No. 10492-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ANIL BANCE solicitor (First Respondent)
-and-
DAVINDER SINGH CHEEMA solicitor (Second Respondent)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

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Miss N. Lucking (in the chair)
Mrs K. Thompson
Mrs S. Gordon

Date of Hearing: 21 October 2010

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# FINDINGS & DECISION

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**Appearances**

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

The First Respondent, Anil Bance, appeared in person.

The Second Respondent, Davinder Singh Cheema, did not appear and was not represented.

**Application Date**

The date of the Rule 5 Statement was 24 March 2010.

**Allegations**

1. The allegations against the Respondents were as follows:

    1.1 They had withdrawn money from client account in breach of Rule 22 of the Solicitors' Accounts Rules 1998. They had also been dishonest, although for

the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated;

1.2 They had failed to keep accounting records properly written up at all times contrary to Rule 32(1) of the said Rules;

1.3 They had failed to carry out reconciliations of their client accounts in breach of Rule 32(7) of the said Rules;

1.4 In breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 they had failed to act with integrity. They had also been dishonest, although for the avoidance of doubt it was not necessary to prove dishonesty for this allegation to be substantiated;

1.5 In breach of Rule 1.04 of the said Code they had failed to act in the best interests of their clients;

1.6 In breach of Rule 10.06 of the said Code they had failed to fulfil undertakings;

1.7 They acted in circumstances where there existed a conflict between their interests and those of their clients.

**Factual Background**

Respondents' Histories

2. The First Respondent was born on 11 March 1973 and was admitted as a solicitor on 5 January 1998. The Second Respondent was born on 9 June 1970 and was admitted as a solicitor on 15 May 2002. The Respondents' names remained on the Roll of Solicitors.

3. At all material times the Respondents carried on practice in partnership as Ascot and Chase Solicitors of 26 Station Approach, Hayes, Bromley, Kent BR2 7EH. On 1 December 2009 the Applicant decided to intervene into the practice, following completion of an investigation which commenced on 22 June 2009. The First Respondent currently worked in approved employment, practising criminal law at a solicitors' firm. The Second Respondent's employment status was unknown.

Documents Before The Tribunal

4. The Tribunal had before it the following documents:

Applicant

- Rule 5 Statement and Exhibit DEB 1 dated 24 March 2010;

- Applicant's Supplementary Bundle containing source documents in support of various matters raised within the Interim Forensic Investigation Report. They were before the Tribunal at the First Respondent's request.

First Respondent

- Written Representations and Exhibit AB1 dated 19 October 2010.

Facts

5. The Applicant's Investigation Officer, Ms G. Seager, attended at the offices of Ascot and Chase on 22 June 2009. The First Respondent was present; the Second Respondent was on leave. Investigation Officers Mr G. Page and Ms L. Horton attended at the offices on 2 September 2009. Mr Page attended again on 23 and 27 October 2009. An Interim Forensic Investigation Report ("FIR") with 7 exhibits dated 23 November 2009 was prepared and signed by M. J. Calvert, the Applicant's Head of Forensic Investigation. The report was included in Exhibit DEB 1.

6. On 27 October 2009 the First Respondent gave Mr Page a document dated 27 October 2009 entitled "Memo" expressed as being the agreed opinion of the partners, providing their explanation for issues relating to property transactions identified during the investigation. The Memo commenced with the statement that it had been agreed by the partnership that bearing in mind that the Second Respondent was still on leave it was inappropriate to allow the First Respondent to discuss matters concerning the practice in his absence.

7. On 22 December 2009 the Applicant wrote with the FIR to the Respondents inviting comment and explanation. A response was provided on behalf of the Respondents in the form of representations by Richard Nelson Solicitors sent under cover of letter dated 5 February 2010 ("the Richard Nelson Representations"). That firm continued to act and was sent notification of the substantive hearing date under cover of letter from the Tribunal dated 8 July 2010. On 19 October 2010, Richard Nelson Solicitors informed the Tribunal by email that its instructions had been terminated.

8. The Respondents held a number of bank accounts at National Westminster Bank plc in Bromley, Kent, which either of them alone could operate. As at 2 September 2009 the balances on the accounts were as follows:

| | | |
|---|---|---|
| Client Account (1) | £185,943.26 | Credit |
| Client Account (2) | £17.29 | Credit |
| Client Account (3) | £0.00 | |
| Office Account (1) | £14,907.34 | Debit |
| Office Account (2) | £9.20 | Credit |
| Loan Account | £11,594.14 | Debit |

9. The books of account were not in compliance with the Solicitors' Accounts Rules 1998 ("SAR"). In particular no client account reconciliations had been carried out since 31 December 2008. The Respondents accepted in the Richard Nelson representations that this was the case, explaining that the firm's book keeper left in March 2009 and the First Respondent had attempted to deal with accounts matters himself.

