

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10346-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SHABNUM AZIZ

Respondent

Before:

Mr R. Hegarty (in the chair)

Mr A.G. Gibson

Mr S. Howe

Date of Hearing: 20th May 2013

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:
 - 1.1 Contrary to Rule 10.05(1)(a) of the Solicitors Code of Conduct 2007 the Respondent failed to fulfil an undertaking given by her in writing to B Solicitors on 27 August 2008, namely to pay the sum of £217,000 within six weeks of that date to discharge her clients' liability to B C Limited.
 - 1.2 In breach of Rules 1.02, 1.04 and 1.06 (or any of them) of the said Code the Respondent agreed to appoint DEC as a fellow Director of Cranbrook Solicitors Limited for the purpose of satisfying the requirements of the firm's lender clients for the firm (in order to retain its position as a panel member) to be comprised of more than one principal, and in circumstances where such clients did not know that in fact he had no practical involvement in the accounting, regulatory or supervisory responsibilities of the firm.
 - 1.3 Contrary to Rule 32(1)(a) of the Solicitors Accounts Rules 1998 the Respondent failed to keep accounting records properly written up to show her dealings with client money held, received or paid. It was alleged the First Respondent had acted dishonestly.
 - 1.4 Contrary to Rule 32(1)(c) of the Solicitors Accounts Rules 1998 the Respondent failed to keep accounting records properly written up to show her dealings with office money relating to client matters.
 - 1.5 Contrary to Rule 32(5) of the Solicitors Accounts Rules 1998, the accounting records kept did not show the current balance on each client ledger, or it was not readily ascertainable because the entries were not made in date order.
 - 1.6 Contrary to Rule 30 of the Solicitors Accounts Rules 1998 inter ledger transfers were carried out in circumstances other than permitted by the said Rule. It was alleged the Respondent had acted dishonestly because some such transfers were designed to disguise the existence of debit balances on client ledgers.
 - 1.7 Contrary to Rule 22 of the Solicitors Accounts Rules 1998 the Respondent withdrew money from client account in circumstances other than permitted by the said Rule, including the withdrawal of client money for her own use. It was alleged the Respondent had acted dishonestly.
 - 1.8 Contrary to Rule 1 of the Solicitors Code of Conduct 2007 the Respondent failed to act with integrity, allowed her independence to be impaired and behaved in a way that was likely to diminish the trust the public placed in her or the profession by virtue of each or both of the following:
 - i. The Respondent provided false and misleading information to the Assigned Risks Pool for the indemnity years 2007/2008 and 2008/2009. It was alleged the Respondent had acted dishonestly.

- ii. The Respondent conducted conveyancing transactions which bore characteristics of mortgage fraud. It was alleged the Respondent was grossly reckless.
- 1.9 Contrary to Rule 5.01(1)(b) of the Code the Respondent failed to make arrangements for compliance with the Money Laundering Regulations.
- 1.10 Contrary to Rule 10.05(1)(a) of the Solicitors Code of Conduct 2007 the Respondent failed to fulfil undertakings dated 29 January and 4 February 2009 given to M & Co Solicitors, namely to discharge 3 Charges registered against a property in Romford and to send evidence of such to M & Co Solicitors.
- 1.11 Contrary to Rule 1.02 of the said Code the Respondent failed to act with integrity when she falsely stated to M & Co Solicitors on 18 March 2009 that she was waiting for a DS1 from the lender when she had not sent a payment to discharge the mortgage.
- 1.12 The Respondent failed to deliver her accountant's report for the period 6 November 2007 to 5 November 2008 due by 5 May 2009.
- 1.13 The Respondent failed to deliver a Cease to Hold report for the period ended 12 May 2009.
- 1.14 The Respondent failed to pay the sum of £15,750 being the premium payable to the Assigned Risks Pool.
- 1.15 Contrary to Rules 1.02 and/or 1.06 of the said Code the Respondent failed to act with integrity and/or acted in a way that was likely to diminish the trust the public placed in her or the profession.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 2 October 2009 together with attached Rule 5 Statement and all exhibits
- First Supplementary Statement dated 23 June 2010 together with all exhibits
- Statement of Nasreen Iqbal dated 27 March 2012 together with all exhibits
- Emails dated 15 and 19 May 2013 between David Barton and Shokat Aziz

Respondent:

- Witness Statement of Shokat Aziz dated 4 December 2012 together with attached bundle of documents
- Email from Shokat Aziz dated 10 December 2012 to David Barton

- Letter dated 24 June 2010 from Shokat Aziz to Messrs Wright Son and Pepper Solicitors
- Letter dated 23 April 2013 from the Respondent's GP
- Letter dated 20 February 2013 confirming the Respondent's receipt of state benefits
- Documents from Birmingham City Council dated 2 March, 3 March and 5 March 2013 relating to Council Tax

Application to Proceed in the Respondent's absence

3. Mr Barton, on behalf of the Applicant, confirmed he had been in regular communication with the Respondent's brother, Shokat Aziz, the most recent of which had been last week in emails dated 15 and 19 May 2013. Mr Aziz had been dealing with matters on the Respondent's behalf due to her personal and medical circumstances, and he was aware of the date of the substantive hearing. In his email dated 15 May 2013 Mr Aziz had stated the Respondent would not attend the Tribunal hearings due to concerns about her safety. Mr Barton had advised Mr Aziz in an email dated 19 May 2013 that he would be asking the Tribunal to proceed with today's hearing in her absence.
4. These proceedings had been outstanding for over three years and the Respondent had not provided any up to date psychiatric evidence despite indicating she would obtain such reports. Mr Barton had sent an email to Mr Aziz on 8 May 2013 and had spoken to Mr Aziz many times on the telephone. Mr Aziz had explicitly stated in an email dated 26 April 2013 that he was communicating on behalf of the Respondent, and that he would accept communication for her as she did not wish to disclose her address.
5. Mr Barton also reminded the Tribunal that details of these proceedings had been publicised in the Law Society's Gazette pursuant to the Tribunal's Order made on 7 December 2010 for substituted service of proceedings. Mr Barton referred to the Tribunal's Memorandum of a Case Management Hearing dated 30 May 2012 which confirmed that in April 2012, Mr Aziz on behalf of the Respondent had applied for an adjournment of an earlier case management hearing. In all the circumstances, Mr Barton submitted the Respondent was aware of these proceedings and of today's hearing, and that matters should proceed in her absence.

