SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10353-2009
Case No. 10548-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
SHAQIL AHMED	First Respondent
and	
[RESPONDENT 2]	Second Respondent
and	
[RESPONDENT 3]	Third Respondent

Before:

Mr. D. Green (in the chair)
Mr. J. Astle
Mr. D. E. Marlow

Date of Hearing: 17th February 2011, 7th and 8th April 2011 and 21st and 22nd July 2011

Appearances

Stephen Battersby, solicitor of Jameson & Hill Solicitors of Jameson & Hill Solicitors, 72/74 Fore Street, Hertford, SG14 1BY for the Applicant.

The First Respondent, Mr Shaqil Ahmed appeared in person.

The Second Respondent appeared and was represented by Mr Nicholas Mason of Counsel.

The Third Respondent appeared in person.

JUDGMENT

Allegations

The allegations against the First Respondent, Shaqil Ahmed, were that he:

1. Created false documents contrary to Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC"). It was alleged the First Respondent had acted dishonestly;

2. Misled his client contrary to Rule 1.02, Rule 1.04 and Rule 1.06 SCC. It was alleged the First Respondent had acted dishonestly;

3. [withdrawn]

4. [withdrawn]

The allegations against the Second Respondent were that he:

5. [withdrawn]

6. [withdrawn]

7. [withdrawn]

8. Failed to make arrangements for the effective management of the firm contrary to Rule 5 of the SCC.

The allegations against all three Respondents were that they:

9. Failed to act in the best interests of clients and failed to provide a proper standard of work contrary to Rule 1(c) and 1(d) Solicitors Practice Rules ("SPR");

10. Failed to ensure that the practice was effectively supervised and managed contrary to Rule 13 SPR;

The further allegations against the First Respondent, Shaqil Ahmed only were that he:

11. Created false documents contrary to Rule 1(a) and Rule 1(d) of the "SPR". It was alleged the First Respondent had been dishonest;

12. Misled his client contrary to Rule 1(a), Rule 1(c) and Rule 1(d) SPR. It was alleged the First Respondent had been dishonest.

Preliminary Matters

13. On 23 September 2010 the Tribunal made an Order that case number 10548/2010 be consolidated with case number 10353/2009.

14. At the beginning of the substantive hearing on 17 February 2011 the Applicant sought leave from the Tribunal to withdraw allegations 1, 2, 3, 4, 5,6 and 7 and 8 as he had been provided with explanations from the First and Second Respondents and was of the view that these allegations could not be proved. The Tribunal, having heard

submissions from the Applicant, Mr Ahmed and [RESPONDENT 2] granted leave to withdraw allegations 3, 4, 5, 6 and 7, but refused leave to withdraw allegations 1,2 and 8. The Tribunal's decision were recorded in a Memorandum dated 17 February 2011.

15. The First Respondent, Mr Ahmed, admitted allegations 11 and 12 but denied he had been dishonest.

16. During the course of the hearing, a number of facts were agreed between the parties and as a result a number of issues relating to conveyancing matters were withdrawn.

Documents

17. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

Applicant:

- Application dated 14 October 2009 in case number 10353/2009 together with attached Rule 5 Statement and all exhibits;
- Application dated 28 May 2010 in case number 10548/2010 together with attached Rule 5 Statement and all exhibits;
- Chronology in case number 10353/2009;
- General Form of Judgment or Order and Notice of Hearing in case number BD34562 [GSC v RSR];
- Claim form and Particulars of Claim in case number BD650077 [GSC v RSR];
- The Judgment of Recorder Clayton in claim number BD650077 dated 13 December 2010 in the case of [GSC v RSR];
- Applicant's Statement of Costs dated 15 February 2011;
- Applicant's Statement of Costs dated 6 April 2011;
- Applicant's Statement of Costs dated 20 July 2011;
- Property Fraud (II) Warning Card and Money Laundering Warning Card;
- The Judgment of His Honour Judge Durham Hall dated 7 April 2009 in the case of R v Ramzan, Farid, Farid, Ali, Rafiq, Hussain and Farid.

First Respondent, Shaqil Ahmed:

- Witness Statement of Shaqil Ahmed dated 4 February 2011 together with all exhibits;
- Second Witness Statement of Shaqil Ahmed dated 4 February 2011;
- Letter from Shaqil Ahmed dated 30 March 2011 together with attached medical report from Dr K Rauvala dated 24 March 2011

- Witness Statement of Shaqil Ahmed dated 8 July 2011 together with all exhibits.

Second Respondent:

- Witness Statement of [RESPONDENT 2] dated 7 January 2011 together with all exhibits;
- Witness Statement of [RESPONDENT 2] dated 17 January 2011 together with all exhibits;
- Undated letter from LBS Legal;
- Letter dated 6 April 2011 from [RESPONDENT 2] to the Tribunal together with attached letter from Stella Properties Limited dated 15 February 2007;
- Letter dated 3 February 2011 from [RESPONDENT 2] to the Tribunal together with all enclosures;
- File Checklist and New Matter Details Form.

The Third Respondent:

- Witness Statement of [RESPONDENT 3] dated 28 October 2010 together with all exhibits.

Factual background

18. The First Respondent, Shaqil Ahmed ("Mr Ahmed"), born in 1976, was admitted as a solicitor on 2 February 2001. His name remained on the Roll.

19. The Second Respondent, [RESPONDENT 2], born in 1973, was admitted as a solicitor on 15 July 1999. His name remained on the Roll.

20. The Third Respondent, [RESPONDENT 3], born in 1980, was admitted as a solicitor on 1 November 2006. His name remained on the Roll.

21. At the material times the Respondents were all members of Sekhon Firth Solicitors LLP ("the Firm") practising from their head office at Commercial House, 140-148 Manningham Lane, Bradford, BD8 7JJ.

<u>Allegations 1 and 2</u>

22. The Firm was instructed by Mr C ("the claimant") in relation to a defamation matter. Elections had taken place at a local Sikh Temple where the Claimant, Mr R ("the Defendant") and [RESPONDENT 2]'s father were all prominent figures. A dispute broke out at the Temple as to whether the Temple's management committee could have two members from the same family; brothers in this case.

23. The Claimant and [RESPONDENT 2]'s father were of the opinion that such an appointment would have been contrary to the Temple's constitution. However, it was alleged that, during a heated argument that ensued, the Defendant grabbed a

microphone and accused the Claimant of misappropriating £60,000 from the Temple during his time as Treasurer. This allegation was strenuously denied by the Claimant. As a result of the Defendant's accusation against the claimant the Firm was instructed by the Claimant to issue proceedings against the Defendant alleging defamation.

24. The matter was listed for a four day trial beginning on 5 November 2007 but was adjourned part-heard on 6 November 2007 in order for the Claimant to obtain independent legal advice after it became apparent that a number of documents in the trial bundle prepared by the Firm were not genuine.

25. The claim form issued by the Firm was sealed by the Court on 15 February 2005 and the Particulars of Claim were sealed 16 February 2005 (these dates were wrong and should have been 2006).

26. The false documents uncovered at the trial included a General Form of Judgment or Order, dated 19 August 2005, which appeared to have been issued by Deputy District Judge Jones of the Chancery Division, Bradford District Registry under claim number BD34562. The Order stated that upon the Defendant's failure to file a defence the Claimant was granted Judgment in Default against the Defendant. The Order further stated that a hearing for the Assessment of Damages was to be listed with a two hours estimated length of hearing. The document was not sealed by the Court.

27. A further Court document which was a Notice of Hearing dated 25 October, appeared to have been issued by the Chancery Division of Bradford District Registry under claim number BD34562. This stated that an Assessment of Damages Hearing was listed for 5 January 2006. This time the estimated length of hearing was one day. The document was not sealed by the Court.

28. On the first day of the trial these two documents were examined by the Judge. He noted that the Notice of Issue (the Court's record for the start of proceedings) was dated 16 February 2006, five months after the General Form of Judgment or Order granting Judgment in Default to the Claimant. Furthermore he noted that the matter he was hearing had been given the claim number BD650077, which differed from those on the Order and the Notice of Hearing.

29. A Memorandum prepared by Counsel for the Defendant referred to five documents which the Judge suggested were forgeries. The Court had no record of a claim being pursued under number BD34562; and there was no Chancery Division at Bradford District Registry.

30. Following investigations it was decided that due to "certain difficulties of a professional nature" the Firm should stop acting for the Claimant, and the matter was adjourned whilst the Claimant sought independent legal advice. The Claimant was invited to re-list the matter and costs were reserved.

31. Upon examination of the file it appeared that false correspondence was also created and used in conjunction with the false Order and Notice in communications between the Firm, the Claimant client and the Court. The file contained a letter dated 29 July 2005 to Bradford County Court which appeared to enclose Particulars of Claim in triplicate with an issue fee of £350. The reference on the letter began SA, the initials

of Mr Ahmed. However, the Particulars of Claim in the Claimant's matter were dated 24 August 2005 and the claim form was stamped by the Court accordingly. The Firm's ledger made no reference to a Court fee of £350 being paid at that time.

32. The file also contained correspondence to the Claimant dated 31 October 2005, again under Mr Ahmed's reference. The letter was headed "Re: Defamation action against (Mr R)" and stated:

> "We confirm that further to the Judgment in Default granted by the Order of Deputy District Judge Jones dated 19 August 2005, this matter has now been listed for an Assessment of Damages with an estimated length of hearing of one day at 10.30 on 5 January 2006".

The file also contained a letter dated 16 December 2005 sent by Mr Ahmed to the Court with their reference BD34562 enclosing a copy of the Claimant's witness statement in preparation for the hearing on 5 January 2006.

33. Notwithstanding the documents on file, on 3 April 2006 Mr Ahmed wrote to the Court requesting Judgment in Default against the Defendant. It appeared that Judgement was entered against the Defendant and on 12 June 2006 Mr Ahmed wrote to the Claimant and informed him that the adjourned hearing to have the default judgement set aside had been relisted for 27 June and a directions hearing for the disposal of the matter was listed for 14 July 2006.

34. In a statement dated 10 December 2008 from Mr Ahmed to the SRA, he stated that he was unaware of any issue as to the authenticity of any documents until he was telephoned by the Defendant's solicitor. He stated that he did not forge the documents and that he did not prepare the trial bundle. He further stated that after resigning from the Firm on 15 August 2007 he had not had any conversations with any parties concerning any admission of the forged documents.