10. The Respondents were unable to provide Mr Page with a list of liabilities to clients. He calculated from documentation provided that as at 2 September 2009 the firm's minimum (not total) liability to clients was £527,365, relating to four matters namely:

| Property | Amount |
|---|---|
| Therapia Road (Client Bance) | £142,465.00 |
| Nutbrook Court (Client Bance) | £134,965.00 |
| Toronto Road (Client Cheema) | £59,965.00 |
| Fairmount Avenue (Clients Bance and Cheema) | £189,970.00 |

The cash available in client account as at 2 September 2009 was £185,971.75. The minimum cash shortage was therefore £527,365.00 less £185,971.75, namely £341,393. 25.

11. Mr Page was unable to account precisely for the cause of the cash shortage due to the book keeping arrears. He identified the following as relevant factors:

| | |
|---|---|
| Round sum transfers made from Client Account (1) to Office Account (1) | £188,780.00 |
| Round sum transfers made from Client Account (1) to Office Account (2) | £2,970.00 |
| Failure to account for monies paid out from Client Account (3) | £5,500.00 |
| Misuse of client monies for personal and other improper payments | £15,611.03 |
| | £212,861.03 |

12. Mr Page and Ms Horton interviewed the Respondents on 3 September 2009, and on 23 and 27 October 2009 Mr Page attended at the firm's offices again to discuss, amongst other matters, the identified minimum cash shortage. On 23 October 2009 the Second Respondent was still on leave. The First Respondent was unwilling to be interviewed until such time as he had been able to speak to the Second Respondent. On 27 October 2009 Mr Page was provided with the Memo dated 27 October 2009.

13. Under SAR Rule 22, client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held). Under SAR Rule 19, where a solicitor required payment of his fees from money held for a client or trust in a client account he must first provide the client with a bill of costs or other written notification of the costs incurred. Costs transferred out of a client account in accordance with Rule 19 must be specific sums relating to the bill or other written notification of costs and covered by the amount held for the particular client or trust. Round sum transfers on account of costs will be a breach of the Rules.

14. Withdrawals were made from client account and paid into office account between 5 January and 28 August 2009, evidenced by bank statements for that period. A total of 75 "round sum" Client to Office (1) Account transfers totalling £188,780 were identified to the Respondents during interview on 3 September 2009. The transfers varied in amount from £50 to £29,000. A number of the transfers were made just before the office account reached its £15,000 overdraft limit. For example, on 22 July 2009 the sum of £29,000 was transferred from Client to Office Account (1). The money was available for use in office account until about 24 July 2009 when £28,000 was transferred back to Client Account (1).

15. The Respondents explained that the transfers represented payment for work done. They were unable to identify to which ledger account cards some of the withdrawals related and which withdrawals related to which transfers for work done. There was an express obligation under the SAR to maintain a Central Bill Register. The firm's Central Bill Register contained 16 bills of costs for the period 16 December 2008 to 11 August 2009, totalling £9,401.50. The bills did not relate to the transactions in the bank statements. It therefore appeared that the majority of the transfers totalling £188,780, if not all, were improperly made in breach of the SAR 1998.

16. In the Richard Nelson Representations, the Respondents admitted the existence of the minimum cash shortage of £341,393.25, but were unable to provide a full explanation as to how the shortfall had arisen due to their accounting procedures/book keeping difficulties. The Respondents also accepted that between 5 January and 28 August 2009, 75 round sum transfers totalling £188,780 were made from Client to Office Account (1). They explained that the round sum transfers related to costs due for work undertaken and for which clients had been sent bills. They were unable to identify the matters for which the transfers were made due to the ledgers not being up to date.

17. The Respondents also admitted that 10 round sum transfers totalling £2,970 had been made from Client Account (1) to another Office Account between 23 January and 24 August 2009, but they were unable to identify to which clients those transfers referred. Two further round sum transfers totalling £5,500 had been made from Client Account (1) into Client Account (3) between 2 January and 2 September 2009. The Respondents believed this to be due to a bank error.

