SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10347-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JAYSUKH JAYANTILAL PATEL Respondent

Before:

Mr D. Green (in the chair)
Mr R. Nicholas
Mrs L. Barnett

Date of Hearing: 4 July 2011 and 26 September 2011

Appearances

Geoffrey Williams QC, Solicitor Advocate, of The Mews, 38 Cathedral Road, Cardiff CF11 9LL for the Applicant.

Andrew Lockley, Solicitor, of Irwin Mitchell LLP, Riverside East, 2 Millsands, Sheffield S3 8DT for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he:-

1.1. Misled clients, contrary to Rules 1(a), 1(c) and 1(e) Solicitors' Practice Rules 1990 ("SPR"). It was also alleged that the Respondent's conduct was grossly reckless;

1.2 Withdrawn;

1.3 Knowingly misrepresented the true transaction value of a conveyancing transaction, contrary to Rules 1.02, 1.06 and 10.01 Solicitors' Code of Conduct 2007 ("SCC"). It was also alleged that the Respondent's conduct was dishonest;

1.4 Withdrawn;

1.5 Allowed his client account to be used as a banking facility contrary to Rule 15 Solicitors' Accounts Rules 1998 ("SAR");

1.6 Created a client debit balance by making payments for clients from client bank account when insufficient funds were held for those clients contrary to Rule 22 (1) SAR.

1.7 Failed to carry out post-completion formalities in conveyancing transactions in a timely manner or at all contrary to Rule 1.04 SCC.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 6 October 2009 and exhibit marked "GM 1";
- Application and Rule 7 Supplementary Statement dated 27 May 2010 and exhibit "GM 2";
- Schedule of Costs of the Applicant dated 30 June 2011.

Respondent:

- Respondent's signed statement dated 27 June 2011;
- Bundle of references.

Preliminary Matters

3. Mr Williams made an application, advance notice of which was given to the Respondent and the Tribunal by letter dated 30 June 2011, to withdraw allegations 1.2 and 1.4 with the Tribunal's consent. Further, allegation 1.1 was to be put on the basis

of the Respondent's gross recklessness, and allegation 1.3 was to be put on the basis of the Respondent's dishonesty. The Applicant was satisfied that dishonesty in respect of allegation 1.1 was capable of being proved but, adopting a pragmatic approach, was prepared to accept the Respondent's admission that he had been grossly reckless. The Applicant had reviewed the evidence in support of allegation 1.2, and had concluded that proving the facts alleged to the high standard required would entail an intricate analytical exercise which would ultimately have no impact on the disposal of the matter in view of the admissions that were to be made by the Respondent. The Applicant was also satisfied that the facts in support of allegation 1.4 were unlikely to result in the charge being proved.

4. Mr Williams confirmed that the remaining allegations were admitted by the Respondent, including the allegation of knowingly having misrepresented the true transaction value of a conveyancing transaction, which was also admitted to have been dishonest. He submitted that the admitted allegations were at the top end of the scale of misconduct.

5. Mr Lockley did not oppose the application.

6. The Tribunal duly consented to the withdrawal of allegations 1.2 and 1.4 pursuant to Rule 11 (6) of the Solicitors (Disciplinary Proceedings) Rules 2007.

Factual Background

7. The Respondent was born on 4 April 1967 and admitted as a solicitor on 2 August 1993. His name remained on the Roll of Solicitors.

8. At all material times the Respondent practised as a partner in the firm of Shah & Burke at 484 Neasden Lane North, Neasden, London NW10 0DG ("the Firm"), which closed in 2009.

9. Allegation 1.1 arose from immigration matters in which the Respondent represented KP (husband) and DP (wife). The allegations in the Rule 7 Supplementary Statement arose from an inspection of the Firm by the Solicitors Regulation Authority ("SRA") which commenced on 8 December 2009 and resulted in a Forensic Investigation Report ("FIR") dated 20 January 2010 by M.J. Calvert, the SRA's Head of Forensic Investigation.

10. KP and DP entered the UK as visitors and instructed the Respondent to prepare and lodge applications for indefinite leave to remain. An application was made on behalf of DP on 6 December 2000 and on behalf of KP on 1 October 2001. Both applications were made on standard Home Office ("HO") forms and were submitted by recorded delivery. The applications were treated as linked by the HO and assigned the same reference number.

11. Both applications were refused by the HO; DP's on 29 April 2002 and KP's on 30 April 2002. The time limit for appeal was stated on each refusal notice. Completed appeal forms had to arrive at the HO no later than ten working days after the refusal notice was first received by the Respondent. Taking into account deemed dates of receipt, the deadlines for appeal were 9 and 10 May 2002 respectively.

12. DP's and KP's HO records ended with the refusal notices. The Respondent asserted that appeals were prepared and sent to the HO. He provided the SRA with copies of completed appeal forms dated 2 July 2002, almost two months after the expiry of the period within which appeals could validly be made.

