SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10345-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SHAMEER FAROUK SACRANIE First Respondent

and

SFS LEGAL LIMITED Second Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr D. Potts
Mrs L. McMahon-Hathway

Date of Hearing: 15th – 16th May 2012

Appearances

Jonathan Goodwin, solicitor advocate of 17e Telford Court, Dunkirk Lea, Chestergates, Chester CH1 6LT for the Applicant on the instructions of Jonathan Greensmith, solicitor of Russell Jones & Walker Solicitors, 50-52 Chancery Lane, London WC2A 1HL.

The First and Second Respondents did not attend and were not represented.

JUDGMENT

Allegations

1. The allegations against the First and Second Respondents were that they:

1.1 failed to accurately record the movement of client monies, contrary to Rule 32 Solicitors' Accounts Rules 1998 ("SAR");

1.2 maintained client debit balances, contrary to Rules 22 and 7 SAR;

1.3 failed to record referral arrangements with introducers in writing, contrary to Rule 9 Solicitors' Code of Conduct 2007 ("SCC");

1.4 used client monies to pay business expenses, contrary to Rule 22 SAR and to Rules 1.02, 1.04 and 1.06 SCC;

1.5 failed to provide specific information and documentary evidence required by the SRA, contrary to Rule 20.05 SCC;

1.6 provided banking services through client account without underlying legal transactions, contrary to Rule 15 SAR and Rules 1.02 and 1.06 SCC;

1.7 transferred monies from client to office accounts in round sums without first delivering a bill of costs, contrary to Rule 22 SAR;

1.8 acted in circumstances of a conflict of interests, contrary to Rule 6 Solicitors' Practice Rules 1990 ("SPR") and Rule 3 SCC;

1.9 failed to make material disclosures to lender clients and in so doing preferred the interests of borrower clients, contrary to Rules 1 (c) and Rule 6 SPR and Rules 1.04 and 3 SCC;

1.10 failed to follow client instructions, contrary to Rules 1 (c), 1 (d) and 1 (e) SPR and Rules 1.04, 1.05 and 1.06 SCC;

1.11 as principals, failed to comply with SAR contrary to Rule 6 SAR;

1.12 as principals, failed to remedy breaches of SAR promptly upon discovery contrary to Rule 7 SAR;

1.13 failed to act in the best interests of clients, contrary to Rules 1.04 and 1.05 SCC;

1.14 gave misleading information about the cost of a matter, contrary to Rules 1.02, 1.04, 1.05 and 2.03 SCC;

The allegations against the First Respondent alone were that he:

1.15 used figures which he knew to be inaccurate when carrying out reconciliations, contrary to Rule 32 SAR and Rules 1.02 and 1.06 SCC;

1.16 took loans from clients without insisting that they took independent legal advice, contrary to Rule 3.01 (2) SCC;

The allegation against the Second Respondent alone was that it:

1.17 operated under different trading styles when acting for the seller, buyer and lender in property transactions, giving the impression that each party was represented by a different firm when it was not, contrary to Rules 3, 1.02, 1.04 and 1.06 SCC.

The further allegations against the First Respondent alone were that he:

1.18 failed to ensure that lender clients were aware of all relevant information in transactions completed for him or for his wife and in so doing preferred his own interests to those of his firm's lender clients, contrary to Rules 1 (a), (c), (d) and (e) and Rule 6 SPR and Rules 1.02, 1.04, 1.05 and 1.06 and Rule 3 SCC;

1.19 obtained monies from lender clients in circumstances where he was not entitled to do so, contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC;

1.20 misled the SRA, contrary to Rule 20.05 SCC;

Dishonesty was not an essential ingredient of any of the allegations. Nevertheless the case was put against the First Respondent on the basis that he was dishonest or in the alternative, reckless and that he had taken a blinkered approach to his professional duties with regard to allegations 1.18, 1.19 and 1.20.

Documents

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the First and Second Respondents, which included:

Applicant:

- Application dated 2 October 2009
- Rule 5 Statement and exhibit bundle "GM1" dated 2 October 2009
- Supplementary Rule 7 Statement and exhibits "GM2" to "GM6" dated 2 August 2010
- Bundle of correspondence – various dates
- Schedule of Costs dated 14 May 2012

First Respondent:

- Email dated 15 May 2012

Second Respondent:

- None

Preliminary Matter

3. Mr Goodwin informed the Tribunal that he had been instructed throughout the matter by Mr Greensmith, on behalf of the Applicant. He said that on 14 May 2012, Mr

Greensmith had spoken to the First Respondent who had confirmed that he intended to write to the Tribunal to request an adjournment of the substantive hearing. Mr Goodwin said that the First Respondent had indicated that he would be seeking the adjournment on the basis that he wished to make written representations to the Tribunal and to negotiate a Regulatory Settlement Agreement ("RSA") with the Applicant.

4. Mr Goodwin said that the First Respondent had subsequently spoken to the Admin office of the Tribunal on the morning of the hearing, prior to its commencement and had confirmed that he would be sending an email within twenty minutes setting out his application for adjournment. Nothing had been received prior to the hearing commencing but Mr Goodwin said that he had to alert the Tribunal to the First Respondent's position and that he himself had to be cautious as to how he proceeded in light of a potential adjournment application.

5. Following a short break, Mr Goodwin confirmed that an email had been received from the First Respondent at 10.26am and dated 15 May 2012. He referred the Tribunal to the email which had been seen by the Tribunal. He said that the First Respondent sought an adjournment of the substantive hearing on the basis that he was still suffering from depression and anxiety and he had requested that the hearing be adjourned pending receipt of his written submissions which he would provide to the Tribunal within eight weeks. Mr Goodwin said that it was evident that the First Respondent was also still seeking to enter into an RSA with the Applicant.

6. Mr Goodwin said that the proceedings had commenced in October 2009 and since that time, the First Respondent had had ample opportunity to make written representations regarding the Rule 5 and Rule 7 Statements.

7. Mr Goodwin referred the Tribunal to the bundle of various correspondence relating to the history of the proceedings and the First Respondent's previous adjournment applications.

8. Mr Goodwin referred the Tribunal to the letter dated 3 February 2011 from Mr Greensmith to the First Respondent. He said that the Applicant had considered whether it was appropriate to enter into an RSA with the First Respondent and that in this case, it had not been considered appropriate in view of the seriousness of the allegations including allegations of dishonesty against the First Respondent. The letter stated:

> "Together with the SRA, I have given consideration to the matter following your email to me of 2 February 2011. Within that email, you largely repeat the representations that you made in your faxed letter to Ms. Thomas of 22 September 2010. Your request has again been considered carefully but the SRA repeats its decision that it will not enter into an agreement with you, for the reasons set out above".

9. Mr Goodwin said that by further letter dated 24 February 2011, Mr Greensmith had written to the First Respondent and stated:

> "As is set out in my without prejudice letters to you of 11 and 17 February, the only manner in which the SRA is agreeable to bringing this matter to

> conclusion without a full substantive hearing on 28 February is by way of 'Carecraft' agreement, to be handed up to the Tribunal, within which you (1) admit the allegations, (2) admit that you acted dishonestly, (3) agree that you should be struck off the Roll, (4) agree that you will not seek readmission to the Roll, and (5) pay the SRA's costs.
>
> We are not going to be able to dispose of this matter by way of Carecraft agreement unless you can agree all five of these requirements. You are aware of the seriousness with which the SRA views the allegations that have been made against you. For this reason, the SRA is not prepared to negotiate upon these terms and there is therefore no need for an adjournment in order to dispose of the matter by way of Carecraft agreement".

10. Mr Goodwin submitted that it was clear from this that the Applicant was not prepared to enter into negotiations with the First Respondent.

11. By letter dated 24 February 2011, Mr Goodwin said that the First Respondent had requested a sixteen week adjournment in respect of the original substantive hearing scheduled for 28 February 2011 and that he would within that period of time continue with his efforts to settle the matter with the Applicant or in the absence of that, he would file his responses to the allegations and make preparations for the rescheduled substantive hearing. Mr Goodwin said that the First Respondent had never filed such responses to the allegations.

12. Mr Goodwin said that by further letter dated 15 July 2011 from Mr Greensmith to the Tribunal, Mr Greensmith had proposed directions if the Tribunal were minded to make them upon a further application for adjournment by the First Respondent of the rescheduled substantive hearing which had been listed for 19 to 21 July 2011. Mr Goodwin said that the First Respondent had applied for the further adjournment on the basis of his ill-health and Mr Greensmith had therefore requested that the First Respondent attend for an independent medical examination.

13. By letter dated 19 July 2011 to the Tribunal, the First Respondent had stated:

> "... I will provide a substantive response within the next few days".

Mr Goodwin said that the First Respondent had failed to do so.

14. Mr Goodwin said that by letters dated 5 October 2011 and 8 November 2011, Mr Greensmith had written to the First Respondent proposing various dates for him to attend the medical examination and had confirmed that the Applicant would bear the First Respondent's reasonable travelling expenses for such attendance. Mr Goodwin said that the First Respondent had failed to attend any such appointments or to engage with Mr Greensmith. In his letter dated 5 December 2011, Mr Greensmith had informed the First Respondent that:

> "... As you have failed to engage in this process the SRA will be requesting that this matter is listed by the Tribunal for Substantive hearing at the next available date following the forthcoming Directions hearing which, as you know, is listed to be heard by the Tribunal on Tuesday 13 December 2011.

> Please confirm by return whether you have any intention of attending upon Dr L".

15. Mr Goodwin said that on 13 December 2011, the Tribunal had listed the matter for substantive hearing on the first open dates with a time estimate of three days and directed that any application by the First Respondent to vary the listing or any other directions had to be made at least twenty-eight clear days before the first day of the substantive hearing. Mr Goodwin said that whilst the Tribunal had recorded in its Memorandum of 19 July 2011 that it might not have power to compel an individual to undergo a medical examination, it had recorded that it could make such a direction and could draw an adverse inference if the Respondent refused to have such a medical examination carried out.

16. Mr Goodwin said that by further letter dated 9 May 2012 to the First Respondent, Mr Greensmith confirmed that the substantive hearing had been rescheduled for 15 to 17 May 2012 and stated:

> "As you have failed to engage in the process generally, as you have failed to attend an appointment for a consultation with the SRA's expert psychiatrist and as you have failed to make an application to vary the listing of the hearing commencing on 15 May 2012, the SRA will be inviting the Tribunal to proceed and to determine the matter at the hearing next week even in the event that you fail to attend".

17. By e-mail dated 14 May 2012, Mr Goodwin said that Mr Greensmith had written again to the First Respondent and stated:

> "I would be grateful if you would forward a copy of the letter that you told me that you would be sending to the Tribunal in due course".

18. Mr Goodwin said that the most recent correspondence from the First Respondent was therefore his e-mail of 15 May 2012 as already referred to, requesting a further adjournment of the substantive hearing on the basis that the First Respondent was still unwell and referring to his wish that the matter be dealt with by way of an RSA. Mr Goodwin submitted that at the Tribunal's discretion, the case should be heard substantively. He said that it was not a suitable case for an RSA and the First Respondent had been told that on more than one occasion so that his wish to have it dealt with in that way was without merit.

19. In relation to the First Respondent's state of health, Mr Goodwin said that no up to date medical evidence had been provided by the First Respondent to support his continuing ill health and the Applicant had requested and the Tribunal had directed that the First Respondent attend for a medical examination by an independent psychiatrist yet the First Respondent had failed to do so. Mr Goodwin submitted that the Tribunal was therefore entitled to draw from that an adverse inference.

20. In relation to authorities as to the First Respondent's health, Mr Goodwin said that the case of Brabazon-Drenning v United Kingdom Central Council for Nursing, Midwifery and Health Visiting October 2000 (co/490/2000) had previously been considered at the hearing on 19 July 2011. Mr Goodwin submitted that the current situation could be differentiated in that there was no medical evidence before the

Tribunal and the First Respondent had failed to attend the medical examination, as stated, even though he had originally agreed to do so.

21. Mr Goodwin informed the Tribunal that research had been undertaken which showed that the First Respondent had been active in the interim in the business world and had held other directorships which were not necessarily legal in nature but Mr Goodwin submitted it supported that the First Respondent had been participating in both work and business.

22. Mr Goodwin requested that the Tribunal reject the First Respondent's application for an adjournment and that the substantive hearing proceed.

The Tribunal's Decision

23. The Tribunal had read all of the documents to which it had been referred including the various correspondence between the Applicant's legal representatives, the First Respondent and the Tribunal itself. It also had regard to the relevant authorities, namely Regina v Hayward, Regina v Jones and Regina v Purvis [2001] EWCA Crim 168 and to the Tribunal's own practice note on Adjournments.

24. The Tribunal had regard to the judgment of Rose LJ in Hayward, Jones and Purvis, in which he stated:

> "In our judgment, in the light of the submissions which we have heard and the English and European authorities to which we have referred, the principles which should guide the English courts in relation to the trial of the defendant in his absence are these.
>
> (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
>
> (2) Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him...
>
> (3) The trial judge has a discretion as to whether a trial should take place continue in the absence of a defendant and/or his legal representatives.
>
> (4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented...
>
> (6) If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit...".

25. The Tribunal decided that the First Respondent had deliberately absented himself from the substantive hearing. It was clear that the First Respondent was aware of the

substantive hearing and that he had had a number of opportunities to file written submissions and indeed had been directed to do so but had failed to do so to date.

26. The Tribunal's own practice note stated:

> "(4) The following reasons will NOT generally be regarded as providing justification for an adjournment:
>
> (c) Ill-health
>
> The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient".

27. The Tribunal had read the First Respondent's e-mail dated 15 May 2012, which sought to rely on his ill-health. However, the First Respondent had produced no updating medical evidence or "a reasoned opinion of an appropriate medical adviser" to support his claimed medical condition and that this had lead to his inability to attend the substantive hearing. In addition, the Tribunal had heard that the First Respondent had failed to attend medical appointments despite having agreed to do so. The Tribunal was satisfied that it was entitled to draw an adverse inference from the First Respondent's non-attendance.

28. The Tribunal had also heard that whilst the First Respondent had sought to enter into an RSA with the Applicant, the Applicant had informed the First Respondent on more than one occasion that his case was not an appropriate case for such an agreement. The Tribunal was satisfied that by raising this in his e-mail dated 15 May 2012, the First Respondent was aware of the reality of the situation that his seeking to enter into an RSA with the Applicant was without merit.

29. The Tribunal refused the First Respondent's application for adjournment and decided that the substantive hearing should proceed. In reaching its decision, the Tribunal was satisfied that it had exercised its discretion to proceed with great care. The Tribunal was confident that the case could be dealt with fairly on the papers, it being incumbent upon the Applicant's legal representative to prove all of the allegations against the First Respondent beyond reasonable doubt.

