totalling £194,922 had been received towards the purchase of the property. The amount shown in this statement for the purchase price, including apportionments, was in the sum of £168,177.82, resulting in an amount from the mortgage advance un-utilised in the purchase of £26,744.18.
106. The statement showed the use of the excess mortgage advance monies to include £10,000 to be transferred to an entity named GFS Ltd and £450 "Broker's fees". The remaining balance of funds in the sum of £12,819.18 was shown on the statement. During interview the Second Respondent indicated that she had not prepared the completion statement. She said "It's not actually me preparing the completion statement but I think this, this is maybe a pattern with Mr Islam. He'll tell me to prepare the Certificate of Title and then he'll do all the work on it, and I don't know what, what he's doing. He's preparing these completion statements himself for a reason. I don't know..."
107. The balance of the funds in the sum of £12,819.18 was authorised in a letter dated 8 December 2005 and signed by the First Respondent to be transferred from HSBC Bank to an account at NatWest Bank in the name of MSK and MSK was informed of that fact by letter dated 8 December 2005. The payment of £10,000 to GFS Ltd was authorised by letter dated 7 December 2005 to HSBC bank, and signed by the First Respondent to be paid to an account at Barclays Bank. The broker's fee in the sum of £450 was authorised in a letter dated 9 January 2006 to HSBC bank, signed by the First Respondent to be paid to an account at HSBC in the name of MA HR C. The lender client was led to believe that the purchase price was £204,950. The sum of approximately £168,000 was paid.
108. The Second Respondent reiterated that she had not prepared the completion statement, that she had no knowledge of the payments made to GFS Ltd, MA HR C and the

client and suggested that the First Respondent had authorised the payments. The Second Respondent signed the Certificate of Title.

Ms Z - purchase of Plot 22

109. The transaction completed on 15 February 2006 and was assisted by way of a mortgage of £233,920 provided by Kensington Mortgages. A reservation statement from C Homes bearing a reservation date of 17 January 2005, showed a sale price agreed of £259,950 but discounted to £213,159. The client care letter was unsigned and dated 1 February 2006 and purported to come from the Second Respondent although she indicated to the FI during interview on 15 May 2009 that the letter was not hers.
110. By letter dated 3 February 2006, Kensington Mortgages instructed the firm to act on its behalf in accordance with the CMLH. There was no Certificate of Title located on the client matter file. There was a letter to Kensington Mortgages dated 8 February 2006 bearing the First Respondent's reference, purporting to enclose the Certificate of Title.
111. A completion statement received under cover of a letter dated 15 February 2006 from HC Solicitors who acted for the sellers, showed that the purchase price was £259,950 less an allowance of £46,791 to give a net amount of £213,159. There was no evidence on the client matter file to show that the lender client had been advised of the discount or that the mortgage advance was in excess of the amount required to purchase the property. The Second Respondent agreed during interview with the FI that it was incorrect not to have informed the mortgage lender of the circumstances.
112. Another completion statement on the file showed the mortgage advance to be in the sum of £233,920 and the actual price to be £212,690.98, resulting in an amount from the mortgage advance un-utilised in the purchase of £21,229.02. The statement identified the payment of the excess mortgage advance monies to include £5,000 to Ms Z and £11,006.52 to JMG. The Second Respondent said in interview that she had not prepared the completion statement.
113. The counterpart lease dated 15 September 2006 was signed by the client and witnessed by the Second Respondent. A mortgage deed dated 15 February 2006 was signed by the client and witnessed by the Second Respondent. An undated authority on the client matter file purported to be from Ms Z requested the First Respondent to deposit £5,000 into her NatWest Bank account and to pay the balance to JMG's HSBC account. The payment of £5,000 to Ms Z's account was authorised by letter dated 16 February 2006 to HSBC Bank and signed by the First Respondent. The payment of £10,006.52 to JMG's account was authorised by letter dated 16 February 2006 to HSBC bank and signed by the First Respondent.
114. The Second Respondent indicated that all payments to and from the client bank account had been made by the First Respondent and that she had no knowledge of the completion statement showing the payment of surplus funds. The Second Respondent indicated that she had done what she had been requested to do by the First Respondent but that she had not considered that she had ever had full conduct of the matter.

115. The Second Respondent signed Certificates of Title in relation to transactions which included undertaking(s) to the effect that, "We, the conveyancers identified above, give the Certificate of Title set out in the Appendix to Rule 6 (3) of the Solicitors Practice Rules 1990 as if same were set out in full, subject to the limitations contained in it".
116. In addition to the Certificates of Title which the Second Respondent signed containing undertakings to the lender clients, the First Respondent signed a number of Certificates of Title to lender clients which contained undertakings in the following form; "That we will apply all monies received from you towards the purchase of the property..."
117. In a letter dated 25 August 2010, the Applicant wrote to the Second Respondent enclosing a copy of the Report and seeking her explanation. The Second Respondent provided her explanation in a letter dated 4 November 2010. Having explained the circumstances relating to the individual transactions in which she signed Certificates of Title, the Second Respondent said;

"Upon reflection I realise that this was a deliberate and planned method of work that Mr Islam had adopted. It was a play on his part to deceive me. Therefore I do not accept that I was in breach of Rule 1(c) Solicitors Practice Rules 1990...

