SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10427-2010

Also linked with and heard at the same time as Case No. 10420-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KOFOWOEOLA OMOTAYO BOLANLE OBATOLU First Respondent

and

[RESPONDENT 2] Second Respondent

Before:

Miss N Lucking (in the chair)
Miss J Devonish
Mrs C Pickering

Date of Hearing: 19th - 21st January 2011

Appearances

Ms Chloe Carpenter of Counsel for the Applicant.

Kofowoeola Omotayo Bolanle Obatolu, the First Respondent, appeared in person.

[RESPONDENT 2], the Second Respondent, appeared in person.

JUDGMENT

Allegations

The allegations against both Respondents were:-

(1) The Respondents failed to keep accounting records properly written up and appropriately record all dealings with clients' monies, contrary to Rule 32 of The Solicitors' Accounts Rules 1998 ("SAR").

(2) The Respondents made improper transfers from client account, contrary to Rule 22 SAR.

(3) The Respondents allowed their client account to be utilised as a banking facility, contrary to Rule 15 Note (ix) SAR.

The additional allegations against the First Respondent (Mr Obatolu) only were:-

(4) The First Respondent failed to comply with the Law Society's Guidance on Money Laundering and failed to comply with the Money Laundering Regulations 2007.

(5) The First Respondent failed to follow his client's instructions, contrary to Rule 1.04 Solicitors Code of Conduct 2007 ("SCC").

(6) The First Respondent failed to comply with Rule 3.19(d) SCC and thereby failed to act in the best interests of his clients, contrary to Rule 1.04 SCC.

1. This case was linked with and heard at the same time as case number 10420/10 which also involved the First Respondent.

Documents

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

<u>Applicant</u>

- Rule 5 Statement together with all enclosures.
- Note of Opening Submissions for the SRA.
- Bundle of additional documents.
- Statement of Costs dated 17 January 2011.
- SRA Bundle of Authorities.

<u>The First Respondent, (Mr Obatolu)</u>

- Letter dated 22 September 2010 together with attached bundle of documents.
- Statement of the First Respondent.
- Reply to George Marriott's comments on Bearing Sachs LLP.
- Letter dated 9 August 2010 from the SRA to the First Respondent.
- Decision of Adjudicator dated 6 August 2010.
- Bundle of Character References.

<u>The Second Respondent, *[RESPONDENT 2]*</u>

- Statement of the Second Respondent.
- Reply to George Marriott's comments on Bearing Sachs LLP.
- Bundle of Character References.
- Letter dated 22nd September 2010 together with attached bundle of documents.

Factual Background

3. The First Respondent, born in 1966, had been a Registered Foreign Lawyer since 1 November 1998. The Second Respondent, born in 1976, was admitted as a solicitor on 2 April 2007. Her name remained on the Roll. At the material time both Respondents were members of Bearing Sachs LLP ("the firm") of 59A Broadway, Stratford, London E15 4BQ. The firm was established on 16 March 2007 and closed down on 31 August 2010.

4. During an investigation by the SRA in August 2009, the First Respondent's attention was drawn to the Law Society's Money Laundering Warning Card (issued September 2002), Anti-Money Laundering Practice Notes (issued December 2007 and February 2008), the CML Handbook, the Law Society's Guidance and Warning Card regarding Property Fraud and the Law Society's Mortgage Fraud Practice Note (issued March 2008).

<u>48 G Road</u>

5. The First Respondent dealt with a re-mortgaging transaction on the above property on behalf of Mrs I and an Institutional Lender who provided a re-mortgage advance of £269,965. The firm was instructed by the Institutional Lender to act in accordance with the CML handbook. The Certificate of Title was signed by the Second Respondent.

6. After payment of monies to discharge an earlier charge on the property and the transfer of the firm's costs and disbursements, £45,926.21 was paid to Mrs I. These payments resulted in a balance of £4,000 on the client ledger. This balance of £4,000 was debited from the ledger on 24 June 2008 under the description "Client's instructions." However, the debit was in fact an inter-ledger transfer from Mrs I's ledger to Mr M's. The description of the transfer on Mr M's ledger was "On account of costs". Although the inter-ledger transfer was described as "Client's instructions" on Mrs I's ledger, the First Respondent stated that it was a payment in respect of a Broker's fee to Mr T. However, the monies did not go to Mr T as he instructed the firm to credit them to the ledger of Mr M. The entry on Mr M's ledger was "On account of costs" and, although it was recorded as a transfer, gave no indication as to the source of the monies. Mrs I subsequently confirmed in writing that she had instructed the firm to pay £4,000 to the broker, Mr T.

7. The First Respondent admitted to the SRA's Forensic Investigation Officer ("FIO") that he was in breach of Rules 32(2) of the SAR in that the firm had not recorded the transaction in a client cash account and did not maintain a record of sums transferred

from one ledger to another; an inter-ledger transfer journal. He also admitted breaching Rule 32(1) SAR in that the description given to the transaction of "Client's instructions" was not enough to satisfy the requirement of keeping accounts records properly written up and appropriately recording all dealings with clients' monies. However, he blamed the breaches on bookkeeping errors.

8. The First Respondent confirmed the firm operated an inter-ledger transfer journal, and provided a copy to the SRA. The journal provided recorded the transfer of £4,000 from Mrs I to Mr M on 24 June 2008, however, the journal only contained four entries, the earliest being 12 May 2008 despite the firm having traded since March 2007.

Flats 1 to 7, HP Road

9. The First Respondent confirmed that he was the fee earner in relation to the proposed purchase of the above properties and that he had acted for a number of clients including Mr T. The vendor in the matter was GD Ltd ("G"). The First Respondent had written to G's legal representatives on 5 February 2008 and stated "We have been instructed on the purchase of the above flats by the following client's (sic)..." There followed a list of seven clients and the respective properties they wished to purchase. Prices varied from £160,000 to £220,000. The list did not include Mr T. The First Respondent explained that Mr T had wished to purchase the freehold of these properties and then sell leases to the other seven individuals; however, the freehold had not been available.