The Tribunal's Decision

6. The Tribunal had considered carefully all the correspondence provided and the submissions of the Applicant. The Tribunal noted substituted service of the proceedings had taken place by way of an advertisement in the Law Society's Gazette in 2011 and that there were a number of emails from the Respondent's brother, Mr Shokat Aziz, who appeared to be dealing with matters on her behalf. Indeed he had provided a witness statement dated 4 December 2012 which contained a detailed response to some of the allegations and gave information regarding the Respondent's financial situation, specifically stating she could not afford legal representation or the cost of obtaining medical evidence. Mr Barton had written to Mr Aziz on 8 May 2013 with details of today's hearing. In his email of 15 May 2013 to Mr Barton Mr Aziz specifically stated the Respondent would not attend the "SDT hearings".

The Tribunal had also informed the Respondent of today's hearing by writing to her last known address on 15 January 2013.

7. In the circumstances, the Tribunal was satisfied that the Respondent was aware of these proceedings, that she was also aware of today's hearing and had waived her right to attend. The Tribunal was further satisfied that even if the hearing were to be adjourned today, it was unlikely the Respondent would attend a future substantive hearing. Accordingly, the Tribunal granted the Applicant leave to proceed in the Respondent's absence.

Factual Background

8. The Respondent was born on 11 August 1967 and was admitted as a solicitor on 2 June 1997. At all material times she practised under the style of Cranbrook Solicitors Limited of 79 Cranbrook Road, Ilford, Essex, IG1 4PG ("the firm").
9. The firm was incorporated on 26 October 2006, when the Respondent was appointed as director, and was the successor practice to Cranbrook Solicitors, which the Respondent had established in October 2000. The practice address was the same throughout. The issued share capital of the company was owned by the Respondent, who alone at all material times operated office and client bank accounts. The practice was intervened on 12 May 2009 when the Respondent's practising certificate was suspended.

Allegation 1.1

10. In a letter dated 27 August 2008 the Respondent gave B Solicitors an undertaking in the following terms:

“[B C LIMITED] v [KN and MD]

Further to this matter, we understand that your clients would after all be prepared to accept an undertaking from us, so as to allow suspension of the warrant for six weeks from today.

We accordingly hereby undertake to pay the agreed sum of £217,000 within six weeks.

Please confirm this is agreed and that the Bailiffs Appointment has been cancelled.”

11. In a letter dated 16 October 2008 B Solicitors reported to the Solicitors Regulation Authority (“SRA”) the Respondent's failure to fulfil the said undertaking. The letter confirmed they had relied on the undertaking and that notwithstanding repeated requests that the undertaking be fulfilled, this was not done.
12. On 9 January 2009 the SRA wrote to the Respondent requesting an explanation. She replied in a letter dated 13 January 2009. She also sent a witness statement in which she stated the undertaking had been given under duress. In a letter dated 18 March 2009 from the Respondent's solicitors to the SRA it was accepted the undertaking had not been fulfilled.

Allegation 1.2

13. On 27 February 2009 the SRA wrote to DEC to ask questions about his involvement as a principal in the firm. On 2 March 2009 he responded stating that the sole reason he had been asked by the Respondent to become a director was to enable the firm to satisfy the requirements of lender clients. He confirmed the appointment was:

“of a purely nominal character, so as to prevent the potentially substantial loss of business which would ensue as a result of being precluded from acting for a large number of mortgage lenders.”

Allegations 1.3 to 1.7

14. On 12 March 2009 an Investigation Officer from the SRA commenced an investigation into the firm and produced a report dated 17 April 2009. On 12 May 2009 the SRA intervened into the practice.
15. The Investigation Officer noted that individual client ledgers had not been maintained for all client matters, that the office side of the client ledger accounts had not been maintained accurately, that client ledgers had been maintained which bore no relation to the matter file, and that ledger accounts were not maintained in date order making it difficult to ascertain the balance on such client ledgers.
16. The Investigation Officer noted there were numerous inter ledger transfers which were not supported by evidence of authority and nor was it permissible under the rules for the money to have been withdrawn from client account.
17. On the matter of Mrs M, the sum of £174,410 was transferred to the client ledger account of an unconnected client on 30 November 2008. The transfer had the effect of covering up a debit balance on the receiving client ledger. At the time the money was transferred, there were insufficient funds on Mrs M's ledger as her sale had not completed and sale proceeds were not received until 23 December 2008. Accordingly, in covering up a debit balance on the receiving ledger, a debit balance was created on Mrs M's ledger and that was disguised by the entry of an incorrect receiving date into the narrative.
18. The Respondent received £146,000 from a firm of chartered certified accountants on her undertaking to use the money solely to assist in connection with the purchase of a property by her client DSF. This undertaking was provided in a letter dated 26 February 2009 which contained the Respondent's reference. The sum of £146,000 was received into client account and on 27 February 2009 was credited to a ledger in the Respondent's own name. The credit entry had the effect of disguising a debit balance on her ledger, which had become overdrawn as a result of round sum withdrawals to office account debited prior to 27 February 2009. The firm's bookkeeper confirmed the Respondent had directed her to credit the £146,000 to her own ledger.
19. The Investigation Officer found that there had been round sum withdrawals totalling £290,000 during the period 1 January to 20 March 2009, some of which purported to be pursuant to bills of costs, when in fact such bills had been debited to the

Respondent's own client ledger. There was no evidence of work having been undertaken justifying such postings to her ledger. The bills contained identical narratives with no objective evidence to support the amounts.