Essentially Mr Islam was running the practice. He had a controlling attitude towards me and sometimes used bullying tactics. I realised afterwards that he just needed someone to be a partner to enable him to deal with lenders. I did not receive a share of the profits, have any say in who was employed, nor could I sign cheques. I did not have a key to the office or authorised to open post and DX.

Mr Islam had an accounts office at the end of the main office which was closed off. He would be talking to the bookkeepers in their own dialect and for the most part encouraged the staff, including myself to keep out. He informed me that his father was an accountant and was responsible for the accounts of the firm. He usually attended the offices every once a week.

...Certificates of Title were signed under Mr Islam's instructions. I would refer you to the consistent pattern of work that Mr Islam used to manipulate me... in conclusion I have suffered both physically and mentally and am currently undergoing treatment.

...In short I should be accused of naivety and my trusting nature given that Mr Islam led me to believe that he was working with CC, a magic circle firm, and further informed me that he was experienced in conveyancing work. It is only recently that I realised that he was weaving a web of deceit around me. I am shocked to find out the various methods he used to engage in mortgage fraud which I cannot still comprehend. Since the closure of OSL three years ago and there have never been any complaints against me".

Witnesses

118. Mr John Mercer, former Forensic Investigation Manager with the SRA gave evidence on behalf of the Applicant and was cross-examined by Mr Nesbitt on behalf of the Second Respondent. He confirmed the truthfulness of his report and told the Tribunal that he had worked in the Forensic Investigation Department for 19 years and had carried out approximately 200 investigations during that time.
119. In cross-examination, Mr Mercer confirmed that it was fair to say that the Second Respondent had appeared to have been reluctant to accept the offer of partnership made by the First Respondent. He also confirmed that she had appeared nervous and uncertain in relation to the First Respondent's decision that she should run a branch office of the practice in Woking.
120. Mr Nesbitt referred the witness to the Second Respondent's letter to the SRA dated 4 November 2010 in which she had recognised that she had been naive. Mr Mercer confirmed that in his view, the Second Respondent probably had behaved naively and had not asked the questions that she should have done. He said that his overall impression was that the Second Respondent had been in a "bit of a minority position" and she had described being "marginalised". He added that in his view, she had probably not been well equipped to deal with the situation that she had found herself in.
121. In relation to the transaction involving Ms D, Mr Mercer told the Tribunal that there had been no other evidence to show that the Second Respondent had a wider involvement in the case. He confirmed that she had signed the Certificate of Title. In the transaction involving Mr K, Mr Mercer stated that the Second Respondent had been forceful in stating that the client care letter that had been sent was not her own. In relation to the transaction involving Ms Z, Mr Mercer confirmed that the Second Respondent had asserted that she would not have written a letter that had contained so many errors.
122. In response to further questioning from Mr Nesbitt, Mr Mercer confirmed that the First Respondent had accepted that all of the transactions had been authorised by him. Mr Mercer told the Tribunal that the First Respondent had shown an inclination to pass blame on to members of staff as well as to outside parties but he had not tried to involve the Second Respondent. He confirmed that the Second Respondent had been co-operative during the investigation. He stated that both Respondents had participated when interviewed by the FI but in his view, the First Respondent had been more dominant.

Findings of Fact and Law

123. Mr Goodwin referred the Tribunal to the cases of Bolton v The Law Society (1994) 1 WLR 512 and Weston v The Law Society 29 June 1998, CO/225/1998. He submitted that the First Respondent could not be said to be "a person of unquestionable integrity, probity and trustworthiness" and he told the Tribunal that the First Respondent had fallen far short of the standards that should be expected of solicitors.

124. The Tribunal determined all the allegations to its usual high standard of proof, that is beyond reasonable doubt.

First Respondent

125. **Allegation 1.1. He had breached Section 34 of the Solicitors Act 1974 (as amended), as he has failed to deliver promptly, or at all, an accountant's report for the year ending 31 March 2008.**

Allegation 1.2. He failed to deliver promptly or at all, an accountant's report for the year ending 31 March 2009, contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made hereunder.

- 125.1 Mr Goodwin, on behalf of the Applicant, told the Tribunal that the First Respondent had failed to submit accountant's reports for the year ending 31 March 2008 and 31 March 2009. He reminded the Tribunal that correspondence had been sent to the First Respondent by the SRA in relation to the outstanding accountant's reports but that the First Respondent had failed to reply.