10. The SRA questioned how the firm had come to be instructed by all seven clients in relation to these purchases and how the clients gave their instructions, as there was no record on file. The First Respondent stated "Mr T is a broker and an estate agent. Some of the clients are existing clients and known to me. There are no written instructions in relation to these purchases as at the date of the letter." He said that instructions in all seven matters had been received from Mr T. He stated that no identity checks had been carried out on the clients as no contracts had been received.

11. A single ledger was opened for all seven matters in the name of Mr T, despite the fact that he was not a client in relation to any of the seven proposed purchases. None of the purchases completed. The First Respondent believed it was because the properties had been devalued.

12. The ledger recorded that on 29 January 2008, before the firm had written to G's legal representative confirming their instructions, the firm received £10,000 into its client account described as "Cash Express – On account of (sic)." The client account bank statement showed the payment of £10,000 as a direct credit from CE to the firm's client account. The First Respondent stated that the payment was from CE on behalf of Mr T. On the same day £9,970 was transferred out to Mr T and a £30 charge was made in respect of CHAPS fee. The transfer was confirmed to Mr T in writing.

13. CE's web page gave details of the services offered by CE. It stated "We provide you with instant cash, without the need for a Bank account or waiting for cheques to clear." The First Respondent explained that the £10,000 was a loan from CE to Mr T which Mr T had requested be paid into the firm's client account. The money was to

sort out a re-possession. The First Respondent was asked to provide evidence of the re-possession for which the £10,000 was received by the firm. A letter dated 15 September 2008 from Mr T confirmed "I had arranged for a loan of £10,000 on 28/01/08...I had arranged for the funds to be transferred telegraphically to my client account...This loans at the time were for stopping my repossession matters (sic)..." The First Respondent also provided a letter to CE from the firm. The heading of the letter stated "RE: UNDERTAKING IN RESPECT OF MR T PROPERTY: 80 [HP] ROAD..." In the letter the firm undertook to redeem the loan of £10,000 whether or not they proceeded to completion on the property.

14. The First Respondent denied he had breached Anti-Money Laundering Practice Notes and Guidance but admitted that he should have opened a separate ledger for Mr T's transaction.

15. The ledger was then dormant until 18 March 2008 when a further £33,000 was received into client account and credited to the ledger with the description "Funds on account of costs." The SRA noted that they were unable to ascertain the source of £33,000. On 8 April 2008 the sum was debited from the ledger and sent to G, the owner and potential seller of HP Road.

16. The First Respondent explained Mr T had provided the firm with a banker's draft on account for one of the flats and when the offer on the flat was rejected Mr T gave instructions that "the money should be returned to G." A telephone attendance note confirmed the instructions and the TT instruction form described the payment as a refund to G. The First Respondent admitted that he had breached Rule 32(1) and 32(2) by failing to keep accounting records properly written up and failing to appropriately record receipt of monies. When the First Respondent was asked why, when the offer on the property had been rejected by the vendor, the £33,000 was still sent to the vendor, he stated that he was not aware at the time that G was the vendor. However, he had already written to G's legal representatives on 5 February 2008 informing them that the firm was acting for the proposed purchasers and correspondence on the file, the draft contract and Land Registry searches confirmed that G was the seller and the registered proprietor of the property. The SRA put to the First Respondent that it would be highly unusual that the firm should receive £33,000 from a client and then refund it to the vendor who was represented by another firm of solicitors. Although he did not consider it at the time the First Respondent admitted that the circumstances were unusual. He further stated "If I knew they were the vendors then I wouldn't have returned the money to them." There was no evidence that the First Respondent raised any questions or sought any explanation for the transactions.

17. In a letter dated 26 September 2008 to the SRA the First Respondent stated that the monies were received from Mr T as deposit on account and were not received from G. Mr T had wanted to buy the freehold of HP Road and sell leases to individuals, however, this fell through. The monies were therefore paid out to a third party in relation to another transaction to which the firm was not a party. A letter from Mr T was provided which confirmed that he had instructed the firm to send the £33,000 to G in a completely different matter. The First Respondent conceded to the FIO that while, at the time, he had considered he had complied with the Law Society's Money

Laundering Practice Note he stated “Now that you have pointed out a few things I should have made some further checks.”

18. When the SRA conducted a search of the Financial Services Authority Register no record was found of Mr T either by his name or the name of his business IP Services to show that he was authorised by the FSA to conduct mortgage business.

<u>TB Mews</u>

19. The First Respondent dealt with the proposed purchase of a property for a client, CB. The First Respondent stated that he had received instructions from CB over the telephone and a client care letter dated 19 June 2008 requested £300 on account of costs. This sum was never paid.

20. The file contained documents in relation to identification verification carried out by the firm for the purpose of Money Laundering checks. The documents were the paper counter-part of a driving licence but not the photocard, a birth certificate, a utility bill and the only picture ID was a photocard for employment with a housing development company. Regulation 7 of the Money Laundering Regulations required a relevant person (independent legal advisor) to apply customer due diligence measures when carrying out an occasional transaction. Under due diligence the solicitor was required to identify the customer and verify their identification on the basis of documents, data and information obtained from an independent reliable source (Regulation 5). The documents provided only showed that an individual whose name matched that given by the client lived at the address provided by the client. They could not confirm through employee ID whether the person who instructed the First Respondent was in fact CB.

21. The First Respondent confirmed that the client file had been opened in June 2008 and he had been informed by CB over the telephone that the transaction had fallen through due to devaluation. There was no attendance note on record to confirm this and the First Respondent stated that he had simply remembered this. The matter ledger recorded receipt of two payments of £12,515, paid directly into the firm’s client account on 27 June 2008. The description on the ledger for both of these receipts was “Funds on account of costs” but there was no indication of the source of the funds. On the same day £25,000 was debited and sent to Mr O with the description “clients intrsuc (sic)”. The remaining £30 was transferred to office account on 29 June as a CHAPS fee. The First Respondent explained that CB had telephoned him and confirmed that their funds had come through a loan from the bank. There was no attendance note on file to confirm this and no explanations why the funds were paid onto the ledger from the same account in two tranches, both with the same description.