18. During the hearing the First Respondent disputed the precise amount of the round sum transfers.

19. There were other transactions which the Respondents were unable to explain. Eleven payments totalling £15,611.03 had been made from client account to the First Respondent. It was said in the Richard Nelson Representations on behalf of the First Respondent that those payments represented money owed to him in relation to personal matters on which the firm acted e.g. remortgages and sale/purchase of his properties and/or were due to errors made when cheques were written from client account instead of office account. It was also accepted by the Respondents that £2,100 had been transferred from Client Account (1) to Client Account (2) on 13 January 2009. The Respondents suggested that 3 cheque payments to Optima Legal totalling £2,093.14 in settlement of legal bills had been made from client account when they should have been paid from office account. The First Respondent had written the cheques using the client account cheque book by mistake.

20. Mr Page during cross-examination by the First Respondent conceded that there had been instances during the investigation when the First Respondent had suggested that the monies transferred from client account might have belonged to the First Respondent personally or to the partnership, but he was unable to provide any assistance in relation to the possibility that the overall client account shortfall could have been reduced due to sums of money owing to the partners. Mr Page thought that he recalled the First Respondent informing him that there should have been more bills in the Central Bill Registry. He could not recall having looked at 20 sample files

containing bills. He did remember asking for an explanation as to the lack of bills, but did not receive the same.

21. It was alleged by the Applicant that the Respondents had been dishonest in respect of allegation 1.1, which they denied.

22. Allegations 1.4 to 1.7 concerned the misuse of mortgage funds, and concerned four property transactions which had been conducted using monies advanced to the Respondents by lender clients. In respect of allegation 1.4 it was also alleged that the Respondents had been dishonest. The Respondents denied these allegations, save where stated otherwise below.

23. The firm was instructed to act for the lender clients, the Birmingham Midshires Building Society, part of the Bank of Scotland Group, and Bank of Scotland in the transactions. The instructions stated that the transactions were to be conducted in accordance with the Council of Mortgage Lenders' Handbook for England and Wales ("CMLH"). The Certificates of Title signed on behalf of the firm by one or other of the Respondents were expressed to be in the form of the Certificate of Title set out at the Appendix to Rule 3 of the Solicitors' Code of Conduct 2007. Those Certificates therefore contained express undertakings on behalf of the firm in which the Respondents were partners and solicitors. The Respondents undertook to act for lenders in accordance with the CMLH. They were required to hold advances on trust until completion, return funds where completion was delayed, secure good title to property and register mortgages and remortgages at the Land Registry within a limited specified period.

24. On 10 March 2009 mortgage funds of £142,465 and £134,965 were received into the Respondents' Client Account (1) from the lender client. The funds were advanced to enable the First Respondent to complete his proposed purchases of properties at Therapia Road and Nutbrook Court, London on 11 March 2009. Certificates of Title for both properties had been submitted to the lender clients, signed by the Second Respondent. The sum of £270,389.42 was debited from Client Account (1) on 11 March 2009, but it was not used in connection with the two purchases as the Respondents had undertaken to their lender client that it would be. Instead it was used to discharge the mortgage of Mr M., an unconnected individual. Further neither mortgage advance was registered at the Land Registry in accordance with the undertakings.

25. Mr M.'s sale completed on 28 November 2008. Funds of £310,659 were released by the sale and transferred to the firm's client bank account on that day. The sum of £4,230 was sent to the vendor's solicitor, and £52,453.34 to Mr M. Mr Page found on file an unactivated CHAPS payment instruction dated 28 November 2008 in favour of the Birmingham Midshires Building Society (Mr M.'s mortgage holder) for £271,969.79. Mr M.'s mortgage was not in fact redeemed until 11 March 2009 using the advances referred to above.

26. The Respondents also conducted remortgage transactions in respect of properties at Toronto Road and Fairmount Avenue, London. On 22 April 2009 they received into Client Account (1) the sum of £59,965 relating to the remortgage of Toronto Road. On 7 August 2009 they received £189,970 into the same client account in respect of

the remortgage of Fairmount Avenue. The Respondents acted for lender clients, the Bank of Scotland and the Birmingham Midshires Building Society respectively, in these transactions.