- 125.2 Mr Goodwin pointed out to the Tribunal that it was important that the significance of failing to file accounting reports was not lost given the nature of the other allegations against the First Respondent. He explained that the filing of accountant's reports was the first line of the regulatory process and alerted the SRA to any potential problems.

- 125.3 The Tribunal considered that the allegations were substantiated against the First Respondent on the facts and documents before it.

126. **Allegation 1.3. Contrary to Rule 1(c) of the Solicitors Practice Rules 1990 ("SPR") he failed to ensure that he was fully conversant with the requirements of the Counsel of Mortgage Lenders Handbook ("CMLH") and/or his lender client(s) instructions;**

Allegation 1.4. He failed to disclose material information to lender clients;

Allegation 1.5. He failed to act in his lender client's best interests;

Allegation 1.6. He failed and/or delayed in complying with undertakings given in Certificates of Title.

Allegation 1.7. Contrary to Rule 15 of the Solicitors Accounts Rules 1998 ("SAR") and the notes thereto, he facilitated, permitted or acquiesced in client bank account being utilised as a banking facility.

Allegation 1.8. He improperly paid away funds held on behalf of lender client(s) and/or failed to utilise such funds towards the purchase of properties for which the funds were intended.

Allegation 1.9. He acted contrary to Rule 1(a)(d) and (e) of the "SPR", by virtue of his acting in transactions were suspicious and bearing the hallmarks of Money Laundering and/or Mortgage Fraud.

Allegation 1.10. He failed to exercise any or adequate supervision of staff.

- 126.1 Mr Goodwin reminded the Tribunal that dishonesty was alleged against the First Respondent in relation to allegations 1.4 – 1.9. He pointed out that these allegations were of the most serious kind but told the Tribunal that they could find the allegations proved without finding that the First Respondent had acted dishonestly.
- 126.2 Mr Goodwin told the Tribunal that the First Respondent had acted for a number of lenders, including Barclays Wealth (“Barclays”) and Alliance & Leicester plc (“Alliance & Leicester”). The conveyancing transactions that he had been involved in were set out in the Report.
- 126.3 The Tribunal was told that the First Respondent should have been aware of the Law Society guidance contained within the “Green” and “Blue” Warning Cards. In addition he should have had full knowledge of the CMLH. Mr Goodwin reminded the Tribunal that the First Respondent had completed a professional history form which had been provided to the FI in which he had confirmed his knowledge of the relevant guidance. In addition, instructions had been given by Barclays to the First Respondent to act in accordance with their “General Instructions to Solicitors and Licensed Conveyancers” (January 2005 Edition). In particular those instructions had required the First Respondent to follow the guidance in the Law Society’s “Green” Warning Card on property fraud, “Blue” Card on money laundering and “Pink” Card on undertakings. The instructions had also required the First Respondent to “retain control of all funds received from us and apply them in respect of the transaction in which you are instructed”. He asked the Tribunal to note that the Report had outlined a number of areas of concern in relation to the transactions carried out by the First Respondent.
- 126.4 The Report had exemplified nine property transactions where Barclays had provided finance to the clients. Mr Goodwin told the Tribunal that the files that were examined by the FI showed substantial differences between the purported purchase price and the amounts actually paid. As a result, the mortgage advances were considerably in excess of the amounts paid. The transactions were suspicious and had the hallmarks of mortgage fraud and money laundering. The First Respondent had failed to disclose material facts to his lender clients and had failed to act in accordance with their instructions and in their best interests. The First Respondent signed a number of Certificates of Title which were inaccurate and rather than utilising the mortgage monies towards the purchase, he had paid away funds to third parties including payments to Feroza Housing Limited in which he had a personal interest.
- 126.5 Mr Goodwin reminded the Tribunal that the Certificate of Title was a most important document upon which lenders relied. It was the trigger for the release of mortgage funds. It was critical that the information contained within the Certificate of Title was correct and that solicitors complied with the undertakings contained within it. Mr Goodwin submitted that lenders should be able to rely on the accuracy of the contents of Certificates of Title. Mr Goodwin reminded the Tribunal that the amounts involved in this case were large and he stated that the First Respondent’s failure to comply with his undertakings and the fact that he had paid away money to third parties showed that the First Respondent had acted dishonestly. Mr Goodwin told the Tribunal that the public would conclude that the First Respondent’s actions had been

dishonest and the First Respondent himself knew that what he was doing was dishonest.

126.6 The Tribunal was told that a number of fee earners had been involved in these transactions but the First Respondent was the partner and sole signatory to the client account. He had signed the Certificates of Title and had authorised payments to third parties and to himself in the case of two of the transactions. The involvement of other fee earners showed that the First Respondent had failed to exercise supervision over his staff.