22. It was unclear from the file when the First Respondent became aware that the transaction was no longer proceeding. However, the funds were paid out to a third party on the same day that they were paid in. The First Respondent was shown a signed client instruction dated 27 June 2008 which authorised the payment of £25,000 to Mr O. The relevant bank statement showed the payment of £25,000 to Mr O with the description “Legal Fees”. The First Respondent explained that it was his understanding that Mr O was a lawyer from Nigeria. The firm’s client account

cashbook recorded the two payments of £12,500 as "fees". The payment of £25,000 to Mr O was recorded as a "refund". However, the description on the TT form stated "Legal Fees".

23. The First Respondent explained that the two payments of £12,515 received from CB's partner were deposits for a purchase which fell through. He considered he ceased to be instructed on the matter and the deposit was paid out as instructed by his client. When asked if he had considered whether the transaction had been unusual, he accepted that he should have done more and "flagged it" in the light of Practice Notes and Guidance on Money Laundering.

24. The First Respondent accepted that he had breached Rule 32 SAR because the transactions were not properly written up and not appropriately recorded.

Flat 2 S Hill

25. The First Respondent acted for KK, in the proposed purchase of the above property. He stated he had received instructions from KK over the telephone, and that KK purchased properties at auction, refurbished them and then sold them on. He also explained that he had acted for KK before whilst working at his previous firm.

26. Money laundering identity checks had not been completed. The ledger recorded that on 13 February 2008 two payments of £5,000 and £4,980 were credited to the ledger both with the description "Money on account of costs." The source of the funds was not identified and the First Respondent said this was due to a bookkeeping error. The ledger also recorded two payments on 14 February 2008 of £5,000 and £5,020 described as "On account of costs". Again the source of the funds was not identified. On the same day these sums were debited from the ledger as "corrections".

27. During his interview with the SRA the First Respondent admitted that these were not correction transfers but were in fact an inter-ledger transfer in the form of a loan from KK to Mr F to prevent a repossession. However, no contemporaneous written evidence was provided to show that both clients had agreed to the transfer.

28. The First Respondent provided a letter from Mr F dated 17 September 2009 which confirmed that KK had provided him with a loan of £10,020 to stop the possession of his property. However, no evidence was provided from KK to show that he had agreed to the transfer. A payment instruction form was also provided showing a payment of £9,419.70 to L Solicitors as well as correspondence in relation to the repossession.

29. On 19 February 2008 KK's ledger recorded a further credit of £1,600. On 20 February 2008 KK's ledger recorded a debit of £1,080 paid to A Electronics. An internet search showed that A Electronics was an electrical retailer based in London. The file contained an attendance note dated 21 February 2008, the day after the transfer was recorded on the ledger, which stated "(KK) called, pay this into the account of A Electronics Ltd. Matter no longer proceeding." The First Respondent explained that KK had struggled to get a mortgage offer. He conceded that he may have made an error with the date of the attendance note and said that KK had contacted him and asked him to pay A Electronics as he owed them for car lights. He

did not want the money paid into his account as he was overdrawn. The First Respondent stated that the circumstances did not strike him as unusual and that the payment had been made in accordance with client's instructions.

30. On 27 February 2008 the ledger recorded a debit of £900, paid to KK described as a refund to client. However, despite the fact that the matter was no longer proceeding, on the same day the ledger recorded a credit of £1,580 described as "Moneys on account of costs." Between 29 February and 18 March the ledger recorded the refund to KK so that on 18 March the client ledger had a credit balance of £30. On 25 March 2008 the ledger recorded a debit of £2,000 refund to KK. This payment placed the ledger into an overdrawn balance of £1,970.

31. The payments of £900 on 27 February and £1,500 on 29 February 2008 were both described on the TT instruction forms as "Broker's fees" but were actually paid into KK's personal account. The First Respondent explained that the fee of £900 was a valuation fee in respect of another property and the fee of £1,500 was a broker's fee in respect of another matter. The First Respondent said that he was aware of these matters but stated that since KK had not provided his ID documents, the firm was not dealing with any more of his transactions at that time.

32. On 30 April 2008 the debit balance on the client ledger increased to £9,780 following a further payment of £7,810 to KK. The TT instruction form in relation to this transfer described the payment as "balance". The First Respondent believed that the date of this payment as recorded on the ledger may have been incorrect and the payment may have been made earlier. The ledger in this matter was overdrawn for a period of over six weeks.

33. A credit of £1,870 on 1 May 2008 reduced the debit balance to £7,910. The First Respondent stated this was a payment from Mr F as a partial repayment of the monies loaned to him by KK. The debit balance was wiped out on 12 May 2008 following the payment of £7,200 and £110 on 6 May and £600 on 12 May described as "On account of costs". Initially the First Respondent was unable to confirm the source of the payments "I can't recollect, I will have to check my records. It's not my own personal account or any other operated by this firm." He suspected the monies were provided by Mr F although when questioned further it was discovered that Mr F did not have internet access to the firm's client account. However, the First Respondent later explained that these sums were paid as a loan to him from his wife's own account. He stated that he was unaware that the ledger had become overdrawn and stated that as soon as he discovered that this was the case he rectified it. He admitted to breaching Rule 22(5) SAR.

W Gardens

34. The First Respondent was instructed on the purchase of a property by Mr M. On 4 June 2008 the firm was also instructed by C&G who were providing a mortgage advance, to act in accordance with the CML handbook.

35. The matter ledger recorded four payments of £10,000, £7,000 a further £10,000 and £5,900 on 30 May, 6 June, 11 June and 13 June 2008 respectively. All of these payments were described on the ledger as "On account of costs" but the source of

funds was not identified. The First Respondent confirmed the source of the funds was Mr M. The paying-in slip in relation to the payment of £5,900 showed that those funds were paid, directly, in cash into the firm's client account in £20 notes. The First Respondent explained that the firm's normal policy was not to accept cash payments over £5,000 unless there were exceptional circumstances, and that in this matter Mr M had recently sold two properties and the cash payments were funds from the proceeds of sale.