Factual Background

30. The First Respondent was born on 10 September 1973 and was admitted to the Roll of Solicitors on 15 September 1999. The First Respondent remained on the Roll. At the material time the First Respondent practised on his own account in the recognised body SFS Legal Limited (the Second Respondent) at Barkby House, Barkby Road, Leicester LE4 9LG.

31. The Second Respondent ("the firm") was incorporated as a Limited Company on 3 August 2004 and became recognised by the Applicant from 3 September 2004. The First Respondent was the sole director and shareholder. The Second Respondent was a solicitor's practice operating from Barkby House, Barkby Road, Leicester LE4 9LG

and from satellite offices in London, Birmingham, San Francisco and Dubai. At the material time, the Second Respondent had two other trading styles namely Property Law Associates ("PLA") and Easy Way 2 Convey ("EW2C") which were used in certain property transactions. All property work was undertaken from the Second Respondent's head office in Leicester.

32. The Applicant commenced an inspection into the First and Second Respondents on 26 March 2008, which culminated in a Forensic Investigation (FI") Report dated 6 October 2008.

SAR breaches

33. The First and Second Respondents operated two sets of ledgers: one held on a computerised system and updated by accounts staff and the other based upon manual entries, updated by individual fee earners. The two sets of ledgers did not correspond with each other.

34. The Applicant compared the differing computerised and manual ledgers in the client matter of Mr and Mrs M. The computerised ledger showed a rising debit balance in the period 13 December 2007 to 31 December 2007 which was not rectified until 18 January 2008. The manual ledger of the same transaction revealed different postings and different client balances throughout and did not fall into debit balance.

35. The First Respondent told the Applicant that the debit balance on the computerised ledger was caused by an error in the postings. The Applicant requested documentary evidence in support of the postings in the client matter of Mr and Mrs M. The First and Second Respondents failed to provide that and it proved impossible to determine which, if any, accurately reflected the movement funds. The position was further complicated by the presence of three different versions of the manual ledger.

36. The First Respondent stated that the computer ledgers were created retrospectively by accounts staff and did not accurately record the movement of monies from client matters. The First Respondent told the Applicant that the manual ledgers were more accurate because they were regularly updated by fee earners whereas it was left to the firm's accountants to update the computerised ledger and "mirror" the manual ledgers.

37. In comments made to the Applicant on 16 January 2009 the Respondent admitted that there had been breaches of the SAR.

Debit balances on client account

38. The First and Second Respondents used the computerised ledger to reconcile the accounting records each month, rather than the manual ledger.

39. The four monthly reconciliations which had been completed prior to the inspection revealed client debit balances of £65,185.95 as at 30 September 2007, £124,766.76 as at 31 October 2007, £74,974.46 as at 30 November 2007 and £56,168.85 as at 31 December 2007. The First Respondent told the Applicant that these were not true debit balances but were due to posting errors on the ledgers.

40. Debit balances were allowed to remain from one reconciliation date to another without rectification:

- the debit balances in the ledgers of A, AK and WS in the sums of £1,163.25, £1,460 and £1,240 respectively appeared as at the reconciliation date of 30 September 2007 and remained as at the reconciliation date of 31 October 2007;

- the debit balance of AK remained unrectified as at the reconciliation dates of 30 November 2007 and 31 December 2007;

- two debit balances in respect of client FL appeared on the reconciliation date of 31 October 2007 and again on 30 November 2007. One was permitted to remained unrectified on 31 December 2007;

- the debit balances in respect of client A&TES and RP which existed on 31 October 2007, 30 November 2007 and 31 December 2007 remained unrectified.

41. The First Respondent described the debit balances as "virtual debit balances and not actual debit balances" on account of the computer ledger records not accurately reflecting the movement of monies on client matters. Although the First and Second Respondents had manual client ledgers, they had only maintained a computerised general client ledger, namely totals held for each client, but these were based upon the computer ledgers which the Respondents knew to be "inaccurate". This resulted in the general ledger being substantially inaccurate.

42. The four largest debit balances on individual client ledgers were on ledgers E022 “SFS”, 10102 “Fees Transferred”, A0034 “PI” and E0054 “Mr and Mrs M”.

<u>E022 “SFS” - Purchase of 45 Naseby Road</u>

43. The firm acted for the First Respondent in his purchase of the property with the assistance of a mortgage from an institutional lender and loans from two clients, namely Mr S and PI (a company). The firm also acted for the institutional lender. The stated purchase price was £154,000 and the mortgage was in the sum of £127,500. Contracts were exchanged on 11 September 2007 when the deposit of £15,400 was paid to the seller’s solicitor by cheque. Completion took place on 21 September 2007 when monies in the sum of £138,600 were paid to the seller’s solicitor by telegraphic transfer.

44. The manual and computerised ledgers did not correspond with each other. The manual ledger included a payment of £26,400 which did not appear on the computerised ledger. The computerised ledger included a payment of £43 on 30 September 2007 which did not appear on the manual ledger. The ledgers each suggested different dates for the payment of the deposit to the seller’s solicitor. The account balances of each ledger were in different amounts.

45. According to the manual ledger, as at 21 September 2007, the First and Second Respondents held £172.73 in their client account on this matter. On the same date, the

computerised ledger showed a shortfall of £26,185.77. The client debit balance of £26,185.77 recorded on the computerised client ledger was used by the First and Second Respondents during the 30 September 2007 reconciliation but was not corrected at the time.

46. The First Respondent told the Applicant that the £26,400 shown as a credit on the manual ledger on 20 September 2007 originated from "monies owed on the files… in terms of bills of costs" and included the loans obtained from the firm's clients, Mr S and PI. The First Respondent was asked to provide a breakdown as to where these "costs" had come from but failed to do so.

Remortgage

47. The computerised ledger for the First Respondent's Naseby Road purchase also recorded a further, separate transaction in which the First Respondent remortgaged a separate property in October 2007.

48. The Respondents failed to record the transaction on a separate ledger but continued posting entries upon the computerised version of the Naseby Road purchase ledger. No entries were posted to a manual ledger in respect of the transaction. The computerised ledger recorded that £210,965 was received from an institutional lender and credited to the client side of the First Respondent's ledger concerning 45 Naseby Road, which at that stage was in debit by £27,435.77. The consequence was that the ledger returned to credit in the sum of £183,529.23, but also that the institutional lender's funds were no longer intact.

49. The First Respondent stated that this was an "error in posting" and "not reflective of the true movements of monies on that particular transaction".

50. In addition, the client ledger was debited by five payments of £50,000 between 11 October 2007 and 18 October 2007 by payments to the Office Tracker Account although two of the payments were subsequently reversed. The manual ledgers did not record these transactions.

E0054 Mrs and Mrs M – Purchase of 78 Christchurch Road

51. The firm acted for Mr and Mrs M in the purchase of a property for £360,000 with a mortgage of £334,250 from SWB, an institutional lender for whom the firm also acted.

52. Simultaneous exchange and completion took place on 13 December 2007. £360,632.50 being the purchase monies together with £632.50 on account of rent for twenty-three days was paid from the client bank account to the seller's solicitors one day earlier on 12 December 2007. At the time of the transaction, the rate of Stamp Duty Land Tax ("SDLT") which was due upon the purchase was £10,800 being 3% of £360,000.

53. The transaction included the use of the firm's SDLT minimisation scheme. During the inspection, the First Respondent gave the Applicant the documentation which had been made available to Mr and Mrs M about the scheme. Client care documentation wrongly stated that SDLT of £10,050 was payable upon the transaction. The client

care documentation also stated "we offer a SDLT minimisation scheme, where we can reduce this by 50% to £5,025.00". This meant to the clients that only half of the SDLT liability would be paid to HM Revenue and Customs ("HMRC") and that the amount that would be paid was £5025. The First Respondent told the Applicant that his firm sought a fee equal to 1.5% of the transaction value where it operated the minimisation scheme and this was therefore an anticipated fee to the firm.

54. The completion statement provided to Mr and Mrs M recorded a fee of £5400 on account of "SDLT Services". The firm had taken a fee in a different amount from that noted on the completion statement; £4374.38 was taken for SDLT scheme. The completion statement itself did not indicate that any SDLT was paid. The computerised and manual ledgers for the transactions and the postings thereon differed.

55. The First Respondent told the Applicant that the manual ledgers were correct. He then provided the Applicant with three different versions of the manual ledger for the matter. All of the manual ledgers showed different balances due to Mr and Mrs M at the end of the matter; one version showed a balance due of £360.35, one showed a balance due of £480.35 and one showed a balance due of £8480.35. The computerised ledger showed a debit balance on client account of £4923.27 and an inter-ledger transfer of £5400 which the First Respondent was unable to explain. The Applicant asked the First Respondent in interview and by e-mail dated 11 July 2008 to provide an accurate ledger which he failed to do.

56. All of the manual ledgers suggested that £1600 had been paid to HMRC although the dates of the purported payment did not accord. The computerised ledger recorded no payment to HMRC and the completion statement did not tell the clients that any payments had been made to HMRC.

57. The documents left Mr and Mrs M with the impression that they had made a saving of £6425.62 by having paid £4374.38 in fees to the firm rather than having incurred a liability for SDLT of £10,050, albeit miscalculated. No evidence was seen on the file that Mr and Mrs M had been provided with any advice concerning the risks of the scheme. The First Respondent told the Applicant that all transactions under the scheme risked failure. The First Respondent stated that HMRC had nine months within which to raise enquiry concerning the transaction, following which enforcement action might be taken. The First Respondent told the Applicant that his advice to clients was that they "should pay the liability over in excess of what we haven't already paid over". This meant that Mr and Mrs M would have to pay the outstanding £9200 together with any penalty and interest payments and would have lost their payment £4374.38 in fees to the firm for no benefit.

<u>Ledger A0034 "General Ledger (PI)"</u>

58. The manual ledger in respect of client PI recorded three transactions. The computerised version of the ledger, which fluctuated between credit and debit balances between September 2007 and April 2008, recorded ninety-four transactions over three pages.

59. The SAR required that all dealings with client money must be appropriately recorded on the client side of the separate client ledger account for each client and that no other entries might be made in those records, in accordance with Rule 32 (2).

60. The computerised ledger recorded the receipt and payment of monies from a number of clients and their various, unrelated, transactions. The First Respondent told the Applicant that the ledger was used "as a general ledger for posting unallocated entries and queries". Payments and receipts were posted to the ledger on behalf of more than one client and on more than one matter. The First Respondent told the Applicant that he had issued client account cheques on behalf of PI in circumstances where the firm was providing no other underlying legal service. The said payments had been recorded on the computerised ledger.

61. One such payment was for £16,099.41, made payable to "BMW Finance" on 11 September 2007. That payment put the ledger into debit by £16,218.68 and the payment was not recorded on the manual ledger.

Blue warning card on money laundering

62. Many payments and receipts were in respect of "LM", such as a debit of £32,000 on 14 September 2007, a further debit of £25,000 on 21 September 2007 and debits of £9500 and £28,000 on 12 October 2007. The First Respondent told the Applicant that he processed transactions on behalf of LM when no legal service had been provided.

63. LM was a second-hand car dealership. The First Respondent told the Applicant that he had issued client account cheques on behalf of LM when LM purchased vehicles at discount and in circumstances in which it did not want the sellers to know they were being purchased by a motor trader.

64. The First Respondent told the Applicant that he had taken steps to check the source of funds received from clients and credited to the PI ledger by asking questions about the source of those funds.

Ledger 10102 – General Ledger (fees transfers)

65. The Respondents operated a general client ledger, which covered the transactions for a large number of clients. The ledger had client account debit balances in the amount of £34,270.81 as at 30 September 2007, £57,568.59 as at 31 October 2007 and £59,999.85 as at 30 November 2007. The debit balance as at 31 December 2007 was £40,044.14.

66. The First Respondent told the Applicant that the ledger was used for "miscellaneous postings". The evidence demonstrated that the Respondents used the ledger as a banking facility in order to receive monies from certain clients, including PI and LM, and to make immediate payments out on their behalf by client account cheque where there was no underlying legal transaction.

Round Sum Transfers

67. Rules 19 (2) and 19 (3) of the SAR set out the circumstances in which a solicitor may transfer monies from client account on account of costs. The Rules state that a

solicitor may only do so upon having first given or sent the client the bill of costs. Note (x) to Rule 19 state that the transfer of monies from client account on account of costs must be specific sums which relate to the bill and that round sum withdrawals on account of costs are a breach of the Rules.

68. Thirty-five round sum transfers were made from client bank account to the Respondents' office bank account on account of costs between 19 September 2007 and 27th February 2008 and totalled £165,920.

Loans from clients

69. In relation to the First Respondent's purchase of the property at 45 Naseby Road, this had partly been funded by two loans from clients Mr S and PI, who loaned £11,450 and £11,000 respectively. The First Respondent failed to disclose documentation which showed the exact amount he borrowed from PI together with letters of consent from both lenders.

70. There was no evidence on either file to show that either client had taken independent legal advice before agreeing to the loans to the First Respondent. Mr S had written to the firm by letter dated 10 September 2007 and asked when the loan would be repaid. There was no record on the file of a response having been provided to Mr S's letter. The First Respondent had provided a copy of a letter which stated that he would offset the loan against future legal fees but there was no record of Mr S having consented to the First Respondent's proposal.

71. The First Respondent told the Applicant that the loans had been repaid but there was no documentary evidence to support that. The First Respondent produced a copy of a letter sent to Mr S which referred to £6,000 out of the £11,450 loaned in circumstances where two of the three cheques making up that sum were payable to third parties rather than to Mr S, contrary to Rule 15 of the SAR. The remaining £5400 was stated to have already been offset against fees due to the firm from Mr S. No bills in support of that had been provided despite the Applicant having requested documentary evidence that the monies had been returned to Mr S.

Advising lenders of material facts

72. The Respondents represented institutional lenders in property transactions where the lenders subscribed to the Council of Mortgage Lenders ("CML") and where the requirements of the CML Handbook ("the Handbook") formed part of those lenders' instructions.

73. Under the Handbook (and Rule 3 of the SCC) there was a requirement to notify the lender if acting for all parties to the transaction where:

- the solicitor proposed to act as seller, buyer and lender in the same transaction;
- the solicitor or principal was the seller;
- the seller had not owned or been the registered proprietor of the property for six months or more;

- any matter came to the attention of the solicitor which the solicitor should reasonably have expected the mortgagee to consider important in deciding whether or not to lend to the borrower;
- the purchase price of the property was not the same as set out in the mortgagee's instructions, for example due to an arrangement in which the buyer benefits from a cash or non-cash incentive from the seller; or where
- the solicitor would not have control over the payment of all of the purchase money.

74. The Handbook required that such reporting to the lender was made as soon as the solicitor became aware of the matter to be reported. The Handbook also required that any contact between the solicitor and the lender was made in writing.

75. A number of conveyancing files were inspected by the Applicant. No evidence could be found on the four exemplified conveyancing files to show that lender clients had been advised of certain material facts including the transactions were completed on a back-to-back basis and that the firm, under different trading styles, namely PLA and EW2C, had represented the seller as well as the buyer and the lender. The Respondents divided their employees between these trading styles which furthered the impression that they were independent firms.

