

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10528-2010

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RANA MAHMOOD ALAM KHAN

First Respondent

And

*[SECOND RESPONDENT]*

Second Respondent

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Before:

Mrs K Todner (in the chair)

Mr J C Chesterton

Mr M G Taylor CBE DL

Date of Hearing: 4th and 18th July 2011

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## Appearances

Mr Nicholas Peacock QC for the Applicant.

Mr Simon Monty QC for the First Respondent, Rana Mahmood Alam Khan.

The Second Respondent, did not appear and was not represented.

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## JUDGMENT

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**Allegations**

1. The First Respondent, Rana Mahmood Alam Khan, withdrew and/or transferred monies from client account other than as permitted by Rule 22(1)(a) of the Solicitors Accounts Rules 1998 (“SAR”). It was alleged the First Respondent had behaved dishonestly.
2. The Respondents failed to act with integrity and in the best interests of their clients in breach of Rule 1.02 and Rule 1.04 of the Solicitors Code of Conduct 2007 (“SCC”).
3. The Respondents failed to keep their firm’s accounting records properly written up in breach of Rules 32(1) and (2) and (7) of the SAR.
4. The First Respondent, Rana Mahmood Alam Khan, failed to produce his firm’s accounting records to the Investigating Officer (“IO”) in breach of Rule 34 of the SAR.
5. The Respondents failed to remedy breaches of the SAR promptly upon discovery in breach of Rule 7(1) of the SAR.
6. Contrary to Rule 6 of the SAR the Respondents failed to ensure the firm’s compliance with the SAR.
7. The First Respondent, Rana Mahmood Alam Khan, failed to deal with the Solicitors Regulation Authority (“SRA”) in an open, prompt and cooperative way in breach of Rule 20.03 of the SCC.
8. The Second Respondent, permitted monies to be withdrawn and/or transferred from client account other than as permitted by Rule 22(1)(a) of the SAR.
9. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 16 October 2009 contrary to Rule 10.05 SCC.
10. In sending a client account cheque to other solicitors which was subsequently dishonoured, the First Respondent, Rana Mahmood Alam Khan, acted without integrity and in a way likely to diminish the trust which the public placed in him and the profession contrary to Rules 1.02 and 1.06 SCC.
11. In failing to respond to correspondence sent to him by or on behalf of the SRA, the First Respondent, Rana Mahmood Alam Khan, failed in his duty to deal openly, promptly and cooperatively with the SRA contrary to Rule 20.05 SCC.
12. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 18 September 2008 contrary to Rule 10.05 SCC.
13. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 25 November 2008 contrary to Rule 10.05 SCC.
14. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an Order made by Manchester County Court on 30 March 2009 and that in so doing he acted in

a manner which could diminish the trust of the public in him and the profession contrary to Rules 1.06 and 11.02 SCC.

15. The First Respondent, Rana Mahmood Alam Khan, failed to redeem his mortgage following completion of the sale of a property owned by him at 545 B Road to Mr JA on 9 April 2009 in which his firm acted contrary to Rules 1.02 and 1.06 SCC.
16. The First Respondent, Rana Mahmood Alam Khan, retained the completion funds for his own benefit following completion of 545 B Road contrary to Rules 1.02 and 1.06 SCC.
17. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 2 April 2009 contrary to Rule 10.05 SCC.

The First Respondent, Rana Mahmood Alam Khan, admitted allegations 4, 9, 10, 11, 12, and 13. After giving his evidence the First Respondent also admitted allegations 15, 16 and 17.

### **Documents**

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

Applicant:

- Application dated 14 May 2010 together with attached Rule 5 Statement and all exhibits;
- Supplementary Statement dated 18 August 2010 together with all exhibits;
- Second Supplementary Statement dated 31 March 2011 together with all exhibits;
- Witness Statement of Javed Akhtar dated 21 April 2011 together with all exhibits;
- Schedule of Costs;
- Handwritten notes from Mr Jonathan Chambers.

The First Respondent, Rana Mahmood Alam Khan:

- First Respondent's Schedule;
- Letter dated 4 May 2011 from Dr Ann Coxon;
- Statement of Fitness for Work for Social Security or Statutory Sick Pay dated 15 June 2011;
- Letter dated 20 June 2007 from the First Respondent to London Borough of Newham;
- Invoice from Perfect Software;

- Email from the Second Respondent to the First Respondent dated 2 April 2009;
- Bank statements from NatWest Bank dated from 13 November 2009 to 10 December 2009;
- Letter dated 28 May 2009 from R Khan and Partners Solicitors to Messrs BM Solicitors;
- Letter dated 9 June 2009 from R Khan and Partners Solicitors to Messrs BM Solicitors;
- Letter dated 8 June 2009 from BM Solicitors to R Khan and Partners;
- Letter dated 6 August 2009 from R Khan and Partners to Habibsons Bank Ltd together with enclosure;
- Letter dated 13 February 2009 from the Second Respondent to Habibsons Bank Ltd;
- Letter dated 21 January 2009 from the Second Respondent to Habibsons Bank Ltd;
- Account Opening Form from Habibsons Bank Ltd dated 3 December 2008;
- Extracts from the firm's bank account ledgers;
- Completion Statement for Mr Javed Akhtar (40 E Cres);
- Letter dated 1 August 2007 from Longmans Solicitors to R Khan and Partners together with enclosure;
- Funds Transfer Debit Advice dated 8 August 2007 from Barclays Bank to R Khan and Partners;
- Statement in relation to 27 C Road together with extract from the internet containing information about 27 C Road;
- Emails between the First Respondent and the Royal Bank of Scotland dated from 7 June 2010 to 29 June 2010;
- Letters dated 25 September 2009 and 5 October 2009 from St Giles Legal and Professional Risks to the First Respondent;
- Letter dated 5 October 2009 from Abbey to R Khan and Partners;
- Letter 16 November 2009 from R Khan and Partners to the SRA;
- Letter dated 16 November 2009 from R Khan and Partners to Capita Insurance Services;

- Letter dated 25 November 2009 from Capita Insurance Services to R Khan and Partners.

The Second Respondent,

- Letter dated 10 October 2010 from the Second Respondent to the Tribunal together with attached bundle of documents;
- Email messages between the Second Respondent and Mr Battersby dated from 4 April 2011 to 18 April 2011;
- Email messages between the Second Respondent and Mr Battersby dated 4 and 5 July 2011;
- Letter dated 8 July 2011 from the Second Respondent to the Tribunal together with attached documents.