27. The freehold of the Toronto Road property was owned by the Second Respondent, and mortgaged to NatWest. In the 27 October 2009 Memo the Respondents said that the intention was to divide the property into 4 leasehold flats. The remortgage application was made by the Second Respondent's wife. On 17 April 2009 the First Respondent signed a Certificate of Title containing undertakings as before. The Bank of Scotland forwarded the advance of £59,965. That sum was paid out to the Second Respondent on 23 April 2009. The original mortgage on the property, the amount of which could not be identified by Mr Page, had not been discharged nor had the Bank of Scotland remortgage been registered at the Land Registry. In the Richard Nelson Representations, the Respondents said that there were outstanding matters which required resolution in order to finalise the new leases for the development prior to the registration of the lease. Once lease plans had been obtained from the Land Registry, Form DS3 from NatWest would have allowed the Bank of Scotland's interest to be registered. The Respondents admitted the delay in registering the lender's interest. They said that £59,965 was money due to the Second Respondent and his wife under the remortgage.

28. The Fairmount Avenue property was owned by the Respondents. Mr Page was again unable to identify the amount of the original mortgage, held by Mortgage Express. The Respondents applied for a remortgage and on 7 August 2009 received the advance of £189,970 form the lender into Client Account (1). On 10 August 2009 a payment of £121,750 was made from Client Account (1) to the Second Respondent's uncle. In the Richard Nelson Representations the Respondents admitted that the lender's interest had not and could not be registered until the mortgage with Mortgage Express had been redeemed. Due to cash flow difficulties the Respondents said they had been unable to redeem the mortgage and therefore were unable to register the lender's charge. They explained that the payment of £121,750 to the Second Respondent's uncle was in respect of an entirely unrelated matter, namely a remortgage on his behalf.

**Witnesses**

29. The Forensic Investigation Officer, Mr Page, gave oral evidence, and was cross-examined by the First Respondent. During cross-examination Mr Page confirmed when put to him by the First Respondent that the latter was not obstructive, and was cooperative and upfront about the state of the firm's books throughout the investigation.

30. The First Respondent did not give or call any evidence.

**Submissions**

31. The First Respondent relied on his written representations dated 19 October 2010. He drew the Tribunal's attention to the following specific matters:

- His area of expertise was criminal law and he was good at his job.

- His references, including those from a solicitor and a Queens Counsel, described him as being well liked by his peers and well respected by his clients. He submitted that the references demonstrated that he was an honest and trustworthy individual who worked extremely hard to the high standards required.

- He had made errors of judgement, but denied that he was dishonest. As a criminal practitioner he did not understand or fully appreciate the administrative side of the profession and readily admitted that his firm's accounts were in a shambolic state. He had found his appearance before the Tribunal very difficult. He had never shied away from the fact that he had to return sums of money to the lenders, and had attempted to raise funds to pay back the sums outstanding.

- During 2005 he had suffered from a period of serious illness, taking him out of the office for treatment for approximately two years. When he returned to his firm, which had previously been managed by the Second Respondent, he had concentrated on re-building the practice, and had left accounting procedures to others. Once his attention had been drawn to the book keeping issues, he alone had attempted to rectify the situation.

**The Tribunal's Findings As To Fact And Law**

32. The First Respondent had attended before the Tribunal and had chosen not to give oral evidence. The Second Respondent had not attended before the Tribunal. The Tribunal had satisfied itself that the Second Respondent had been served with the Rule 5 Statement and all supporting documents and that the Second Respondent was aware of the hearing date, having been notified via Richard Nelson, the solicitors on record at the material time. The First Respondent had provided the Tribunal with written representations dated 19 October 2010. The Tribunal had also considered the contents of the Memo dated 27 October 2009 and the representations made on behalf of the Respondents by Richard Nelson Solicitors under cover of the letter dated 5 February 2010.

33. The First Respondent had made certain admissions. The Tribunal had proceeded on the basis that the Second Respondent denied all allegations. However neither Respondent had provided the Tribunal with clear, consistent explanations in relation to the monies drawn from client account and paid into office account and events surrounding the property transactions.

Allegation 1.1

34. This allegation related to breaches of the SAR 1998 identified by the Applicant's Investigation Officers during their inspection of the Respondents' firm in June and September 2009. It was also alleged that the Respondents were dishonest, although it was not necessary to prove dishonesty for this allegation to be substantiated.

35. The First Respondent admitted that sums of money were withdrawn from client account and paid into office account in breach of the SAR 1998 but disputed the amounts. He denied dishonesty.

