

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF [*RESPONDENT 1*], solicitor (First Respondent)  
and ZAHID AZIZ SHEIKH, Registered Foreign Lawyer (Second Respondent)

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

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Mr R Nicholas (in the chair)  
Mr S Tinkler  
Mr M G Taylor CBE DL

Date of Hearing: 25th January 2011

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**FINDINGS & DECISION**

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**Appearances**

David Elwyn Barton, solicitor, 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX appeared on behalf of the Solicitors Regulation Authority (“SRA”).

[*RESPONDENT 1*], appeared and was represented by Ms Alexandra Felix of Counsel instructed by Mr Shorrof Uddin of Richard Nelson Solicitors, 8 The Courtyard, 707 Warwick Road, Solihull, West Midlands, B91 3DA. Zahid Aziz Sheikh did not appear and was not represented.

**Allegations**

The allegations against the Respondents were as follows:-

1. Contrary to Rule 1 of the Solicitors Code of Conduct 2007 they had:-
  - (a) failed to act with integrity;
  - (b) behaved in a way that is likely to diminish the trust the public places in them or the legal profession.

The particulars were that they had misappropriated money, had provided the SRA with false and misleading information, and had failed to produce documents and information or to otherwise cooperate with the SRA to enable it to check compliance with the Solicitors Accounts Rules and the Code of Conduct.

2. Contrary to Rule 10.05 of the said Code they had failed to fulfil undertakings.

In respect of all the allegations it was also alleged the Respondents had been dishonest, although it was submitted that it was not necessary to substantiate dishonesty in order to prove any or all of the above allegations.

### **Preliminary Matter**

The Applicant informed the Tribunal that he had obtained an order for substituted service against Mr Sheikh (“the Second Respondent”). He had effected service by advertising notice of today’s proceedings in the Law Society’s Gazette of 2 September 2010. The Applicant therefore asked the Tribunal to proceed and hear the substantive matter in the absence of the Second Respondent.

### **Decision of the Tribunal**

The Tribunal, having been satisfied that service of documents had been properly effected on the Second Respondent under Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007, decided in accordance with its powers under Rule 16 (2) to hear and determine the application against him notwithstanding the Second Respondent had failed to attend in person and was not represented at the hearing.

### **Factual Background**

1. *[RESPONDENT 1]*, (“The First Respondent”) was admitted as a solicitor in 2005. The Second Respondent was added to the Register of Foreign Lawyers in 2009. The First Respondent remained on the Roll of Solicitors. The Second Respondent’s whereabouts were unknown. At all material times the Respondents were partners in the firm of Alo & Co Solicitors (“Alo & Co”) of Gordon House, 6 Lissenden Gardens, London NW5 1LX.
2. On 27 August 2009 the SRA commenced an investigation without notice of the books of account of Alo & Co. On 1 September 2009 the Respondents took over the firm of Alo & Co from Ms S. Her partner Ms A had left the firm before the investigation began.
3. On 2 September 2009 the only occasion upon which the Respondents made themselves available for interview, Investigation Officers Mr Awan and Mr Davies interviewed the Respondents who stated the following:-
  - they each owned 50% of the equity;
  - the firm had not yet started trading;
  - they did not have professional indemnity insurance;

- they had opened 8 bank accounts in the name of the firm with NatWest and Barclays but could not give details of the accounts;
  - whereas the Respondents had intended opening on 1 September they would be deferring this until 14 or 21 September. As a consequence the investigation was deferred.
4. On 21 December 2009 the Investigation Officers (“IOs”) attended the Respondents’ office without notice. A telephone conversation took place with a person initially identifying himself as the Second Respondent but who later said he was Mr Paul. Mr Awan was told that the Second Respondent was unwell and that the First Respondent was in court all day.
  5. On 21 December 2009 Mr Awan called the firm and was put through to Mr Paul again. He was told the Second Respondent was in Kings College Hospital suffering from swine flu. On each of 21 and 22 December 2009 Mr Awan called the First Respondent on his mobile and left a message for him. On 22 December 2009 the Second Respondent left a message at the SRA call centre and Mr Awan called him back leaving a message for him.
  6. On 23 December 2009 the IOs attended the Respondents’ office and were informed by the receptionist that there was no one there nor would there be until the New Year. They waited for 45 minutes and a Notice under Section 44B Solicitors Act 1974 as amended was left at the office requiring production by the Respondents of various documents. They had never been provided.
  7. On 23 December the Second Respondent and Mr Awan spoke on the telephone. The conversation was recorded with the Second Respondent’s knowledge and consent. The Second Respondent represented to Mr Awan that:-
    - No one was at the office because “we have not started business yet. We’ll be opening by the sixth of January...”.
    - They had not started operating yet.
    - They had no clients.
    - They only had accounts with Barclays.
    - The First Respondent was away on holiday.
    - That he, the Second Respondent, was unwell and that as they would not be open until 6 January Mr Awan could call after that date and make arrangements to speak properly.
  8. The investigation led to an interim Forensic Investigation Report (“FIR”) dated 24 December 2009 demonstrating that money had passed through the firm’s client account and that the SRA had failed in its attempts to gain access to the firm’s financial records with the First Respondent apparently remaining abroad. The final FIR was dated 30 March 2010.