35. On 12 August 2008, 24 September 2008 and 2 October 2008 [RESPONDENT 2] provided witness statements from Mr Desai, the Claimant, and Mr Qazi of Counsel which all confirmed that Mr Ahmed had attended the Court following the adjournment and had admitted responsibility for producing the false documents.

36. The Witness Statement of Mr Desai confirmed that Mr Desai had prepared the Court bundles for the trial. It further stated that while the issue of the documents was being investigated by the Court, Mr Desai telephoned Mr Ahmed asking him to attend Court. During that attendance Mr Ahmed confirmed to Mr Desai and Mr Qazi of Counsel that Mr Ahmed had created the documents.

37. The witness statement of Mr Qazi, of Counsel, stated that:

> "there is no doubt in my mind that the erroneous documentation within the bundle appeared to have arisen by virtue of a former employee of my Instructing Solicitors called Mr Shaqil Ahmed".

Counsel also stated that Mr Ahmed had attended Court and was asked by Mr Desai about certain documentation, to which Mr Ahmed stated he had been responsible for producing and filing those documents.

Allegation 8

38. By letter dated 17 November 2008, [RESPONDENT 2] wrote to the SRA and stated that Mr Desai had joined the Firm in April 2007 from the local Metropolitan Council and had over 17 years of experience in dealing with litigation. As a result of this experience [RESPONDENT 2] stated that Mr Desai was far more capable than a young trainee and was given minimum supervision. He stated that the trial bundle was completed by Mr Desai and then checked by both himself and Mr J. Mr J was described as an experienced litigator with over 15 years experience who had been with the Firm since 2006. He stated that tasks undertaken by Mr Desai were closely monitored by either [RESPONDENT 2] or Mr J, as was all incoming or outgoing post.

39. [RESPONDENT 2] stated that the inclusion of the forged documents was not down to a lack of supervision and irrespective of the degree of supervision it would not have prevented such forgeries taking place. On the face of it the documents appeared to be official Court documents and were accepted as such by Counsel and the Defendant's solicitors. [RESPONDENT 2] stated that there was no reason for him, Mr Desai, or Mr J to question the documents.

40. The file contained an undated file note, which was a brief review of the Claimant's case. The note stated:

> "The matter is confusing, as it seems that our client raised a Court action as a claimant.
>
> Some form of hearing took place (a disposal hearing in January 2005.
>
> There is a claim form sealed for the same matter, issue date 16-2-06."

From that note it was clear that a file review was carried out where the discrepancies between the false documents and the actual progress of the file were identified.

41. In a letter from Mr J to the SRA dated 29 June 2009, Mr J stated he had been hired by the Firm in March 2006 to carry out an audit of Mr Ahmed's files due to concerns with Mr Ahmed's work and complaints from clients. That review had highlighted the discrepancies created by the existence of the false documents. However, [RESPONDENT 2] did not investigate the matter further and the forged documents were still included in trial bundles served on the other side and the Court.

Allegations 9 and 10

42. The Firm acted in a number of purchase and remortgage transactions on behalf of clients who had been introduced by Rashid Farid, a mortgage broker and owner of Lifestyle Mortgages (Kirklees) Ltd ("Lifestyle"). Lifestyle was authorised by the

FSA, however, on 25 October 2007 the FSA authorisation ceased and on 12 February 2008 the company ceased trading.

43. On 7 April 2009 Rashid Farid was sentenced to eleven years in prison for offences of fraud against Halifax Bank of Scotland Group (HBOS) of almost £1,000,000. Rashid Farid submitted false applications for mortgages or re-mortgages of properties either using the genuine property owners' details, or amending the Land Registry on-line, and altering the details of the owners.

44. Rashid Farid's brother, Mohammed Jahangir Farid, a trainee at the Firm, was also convicted of Money Laundering offences and was sentenced to four years imprisonment.

45. The SRA commenced an inspection into the Firm on 19 September 2007. [RESPONDENT 2] stated that the Firm was established in 2002 as a general practice employing three assistant solicitors, two consultants and five other members of staff. The Firm had previously held a branch office in Huddersfield at 329 Bradford Road, Huddersfield. The SRA's investigation centred on a number of transactions carried out from the Firm's Huddersfield office where monies were paid to and from Rashid Farid, Mohammed Jahangir Farid, Lifestyle or NF (brother of Rashid Farid and Mohammed Jahanghir Farid).

46. As a result of their investigation the SRA prepared a Report which listed a number of transactions where monies had been received and paid to unrelated third parties. Each transaction identified an unadmitted member of the Firm's staff conducting the matter. In nine of the transactions [RESPONDENT 2] was the supervising partner. In the other four matters no supervising partner was identified. In two transactions Mr Ahmed signed the Certificate of Title. In five transactions [RESPONDENT 2] signed the Certificate of Title, and in a further five transactions [RESPONDENT 3] signed the Certificate of Title.

47. The Report raised concerns that:

- The Firm had failed to disclose gifted deposits and incentives on some transactions;
- The Firm had preferred the interests of purchaser clients over lenders;
- The Firm had failed to inform lenders that the firm was acting for buyers and sellers in the same transaction;
- The Firm had preferred the interests of one client over another;
- The Firm failed to investigate discrepancies in a client's signature on one transaction;
- The Firm failed to investigate why monies were being sent to third parties in a number of remortgage transactions.

<u>9 L Avenue</u>

48. The Firm acted for AK in relation to the purchase of a property at 9 L Avenue. The Firm's unadmitted member of staff, IR, had conduct of the matter. The file was opened in November 2006.

49. On 19 February 2007 the Firm received a mortgage offer from GMAC in respect of AK's proposed purchase. In the same letter GMAC instructed the Firm to act on its behalf in the transaction. The mortgage offer, based on a purchase price of £90,000 was that GMAC was willing to lend £71,925. Special Condition 10 of the mortgage offer stated:

> "If this is a purchase transaction and you are receiving a deposit and/or incentive as part of that transaction, a deposit and/or incentive to maximum 5% of the purchase price is permitted... Failure to disclose a deposit or incentive may result in a change to or variation of, the terms of this offer...

The Special Conditions stated that the mortgage offer was valid until 20 April 2007.

50. On 21 March the Firm received a letter from the seller's solicitor which stated that the seller was providing the purchaser with a gifted deposit of £4,500; 5% of the purchase price. This position was confirmed by the Firm who said they awaited receipt of the monies. This sum was the maximum which GMAC would accept before withdrawing their mortgage offer.

51. [RESPONDENT 2] signed a Certificate of Title listing a completion date of 18 April 2007. On 18 April mortgage monies of £71,925 were drawn down into the Firm's client account from GMAC.

52. On 19 April £85,500 was transferred from the Firm's client account to the seller's solicitor, these monies were the full purchase price of £90,000, less the gifted deposit of £4,500.

53. It was alleged that the Firm:

- failed to disclose to the lender client the gifted deposit from the seller;
- preferred the interests of the purchaser client over the lender client.

<u>131 C Road</u>

54. The Firm's unadmitted member of staff, SS, acted for ZH in relation to the purchase of a property at 131 C Road. The matter detail form listed [RESPONDENT 2] as the partner in charge. The matter was opened in January 2006. In the same transaction the Firm's unadmitted member of staff JI acted for BH in relation to the sale of the above property. The buyer and seller were related. The Firm also acted for the lender, however, the file contained no evidence to suggest that the lender was informed that the Firm was acting on behalf of both the buyer and seller in the same transaction. Furthermore, both JI and SS operated from the Firm's Huddersfield office.

55. It was alleged that the Firm failed to inform the lender client that the Firm was acting for the buyer and seller in the same transaction.

<u>45 D Road</u>

56. The Firm's unadmitted fee earner, SS acted for MN in relation to the purchase of a property at 45 D Road. The Firm's fee earner JM also acted for MR who was the seller of the above property. The Firm was also instructed to act for the lender. There was no evidence on file to show that the lender was informed that the Firm was acting for both the buyer and seller in the transaction.

57. The matter form listed [RESPONDENT 2] as the partner in charge of the sale transaction. On 19 March 2007 the Firm received a mortgage offer for MN from GMAC. The offer of £74,725 was based on a purchase price of £88,000.

58. The Mortgage offer Special Condition 8 stated:

> "If this is a purchase transaction and you are receiving a deposit and/or incentive as part of that transaction, a deposit and/or incentive to maximum 5% of the purchase price is permitted... Failure to disclose a deposit or incentive may result in a change to or variation of, the terms of this offer... Incentives include, but are not limited to: - Cash Back – Money towards legal fees, stamp duty or valuation... Financial assistance from a family member will not invalidate this offer providing it has been fully disclosed as part of your application."

59. Mr Sekon signed the Certificate of Title and the matter ledger recorded receipt of the mortgage monies on 23 April 2007 which remained the only credit on the ledger until 11 May 2007 when a banker's draft in the sum of £8,875 was credited to the ledger. The receipt stated that the monies were payable to the client. However, next to the entry on the ledger was a handwritten annotation "Rashid (7757)".

60. This credit increased the ledger balance to £83,600. Earlier instructions from MN stated that he was receiving a gifted deposit of £4,400 from MR exactly 5% of the purchase price. The instructions also stated that MN's legal fees, totalling £606.44 would be paid for by MR.

61. The ledger recorded that on 15 May 2007, £83,600 was moved by inter-ledger transfer from the purchase ledger of MN to the sale ledger of MR. On the same day £606.44 was transferred back from MR to MN and these monies were used to satisfy MN's liability in relation to the Land Registry fees. However, the matter did not formally complete until 16 May 2007.

62. The sale ledger also recorded another inter-ledger transfer of £8,875 which was transferred to a ledger belonging to IM. The file contained a completion statement which stated that the monies were a loan to NF. However, a further letter from MR stated that the monies were to repay a loan from NF.

63. It was alleged that the Firm:

- Failed to inform the lender client that the Firm represented both the purchaser and the seller;
- Failed to inform the lender client of a gifted deposit;
- Failed to inform the lender of further incentives;

- Preferred the interests of one client over another.

16 L Drive

64. The Firm's unadmitted fee earner, JM acted for JF and NB in relation to the sale of a property at 16 L Drive. The new matter sheet stated that [RESPONDENT 2] was the partner responsible. The Firm also acted for the purchaser, IM. On 16 May the Firm received a mortgage offer from the lender in respect of the property and a request to act on its behalf. The file contained no evidence to suggest that the lender was informed that the Firm was acting for the buyer and the seller. It was alleged that the Firm failed to disclose to the lender client that the Firm acted for the buyer and seller.