36. Mortgage monies of £150,000 were drawn down from C&G and recorded on the client ledger on 23 June 2008. On 24 June the ledger recorded receipt of two further payments, £4,000 being the inter ledger transfer from the account of Mrs I and £13,750 which was paid directly into the firm's client account by CE. Both of these payments were described as "On account of costs". The First Respondent explained that the £13,750 had been provided to Mr M by CE under a loan agreement with Mr T. Mr M had lent Mr T monies to prevent a repossession of a property and the payment of £13,750 onto the ledger was the repayment of that loan. The inter ledger transfer journal recorded the transfer of £13,750 from Mr T to Mr M. The reason stated on the journal was "Client's instructions." The matter completed on 24 June when £200,000 was sent to the seller's solicitor. There was no evidence to show that the lender had been informed that part of the balance of the completion funds was being provided by a third party by way of further borrowing. This was in breach of the CML Handbook.

37. On completion the ledger balance was reduced to £650. On 30 June 2008 the firm transferred £1,500 from client account to office account in respect of its profit costs in accordance with its bill dated 26 June 2008. The bill included disbursements totalling £201.00. These disbursements were not recorded on the ledger but were included on the completion statement. The completion statement, dated 25 June 2008, referred to receipts in the sum of £203,650. However, at the date of the statement the ledger only recorded receipts of £200,650. Furthermore payments made on the ledger on 30 June and 3 July 2008 and an inter-ledger transfer meant that total receipts in the matter totalled £204,900.

38. The payment of £1,000 on 30 June 2008 described as "On account of costs", prevented the ledger from becoming overdrawn when the firm transferred £1,500 from client account to office account in respect of its costs. When initially questioned by the SRA the First Respondent could not recall the source of the monies and stated that it may have been an inter-ledger transfer. However, in later correspondence to the SRA the First Respondent stated the firm had transferred office monies from one client ledger to another to prevent a debit balance occurring when office monies (profit costs) were transferred from client account to office account.

39. The First Respondent also enclosed the relevant ledger which showed that on 30 June 2008 £1,000 had been debited from the ledger of R Investments with the description "Transfer – Profit costs". The R Investment ledger also recorded a previous transfer of costs of £915.63 on 25 January 2008. The ledger had remained dormant for six months until the further £1,000 was transferred. The effect of the £1,000 transfer was to reduce the R Investment ledger balance to zero. Furthermore, the R Investment ledger failed to record the raising of a bill in respect of both the £915.63 and the £1,000 transfers. The inter-ledger transfer journal recorded the transfer of £1,000

from the R Investment ledger to Mr M's ledger with the reason "Profit cost transfer from [R] to (Mr M). Not sent to office Acc first cos office acc overdrawn & may not be able to get it out"

40. Mr M's ledger recorded receipt of another inter-ledger transfer on 30 June 2008 this time of £250 described as "Transfer from 778b D." However, despite this transfer occurring on the same day as the transfer of £1,000 from the R Investment ledger, the inter-ledger transfer journal did not record the transfer.

41. On 1 July 2008 £2,000 was debited from the matter ledger with the description "HMRC – Stamp Duty." The effect of this transfer was to create a debit balance on the matter ledger in the sum of £1,600. At the time of completion the Respondents did not hold sufficient completion monies on account to complete. This debit was rectified on 3 July 2008 with a credit of £3,000. The First Respondent could not recall the source of the payment but said that it would have been either Mr T or Mr M, and that he would have received a telephone call from one of them.

42. However, in later correspondence the First Respondent explained that the monies had not come from either Mr T or Mr M but were funds for YB, an entirely different client, which was posted in error to Mr M's ledger. The effect of this was to rectify a debit balance on the ledger. The First Respondent provided an updated matter ledger which showed that once the £3,000 credit entry was corrected the ledger went back to a debit balance of £1,600. This debit balance was increased to £1,750 on 4 July 2008 with a £150 payment to HMLR in respect of register fees. The debit balance was finally rectified on 1 August 2008. However, the funds did not come from Mr M but from two transfers out of office account for £1,550 and £200. The debit balance could not be rectified immediately out of office account as the account was overdrawn as at 30 June.

<u>778b D Road</u>

43. The First Respondent acted for Mr M and an Institutional Lender, H, on the proposed purchase of a property. H was providing a mortgage advance and instructed the firm to act in accordance with the CML handbook.

44. According to the Certificate of Title signed by the First Respondent the purchase price was £165,000 and the transaction was due to complete on 21 September. However, the contract stated that the matter completed by way of simultaneous exchange and completion on 18 October 2007.

45. The First Respondent stated Mr T was purchasing 778a D Road and Mr M was purchasing 778b D Road. On 21st September 2007 the ledger recorded receipt of the mortgage advance of £156,720 from the Lender. On the same day the ledger also recorded the debit of £8,000, payable to Mr T. The accompanying telegraphic transfer form described the payment as "Brokers Fee 778b D Road." The First Respondent could not explain why there were no written instructions from the client in respect of this payment. At the time of this payment no funds other than the mortgage monies, drawn down from the lender had been paid onto the ledger. It therefore appeared mortgage monies were used to satisfy Mr M's liability to Mr T.

46. The First Respondent agreed that the lender had an expectation that their mortgage monies would be used to purchase the property. However, he did not agree that by paying £8,000 of mortgage monies to Mr T he had failed to act in the lender client's best interest. Despite receiving £156,720 from the lender only £145,000 was forwarded to the seller's solicitor on completion. A further £5,000 was sent to the seller's solicitor on 18 October, four weeks after completion placing the client ledger into debit in the sum of £3,199.26. The debit balance increased to £4,849.26 the following day when a further £1,650 was debited from the ledger in respect of stamp duty. The debit balance was rectified on 22 October 2007 when £5,000 was credited to the ledger with the description "CASH You – on account of cos (sic)". The First Respondent stated that this payment came from Mr M. It therefore appeared on the day of completion the firm did not hold sufficient monies to complete the transaction. The ledger in this matter was overdrawn for a period of over six weeks.

