

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RAJESH SINGH PATHANIA, solicitor (the First Respondent)
and [RESPONDENT 2] – NAME REDACTED, solicitor (the Second Respondent)

Upon the application of Jayne Willetts
on behalf of the Solicitors Regulation Authority (“SRA”)

Mr K W Duncan (in the chair)
Mr J C Chesterton
Mr M Hallam

Date of Hearing: 22nd September 2010

FINDINGS & DECISION

Appearances

The matter came before the Tribunal on 22 September 2010 for a substantive hearing. The Applicant, Ms Jayne Willetts, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondents were represented by Mr Peter Cadman. The Second Respondent appeared. The First Respondent did not appear and has been in India since October 2008 as a result of difficulties with his immigration status. Mr Cadman confirmed that he had full instructions from the First Respondent and invited the Tribunal to proceed in his absence. The Tribunal was satisfied that the First Respondent was aware of the proceedings and had been able to instruct his legal representative, and so directed that the hearing should proceed.

Allegations

Proceedings were commenced against the Respondents by way of an Application and supporting statement dated 9 December 2009. Further allegations were made against the Respondents in a Supplementary Statement dated 8 July 2010.

The allegations against both Respondents in the original application are that:-

1. Their books of account were not in compliance with the Solicitors' Accounts Rules 1998 ("SAR 1998") in that:
 - (i) Accounting records were not kept properly written up to show their dealings with client and office account - Rule 32.
 - (ii) There was a failure to hold client money in a client bank account - Rule 15(1).
 - (iii) Monies were improperly withdrawn from client account otherwise than in accordance with Rule 22(1).
 - (iv) Funds belonging to the First Respondent were held in the client bank account - Rule 15(2) and Guidance Note (xii) to Rule 13.

The allegations against the First Respondent in the original application are that:-

2. He acted where there was a conflict of interest between the interests of his clients contrary to Rules 1.04, 1.06 and 3.01 of the Solicitors Code of Conduct 2007 ("SCC 2007").
3. In acting where there was a conflict of interest between his interests and the interests of his lender client he acted contrary to Rule 1(c) and 1(d) of the Solicitors Practice Rules 1990 ("SPR 1990") and Principle 15.04 of the Guide to Professional Conduct of Solicitors (8th edition).
4. He failed to disclose material facts to his lender client contrary to Rule 1(a), 1(c), 1(d) and 1(e) of the SPR 1990.

The allegations against the First Respondent in the Supplementary Statement are that:-

5. By failing to redeem a mortgage owing to Alliance & Leicester plc he failed to act in the best interests of his clients and failed to provide a good standard of service in breach of Rules 1.04 and 1.05 of the SCC 2007.
6. By failing to redeem a mortgage owing to HSBC he failed to act in the best interests of his clients and failed to provide a good standard of service in breach of Rules 1.04 and 1.05 of the SCC 2007.
7. He acted for a client Mr M where his own interests conflicted with those of his client in breach of Rule 3.01(b) of the SCC 2007.
8. He used his position after termination of the retainer to take unfair advantage of Mr M in breach of Rule 10.01 of the SCC 2007.

The allegations against both Respondents in the Supplementary Statement are that:-

9. They failed to discharge the premium for professional indemnity insurance run off cover in breach of the Solicitors Indemnity Insurance Rules 2008.

Mr Cadman confirmed that the Respondents both admitted allegation 1, and that the First Respondent admitted allegation 2. The First Respondent denied allegations 3 and 4. The First Respondent admitted allegations 5 and 6, and he denied allegations 7 and 8. Both Respondents admitted allegation 9.

Factual Background

1. The First Respondent was born in 1965. He was admitted as a solicitor on 15 January 2003. The Second Respondent was born in 1969. She was admitted as a solicitor on 15 July 2003.
2. The Respondents practised in partnership together as Newland Solicitors, 25 New Road, London E1 1HE until there was an intervention into the practice on 1 June 2009. The First Respondent was the sole equity partner. The Second Respondent was a salaried partner.
3. On 4 March 2009 an SRA investigation commenced at the Respondents' offices. The First Respondent was not present as he was delayed in India due to problems with his entry visa to the UK. The Second Respondent was present during the inspection. Accounting records as at 31 January 2009 were produced.
4. A Forensic Investigation Report dated 19 March 2009 was prepared.