### **Preliminary Matters**

#### Application for an Adjournment by the First Respondent, Rana Mahmood Alam Khan

19. Mr Monty QC, Counsel on behalf of the First Respondent, made an application for an adjournment. The Tribunal was referred to a letter dated 4 May 2011 from Dr Ann Coxon (Consultant Physician and Neurologist). The Tribunal was also referred to a GP's Sickness Certificate stating the First Respondent was not fit for work from 3 June 2011 to 20 July 2011. The matter had previously come before the Tribunal on 4 May 2011 and on that date the substantive hearing had been adjourned on the basis of Dr Coxon's medical report. Since then the First Respondent had been receiving medication. On 1 June 2011 he had suffered from chest pains and was diagnosed with angina. This led to a hospital stay from 3 June to 10 June 2011 and some further medical treatment, details of which were given to the Tribunal. The First Respondent was also awaiting further tests.
20. On the previous occasion on 4 May 2011 the First Respondent had been represented by Mr Henry of Counsel and on that occasion the First Respondent had been unable to provide Mr Henry with instructions due his medical difficulties. On 29 June 2011 the First Respondent's insurers had agreed to indemnify the First Respondent for the costs of these disciplinary proceedings and had agreed for Counsel to be instructed. Accordingly the First Respondent's current Counsel had been instructed on 29 June 2011 and had met the First Respondent on 1 July 2011. It became apparent to Mr Monty QC that until 1 July 2011 none of the First Respondent's previous legal representatives had gone through each of the allegations with him and taken his instructions on them. The allegations were serious, including allegations of dishonesty and could impact on the First Respondent's livelihood.
21. Counsel for the First Respondent was of the view that he required further documents and reminded the Tribunal that the First Respondent's firm had been intervened and therefore there was no harm to the public in a further adjournment being granted. The First Respondent's Counsel submitted he was not in a position to represent the First Respondent properly having spent only three and a half hours with the First

Respondent on 1 July 2011 to deal with 17 separate allegations against him. The First Respondent's Counsel had prepared a schedule on behalf of the First Respondent containing his response to the allegations but that schedule simply summarised representations made by the First Respondent's previous Counsel. Mr Monty QC needed to discuss the reasons behind those responses with the First Respondent. He submitted it was not fair on the First Respondent to proceed until proper instructions had been taken from him. The First Respondent denied dishonesty and needed to be able to give evidence on those allegations which were denied. The First Respondent was not well enough to deal with the Tribunal proceedings and would give the Tribunal a further undertaking not to apply for a practising certificate before the date of the next hearing.

22. The First Respondent's Counsel submitted the Tribunal should balance the need to deal with cases efficiently against the risk to the public and take into account fairness to the First Respondent. He submitted the First Respondent would not receive a fair trial until his detailed instructions had been obtained and he was unable to provide a full and proper explanation to the Tribunal until his health had recovered. The First Respondent had no objection to the Tribunal proceeding with the case against the Second Respondent but submitted it was in the interests of justice for the case against the First Respondent to be adjourned today.

#### The Applicant's Submissions on the First Respondent's Application to Adjourn

23. The Applicant opposed the First Respondent's application for an adjournment on three grounds. Firstly, these proceedings had been outstanding for over a year. The SRA's inspection had taken place in November 2009 and some of the events complained about were from 2008. The SRA was ready to deal with the case today and indeed witnesses had attended to give evidence. It was most unsatisfactory that the application for an adjournment was being made at such a late stage.
24. Secondly, the letter from Dr Coxon had stated on 4 May 2011 that she was of the view the First Respondent could not represent himself because of cognitive problems. However, the First Respondent was represented by Mr Monty QC and therefore was not representing himself before the Tribunal. Furthermore, Dr Coxon had concluded in her letter of 4 May 2011 that she would see the First Respondent again in two weeks and submit an interim report at that time. No further report had been produced and it was not clear whether the First Respondent had returned to see Dr Coxon and if he had not returned, the Tribunal had not been given any explanation as to why not. The Tribunal was now being told the First Respondent was suffering from angina and that he had been under investigation in hospital since 3 June 2011. Given that that was the situation, the Certificate provided by the First Respondent's GP, dated 15 June 2011, had only been handed in to the Tribunal this morning. Furthermore, that Certificate simply stated the First Respondent was not fit for work and this was quite different from the issue of whether the First Respondent could provide instructions to Counsel. There was no medical evidence before the Tribunal today stating the First Respondent was not fit to proceed today.
25. Thirdly, on the question of representation, the Applicant submitted Mr Monty QC was more than able to adequately represent the First Respondent today and indeed, a Schedule had been prepared and filed by Mr Monty QC on behalf of the First

Respondent which provided a response to the allegations. A number of those allegations had been admitted. Accordingly, the Applicant submitted the First Respondent's application for an adjournment should be refused.

The Tribunal's decision on the First Respondent's application for an adjournment

26. The Tribunal had listened carefully to the submissions of both parties and had considered the documents provided. The First Respondent had made an application for an adjournment at the substantive hearing on 4 May 2011 which the Tribunal had reluctantly granted. On that occasion the substantive hearing had been adjourned and re-listed to today's date, 4 July 2011, and this morning the First Respondent had made a further application for an adjournment on the basis of his medical condition and on the basis that his legal representative required more time to be able to take instructions from him.

27. The Tribunal's Policy/Practice Note on Adjournments dated 4 October 2002 stated at paragraph 4:-

“The following reasons will NOT generally be regarded as providing justification for an adjournment; ...

**(b) Lack of Readiness**

The lack of readiness on the part of either Applicant or Respondent or any claimed inconvenience or clash of engagements whether professional or personal.

**(c) Ill-health**

The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient.”

28. These were serious allegations that needed to be determined and dealt with expeditiously. The First Respondent had not engaged with the process except to apply for adjournments and this was the second time an application to adjourn had been made at such short notice at a substantive hearing.

29. The medical evidence provided was a Statement of Fitness for Work for Social Security or Statutory Sick Pay from the First Respondent's GP dated 15 June 2011. This was insufficient evidence of the First Respondent's medical condition and indeed, simply stated the First Respondent was “not fit for work”. There was no suggestion that the First Respondent was unfit to give instructions to his Counsel and indeed, the First Respondent was present before the Tribunal today. He had instructed Leading Counsel who had had the opportunity of a lengthy conference with him on 1 July 2011. In any event, the Tribunal's Policy/Practice Note on Adjournments made it clear that lack of readiness was not generally regarded as a reason for granting an adjournment.

30. The Tribunal was satisfied the hearing should proceed and refused the First Respondent's application for an adjournment.