13. The Respondent's clients became worried after five years had passed without news. On 17 May 2007 they made a subject access request to the HO.

14. On 29 May 2007 a letter was sent by the Firm to KP signed by the Respondent stating:-

> "We refer further to our previous correspondence on this matter and to our subsequent discussions. As requested we enclose herewith:
>
> 1. A copy of the Grounds of Appeal dated 2nd July 2002 together with the list of the enclosures and the acknowledgement dated 11th July 2002.
>
> 2. A copy of the letter written to the Immigration & Nationality Directorate."

15. The acknowledgement referred to in the letter was an amended version of the acknowledgement provided by the HO on receipt of DP's original application for indefinite leave to remain. At the foot of the original acknowledgement the words "SET (F)" appeared; the same reference appeared at the foot of the amended version. This was the standard HO form number for an original application for indefinite leave to remain and not for an appeal. On the original acknowledgement the HO had inserted in manuscript its reference "P1042097", had struck through a typed date of 6 December 2000 and inserted in manuscript the date "11/01/01". On the amended version of that document sent by the Respondent with the letter dated 29 May 2007, the handwritten month "01" had been changed to "07" and the year "01" had been changed to "02". The letter referred specifically to the date of the acknowledgement as 11 July 2002. The amended acknowledgement must therefore have been in front of the writer of the letter for that date to be known.

16. The Respondent admitted in his response to a letter from the SRA dated 16 February 2009 that the letter to KP dated 29 May 2007 originated from the Firm and confirmed that he signed that letter. He said that he did not know how the acknowledgement had come to be amended in such a way as to suggest that it was an acknowledgement of the appeal. He said that the amendment of the acknowledgement was "very crude and obvious" and described the alteration as "blatant and obvious which in [the Firm's] view could not deceive."

17. DP and KP instructed other solicitors who complained on their behalf to the Legal Complaints Service ("LCS") on 3 June 2008.

18. The Firm closed formally in November 2009. The SRA's Investigation Officer ("IO") commenced his investigation on 8 December 2009. That investigation raised questions concerning conveyancing transactions conducted by the Respondent.

19. In April 2007 L and G instructed the Respondent to act on the purchase of a commercial property. Company LGD, of which L and G were two of the directors, was formed on 17 May 2007 to complete the transaction. The property was to be purchased for £1,200,000. Contracts were to be exchanged on 21 June 2007 and completion was to take place on or before 3 September 2007. As a result of funding problems completion was delayed and the purchase price was reduced to £1,070,000. The clients made funds available prior to completion. The client matter ledger recorded funds as having been received from L and L's spouse; no monies were provided by G. A further £181,614.33 was received from various third parties. Between 3 July 2007 and 30 July 2007 the sum of £113,000 credited to the client account ledger was paid to apparently unconnected third parties (£54,000 was paid to relatives of G). The Respondent later told the SRA that these payments were made on the instruction of his clients.

20. A letter to the Firm dated 19 October 2007 from the bank providing a mortgage advance for the transaction quoted the Respondent's reference and noted that the Firm was without funds to cover SDLT. The bank instructed the Firm as follows:

> "In the meantime, assuming that this does not preclude you from completing this matter and that the situation has no adverse affect upon the Certificate of Title you have provided to the Bank, then we have no objection to your proceeding to complete the purchase".

The letter confirmed that £605,000 had been released by CHAPS payment and would be in the Firm's account shortly.

21. On 22 October 2007 the Respondent wrote to L and G setting out details of the amount required for completion. A deposit of £100,000 had been paid in addition to the mortgage of £605,000. Included in the list of disbursements was Stamp Duty Land Tax ("SDLT") of £53,750. The Respondent requested £62,533.25 to complete. On 31 October 2007 a second letter was sent to L and L's spouse repeating the request.

22. The transaction completed on 23 November 2007. The final purchase price for the property was £1,080,000 as confirmed by a duly executed Form TR1 sent by the Respondent to L and L's spouse on 21 December 2007.

23. At completion the Respondent held insufficient funds to meet LGD's liability for SDLT. The payments to unrelated third parties prior to completion had caused the deficit, which had not been made good by the clients.

24. On 28 March 2008 the Respondent wrote to the lender concerning registration of its legal charge. On 25 June 2008 the lender chased the Respondent for an update on the position. The Respondent replied on 6 August 2008 stating that, as he had advised the bank in his letter of 3 June 2008, the Firm was awaiting re-execution of the transfer document. Once the transfer document had been received the Respondent said that the Firm would attend to registration.

25. Form TR1 was never re-executed. When it was ultimately submitted to HM Revenue & Customs ("HMRC") by the Respondent for the purposes of payment of SDLT, it stated at paragraph 9 headed "Consideration":

> "The Transferor has received from the Transferee for the Property the sum of ONE POUND (£1.00P)".

The Respondent had amended the transaction value on the first page of the document executed by his clients so that it showed the value of the transaction as £1. The Respondent did not put the amended document in front of his clients after he had amended it.