Mr and Mrs A – 33 Draper Street

76. The Respondents represented the buyer, seller and mortgagee in a transaction in which the firm represented Mr and Mrs A in the purchase of the property from FHL. The First Respondent was a director of FHL and signed the appropriate Land Registry forms. Mr and Mrs A purchased the property with the assistance of a mortgage from TMB, also represented by the firm.

77. There was no evidence that TMB had been advised of the relevant material facts which were that the First Respondent was both the sole director of the firm and a director of the seller and that the firm was representing all parties to the transaction. The First Respondent subsequently provided copy letters which he asserted demonstrated that TMB had been advised that the firm represented all parties in the transaction. Correspondence referred to PLA as "sister company" to the Second Respondent, rather than as a trading style of the Second Respondent.

78. Mr and Mrs A had also been assisted in the purchase by a "gifted deposit" of £60,000 from the seller, which should have been reported to the lender.

Plot E39 Broughton Green

79. The Respondents represented all parties in a transaction in which ZAM, (a company), purchased a property for £190,395 and immediately sold it to S, an individual for £229,995. At the material time, S was the company secretary of ZAM. S funded his purchase with a mortgage and an unsecured loan both from GM, an institutional lender, for whom the Respondents also acted. GM instructed the firm to represent their interests in the transaction in accordance with the Handbook.

80. Contrary to the requirements of the Handbook, the Respondents failed to notify their lender client:

- that the firm was acting for seller, buyer and lender;
- the nature of the relationship between the buyer and the seller; or
- that the seller had not owned or been the registered owner of the property for six months or more.

81. The First Respondent provided the Applicant with a letter which referred to PLA as a "sister company" rather than a trading style of the Second Respondent.

Plot 361 Sirus

82. The Respondents acted for the buyer, seller and institutional lender in a transaction in which S purchased a property for £155,349 and immediately sold it to R for £189,450. R was funding his purchase with a mortgage from ME, who instruct the firm in accordance with the Handbook.

83. On completion, the proceeds of S's sale in the sum of £30,833.28 were distributed by telegraphic transfer to S and to four other parties, including ZAM. The Respondents were asked to provide details of the other recipients of funds and the reasons for the payments but failed to do so. No evidence was found on the file which gave authority from S allowing payment to third parties.

Plot 17 The Oaks

84. The Respondents acted for the buyer, seller and institutional lender in a transaction in which BPL purchased a property for £170,088.13 and immediately sold it P for £190,000. P was funding the purchase with a mortgage from TMB who instructed the firm in accordance with the Handbook.

85. Upon completion, the firm returned funds from the proceeds of BPL's sale to the purchasers, P. Nothing on any of the ledgers suggested that any SDLT was paid in respect of the transaction.

86. The First Respondent failed to provide any documents requested by the Applicant to support his assertion that TMB was made fully aware of the nature of the transaction or that SDLT had been paid on the purchase.

Disclosure letters

87. In relation to the four exemplified conveyancing transactions, the First Respondent asserted that the lenders in all of the transactions had been "advised" that his firm, through separate trading styles, acted for the seller, buyer and lender. The First Respondent provided letters in support of his assertion and which he said had been sent to the lenders. There was no evidence on any of the files to demonstrate that the lenders had responded and authorised the transactions to continue.

Referral arrangements

88. During interview on 27 March 2008, the First Respondent told the Applicant that 60% of the firm's work was derived from referrals. The First Respondent produced a list of referrers, which comprised of a total of seven estate agents and independent financial advisers.

89. The First Respondent accepted that no formal written agreements were in place, setting out the terms of the referral arrangements with each introducer. In the course of the investigation, the Respondents entered into formal written agreements with three of the seven introducers. No evidence had been produced that the Respondents were compliant in respect of the remaining four introducers.

90. The Respondents made payments to referrers from client account directly from the ledgers concerned. Between 15 October 2007 and 13 February 2008, the First Respondent made fifty-eight payments to four different referrers totalling £5325. The First Respondent confirmed that the firm paid the referral fees from funds held in the client bank account.

Stamp Duty Mitigation Scheme ("SDMS")

91. The First Respondent developed an "SDMS" approximately one year prior to the Applicant's investigation.

92. On some client matter ledgers there were no payments of SDLT at all or the payments that were made were less than the sums due. In the matter of Mr and Mrs M, the firm's clients purchased a property for £360,000 but they paid SDLT of only £1600 rather than the prescribed rate of 3% of the purchase price which would have amounted to £10,800. The First Respondent completed more than fifty similar transactions in which the scheme was adopted.

93. The scheme assumed the purchase of a residential property by husband and wife and operated in a "two-step process being (1) to acquire the property for full consideration which may be funded by a mortgage, followed by (2) an immediate gift of all or a substantial part of the property to a party… and subject to caveats… this transaction results in no SDLT or a reduced amount of SDLT arising".

94. There was no evidence from the papers made available to the Applicant during the investigation, which showed that clients had been advised of the risks involved in participating in an SDMS, including enforcement action by HMRC.

95. In November 2008, the First Respondent provided further documentation which had not been available during the inspection. The documents provided after the event were the first documents which explained some of the risks under the scheme. The First Respondent referred the Applicant to correspondence sent to clients, including a fact find and a summary of risk letter in support of his assertion that clients had been advised of the risks involved.

96. The First Respondent also provided the Applicant with a copy of the analysis of the scheme, which he provided to clients. Under the scheme, the husband and wife were considered to be separate parties to the transaction and the analysis referred to them as

"Party A" and "Party B". The scheme required Party A to exchange contracts with the vendors of the property, to pay the deposit, to pay the vendors upon completion and to undertake with the lender to be solely responsible for the discharge of the interest payments and the capital of the loan. Immediately upon becoming the legal estate owner of the property upon completion of the purchase, Party A was required to gift their "entire interest in the property" to Party B.

97. The success of the scheme was dependent upon the gift being for no consideration and being considered a distinct, separate transaction and a "non-event" for SDLT purposes. Party B was unable to make any contribution towards either the deposit or towards mortgage payments because if Party B assumed any part of the debt in respect of the purchase, then it would be taken into consideration for the purposes of SDLT.

98. The Respondents charged their clients substantial fees for the SDMS, over and above the firm's standard conveyancing transaction fees. Notwithstanding the high level of fees paid for this advice and preparation of the deed of gift, the First Respondent told the Applicant that the clients who entered the scheme risked enquiry from HMRC which, following enforcement action, could require the clients to pay the full amount of SDLT which would normally be due. This could include a penalty charge and interest.

99. No evidence was seen on any of the files examined by the Applicant that the Respondent had prepared and their clients had entered into any of the deeds of gift required by the SDMS. Despite oral and written requests for copies of the deeds of gift, the First Respondent had failed to provide any.

Failure to cooperate with the Applicant

100. The Applicant wrote to the First Respondent by e-mail dated 11 July 2008 and requested certain specific information. The First Respondent replied by e-mail dated 21 July 2008 and informed the Applicant that he had been preoccupied and would provide the requested information with his response by the end of that week. The Applicant required that the information be provided by close of business on 25 July 2008. The First Respondent wrote again to the Applicant by e-mail dated 28 July 2008 that he had been unable to provide the required information due to work commitments and due to delay on the part of his accountant and staff in providing the information.

101. The Applicant told the First Respondent that work would start on a written report of the investigation and the matters of concern which had been identified regardless that no response had been received from the First Respondent.

102. The First Respondent wrote to the Applicant on 4 August 2008 and stated that he had scanned and emailed a response to the Applicant which contained the required information. No email or attachment was received by the Applicant. The Applicant advised the First Respondent of this on 6 August 2008 and requested a full response with the required information by close of business on 8 August 2008.

103. The Respondents failed to provide any further information.

104. The Applicant formally raised matters identified in the FI Report in a letter dated 23 October 2008. The First Respondent replied by letter dated 24 November 2008.

Allegations against the First Respondent only

105. A further FI investigation was commenced by the Applicant on 19 October 2009 and culminated in an FI Report dated 3 February 2010.

106. The First Respondent closed his practice on 31 March 2010. Thereafter, the Applicant obtained and examined files provided by H Bank and A (now S) Bank which provided mortgage advances to the First Respondent and his wife in respect of property transactions but where registration of the transactions had not been completed.

66 Naseby Road ("Property 1")

107. The First Respondent purchased Property 1 on 25 August 2006 for £132,000 with the assistance of a mortgage from A Bank. The firm acted in the transaction which was registered with the Land Registry on 4 January 2007.

108. The First Respondent's wife ("Mrs S") applied to the BM Bank), part of H Bank, for a loan of £131,500 to assist in her purchase of Property 1 at a price of £155,000. H Bank instructed the Respondents to represent their interests in the transaction.

109. The mortgage application did not make full disclosure of Mrs S's employment status and her relationship with the seller. As a result, BM Bank were unaware that Mrs S was related to her employer and that as the property belonged to the First Respondent (her husband), the transaction constituted a private sale.

110. The Certificate of Title was sent to BM Bank by the Second Respondent and the mortgage monies for Mrs S's purchase were released to the firm on 2 November 2006.

111. No property sale took place. No charge to BM Bank was ever registered. The property remained in the First Respondent's name and the monies advanced by BM Bank were used by the First Respondent. The First Respondent told the Applicant that the BM Bank mortgage was intended to have been short term finance and had not been registered as he had intended to repay it quickly.

112. Representations made by Ch Solicitors on behalf of the First Respondent stated that the money was used for the renovation of the Respondents' Leicester office building and to "growing the [First Respondent's] practice". The explanation continued "the [First Respondent's] sole purpose for raising mortgages was to support and fund the development of [the Second Respondent]. His intention was to use the mortgages obtained towards [the Respondents'] business and redeem the mortgages shortly thereafter".

113. In a letter from the First Respondent's firm to H Bank's solicitors dated 10 July 2010, it was claimed that the First Respondent had repaid the mortgage from BM Bank by payment of £131,748.27 on 29 November 2006. The First Respondent was unable to prove that any such payment had been made. No such monies were received by BM

Bank and the mortgage account continued to be maintained and regular repayments made.

114. The First Respondent made a mortgage application to TMB in his own name to remortgage Property 1 in the amount of £127,550. The stated property value was £150,000. The First Respondent declared his income to be £160,000. The First Respondent told the FIO that TMB had not been aware of the earlier charge as it had not been registered.

115. The mortgage offer from TMB was conditional upon the First Respondent granting a legal charge over the property.

116. The First Respondent told the FIO that Property 1 was remortgaged to redeem the mortgage taken from BM Bank but that the mortgage monies were not used for that purpose and were used within the business (the Second Respondent) for renovation of the firm's premises.

117. Completion of the remortgage took place on 23 February 2007 when £127,500 was received into client bank account. The First Respondent failed to register TMB's charge over Property 1 contrary to TMB's instructions and TMB's mortgage advance was left unsecured.

118. The First Respondent applied for and obtained a further loan in respect of Property 1 from B Bank. The charge to B Bank was registered with the Land Registry on 1 August 2007 and left the existing lenders, BM Bank and TMB, without any security for their advances.

119. There were four further exemplified conveyancing transactions for 77 Fairfax Road ("Property 2"), 72 Essex Road ("Property 3"), 5B Roseberry Road ("Property 4") and 44 Wainwright Avenue ("Property 5") which followed a similar pattern.

Accounts Issues

120. The FI Report dated 3 February 2010 noted that the firm's books of account remained otherwise than in accordance with the SAR. The First Respondent was unable to provide the FIO with accurate client ledger balances which corresponded with the cash book figures shown on the reconciliation statements. The First Respondent told the FIO that his firm would shortly cease to hold client monies and he had therefore made no effort to improve the accounting system since the 2008 FI investigation.

121. The Applicant formally raised the matters identified by the 3 February 2010 FI Report by letter to the First Respondent dated 11 February 2010 to which the FI Report was attached and by further letter dated 26 March 2010. The First Respondent replied by letter dated 23 February 2010 and by a letter erroneously dated 14 February 2010 but received on 14 April 2010.

122. The First Respondent denied that he had been dishonest in the way in which he had obtained mortgages from H Bank and stated that he did not intend to defraud H Bank.

Witnesses

123. The FIOs gave evidence.

Ms R Whatmore

124. In her evidence, Ms Whatmore, the first FIO, confirmed that the FI Report dated 6 October 2008 had been prepared by her and that it was true to the best of her knowledge and belief.

125. Ms Whatmore referred to her email dated 11 July 2008 to the First Respondent sent after the final interview on 10 July 2008 in which she said she had requested a list of documentation and information to be provided. She referred the Tribunal to her exchange of emails with the First Respondent commencing 21 July 2008 and which she said concluded on 8 August 2008 after which Ms Whatmore said nothing further was forthcoming from the First Respondent.

126. In relation to the gifted deposits, Ms Whatmore said that the letters provided by the First Respondent had been sent to her by email prior to her final interview with him in July 2008 and she confirmed that she had not doubted their veracity.

127. Ms Whatmore was referred to the First Respondent's letter dated 24 November 2008 in which he had stated:

> "... The manual ledger system was an accurate reflection of the movement of monies on client matters and no debit balances existed on our manual ledgers.
>
> Furthermore, through the testing carried out by our external accountants they have confirmed that no true debit balances existed on any client files. The debit balances in Appendix 3 are virtual debit balances and not actual debit balances…" .

Ms Whatmore said that the debit balances did exist on the computer ledgers and on the reconciliations which had been undertaken prior to her investigation and had been detailed in her Report. She said that the First Respondent had operated computer ledgers and Excel spreadsheets as manual ledgers. She said that the computer ledgers and manual ledgers had never married up and there had been different postings on each ledger. Ms Whatmore referred the Tribunal to her Report which stated at paragraph 12:

> "... Documentary evidence to support the postings on both the ledgers, although requested, was not provided and therefore Ms Whatmore has been unable to establish which ledger, if either, reflects the most accurate position".

128. In relation to Accountant's Reports, Ms Whatmore said that she had never seen any reports filed by the First Respondent's Accountants.

129. Ms Whatmore was referred to a letter dated 15 March 2007 to TMB from fee earner ZG of the Second Respondent. In response to a question from the Tribunal regarding the letter, Ms Whatmore said that it appeared that the fee earner ZG had been acting for FH who had been the vendors regarding 33 Draper Street and she had not identified that, although the letter purported to be from the Second Respondent. Ms

Whatmore said that whilst PLA and EW2C had been two entities separate from the Second Respondent, they had been located in the same offices and fee earners could have sat opposite each other and could have undertaken work on each other's files.

Mr B Sage

130. In his evidence, Mr Sage, the second FIO and author of the second FI Report, confirmed that his Report dated 3 February 2010 had been prepared by him and that it was true to the best of his knowledge and belief.