Allegation 1 (both Respondents)

5. The SRA Investigation Officer ("IO") identified that the accounting records were not properly written up and as a result the IO was unable to compute the firm's liabilities to its clients as at the extraction date of 31 January 2009. The failures are exemplified as follows:-
 - The second reconciliation statement was not in accordance with the firm's list of liabilities produced for inspection.
 - Client bills had not been posted on individual client ledger accounts.
 - There was a shortage on client account of £46,606.12.
 - Amounts were allocated to incorrect client ledger accounts.
6. Client monies were held outside client account in that the sum of £200,000 was transferred from the firm's client account to the First Respondent's personal bank account on 24 October 2008. The First Respondent maintained that he had transferred the monies to his personal bank account due to concern over the banking crisis. He claimed that during the period 29 October 2008 to 31 December 2008 he returned these monies to his client by a series of seven cheques and three online transfers. None of these purported payments has been verified as having been cleared through the First Respondent's personal bank account by the production of any banking records such as bank statements.

7. Between 3 October and 22 December 2008, the sum of £750,999 by eleven separate payments was improperly transferred from the firm's client account to office account. The First Respondent explained in a letter from Russell Cooke Solicitors dated 20 May 2009 that monies were transferred from client account to office account for a variety of reasons including the banking crisis and also to enable payments to be made on behalf of clients whilst the First Respondent was out of the country.
8. In addition the IO noted other unexplained payments from client account totalling £60,000. An explanation for these payments has not been provided.
9. Funds belonging to the First Respondent were credited to client account. This breach occurred when the First Respondent acted for himself in the purchase of 62 Coopers Close, London for £250,000 with the assistance of a mortgage of £224,951. The transaction was completed on 7 April 2006. Office copy entries are attached showing the First Respondent registered as proprietor in the name of "Rajesh Singh".
10. The Respondents, as principals in the practice, are responsible for ensuring compliance with the Solicitors Accounts Rules by themselves and everyone working in the practice in accordance with Rule 6 of the SAR 1998.

Allegations 2 – 4 (First Respondent)

11. The First Respondent acted in the same transaction (sale, purchase and mortgage of 5 Silvester House) for the vendor, the purchaser and the mortgage lender where there was a conflict of interest. Completion took place on or around 2 October 2008. The IO was unable to locate any documentary evidence to establish that the First Respondent was permitted to act for all three parties in accordance with the requirements of Rules 3.09 and 3.10 of the SCC 2007. The property remains registered in the name of the vendor according to recent office copy entries.
12. The First Respondent acted for himself in the purchase of a property at 62 Coopers Close. He also acted for his mortgage lender, Birmingham Midshires. Completion took place on 7 April 2006. The First Respondent failed to notify the lender that he was acting on his own behalf. He thereby disregarded Part 1 Provision 1.14 of the Council of Mortgage Lenders (CML) Handbook prohibiting him from acting on his own behalf unless specifically authorised by the lender. The First Respondent thereby acted where there was a conflict between his interests and the interests of his lender client.
13. Further, the First Respondent used the name of "Rajesh Singh" on the draft contract. The name "Rajesh Singh Patania" had originally been typed on the document. However, the name "Patania" was subsequently crossed out. The final version of the contract exchanged on 7 April 2006 was in the name of "Rajesh Singh".
14. The Memorandum of Exchange of Contracts shows the name of the purchaser as "Rajesh Singh" and the name of the identity of the person who exchanged as "Rajesh Singh". This document would not be forwarded to the lender, only to the vendor's solicitors.

