No. 10491-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PRAKASH SHANTILAL MEHTA, solicitor (First Respondent) and [RESPONDENT 2] – NAME REDACTED, solicitor (Second Respondent)

Upon the application of Katrina Elizabeth Wingfield on behalf of the Solicitors Regulation Authority

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Mr. D. Glass (in the chair)
Mrs E Stanley
Mrs C Pickering

Date of Hearing: 25 October 2010

FINDINGS & DECISION

Appearances

Katrina Elizabeth Wingfield of Penningtons Solicitors LLB, Abacus House, 33, Gutter Lane, London, EC2V 8AR was the Applicant.

The Respondents were represented by Stephen Gilchrist.

The original application to the Tribunal, on behalf of the Solicitors Regulation Authority ("SRA"), was made on 26th March 2010, with a supplementary statement dated 17th September 2010.

Allegations

The allegations against both Respondents were that they had:-

1. Acted in breach of the Solicitors Accounts Rules (SAR) in particular:-

   (i) Rule 22(1) and (5), in that monies had been improperly withdrawn from client account;

(ii) Rule 19(2), in that monies had been transferred from client to office account when bills of costs had not been delivered to the clients;

(iii) Rule 15(1), in that they had raised fictitious bills of costs on client matters;

(iv) Rule 7, in that they had failed promptly to replace monies improperly withdrawn from client account.

2. Acted in breach of Rule 1 of the Solicitors Code of Conduct (SCC), in particular:

(i) Rule 1.02, in that they had failed to act with integrity;

(ii) Rule 1.06, in that they had behaved in a way which was likely to diminish the trust of the public in themselves or the profession

in that they had utilised client monies for their own benefit.

3. Acted in breach of Rule 1 of the Solicitors Code of Conduct (SCC), in particular:

(i) Rule 1.02, in that they had failed to act with integrity;

(ii) Rule 1.04, in that they had failed to act in the best interests of clients;

(iii) Rule 1.06, in that they had behaved in a way which was likely to diminish the trust of the public in themselves and the profession;

in relation to loans taken from clients.

4. Acted in breach of Rule 1 of the SCC, in particular Rule 1.01, 1.02, 1.04 and 1.06 in that they had sought to mislead the SRA by providing incomplete information as to the scale of transactions the firm had carried out which bore the hallmarks of mortgage fraud.

5. Acted in breach of Rule 1 of the SCC, in particular:

(i) Rule 1.02, in that they had failed to act with integrity;

(ii) Rule 1.03, in that they had allowed their independence to be compromised;

(iii) Rule 1.04, in that they had failed to act in the best interests of each client;

(iv) Rule 1.06, in that they had behaved in a way which was likely to diminish the trust the public placed in themselves or the profession;

in that they had failed to inform lender clients of material facts including the provision of deposit monies by third parties, cashbacks being paid to purchasers and vendors remaining in the properties.

6. Acted in breach of Rule 3.01 and 3.16 in that they had acted for both lender and borrower where there had been a conflict of interest.

The allegations against the First Respondent only were that he had:-

7. Acted in breach of Rule 1 of the SCC, in particular:

   (i) Rule 1.01 in that he had failed to uphold the rule of law and the proper administration of justice;

   (ii) Rule 1.02, in that he had failed to act with integrity;

   (iii) Rule 1.04, in that he had failed to act in the best interests of the client;

   (iv) Rule 1.06, in that he had behaved in a way which was likely to diminish the trust of the public in himself or the profession;

   in that he had acted in contravention of a Restraint Order dated 21 August 2008.

8. Acted in breach of Rule 1 of the SCC, in particular:

   (i) Rule 1.01, in that he had failed to act with integrity;

   (ii) Rule 1.04, in that he had failed to act in the best interests of the client;

   (iii) Rule 1.06, in that he had behaved in a way which was likely to diminish the trust of the public in himself or the profession

   in that he had overcharged his client.

In relation to the allegations it was alleged that the Respondents had acted dishonestly or in the alternative recklessly.

The Further allegations against both Respondents were that they had: -

9. Acted in breach of Rule 1.06 of the SCC in that they had failed to comply with a decision made by the Legal Complaints Service dated 19 November 2009.

10. Acted in breach of Rule 20.05 of the SCC in that they had failed to co-operate with an investigation conducted by the SRA in relation to a complaint by Ms Sam and a complaint by Mrs Sa.

Factual Background

1. The First Respondent, born in 1964, was admitted to the Roll of Solicitors on 15 April 1992. The Second Respondent, born in 1973, was admitted on 3 December 2001. As at the date of the hearing both Respondents were on the Roll.

2. At all relevant times the Respondents had practised in partnership together under the style of Mehtalaw from Lynx House, Ferndown, Northwood, Middlesex, HA6 1PQ. The firm was closed on 28 August 2009.

3. On 25 March 2009 an investigation of the books of account and other documents of Mehtalaw was commenced by Mr Chambers, an Investigation Officer of the SRA,

resulting in an interim report (the April report) dated 6 April 2009 and a final report (the August report) dated 21 August 2009.

4. The First Respondent had commenced the firm of Mehtalaw in 1995 and had been joined in partnership by the Second Respondent in October 2006. At the time of the inspection the firm, which had been a property practice, had employed three solicitors and a further eight unadmitted staff.