47. A letter from the firm to the seller's solicitors was dated 20 September 2006. (This is thought to be an error and should be 2007). The letter stated "Our instructions are that your client has already been paid £22,000 and the balance is £143,000 on completion kindly confirm your instructions." However, the ledger showed that completion monies of £150,000 were paid over. Therefore if the deposit stated in the letter was accurate the actual purchase price paid was £172,000.

48. The First Respondent confirmed the firm had paid the seller's solicitor £150,000; the initial £145,000 and the further £5,000. This meant that, if the stated purchase price was correct on the Certificate of Title, then the deposit paid was only £15,000, and not £22,000 as stated in the firm's letter.

49. The signed contract document on file, dated 18 October 2008 confirmed that the purchase price was £165,000. However, the contract also referred to a £15,000 "allowance". Furthermore, the contract did not include any details of a deposit having been paid. It stated that the purchase price was £165,000 and that a £15,000 "allowance" meant that £150,000 was due on completion which was the amount that was paid. The First Respondent stated that he did not disclose the allowance to the lender as the full purchase price was paid. He stated that the allowance of £15,000 had been cancelled as the matter had not completed on time and he further stated that the previous solicitors who handled the matter had paid a £15,000 deposit to the seller's solicitor.

50. A letter from the seller's solicitor confirmed that a deposit of £15,000 had been paid to them. However, there was no evidence of this letter on the file.

51. From the documentation on the file it was unclear whether the deposit paid was £15,000, £20,000, £22,000 or £nil in place of a £15,000 allowance which was not disclosed to the lender. Regardless of the amount paid, the firm never held the deposit for the property, and there was no evidence on the file to suggest that the lender was informed of this fact or informed of any variation in the purchase price. This was contrary to the CML handbook.

Witnesses

52. The following witness gave evidence:-

- Gary Page (Forensic Investigation Officer with the Second Respondent)

Findings of Fact and Law

53. The Tribunal had considered the evidence, the submissions of all parties and had considered all the documents provided very carefully. The Tribunal noted there was no allegation of dishonesty.

54. The allegations arose out of the firm's conveyancing work on six transactions which had been drawn to the Tribunal's attention. The First Respondent had accepted, during the SRA investigation, that he had conduct of each of the files. Both Respondents denied the allegations against them although during the course of their submissions, the First Respondent admitted there had been "system errors" for which he was responsible, and the Second Respondent accepted the SAR breaches and said she admitted the allegations and accepted they had happened. The Second Respondent did not make detailed submissions on each of the transactions and allegations, and adopted the submissions made by the First Respondent. Nevertheless, the Tribunal gave careful consideration to each of the transactions and allegations in turn.

<u>48 G Road</u>

55. The Applicant's case was that the descriptions on the ledgers were insufficient to satisfy the requirement of Rule 32 (1) of SAR in that the descriptions gave no reasons for the transfer, or the identity of the ledger to which the sum had been transferred to/from, nor were the transfers recorded in a client cash account or in a record of sums transferred from one client ledger account to another. The Applicant had also submitted that the inter ledger transfer journal provided by the First Respondent to the SRA on 26 September 2008 was undated, contained only four entries starting from 12 May 2008 and was therefore not a contemporaneous document.

56. The First Respondent had accepted that there had been system errors and that he had been responsible for those errors. He explained Mr T did not provide mortgages and therefore did not have to be FSA regulated as he was only an agent. He further explained that Mr M and Mr T were cousins and that the firm had been handling matters for both of them. Mr T had borrowed money from Mr M and it was subsequently repaid. Mrs I had instructed the First Respondent by a telephone call to pay Mr T a fee of £4,000. She subsequently confirmed this in writing. The First Respondent claimed he had made a note of the telephone attendance but this was not on the file.

<u>Flats 1 – 7 HP Road</u>

57. The Applicant had submitted the Respondents had allowed their client account to be used as a banking facility, allowing payments to be made in and out of client account that had nothing to do with the proposed purchase. Furthermore, the sum of £10,000 had been paid out direct to Mr T on the same day it had been paid into client account, in circumstances where there was no reason for monies to pass through the client account. The Applicant submitted these transactions were further examples of the

Respondents breaching Rule 32 of SAR as the ledger did not indicate the source of funds nor did it record the purpose of the payment of £33,000 to G. The Applicant submitted that the First Respondent had failed to follow the Law Society's Guidance on Money Laundering for the following reasons:-

- He had accepted instructions from Mr T purportedly on behalf of seven clients without obtaining written instructions from those clients or carrying out identity checks on those seven clients.

- He had accepted funds from Mr T rather than from the seven clients.

- The First Respondent had accepted £10,000 into client account on 29 January 2008 and paid it out to Mr T on the same day in a situation where it was unnecessary for it to pass through the firm's client account.

- He had paid £33,000 to G, the proposed vendor in a situation where there had been unusual instructions, the transaction ended for no apparent reason, the client was depositing funds in client account and then unexpectedly asking for those funds to be paid back to a third party or to the source of where the funds came from.

58. The First Respondent had submitted Mr T was selling to seven lessees. The leases were to be purchased first and once that was done, Mr T would buy the freehold. The First Respondent said it would not have been wise for Mr T to buy a freehold until the leases were in place and the value of the property was known. G was the original seller and the properties involved were re-possessed properties being purchased at auction. The £33,000 was deposited by a banker's draft by Mr T and the First Respondent had a draft contract. The First Respondent had stated the client paid money in direct and gave the firm the slip to show it was paid in. He stated it was normal for clients to pay monies into the firm's account and that in all his years of practice, he had sent bills to clients, giving the firm's account details for the clients to pay those bills.