### **Factual Background**

31. The First Respondent, Rana Mahmood Alam Khan, born on 5 March 1964, was admitted as a solicitor on 15 March 2004. His name remained on the Roll of Solicitors. He did not hold a current practising certificate.
32. The Second Respondent, was born on 22 September 1980 and his name was entered on the Register of Foreign Lawyers on 1 November 2008. His name was currently on the Register of Foreign Lawyers.
33. At all material times the Respondents practised in partnership under the style of R Khan and Partners at 307 High Street North, Manor Park, London E12 6SL ("the firm"). The First Respondent was the sole signatory to the office and client accounts. It was accepted by both Respondents that the Second Respondent had no control over the maintenance of, or any involvement in, the operation of the firm's accounting records. The First Respondent conducted conveyancing work and the Second Respondent conducted immigration work.
34. Upon due notice the SRA carried out an inspection of the Respondents' firm and produced a Forensic Investigation Report ("FI Report") dated 23 November 2009. On 27 November 2009 an Adjudicator resolved to intervene into the Respondents' practice following consideration of the FI Report dated 23 November 2009.

### Allegations 1 and 2

35. The books of account were not in compliance with the Solicitors Accounts Rules ("SAR") and it was ascertained by the Investigation Officer ("IO") that there was a minimum cash shortage on client account totalling £69,926.84. The First Respondent agreed with the calculations of the minimum cash shortage and he believed that there were a small number of client balances not included within the above calculation which would have the effect of increasing the minimum cash shortage. Because of the inadequacy of the firm's accounting records the IO was unable to determine the cause of the cash shortage.
36. During the course of interview with the IO the First Respondent made reference to two payments (totalling £63,500) which had been made from client account in relation to 'non-client' matters and which may have caused the shortage. At the date of the FI Report the First Respondent had provided no evidence to the IO that the minimum cash shortage had been replaced. As a result of the cash shortage the firm was unable to make a required completion payment in the amount of £245,000 on the conveyancing matter of Ms N and Mr N.

### Allegations 3 and 4



37. Two advisors from the Practice Standards Unit (“PSU”) of the SRA, who were carrying out an inspection at the firm, informed the IO that they had been supplied with incomplete bank statements from the firm’s accountant relating to the period around the end of October 2009 for the client accounts held at NatWest Bank, which had a balance of £286.44 and Habibson’s Bank, which had a balance of £263.72 and that the First Respondent had failed to provide any client account reconciliations or any lists of liabilities to clients when requested. The PSU advisers subsequently provided the IO with a memorandum dated 19 November 2009 which described the difficulties they had experienced and their request to obtain complete financial records from the First Respondent during the course of their monitoring visit.
38. The IO determined that the firm’s books of account were not in compliance with the SAR for the following reasons:
- No client account reconciliations had been provided;
  - The bank statements provided were incomplete;
  - No list of liabilities to clients was provided;
  - No other accounting records, such as a cashbook or client ledger accounts pertaining to individual client matters were provided.

#### Allegation 5

39. On 18 November 2009 the IO asked the First Respondent how long he had been aware that a shortage subsisted in the firm’s client bank accounts. He said that he did not recall exactly and he said:-

“I was adjusting other [client ledger] accounts to make the books balance. I would delay payments on client ledgers whilst I waited for other receipts [on other ledger accounts] to come in”.

The First Respondent further said that he had explained the situation to the Second Respondent that morning and that he was now aware of the shortage.

40. The IO interviewed the Second Respondent who said that the First Respondent had made him aware that a shortage existed on client bank account “a couple of weeks ago” although he was unable to provide an exact date, and he added that it was “quite recently”. The Second Respondent reiterated that he did not have involvement with conveyancing matters or involvement with operating the firm’s bank accounts.

#### Allegation 7

41. Shortly before a meeting with the IO was due to commence (in which the First Respondent had agreed to provide a written explanation in respect of the minimum shortage on the client account, bank statements for the office and client accounts, further details of the beneficiaries of the two payments totalling £63,500 which were made from the client account and a completed professional history form) the First Respondent contacted the IO and stated that the firm had closed and that any further questions that were required to be put to him should be made in writing.

Allegations 9, 10 and 11

42. In October 2009 the First Respondent was dealing with the purchase of a residential property at 41 D Road for a client, Mr YS. The solicitors representing the seller, Mr AI, were HW & Co. On 16 October 2009, contracts were exchanged by telephone in accordance with Law Society Formula B. This stated:-

“A completion date of ..... is agreed. Each solicitor confirms to the other that he or she holds a part contract in the agreed form signed by the client(s) and will forthwith insert the agreed completion date.

Each solicitor undertakes to the other thenceforth to hold the signed part of the contract to the other's order, so that contracts are exchanged at that moment. Each solicitor further undertakes that day by first class post, or, when the other solicitor is a member of a document exchange (as to which the inclusion of a reference thereto in the solicitor's letterhead shall be conclusive evidence) by delivery to that or any other affiliated exchange, or by hand delivery direct to that solicitor's office to send his or her signed part of the contract to the other together, in the case of a purchaser's solicitor, with a banker's draft or a solicitor's client account cheque for the deposit amounting to £....”

43. By exchanging contracts in accordance with Formula B, the First Respondent entered into the above undertaking and therefore became obliged to comply with it by sending HW & Co the signed contract as well as the agreed deposit. HW & Co were concerned not to have received the signed contract or agreed deposit in the sum of £11,300 from the First Respondent and sent communications to him by fax on 3 and 4 November 2009 pressing him on the matter. Not having received the contract, or the cheque by 5 November 2009, HW & Co made a formal complaint to the SRA.
44. After the complaint was made to the SRA, the First Respondent did supply HW & Co with a client account cheque in the sum of £11,300 representing the deposit. However, on 26 November HW & Co wrote to the SRA to inform them that the cheque had to be re-presented. On 3 December 2009, HW & Co wrote again to the SRA to say that the cheque had not been honoured.
45. The SRA instructed an outside firm of solicitors (GLLP) to investigate the complaint on its behalf and this firm wrote to the First Respondent on 4 January 2010 seeking his explanation for what had happened. By this time the First Respondent's firm had closed and the letter was sent to his home address. He was required to respond by 18 January, but failed to do so and on 19 January was written to again. On 27 January he contacted GLLP by telephone and they agreed an extension to respond to the letter until 3 February 2010, but such response never came. Although the First Respondent later instructed a solicitor (JF) to deal with matters on his behalf, JF wrote to the SRA on 29 April 2010 to say that the First Respondent would reserve his position and not make any response.