5. At the commencement of the inspection Mr Chambers had been informed by the First Respondent that the firm had an overdraft limit of £10,000 on office account. Mr Chambers had noted from office bank account statements that the firm appeared to have experienced cash flow difficulties during the six months prior to 28 February 2009. Direct debits in favour of the firm's PI insurers had been returned unpaid by the bank on two occasions, when the overdraft limit would have been exceeded had the payments been met.

6. The Respondents had stated at the commencement of the inspection they were unaware of any misuse of client funds. Mr Chambers had found that the books of account had not been in compliance with the SAR. He had identified a minimum cash shortage on client account of £46,707.39 as at 28 February 2009. The client account reconciliation at that date, signed by the First Respondent on 2 March 2009, had indicated a nil shortage. The cash shortage identified by Mr Chambers had been agreed by the Respondents at a meeting on 1 April 2009.

7. The cash shortage had arisen as a result of £40,372.39 paid out of client account in contravention of a High Court Restraint Order and £6,335 by way of improper withdrawals from client account.

8. At a meeting on 31 March 2009 the First Respondent had informed Mr Chambers that he would replace the sum of £40,372.39 as soon as possible. He had subsequently provided evidence of replacements totalling £40,372.39, comprising transfers from office to client bank account of £30,000.00 on 7 April and £10,372.39 on 14 April. £4,000 towards the sum of £6,335 had been replaced during March on completion of the relevant client matters leaving £2,335 unreplaced as at 31 March 2009.

9. In relation to the client money paid out in contravention of the Restraint Order, the First Respondent had acted for a Mr HSB in the sale of a property at 4 G Gardens, in the sum of £250,000.00. Contracts had been exchanged on 15 August 2008 and completion had taken place on 26 August 2008, with proceeds of sale totalling £250,365.75 being received by the firm.

10. On 22 August 2008 the firm had received, by fax, from Bedfordshire Police, a copy of a High Court Restraint Order prohibiting their client, or others on his behalf, from dealing with his assets including the property 4 G Gardens or the net proceeds of sale of the said property after repayment of any mortgages.

11. The firm had discharged an outstanding mortgage in the sum of £136,000.37 on 27 August, leaving a balance on client account of £114,365.38. A further 19 payments had been made out of client account thereafter totalling £40,372.39. The payments had included 12 designated "Firm's costs", between August 2008 and January 2009 totalling £26,476.76.

12. Exceptions to the Order had included provision for up to £3,000 for legal advice and representation in connection with the Order and further sums for legal expenses incurred in the relevant proceedings provided that the prosecutor had been notified in writing as set out in the Order.

13. On 9 October 2008, the Asset Forfeiture Division of the Revenue and Customs Prosecutions Office had written to the firm. On the date the letter had been received, 13 October 2008, the firm had held £87,925.38 according to the client ledger. The letter had sought confirmation that the sum of £110,000 was still held by the firm. The firm had failed to respond. A further letter had been sent on 18 November requesting a reply. On receipt of that letter on 20 November the firm had held, according to the ledger, £79,619.78. The First Respondent had confirmed to Mr Chambers that he had not replied to that letter either.

14. When initially questioned by Mr Chambers on 26 March 2009 the First Respondent had stated that as far as he was aware he had fully complied with the terms of the Restraint Order. He had indicated that the fees charged had been in respect of work done on behalf of the client relating to criminal litigation matters. Subsequently, on 31 March, the First Respondent had admitted to Mr Chambers that he had in fact breached the provisions of the Order. The Second Respondent had indicated that he had been unaware of the Restraint Order or of the payments made in contravention thereof.

15. At the meeting on 26 March 2009, the First Respondent had indicated that he had charged £3,000 plus VAT for the conveyancing work and had then been retained by the client Mr HB and two others to conduct criminal litigation work on their behalf. An unsigned client care letter on the file dated 3 September 2008 had provided for fees of £25,000 plus VAT and for the fees to come out of the proceeds of sale of 4 G Gardens. In addition, Mr Chambers had found an attendance note on the file which had referred to fees for the trial and the fees being taken from Mr HB's deposit up to £25,000. It had also indicated that accounts were to be sent to 38 G [Gardens]. Mr Chambers had found no evidence of criminal litigation work done on the file. The First Respondent had produced four lever arch files which he said contained evidence of the work he had done. Mr Chambers had reviewed the lever arch files and had prepared lists of the contents, which had appeared to be, in the main, copies of court documents, witness statements and correspondence between the defendants and others including other firms of solicitors. There had been no correspondence from Mehtalaw, nor any attendance notes.

16. At the meeting on 31 March 2009, Mr Chambers had asked the First Respondent about the level of the costs charged. The First Respondent had indicated that he could not justify his costs and wished to rectify it. When asked by Mr Chambers whether he had borrowed the money to assist cash flow, the First Respondent had indicated that "the reason for the billing was to help cash flow...." When it had been pointed out that there was nothing signed by the client agreeing the figures, the First Respondent had stressed that there had been numerous conversations about costs and that he had not been dishonest. He had produced a schedule of bills of costs he had raised, on which Mr Chambers had annotated VAT amounts, on which the First Respondent had estimated the amount of work actually done which had shown a total value of time at £5,400 as against the £22,618.75 billed. The schedule had shown that six of the bills had not been sent to the clients. The Second Respondent had indicated he had been unaware of the First Respondent's actions.