26. On 26 September 2008, almost a year after completion, the Respondent submitted the SDLT return in hard copy, having submitted the return online the same day, and enclosed a cheque for £200 for the late stamping penalty. The SDLT return document was completed at paragraph 10 to show the total consideration in money or money's worth, including VAT, as £1. Receipt of the return was also acknowledged by HMRC online on 26 September 2008. That acknowledgement recorded the effective date of the transaction as being 23 November 2007. Form AP1 which the Respondent submitted to the Land Registry also showed the value of the transfer as being £1.

27. During interview the IO asked the Respondent about the series of payments made pre-completion which resulted in there being insufficient funds to pay the SDLT. The Respondent said that the payments were made within the background of pressure of work. He said later in the same interview that only the front sheet of TR1 had been amended. The IO clarified that the clients would have signed a document showing a consideration of £1,080,000 and had the document witnessed at that consideration. The IO asked whether he was right in understanding that what the Respondent was saying was that the front sheet of the already signed and witnessed document was amended and not put to the client subsequently. The Respondent said that that was his understanding. He was asked whether that was an honest act. He said:

> "In hindsight, no."

28. The Respondent's explanation for his act was that the Firm's insurance was being renewed and that he had been told:

> "... this would just increase the premium so to amend it and get it lodged without (sic)."

Later in the same interview the IO said:

> "So we've got the situation where for whatever reason the Transfer was altered and it was submitted and Stamp Duty paid on the basis of a consideration of a [sic] £1 and presumably that your hopes would were that would continue unnoticed in perpetuity [sic]."

The Respondent's reply was:

> "Yes".

29. When the SRA provided the Respondent with a copy of the report under cover of letter dated 27 April 2010 he engaged fully with enquiries. He said that he had to accept his naïvety, immaturity and above all his stupidity. He said:

> "It is clear that if there were insufficient funds to pay the stamp duty, that I should not have completed this transaction or at least referred the matter to the Lender/Bank before completion. With hindsight we, as a Firm, should have informed the Lender/Bank that we were not able to register their security because the client had not provided sufficient monies to pay the stamp duty as a result of an oversight on our part. This could have been rectified by the Lender/Bank paying the stamp duty hence enabling the registration of the charge and then adding that sum to their borrower's mortgage account. In a panic we overreacted and therefore dealt with it in a manner which I must accept was wholly improper for which I unreservedly apologise."

30. The Respondent was asked by the SRA to comment on whether, by altering the AP1 and TR1 Forms, he had misled the Stamp Duty Office and the Land Registry as to the position regarding the true value of the transaction. He responded:

> "This is accepted for the reasons previously stated and in particular those stated at the meeting with the investigation officer. However, I have and do unreservedly apologise for this."

31. Client L complained to the LCS. Prompted by that complaint, the Respondent's partner notified the Stamp Office that the Land Registration Form specifying the consideration paid as £1 was incorrect. His partner paid the correct outstanding SDLT liability of £41,600 on 20 October 2009, just over one year after the original SDLT form had been submitted by the Respondent.

32. The Respondent received funds from parties unconnected with the LGD transaction, namely £69,988 and £111,626.33 from KLKM on 13 November 2007 and P(A) on 23 November 2007. The matter ledger recorded payments of £40,000 to M Ltd on 3 July 2007, £50,000 to Ms AG on 9 July 2007, £14,000 to DL on 13 July 2007, £4,000 to AG on 25 July 2007 and £5,000 to Barclays Bank on 30 July 2007. Instructions regarding some of these payments were confirmed by the Respondent to L and G by letter dated 25 July 2007. He informed them that a balance of £4,000 remained on the account. The payments to unconnected third parties left the account short of money so that SDLT could not be paid.

33. The Respondent acted for Mr and Mrs B in their purchase of a residential property for £380,000. The transaction completed on 13 July 2007. The purchase was to be funded by cash raised in part by a mortgage advance on another property which was owned jointly by the clients with other family members. Funds to complete the transaction were transferred on 11 July 2007 despite the fact that there was insufficient money on the client matter ledger at the time. This transfer caused a client debit balance of £42,100 which was corrected on 12 July 2007 after the receipt of further monies from Mr and Mrs B. On 7 August 2007 the client matter ledger recorded that £12,260 was being held to the credit of the clients. Those funds should have been used to pay disbursements such as stamp duty and to register the property. Instead the ledger showed that £2,500 was transferred to the matter of J on 23 October

2007, £1,688.25 was transferred to another matter for the same clients on 22 August 2008 and £8,000 was returned to the clients on 24 October 2008, leaving a balance of £571.75. Post-completion formalities, including payment of SDLT and registration of the purchase, had not been concluded when the IO inspected the books of account on 8 December 2009. They noted that SDLT had not been paid. The completion statement sent to the clients by the Respondent on 9 July 2007 included a fee of £220 for registration and £11,400 SDLT as disbursements. The Respondent said that he had initial conduct of the matter, but ceased to have conduct post-completion. His partner stated that the Respondent had had conduct throughout. The Respondent said that Form AP1 had not been filed in time to submit the SDLT return. He told the IO that he was under immense pressure as he was acting for a significant developer in addition to his normal workload, with limited assistance. He added that he had misunderstood information that a related remortgage was complete as referring to post-completion formalities on the purchase. He said that he had not looked at the ledger before returning £8,000 to the clients and that stamping and registration would be dealt with immediately.