36. The Tribunal found the facts set out in the FIR to have been substantiated. The precise amounts of money involved were in dispute. The Forensic Investigation Officers had done their best to produce accurate figures based on the information provided to them by the Respondents. The Respondents admitted in their Representations that there was a minimum cash shortage of £341,393.25 at the time of the first inspection and that they could not explain how the cash shortage had arisen due to serious difficulties with accounting procedures and book keeping. They accepted that there had been 75 round sum transfers totalling £188,780 from client to office account between 5 January and 28 August 2009. They were however unable to identify the matters for which transfers were made due to the ledgers not being up to date. This was unacceptable.

37. The First Respondent submitted that he had told Mr Page that it was possible round sum transfers from client account to office account were of funds which belonged to the Respondents by virtue of their personal transactions. Mr Page conceded that this might well have been the case. However Mr Page had inspected the Respondents central record of bills, which solicitors are obliged to maintain, and found only 16 bills totalling £9,401.50 for the period 16 December 2008 to 11 August 2009. This still left unaccounted round sum transfers of £179,378.50.

38. Rule 22 of the SAR 1998 was clear in stating that client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held). SAR Rule 19 states, amongst other things, that a solicitor who properly requires payment of his fees from money held for a client in a client account must first provide a bill or other written notification of costs incurred to the client or the paying party. The guidance to that Rule emphasises that costs transferred out of a client account in accordance with Rule 19 (2) and (3) must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client. Round sum transfers on account of costs are a breach of the SAR.

39. The Tribunal found that the precise amounts of money transferred by the Respondents from client to office account made no difference to a breach of the SAR. Nowhere in the relevant Rules does it state that a minimum sum must be transferred in order for a breach to be established.

40. The Tribunal also found as a fact that monies were transferred from client account to office account to ease cash flow and to ensure that the firm did not breach its office account overdraft limit of £15,000. Money was transferred back to client account when the immediate financial crisis was over as was evident from the bank statements.

41. The Tribunal therefore found the allegation against both Respondents to have been substantiated in full on the facts, the First Respondent having made a part-admission.

Allegation 1.2

42. The First Respondent admitted that he had failed to keep accounting records properly written up at all times contrary to Rule 32(1) of the SAR 1998.

43. The Tribunal found this allegation as against the Second Respondent to have been substantiated on the facts. The Richard Nelson Representations contained an admission on behalf of both Respondents that the books of account were not up to date at the time of the inspection.

Allegation 1.3

44. The First Respondent admitted that he had failed to carry out reconciliations of the firm's client accounts in breach of Rule 32(7) of the SAR 1998. The Tribunal found this allegation as against the Second Respondent to have been substantiated on the facts. The Richard Nelson Representations contained an admission on behalf of both Respondents that as at the time of the inspection the last reconciliation completed was at 31 December 2008.

Allegations 1.4 to 1.7

45. These allegations related to mortgage transactions involving properties at Therapia Road, Nutbrook Court, Toronto Road and Fairmount Avenue, London. It was alleged by the Applicant that the Respondents had:

- Failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007. It was also alleged that they had been dishonest;
- Failed to act in the best interests of their clients in breach of Rule 1.04 of the said Code;
- Failed to fulfil undertakings in breach of Rule 10.06;
- Acted in circumstances where there existed a conflict between their interests and those of their clients.

46. All allegations, including the allegation of dishonesty, were denied, save as follows. The First Respondent admitted having failed to act in the best interests of his clients, in the event that the Tribunal found that the lenders were his clients. In support he referred in his written representations to the Therapia Road, Nutbrook Court and Fairmount Avenue transactions, in which he had not signed the Certificates of Title containing the undertakings to the lender clients. However the First Respondent conceded that he would be in breach of the undertakings if the Tribunal concluded that they extended to him as a partner in the firm under Rule 3 of the Solicitors Code of Conduct 2007.

47. The Tribunal found the facts set out in the FIR to have been substantiated. Indeed they were not contested by the Respondents to any significant degree.

48. The Tribunal had no difficulty in finding as a fact that the lenders were the Respondents' clients in each transaction. The lenders were clients of the firm in which both Respondents were partners. The Tribunal also noted that the borrower in each transaction was the First Respondent (Therapia Road, Nutbrook Court), the Respondents jointly (Fairmount Avenue) or the Second Respondent's wife (Toronto

Road). The potential for conflict of interest must have been obvious to the Respondents from the start.