20. The Investigation Officer concluded that he could not rely on the firm's books of account. With the data available he calculated that on 18 February 2009 there was a minimum cash shortage of £187,254.96. The firm should have had in client account the sum of £475,907.94 but only held £288,652.98. At the time of the investigation the Respondent was absent from the firm due to illness but, despite a request that she contact the Investigation Officer, she had not done so at the date of the report.
21. The firm should have been holding £270,811.51 for Mrs M whose sale proceeds were received into client account on 23 December 2008. Various payments were made from this ledger including the transfer of £174,410 on 30 November 2008 to the ledger of Mr K, whose ledger had been overdrawn since 5 April 2007 due to a large number of debit transfers. The overdrawn balances were substantial reaching £410,597.24 by 13 August 2008. The ledger apparently related to one property transaction but on the face of it had entries relating to a variety of activities which the Investigation Officer had not been able to investigate properly with the Respondent.
22. The firm should have been holding £105,111.43 for Mr H. His ledger showed a number of unauthorised inter ledger transfers, mispostings of receipts and round sum transfers from client to office account. The Respondent withdrew £290,000 from client account between 1 January and 20 March 2009.
23. The firm should have been holding £99,985 for Ms N however the receipt of sale proceeds was credited to a different ledger in the name of CP which was overdrawn. The credit had the effect of disguising the debit balance on the CP ledger.

Allegation 1.8

24. The Respondent submitted proposal forms to the Assigned Risks Pool manager for the indemnity years 2007/2008 and 2008/2009. The gross fees disclosed by the firm were substantially below the actual gross fees. This led to the assessment of premiums which were significantly lower than would otherwise have been payable based on the firm's actual gross fees. The proposal forms were signed by the Respondent.

Allegation 1.9

25. The Investigation Officer examined a number of files where the Respondent had acted for purchasers of properties. On one transaction the buyer of two properties did not pay the entire purchase price to the Respondent although he was purchasing with the aid of mortgages. There was a sale of two flats but the sales particulars described the property as a single dwelling. In another transaction there were similar features with the buyer obtaining three mortgages on a property which did not appear to comprise of three units.

Allegations 1.10 and 1.11

26. M & Co Solicitors acted on behalf of a client in connection with the purchase of a property in Romford. The purchase completed on 2 March 2009. On 29 January 2009 the firm undertook to redeem or discharge the registered Charge in favour of a lender and to send Form DS1 or the receipt of charge as soon as received. In a letter dated 4 February 2009 the firm further undertook “to discharge all three charges registered on the property.” In a letter dated 18 March 2009 to M & Co Solicitors the Respondent stated the firm was:

“...still awaiting the DS1/END1 in favour of [the lenders]...”

27. A copy of the firm’s client ledger relating to the sale showed the Charge was not repaid and the two undertakings were not complied with.

Allegations 1.12, 1.13 and 1.14

28. The Respondent was required to deliver an accountant’s report by 5 May 2009 for the period 6 November 2007 to 5 November 2008. She was also required to deliver a Cease to Hold Report for the period from 6 November 2008 to 12 May 2009, which was due on or before 12 November 2009. The reports were not delivered, and both remained outstanding.
29. The Respondent was required to pay an insurance premium to the Assigned Risks Pool in the sum of £15,750. The premium was not paid and remained outstanding.

Allegation 1.15

30. On 4 May 2006 Dr Nasreen Iqbal paid the Respondent £134,000 which was credited to the firm's client account. This amount represented Dr Iqbal's contribution to a joint venture with the Respondent to purchase a property in Ilford which was to be converted into apartments and sold at a profit. The property was conveyed into the Respondent's sole name without Dr Iqbal's knowledge.
31. After May 2006 Dr Iqbal requested regular updates by telephone as to the progress of building work but her calls to the Respondent were not returned. She sent letters by recorded delivery and subsequently instructed solicitors to enter into correspondence with the firm. Dr Iqbal arranged for her solicitors to enter a restriction on the property which was done on 27 May 2009. Dr Iqbal attended the firm on 3 November 2009 but the Respondent refused to see her and sent her colleague instead. The Respondent did not account for the money and Dr Iqbal was now pursuing a claim against the Compensation Fund to recover her funds.

Witnesses

32. The following witnesses gave evidence:
- Roberto Ferrari (previously an Investigation Officer of the SRA and now employed as Regulatory Manager at the SRA)
 - Dr Nasreen Iqbal

Findings of Fact and Law

33. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
34. **Allegation 1.1: Contrary to Rule 10.05(1)(a) of the Solicitors Code of Conduct 2007 the Respondent failed to fulfil an undertaking given by her in writing to B Solicitors on 27 August 2008, namely to pay the sum of £217,000 within six weeks of that date to discharge her clients' liability to B C Limited.**
- 34.1 The Respondent had given an undertaking to B Solicitors in a letter dated 27 August 2008 agreeing to pay the sum of £217,000 within six weeks from that date. In a letter dated 16 October 2008 from B Solicitors to the SRA, they confirmed the Respondent's clients had defaulted in repaying a loan and their client had obtained a possession order requiring the Respondent's clients to give up possession of the property by 22 October 2007 together with a money judgement for £194,250. They had failed to do so, and a bailiff's appointment had been arranged for the end of August 2008. The undertaking given by the Respondent was to pay the sum of £217,000 by 8 October 2008. B Solicitors' client had relied on that undertaking and agreed not to execute its Warrant of Possession for six weeks. However, the firm did not comply with their undertaking despite repeated requests for them to do so.
- 34.2 The Respondent had given some explanation by providing a copy of her witness statement prepared for proceedings in the Manchester District Registry. In that statement she indicated her clients had attended her offices on 26 August 2008 informing her that the bailiff's appointment could be suspended if an acceptable solicitors' undertaking could be provided. She indicated she had not been prepared to give an unqualified undertaking without being certain that the undertaking could be met by receipt of client funds. The undertakings offered had not been acceptable and it was agreed with the client that an application would be made to suspend the possession order.
- 34.3 However one of the Respondent's clients unexpectedly attended her offices on 28 August 2008 and demanded she should provide an unqualified undertaking. The Respondent claimed the client was aggressive, menacing and threatening and that she was extremely frightened, fearing for her safety, and simply felt unable to say no to him. Accordingly, she agreed to give the undertaking under immense pressure and duress and faxed the undertaking to B Solicitors in front of her client, who would not leave until she did so. The Respondent confirmed in her statement that she did not inform B Solicitors that the undertaking had been given under duress until 17 October 2008. Nor did she report the matter to the police.
- 34.4 The Tribunal noted this statement had been provided for the purposes of proceedings between the lender, B C Limited, and the Respondent's firm for the recovery of the debt, and had not been prepared for these proceedings. The Tribunal also noted from the Respondent's solicitor's letter dated 18 March 2009 that the undertaking had not