9. On 31 December 2009 the SRA resolved to intervene in the practice. Devonshires (Mr D) was the appointed agent.
10. The records that the intervention agent was able to obtain were confined to two bank mandates and bank statements from NatWest and Lloyds TSB. The mandates were signed by both Respondents. The Lloyds TSB mandate was dated 1 September 2009.
11. A copy of the partnership mandate obtained from NatWest via Mr D showed that the authorised signatories were the First and Second Respondent.
12. The statements for the client account at NatWest, showed very significant activity between 4 November and 24 December 2009: 17 receipts into the client account, between £25,000 and £950,000 totalling £4,361,229.03 and 35 payments out, varying in amount between £700.00 and £500,000, totalling £4,359,636.34. One of the receipts, £125,000 on 4 November 2009, appeared to be a mortgage advance. The most significant payments out ranged from two payments totalling £126,650 to AL to three payments totalling £744,100 to D and BA.
13. The bank mandate obtained from Lloyds TSB showed that the authorised signatories at that bank were the First and Second Respondents. Statements showed that there was significant activity between 23 October 2009 and 11 January 2010. Transactions (omitting interest credited and service charges debited from the account) totalled credits of £619,406.53 and debits of £619,213.00.
14. Mr D had been unable to recover any relevant documents or any client matter files from the firm's premises and so the IOs had been unable to clarify the nature and purpose of the transactions conducted through either the Lloyds TSB or NatWest accounts.
15. The absence of financial records and transaction files gave Mr Awan no option but to resort to such documents as he could retrieve from the compensation fund in connection with claims made by individuals alleging fraudulent activity by the firm. He also contacted other solicitors. It was apparent to the IOs that Alo & Co had been acting in a number of conveyancing transactions.
16. PP L Limited acted in connection with the purchase of a flat in Edmonton, London. The purchase monies £150,000 were received into Alo & Co's client account on 4 December 2009 following their provision of an undertaking to discharge the registered charge on the property in favour of Northern Rock plc. That undertaking was not complied with and an analysis of the financial movements derived from the NatWest bank statements led the SRA to conclude that the money had been misappropriated and/or used in breach of undertaking.
17. Similar facts applied to two other transactions in which Alo & Co acted for the vendor. In both cases the documents recorded exchange having taken place with Mr Sheikh. In one, completion was effected on 21 December 2009 when the sum of £249,968.33 was remitted to the client bank account at NatWest. In the other transaction the balance of the purchase price £472,500 was remitted to Alo & Co on 22 December 2009. As at 29 March 2010 the purchaser had successfully been registered as the new proprietor but a charge dated 15 August 2005 in favour of

Lloyds TSB had not been removed. The money sent to Alo & Co had not been used for its intended purpose.