126.7 Mr Goodwin referred the Tribunal to the following transactions:-

SP Limited – Purchase of Flats at 75 Acre Lane

126.8 The Tribunal was told that the First Respondent acted for SP Ltd in the purchase of Flats 1, 3, 4, 5, 9, 10, 11, 12, 13, 15 and 19 of 75 Acre Lane from T Ltd. Finance was provided by Barclays. The unsigned client care letter dated 22 November 2005 indicated that the original instructions were received from MP Ltd. The First Respondent confirmed during interview on 29 November 2007 that MP Ltd and a Mr A were one and the same. A letter from D Solicitors dated 28 November 2005 showed that the First Respondent's client was VC. The file contained an exchanged contract dated 29 November 2005 between T Ltd and an entity named CS Ltd. A covering letter to the contract appeared to tie VC in with CS Ltd. The contract recorded that the units and parking spaces were to be purchased for £4,585,000. Further correspondence on the file showed that the purchase by CS Ltd gave way to a sale by T Ltd to MPS Ltd for £5,300,000. In a letter to D Solicitors dated 26 February 2007, the firm identified that the buyers were now SP Ltd. No agreement involving this party was found on the file reviewed.

126.9 Mr Goodwin told the Tribunal that the First Respondent signed the Certificate of Title on 26 February 2007 showing a purchase price of £7,242,000. The Report on Title contained the following undertaking "e. That we will apply all monies received from you towards the purchase of the property..." On 9 March 2007 the client ledger account was credited with monies received from Barclays amounting to £5,417,855. The purchase was finally completed by SP Ltd.

126.10 Prior to securing finance with Barclays there were a number of unexplained receipts that were shown in the relevant client ledger account. The client ledger account was also charged with a number of unexplained payments. Mr Goodwin asked the Tribunal to note that it was significant that a payment was made on 28 March 2007 to Feroza Housing Ltd in the sum of £693,500.00. Feroza Housing Ltd was a company that was incorporated on 7 November 2006 with the First Respondent as the sole director and his wife as the company secretary. The First Respondent's home address was the registered office address of the company. In interview, the First Respondent replied to the FI suggestion that there were factors in the transaction that should have been brought to the attention of the bank by saying "No I agree with you 100%, it's a complete mess, all of this".

B Ltd – Purchase 8 Palace Gate

- 126.11 The firm acted for B Ltd, a company registered in the British Virgin Islands in the purchase of 8 Palace Gate for the sum of £19,500,000 from FP (Two) Ltd. A search at the Land Registry as at 5 March 2007 showed that the seller had paid only £8,250,000 for the property on 18 July 2006. There was an unsigned client care letter on the file dated 7 March 2007 addressed to B Ltd together with an agreement for sale dated 14 March 2007 which showed the purchase price of £19,500,000. This was an increase in excess of £8million over an eight-month period. The client received a mortgage offer of £14,625,000 dated 5 March 2007 from Barclays supported by personal guarantees from a Mr BS and FP (Two) Ltd each for £14,625,000.
- 126.12 Mr Goodwin told the Tribunal that a Report on Title to Barclays was signed by the First Respondent confirming a purchase price of £19,500,000. The Report on Title contained the following undertaking; "e. that we will apply all monies received from you towards the purchase of the property...". A front page of a form TR1 found on the file dated 14 March 2007 showed the purchase price as being £10,225,000. Another form TR1 also dated 14 March 2007 found on the matter file showed the purchase price to be £19,500,000. A net mortgage advance of £14,478,525 was received from Barclays on 14 March 2007 but on the same date a payment was sent by the First Respondent of £10,225,000 to complete the matter. There were a number of unexplained payments made out of the surplus funds generated by the mortgage receipt including a second payment to Feroza Housing Ltd on 27 March 2007 in the sum of £935,000. The matter was registered at the Land Registry on 22 March 2007 in the name of a UK Company by the name of B Ltd, the business of which was understood to be that of a fish restaurant.
- 126.13 Mr Goodwin told the Tribunal that a total of £2,446,000 had been credited to a bank account in the name of Feroza Housing Ltd. The payments included those received from the SP Ltd and B Ltd transactions. The FI were informed that on 30 May 2007, a payment of £1,770,158.41 was made from the funds held in the Feroza Housing Ltd account to an HSBC account at a branch at 241 London Road, Mitcham. The payment showed the name "Mr M S Islam". The FI considered that this may be a personal bank account of the First Respondent. The FI ascertained that the Feroza bank account was closed on 31 May 2007 and £70,250 was paid by cheque to an entity named A & R on 12 April 2007 and £630,000 was paid by cheque to the firm on 9 March 2007. The FI noted that the signatures on both of these cheques appeared to be similar and were also similar to numerous documents known, or believed to have been, signed by the First Respondent. Mr Goodwin pointed out to the Tribunal that in a recent e-mail from the First Respondent on 24 November 2011, he had referred to the fact that certain signatures may have been forged but had not mentioned any specific documents. Mr Goodwin stated that it was the Applicant's case that the FI's observations regarding the similarities in the signatures were correct.
- 126.14 The First Respondent had claimed that Feroza Housing Ltd had been set up in error by another fee earner. In interview he had stated- "... Feroza Housing Ltd was a company that things M and them asked to set up. I set up a company for them and that was it..." When asked about the fact that he was shown as the sole director of the company, the First Respondent had stated:-"Why me? It would have been M. Yeah,