15. The Certificate of Title showed the borrower as being "Rajesh Singh". The Certificate of Title was signed "R S Pathania Solicitor". The mortgage instructions were issued in the name of "Rajesh Singh".
16. The property was registered in the name of "Rajesh Singh" as shown on the office copy entries.
17. The First Respondent had applied to the Law Society for admission as a solicitor in the name of "Rajesh Singh". An email from the Law Society revealed that the First Respondent had on his Qualifying Lawyers Transfer Test ("QLTT") file, used the name of "Rajesh Singh Pathaia". The First Respondent confirmed by email dated 5 January 2003 that he would like his name registered as "Rajesh Singh Pathania" on the Roll.
18. The First Respondent had used the name of "Rajesh Kumar Singh Pathania" for the purposes of his appeal to the Asylum & Immigration Tribunal. The First Respondent's Residence Permit shows the name of "Rajesh Singh Kumar".
19. An email from the First Respondent's solicitors dated 19 August 2009 states that the First Respondent's full name is "Rajesh Kumar Singh Pathania" which is the name that he has had since birth and is on all his identification. This is not the name used consistently by the First Respondent.

Allegation 5 (First Respondent)

20. In September 2008, Mr A instructed Newland Solicitors to act on his behalf in connection with the remortgage of his property at 8 Sturge Avenue, London. Mr A was the sole proprietor of the property subject to a charge dated 29 September 2006 to Alliance & Leicester plc.
21. The new mortgagee, Halifax, also instructed Newland Solicitors to act on its behalf. The mortgage instructions dated 2 September 2008 imposed conditions, including that "The borrower must give us first mortgage over the property".
22. The mortgage offer dated 2 September 2008 to Mr A provided for a mortgage from Halifax plc of £219,000 over a 30 year term. The valuation of the property was £295,000.
23. On the file is a copy of a retainer letter dated 2 September 2008 addressed to Mr A and providing for Newland Solicitors to act on behalf of Mr A in connection with the remortgage of his property. The work specified to be carried out by Newland includes "Redeeming your existing mortgage".
24. The Certificate of Title dated 2 September 2008 signed by Rajesh Singh Pathania was submitted to the Halifax and requested draw down of the mortgage funds for completion on 3 September 2008. The sum of £218,970 (£219,000 advance less CHAPS fee of £30) was credited to the Respondents' client account on 3 September 2008.

25. The Halifax mortgage deed was signed by Mr A and witnessed by Rajesh Singh and was dated 3 September 2008.
26. The funds for the new mortgage were received by Newland on 3 September 2008. However the existing mortgage to the Alliance & Leicester plc was not redeemed.
27. On 1 October 2008, Newland Solicitors paid to Mr A the sum of £3,000 by telegraphic transfer.
28. On 17 March 2009, an application to change the register was submitted to the Land Registry. The application referred to the discharge of the charge and to a new charge. The application was rejected by the Land Registry by email dated 19 March 2009 due to the failure to provide evidence of the discharge of the existing mortgage to Alliance & Leicester plc. An extension of time was granted by the Land Registry and a final cancellation date of 19 May 2009 imposed, but the application was never completed.
29. On 15 April 2009 Newland Solicitors paid to Mr A the sum of £3500 by cheque drawn on client account. This sum was cleared through client account on 21 April 2009.
30. Mr A remains as sole proprietor of the property, subject to a mortgage to Alliance & Leicester plc and to a unilateral notice in favour of Halifax plc.
31. Mr A complained to the Legal Complaints Service (“the LCS”) by letter dated 4 June 2009.
32. On 7 July 2009 the LCS wrote to the Respondents requesting documentary evidence and an explanation of the failure to follow Mr A’s instructions and redeem the mortgage.
33. On 20 July 2009, the Second Respondent replied to the LCS by email confirming that there had been an intervention into the firm; that the First Respondent was “held up” in India; and that she could not assist further as she did not carry out any conveyancing work. Further correspondence was sent to the Respondents but there was no response.