18. The SRA asked the Respondents to answer questions arising out of the interim report. The Second Respondent had never responded. The First Respondent's reply on his behalf dated 16 February 2010. They explained "[RESPONDENT 1], informs us that he knew of Mr Zahid Sheikh, a Registered Foreign Lawyer, through mutual friends of theirs in Pakistan... that C approached him and Mr Sheikh and invited them to meet Ms S with a view to purchasing the Firm... In August 2009 the SRA was also informed that Mr Sheikh had become a partner of the Firm... On 1st September Ms S resigned from the partnership and the SRA was advised... a month later, on 1st October 2009, he [Mr A] resigned from the partnership and informed the SRA ...". The letter went on to describe difficulties at the Firm including obtaining professional indemnity insurance as there was a previously undisclosed claim and the fact that membership of numerous lender panels had expired. Although required not to return to the firm or carry out work in its name Ms S was continuing to do so. These difficulties it was asserted led to the First Respondent's resignation.
19. The letter of 16 February also stated "[RESPONDENT 1], informs us that he later became aware that Ms Sweeney withdrew in excess of £100,000 from the Firm's clients' bank account with the assistance of Mr Sheikh. [RESPONDENT 1], informs us that he had nothing to do with that withdrawal." Following his resignation "he heard nothing more about the Firm until December 2009 when he discovered that the Firm was the subject of an SRA intervention."
20. The letter of February 2010 asserted by way of summary that the First Respondent "was a partner of the Firm with Mr Sheikh for only a month (1st September until 1st October 2009). During that period the Firm was not operational, the Firm did not act for any clients, the Firm did not receive any clients' instructions and the Firm did not receive or pay any client monies." "On 1st October 2009, [RESPONDENT 1], informed the SRA that he had resigned from the Firm and that he had no further dealings with the Firm. He also notified his bankers." The letter continued "If Mr Sheikh's conduct resulted in concerns being raised by the SRA, then only Mr Sheikh should account for that. In those circumstances, [RESPONDENT 1], is merely an innocent party to a partnership and the alleged misconduct of Mr Sheikh was not within his knowledge..."
21. The SRA invited the Respondents to answer questions arising out of the final report. The Second Respondent had not replied. The First Respondent's solicitors replied dated 28 May 2010, including that the First Respondent had no knowledge of the transactions through the bank accounts after 1 October 2009.
22. It was explained that the First Respondent had prepared letters for the SRA, Lloyds TSB and NatWest Banks on 30 September 2009 to notify them of his resignation. He placed the letters in envelopes for the serviced office receptionist to post. Whilst he had stated that he believed the letters had been sent he "acknowledges that those letters may have been lost by either the receptionist or the Post Office since it is clear that the recipients did not receive the letters... he did not retain a copy of the letters..."

23. The letter of 28 May 2010 continued “When [RESPONDENT 1], left the partnership he assumed that Mr Sheikh would enter into a new partnership with Ms K or trade as a sole principal. [RESPONDENT 1], did not consider that he had any ongoing obligation to Mr Sheikh or the firm once he resigned from the partnership.” “[RESPONDENT 1], is content that he discharged his professional obligations for management and supervision of the firm up to 1st October 2009. [RESPONDENT 1], responsibility for supervision and management of the firm ceased on 1st October 2009 when he resigned ...”.
24. The Tribunal reviewed documents submitted by the Applicant including:-
- The Rule 5 Statement dated 10 June 2010 with exhibits including the FIR.
  - Copy of an advertisement in the Law Society’s Gazette dated 2 December 2010.
  - Supplementary bundle.
  - Schedule of Costs.
25. The Tribunal reviewed documents submitted by the First Respondent including:-
- Bundle of printed receipts for postage, petrol and other items.
  - Copies of two unsigned, unaddressed letters dated 14 December 2010.
  - Bundle of 16 personal references for the First Respondent.

### **Witnesses**

26. There were no witnesses but the First Respondent gave sworn evidence.

### **Findings as to Fact and Law**

#### Allegations 1(a) and (b) Findings in Respect of the First Respondent

27. The Applicant submitted that the First Respondent did not deny that there had been a raid on client account but he denied that he was in any way involved in it as he had resigned from the partnership and had no further role after 1 October 2009. None of the interested parties had received written notification of the First Respondent’s resignation. He had ignored his responsibilities for the stewardship of client money and walked away from the practice but not before he had opened the various bank accounts. It was also significant that the First Respondent admitted that he had not retained any copies of the notifications which he claimed to have sent. This had occurred notwithstanding that the First Respondent claimed to have expressed concerns about the running of the practice and had given this as his reason for leaving. The SRA took the view that if the First Respondent had submitted the letters claimed, it was unlikely that all three organisations would have failed to receive them.