Allegations 11, 12 and 13

46. In September 2008 the First Respondent was acting for Miss AP in connection with the assignment to her of a Lease. In connection with this matter he gave undertakings to S&D, the solicitors on the other side, to pay their costs in the matter. The first of these was given in a letter dated 18 September 2008 undertaking to pay their costs in the sum of £200 whether or not the matter proceeded to completion. A second letter of 25 November 2008 gave a similar additional undertaking in respect of a further sum of £200 plus VAT.
47. On 29 January 2010 S&D wrote to the SRA complaining that the undertakings had not been complied with and attaching copies of relevant correspondence including chasing letters which they had sent to the First Respondent. By the time the complaint reached the SRA, the First Respondent's firm had been intervened.
48. The SRA wrote to the First Respondent seeking his explanation for his conduct on 16 April 2010. There was no response to this letter and the SRA wrote to him again on 10 May 2010. He phoned on 19 May indicating that he would submit a response by 21 May, but this was not forthcoming and he was written to again on 26 May and 9 June. He finally emailed on 22 June 2010 to say that he had been unwell. In an email dated 2 July 2010, he explained that because of the intervention, it had become impossible for him to comply with the undertaking. The SRA wrote to him again on 5 July 2010 seeking documentary confirmation as to what he had said, but this was not forthcoming and he was written to again on 13 July. On 21 July he emailed to say that he was unable to provide any further information.

#### Allegations 11 and 14

49. On 30 March 2009 Manchester City Council obtained a Judgment by Default in Manchester County Court against the First Respondent. This was in the sum of £29,328.70 and related to work which the Council had had to carry out on a default basis at a house in their area. On 20 October 2009 an application made by the First Respondent to have the Judgment set aside was dismissed by the Court. Additional costs of £450 were ordered against him, which increased his liability under the Court Order.
50. On 22 October 2009 the Council wrote to the First Respondent asking for his proposals to settle the matter. From their further letter to him of 26 October, it was clear that the First Respondent had agreed with them to make monthly payments of £1,222 by standing order commencing on 17 November 2009. With this letter was enclosed a standing order mandate. When the Council had not received the first payment as agreed on 17 November, they wrote to the First Respondent again on 30 November pointing out that if he did not contact them, they would commence bankruptcy proceedings. Nothing having been heard from the First Respondent, Manchester City Council made their complaint to the SRA on 10 December 2009. In their letter to the SRA of 18 February 2010 the Council confirmed that they had applied for a charging order on the First Respondent's home address.
51. The SRA wrote to the First Respondent on 9 March 2010 seeking his explanation for what had happened. Although he did not fail completely to engage with them, he did not give any full explanation for what had happened other than to say:-

- That he had not been the owner of the property at the time the works had been carried out, having acquired it after that time;
- That he had planned to appeal against the Order of the Court and bring the previous owner into the proceedings;
- That he had never made any promise to pay off the Judgment debt by standing order as claimed by the Council;
- That the intervention into his practice had prevented him from dealing with matters as he would have wished.

52. On 5 July 2010 the SRA wrote to the First Respondent seeking further information which was not forthcoming and they wrote again on 13 July. On 21 July he contacted them to say that he would be providing no further information.

#### Allegations 15, 16 and 17

53. On 2 June 2006 the First Respondent became the owner of a residential property at 545 B Road. To assist him in his purchase of the property he obtained a mortgage from the Royal Bank of Scotland (“RBS”) under which he borrowed about £200,000. In late 2008 the First Respondent agreed to sell the property to Mr Javed Akhtar, who was represented by BM Solicitors and received a £20,000 deposit on 28 December 2008. On 2 April 2009 in Replies to Requisitions on Title the firm entered into the usual undertaking that an undertaking to discharge would be given upon completion.
54. The transaction was completed on 9 April 2009 with the sale price being £225,000. Following completion between 24 April 2009 and 8 June 2009 there was an exchange of correspondence between BM Solicitors and the First Respondent regarding the respective signed Contracts.
55. On 15 July 2009 BM Solicitors wrote to the First Respondent seeking an executed form DS1 in connection with the transaction. The First Respondent failed to send them this and they sent reminders on 21 and 30 July and 17 September. It became apparent that the First Respondent, in contravention of the undertaking given on 2 April 2009, had failed to discharge the mortgage to his borrowers, the RBS. The consequence of this was that RBS sought possession of the property and a Notice of Eviction dated 11 March 2010 was served on the occupier.
56. On 1 April 2010 BM Solicitors wrote to Mr Akhtar’s mortgagees, AM plc, to inform them of the situation. They added that they were closing their practice. Mr Akhtar consulted another firm of Solicitors BBK who wrote to the SRA on 13 April 2010. Mr Akhtar was evicted from the property.
57. On 2 February 2011 the SRA wrote to the First Respondent seeking his explanation for what had taken place. Responses sent on his behalf by his legal representative stated:-
- The transaction was dealt with by a Legal Executive who, in answer to a further query, he said had been supervised by the Second Respondent;

- The First Respondent had been ill and under stress and unaware of the relevant events;
- The First Respondent had personally given no undertaking to discharge the mortgage;
- The First Respondent would not himself have agreed to exchange and complete on 9 April 2009;
- The solicitors on the other side failed to send the balance of the completion monies but the matter went ahead;
- The First Respondent took over conduct of the file himself on 9 June 2009 and tried to get the balance;
- The property had been sold subject to encumbrances;
- There was no legal obligation upon him to discharge the mortgage;
- The completion monies had gone into office account – then intervention followed;
- The signature on the undertaking of 2 April 2009 was not that of the First Respondent.

### **Witnesses**

58. The following witnesses gave evidence:-

- Mr Javed Akhtar;
- Mr Jonathan Chambers (Forensic Investigation Officer with the SRA);
- The First Respondent, Rana Mahmood Alam Khan.