49. On 10 March 2009 the Respondents received from their lender client into the firm's client account mortgage funds of £142,465 and £134, 965. Those funds were advanced for the sole purpose of enabling the First Respondent to purchase the Therapia Road and Nutbrook Court properties on 11 March 2009. The Certificates of Title containing undertakings were signed by the Second Respondent on behalf of the firm. The mortgage advances belonged to the lender client until such time as they were used by the Respondents for the purpose for which they were advanced in reliance upon the firm's undertakings. The money had to be returned to the lender immediately if it was not to be used for that purpose. The purchases were never completed. Instead, the mortgage advances were used to discharge Mr M.'s mortgage. The Respondents admitted in the Richard Nelson Representations that the proposed purchases by the First Respondent had not proceeded, and that the advances should have been returned to the lender. They also admitted that the advances were used to redeem Mr M.'s mortgage. In consequence the mortgages had not been registered at the Land Registry as required by the firm's undertakings. There were no properties against which to register the advances. The First Respondent had never obtained title to the properties. The lender client was left without security for the mortgages.

50. The Tribunal was satisfied beyond all doubt that the Respondents retained these mortgage advances in breach of undertakings, including the undertaking to return the money to the lender clients immediately upon it being clear that the purchases were not to proceed. They admitted as much in their 27 October 2009 Memo when they stated: "It is accepted that both purchases became abortive and therefore although mortgage funds were requested, these are to be returned." The fact that the First Respondent maintained the monthly mortgage repayments was irrelevant. The lender clients advanced money which the Respondents undertook to secure on properties to be purchased by the First Respondent. It was not the lender clients' intention to advance a large unsecured loan to the First Respondent to be used to redeem Mr M.'s mortgage.

51. There was no explanation or justification for either Respondent using the mortgage advances in the way that they did. The First Respondent's attempt to provide some explanation for his conduct contained in his written representations dated 19 October 2010 was entirely unacceptable. He suggested, amongst other things, that there was sufficient money in client account to redeem the various mortgages, but only at the expense of other clients and that at the forefront of his mind was his intention to ensure that clients were not at a loss. These representations caused the Tribunal concern, suggesting as they did a gross misunderstanding by the First Respondent of his duties towards his lender clients, and in particular the need to act with complete integrity throughout all transactions. Integrity encompasses repaying mortgage monies in accordance with undertakings if they are not immediately used for the purpose for which they have been advanced. It was no excuse to say that it would have been possible to juggle other money in client account to redeem mortgages. Client money is sacrosanct and is to be treated as such.

52. In respect of the Toronto Road property, on 22 April 2009 an advance of £59,965 was sent to the Respondents by the Bank of Scotland as a remortgage to the Second

Respondent's wife to be secured on a flat, one of four to be created by the Second Respondent at the property. The Second Respondent owned the freehold. The First Respondent signed the Certificate of Title on 16 April 2009, containing the same undertakings as before. On 23 April 2009 the advance was paid out to the Second Respondent, and not to his wife. By the time of the intervention in the Respondent's firm the lease had not been created and the advance had not been registered. The lender client was therefore left unprotected again.

53. The property at Fairmount Avenue was remortgaged by its owners, the Respondents. The mortgage advance of £189,970 was received from the lender client on 7 August 2009 into the Respondents' client account. As at 19 November 2009 the original mortgage to Mortgage Express had still not been redeemed. In consequence the remortgage had not been registered at the Land Registry and the lender client was again left unprotected. In the Richard Nelson Representations it was admitted on behalf of the Respondents that due to cash flow difficulties they had been unable to redeem the mortgage and register the charge in favour of the lender.

54. The Tribunal found the allegation that both Respondents had failed to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 substantiated on the facts. Personal integrity is central to the solicitors' role as a trusted adviser to the public. The Respondents had failed to demonstrate high moral principles by their conduct, and in particular in their dealings with their lender clients as set out above. They had received substantial mortgage advances which had been used for purposes other than those intended by their lender clients. Large sums of money remained unaccounted for and unsecured.

55. The Tribunal found the allegation that both Respondents had failed to act in the best interests of their clients in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 substantiated on the facts. The Code required solicitors to act in the best interests of every client, which included acting in good faith and doing his best for each client. The Respondents failed to act in the best interests of their lender clients. They did not appear to have recognised lenders as clients at all, but rather as a source of unsecured funding to enable them to maintain a practice that was, on the facts and as admitted by the Respondents, in difficulties with cash flow. It was not in the best interests of the lender clients for mortgage funds advanced for the purchase of properties by the First Respondent to be used for the redemption of Mr M.'s mortgage. The Tribunal did not hear any evidence as to what became of the substantial balance of the proceeds of sale of Mr M.'s property, which should have been, but was not, used to redeem Mr M.'s mortgage. It does not know what Mr M. was told by the Respondents about the redemption of his mortgage. The Birmingham Midshires Building Society was certainly not made aware that its funds had been used for a purpose other than the First Respondent's purchase of two properties. The Respondents had a duty to their lender client to return those funds as soon as they became aware that the purchases were not to proceed. They failed to do so.