18 B Street

65. The Firm's unadmitted fee earner JAV acted for NM in relation to the purchase of a property at 19 B Street. The Matter Details Form listed [RESPONDENT 2] as the partner in charge. The Firm also acted for the sellers Mr and Mrs H, who were the buyer's parents. The Firm was instructed to act for the lender. There was no evidence on file to suggest that these facts were disclosed to the lender. It was alleged that the Firm failed to disclose to the lender client that the Firm was acting for the buyer and seller.

62 St M Avenue

66. The Firm's unadmitted member of staff, SS acted in relation to the remortgage of a property at 62 St M Avenue. The Matter Details Form listed [RESPONDENT 2] as the partner in charge. A Land Registry search listed the proprietor as APJ and disclosed that there was an existing charge on the property in favour of Yorkshire Bank. Notwithstanding the Land Registry search, the file contained a copy of a passport belonging to TQ along with a file note which stated that TQ was "...the gentleman acting for (APJ)". The file also contained a copy of APJ's driver's licence and a notice of authority to act signed by APJ which authorised the Firm to deal with TQ.

67. The signature on the driver's licence of APJ differed from that which appeared on a mortgage fee arrangement form and instructions to the Firm to remit completion monies to RF. However, the signature did match the one on the Firm's Terms and Conditions of Business. There was no evidence on the file by way of an explanation for the discrepancies in signatures. It was alleged that the Firm failed to conduct any investigation into the discrepancies of APJ's signatures.

Remortgages

68. The Firm also acted in a number of re-mortgaging transactions where properties which had previously been mortgage free had charges against them and mortgage monies were then sent to unrelated third parties. In each of the cases before the Tribunal the Certificates of Title were signed by [RESPONDENT 3].

12 O Street

69. The Firm, through its unadmitted member of staff, JM, acted for SH in the remortgage of a property at 12 O Street. The completion statement on the file stated that after the redemption of the existing mortgage, the payment of legal fees and agents fees of £770 to NF, the balance available to the client was £17,171.53. A note on the file, signed by the client, authorised the balance of the remortgage to be sent to RF. This was done on 26 April 2007. However, the file contained no explanation as to why the proceeds of sale were being sent to a third party. It was alleged that the Firm failed to investigate why monies were being sent to third parties.

204 A Road

70. The Firm acted for TH in relation to the remortgage of a property at 204 A--- Road. The Matter Detail Form listed [RESPONDENT 2] as the partner in charge of the matter. The matter ledger recorded two payments from the lender on 22 February 2007 for £250 and £74,965. On 23 February 2007 £3,250 was transferred out to NF in respect of brokers' fees and a further £71,472.42 was sent to a third party, DP. The file contained a signed authority from the client confirming the transfer to the third party. However, the file did not contain any explanation as to why the funds were being sent to the third party. It was alleged that the Firm failed to investigate why monies were being sent to third parties.

93 T Avenue

71. The Firm, through its unadmitted member of staff, JIM, acted for AH and TY in relation to the remortgage of a property at 93 T Avenue. The client ledger confirmed receipt of a mortgage advance of £99,965 on 5 March 2007. The next day £96,970.42 was transferred out and paid to ZNE. A completion statement on file confirmed that this sum was the complete balance of proceeds of the remortgage available to the client. The completion statement also referred to a payment of £2,500 in respect of brokers' fees. The ledger recorded this payment being made to NF on 7 March 2007. The file contained a signed authority from both clients confirming the transfer to ZNE. However, the file did not contain any explanation as to why the funds were being sent to an unrelated third party. It was alleged that the Firm failed to investigate why monies were being sent to third parties.

16 U Road

72. The Firm, through its unadmitted member of staff, JM, acted for PD in relation to the remortgage of a property at 16 U Road. The matter detail form listed [RESPONDENT 2] as the partner in charge of the matter. The client ledger confirmed receipt of £288,970 on 13 April 2007. On 17 April 2007 £218,379.82 was transferred out and paid to CGB Limited, £62,000 was paid out to IM, and £3,000 was paid to NF in respect of agents fees. A completion statement on file confirmed these payments and confirmed that from a mortgage advance of £288,970, the balance sent to the client was just £5,000. The file contained signed client authorities confirming the transfer to CGB Limited and IM. However, the file did not contain any explanation as to why the funds were being sent. It was alleged that the Firm failed to investigate why monies were being sent to third parties.

Allegations 11 and 12

73. Mr Ahmed acted for RS in relation to a civil litigation matter. RS had obtained finance to assist in the purchase of a car. The car was subsequently found to be faulty and therefore RS refused to pay the instalments as they fell due. As the result of an alleged failure to pay, the finance company commenced proceedings against RS. The file contained a letter from Mr Ahmed to RS, dated 19 January 2007. It stated:

> "The resolution of this matter was negotiated with [BF] Ltd, in that they confirmed that your finance agreement with them through [FCF] will be voided and all payments returned to ourselves... We are currently awaiting the refunds of monies paid.... we confirm that you can cancel your standing order."

74. The file also contained a letter, dated 2 February 2007 from SCM who were acting for the finance company. This letter stated:

> "Further to the out of court global settlement of this matter.... we re [sic] in the process of finalising the payments in regards to this matter so as to close your client account with [B] Ltd. We confirm that the remaining balances will be nullified, and the payments made to date will be refunded to you."

75. A further letter from SCM requested payment of the appropriate settlement figure, £1,785.63, and outstanding costs of £175, which were due. These were forwarded by Recorded Delivery by Mr Ahmed on 22 March 2007; the cheque for £1,785.63 was from client account.

76. The file contained a signed letter on SCM letterhead dated 23 March. It stated:

> ".....we can now confirm receipt of your cheques in the sum of £1,785.63 and £175 respectively to cover the amount required.... Subject to the clearance of your cheques... we are now able to confirm that your client's account with [BH] under reference [------] is full settled and closed."

77. However, the file also contained a blank sheet of SCM letterhead, a sheet containing the text of the 23 March 2007 letter, a sheet where the text of the 23 March 2007 letter had been superimposed over the letterhead and another draft of the letter, signed with a different signature and an unsigned copy of the letter of 23 March.

78. Notwithstanding the correspondence which was apparently exchanged between the two firms and the Firm's advice that he could cancel his standing order, RS continued to receive reminders in respect of payments due. As a result of the continuing reminders RS forwarded copies of the correspondence to the finance company to show that the matter was resolved, including the letter dated 23 March. The letter was forwarded by the finance company to SCM who stated that the letter of 23 March had not come from their office and alleged that it had been forged. As a result of this allegation the SRA contacted Mr Ahmed on 25 July 2007 requesting his explanation for the alleged forgery.

79. Mr Ahmed replied to the SRA on 10 August 2007. He explained that he was the supervising partner in the matter and that day to day conduct had been in the hands of a paralegal, MH. Mr Ahmed confirmed that having considered the correspondence for the first time the content of the Firm's letter to RS, dated 19 January 2007 was "... absolutely untrue and misleading...". Mr Ahmed stated that RS had never been asked to pay £1,765.63 and suggested that the monies were paid into client account by MH. Mr Ahmed also confirmed that having investigated the matter he had disciplined MH and dismissed him from the Firm for gross misconduct.

80. On 26 September 2007 [RESPONDENT 2] wrote to the SRA and explained that Mr Ahmed was no longer with the Firm. He also stated that Mr Ahmed was "directly responsible for the work in respect of that matter".

81. A witness statement from Mr Ahmed dated 22 October 2007 stated that he had been responsible for the letters found on the file. He stated that he had scanned SCM's letterhead and amended it to give the appearance that the Firm had settled the matter. Furthermore, he stated that he had asked a friend, and client of the Firm, to loan him £1,785.63 to pay the overdue invoice. Mr Ahmed admitted amending a ledger to show that monies had been paid from RS's matter and not the other client. Mr Ahmed stated that he was under significant mental pressure at the relevant time due to medical issues and enclosed copies of various medical reports.

Witnesses

82. The following witnesses gave evidence:

- Mr Mohammed Ayaz Qazi
- Mr Younus Desai
- Stephanie Young (Forensic Investigation Officer with the SRA)
- The First Respondent, Mr Shaqil Ahmed
- The Second Respondent
- The Third Respondent

Application of No Case to Answer on allegations 1, 2 and 8 by the First Respondent, Mr Ahmed and the Second Respondent

<u>Submissions of the First Respondent, Mr Shaqil Ahmed on Application of No Case to Answer</u>

83. After the Applicant had presented his case, Mr Ahmed submitted an application for no case to answer on allegations 1 and 2 against him on the basis that the evidence given by Mr Qazi and Mr Desai did not satisfy the high standard of proof required. Both witnesses in their evidence had stated Mr Ahmed did not make any admissions to them regarding the false documents. Mr Qazi had drawn an inference from Mr Ahmed's presence at Court that Mr Ahmed had something to do with the fabricated documents. However, Mr Ahmed had been looking at a bundle of documents as a whole and he had dealt with many documents within that bundle. Mr Desai had also given evidence that there could have been a misunderstanding between him and Mr

Ahmed, and that he was not sure whether Mr Ahmed had been referring to particular documents within the bundle, or the bundle as a whole when Mr Ahmed had discussed who prepared that bundle. Mr Ahmed submitted that the evidence failed to meet the high standard of proof required and that no reasonably directed Tribunal could find those allegations proved.

Submissions of the Second Respondent on Application of No Case to Answer on allegation 8

84. Mr Mason, Counsel on behalf of the Second Respondent, submitted an application of No Case to Answer on allegation 8 after the Applicant had presented his case. It was alleged that [RESPONDENT 2] had failed to make arrangements for the effective management of the firm contrary to Rule 5 of the Solicitors Code of Conduct 2007. Counsel for [RESPONDENT 2] submitted that the Code of Conduct came into force on 1 July 2007 and therefore to be guilty of an offence under that Code, the conduct would have to have taken place after that date. The Applicant had to show that the failing occurred after 1 July 2007, and if the Applicant could not show that the conduct had taken place after 1 July 2007, then the allegation must fail.