### **Findings of Fact and Law**

59. The Tribunal had considered carefully all the evidence given, all the documents provided and the submissions of all parties. The Tribunal considered each of the allegations in turn and used the criminal standard of proof in relation to each particular allegation in that the Tribunal had to be satisfied beyond reasonable doubt that the allegation was proved.
60. **Allegation 1. The First Respondent, Rana Mahmood Alam Khan, withdrew and/or transferred monies from client account other than as permitted by Rule 22(1)(a) of the Solicitors Accounts Rules 1998 (“SAR”). It was alleged the First Respondent had behaved dishonestly.**

- 60.1 This allegation was against the First Respondent only and in his evidence the First Respondent had admitted there had been a shortfall. In his evidence the First Respondent had said that when discussing this issue with Mr Chambers the First Respondent was referring to a shortfall in the office account, whereas Mr Chambers in his evidence had stated he was referring to the client account. Mr Chambers said he had not been provided with any ledger cards and had not been provided with any explanation as to how the shortfall had occurred. It was clear from the evidence before the Tribunal that there was a minimum cash shortage on client account of £69,926.84 and as a result of the shortage the firm had been unable to make a required completion payment in the amount of £245,000 on the conveyancing matter of Ms N and Mr N. The First Respondent accepted the firm had been unable to complete due to a shortfall on client account.
- 60.2 The First Respondent in evidence admitted £6,500 had been paid from client account by mistake causing a shortfall, as a result of him using the wrong cheque book. However the First Respondent claimed the Second Respondent was also a signatory on the firm's bank accounts, and had authorised payment to transfer funds. He referred to letters to the firm's bank that appeared to be from the Second Respondent. The Second Respondent, in his statement dated 10 October 2010, said he had never been a signatory to the firm's office or client accounts and was not aware of the shortfall until the PSU visit on 17 November 2009. The FI report confirmed that the First Respondent told Mr Chambers that only he could operate all bank accounts, yet in his evidence, the First Respondent claimed the Second Respondent could authorise the transfer of funds. Mr Chambers was not questioned about this issue at all.
- 60.3 The First Respondent was questioned about the letters to the bank appearing to be different to the firm's notepaper being used at the time, and he accepted in cross-examination that the firm's computer system had a number of templates that any fee earner could access and use, and that different letterheads were used to copy and paste. The Second Respondent in his statement dated 8 July 2011 stated the letters to the bank were sent on the First Respondent's instructions and the bank returned them as they were not signed by the authorised signatory. He stated additional letters were sent bearing the First Respondent's signature in order to request the release/transfer of funds. The Second Respondent confirmed no funds were ever released on his signatures.
- 60.4 The Tribunal did not believe the First Respondent's version of events that the Second Respondent had authorised the transfer from funds. The First Respondent himself had accepted there had been a shortage on client account, and accordingly the Tribunal found this allegation proved.
- 60.5 In relation to the question of dishonesty, the Tribunal had been referred to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 which set out the test for dishonesty to be proved. The Tribunal had to consider whether the First Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people, and that he himself realised that by those standards his conduct was dishonest.
- 60.6 Whilst it had been alleged the Respondent had behaved dishonestly in relation to the matters in this allegation, the Tribunal was concerned that the basis of the allegation of dishonesty had not been specifically set out and it was not at all clear from the

Rule 5 Statement the basis upon which it had been alleged. The Applicant had submitted that any wrongful misapplication of client monies, where done knowingly, and in circumstances where one reason is that the solicitor had pressing financial problems, was dishonest. He had also submitted that where that solicitor did not have enough money to meet his own or another client's liabilities and so was using someone else's money to do so, this was dishonest.

- 60.7 The First Respondent had admitted to the IO that he was waiting for money to come in from other clients and the Applicant submitted this established dishonesty as the First Respondent knew what he was doing was wrong and he was re-writing the accounts to cover this up. However in his evidence that the First Respondent stated he had never wrongly misapplied client money.
- 60.8 The First Respondent was cross-examined on the issue of using Mr Akhtar's money for the benefit of the firm, which he denied, but this was in relation to allegations 15, 16 and 17, where dishonesty had not been alleged. The First Respondent was also questioned about the financial difficulties of the firm, and the firm's position in November 2009 but he was not cross-examined specifically on behaving dishonestly in relation to allegation 1 where dishonesty had been alleged.
- 60.9 The Tribunal was mindful of the case of Thaker v Solicitors Regulation Authority [2011] EWHC 660 (Admin) in which Lord Justice Jackson had stated:

“The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or a Rule 4 statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies.”

As the First Respondent had not been questioned about behaving dishonestly in relation to allegation 1, and the basis of the dishonesty allegation was not set out within the Rule 5 Statement, the Tribunal was not satisfied that the allegation of dishonesty had been proved to the requisite standard.

61. **Allegation 2. The Respondents failed to act with integrity and in the best interests of their clients in breach of Rule 1.02 and Rule 1.04 of the Solicitors Code of Conduct 2007 (“SCC”).**
- 61.1 This allegation had been alleged against both Respondents and the particulars relied upon by the SRA related to the minimum cash shortage of £69,926.84 and the fact that the firm was unable to meet the required completion payment on the conveyancing matter of Ms N and Mr N. The firm should have held the sum of £246,963.75 on 17 November 2009 ready for completion.
- 61.2 The First Respondent had accepted in his evidence that the firm had been unable to complete the transaction for Ms N and Mr N due to the shortfall. The First Respondent had borrowed money from his brother and had sent this to Mr N's new solicitors on or about 27 November 2009 by way of repayment.

- 61.3 The Tribunal was satisfied that the First Respondent had failed to act with integrity and in the best interest of his clients by failing to ensure that the firm had retained sufficient funds in client account in order to complete the conveyancing transaction on behalf of his clients. The clients had been deprived of their funds for a period of at least 10 days and had not been able to meet their contractual liability to complete as a result. The clients had suffered loss and the Tribunal was satisfied this allegation had been proved against the First Respondent.
- 61.4 In relation to the Second Respondent, it had been accepted during the SRA investigation that the Second Respondent had no control or involvement with the maintenance of the firm's accounting records. Furthermore, the Second Respondent conducted immigration work only. The Tribunal was satisfied the Second Respondent could not have failed to act with integrity if he did not know about conveyancing transactions or the shortfall. The Tribunal accepted the Second Respondent's written submissions that he was not aware of what was going on and the Tribunal found this allegation was not proved against the Second Respondent.
62. **Allegation 3. The Respondents failed to keep their firm's accounting records properly written up in breach of Rules 32(1) and (2) and (7) of the SAR.**
- 62.1 This allegation was against both Respondents. The First Respondent had accepted in his evidence that he had discovered in November 2009 that no reconciliation statements had been carried out between July 2009 and November 2009. He also stated that he had not been able to access the firm's computerised accounts since 2008 as he had not paid the licence fee necessary to access the system. However, he also maintained that reconciliations had been done every month until the end of July 2009 but yet did not produce copies of these, claiming he had given them to his bookkeeper. He also stated that he owed money to his bookkeeper and that as a result of this, the bookkeeper may not have done reconciliations. He claimed he had not known that reconciliations were not being done. The Tribunal was satisfied the First Respondent had failed to keep his firm's accounting records properly written up and that this allegation was proved against him.
- 62.2 In relation to the Second Respondent, he had submitted the First Respondent was the sole owner of the firm and he should not be held liable for any breaches of the SAR or professional conduct. In his written submissions dated 10 October 2010, the Second Respondent stated no formal partnership agreement was ever drafted between him and the First Respondent, that he had never shared any profits with the First Respondent, he had received only a couple of wage slips, and he had never contributed towards the capital. He referred the Tribunal to the Partnership Act 1890 and claimed there was no partnership. However, the Tribunal noted the Second Respondent had been held out as a partner of the practice at the material times. His name appeared on the notepaper as a partner and he was named as a partner in The Law Society records of the firm. The Tribunal was satisfied he was a partner of the practice at the material time. As such he was equally responsible for any breaches of the SAR. The Tribunal found allegation 3 proved against the Second Respondent.
63. **Allegation 4. The First Respondent, Rana Mahmood Alam Khan, failed to produce his firm's accounting records to the Investigating Officer ("IO") in breach of Rule 34 of the SAR.**