59. The First Respondent stated Mr T did not go ahead with the purchase as the property was devalued and, as he did not proceed with the purchase, the firm had not obtained identity documents for the seven lessee clients. The First Respondent did not assume there were any money laundering issues but did accept it was a risk to send £33,000 to a third party instead of returning it to Mr T. However he said he had known G was the owner of the flats as he had been provided with office copy entries confirming this.

<u>TC Mews</u>

60. The Applicant's case was that again there had been a breach of Rule 32 SAR as the client's ledger recorded receipts without any indication as to the source of funds. Furthermore, the Applicant submitted both Respondents had breached Rule 15 Note (ix) SAR as £25,000 was paid out to Mr O, a third party, on 27 June 2008, the same day as that amount had been paid into the client account. The Applicant submitted this amounted to using the client account as a banking facility. The Applicant further

submitted the First Respondent failed to follow the Law Society's Guidance on Money Laundering and the Money Laundering Regulations because:-

- He did not properly identify the client and her identity from reliable and independent sources.

- On the same day that monies representing a deposit on a property were paid into client account, the proposed transaction fell through and those funds were paid out to a different unrelated third party.

The Applicant submitted the First Respondent's explanation was incredible. It was inconceivable that monies were received, the property was devalued and monies were paid out to a third party all on the same day.

61. The Second Respondent recalled this particular transaction and confirmed she had prepared a Form of Authority for the client to sign confirming the monies were to be paid to Mr O. The Second Respondent confirmed that the client did not want the funds to be transferred back to her as she said she would spend the money and therefore the client asked for the money to be paid to Mr O, who was a Nigerian lawyer who was buying a property for the client in Nigeria. The First Respondent stated that the monies were not paid back to the client as it would have cost the client more in telegraphic transfer fees.

<u>Flat 2, S Hill</u>

62. Again the Applicant submitted this transaction demonstrated both Respondents had acted in breach of Rule 32 SAR as the client ledger failed to identify the source of funds. Furthermore, the Applicant submitted the Respondents had allowed their client account to be utilised as a banking facility by KK particularly in view of the fact that KK had asked the Respondents to pay A Electronics for some car headlights and he had stated he did not want the money to be paid into his account as he was overdrawn. The Applicant also submitted that this transaction demonstrated the Respondents had breached Rule 22 of SAR as payments made from the client ledger created a debit balance on the client account. The First Respondent had failed to follow the Law Society's Guidance on Money Laundering and the Money Laundering Regulations because:-

- He had opened a ledger for a client, accepted money into his client account and paid out money without verifying his client's identity.

- As well as paying a sum of money to A Electronics, a third party, rather than returning funds to the client, the First Respondent had received further credits after being told the matter was not proceeding and he had made payments to his client KK in excess of the amount held in client account.

The Applicant submitted it was inconceivable that a solicitor with the First Respondent's experience would be unaware of the rule relating to allowing client account to be used as a banking facility. Furthermore, the First Respondent was the

firm's Money Laundering Officer, so should have been aware of all the relevant regulations.

63. The First Respondent stated he had acted for KK at his previous firm Bluestone & Partners LLP and that the client was well known to him. The client bought properties at auction and then sold them at a profit. In relation to this transaction, the client had later informed the First Respondent that he was not interested in the property and that the firm should put a hold to the transaction. The firm had already received documentation from the auctioneer and told the auctioneer they were awaiting instructions. The client had left the country and that was the reason the First Respondent had been awaiting his identity documents.

64. Regarding the payment to A Electronics, the First Respondent stated that he had thought the rules stated if a client instructed payment to a third party, then that payment could be made. In his submissions the First Respondent confirmed he had never heard of using the solicitor's account as a banking facility and he had not been aware of the banking facility rule. This was the first time he had ever heard of this. He submitted refunds had been made on the client's instructions and that he had thought the client would reinstruct the firm on the transaction. The First Respondent was unable to explain why payments had been made in dribs and drabs. He stated the client had asked the firm to hold on to the money as the client was not in the country, his account was overdrawn and he did not want all the money to be paid back in one transfer. The First Respondent accepted the firm's client account had been used to disburse some money.

W Gardens

65. The Applicant's case was that this was another example of the Respondents breaching Rule 32 SAR as the source of funds had not been identified on the ledgers. Furthermore, there had not been a contemporaneous record of the transfer of £13,750 from Mr T to Mr M in a client cash account and an inter-ledger transfer journal had not been provided to the FIO at the time of the investigation. When such a journal was provided it contained only four entries starting on 12 May 2008, and did not state when that document was created. The Applicant further submitted that Rule 22 SAR had also been breached as monies had been transferred from the client account to the office account without bills being raised and sums had been debited creating a debit balance on the client account. The Applicant further submitted there had been breaches of the Law Society's Guidance on Money Laundering as the First Respondent had received £5,900 in cash into his client account, and he had failed to report to the lender that part of the balance of completion monies was being provided by a third party.

66. The First Respondent did not make any specific submissions regarding the W Gardens transaction other than those contained in the documents before the Tribunal.

778b D Road

67. The Applicant's case was that the Respondents had breached the SAR in relation to this transaction as there was no indication given as to the source of funds received, and no explanation for transfers that had been made, which placed the client ledger

into debit. Furthermore, the First Respondent had acted contrary to the instructions from his lender client in that he paid £8,000 of the mortgage monies to Mr T and he paid £145,000 of the mortgage monies to the vendor's solicitors four weeks prior to completion. He had completed the transaction without having sufficient funds in place to do so and had failed to report to the lender that his firm had only paid £150,000 to the purchaser's solicitors, when the purchase price stated on the mortgage offer and the contract was £165,000. It was clear from the documents that exchange of contracts had not taken place when the First Respondent took over this matter from the client's previous solicitors.