Witnesses

34. None.

Findings of Fact and Law

35. **Allegation 1.1. Misled clients, contrary to Rules 1(a), 1(c) and 1(e) SPR. It was also alleged that the Respondent's conduct was grossly reckless.**

35.1 The Respondent admitted the allegation, which was put on the basis that he was grossly reckless which he also admitted.

35.2 The allegation related to the letter written and signed by the Respondent and sent to KP dated 29 May 2007, with which he enclosed "a copy of the Grounds of Appeal dated 2 July 2002 together with a list of the enclosures and the acknowledgement dated 11 July 2002." In his witness statement the Respondent accepted that the acknowledgement sent to KP was an obvious forgery, confirming what he had told the IO during interview. However he denied falsifying the document himself. He blamed his working environment, which he said was chaotic and pressurised, for his having picked up the file, quickly skimmed the documentation and dictated the 29 May 2007 letter. He acknowledged that he did not review the documentation in detail, and so did not note the amendments to the purported acknowledgement. He said that after dictating the letter his only further involvement would have been to sign it off. He would not have double checked the content or the enclosures. He could not explain how the acknowledgement came to be on the file in advance of his writing to the clients. He expressed his regret that he did not review the papers in sufficient detail to spot the change and repeated that he was working in a rush and did not make the proper checks. He accepted that the result of his oversight might have been to mislead the clients, but denied any deliberate attempt to do so.

35.3 Mr Williams said that the Applicant had concluded that it was unable to prove beyond reasonable doubt that the Respondent personally altered the acknowledgement and that he failed to submit the appeals on behalf of the clients. It was however able to

show that any appeals must have been submitted significantly out of time. There was no doubt that the acknowledgement sent by the Respondent to his clients was a forgery and that it had been forged by someone. Mr Williams submitted that the Respondent should never have sent that forged document to his clients. They were misled by being given comfort on receipt of the forged acknowledgement when there was no comfort to be had. A moment's thought and attention to the documents that were being sent would have prevented those vulnerable clients from being misled. Fortunately they went to other solicitors who reported what had happened to the SRA so that the matter came to light and was fully investigated. Mr Williams submitted that this was a particularly serious allegation. The mere fact that the allegation of dishonesty had not been pursued by the Applicant did not make it any less serious.

35.4 Mr Lockley said that the Respondent's position was that he simply did not notice the forgery. He had to accept that his conduct had been grossly reckless. That was the basis upon which the Applicant had put its case to the Tribunal and the Respondent had accordingly acknowledged what he had no option but to acknowledge on the face of the documentary evidence available.

35.5 The Tribunal found the allegation, including the allegation that the Respondent's conduct had been grossly reckless, which was admitted by the Respondent, substantiated beyond reasonable doubt.

36. **Allegation 1.3. Knowingly misrepresented the true transaction value of a conveyancing transaction, contrary to Rules 1.02, 1.06 and 10.01 SCC. It was also alleged that the Respondent's conduct was dishonest.**

36.1 The Respondent admitted the allegation, which was put on the basis that he was dishonest which he also admitted.

36.2 The allegation related to the Respondent's post-execution amendment of Form TR1 and representation on the SDLT return and Form AP1 to show that the LGD transaction value was not the actual value of £1.08 million, but was instead £1. The documents were submitted by the Respondent to the relevant authorities on or about 26 September 2008. The misrepresentations were prompted by his failure to retain sufficient funds to meet SDLT liability. The Respondent told the IO that he accepted that by altering the AP1 and TR1 forms he misled the Stamp Duty Office and the Land Registry as to the position regarding the true value of the transaction. He also told the IO that he hoped that the misstated transaction value would continue unnoticed in perpetuity.

36.3 Mr Williams described the Respondent's dishonesty as being most serious and at the top end of the scale. The Respondent paid away the £41,600 retained for SDLT acting on the pre-completion instructions of his clients. However, by amending and completing the various conveyancing documents to misrepresent the true value of the transaction, he acted dishonestly in that he:

- Deprived HMRC, and thereby the public purse, of funds to which it was entitled;

- Saved himself and/or the Firm from having to pay £41,600 to HMRC out of their own funds assuming that recovery from the clients could never be made;

- Intended, as he declared to the IO, to deceive HMRC in perpetuity.

36.4 Mr Williams submitted that, even if, as had been suggested by the Respondent, someone else was involved in the decision, or advised the Respondent to make the amendment, it was no excuse to say that he was dishonest because someone else thought that it was a good idea. This was a calculated scheme of dishonest conduct designed to keep HMRC forever out of money to which it was entitled.