Allegation 6 (First Respondent)

34. In September 2008, Mr C instructed Newland Solicitors to act on his behalf in connection with the remortgage of his property at Apartment 279, Building 50, Argyll Road, Woolwich, London SE18 6PP. Mr C was the sole proprietor of the property, subject to a charge dated 27 April 2006 to HSBC.
35. The new mortgagee Halifax also instructed Newland Solicitors to act on its behalf. The mortgage instructions dated 9 September 2008 imposed a condition that “The borrower must give us first mortgage over the property”.
36. The mortgage offer dated 9 September 2008 to Mr C provided for a mortgage from Halifax plc of £273,500 over a 20 year term. The valuation of the property was £305,000.

37. On the file is a copy of a retainer letter dated 24 September 2008 addressed to Mr C and providing for Newland Solicitors to act on behalf of Mr C in connection with the remortgage of his property. The work specified to be carried out by Newland includes "Redeeming your existing mortgage".
38. The Certificate of Title, dated 15 September 2008, signed by Rajesh Singh Pathania was submitted to the Halifax by fax dated 15 September 2008 and requested draw down of the mortgage funds for completion on 18 September 2008. The sum of £273,500 was credited to the Respondents' client account on 18 September 2008.
39. The Halifax mortgage deed was signed by Mr C and dated 18 September 2008.
40. The funds for the new mortgage were received on 18 September 2008. However the existing mortgage to the HSBC was not redeemed.
41. On 12 March 2009, Newland confirmed to Halifax that they were dealing with the registration formalities and were awaiting evidence of discharge.
42. On 17 March 2009, an application to change the register was submitted to the Land Registry by letter of the same date with a fee of £70. The application was rejected by the Land Registry by letter dated 19 March 2009, due to the failure to provide evidence of the discharge of the existing mortgage to HSBC. An extension of time was granted by the Land Registry and a final cancellation date of 20 May 2009 imposed, but the application was never completed. On 20 May 2009, the Land Registry cancelled the application.
43. On 14 May 2009, the First Respondent wrote to HSBC advising that they were acting in the remortgage of the property and requesting a redemption statement calculated to 15 May 2009 and also requesting the Title Deeds and documents.
44. On 15 May 2009, HSBC faxed to the First Respondent a redemption statement for the existing mortgage. The mortgage was not redeemed.
45. Solicitors instructed on behalf of Mr C corresponded with Halifax plc on 30 June 2009 and a response was received on 8 July 2009, confirming that the funds had been advanced to Newland Solicitors for the purpose of repaying the HSBC mortgage.
46. Mr C remains as sole proprietor of the property, subject to a mortgage to HSBC.
47. Mr C complained to the LCS by letter dated 30 May 2009.
48. On 16 June 2009, the LCS wrote to the Respondents requesting documentary evidence and an explanation of the failure to follow Mr C's instructions to redeem the mortgage.
49. The Second Respondent replied to the LCS by email dated 30 June 2009 confirming that the First Respondent dealt with the conveyancing files; that she did not carry out conveyancing; and that the First Respondent had left the UK for India in October 2008.

Allegations 7 – 8 (First Respondent)

50. Mr M instructed Newland Solicitors to act on his behalf in connection with defending a claim against him by MP Ltd relating to a loan.
51. Mr M instructed Newland to act on his behalf in February 2008. The First Respondent had overall conduct of the case on Mr M's behalf but, on occasions, other fee earners in the firm assisted him.
52. On 2 May 2008, Newland reminded Mr M that he had agreed to remortgage his property in order to meet the legal costs (£30,984.06) owing to the Respondents' firm and further costs as required.
53. By letter dated 12 June 2008, Mr M was advised that the claim against him should be settled. A further letter, also dated 12 June, again advised Mr M that the claim should be settled.
54. The advice to settle the claim was repeated on 16 June 2008 as follows:-
- “No lawyer is going to be able to advise you that no money at all need be repaid to M or L. We stress that it is not in your best interest to ignore this opportunity to settle the matter with RL and you need to provide us with your instructions as soon as possible before matters escalate and the opportunity to settle is lost.
-If however we do not hear from you further then we shall have no alternative but to apply to the court to come off the record and cease acting for you. There is thus a strong likelihood that the amounts claimed against you shall result in you losing your home and being evicted. We shall further take steps to secure our fees.”
55. By letter dated 1 July 2008, Mr M was asked for details of his mortgage offer and stated as follows:-
- “.....we will apply to the court to come off the record and shall no longer be in a position to represent you. Thereafter we shall take steps to secure our fees in this matter.”
56. On 30 July 2008, in separate proceedings in which they were claimants, the Respondents obtained a judgment against MP Ltd for £82,500 plus costs. Mr M had no knowledge of this.
57. Mr M was informed on 7 August of a hearing on 12 August 2008 and that his instructions were urgently required.
58. On 18 August 2008, Mr M was reminded of the outstanding costs and advised that the firm was intending to take security for costs by way of a Second Charge on Mr M's property. Mr M was also asked to sign a Legal Charge and to seek independent legal advice.