17. In relation to the improper withdrawals from client account totalling £6,335, as at 28 February 2009, a total of 37 bills of costs had been raised incorrectly and monies transferred from client account to office account to meet them. Monies had been requested from clients on account of disbursements and billed and taken as profit costs soon after receipt. The fee earners involved in the matters had been the Respondents and a conveyancing assistant.

18. The shortage, created by the firm taking the monies for profit costs, had been replaced when the firm had been put in funds for completion, and a further discounted bill raised. As at 31 March 2009, 15 of the 37 matters had still not completed leaving £2,335 by way of shortage.

19. The First Respondent had informed Mr Chambers that some of the bills had been sent to clients and some not. He had also stated that "should expenses need to be met sometimes we bill in advance in this matter". He had confirmed that expenses were office overheads and that the "driving factor behind this is the cash flow constraints on the office account".

20. Mr Chambers had exemplified the matter relating to the purchase of 157 B Road where £200 had been requested by letter of 22 January 2009, prior to commencement, to cover disbursement costs. A schedule of estimated costs showed legal fees of £330 plus VAT and £224.03 disbursements and also stated that a deposit of £200 was required to cover disbursements. The sum of £200 had been banked on 27 January 2009. On 9 February a bill totalling £200 (inclusive of VAT) had been raised bearing the description "provision of legal service re p/o B Road - agreed fees" and the sum transferred from client to office account. The matter had completed on 19 March 2009, when a further £99.25 had been taken in costs. No disbursements had been paid at that stage.

21. The First Respondent had informed Mr Chambers that the practice of interim billing had ceased.

22. Mr Chambers had identified two further shortages, which had been rectified prior to his inspection. Both had been matters of which the First Respondent had conduct. In the matter of K, the shortage had existed for 118 days in the sum of £3,600 and in the matter of G, the shortage had existed for 35 days in the sum of £6,000. The First Respondent had explained that, in relation to the K matter, he had borrowed the sum of £3,600 and then repaid £3,680 without the client's knowledge. On the relevant client ledger the First Respondent had written a note, dated 1 April 2009, confirming that the invoices had not been genuine and apologising. In the G matter, the First Respondent had been acting in a purchase and had raised an invoice for £6,000 and transferred funds from client to office account on 3 October 2007. On 7 November 2007 a credit note had been raised and an equivalent amount deducted from other fee transfers on that date. The First Respondent had informed Mr Chambers that he had borrowed those funds without the client's knowledge and that neither invoice nor credit note had been sent to the client. He had annotated the copy client ledger in the matter, also indicating he was "very sorry".

23. Mr Chambers had identified three further client matters where four transfers, totalling £51,319.50, had been made from client account to either office bank account or to personal bank accounts of the First Respondent during January and February 2009. The Respondents had stated that the sums transferred had been loans from clients,

with the prior consent of the clients. They had, however, been unable to produce contemporaneous written consents in respect of three of the four loans.

24. Two sums, £22,000 and £19,500, had been transferred to personal accounts of the First Respondent on 26 January and 11 February 2009 respectively, from the client "H and T M". The file had contained a copy email from the First Respondent to HM timed at 15.43 on 11 February 2009 requesting authorisation to the use of £41,500 from the client's stamp duty retainer until 5 March 2009, as he was "in severe cash flow". Email authorisation was timed at 16.03 hours. There had been no evidence of authorisation prior to the first transfer.

25. The firm had been unable to repay the loan of £41,500 by 20 March 2009. A loan agreement, dated 20 March, had made provision for repayment of £41,600 by monthly payments of £1,000 from 20 April 2009. The First Respondent had provided Mr Chambers with an email from the client dated 26 March 2009 indicating he had been aware of the transfers at the time they were made.

26. On 14 January 2009 the sum of £4,819.50 had been transferred from client to office bank account on the ledger of "H and S Shah" described as "Loan HBS cl-office a/c". There was a telephone note on the file timed at 7.30 pm on 13 January indicating that the Second Respondent had spoken to the client requesting a short term interest free loan and that the client had agreed "as long as the funds were available for his purchase on 5 February 2009". There had been no contemporaneous written authority. £1,399.50 had been repaid by the due date, the balance of £3,420 had not been repaid until 5 March 2009. Retrospective written authority had been provided dated 31 March 2009.

27. Also on 14 January 2009, £5,000 had been transferred from client to office on the ledger of "JM" described as "Loan HBS cl-office". Again there was a telephone attendance note dated 14 January indicating that the Second Respondent had obtained authority from the client to the loan for office expenses for two weeks. The monies had been repaid on 22 January 2009. No written authority had been available.

28. Mr Chambers had raised concerns in his April report regarding a conveyancing transaction in which the firm (the Second Respondent) had acted for a Ms EG in the purchase of a property 12 P Gardens and also for the lender, Birmingham Midshires. The purchase price of the property had been £375,000 and the mortgage £318,715 (85% of the apparent purchase price). A certificate of title dated 1 October 2008 had been signed by the First Respondent and had provided for completion on 3 October 2008. Completion had actually taken place on 8 October 2008 according to the Completion Statement.