been complied with. Whilst there was also a statement from DEC dated 10 December 2008, that statement was also prepared for the civil proceedings and the issue of duress was referred to insofar as what the Respondent had told DEC. There was no independent evidence to substantiate the Respondent's version of events, which in any event, was contained in a statement prepared for civil proceedings. As the undertaking remained outstanding, the Tribunal was satisfied this allegation was proved.

35. **Allegation 1.2: In breach of Rules 1.02, 1.04 and 1.06 (or any of them) of the said Code the Respondent agreed to appoint DEC as a fellow Director of Cranbrook Solicitors Limited for the purpose of satisfying the requirements of the firm's lender clients for the firm (in order to retain its position as a panel member) to be comprised of more than one principal, and in circumstances where such clients did not know that in fact he had no practical involvement in the accounting, regulatory or supervisory responsibilities of the firm.**

35.1 The Applicant's bundle of documents contained a letter from DEC dated 2 March 2009 to the SRA. DEC confirmed in that letter that, although he had been a director of the firm, he "had no practical involvement". He had no right to sign cheques or to make, or authorise transfers even in the Respondent's absence. Whilst he had the right to see the bank reconciliation statements, the annual client audit report and the annual company accounts, in practice he had no ready access to the computerised accounts which were available for reference only. He had no role in policy making and he explained that the sole reason the Respondent had asked him to become a director was so as to be able to satisfy the requirements of numerous mortgage lenders to be eligible for panel membership. DEC confirmed that his appointment as director:

".....was of a purely nominal character, so as to prevent the potentially substantial loss of business which would ensue as a result of being precluded from acting for a large number of mortgage lenders."

35.2 The Respondent had not provided any explanation of the matter herself. The Tribunal noted that no evidence had been provided to confirm the firm's lender clients had been aware of this arrangement. They were therefore not aware that DEC had no practical involvement in the accounting, regulatory or supervisory responsibilities of the firm. The Tribunal was satisfied that had such information been provided to those lender clients, they may have taken a different view as to whether to allow the firm to remain on their respective lender panels. The failure to provide such information to the firm's lender clients was a failure to act in the best interests of those clients contrary to Rule 1.04 and was behaviour that was likely to diminish the trust the public placed in the Respondent or in the profession contrary to Rule 1.06.

35.3 The Respondent had proposed such an arrangement to DEC with the sole purpose of ensuring her firm would remain on lender panels in circumstances where she knew there was a risk that the firm may not retain its membership if she was the sole director. In practical terms, she was indeed the sole director with control over all matters, a situation which some lenders may have sought to avoid. By not disclosing the true nature of her arrangement with DEC to lender panels, the Respondent had acted with a lack of integrity contrary to Rule 1.02. The Tribunal was therefore satisfied this allegation was proved.

- 36. Allegation 1.3: Contrary to Rule 32(1)(a) of the Solicitors Accounts Rules 1998 the Respondent failed to keep accounting records properly written up to show her dealings with client money held, received or paid. It was alleged the First Respondent had acted dishonestly.**

Allegation 1.6: Contrary to Rule 30 of the Solicitors Accounts Rules 1998 inter ledger transfers were carried out in circumstances other than permitted by the said Rule. It was alleged the Respondent had acted dishonestly because some such transfers were designed to disguise the existence of debit balances on client ledgers.

- 36.1 The Tribunal had heard evidence from Mr Ferrari, the Investigation Officer from the SRA, and had also considered his report dated 17 April 2009. He had confirmed in his evidence that the Respondent was the only person authorised to operate both client and office account and that he had found multiple deficiencies in those accounts. There had been inaccurate recording of entries on ledgers, missing entries, round sum transfers, inaccurate postings and no authority for inter file transfers. Mr Ferrari confirmed the firm had an overdraft facility of £50,000 and as at 18 February 2009 he had calculated a minimum cash shortage of £187,254.96.
- 36.2 He had referred the Tribunal to a table contained within his report which set out a number of client to office transfers. It showed the amount indicated on office account and the amount that would have been shown if no transfer had been made. Mr Ferrari confirmed that bills of costs were not shown on all cases and, where they were, some of the bills were round sum transfers. Some entries on the ledger were an accumulation of transfers.
- 36.3 Mr Ferrari confirmed he had never met or spoken to the Respondent despite requesting her to contact him on numerous occasions which she had failed to do. He had spoken to the firm's bookkeeper who had confirmed the entries had been made at the Respondent's direction.
- 36.4 The Tribunal noted Mr Aziz, the Respondent's brother, had referred to the firm's accounting procedures in his witness statement. However, as Mr Aziz was not a staff member of the firm, his statement was hearsay and the Tribunal attached due weight to it. The Respondent herself had failed to provide any explanation for the accounting irregularities at any point, despite having been given a number of opportunities to do so.
- 36.5 The Tribunal had been provided with examples where clients' monies had been transferred to the ledgers of unconnected clients without authority or explanation. In particular, the sum of £174,410 which were the sale proceeds due to Mrs M, were recorded as being received on 13 November 2008, when in fact the matter did not complete until 23 December 2008 when completion monies were received into client account. Despite this, on 30 November 2008 the sum of £174,410 was transferred from Mrs M's client ledger to the client ledger of Mr K, an unconnected client. Mr K's client ledger had showed a debit balance of £174,410 since 7 April 2008 and, indeed, had contained debit balances of amounts varying from £410,597.24 to £97,270.08 since 2 March 2007. The receipt of the sum of £174,410 on 30 November

2008 effectively gave Mr K's client ledger a nil balance. However, as these funds had not actually been received for Mrs M when they were transferred to Mr K's ledger, the transfer actually created a debit balance on Mrs M's client ledger.