59. A further letter was sent to Mr M on 27 August 2008, requiring him to sign the Legal Charge and asking for a payment on account of costs of £1,000. On 22 September 2008, Mr M was chased again for a response to the offer of settlement.
60. On 2 October 2008, Mr M received a letter from Newland, settled by counsel, informing him that the Respondents had, on 30 July 2008, obtained a judgment against MP Ltd for £82,500 plus costs. Mr M was further advised that the Respondents would enforce the judgment by making an application for a third party debt order against Mr M, and that Mr M should seek alternative legal representation. A draft invoice/statement was attached to this letter claiming total fees of £38,921.86.
61. Mr M had, until that date, been represented by the Respondents' firm in connection with the litigation involving MP Ltd. He had no previous knowledge that the Respondents were parties to litigation involving MP Ltd.
62. Newland subsequently issued proceedings against Mr M for outstanding fees and served a Reply to Defence. Attached to that Reply to Defence was a client care letter dated 12 December 2007 alleged to have been signed by Mr M. The letter contains the following paragraph:

“We also like to stress that there may be a potential conflict of interest between you and Newland as we have already started separate money claim against MPL through another firm of solicitors. However, you are happy to waive any such conflict of interest as you want us to pursue the matter against M/MPL”
63. Mr M had not previously seen this client care letter until he was served with the Reply to Defence. Likewise he is unable to identify that it was his signature that appeared on the document.
64. The First Respondent rendered invoices to Mr M on 12 March 2008 for profit costs of £3,937.50; on 31 March 2008 for £7,500 and on 10 April 2008 for £5,000. A final invoice dated 2 October 2008 was submitted to Mr M listing six unpaid invoices between January and May 2008 and a further final charge of £7,000 plus VAT and disbursements up to 2 October 2008. The total sum claimed was £38,921.86.
65. By letter dated 15 October 2008, Mr M instructed Newland that he no longer wished the firm to act on his behalf and that he required a remuneration certificate in respect of their costs.
66. On 10 December 2008, the First Respondent lodged priority searches in his name and in the name of his firm against Mr M's property. Confirmation of this was by letter dated 12 December 2008.
67. On 12 December 2008, Mr M wrote to the Respondents complaining about the conflict of interest and overcharging.
68. On 15 December 2008, the Land Registry informed the First Respondent that there had been a complaint and that the searches were only permitted to protect a

transaction for value such as a Legal Charge. The First Respondent was asked to either provide a copy of the Charge Deed or to withdraw both searches.