- 63.1 Mr Chambers, in his evidence, had confirmed that he had not been provided with any accounting records and that although the First Respondent had been given a full opportunity to provide information, he did not do so. The First Respondent had not provided any client ledger cards or any full written explanations.
- 63.2 The First Respondent had admitted this allegation but then had given evidence to indicate that he had provided some records. On 18 July 2011, the First Respondent had produced some documents which he claimed were client ledger cards from his computerised accounts system that he had printed on the day Mr Chambers visited the firm and he said he had given the originals to his previous solicitors. He claimed he had paid his previous solicitors' outstanding invoice on 15 July 2011 and obtained these ledger cards from them. The First Respondent claimed he had given copies of these client ledger cards to Mr Chambers on 18 November 2011. However, in his evidence on 4 July 2011 the First Respondent stated that on the day Mr Chambers visited the firm's office, the accounts system was not working as he had not paid his licence renewal fee. This was contradictory to his evidence on 18 July 2011. The Tribunal rejected the First Respondent's evidence and did not believe the First Respondent's version of events. Furthermore, the Tribunal was mindful that Mr Chambers had not been cross examined on the First Respondent's claims of providing some records. The Tribunal was satisfied this allegation was proved.
64. **Allegation 5. The Respondents failed to remedy breaches of the SAR promptly upon discovery in breach of Rule 7(1) of the SAR.**
- 64.1 This allegation was against both Respondents. The First Respondent had accepted during the Forensic Investigation that he had been adjusting the firm's accounts to make the books balance. He stated he would delay payments on client ledgers whilst he waited for other receipts to come in. There was some dispute about which ledgers the First Respondent had been referring to. Mr Chambers in his evidence accepted the First Respondent had not used the words "client ledgers" when making reference to adjusting the accounts, and that those words in square brackets were Mr Chambers' own contemporaneous notes, and reflected his interpretation of what the First Respondent had said. However, the First Respondent had used the words "client ledgers" when referring to delaying payments. Mr Chambers further said that if the First Respondent had been referring to office ledgers instead of client ledgers, that would have made no sense in the context of the conversation.
- 64.2 The First Respondent in his evidence on 18 July 2011 claimed that during this discussion with Mr Chambers he had been referring to the firm's office account as he could not pay his secretary's wages. He claimed the discussion was about the firm's overdraft limit being suspended and that while Mr Chambers may have been asking about the client account, the First Respondent had been talking about the office account. The First Respondent's Counsel referred to the matter as a misunderstanding. However, the Tribunal rejected that explanation as it was quite an incredible proposition that the First Respondent would be adjusting his office account to make the books balance. In any event the First Respondent accepted he had delayed payments on client ledgers whilst awaiting receipts. The Tribunal was satisfied the First Respondent had failed to remedy breaches of the SAR upon prompt discovery and that this allegation was proved.

64.3 In relation to the Second Respondent, the Tribunal had already found the Second Respondent was a partner of the practice at the material time. Although the Second Respondent had stated in his written submissions dated 10 October 2010 that he had no involvement in the firm's accounts, the Tribunal was satisfied that as a partner of the practice the Second Respondent was liable for any breaches of the SAR. Accordingly this allegation was proved against him.

65. **Allegation 6. Contrary to Rule 6 of the SAR the Respondents failed to ensure the firm's compliance with the SAR.**

65.1 This allegation was against both Respondents. Rule 6 of the SAR stated:

“All the *principals* in a practice must ensure compliance with the rules by the *principals* themselves and by everyone else working in the practice.”

The First Respondent had accepted in his evidence that no client account reconciliations had been carried out between July 2009 and November 2009 and that there had been a shortfall on client account. Accordingly the Tribunal was satisfied this allegation was proved against the First Respondent. All partners had a responsibility to ensure compliance with the SAR. The Second Respondent was also liable, as a partner of the practice, for breaches of the SAR. Furthermore the Second Respondent informed Mr Chambers that he had been made aware of the shortfall “a couple of weeks ago” and he had done nothing to rectify it. The Tribunal found this allegation proved against both Respondents.

66. **Allegation 7. The First Respondent, Rana Mahmood Alam Khan, failed to deal with the Solicitors Regulation Authority (“SRA”) in an open, prompt and cooperative way in breach of Rule 20.03 of the SCC.**

66.1 This allegation was against the First Respondent only. Mr Chambers, having attended the firm on 18 November 2009, arranged to return on 19 November 2009 to allow the First Respondent the opportunity to provide further information, documents and explanations. However on the morning of 19 November 2009, the First Respondent informed Mr Chambers that the firm had closed that morning. He asked for any further questions to be put in writing. The investigation was then terminated by Mr Chambers. It appeared therefore that the First Respondent had closed down his practice while the investigation was ongoing. In his evidence the First Respondent made a number of references to being unable to provide information due to the intervention. However, the intervention took place on 27 November 2009, about a week later. The Applicant had confirmed that files were available for inspection after the intervention.

66.2 The Tribunal accepted Mr Chambers' evidence that he had not been provided with any ledgers, accounts, information or explanations by the First Respondent. Mr Chambers was not cross examined about the First Respondent's claim that some client ledgers were provided. Accordingly, the Tribunal found allegation 7 proved.