- 36.6 There were other inter ledger transfers which were not supported by evidence of authority from the client, nor did any of the provisions in Rule 22(1) of the Solicitors Accounts Rules 1998 ("SAR") apply. Indeed Mrs M's funds had not even been received so could not have been transferred in any event under Rule 22.
- 36.7 In the matter of Mrs N, £99,985 was received into client account on 30 September 2008, however, no client ledger was created for this matter although various other client ledgers existed for Mrs N. The funds received were posted to a client ledger in the name of an unconnected client CP Ltd, where, prior to the receipt of funds, there existed a debit balance.
- 36.8 The Respondent had received the sum of £146,000 on 27 February 2009 from a firm of chartered certified accountants having given an undertaking to use the money solely to assist in connection with the purchase of a property by her client, DSF, who was receiving a loan facility from those accountants. However, the funds were posted to the Respondent's own client ledger, which related to an abortive sale, and without this entry, that client ledger would have recorded a debit balance of £46,647.77 as a result of several transfers for costs and disbursements on that ledger to the office account earlier in February 2009. Mr Ferrari stated the firm's bookkeeper informed him that she had been directed to make this posting by the Respondent. DSF's purchase was completed on 2 March 2009 when the balance of the completion monies of £475,000 was forwarded to the seller's solicitors. At that date DSF's client ledger recorded a balance of £344,220.50 and ten days later the payment of £475,000 was yet to be posted to the ledger.
- 36.9 The Tribunal was satisfied, having heard Mr Ferrari's evidence, that the book keeper had made entries on the client ledgers at the Respondent's direction. As such, the Tribunal was further satisfied that the Respondent had failed to keep accounting records properly written up to show dealings with client money held, received or paid. Mrs M's completion monies were recorded as received on 13 November 2008 when, in fact, they were not received until 23 December 2008. The sum of £174,410 was transferred on 30 November 2008 from Mrs M's ledger, when those funds had not even been received on that date, and this meant that the balance showing on Mrs M's client ledger was inaccurate. Furthermore the ledger for DSF showed inaccurate entries for monies held, received or paid.
- 36.10 Both allegations 1.3 and 1.6 contained an allegation of dishonesty. It was alleged the Respondent had acted dishonestly in failing properly to show her dealings with client money held, received or paid, and it was alleged she had acted dishonestly because some inter ledger transfers were designed to disguise the existence of debit balances on client ledgers.
- 36.11 The Tribunal considered the case of *Twinsectra Ltd v Yardley & Others* [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly,

the Tribunal had to consider whether the Respondent herself realised that by those standards her conduct was dishonest.

- 36.12 Dealing firstly with the issue of dishonesty in relation to allegation 1.3, the Tribunal was satisfied that recording Mrs M's sale proceeds as received on 13 November 2008, when in fact they were received on 23 December 2008, but yet showing that those funds were transferred to another client's ledger on 30 November 2008, which had had a long standing debit balance, would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that the Respondent must have known on 13 November 2008 that the matter had not completed, it did not complete until some time later on 23 December 2008 and therefore completion monies could not possibly have been received on 13 November 2008. By failing to keep those accounts properly written up and allowing the client ledger to show that such funds had been received when they had not, and then show those funds were paid to another client's ledger to conceal a debit balance on that ledger, the Tribunal was satisfied the Respondent realised that her conduct was dishonest by those standards.
- 36.13 On the issue of dishonesty in relation to allegation 1.6, the Tribunal was satisfied that recording the transfer of funds, which had not yet been received, from Mrs M's client ledger to Mr K's client ledger which had a debit balance, without any authority from Mrs M, thereby giving the impression that Mr K's ledger no longer had a debit balance would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent was the only person who could authorise such transfers and it was clear that by making the transfers, the debit balance on Mr K's account was disguised as there were in actual fact no such funds on Mrs M's client ledger to transfer in the first place. Although Mr K's ledger showed a nil balance, it was in reality still a debit balance in the sum of £174,410. The Tribunal was satisfied that the Respondent deliberately transferred the non existent funds from Mrs M's client ledger to Mr K's client ledger, which had a long standing debit balance, specifically to conceal and disguise that debit balance and in doing so, she realised that her conduct was dishonest by the ordinary standards of reasonable and honest people.
- 36.14 The Tribunal therefore found both allegations 1.3 and 1.6 proved including the allegations of dishonesty in relation to both allegations.
- 37. Allegation 1.4: Contrary to Rule 32(1)(c) of the Solicitors Accounts Rules 1998 the Respondent failed to keep accounting records properly written up to show her dealings with office money relating to client matters.**
- 37.1 The Tribunal had been referred to a number of client ledgers where bills had not been posted on the client ledger resulting in significant office credit balances. The client ledger for Mr DS's purchase of a property in Leyton showed an office credit of £10,413.73. The Respondent's own client ledger showed an office credit of £91,316.64. This was contrary to Rule 32(1)(c) of the SAR. The Respondent had provided no explanation. The Tribunal found this allegation proved.
- 38. Allegation 1.5: Contrary to Rule 32(5) of the Solicitors Accounts Rules 1998, the accounting records kept did not show the current balance on each client ledger,**

or it was not readily ascertainable because the entries were not made in date order.

38.1 Mr Ferrari confirmed client ledger accounts had not been maintained in date order which led to difficulties in ascertaining the actual balance on the client ledger. The Respondent had not provided any explanation for this. The Tribunal found this allegation proved.

39. Allegation 1.7: Contrary to Rule 22 of the Solicitors Accounts Rules 1998 the Respondent withdrew money from client account in circumstances other than permitted by the said Rule, including the withdrawal of client money for her own use. It was alleged the Respondent had acted dishonestly.