it's completely incorrect. See A1 when I purchased it they wanted my address and some details. It should be M. Have I given them my details? But I've never received anything from Companies House regarding this company, it was set up for their purposes. Does it show whether there's been a change of directors?"

- 126.15 When the FI told the First Respondent that the company's search showed him as the sole director, he commented "M and D have asked, I remember M2 came and asked me they wanted to open a company, another company, I said fine use my business card and stuff... A1, which we use to set up companies, A1 Companies Ltd and they...and this was the name that they wanted". He confirmed that the company address was his own and in answer to a question from the Investigator about why the company had been set up, the First Respondent had stated:- "All these people are part of M2's broker's friends and I think in this transaction they wanted another subsidiary company set up. I remember having this conversation with them for setting up a company. I said there's the business card, use A1 to set it up and that was it. I had no recollection for anything else after that." He also confirmed that his wife was the company secretary. Mr Goodwin stated that the Tribunal could be satisfied that the company had been the First Respondent's and payments to the company had been dealt with under his direction.
- 126.16 The Tribunal was also referred to the transaction involving CM Ltd and Mr A in the purchase of 1 – 8 Phoenix Court. In that transaction, the First Respondent had signed and submitted a Report on Title to Barclays showing a purchase price that was in excess of the price shown on the completion statement. This had resulted in a surplus which had not been applied towards the purchase of the property despite the undertaking contained in the Report on Title that all monies received would be paid towards the purchase. The finance provided by Barclays had been on the strength of Mr A's personal guarantee. The FI had identified concerns as to the veracity of Mr A's signature.
- 126.17 The FI had noted that a number of unexplained payments had been made out of the surplus funds, the details of which were set out in the Report. In interview on 29 November 2007, the First Respondent could not say what the unrelated payments were for and agreed that there had been no financial or accounting necessity for the payments having been made. He had stated; "I don't know what's happened I think another things obviously what's happened is you know following the transaction money should have been given to the client it seems that what's happened is we followed client's instructions which we shouldn't have, we acted a bit like bankers".
- 126.18 Mr Goodwin told the Tribunal that the reality was that the First Respondent had signed a Certificate of Title certifying a higher purchase price. He had not informed the lenders of the position and following completion of the transaction he had paid away money when he did not know where the money was going and did not enquire where or to whom the payments were made. Mr Goodwin submitted that this showed dishonest conduct on the part of the First Respondent and that at the very least his actions were grossly reckless and not the actions of a prudent and honest solicitor.
- 126.19 The Tribunal was referred to the purchase of flats 1-12, 92 Campbell Road by CM Ltd, the purchase of Harborne Bell Tower by SPLtd 2, the purchase of Gladstone

House by R Ltd and the purchase of Oakwood by W Ltd as examples of other transactions that had followed a similar pattern.

- 126.20 The Tribunal was told that the FI had considered 34 transactions where finance for the clients had been obtained from Alliance & Leicester. Of these transactions, 19 were identified as showing indications that the mortgage/loan monies had been obtained and/or dealt with fraudulently. These matters had been examined by the FI after the interviews conducted with the First Respondent and so had not been discussed with him. Five of the matters had been exemplified in the Report and these showed evidence of “back-to-back” transactions and a failure on the part of the First Respondent to comply with the requirements of the CML Handbook.
- 126.21 Mr Goodwin submitted that in summary the First Respondent had failed to disclose material information to the lender, failed to act in their best interests and failed to comply with his undertaking. He had also allowed his client account to be used as a banking facility in relation to the surplus funds generated by the mortgage. He had acted in a transaction that contained the hallmarks that were warned against in the Law Society guidance.
- 126.22 Mr Goodwin submitted that there had been widespread misconduct on the part of the First Respondent involving vast sums and mortgage fraud on a massive scale. He stated that the public would conclude that the First Respondent’s conduct had been dishonest and it was his submission that the First Respondent knew that what he was doing was wrong. He stated that other than the matters set out within the interview transcripts, the First Respondent had failed to provide any other explanation for his actions. Mr Goodwin told the Tribunal that the First Respondent’s conduct had been disgraceful and had adversely affected his own reputation and the reputation of the profession as a whole.
- 126.23 The Tribunal had read the Rule 5 Statement which contained details of all of the transactions that had been included in the Report. The Tribunal carefully considered the facts and documents before it and considered the test to be applied for determining dishonesty as set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found the allegations substantiated against the First Respondent and considered that the First Respondent had acted dishonestly in relation to allegations 1.4 – 1.9.