67. **Allegation 8. The Second Respondent, permitted monies to be withdrawn and/or transferred from client account other than as permitted by Rule 22(1)(a) of the SAR.**

67.1 This allegation was against the Second Respondent only. Whilst the Tribunal accepted the Second Respondent was not a signatory on the client or office accounts and that he did not have any control or involvement in the operation of the firm's accounting records, the Tribunal had found he was still nevertheless liable as a partner of the practice to ensure that the SAR were complied with. It was his responsibility to ensure that there were no breaches of those rules and he had failed to do so by allowing the First Respondent to have complete control over the client account. He had joint responsibility for compliance with the SAR and by allowing a shortage to occur on the client account, albeit unknowingly, he had clearly permitted monies to be withdrawn and/or transferred from client account in breach of Rule 22 (1)(a) of the SAR. Accordingly, the Tribunal found this allegation proved against the Second Respondent.

68. **Allegation 9. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 16 October 2009 contrary to Rule 10.05 SCC.**

**Allegation 10. In sending a client account cheque to other solicitors which was subsequently dishonoured, the First Respondent, Rana Mahmood Alam Khan, acted without integrity and in a way likely to diminish the trust which the public placed in him and the profession contrary to Rules 1.02 and 1.06 SCC.**

**Allegation 11. In failing to respond to correspondence sent to him by or on behalf of the SRA, the First Respondent, Rana Mahmood Alam Khan, failed in his duty to deal openly, promptly and cooperatively with the SRA contrary to Rule 20.05 SCC.**

**Allegation 12. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 18 September 2008 contrary to Rule 10.05 SCC.**

**Allegation 13. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 25 November 2008 contrary to Rule 10.05 SCC.**

68.1 These allegations were against the First Respondent only and had been admitted by him. Accordingly, the Tribunal found allegations 9, 10, 11, 12 and 13 proved against the First Respondent.

69. **Allegation 14. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an Order made by Manchester County Court on 30 March 2009 and that in so doing he acted in a manner which could diminish the trust of the public in him and the profession contrary to Rules 1.06 and 11.02 SCC.**

69.1 This allegation was against the First Respondent only and related to a Judgment entered against him in the Manchester County Court. The First Respondent had

explained that the Judgment related to a personal private matter and did not relate to his practice as a solicitor. The First Respondent had informed the SRA in an email dated 2 July 2010 that the debt was due from a previous owner of the property in question and that whilst he had been sent a standing order form from the defendants he had not received this as the firm had closed down and his post was re-directed to the Intervening Solicitors.

69.2 The Tribunal was satisfied that the Judgment had no connection with the First Respondent's practice and was a personal matter. In the circumstances, the Tribunal found this allegation was not proved.

70. **Allegation 15. The First Respondent, Rana Mahmood Alam Khan, failed to redeem his mortgage following completion of the sale of a property owned by him at 545 B Road to Mr JA on 9 April 2009 in which his firm acted contrary to Rules 1.02 and 1.06 SCC.**

**Allegation 16. The First Respondent, Rana Mahmood Alam Khan, retained the completion funds for his own benefit following completion of 545 B Road contrary to Rules 1.02 and 1.06 SCC.**

**Allegation 17. The First Respondent, Rana Mahmood Alam Khan, failed to comply with an undertaking given on 2 April 2009 contrary to Rule 10.05 SCC.**

70.1 These allegations were against the First Respondent only. At the beginning of the hearing the First Respondent had denied these allegations and indeed, gave evidence to that effect on 4 July 2011. He claimed the matter had been dealt with by the Second Respondent and that although the relevant correspondence on the file contained the First Respondent's reference number, this was because it had not been changed. He claimed that an email dated 2 April 2009 from the Second Respondent to the First Respondent containing a number of attachments was evidence that the Second Respondent had dealt with this transaction. The First Respondent further claimed in his evidence on 4 July 2011 that the Replies to Requisitions on Title dated 2 April 2009 were not the ones sent to BM Solicitors as the bank details were different. He accepted the undertaking contained at paragraph 6 of the Replies agreeing to discharge the charge to RBS was the same but claimed the document had not been sent from his office. He stated no undertaking had been given and he had not signed it.

70.2 The First Respondent claimed that on completion the balance of completion funds were not paid in full and that as a result the firm had held the Transfer awaiting the balance. The First Respondent further claimed that he had not given any undertaking, and that Mr Akhtar had purchased the property subject to the First Respondent's charge, as Mr Akhtar's solicitor had not amended the contract. The First Respondent accepted that in November 2009 the firm's office account had a large overdraft.

70.3 Mr Akhtar gave evidence that he had not known about the First Respondent's mortgage when he agreed to purchase the property and that the First Respondent had referred him to another firm of solicitors, Messrs BM Solicitors, as the First Respondent's firm could not represent him. He signed whatever his solicitors asked him to sign at their office. He confirmed the First Respondent had been paid the

purchase monies in full on completion and there was no shortfall. He also confirmed so far as he was aware, the First Respondent was the only solicitor at the firm and signed everything himself.

- 70.4 At the hearing on 18 July 2011, the Tribunal had received a further statement from the Second Respondent dated 8 July 2011. In that statement the Second Respondent stated he had not dealt with the sale of 545 B Rd for the First Respondent and that he had not signed any letters or Replies to Requisitions. He had never done any conveyancing. He stated the email dated 2 April 2009 had been sent by him to the First Respondent on the First Respondent's instructions whilst the First Respondent was "sitting at BM Solicitors with his friend Mr (IA) (solicitor partner of the BM Solicitors)".
- 70.5 At the hearing on 18 July 2011 the First Respondent continued to give his evidence. After he had concluded his evidence, his Counsel stated that with the benefit of hindsight, the First Respondent accepted allegations 15, 16 and 17. Accordingly, the Tribunal found allegations 15, 16 and 17 proved against the First Respondent.

### **Previous Disciplinary Matters**

71. None.

### **Mitigation of the First Respondent**

72. The Tribunal was provided with details of the First Respondent's career history. In his evidence, the First Respondent had given some explanations regarding the admitted allegations. The First Respondent had accepted that he failed to comply with undertakings. He said that in the matter involving 41 D Road the client had changed his mind after signing the contract and that the First Respondent had also been informed by the estate agent that the seller had agreed to pull out and the contracts would be null and void. This was the reason why the deposit had not been sent to HW & Co. The deposit was eventually sent after the matter was reported to the SRA but by then the firm had been intervened and there was no money in the account.
73. In relation to the undertaking given to S & D Solicitors, the First Respondent stated that completion had not taken place and the matter was still pending at the time of the intervention. The First Respondent said he had not seen the invoice from S & D Solicitors as it had been sent after the intervention. He said there had been sufficient money in the client account to pay the invoice. The First Respondent said he had co-operated with the SRA.
74. The First Respondent's firm had run into problems when the conveyancing work dried up, the firm was taken off lender panels and ended up in the Assigned Risks Pool. The combination of these factors led to the closure of the firm and the Tribunal was reminded about the First Respondent's ill health and provided with further details concerning his medical problems. The First Respondent had been suffering from stress and he had a history of attending for treatment at his doctors during the period leading up to the intervention.