131. Mr Sage was referred to his Report and the section regarding the lodgement of £108,715 which he had seen in the firm's client account bank statements dated 24 June 2008.He said that the sum had been a bank transfer from Abbey which had been transferred to the firm's office account on the same date in the sum of £58,715 and a CHAPS payment for the balance of £50,000 shown as "To Tiuta PLC 016098 SAC3041PL".

132. Mr Sage said that he had asked the First Respondent for an explanation for the payments and supporting documentation. He said that the First Respondent had explained the payment for £58,715 which he told him had been for his fees due from NSMMG Ltd but had not provided any supporting documentation. For that reason, Mr Sage said that his report had been incomplete regarding the NSMMG Ltd matter. Mr Sage said that the First Respondent had not provided any explanation for the balance of £50,000 and that he [Mr Sage] had been suspicious as the whole sum had looked very much like a mortgage advance.

133. Mr Sage referred to his contemporaneous handwritten notes of his interview with the First Respondent on 26 November 2009, which stated regarding the £108,715:

> "Mr S [the First Respondent] said the £108,715 was payment of his fees and may have come from "an investor" (presumably an investor in NSM) – he said the investor may have obtained a mortgage advance from Abbey".

134. Mr Sage said that he requested documentary evidence to support that but none had been forthcoming.

135. In response to a question from the Tribunal in relation to the firm's offices, Mr Sage referred to his Report which stated:

> "...He said that the firm also had offices in London, Birmingham, Dubai and San Francisco but that these were only addresses where rooms could be made available to meet clients when required and no members of staff were based there".

Findings as to Fact and Law

The allegations <u>against the First and Second Respondents</u> were that they:

136. **Allegation 1.1 failed to accurately record the movement of client monies, contrary to Rule 32 Solicitors' Accounts Rules 1998 ("SAR");**

Allegation 1.2: maintained client debit balances, contrary to Rules 22 and 7 SAR;

Allegation 1.3: failed to record referral arrangements with introducers in writing, contrary to Rule 9 Solicitors' Code of Conduct 2007 ("SCC");

Allegation 1.4: used client monies to pay business expenses, contrary to Rule 22 SAR and to Rules 1.02, 1.04 and 1.06 SCC;

Allegation 1.5: failed to provide specific information and documentary evidence required by the SRA, contrary to Rule 20.05 SCC;

Allegation 1.6: provided banking services through client account without underlying legal transactions, contrary to Rule 15 SAR and Rules 1.02 and 1.06 SCC;

Allegation 1.7: transferred monies from client to office accounts in round sums without first delivering a bill of costs, contrary to Rule 22 SAR;

Allegation 1.8: acted in circumstances of a conflict of interests, contrary to Rule 6 Solicitors' Practice Rules 1990 ("SPR") and Rule 3 SCC;

Allegation 1.9: failed to make material disclosures to lender clients and in so doing preferred the interests of borrower clients, contrary to Rule 1 (c) and Rule 6 SPR and Rules 1.04 and 3 SCC;

Allegation 1.10: failed to follow client instructions, contrary to Rules 1 (c), 1 (d) and 1 (e) SPR and Rules 1.04, 1.05 and 1.06 SCC;

Allegation 1.11: as principals, failed to comply with SAR contrary to Rule 6 SAR;

Allegation 1.12: as principals, failed to remedy breaches of SAR promptly upon discovery contrary to Rule 7 SAR;

Allegation 1.13: failed to act in the best interests of clients, contrary to Rules 1.04 and 1.05 SCC;

Allegation 1.14: gave misleading information about the cost of a matter, contrary to Rules 1.02, 1.04, 1.05 and 2.03 SCC.

The allegations <u>against the First Respondent alone</u> were that he:

Allegation 1.15: used figures which he knew to be inaccurate when carrying out reconciliations, contrary to Rule 32 SAR and Rules 1.02 and 1.06 SCC;

Allegation 1.16: took loans from clients without insisting that they took independent legal advice, contrary to Rule 3.01 (2) SCC.

The allegation against the Second Respondent alone was that it:

> **Allegation 1.17: operated under different trading styles when acting for the seller, buyer and lender in property transactions, giving the impression that each party was represented by a different firm when it was not, contrary to Rules 3, 1.02, 1.04 and 1.06 SCC.**

The further allegations against the First Respondent alone were that he:

> **Allegation 1.18: failed to ensure that lender clients were aware of all relevant information in transactions completed for him or for his wife and in so doing preferred his own interests to those of his firm's lender clients, contrary to Rules 1 (a), (c), (d) and (e) and Rule 6 SPR and Rules 1.02, 1.04, 1.05 and 1.06 and Rule 3 SCC;**
>
> **Allegation 1.19: obtained monies from lender clients in circumstances where he was not entitled to do so, contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC;**
>
> **Allegation 1.20: misled the SRA, contrary to Rule 20.05 SCC;**

Submissions on behalf of the Applicant

136.1 Mr Goodwin referred the Tribunal to the Rule 5 and Rule 7 Statements upon which he relied. He confirmed that the allegations 1.1 to 1.14 related to both of the Respondents, allegations 1.15 and 1.16 related to the First Respondent only and allegation 1.17 to the Second Respondent only. In relation to allegations 1.18 to 1.20, he said that these further allegations related to the First Respondent only and that dishonesty was alleged in relation to all three.

136.2 Mr Goodwin said that whilst dishonesty was not an essential ingredient of allegations 1.18 to 1.20 and it was open to the Tribunal to find the allegations proved absent findings of dishonesty, he submitted that the allegations were extremely serious and that the First Respondent in the alternative had been reckless in relation to allegations 1.18, 1.19 and 1.20.

136.3 Mr Goodwin referred the Tribunal to the test for dishonesty as set out in Twinsectra v Yardley [2002] 2 All ER 377, referred to by Lord Hutton as the "combined test" and he said that this was both an objective and subjective test. In addition, Mr Goodwin referred the Tribunal to the case of Bolton v The Law Society [1994] 1 WLR 512 upon which he said he also relied. Mr Goodwin said that Lord Bingham M R in his judgment in that case stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness...
>
> Any solicitor shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such

> cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.
>
> ...If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust...
>
> ...In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever reputation, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.
>
> ...The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price".

136.4 Mr Goodwin said that whilst the Tribunal would be aware of the comments in Bolton, he considered them worthy of repetition due to their importance.

136.5 Mr Goodwin also referred the Tribunal to the case of Weston v The Law Society [1998] co/0225/98 QBD in relation to the obligation on solicitors to comply with the SAR; the integrity of clients' funds must be maintained and any breach of the SAR was found to be serious in Weston, whether involving dishonesty or not.

136.6 In relation to the Second Respondent, Mr Goodwin said that it was a Recognised Body by virtue of the Administration of Justice Act ("AJA") 1985. He informed the Tribunal that under Schedule 2 of the AJA, the Tribunal had the power, subject to finding the allegations proved against the Second Respondent, to fine it or revoke its recognition or both. Mr Goodwin confirmed that the Second Respondent had changed its name to Alcimus Limited and he confirmed that Mr Greensmith was obtaining an updated company search and company accounts for the Second Respondent, under both its former and current name.

Allegations 1.1, 1.2, 1.6, 1.7, 1.11, 1.12 and 1.15

136.7 Mr Goodwin referred the Tribunal to the first FI Report dated 6 October 2008. He said that the Respondents' books of account had not been compliant with the SAR.

136.8 The Respondents had operated two sets of ledgers; one computerised and the other manual. Mr Goodwin said that the two sets of ledgers did not correspond with each other. In the case of Mr and Mrs M (ledger E0054) the differing computerised and manual ledgers had been compared by the FIO. The computerised ledger had shown a rising debit balance in the period 13 December 2007 to 31 December 2007 which had

not been rectified until 18 January 2008. He said that the manual ledger for the same transaction had revealed different postings and different client balances throughout and had not fallen into debit balance.

136.9 Mr Goodwin referred the Tribunal to the First Respondent's letter dated 24 November 2008 which addressed the issue of the differing ledgers and debit balances and stated:

> "... The manual ledger system was an accurate reflection of the movement of monies on client matters and no debit balances existed on our manual ledgers.
>
> Furthermore, through the testing carried out by our external accountants they have confirmed that no true debit balances existed on any client files. The debit balances in Appendix 3 are virtual debit balances and not actual debit balances. You will see from the computerised ledgers for the 2008 period that debit balances do not exist. Evidence of the same was provided to Ms Whatmore".

136.10 Mr Goodwin submitted that it was difficult to accept the First Respondent's explanation as debit balances had been evident on the computerised ledgers seen by the FIO. Mr Goodwin referred the Tribunal to the First Respondent's further letter dated 19 March 2009, which stated:

> "I accept, as I have stated in my previous responses, that due to the expansion of my practice I have not kept up to speed with my compliance with the Solicitors Accounts Rules ("Rules"), as with the benefit of hindsight I could have. However, I have acknowledged this during the inspection and subsequently during my responses to the Forensic Investigations (sic) Report. Furthermore, I have taken proactive steps to ensure that I am compliant with the Rules by dedicating sufficient resource to my accounting practices".

136.11 Mr Goodwin said that in her Report, Ms Whatmore had addressed the matter of Mr and Mrs M and the differing ledgers and debit balances and whilst documentary evidence to support the postings on both ledgers had been requested, it had not been provided. As a result, Mr Goodwin said that Ms Whatmore had been unable to establish which ledger, if either, reflected the most accurate position. As a result of the discrepancies between client balances and postings on a number of manual and computerised client ledgers, Mr Goodwin said that the FIO had been unable to express an opinion as to whether the funds held in the firm's client bank account were sufficient to meet the firm's liabilities to clients as at 29 February 2009.

136.12 In relation to the client debit balances, Mr Goodwin referred the Tribunal to the FI Report which exemplified the reconciliations examined by the FIO and undertaken by the First Respondent prior to the investigation date of 29 February 2009. He said that the client reconciliations for 30 September 2007, 31 October 2007, 30 November 2006 and 31 December 2007 had shown client debit balances of £65,185.95, £124,766.76, £74,974.46 and £56,168.85 respectively. Mr Goodwin said that the First Respondent had told the FIO in interview on 10 July 2008 that they were not "true debit balances" and that they had arisen due to "posting errors".

136.13 Mr Goodwin submitted that where there had been multiple and different versions of manual ledgers, the Respondents could not have been compliant with the

requirements of the SAR. In his letter dated 16 January 2009, Mr Goodwin said that the First Respondent had admitted that there had been breaches of the SAR.

Ledger EO22 SFS

136.14 Mr Goodwin said that the Second Respondent had acted for the First Respondent in his purchase of 45 Naseby Road, Leicester at a purchase price of £154,000 with the assistance of a mortgage advance in the sum of £127,500 from TMB, for whom the firm also acted. Contracts had been exchanged on 11 September 2007 and a deposit of £15,400 had been paid by cheque to the seller's solicitors. Completion had taken place on 21 September 2007 and monies had been sent by telegraphic transfer to the seller's solicitors in the sum of £138,600.

136.15 Mr Goodwin referred the Tribunal to the computer ledger for the transaction. He said that it showed the sum of £210,965 having been received from the institutional client and credited to the client ledger but that until that point, the client ledger had been in debit in the sum of £27,435.77. As a result of the substantial payment in, the ledger had then been substantially in credit in the sum of £183,529.23 but Mr Goodwin said that the lender's funds were no longer intact. In addition, Mr Goodwin said that five payments of £50,000 had subsequently been transferred to the firm's office account in October 2007, but had not been recorded on the manual ledger for the transaction and for which the First Respondent had had no explanation.

136.16 Mr Goodwin submitted that the Respondents' systems had not complied with the SAR and it was of considerable concern that the FIO had been unable to assess the liabilities to clients, potentially placing clients' funds at risk. He said that the First Respondent during a meeting with the FIO on 10 July 2008 had stated that he believed the debit balance on the computerised ledger had arisen due to an "error in posting" and that the computerised ledger "is not reflective of the true movements of monies on that particular transaction".

Ledger E0054 Mr and Mrs M

136.17 Mr Goodwin said that the Second Respondent had acted on behalf of Mr and Mrs M in their purchase of 78 Christchurch Avenue, Middlesex for a purchase price of £360,000 with the assistance of a net mortgage advance in the sum of £334,250 from SWB for whom the firm also acted. Simultaneous exchange and completion took place on 13 December 2007.

136.18 Mr Goodwin referred the Tribunal to the computerised and manual ledgers appended to the first FI Report. He said that an inter-ledger transfer of £5400 from the account on 13 December 2007 had created a debit balance on the computerised ledger in the sum of £4925.27. Further postings during December had resulted in a debit balance in the sum of £5180 as at 31 December 2007 which had not been mirrored on the manual ledger.

136.19 Mr Goodwin said that during the meeting on 10 July 2008 the FIO had asked the First Respondent to explain the reason for the inter-ledger transfer of £5400. The First Respondent had stated that he could not provide "an answer to that question". Mr Goodwin said that the FIO had subsequently requested that the First Respondent

provide a breakdown of the postings on the ledgers, including the inter-ledger transfer of £5400 but the information had not been forthcoming.

Ledger A0034 General Ledger (PI)

136.20 Mr Goodwin said that the ledger for this matter contained a large number of client account postings, both debits and credits, from September 2007 to April 2008 and which related to different clients. He said that throughout the ledger, the balance moved between debit and credit and the ledger showed client debit balances as at the end of October 2007 of £30,286.73, as at November 2007 of £10,622.50 and as at December 2007 of £8572.50, which had been the amounts detailed in the end of month client matter listing and the reconciliations for the month ends September 2007, October 2007, November 2007 and December 2007. The manual ledger showed only three postings.

136.21 Mr Goodwin referred the Tribunal to the first FI Report and the exemplified posting dated 11 September 1007 in the sum of £16,099.41. He said that examination of the firm's client account bank statement had shown this to have been a CHAPS payment to "BMW Finance". He said that there had already been a debit balance on the ledger of £119.27 when the payment was made which had increased the debit balance to £16,218.68. In the meeting on 10 July 2008 with the FIO, the First Respondent had said that he believed "it was payment on behalf of PI to do with a transaction that they have to do with BMW Finance and they asked me [the First Respondent] to make a payment on their behalf".

136.22 Mr Goodwin said that when asked whether PI had deposited sufficient funds with the firm before the payment had been made, the First Respondent had stated "I think there should be an opening balance on that ledger which was money on that account which was their money". Mr Goodwin said that the FIO had asked the First Respondent to provide evidence that funds had been received from PI before the payment had been made to BMW Finance on their behalf, together with their client's instructions to the payment to be made. He said that no such documentation or evidence had been forthcoming.

136.23 Mr Goodwin said that this ledger showed a large number of transactions involving receipt of client monies and almost immediately, payment out of client monies. He said that the ledgers showed a number of different names, but PI and LM appeared most frequently.