29. Mr Chambers had established from the firm's records that £11,655.23 had been paid back to the client Ms G on 9 October 2008. He had also noted that deposit monies had been received from third parties totalling £85,000 (£2,750 received from a Mr Vanish Patel on 6 October and £82,250 from Patel Enterprises Ltd on 8 October). Documents had variously described those funds as "equity release facility" and "bridging finance". The sum of £3,750 had been paid to Patel Enterprises Ltd on 9 October described as "interest".

30. At the interview on 1 April 2009, the Second Respondent had confirmed that the firm had not informed the lender of the nature of the deposit funds received, indicating that

he had believed that had been done by the borrower client. He had also indicated that Mr Vanish Patel was a client of the firm and that the firm had acted for him in other matters. In respect of the matter, the Second Respondent had said that they had "not provided legal advice to him on the loans he has made".

31. The Second Respondent had estimated that the firm had acted in a further 20-25 transactions structured in a similar way, in which Birmingham Midshires had invariably been the lender.

32. On 27 May 2009, after the SRA had received written responses, including a list of 18 matters, Mr Chambers had contacted the First Respondent to arrange for the investigation to be continued, in order that he could, inter alia, review the 18 transactions involving "equity release" as set out on the schedule provided to the SRA on 26 May 2009.

33. When Mr Chambers returned to the firm's offices on 5 June 2009, with a colleague Mr Page, he had been provided with an "updated" schedule which had listed 29 transactions involving "equity release". The original schedule had detailed a total of £649,800 in respect of "equity release" loans received from Mr Patel/Patel Enterprises Ltd, whereas the updated schedule had totalled £1,222,800 and whereas the original schedule had shown a total of £26,072.52 had been repaid to purchasers the updated schedule showed a figure of £105,031.76.

34. Mr Chambers had ascertained that the firm had been instructed by several lender clients, Birmingham Midshires in 23 transactions, the Mortgage Works in 3; Bristol and West in 1; Cheltenham & Gloucester in 1; and Kensington Mortgages in 1. He had calculated that the £3,201,965 mortgage advances represented 71.1% of the total purported purchase price of £4,225,400 and noted that the balance had been provided by Mr Patel and Patel Enterprises Ltd. The "equity release" loans had ranged in amount from £19,500 to £87,000 and the sums returned to the purchasers had ranged from nil to £24,523.05. Further, Mr Chambers had noted that in 13 matters, no monies had been received direct from the purchaser clients and in a further 9 matters less than £1,000 had been received.

35. The Second Respondent had informed Mr Chambers that Messrs Attwells of Ipswich would have acted for the vendors in the matters, and that a firm of mortgage brokers called Marble Finance Limited had dealt with many of the related mortgage applications.

36. In interview on 5 June 2009, the Second Respondent had confirmed to Mr Chambers that the matter of Ms EG was representative of all 29 transactions, in that no information had been provided to the lender clients. Mr Chambers had reviewed a further seven files and had found no disclosure to lender clients of material facts on those files. The Second Respondent had referred to the mortgage application form in the Ms EG matter, which he had forwarded to Mr Chambers on 1 April 2009, and had indicated that he believed the same information regarding the provision of the deposit would have been given, namely that it was from "equity release on other investment property". On that basis the Second Respondent had indicated that he had believed no further disclosure had been required in accordance with the CML Handbook. The mortgage application form in the Ms EG matter had not been on the file and the copy subsequently provided was unsigned. No copy mortgage application forms had been on the other seven files examined by Mr Chambers.

37. In his August report Mr Chambers exemplified two further matters which he had reviewed, namely Mr RB and Mr PS, neither of which had been included on the first schedule.

38. The firm had acted for Mr RB in his purchase of 7 H Cottages and for Birmingham Midshires, whose letter of instructions had referred specifically to the CML Lenders Handbook and their Part 2 instructions. Attwells had acted for the vendor and MF Ltd had been the mortgage broker.

39. The Second Respondent had signed the Certificate of Title on 14 January 2009 which showed a purchase price of £125,000. The mortgage advance had been £82,500 and the Completion Statement showed a purchase price of £110,000. It had appeared from the client ledger that completion had taken place on 16 January 2009 and on that date the sum of £24,523.05 had been transferred to a bank account in the name of Mr RB. No monies had been received from the client. The balance of the purchase price had been purported to have been made up in the sum of £56,000 described as "equity release". That sum had been received into the firm's client bank account on 15 January 2009 from Patel Enterprises Ltd described as "part of an equity release facility secured on a property owned by our client". On 26 January 2009, £1,100, namely 1% of the purported purchase price per completion statement described as "interest fees" had been paid to Patel Enterprises Ltd.

40. In addition Mr Chambers had noted that Attwells, acting for the vendor, had emailed the firm on 12 January 2009 indicating that their client would be renting the property back on completion. There had been no evidence on the file to show that that information or information regarding the source of the deposit or the payment of funds to the purchaser on completion had been passed to the lender client despite the specific prohibition by the lender.

41. The firm had acted for Mr PS in his purchase of 376 B Crescent and for the Mortgage Works Plc, whose instructions had also referred to the CML Handbook and their Part 2 instructions. Attwells had again acted for the vendor and the mortgage broker was the MC.