36.5 Mr Lockley submitted that the Respondent had accepted his responsibility in relation to this allegation as early as 27 April 2010 when he wrote to the SRA in response to the FIR stating that his actions were wholly improper for which he unreservedly apologised. Mr Lockley referred in detail to the background to the Respondent's employment at the Firm and to the working conditions which he said were in place. He gave an example in his witness statement of an occasion in June 2007 when he developed a back problem, he said due to stress. He was advised not to return to work until he had fully recovered, but his business partner drove to his home to take him to the office, having decided that an early return to work would assist his recovery. The Respondent relied upon this event as an example of the extent to which his business partner controlled his behaviour. The Tribunal noted however that neither party had called evidence from the Respondent's business partner and/or other former employees of the Firm and that the Respondent did not give any oral evidence. The weight to be given by the Tribunal to his unsupported assertions was therefore limited.

36.6 The Tribunal found the allegation including the allegation that the Respondent's conduct was dishonest, which was admitted by the Respondent, substantiated beyond reasonable doubt on the facts and documents on the combined test for dishonesty set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

37. **Allegation 1.5. Allowed his client account to be used as a banking facility contrary to Rule 15 SAR;**

37.1 The Respondent admitted the allegation, including the allegation that he was reckless and took a blinkered approach to his professional duties as a solicitor. The allegation related to the receipt into and payment out of monies on client matter ledgers maintained by the Firm for LGD and Mr and Mrs B.

37.2 Mr Williams submitted that client account was not to be used as a banking facility for the convenience of clients or anyone else. Mr Lockley referred the Tribunal to the working environment under which the Respondent alleged that he was operating.

37.3 The Tribunal found the allegation, which was admitted by the Respondent, substantiated beyond reasonable doubt.

38. **Allegation 1.6. Created a client debit balance by making payments for clients from client bank account when insufficient funds were held for those clients, contrary to Rule 22 (1) SAR.**

38.1 The Respondent admitted the allegation, including the allegation that he was reckless and took a blinkered approach to his professional duties as a solicitor. The allegation related to the decision by the Respondent to transfer funds to complete the purchase of Mr and Mrs B's property when insufficient funds were held on their behalf, resulting in a debit balance of £42,100 for one day until the balance to complete was received from the clients and credited to the ledger on 12 July 2007. The Tribunal found the allegation substantiated beyond reasonable doubt.

39. **Allegation 1.7. Failed to carry out post-completion formalities in conveyancing transactions in a timely manner or at all contrary to Rule 1.04 SCC.**

39.1 The Respondent admitted the allegation, including the allegation that he was reckless and that he took a blinkered approach to his professional duties as a solicitor. On the LGD transaction the Respondent failed to submit the SDLT return to HMRC until 26 September 2008; completion had taken place on 23 November 2007. A late penalty fee of £200 was incurred. Mr and Mrs B's transaction completed on 13 July 2007, but SDLT had not been paid and the purchase had not been registered by the date of the SRA's inspection on 9 December 2009, over two years later. The Tribunal found the allegation substantiated beyond reasonable doubt.

Previous Disciplinary Matters

40. None recorded against the Respondent.

Mitigation

41. Mr Lockley referred the Tribunal to the Respondent's witness statement. He started work at the Firm as a paralegal in September 1990. He became a junior partner in 2002, and acquired a 10% equity share in the practice. The Respondent and his majority partner were the only solicitors at the Firm, and employed 20 staff. The practice remained under the ultimate control of the majority partner, who made all the business decisions. The partners were supported by an experienced litigation assistant, one trainee, a team of paralegals and various support staff. The Respondent asserted that the office layout was not conducive to effective supervision. His partner was responsible for delegation of work. The only supervision mechanism was his partner's review of incoming and outgoing post. The Respondent asserted that the working environment was one of "complete chaos, with minimal supervision", and that the Respondent had an "enormous workload". He asserted that his workload increased dramatically with the move to conveyancing work where the Firm was seeking to build a reputation. He worked from 6.30am to 8.30pm every day and every weekend both from office and home. There was insufficient time, he said, to complete attendance notes. It was the usual practice to action a client's instruction directly, rather than recording the content and the advice. With hindsight the Respondent now realised that quality was being sacrificed in the interest of volume. When the Respondent became a junior partner the situation did not improve. He continued to follow his partner's lead on all matters as evidenced by his return to work from sick leave when he was not fully recovered. The Respondent had now distanced himself from the working environment and had reflected on the way the practice was managed. He accepted that he was responsible for ensuring his own

compliance with his professional obligations, and that this aspect of his practice fell below acceptable standards.