39.1 Mr Ferrari had referred the Tribunal to a table in his report showing that numerous round sum transfers were made from client to office bank account. He had confirmed the firm had an overdraft facility of £50,000 with its bank. During the period 1 January 2009 to 20 March 2009 a number of round sum transfers from client to office had been made totalling £290,000. The effect of each of these transfers was to keep the overdraft limit under £50,000. The round sums transferred ranged from £5,000 to £30,000 and it was clear from the table that if these transfers had not been made, the overdraft limit would have been exceeded.

39.2 On the ledger of CP Limited, which in fact related to the Respondent's own abortive sale of a property, there were a number of bills of costs, which came to a total of £90,367.77 for which Mr Ferrari had not been able to find any objective evidence to support the amounts billed. On each bill the narrative was identical and stated:

“Taking instructions and carrying out works to complete the above transaction in accordance with your instructions.”

39.3 There were various entries on that ledger which did not relate to the purchase at all. On 28 August 2007 the sum of £379,965.00 was received from a lender BM and on 1 October 2007 a payment was made to the same lender in the sum of £380,000. However, the lender involved in this purchase transaction had been B Bank so it was not clear why funds were received and paid to BM, who appeared to be a lender unrelated to this transaction.

39.4 Also, on the client ledger of CP Limited, there were numerous entries for drawings paid to the Respondent. Whilst this was in fact the ledger related to the Respondent's own purchase of a property, there were numerous entries which did not relate to that purchase.

39.5 Mr Ferrari was unable to calculate the total liabilities to clients as at 28 February 2009 and was unable to state whether the funds held on client bank account were sufficient to meet the firm's liabilities to clients as at that date. However, Mr Ferrari confirmed that he had identified as at 18 February 2009 there was a minimum cash shortage of £187,254.96. The cash available was £288,652.98. However, the firm should have been holding the sum of £270,811.51 on Mrs M's client ledger, £105,111.43, on Mr H's client ledger and £99,985 on Ms N's client ledger. As the firm was only holding cash in the sum of £288,652.98 this left a shortfall of £187,254.96. Mr Ferrari was

unable to explain the cause of the minimum cash shortage due to the state of the accounting records. He submitted that the number of unauthorised inter ledger transfers, mispostings of receipts and round sum transfers from client to office account could have been contributory factors.

39.6 This allegation also contained an allegation of dishonesty. Again the Tribunal considered the case of *Twinsectra Ltd v Yardley & Others*. The Tribunal was satisfied that making round sum transfers from client account to office account without any objective evidence to support the amounts billed, in circumstances where those transfers enabled the balance of office account to remain below the overdraft limit, would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was further satisfied that the Respondent was consciously and deliberately transferring funds from client to office account to ensure the overdraft limit would not be exceeded. This was evident from the fact that a number of bills contained standardised wording, and there was no evidence of work being carried out to justify those bills. The repetitive features of these bills, taken in conjunction with the proximity to the firm's overdraft limit showed the conduct was deliberate. The Tribunal was satisfied the Respondent realised that making such transfers was dishonest by the ordinary standards of reasonable and honest people. The Tribunal found this allegation proved including dishonesty.

40. Allegation 1.8: Contrary to Rule 1 of the Solicitors Code of Conduct 2007 the Respondent failed to act with integrity, allowed her independence to be impaired and behaved in a way that was likely to diminish the trust the public placed in her or the profession by virtue of each or both of the following:

- i. The Respondent provided false and misleading information to the Assigned Risks Pool for the indemnity years 2007/2008 and 2008/2009. It was alleged the Respondent had acted dishonestly.**
- ii. The Respondent conducted conveyancing transactions which bore characteristics of mortgage fraud. It was alleged the Respondent was grossly reckless.**

40.1 The Tribunal heard evidence from Mr Ferrari that the firm's actual gross fees for the period 26 October 2006 to 31 October 2007 were £361,753 as set out in the firm's annual accounts for that period. However, on the firm's application form for admission to the Assigned Risks Pool for the indemnity period 1 October 2008 to 30 September 2009 dated 29 August 2008, the firm's gross fees for the latest complete financial year were stated to be £50,000. The application had been signed by the Respondent. Mr Ferrari confirmed the Assigned Risks Pool insurance premium was specifically calculated on a percentage of the gross fees so the Respondent had an interest in providing the lower figure.

40.2 The Tribunal was satisfied, having considered the firm's last available annual accounts for the period 26 October 2006 to 31 October 2007 that the Respondent had provided false and misleading information by stating the firm's gross fees for the last complete financial year at a lower figure than the actual fees showing in her accounts.