42. According to the Certificate of Title signed by the Second Respondent on 18 September 2008, the purchase price had been £124,500, £94,542.19 of which was to be funded by the mortgage. Completion had taken place on 24 September 2008 and on 9 October 2008 the sum of £10,236.50 had been transferred to a bank account in the name of Mr PS. No monies had been received from the client. The balance of the purchase price had been made up by receipt of £44,500, described as "equity release" and received from Patel Enterprises Ltd on 24 September 2008. Mr Patel had described the monies as "part of an equity release facility secured on a property owned by our client". On the same date the sum of £1,245, or 1% of the purchase price, had been paid to Patel Enterprises described as "interest costs".

43. Emails on the client file had indicated that the firm had been informed by their client that repossession of the property had been imminent and had provided Attwells with the phone number of the vendor, their own client. In addition, there had been an indication that the vendors would remain at the property as tenants on completion.

44. There had been nothing on the file to indicate that any of the information relating to a tenancy or that relating to funding had been passed to the lender client, despite their instructions.

45. The Second Respondent had described Mr Patel, who had been the sole director of Patel Enterprises Ltd as at 15 April 2009, as a business acquaintance whom he had met at property investment seminars. He said the firm had acted for Mr Patel in one transaction and that the firm had not provided any advice to Mr Patel or to his company regarding the "equity release" loans made in the 29 matters. The one transaction in which the firm had acted for Mr Patel had involved a loan in the sum of £33,000 to a Mr B on 20 October 2008 and repaid to the firm on 19 February 2009. Mr Patel had therefore been a client of the firm during that period. 15 of the 29 transactions on the amended schedule had completed during the period 20 October 2008 to 19 February 2009.

46. Mr Chambers had accessed property investment websites associated with Mr Patel, including www.propertyfinanceworkshop.com which stated it was copyrighted by Patel Enterprises Ltd. This referred to workshops which purported to advise on "How to do "No Money Down" deals in 2009" inter alia. Mr Chambers had obtained a copy of a workbook associated with the workshops. The contents of the workbook had included details of key contacts including Attwells as acting for the vendor and Mehtalaw as acting for the purchaser. In addition the workbook had contained an example option agreement, a full copy of the firm's client care letter and an example quotation schedule. From a previous version of the workbook, Mr Chambers had established that the Second Respondent had apparently given a presentation at previous workshops.

47. The Second Respondent had acknowledged that he was aware of the website and the workbook but denied that they bore any correlation to the 29 equity release loans received from Mr Patel and Patel Enterprises Ltd, totalling £1,222,800. He had also said that the firm's details should not be in the workbook. His explanation about the key contacts had been that they all had a reputation in the property investment market and had been working together by way of mutual referral. He had denied that the 29 transactions had been part of a "No money down" purchasing process.

48. Mr Chambers had enquired as to whether the firm had acted in any matters involving Mr Patel and an option agreement. The Second Respondent had denied doing so. Mr Chambers had drawn the attention of the Second Respondent to a transaction in which the firm had acted for a Mr and Mrs B in the sale of a property in which Attwells had acted for the purchaser. In that case the firm had paid out of the proceeds of sale of £164,000, the sum of £52,000 to a bank account in the name of Mr Patel, purportedly in accordance with the terms of an Option Agreement between Mr and Mrs B and a company, A Direct Sale Ltd, in which Mr Patel had been the sole Director. The Second Respondent had indicated that he could not recall the detail of the transaction and also that it had not necessarily been part of a "No money down" property scheme.

49. In the matter of Mr and Mrs B's sale of 203 B Avenue, instructions had been given directly by Mr Patel to the firm on 24 July 2008. The Second Respondent had asked him why the firm was acting for the vendor. On 20 August 2008 Mr Patel had emailed the firm, attaching a copy of a signed Option Agreement and requesting a solicitor undertaking to transfer £52,000 on completion, to a bank account in the name Vanish Patel. That undertaking had been provided by email dated 21 August 2008.

50. The Option Agreement had been dated 5 August 2008 and in substance had been identical to that in the workbook. It had appeared that Mr and Mrs B had contracted to sell the property to A Direct Sale Ltd for £112,000 with an option to A Direct Sale Ltd to sell on within a six month period. The agreement had specified that the owner "shall be obliged to sell the property to such party that the option holder may specify for a price no less than the price" (£112,000), and that "on completion of the sale of the property to a third party the owner shall make a payment to the Option holder a sum equal to the difference between the final contract price for the sale of the property to the third party and the price". On 20 April 2009, Mr Vanish Patel was the sole director of A Direct Sale Ltd.

51. The contract for sale in the sum of £164,000 was dated 5 September 2008 and was signed by Mr and Mrs B. That was one month after the date of the Option Agreement. The difference between the two figures was £52,000, the sum which had been transferred to Mr Patel on completion on 8 September 2008, in accordance with the undertaking.

52. According to the client ledger the clients had received the sum of £7,971.2 and their mortgage had been redeemed in the sum of £104,028.73, a total of £112,000. However, there had been no evidence on the file of any advice having been given to Mr and Mrs B in relation to the option agreement.

53. The SRA caseworker had written to the Respondents regarding the matters on 29 September 2009. An initial response had been received from the Second Respondent, dated 26 October 2009 and a further response dated 6 November 2009.