85. Furthermore, the basis of the case against [RESPONDENT 2] had been set out in the Rule 5 Statement as contained within paragraphs 84-88 of the Rule 5 Statement. The evidence was very narrow and was founded on a file note exhibited at page 302 of the exhibits attached to the Rule 5 Statement in case number 10353/2009. That file note stated:

> "The matter is confusing, as it seems that our client raised a court action as a claimant.
>
> Some form of hearing took place (a disposal hearing in January 2005.
>
> There is a claim form sealed for the same matter, issue date 16-2-06.
>
> Simply a question of fact, probably is
>
> Ledger needs to be checked.
>
> We have incurred at least one court issue fee of £400.00."

That file note was undated and therefore the Tribunal could not ascertain when it was written. Furthermore, there was no evidence as to when discussions had taken place regarding the content of that file note or what investigations should have been made. There was no evidence of a breach of Rule 5 of the Solicitors Code of Conduct 2007 and Counsel for [RESPONDENT 2] submitted the allegation must fall at this stage.

86. The Tribunal was reminded that the hearing in that trial was listed in October 2007 to take place in November 2007. [RESPONDENT 2]'s Witness Statement dated 7 January 2011 confirmed a review had been carried out by Mr J in 2006. Mr J had the file from late 2006 until July 2007 and on completing his review, he discussed his findings sometime between late 2006 but before July 2007. The evidence relied upon by the SRA was very narrow and was contained in paragraphs 84-88 of the Rule 5 Statement in case number 10353/2009. Mr J had been hired by the firm to carry out

an audit of Mr Ahmed's files due to concerns with Mr Ahmed's work and complaints from clients. However there was no further investigation and the SRA's case was that if the matter had been investigated, it was probable the false documents would be discovered. Counsel for [RESPONDENT 2] submitted that assertion was wholly unsubstantiated by the documents and the evidence. The file note at page 302 did not raise any concerns by Mr J on the forged documents. He simply made reference to the matter being "confusing". That confusion related to the date of the disposal hearing in January 2005 and the date of the issue of the claim form. The claim form had been sealed by the Court on 16 February 2005. However, the Particulars of Claim which was also sealed on the same date were actually dated 24 August 2005. It was quite clear that the claim form could not have been issued on 16 February 2005 as this would have expired before the Particulars of Claim were issued, also on the same date. Counsel for [RESPONDENT 2] submitted the date stamp of the Court seal must have been incorrect but yet there was no allegation of forgery. The case number was a Bradford number and was consistent with a case that would have been issued in 2006 as it started "BD6".

87. Counsel for [RESPONDENT 2] submitted the Court had sealed the claim form and the Particulars of Claim with a wrong date in error and furthermore, the file note on page 302 did not refer to the authenticity of documents but simply confusion about the dates. Counsel for [RESPONDENT 2] submitted the evidence was wholly untenable and reminded the Tribunal that Mr Qazi, who was a barrister, had not noticed the documents were forged, QC Farley who was the opposing Counsel had not noticed the documents were forged and both of these barristers would have been looking at the papers very closely, certainly more closely than a solicitor who was reviewing the file or preparing the bundle of documents for trial. Furthermore, the solicitors on the opposing side had not noticed the forged documents. The Tribunal's attention was drawn to the comments of Recorder Clayton in the case of [GSC v RSR] dated 13 December 2010 in which he stated he had been looking at the documents "...more inquisitively than anything else and simply to ascertain really the true chronology of events and what the orders were about...".

88. Counsel for [RESPONDENT 2] submitted that there was no case to answer on a legal basis on allegation 8 and there was certainly no evidence to satisfy the Tribunal that [RESPONDENT 2] was guilty of the allegation in the way it had been presented.

Submissions of the Applicant on Mr Ahmed and [RESPONDENT 2]'s Application of No Case to Answer

89. The Applicant accepted that until he had heard the evidence from the witnesses, he had had no doubts on the strength of the case. However, having heard the witnesses evidence, he accepted that there were concerns about the evidence they had given and the Applicant accepted he could not now prove allegations 1 and 2 against Mr Ahmed, given the manner in which the evidence had come out.

90. In relation to allegation 8, the Applicant reminded the Tribunal that evidence had been given by Mr Desai that Mr Desai had prepared the bundles for trial on 1 November 2007. That post-dated 1 July 2007 when the SCC came into effect. The Applicant submitted that the duty to supervise was a continuing duty and would continue after 1 July 2007.

The Tribunal's Decision on Mr Ahmed and [RESPONDENT 2]'s Application of No Case to Answer on allegations 1,2 and 8

91. The Tribunal had considered carefully the submissions made by the Applicant, Mr Ahmed and [RESPONDENT 2], and had also considered all the documents provided. The Tribunal had made it clear at the outset of the hearing that the allegations needed to be proved to the criminal standard of proof, beyond reasonable doubt.

92. Dealing firstly with allegations 1 and 2 which were against Mr Ahmed only, it had been alleged that Mr Ahmed had created false documents and had misled his client contrary to the Solicitors Code of Conduct 2007. It had also been alleged that Mr Ahmed had acted dishonestly. The Tribunal's attention had been drawn in particular to two documents which purported to be a Judgment from the Bradford District Registry dated 19 August 2005 and a Notice of Hearing also from the Bradford District Registry dated 25 October 2005. Both of these documents made reference to claim number BD34562 and it subsequently transpired that these documents were false as no such case number existed. Both of the documents referred to the case of [GSC v RSR] and the Tribunal's attention had been drawn to a claim form involving both these parties which contained a claim number BD650077 from the Bradford District Registry which appeared to have been sealed by the Bradford District Registry on 16 February 2005. However, the Particulars of Claim were dated 24 August 2005 which was a date some six months after the documents appeared to have been sealed by the Court. The only conclusion that could be drawn from this was that the Court must have made an error and sealed the claim form and certainly the Particulars of Claim with the incorrect date.

93. The alleged Judgment dated 19 August 2005 was stamped as "received" on 20 August 2005. The alleged Notice of Hearing in claim number BD34562 dated 25 October 2005 was stamped as received on 28 October 2005.

94. In relation to the second allegation that Mr Ahmed had misled his client, the Applicant relied on a letter dated 31 October 2005 from the firm to Mr C which contained Mr Ahmed's reference. That letter advised Mr C that Judgment in Default had been granted by Deputy District Judge Jones on 19 August 2005 and the matter had been listed for an assessment of damages hearing on 5 January 2006. This was clearly incorrect as information given relied on the false notice of hearing and judgment which made reference to a claim number BD34562 which did not exist. A further letter was sent to Mr C by the Firm, also containing Mr Ahmed's reference, which stated that the adjourned hearing to set aside judgment had been relisted for 10.30 a.m. on 27 June at Bradford County Court and the directions hearing for the disposal of the matter was listed for 14 July 2006 at 2.00 p.m.

95. At the trial of this action in November 2007 it became apparent to Recorder Clayton that the alleged notice of hearing and Judgment in claim number BD34562 were false and an enquiry was immediately undertaken to ascertain how these documents found their way into the trial bundle.

96. Mr Ahmed denied the allegations and the Applicant had relied on two witness statements in support of his case. The first Witness Statement was from Younus Desai and was dated 12 August 2008. In that statement Mr Desai stated:

> "Mr Ahmed attended the Court and confirmed to me and Mr Qazi who was the Claimants Counsel that he had produced these documents himself".

The Applicant also relied on a Witness Statement from Mr Mohammed Ayaz Qazi dated 2 October 2008. In that statement Mr Qazi stated:

> "I recall a Mr Ahmed drawing his attendance and being asked about certain documentation by Mr Desai in relation to which he stated that he had been responsible for producing and filing the offending documents".

Both those witnesses had given evidence before the Tribunal but their evidence had subsequently become qualified. Mr Qazi in his evidence said that when Mr Ahmed came to Court he appeared dazed, confused and concerned as to why he had been asked to attend. His health and appearance had deteriorated and he had not seemed to be himself. Mr Qazi stated that whilst Mr Ahmed accepted some responsibility for the bundle, he did not say/acknowledge or accept that he had created the false documents. Mr Qazi said that his Witness Statement of 2 October 2008 had been prepared for a Wasted Costs Application in the case and having reflected on the matter, there was a lingering doubt in Mr Qazi's mind as to whether there was an acknowledgement or acceptance by Mr Ahmed of creating the false documents.

97. Mr Desai in his evidence confirmed that he had prepared the trial bundle and had been assisted by Mr J. When issues had been raised about the false documents, Mr Desai had telephoned Mr Ahmed and asked him to come to Court to explain the position. Mr Desai said that he showed the two documents to Mr Ahmed whilst the documents were still within the trial bundle. He asked Mr Ahmed who had produced the two documents and Ahmed had replied "I did". It had been a very short conversation and Mr Desai confirmed that Mr Ahmed did not look well when he attended Court. Mr Desai accepted that there could have been a misunderstanding between him and Mr Ahmed, and accepted that Mr Ahmed could have thought that he was referring to other documents in the bundle and not referring to the false Notice of Hearing and Judgment. Mr Desai accepted that there was doubt on this issue, as Mr Ahmed had been looking at the trial bundle as a whole. When Mr Ahmed had come to Court, the trial bundle had been placed on the desk in the consultation room and it may have been that in light of Mr Ahmed's medical condition, he may have misunderstood what was being asked of him. Mr Desai confirmed that the two documents had not been removed from the bundle when the bundle was shown to Mr Ahmed.

98. In relation to allegations 1 and 2, the Tribunal accepted the submissions made by the Applicant and by Mr Ahmed that the evidence in support of these allegations from Mr Qazi and Mr Desai had become qualified when they gave their oral evidence, whereas their Witness Statements had previously been unequivocal. The Tribunal accepted that the evidence was such that a reasonably directed Tribunal could not convict Mr Ahmed of allegations 1 and 2. Moreover, the Tribunal noted that both allegations 1 and 2 had been put on the basis that Mr Ahmed had breached a number of Rules within the Solicitors Code of Conduct 2007. The Tribunal noted that all the

documents alleged to have been created to support these allegations predated 1 July 2007 when the SCC came into effect. Furthermore, the two false documents were marked as received in 2005 which indicated that those documents must have been created prior to that date. This meant that those two documents also preceded the SCC 2007. On that basis the Tribunal was satisfied that no reasonably directed Tribunal could find allegations 1 and 2 proved on the basis upon which they had been presented. The Tribunal dismissed allegations 1 and 2 and was satisfied that there was no case to answer in relation to either of these two allegations against Mr Ahmed.