68. The First Respondent stated this was a transaction that he had taken over from another firm of solicitors. The previous firm of solicitors had already exchanged contracts and they had lost their allowance on exchange. The First Respondent stated that as there was no allowance, there was nothing to report to the lender. He stated the contract made reference to an allowance but the client's previous firm of solicitors had told him to ignore that allowance and he had therefore deleted reference to it from the contract.

69. **Allegation (1). The Respondents failed to keep accounting records properly written up and appropriately record all dealings with clients' monies, contrary to Rule 32 of The Solicitors' Accounts Rules 1998 SAR.**

69.1 During the interview with the FIO, the First Respondent had admitted breaching Rule 32 of SAR but had stated these were bookkeeping errors and "system errors". This allegation was in fact admitted by the Second Respondent in her closing submissions and the Tribunal found the allegation proved against both Respondents who were partners in the firm of Bearing Sachs LLP and were both therefore equally responsible for the state of the firm's accounts. The Tribunal did not accept there had been "system errors" and documents provided confirmed this was not the case.

69.2 The Tribunal had been taken through six conveyancing transactions, and on each of those transactions the client ledgers failed to record the source of all payments into client account or the method of payment. Transfers had been made between different client ledgers without any proper detailed record being kept and sums were being transferred from one client ledger to another without contemporaneous records of the sums transferred or of bills authorising those transfers.

70. **Allegation (2). The Respondents made improper transfers from client account, contrary to Rule 22 SAR.**

70.1 This allegation appeared to be admitted by the Second Respondent in her closing submissions. The Tribunal found this allegation was proved against both Respondents. In three of the conveyancing transactions the Tribunal had been referred to, payments had been made out of client account which were not in accordance with the SAR and thereby placed the client account in debit in all those cases. In the case of Flat 2, S Hill, a refund of £2,000 to the client had placed the ledger into an overdrawn balance of £1,970 on 25 March 2008, and this debit balance increased to £9,780 on 30 April 2008. The debit balance was not fully cleared until 12 May 2008.

70.2 On W Gardens £1,000 had been transferred from the client R Investments' ledger to Mr M's ledger on 30 June 2008, which amount the First Respondent stated was due to the firm by R Investments in costs. However, the R Investments' ledger did not record any bill and therefore this sum had been improperly transferred. This ledger also contained a debit balance which was not cleared until approximately one month later. Finally, on the matter of 778b D Road, again the ledger was placed into a debit balance on 18 October 2007 as a result of completion taking place when the firm did not have sufficient funds to complete, and this debit balance was not rectified until 22 October 2007. The Tribunal rejected the First Respondent's explanation that the client's previous solicitor had already exchanged contracts prior to the First Respondent taking over the matter. It was blatantly clear from the documents that simultaneous exchange and completion had taken place on 18 October 2007.

71. **Allegation (3). The Respondents allowed their client account to be utilised as a banking facility, contrary to Rule 15 Note (ix) SAR.**

71.1 Again this allegation appeared to be accepted by the Second Respondent in her closing submissions. The Tribunal found this allegation proved against both Respondents. The Tribunal had been provided with evidence of three abortive transactions where money had been paid into client account when there was no apparent immediate need for those funds, and the funds were then transferred out of client account to a third party, in one case on the same day. Furthermore, in relation to the client KK, the First Respondent had accepted in his submissions that this client had informed the firm his account was overdrawn and he did not want the money to be paid back into his own account. He had therefore used the firm's client account to disburse some money. The Tribunal was extremely concerned that although the First Respondent was the firm's Money Laundering Reporting Officer, he admitted in his submissions that he had never heard of using a solicitor's client account as a banking facility.

72. **Allegation (4). The First Respondent failed to comply with the Law Society's Guidance on Money Laundering and failed to comply with the Money Laundering Regulations 2007.**

72.1 This allegation was against the First Respondent only. The Tribunal was satisfied that the First Respondent had failed to comply with the Law Society's Guidance on Money Laundering and had failed to comply with the Money Laundering Regulations 2007, despite being the firm's Money Laundering Reporting Officer. One example of his failure was the payment into client account of £33,000 by Mr T in respect of flats 1–7 HP Road, a transaction that did not proceed, and those funds were then transferred out to a third party. The Tribunal was also provided with details of money being paid into client account without proper client identity checks being in place, and also with details where funds had been paid into client account by third parties. The Tribunal noted in particular, in relation to the purchase of TC Mews, the firm had received £25,000 into client account on 27 June 2008, and paid this amount to a third party on the same day having been told the transaction was no longer proceeding. This was a clear example of unusual and suspicious circumstances highlighted by the Money Laundering Regulations and guidance.

73. **Allegation (5). The First Respondent failed to follow his client's instructions, contrary to Rule 1.04 Solicitors Code of Conduct 2007 SCC.**

Allegation (6). The First Respondent failed to comply with Rule 3.19(d) SCC and thereby failed to act in the best interests of his clients, contrary to Rule 1.04 SCC.

73.1 These allegations were against the First Respondent only. The Tribunal found both allegations were proved. Rule 3.19 (d) SCC placed an obligation on the First Respondent to report to the lender if he did not have control over the payment of all the purchase money. On 778b D Road, completion had taken place when the firm held insufficient funds to complete the transaction. There was no evidence the lenders had been notified of this and this was clearly a failure to act in their best interests placing the lender at risk.

73.2 The Tribunal had also been provided with evidence that mortgage funds had been used in breach of lender's instructions. A lender had not been informed that part of the balance of the purchase monies had been provided by a third party, and a lender was not informed that part of the purchase monies had apparently been paid outside the control of the firm. In particular, a lender had provided a mortgage advance of £156,720 in relation to the purchase of 778b D Road and from these funds, the First Respondent had paid £8,000 to Mr T. Only £150,000 was sent to the seller's solicitors. The First Respondent himself had accepted, when interviewed by the FIO, that the lender had an expectation that the mortgage advance would be used to purchase the property. The First Respondent's conduct had not been in the best interests of his lender client.