54. On 22 June 2009, a decision had been made to refer the matters the subject of the April report to the Tribunal by an adjudication Panel. A decision to include the matters the subject of the August report had been made by an authorised officer on 17 December 2009. The adjudication panel had also directed that if the Respondents failed properly to close their practice by 31 August 2009 the matter be referred back for further consideration. Confirmation of closure had been provided by letter dated 28 August 2009.

55. By a decision dated 28th May 2010 the Adjudicator had referred the conduct of the Respondents to the Tribunal in respect of their failure both to comply with directions following a decision of Inadequate Professional Services dated 19th November 2009 arising from complaints relating to their client Ms Sam and to co-operate with an investigation by the SRA into her complaint.

56. By a decision dated 7th July 2010, an authorised officer had resolved to add to the existing proceedings before the Tribunal the Respondents failure to co-operate with an investigation by the SRA into a complaint by their client Mrs Sa.

Preliminary Matter

57. The Applicant sought to withdraw allegations 5 and 6 as against the First Respondent. The Tribunal agreed to the withdrawal.

58. The parties informed the Tribunal that the factual background was agreed and that allegation 1 was admitted by both Respondents, allegation 2 admitted by the First Respondent only, allegations 3 and 4 denied by both Respondents, allegations 5 and 6

both denied by the Second Respondent, allegation 9 admitted by the First Respondent only and allegation 10 admitted by the First Respondent only as regards Ms Sam and the Second Respondent only as regards Ms Sa.

59. In respect of allegations 7 and 8, involving the First Respondent only, the allegations were admitted. However, the Tribunal was informed that neither Respondent admitted acting either dishonestly or recklessly in relation to any of the allegations.

Documentary Evidence before the Tribunal

60. The Tribunal reviewed the Rule 5 and the Rule 7 Statements together with their accompanying exhibits and the written Opening Submissions of the Applicant.

Witnesses

61. Mr Chambers, an Investigation Officer with the SRA, gave evidence relating to his two inspections of the Respondents' firm and as to the contents of the resultant reports of 6th April 2009 and 21st August 2009.

62. In relation to the conveyancing file of Ms EG in which the firm had been instructed on the purchase of 12 P Gardens, Mr Chambers explained that the mortgage application form, in the name of Ms EG, had not been on the file when he had inspected it. He said that the form had been sent to him subsequently and he had noted that the application form had neither been signed nor dated by Ms EG. Mr Chambers confirmed that there had been no mortgage application forms on any of the other seven files that he had inspected from the list of 29 files, nor would he normally have expected to see such forms on conveyancing files. There had been no evidence of any notification to the firm's lender clients of any material facts including equity release, vendors remaining as tenants or payments towards the purchase price by third parties.

63. In relation to the conveyancing file of Mr & Mrs B where the Second Respondent had been instructed on their sale, Mr Chambers had noted that there had been a sale at £164,000 only one month after an Option Agreement between Mr & Mrs B and A Direct Ltd for a sale at £112,000. The result had been that Mr & Mrs B had received only £7,971.27 after the repayment of their mortgage and Mr Patel, the sole Director of A Direct Ltd, had received £52,000.

64. Mr Chambers confirmed that there had been concern about potential mortgage fraud in that it had appeared that vendors, anxious to sell, had entered option agreements with A Direct Sale Ltd, which had reserved the right to sell on for a higher price, and had subsequently signed contracts for sale to third parties at higher, inflated prices. The deposit, needed by that third party, had been provided by Mr Patel and subsequently repaid to him with interest from the mortgage advance. The third party purchasers had made no contributions to the purchase price hence they had been involved in "No Money Down" transactions and the firm's lender clients had provided mortgages based on higher, inflated values. Mr Chambers explained that he had believed that the sale file of Mr & Mrs B on which the firm had been instructed had been a mirror image of the 29 purchase transactions.

65. In cross-examination, in relation to the client loans, Mr Chambers stressed that concerns had remained relating to the lack of written authority by both spouses and

the total lack of advice about taking independent legal advice before making unsecured loans to one's solicitor.

66. Turning to the allegation of failing to inform lender clients of material facts, Mr Chambers confirmed that he had not spoken to Ms EG and that he had not produced evidence from any of the lenders involved. While he accepted that there had been some additional "equity release" files and in some cases "equity release fees" of £100 had been added to bills, albeit with no details of properties upon which monies had been secured, he stressed that the main concern had been the failure by the Second Respondent to inform the firm's lender clients of material facts. It had also been of concern that the firm had failed to advise Mr & Mrs B on their Option Agreement or to obtain their agreement to the firm's undertaking to pay monies from the proceeds of the sale of their property to Mr Patel.

Submissions on behalf of the Respondents

67. Mr Gilchrist submitted that there was insufficient evidence to prove that the equity release schemes had been "No Money Down" transactions or anything other than what they had purported to be, or that properties had been over-valued or over-mortgaged. He submitted that the Second Respondent had believed that property investors had been involved in the 29 equity release purchases and that the monies supplied by Mr Patel had, in effect, been the purchaser clients' monies. Mr Gilchrist further submitted that there was no evidence before the Tribunal, by way of complaint or otherwise, that lenders had been misled and therefore allegation 5 had not been established.