99. Dealing with allegation 8 which was against [RESPONDENT 2], this alleged that [RESPONDENT 2] had failed to make arrangements for the effective management of the firm contrary to Rule 5 of the SCC 2007. The Tribunal had carefully considered Mr Mason's submission that the allegation had been brought under the SCC 2007 and that the allegation failed as the result of this. The Tribunal rejected this submission and accepted the Applicant's submission that as the case was listed for a hearing in October 2007 and a trial took place in November 2007 the alleged conduct took place after the implementation of the 2007 Code.

100. As a result of the trial due in November 2007, Mr Desai had prepared bundles of documents in preparation, which were lodged at Court. The Tribunal was satisfied therefore that there was an obligation on Mr Ahmed to make arrangements for the effective management of the firm after 1 July 2007 including a continuing duty to supervise and review this particular case which was due to be heard in November 2007.

101. However, the evidence relied upon by the Applicant in support of this particular allegation had been placed on a very narrow basis in that the Applicant relied on an undated file note contained at page 302 of the Applicant's bundle of documents with reference to case number 10353/2009. That file note raised concerns about dates and was clearly with reference to a clerical error made by the Court, rather than the issue of authenticity of any documents. On that basis, the Tribunal was satisfied that on the evidence presented, a reasonably directed Tribunal could not convict [RESPONDENT 2] of allegation 8 and accordingly the Tribunal dismissed that allegation on the basis that there was no case to answer.

Findings as to Fact and Law

102. The Tribunal had considered carefully the submissions made by all parties, the documents provided and the evidence that had been given. The Tribunal considered each of the remaining allegations on the criminal standard of proof in that they had to be proved beyond reasonable doubt.

103. **Allegation 9: The Respondents failed to act in the best interests of clients and failed to provide a proper standard of work contrary to Rule 1(c) and 1(d) Solicitors Practice Rules ("SPR")**

Allegation 10: The Respondents failed to ensure that the practice was effectively supervised and managed contrary to Rule 13 SPR

103.1 During the course of the hearing, the Respondents had made a number of concessions and the issues were substantially narrowed as a result of discussions that took place between the parties. Mr Ahmed was a litigator who did not conduct any conveyancing. Both allegations 9 and 10 were denied by all the Respondents despite the concessions made.

103.2 [RESPONDENT 2] and Mr [RESPONDENT 3] accepted that in relation to 9 L Avenue the firm had failed to disclose to the lender a gifted deposit from the seller and had preferred the interests of the purchaser client over the lender client but submitted this had been an isolated failing by the individual fee earner dealing with the file.

103.3 In the matter of 131 C Road, [RESPONDENT 2] and [RESPONDENT 3] accepted that the Firm had failed to inform the lender client that the Firm was acting for the buyer and seller in the same transaction, but submitted this had been an isolated failure by the fee earner dealing with the file.

103.4 In the matter of 45 D Road, [RESPONDENT 2] accepted the Firm had failed to inform the lender client that the firm represented both the purchaser and the seller, or that there had been a gifted deposit, or that there were further incentives and that the firm had preferred the interests of one client over another, but again submitted this was an example of individual error rather than a systematic failure.

103.5 In the matters of 16 L Drive and 19 B Street, [RESPONDENT 2] had accepted the Firm had failed to disclose to the lender client that the Firm acted for the buyer and seller, but also submitted this had been an individual error by the fee earners with conduct of the file.

103.6 In the matter of 93 T Avenue, [RESPONDENT 2] and [RESPONDENT 3] had accepted the Firm failed to investigate why monies were being sent the third parties, however submitted that there was evidence of some investigation.

103.7 In the matter of 16 U Road, [RESPONDENT 2] and Mr [RESPONDENT 3] made a qualified admission that the Firm had failed to investigate why monies were being sent to third parties.

103.8 It was denied that the Firm had failed to conduct any investigation into the discrepancies of APJ's signature on the matter of 62 St M Avenue and it was also denied that the Firm had failed to investigate why monies were being sent to third parties on the matter of 12 O Street and 204 A Road.

103.9 All three Respondents denied allegations 9 and 10 in that they did not accept that they had failed to act in the best interests of clients and failed to provide a proper standard of work, despite the accepted failures, and they denied that they had failed to ensure the practice was effectively supervised and managed. Furthermore all the failures had taken place in only the Huddersfield branch of the Firm.

103.10 The Tribunal considered the three live issues which related to 62 St M Avenue, 12 O Street and 2O4 A Road. Dealing firstly with 62 St M Avenue, it was alleged the firm had failed to conduct any investigation into the discrepancies of APJ's signatures.

Mr [RESPONDENT 3] had given evidence to confirm that on this particular case the Firm had received a written authority from the client to make a payment to a third party. However, the client's signature on the Terms of Engagement differed from the client's signature in the letter of authority requesting the payment to be made to the third party. As a result of the discrepancy in the signatures, [RESPONDENT 3] confirmed that the instructions were not followed and in fact the monies were returned to the client and not paid to a third party. On this basis, [RESPONDENT 3] submitted the firm had investigated the signatures, realised that there was a discrepancy and had returned the monies to the client. The Tribunal accepted [RESPONDENT 3]'s evidence and found him to be a credible witness. On that basis, the Tribunal found this particular issue was not proved.

103.11 In relation to the matter of 12 O Street, [RESPONDENT 3] submitted that the firm had received a written instruction from the client asking for monies to be paid to a third party and there was a clear note on the file stating "client has authorised payment - 26/4/07". This confirmed that the fee earner had verified that the instruction from the client was genuine and that the client actually required the payment to be made to a third party. Effectively the fee earner had double checked the instructions from the client and therefore made some investigation into why the monies were being sent to a third party. This was exactly the same position in relation to 204 A Road when again the fee earner had handwritten written on the letter of instruction from the client which requested monies to be paid to a third party. The handwritten note contained the client's contact number which confirmed that the fee earner had spoken to the client, and the client was happy for funds to be sent to the third party. The handwritten notes were dated 22 February 2007. [RESPONDENT 3] submitted the manuscript entries confirmed the client had been contacted to double check the instructions for a payment to be made to a third party. However, the Tribunal was mindful that in both of these transactions whilst there was a handwritten note on the letter of instruction requesting payment to be made to a third party, no evidence had been provided of any further investigation as to why monies were being sent to third parties. Accordingly, the Tribunal found that these two particular disputed issues were proved.

103.12 Both [RESPONDENT 2] and [RESPONDENT 3] had sought to provide explanations for the shortcomings on the other matters drawn to the Tribunal's attention. The Tribunal had been impressed with their evidence and found both [RESPONDENT 2] and [RESPONDENT 3] to be honest and credible witnesses. In the matters of 9 L Avenue and 45 D Road, there had been a failure to inform the lender client of a gifted deposit. The Tribunal had heard evidence from [RESPONDENT 3] explaining that the fee earners dealing with these particular files had misinterpreted the rule relating to the deposit. The lender had permitted a deposit of up to 5% and the way in which the special condition had been drafted seemed to imply that anything over 5% would be considered invalid. The fee earners had misinterpreted this to mean that any deposit up to 5% was acceptable and there was no need to report this to the lender. [RESPONDENT 3] reminded the Tribunal that although the lenders had not been informed of the 5% deposit, no complaints had been raised by them and as the gifted deposit was within the amount permitted by the lender, even if the matter had been notified, the transactions would still have proceeded. There had been no loss to the lenders and this was simply an issue of a technical breach. As there had been no loss [RESPONDENT 3] submitted that the Firm had not preferred the interests of a

purchaser client over a lender client. Furthermore, on the transaction relating to 9 L Drive that the Firm had taken measures to protect the lender's position as a report had been made to the Serious Organised Crime Agency ("SOCA") requesting permission to proceed in light of the fact that the purchaser was receiving cash gifted to him from relatives towards the purchase price where the Firm had not been provided with any bank statements from those third parties. [RESPONDENT 3] submitted this was clear evidence that the Firm had undertaken measures to protect the lender's position.

103.13 Allegation 9 alleged that the Respondents had failed to act in the best interests of clients and failed to provide a proper standard of work contrary to Rules 1(c) and 1(d) of the Solicitors Practice Rules. Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990 stated:

> "A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
>
> ...
>
> (c) the solicitor's duty to act in the best interests of the client;
>
> (d) the good repute of the solicitor or of the solicitors' profession."

103.14 Mr Mason had made a number of closing submissions on behalf of [RESPONDENT 2] and those submissions were adopted by both Mr Ahmed and [RESPONDENT 3]. Mr Mason had referred the Tribunal to the Judgment of Lord Justice Moses in the case of Akodu v SRA [2009] EWHC 3588 (Admin) where he had stated:

> "... there is no other reasonable conclusion that can be reached other than that the basis upon which he had been found guilty was merely on the basis that he was a partner of the firm. If that was the only basis, then there has been no argument advanced on behalf of The Law Society to suggest that that was a lawful basis upon which any solicitor can be found guilty of conduct unbefitting the profession. If any authority is needed for the proposition, it can be found in Cordery on Solicitors at J 2225. Some degree of personal fault is required."

103.15 Mr Mason submitted that the allegations had been presented in the broadest and non-specific of terms and simply referred to a number of conveyancing transactions as evidence of a lack of the Respondents supervising and managing the practice. In relation to Mr Ahmed and [RESPONDENT 3], the only specific matter referred to was that they had signed Certificates of Title on some transactions but Mr Mason had submitted this did not relate to supervision or management of the practice. Signing a Certificate of Title was simply certifying that the property had a good and marketable title.

103.16 The Rule 5 Statement stated that the evidence to support allegations 9 and 10 was contained in paragraphs 17 – 174 of the Rule 5 Statement. The evidence relied upon was identical for both allegations and was presented in a global and non-specific manner. Mr Mason submitted that the allegations must be viewed in the context of

the Respondents' liability as partners, and, in respect of the transactions placed before the Tribunal, these had all taken place at the Huddersfield office where neither Mr Ahmed nor [RESPONDENT 3] had any specific management or supervisory functions. [RESPONDENT 2] had accepted that he was the supervisor on all matters at the Huddersfield office, however, it was submitted that the Tribunal must be satisfied that there had been a systematic failure of the Respondents' management and supervisory systems in order for the Tribunal to find that there had been a breach of Rules 1(c) and 1(d) or Rule 13 of the Solicitors Practice Rules. It was submitted that the Tribunal could only find these partners liable if the Tribunal was satisfied that there were systematic failures. Mr Mason submitted that even if the Tribunal found there had been some failings that may not give rise to a breach of any of the Rules. Failings could arise and not be systematic and it was submitted that if there were systematic failings, then these would be apparent in the other offices of the Firm as well.