28. The Applicant emphasised the lack of responsibility with which the First Respondent had behaved in respect of the practice. He stated that he discovered that Ms S had withdrawn money from the practice when she should not have done so but he had not reported this to his regulator although it represented serious misconduct if true. The Applicant submitted that it was significant that in making an application to the court to set aside a statutory demand made by The Law Society in respect of the costs of the intervention in the practice and sums paid out of the compensation fund, the First Respondent had stated that he was no longer a partner in the firm and any debt owed resulted after his resignation. He continued "I am currently obtaining evidence in support of this" but no evidence had ever been produced.
29. The First Respondent's confirmed the key elements of his defence as set out in his then solicitors' letters of February and May 2010. Throughout September 2010 he spent part of his time in Newcastle working for Premier Legal Services ("PLS") although he had denied to Mr Awan having knowledge of that organisation. His explanation was that he had purchased it for his brother but had been unable to pass it on to him. For cultural reasons at the meeting with Mr Awan the First Respondent did not wish to disclose these personal difficulties in front of the Second Respondent.
30. The First Respondent confirmed that at the 2 September meeting with Mr Awan he had done most of the talking on behalf of the partners but this was because questions had been directed to him and for no other reason.
31. The First Respondent produced receipts for expenditure in the Newcastle Upon Tyne and neighbouring areas for periods after 1 October when he stated that he was driving taxis. The bundle included a receipt from the Post Office in Newcastle Upon Tyne timed at 10.38 on 22 October 2009, (the date of letters found at the practice which bore his reference and showed him as a partner) and a receipt from a garage in Gateshead timed at 17.28 on the same day. The First Respondent also referred to a receipt from a dentist on 23 December 2009 in Newcastle Upon Tyne which was the same day that the Second Respondent's conversation with Mr Awan had taken place. The First Respondent explained that he was late in presenting this evidence because he had had trouble retrieving the receipts from his accountant and had only been able to post them to his representatives less than a week before this hearing.
32. The First Respondent confirmed that he had done no legal work for Alo & Co between 1 September and 1 October. Any legal work done had been for PLS.
33. The First Respondent considered that he had discharged his duty in respect of Ms S's alleged misconduct by consulting a member of the regional office of the Serious Fraud Office. He agreed that he did not contact either the banks or the SRA to check that his letters to them had been received. Although he knew that at the time he had prepared them there was a postal strike in progress he had not verified their safe arrival.
34. In respect of his application to set aside the statutory demand made by The Law Society the First Respondent said that he had sought to obtain the necessary supporting evidence and referred to the two copy letters dated 14 December 2010.

35. The First Respondent's representative drew the Tribunal's attention to the character references. It would have been completely out of character for him to behave in a way that was dishonest or lacked integrity. It was consistent with dishonest behaviour on the Second Respondent's part that he should retain the First Respondent's name on the notepaper. As a Registered Foreign Lawyer the Second Respondent was not able to operate in sole practice. The First Respondent was open to criticism for not advising the SRA of his concerns about Ms S's actions regarding the withdrawal of £100,000 from the firm's bank account at a time when he knew the SRA had commenced an investigation but his conduct did not equate to dishonesty.

36. The Tribunal's attention was drawn to particular points which supported the First Respondent's assertion that he was no longer a partner after 1 October:

All the conveyancing transactions described in the FIR had been carried out by the Second Respondent.

On 23 December 2009 the IOs had had a conversation with the receptionist at the serviced offices. A handwritten attendance note included: "FA [Mr Awan] asked her about [RESPONDENT 1], she said she did not know anything about [RESPONDENT 1], and that Mr Sheikh is now in charge of everything at this firm."

The fact that the First Respondent had not responded to the Section 44 Notice left at the premises.

The fact that the First Respondent engaged actively with the SRA once he was made aware of the intervention to his home address.

37. It was submitted that the Applicant had failed to discharge the burden of proof upon him to establish that the First Respondent remained in the partnership after 1 October 2009.

38. Having carefully considered the evidence including the First Respondent's sworn witness evidence, the submissions of the Applicant and of the First Respondent's representatives the Tribunal found allegation 1(a) that the First Respondent had failed to act with integrity by misappropriating money, providing the SRA with false and misleading information not to have been proved.