68. As to allegation 4, Mr Gilchrist submitted that the sending of an incomplete schedule only days before a visit when a complete schedule was made available, did not amount to the Respondents seeking to mislead the SRA.

69. Turning to the loans from clients, Mr Gilchrist explained that the Respondents came from a close community in which people were prepared to help each other out. The Respondents accepted that they had failed to secure prior written consents in all cases and that in relation to one client, independent legal advice had not been taken until the First Respondent had been unable to repay the loan in full at the date agreed.

70. Mr Gilchrist submitted that neither Respondent had acted dishonestly. He explained that the Respondents had been trying to deal with many difficulties and while monies had been borrowed from the firm's client account, mostly with their clients' consent, those monies had been repaid and it had always been the intention of the Respondents that they should be repaid.

Findings as to fact and law

<u>Allegation 1 – Breaches of the Solicitors' Accounts Rules</u>

71. The Tribunal found allegation 1, relating to breaches of the SAR, both admitted and proved as against both Respondents. It noted that there had been very serious breaches, including the misuse of client monies. As at 28 February 2009, there had been a cash shortage of £46,707.39. The Tribunal was satisfied that that shortage had represented £40,372.39 being monies paid out of client account in contravention of a High Court Restraint Order and £6,335 constituting improper withdrawals from client

account. The improper withdrawals from client account had been by way of bills raised in the sum of the amount paid by clients in respect of disbursements.

72. The Tribunal found that there had been two further shortages that had been rectified prior to inspection; one in the sum of £3,600 (Re K) where the shortage had existed for 118 days and the other in the sum of £6,000 (Re G) where the shortage had existed for 35 days. In both cases the Tribunal found that client monies had been utilised to assist the firm's finances without the clients' knowledge.

Allegation 2 – Breach of Rule 1 by utilising client monies for their own benefit

73. The Tribunal found the allegation, relating to the utilisation of client monies, proved as against both Respondents, indeed it had been admitted by the First Respondent. The Tribunal accepted that the First Respondent had been responsible for the billings in the total sum of £6,335 when monies, paid by clients for disbursements, had been transferred to office account as profit costs. The First Respondent had also been responsible for transferring £40,372.39 from client account in contravention of a High Court Restraint Order and in addition there had been an element of substantial over-charging. The Tribunal found that the Respondents had had financial difficulties and had been utilising client monies to assist their cash flow.

74. The Tribunal found the Second Respondent, as a partner, to have been in breach of his responsibilities for the firm's accounts and careful stewardship of client monies.

75. However, the Tribunal was satisfied that as the instigator of the transfers resulting in the utilisation, the First Respondent had been dishonest in that in making those transfers from client account, his conduct had been dishonest by the standards of reasonable and honest people and that he himself, when making those transfers, had realised that, by those standards, his conduct was dishonest.

76. The Tribunal did not accept Mr Gilchrist's submissions that the First Respondent had not been dishonest but rather, grossly stupid and had failed to appreciate the seriousness of a High Court Restraint Order. The Tribunal was satisfied that when the First Respondent had billed £22,618.75 in respect of costs, he had been fully aware that he had not done sufficient work to justify such costs. His subsequent schedule of the value of work that he had actually done had been in the sum of £5,400.

Allegation 3 – Breach of Rule 1 in relation to loans from clients

77. The Tribunal found the allegation proved as against both Respondents. In the matters of Re K and Re G, the Tribunal found that the First Respondent had falsified documentation and "borrowed" clients' monies without their knowledge. In the matter of H&TM, the Tribunal found that two sums of £22,000 and £19,500 had been transferred from the firm's client account not to office account but to personal accounts of the First Respondent. The Tribunal found that there had been no evidence of authorisation before the transfer of the sum of £22,000, that the second loan had only been authorised by one of the two clients involved and that there had been no advice to the clients to take independent legal advice before making an unsecured loans of £41,500. The Tribunal noted that the clients had subsequently taken independent legal advice when the Respondents had been unable to repay the loan as agreed.

78. The Tribunal found that the Second Respondent had been involved in securing two loans from clients of £4,819.50 and £5,000 and in neither case had there been contemporaneous written authority, consent from all parties or any advice to the clients to take independent legal advice before making unsecured loans.

Allegation 4 – Breach of Rule 1 by seeking to mislead the SRA

79. The Tribunal did not find as proved against either Respondent the allegation that they had sought to mislead the SRA by providing incomplete information as to the scale of transactions involving the purported equity release scheme. The Tribunal did not consider it necessary to make any findings as to the nature of the 29 transactions or as to the involvement of the Second Respondent and MehtaLaw with the various schemes marketed by Mr Patel, Patel Enterprises Ltd and A Direct Sale Ltd.

Allegation 5 – Breach of Rule 1 by failing to inform lender clients of material facts - as against the Second Respondent only

80. The Tribunal found that the Second Respondent had failed to inform his lender clients of all material facts in breach of the requirements of the CML Handbook and of the general duties to clients. The Tribunal did not accept that in any of the 29 transactions, listed on the updated schedule supplied by the Respondents on 5 June 2009, the lenders had been informed about funds being supplied by third parties, albeit by way of purported equity release schemes, or of vendors remaining in the premises as tenants.