The Second Respondent

127. **Allegation 2.1. Contrary to Rule 1 (c) of the Solicitors Practice Rules 1990 ("SPR"), she signed Certificates of Title without having fully familiarised herself with the transactions, the subject of the Certificate of Title;**
- Allegation 2.2. She failed to disclose material information to lender clients;**
- Allegation 2.3. She failed to act in her lender clients best interests;**
- Allegation 2.4. She failed and/or delayed in complying with undertakings contained within Certificates of Title.**

- 127.1 Mr Goodwin told the Tribunal that although dishonesty was not alleged against the Second Respondent the allegations were still serious. He stated that the Second Respondent should have known the importance of the Certificates of Title as she had indicated on the professional history form that she had given to the FI that her area of speciality was conveyancing. In addition, she had responsibilities as a partner of the firm.
- 127.2 Mr Goodwin referred the Tribunal to the transactions in which the Second Respondent had been involved. He referred to the transaction involving Ms D and the purchase of 86 Dorchester Court. He told the Tribunal that the Second Respondent had signed the Certificate of Title dated 24 November 2005 and which was submitted to the lender showing the price stated in the transfer to be £300,000. A completion statement from HC Solicitors who acted for the seller showed that the true purchase price was £295,000 less an allowance of £53,100 giving a net sum of £241,900. A statement of account contained on the file showed payments of the surplus funds. The Second Respondent had told the FI that she had no knowledge of these payments and that she had not been named as the fee earner on the file. Mr Goodwin told the Tribunal that she had signed the Certificate of Title without familiarising herself with the file. This had resulted in her failing to disclose the discount to the lender which meant that she had not acted in their best interests.
- 127.3 In relation to the purchase of Plot 97, 63 Dorchester Court by Mr MSK, the Second Respondent had signed the Certificate of Title in which it was stated that the purchase price was £204,950 and which was submitted to the lender client. The completion statement received from HC Solicitors who acted for the sellers showed that the true purchase price was £204,950 less an amount of £36,891 to give a net amount of £168,059. The mortgage offer had stated that the conveyancer needed to report to the lender if the purchase price to be stated was not £204,950. Mr Goodwin told the Tribunal that there was no evidence to show that the discount or that the mortgage advance was in excess of the amount required to purchase the property had been reported to the lender. A completion statement on the file showed the use of the excess mortgage advance with £10,000 being paid to GFS Ltd and a further £450 paid as a broker fee. Mr Goodwin stated that it was accepted that the First Respondent had authorised and signed the telegraphic transfers for those payments but the Second Respondent had failed to disclose material information to the lender and therefore had not acted in their best interests. Mr Goodwin also referred the Tribunal to the purchase of Plot 22, 34 Dorchester Court by Ms Z that had followed a similar pattern.
- 127.4 Mr Goodwin submitted that the Second Respondent should have taken steps to satisfy herself on the documentation in relation to these transactions and should not simply have relied on the First Respondent. In addition, Mr Goodwin told the Tribunal that the Applicant's case also relied on the Barclays transactions where the First Respondent had signed a number of Certificates of Title which contained undertakings that all monies would be applied towards the purchase of the property. He stated that the Second Respondent was a partner in the practice and was responsible for compliance with the undertakings given by the firm.
- 127.5 The Tribunal considered that the allegations were substantiated against the Second Respondent and indeed she had admitted the allegations.

128. **Allegation 2.5. Contrary to Rule 15 of the Solicitors Accounts Rules 1998 ("SAR") and the notes thereto, she facilitated, permitted or acquiesced in the client bank account being utilised as a banking facility;**

Allegation 2.6. She withdrew money from client account contrary to Rule 22 of the SAR.

- 128.1 Mr Goodwin told the Tribunal that, as the Second Respondent was a partner in the firm, she was obliged to ensure compliance with the SAR. He referred the Tribunal to the large number of transactions set out in the Report where funds had been improperly paid away in breach of the SAR and where the firm's client bank account had been utilised as a banking facility. He stated that, insofar as there had been breaches to the SAR, the Second Respondent was liable.
- 128.2 Mr Nesbitt on behalf of the Second Respondent asked the Tribunal to note that the Second Respondent had made admissions in relation to these allegations as she accepted that she was strictly liable in accordance with SAR 6. She did not make the admissions in any "conscious" way. Instead she accepted that breaches of the SAR had taken place and that she was liable as a partner within the firm.
- 128.3 The Tribunal considered the allegations substantiated against the Second Respondent on the facts and documents before it and indeed she had admitted the allegations.