56. To compound matters the Respondents did not register the mortgages at the Land Registry in accordance with undertakings contained within Certificates of Title signed on behalf of the firm. It was fundamental to the continued smooth operation of the conveyancing system in which the public and the profession placed their trust that solicitors' undertakings were honoured in their entirety. It was not acceptable to say in

explanation, as in the case of Fairmount Avenue, that the mortgage could not be secured at the Land Registry because the existing mortgage had not been redeemed due to cash flow difficulties. Nor was it an acceptable explanation to say that the mortgage could not be secured because the lease had not been created, as in the case of Toronto Road. The advances in respect of Therapia Road and Nutbrook Court could not be secured of course because the purchases were never completed. By their conduct the Respondents had effectively converted what should have been substantial secured loans into substantial unsecured loans to their practice. This was not what the lender clients intended when they released funds to the Respondents.

57. The Tribunal found the allegation that both Respondents had failed to fulfil undertakings in breach of Rule 10.06 of the Solicitors Code of Conduct 2007 substantiated on the facts. The Tribunal noted that the First Respondent had admitted this allegation if the Tribunal found that the undertakings applied to him as a partner in the firm even if he had not signed the Certificates of Title. The Tribunal did so find. In doing so it noted that the Second Respondent had signed the Certificates relating to the properties to be purchased by the First Respondent. The Tribunal had no doubt that the Respondents had failed to fulfil their undertakings to their lender clients for reasons stated above.

58. The Tribunal found the allegation that both Respondents had acted in circumstances where there existed a conflict between their interests and those of their clients substantiated on the facts. Both Respondents denied this allegation. The property transactions involved the advance of monies by a lender client to the First or Second Respondent or the Second Respondent's wife. A solicitor must not act for both lender and borrower on the grant of a mortgage or remortgage of land if a conflict exists or arises. The Tribunal found on the facts presented to it, having given due consideration to the written representations submitted on behalf of the Respondents, that each of the property transactions described gave rise to a clear conflict of interest. The Tribunal found that the Respondents misused mortgage funds for their own purposes and in breach of the undertakings that they had provided to their lender clients, leaving those clients without security for the monies advanced and exposing them to the significant risk of substantial financial loss. This was unacceptable conduct.

Dishonesty In Relation To Allegations 1.1 and 1.4

59. Both Respondents denied dishonesty in relation to allegations 1.1 and 1.4. Mr Barton for the Applicant addressed the Tribunal on the test to be applied to allegations of dishonesty as set out in the decision of the House of Lords in Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

60. The First Respondent relied on the character references exhibited to his written references as evidence that he was a man of integrity. Mr Barton referred the Tribunal to the decision of Donkin-v-The Law Society [2007] EWHC 414. He agreed that the First Respondent was entitled to ask the Tribunal to consider character references when reaching its decision on the allegations of dishonesty, but submitted that the character references of themselves were insufficient to discharge the evidence in support of the dishonesty allegations against the First Respondent. The Tribunal gave such weight to the character references as it thought appropriate when it considered its decision.

61. The Tribunal applied the test set out in Twinsectra Ltd v Yardley & Ors, bearing in mind the high standard of proof to be met for allegations of dishonesty to be made out. The Tribunal gave careful consideration to the evidence in support of the allegations of dishonesty, written representations on behalf of the Respondents, the First Respondent's written representations dated 19 October 2010 including his character references, and oral submissions of the Applicant and the First Respondent. The Tribunal was satisfied to the requisite high standard that both Respondents had participated in a deliberate sequence of events. In all the circumstances the Respondents' proven conduct in respect of the withdrawals of money from client account in breach of Rule 22 of the SAR 1998 and their proven failure to act with integrity in respect of the property transactions was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondents did not have an honest belief that they were entitled to act in the way that they did and that they knew that what they were doing was dishonest by the standards of reasonable and honest people. The objective and subjective elements of the combined test set out in the case of Twinsectra Ltd were therefore satisfied. The Tribunal found that the Respondents had been dishonest in respect of these allegations.