PI

136.24 Mr Goodwin said that the First Respondent had informed the FIO that PI was a property investment company for whom the firm had acted for approximately two to three years. In a previous conversation, Mr Goodwin said that the First Respondent had told the FIO that his company had assisted PI by issuing client account cheques where there had been no underlying legal transaction. The First Respondent had explained. "Where they [PI] require a client account cheque for any deposits they are paying etc. then what we do is they deposit funds with us, we then raise a cheque for them and their cheque then goes out on our letterhead saying on behalf of our client etc., please find enclosed a cheque for the sum of…".

136.25 Mr Goodwin said that when asked by the FIO why his firm had issued the cheque rather than PI themselves, the First Respondent had stated:

> "I think it's only been because they wanted us to issue a client account cheque on the transactions they are working on".

When asked by the FIO how his firm ensured that it was all above board and what checks were carried out, Mr Goodwin said that the First Respondent replied:

> "… we check the source of the funds, where they are coming from and invariably they are cheques raised from their own accounts and the Directors are known to me historically so I am confident that they are genuine business people and they are not involved in any transactions that I am not happy with…there is no cash being paid into my account…it's either based on bank transfers or cheques…and the payments I am making for them are bank transfers or cheques… no cash payments… or foreign payments".

136.26 Mr Goodwin said that the First Respondent had informed the FIO that since she had brought the matter to his attention, he had looked into it "to identify can I do what I am doing for them and I have subsequently had a discussion and explained to them that this may potentially be a problem in terms of me not providing them with an underlying legal service, unless I can provide them with a (sic) underlying legal service, then I shouldn't be putting money through my account and on that basis we agreed that I wouldn't be putting any more transactions through…since you alerted it to me I have stopped doing transactions for them".

136.27 Mr Goodwin said that the First Respondent had advised the FIO that the reason PI had required such a service from him was because "the people they [PI] are dealing with want to know that the money is guaranteed and what they are saying is if the money has come from the solicitors (sic) account they know it is guaranteed money…".

LM

136.28 Mr Goodwin said that during the meeting on 10 July 2008, the First Respondent had informed the FIO that he had operated a similar service to that offered to PI, to another client, namely LM. He said that LM had brought "vehicles from auction houses etc. finance companies and they had to make payments to those companies and they were making payments from our account because sometimes they did not want the auction companies to know that it was LM buying cars because they were getting them at reduced prices because they were repossession vehicles etc. so they were issuing client account cheques…".

136.29 Mr Goodwin said that it was evident that the Respondents had provided banking services through their client account without there having been the required underlying legal transactions. He said that solicitors do not operate as banks, are not able to offer banking facilities to clients and that there must be an underlying legal transaction with proper instructions having been received. Mr Goodwin submitted that the Respondents and specifically the First Respondent must have been aware that the client account could not be used in that way. In addition, Mr Goodwin said that the involvement of a solicitor leant legitimacy to any transaction and that funds received from a solicitor's client account would be viewed as coming from a safe source. He

submitted that as a whole, this gave rise to considerable concerns as to how the Respondents had operated their client account.

Ledger 10102 General Ledger (fees transfers)

136.30 Mr Goodwin referred the Tribunal to this ledger, which he said appeared to show inter-ledger transfers covering the period from 21 August 2007 to 29 February 2008 and showed a debit balance rising to £160,084.20 as at 31 August 2007. Mr Goodwin said that the FIO had asked the First Respondent to explain the use and purpose of this ledger and he had stated that "it has basically been used as a miscellaneous posting ledger… My understanding (sic) it was created by the previous cashier… And is still being used as a general ledger…".

136.31 Mr Goodwin informed the Tribunal that during the course of the final meeting, the First Respondent had admitted that he needed to "regain control" over his accounts. He stated that he was "embarrassed" by the state of his accounts for which, he accepted, he was ultimately "responsible".

Round sum transfers

136.32 Mr Goodwin referred the Tribunal to the first FI Report and that the FIO had identified thirty-five transfers to the firm's office account which had been in round sums over a six month period from 19 September 2007, up to and including 27 February 2008. He said that the round sum transfers totalled £165,920.

136.33 Mr Goodwin referred to the FI Report in relation to Rule 19 of the SAR, Note (x), which stated:

> "Costs transferred out of client account in accordance with Rule 19 (2) and (3) must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or controlled trust. Round sum withdrawals on account of costs will be a breach of the rules".

136.34 Mr Goodwin said that the First Respondent informed the FIO that the round sum transfers related to monies properly required for payment of the firm's costs. Mr Goodwin said that the First Respondent explained that monies owed to the firm in relation to costs would be rounded down and transferred from client to office account. The remaining amount of costs owed to the firm would then be paid in the next transfer. Mr Goodwin said that during interview on 10 July 2008, the First Respondent had acknowledged that "...the correct way to do it is invoice specific…".

136.35 In relation to the regular round sum transfers in the sum of £6500, Mr Goodwin acknowledged that the First Respondent had stated these all related to the same client NSMMG Limited being a regular retainer from the client on account of general corporate services provided. Mr Goodwin said that the client account bank statements did show that the firm received regular payments from NSMMG in that sum but no bills had been produced.

136.36 Mr Goodwin submitted that in relation to the remaining round sum transfers, the way in which the Respondents had dealt with fees had been fraught with danger and arguably, the Respondents had not been entitled to transfer costs since no evidence

had been identified of bills having been delivered or written notifications of costs sent to the relevant clients. Mr Goodwin said that it was rare that costs amounted to a precise round sum and that whilst there was no suggestion of dishonesty in relation to the transfers they did give rise to a breach of the SAR.

136.37 In relation to allegations 1.11 and 1.12, Mr Goodwin submitted that, as principals, the Respondents had failed to comply with the SAR and had failed to remedy breaches of the SAR promptly upon discovery.

Allegations 1.3 and 1.4

136.38 Mr Goodwin said that the Respondents had had referral arrangements with certain introducers and that the First Respondent had produced a list of the seven introducers which comprised estate agents and independent financial advisers ("IFA"). Mr Goodwin said that the First Respondent had accepted that no formal written agreements had been in place setting out the terms of the referral arrangements with each introducer. Mr Goodwin said that this had been in breach of Rule 9 of the SCC.

136.39 Mr Goodwin said that during the course of the investigation, the Respondents had entered into formal written agreements with only three of the introducers, namely TF, SH and SRPS and the signed written agreements had post-dated the investigation. He said that despite requests, no evidence had been produced to demonstrate that the Respondents were compliant in respect of any of the four remaining introducers.

136.40 In relation to payments of referral fees, Mr Goodwin said that the FIO had identified from the client account bank statements fifty-eight payments totalling £5325 made between 15 October 2007 and 13 February 2008 and which had been made directly out of client bank account in respect of referral fees paid to TF (IFA), SH (IFA), BME (Estate Agent) and JJ (IFA).

136.41 When asked about the payment of referral fees from client account during the meeting on 10 July 2008, Mr Goodwin said that the First Respondent had stated that the payments "were coming out of client account, until we discussed it…and it's now changed…they are now coming out of office account". Mr Goodwin said that the FIO asked the First Respondent how he ensured that the direct withdrawal of referral fees from the firm's client account did not lead to a shortage of funds held in the client account and the First Respondent had explained that the referral fees were paid out of the firm's costs.

136.42 Mr Goodwin submitted that referral fees should never be paid from client account since such fees were an expense of the firm and as such were not client monies and he said that should have been obvious to the Respondents.

Allegation 1.16

136.43 Mr Goodwin said that allegation 1.16 related to loans which the First Respondent had taken from clients but in relation to which the First Respondent had not insisted that the clients took independent legal advice.

45 Naseby Road, Leicester/Mr MS and PI

136.44 Mr Goodwin referred the Tribunal again to the purchase of 45 Naseby Road in relation to which the Second Respondent had acted on behalf of the First Respondent with the assistance of the mortgage advance and loans from clients. Mr Goodwin referred to the first FI Report and that the FIO had noted on the matter file for 45 Naseby Road that a Mr MS by letter dated 10 September 2007 had stated:

> "Dear Shameer
>
> Further to our recent discussion, I confirm that I am happy for you to use £11,450 of the money you hold on my behalf at present towards your forthcoming property purchase.
>
> Please let me know when this will be repaid".

136.45 Mr Goodwin said that the FIO had asked the First Respondent in the meeting on 10 July 2008 the details of the advice given to Mr MS in relation to the loan. The First Respondent had stated that it was a "short-term loan, some of…the money would be off-set against bills of costs, in the future for work done and...as and when he [Mr MS] requires it, he asks me for it, and I will pay it back to him". Mr Goodwin said that the First Respondent had confirmed that the loan was still outstanding as at 10 July 2008. He said that when the FIO had asked the First Respondent whether Mr MS had been advised to seek independent legal advice, the First Respondent had replied "I did say to him if you want to go and speak to someone independently I am happy for him to do that...and he said that's fine I don't need to do that".

136.46 Mr Goodwin said that the First Respondent had also informed the FIO that he had taken a loan from PI. When asked by the FIO whether he had also obtained consent from PI for the loan, Mr Goodwin said that the First Respondent had replied "Yes I did get consent from P". When asked by the FIO why the letter of consent was not apparent on the matter file, Mr Goodwin said that the First Respondent had stated "I'm not sure, I'll have to look into the file to see where that letter's gone". He said that the First Respondent had advised that the loan was for approximately £11,000 and although the FIO had asked for a copy of PI's letter of consent by e-mail dated 11 July 2008, that had not been forthcoming.

136.47 Mr Goodwin referred the Tribunal to Rule 3 of the SCC in relation to conflict of interest and Note 41, which stated:

> "In conduct there is a conflict of interests where you in your personal capacity sell to, or buy from, or lend to, or borrow from, your client. In all these cases you should insist the client takes independent legal advice. If the client refuses you must not proceed with the transaction".

136.48 Mr Goodwin said that whilst dishonesty was not alleged in relation to allegation 1.16, the First Respondent was alleged to have breached Rule 3 of the SCC by his conduct, namely that he had failed to act as he should have done in advising the clients to seek independent legal advice and in the event that the client had chosen not to do so, that he should not have proceeded with the transactions.

Allegations 1.8, 1.9, 1.10 and 1.17

136.49 Mr Goodwin referred the Tribunal to the first FI Report in relation to the failure of the Respondents to inform lenders of material facts. He said that during the course of her investigation, the FIO had reviewed a number of conveyancing client matter files and had been unable to find any evidence on the four exemplified conveyancing files which showed that lender clients had been advised of certain material facts including that the transactions were completed on a back-to-back basis and that the firm, under different trading styles (PLA and EW2C), had represented the seller as well as the buyer and the lender.

136.50 Mr Goodwin referred the Tribunal to the exemplified transactions.

33 Draper Street (Mr and Mrs A)

136.51 Mr Goodwin said that PLA, a trading name of the Second Respondent, had been instructed in March 2007 by FH Limited in the sale of 33 Draper Street, Leicester. The Second Respondent had also been instructed by Mr and Mrs A in the purchase of the same property at a stated purchase price of £120,000 with the assistance of a mortgage advance of £60,000 from TMB for whom the firm also acted and had been instructed in accordance with the CML Handbook.

136.52 Mr Goodwin said that the buyers, Mr and Mrs A had been assisted in the purchase by a "gifted deposit" in the sum of £60,000 from the seller. He said that the FIO had been provided with a letter dated 15 March 2007 from the Second Respondent to the lender which indicated that the lender had been notified of the "gifted deposit". Mr Goodwin said that in her evidence, the FIO had confirmed that she had had no reason to question the veracity of the letter.

136.53 Mr Goodwin informed the Tribunal that no evidence had been observed on the matter file which indicated that the firm's lender client, namely TMB had been advised that:

- the firm had acted, albeit under separate trading names, for seller, buyer and lender; and
- the sole director of the Second Respondent, the First Respondent, was also a director of FH Limited (the seller).

136.54 Mr Goodwin submitted that the Respondents had not informed their lender client that the firm was acting for seller, buyer and lender or that the First Respondent was also a director of FH Limited, the seller. Mr Goodwin said that the FIO had requested by e-mail dated 11 July 2008 that the First Respondent provide documentary evidence that the lender had been notified but that had not been forthcoming.

136.55 Mr Goodwin submitted that whilst no allegation was made of dishonesty in this regard, there had been an obligation on the Respondents to notify their lender clients of facts which were material to decisions taken by their lender clients.

ZAML Limited and Mr AS

136.56 Mr Goodwin said that PLA had been instructed in November 2007 by ZAML Limited in the purchase of plot E39 Broughton Green, Salford for a net purchase price of £190,395. Mr Goodwin said that this figure was minus a reservation fee and incentive discount. PLA had also been instructed on behalf of ZAML in the back-to-back sale of the property on the same day of purchase, to a Mr AS in the sum of £229,995. Mr Goodwin informed the Tribunal that a company search of appointments revealed that Mr AS was a Secretary of ZAML.

136.57 Mr Goodwin said that EW2C, another trading name of the Second Respondent had been instructed by Mr AS to act in purchase of the same property from ZAML at a stated purchase price of £229,995 with the assistance of a mortgage advance of £218,495 together with an unsecured loan in the sum of £12,350, both from G Mortgages for whom the firm also acted and had been instructed in accordance with the CML Handbook.

136.58 Mr Goodwin informed the Tribunal that the transaction (purchase, sale and purchase) had proceeded by way of simultaneous exchange and completion on 21 December 2007. He said that no evidence had been observed on the file to indicate that the firm's lender client namely, G Mortgages had been advised that:

- the firm, under its separate trading names, had acted for seller, buyer and lender; and
- the relationship between Mr AS (their borrower) and ZAML (the seller); and
- the seller had not owned or been the registered owner of the property for at least six months (back-to-back transaction)

136.59 Mr Goodwin said that at the meeting on 10 July 2008, the FIO had asked the First Respondent about the relationship between ZAML and Mr AS and he had responded "I'm not aware of what the formal relationship is…". Mr Goodwin said that when asked whether in such a situation the lender should have been notified of the position, the First Respondent had replied "[I] can't see a problem with this in terms of corporate law… I don't think it's relevant for lender purposes because the lending was given to the individual, not the company…".

136.60 Mr Goodwin submitted that it could not be for the First Respondent to determine what information would be relevant to his lender client but for the lender client to form a view once it had been given all relevant information by the Respondents, which they had been under an obligation to provide. In relation to the discounted purchase and the back-to-back transaction, Mr Goodwin said that the First Respondent had agreed to see what information had been provided to the lender and whilst it had been requested again by the FIO, no further information had been forthcoming.

Mr AS and Mr FR

136.61 Mr Goodwin said that PLA had been instructed in January 2008 by Mr AS in the purchase of Plot 361 Sirus, Birmingham for a net (minus a reservation fee and incentive discount) purchase price of £155,349. He said that PLA had also been

instructed on behalf of Mr AS in the immediate (back-to-back) sale of the property on the same day of purchase, to a Mr FR in the sum of £189,450.