Allegation 6 – Acting for both lender and borrower where there had been a conflict of interest – as against the Second Respondent only

81. As a consequence of his failure to disclose material facts the Tribunal was satisfied that the Second Respondent had acted for clients in circumstances where there had been a conflict of interest. The Tribunal found the allegation proved as against the Second Respondent.

Allegation 7 – Breach of Rule 1 by acting in contravention of a Restraint Order

82. In making some 19 payments, totalling £40,372.39, out of funds held by the firm subject to a Restraint Order, of which the First Respondent had had notice, the Tribunal found that the First Respondent had acted recklessly and in breach of the Order. The Tribunal did not accept Mr Gilchrist's submissions that in not taking the Order as seriously as he should have done, the First Respondent had simply acted negligently which he had admitted. The Tribunal was satisfied that the terms of the Order had been clear and that the conduct of the First Respondent, as a solicitor, in ignoring the terms of the Order served on him by the Bedfordshire Police was not merely negligent but reckless. The Tribunal found the allegation proved.

Allegation 8 – Breach of Rule 1 by overcharging client

83. The First Respondent admitted that in submitting bills amounting to £22,618.75 for work subsequently valued on a time basis at £5,400 he had overcharged his client. Again, the Tribunal did not accept that the First Respondent's behaviour had been simply negligent arising from a careless mistake but found it to have been reckless in that bills had been raised without any regard to the real value of the services provided.

Allegation 9 – Breach of Rule 1 by failing to comply with a decision of the Legal Complaints Service

84. As partners in the firm of Mehtalaw Solicitors, the Tribunal was satisfied that both Respondents had been responsible for ensuring compliance with the decision made by the Legal Complaints Service dated 19th November 2009. The Tribunal found the allegation proved as against both Respondents.

Allegation 10 – Failing to co-operate with the SRA in relation to complaints

85. Again as partners in the firm of Mehtalaw Solicitors, the Tribunal was satisfied that both Respondents had been responsible for ensuring co-operation with investigations conducted by the SRA regardless of which Respondent had had responsibility for a particular client file. The Tribunal found the allegation proved as against both Respondents in that they had failed to co-operate in relation to the investigation of complaints against the firm by Ms Sam and Ms Sa.

Mitigation

86. Mr Gilchrist provided details of the professional and personal circumstances of both Respondents. In relation to the Second Respondent, he accepted that such serious allegations merited a severe penalty but stressed that the Second Respondent hoped to be allowed to continue to practice as a solicitor in the future.

87. Turning to the First Respondent, Mr Gilchrist accepted that it was only in exceptional circumstances that a solicitor found to have been dishonest would be allowed to continue in practice. He reminded the Tribunal that some of the client monies had been replaced before the visit of the forensic investigation officer and reminded the Tribunal of circumstances surrounding the use of client monies.

Application for Costs

88. The Applicant referred to the Schedule of Costs dated 25th October 2010 and sought a fixed order in the sum of £36,976.90.

89. While not opposing the application for costs, Mr Gilchrist gave the Tribunal details of the Respondents' parlous financial circumstances.

Sanction and Reasons

90. Dealing with the First Respondent, who the Tribunal found to have been both dishonest and reckless when dealing with client monies, the Tribunal considered that the appropriate penalty was that he be struck off the Roll of Solicitors and it so ordered.

91. In determining penalty, the Tribunal had regard to the high duties imposed on solicitors when dealing with clients' monies and to the approach of the Master of the Rolls in Bolton v Law Society WLR 25th March 1994. The Tribunal considered that the First Respondent had fallen way below those high standards and had failed to discharge his professional duties with integrity, probity and complete trustworthiness.

92. Turning to the Second Respondent, although he had not been found to have behaved either dishonestly or recklessly, the Tribunal was concerned about his failings when dealing with clients' monies. It regarded all breaches relating to the stewardship of client monies as very serious indeed. In the particular circumstances, it considered that the suspension of the Second Respondent from the Roll of Solicitors for a period of one year was the appropriate penalty and it so ordered.

Decision as to Costs

93. The Tribunal was satisfied that all the allegations had been properly brought and made orders for costs, on a joint and several basis, against both Respondents. However, in the light of the Respondents' financial positions, it stated that such orders were not to be enforced without the leave of the Tribunal.

The Orders of the Tribunal

94. The Tribunal Ordered that the Respondent, Prakash Shantilal Mehta of Mehtalaw, Links House, Ferndown, Northwood, Middlesex, HA6 1PG, solicitor be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs on a joint and several basis fixed in the sum of £36,976.90, not to be enforced without the leave of the Tribunal and the Tribunal direct that the decision of Inadequate Professional Services dated 11th November 2009 to be treated for the purposes of enforcement as if it was contained in an Order made by the High Court.

95. The Tribunal Ordered that the Respondent [RESPONDENT 2] of Northwood, Middlesex, HA6, solicitor be Suspended from practice as a solicitor, for the period of one year to commence on the 25th day of October 2010 and it further Ordered that he do pay costs on a joint and several basis, fixed in the sum of £36,976.90, not to be enforced without the leave of the Tribunal and the Tribunal direct that the decision of Inadequate Professional Services dated 11th November 2009 to be treated for the purposes of enforcement as if was contained in an Order made by the High Court.

Dated this 7th day of January 2011
On behalf of the Tribunal

D Glass
Chairman