Previous Disciplinary Matters

129. None for either Respondent.

Mitigation

First Respondent

130. None.

Second Respondent

131. Mr Nesbitt, on behalf of the Second Respondent, invited the Tribunal to find that there had been no wilfulness on her part. He pointed out that the Second Respondent had been a newly qualified solicitor who had been anxious to get a job. The First Respondent had been plausible, having claimed to have worked for a magic circle firm. The Second Respondent now recognised that she had been naive and should have asked more questions. She accepted that the Tribunal would wish to mark her culpability in some way.
132. Mr Nesbitt gave the Tribunal some detailed information as to the Second Respondent's personal background and history. He told the Tribunal that she had experienced various difficulties in her adult life. She had lived a peripatetic life in South Africa where she and her former husband had been involved in various small businesses. She had experienced violence and been held at gunpoint in an armed robbery and had decided to return to the United Kingdom. Following the breakdown of her marriage, she had lived with her mother and her three young children but the

accommodation had proved to be too small and she had found herself homeless and had been re-housed by the local authority. She had subsequently divorced her husband and had been unsupported by him. She had become a mature student and had managed to obtain a training contract. By 2004 she was a newly qualified solicitor and Mr Nesbitt pointed out that, at that point in time, it might have been expected that her life would have taken a brighter turn. She had come from relatively modest beginnings and had experienced quite a difficult adult life although he did not wish to be melodramatic on that point. He pointed out that she had an expectation of a modest career and had worked hard.

133. The Tribunal was told that it was unfortunate that the Second Respondent had been 'taken in' by the First Respondent who had appeared plausible. Mr Nesbitt suggested that a number of people must have been taken in by the First Respondent given the extent of the fraud. He asked the Tribunal not to judge the Second Respondent too harshly for accepting a position with the First Respondent. He pointed out that within months she had been pressurised into a partnership of which she had little understanding. She did not appreciate the full implications of partnership. She knew that a partnership came with responsibilities and she was anxious to discharge her duties. He pointed out that the Second Respondent had been "flipped in and out" of partnership with little consultation. The First Respondent had been an overbearing person who had exerted influence on her and she had succumbed. She had been denied access to various things and realised now that she should have questioned things more.
134. Mr Nesbitt asked the Tribunal to note that the extent of the Second Respondent's culpability had been her involvement in three transactions where she had trusted the First Respondent and in which she had received no training in conveyancing matters. She recognised that her checks of the underlying documentation in relation to those transactions had been insufficient and the consequences had been far reaching. She had trusted the First Respondent as her senior partner. Mr Nesbitt suggested that anyone in her position might feel entitled to trust their senior partner. He pointed out that she now recognised that a Certificate of Title was a significant document and that she should not simply have trusted another solicitor when signing those documents. She knew that now but had not known it at the time. He pointed out that the transactions had taken place whilst she was still newly qualified. Since that time she had obtained experience and knowledge that she did not have at the time in question. Her relative ignorance and lack of experience regarding the significance of Certificates of Title and the role of a partner had been remedied by the experience she had gained subsequently. He pointed out that this was hardly surprising given the "chastening experience" that she had had.
135. In relation to the current position, Mr Nesbitt told the Tribunal that the Second Respondent was working on a flexible basis in a firm that was struggling. She was paid as and when work was done and she received a third of the fees generated. Her income over the last three years had been modest and in the current year she had earned £5,000 gross which had been a modest improvement on previous years.
136. Mr Nesbitt told the Tribunal that the Second Respondent was facing multiple legal actions following the closure of the firm and due to her position as partner. She had in effect taken responsibility for the First Respondent's failings. She was battling on

a number of fronts. A Judgment in default had been made in the sum of £300,000 and she had been in court recently to try and have the Judgment set aside. The matter had been adjourned until next year. There were currently five actions that had been initiated by Barclays and which were listed for trial in the following year. The total level of claims against her stood at about £30 million. The firm's insurers were trying to avoid liability. She had spent between £40 - £50,000 in legal costs in defending the actions and on representation before the Tribunal and of this, about £15,000 remained unpaid. She had two bank accounts that were overdrawn in the region of £5,000 and she had no savings to speak of.