69. By letter dated 16 December 2008, Mr M complained to the SRA about the First Respondent.
70. SMR Solicitors, instructed to act on behalf of Mr M in the remortgage, complained to Newland about the priority search by letter dated 17 December 2008.
71. On 23 December 2008, the Land Registry sent a reminder to the First Respondent as he had not responded.
72. On 6 January 2009, Newland wrote to the Land Registry explaining that as Mr M owed them money for fees and for a third party debt order then they were trying to prevent Mr M selling his property to his wife and avoiding the debts. Reference was also made to an application for an injunction.
73. By letter dated 7 January 2009, the Land Registry confirmed that debt actions did not afford Newland any proprietary interest in the property. The First Respondent was further advised that the searches had been wrongly lodged and that a written withdrawal should be submitted. The First Respondent failed to submit a written withdrawal and the searches therefore expired by effluxion of time.
74. The Land Registry also advised that an injunction could constitute a pending land action so that a notice or restriction could be registered against the property. It referred to its Practice Guide 19 paragraph 8.13 which defines a pending land action as an action or proceeding in court relating to land or any interest in or charge on land.
75. Notwithstanding the contents of this letter from the Land Registry the next day [8 January 2009] an application for a without notice injunction was made. The evidence in support refers both to the recovery of outstanding fees and to the third party debt order. The application was refused on 8 January 2009.
76. Copies of the papers were served upon Mr M on 8 January 2009. Mr M instructed Chamberlain Martin Solicitors (“CMS”) to act on his behalf.
77. Mr M further complained to the LCS by letter dated 8 January 2009, and provided further information by letter dated 3 February 2009.
78. Mr M served a witness statement in connection with the proceedings on 12 January 2009. On 13 January 2009, Newland informed the court and Mr M’s solicitors that the court “has no jurisdiction for freezing injunction order” and applied to vacate the hearing on 14 January.
79. By letter dated 4 February 2009, CMS requested Newland to provide a copy of the client care letter by way of discovery. Newland responded on 9 February 2009 confirming that they would provide the same by way of disclosure “as per usual process”. A Reply to Defence was served on 23 April 2009 and a list of documents on 7 May 2009.

80. The SRA caseworker wrote to the First Respondent on 4 June 2009 requesting his explanation for the matters complained of by Mr M. There was no response.
81. A further letter was forwarded to the First Respondent on 18 June 2009.
82. On 1 July 2009, Russell Cooke Solicitors responded on behalf of the First Respondent stating that he was out of the country and there was nothing to add to the replies already provided to the LCS. The caseworker responded by email dated 3 July 2009 requiring a specific response to the conduct issues.
83. The First Respondent replied on 5 October 2009 stating that he was held up in India and that he would like to respond fully upon his return to the UK. The First Respondent was advised by letter dated 17 November 2009 that the matter would be added to the existing disciplinary proceedings.

Allegation 9 (both Respondents)

84. On 25 February 2010, the brokers for Newland Solicitors, PYV Legal, complained to the SRA that the partners were in policy default as they had failed to discharge the premium (£15,710.63) for professional indemnity insurance run off cover. The run off cover became necessary as a result of the intervention and commenced on 28 May 2009.
85. There is a policy default in accordance with the Solicitors Indemnity Insurance Rules 2008 if there is a failure on the part of a firm or any principal of that firm to pay for more than two months after the due date for payment all or any part of the premium in respect of a policy. In this case the premium fell due on 28 May 2009 and therefore is more than two months overdue. A principal of the firm is defined as a partner for the purposes of the Rules. The definition is not restricted to equity partners. Accordingly both Respondents are in policy default.
86. An SRA caseworker asked the Respondents for an explanation by letters dated 19 March 2010. There was no response from the Respondents. Reminder letters were sent on 12 April 2010.
87. The Second Respondent replied by email dated 4 May 2010 explaining that she had not had any information from the insurers regarding the indemnity insurance after the intervention. The caseworker replied by email to both Respondents on 5 May 2010 providing contact details for the brokers. There was a further exchange of emails with the Second Respondent on 11 May 2010. There was no further communication from either Respondent.
88. The brokers confirmed by email dated 24 May 2010 that they had not heard from the Respondents and that the premium remained unpaid.

Witnesses

89. Mr M gave evidence before the Tribunal with the assistance of an interpreter. He was questioned by Mr Cadman on behalf of the Respondents.