Previous Disciplinary Matters

74. None.

Mitigation

<u>The First Respondent</u>

75. The First Respondent referred the Tribunal to the character references provided. He confirmed he had tried to obtain other work since Bearing Sachs LLP had closed down on 31 August 2010. He was inundated with debts from insurers, bills and the landlord of the premises for Bearing Sachs LLP. He had lost all his savings and had been unable to work due to these proceedings. He had three children aged between 10 and 18 years old and he had no income. He never thought the allegations would all be proved and he was still in a state of shock. The First Respondent said that he had high blood pressure, he was on medication and although he owned his own property jointly with his wife, there was a mortgage on it so the equity was likely to be around £50,000.

76. The First Respondent referred the Tribunal to the cases of William Arthur Merrick v the Law Society [2007] EWHC 2997 (Admin) and the case of Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to his financial position. He was sorry these things had happened.

The Second Respondent

77. The Second Respondent stated they had been remorseful when the FIO came to the firm and that they had put things in place to ensure these matters would not happen again. She hoped the Tribunal's decision would not affect her ability to practice in the future. She was not employed and had been unable to obtain employment due to these proceedings. She did not own any property, she did not have any dependents and she was not married.

Sanction

78. The Tribunal had considered carefully the submissions of both Respondents and all the documents provided, including the character references submitted on behalf of both Respondents.

The First Respondent

79. The Tribunal had heard two cases against the First Respondent together which were this case and case number 10420/2010 which had been linked with this case and heard at the same time.

80. In both cases all the allegations had been found proved against the First Respondent. These allegations were all serious matters involving flagrant breaches of the Solicitors Accounts Rules 1998, the Money Laundering Regulations and the Solicitors Practice Rules 1990. Clients had been exposed to a high level of risk which these rules were designed to protect them from.

81. It was clear to the Tribunal on the evidence provided in relation to both cases that these were not isolated incidents and the First Respondent had shown a consistent disregard for the rules and responsibilities of members of the profession. The Tribunal took into account the case of Bolton v The Law Society [1994] CA and the comments of Sir Thomas Bingham MR who had stated:-

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."

The First Respondent's conduct had caused a great deal of damage to the reputation of the profession and had placed the public at risk.

82. The penalty imposed by the Tribunal reflected the seriousness of the allegations in both cases and the First Respondent's repeated breaches of the professional rules. The Tribunal ordered the First Respondent be struck off the Register of Foreign Lawyers.

The Second Respondent

83. It was clear to the Tribunal that the Second Respondent was an inexperienced solicitor and the Tribunal took this into account. Nevertheless, she had been a partner of the firm and as such she was equally responsible for ensuring compliance with the Solicitors Accounts Rules which were in place to protect client funds. A solicitor's client account was sacrosanct and the Second Respondent had allowed her firm's client account to be used as a banking facility which was a very serious matter indeed. This had caused clients to suffer and placed lenders at risk.

84. The Tribunal took the view that the appropriate penalty in relation to the Second Respondent was a fine of £5,000. The Tribunal also recommended the Second Respondent should not be allowed to practice either on her account as a principal, or as a partner of any practice until she had obtained three years of experience as an employed solicitor in approved employment.

Costs

85. The Applicant requested an Order for her costs and provided the Tribunal with a Schedule of Costs dated 17 January 2011 stating the costs came to £45,733.64. She requested the Tribunal to apportion the costs between the two Respondents with an Order that they should be jointly and severally liable for those costs.

86. In relation to the case of Merrick v The Law Society, the Applicant referred the Tribunal to the comments of Mr Justice Gross who had stated:-

> "...there can be no general rule that the SDT should *not* impose an order for costs in addition to an order of suspension or an order striking off a solicitor. Were it otherwise, the more serious the misconduct, the less likely that the Law Society could recoup the costs to which it had been put in dealing with it. That cannot be right."

The Applicant submitted that the gravity of the conduct in this case, particularly in relation to the First Respondent, did not merit an order under the principle of Merrick v The Law Society.

87. In relation to the case of D'Souza v The Law Society the Applicant referred the Tribunal to the comments of Mr Justice Coulson who had stated:-

> "It seems to me that Camancho and Merrick are authority for the proposition that the means of a defendant to tribunal proceedings may be a relevant consideration in calculating the appropriate sanction as to the level of fines and costs. This would usually arise when a solicitor is being suspended from practice or struck off; but there will be exceptional cases where, even though a

> solicitor is allowed to continue in practice, his income may be a relevant consideration both as to any costs sanction and in respect of any financial penalty that might be imposed."

The Applicant submitted the Respondents must satisfy the Tribunal that this was an exceptional case where their means must be taken into account. She further submitted that where a fine had been imposed, the Respondents could not rely on the case of Merrick v The Law Society. Further, the Applicant reminded the Tribunal that neither Respondent had provided any schedule of income, expenditure, capital and assets providing full financial details.

88. The First Respondent requested some time to pay the costs.

89. The Second Respondent submitted the costs schedule was very excessive and stated she had no means to pay this.

90. The Tribunal had considered carefully the submissions of all parties and the documents provided. The Tribunal was of the view that the Schedule was excessive and assessed the costs in the total sum of £37,000. These were to be apportioned between the Respondents. The First Respondent was to pay £27,000 and the Second Respondent was to pay £10,000.

91. The Tribunal had considered the cases of Merrick v The Law Society and D'Souza v The Law Society. Neither Respondent had provided a formal Schedule of Income, Expenditure, Capital /Assets and neither Respondent had given any evidence on oath in relation to their financial circumstances. In view of this, the Tribunal ordered both Respondents should pay the costs ordered in full.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, KOFOWOEOLA OMOTAYO BOLANLE OBATOLU of 388 Mawney Road, Romford, RM7 8QP, registered foreign lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to case no. 10420/2010, fixed in the sum of £30,000.00, and the costs of and incidental to case no. 10427/2010, fixed in the sum of £27,000.00.

93. The Tribunal Ordered that the Respondent, *[RESPONDENT 2]*, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 29th day of March 2011
On behalf of the Tribunal

N Lucking
Chairman