137. The Tribunal was told by Mr Nesbitt that much of the Second Respondent's time and energy had been taken up in dealing with the claims against her and in the Tribunal proceedings. This had put her under a tremendous strain and she was being treated by her GP for depression and had been referred for therapy. She was barely sleeping. She had spoken of suicidal thoughts and her solicitors were gravely worried about her. Mr Nesbitt submitted that her health problems were hardly surprising given the "maelstrom" that she found herself caught up in. He hoped the Tribunal would consider these matters to be relevant in what was a "most unhappy story".
138. Mr Nesbitt invited the Tribunal to consider the Second Respondent as a woman of modest courage and resilience who could have expected a brighter future. She would now find it much more difficult to find work in the future. He confirmed that the Second Respondent was currently practising as a solicitor. There had been difficulties at her current practice due to the existence of these proceedings but she was still being offered work at the moment. The practice was in a fairly precarious situation at the current time and there had been some uncertainty about its future.
139. Mr Nesbitt told the Tribunal that the Second Respondent had learned her lesson and there had been no subsequent complaints in relation to her work. He submitted that she should be able to continue to provide a valuable service to her community. She had found herself in this situation through no fault of her own and there had been no suggestion of dishonesty on her part. In view of this, he submitted that it would not be right for the Tribunal to interfere with her ability to practise. He stated that she was in a miserable situation already. He invited the Tribunal to mark her "peripheral involvement" by issuing a strong reprimand or if that was felt to be insufficient then a financial penalty. He pointed out that any financial penalty needed to be at a level that was realistic, fair and proportionate and he requested that this be at the lower end of the scale.

Sanction

140. The Tribunal found that the First Respondent had been dishonest. On that basis the Tribunal's starting point was that the First Respondent should be struck off the Roll of Solicitors and the Tribunal considered the case of Bolton v- The Law Society [1994] 1 WLR 512. The Tribunal decided that the First Respondent's pattern of behaviour displayed systematic dishonesty and for the protection of the public and the public's confidence in the reputation of the profession, the only sanction appropriate in the case was striking off the Roll and the Tribunal so ordered.

141. In relation to the Second Respondent, the Tribunal considered the range of sanctions available. In all the circumstances the Tribunal decided it would be appropriate to impose a financial penalty. Having taken into account the Second Respondent's current financial and personal circumstances, the Tribunal considered that the appropriate penalty would be to order that she pay a fine of £2,000. The Tribunal hoped that she would be vigilant in relation to her working arrangements in the future.

Costs

142. The Applicant's claim for costs was £182,659.60. This included the forensic investigation fees. Mr Goodwin told the Tribunal that he considered that the Applicant had taken a fair and reasonable approach to costs and he did not consider that this was an appropriate case for joint and several liability in relation to them. He confirmed that a copy of the costs schedule had been served on both Respondents.
143. He had suggested that the appropriate way forward might be for a fixed contribution towards costs in the region of 10% to be paid by the Second Respondent. As costs had not been agreed, he stated that he was content to allow the Tribunal to order such costs as it considered appropriate. He asked that the Tribunal did not make an order that costs could not be enforced without leave, as in this event, costs would fall to be borne by the profession as a whole. He pointed out that the Applicant's Costs Recovery Unit took a reasonable approach and would consider sensible and appropriate instalment payments. If an order was made that costs should not be enforced without leave, then this would involve further costs in the future and also may mean that the Respondents were less inclined to offer instalment payments. He recognised that the costs were high but there had been a considerable amount of work and all costs had been properly incurred. He stated that the bulk of the costs should fall to be paid by the First Respondent although the prospects of recovery of these costs may be low as the First Respondent's whereabouts were currently unknown.
144. Mr Nesbitt, on behalf of the Second Respondent, submitted that she should pay no more than a modest proportion of the costs. He suggested that any costs order should be "*de minimis*" as the reason for the investigation had been entirely the fault of the First Respondent. He stated that even if the Second Respondent had substantial means then she should still not have to pay more than 2-3% of the total costs. He referred the Tribunal to the cases of Merrick v The Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) and stated any financial penalty should be proportionate with the Second Respondent's ability to pay otherwise she could be forced into bankruptcy.
145. Mr Nesbitt told the Tribunal that the equity in the Second Respondent's properties was likely to be less than 10% of the total value. It was speculative as to whether she could continue without being made bankrupt. She was in the very worst financial situation of any solicitor that was likely to come before the Tribunal. He submitted that if it transpired that the Second Respondent's situation improved then it was open to the Applicant to come back to the Tribunal.
146. The Tribunal decided that it was appropriate to make a summary assessment of costs at £165,000. Having considered the submissions made by the parties, the Tribunal ordered that the First Respondent should pay 95% of the costs and the Second

Respondent should pay 5% of the costs. This resulted in an apportionment of costs with the First Respondent paying £156,750 and the Second Respondent paying £8,250.00. In view of the Second Respondent's financial circumstances, the Tribunal considered it appropriate that the order for costs against the Second Respondent should not be enforced without the leave of the Tribunal.

Statement of Full Order

147. The Tribunal Ordered that the Respondent, Mohammed Shariful Islam, 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 £156,750.00.
148. The Tribunal Ordered that the Respondent, [RESPONDENT 2], solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,250.00, such costs not to be enforced without leave of the Tribunal.

Dated this 19th day of January 2012
On behalf of the Tribunal

J Martineau
Chairman