136.62 Mr Goodwin said that EW2C had been instructed by the end purchaser Mr FR to act in the purchase of the same property from Mr AS at a stated purchase price of £189,450 with the assistance of a mortgage advance of £170,505 from ME, for whom the firm also acted and had been instructed in accordance with the CML Handbook.

136.63 Mr Goodwin informed the Tribunal that EW2C had written to ME on 5 March 2008 and had advised them that their client, Mr FR, was to receive a "gifted deposit" from the seller, who was also paying legal fees and disbursements. He said that EW2C had asked the lender to confirm that this was acceptable and that they could proceed to completion. In a fax dated 12 March 2008 ME had stated that they did not have EW2C as acting on the matter but a hand written note annotated on the fax stated "11/03 – Advised by Sonny deposit is no longer gifted and this is to be paid by Mr R's cousin. Said we would need letter of no interest from cousin before exchange".

136.64 Mr Goodwin said that Mr FR's cousin, Mr BS had provided a letter dated 18 March 2008 in which he stated that he had no interest in the said property.

136.65 Mr Goodwin said that the FIO had not challenged that there had been disclosure to the lender in relation to the "gifted deposit" but rather that there had again been no evidence on the matter file which indicated that the firm's lender client, namely ME had been advised that:

- the firm, under its separate trading names, had acted for seller, buyer and lender; and
- the seller (Mr AS) had not owned or been the registered owner of the property for at least six months.

<u>BP Limited ("BPL") and Mr and Mrs P</u>

136.66 Mr Goodwin informed the Tribunal that the Second Respondent had been instructed in November 2007 by BPL in the purchase of Plot 17, The Oaks for the net (minus a reservation fee and incentive discount) purchase price of £170,088.13. The Second Respondent had also been instructed on behalf of BPL in the immediate (back-to-back) sale of the property on the same day of purchase to Mr and Mrs P for the sum of £190,000. Mr Goodwin said that PLA had been instructed by Mr and Mrs P to act in the purchase of the property from BPL at the stated purchase price of £190,000 with a mortgage advance of £161,500 from TMB for whom the firm also acted in accordance with the CML Handbook.

136.67 Mr Goodwin said that again, no evidence had been observed on the matter file which indicated that the firm's lender client namely TMB had been advised that:

- the firm, under it separate trading names, had acted for seller, buyer and lender; and
- the seller (BPL) had not owned or been the registered owner of the property for at least six months; and

- the proceeds of the sale were to have been returned to the buyer following completion rather than the seller.

136.68 In relation to these transactions, Mr Goodwin referred the Tribunal to the First Respondent's letter dated 24 November 2008 which stated that:

> "9. (a) (i) The Lender in this case was advised that my firm, three separate trading styles, was acting for the seller, buyer and lender. A copy of the letter was given to Ms Whatmore. If you do not have this in your file then please let me know and I will obtain a copy from our archive file.
>
> (ii) The lender was not advised that I was a Director of FH Limited as I was not the conveyancer acting on the file. In the circumstances there was no conflict of interest. However, in light of the comments made by Ms Whatmore my firm has now adopted a policy to notify third parties of my interest in any companies when work is being carried out by my firm for such companies.
>
> (b)(i) The Lender in this case was advised that my firm, through separate trading styles, was acting for the seller, buyer and lender. A copy of the letter was given to Ms Whatmore. If you do not have this in your file then please let me know and I will obtain a copy from our archive file.
>
> (ii) My firm did not advise the lender of the relationship between Mr S [Mr AS] and [ZAML] because the conveyancer on the file did not believe that there was any conflict of interest.
>
> (iii) The Lender was advised that the transaction was a back to back transaction.
>
> (c)(i) The Lender in this case was advised that my firm, through separate trading styles, was acting for the seller, buyer and lender. A copy of the letter was given to Ms Whatmore. If you do not have this in your file then please let me know and I will obtain a copy from our archive file.
>
> (ii) The Lender was advised that the transaction was a back to back transaction.
>
> (d)(i) The Lender in this case was advised that my firm, through separate trading styles, was acting for the seller, buyer and lender. A copy of the letter was given to Ms Whatmore. If you do not have this in your file then please let me know and I will obtain a copy from our archive file.
>
> (ii) The Lender was advised that the transaction was a back to back transaction.
>
> In light of these findings it is now a policy of my firm:
>
> - to advise lenders when my firm or any trading style is acting for the seller, buyer or lender. If you would like to see our standard letter dealing with this point then please let me know;
> - to advise lenders of any third party connections where I or my staff believe that there may be a conflict of interest; and

- to advise lenders of transactions where sellers have not owned the property for more than six months if this is a requirement."

136.69 Mr Goodwin informed the Tribunal that the letters referred to by the First Respondent in relation to notifying the respective lenders that his firm through separate trading styles was acting for the seller, buyer and lender were never provided to the FIO and there had been no evidence on any of the matter files that the Respondents had provided the necessary information to its lender clients. Mr Goodwin submitted that as a result of the Respondents' conduct, they had failed to make material disclosures to lender clients and in so doing had preferred the interests of borrower clients and had failed to follow their lender clients' instructions.

Allegations 1.13 and 1.14

136.70 Mr Goodwin said that the Respondents had operated a Stamp Duty Mitigation Scheme. He said that on some conveyancing files and ledgers, the first FIO noted that there had been no payments of SDLT or it appeared to be less than the prescribed SDLT rate, according to the purchase price thresholds at the time of completion.

136.71 In the matter of Mr and Mrs M, Mr Goodwin said that the firm's clients had purchased a property for £360,000 but had paid SDLT of only £1600 rather than the prescribed rate of 3% of the purchase price which would have equalled £10,800. Mr Goodwin said that the First Respondent had completed in excess of fifty similar transactions in which the scheme had been adopted.

136.72 Mr Goodwin said that during the course of the investigation, the First Respondent had provided an analysis of his scheme which stated that the scheme was:

> "intended to facilitate the purchase of a property, free of SDLT…and involves a 'two-step process' being '(1) to acquire the property for full consideration which may be funded by a mortgage followed by (2) an immediate gift of all or a substantial part of the property to a party...and subject to caveats...this transaction results on (sic) no SDLT or a reduced amount of SDLT arising'".

136.73 On reviewing a number of client ledgers, Mr Goodwin said that the FIO had noted that the legal fees charged and taken by the Respondents had been over and above the firm's standard conveyancing transaction fees for providing the mitigation service and appeared to be substantial. Mr Goodwin gave the example of Mr and Mrs M's case where the fees taken for "additional work" (the mitigation scheme) amounted to £4374.38 inclusive of VAT.

136.74 During the final meeting on 10 July 2008, Mr Goodwin said that the First Respondent informed the FIOs, having been asked what information was provided to clients that "the risks are...once you have submitted the return there is a nine month window in which an enquiry can be raised from the return being submitted...so what we tell the client, if the Revenue make an enquiry...our first port of call would be to argue the scheme with the Revenue and say this is why it works and use Counsel's opinion...if (sic) Revenue then decided to take enforcement action, then our recommendation to the client is you should pay the liability over in excess of what we haven't already paid over...".

136.75 Mr Goodwin said that the FIO had enquired about potential interest and penalties and the First Respondent had stated that "there are two aspects to it, the first is penalty, the second is interest. Penalty only arises if the return is late and the submission is late etc., if that is not the case then the likelihood of penalty arising is unlikely. Interest may arise but there has been no test in law that we have found where (sic) Revenue has successfully argued that interest is payable on mitigating and tax liability, where you have mitigated on genuine terms ". Mr Goodwin said that the First Respondent had informed the FIO that he had not received any enquiries or challenges from HMRC as at the date of their meeting.

136.76 In relation to the firm's fees for the mitigation scheme, Mr Goodwin said that the First Respondent informed the FIO that his firm had charged 1.5% of the SDLT in fees. In relation to the work undertaken for the fees, the First Respondent had explained that his firm had put "in place the beneficial transfer on completion, submission of a return, if it is submitted, and obviously registration of that at (sic) Land Registry". Mr Goodwin said that when the FIO had asked the First Respondent whether that work would be undertaken in any event in a normal conveyancing transaction, the First Respondent had responded "Yes".

136.77 Mr Goodwin informed the Tribunal that there had been no evidence from the documentation made available to the Applicant during the inspection, in relation to the mitigation scheme, which showed that clients had been advised of the risks involved in participating in such a scheme, including enforcement action by HMRC. He said that it appeared from the First Respondent’s comments on the scheme that if it was challenged, the advice to clients was simply that they would have to make payment of the outstanding SDLT. He said that the FIO had requested copy information provided to clients which informed them of the risks involved in such a scheme along with copies of Deeds of Gift but these had not been immediately forthcoming.

136.78 Mr Goodwin informed the Tribunal that whilst the First Respondent had provided further documentation in November 2008 in relation to the mitigation scheme and in response to a written request from the Applicant, this had not been available during the inspection and had not been amongst the information initially provided to the Applicant. He submitted that it could not have been available to clients at the time of the inspection.

136.79 Mr Goodwin said that whilst it was not alleged that the scheme was unlawful per se, solicitors must be cautious to become involved in such schemes and ensure that appropriate advice is given to all clients including lender clients to comply with their obligations under the rules.

Allegation 1.5

136.80 Mr Goodwin said that in relation to the Respondents' failure to cooperate with the Applicant, the FIO had written to the First Respondent by e-mail dated 11 July 2008 and had requested specific information, which included evidence of PI's consent to their loan to the First Respondent, an explanation as to why the proceeds of sale of Plot 361 had been distributed to third parties, an explanation for the transfer of £5400 to another ledger in the matter of Mr and Mrs M, copies of the Deeds of Gift

purportedly made during the exercise of the SDLT mitigation scheme and information relating to the referral arrangements.

136.81 Mr Goodwin said that the First Respondent had replied by e-mail dated 21 July 2008 and had indicated that he would reply with the required information by the end of that week. He had then written to the Applicant again by e-mail dated 28 July 2008 and stated that he had been unable to provide the required information due to work commitments and delays on the part of his accountant and staff in providing the information. The Applicant had informed the First Respondent that work would commence on the written FI Report in any event.

136.82 Mr Goodwin informed the Tribunal that the First Respondent then wrote to the Applicant on 4 August 2008 and said that he had scanned and e-mailed a response containing the required information but no such e-mail or attachment had ever been received by the Applicant. Mr Goodwin said that the Applicant notified the First Respondent of that on 6 August 2008 and required a full response with supporting documentary evidence by close of business on 8 August 2008. The First Respondent advised that he was out of the country and would respond to the Applicant over the course of the weekend. Mr Goodwin said that the Respondents had never provided any further information to the Applicant.

136.83 Mr Goodwin asked the Tribunal to note that by way of explanation, the First Respondent had told the Applicant that he had assumed that the information had no longer been required because he had received no further e-mails or letters from the Applicant beyond August 2008. Mr Goodwin submitted that this was an extraordinary position for any solicitor to adopt when dealing with repeated requests for information from his regulator.

136.84 Mr Goodwin told the Tribunal that a further FI inspection had been undertaken which commenced on 19 October 2009 and culminated in a Report dated 3 February 2010. He referred the Tribunal to the Rule 7 Supplemental Statement and exhibited documents upon which he relied. Mr Goodwin confirmed that the further allegations 1.18, 1.19 and 1.20 related to the First Respondent alone. He said that whilst dishonesty had been alleged in relation to all three allegations, they could be found proved absent dishonesty but that the First Respondent had in the alternative been reckless.

136.85 Mr Goodwin said that the First Respondent had closed his practice on 31 March 2010. The Applicant had then examined files provided by HBOS and Abbey (now Santander) which had provided mortgage advances to the First Respondent and his wife in respect of purported property transactions but where registration of the properties had not been completed. Mr Goodwin exemplified the mortgages and remortgages of five of the transactions.

<u>Allegations 1.18, 1.19 and 1.20</u>

136.86 Mr Goodwin referred the Tribunal to the second FI Report and submitted that the First Respondent had breached undertakings and misled mortgagee clients where, in at least three cases, charges on properties had not been registered. He said that further loans had been obtained using the same properties as security and neither lender had been advised about the existence of the other's loan and charge. In a fourth matter, Mr

Goodwin said that the firm's mortgagee client had been misled as to the true purchase price paid for the property.

72 Essex Road, Leicester

136.87 Mr Goodwin said that this had involved a remortgage by the First Respondent of his property at 72 Essex Road in Leicester in June 2005. The firm (the Second Respondent) had acted for the First Respondent in the transaction. The firm had also acted for the building society, BM (H plc) in relation to its provision of mortgage funds of £140,250. Mr Goodwin said that the remortgage completed on or about 13 July 2005 but at the date of the second FI Report, the mortgage remained unregistered. He said that Land Registry entries as at 20 April 2009 showed a charge dated 6 July 2006 in favour of ME. The register also showed a Unilateral Notice dated 20 March 2009 in respect of a charge in favour of the BS plc believed to be the BM (H plc) mortgage.

136.88 Mr Goodwin said that on 26 November 2009 in interview with the second FIO, the First Respondent had admitted his breach of undertaking in respect of his failure to register the charge dated 13 July 2005 in favour of H plc. Mr Goodwin said that the First Respondent told the FIO that he had owned the property since 2001 and the BM/H remortgage was meant to have been short term finance for business purposes. The First Respondent had said that he had intended to repay it very shortly and for that reason it had not been registered. Mr Goodwin said that it had not been repaid and in July 2008 the First Respondent had obtained another mortgage advance on the property from ME.

136.89 Mr Goodwin said that the First Respondent had admitted that since the existing mortgage with H had not been registered, the property had appeared unencumbered and as a result, the First Respondent had been able to secure the loan from ME. No evidence had been seen which showed that ME had been advised there was an existing unregistered mortgage advance on the property. Mr Goodwin said that the First Respondent had stated that he had intended to use the loan to redeem the existing mortgage but the funds had been needed in the business and had also been used for improvements to the office premises.

136.90 Mr Goodwin referred the Tribunal to the remortgage application form which stated:

> "Declared income £145,000.00" of the First Respondent and the extract from the Special Conditions which stated:
>
> "9 (E2) The customers existing mortgage (s) number (s) with abbey.
>
> along with any other mortgage that the customers have on their current property are to be redeemed on or before completion. If the Conveyancer is aware of any mortgage, on any other residential property, other than those specified in the instructions full details of these must be provided to us and our instructions obtained before any contractual obligation is entered into...".

136.91 Mr Goodwin referred the Tribunal to e-mail correspondence dated 25 and 26 January 2010 which passed between Co Solicitors for the building society and Ch Solicitors

who represented the First Respondent. In relation to 72 Essex Road, Mr Goodwin said that the building society's solicitors stated:

> "Again, an application was submitted to our client to remortgage the property for a sum of £148,750. The stated purpose of the remortgage was for home improvements and for a Buy to Let deposit. Completion of the loan took place on 13 July 2005 and despite this, it has never been registered.
>
> Your client then went on to raise a loan with ME. The charge for that loan was actually registered on 6 July 2006 and I have confirmed with ME that its charge has not been redeemed and no redemption statements have ever been requested.
>
> Your client's practice wrote to us on 9 October 2009 and advised that an application had been made to register our client's charge. Your client then wrote to me on 13 November 2009 advising that an application for registration had been made. Registration has not been completed. The letter of 9 October 2009 went on to deliberately mislead our client by stating that "all charges are secured and are in the process of being secured on the properties"".