42. Mr Lockley referred to the decisions of the Court of Appeal in Salsbury v The Law Society [2008] EWCA Civ 1285 and the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). The Respondent appreciated that he faced an uphill struggle to persuade the Tribunal not to strike him off the Roll in view of his admissions and the Applicant's characterisation of his dishonesty as being at the top end of the scale. In Salsbury the Court of Appeal acknowledged that there remained a residual category of cases where dishonesty was admitted but where a respondent might be spared the ultimate sanction of striking off. This residual category of cases was further explored in the Court's decision in the case of Sharma. Mr Lockley referred the Tribunal to paragraphs 7 and 13 of that decision in support of his submission that the Tribunal was able to find exceptional circumstances in this case. It was the nature, scope and extent of the dishonesty itself that mattered when the Tribunal considered whether a particular case fell within the residual category of cases where striking off would be disproportionate in all the circumstances. Further it was not suggested in Sharma that all of those factors had to be present in order for there to be exceptional circumstances.

43. Mr Lockley submitted that there was a single incident of dishonesty for which the Respondent had provided his explanation and apologised in his letter of 27 April 2010 to the SRA. He had acted on the instructions of his clients LGD when making the payments out from monies held to pay SDLT. He confirmed those instructions in his letter to the clients dated 25 July 2007, but found himself in a predicament as a result of the clients not reimbursing the money. Mr Lockley relied on the decision of the Divisional Court in the case of Burrowes v The Law Society [2002] EWHC 2900. It was alleged that Mr Burrowes was guilty of conduct unbefitting a solicitor in that he "forged the signatures of two purported witnesses to two Wills who were not in fact present when the Wills were signed by the testators". "In a moment of madness" Mr Burrowes added to each Will the details of two people who were not present when the Wills were signed, one of whom worked for his firm. There was no personal gain on his part. He was acting on the instructions of the client that whatever the consequences they wanted to execute the Wills there and then without witnesses. The Tribunal's decision to strike Mr Burrowes off was quashed on appeal. Mr Lockley submitted that there was material in the Respondent's case on which the Tribunal could find that it was of the Burrowes type. The testimonials to his integrity demonstrated that his behaviour in relation to the amendment of the conveyancing documents was entirely out of character. Two references came from members of the Bar who were aware of the allegations and who expressed the view that such conduct was out of character. The comment was repeated in the other references. Mr Lockley submitted that if the Respondent's behaviour was out of character and a single act of dishonesty, albeit with serious consequences, it was open to the Tribunal to find that the case met the conditions as to nature, scope and extent of dishonesty for exceptional circumstances to apply.

44. Mr Lockley submitted that the Respondent's dishonest act benefitted no-one. In fact there was a detriment to the Respondent who had to raise funds to put matters right by means of a loan as set out in his letter to his partner dated 22 October 2009. The money should rightly have been reimbursed by the clients. His behaviour might have

had a limited adverse affect on others, in particular HMRC, but ultimately the money was repaid. Further, whilst there was no evidence of mental health issues, there was evidence of stress. Mr Lockley accepted that stress did not provide an excuse for the Respondent's conduct but submitted that it could still be taken into account. The Respondent's stress levels were likely to be at the higher end of the scale for the reasons rehearsed in his witness statement. His partner had long dominated the practice and the Respondent was a more passive character.

45. Mr Lockley referred to the Respondent's impressive references from people who had known him for 20 years or more. Members of the public were able to speak to what he had given to the solicitors' profession over the years. In particular the Tribunal was referred to the reference from a high-profile Foundation dated 1 July 2011. The consistent feature of the references was that the Respondent was a tenacious, committed and compassionate contributor to the law. He regularly acted on a charitable basis and had excellent legal skills. He had voluntarily refrained from practise since the Firm closed. This had enabled him to assist one individual as a McKenzie friend pro bono with the result that longstanding and difficult proceedings had been brought to a satisfactory conclusion. Mr Lockley submitted that, taking all of these factors into account, the Tribunal could properly decide that the Respondent fell into that residual category of exceptional cases where a sanction other than striking off could be imposed. However he conceded that this was not a decision that the Tribunal would come to readily.

46. Mr Williams was permitted to respond on one point of law; he asked the Tribunal to consider paragraph 34 of the decision in Sharma in addition to the paragraphs to which it had been referred by Mr Lockley.

Sanction

47. The Respondent admitted five allegations, including dishonesty, gross recklessness and recklessness. The allegations were extremely serious. The facts underlying the admitted allegation of dishonesty related to the Respondent's decision knowingly to amend an already executed document on a transaction where he was holding insufficient funds to pay SDLT to show the transaction value as £1 rather than its true value of £1,080,000. Other documents were prepared and submitted to HMRC and the Land Registry on the same basis. Further the Respondent had admitted that he had been grossly reckless in misleading vulnerable clients in relation to the conduct of their appeals against refusals for leave to remain in the United Kingdom.

48. The Tribunal had listened attentively to Mr Lockley's submissions. He had worked hard to put the Respondent's best case before the Tribunal, and had left no stone unturned. The Tribunal had read the references submitted on the Respondent's behalf, and his witness statement. It was to the Respondent's credit that he had ultimately admitted the allegations. The Tribunal also noted that the Applicant had withdrawn two allegations with its consent.