75. The First Respondent had received no income since November 2009 as he had not been able to work and he had considerable debts. He would therefore not be able to pay any costs or a substantial fine. The Tribunal was asked to recognise the problems that had caused the breaches to happen and to take into account that the First Respondent would only be able to get out of his current difficulties by continuing to work, albeit in a supervised capacity. This would allow him to produce some income to repay his debts. If the Tribunal was minded to consider any other sanction it was submitted that any suspension should be for a short period of time.

### **Mitigation of the Second Respondent**

76. The Second Respondent, in his statement dated 10 October 2010 stated he had taken every care in providing immigration advice and had performed his duties with due diligence and honesty, acting in the best interests of clients.

### **Sanction**

77. The Tribunal had considered carefully the submissions made and the documents provided by both Respondents.
78. There had been serious breaches of the Solicitors Accounts Rules and it was clear to the Tribunal that the accounts of this practice were in a terrible state and had not been properly maintained for a considerable period of time. There had been a shortage on client account which had led to the firm being unable to complete on a transaction on behalf of clients. The Tribunal was mindful that no proper explanation had been given explaining how the shortage had arisen. Both Respondents, as partners of the practice, were equally responsible for compliance with the SAR and had to take equal responsibility for the breaches that had been allowed to occur. The Tribunal stressed client funds were sacrosanct.
79. The First Respondent, in addition to allowing breaches of the SAR to take place, had failed to deal with the SRA in an open, prompt and cooperative manner and thereby prevented the SRA from carrying out its regulatory function which was important to ensure the proper protection of clients and their funds. He had also failed to comply with undertakings and had sent a client account cheque to other solicitors which was subsequently dishonoured. In cross-examination the First Respondent had accepted undertakings were the lifeblood of the legal system without which the system would grind to a halt. He accepted it was important to comply with undertakings fully and at all times. The Tribunal stressed that undertakings were the bedrock of the procedure that solicitors used in conveyancing transactions and they formed the basis upon which solicitors conducted business daily. It was crucial that a third party must be able to rely on a solicitor's word and therefore failing to comply with undertakings was not acceptable.
80. The Tribunal had not been impressed by the First Respondent's evidence and found him to be contradictory, less than frank and open, and at times did not believe him at all. The Tribunal was particularly concerned that the First Respondent had allowed a member of the public, Mr Akhtar, to purchase a property from him which was subsequently repossessed due to the First Respondent failing to discharge a Legal Charge on that property. Whilst the First Respondent had eventually admitted the

allegations relating to this transaction after giving his evidence, it was clear to the Tribunal that during the course of his evidence the First Respondent had shown little understanding, sympathy or regard for the position he had placed Mr Akhtar in. This was not the behaviour the Tribunal expected from a member of the profession. It was hard for the Tribunal to imagine any other situations where a solicitor's conduct would bring the profession into such serious disrepute. The First Respondent's conduct had caused clients to suffer substantial financial losses and he had failed to act with any integrity particularly in relation to Mr Akhtar and Ms N and Mr N. His conduct had caused Mr Akhtar to lose his property, which was extremely serious.

81. Sir Thomas Bingham MR in *Bolton v The Law Society* [1994] had stated:

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

82. The Tribunal was satisfied that the First Respondent had failed to discharge his professional duties with integrity, probity and trustworthiness, and was also satisfied that his behaviour had caused serious damage to the reputation of the profession. He was a risk to the public and in all the circumstances, the Tribunal was satisfied that the appropriate sanction was to strike off the First Respondent from the Roll of Solicitors.

83. In relation to the Second Respondent, whilst the Tribunal had not found that he had acted with a lack of integrity, the Tribunal had still found there had been serious breaches of the SAR and the Second Respondent, by allowing the First Respondent to have complete control over the firm's accounting procedures, had allowed a number of very serious breaches to take place. The Second Respondent was a partner of the practice at the material time and had a responsibility as such to ensure the SAR, which were in place to protect client funds, were complied with. He had failed to do this and the Tribunal was satisfied that the appropriate sanction in relation to the Second Respondent was to suspend him for a period of six months.

### **Costs**

84. The Applicant requested an order for his costs and provided the Tribunal with a Schedule of Costs indicating the costs came to a total of £27,978.43. He requested any Order for costs should be a joint and several liability Order due to the overlap in the allegations. However, the Applicant accepted that if the Second Respondent was present before the Tribunal, he would probably submit that he should not have to pay for the costs of dealing with the First Respondent's evidence and he may well argue that his case could have been dealt with far more quickly. However the Applicant submitted that the breaches had been allowed to take place while the Second Respondent was a partner of the practice and therefore he should be equally liable for the costs.

85. Counsel for the First Respondent submitted the First Respondent had not received any income since November 2009 as he had not worked since then. The Tribunal was provided with details of the considerable debts owed by the First Respondent. The First Respondent could not afford to pay any costs at all.
86. The Tribunal had considered the Costs Schedule carefully and was satisfied that the costs claimed were reasonable. The Tribunal did not consider a joint and several liability order was appropriate in these circumstances and therefore ordered the First Respondent should pay £23,781.67 as a contribution towards the Applicant's costs and the Second Respondent should pay a contribution of £4,196.76.
87. It was clear to the Tribunal that the First Respondent was not in any position to pay the costs and the Tribunal accepted the submissions of his Leading Counsel concerning his financial position. These circumstances had not been challenged by the Applicant. The Tribunal was also mindful that by removing the First Respondent from the Roll of Solicitors he had been deprived of his livelihood and, pursuant to the case of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) the Tribunal Ordered that the Order for costs against the First Respondent was not to be enforced without leave of the Tribunal.

#### **Statement of Full Order**

88. The Tribunal Ordered that the Respondent, Rana Mahmood Alam Khan, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,781.67, such costs not to be enforced without leave of the Tribunal.
89. The Tribunal Ordered that the Respondent, of Chichawatni, Pakistan, registered foreign lawyer, be suspended from practice as a registered foreign lawyer for the period of 6 months to commence on the 18th day of July 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,196.76.

Dated this 23rd day of September 2011  
On behalf of the Tribunal

K Todner  
Chairman