136.92 Mr Goodwin said that the ME charge had been registered on 6 July 2006 but there had been two charges on the property and only one charge had been registered.

136.93 Mr Goodwin referred the Tribunal to a letter dated 20 November 2009 from the First Respondent's solicitors, which stated:

> "Our client is an ambitious and hardworking individual and the instructions given to us are that the re-mortgage proceeds from the loans taken were used purely for the purpose of renovating the Leicester office of SFS Legal and growing the practice of SFS Legal. The address of the Leicester office of SFS Legal is Barkby House, Barkby Road, Leicester, LE4 9LG ("Barkby House"). SFS Legal is the occupier and owner of Barkby House and when Barkby House was acquired in 2005 it was a derelict factory.
>
> Our client has not used the remortgage proceeds to fund a lavish lifestyle. The proceeds have purely been used to grow our clients (sic) business. We accept that SFS Legal should have attended to the registration of the charges in accordance with the CML Handbook.
>
> ...
>
> Our client's sole purpose for raising mortgages was to support and fund the development of SFS Legal. His intention was to use the mortgages obtained towards the SFS Legal business and redeem those mortgages shortly thereafter.
>
> Our client denies any allegation that he has set out to default your client. The intention has been, and remains, to discharge his obligations to your client. You will note our client's proposals below.
>
> Our client has honoured all payments on each of the mortgages and shall do so from hereon...".

136.94 Mr Goodwin said that the First Respondent's position appeared to be that since he had maintained payments on the various mortgages that justified his actions. Mr Goodwin submitted that that was irrelevant. He submitted that the First Respondent had been dishonest, both by the representations he had made to the mortgagees and by his conduct. Mr Goodwin said that the First Respondent's solicitor had also stated:

> "... The SRA has no ambit to investigate what has happened to the re-mortgage monies...".

136.95 Mr Goodwin said that that could not be right and the Applicant was under an obligation to investigate. Mr Goodwin submitted that the First Respondent had secured advances for use by him other than as intended by the respective lenders. He said that to the Applicant's knowledge, the mortgages had not been redeemed.

66 Naseby Road, Leicester

136.96 Mr Goodwin said that the First Respondent was the registered proprietor of 66 Naseby Road, purchased by him in 2006 for £132,000. The records showed a charge dated 20 July 2007 in favour of BB, a Unilateral Notice regarding a charge dated 23 February 2007 in favour of BS/H plc, a Unilateral Notice regarding a charge dated 2 November 2006 in favour of BS trading as BM and a charge dated 21 February 2009 in favour of TMB.

136.97 Mr Goodwin said that the firm acted for the First Respondent and for TMB. The client ledger showed receipt of mortgage funds in the sum of £127,500 on 23 February 2007 but the charge had remained unregistered until 6 October 2009. Mr Goodwin said that the First Respondent had referred to the earliest charge dated 2 November 2006 in relation to BM and that it had not been registered as he had intended to repay the loan shortly thereafter but it had not been repaid and he had obtained a further mortgage advance on the property from TMB which had completed on 23 February 2007. Mr Goodwin said that the First Respondent had agreed that that charge had also not been registered at the appropriate time.

136.98 Mr Goodwin said that the First Respondent had intended to utilise the funds from TMB's advance to redeem the earlier charge but the money had then been used within his business, on renovations to the firm's office premises. Mr Goodwin said that the loan from BB had been a third loan secured on the property. He said that it appeared that BB had a first charge on the property, TMB's charge was second and the charge dated 2 November 2006 in favour of BM remained unregistered.

136.99 Mr Goodwin referred the Tribunal to the mortgage application made by the First Respondent's wife to BM in respect of 66 Naseby Road. He said that it showed a purchase price of £155,000 and in answer to "Is this a private sale?" it stated "No". Mr Goodwin referred to the letter of instruction from BM/H plc dated 19 October 2006 to the firm which stated "...Please also act for H plc on the mortgage of the property to us...". Mr Goodwin said that BM/H had been unaware that the First Respondent was the applicant's husband and that it was a private sale but Mrs Sacranie had said that it was not a private sale on the application form.

136.100 Mr Goodwin referred to the Certificate of Title which stated:

> "We, the conveyancers named above, give Certificate of Title set out in the Appendix to Rule 6(3) of the Solicitors' Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it".

He said that the Certificate of Title was a trigger to the lender that all was well and the required enquiries had been made and the lender relies upon the Certificate to release the mortgage advance. But Mr Goodwin said that in this case there had been no actual sale and no registration of the BS/BM charge and the property had remained in the name of the First Respondent and the monies had been used for his own purposes, namely to re-furbish his offices and unconnected with the purpose for which the monies had been advanced to him. Mr Goodwin submitted that the First Respondent's conduct had been a breach of trust, contrary to his instructions from the lender clients and that his conduct had been dishonest.

136.101 Mr Goodwin referred the Tribunal again to the letter from the First Respondent's solicitors dated 20 November 2009. He said that the letter clearly stated that the First Respondent's sole purpose for raising mortgages had been to support and fund the development of his firm. Mr Goodwin said that the letter had not addressed the way in which funds had been obtained by the First Respondent, which Mr Goodwin submitted had been dishonest. He said that the First Respondent must have known that the purported sale to his wife had not been genuine or for a related property purchase.

136.102 Mr Goodwin submitted that the First Respondent had preferred his own interests to those of his lender clients and had sought to mislead the lender and his regulator that the outstanding mortgage in 2006 had been discharged when it had not. Mr Goodwin referred the Tribunal to a letter dated 10 July 2009 from the firm to Co Solicitors, the solicitors for H Bank/H and BM, which stated:

> "...Furthermore, please note that the mortgage advance from BM released on 66 Naseby Road Leicester in the sum of £131,748.27, was repaid to your client on 29 November 2006 to account number 80 48 97 01771773".

136.103 By letter dated 27 July 2009, Mr Goodwin said that Co Solicitors wrote back to the firm/First Respondent and stated:

> "...We have now received confirmation from our client that the funds which you allege were returned to our client on 29 November 2006, were never received. They also confirm that all mentioned accounts are being maintained".

136.104 Mr Goodwin said that the First Respondent maintained that the mortgage had been discharged. By letter dated 26 October 2009, Co Solicitors had written again to the firm/First Respondent and had stated:

> "We have received confirmation from our client that BM's charge 20012004421 was definitely not returned to our client and that the account is being maintained".

136.105 Mr Goodwin submitted that that had been wholly inconsistent with the First Respondent's instructions since if, as he maintained, the mortgage had been

discharged why would he still have been making the monthly payments. He submitted that the First Respondent had sought to mislead the lender and the Applicant with his explanations.

136.106 In relation to the TMB application, Mr Goodwin said that the First Respondent had made that application in his own name and he referred the Tribunal to the mortgage application form which stated "Total Personal Income £160000.00 per annum". Mr Goodwin said that it had been a condition of the TMB mortgage that "The borrower must give us first mortgage over the property" but that had not happened and the charge had remained unregistered until 6 October 2009.

136.107 Mr Goodwin said that the BB charge dated 20 July 2007 had left the BM/H and TMB mortgages with no security. By an email dated 13 November 2009, Mr Goodwin said that the First Respondent had written to Co Solicitors and stated:

> "...Furthermore, I would prefer to deal with matters with you and your client and achieve a settlement and resolution to the outstanding points rather than involving the SRA. Your client has suffered no loss as all accounts are up to date in terms of payment. I appreciate the need to formalize the securities and I am happy to work with you to get this achieved as soon as is practicable".

136.108 Mr Goodwin submitted that again, it was not relevant that the lender had suffered no loss but rather what was relevant were the circumstances in which the loans had been obtained and which had been dishonest on the part of the First Respondent.

<u>77 Fairfax Road, Leicester</u>

136.109 Mr Goodwin said that the First Respondent had confirmed that he had purchased 77 Fairfax Road in 1999 without a mortgage. He had then obtained a mortgage advance in 2005 from BM/H plc and Land Registry records showed that the BM mortgage dated 15 April 2005 had been registered on 2 March 2006. The amount outstanding on the BM mortgage account as at November 2009 had been in the region of £130,000.

136.110 Mr Goodwin said that in 2007, the First Respondent had applied again to BM for a remortgage of the property and had obtained a loan of £211,000. The firm had acted for the First Respondent and also for BM on the remortgage which had completed on 11 October 2007. Mr Goodwin said that on the matter file itself, many documents usually found on such a transaction had been missing.

136.111 Mr Goodwin told the Tribunal that the First Respondent had admitted that upon completion of the remortgage, the earlier charge in favour of BM should have been redeemed but the First Respondent had said that the money was required in the firm and as a result, the earlier charge had not been redeemed and the later charge had not been registered. Mr Goodwin said that the First Respondent had stated that both mortgage accounts were being maintained.

136.112 Mr Goodwin referred the Tribunal to the First Respondent's remortgage application for 77 Fairfax Road, which stated "Declared income: £312,000.00". Mr Goodwin said that this had been as at 16 May 2007 yet the earlier application dated 15 December

2006 had stated the First Respondent's declared income to be £160,000. Mr Goodwin submitted that there had been a significant difference in the First Respondent's declared incomes within a short period of time. The remortgage application had also stated:

> "(E7b)
>
> The customer(s) have declared an intention to use 41,000.00 of this advance for debt repayment purposes. The mortgage advance has been assessed on this basis, and it is the customers' (sic) responsibility to ensure that this part of the advance is used for this purpose. Completion takes place on the condition that such repayment takes place".

Mr Goodwin said that the representations made by the First Respondent when he had applied for the loan had clearly been that he intended to repay debt, but the reality Mr Goodwin submitted was that he had utilised the monies purely for refurbishment of his business premises, as had been admitted by his legal representatives.

5B Roseberry Road, Leicester (Plot 19 Charnwood Mews)

136.113 In relation to this property, Mr Goodwin said that the firm had acted for the First Respondent in connection with his purchase in the sum of £117,500 which had completed on 6 August 2008. Mr Goodwin said that the First Respondent had been assisted in the purchase by a mortgage advance of £124,000 from BS plc for whom the firm also acted. After completion, Mr Goodwin said that the client ledgers showed that £6643.55 had been paid by the firm to the First Respondent.

136.114 Mr Goodwin referred the Tribunal to the Mortgage Instructions to the firm dated 5 August 2008, which stated that the purchase price was £155,000 but the client ledger showed it to have been £117,000 paid out on 6 August 2008 and the balance of £6643.55 having been paid to the First Respondent. Mr Goodwin also referred the Tribunal to the Transfer Deed which stated:

> "The Transferor has received from the Transferee the sum of One Hundred and Seventeen Thousand Five Hundred Pounds (£117,500.00)";

and to the Agreement dated 25 July 2008 which stated:

> "2.1 The Purchase Price shall be varied such that the Purchase Price is deemed to be One hundred and seventeen thousand five hundred pounds (£117,500.00)".

136.115 Mr Goodwin said that £117,500 had been the price at which the purchase had subsequently been registered. He submitted that given the difference in the purchase price, Bank of Scotland must have thought that it was providing 80% of the value of the purchase monies whereas the reality was that it had funded in excess of the entire transaction, including the First Respondent's costs. Mr Goodwin said that the First Respondent had indicated that the purchase price had been discounted by the seller and that the lender had been advised of that but no documentary evidence had been produced to support the First Respondent's contention.

136.116 Mr Goodwin submitted that again, the First Respondent had obtained monies from a lender in circumstances where otherwise he would not have done and he had preferred his own interests to those of the lender client.

NSMMG Limited (44 Wainwright Avenue)

136.117 Mr Goodwin said that it had been noted by the second FIO from the firm's client account bank statements that these showed a lodgement of £108,715 on 24 June 2009, which had been a bank transfer from AN and it had been apparent that the sum had been utilised on the same date for a transfer to the firm's office account of £58,715 and a CHAPS payment of £50,000 which had been shown on the bank statement as "To Tiuta PLC 016098 SAC3041PL". Mr Goodwin referred the Tribunal to the firm's BB client account statement which showed the payments and receipts.

136.118 In relation to the "SAC" reference, Mr Goodwin said that this suggested that the £50,000 had been paid into an account in the First Respondent's name. Mr Goodwin said that the details shown on the bank statement in relation to the transfer of the £108,715 had been identical in format to those in relation to other receipts from AN, which had clearly been mortgage advances. Mr Goodwin said that the First Respondent had been asked to provide further evidence to support his contention that the sum in question related to fees from NSMMG but no further information had been forthcoming.

136.119 Mr Goodwin submitted that the £108,715 had been a mortgage advance from AN in the name of the First Respondent's wife in relation to 44 Wainwright Avenue and he said it was inconceivable that the First Respondent had not known that it was an advance from AN yet he had argued that it was not when questioned by the second FIO. Mr Goodwin referred the Tribunal to the Witness Statement of Ms WSC, a Financial Crime Manager in the Financial Crime Operations Department of Santander. Her Statement dated 7 June 2010 stated:

> "The advance requested was £108,500.00 against the stated purchase price of £145,000.00. This means that the applicant [Mrs Sacranie] was providing £36,500.00 from her own funds...".

136.120 Mr Goodwin said that in the exhibit to Ms WSC's Statement, it included a copy of the Mortgage Application by Mrs Sacranie which stated:

"Marital status	Separated
Occupation	Solicitor
Employer name	SFS Legal Ltd
Name of present owner/builder	Mr Shameer"

136.121 Mr Goodwin said that the mortgage application had been incorrectly completed by the First Respondent's wife in that she was not separated nor was she a solicitor. He submitted that the reference to the name of the vendor was the first name of the First Respondent and the application had been completed in that way to give the impression that it was someone other than the First Respondent. Mr Goodwin said that the Statement of Ms WSC clearly detailed that the purchase address in the mortgage application had been stated to be 44 Wainwright Avenue in Leicester and that the only applicant was the First Respondent's wife.

136.122 Mr Goodwin referred to the conclusion of Ms WSC's statement which stated:

> "Had Abbey (Santander) known that any details submitted on the application forms were false we would not have released completion funds".

136.123 Mr Goodwin submitted that this had been another example of the First Respondent having used his status as a solicitor and principal of his firm to obtain funds from lenders when otherwise they would not have made such loans.