49. Misleading clients by gross recklessness was unacceptable behaviour which damaged the public's confidence in the profession in a way that was very difficult to put right and for which there was no excuse. Clients were entitled to expect a high standard of care and attention from their solicitors and solicitors were expected to maintain that

standard as their first priority no matter what other demands were made on their time. No member of the public would expect any solicitor to send a client a forged document as a result of not checking a letter properly. These clients were particularly vulnerable. They were in a difficult situation and were understandably concerned about whether or not they were going to be granted leave to remain in the United Kingdom. They heard nothing from the Respondent for five years, which demonstrated the level of trust that many clients placed in their solicitors; there was an assumption that if the solicitor said he was dealing with a problem, he could be trusted to get on with it without interference. Fortunately DP and KP eventually instructed other solicitors who were able to get to the bottom of what had happened triggering the SRA's investigation, and who, hopefully, helped to restore the clients' confidence in the profession. This allegation alone might well justify striking off. The Respondent did his clients and his profession a great disservice by his behaviour.

50. The allegation concerning the amendment of client LGD's Form TR1, leading to the knowing misrepresentation of the transaction value which the Respondent admitted was dishonest, was also extremely serious. It would be entirely appropriate and proportionate for the Tribunal to strike the Respondent off the Roll for this offence. Until such time as the transaction value was correctly stated by the Respondent's business partner and SDLT paid, the public purse was effectively cheated out of revenue of £41,600. Such conduct was simply inexcusable. The mitigating factors pertaining to the Respondent such as pressure of work and suggestions of stress carried little weight. For example, the Tribunal had been told in mitigation that the Respondent had paid the SDLT back to the Firm from his own resources. However this did not happen until 22 October 2009, after the SRA had commenced its investigation. Payment of the correct SDLT was prompted only by that investigation, at which point the Respondent's partner made the payment rather than the Respondent himself. The Respondent had only himself to blame for completing a transaction when he did not have sufficient funds available to pay SDLT which he knew had to be paid immediately completion had taken place. There was no doubt that the Respondent knew this because he wrote to his clients to tell them how much money was required to complete. Without sufficient funds completion should not have taken place. If the clients were unhappy about this course of action the solution was in their own hands; all they had to do was put the Respondent in funds. For the Respondent to address this issue by amending the first page of Form TR1 without reference to his clients after they had already executed the document, so that it appeared to the relevant bodies that no tax was payable was dishonesty of a staggering level. Indeed any such amendment to the executed document post-completion was plainly wrong save for in the most exceptional circumstances which did not apply here. Further the Respondent agreed with the IO during interview that his hopes were that the fact that the transfer had been altered and submitted and SDLT paid on the basis of a consideration of £1 would continue unnoticed in perpetuity. He blamed his partner, or rather suggested that they had embarked on a joint enterprise to amend the transfer. This was immediately denied by his partner. In any event even if the Respondent's assertion was correct, it was up to him to refuse to behave dishonestly and, if necessary, to report the matter to his clients and the SRA. The Tribunal noted what the Respondent said about the way in which his partner dominated the Firm. Perhaps that was unsurprising as it had been his business for 35 years. However the Tribunal also noted that, despite the working conditions which the Respondent described in his statement, he had worked at the Firm since 1990, was admitted as a solicitor in 1993,

and made a conscious decision to become a 10% equity partner in 2002. If the working conditions were truly as the Respondent described, the Tribunal found it surprising that he not only agreed to become an equity partner but remained an equity partner for as long as he did.

51. Mr Lockley stated unequivocally that the Respondent had no mental health issues at the material time. Indeed there was no medical evidence before the Tribunal to support such a contention. The Respondent asserted that he was under stress. It was the nature of the profession that the working environment might be difficult and stressful. However the majority of solicitors did not respond to stressful situations by acting dishonestly in an attempt to cover their tracks. Instead they faced their problems and mistakes and promptly implemented honest solutions.

52. In the Judgment of the then Master of the Rolls, Lord Bingham, in Bolton v The Law Society [1994] 2 ALL ER 486, which remains good law, he stated as follows:-

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is 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... 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...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... 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 standing 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 readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor... he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

53. The starting point is that the Respondent should be struck off the Roll, having admitted dishonesty and indeed gross recklessness. Mr Lockley relied on the cases of Salsbury and Sharma in support of his proposition that there were exceptional circumstances justifying a penalty other than striking off, which he submitted would be disproportionate.

54. The Tribunal considered the Judgment of Mr Justice Coulson at paragraphs 13 and 14 of Sharma, which stated as follows:-

> "It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified:-
>
> (a) save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll. That is the normal and necessary penalty in cases of dishonesty.
>
> (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances.
>
> (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as in the case of Burrowes, or over a lengthy period of time, such as Bultitude; whether it was of benefit to the solicitor (Burrowes) and whether it had an adverse effect on others...
>
> It does not seem to me that this distinction [between cases of dishonesty involving the appropriation of clients' money and other cases of dishonesty which did not involve financial loss to clients] is born out in the authorities to which I have referred. It seems to me that it is the nature, scope and extent of the dishonesty itself that matters. Questions as to financial loss may however be relevant in considering whether a particular case falls within or outside the exceptional category to which the authorities refer."