- 40.3 An allegation of dishonesty had also been made in relation to providing this information. The Tribunal again considered the case of *Twinsectra Ltd v Yardley & Others*. The Tribunal was satisfied that declaring gross fees at a lower figure than the actual gross fees for the purposes of obtaining professional indemnity insurance would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, given that the premium for professional indemnity insurance with the Assigned Risks Pool was specifically calculated on a percentage of the amount of gross fees, the Respondent knew that she would benefit from declaring a lower figure for the firm's gross fees, and that her premium would be much higher if she had given the actual figure. The Tribunal was therefore satisfied that she made a conscious decision to provide the Assigned Risks Pool with an incorrect figure for her gross fees over the relevant period in order to receive a reduced premium, and that she therefore knew that her conduct was dishonest by those standards.
- 40.4 The Tribunal had been referred to the purchase of a property in the sum of £250,000, in which the Respondent acted for the purchaser. The property was marketed as one residence on the estate agents particulars. However the purchase of this property was being funded by the sale of two flats at the property, with 125 year leases being granted out of the freehold title. The leases were granted simultaneously with the purchase of the freehold for a premium of £195,000 each to Mr SP. There was no evidence on the file that there were two flats at the property, or when the conversion took place, or when planning permission had been granted. Furthermore, the firm did not receive all the completion funds in respect of the purported selling price for each flat.
- 40.5 The firm acted for the same client in its purchase of a property from Mr AI in the sum of £280,000. Although the property was freehold, it had been converted into three flats in December 2006. However this was not disclosed on the Sellers Property Information Form dated 29 February 2008 on the file. The purchase was facilitated by the grant of three leases of the three flats at the property for premiums of £180,000, £180,000 and £140,000 respectively to, again, Mr SP. No funds were received at all from the client and the purported premium on the grant of the leases was not received in full. The full purchase price was not paid.
- 40.6 The Tribunal was satisfied, having considered these transactions that the Respondent had conducted, that they bore the characteristics of mortgage fraud as set out in The Law Society Green Warning Card on Property Fraud and The Law Society Practice Note on Mortgage Fraud dated 18 March 2008. By ignoring the warnings contained in these documents, the Tribunal was satisfied the Respondent had acted recklessly. Accordingly, the Tribunal found allegation 1.8 proved in its entirety including the allegation of dishonesty.
- 41. Allegation 1.9: Contrary to Rule 5.01(1)(b) of the Code the Respondent failed to make arrangements for compliance with the Money Laundering Regulations.**
- 41.1 Mr Ferrari in his evidence confirmed that the Money Laundering Regulations policy used by the firm was out of date. He had been provided with a copy of the firm's Office Manual and noted that the money laundering policy included in that manual was not compliant with the Money Laundering Regulations 2007 which came into effect on 15 December 2007. The policy in the Office Manual referred to the 1993

Regulations and listed out of date contact information for the Financial Unit of the National Criminal Intelligence Unit.

41.2 The Tribunal had not been provided with any evidence of an updated policy and was therefore satisfied that the Respondent had failed to make arrangements for compliance with the relevant Money Laundering Regulations as required by Rule 5.01(1)(b) of the Solicitors Code of Conduct. The Tribunal found this allegation proved.

42. **Allegation 1.10: Contrary to Rule 10.05(1)(a) of the Solicitors Code of Conduct 2007 the Respondent failed to fulfil undertakings dated 29 January and 4 February 2009 given to M & Co Solicitors, namely to discharge 3 Charges registered against a property in Romford and to send evidence of such to M & Co Solicitors.**

Allegation 1.11: Contrary to Rule 1.02 of the said Code the Respondent failed to act with integrity when she falsely stated to M & Co Solicitors on 18 March 2009 that she was waiting for a DS1 from the lender when she had not sent a payment to discharge the mortgage.

42.1 The Tribunal had been provided with a copy of the Respondent's Replies to a standard requisition on title received from M & Co Solicitors in which she undertook to redeem or discharge a registered Charge in favour of the lender and to send Form DS1 or receipt of the Charge as soon as received. The Tribunal had also been referred to a letter dated 4 February 2009 from the Respondent's firm to M & Co Solicitors, which contained the Respondent's reference, in which it was stated:

“We confirm that the 3 charges registered shall be redeemed and we shall let you have requisite discharge documents in respect of all 3 charges as soon as same are received by ourselves.”

42.2 The Tribunal had also been provided with a letter dated 18 March 2009 from the Respondent's firm, again bearing the Respondent's reference, in which it was stated the firm was:

“.....still awaiting the DS1/END1 in favour of [lenders]and will of course forward you same once we have received it.”

42.3 The client ledger on this matter indicated that the Charge had not been repaid. In the absence of any evidence from the Respondent to the contrary, and bearing in mind the complaints made by M & Co Solicitors to the SRA on 19 May 2009, it was clear that the Respondent had failed to fulfil the undertakings given to them and she had falsely stated she was waiting for a Form DS1 when clearly no payment had been made to discharge the mortgage and therefore no Form DS1 would be provided by the lender.

42.4 The Tribunal was satisfied that the Respondent knew she had not discharged the mortgage and therefore by advising M & Co Solicitors that she was awaiting a Form DS1 when she knew such a Form would not be provided until the mortgage was discharged she had made a false statement to M & Co. In such circumstances, she

had failed to fulfil undertakings and had acted with a lack of integrity. The Tribunal found both allegations 1.10 and 1.11 proved.

43. Allegation 1.12: The Respondent failed to deliver her accountant's report for the period 6 November 2007 to 5 November 2008 due by 5 May 2009.

Allegation 1.13: The Respondent failed to deliver a Cease to Hold Report for the period ended 12 May 2009.

43.1 Mr Barton, on behalf of the Applicant, had confirmed the Respondent had still not filed her accountant's report for the period 6 November 2007 to 5 November 2008, and nor had she filed a Cease to Hold Report for the period ending 12 May 2009. Accordingly, the Tribunal found both these allegations proved.

44. Allegation 1.14: The Respondent failed to pay the sum of £15,750 being the premium payable to the Assigned Risks Pool.

44.1 Mr Barton confirmed the Respondent had still not made payment of the outstanding premium for her professional indemnity insurance in the sum of £15,750 to the Assigned Risks Pool. He also reminded the Tribunal that the premium had been calculated on the grossly understated gross fees in any event as the Respondent had supplied incorrect information in her application form as set out in allegation 1.8. In the absence of any submissions from the Respondent, the Tribunal was satisfied this allegation was proved.

45. Allegation 1.15: Contrary to Rules 1.02 and/or 1.06 of the said Code the Respondent failed to act with integrity and/or acted in a way that was likely to diminish the trust the public placed in her or the profession.

45.1 The Tribunal heard evidence from Dr Nasreen Iqbal, who was the Respondent's sister in law as the Respondent was married to Dr Iqbal's husband's half brother. Dr Iqbal's evidence was in relation to a business proposition she had entered into with the Respondent in 2006 to purchase a property in Ilford which would be converted into flats and then sold at a profit. She confirmed she had given the Respondent's firm a cheque in the sum of £134,000, which had been from her savings account, for this purchase. She confirmed the firm had previously acted for her husband on three occasions. Dr Iqbal stated that the property was supposed to have been purchased in the joint names of both the Respondent and Dr Iqbal, however she had not received any communication from the Respondent or her firm and she subsequently found out that the property had been purchased in the Respondent's sole name.