136.124 Mr Goodwin submitted that in relation to allegations 1.18, 1.19 and 1.20 the Tribunal could be satisfied that the combined test as set out in Twinsectra had been met namely that the public would objectively conclude that the First Respondent had been dishonest and on a subjective basis, that the First Respondent must have known, at the relevant times, that his conduct was dishonest. Mr Goodwin said that this was supported on the documents and by the First Respondent's own explanations that he knew the mortgage monies had been utilised for purposes other than those for which they had been advanced. Mr Goodwin said that if the Tribunal were not persuaded of that, it was still open to them to find the allegations proved and that the First Respondent had conducted himself recklessly. Mr Goodwin said that whilst the First Respondent's own position was that he had not acted dishonestly in obtaining the mortgage monies and he appeared to rely on the fact that the mortgage repayments were being maintained, the Applicant's position was that that was irrelevant.

Submissions on behalf of the First and Second Respondents

136.125 None.

The Tribunal's Findings

136.126 The Tribunal applied its usual standard of proof namely beyond reasonable doubt.

136.127 The Tribunal found allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.18, 1.19 and 1.20 proved on the facts and on the documents. The Tribunal did not find allegation 1.17 proved.

136.128 The Tribunal had listened carefully to the submissions on behalf of the Applicant and had read all of the documents to which it had been referred, including the Respondent's letters dated 20 November 2008 and 16 January 2009.

136.129 The Tribunal found all of the SAR breaches against both Respondents proved. It heard that the Respondents had operated two sets of ledgers; one manual and one computerised but that the two sets did not correspond with each other. The Tribunal did not accept the First Respondent's representation that the differences on the ledgers had been created by errors in postings and noted that he had not provided documentary evidence in support of his contention. The First Respondent had acknowledged that there were two conflicting accounts records and the Tribunal found that in such circumstances, the Respondents could not have been compliant with the SAR.

136.130 The Tribunal was satisfied that there had been actual debit balances as a result of which it had been impossible for the first FIO to identify whether the Respondents

had held sufficient monies in the client bank account to have met their liabilities to clients. It found that despite the Respondents having known that the computerised ledgers were inaccurate and did not record the true movement of client monies, they had used them to reconcile the accounting records each month, rather than the manual ledgers. The Tribunal was satisfied that debit balances had been allowed to remain from one reconciliation date to another without rectification and it did not accept that the debit balances had been "virtual debit balances" as contended by the First Respondent.

136.131 In the exemplified transactions of 45 Naseby Road and 78 Christchurch Road and in relation to the General Ledger (PI) and General Ledger (fees transfer), the Tribunal found that on those transactions the manual and computerised ledgers had differed and no adequate explanations had been provided by the Respondents including no supporting documentation, such as bills of costs for 45 Naseby Road or an accurate ledger for 78 Christchurch Road.

136.132 The Tribunal found in the case of the General Ledger (PI) that the manual ledger recorded three transactions but the computerised version recorded ninety-four transactions and that payments and receipts had been posted to the ledger on behalf of more than one client and on more than one matter, in breach of Rule 32 (2) of the SAR. The Tribunal was also satisfied that the Respondents had operated the client bank account as a banking facility for clients and had issued client cheques on behalf of PI and LM, another client of the firm. The Tribunal found that this must have given the payments an air of legitimacy since they came from a solicitor's client account yet there had been no underlying transactions. It was satisfied that the Respondents had also operated the General Ledger (fees transfer) in effect as if it were a suspense ledger but had not operated it in accordance with the relevant rule namely Rule 32 (16) of the SAR.

136.133 The Tribunal found that there had been thirty-five round sum transfers made from the Respondents' client bank account to the office account between 19 September 2007 and 27 February 2008 which totalled £165,920. The Tribunal found that the transfers had been made in breach of Rules 19 (2) and (3) of the SAR. The Respondents had failed to produce respective bills of costs or written notifications of costs in support of the sums transferred and the First Respondent had acknowledged that the correct way to transfer costs was for the costs to be "invoice specific".

136.134 The Tribunal was satisfied that in relation to the First Respondent's purchase of 45 Naseby Road, this had been partly funded by loans from clients PI and Mr S and that neither client had taken independent legal advice before agreeing to the loans to the First Respondent.

136.135 In relation to the four exemplified transactions of 33 Draper Street, Plot E39 Broughton Green, Plot 361 Sirus and Plot 17 The Oaks, the Tribunal heard that the Respondents had acted for lender clients but had failed to notify the lender clients of certain material facts. The Tribunal found that the Respondents had failed to notify their lender clients that the transactions had been completed back to back and no documentary information had been provided by the First Respondent to support his contention that they had been so advised. In addition, the Tribunal was satisfied that incentives had not been disclosed to the lender clients by the Respondents and such failure placed the Respondents in a position of conflict between clients.

136.136 The Tribunal found that the Respondents, in the course of the exemplified transactions, failed to notify their lender clients of the nature of the relationship between buyer and seller or that the seller had not owned or been the registered owner of the property for six months or more.

136.137 The Tribunal did not find that there had been a breach of Rules 3 and 1.02, 1.04 and 1.06 of the SCC in relation to the Second Respondent only. As the allegation had been pleaded in the Rule 5 Statement, the Tribunal found that the impression had not been given that each party was represented by a different firm since it was clear that PLA and EW2C had all operated from the same address and that PLA and EW2C had been trading names of the Second Respondent.

136.138 In relation to the firm's referral arrangements, the Tribunal found that the Respondents had only entered into formal written agreements, as required by Rule 9 of the SCC, with three of its seven introducers. It noted that the First Respondent had admitted in his letter dated 24 November 2008 that no formal written agreements had been in place at the time of the first FI inspection. The Tribunal found that no evidence had been produced by the Respondents that they had entered into agreements with the remaining four introducers and in relation to the three written agreements these had post-dated the Applicant's first inspection. The Tribunal was also satisfied that the Respondents had paid referral fees from client account instead of office account and the First Respondent had confirmed the same in his letter dated 24 November 2008. The Tribunal found that the First Respondent had breached his fiduciary duty to clients and impaired his duty to always act in the best interests of his clients since any referral payment must be paid by the firm and never the client.

136.139 In relation to the SDMS, the Tribunal found that the First Respondent had been unable at the time of the investigation to provide supporting documentation regarding the scheme and this had only become available in November 2008. It accepted that as a result, the documentation which detailed some of the risks under the scheme could not have been available to clients at the time of the inspection. The Tribunal found that the scheme created a conflict or significant risk of conflict between the husband and wife clients and that the Respondents had failed to follow the instructions of their lender clients, preferring instead the interests of their borrower clients.

136.140 The Tribunal found that the Respondents had failed to act in their clients' best interests and had given misleading costs information to clients about the costs of matters since the clients had paid significant fees to the Respondents for the SDMS "service" but could potentially have still been liable for their SDLT payable to HMRC. The Tribunal found that it was impossible to determine what actual service the clients had received for the substantial fees charged by the firm for the SDMS.

136.141 The Tribunal found that the Respondents had breached Rules 6 and 7 of the SAR, by virtue of the SAR breaches and by virtue of their failure to remedy said breaches promptly upon discovery. In his letter dated 19 March 2009, the Tribunal noted that the First Respondent had admitted that "due to the expansion of my practice I have not kept up to speed with my compliance with the Solicitors Accounts Rules ("Rules"), as with the benefit of hindsight I could have". The Tribunal found that the second FI Report dated 3 February 2010 evidenced that the books of account remained otherwise than in accordance with the SAR since the first inspection and it was satisfied that that constituted further evidence of the Respondents' failure to

comply with Rules 6 and 7 of the SAR and Rules 15 and 32 of the SAR in relation to the client account reconciliations.

136.142 As to the failure to cooperate with the Applicant, the Tribunal was satisfied that the Respondents had failed to provide various documentation and specific information further to requests from the Applicant, such as evidence of postings, breakdowns of costs, an accurate ledger for the 78 Christchurch Road transaction, documentation pertaining to the loan from PI and the four outstanding written referral agreements.

136.143 In relation to allegations 1.18, 1.19 and 1.20, the Tribunal found all three allegations against the First Respondent alone proved including that the First Respondent had been dishonest in relation to allegations 1.18, 1.19 and 1.20.

136.144 In relation to the five exemplified transactions dealt with in the Supplemental Rule 7 Statement the Tribunal was satisfied so that it was sure that the First Respondent had preferred his own interests over those of his lender clients by having failed to ensure that those lender clients had been made aware of all relevant information in transactions completed for him or for his wife. The First Respondent had failed to register charges and had informed the FIO that the reason for that had been that he had intended to secure short term finance and then to repay it quickly but the Tribunal found that had not been done and charges had remained unregistered and had not been redeemed so that lender clients had had no security or monies returned. The Tribunal found that the First Respondent had further sought to mislead his regulator, the Applicant, by maintaining that he had discharged the BM mortgage account for 66 Naseby Road when he had not and that he had advanced and repeated that suggestion knowing that it was untrue.

136.145 In relation to 44 Wainwright Avenue, the Tribunal was satisfied that the sum of £108,715 had been received from AN as it was identical in format on the client account bank statement to other receipts of mortgage advances from AN and it did not accept the First Respondent's assertions that the payment in some way related to his client NSMMG. The Tribunal found that it was implausible that the First Respondent had not known that the money had come from AN and was a mortgage advance and it was satisfied that the First Respondent had used his position as a solicitor and principal of the firm to obtain monies from lender clients on his and his wife's behalves where they would not have been entitled to have received them and the lenders would not have released such funds had they known the truth.

136.146 The Tribunal found that the application form completed by the First Respondent's wife had contained falsehoods and it noted that AN had confirmed in the Statement of Ms WSC that it would not have allowed a mortgage application to complete where there was any doubt regarding the validity of information supplied in a mortgage application. The Tribunal heard that the First Respondent had given no indication to his lender client that the application had been inaccurate or that the monies advanced were to be used for any purpose other than the purchase. For those reasons, the Tribunal was satisfied that the First Respondent must have known that the application was not accurate.

136.147 The Tribunal found that the First Respondent had raised funds from lender clients solely for the purpose of supporting and funding his business (the Second

Respondent) and the First Respondent had admitted that via his own legal representatives in their correspondence dated 20 November 2009.

136.148 The Tribunal found dishonesty proved on the combined test as set out in Twinsectra. It found that the First Respondent had been dishonest in relation to allegations 1.18 and 1.19 in that an objective member of the public would have considered it dishonest that the First Respondent did not disclose to lender clients all relevant information for him and his wife and subjectively, he plainly knew that he was being dishonest by his non-disclosure, by his serial re-mortgaging of properties, by his forbearance to register those mortgages and by securing advances, not for the reasons he had given when applying, but to fund and support his firm. This had been borne out by the relevant exemplified transactions.

136.149 In relation to allegation 1.20, the Tribunal found that the First Respondent had been dishonest on the objective basis, namely that an objective member of the public would have considered the First Respondent's spurious explanations regarding the £108,715 to have been untrue and subjectively, that the First Respondent himself must have known that what he told the FIO regarding the AN mortgage advance and supposed fees owed by NSMMG Limited was untrue.

Previous Disciplinary Matters

137. None.

Mitigation

138. None. The Tribunal reminded itself of its finding that the First Respondent had waived his right to attend the hearing, and that he had had ample opportunity both to attend and to make written representations to the Tribunal on behalf of himself and on behalf of the Second Respondent but had chosen not to do so.

Sanction

<u>First Respondent</u>

139. The Tribunal had found all of the allegations against the First Respondent proved. The First Respondent had made certain admissions in correspondence but had shown no evidence of remorse for his actions and instead had sought to rely on spurious explanations which had been shown to have been untrue and dishonest.

140. The First Respondent's conduct had shown a blatant disregard for his professional obligations and included breaches of the core duties which underpinned all of the other Rules. The First Respondent had also deliberately misled his regulator, the Applicant and his own clients including lender clients.

141. The Tribunal had a duty to protect the public and the reputation of the solicitors' profession including the maintenance of the public's confidence in the profession. It was essential that the sanction imposed by the Tribunal reflected that duty whilst at the same time being reasonable and proportionate. The SCC 2007 and its predecessor the SPR 1990 and the SAR 1998 existed to ensure that solicitors behaved with

integrity, essential to their role as the client's trusted adviser and characterising all their professional dealings with their regulator, other lawyers and the public.

142. The Tribunal was extremely concerned by the seriousness of the allegations found proved against the First Respondent and in particular, by his dishonest conduct. The Tribunal considered that if allowed to continue to practise the First Respondent posed a serious risk to the public. The Tribunal had to balance the requirement to impose a reasonable and proportionate sanction with its duty to protect the public and the legal profession's reputation. The result of the balancing exercise was that in the circumstances of this case, the Tribunal had to strike the First Respondent off of the Roll of Solicitors.

Second Respondent

143. The Tribunal had found all of the allegations against the Second Respondent proved bar allegation 1.17. The Second Respondent was the firm itself and a recognised body.

144. The Tribunal noted that the Second Respondent had changed its name to Alcimus Limited, formerly SFS Legal Limited and that Alcimus had gone into liquidation, the Petition date having been 22 March 2010 and the Winding Up Order having been made on 25 March 2011.

145. The Tribunal had regard to the AJA 1985 and its powers under that Act with regard to a recognised body and in all the circumstances, the Tribunal decided to revoke the recognition of the Second Respondent.

Costs

146. Mr Goodwin confirmed that a copy of the Schedule of Costs had been sent to the First Respondent but no response had been received from him. He said that the First Respondent had not provided any details of his financial circumstances.

147. Mr Goodwin invited the Tribunal to make a costs order in favour of the Applicant but acknowledged that in view of the amount of the Applicant's costs it might be more appropriate for there to be a detailed assessment. If the Tribunal were minded to order a detailed assessment, Mr Goodwin asked for an interim payment for such amount as the Tribunal saw fit to order. He said that the Applicant would seek to enforce an interim order and if successful, it would then pursue any balance, should the Tribunal make an order for costs in its favour.

148. In response to a question from the Tribunal, Mr Goodwin said that Mr Greensmith had obtained abbreviated accounts for the Second Respondent and an updated company search which showed that in its new guise of Alcimus Limited it had gone into liquidation in March 2010.

149. The Tribunal listened carefully to the submissions on behalf of the Applicant as to costs and noted that the First Respondent had not provided any financial information despite his having been invited to do so by the Applicant. The Tribunal decided that the First Respondent should be ordered to pay the costs of the case subject to detailed

assessment unless agreed between the parties and to pay interim costs in the sum of £40,000 within fourteen days.

Statement of Full Order

150. The Tribunal Ordered that the First Respondent, Shameer Farouk Sacranie 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, subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountants of the Law Society and that he do pay interim costs in the sum of £40,000.00 within 14 days of 16th May 2012.

151. The Tribunal Ordered that the recognition of the recognised body of Alcimus Limited of Barkby House, Barkby Road, Leicester LE4 9LG (formerly known as SFS Legal Limited of Barkby House, Barkby Road, Leicester LE4 9LG) be Revoked from 5 pm on Wednesday 16th May 2012.

Dated this 13th day of June 2012
On behalf of the Tribunal

L. N. Gilford
Chairman