Submissions

90. In relation to allegation 4, Ms Willetts said that because of the use of different names by the First Respondent, it was not possible for the lender to identify that the solicitor dealing with the conveyancing on its behalf and the purchaser of the property were one and the same person. The First Respondent failed to inform his lender client that he was acting on his own behalf and that the solicitor signing the Certificate of Title was the mortgagor.
91. With regard to allegations 7 and 8, the SRA contended that even if (which was not accepted) Mr M had received and signed the client care letter, such purported consent would not have permitted the First Respondent to act in circumstances where his interests conflicted with those of his client. The guidance notes to Rule 3.01(2)(b) at paragraph 39 provide that there are no circumstances where a solicitor can act for a client whose interests conflict with the solicitors' own interests.
92. It was suggested that Mr M knew that Newland Solicitors were acting in the proceedings against MP Ltd. Mr M maintained that this was not correct.
93. By acting for Mr M in litigation at the same time as being involved in litigation against MP Ltd, the First Respondent was aware of the claim by MP Ltd against Mr M and was, therefore, able to use this knowledge to his own advantage, in particular, to consider an application for a third party debt order against Mr M. As a result, the First Respondent's interests conflicted with the interests of his own client.
94. The SRA averred that, as the First Respondent had no proprietary interest in Mr M's property, he had no legal entitlement to lodge a priority search with the Land Registry to prevent Mr M dealing with his property either by way of sale or re-mortgage. Further, the First Respondent failed to lodge a written withdrawal with the Land Registry when requested to do so thereby causing his former client further distress and inconvenience. In such circumstances the First Respondent used his position to take unfair advantage of Mr M after termination of his retainer with the firm.
95. Mr Cadman argued that nobody was misled by the First Respondent's use of different names. There was no suggestion that he had acted dishonestly. The building society knew who he was. The mortgage application gave full information about address, occupation and that he was a partner in Newland Solicitors.
96. With regard to Mr M, there was no conflict of interests. The Respondent and Mr M shared a common opponent. The issue of conflict arose, potentially, only at the point where the Respondent sought to protect his interest. At that point, he acted properly in writing to Mr M in the terms of the letter. There was no suggestion that the Respondent's handling of Mr M's case had been in any way negligent.
97. In addition to the oral submissions and witness testimony, the Tribunal reviewed all the documents submitted, which included:
 - the Application dated 9 December 2009 together with the supporting statement and documentation (exhibit JBW1);

- the Supplementary Statement dated 8 July 2010 together with supporting documentation (exhibit JBW2);
- references in support of the Respondents and the second Respondent's curriculum vitae, together with confirmation that she had recently submitted her PhD thesis.

Findings as to Fact and Law

98. The Tribunal noted that the First Respondent admitted allegations 1, 2, 5, 6 and 9, and that he denied allegations 3, 4, 7 and 8. The second Respondent only faced allegations 1 and 9, and she admitted both allegations.
99. The Tribunal reminded itself that the burden of proof is on the Applicant and that a disciplinary allegation is only substantiated if the Tribunal is satisfied so that it is sure that the allegation is proved.
100. The Tribunal was satisfied that the evidence substantiated the allegations and therefore found all allegations proved.
101. With regard to allegations 3 and 4, the Tribunal found that the building society did not have full knowledge of all material facts. There was no reason for the building society to think that the same person was involved in the different aspects of the transaction. The first Respondent failed to comply with an explicit requirement.
102. With regard to allegations 7 and 8, the Tribunal found that there was a conflict from the very start of the First Respondent's dealings with Mr M. The Tribunal accepted the evidence given by Mr M, including the fact that he was not aware of the litigation between Newland Solicitors and MP Ltd. Further, the Tribunal concluded that the First Respondent had used information he obtained because he was representing Mr M to his own advantage and against his client's interests.

Previous disciplinary findings

103. After the Tribunal had announced its findings in relation to the allegations against the Respondents, the Tribunal was informed that, on a previous occasion, disciplinary allegations against the Respondents had been substantiated and a sanction had been imposed by the Tribunal.
104. That case had come before the Tribunal on 29 July 2008. Both Respondents faced allegations regarding improperly withdrawing, or allowing to be withdrawn, client money from their client account; failing upon discovery to remedy promptly a shortage of money in client account; and failing to ensure that they recorded all dealings with client money on the client side of a separate ledger account for each client. In addition, the First Respondent alone faced allegations that he failed to supervise properly non-qualified staff in relation to conveyancing work; that he failed to comply with Rule 6 of the SPR 1990 in acting in conveyancing matters; and that he failed to act in the best interests of clients.
105. The Respondents admitted all allegations against them.