103.17 Mr Mason submitted that no system could be foolproof and all systems involved some element of human involvement. It was impossible to create a system where every action on the file was reviewed and even then, it was possible that one person could make a mistake. If there were inherent dangers/failures, then it was submitted that it would be expected that the Authority would issue a Rule or guidance relating to that danger. The Tribunal had heard evidence of the systems in place which required a review of a fee earners' work by a supervisor, and the potential for another review by a partner. It was submitted that this was a sufficient safeguard. Furthermore, the Tribunal was reminded that reviews of the files had also been undertaken by the SRA and also scrutinised by the Police. There were only four cases where third party payments had been identified and Mr Mason submitted that this did not amount to systematic failure of management or supervision. The system was in place and the failing was by the individual fee earner concerned, if at all.

103.18 The Tribunal accepted Mr Mason's submission that some degree of personal fault was required and further accepted the submission that the systems in place were adequate. [RESPONDENT 2] had given evidence that the Huddersfield office dealt with over 2,000 conveyancing transactions a year. There were approximately 15-20 files per week being taken on at the Huddersfield office which was clearly a high volume of transactions. The Tribunal's attention had been drawn to a small number of files which represented a tiny fraction of the overall conveyancing transactions carried out at the Huddersfield office. The Tribunal was also mindful that the same systems had worked perfectly adequately at the Firm's other offices in Bradford and Shipley.

103.19 [RESPONDENT 2] had also given evidence concerning AH who he had employed as a supervisor for the Huddersfield office. It was clear from [RESPONDENT 2]'s evidence that he had been meticulous in his duties as a supervising solicitor of the Huddersfield office and indeed, he had taken great measures to ensure AH, who was also a solicitor, was suitable to manage the day to day office and supervise it on a day to day basis. Her workload had been considerably reduced to enable her to supervise other staff properly and indeed, [RESPONDENT 2] closely supervised and reviewed her work using the opportunity to get to know her better in order to enable him to assess that she was suitable, fit and proper to carry out the work. The Tribunal was satisfied that the systems and supervisors in place at the Huddersfield office were all acceptable.

103.20 The Tribunal was also mindful of the comments of his Honour Judge Durham Hall in the case of R v Ramzan, Farid, Farid, Ali, Rafiq, Hussain and Rashid Farid dated 7 April 2009. Judge Durham Hall had stated, "This was an utterly sophisticated, meticulously organised crime" and he referred to Mr Rashid Farid in the following terms:

> "...you indulged and orchestrated in a truly breathtakingly wide-scale series of identity thefts."

103.21 The Tribunal was satisfied that the failures in the transactions before the Tribunal were not systematic, particularly in view of the fact that they appeared in such a small number of cases given the number of overall cases being dealt with at the Huddersfield office. Those failures could not be attributed to a failure in the adequacy of systems or a systematic fault and the Tribunal accepted that there were errors of judgment in every business which were human errors. The Tribunal had been referred to nine transactions out of a potential 2,000 cases per annum where various breaches had occurred but the Tribunal noted that those nine transactions had been dealt with over a period of three years between 2005-2007. Furthermore, the Tribunal noted that the Rule 5 Statement did not allege any personal individual fault against any particular Respondent and the case had been put on the basis simply that the Respondents were all partners in the practice and as partners they had failed to act in the best interests of clients.

103.22 The Tribunal was satisfied that these Respondents had not failed to act in the best interests of their clients and nor had they failed to provide a proper standard of work. Accordingly the Tribunal was satisfied that allegation 9 was not proved.

103.23 Allegation 10 was based on Rule 13 of the Solicitors Practice Rules which stated:

> "Solicitors shall ensure that every office where they or their firm's practice is and can reasonably be seen to be properly supervised..."

103.24 The Tribunal noted in particular that neither Mr Ahmed nor [RESPONDENT 3] had any involvement with the Huddersfield Office. Indeed, Mr Ahmed was a litigation solicitor who did not conduct any conveyancing work at all.

103.25 The same systems and processes had been used at the Bradford and Shipley offices of the firm and no breaches had been found within those offices. Accordingly the Tribunal was satisfied that Mr Ahmed and [RESPONDENT 3] had ensured that adequate systems were in place for the supervision and management of the practice and therefore found allegation 10 was not proved against Mr Ahmed and [RESPONDENT 3] as they had met their responsibilities as partners of the practice.

102.26 In relation to [RESPONDENT 2], he accepted that he was the supervisor of the Huddersfield office and had management responsibilities for that office. The Tribunal had already accepted that the specific failures before the Tribunal were sporadic and those failures had only been found in a very small number of transactions when compared with the overall number of transactions processed by the Huddersfield office. The Tribunal had accepted that there were minimum levels of human error

which were inevitable in every practice and the Tribunal noted that the Authority had found no fault at either the Shipley or the Bradford offices and previous visits by the Practice Standards Unit of the SRA had raised no concerns.

102.27 Furthermore, the Tribunal noted that the failures had been found specifically on the mortgage fraud cases which had been before His Honour Judge Durham Hall in the criminal case against the various defendants including Mr Rashid Farid. His Honour Judge Durham Hall did not criticise the Firm, its systems or supervision within the Firm, but accepted the Firm had been subject to an utterly sophisticated meticulously organised crime. This indicated that it would have been very difficult for the mortgage fraud to have been detected and indeed, Judge Durham Hall who spent a number of weeks dealing with the trial was satisfied that Mr Rashid Farid, who was a mortgage broker and an accountant by profession, had spotted a gaping opportunity provided by the Land Registration Act 2002 and had exploited this to enable him to commit the crimes that he did.

106.28 The Tribunal was satisfied that none of the specific failures before the Tribunal had been associated with [RESPONDENT 2] personally and in the circumstances, the Tribunal found allegation 10 was not proved against [RESPONDENT 2].

107. **Allegation 11: The First Respondent, Mr Shaqil Ahmed created false documents contrary to Rule 1(a) and Rule 1(d) of the "SPR". It was alleged the First Respondent had been dishonest.**

Allegation 12: The First Respondent, Mr Shaqil Ahmed misled his client contrary to Rule 1(a), Rule 1(c) and Rule 1(d) SPR. It was alleged the First Respondent had been dishonest.

107.1 Mr Ahmed admitted these allegations but denied that he had been dishonest. In his closing submissions Mr Ahmed had accepted that he had created false documents but had submitted that his behaviour had been out of character and was due to his ill health at the time. He submitted that his behaviour was a direct result of his confused and disorientated state, and that he had not been in charge of his mental faculties having had considerable problems with his medical condition which had been misdiagnosed on various occasions. The Tribunal's attention had been drawn to a medical report from Dr Rauvala dated 23 March 2011 which gave details of Mr Ahmed's medical condition and stated his symptoms had started in 2005 and consisted of left-sided arm and facial numbness, confusion and disorientation, headaches and slurred speech. These symptoms had continued into 2007 and Dr Rauvala stated that the medication taken by Mr Ahmed was likely to cause side effects which might affect concentration.

107.2 Mr Ahmed in his closing submissions had accepted that the objective test of dishonesty set out in the case of Twinsectra Ltd v Yardley and Others was satisfied, but he submitted that the subjective part of that text failed due to his medical condition, as he was not aware of right from wrong and he certainly did not have any intention of acting dishonestly. He was simply trying to achieve the best result for the client and at the time he did not think he had done anything wrong. The Applicant had drawn the Tribunal's attention to a Witness Statement from Mr Ahmed dated 22

October 2007 which had been sent to the SRA. In that statement Mr Ahmed had stated:

> "Despite knowing fully that it was wrong and forbidden to write on the letterhead of another firm without permission, I proceeded by scanning a copy of a letter from [SMC] and amended it showing that the Firm had agreed a settlement. I later presented this letter to Mr [S], my client. I was under severe mental pressure at this point and not thinking clearly."

However, the Tribunal's attention had also been drawn to a letter from Mr Ahmed to the Authority dated 25 October 2009 in which Mr Ahmed stated with reference to that statement:

> "I do not recall having drafted or signed this said statement..... this statement is not in the style that I would draft, and furthermore my signatures seem to be very odd. First and foremostly, there are 2 signatures on the statement, which is unusual. The higher signature seems to be similar to one I would use in correspondence, and the lower signature is different. Secondly they seem to have been made by different pens. Furthermore, I do not recall attending the offices of Sekhon & Firth on the 22nd October 2007... the written date is not in my handwriting."

107.3 This issue was not dealt with in the evidence given before the Tribunal and clearly appeared to be an inconsistency in that there was doubt over whether Mr Ahmed's Witness Statement dated 22 October 2007 had indeed been drafted, approved and signed by Mr Ahmed.

107.4 The medical report from Dr Rauvala did cover the period in question and clearly stated that Mr Ahmed was suffering from confusion and disorientation in 2007 when the false documents were created.

107.5 The Tribunal considered the issue of dishonesty and particularly considered the test in Twinsectra v Yardley. Mr Ahmed himself accepted that the objective part of that test was satisfied in that his conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. In relation to the subjective part of that test, the Tribunal had to be satisfied that Mr Ahmed himself realised that by those standards his conduct was dishonest. The Tribunal accepted the medical evidence which had been provided confirming Mr Ahmed was suffering from confusion and disorientation at the material time as a result of his serious medical condition and that this would have affected his concentration. Accordingly, the Tribunal was satisfied that Mr Ahmed himself may not have realised that by those standards his conduct was dishonest.

107.6. The Tribunal found allegations 11 and 12 were proved, indeed these had been admitted by Mr Ahmed himself, but the Tribunal did not find that Mr Ahmed had acted dishonestly.

Previous Disciplinary Matters

108. None.

Mitigation

Mitigation of the First Respondent, Mr Shaqil Ahmed

109. Mr Ahmed provided the Tribunal with his professional career history and confirmed that he had worked consistently for ten years until he became severely ill and as a result of his medical condition he had been forced to take an extended sabbatical. His mental wellbeing was now much better and Mr Ahmed stressed that he sincerely regretted what had happened and apologised to the Tribunal. He held his professional obligations in high regard and he hoped to overcome his physical ill-health and return to the profession in the future. He stressed again that his actions had not been taken whilst he had been in his normal state of mind and suggested that the appropriate Order should be a reprimand.