39. In respect of allegation 1(b) that the First Respondent had behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, the Tribunal was satisfied on the evidence that the First Respondent had failed to take proper steps to divest himself of the partnership. Having regard to the fact that as a Registered Foreign Lawyer the Second Respondent was unable to practice without a solicitor as partner it was particularly important for the First Respondent to ensure that he took proper steps to notify all interested parties when he ceased to be involved in the practice. The Tribunal considered that he had failed to do that adequately or possibly had not done it at all and the problems and difficulties which followed were such as to diminish the trust the public placed in him and in the legal profession. The Tribunal found this allegation to have been proved, but was not satisfied that his conduct in respect of allegation 1(b) amounted to dishonesty.



Allegations 1(a) and (b) - Findings in respect of the Second Respondent

40. It was the Applicant's submission that substantial sums of money had been misappropriated from client account. There had been a wholesale failure to look after client money in accordance with the principles set out in the case of Bolton. The Second Respondent had not engaged in the matter since the first stage of the investigation had been concluded in September 2010. He had failed to provide assistance to the SRA at all stages. There had been no response to the Civil Evidence Act Notice and the evidence set out in the papers was therefore not contested at all by the Second Respondent. The conveyancing transactions described in the investigation report were all effected before the telephone conversation with the Second Respondent took place. It was submitted that the objective test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 was satisfied and that in the face of that uncontested evidence the Second Respondent's statements during his telephone conversation with Mr Awan on 23 December demonstrated that his conduct also satisfied the subjective test in Twinsectra in that he knew what he was saying was untrue and therefore knew that he was behaving dishonestly.
41. Having carefully considered the papers and the Applicant's submissions and in the absence of any representations by or on behalf of the Second Respondent, the Tribunal found allegations 1(a) and (b) to have been proved and that this was a clear case of dishonesty.

Allegation 2 – Findings in respect of the First Respondent

42. This allegation related to alleged failure to fulfil undertakings given during the course of conveyancing transactions described in the FIR. The Applicant alleged dishonesty in respect of these undertakings as the money which had been required to fulfil them had not been used for the purpose for which it had been paid over and appeared to have been misappropriated. The undertakings were given on behalf of the firm for which the partners at the time were responsible. The First Respondent's representatives' submissions in respect of his departure from the firm were also relevant to this allegation. The transactions had all occurred after his departure date.
43. The Tribunal found in respect of the First Respondent that this allegation had not been proven. The undertakings were given following his departure from the firm and there was no evidence that he had in any way been involved in the transactions.

Allegation 2 - Findings in respect of the Second Respondent

44. The Tribunal having carefully considered the evidence and the submissions found this allegation to have been proved in respect of the Second Respondent and was also satisfied that he had behaved dishonestly and had done so knowingly.
45. The Tribunal considered that all the allegations against the Second Respondent were of the utmost seriousness particularly having regard to the degree of dishonesty which he had demonstrated.

**Mitigation**

46. It was submitted on behalf of the First Respondent that the allegation which had been proved against him was at the bottom end of the scale particularly in the context of the wide ranging allegations which he had faced. He had shown an abject lack of judgement in the trust that he had placed in people but that was all. As to his means the First Respondent was able to obtain very little legal work at present. He was undertaking only one or two cases per week through PLS.
47. The Second Respondent not being present submitted no mitigation in respect of the allegations found proven against him.

### **Previous Disciplinary Sanctions before the Tribunal**

48. None in respect of either Respondent.

### **Costs Order**

49. The schedule of costs amounted to £26,231.30 in respect of the investigation and proceedings against both Respondents including VAT. It was submitted on behalf of the First Respondent that the costs attributable to him should be minimal having regard to the relatively modest proportion of the allegations which had been proved and the scale of the investigation. The Applicant conceded that a significant part of the case against him had not been found proved but considerable work had been done and documents in his defence had been produced at a very late stage. The Tribunal ordered that the First Respondent pay one quarter of the costs and that the Second Respondent pay three quarters. In arriving at their decision the Tribunal had taken into account the weight of the allegations proved against the respective Respondents.

### **Sanction**

50. The Tribunal Ordered that the Respondent, [*RESPONDENT 1*], solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,557.83
51. The Tribunal Ordered that the Respondent, ZAHID AZIZ SHEIKH of c/o Gordon House (formerly Alo & Co Solicitors), 6 Lissenden Gardens, London, NW5 1LX, Registered Foreign Lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,673.47.

Dated this 15<sup>th</sup> day of March 2011  
On behalf of the Tribunal

R Nicholas  
Chairman