62. For the avoidance of doubt if the Tribunal had not been minded to find dishonesty in this case they would in any event have found that the conduct of the Respondents was grossly reckless.

**Mitigation**

63. The First Respondent told the Tribunal that he was very sorry for what had occurred. He asked the Tribunal to take into account his character references. If permitted to stay on the Roll of Solicitors he had the possibility of future employment. He had no intention of becoming a principal or partner in any firm, but wanted to work for someone else as a criminal law solicitor providing an excellent quality of service. The First Respondent submitted that the troubles encountered arose during difficult times. He had suffered ill health. On his return to the office after extensive treatment over a two year period he had tried to resurrect the practice. He had struggled to keep the practice going and to a large extent had buried his head in the sand. He had been very embarrassed by what had happened and did not feel that he could ask for assistance. His wife had recently given birth to their second child. He had now made his family aware of his problems and of the possible sanctions against him. He felt that he had let his family down badly. The First Respondent said that he had attended before the Tribunal, had shown remorse and had provided an explanation for the firm having got into the state that it did. He invited the Tribunal not to strike him off the Roll of Solicitors. He did not feel that the profession would be damaged if he was allowed to continue to practice, particularly as he had learnt from the experience.

64. There was no mitigation on behalf of the Second Respondent.

**Costs**

65. The Applicant applied for fixed costs of £17,680. 20.

66. The First Respondent submitted that costs should be ordered against the Second Respondent alone. The First Respondent had faced his responsibilities and had attended the Tribunal to provide an explanation. The Second Respondent had not. The First Respondent's future income was in jeopardy. In addition he had outstanding intervention and indemnity insurance costs to pay. He was a family man with very young children, and his wife was currently on maternity leave. The family had no savings and various other debts.

**Previous Disciplinary Proceedings Before The Tribunal**

67. There were no previous disciplinary proceedings in respect of either Respondent.

**Sanction And Reasons**

68. The Tribunal took account of the character references contained within the First Respondent's bundle and noted all the points made by him in mitigation. It recognised that he had suffered a number of practical difficulties in relation to the practice which had been very short of money. Where a solicitor found himself with cash flow problems it was incumbent on him immediately to recognise either that he must seek funding from an authorised source or to accept that his firm was no longer viable.

69. Both Respondents took a most serious step when they resorted to the use of client account and mortgage advance funds to meet their office expenditure and outstanding financial responsibilities to their clients. It was not acceptable to say that money improperly withdrawn from client account and used for purposes for which it was not intended was to be repaid at some unspecified time. All client money was sacrosanct. It was not available to a solicitor for his personal purposes. It was incumbent upon a solicitor to exercise proper stewardship of client funds and any failure to do so was to be regarded as wholly unacceptable.

70. The Tribunal considered the well-established general principles laid down by the Court of Appeal in Bolton-v-Law Society [1994] 1 WLR 512 CA. In order to practice as a solicitor it was fundamental to be a person who acted at all times with the utmost integrity, probity and trustworthiness. The core purpose of the sanction imposed was to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Any client was entitled to expect that his solicitor was a person whose trustworthiness was not in question. A failure to maintain the profession's high standards was not to be tolerated, in order to protect the public from danger and to maintain the good reputation of the solicitors' profession and the public's confidence in that reputation.

71. Having regard to all the circumstances, and in particular the findings of dishonesty, the Tribunal took the view that it was both fair and proportionate to order that both Respondents be struck off the Roll of Solicitors.

**Decision As To Costs**

72. The Respondents must bear the Applicant's costs. However the Tribunal did consider that the First Respondent had demonstrated evidence of some responsibility and

remorse by attending before the Tribunal, although it could not be said that he had provided any satisfactory explanation for his conduct. In contrast the Second Respondent had entirely abdicated all responsibility for his actions.

73. The Tribunal ordered that costs should be reduced to the sum of £16,085 to take into account the shorter hearing. The First Respondent was ordered to pay one-third and the Second Respondent two-thirds of those costs.

**Orders**

74. The Tribunal Ordered that the First Respondent, Anil Bance, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £5,360.00.

75. The Tribunal Ordered that the Second Respondent, Davinder Singh Cheema, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £10,725.00.

Dated this 10th day of December 2010
On behalf of the Tribunal

Miss N Lucking
Chairman