55. Mr Williams also referred the Tribunal to paragraph 34 of the same Judgment, which stated:

> "Their [the tribunal] first finding was that "there was no harm to the public". I assume that by this that the tribunal meant that no client suffered financial loss. It seems to me that that is a very narrow way of looking at dishonesty, and wholly fails to recognise the wider issues involved. In my judgment there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth."

56. The question for the Tribunal was whether this case fell within the exceptional circumstances described above. This Tribunal concluded that it did not. This was not a moment of madness. Form TR1 was dishonestly amended and other conveyancing transaction forms were prepared and submitted supported by the amended document. To the unknowing employee processing the documents at HMRC they would have looked entirely unexceptional. The Respondent's hope expressed to the IO was that his amendment to TR1 would never be discovered. This conscious act of dishonesty was carried out, repeated in subsequent documents, and maintained until the SRA's investigation began in late 2009. The act was done with the purpose of bringing a potential benefit to the Firm and the Respondent. In his interview with the IO the Respondent referred to the fact that the Firm was renewing its insurance at the time when TR1 was amended. As an equity partner in the Firm, the Respondent would benefit from a lower insurance premium. At the very least his mistake would not be

uncovered. The clients had apparently failed to pay the SDLT to the Firm on request. Inevitably the Firm was going to have to find the money itself to make the payment. The fact that no SDLT was payable on the amended transaction value avoided that difficulty. The Respondent's behaviour also had an adverse affect on others, for example the loss of the use of SDLT and interest by HMRC which was not put right until 2009. Within the principles set out in Bolton there was obvious potential for damage to the reputation of the solicitors' profession in the eyes of the Firm's clients and the public. The public's confidence in the profession would inevitably be damaged if it became aware that the Respondent not only dishonestly amended Form TRl in the way that he did, but also that he replicated the dishonest amendment on official documents submitted to HMRC. Confidence in the profession would be further damaged if this Tribunal permitted the Respondent to continue to practise as a solicitor after admitting that dishonesty.

57. The Tribunal could not ignore the other less serious allegations. They demonstrated a course of conduct over a period of time and revealed the Respondent's *laissez-faire* attitude to the management of his clients' cases and the funds they entrusted to him. He was not dishonest in that regard, but reckless as he admitted.

58. The Tribunal did not accept Mr Lockley's submissions in mitigation. The circumstances of this case were not exceptional. The case could be distinguished from that of Mr Burrowes, who had acted on the spur of the moment when in a moment of madness he added to Wills the details of witnesses, one of whom was in the employ of his firm. When that individual saw her name and address on the Will she realised that she had not witnessed the document and approached another partner who raised the matter with Mr Burrowes and then referred the matter to the Law Society. The tribunal in that case was presented with medical evidence dealing with Mr Burrowes' state of mind at the time of the events. There was no such evidence available in relation to this Respondent. Lord Justice Rose in Burrowes stated that in his judgment Mr Burrowes' misconduct was isolated. He was suffering from depression at the time. His act was of no benefit financially or otherwise to him and could only have caused loss to the clients at whose insistence it was that he did what he did. A few days later proper Wills were prepared and legally executed. Those factors did not exist in this Respondent's case.

59. Taking all matters into consideration the only appropriate and proportionate sanction in this case was that the Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered.

Costs

60. At the hearing on 4 July 2011 the Applicant's costs were not agreed and the Respondent had not provided evidence of his means following the decision in the case of Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232. After hearing submissions on behalf of the parties, the Tribunal ordered directions for the disposal of the costs issue, including that the matter be re-listed for hearing on the first available date in September 2011. The Tribunal reserved the matter to itself.

61. The costs hearing took place on 26 September 2011. Mr Williams appeared for the Applicant. He had spoken to Mr Lockley for the Respondent who had asked the

Tribunal to excuse his non-attendance. Mr Williams confirmed that the Applicant's costs were agreed at £20,000. Payment had recently been made by cheque and Mr Williams was unable to say that it had cleared, although there was no reason to doubt that it would in due course. With Mr Lockley's consent he therefore asked for an order for costs in the agreed amount of £20,000, and the Tribunal so ordered.

Statement of Full Order

62. On 4 July 2011 the Tribunal Ordered that the Respondent, JAYSUKH JAYANTILAL PATEL of 26 Davenham Avenue, Northwood, Middlesex HA6 3HQ solicitor, be STRUCK OFF the Roll of Solicitors. The Applicant's application for costs was adjourned to the first available date after 1 September 2011 with a time estimate of one hour.

63. On 26 September 2011 the Tribunal Ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.

Dated this 4th day of October 2011
On behalf of the Tribunal

D. Green
Chairman