106. The First Respondent was fined £10,000.00 and ordered to pay costs. The Second Respondent was fined £2,000.00 and ordered to pay costs.

Mitigation

107. Mr Cadman drew the Tribunal's attention to the Findings from 28 July 2008. The background to the difficulties experienced by Newland Solicitors in relation to a former employee, Mr U, was set out in those findings. It was those difficulties which had given rise to the judgment debt obtained by Newland against MP Ltd. The Respondents had had to replace a shortfall of £69,000 from their own resources.
108. The First Respondent has been the subject of bankruptcy proceedings. The Second Respondent has very limited means, her only income being from the rental of the family home while she stays with relatives. She has not been able to practise since the intervention and is making arrangements to dispose of the practice. The problems with the run off cover arose as a result of the First Respondent's bankruptcy and the Second Respondent's lack of means.
109. Mr Cadman emphasised that the Respondents had not been accused of dishonest conduct and that no financial loss had been occasioned by their actions. He accepted that the previous findings aggravated the position of the Respondents, but he reminded the Tribunal that the actions of Mr U had been primarily responsible for the Respondents appearing before the Tribunal in 2008 and they were still suffering the consequences of Mr U's actions.

Application for Costs

110. Ms Willetts produced a Schedule of Costs in the sum of £36,824.67.
111. Mr Cadman suggested that the overall amount claimed seemed high given that the hearing had occupied the Tribunal for less than a day. He said that he was not able to enter into any negotiation with regard to the First Respondent's liability for costs in view of the bankruptcy order, and suggested that the Tribunal might order costs to be subject to a detailed assessment in respect of the First Respondent.
112. On behalf of the Second Respondent, Mr Cadman invited the Tribunal to take into account her limited involvement and lack of means, and to order her to pay an appropriate percentage of the costs.

Sanction and Reasons

113. The Tribunal noted that the First Respondent had breached a number of rules across a wide range of areas of professional practice. The misconduct which had been proved against him was not dissimilar to that which was substantiated in 2008. Although it was not alleged that the First Respondent had acted dishonestly, the Tribunal concluded that he posed a risk to the public and to the reputation of the profession, and there were no conditions which could be attached to his Practising Certificate that would prevent him from so doing. The appropriate sanction in the case of the First Respondent was that he be struck off the Roll of Solicitors. This was necessary to reflect the seriousness of the misconduct and to protect the public.

114. The Second Respondent had admitted the allegations against her. Again, there was no allegation of dishonesty. It was clear, however, that she had not learned from the mistakes she had made in 2008. The Tribunal considered that a lengthy period of suspension from practise was necessary to reflect the seriousness of the Second Respondent's misconduct and to protect the public. The Tribunal was also of the view that, if and when the Second Respondent returns to practise, the Law Society should consider imposing conditions on her Practising Certificate allowing her to work only in approved employment.

Decision as to Costs

115. The Tribunal considered that the proceedings were properly brought. It was appropriate for the Respondents to be ordered to pay costs. The Tribunal fixed the total amount of costs to be paid by the Respondents in the sum £30,000.00 and decided that the First Respondent should be responsible for paying £25,000.00 and the Second Respondent £5,000.00.
116. Having considered the means of the Respondents, the Tribunal concluded that the awards of costs should not be enforced without the permission of the Tribunal.

Orders

117. The Tribunal Ordered that the Respondent, Rajesh Singh Pathania of 62 Coopers Close, London E1 4BB, solicitor, be struck off the Roll of Solicitors, and it further Ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00, such costs not to be enforced without the permission of the Tribunal.
118. The Tribunal Ordered that the Respondent, [RESPONDENT 2] of London E1, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 22nd day of September 2010, and it further Ordered that the Respondent 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 the permission of the Tribunal.

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

K W Duncan
Chairman