45.2 Dr Iqbal confirmed she went to the Respondent's office to speak to her, but the Respondent had refused to see Dr Iqbal. Dr Iqbal had also tried to contact the Respondent and speak to her on the phone, as well as writing letters to her, but the Respondent had not replied or communicated in any way. Dr Iqbal had received one telephone call from the firm advising Dr Iqbal to contact her own husband about the matter, to which Dr Iqbal had confirmed it had nothing to do with him as the agreement had been with the Respondent. Dr Iqbal stated the funds of £134,000 were all her savings and there were only a few pounds left.

- 45.3 Dr Iqbal confirmed she had been told by the Respondent that the Respondent had obtained an interest free loan from Barclays for a period of six months. They had intended the property would be converted into flats within six months and then sold. There had been no intention that the loan would be required beyond six months. However, the property had now been sold and as Barclays had a first charge, they had taken the money. Dr Iqbal was now pursuing a claim through the Compensation Fund.
- 45.4 The Tribunal accepted Dr Iqbal's evidence and noted the cheque for £134,000 had been made out to the Respondent's firm. Although Mr Aziz, the Respondent's brother, had provided some information regarding the background to this matter in his witness statement dated 4 December 2012, this was hearsay evidence as Mr Aziz had not been directly involved in this matter. The Respondent had provided little explanation and given that the property had been registered in the Respondent's sole name, it was clear that the Respondent had failed to protect Dr Iqbal's interest in the property. Nor had she accounted to Dr Iqbal for the sum of £134,000. The Tribunal was satisfied that this failure showed that the Respondent had acted with a lack of integrity and had acted in a way that was likely to diminish the trust the public placed in her or the profession. The Tribunal found this allegation proved.

Previous Disciplinary Matters

46. The Respondent had appeared before the Tribunal previously on 17 February 2009.

Mitigation

47. There was no direct mitigation from the Respondent herself apart from the witness statement provided by her brother, Mr Shokat Aziz, dated 4 December 2012 which provided some information and attached an undated Chronology and Synopsis document that appeared to have been prepared by the Respondent. Details of the Respondent's income and financial circumstances were supported to some extent by the letters provided from Birmingham City Council and the local Benefits Agencies. Details of the Respondent's medical condition were provided in letters dated 22 October 2010, 11 April 2012 and 23 April 2013 from her GP, which had also been provided by her brother.

Sanction

48. The Tribunal had considered carefully all the information before it relevant to mitigation, including the information contained in Mr Shokat Aziz's witness statement in relation to the Respondent's personal circumstances, medical condition and her financial position, as well as the letters from her GP. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
49. The Tribunal had found a number of very serious allegations proved which included allegations of dishonesty in relation to four of those allegations. There had been serious breaches of the Solicitors Accounts Rules 1998 and there existed a client

account cash shortage of at least £187,254.96. The Respondent had failed to honour a number of undertakings which were the bedrock of the procedure used by solicitors in conveyancing transactions. It was crucial that a third party could rely on a solicitor's undertaking in order to do business. The Respondent had also failed to comply with a number of her regulatory responsibilities, she had acted with a lack of integrity and had made a false statement in her application to the Assigned Risks Pool and to another firm of solicitors. Clients and third parties had suffered losses as a result of her conduct and she had caused serious damage to the reputation of the profession.

50. This was the Respondent's second appearance before the Tribunal. On the previous occasion, she had admitted a number of allegations which included a failure to act in the best interests of her client, failure to comply with undertakings, improperly withdrawing client money from client account, failing to remedy promptly a shortage of money in client account, failure to properly supervise, failure to comply with a Court Order and failure to deal with her regulator in an open, prompt and co-operative way. On that occasion she had been fined £10,000.
51. The Tribunal had found the Respondent acted dishonestly on four allegations and was therefore mindful of the case of the *SRA v Sharma* [2010] EWHL 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”.

52. Although the Respondent had indicated in the statement she had prepared for other civil proceedings that she acted under duress in relation to the undertaking given to B Solicitors, there was no independent supporting evidence of this before the Tribunal. Furthermore, the Tribunal had found she had acted dishonestly in other respects and whilst the Tribunal took into account the information provided in the Respondent's GP letters, and her personal difficulties as set out in Mr Aziz's witness statement and in her Chronology, the Tribunal was satisfied that there were no exceptional circumstances and accordingly Ordered that the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

53. The Applicant requested an Order for his costs in the total sum of £19,488.33. He provided the Tribunal with details of these costs and confirmed he had sent an email on 19 May 2013 to Mr Shokat Aziz, the Respondent's brother, setting out the costs claimed.
54. The Tribunal had considered carefully the matter of costs and, having recalculated the total costs from the figures contained in the email dated 19 May 2013 provided by Mr Barton, the Tribunal assessed the costs in the total sum of £19,425.33 and made an Order that the Respondent should pay the Applicant's costs in this amount. In relation to enforcement of those costs, the Tribunal noted the Respondent was receiving benefits. The Tribunal had particular regard for the case of *SRA v Davis and McGlinchey* [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”

55. The Tribunal was satisfied the Respondent did not have the means to pay the costs ordered, and noted some documentary evidence had been provided of her financial situation. The Tribunal was also mindful of the cases of *William Arthur Merrick v The Law Society* [2007] EWHC 2997 (Admin) and *Frank Emilian D’Souza v The Law Society* [2009] EWHC 2193 (Admin) in relation to the Respondent’s ability to pay those costs. The Respondent had been struck off the Roll of Solicitors and had been deprived of her livelihood. She was also receiving state benefits and appeared not to have worked since March 2009. In all the circumstances, the Tribunal Ordered the Order for costs was not to be enforced without leave of the Tribunal.

Statement of Full Order

56. The Tribunal Ordered that the Respondent, Shabnum Aziz, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,425.33, such costs not to be enforced without leave of the Tribunal.

Signed this 8th day of July 2013
On behalf of the Tribunal

R. Hegarty
Chairman