Sanction

Sanction - The First Respondent, Mr Shaqil Ahmed

110. The Tribunal had found that Mr Ahmed had created false documents and had misled his client, which were very serious matters indeed. Whilst the Tribunal accepted that there had been no finding of dishonesty, the Tribunal stressed that the failings were still very serious nevertheless. The parties had relied on the documents that had been created and these documents had been submitted to other solicitors by the client who had had no reason to believe they were not an accurate portrayal of the position. Mr Ahmed's conduct had brought the profession into disrepute and his client had suffered as a result of his behaviour.

111. The Tribunal did give very serious consideration as to whether Mr Ahmed's name should be removed the Roll of Solicitors but decided that this was not appropriate taking into account Mr Ahmed's medical condition and history, the fact that the Tribunal had not found dishonesty proved on the basis that Mr Ahmed may not have known what he was doing at the material time, and also because the Tribunal was satisfied that it was not necessary to prevent Mr Ahmed from practising permanently as a solicitor in order to protect the profession and the public. However, Mr Ahmed had accepted that his health was still not good although he indicated that he did wish to return to practice within the profession when his health improved. Taking into account all the circumstances the Tribunal considered the appropriate sanction was an indefinite suspension given the serious nature of the allegations proved. In order to end the suspension, Mr Ahmed was expected to provide the Tribunal with evidence that he was fit to return to practice as a solicitor in the future. The Tribunal Ordered Mr Ahmed be indefinitely suspended from practice from 22 July 2011.

Costs

112. The Applicant referred the Tribunal to his Schedules of Costs and requested an Order for those costs which came to a total of £65,411.86. The Applicant accepted some of those costs related to case number 10547/2010 against Mohammed Jahangir Farid which the Tribunal had dealt with on 17 February 2011. The Applicant assessed the costs relating to that particular case would have been between £3,000-£5,000 and he

reminded the Tribunal that no Order for costs had been made on that case as Mr Farid was in prison and did not have the means to pay any costs. The Applicant accepted the Costs Schedules did not identify which costs were attributable to case number 10353/2009 (which dealt with allegations 1 to 8 and which costs were attributable to case number 10548/2010 (which dealt with allegations 9 to 12). The Applicant estimated that one third of the costs would have been incurred on case number 10353/2009 (allegations 1-8) and two thirds of the costs would have been incurred on case number 10548/2010 (allegations 9-12). Of the two thirds attributable to case number 10548/2010, the Applicant estimated that approximately £4,000-£5,000 of those costs would relate to allegations 11 and 12 which were against Mr Ahmed and which were the only allegations that had been proved.

113. The Applicant accepted that the Tribunal needed to decide initially on whether the Respondents should be liable for the costs of the SRA, particularly in light of the case of Baxendale-Walker. The Applicant accepted that costs were not intended to be a punishment but reminded the Tribunal that Lord Justice Moses had stated in Baxendale-Walker:

> "A regulator brings proceedings in the public interest in the exercise of a public function which it is required to perform. In those circumstances the principles applicable to an award of costs differ from those in relation to private civil litigation. Absent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party has succeeded".

114. The Applicant submitted that these cases had to be investigated by the SRA and brought to the Tribunal, and reminded the Tribunal that although two Respondents had been found not guilty of any misconduct, there had been a long and fair hearing and indeed, the case had been brought before the Tribunal due to others within the Firm misconducting themselves, although the Applicant accepted this was not necessarily due to the conduct of either [RESPONDENT 2] or [RESPONDENT 3]. The Applicant submitted this was a proper case for a costs Order to be made against the Respondents as the case had been properly brought and it was entirely right for it to have been dealt with before the Tribunal. There were shortcomings in the Firm which justified the regulator investigating this Firm and that was a feature that the Tribunal should take into account.

115. The Applicant confirmed he had been instructed by the SRA to negotiate an appropriate figure if the Tribunal was to make an Order for costs. The SRA was prepared to offer a substantial reduction and the Applicant had been instructed not to request more than half of the costs claimed.

116. The Applicant was mindful of Mr Ahmed's financial situation and noted his Witness Statement dated 8 July 2011 contained details of his financial position and indicated clearly that he was not in a position to pay any costs. The Applicant was mindful of the case of Solicitors Regulation Authority v Davis [2011] EWHC 232 (Admin) and accepted Mr Ahmed had complied with the requirement set out in that case requiring him to put before the Tribunal sufficient information to persuade the Tribunal that he lacked the means to meet an Order for costs.

The Submissions on costs of the Second Respondent

117. Counsel on behalf of [RESPONDENT 2] confirmed [RESPONDENT 2] did not make any application for the SRA to pay his costs. He accepted the SRA was exercising a public duty and did not wish to make any application for costs.

118. Counsel for [RESPONDENT 2] referred the Tribunal to Rule 18 of the Solicitors (Disciplinary Proceedings) Rules 2007 which provided the Tribunal with a very wide discretion in relation to any Order for costs. That discretion had to be exercised with a consideration as to what was just and reasonable. Furthermore, Rule 18(4) made it clear that the Tribunal may also make an Order as to costs where any application or allegation was withdrawn or amended and where no allegation of misconduct had been proved against the Respondent. These considerations were particularly relevant in this particular case.

119. Dealing firstly with case number 10353/2009 which dealt with allegations 1-8 (many of which were withdrawn at the beginning of the substantive hearing), the allegations were divided into two areas. Allegations 1 and 2 related to forged documents and matters arising out of those and were against Mr Ahmed only. Allegation 8, which had been made against [RESPONDENT 2] related to him failing to make arrangements for the effective management of the Firm. All these allegations had been dismissed by the Tribunal at an early stage on Mr Ahmed and [RESPONDENT 2]'s applications of no case to answer. Mr Mason submitted that from the outset there was a significant body of persuasive evidence to indicate [RESPONDENT 2] had no responsibility for the forged documents. The evidence emanated from three Witness Statements, provided from three separate sources, a barrister, a solicitor and the client to the SRA. [RESPONDENT 2] had supplied those Witness Statements and had the SRA addressed those statements, it would have been clear that there was no case against [RESPONDENT 2]. The SRA had evidence before it that on the face of it established, [RESPONDENT 2] was not responsible for the forged documents and indeed, this was significant as the SRA considered that evidence so persuasive and cogent that it formed the foundation of those allegations. The Witness Statements were all included in the Rule 5 Statement and indeed, the SRA had called the barrister and the solicitor to give evidence before the Tribunal. From receipt of those statements at an early stage the SRA considered the evidence was sufficiently compelling so as to call it but that was wholly irreconcilable in relation to [RESPONDENT 2] as it exonerated him completely. The SRA did not address this point and instead wanted to use that evidence against him as well.

120. Counsel for [RESPONDENT 2] stressed that he did not make any criticism of Mr Battersby as Mr Battersby had not drafted the Rule 5 Statements but Counsel submitted it had been wholly unsustainable to issue the Rule 5 Statement in case number 10353/2009 against [RESPONDENT 2] as this was not cogent or reliable. The case was entirely flawed and should not have proceeded, and indeed, as a result of the forged documents being placed in the bundle at the trial of the case involving Mr C, his Honour Recorder Clayton had had to deal with a Wasted Costs application. [RESPONDENT 2] had been exonerated in his Judgment, yet notwithstanding that, the SRA maintained the case against [RESPONDENT 2] until 7 February 2011 when

the SRA made an application to withdraw the case against [RESPONDENT 2]. Counsel for [RESPONDENT 2] submitted that had the case been properly considered at an early stage, it should not have been pursued.

121. In relation to the second matter of case number 10548/2010, this related to failings in a number of property transactions and the Tribunal had not found any misconduct on the part of [RESPONDENT 2]. Again, Counsel for [RESPONDENT 2] criticised the manner in which the case had been brought although he stressed that he did not criticise Mr Battersby who had not been involved in drafting the Rule 5 Statement. The criticism was the way in which the case had been brought against all three Respondents. The case had been founded on the basis that all three Respondents were equally at fault for the inadequate management and supervision of the Firm and the Tribunal had accepted that in order to find a partner liable of such allegations, there had to be a finding of a systematic failure in the implementation of a proper system of management and supervision. Furthermore, the SRA should have considered the partners' liability within the restriction laid down in the case of Akodu v The SRA which unequivocally indicated there must be some personal responsibility on the part of the partners. Counsel submitted that this case had not been formulated with regard to that authority and if it had, the case was clearly flawed.

122. The case had been brought on the basis of alleged failings on 13 files and a result of those failings, it was alleged these three partners were liable. The case was legally flawed as it took no account of Akodu v The SRA and the case was factually flawed as the evidence even on the papers did not establish any systematic failure within the Firm. The person who had drafted the Rule 5 Statement did not have regard to this. Furthermore, what had occurred before the Tribunal was that a number of issues were significantly reduced or withdrawn during the course of the substantive hearing and indeed, the Applicant had adopted a proper position and made concessions where issues were clearly unsustainable. Counsel for [RESPONDENT 2] provided the Tribunal with a number of examples on the relevant transactions where there was clear evidence within the bundle of documents that the allegations against [RESPONDENT 2] were unsustainable.

123. Furthermore, an allegation had been made that the three Respondents had been reckless and this had been made in the broadest of terms. The Applicant properly did not pursue that allegation and withdrew it and this was a further example of a fundamental misunderstanding of the legal and practical position. There was no evidence at all of a culpable systematic failure and had the correct approach been adopted with regard to the legal and factual position, it was clear that the case was very narrow and could not be sustained.

124. Counsel for [RESPONDENT 2] accepted that while the SRA had a duty to investigate and contemplate any prosecution, it was not just or equitable, in these circumstances, to make an Order for costs against a Respondent where no allegations had been proved and many of the particulars relied upon had been withdrawn and/or amended during the course of the hearing. That represented a proper evaluation of the case that should have been undertaken at the outset.

125. Counsel for [RESPONDENT 2] submitted that if the Tribunal did not accept his submissions on costs, then any Order for costs should be extremely limited to the

early part of the investigation process which related only to the initial investigation. The Tribunal was reminded that there was evidence within the papers presented by the Authority that did not support a number of the Particulars pursued and the SRA should not be allowed any costs relating to those matters in particular. The claim had been flawed legally and factually and the SRA had had no regard for the restriction on individual partners or individual culpability.

The Submissions on costs by the Third Respondent

126. [RESPONDENT 3] adopted the submissions made by Mr Mason, Counsel for [RESPONDENT 2], and reminded the Tribunal that the Costs Schedule appeared to cover a number of different matters, and that his involvement had only been on case number 10548/2010, and related only to allegations 9 and 10 of which he had been completely exonerated. Furthermore, [RESPONDENT 3] reminded the Tribunal that the transactions complained of were all matters at the Huddersfield office over which he had had no responsibility at all and some matters had taken place before he became a partner of the practice. He submitted if any Order for costs were to be made against him, then the Tribunal should take into account proportionality.

127. There were some issues that [RESPONDENT 3] wished to highlight which had taken place before the Applicant had been instructed by the SRA to issue the Rule 5 Statement. These related to discussions that had taken place between the SRA and [RESPONDENT 3] prior to the matter being referred to the Tribunal. Although the SRA had spent much time investigating this case, [RESPONDENT 3] submitted that a great deal of that time and effort had been used in a misguided manner.

128. [RESPONDENT 3] referred the Tribunal to a letter sent to him by the SRA on 23 September 2009 which requested his comments on a number of issues and which attached the Forensic Investigation Report. [RESPONDENT 3] had replied to this letter on 29 September 2009 and had explained that the original conveyancing files were no longer with the Firm due to their removal by the Police who had been investigating Mr Rashid Farid. He stated that as a result of this the Respondents were experiencing difficulty in responding fully to some of the points raised in the SRA's letters. [RESPONDENT 3] had written to the SRA again on 6 October 2009 explaining that he could not meet the deadline they had given for the responses to be sent to them and also reminding them that they had agreed to waive the requirements on the Respondents to respond within the timeframe set, and that the SRA had indicated they would revert to the Respondents to let them know how they required the Respondents to proceed in light of the fact that the files were no longer within their possession.

129. The SRA wrote to [RESPONDENT 2] on 14 October 2009 stating that there were some queries within their letter of 23 September 2009 which did not require access to the relevant files and the SRA required an initial response to those questions by 27 October 2009. They required a substantive response to the remaining questions by 10 November 2009 on the basis that they understood the Police had allowed the Respondents access to the files at a mutually convenient time.

130. On 29 October 2009 [RESPONDENT 3] had written to the SRA again explaining that arrangements had now been made with the Police to allow the Respondents to access

the files and in the meantime [RESPONDENT 3] would respond to the questions raised to the best of his knowledge without the files. [RESPONDENT 3] reminded the Tribunal that that letter was dated 29 October 2009 and the cases the SRA had been requested further information about were from 2005-2006, some three years earlier.

131. [RESPONDENT 3] stated that he had given responses to the SRA and by 12 November 2009 he had gained access to the files and given the SRA all the information requested. However, in January 2010 the SRA had written to the Respondents informing them that they were to be referred to the Tribunal. That letter referred only to the SRA's Report and did not make reference to any of the responses sent by [RESPONDENT 3]. He raised this issue with them at the time and the SRA wrote back again referring only to the Respondents preliminary qualified response given on the basis that the Respondents still needed access to the files from the Police. A subsequent letter from the SRA later accepted that the SRA had not taken note of the Respondents detailed response but the SRA was still of the view that the matter needed to be referred to the Tribunal. [RESPONDENT 3] submitted that the SRA could have dealt with these issues if they had considered the papers properly and correctly at that stage and a lot of the costs may not have been incurred. Instead, what subsequently happened was that a number of cases were exemplified in the Rule 5 Statement which had not even been mentioned in the Forensic Investigation Report and therefore the Respondents had never been given a chance to provide any explanation on those. [RESPONDENT 3] submitted that it was extremely unfair that the Respondents had not been given a proper opportunity to deal with these issues prior to the Rule 5 Statement being issued and the matter coming before the Tribunal.

132. [RESPONDENT 3] had given evidence before the Tribunal to confirm that he did not have any role at the Huddersfield office, he had played no part in any of the shortcomings and had no reason to suspect that there had been any failings at the Huddersfield office. He submitted that he had cooperated fully with the SRA and had been open throughout and there was no reason for him to have been brought before the Tribunal.

133. [RESPONDENT 3] referred the Tribunal to the case of Donald Charles O'Rourke and Desmond John McCarthy [10503/2010] in which one of the partners had been found liable for breaches of the Solicitors Accounts Rules on a strict liability basis even though he had had no involvement with the accounts, and had no reason to have known of the matters which led to the proceedings. In that case the Tribunal had made no Order for costs against that Respondent to reflect the apportionment of culpability. [RESPONDENT 3] asked the Tribunal to take this case into account when considering his liability on the question of costs.

The Submissions of the First Respondent, Mr Shaqil Ahmed on costs

134. Mr Ahmed adopted the submissions made by Counsel for [RESPONDENT 2] and [RESPONDENT 3]. He reminded the Tribunal that the Costs Schedule was global and no breakdown had been provided of the costs that had been incurred in relation to each individual case. He also reminded the Tribunal that allegations 1 and 2 in case number 10353/2009 had been dismissed by the Tribunal and submitted that there should be no Order for costs in relation to that case.

135. On case number 10548/2010, he adopted the submissions of Counsel for [RESPONDENT 2] and [RESPONDENT 3] in relation to allegations 9 and 10. Mr Ahmed reminded the Tribunal that he was working within the litigation department, he did not deal with conveyancing and had had no involvement with the Huddersfield office. He had not been aware of the SRA's investigation until they wrote to him some time later, nor had he been given the opportunity to consider any of the files or respond to the SRA's questions. In relation to allegations 11 and 12, Mr Ahmed had admitted these allegations in October 2007 to Stephanie Young, albeit he did not accept that he had been dishonest. He submitted the costs should be very minor indeed and noted again there was no clear breakdown within the Costs Schedule apportioning costs to the various allegations and cases.

136. Mr Ahmed referred the Tribunal to his Witness Statement dated 8 July 2011 which set out details of his financial circumstances. He also referred the Tribunal to the case of SRA v Davis and submitted that he had complied with the requirements of providing evidence of his financial circumstances. He was not in any position to pay costs. Mr Ahmed submitted the SRA's global prosecution of all the Respondents had been incorrect and improper, and that the SRA should have focused on individual culpability and had failed to do so.

The Tribunal's Decision on Costs

137. The Tribunal had considered very carefully the submissions of all the Respondents on the issue of costs, the submissions of the Applicant, the documents provided and the manner in which the case had been prosecuted and subsequently pursued during the course of the lengthy hearing.

138. Dealing first with case number 10353/2009 which was with reference to allegations 1-8 against Mr Ahmed and [RESPONDENT 2] only, the Tribunal was mindful that no allegations had been proved but accepted that a regulator should not be deterred from pursing cases for fear of an Order for costs being made against the regulator. In this case the Respondents did not make any application for costs against the SRA but also submitted they should not be ordered to pay any of the SRA's costs

139. The Tribunal was satisfied that as a result of [RESPONDENT 2] providing the SRA with Witness Statements from Mr Qazi, Mr Desai and the client, Mr C, [RESPONDENT 2] had provided the SRA with strong and cogent evidence to support the position that no case should have been brought against him to the Tribunal. Furthermore, Recorder Clayton had been satisfied in his Judgment that [RESPONDENT 2] was not involved with the forged documents at all and he stated in his Judgment that there was no question of [RESPONDENT 2] being responsible for improper conduct in relation to the preparation of the forged documents.

140. The Tribunal had dismissed allegations 1, 2 and 8 on the basis that there had been a technical error in the drafting of the case in that the conduct and evidence relied upon predated the SCC and the allegations could not be proved as drafted. Furthermore, the Tribunal was also mindful that the Applicant had withdrawn allegations 3, 4, 5, 6 and 7 at a very early stage, having had discussions with the Respondents and having taken the view that those allegations could not be proved. Accordingly, the Tribunal

was satisfied that there should be no Order for costs in relation to allegations 1, 2 and 8 on case number 10353/2009.

141. Concerning case number 10548/2010, allegations 9 and 10 had been pursued against all three Respondents and the Tribunal had found these allegations were not proved as the Tribunal had found that there was no systematic failure within the Firm. Furthermore, the Tribunal was mindful that a large number of issues within the Particulars relied upon were withdrawn and/or reduced considerably during the course of the hearing. It was clear to the Tribunal that if the SRA had considered all the documentation properly at the outset, the SRA would have come to the same conclusion as the Tribunal in that there was no systematic failure within the Firm, and that there was certainly no personal culpability on the part of any of these Respondents. The Tribunal accepted the submissions made by Mr Mason on behalf of [RESPONDENT 2] and [RESPONDENT 3] in relation to allegations 9 and 10. The Rule 5 Statement had been drafted very widely and did not focus on any actual culpability by these Respondents and had the issues been properly investigated at the outset, the SRA could have taken a proper view of the matter. The Tribunal had found that none of these Respondents were responsible for any faults in either their supervising or managerial duties, and had no personal culpability, and that the failures were such that could be expected in any well run organisation. Whilst the Tribunal took into account the case of O'Rourke and McCarthy referred to by [RESPONDENT 3], the Tribunal was satisfied that this case had not been properly brought by the SRA and there was clear evidence within the papers supplied by the SRA that a number of the particulars pursued were unsustainable. In the circumstances, the Tribunal Ordered that there should be no Order for costs in relation to allegations 9 and 10.

142. Dealing with allegations 11 and 12 which were against Mr Ahmed only, these were the only allegations which had been proved, bar dishonesty and the Applicant had accepted the costs relating to those particular allegations against Mr Ahmed would amount to approximately £4,000 to £5,000. The Tribunal therefore Ordered Mr Ahmed to pay the costs of the SRA in the sum of £5,000. However, the Tribunal took into account the case of SRA v Davis and noted from the evidence provided by Mr Ahmed that he was impecunious and did not have the means to pay any costs in view of the fact that he had been unemployed for a substantial period of time due to his ill health and was currently reliant upon State benefits. In the circumstances, the Tribunal Ordered that the Order for costs against Mr Ahmed was not to be enforced without leave of the Tribunal.

Statement of Full Order

143. The Tribunal Ordered that the Respondent, Shaqil Ahmed of 5 Union Street, Brierfield, Nelson, Lancashire, BB9 5AL, solicitor, be Suspended from practice as a solicitor for an indefinite period to commence on the 22nd day of July 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 12th day of October 2011
On behalf of the Tribunal

D. Green
Chairman